***** CAPITAL CASE *****

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JESSIE HOFFMAN, JR, *Petitioner,*

v.

TIMOTHY HOOPER, WARDEN, *Respondent.*

ON WRIT OF CERTIORARI TO THE
LOUISIANA SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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Dated: March 4, 2022

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***** CAPITAL CASE *****

QUESTION PRESENTED FOR REVIEW

In this capital case, a young Black defendant with no prior criminal history was sentenced to death by an all-White jury for the murder of a young White woman.

The defense mitigation case for life focused on Mr. Hoffman's good character. The jury heard uncontradicted testimony from multiple witnesses that Mr. Hoffman had no prior criminal history or history of violence, did not drink or do drugs, had always been a kind, quiet and well-behaved child, and that this shocking crime was completely out of character.

In post-conviction proceedings, the defendant obtained an affidavit from a member of the jury revealing that during deliberations the jury discussed Mr. Hoffman's race, compared him to O.J. Simpson, believed that he "played the race card" to "get off," speculated that he had an undisclosed criminal record, he was involved in drugs and gangs, and that they sentenced him to death to prevent him from killing again.

Despite recognizing that the juror statements "suggest they held beliefs that may have rested on racial stereotypes" the Louisiana courts refused to consider this evidence of racial bias, declining to find it sufficient under *Peña-Rodriguez v. Colorado*, 137 S. Ct. 855 (2016) to overcome Louisiana's juror no-impeachment rule.

The question presented is this:

> Did the Louisiana Supreme Court err in failing to consider clear evidence of juror racial bias under *Peña-Rodriguez* in the extraordinary circumstances of this death penalty case?

Petitioner Jessie Hoffman respectfully requests that this Court issue a writ of certiorari to review the decision of the Louisiana Supreme Court.

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PARTIES TO THE PROCEEDINGS

1. Jessie Hoffman, Jr., Petitioner/Appellant
2. Timothy Hooper, Warden, Louisiana State Penitentiary, on behalf of the State of Louisiana, Defendant/Appellee

PETITION FOR WRIT OF CERTIORARI

Petitioner Jessie Hoffman respectfully prays that a writ of certiorari issue to review the judgment of the Louisiana Supreme Court entered in this case.

OPINIONS BELOW

The final judgment and decree rendered by the Louisiana Supreme Court on October 19, 2021, denying Petitioner's writ to review the district court's summary denial of post-conviction relief is attached as Appendix A. The Judgment of the 22nd Judicial District Court of St. Tammany Parish, Louisiana, summarily denying Petitioner's application for post-conviction relief is attached as Appendix B. The juror's affidavit is attached as Appendix C.

JURISDICTION

The Louisiana Supreme Court issued its denial of Petitioner's writ of review on October 19, 2021, and that ruling became final on that date. On January 11, 2022, an extension of time to file the petition for writ of certiorari was granted to and including March 4, 2022, in App. No. 21A310. App. D. This Court has jurisdiction under 28 U.S.C. § 1257. This petition is timely filed pursuant to Supreme Court Rule 13.1.

RELEVANT CONSTITUTIONAL PROVISIONS

The Sixth Amendment to the United States Constitution provides, in relevant part:

> In all criminal prosecutions, the accused shall enjoy the right to a . . . trial, by an impartial jury.

U.S. Const. Amend. VI.

The Eighth Amendment to the United States Constitution provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Const. Amend. VIII.

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

> No State shall . . . 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.

STATEMENT OF THE CASE

Mr. Hoffman was convicted and sentenced to death by an all-White jury who relied on racial bias and stereotypes during their deliberations.

In *Peña-Rodriguez v. Colorado*, 137 S. Ct. 855 (2016), this Court held that the Sixth Amendment requires a court to consider juror evidence of racial bias whenever "a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant." *Id.* at 869.

This Court has also recognized the particular prejudice resulting from even the brief injection of the "powerful racial stereotype" of the dangerous nature of Black men into penalty phase deliberations in a capital case where the jury's assessment of the defendant's character and propensities is central to their decision. *Buck v. Davis*, 137 S. Ct. 759, 777 (2017) (referring to racial stereotype at the penalty phase of a capital trial as "toxins," that are "deadly," even "in small doses").

