No. 20-7864 ORIGINAL

In The
Supreme Court of the United States
_____ Term, _____

JAMES E. MASON, JR. V. DARREL VANNOY, Warden

On Petition for a Writ of Certiorari to

LOUISIANA SUPREME COURT

James E. Mason, Jr. #589589
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April 21, 2021

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QUESTION PRESENTED

1. **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 in *Teague v. Lane*, 489 U.S. 288 (1989).**

RELATED PROCEEDINGS

On August 10, 2020, Mr. Mason filed his collateral review in the First Judicial District Court concerning his verdict being unconstitutionally obtained with a non-unanimous jury verdict. On September 30, 2020, the district court denied him relief. On October 22, 2020, Mr. Mason filed for Supervisory Writs to the Louisiana Second Circuit Court of Appeal, which was denied by the Court of Appeal on December 9, 2020.

Mr. Mason then sought Writ of Review to the Louisiana Supreme Court on December 23, 2020 which was denied on March 23, 2021.

INTERESTED PARTIES

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In The
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No.: _____

JAMES E. MASON, JR. v. DARREL VANNOY, Warden

Petition for Writ of Certiorari to the Louisiana Supreme Court

Pro Se Petitioner, James E. Mason, Jr. respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Louisiana Second Circuit Court of Appeal, entered in the above entitle proceeding on December 9, 2020 and the Louisiana Supreme Court, entered in the above entitled proceeding on March 23, 2021

NOTICE OF PRO-SE FILING

Mr. Mason requests that this Honorable Court view these Claims in accordance with the rulings of *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972). Mr. Mason is a layman of the law and untrained in the ways of filings and proceedings of formal pleadings in this Court. Therefore, he should not be held to the same stringent standards as those of a trained attorney.

OPINIONS BELOW

The opinion(s) of the Louisiana Second Circuit Court of Appeal was denied on December 9. 2020 and the Louisiana Supreme Court was denied on March 23, 2021. These pleadings were filed as collateral review, Supervisory Writ, and Supreme Court Supervisory Writs.

JURISDICTION

The Louisiana Supreme Court denied discretionary review of Mr. Mason's Supervisory Writ on March 23, 2021 On March 19, 2020, this Court issued an order automatically extending the time to file any petition for a Writ of Certiorari to 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing. This Court has

jurisdiction pursuant to 28 U.S.C. § 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth, Fifth and Sixth Amendments to the United States Constitution and *Lawrence v. Florida*, 549 U.S. 327, 127 S.Ct. 1079 (2007)(post-AEDPA).

The Sixth Amendment to the United States Constitution provides, in relevant 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 relevant part: "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." U.S. Const. Amend XIV, § 1.

La.C.Cr.P. Art. 930.3 provides in pertinent part: "If the Petitioner is in custody after sentence for conviction of an offense, relief shall be granted only on the following grounds: (1) The conviction was obtained in violation Constitution of the United States or the State of Louisiana."

INTRODUCTION

When Mr. Mason is an African-American man who was tried for a murder, 2 jurors voted to acquit. Had Mr. Mason been tried in federal court or any of 48 states, that 11-1 verdict would not have sufficed to convict him. But Louisiana allowed non-unanimous jury verdicts at the time, making the dissenting jurors' votes meaningless. Mr. Mason was convicted and sentenced to life in prison without the benefit of Probation, Parole, or Suspension of Sentence.

This Court recently held in *Ramos v. Louisiana*, 140 S.Ct. 1390 (2020), that the Sixth and Fourteenth Amendments prohibit criminal convictions by non-unanimous jury verdicts. But the Court left open the question whether *Ramos* applies retroactively to cases on collateral review. Shortly, thereafter, the Court granted Certiorari in *Edwards v. Vannoy*, No.: 19-5807, to decide whether *Ramos*

applies to cases on *federal* collateral review.

The ***Ramos*** Court reversed Mr. Ramos' conviction and held that Louisiana's scheme of non-unanimous jury verdicts violated the Sixth and Fourteenth Amendments of the United States Constitution.

In doing so, 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).[1] 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 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.*[2]

Finally, the Court addressed *Apodaca v. Oregon*, 406 U.S. 464 (1972). In *Apodaca*, a majority of Justice 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*, (slip op., at 8).

Four Justices in the *Ramos* Court found that *Apodaca* had little-to-no precedential value to the case before them.[3] Two Justices found that *Apodaca* was simply "irreconcilable" with the Court's

[1] 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 common law, state practices in the founding era, or opinions and treatsies written soon afterward – the answer is unmistakable. A jury must reach a unanimous verdict in order to convict.").

[2] 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 incorporates the Sixth Amendment jury trial right against the States"); *id.*, at ___ (Thomas, J., concurring on the judgment)(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.").

[3] Joined by Justices Ginsberg and Breyer, Justice Gorsuch explained that "***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

constitutional precedent, or "egregiously wrong," and must be overturned.[4] 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). The Court could not, and would not, rely on *Apodaca* to uphold Louisiana and Oregon's system of non-unanimous jury verdicts.

