No. 20-251

In the Supreme Court of the United States

WILLIE GIPSON,
Petitioner

v.

STATE OF LOUISIANA,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Louisiana

BRIEF IN OPPOSITION

JEFF LANDRY
Attorney General
ELIZABETH BAKER MURRILL*
Solicitor General
*Counsel of record
SHAE MCPHEE
Deputy Solicitor General
Louisiana Department of Justice
1885 N. Third St.
Baton Rouge, LA 70802
(225) 326-6766
murrille@ag.louisiana.gov

JASON R. WILLIAMS
District Attorney,
Parish of Orleans
DONNA ANDRIEU,
Assistant District Attorney
619 South White Street
New Orleans, LA 70119
(504) 822-2414
donna.andrieu@orleansda.com

QUESTION PRESENTED

Whether this Court's decision in *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020), applies to cases on state collateral review, where the State follows the retroactivity framework established in *Teague v. Lane*, 489 U.S. 288 (1989).

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INTRODUCTION

In *Ramos v. Louisiana*, this Court held that a conviction based upon a non-unanimous verdict—in state or federal court—violates the Sixth and Fourteenth Amendments. But that holding cannot directly benefit Gipson here because his conviction and sentence became final many years before this Court issued its decision in *Ramos*. As a general matter, under this Court's jurisprudence, new rules apply only to convictions that are not final. *See Griffith v. Kentucky*, 479 U.S. 314 (1987).

This case arises from a *state collateral* proceeding. With only two narrow exceptions, new rules do not apply to cases that are final because of the retroactivity bar this Court erected in *Teague v. Lane*, 489 U.S. 288 (1989), and subsequent decisions. Because *Ramos* announced a new rule of criminal *procedure*, the *Ramos* rule would satisfy *Teague*'s second exception to the retroactivity bar only if *Ramos* announced a watershed rule of criminal procedure.

The Louisiana Supreme Court has declined to directly answer the question of whether the *Ramos* rule is retroactive in state collateral proceedings. It has denied writs in all post-conviction cases raising the issue.

Petitioner Willie Gipson asks this Court to "resolve whether *Ramos* applies on state collateral review." Pet. 9. This request is somewhat ambiguous. If Gipson is asking the Court to require Louisiana to retroactively apply *Ramos* as a matter of state law, the Court should deny certiorari because this Court does not resolve questions of state law.

If Gipson is asking this Court to require state courts to apply *Ramos*

retroactively as a matter of federal constitutional law, the Court should deny certiorari anyway because the Court could not grant relief to Gipson unless it (1) declares the *Ramos* rule retroactive and (2) constitutionalizes *Teague*'s second exception. The Court should not take these steps for two reasons.

First, there is no need to grant certiorari in this case to decide whether *Ramos* is retroactive because this Court has already granted certiorari in *Edwards v. Louisiana* to answer the question of "whether this Court's decision in *Ramos v. Louisiana*, 590 U. S. ___ (2020), applies retroactively to cases on federal collateral review." 140 S. Ct. 2737, 2738 (2020). It bears emphasis that, since adopting the *Teague* retroactivity framework, this Court has *never* found any new rule of criminal procedure to be watershed, despite considering the question numerous times.

Second, even if this Court granted relief to the *federal* habeas petitioner in *Edwards*, and declared the *Ramos* rule retroactive, Gipson could not directly benefit from that holding. Gipson seeks *state* post-conviction relief. Although this Court has held that new *substantive* rules satisfying *Teague*'s first exception must be applied retroactively by the States in post-conviction proceedings, the same is not true for new *procedural* rules satisfying *Teague*'s second exception. *Montgomery v. Louisiana*, 136 S. Ct. 718, 729 (2016). In *Montgomery v. Louisiana*, this Court expressly reserved the question of whether a new procedural rules must be applied retroactively by the States. *Id.* at 729.

The Court should not extend *Montgomery*'s holding and constitutionalize *Teague*'s second exception. There are important differences between procedural and

substantive rules, and the Court has long treated these rules differently for the purposes of *Teague*'s retroactivity analysis. The logic of that distinction applies with equal force to the question of whether the Constitution requires retroactive application of procedural rules.

Because it is unlikely that the Court will identify any watershed rules of criminal procedure, and because there is no basis to constitutionalize the second exception to *Teague*'s retroactivity bar, the State respectfully asks the Court to deny certiorari.