Mr. Hoffman sought relief from his unconstitutional race-tainted conviction relying on a juror's sworn affidavit. Despite recognizing that this evidence indicated jurors were influenced by racial stereotypes, the Louisiana Supreme Court declined to consider it, invoking the state evidentiary bar against admission of juror testimony.

The Louisiana courts' refusal to consider Mr. Hoffman's evidence, flies in the face of fundamental precepts underlying this Court's jurisprudence and compels the Court's intervention in the extraordinary circumstances of this capital case.

A. Statement of Facts

Petitioner, Jessie Hoffman Jr., a Black teenager from New Orleans with a long history of childhood physical and sexual abuse, was less than three months past his 18th birthday when he was arrested for the instant offense. He was charged with the 1996 murder of Mary Elliott, a young White woman from the neighboring majority-White parish of St. Tammany.

The crime shocked the community and Mr. Hoffman's friends and family. He had no criminal record or history of violence, and had always been a "good kid." He confessed to the murder within hours of his arrest.

Police reported to the media that the offense did not appear premeditated, but rather a robbery that got out of hand.[1]

[1] Boyd, R., *Advertising Exec Died of One Gunshot Wound*, THE TIMES PICAYUNE, (December 1, 1996). (St. Tammany Parish Sheriff's Office spokesman, James Hartman "said authorities believe Mr. Hoffman intended only to rob Elliott as she prepared to get into her car shortly after leaving her office Wednesday at 5 pm. Then, when Elliott had no money, he kidnapped her, planning to force her to use an automatic teller machine bank card to get money, authorities said. "But at some point it appears things went way beyond that," Hartman said.").

The crime occurred amidst a "backdrop of fear and desperation caused by a crime wave that engulfed both St. Tammany and Orleans in November of 1996." *State v. Hoffman*, 98-3118 (La. 04/11/00), 768 So. 2d 542, 553. Coverage by the New Orleans *Times Picayune* in a special, race series three years earlier described the impact of soaring crime rates on race relations as crime was viewed by many as predominantly a problem of the Black inner city.[2] The coverage describes "a city gripped by the fear of crime" which "for many White New Orleanians," "translates into a terror of black crime and a distrust of young African-American men" and a "perception that African-Americans are predators." John C. Hill, *Misperceptions, fear increase racial hostility*, THE TIMES–PICAYUNE (Nov. 17, 1993). This exacerbated tensions "between urban, black New Orleans and the suburban white metro area," such as St. Tammany Parish. *Id.*

Ms. Elliott was killed after commuting from her home in St. Tammany Parish to downtown New Orleans for work, and news coverage of the offense reflected concerns of "New Orleans crime." As one St. Tammany resident expressed: "nothing

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[2] *See* Jim Amoss, *Together Apart: The Myth of Race* (1993), THE TIMES PICAYUNE, NOLA.COM, (August 20, 2015), https://www.nola.com/news/politics/article_f526cb05-a724-5b3c-99b5-309cb1116303.html (introducing re-publication of series, and making links available online). The paper commissioned a poll that confirmed widespread racial biases. It found that 60% of White people in the New Orleans area (which includes St. Tammany) believed Black people are more violent, and "about half… think that black people are lazier, less intelligent and more lacking in willpower than white people." *See* James O'Byrne, *Together Apart: Race divides, does damage*, THE TIMES–PICAYUNE (Aug. 16, 1993), https://www.nola.com/news/politics/article_1aeabb57-57d5-5edf-bead-a47e28c6032d.html.

Prejudices appeared stronger in the white suburbs, with 57% of suburban respondents thinking that "separate but equal" was ok, compared to 35% of people living in the city. *See* Elizabeth Mullener, *Race Relations In And Around New Orleans*, THE TIMES–PICAYUNE (Nov. 18, 1993), https://www.nola.com/news/politics/article_e41fa029-3668-5e1a-8bb3-4bf334dfe69e.html.

that happens in New Orleans surprises me over in that zoo. That's why we live over here in God's country to get away from all that nonsense across the lake.") R. 3526-27;[3] *see Hoffman*, 768 So. 2d 554; *id* at n.3 (quoting news footage, and recognizing the "possible racial overtones" of this coverage).