Furthermore, this Court held Oral Arguments on *Edwards*, supra on December 2, 2020, and is currently determining such.

This case presents the question whether *Ramos* applied to cases on *state* collateral review, where the State follows the retroactivity framework established in *Teague v. Lane*, 489 U.S. 288 (1989).[5] Insofar as the Court decides *Edwards* on the basis of whether *Ramos* is retroactive under the *Teague* framework, this case should be held for that one and disposed of accordingly. But if, for whatever reason, the Court does not reach that question in *Edwards*, the Court should grant plenary review in this case and hold that *Ramos* is retroactive under the *Teague* framework.

Under *Teague*, constitutional rules of criminal procedure that are not "new" apply retroactively. See: e.g., *Saffle v. Parks*, 494 U.S. 484, 487-88 (1990). When a constitutional decision is "grounded upon fundamental principles" that have been consistent "year to year," *Desist v. United States* 394 U.S. 244, 263 (1969)(Harlan, J. dissenting), the state interests protected by the general prohibition

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Apodaca to be inapplicable in this case because it 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 judgment)(slip op., at 8).

[4] 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 ___ (Sotomayer, 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).

[5] Unless otherwise noted, citation to ***Teague*** in this petition are citations to ***Teague***'s plurality opinion.

against retroactivity must yield, *Teague*, 498 U.S., at 309.

Ramos holding that the Sixth Amendment does not permit non-unanimous state jury verdicts is such a rule. It did not "break [] new ground," *Chaidez v. United States*, 568 U.S. 342, 347 (2013) (internal quotation marks omitted), but rather applied the original understanding of the Sixth Amendment to the States based on longstanding incorporation doctrine, see *Ramos*, 140 S.Ct., at 1395-97.

Even if *Ramos*'s rule were deemed "new," it would apply retroactively because it is a watershed rule – i.e., a rule that is "central to an accurate determination of innocence or guilt" and an "absolute prerequisite to fundamental fairness. *Teague*, 489 U.S., at 313-14. Because jury unanimity implicates the fundamental fairness and accuracy of criminal proceedings, a conviction secured with a fractured jury is defective even if the case is on collateral review.

STATEMENT OF THE CASE AND FACTS

James E. Mason, Jr., was charged by a Bill of Indictment filed on January 25, 2008, alleging that on or about the 27th day of November, 2007, he violated LSA-R.S. 14:30.1, in that he committed the offense of Second Degree Murder of Latora Wiley. Co-defendant Charles Evans, the shooter, was also charged with the same murder in docket number 264347. Mr. Mason was formally arraigned and a Not Guilty Plea was entered on January 28, 2008.

On September 1, 2011, the jury found Mr. Mason Guilty of Second Degree Murder in an 11-1 verdict. Mr. Mason was sentenced to serve life in prison without benefit of probation, parole, or suspension of sentence. The remainder of Mr. Mason's Statement of the Case are stated above.

Mr. Mason has remained in continued custody since his arrest, and is currently an inmate at Louisiana State Prison at Angola, Louisiana, Darrel Vannoy, Warden. Applicant asks that his *Pro-Se* efforts herein be liberally construed as he has made a good faith effort to follow form. See, *United States v. Glinsey*, 209 F.3d 386, 392 (5th Cir. 2000); citing *Haines v. Kerner*, 404 U.S. 519, 520, 92

S.Ct. 594, 595 (1972).

Mr. Mason was convicted by a non-unanimous jury verdict. One juror harbored enough doubt about Mr. Mason's guilt to enter a vote of "not guilty." On the basis of that 11-1 verdict, Mr. Mason was sentenced to life without the benefit of Probation, Parole, or Suspension of Sentence.

This Court holds that non-unanimous jury verdicts are unconstitutional.

On March 18, 2019, this Court granted Certiorari to address whether the Sixth and Fourteenth Amendments require a unanimous jury verdict to convict a defendant of a serious offense. *Ramos v. Louisiana*, 140 S.Ct. 1390 (2020).

A. non-unanimous jury convictions violate the Sixth and Fourteenth Amendments.

> ***On what ground would anyone have us leave Mr. Ramos in prison for the rest of his life? Not a single Member of this Court is prepared to say Louisiana secured his conviction constitutionally under the Sixth Amendment. No one before us suggests that the error was harmless. Louisiana does not claim precedent commands an affirmance. In the end, the best anyone can seem to muster against Mr. Ramos is that, if we dared to admit in his case what we all know to be true about the Sixth Amendment, we might have to say the same in some others. But where is there justice in that? Every judge must learn to live with the fact he or she will make some mistakes; it comes with the territory. But it is something else entirely to perpetuate something we all know to be wrong because we fear the consequences of being right.***

Ramos v. Louisiana, 590 U.S. ___, ___ (2020)(plurality opinion)(slip op., at 26).