STATEMENT

Factual Background

In early 1996, Roy Simon was outside working on his car when a man in a green shirt "roll[ed] up" on a bicycle, shot Simon three times, and rode away. Pet. App. 21a. Simon did not survive his wounds. Pet. App. 19a.

Sabrina Simon—the victim's wife—witnessed the murder. Pet. App. 21a. A neighbor corroborated Mrs. Simon's account that a man in a green shirt riding a bicycle had committed the murder. Pet. App. 20a.

Authorities came to believe that Petitioner Willie Gipson was the perpetrator. Pet. App. 20a. When presented with a photo lineup, Mrs. Simon identified Gipson as the killer "because she remembered his face." Pet. App. 21a. According to Mrs. Simon, "she could remember [Gipson's] face, from the forehead to the eyes[,] . . . . because of the subject's thick eyebrows and eyes that 'sit back.'" Pet. App. 22a.

Procedural History

In mid-1996, the State charged Gipson with one count of second-degree

murder.[1] Pet. App. 17a. Gipson pleaded not guilty. Ultimately, a jury returned a guilty verdict. The vote was 10-2. Pet. App. 11a. The trial court sentenced Gipson to life imprisonment without the possibility of parole.[2]

Gipson appealed, challenging the sufficiency of the evidence supporting his conviction. The Louisiana Court of Appeal for the Fourth Circuit affirmed Gipson's conviction. Pet. App. 28a. The Louisiana Supreme Court denied his application for a writ of certiorari. *State v. Gipson*, 2000-0241 (La. 12/8/00), 775 So. 2d 1076.

Gipson's conviction became final—and many years passed—before, in 2019, Gipson sought post-conviction relief in the Criminal District Court of Orleans Parish. Pet. App. 16a. Gipson challenged his non-unanimous jury verdict on collateral review.[3] *See* Pet. App. 12a. The district court denied relief "for lack of merit." Pet App. 16a. The intermediate court of appeals affirmed. Pet. App. 14a–15a.

While Gipson's application for discretionary review was pending before the Louisiana Supreme Court, this Court handed down its decision in *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020). *Ramos* held that a conviction—in state or federal court—based upon a non-unanimous verdict violates the Sixth and Fourteenth Amendments. That decision applied to all cases pending on direct review. Shortly after handing down *Ramos*, the Court also granted certiorari in *Edwards v. Louisiana*

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[1] *See* La. Rev. Stat. 14:30.1.

[2] In accordance with this Court's decisions in *Miller v. Alabama*, 567 U.S. 460 (2012) and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), Gipson has been resentenced to life with the possibility of parole. *See Gipson v. State*, 178 So. 3d 140, 141 (La. 2015).

[3] Gipson based his challenge on the Fourteenth Amendment's Equal Protection Clause. *See* Pet. App. 12a.

to answer the question of "whether this Court's decision in *Ramos v. Louisiana*, 590 U. S. ___ (2020), applies retroactively to cases on federal collateral review." 140 S. Ct. 2737, 2738 (2020).

Because Gipson's case is no longer on direct review, the Louisiana Supreme Court denied his writ application—along with the applications of many petitioners seeking post-conviction relief on similar grounds. Pet. App. 1a. Chief Justice Johnson pulled back the curtain in Gipson's case and explained that "a majority of this court has voted to defer until the Supreme Court mandates that we act." Pet. App. 2a.

Gipson now seeks a writ of certiorari from this Court. He asks this Court to consider whether *Ramos* should apply retroactively on state collateral review.

REASONS FOR DENYING THE PETITION

Gipson's petition for certiorari is ambiguous about how he expects the Court to grant him relief in this procedural posture. He asks the Court to "resolve whether *Ramos* applies on state collateral review." Pet. 9. But whether to grant collateral relief under Louisiana law is, of course, a question of state law. And this Court does not decide issues of state law.

To be sure, this Court explained in *Montgomery v. Louisiana* that the question of whether the federal Constitution requires retroactive application of a new rule handed down by this Court is a question of federal law. And the Court held in *Montgomery* that "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." 136 S. Ct. at 729 (emphasis added). But *Ramos*

announced a new *procedural* rule, not a substantive rule. New procedural rules are virtually never retroactive. And in *Montgomery*, the Court expressly reserved the question of whether the Constitution requires retroactive application of new watershed *procedural* rules in state court. 136 S. Ct. at 729 ("[T]he constitutional status of *Teague*'s exception for watershed rules of procedure need not be addressed here.").

