NO. _____

IN THE
Supreme Court of the United States

_____

RICHARD WOODS, PETITIONER,

V.

STATE OF LOUISIANA, RESPONDENT.

ON PETITIONS FOR WRITS OF CERTIORARI TO
THE LOUISIANA SUPREME COURT AND THE

_____

PETITION FOR WRIT OF CERTIORARI

_____

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QUESTIONS PRESENTED

Whether petitioner's conviction based upon a non-unanimous verdict violated the Sixth and Fourteenth Amendments to the United States Constitution?

Whether this Court should grant the petitions, vacate the decision below and remand to the state courts for consideration of the constitutional issue in the first instance?

PARTIES TO THE PROCEEDING

Petitioner in this case is Richard Woods. The State Of Louisiana is the Respondent.

PRIOR RELATED PROCEEDINGS

State v. Woods, 942 So. 2d 658, 2006 La. App. LEXIS 2325, 41,420 (La.App. 2 Cir. 11/01/06) | *Writ denied* by *State v. Woods*, 959 So. 2d 494, 2007 La. LEXIS 1567 (La., 06/22/07); *Writ denied* by *State v. Woods*, 959 So. 2d 494, 2007 La. LEXIS 1568, 2006-2768 (La. 06/22/07); *Post conviction relief denied* at *State v. Woods*, 2020 La. LEXIS 628 (La., 03/09/20).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Richard Woods respectfully petitions for writs of certiorari to the Louisiana Supreme Court in *State v. Woods*, 2020 La. LEXIS 628 (La. 03/09/20), 942 So. 2d 658.

OPINIONS BELOW

In *State v. Woods*, the state Supreme Court denied post-conviction relief. *State v. Woods*, 291 So. 3d 222, 2020 La. LEXIS 628, 2019-01198 (La. 03/09/20). Chief Justice Johnson dissented, noting that she would grant writs and assigned as reasons. *State v. Woods*, 291 So. 3d 222, 2020 La. LEXIS 628, 2019-01198 (La. 03/09/20), pet app. at 16a (Johnson, C.J. *dissenting and assigning reasons*) ("I would grant this writ application and remand to the district court with instructions to stay the relator's application for post-conviction relief until the United States Supreme Court issues its ruling in the case of *Ramos v. Louisiana*, 2018-5924, U.S. , 139 S.Ct. 1318, 203 L. Ed. 2d 563 (2019).")

JURISDICTIONAL STATEMENT

The judgment and opinions of the Louisiana Supreme Court were issued in *State v. Woods*, 2019-01198, on March 9, 2020. See Appendix "D", Pet. App. 16a. This Court's jurisdiction is pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides, in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury…". U.S. Const. Amend. VI.

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. Amend. XIV.

La. C. Cr. P. Art. 930.4: "If the petitioner is in custody after sentence for conviction for an offense, relief shall be granted only on the following grounds: 1) The conviction was obtained in violation of the constitution of the United States or the State of Louisiana. …"

STATEMENTS OF FACTS

Petitioner was convicted of second-degree murder, aggravated battery and attempted manslaughter, and sentenced to life imprisonment after three people, including petitioner's wife, were stabbed in a home known for drug use in West Monroe, Louisiana. The state claimed the stabbing occurred because petitioner found out his wife had "offered to sell herself to a man in order to get crack." Petitioner maintained he acted in self-defense. See *State v. Woods*, 942 So. 2d 658, 2006 La. App. LEXIS 2325, 41,420 (La.App. 2 Cir. 11/01/06), at pet. app. 1a-12a.

STATEMENT OF THE CASE

Petitioner was convicted by a non-unanimous verdict. His conviction became final on June 22, 2007.