The United States Supreme Court decided *Ramos v. Louisiana*, on April 20, 2020. In that case, Evangelisto Ramos faced a charge of Second Degree Murder, for which he maintained his innocence and invoked his right to a jury trial. *Ramos v. Louisiana*, 590 U.S. ____, ____ (2020)(slip op., at 1). During that trial, one juror believed that the State of Louisiana had failed to prove Mr. Ramos' guilt beyond a reasonable doubt. *Id.* The one juror voted to acquit. *Id.*

The courts in 48 states would have acquitted Mr. Ramos in this circumstance; but in Louisiana – where the law allowed 11-1 and 10-2 non-unanimous jury convictions – Mr. Ramos received a life sentence, without the possibility of parole. *Id.*

In addition to being inconsistent with the vast majority of criminal procedure practice across the country, Louisiana's non-unanimous jury rule – the *Ramos* Court explained – was born from the Jim Crow era. "With a careful eye on racial demographics, the [1898 Constitutional] Convention delegates sculpted a 'facially race-neutral' rule permitting 10-to-2 verdicts in order 'to ensure that African-American jury service would be meaningless.'" *Id.*, at ___ (slip op., at 2).

Ramos asked this Court to reconsider *Apodaca v. Oregon*, 406 U.S. 404 (1972), and its companion case, *Johnson v. Louisiana*, 406 U.S. 356 (1972). In those deeply divided opinions, five Justices held that the Sixth Amendment requires unanimous jury verdicts. See: *Johnson*, 406 U.S., at 371 (Powell, J., concurring in the judgment in *Apodaca*); *Apodaca*, 406 U.S., at 414 (Stewart, J., joined by Brennan and Marshall, JJ., dissenting); *Johnson*, 406 U.S., at 381-3 (Douglas, J., dissenting in *Apodaca*).

Four of those five Justices also concluded that the incorporation doctrine requires States to abide by the Sixth Amendment's unanimity requirement. *Apodaca*, 406 U.S., at 414-5 (Stewart, J., dissenting); *Johnson*, 406 U.S., at 380 (Douglas, J., dissenting in *Apodaca*). But the fifth, Justice Powell, rejected the notion that the incorporation doctrine required unanimous state jury verdicts. *Johnson*, 406 U.S., at 369-71 (Powell, J., concurring in the judgment in *Apodaca*).

Justice Powell endorsed "'dual-track' incorporation – the idea that a single right can mean two different things depending on whether its being invoked against the federal or state government." *Ramos*, 140 S.Ct., at 1398. Although this Court had repeatedly rejected, that proposition, and rejects it today, *id*, at 1398-99, Justice Powell's solo position in *Apodaca* and *Johnson* carried the day, allowing the practice of non-unanimous state jury verdicts to continue.

On April 20, 2020, this Court held in *Ramos* that the Sixth and Fourteenth Amendments prohibit state criminal convictions by non-unanimous jury verdicts. *Ramos*, at 1408. Writing for the majority, Justice Gorsuch acknowledged that "*Apodaca* was gravely mistaken." *Ramos*, at 1405. As the Court

explained, "the common law, state practices in the founding era, [and] opinions and treatsies written soon afterward" all show that the Sixth Amendment requires that "[a] jury must reach a unanimous verdict in order to convict." *Id.*, at 1397. The Court according reversed Mr. Ramos' conviction, explaining that "[n]ot a single Member of this Court [wa]s prepared to say Louisiana secured his conviction constitutionally under the Sixth Amendment." *Id.*, at 1408.

C. Louisiana continues to deny Mr. Mason relief.

Recent developments during the 2018 Regular Session of the Louisiana Legislation, where the opponents of changing Louisiana's non-unanimous verdict Law ***admitted*** that the Law was premised on racial discrimination. *ANY* Law based on racial discrimination ***cannot*** stand, and will be declared unconstitutional by the United States Supreme Court.

This Honorable Court must consider the fact that on November 6, 2018, the voters of Louisiana voted to change the Law concerning non-unanimous verdicts. Although the new law only applies to persons whose trial commences on or after January 1, 2019, the State ***admitted*** that the Law was premised on racial discrimination during the arguments concerning such during the Legislative Session. A Law based on discrimination cannot stand. Although the ballot failed to include the fact that the non-unanimous jury verdict was based on racial discrimination, the Constitutional Amendment was passed by the voters of the State of Louisiana.

Most amazingly, during the course of the 2018 Legislative Session's discussion of the possibility of changing the Louisiana Constitution's amendment to mandate unanimous jury verdicts, the prosecutors informed the Legislators during the Hearing that they were going to address the "White Elephant in the room." The prosecutors admitted that the non-unanimous jury verdict laws were based on racial discrimination, but, "It is what it is," ... "but it works." It would appear that any hope the State would have had to prevent the Bill's passage was "shot out of the water" with these remarks during the course

of the hearing.[6]

Naturally, some of the Legislators had taken offense to the District Attorneys' (John F. DeRosier [Calcasieu Parish], and Don M. Burkett [Sabine Parish]) statements infuriated the Panel to the point where they unanimously agree to send the amended Bill to the House of Representatives for a full vote. Although the Bill was amended to reflect **Prospective Application** only to those arrested after January 1, 2019, the Legislators agreed that most likely the Federal Courts would rule the new law had to be applied retroactively. This Bill was passed by a ***vast majority*** of the Legislators.

