CAPITAL CASE

No. 20-1686

In the Supreme Court of the United States

BOBBY LEE HAMPTON,

Petitioner,

v.

DARRELL VANNOY, WARDEN

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FIRST JUDICIAL DISTRICT COURT OF CADDO PARISH, LOUISIANA

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the rule announced in *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018), applies retroactively to cases on state collateral review?

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INTRODUCTION

Petitioner Bobby Lee Hampton was charged with first-degree murder more than twenty years ago after he and two other men shot and killed an employee of a liquor store that they were robbing. At trial, Hampton's lawyer strategically conceded Hampton's participation in the robbery to gain credibility with the jury while maintaining that Hampton was not the shooter. Hampton was convicted and sentenced to death.

Nearly two decades passed before this Court announced a new rule in *McCoy v. Louisiana*: "[I]t is unconstitutional to allow defense counsel to concede guilt over the defendant's intransigent and unambiguous objection." 138 S. Ct. 1500, 1507 (2018). Hampton sought collateral relief in state district court, arguing that *McCoy*'s rule should apply retroactively to his case under *Teague v. Lane*, 489 U.S. 288 (1989)—which Louisiana has adopted for the purposes of state post-conviction review.

Without reviewing the record, the state district court assumed without deciding that Hampton had made the "intransigent and unambiguous objection" required to maintain a *McCoy* claim. Pet. App. 1a n.1. The court then decided that the *McCoy* rule satisfied neither of *Teague*'s exceptions and so could not apply retroactively. The Louisiana Supreme Court denied review, and now Hampton raises his retroactivity argument here.

The Court should deny certiorari for at least three reasons. First, even if the Court is interested in

answering Hampton's question presented, it should wait for a case that squarely implicates *McCoy*. It is not clear whether Hampton made the requisite intransigent and unambiguous objection to the trial judge. Nothing in Hampton's petition suggests that he alerted the trial court of his alleged disagreement with his lawyers about conceding his participation in the robbery. A defendant's unambiguous objection to the trial judge is a key ingredient to a *McCoy* claim because, absent such an objection, there is no means for a court to cure the error.

Second, all of the important legal issues that Hampton's petition implicates were resolved by this Court's recent opinion in *Edwards v. Vannoy*, 141 S. Ct. 1547 (2021). Because the *McCoy* rule is both new and procedural, it will not apply retroactively unless it satisfies *Teague*'s so-called "watershed" exception. But in *Edwards* this Court "acknowledged what has become unmistakably clear: The purported watershed exception is moribund." *Id.* at 1561. Thus, because *McCoy* announced a procedural rule, it cannot apply retroactively.

Hampton argues at length in his petition that *McCoy* announced a substantive rule—which would not be subject to *Teague*'s retroactivity bar—but he is mistaken. A rule is procedural if it affects "only the manner of determining the defendant's culpability." *Schriro v. Summerlin*, 542 U.S. 348, 353 (2004). A rule forbidding a lawyer from conceding his client's culpability is surely a rule that affects "only the manner of determining the defendant's culpability." *Id.*

Finally, it is not clear how Hampton expects the Court to grant him relief in the current procedural posture. This action arises from *state* collateral review. Whether to grant relief on state collateral review is a question of state law. *See Danforth v. Minnesota*, 552 U.S. 264, 288 (2008). And this Court does not resolve questions of state law. *DIRECTV, Inc. v. Imburgia*, 577 U.S. 47, 47 (2015); *Michigan v. Long*, 463 U.S. 1032, 1041 (1983).

To be sure, this Court held in *Montgomery v. Louisiana* that "the Constitution requires state collateral review courts to give retroactive effect to [substantive] rule[s]" that are not subject to the retroactivity bar. 577 U.S. 190, 200 (2016), as revised (Jan. 27, 2016). But *Montgomery* expressly limited this holding to substantive rules and reserved the question of whether the Constitution requires States to apply new watershed procedural rules retroactively. *Id.* Because, after *Edwards*, *Teague*'s watershed exception retains no vitality, that question will remain unanswered. Thus, because *McCoy* announced a new procedural rule, the federal Constitution does not require state courts to apply it retroactively.