Petitioner filed for state post-conviction relief alleging his conviction was obtained in violation of the Constitution of the United States. The petition was denied. On March 9, 2020, the Louisiana Supreme Court denied writs. Chief Justice Johnson would grant and assigns as reason: "I would grant this writ application and remand to the district court with instructions to stay the relator's application for post-conviction relief until the United States Supreme Court issues its ruling in the case of *Ramos v. Louisiana*, 2018-5924, U.S. , 139 S.Ct. 1318, 203 L. Ed. 2d 563 (2019)." *State v. Woods*, 291 So. 3d 222, 2020 La. LEXIS 628, 2019-01198 (La. 03/09/20), Appendix D, Pet. App. 16a.

During the pendency of the litigation, while *Ramos v. Louisiana* was pending in this Court, the State of Louisiana disavowed Justice Powell's theory of partial

incorporation which had formed the basis for the *Apodaca v. Oregon* opinion. See Brief of Respondent, *Ramos v. Louisiana*, 18-5924 ("neither party is asking the Court to accord Justice Powell's solo opinion in Apodaca precedential force."); Oral Argument, *Ramos v. Louisiana*, 18-5924, at 34 (Ms. Murrill: Justice Ginsburg, we don't think that Justice Powell's decision was entirely clear with regard to the rule as it would apply historically); see also *id.* at 39, lines 6-18.

Nevertheless, the state courts continued to treat the conviction as valid.

On April 20, 2020, this Court reversed the conviction of Evangelisto Ramos observing: "Not a single member of this court is prepared to say Louisiana secured his conviction constitutionally under the Sixth Amendment." *Ramos v. Louisiana*, Slip Op at __.

On April 27, 2020, this Court summarily granted, vacated and remanded for further consideration twelve cases (eleven from Louisiana) based upon the decision in *Ramos*.[1] (Order List, 4/27/2020).

The Louisiana courts have begun to process the impact of Ramos v. Louisiana on state post-conviction cases. *State v. Jordan*, 2020-0319 (La. App. 1 Cir 5/26/20), 2020 La. App. LEXIS 806 * ("WRIT GRANTED IN PART AND DENIED IN PART. The

[1] See *Nagi, Kassim M. v. Louisiana*, 18-1585 (Order of 4/27/2020) (Justice Thomas would deny); *Lewis, Billy R v. Louisiana*, 18-7488 (Order of 4/27/2020); *Alridge, Dajuan v. Louisiana*, 18-8748 (Order of 4/27/2020); *Dyson, Corlious v. Louisiana,* 18-8897 (Order of 4/27/2020) (Justice Thomas would deny); *Brooks, Michael v. Louisiana,* 18-9463 (Order of 4/27/2020) (Justice Thomas would deny); *Dick, Shaun v. Oregon,* 18-9130 (Order of 4/27/2020); *Sheppard, Kevin v. Louisiana*, 18-9693 (Order of 4/27/2020); *Crehan, Jace v. Louisiana,* 18-9787 (Order of 4/27/2020); *Heard, Robert v. Louisiana*, 18-9821 (Order of 4/27/2020); *Richards, Aaron v. Louisiana*, 19-5301 (Order of 4/27/2020) (Justice Thomas would deny); *Victor, Errol v. Louisiana*, 19-5989 (Justice Thomas would deny); *Johnson v. Horatio v. Louisiana*, 19-6679 (Order of 4/27/2020).

district court's ruling denying relator's application for postconviction relief is vacated in part for the sole purpose of remanding the application to the district court for a hearing on re la tor's claim regarding his conviction by a non-unanimous jury verdict, in light of *Ramos v. Louisiana*, U.S. , 140 S. Ct. 1390, 206 L. Ed. 2d 583 (2020), 2020 WL 1906545. In all other respects, the writ application is denied."); *State v. Verdin*, 2020-0061 (La. App. 1 Cir 05/22/20), 2020 La. App. LEXIS 786 * ("WRIT GRANTED IN PART AND DENIED IN PART. The district court's ruling denying relator's application for postconviction relief is vacated in part for the sole purpose of remanding the application to the district court for a hearing on relator's claim regarding his conviction by a non-unanimous jury verdict, in light of *Ramos v. Louisiana*, U.S. , 140 S. Ct. 1390, 206 L. Ed. 2d 583 (2020), 2020 WL 1906545. In all other respects, the writ application is denied."); *State v. Kelly*, 2020-0273 (La. App. 1 Cir 05/12/20) ("WRIT GRANTED. The district court's ruling denying relator's motion to declare Louisiana Code of Criminal Procedure article 782(A) unconstitutional is vacated for the sole purpose of remanding the matter to the district court for a hearing on relator's claim regarding his conviction by a non-unanimous jury verdict, in light of *Ramos v. Louisiana*, ___ U.S. ___, ___ S.Ct. ___, 206 L. Ed. 2d 583 (2020), 2020 WL 1906545.").