In April 2019, Mr. Mason sought state Post-Conviction Relief, arguing that his conviction is invalid because it rests on a non-unanimous jury verdict. Before ***Ramos*** was decided, the trial court.

After ***Ramos*** was decided, the Louisiana Supreme Court remanded nearly forty non-final cases to the Court of Appeals for further proceedings. But that Court, which adopted ***Teague***'s retroactivity test for cases on collateral review, ***State ex rel. Taylor v. Whitley***, 606 So.2d 1292, 1296 (La. 1992), denied at least six applications for collateral relief, including Mr. Mason's. However, it must be noted that the Louisiana Supreme Court remanded several cases on collateral review in order for the district court to review for retroactive application of ***Ramos*** on collateral review. See: ***State v. Richard Verdin***, 2020 WL 2613349 (La. App. 1st Cir. 5/22/2020)(Docket No.: 2020-KW-0061), where the Louisiana Second Circuit Court of Appeal remanded Mr. Verdin's case to the "district court for a hearing on relator's claim regarding is conviction by a non-unanimous jury verdict, in light of ***Ramos v. Louisiana***, 140 S.Ct. 1390. In all other respects, the writ application is denied."

REASONS FOR GRANTING THE WRIT

In accordance with this Court's *Rule X, § (b) and (c)*, Mr. Mason presents for his reasons for granting this writ application that:

[6] Mr. Mason is unable to obtain a copy of the CD of the Committee Hearing in order to provide a copy to the Courts due to the restrictions of this institution.

Review on a Writ of Certiorari is not a matter of right, but of judicial discretion. A petition for a Writ of Certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers.

A state court of last resort (Louisiana Supreme Court) has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals.

A state court or a United States Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Mr. Mason, like others in Louisiana and Oregon, seeks state collateral relief based on this Court's holding in ***Ramos v. Louisiana***, supra, that the Constitution prohibits States from procuring criminal convictions by non-unanimous jury verdicts. Under Louisiana law, Mr. Mason is entitled to such relief if he can satisfy the federal retroactivity framework established in ***Teague v. Lane***, supra. See: ***State ex rel. Taylor v. Whitley***, surpa; *cf.* ***Danforth v. Minnesota***, 552 U.S. 264, 282 (2008)(States may elect to follow ***Teague***).

This Court, meanwhile, has granted Certiorari to determine whether ***Ramos*** "applies retroactively to cases on *federal* collateral review." ***Edwards v. Louisiana***, No. 19-5807, Order (May 4, 2020) (emphasis added). The Petitioner in ***Edwards*** argues that the retroactivity framework adopted in ***Teague*** governs his case and that he satisfies that framework. Insofar as the Court decides ***Edwards*** on the basis of whether ***Ramos*** is retroactive under the ***Teague*** framework, this case should be held for that one and unresolved accordingly.

But if, for whatever reason, the Court's ultimate disposition of ***Edwards*** does not resolve whether

Ramos is retroactive under the *Teague* framework, the Court should grant Certiorari here to do so. Approximately 1,601 individuals remain in prison in Louisiana alone because of convictions based on non-unanimous state jury verdicts. See: Amicus Br. Of the Promise of Justice Initiative et al. at 11, *Edwards v. Vannoy*, No. 19-5807. In Oregon, the Federal Public Defender's Office has filed new successive state Post-Conviction petitions in 52 cases implicating *Ramos*. See: Amicus Br. of Fed. Public Defender's for the District of Oregon et al., at 6, *Edwards v. Vannoy*, No. 19-5807.

Ramos itself confirms that these convictions are untrustworthy because of the method by which they were obtained. And as the Court has already recognized in granting Certiorari in *Edwards*, this issues is unquestionably important – for the affected individuals but also for a society that champions the integrity of its criminal process.[7]

The United States Supreme Court and the U.S. Fifth Circuit Court of Appeal have already made clear that a determination that a non-unanimous jury verdict violates the Sixth and Fourteenth Amendments necessitates retroactive application.

In *Burch v. Louisiana*, 441 U.S. 130 (1979), Mr. Burch was charged with exhibiting two obscene motion pictures. *Id.*, at 132. Under Louisiana law, the court tried him before a six-person jury. *Id.* A jury poll indicated that the jury had voted five-to-one to convict him. *Id.* He appealed, arguing that the Louisiana law permitting conviction with a non-unanimous six-member jury violated his rights to a trial guaranteed by the Sixth and Fourteenth Amendments. *Id.*, at 132-33.

The United States Supreme Court agreed and found that convictions by non-unanimous six-member jury threatened the substance of the jury trial guarantee and violated the Constitution. *Id*, at 138.

