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 THE DKT LIBERTY PROJECT AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

INTEREST OF *AMICUS CURIAE*[1]

The DKT Liberty Project was founded in 1997 to promote individual liberty against encroachment by all levels of government. The Liberty Project is committed to defending privacy, guarding against government overreach, and promoting every American's right and responsibility to function as an autonomous and independent individual. The Liberty Project espouses vigilance against government overreach of all kinds, but especially overreach that restricts individual civil liberties. The Liberty Project has filed briefs as *amicus curiae* in both this Court and in state and federal courts in cases involving constitutional rights and civil liberties.

The Liberty Project has a particular interest in this case based on its long-standing advocacy on behalf of Fate Vincent Winslow, a Black man who was arrested in September 2008 for acting as a middleman in a small-scale marijuana sale. Mr. Winslow subsequently was sentenced to life in prison by a non-unanimous jury in Louisiana that voted along racial lines. *See State v. Winslow*, 55 So. 3d 910, 913, 917 (La. Ct. App. 2010); Tana Ganeva, *Pot Prisoners: Meet Five Victims of the War on Drugs*, Rolling Stone (Sept. 13, 2017).[2]

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[1] Blanket consents from both parties to the filing of *amicus* briefs have been filed with the Clerk. Pursuant to Rule 37.6, *amicus curiae* affirms that no counsel for a party authored this brief in whole or in part, and no person other than *amicus curiae* or its counsel made a monetary contribution to this brief's preparation or submission.

[2] URLs listed in table of authorities.

Specifically, Mr. Winslow, who was then homeless, acted as a middleman in a $20 marijuana sale at the request of an undercover police officer—a service for which he received $5. *Winslow*, 55 So. 3d at 912-13. Mr. Winslow was sentenced to life in prison at hard labor without the possibility of parole, probation, or suspension for this $5 service he provided.[3] *See id.* at 913. Mr. Winslow's jury consisted of 10 white jurors and two Black jurors. Both Black jurors voted to acquit him. *See* Ganeva, *supra*. However, because this Court had upheld Louisiana's practice of allowing convictions by non-unanimous juries as constitutional in *Apodaca v. Oregon*, 406 U.S. 404 (1972), *abrogated by Ramos v. Louisiana*, 140 S. Ct. 1390 (2020), the Louisiana appeals court upheld Mr. Winslow's conviction. *See* 55 So. 3d at 913; *see also id.* at 917 (citing *Apodaca*).

The DKT Liberty Project files this brief so that Mr. Winslow and others who are similarly situated may receive the benefit of this Court's decision in *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020), that non-unanimous jury verdicts are unconstitutional.

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[3] Mr. Winslow was sentenced under Louisiana's four strikes law because he had three prior nonviolent convictions: two unarmed robberies, one of which was committed when he was a minor, and possession of cocaine. *See Winslow*, 55 So. 3d at 915.

SUMMARY OF ARGUMENT

Last Term in *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020), this Court held that the Sixth Amendment required unanimous jury verdicts, despite the statements in *Apodaca v. Oregon*, 406 U.S. 404 (1972), to the contrary. The Court repudiated its prior decision in *Apodaca*, which it described as "unmoored . . . from the start" and as "sit[ting] uneasily with 120 years of preceding precedent." *Ramos*, 140 S. Ct. at 1405; *see also id.* at 1416 n.6 (Kavanaugh, J., concurring in part) (noting that a majority of the Court found that *Ramos* overruled *Apodaca*). *Ramos* thus realigned the Court's Sixth Amendment jurisprudence by overturning *Apodaca* and making clear that states are obligated to use unanimous juries.

For the reasons set forth by Petitioner, *Ramos* reaffirmed an "old rule" dictated by precedent that, under *Teague v. Lane*, 489 U.S. 288 (1989), applies retroactively to defendants who had exhausted all direct appeals at the time *Ramos* was decided, such as Mr. Winslow. *Amicus* writes separately, however, to suggest that, if the Court determines that *Ramos* announced a "new rule"—as Petitioner alternatively argues—the Court should reconsider the manner in which it balances the interests that underlie *Teague*'s exception for "watershed" rules of criminal procedure. In the three decades since *Teague*, this watershed exception has proven to carry less weight than the paper on which it was written. The Court's narrow definition of what may be considered watershed has foreclosed collateral relief in every case that has come before it. The Court should consider revisiting the watershed

exception to make clear that where a new rule replaces an old rule that was the product of discriminatory animus, the interests in accuracy and fundamental fairness of the criminal proceeding always outweigh the state interest in finality of a conviction. No state should have an interest in the finality of a conviction that is the product of a rule steeped in discriminatory animus.

