IN THE SUPREME COURT OF THE UNITED STATES

No. 19-5807

THEDRICK EDWARDS, PETITIONER

v.

DARREL VANNOY, WARDEN

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MOTION OF THE UNITED STATES FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Acting Solicitor General, on behalf of the United States, respectfully moves for leave to participate in oral argument in support of respondent and requests that the United States be allowed ten minutes of argument time. Respondent has consented to an allocation of ten minutes of its argument time to the United States.

The question presented in this case is whether this Court's decision in Ramos v. Louisiana, 140 S. Ct. 1390 (2020) -- which held that the Sixth Amendment requires a unanimous jury verdict to convict a state defendant of a serious crime, id. at 1397 -- applies retroactively to cases on federal collateral review.

Although the United States did not participate in Ramos because the Federal Rules of Criminal Procedure require unanimous jury verdicts in federal criminal trials independent of the Sixth Amendment, see Fed. R. Crim. P. 31(a), the government has at least two significant interests in the question presented here. The United States has accordingly filed an amicus brief in support of respondent.

First, applying Ramos retroactively to vacate state convictions that have become final could disturb subsequent federal sentences that were predicated on those state convictions. See, e.g., 18 U.S.C. 924(e). The United States Attorney's Offices in Louisiana and Oregon -- two States that long allowed nonunanimous jury convictions, see Ramos, 140 S. Ct. at 1394 -- have informed this Office that a significant number of federal convictions could be affected by the result of this case.

Second, the federal government has a general interest in the framework for determining the retroactivity of rules of criminal procedure, which this Court has applied to federal and state convictions alike. See, e.g., Welch v. United States, 136 S. Ct. 1257, 1264 (2016) (deciding the retroactivity of Johnson v. United States, 576 U.S. 591 (2015)); Chaidez v. United States, 568 U.S. 342, 358 & n.16 (2013) (deciding the retroactivity of Padilla v. Kentucky, 559 U.S. 356 (2010)).

For both reasons, the government has participated in many criminal retroactivity cases since adoption of the modern retroactivity framework in Teague v. Lane, 489 U.S. 288 (1989), including cases in which the government did not participate when the Court announced the underlying criminal-procedure rule. See, e.g., Montgomery v. Louisiana, 136 S. Ct. 718 (2016) (government participating as amicus curiae at oral argument on the retroactivity of Miller v. Alabama, 567 U.S. 460 (2012), even though the government did not participate in Miller); Schriro v. Summerlin, 542 U.S. 348 (2004) (government participating as amicus curiae at oral argument on the retroactivity of Ring v. Arizona, 536 U.S. 584 (2002), even though the government did not participate in Ring); see also, e.g., Whorton v. Bockting, 549 U.S. 406 (2007) (government participating as amicus curiae at oral argument on the retroactivity of Crawford v. Washington, 541 U.S. 36 (2004)).

Given its distinctive experience and perspective on the question presented, the United States respectfully submits that its participation in oral argument would materially assist the Court in its consideration of this case.

Respectfully submitted.

JEFFREY B. WALL
Acting Solicitor General
Counsel of Record

OCTOBER 2020