On June 3, 2020, the Louisiana Supreme Court remanded nearly forty non-final cases to the courts of appeal to conduct new error patent reviews in light of the decision in *Ramos v. Louisiana*. Still, the Court denied at least six writ applications in cases where convictions were deemed final. Chief Justice Johnson would have

granted writs and docketed and assigned reasons. Justices Weimer and Crichton would have granted and docketed. Chief Justice Johnson noted that a "majority of this court has voted to defer until the Supreme Court mandates that we act." However she suggested that "It is time that our state courts—not the United States Supreme Court—decided whether we should address the damage done by our longtime use of an invidious law." *State v. Gipson*, 2020 La. Lexis 1039 (6/3/2020).

Failing to apply *Ramos* retroactively to cases on state collateral review will only further reinforce the presumption that the judicial system prioritizes efficiency over mitigating the impacts of an explicitly racist law. "At stake here is the very legitimacy of the rule of law, which depends upon all citizens having confidence in the courts to apply equal justice." *Id.*

In one respect, these cases are procedurally different from the cases the Court summarily granted, vacated and remanded on April 27, 2020, as they arise out of state post-conviction. In these cases, the lower courts will have to address whether state courts are obligated to follow *Ramos v. Louisiana* in addressing challenges raised in post-conviction.

The opinion in *Ramos v. Louisiana*, adumbrated the future discussion on whether the opinion would apply to cases that became final before April 20, 2020. Justice Kavanaugh concurring in judgment addressed the question of whether *Ramos v. Louisiana* would apply in federal habeas: "So assuming that the Court faithfully applies Teague, today's decision will not apply retroactively on federal habeas corpus review and will not disturb convictions that are final." *Ramos v.*

Louisiana, No. 18-5924, 2020 U.S. LEXIS 2407, at *60 (Apr. 20, 2020) (Kavanaugh, J., concurring). As Justice Alito explained, the remaining justices offered no certainty on that question:

> The remaining Justices in the majority, and those of us in dissent, express no view on this question, but the majority's depiction of the unanimity requirement as a hallowed right that Louisiana and Oregon flouted for ignominious reasons certainly provides fuel for the argument that the rule announced today meets the test. And in Oregon, the State most severely impacted by today's decision, watershed status may not matter since the State Supreme Court has reserved decision on whether state law gives prisoners a greater opportunity to invoke new precedents in state collateral proceedings.

Ramos v. Louisiana, No. 18-5924, 2020 U.S. LEXIS 2407, at *95 (Apr. 20, 2020).

This Court has granted certiorari in *Edwards v. Vannoy*, 19-5807, limited to "to the following question: Whether this Court's decision in *Ramos v. Louisiana*, 590 U. S. ___ (2020), applies retroactively to cases on federal collateral review."

This case presents a distinct and more narrow question, with regard to how the Louisiana courts address the validity of a non-unanimous conviction in state post-conviction and for purposes of La. C. Cr. P. 930.3. All Petitioner asks is that the Louisiana Supreme Court first be permitted to consider the claim at issue in light of this Court's opinion in *Ramos v. Louisiana*, 590 U.S. __ (2020).