At bottom, there is no avenue for relief for Hampton, under state or federal law.

STATEMENT OF THE CASE

1. Around 1 o'clock in the morning of August 12, 1995, Petitioner Bobby Lee Hampton and two other

men entered Thrifty Liquor Store in Shreveport, Louisiana.[1] All other customers had exited the store, and the employees were preparing to close up shop when, without warning, multiple shots rang out through the store. One of the employees was hit by the gunfire. The men stole cash from the register, and Hampton forced an employee to break into and ransack the manager's office. As the robbers were preparing to leave, Hampton instructed his coconspirators to "take care of the other two" store employees. But the other robbers apparently balked and did not do as Hampton instructed.

When police arrived at the scene, they determined that Russell Coleman, one of the store's employees, had died after being shot three times in the back.

2. Authorities identified Hampton as one of the three robbers and charged him with first-degree murder. The case went to trial in mid-1997, and Hampton's strategy was to concede participation in the armed robbery but argue that he was not the shooter. The jury found Hampton guilty of first-degree murder and he was sentenced to death.

Hampton's conviction and sentence were affirmed on direct appeal by the Louisiana Supreme Court. Importantly, although Hampton argued on appeal that his lawyers provided him with ineffective assistance of counsel for conceding his participation in

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[1] The facts of the crime are taken from the Louisiana Supreme Court's opinion addressing Hampton's appeal on direct review. *See State v. Hampton*, 750 So.2d 867 (1999).

the robbery, it does not appear that he raised this issue with the trial court.

Nearly two decades later, this Court held in *McCoy* that a lawyer may not admit a client's guilt over the client's intransigent objection. 138 S. Ct. at 1507. Hampton filed a successive application for post-conviction relief in the 1st Judicial District Court of Caddo Parish, Louisiana. He claimed that this Court's decision in *McCoy* should apply retroactively to his case. The district court assumed without deciding that Hampton made the requisite "intransigent objection" and then concluded that—under the retroactivity framework established by this Court in *Teague* and adopted by the Louisiana Supreme Court for the purposes of state collateral review—*McCoy* should not apply retroactively to Hampton's case. The Louisiana Supreme Court denied review.

Hampton then petitioned this Court for review, arguing that *McCoy* announced a new rule that satisfied either one of the two exceptions to the retroactivity bar articulated in *Teague*. While Hampton's petition was pending, this Court announced its decision in *Edwards* and officially acknowledged that no new procedural rule will ever apply retroactively (at least on federal collateral review). 141 S. Ct. at 1561.

REASONS FOR DENYING THE PETITION

I. HAMPTON'S CASE IS DISTINGUISHABLE FROM *MCCOY V. LOUISIANA*.

The dissenting opinion in *McCoy* observed that "[t]he constitutional right that the Court has now discovered—a criminal defendant's right to insist that his attorney contest his guilt with respect to all charged offenses—is like a rare plant that blooms every decade or so." 138 S. Ct. at 1514 (Alito, J., dissenting). *McCoy* applies only rarely because—among other reasons—the *McCoy* rule "will not come into play unless the defendant e*xpressly protests counsel's strategy of admitting guilt*." *Id.* at 1515 (emphasis added). Importantly, "[w]here the defendant is advised of the strategy and says nothing, or is equivocal, the right is deemed to have been waived"—as this Court explained in *Florida v. Nixon*. *Id.* (citing 543 U.S. 175, 192 (2004)).

This distinction is critical because, in the absence of an express objection, the trial court is powerless to remedy the injury. And so no "structural error" occurs. *See McCoy*, 138 S. Ct. at 1512 (explaining that structural error occurred when the trial court allowed counsel's admission despite McCoy's "insistent objections"). Allowing defendants to raise *McCoy*-based autonomy claims after trial opens the door for improper gamesmanship. For example, a defendant could allow counsel to roll the dice at trial by conceding guilt. If the jury rejected that approach, the defendant could

turn around in post-conviction proceedings and claim that counsel had conceded guilt despite his desire to pursue an outlandish innocence claim. The *McCoy* rule's sensible requirement that defendants must object to counsel's concession of guilt prevents defendants from disguising buyer's remorse as a *McCoy* claim.