Amicus also writes to stress that the practical impact of a retroactivity conclusion in this case will be minimal. The Court faced this calculus before in *Brown v. Louisiana*, 447 U.S. 323 (1980), when it decided to apply its rule barring non-unanimous six-member juries retroactively. Like *Brown*, this Court's *Ramos* decision implicates convictions arising out of only two states: Louisiana and Oregon. The number of second or successive petitions that would result from retroactive application of *Ramos* would be limited, and certainly substantially fewer than the number of collateral appeals that have resulted from the Court's more recent retroactivity decisions such as *Welch v. United States*, 136 S. Ct. 1257 (2016). Furthermore, the analysis required under a *Ramos*-based petition would be straightforward: courts would merely need to determine whether the defendant had been convicted by a non-unanimous jury. That is both the beginning and the end of the analysis.

For these reasons, as well as those set forth by Petitioner, this Court should conclude that the rule announced in *Ramos* is retroactively applicable.

ARGUMENT

I. The Court Should Revisit *Teague*'s Watershed Exception to Cover New Rules that Replace Rules that Are the Product of Discriminatory Animus.

"[I]n the years since *Teague*, [this Court has] rejected every claim that a new rule satisfied the requirements for watershed status" and has stated that "it is unlikely that any such rules" have "yet to emerge." *Whorton v. Bockting*, 549 U.S. 406, 417-18 (2007) (internal quotation marks omitted). Rather than continue to recite that there are two exceptions to non-retroactivity under *Teague* when there is effectively only one, this Court should revisit *Teague*'s watershed exception. The Court should consider the application of the watershed rule to new rules that replace prior rules that are the product of discriminatory animus. Although *amicus* recognizes that the Court has—in cases prior to its *Teague* ruling—declined to retroactively apply rules replacing those rooted in discriminatory animus, *see, e.g.*, *Allen v. Hardy*, 478 U.S. 255 (1986) (refusing to apply *Batson* retroactively), such a consideration under *Teague* would better balance the interests at stake. A state cannot have an interest in the finality of a conviction that is the product of a rule adopted for discriminatory purposes.

A. The Non-Unanimous Jury Rule Is the Product of Discriminatory Animus.

The non-unanimous jury rule at issue in this case is indisputably the product of discriminatory animus. As this Court observed in *Ramos*, delegates to the

Louisiana constitutional convention sanctioned 10-to-2 verdicts with the explicit goal of "'ensur[ing] that African-American juror service would be meaningless,'" and in Oregon the purpose was likewise "to dilute 'the influence of racial, ethnic, and religious minorities on Oregon juries.'" *Ramos*, 140 S. Ct. at 1394 (citations omitted). Louisiana's practice of allowing non-unanimous jury convictions was nothing more than a modern-day remnant of Jim Crow era policies designed to wield the criminal justice system as a weapon to oppress Black persons. Many individuals—especially Black persons—continue to suffer from the harm imposed by this unconstitutional practice, and those individuals cannot seek relief unless this Court rules that its decision in *Ramos* is retroactively applicable.

Given their discriminatory origins, rules such as the one *Ramos* invalidated actually impose *two* constitutional violations on defendants who are convicted under them. Specifically, as this Court has said time and time again, policies that are aimed at reducing the participation of Black jurors "den[y] a black defendant equal protection of the laws," *Batson v. Kentucky*, 476 U.S. 79, 85 (1986); *see also Strauder v. West Virginia*, 100 U.S. 303 (1880), *abrogated on other grounds by Taylor v. Louisiana*, 419 U.S. 522 (1975); *Ramos*, 140 S. Ct. at 1410 (Sotomayor, J., concurring in part) (suggesting that the history of racial animus underlying the use of non-unanimous juries violates the Equal Protection Clause). A defendant convicted by a non-unanimous jury, then, is not only subject to a rule that denies Sixth Amendment rights, but also to a rule that violates the Equal Protection Clause. Thus, the

defendant is the victim of a two-layer constitutional violation.