In *Brown v. Louisiana*, 447 U.S. 323 (1980), the United States Supreme Court held that the

[7] This Court has requested responses to several petitions that, like Mr. Mason's here, arise from state collateral review proceedings and challenges the validity of their convictions by non-unanimous juries. See: *e.g.*, ***Tam Q. Le v. Vannoy***; No. 18-8776; ***Jones v. Louisiana***, No. 19-8775; ***Woods v. Louisiana***, No. 20-5003; ***Williams v. Louisiana***, No. 19-8740; ***Dunn v. Louisiana***, No. 19-8711. This Louisiana Supreme Court decided all of these cases before this Court issued its opinion in ***Ramos***.

constitutional principle announced in ***Burch*** – that conviction of a non-petty criminal offense in a state court by a non-unanimous six-person jury violates the accused's right to trial by jury guaranteed by the Sixth and Fourteenth Amendments - "requires retroactive application." *Id.*, at 334 ("It is difficult to envision a constitutional rule that more fundamentally implicates "the fairness of the trial – the very integrity of the fact-finding process." ... Any practice that threatens the jury's ability to perform that function poses a similar threat to the truth-determining process itself. The rule in ***Burch*** was directed toward elimination of just such a practice. Its purpose, therefore, clearly requires retroactive application.").

In ***Brown***, the Court stressed that "[w]here the major purpose of new constitutional doctrine is to overcome an aspect of the criminal trial that substantially impacts its truth-finding function and so raises serious question about the accuracy of guilty verdicts in past trials, the new rule has been given complete retroactive effect. Neither good-faith reliance by state or federal authorities on prior constitutional law or accepted practice, nor severe impact on the administration of justice has sufficed to require prospective application in these circumstances." *Id.*, at 328 (*citing* ***Williams v. United States***, 401 U.S. 646, 653 (1971)(plurality opinion of White, J.); ***Ivan v. City of New York***, 407 U.S. 203, 204 (1972)).

Stare Decisis binds this Court to follow the decision by the United States Supreme Court in ***Brown***. See: e.g. ***Ramos v. Louisiana***, supra at ___ (Kavanaugh, J., concurring in part)(slip op., at 10. n. 5) "vertical stare decisis is absolute, as it must be in a hierarchical system with 'one supreme court.'" ... In other words, the state courts and the other federal courts have a constitutional obligation to follow a precedent of this Court unless and until it is overruled by this Court.").

Following the United States Supreme Court's decision in ***Brown***, two Fifth Circuit Court of Appeal cases found that the Supreme Court ruling on unanimous jury verdicts in cases with six-person juries

required retroactive application to people seeking Post-Conviction Relief. *Atkins v. Listi*, 625 F.2d 525, 525-26 (5th Cir. 1980); *Thomas v. Blackburn*, 623 F.2d 383, 384 (5th Cir. 1980).

In the instant case, it is clear that the 11-1 non-unanimous jury verdict in Mr. Mason's criminal trial substantially impaired its truth-finding function and raises serious questions about the accuracy of guilty verdicts in past trials.

In *Timbs v. Indiana*, 139 S.Ct. 682, 203 L.Ed.2d 682 (2/20/2019), the United States Supreme Court held that: "A Bill of Rights protection is an incorporated protection, applicable to the States under the Fourteenth Amendment's Due Process Clause, if it is fundamental to the scheme of ordered liberty, or deeply rooted in the Nation's history and tradition. *Timbs* was determined with a unanimous decision amongst the Justices of the United States Supreme Court. "If a Bill of Rights is incorporated by the Fourteenth Amendment's Due Process Clause, and the enforced against the States, there is no daylight between the federal and state conduct it prohibits or requires. Fourteenth Amendment to the United States Constitution.

Although the question presented to the United States Supreme Court in *Timbs* concerned the Eighth Amendment's Excessive Fines Clause, this case mirrors *Timbs* in requesting that the Honorable Court similarly determine that the Sixth Amendment right to a unanimous verdict guaranteed in the federal courts is applicable to the State through the Fourteenth Amendment's Due Process Clause.

Any correct reading of Section 1 of the Fourteenth Amendment to the United States Constitution would acknowledge that the Privileges and Immunities Clause provides an alternative basis for applying it to the States, at minimum, those individual rights enumerated in the first eight Amendments (See: *Timbs v. Indiana*, 139 S.Ct. 682, 691 (2019)(Gorsuch, J., concurring). Here, there is a special reason to do so because *Apodaca* stands in the way of incorporation under the Due Process Clause. Rather than overrule *Apodaca*, the Court should hold that the Privileges and Immunities Clause

requires the States to convict people of serious crimes only be by an unanimous verdict of an "impartial jury."[8] See: Fourteenth Amendment to the United States Constitution.

After all, the Constitution sets a floor of rights below which state authorities may not go; yet, under the two-track approach, the state and local authorities can (and do) fall beneath the federal constitutional minimum. See: **Marc L. Miller & Ronald F. Wright,** ***Leaky Floors: State Law Below Federal Constitutional Limits***, 50 Ariz.L.Rev. 227 (2008).

This Court should not allow the States to construct a basement of rights somewhere beneath the federal floor. See: United States Constitution, Art. Vi, cl. 2 ("This Constitution ... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding").

Because "the Sixth Amendment requires a unanimous jury verdict to convict in a *federal* criminal trial," id., at 371 (emphasis in original), the same is required to convict a person in a state criminal trial.

