

IN THE
Supreme Court of the United States

FIVEA SHARIPOFF,

Petitioner,

v.

ROB PERSSON, SUPERINTENDENT, COFFEE CREEK CORRECTIONAL INSTITUTION,

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Should this Court hold this petition in abeyance pending a decision in *Edwards v. Vannoy*, No. 19-5807, in which this Court will decide whether the rule from *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020)—that a nonunanimous jury verdict violates the United States Constitution—applies retroactively to cases on collateral review, even though petitioner raised no claim on that issue in his federal habeas corpus petition or before the Ninth Circuit?

TABLE OF CONTENTS

QUESTION PRESENTED.....	I
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TABLE OF AUTHORITIES

Cases Cited

<i>Edwards v. Vannoy</i> , No. 19-5807	i, 1, 2
<i>Mayle v. Felix</i> , 545 U.S. 644 (2005).....	1
<i>Ramos v. Louisiana</i> , 140 S. Ct. 1390 (2020).....	i, 1, 2

Constitutional and Statutory Provisions

28 U.S.C. § 2254	2
Rule 2(c) of the Rules Governing Section 2254 Cases.....	1

RESPONDENT'S BRIEF IN OPPOSITION

In this habeas corpus case, petitioner challenges her state-court conviction for manslaughter. Petitioner asks this Court to hold this case in abeyance pending its decision in *Edwards v. Vannoy*, No. 19-5807. But because this case does not raise the issue that *Edwards* will resolve, this Court should deny the petition.

In *Edwards*, this Court will determine whether the rule of *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020)—prohibiting conviction by a nonunanimous jury verdict—applies retroactively to cases on collateral review. But that decision will have no effect on this case because that issue is not presented here. That is, although the jury in petitioner's case was instructed that it could reach a nonunanimous verdict, the constitutionality of that instruction was never presented in this habeas proceeding.¹

For a claim to be presented in a habeas corpus proceeding, the petitioner must allege the claim in the petition for habeas relief. *See Rule 2(c)(1) of the Rules Governing Section 2254 Cases* (“The petition must * * * specify all the grounds for relief available to the petitioner[.]”); *see also Mayle v. Felix*, 545 U.S. 644, 655–56 (2005) (discussing Rule 2(c)). Here, however, the operative habeas corpus petition alleged no claim that the state trial court violated the federal

¹ Indeed, the record in this case does not even reflect that petitioner was convicted by a nonunanimous verdict, because the parties declined the court's offer of a jury poll. (Tr. 1324). For that additional reason, the result in *Edwards* will not control this case.

constitution by instructing the jury that it could reach a nonunanimous verdict. (See Petition for Writ of Habeas Corpus). Nor did petitioner raise that issue in her appeal to the Ninth Circuit. (See Notice of Appeal). Thus, neither the district court nor the court of appeals resolved any question as to whether the nonunanimous jury instruction in petitioner’s case violated her federal rights, leaving this Court with nothing to review on that issue even if it decides in *Edwards* that the rule from *Ramos* is retroactive. Given that procedural posture, *Edwards* cannot have any effect on this case, and this Court has no reason to hold the case in abeyance pending its decision in *Edwards*.²

Although petitioner also asks this Court to summarily reverse based on the claim that the district court did resolve—whether the state court unreasonably applied clearly established federal law when it excluded evidence from petitioner’s trial—that issue does not warrant *certiorari*. The district court’s denial of that claim (and the Ninth Circuit’s denial of a certificate of appealability on it) involves an ordinary, fact-driven application of well-settled legal principles that does not warrant this Court’s review. With respect to the merits of the claim, the superintendent relies on the arguments made in the briefing before the district court. For the foregoing reasons, this Court should deny the petition.

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² If this Court determines that the rule from *Ramos* is retroactive, petitioner can attempt to pursue her claim through an application for authorization to file a successive 28 U.S.C. § 2254 habeas corpus petition.

Respectfully submitted,

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