Given the racial composition of Louisiana, Black jurors are often heavily outnumbered by white jurors, and their voices are effectively silenced by sheer demographics. *See Ramos*, 140 S. Ct. at 1394 (majority opinion). Thus, Black defendants like Mr. Winslow who were convicted by predominantly white juries that were split on racial lines functionally face the same result as if those Black voices were not present on the jury at all. This not only denies Black defendants their constitutionally guaranteed right to the same robust jury trial as a white defendant, but also deeply undermines public confidence in the criminal justice system. *Cf. id.* at 1418 (Kavanaugh, J., concurring in part) (noting that continuing to allow non-unanimous juries could lead to a "perception of unfairness and raci[sm]. . . [that] undermines confidence in and respect for the criminal justice system").

In cases where Black jurors are vastly outnumbered by white jurors, the reduced voting power of Black jurors, combined with the fact that jurors in the majority are less likely to thoroughly engage with minority viewpoints, effectively silences the voice of the Black juror. *See Brown v. Louisiana*, 447 U.S. 323, 331-33 (1980). For this reason, when the Court previously faced the question of retroactive application of a new rule requiring unanimous verdicts by six-member juries in *Brown v. Louisiana*, it chose to apply the new unanimity requirement retroactively. As the *Brown* court noted, "a majority verdict requirement is far more effective in nullifying the potency of minority viewpoints than is the

outright reduction of a jury to a size equivalent to the majority that is allowed to agree on a verdict." *Brown*, 447 U.S. at 333 n.12 (quotation marks omitted).

The same concerns that supported the Court's decision in *Brown* support a retroactivity ruling in this case. And those same concerns demonstrate why *Teague*'s watershed exception—which does not appropriately take into consideration the racist underpinnings of unconstitutional rules—needs to be revisited. This Court should use this opportunity to revise its approach to retroactivity to account for new rules that replace rules that are the product of discriminatory animus.

B. The Interests Underlying *Teague*'s Watershed Exception Support Retroactively Applying New Rules that Replace Rules that Are the Product of Discriminatory Animus.

The Court has set an extremely high bar to meet *Teague*'s watershed exception. Thus far, in every case in which it has been asked to apply the watershed exception, the Court has valued the state's interest in the finality of a conviction over the risks of inaccuracy and fundamental unfairness in the criminal proceeding. *See Whorton*, 549 U.S. at 417-18 (listing cases). But a state cannot have a legitimate interest in the finality of a conviction where that conviction was obtained—like Mr. Winslow's—through the use of a rule that is the product of discriminatory animus.

That a rule that is the product of discriminatory animus results in inaccurate and fundamentally unfair proceedings should be obvious, and is well-illustrated by

the non-unanimous jury rule in this case. *First*, as to accuracy, because majority-rule jury verdicts reduce the role of holdout jurors, convictions by non-unanimous juries systematically carry a substantial risk of inaccuracy. When the doubts of a few jurors can be silenced, the state is not required to prove its facts to the same constitutionally required degree of rigor. This risk of inaccuracy is particularly heightened for Black defendants, as the non-unanimous jury requirement was designed to tilt the rules of criminal procedure specifically against them. And this risk is not merely theoretical. Before this Court interceded in *Ramos*, Black defendants were more than four times more likely to be convicted by non-unanimous juries than white defendants. *See* Thomas H. Frampton, *The Jim Crow Jury*, 71 Vand. L. Rev. 1593, 1639 (2018).

Second, as to fundamental unfairness, the Sixth Amendment's guarantee to trial by jury in criminal cases "ranks among the most essential: the right to put the State to its burden." *Ramos*, 140 S. Ct. at 1409 (Sotomayor, J., concurring in part). Louisiana's and Oregon's use of non-unanimous juries has historically systematically disadvantaged criminal defendants by reducing that burden. Because holdout jurors who harbor reasonable doubts about a defendant's guilt can be outvoted by a majority of jurors who believe the defendant to be guilty, the prosecution does not have to overcome the same burden to prove its case, and defendants are empirically more likely to be found guilty. This risk is particularly heightened for Black defendants, who by virtue of sheer demographics, often

face juries where white jurors vastly outnumber Black jurors.