B. Pre-Trial Proceedings and Voir Dire

Although the case could have been tried in predominantly Black Orleans Parish, where the majority of the State's witnesses were located, the State prosecuted Mr. Hoffman in St. Tammany Parish, a "white flight" parish, whose population was nearly ninety percent White.[4] At the time, the Parish was home to former Ku Klux Klan Grand Wizard, David Duke, who won a significant portion of the parish's White vote in elections for state governor and the U.S. Senate.[5]

The District Attorney, Walter Reed, explained his motivation in a press statement announcing Mr. Hoffman's indictment by the St. Tammany Parish Grand Jury:

> I will seek and ask for the death penalty in this case and I will also issue a strong statement to the criminal element of New Orleans . . . don't think that you can come across those bridges and we're easy picking and we're just going to take it and not do anything about it. . . We will not

[3] "R. __" refers to the designated page of the record on appeal of Mr. Hoffman's trial proceedings.

[4] See R. 1513-14 (expert demographer testifying in January 15, 1998 hearing that according to U.S. census population data, St. Tammany's population was 12% Black and 87% White, whereas Orleans' population was 33% White and 67% Black; and that according to election data from the 1991 gubernatorial election, St. Tammany registered voters were 90% White and 9% Black, compared to Orleans whose registered voters were 38% White and 62% Black).

[5] R. 1514 (expert testifying that Duke won 44% of the White vote in St. Tammany parish when he ran for Governor in 1991); Bill McMahon, *Johnston Says Duke's Showing Won't Change His Views,* THE ADVOCATE, pg. 4 (Oct. 8, 1990) (Duke "carried three metropolitan areas [in his race for Senator] – Ouachita (Monroe), Jefferson (Duke's home parish), and suburban St. Tammany, an area of white flight from urban New Orleans").

tolerate this kind of victimization of our citizens in St. Tammany Parish. R. 3526-27.

Given the nature of this cross-racial crime, Mr. Hoffman's attorneys, who were both White residents of St. Tammany, had concerns about the racial dynamics of the case. Relying on the demographics and David Duke election data, defense counsel sought a change of venue. R. 291, 1504-22. The trial court denied the motion finding that St. Tammany's predominantly White population did not prove that a jury selected from the parish would be unfair. R. 1565.

During voir dire, the State used peremptory strikes to remove the only two qualified Black people from the venire, and an all-White jury was seated. R. 2206, 2907. Defense counsel objected under *Batson*, and renewed their challenge to venue in St. Tammany based on the jury's racial makeup, but their objections were overruled. *See* R. 2910-11, 3525-33, 3647. Despite the defense's ongoing concerns about race, defense counsel questioned only a handful of venire members about race. One prospective juror admitted working for a company with Klan associations. R. 1984-85. But no one who sat on Mr. Hoffman's jury was ever questioned about racial bias or their ability to remain fair in a cross-racial case.

C. Prosecution Case for Death

At trial, the State presented the case in a way that appealed to fears of New Orleans inner-city crime. Contrary to early police statements that the crime was not premeditated, the State argued that Mr. Hoffman planned the entire offense, watched and selected Ms. Elliott ahead of time, and executed a premeditated plan to rob, rape and kill her.

In argument to the jury, the State emphasized the rape of a "beautiful woman" from St. Tammany, who was "defiled and contaminated," and suggested that jurors could tell just by looking at Mr. Hoffman that the victim did not consent to sex. R. 4249, 4252.[6] The State characterized Hoffman as "greedy" and "lazy" R. 3539, 4289. One detective called him "a negro." R. 3739.

At the penalty phase, the prosecution presented victim impact evidence. They argued for the death penalty based on the aggravated nature of the offense, and urged the jury to vote for death to ensure that Hoffman did not "get away with murder." R. 4521.

D. Defense Case for Life

The defense conceded Mr. Hoffman's guilt to second-degree murder, and focused on trying to save Mr. Hoffman's life. Hoping to dispel any prejudicial assumptions that the jury might have, the defense mitigation case rested exclusively on Mr. Hoffman's good character and lack of any prior criminal record.