The Court should hold that the Sixth Amendment's guarantee of jury unanimity is a privilege or immunity of national citizenship, which Section 1 of the Fourteenth Amendment makes applicable to the States. If the Court resolves the question presented on Due Process grounds instead, it should overrule ***Apodaca*** and hold that the Sixth Amendment right to conviction by a unanimous jury applies to States because it is deeply rooted in our Nation's history and traditions fundamental to our scheme of ordered liberty.

In Justice Gorsuch's concurring opinion in ***Timbs***, the Honorable Justice stated:

> The majority faithfully applies our precedent and, based on a wealth of historical evidence, concludes that the Fourteenth Amendment incorporates the Eighth Amendment's Excessive Fines Clause against the States. I agree with that conclusion. As an original matter, I acknowledge, the appropriate vehicle for incorporation may well be the Fourteenth

[8] There is no textual basis for a two-track approach to incorporation under the Privileges and Immunities Clause because rights of national citizenship – by definition – apply everywhere in the Nation. See: United States Constitution, Amendment 14, § 1 ("***No State*** shall make or enforce any law which shall abridge the privileges or immunities of ***citizens of the United States*** ..." (***emphasis added***).

> Amendment's Privileges or Immunities Clause, rather than, as this Court has long assumed, the Due Process Clause."

Accordingly, the district court erred in accepting the non-unanimous verdicts in this case due to the fact that Louisiana's non-unanimous jury system is unconstitutional because it violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Article One, Section Three (3) of the Louisiana Constitution of 1974.

The ***Ramos*** decision only reiterated what the Court had long found: that the constitutional right to a unanimous jury verdict applied equally in state and federal courts"

> This Court has repeatedly and over many years, recognized that the Sixth Amendment requires unanimity ... There can be no question either that the Sixth Amendment's unanimity requirement applies to state and federal criminal trials equally. This Court has long explained that the Sixth Amendment right to a jury trial is "fundamental to the American scheme of justice" and incorporated against the States under the Fourteenth Amendment. The Court has long explained, too, that incorporated provision of the Bill or Rights bear the same content when asserted against States as they do when asserted against the federal government. So if the Sixth Amendment's right to a jury trial requires a unanimous verdict to support a conviction in federal court, it requires no less in state court.

Ramos, *Id.*, at ___ (slip op., at 6-7).

Based on the foregoing, Mr. Mason respectfully requests that this court determine that the Ruling in ***Ramos v. Louisiana***, be applied retroactively to his case because the ruling in ***Ramos*** is not a "new rule of law," but a re-affirmation that the Sixth and Fourteenth Amendments have *ALWAYS* guaranteed a defendant the right to a unanimous jury verdict.

Wherefore, Mr. Mason prays that after thorough review of his filings based on the facts, this court should grant his Claim, by granting relief to warrant a reversal during the course of an evidentiary hearing.

II. The decision below is incorrect.

In ***Ramos***, the Court confirmed the original understanding of the Sixth Amendment and settled principles of incorporation: State convictions based on non-unanimous jury verdicts are invalid. 140

S.Ct., at 1395-96. Because *Ramos* reaffirmed "fundamental principles" that have held true from "year to year." *Desist v. United States*, 394 U.S. 244, 263 (1969)(Harlan, J., dissenting), it did not establish a new rule. And because *Ramos* rule is not new, but rather is "merely an application of the principle[s] that governed" prior decisions of this Court, it applies to cases on collateral review under the retroactivity framework established in *Teague*, 489 U.S., at 307 (internal quotation marks omitted).

Alternatively, even if *Ramos*'s unanimity requirement is new, it applies retroactively to cases on collateral review because it is a "watershed" rule that is "central to an accurate determination of innocence or guilt" and an "absolute prerequisite to fundamental fairness." *Teague*, 489 U.S.at at 14.

A. Ramos did not announce a new rule.

"[A] case announces a new rule when it breaks new ground or imposes a new obligation of the State or the Federal Government." *Teague*, 489 U.S. at 301. *Ramos* did not announce a new rule because it simply applied two longstanding principles: the Sixth Amendment guarantees the right to a unanimous jury verdict and that right applies fully against the States through the Fourteenth Amendment. Both principles were established long before Mr. Mason's conviction became final, and this Court recognized in *Ramos*, that a conviction obtained with a non-unanimous jury verdict is "no verdict at all."

"The requirement of jury unanimity emerged in 14th century England and was soon accepted as a vital right protected by the common law." *Ramos*, 140 S.Ct., at 1395. The "young American States" also embraced the view that the jury trial right entails a guarantee of unanimity. *Id.*, at 1396. At the time of ratification, "[i]f the term 'trial by an impartial jury' carried any meaning at all, it surely included a requirement as long and widely accepted as unanimity." *Id.*, at 1398-99. In short, the principle that "[a] jury must reach a unanimous verdict in order to convict" is "unmistakabl[y]" a longstanding rule of criminal law. *Id.*, at 1395.