Moreover, as Justice Brennan warned in his dissent in *Johnson v. Louisiana*, 406 U.S. 380 (1972), non-unanimous juries are likely to engage in less thorough deliberations. *See Johnson*, 406 U.S. at 388 (Brennan, J., dissenting). This decreases the likelihood that jurors who harbor reasonable doubt about the defendant's guilt will be able to convince the jury to acquit the defendant or to convict under a lesser offense. *See id.* Later empirical studies demonstrated the prescience of Justice Brennan's warning. It is well-documented that juries in majority rule jurisdictions are likely to deliberate for shorter periods of time and coalesce around a majority position more quickly, and jurors who are in the minority are less likely to speak. *See* Reid Hastie et al., *Inside the Jury* 173 (1983). Furthermore, jurors who are not required to reach unanimous agreement are less likely to view the deliberation process seriously. *See id.* at 119. As a result, the state is under less pressure to meet its burden of guilt beyond a reasonable doubt, and the likelihood of a conviction is increased, regardless of actual guilt.

The rule announced in *Ramos* thus addresses the interests underlying the watershed exception in avoiding inaccurate and fundamentally unfair proceedings. But importantly, in this case, there is nothing on the other side of the ledger. Although in all of its *Teague* jurisprudence to date, this Court has found the interests in accuracy and fundamental fairness to be outweighed by the state's interest in the finality of convictions, the state cannot credibly claim to have *any*

legitimate interest in preserving convictions that are the product of a rule born of discriminatory animus. *See, e.g.*, *Lawrence v. Texas*, 539 U.S. 558, 582 (2003) (O'Connor, J., concurring) ("a bare desire to harm [a] group, is an interest that is insufficient to satisfy [even] rational basis review under the Equal Protection Clause"); *Jimenez v. Weinberger*, 417 U.S. 628, 632 (1974) (finding no "legitimate state interest" in "discriminatory laws" (quotation marks omitted)). Because there is no legitimate state interest in the finality of a conviction that is the product of a discriminatory rule, there is nothing to outweigh the interests in accuracy and fundamental fairness. The Court should thus revisit the watershed exception and make clear that where—as here—a new rule replaces a rule that is the product of discriminatory animus, there should be a presumption of retroactivity.

II. A Finding of Retroactivity Will Not, as a Practical Matter, Implicate Administrability Concerns in this Case.

Beyond being proper as a legal matter, retroactive application of *Ramos* would not cause any issues as a practical matter. A finding of retroactivity would not create an unmanageable backlog of second or successive habeas petitions in the lower courts, nor would those second or successive petitions raise the thorny, time-consuming legal issues that previous retroactivity rulings have implicated. Specifically, while this Court's decision in *Welch v. United States*, 136 S. Ct. 1257 (2016), was certainly accurate, the aftermath of that decision included a nationwide influx of second or successive petitions being filed in the lower courts, and those

petitions often implicated complex and myriad legal issues, including issues of state law.

A retroactivity ruling in this case will have no such effect, and the practical impact of this Court's previous retroactivity decisions, including those following *Welch*, should not dissuade this Court from finding retroactivity in this case. The universe of convictions implicated by a retroactivity ruling is small—only convictions arising in two states, and only those in which the guilty verdict was rendered by a non-unanimous jury. In addition, the legal question at issue in these petitions is simple: Was the petitioner convicted by a less-than-unanimous jury? If so, relief is warranted.

A. A Finding of Retroactivity Would Not Open the Floodgates to Second or Successive Habeas Petitions.

A retroactivity ruling in this decision would not open the floodgates to a deluge of second or successive petitions. Practically speaking, a retroactivity ruling in this case would implicate only convictions—and only those by a non-unanimous jury—arising in Louisiana and Oregon, and perhaps a handful of convictions in Oklahoma (which ended its non-unanimous conviction practice over 40 years ago). Indeed, a plurality of this Court reached a similar conclusion in *Brown v. Louisiana*. Specifically, when retroactively applying a rule prohibiting non-unanimous six-member juries, the plurality reasoned that the retroactive application ruling affected a limited number of convictions both because the ruling impacted convictions in "only two States—Louisiana and Oklahoma" and, even then, "only those [convictions] in which it can be shown that the vote was

in fact less than unanimous." *Brown*, 447 U.S. at 336-37 (plurality) ("Thus the number of persons who would have to be retried or released does not approach the magnitude involved in some of our previous cases."). The same is true here.