This Court has granted certiorari and held oral argument in *Edwards* to decide whether the *Ramos* rule will apply retroactively on *federal* habeas review. If the Court decides that *Ramos* is not retroactive under *Teague*, then Gipson's petition will fail. But even if this Court declares the *Ramos* rule to be retroactive for the purposes of federal habeas review in *Edwards*, that alone would not be sufficient to grant relief to Gipson. The Court would need to take the additional step of extending the holding of *Montgomery* and constitutionalizing *Teague*'s second exception. The Court should not take that step because the Court has distinguished sharply between substantive and procedural rules under *Teague*—with the result being that new substantive rules are always retroactive and procedural rules are virtually never retroactive. The logic of that distinction warrants differential treatment of the two types of rules under the Constitution.

I. TO THE EXTENT GIPSON ASKS THIS COURT TO DECIDE A QUESTION OF STATE LAW, CERTIORARI IS UNWARRANTED.

Gipson asks this Court to "resolve whether *Ramos* applies on state collateral review." Pet. at 9. To the extent that Gipson is asking this Court to resolve a matter of Louisiana law, this Court should deny Gipson's petition.

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. v. Imburgia*, 577 U.S. 47, 47 (2015) ("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 proceedings 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.").

And this Court has further explained that whether to provide retroactive relief in a state collateral proceeding—at least where this Court has not declared a new rule retroactive—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. 264, 288 (2008). "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 v. Minnesota*, 552 U.S. 264, 289 (2008) (citing *Johnson v. Fankell*, 520 U.S. 911 (1997)).

The fact that a State has purported to adopt the retroactivity standard this

Court articulated in *Teague v. Lane*—as the Louisiana Supreme Court has done—does not transmogrify the issue into a federal question warranting this Court's review. *See State ex rel. Taylor v. Whitley*, 606 So. 2d 1292, 1297 (La. 1992) (adopting *Teague* for state collateral review). On the contrary, this Court has held that, "[i]f a state court chooses merely to *rely* on federal precedents as it would on the precedents of all other jurisdictions, 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." *Michigan v. Long*, 463 U.S. 1032, 1041 (1983) (emphasis added). And, when adopting *Teague*'s standard to guide state courts in collateral proceedings, the Louisiana Supreme Court went out of its way to say that it was "not bound to adopt the *Teague* standards." *See Whitley*, 606 So. 2d at 1297. Thus, Louisiana courts merely use *Teague* as guidance.

Moreover, in *Danforth*, the Court explained that "States that give broader retroactive effect to this Court's new rules of criminal procedure do not do so by misconstruing the federal *Teague* standard. Rather, they have developed state law to govern retroactivity in state postconviction proceedings." *Danforth*, 552 U.S. at 288–89 (citing *State v. Whitfield*, 107 S.W.3d 253, 268 (Mo. 2003)). It is entirely plausible—and allowable under *Danforth*—that this Court could deny relief under *Teague* but a state court could grant relief under *Teague*. A corollary of this rule is that a state court, for the purposes of state law, could deny relief under *Teague*'s second

exception,[4] even if this Court granted relief under *Teague*'s second exception.

To the extent Gipson raises a state-law issue, this Court is without jurisdiction to decide the matter. "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 (1991).

The Louisiana Supreme Court has had many, many opportunities to decide whether to apply *Ramos* retroactively as a matter of state law. And it has denied every request—at least forty-three denials.[5] As Chief Justice Johnson explained in her dissent, the Louisiana Supreme Court does not intend to grant relief. That settles

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[4] This Court held in *Montgomery* that a state court could not fail to grant relief under *Teague*'s first exception where this Court had granted relief under that exception. 136 S. Ct. at 729.