It is not clear whether, like Robert McCoy, Hampton "vociferously insisted that he did not engage in the charged acts and adamantly objected to any admission of guilt." *Id.* at 1505. Rather than holding an evidentiary hearing to determine whether Hampton actually objected to his attorney's admission during his trial, the post-conviction court said merely that,"[f]or the purposes of this Ruling only, this Court *assumes* that HAMPTON made such an objection in 1997." App. 1a n.1 (emphasis added). Based on that assumption, the lower court addressed the merits of Hampton's argument that *McCoy* retroactivity applies to this case and denied relief.

But there is no reason to believe that Hampton "vociferously" objected, as the lower court assumed. Nothing in Hampton's petition suggests that he alerted the trial judge of his disagreement with his attorney's approach. Indeed, when addressing Hampton's Sixth Amendment ineffective-assistance-of-counsel claim arising from Hampton's lawyers' decision to concede guilt, the Louisiana Supreme Court cited this Court's opinion in *Florida v. Nixon*—where the Defendant did not vociferously object. Pet. 8; *see also* Pet. 10 n.3; *Nixon*, 543 U.S. at 186.

Even assuming the Court is interested in addressing the retroactivity of *McCoy* on state post-conviction review, the Court should wait for a case that unambiguously presents that issue.

II. THIS COURT'S RECENT DECISION IN *EDWARDS V. VANNOY* RESOLVED ALL OF THE IMPORTANT ISSUES IN HAMPTON'S PETITION.

Before this Court handed down its decision last term in *Edwards v. Vannoy*, it was theoretically possible that a new, procedural rule could apply retroactively (at least on federal collateral review). In *Teague*, Justice O'Connor—writing for a plurality—observed that there was a general bar on retroactively applying new constitutional rules; but she identified two possible exceptions to the bar. 489 U.S. at 307–08. One exception applied to new *substantive* rules and the other—known as the watershed exception—applied to new *procedural* rules. The possibility of a watershed rule was merely theoretical because, since adopting the *Teague* retroactivity framework, no such rule was ever announced.

In *Edwards*, however, this Court "acknowledged what has become unmistakably clear: The purported watershed exception [to *Teague*'s retroactivity bar] is moribund." 141 S. Ct. at 1561. The Court's observation that "[t]he purported watershed exception retains no vitality,"—*id.*—resolved any important legal issues in Hampton's petition. That is true because the *McCoy* rule is both *new* and *procedural*.

1. The *McCoy* rule is new. "A case announces a

new rule, *Teague* explained, when it breaks new ground or imposes a new obligation on the government." *Chaidez v. United States*, 568 U.S. 342, 347 (2013) (cleaned up). Put differently, "a case announces a new rule if the result was not dictated by precedent existing at the time the defendant's conviction became final." *Id.* If a rule is old, then it "applies both on direct and collateral review." *Whorton v. Bockting*, 549 U.S. 406, 416 (2007). It is clear that *McCoy* announced a new rule because it answered a question left open in *Nixon*: Whether a defendant's attorney may concede guilt over the defendant's vociferous objections. *See McCoy*, 138 S. Ct. at 1505. Hampton does not contest this point in his petition.

2. The *McCoy* rule is procedural. Hampton argues at length in his petition that *McCoy* announced a *substantive* rule (at 15–20). But that contention defies logic, this Court's precedents, and the plain meaning of the words "substantive" and "procedural."

New substantive rules are "rules forbidding criminal punishment of certain primary conduct" and "rules prohibiting a certain category of punishment for a class of defendants because of their status or offense." *Montgomery*, 577 U.S. at 198 (internal quotation marks omitted). They are retroactive "because they necessarily carry a significant risk that a defendant stands convicted of an act that the law does not make criminal or faces a punishment that the law cannot impose upon him." *Summerlin*, 542 U.S. at 351–52. Indeed, "this Court has recognized that substantive rules 'are more accurately characterized

as . . . not subject to the [retroactivity] bar." *Montgomery*, 577 U.S. at 198.