SUMMARY OF THE ARGUMENT

Petitioner was convicted by a non-unanimous verdict. The law is clear: under the Sixth Amendment, the government can only sustain a conviction for a serious offense based upon a unanimous verdict.

Writs by the Louisiana Supreme Court were denied while *Ramos v. Louisiana* was pending. Petitioners seek the same remedy as those eleven other defendants whose cases were granted, vacated and remanded on April 27, 2020, with the same guidance given by Justice Alito in his statement concurring with the remand orders. Remand to the state courts for further consideration in light of *Ramos v. Louisiana* will allow the Louisiana courts to address in the first instance the question of retroactivity, and error patent review.

REASONS FOR GRANTING THE WRIT

I. This Court Should Grant, Vacate And Remand The Case So That The Louisiana Courts Can Consider In The First Instance Whether A Non-Unanimous Verdict Is Error Patent Under Louisiana Law.

At the time the Louisiana Court of Appeal and the Louisiana Supreme Court reviewed the issues presented in these cases, *Ramos v. Louisiana* was pending before this Court. Chief Justice Johnson at the Louisiana Supreme Court dissented from the ruling below, urging the Court hold the case until this Court had issued the opinion in *Ramos v. Louisiana.*

This Court decided *Ramos v. Louisiana*, on April 20, 2020, holding that the Sixth Amendment right to a jury trial—as incorporated against the States by way of the Fourteenth Amendment—requires a unanimous verdict to convict a defendant of

a serious offense. *Ramos v. Louisiana*, No. 18-5924, 2020 U.S. LEXIS 2407, at *1 (Apr. 20, 2020).

While justices of this Court differed on the question of whether *Apodaca v. Oregon* was precedent, and if it were precedent whether it deserved to be preserved under stare decisis grounds, not a single member of the Court defended the practice. The Court noted that the infringement on the Fourteenth Amendment practice could be traced to efforts to "establish the supremacy of the white race" and the rise of the Ku Klux Klan and efforts to dilute "the influence of racial, ethnic, and religious minorities on Oregon juries." Id at __, Lexis at *11, slip op at 2.

Justice Gorsuch, writing for the five-justice majority, first articulated what the Court had "repeatedly" recognized over many years: the Sixth Amendment requires a unanimous jury verdict. *Id*., at ___ (slip op., at 6).[2] Then the Court addressed the application of this rule to the states, finding that "[t]here can be no question either that the Sixth Amendment's unanimity requirement applies to state and federal criminal trials equally," as it is incorporated against the states under the Fourteenth Amendment. *Id.*, at ___ (slip op., at 7). This understanding of incorporation had also been "long explained" by the Court and was supported by jurisprudence for over a half century. *Id.*[3]

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[2] *See also id*., at ___ (slip op., at 4) ("Wherever we might look to determine what the term 'trial by an impartial jury trial' meant at the time of the Sixth Amendment's adoption—whether it's the common law, state practices in the founding era, or opinions and treatises written soon afterward—the answer is unmistakable. A jury must reach a unanimous verdict in order to convict.")

[3] *See also id.*, at ___ (Kavanaugh, J., *concurring in part*) (slip op., at 10–11) ("the original meaning and this Court's precedents establish that the Fourteenth Amendment

The Court observed that the relief Mr. Ramos – and the petitioners in this case – requested was not some operation of a new fangled principle:

> This Court has, repeatedly and over many years, recognized that the Sixth Amendment requires unanimity. As early as 1898, the Court said that a defendant enjoys a "constitutional right to demand that his liberty should not be taken from him except by the joint action of the court and the unanimous verdict of a jury of twelve persons." A few decades later, the Court elaborated that the Sixth Amendment affords a right to "a trial by jury as understood and applied at common law, . . . includ[ing] all the essential elements as they were recognized in this country and England when the Constitution was adopted." And, the Court observed, this includes a requirement "that the verdict should be unanimous." In all, this Court has commented on the Sixth Amendment's unanimity requirement no fewer than 13 times over more than 120 years.