[5] *See, e.g.*, *State v. Dotson*, 2019-01828 (La. 6/3/20), 296 So.3d 1059; *Silva v. Vannoy*, 2019-01861 (La. 6/3/20), 296 So.3d 1033; *Lionel Jones v. State*, 2019-01900 (La. 6/3/20), 296 So. 3d 1060; *State v. Rochon*, 2019-01678 (La. 6/3/20), 296 So.3d 1028; *State v. Young*, 2019-01818 (La. 6/12/20), 2020 WL 3424876 (involved request for polling slips to file PCR); *State v. Brown*, 2020-00276 (La. 6/22/20), 297 So.3d 721; *State v. McKnight*, 2020-00873 (La. 7/17/20), 299 So.3d 64; *Dennis v. Vannoy*, 2019-01794 (La. 7/24/20), 299 So.3d 54; *State v. Essex*, 2020-00009 (La. 8/14/20), 300 So.3d 843; *State v. Cook*, 2020-00001 (La. 8/14/20), 300 So.3d 838; *State v. Parish*, 2020-00072 (La. 8/14/20), 300 So.3d 861; *Joseph v. State*, 2019-01989 (La. 8/14/20), 300 So.3d 824; *State v. McGuire*, 2019-01632 (8/14/20), 300 So.3d 830; *State v. Johnson*, 2019-02075 (La. 8/14/20), 300 So.3d 858; *State v. Spencer*, 2019-01318 (La. 8/14/20), 300 So.3d 855*; *Lawson v. State*, 2019-02074 (La. 8/14/20), 300 So.3d 858*; *State v. Triplett*, 2019-01718 (La. 8/14/20), 300 So.3d 827; *Vincent Smith v. Louisiana*, 2019-02080 (La. 8/14/20), 300 So.3d 859; *State v. Rashan Williams*, 2020-00069 (La. 8/14/20), 300 So.3d 860; *State v. Withers*, 2020-00258 (La. 8/14/20), 300 So.3d 860; *State v. Wardlaw*, 2020-00004 (La. 8/14/20), 300 So.3d 859; *State v. Mason*, 2019-01821 (La. 8/14/20), 2020 WL 4726952; *State v. Mims*, 2019-2088 (La. 8/14/20), 300 So.3d 867; *State v. Sonnier*, 2019-02066 (La. 8/14/20), 300 So.3d 857; *State v. Pittman*, 2019-01354 (La. 8/14/20), 300 So.3d 856; *State v. Carter*, 2019-02053 (La. 8/14/20), 300 So.3d 856*; *State v. Williams*, 2019-02010 (La. 8/14/20), 300 So.3d 856; *Hernandez v. Vannoy*, 2019-02034 (La. 8/14/20), 300 So.3d 857*; *State v. Eaglin*, 2019-01952 (La. 8/14/20), 300 So.3d 840*; *State v. Kidd*, 2020-00055 (La. 8/14/20), 300 So.3d 828; *State v. Joseph*, 2020-01989 (La. 8/14/20), 300 So.3d 824; *State v. Barrett*, 2019-01718 (La. 8/14/20), 300 So.3d 827*; *State v. Harris*, 2020-00291 (La. 9/8/20), 301 So.3d 13; *State v. Skipper*, 2020-00280 (La. 9/8/20), 301 So.3d 16; *State v. Sims,* 2020-00298 (La. 9/8/20), 301 So.3d 17; *State v. Jackson*, 2020-00037 (La. 9/8/20), 301 So.3d 33; *State v. Hawthorne*, 2020-00586 (La. 9/29/20), 2020 WL 5793105; *State v. Alcus Smith*, 2020-00621 (La. 9/29/20), 2020 WL 5793717; *State v. Johnson*, 2020-00052 (La. 9/29/20), 2020 WL 5793805; *Givens v. State Through Attorney General's Office*, 2020-00268 (La. 10/6/20), 2020 WL 5904873; *Cassard v. Vannoy*, 2020-00020 (La. 10/6/20), 2020 WL 5905099; *State v. Brooks*, 2020-00378 (La. 10/14/20), 2020 WL 6059695; *State v. Moran*, 2020-00623 (La. App. 10/14/20), 2020 WL 6059685.

the issue for the purposes of state law.

II. THE COURT COULD NOT GRANT RELIEF TO GIPSON WITHOUT DECLARING THE *RAMOS* RULE TO BE A WATERSHED RULE OF CRIMINAL PROCEDURE AND CONSTITUTIONALIZING *TEAGUE*'S SECOND EXCEPTION.