By contrast, procedural rules affect "only the manner of determining the defendant's culpability." *Summerlin*, 542 U.S. at 353 (internal quotation marks omitted)). Procedural rules differ fundamentally from substantive rules because "[t]hey do not produce a class of persons convicted of conduct the law does not make criminal, but merely raise the possibility that someone convicted with use of the invalidated procedure might have been acquitted otherwise." *Id.* at 352. "Even where procedural error has infected a trial, the resulting conviction or sentence may still be accurate; and, by extension, the defendant's continued confinement may still be lawful." *Montgomery*, 577 U.S. at 201. Because new procedural rules have a "more speculative connection to innocence" than substantive rules, since adopting the *Teague* retroactivity framework, this Court never identified a new procedural rule that warranted retroactive application. *Summerlin*, 542 U.S. at 352. And, in light of *Edwards*, it never will.

The *McCoy* rule is procedural because it affects only the manner in determining a defendant's culpability. *McCoy* delineates the responsibilities of attorneys and defendants when working together to defend against criminal charges: Although "[t]rial management is the lawyer's province . . . [s]ome decisions . . . are reserved for the client—notably, whether to plead guilty, waive the right to a jury trial, testify in one's own behalf, and forgo an appeal." 138

S. Ct. at 1508. Under *McCoy*, even if counsel "reasonably assess[es] a concession of guilt as best suited to avoiding the death penalty," after "a client expressly asserts that the objective of 'his defence' is to maintain innocence of the charged criminal acts, his lawyer must abide by that objective and may not override it by conceding guilt." *Id.* at 1508–09 (quoting U.S. Const. amend. VI (emphasis removed). A rule that does nothing more than forbid a defendant's lawyer from admitting the defendant's culpability over the defendant's objection—even when a lawyer reasonably believes that admitting culpability will help the defendant—is surely a rule that affects "only the manner of determining the defendant's culpability." *Summerlin*, 542 U.S. at 353. The *McCoy* rule is quintessentially procedural.

To resist this conclusion, Hampton contends that *McCoy* announced a substantive rule because (1) "*McCoy* reflects a categorical guarantee of the defendant's right to make the fundamental choices about his own defense" (Pet. 15 (internal quotation marks omitted)); and (2) *McCoy* "alters the scope of the State's authority" (Pet. 16). If the Court adopted Hampton's broad characterization of substantive rules—and his loose definition of a categorical guarantee—the distinction between substantive and procedural rules would collapse and all new constitutional rules would apply retroactively. That, in turn, would contravene decades of this Court's precedent and make it more difficult for the Court "to say what [it] know[s] to be

true about the rights of the accused under our Constitution" because the Court would need to simultaneously account for "the reliance interest States possess in their final judgments." *Ramos*, 140 S. Ct. 1390, 1407 (2020).

To see the confusion that Hampton's definition of substantive rules would create, consider its application to the unanimous jury rule that the Court recently announced in *Ramos v. Louisiana*. The unanimity rule reflects an "ancient guarantee" that—under Hampton's definition—would also be categorical and alter the scope of States' authority. 140 S. Ct. at 1401. For example, in light of *Ramos*, States no longer have power to accept nonunanimous verdicts. And defendants could now be said to enjoy a categorical guarantee that they will not be punished absent unanimous consent of the jurors. Thus, under Hampton's characterization, the unanimity rule would be substantive. And yet, the *Ramos* rule is unquestionably procedural because it affects only the manner of determining defendants' culpability. *See Edwards*, 141 S. Ct. at 1562 ("*Ramos* announced a new rule of criminal procedure.").

The *McCoy* rule is not substantive because what a lawyer does or does not admit during a trial has nothing to do with the "certain primary conduct" committed by a defendant that the State wants to punish. *Montgomery*, 577 U.S. at 198. Nor does it concern the "status" (*e.g.*, age or intellectual disability) of a defendant or the "offense" committed by the defendant. *Id.*

Because the *McCoy* rule is new and procedural, it could apply retroactively only under the watershed exception to the retroactivity bar. But because the watershed exception no longer exists even as a theoretical matter in light of this Court's recent decision in *Edwards*, the *McCoy* rule cannot apply retroactively and there is no reason to grant certiorari here.