The defense called nine lay mitigation witnesses who gave uncontroverted testimony that Mr. Hoffman had never been in trouble before, and pleaded with the jury to spare his life. R. 4388-4435, 4465-4512.[7] Those witnesses established that Mr. Hoffman graduated high school where he had represented his school as the

[6] "I think it is pretty obvious to everyone here on this jury that Ms. Elliott did not consent to sex with that man over there." R. 4249. "Would you want to stick around with this man over here (indicating)? Of course not." R. 4252.

[7] The witnesses included Mr. Hoffman's high school football coach, a friend from the football team, his aunt, grandmother, two first cousins, girlfriend and mother of his child, a close family friend who was also a social worker, and Mr. Hoffman's father.

quarterback of his high school team, and that he was the good kid in the family, who stayed out of trouble, did not smoke, drink or do drugs, and spent much of his time either with his girlfriend who was expecting a child, or caring for his sick grandmother.[8] They uniformly testified that the crime was a complete anomaly that shocked everyone he knew.[9] All of these witnesses were Black.

A defense mental health expert also testified that Mr. Hoffman had "no legal history" or experience "with criminal behavior." R. 4363-64. Noting just one suspension for fighting at school in seventh grade, the expert testified that Mr. Hoffman did not display the types of violent and negative behaviors in his background typically found in people facing such charges. R. 4364. The crime was "atypical, unusual, fluky kind of behavior." R. 4368.

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[8] Witnesses described Mr. Hoffman as a quiet, well-mannered, teenager, R. 4395 ("a good kid . . . of good character), R. 4405 ("a nice young man"), 4429 ("quiet and humble"), R. 4469 ("always a nice and quiet person"), R. 4396 ("quiet" and "shy"), R. 4490, 4439, 4469, 4487. At the time of his arrest he had recently learned his girlfriend was pregnant and he "wanted to get a better job" and "support his family." R. 4505; R. 4464-66. Witnesses testified that Hoffman was "never" "a trouble maker," R. 4400, had "never been to jail" R. 4408-09; R. 4497 ("there had been no previous history whatsoever"); he was "never violent" R. 4469; R. 4482 ("we have never seen a violent part of Jessie, never"), R. 4482. He did not drink, smoke, or do drugs, R. 4409-10, 4487, 4431-32, nor "go out and run with" the other kids, R. 4408, but "preferred to stay home," play video games, and spend time with his family and girlfriend. R. 4408-09, 4487-88. He was "a good person" R. 4400, R.4469 ("a very nice person") R. 4490 ("a fine young man") who "loved his family," R. 4420, and was kind to others. He was always willing to help, R. 4429, was "wonderful" with younger children, R. 4490, took care of his ailing grandmother, R. 4420, 4115-16 ("he took care of me, gave me my pills . . . put insulin in me in the morning and at night"), R. 4434, and had worked at a church in the summer during school. R. 4434, 4486.

[9] *See, e.g.,* R. 4390 ("This is not the Jessie Hoffman that I know"); R. 4411 ("he just ain't the kind"); R. 4494. ("It was unbelievable at the time, when I first became aware of it, that it had to have been a mistake . . . it just was not the individual that I had grown to know over the years."); R. 4495 ("just totally out of character").

The State presented nothing to contradict this evidence. In fact the prosecution's own witnesses confirmed Mr. Hoffman's lack of a prior criminal record.[10]

E. Jury Penalty Phase Deliberations and Verdict

In accordance with Louisiana law, the jurors were instructed at the penalty phase to consider "the character and propensities of the defendant." R. 4534. They were also directed to consider "any mitigating circumstances," including that "[t]he offender has no significant prior history of criminal activity," R. 4537, a statutory mitigating factor under Louisiana's capital sentencing scheme. They were specifically instructed that "whether any aggravating or mitigating circumstances exist is a fact for you to determine *based on the evidence presented*." R. 4538. (Emphasis added).

Despite the uncontradicted evidence that Mr. Hoffman had no prior criminal history, the jury sent a question to the judge during deliberations:

> If Jessie Hoffman had any kind of juvenile record, would the State have had access to it and would we have been made aware of it?

R. 4543. The court responded in writing: "This question cannot be answered." R. 4543. Defense counsel objected to the form of the response, concerned that jurors were improperly speculating that Mr. Hoffman had a criminal record. The court overruled the objection because such evidence "was not brought forth at trial." R. 4544.