Ramos v. Louisiana, No. 18-5924, 2020 U.S. LEXIS 2407, at *12-13 (Apr. 20, 2020), slip op at __.

Finally, as well, this Court addressed *Apodaca v. Oregon,* 406 U. S. 464 (1972). In *Apodaca,* a majority of Justices recognized that the Sixth Amendment requires unanimity in jury verdicts. However, the Court nonetheless upheld Oregon's system of non-unanimous jury verdicts in "a badly fractured set of opinions." *Ramos*, 590 U.S., at ___ (slip op., at 8). Four Justices in the *Ramos* Court found that *Apodaca* had little-to-no precedential value to the case before them.[4] Two Justices found that

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incorporates the Sixth Amendment jury trial right against the States"); *id.* at ___ (Thomas, J., concurring in the judgement) (slip op., at 4–5) ("There is also considerable evidence that this understanding [of the Sixth Amendment's unanimity requirement] persisted up to the time of the Fourteenth Amendment's ratification.").

[4] As Justice Gorsuch explained "*Apodaca* yielded no controlling opinion at all," *Id.* at ___ (plurality opinion) (slip op., at 18), and "not even Louisiana tries to suggest that *Apodaca* supplies a governing precedent." *Id.* at ___ (plurality opinion) (slip op., at 16). In his separate concurring opinion, Justice Thomas found *Apodaca* to be inapplicable in this case because it

Apodaca was simply "irreconcilable" with the Court's constitutional precedent, or "egregiously wrong" and must be overturned.[5] The Court concluded: "We have an admittedly mistaken decision, on a constitutional issue, an outlier on the day it was decided, one that's become lonelier with time." *Id*., at ___ (plurality opinion) (slip op., at 26).

II. For the Reasons Set forth in *Danforth v. Minnesota*, this Court should Remand the case

This Court should remand these cases to the Louisiana courts to allow them to assess the constitutionality of the non-unanimous convictions in light of *Ramos v. Louisiana*. Previously, the Louisiana courts have adhered to vertical stare decisis in upholding the constitutional validity of non-unanimous juries. In *State v. Bertrand*, the Louisiana Supreme Court overruled a trial court's decision holding unconstitutional the non-unanimous verdict provision. The state Supreme Court observed:

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was decided on due process grounds, and, in his opinion, the Sixth Amendment is incorporated against the states through the Privileges and Immunity Clause of the Fourteenth Amendment: Because "*Apodaca* addressed the Due Process Clause, its Fourteenth Amendment ruling does not bind us because the proper question here is the scope of the Privileges or Immunities Clause." *Id*. at ___ (Thomas, J., concurring in the judgement) (slip op., at 8).

[5] In her concurrence, Justice Sotomayor wrote: *Apodaca* is "irreconcilable with not just one, but two, strands of constitutional precedent well established both before and after the decision. The Court has long recognized that the Sixth Amendment requires unanimity." *Id*. at ___ (Sotomayor, J., concurring in part) (slip op., at 2). In his concurring opinion, Justice Kavanaugh concluded that Apodaca must be reversed, as it is "Apodaca is egregiously wrong. The original meaning and this Court's precedents establish that the Sixth Amendment requires a unanimous jury. … And the original meaning and this Court's precedents establish that the Fourteenth Amendment incorporates the Sixth Amendment jury trial right against the States." *Id*. at ___ (Kavanaugh, J., concurring in part) (slip op., at 11).

> [B]ecause we are not presumptuous enough to suppose, upon mere speculation, that the United States Supreme Court's still valid determination that non-unanimous 12 person jury verdicts are constitutional may someday be overturned, we find that the trial court erred in ruling that Article 782 violated the Fifth, Sixth, and Fourteenth Amendments. With respect to that ruling, it should go without saying that a trial judge is not at liberty to ignore the controlling jurisprudence of superior courts.