This Court has similarly "long explained" that the Sixth Amendment jury trial right applies in full to the State. *Ramos*, 140 S.Ct., at 1397. Well before *Apodaca*, this Court "rejected the notion that the Fourteenth Amendment applies to the States only a watered-down, subjected version of the individual guarantees of the Bill of Rights." *Malloy v. Hogan*, 378 U.S. 1, 10-11 (1964)(internal quotation marks omitted). The Court reiterated that stance "many times ... including as recently last year." *Ramos*, 140 S.Ct., at 1398 (citing *Timbs v. Indiana*, 139 S.Ct. 682, 687 (2019)).

The idiosyncratic result in *Apodaca* does not render *Ramos* new. "[T]he mere existence of conflicting authority does not necessarily mean a rule is new." *Williams v. Taylor*, 529 U.S. 362, 410) 2000)(internal quotation marks omitted).

Apodaca "always stood on shaky ground" because a majority of Justice has consistently rejected its rationale – before, after, and even in *Apodaca* itself. *Ramos*, 140 S.Ct., at 1389-99; *see i.d.* at 1409 (Sotomayor, J., cncurring)(*Apodaca* was a "universe of one"). Although Justice Powell "offered up the essential fifth vote" in *Apodaca*, his personal view that the Sixth Amendment was not fully incorporated against the States "was (and remains) foreclosed by precedent," as he "frankly" acknowledged. *Ramos*, 140 S.Ct., at 1398; see also *McDonald v. City of Chicago*, 561 U.S. 742, 766 n. 14 (2010)("In *Apodaca*, eight Justices agreed that the Sixth Amendment applies identically to both the Federal Government and the States.").

Because *Ramos* simply coupled two longstanding rules of constitutional law – that the Sixth Amendment requires unanimous jury verdicts and that the Sixth Amendment is fully incorporated against the States – it did not establish a "new" rule of criminal procedure within the meaning of *Teague*. See: *Ramos*, 140 S.Ct., at 1409 (Sotomayor, J., concurring)(noting that *Apodaca* was "uniquely irreconcilable with not just one, but two, strands of constitutional precedent will established both before and after the decision"); *Tyler v. Cain*, 533 U.S. 656, 666 (2001)(recognizing that "the

right combination of holdings" can render a rule retroactive). *Ramos* accordingly applies retroactively to cases on collateral review.

B. If new, Ramos' unanimity requirement constitutes a watershed rule of criminal procedure.

To qualify as a watershed rule, a rule's "[i]nfringement ... must seriously diminish the likelihood of obtaining an accurate conviction, and the rule must alter our understanding of the *bedrock procedural elements* essential to the fairness of a proceeding." *Tyler*, 533 U.S., at 665 (internal quotation marks and citation omitted).

Ramos' rule meets both components of this test. It is like the rule announced in *Gideon v. Wainwright*, 372 U.S. 335 (1963), which held that the Sixth Amendment requires States to provide an attorney to criminal defendants who are unable to afford their own attorneys. This Court has "repeatedly referenced to [*Gideon*] in discussing the meaning of the *Teague* exception" for watershed rules. *Whorton v. Bockting*, 549 U.S. 406, 419 (2007).

Gideon was a watershed rule because it reduced the "intolerably high" "risk of an unreliable verdict" that inevitably follows "[w]hen a defendant who wishes to be represented by counsel is denied representation," *id.*, and "restore[d] a "constitutional principle [] established to achieve a fair system of justice." 372 U.S., at 344. The rule recognized in *Ramos* is the same. It is among the "small core of rules" implicit in the concept of ordered liberty," that apply retroactively to case on collateral review. *O'Dell v. Netherland*, 521 U.S. 151, 157 (1997)(internal quotation marks omitted).

The unanimity requirement is "central to an accurate determination of innocence or guilt." *Teague*, 489 U.S., at 313. "The basic purpose of a trial is the determination of truth, and it is the jury to whom we have entrusted the responsibility for making this determination in serious criminal cases." *Brown v. Louisiana*, 447 U.S. 323, 334 (1980)(plurality op.)(internal quotation marks and citations omitted). Accordingly, "[a]ny practice that threatens the jury's ability to properly perform that function poses a

similar threat to the truth-determining process itself." *Id.*

The unanimity requirement is vital to ensuring that jurors engage in "real and full deliberation," *McKoy v. North Carolina*, 494 U.S. 433, 452 (1990)(Kennedy, J., concurring with the judgment), through "a comparison of views" and "arguments among the jurors themselves," *Allen v. United States*, 164 U.S. 492, 501 (1896). When "[a] single juror's change of mind is all it takes" to provoke discussion and debate, verdicts are substantially more accurate. *Blueford v. Arkansas*, 566 U.S. 599, 608 (2012).

The unanimity rule ensures that a verdict represents the views of the entire jury, which guards against biased or inaccurate verdicts. As *Ramos* noted, Louisiana and Oregon adopted their non-unanimity rules for "racially discriminatory reasons." 140 S.Ct., at 1401. Louisiana adopted its rule to "establish the supremacy of the white race" and "to ensure that African-Americans juror service would be meaningless." *Id.*, at 1394 (internal quotation marks omitted). Oregon likewise wanted "to dilute the influence of racial, ethic, and religious minorities on Oregon juries." *Id.* (internal quotation marks omitted).