The jury returned a death sentence. R. 4545-47.

[10] During the guilt phase of trial, two managers at the parking garage where Hoffman worked testified that their company obtained a full background check on him before he was hired, which showed he had no criminal record. R. 3595-96, R. 3610-11. They testified that his driving record and drug screens were also clean. *Id.*

F. Post-Conviction Proceedings

It was not until state post-conviction proceedings that evidence of racial bias emerged. This evidence both confirmed defense counsel's fears about race and their concern that jurors improperly discounted mitigating evidence and considered the existence of a phantom criminal history when determining he should be put to death.

In 2003, Mr. Hoffman presented the signed statement of a juror indicating that jurors explicitly discussed Mr. Hoffman's race throughout deliberations, and relied on prejudicial racial stereotypes in reaching their verdict. The juror stated:

> There were no black people on the jury. The defense made sure that there weren't any. From the start of the trial I thought that was deliberate by the defense so they could play the race card and get him off later. I've heard about people getting off on technicalities like that before. The jurors speculated about this during the trial.

App. C at C3.

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> We also thought it was defense strategy to use his race and background in other ways. They obviously tried to use it as an excuse to try to make us feel sorry for him being a poor black man from the projects so he did not get the death penalty. Like O.J. Simpson using it to get off.

Id.

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> The defendant showed no remorse throughout the trial and came across as very cold-blooded. I watched him during the trial. That had a big impact on me. Looking at him you could tell that he did this cold-blooded crime.

Id. at C2.

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> I felt sure that if he were ever to get out of prison he would do it again. Several of the jurors were worried that he might be released one day or escape and if he did he'd do it again. This was discussed in deliberations and considered by us in deciding that he should get the death penalty. I

> felt it was my duty to make sure that the young girls out there were protected from him. This was very important to our decision.

Id.

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> During the penalty phase deliberations we wanted to know whether the defendant had a juvenile record. We thought that given his background he may have a history of drugs and things like that. We wondered if he was in a gang. The judge told us we were not allowed to have that information.

Id. at 4.

Relying on this evidence, Mr. Hoffman alleged that his Sixth, Eighth and Fourteenth Amendment rights were violated because the jury's decision to sentence him to death was tainted by racial bias. However, the "courts dismissed Hoffman's [ ] claim by relying on no-impeachment rules." *State v. Hoffman*, 2020-00137 (La. 10/19/21); 326 So.3d 232, 237. *See also id.* at fn. 2.

In 2018, following this Court's decision in *Peña-Rodriguez*, Mr. Hoffman renewed his claim in state court. With the law on his side, he also supplemented his evidence with (1) an affidavit sworn by the juror in 2011 confirming that her 2003 statement was accurate,[11] (2) a copy of The Times Picayune 1993 series on race,[12] and (3) a report by racial bias expert Dr. Samuel Sommers, who, in light of the established

[11] App. C at C1.

[12] *See supra,* at fn. 2. The entire series was attached to Petitioner's post-conviction application as Ex. 4, and attached to the Louisiana Supreme Court writ as part of In-Globo Ex. 3.

social science research and relevant evidence, determined that race or racial considerations likely influenced the jurors' deliberations in this case.[13]

The state district court summarily denied Mr. Hoffman's claims. Without any reference to *Peña-Rodriguez,* the court found that they had been previously adjudicated and were without merit. App. B at B2.

On writs, the Louisiana Supreme Court reversed the district court's procedural ruling, finding that Mr. Hoffman could rely on *Peña-Rodriguez* to present a "new or different" claim under Louisiana's post-conviction statute.[14] *Hoffman*, 326 So. 3d at 237-38.