State v. Bertrand, 2008-2215 (La. 03/17/09), 6 So. 3d 738, 743. The state supreme court rejected the defendants' argument that

> [B]ecause no single rationale for the non-unanimity position prevailed in *Apodaca* and in light of more recent Supreme Court Sixth Amendment jurisprudence, the validity of the Apodaca decision is questionable. Defendants further argue that the Apodaca decision is diametrically opposed to the approach taken by the U.S. Supreme Court in recent Sixth Amendment cases involving Federal criminal jury trials, in that, rather than looking at the text of the Amendment and the Framers' understanding of the right at the time of adoption, the decision relied on the function served by the jury in contemporary society. Finally, defendants argue that the use of non-unanimous verdicts have an insidious racial component, allow minority viewpoints to be ignored, and is likely to chill participation by the precise groups whose exclusion the Constitution has proscribed.

State v. Bertrand, 6 So. 3d at 741-42. Having felt constrained by this Court's decision in *Apodaca*, the lower courts in Louisiana did not address anew the arguments raised by the petitioners in this case; and because the Louisiana courts did not believe the use of non-unanimous verdicts was error, there was no place to consider whether procedural bars existed to restrain review.

With the holding of this Court's decision in *Ramos v. Louisiana* in hand, the Louisiana courts should consider in the first instance the questions of application of *Ramos v. Louisiana* in state post-conviction proceedings. As the dissent in *Ramos* notes, "Under our case law, a State must give retroactive effect to any constitutional decision that is retroactive under the standard in *Teague v. Lane*, 489 U. S. 288, 109

S. Ct. 1060, 103 L. Ed. 2d 334 (1989), but it may adopt a broader retroactivity rule. *Montgomery v. Louisiana*, 577 U. S. ___, ___, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016); *Danforth v. Minnesota*, 552 U. S. 264, 275, 128 S. Ct. 1029, 169 L. Ed. 2d 859 (2008)." *Id.* at __ (Alito, J., dissenting) (slip op at __), n 122.

As the Court explained in *Danforth*,

> It is important to keep in mind that our jurisprudence concerning the "retroactivity" of "new rules" of constitutional law is primarily concerned, not with the question whether a constitutional violation occurred, but with the availability or nonavailability of remedies. The former is a "pure question of federal law, our resolution of which should be applied uniformly throughout the Nation, while the latter is a mixed question of state and federal law." *American Trucking Assns., Inc. v. Smith*, 496 U.S., at 205, 110 S. Ct. 2323, 110 L. Ed. 2d 148 (Stevens, J., dissenting).
>
> A decision by this Court that a new rule does not apply retroactively under *Teague* does not imply that there was no right and thus no violation of that right at the time of trial--only that no remedy will be provided in federal habeas courts. It is fully consistent with a government of laws to recognize that the finality of a judgment may bar relief. It would be quite wrong to assume, however, that the question whether constitutional violations occurred in trials conducted before a certain date depends on how much time was required to complete the appellate process.

Danforth v. Minnesota, 552 U.S. 264, 290-91, 128 S. Ct. 1029, 1047 (2008).

In this instance, before addressing the question of retroactivity of *Ramos v. Louisiana* in federal courts, or this Court, the State courts should be given an opportunity to adjudicate petitioners' claims in full. Indeed, the citizens of Louisiana now recognize that this law was deeply rooted in extreme systemic racism. The practice came from post-Reconstruction, when whites fought to return their state to some sense of what they considered normalcy prior to the Civil War. Non-unanimous jury convictions systemically discounted the opinions of jurors of color and

contributed to a significant number of wrongful convictions, some of which later led to exonerations. It corrupted the jury process by silencing skeptical viewpoints, depriving the other jurors of a full view of the evidence. This practice stripped the Louisiana criminal justice system of credibility, making all Louisianans less safe. It resulted in Louisiana leading the nation per capita in incarceration and wrongful convictions. When voters considered the issue at the ballot, they overwhelming rejected the non-unanimous verdicts.