This small universe of individuals qualified to file second or successive petitions, were this Court to find retroactivity, pales in comparison to this Court's recent retroactivity decision in *Welch v. United States*, which had nationwide implications for those whose sentences were enhanced under the Armed Career Criminal Act ("ACCA"), which numbered between over 400 and over 600 offenders per year between 2012 and 2015. U.S. Sentencing Comm'n, *Sourcebook of Federal Sentencing Statistics*, tbl. 22 (2012-2015). And, indeed, following this Court's 2016 decision in *Welch*, "original proceedings" filed in Courts of Appeals "jumped 138 percent to 13,391," which the United States Courts Administrative Office attributed to this Court's decision in *Welch*. *See Federal Judicial Caseload Statistics 2017*, U.S. Courts ("The[se] original proceedings were filed after the Supreme Court of the United States held in *Welch v. United States* that its earlier ruling in *Johnson v. United States* . . . applied retroactively . . . ."); *see also United States v. Mayo*, 901 F.3d 218, 220 (3d Cir. 2018) (noting the "many second or successive [petitions] for post-conviction relief under 28 U.S.C. § 2255 that have been filed in the wake of the Supreme Court's decision in *Johnson v. United States*").

This Court should not view *Welch*'s impact on the federal judicial system as a warning against ruling for retroactivity in this case. The universe of convictions

impacted by a retroactivity ruling is limited and, as described below, the legal issues implicated by those petitions are simple. For the same reason a plurality of this Court concluded in *Brown v. Louisiana* that the court system would not be overwhelmed following a retroactivity ruling impacting only Louisiana and Oklahoma, a retroactivity ruling in this case would impact only a limited number of those currently incarcerated in Louisiana and Oregon. A retroactivity ruling most certainly would not open the floodgates to a nationwide deluge of second or successive petitions.

B. Not Only Will the Number of Impacted Individuals Be Fewer, the Issues Their Petitions Present Will Be Far Simpler.

In addition to not opening the floodgate of petitions, a retroactivity ruling in this case also will not require lower courts to untangle thorny and complex legal issues to determine whether relief is warranted. Again, a plurality of this Court already has made this clear, concluding that "disruption to the administration of justice" was minimal when finding retroactive a decision holding unconstitutional non-unanimous six-member juries. *Brown*, 447 U.S. at 336-37. The ease with which lower courts will be able to determine whether these petitions present meritorious claims stands in stark juxtaposition to the tangled and time-consuming issues implicated by this Court's recent retroactivity conclusion in *Welch.* This Court should not be concerned that the administrability issues some assert *Welch* caused would be implicated by a retroactivity ruling in this case.

Specifically, *Welch*'s retroactivity ruling led to the filing of second or successive petitions raising various complicated legal issues, which required looking at various state statutes and state case law interpreting them. As background, this Court in *Welch* concluded that its decision in *Johnson*—striking down the ACCA's residual clause—was retroactive. As a result, and as noted above, imprisoned individuals nationwide filed second or successive petitions under § 2255, asserting that their sentences had been enhanced under the ACCA based only on the residual clause.

Those second or successive petitions made arguments along these lines: The ACCA provides a mandatory minimum sentence for defendants convicted of being felons in possession who have at least three previous convictions for violent felonies or serious drug offenses. At least one of the petitioner's prior convictions, the petitioner's argument would go, qualified as a "violent felony" under only the ACCA's now-invalid residual clause. *See, e.g.*, *Mayo*, 901 F.3d at 220.

To determine whether the petitioner's argument was correct, then, the court had to determine whether the underlying felony at issue nevertheless qualified as a crime under the ACCA's "elements clause," meaning the crime had "as an element the use, attempted use, or threatened use of physical force against the person of another."[4] *Id.* at 225 (internal quotation marks omitted).