Crediting the affidavit, the Louisiana Supreme Court recognized that "the juror statements suggest they held beliefs that may have rested on racial stereotypes." *Id.* at 238. However, without any discussion of the prejudicial nature of those stereotypes at capital sentencing generally and to Mr. Hoffman's case in particular, or to the other exceptional circumstances of this case that contextualized it, the Louisiana Supreme Court found that Mr. Hoffman failed to satisfy the *Peña-Rodriguez* standard required to pierce the no-impeachment rule. The court summarily found that: "The evidence presented by Mr. Hoffman does not amount to

[13] Dr. Sommers' affidavit was attached to Petitioner's post-conviction application as Ex. 2, and attached to the Louisiana Supreme Court writ as part of In-Globo Ex. 3. Samuel Sommers Ph.D. is an eminent authority on racial bias and juror bias, and his work has been cited by jurists in courts across the country, including this Court. *See, e.g.*, *Flowers v. Mississippi*, 139 S. Ct. 2228, 2274, n.13 (2019) (Thomas, J. dissenting) (citing to Sommers work regarding racial composition of juries and juror bias); *Peña-Rodriguez v. Colorado*, 137 S. Ct. 855, 880 n.9 (2017) (Alito J., dissenting) (citing to Sommers work regarding value of questioning potential jurors about racial bias).

[14] La. C.Cr.P. art. 930.4 provides that "A successive application shall be dismissed if it fails to raise a new or different claim."

a clear statement that indicates [a juror] relied on racial stereotypes or animus to convict," nor does it prove that "racial animus was a significant motivating factor in the juror's vote" for the death sentence." *Id.* (citing *Peña-Rodriguez*, 137 S. Ct. at 869). The court affirmed the district court's denial of relief. Like all the courts before it, the Louisiana Supreme Court dismissed Mr. Hoffman's claims without even a hearing.

This petition for a writ of certiorari follows.

REASONS FOR GRANTING THE PETITION

"Racial prejudice is antithetical to the functioning of the jury system. *Peña-Rodriguez*, 137 S. Ct. at 869. *See Rose v. Mitchell*, 443 U.S. 545, 555 (1979) ("Discrimination on the basis of race, odious in all aspects, is especially pernicious in the administration of justice."). Consideration of race at capital sentencing especially, "is constitutionally impermissible." *Zant v. Stephens*, 462 U.S. 862, 885 (1983).

In *Peña-Rodriguez*, this Court held that the Sixth Amendment jury guarantee requires courts to consider juror statements indicating that a jury's verdict was influenced by racial bias, notwithstanding non-impeachment evidentiary rules to the contrary. *Peña-Rodriguez*, 137 S. Ct. 869.

Mr. Hoffman presented evidence from a juror clearly indicating that jurors explicitly discussed Mr. Hoffman's race throughout deliberations and relied on prejudicial racial stereotypes when convicting and sentencing him to death.

In light of the death penalty imposed, these extraordinary circumstances warrant this Court's intervention.[15]

In *Peña-Rodriguez*, the Court outlined the showing required for the admission of juror evidence of racial bias. It held that trial courts must consider juror evidence of bias whenever "a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus" to reach their verdict. *Peña-Rodriguez*, 137 S. Ct. 869.

The Court emphasized that "[n]ot every offhand comment indicating racial bias or hostility" is sufficient. "There must be a showing that one or more jurors made statements exhibiting overt racial bias that cast serious doubt on the fairness and impartiality of the jury's deliberations and resulting verdict." *Id.* To qualify, the statement must "tend to show that racial animus was a significant motivating factor in the juror's vote to convict." *Id.*

When assessing evidence of racial bias, the Court has cautioned that "the stigma that attends racial bias" may make it difficult for people to speak forthrightly about another juror's overt reliance on racial stereotypes or animus, let alone admit such overt reliance themselves. *Peña-Rodriguez*, 137 S. Ct. 869 (it is one thing to

[15] The only potential impediment to this Court's intervention—a question about the retroactivity of *Pena-Rodriguez*—was eliminated when the Louisiana Supreme Court addressed the *Peña-Rodriguez* question on the merits, expressly noting that it is not bound by the federal court habeas decisions addressing retroactivity urged by the State. *See Hoffman,* 326 So. 3d at 238, n.4. This is appropriate in a capital case where the petitioner has diligently raised his evidence of racial bias at every opportunity, and where *Peña-Rodriguez* is being applied prospectively to govern the admissibility of evidence in state post-conviction proceedings that commenced after *Peña-Rodriguez* was decided, to address "a new or different claim," under state law. Relatedly, Louisiana's post-conviction statute exempts death sentenced inmates from its general requirement of demonstrating the retroactivity of any new law relied upon to overcome the bar to filing successive petition. *See* La. C.Cr.P. art. 930.8(2), (4)

"accuse a fellow juror of having a personal experience that improperly influences her consideration of the case . . . It is quite another to call her a bigot").