It is at least plausible that Louisiana judges (or the elected District Attorneys) will decide to give full effect to this Court's decision in *Ramos v. Louisiana*. And indeed in *State v. Gipson*, Chief Justice Johnson was joined by Justice Weimer and Justice Crichton, who would grant and docket the question whether "Court's recent decision in *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020) should be applied retroactively to cases on state collateral review." *State v. Gipson*, 2020 La. LEXIS 1039 * | 2019-01815 (La. 06/03/20). Specifically, Chief Justice Johnson observed first the view that "*Ramos* meets the test for retroactive application enunciated by the Supreme Court in *Teague v. Lane*, 489 U.S. 288 (1989). … It plainly announced a watershed rule." *Id.* at **2. But more significantly, for this petition's purpose "we are not bound to continue using Teague's test, and there are good reasons to abandon our decision in *Taylor*[6] that adopted it. There was little in the *Taylor* rationale that commands our continued adherence to *Teague*." *Id.* Significantly, Chief Justice Johnson noted that

[6] State ex rel. Taylor v. Whitley, 606 So. 2d 1292, 1296 (La. 1992).

the case arrived "full briefing on this issue" but that there was strong reason for the Louisiana courts to consider the issue in the first instance:

> To be sure, addressing a history of legally-sanctioned racism in our criminal justice system will come with a significant fiscal and administrative cost. But it is a cost we must bear if we mean to show that we guarantee all Louisianans equal justice. We must not "perpetuate something we all know to be wrong only because we fear the consequences of being right." Id. at 1408. The cost of giving new trials to all defendants convicted by non-unanimous juries pales in comparison to the long-term societal cost of perpetuating—by our own inaction—a deeply-ingrained distrust of law enforcement, criminal justice, and Louisiana's government institutions.
>
> Defendants convicted by non-unanimous jury verdicts are prisoners of a law that was designed to discriminate against them and disproportionately silence African American jurors. Simply pledging to uphold the Constitution in future criminal trials does not heal the wounds already inflicted on Louisiana's African American community by the use of this law for 120 years. The reality of that harm "and the resulting perception of unfairness and racial bias—[has] undermine[d] confidence in and respect for the criminal justice system." Id. at 1418 (Kavanaugh, [*14] J., concurring in part). At stake here is the very legitimacy of the rule of law, which depends upon all citizens having confidence in the courts to apply equal justice.

State v. Gipson, supra, at *13-14.

It appears from Chief Justice Johnson's opinion that this Court's decision to grant certiorari in *Edwards v. Vannoy* has caused "The majority of this [The Louisiana Supreme] Court has voted to defer until the Supreme Court mandates that we act" (*State v. Gipson*, at 1) basic principles of federalism support the idea that the state courts should address the question of retroactivity first. And indeed, here, all that petitioner asks is that the Louisiana Courts be given an opportunity – and the responsibility – to do address the validity of Mr. Woods' post-conviction petition with the insight and elucidation provided by this Court's opinion.

For initial petitions for post-conviction relief, Louisiana law does not apply a procedural bar requiring a defendant to establish the retroactivity of a Supreme Court decision. All that is required is that the defendant establish the unconstitutionality of his conviction. See La. C. Cr. P. Art. 930.3 (1). For successive petitions, a defendant is required to establish that the petition was filed within one year of an appellate court or Supreme Court decision, and to establish that the opinion applies retroactively to him. See La. C. Cr. P. Art. 930.8 (A) (2). Whether this is a claim that should be adjudicated under La. C. Cr. P. Art. 930.3 (1) or La. C. Cr. P. Art. 930.8 (A) (2) is a determination that should be made by the Louisiana courts. And regardless of this Court's opinion in *Edwards v. Vannoy,* the Louisiana courts should be given the opportunity to determine the scope of the application of *Ramos v. Louisiana* in state post-conviction.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully Submitted,

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Dated: June 17, 2020