If Gipson is asking this Court instead to require state courts to apply *Ramos* retroactively under the federal Constitution, the Court should deny certiorari anyway. This Court explained in *Montgomery v. Louisiana* "that 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." 136 S. Ct. at 729 (emphasis added). But the Court limited its holding only 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. It follows that the Court could not grant Gipson relief unless it (1) declared the *Ramos* rule retroactive and (2) extended *Montgomery* and constitutionalized *Teague*'s second exception.

The Court should not grant certiorari or take these steps for the following reasons.

A. There is no need to resolve whether *Ramos* is retroactive under *Teague* here because this Court has granted certiorari to decide that issue in *Edwards v. Louisiana*.

Gipson contends that "this case presents an excellent vehicle to address *Ramos*'s retroactivity under the *Teague* framework." Pet. 18. And he further contends that *Ramos* did not announce a *new* rule for the purposes of *Teague*. Pet. 12–14. But this Court will almost certainly decide these issues in *Edwards*. The arguments Gipson advances are identical to the arguments the petitioner made in *Edwards*. And so, there is no need to grant certiorari to decide those issues here. In any event, for

the reasons the State explained in greater detail in its briefing in *Edwards*, Gipson's arguments are unlikely to succeed on the merits.

Ramos did not announce an "old rule." Under this Court's jurisprudence, a so-called "old rule" applies retroactively. *See Teague*, 489 U.S. at 301; *see also Whorton v. Bockting*, 549 U.S. 406, 416 (2007) ("[A]n old rule applies both on direct and collateral review."). But, as this Court has explained, "there can be no dispute that a decision announces a new rule if it expressly overrules a prior decision." *Graham v. Collins*, 506 U.S. 461, 467 (1993). And a majority of the Court in *Ramos* agreed that this Court's decision in *Apodaca v. Oregon*, 406 U.S. 404 (1972), was a binding precedent. A different majority of this Court in *Ramos* overruled *Apodaca*. Thus, for the purposes of *Teague*, Gipson's "old rule" argument is a nonstarter because *Ramos* overturned binding precedent.

Moreover, the *Ramos* rule cannot be applied retroactively because it does not satisfy either of *Teague*'s exceptions to the retroactivity bar. *Teague*, 489 U.S. at 310 (O'Connor, J., plurality opinion) ("U]nless they fall within an exception to the general rule, new constitutional rules of criminal procedure will not be applicable [in federal habeas proceedings] to those cases which have become final before the new rules are announced."). Because the *Ramos* rule is new and procedural, it will survive *Teague*'s retroactivity bar only if it satisfies *Teague*'s second exception. *See Ramos*, 140 S. Ct. at 1419 (Kavanaugh, J., concurring) ("The second *Teague* exception does not apply because today's new rule, while undoubtedly important, is not a 'watershed' procedural rule."). It cannot satisfy *Teague*'s second exception because—like *every*

procedural rule this Court has considered since adopting the *Teague* framework—it does not implicate "the fundamental fairness and accuracy of the criminal proceeding.'" *Schriro v. Summerlin*, 542 U.S. at 348, 352 (2004) (quoting *Saffle v. Parks*, 494 U.S. 484, 495 (1990)); *accord Teague*, 489 U.S. at 311.

The State discussed these points at length in its briefing in *Edwards*. Thus, there is no need to grant certiorari to consider Gipson's arguments here because the Court will almost certainly address them in *Edwards*. But even if the Court grants relief to the petitioner *Edwards* and declares the *Ramos* rule retroactive under *Teague*, there are important reasons to deny certiorari here.

B. Even assuming the Court declares the *Ramos* rule to be retroactive in *Edwards*, the Court could not grant relief to Gipson without constitutionalizing *Teague*'s second exception.

There are some limits on a state court's ability to deny collateral relief. In *Montgomery v. Louisiana*, this Court held that—under the federal Constitution—new *substantive* rules that this Court has held satisfy *Teague*'s first exception must be applied retroactively in state collateral proceedings, regardless of when a prisoner's conviction became final. 136 S. Ct. at 729.

By way of background, under *Teague*'s first exception to the retroactivity bar, new *substantive* rules announced by this Court apply retroactively on federal collateral review. *See Summerlin*, 542 U.S. at 351–52. These 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*, 136 S. Ct. at 728. 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*, 136 S. Ct. at 728.