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[4] While the ACCA also defines a violent felony as "burglary, arson, or extortion, involves the use of explosives, or otherwise involves

And to make that determination—and therefore resolve whether the underlying felony remained a "violent felony" for purposes of the ACCA enhancement—the court undertook what often turned into a six-step approach. The court (1) located the (usually) state statute of conviction, and (2) determined whether, under the "categorical approach," the least of the acts criminalized under that statute implicated the elements clause; that is, whether the least of the acts criminalized involved "the use, attempted use, or threatened use of [physical] force [against another person]." *United States v. Rose*, 896 F.3d 104, 107 (1st Cir. 2018); *Mayo*, 901 F.3d at 224-25.

If, however, there were multiple ways to commit that state law crime, the court (3) then had to employ the "modified categorical approach," under which the court looked at judicial records, such as the plea colloquy, to determine which crime in the statute formed the basis of the state conviction. *Mayo*, 901 F.3d at 225. The court then (4) determined—based on those underlying judicial records—which statutory phrase the defendant was necessarily convicted under. *Id.*

After making that determination, the court (5) returned to the categorical approach to ascertain the least of the acts that statutory phrase criminalized. *Id.*; *United States v. Allred*, 942 F.3d 641, 647-48 (4th Cir. 2019). Finally, the court (6) determined whether that

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conduct that presents a serious potential risk of injury to another," the following discussion focuses on only the application of the elements clause, which frequently was the clause at issue following *Johnson*.

least of the acts includes "the 'use, attempted use, or threatened use of physical force against another person'" as required under the ACCA's elements clause. *Allred*, 942 F.3d at 648.

This six-step process was, and still is, no easy undertaking, as even members of this Court have acknowledged. *See, e.g.*, *Mathis v. United States*, 136 S. Ct. 2243, 2266 (2016) (Breyer, J., dissenting) (calling the modified categorical approach "an impossibly difficult task"); *id.* at 2268 (Alito, J., dissenting) (describing the modified categorical approach as requiring "sentencing judges to delve into pointless abstract questions").[5] Indeed, as one judge pointed out, "[w]hatever the merits of this [categorical and modified categorical] approach, accuracy and judicial efficiency are not among them." *Cradler v. United States*, 891 F.3d 659, 672 (6th Cir. 2018) (Kethledge, J., concurring); *see also United States v. Davis*, 875 F.3d 592, 604 (11th Cir. 2017) ("[T]he true facts matter little, if at all, in this odd area of the law.").

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[5] *See also United States v. Tavares*, 843 F.3d 1, 19 (1st Cir. 2016) ("The result [of the categorical approach] is a Rube Goldberg jurisprudence of abstractions piled on top of one another in a manner that renders doubtful anyone's confidence in predicting what will pop out at the end."); *United States v. Davis*, 875 F.3d 592, 595 (11th Cir. 2017) (describing the categorical approach as sending the court "down the rabbit hole" to "a pretend place in which a crime that the defendant committed violently is transformed into a non-violent one because other defendants at other times may have been convicted, or future defendants could be convicted, of violating the same statute without violence"); *United States v. Burris*, 912 F.3d 386, 407 (6th Cir. 2019) (Thapar, J., concurring) (describing the categorical approach as "baffling"), *cert. denied*, 140 S. Ct. 1235 (2020).

This frustration that followed *Welch* is not implicated by a finding of retroactivity in this case. Here, second or successive petitions raising *Ramos*'s unanimity requirement will require lower courts to engage in only a simple one-step exercise. Courts confronted with a second or successive petition, based on *Ramos*'s rule, must simply determine whether the jury unanimously reached a guilty verdict. If the jury was not unanimous in its finding of guilt, relief is warranted. Full stop.

This Court should not take the administrability issues that arise in the aftermath of *Welch* as cautioning against a finding of retroactivity in this case. Lower courts, deciding second or successive petitions arising from a retroactivity finding here, will not be confronted with difficult questions of the interpretation of state law, and will not be required to engage in jurisprudential gymnastics or analytical abstractions.

For those reasons, not only is retroactivity legally appropriate, a retroactivity ruling in this case, as a practical matter, will not lead to second or successive petitions overloading the federal court system, either in number or in complexity.

CONCLUSION

For the foregoing reasons, the judgment of the United States Court of Appeals for the Fifth Circuit should be reversed.

July 22, 2020

Respectfully submitted,

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