

No. 19-8711

IN THE  
*Supreme Court of the United States*

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WILLIE DUNN, PETITIONER,  
v.  
STATE OF LOUISIANA, RESPONDENT.

ON PETITION FOR WRITS OF CERTIORARI TO  
THE LOUISIANA SUPREME COURT AND THE  
FIRST CIRCUIT COURT OF APPEAL

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PETITIONER'S REPLY TO  
RESPONDENT'S BRIEF IN OPPOSITION  
TO PETITION FOR WRIT OF CERTIORARI

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## REPLY BRIEF

Pursuant to Rule 15.6, Petitioner files this *Reply Brief* to the State of Louisiana's *Brief in Opposition*. The BIO clarifies those issues not in dispute and those warranting remand to the Louisiana courts to consider in the first instance. The BIO does not suggest that the claim is invalid or that the Louisiana courts imposed a procedural bar to addressing the merits of the claim. Nor does the BIO provide any statutory basis for rejecting Mr. Dunn's valid claim for post-conviction relief. *See* La. C. Cr. P. Art. 930.3 ("If the petitioner is in custody after sentence for conviction for an offense, relief ***shall be granted*** only on the grounds (1) The conviction was obtained in violation of the constitution of the United States...").

## ISSUES NOT IN DISPUTE

Mr. Dunn was convicted by a non-unanimous verdict. (See BIO at 1) ("Ten jury members found him guilty of the responsive verdict of manslaughter.").

"The Louisiana Supreme Court has held that a non-unanimous jury is error patent under state law." BIO at 7. *But see* BIO at 7 (arguing that remand for error patent review would be "futile" because Louisiana courts could limit error patent review to cases on direct review).

Petitioner had an unconstitutional trial – and his conviction and continued detention is unconstitutional. The only question remaining, is whether there is a limitation on the courts' authority to grant of relief. *See Beard v. Banks*, 542 U.S. 406, 412, 124 S. Ct. 2504, 159 L. Ed. 2d 494 (2004) ("*Teague's* nonretroactivity

principle acts as a limitation on the power of federal courts to grant habeas corpus relief to state prisoners" (internal quotation marks, ellipsis, and brackets omitted)).

### LEGAL ISSUES REMAINING

The BIO asserts limitation exists based upon *Griffith v. Kentucky*: “[a]s a general rule, new rules of criminal procedure announced by this Court apply *only* to cases pending on direct review.” BIO at 8, citing *Griffith v. Kentucky*, 479 U.S. 314 (1987); see also BIO at 2 (citing *Griffith* for proposition that “new rules *apply* only to convictions that are not final”) (emphasis supplied). *Griffiths*, however, was not a rule of limitation but of extension – as the Kentucky Supreme Court had declined to apply *Batson* to cases on direct review. See *Griffiths v. Kentucky*, 479 U.S. at 329 (1987) (Powell, J., concurring) (noting “the cases we decide today involve only the retroactivity of decisions pending on direct review.”).

The BIO further asserts that the *Ramos* rule is procedural rather than substantive. See BIO at 4.<sup>1</sup> But as *Montgomery v. Louisiana*, explained “substantive rules [] set forth categorical constitutional guarantees that place certain criminal laws and punishments beyond the power to impose. It follows that when a State enforces a proscription or penalty barred by the Constitution, the resulting conviction or sentence is, by definition, unlawful.” *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016). Here, petitioner is being detained without a valid conviction – and there is

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<sup>1</sup> The BIO acknowledges that substantive rules “must be applied retroactively by the States.” BIO at 4. *But see* BIO at 3 (arguing that “*Ramos* announced a new rule of criminal procedure.”). The issue of whether *Ramos* presents a substantive rule is currently not before the Court in *Edwards v. Vannoy*. See *Edwards v Vannoy*, 19-5807 (Brief of Respondent at 26) citing *Edwards’* Brief at 10).

no verdict that authorizes the state to detain him. The question of whether *Ramos* is a substantive or procedural rule is one that should at least first be addressed by the Louisiana courts.

To the extent the State is correct that *Ramos* is a procedural rule, whether it is an old rule, a new rule or a watershed rule, again, that too is a question that should be first addressed by the state court:

The question in this case is whether *Teague* constrains the authority of state courts to give broader effect to new rules of criminal procedure than is required by that opinion. We have never suggested that it does, and now hold that it does not.

*Danforth v. Minnesota*, 552 U.S. 264, 266, 128 S. Ct. 1029, 1033 (2008).

Ultimately, petitioner asks for no more relief than the Petitioner in *Danforth* – which is that the judgment of the Court of Appeal in Louisiana “is reversed, and the case is remanded for further proceedings not inconsistent with this opinion. As was true in *Michigan v. Payne*, the [state] court is free to reinstate its judgment disposing of the petition for state post-conviction relief.” *Danforth v. Minnesota*, 552 U.S. 264, 291 (2008).

In the alternative, this case presents an opportunity to address *Ramos*’s retroactivity under the *Teague* framework without any AEDPA limitation because it arises from a state habeas proceeding. If *Ramos* is retroactive under the *Teague* framework, then petitioner is entitled to relief.

## CONCLUSION

Wherefore, Petitioner respectfully requests that this Court grant, vacate and summarily reverse the conviction and remand to the Louisiana courts for further proceedings consistent with this Court's opinion in *Ramos v. Louisiana*, or in the alternative grant the petition and determine whether the rule in *Ramos v. Louisiana* applies to cases arising from state collateral review.

Respectfully Submitted,



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