III. THIS COURT DOES NOT CONSIDER ISSUES OF STATE LAW.

Hampton asks the Court to decide whether *McCoy* falls under *Teague*'s exception to the retroactivity bar even though this case arises from a state post-conviction proceeding. *See* Pet. 20. To the extent Hampton is asking the Court to resolve a matter of Louisiana law, this Court should deny his petition because it lacks jurisdiction to decide matters of state law. If instead he is asking the Court to grant him relief as a matter of federal constitutional law, the Court should deny certiorari because the federal constitution does not obligate state courts to apply new procedural rules retroactively.

1. This Court has said many times that States alone have the power to determine the content, meaning, and application of state law. *See, e.g., DIRECTV, Inc.*, 577 U.S. at 47 ("State courts are the ultimate authority on that state's law."); *Dickerson v. United States*, 530 U.S. 428, 431 (2000) ("Federal courts hold no supervisory authority over state judicial proceed-

ings and may intervene only to correct wrongs of constitutional dimension."); *Huddleston v. Dwyer*, 322 U.S. 232, 233 (1944) (The decisions of the highest court of a state on matters of state law are in general conclusive upon the Supreme Court of the United States.). If a state-law basis for the judgment is adequate and independent, then this Court lacks jurisdiction because its review of the federal question would be purely advisory. *Coleman v. Thompson*, 501 U.S. 722, 729 (1991).

And this Court has further explained that whether to provide retroactive relief in a state collateral proceeding is a question of state law. In *Danforth v. Minnesota*, the Court observed that its cases about "civil retroactivity" demonstrate that the "remedy a state court chooses to provide its citizens for violations of the Federal Constitution is primarily a question of state law." 552 U.S. at 288. "Federal law simply 'sets certain minimum requirements that States must meet but may exceed in providing appropriate relief." *Id.* (quoting *Am. Trucking Assns., Inc. v. Smith*, 496 U.S. 167, 178–79 (1990) (plurality opinion)). Although this Court has "ample authority to control the administration of justice in the federal court—particularly in their enforcement of federal legislation—[the Court has] no comparable supervisory authority over the work of state judges." *Danforth*, 552 U.S. at 289 (citing *Johnson v. Fankell*, 520 U.S. 911 (1997)).

Even if a State has purported to adopt the *Teague* framework to guide state retroactivity jurisprudence—as the Louisiana Supreme Court has

done—this Court does not have jurisdiction to consider the State's retroactivity rulings for the purposes of state law. *See State ex rel. Taylor v. Whitley*, 606 So. 2d 1292, 1297 (La. 1992) (adopting *Teague* for state collateral review). On the contrary, "[i]f a state court chooses merely to rely on federal precedents[,] . . . then it need only make clear by a plain statement in its judgment or opinion that the federal cases are being used only for the purpose of guidance, and do not themselves compel the result that the court has reached." *Long*, 463 U.S. at 1041. And, when adopting *Teague*'s standard to guide state courts in collateral proceedings, the Louisiana Supreme Court emphasized that it was "not bound to adopt the *Teague* standards." *See Whitley*, 606 So. 2d at 1297. Louisiana courts merely use *Teague* as guidance.

In short, to the extent Hampton is asking this Court to resolve a matter of Louisiana law, this Court is without jurisdiction.

2. If Hampton instead is asking this Court to require state courts to apply *McCoy* retroactively as a matter of federal constitutional law, the Court should deny certiorari. To be sure, as this Court explained in *Montgomery*, "when a new *substantive* rule of constitutional law controls the outcome of a case, the Constitution requires state collateral review courts to give retroactive effect to that rule." 577 U.S. at 200 (emphasis added). But the Court limited its holding to new substantive rules and left open the question of

whether the Constitution requires state courts to apply new procedural rules retroactively on collateral review. *Id.*

As discussed above, *McCoy* announced a procedural rule. Because, after *Edwards*, this Court will not identify a new watershed rule of criminal procedure, the question of whether the federal Constitution requires States to apply such rules retroactively on collateral review will remain unanswered.

CONCLUSION

The State of Louisiana respectfully asks the Court to deny Hampton's petition for a writ of certiorari.

Respectfully Submitted,

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