

NUMBER: \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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CARDELL HAYES,  
*Petitioner,*

vs.

STATE OF LOUISIANA,  
*Respondent.*

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On Petition For Writ Of Certiorari  
To The State of Louisiana

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PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED FOR REVIEW

Because Cardell Hayes's non-unanimous verdict is unconstitutional, *Ramos v. Louisiana*, — S.Ct. —, 2020 WL 1906545 (2020), is he entitled to the relief provided by *Ramos* because his case is in the appeal pipeline?

## **PARTIES TO THE PROCEEDING**

The parties to the proceeding are:

**State of Louisiana**, through the Orleans Parish District Attorney's Office.

**Cardell Hayes**, a defendant convicted in Louisiana for manslaughter and attempted manslaughter and sentenced to 25 years and 15 years, respectively, to run concurrent.



## **CORPORATE DISCLOSURE**

The State of Louisiana is a body politic. The Orleans Parish District Attorney's Office is a subdivision of the state of Louisiana.



## **LIST OF RELATED CASES**

*State v. Hayes*, 2017-0789 (La. App. 4 Cir. 3/27/19), — So.3d —.

*State v. Hayes*, 2019-0808 (La. 3/09/20), — So.3d —, 2020 WL 2319149.

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## **OPINION BELOW**

A non-unanimous Orleans Parish jury (10-2) found Hayes guilty of manslaughter in the death of William Smith and guilty of attempted manslaughter in connection with injuries to Raquel Smith. The Louisiana Fourth Circuit Court of Appeal affirmed the conviction. *State v. Hayes*, 2017-0789 (La. App. 4 Cir. 3/27/19), — So.3d —. The Louisiana Supreme Court denied a writ of certiorari. *State v. Hayes*, 2019-0808 (La. 3/09/30), — So.3d —, 2020 WL 2319149.

## **BASIS FOR SUPREME COURT JURISDICTION**

This court has jurisdiction under 28 U.S.C. §1257(a). *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 125 S.Ct. 1517, 161 L.Ed.2d 464(2005). (Appellate jurisdiction to reverse or modify a state-court judgment is lodged, ... by 28 U.S.C. § 1257, exclusively in the Supreme Court).

## **STATUTORY OR CONSTITUTIONAL PROVISIONS INVOLVED**

### **SIXTH AMENDMENT**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

### **FOURTEENTH AMENDMENT**

The Fourteenth Amendment to the United States Constitution provides, in

pertinent part: . . . 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.

## STATEMENT OF THE CASE

A vehicle accident that escalated into a second accident and confrontation resulted in Cardell Hayes being indicted for one count of aggravated criminal damage to a vehicle, one count of attempted second-degree murder, and one count of second-degree murder. The incident began when Hayes's vehicle was struck from behind. After the parties stopped, the vehicle driven by Will Smith left the scene. Hayes followed and, at some point, bumped the Smith vehicle. The parties exited their vehicles where Hayes supposedly shot and killed Smith and shot at Smith's passenger/wife, Raquel.

Despite the indictment, a jury, by a 10-2 verdict, convicted Hayes of manslaughter and attempted manslaughter.

Hayes timely appealed his conviction, which was affirmed. *State v. Hayes*, 2017-0789 (La. App. 4 Cir. 3/27/19), — So.3d —. The Louisiana Supreme Court denied a writ of certiorari. *State v. Hayes*, 2019-0808 (La. 3/09/30), — So.3d —, 2020 WL 2319149.

## ARGUMENT

**Hayes is entitled to *Ramos* relief because his case remains in the pipeline.**

Hayes is entitled to relief. On April 20, 2020, this court, in *Ramos v. Louisiana*, — U.S. — (2020), ruled the Sixth Amendment to the United States Constitution requires a unanimous jury verdict.

Since Hayes's case was and is in the pipeline he is eligible for the relief of *Ramos*

(See, e.g. *State v. Jones*, 2013-2039 (La. 2/28/14), 134 So.3d 1164) (Defendant entitled to the benefit of the decision in *Miller v. Alabama*, 567 U.S. —, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), because his case was in the direct review pipeline when *Miller* was decided). (See, also, *Griffith v. Kentucky*, 479 U.S. 314, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987) (New rules of constitutional criminal procedure apply retroactively to all cases pending on direct review or in the direct review pipeline).

The facts support relief. The Louisiana Supreme Court denied Hayes's writ application on March 9, 2020 (2109-1198). Therefore Hayes had 90 days to file a writ application with the United States Supreme Court under Rule 13 – extended by 60 days because of the COVID virus, Supreme Court Miscellaneous Order March 19, 2020 – before his conviction becomes final. (See *State v. Holiday*, 2017-1921 (La. 1/29/20), — So.3d —) ( Judgment becomes final on direct review when either: (1) the defendant fails to timely petition the United States Supreme Court for certiorari; or (2) that Court denies his petition for certiorari; and either (a) the defendant, having filed for and been denied certiorari, fails to timely petition the United States Supreme Court, under their prevailing rules, for rehearing of denial of certiorari; or (b) that Court denies his petition for rehearing). Cf. *Caspari v. Bohlen*, 510 U.S. 383, 390, 114 S.Ct. 948, 953, 127 L.Ed.2d 236 (1994) (“A state conviction and sentence become final for purposes of retroactivity when the availability of direct appeal to the state courts has been exhausted and the time for filing a petition for writ of certiorari has elapsed or a timely filed petition has been finally decided.”)(citing *Griffith*, supra)(for purposes of applying



new federal constitutional rules to cases in the direct pipeline and not yet final, “[b]y ‘final’ we mean a case in which a judgment of conviction has been rendered, the availability of appeal exhausted, and the time for a petition for certiorari elapsed or a petition for certiorari finally denied.”).

Since this application is filed within the 90-day deadline of this Court, Hayes, is entitled to have the retroactive benefit of *Ramos*.

### CONCLUSION

Given that Hayes’s case is still on direct review under *Caspari* and *Griffith*, Hayes is entitled to have this Court grant his writ of certiorari, have his conviction vacated, and have his case remanded for relief.

Respectfully submitted:

s/ Mark D. Plaisance

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## **CERTIFICATE OF SERVICE**

I hereby certify that on July 16, 2020, I provided a copy of this Writ of Certiorari  
by electronic mail to:

Leon Cannizzaro, Jr.  
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*s/ Mark D. Plaisance*  
**MARK D. PLAISANCE**