Under *Teague*'s second exception, an "extremely narrow" class of new procedural rules may apply retroactively on federal collateral review. *Summerlin*, 542 U.S. at 352. 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.* "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*, 136 S. Ct. at 730. Because new procedural rules have a "more speculative connection to innocence" than substantive rules, this Court has sharply curtailed *Teague*'s second exception. *Summerlin*, 542 U.S. at 352. It should "come as no surprise" that this Court has never identified a new rule satisfying *Teague*'s second exception, despite considering the question numerous times since adopting the *Teague* framework. *Beard v. Banks*, 542 U.S. 406, 417 (2004).

This Court had never required state courts to apply *Teague*'s exceptions in *state* collateral proceedings until its recent decision in *Montgomery*. But the Court expressly limited its holding by requiring state courts to retroactively apply only new *substantive* rules satisfying *Teague*'s first exception. The Court reserved the question

of whether States could decline to apply a new *procedural* rule retroactively even if this Court found it satisfied *Teague*'s second exception. 136 S. Ct. at 729 ("This holding is limited to *Teague*'s first exception for substantive rules; the constitutional status of *Teague*'s exception for watershed rules of procedure need not be addressed here.").

Thus, even if the Court decides that the *Ramos* rule satisfies *Teague*'s narrow second exception for new procedural rules in *Edwards*, that decision could not automatically benefit Gipson in this proceeding. Before the Court could grant relief to Gipson, the Court would need to take the extra step of extending *Montgomery*'s holding to require state courts to apply new, watershed, *procedural* rules in post-conviction proceedings. The Court should not take that step.

As discussed above, there are important differences between new substantive and procedural rules. The most important difference, of course, is that new procedural rules have a "more speculative connection to innocence" than substantive rules. *Summerlin*, 542 U.S. at 352. Unlike substantive rules, new procedural rules affect "only the manner of determining the defendant's culpability." *Ramos*, 140 S. Ct. at 1419 (Kavanaugh, J., concurring) (internal quotation marks omitted). The important differences between substantive and procedural rules have led this Court to treat those rules differently for the purposes of retroactivity. New substantive rules are almost always retroactive; new procedural rules are almost never retroactive.

The logic of that distinction applies with equal force to the question of whether to extend *Montgomery*'s holding to procedural rules. When concluding that the

Constitution requires state courts to apply new substantive rules retroactively, this Court expressly noted the difference between substantive and procedural rules: "This Court's precedents addressing the nature of substantive rules, *their differences from procedural rules*, and their history of retroactive application establish that the Constitution requires substantive rules to have retroactive effect regardless of when a conviction became final." *Montgomery*, 136 S. Ct. at 729 (emphasis added). "By holding that new substantive rules are, indeed, retroactive, *Teague* continued a long tradition of giving retroactive effect to constitutional rights *that go beyond procedural guarantees*." *Id.* at 730 (emphasis added). Administration of criminal procedure implicates States' sovereign power in a way that substantive constitutional laws do not. For this reason, "[w]hen a new substantive rule of constitutional law is established, this Court is careful to limit the scope of any attendant procedural requirement to avoid intruding more than necessary upon the States' sovereign administration of their criminal justice systems." *Id.* at 735.

At bottom, although state courts are obliged to retroactively apply new substantive rules on post-conviction review, they should be free to decide whether to retroactively apply new procedural rules that this Court identifies as satisfying *Teague*'s second exception (assuming it ever identifies a new watershed procedural rule). For these reasons, even if the Court declares the *Ramos* rule to be retroactive in *Edwards*, Gipson should not benefit from that holding because his case arises from *state* post-conviction proceedings. The Court should deny certiorari.

CONCLUSION

The Court should deny Gipson's petition for certiorari.

Respectfully submitted,

/s/ *Elizabeth Baker Murrill*
JEFF LANDRY
Attorney General
ELIZABETH BAKER MURRILL*
Solicitor General
*Counsel of record
SHAE MCPHEE
Deputy Solicitor General
Louisiana Department of Justice
1885 N. Third St.
Baton Rouge, LA 70802
(225) 326-6766
murrille@ag.louisiana.gov

JASON R. WILLIAMS
District Attorney Parish of Orleans
DONNA ANDRIEU
Assistant District Attorney
619 South White Street
New Orleans, LA 70119
(504) 822-2414
donna.andrieu@orleansda.com