The racially discriminatory intent of these States' rules bore fruit: Black defendants have been 30 percent more likely to be convicted by non-unanimous juries than white defendants. And the jurors voting to convict to convict are more likely to be white: White jurors have case "empty" votes 32 percent less than the expected rate if empty votes were evenly distributed among all jurors. *Id.*

Unanimity protects the accuracy of trial outcomes by reinforcing the defendant's "right to put the State to its burden" of proof, making the government convince each juror of the defendant's guilt beyond a reasonable doubt. *Ramos*, 140 S.Ct., at 1409 (Sotomayor, J., concurring).

The absence of unanimity creates "an impermissibly large risk" of an inaccurate conviction. *Schriro v. Summerlin*, 542 U.S. 348, 356 (2004)(internal quotation marks omitted), because it allows the State to brand the defendant "guilty" even though at least one juror has concluded that the

prosecution did *not* meet its burden.

Allowing the jury to ignore concerns of up to two jurors undercuts the accuracy of the trial. Louisiana has the second highest per capita rate of proven wrongful convictions in the country. Amicus Br. of Innocence Project New Orleans et al., at 30, *Ramos v. Louisiana*, 140 S.Ct. 1390 (2020). Since 1990, at least 13 men have been proven innocent and exonerated after being convicted by non-unanimous juries. *Id.*, at 27.

The unanimity requirement also promotes the fundamental fairness of criminal procedures.

Non-unanimous jury verdicts disproportionately convicted Black defendants and silenced Black jurors. See: *supra*, at 16. "Against this grossly disproportionate backdrop, it cannot be seriously contended that" Louisiana's "longtime use of a law deliberately designed to enable majority-White juries to ignore the opinions and votes of Black jurors at trials of Black defendants has not affected the fundamental fairness of Louisiana's criminal legal system."

Indeed, this Court concluded that the jury-trial right applies in state courts precisely *because* that right "is among those 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions." *Duncan v. Louisiana*, 391 U.S. 145, 148 (1968)(quoting *Powell v. Alabama*, 287 U.S. 45, 67 (1932)).

The jury is the factfinder in criminal proceedings because it allows the defendant's peers to "guard against a spirit of oppression and tyranny on the part of the rulers." *Apprendi v. New Jersey*, 530 U.S. 466, 477 (2000)(quoting **2 J. Story, Commentaries on the Constitution of the United States** 540-1 (4th ed. 1873)). That function of the jury is frustrated when "the unanimous suffrage of twelve of [the defendant's] equals and neighbors" is not required to confirm "the truth of every accusation." *Id* (internal quotations omitted).

Unanimity not only increases accuracy, *see supra at* 15-17, but also gives legitimacy to the criminal

justice system as a whole. That legitimacy is critical to this Court's ongoing efforts "to eradicate racial prejudice from our criminal justice system." *McCleskey v. Kemp*, 481 U.S. 279, 309 (1987). The jury is "a criminal defendant's fundamental protection ... against race or color prejudice," *Id.*, at 310 (internal quotations omitted), and the requirement of unanimity is essential to that purpose. See: *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 628 (1991)("Race discrimination within the courtroom raises serious questions as to the fairness of the proceedings conducted there," mars the integrity of the judicial system[,] and prevents the idea of democratic government from becoming a reality.").

III. This case is an ideal vehicle to resolve whether Ramos is retroactive under Teague.

This case presents an excellent vehicle to address *Ramos'* retroactivity under the *Teague* framework because it arises from a state habeas proceeding that adjudicated Mr. Mason's Sixth Amendment claim on the merits while purporting to apply *Teague*. If *Ramos* is retroactive under the *Teague* framework, then Mr. Mason is entitled to relief.

This Court has granted review of a retroactivity question in this posture before. In *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016), the Court granted Certiorari to decide whether its decision in *Miller v. Alabama*, 567 U.S. 460 (2012) – holding that mandatory sentences of life without the possibility of parole are unconstitutional for juvenile offenders – applied to cases on state collateral review. In *Montgomery*, as here, the Petitioner sought review from denial of relief in collateral proceedings in the Louisiana state courts. 136 S.Ct., at 727. This Court specifically confirmed that cases in this posture provides an opportunity to determine whether rules of criminal procedure apply retroactively under *Teague*. *Id.*, at 727-32.

Mr. Mason's case exemplifies the grave doubts that pervade convictions obtained by non-unanimous jury verdicts. One juror had serious enough doubts about the sufficiency to vote to acquit Mr. Mason. The unanimity requirement protects against convictions based on shaky evidence; its

absence here occasioned a conviction that cannot be trusted.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for Writ of Certiorari.

Respectfully submitted this 21st day of April, 2021.

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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing was served by First Class United States Mail this 21st day of April, 2021 upon counsel of record for Respondent, pursuant to Rule 29 at the following address: 501 Texas Street, 5th Floor, Shreveport, LA 71101.

James E. Mason, Jr.