Consequently, the statements must be viewed "in light of all the circumstances" "including the content and timing of the alleged statements and the reliability of the proffered evidence." *Peña-Rodriguez*, 137 S. Ct. 869. *See also, Smith v. Phillips*, 455 U.S. 209, 221-22 (1982) (O'Connor, J., concurring) ("bias necessarily must be inferred from surrounding facts and circumstances").

In a capital case, those circumstances include the particular risk of harm that racial bias and stereotypes present at the penalty phase. "Because of the range of discretion entrusted to a jury in a capital sentencing hearing, there is a unique opportunity for racial prejudice to operate but remain undetected." *Turner v. Murray*, 476 U.S. 28, 35 (1985) (plurality opinion). The jury's unique focus on the character of the defendant in determining sentence enhances that risk because, unlike guilt-phase determinations, the jury's assessment is largely a moral judgment and inherently subjective. "[J]uror[s] who believe [ ] that blacks are violence prone, or [other negative racial stereotypes], "might well be influenced by that belief" in assessing aggravating and mitigating evidence and determining the appropriate sentence. *Id.* Additionally, "[f]ear of blacks, which could easily be stirred up by the violent facts of petitioner's crime, might incline a juror to favor the death penalty." *Id.*

Finally, this Court stated that the experience of other jurisdictions that have considered the admissibility of juror statements of racial bias should inform trial judges on the application of the *Peña-Rodriguez* principles. *Peña-Rodriguez*, 137 S Ct.

at 870 (directing that the experience of jurisdictions before and after the Court's decision should inform its implementation).

The experience of other jurisdictions makes clear that the inquiry is objective. The juror does not have to expressly acknowledge racial bias or stereotyping; it can be inferred from the objective circumstances. *See Smith,* 455 U.S. at 221-222 (O'Connor, J., concurring) ("bias necessarily must be inferred from surrounding facts and circumstances"). Racial stereotypes, especially, can operate at a subconscious level, and are harmful precisely because decision makers believe in the negative characteristics they attribute through the stereotype. *See United States v. Smith*, CR 12-183 (SRN), 2018 U.S. Dist. LEXIS 69729, at *30 (D. Minn. Apr. 24, 2018) (finding indication of race bias or hostility where juror referenced "banger from the hood" even through race is not mentioned because it "employed the racist stereotype that black men from the inner city are gang members" and "no evidence at trial identified Smith as a gang member"); *Harden v. Hillman*, 993 F.3d 465, 481–84 (6th Cir. 2021) (finding that jurors' statements that defendant was a "crack head," absent any evidence of that at trial, was the product of harmful racial stereotypes associating Black people with crack cocaine and was "overt racial bias.").

Likewise, jurors need not make an explicit connection between the statements of racial bias or stereotypes and their verdict. *Harden*, 993 F.3d at 484-85 (rejecting argument that juror statements are merely "offhand comments" unless there is an explicit statement regarding race and the verdict). The question is whether there is "a clear statement that *indicates*" that a juror "relied on racial stereotypes or

animus," when determining facts critical to their verdict. *See Harden*, 993 F.3d at 484-85 (in excessive use of force case, finding race was a significant motivating factor in the verdict where statements indicated that jurors discounted the plaintiff's testimony because they believed, based on racial stereotypes, that the plaintiff was "on crack" and instigated trouble with the officer "so he could sue the police department and get some money"); *State v. Sparks,* 953 N.W.2d 372, 2020 WL 6156739 (Iowa App. Oct. 21, 2020) (upholding trial court's decision to consider juror statements that (1) defendants left a shell casing behind because "they're all in gangs and if you do drive-by-shootings "all the time" you're just used to it"; and (2) "the way black people are raised 'its o.k. to kill people,'" notwithstanding the lack of any explicit connection to the verdict, finding a "direct connection between race-based assumptions and the verdict determining facts"—drive-by shootings and killing); *Commonwealth v. McCowen*, 458 Mass. 461, 463, 939 N.E.2d 735, 742 (2010) (granting evidentiary hearing in first degree murder case based on juror's statement that bruises like those found on the victim's body result "when a big black guy beats up on a small woman," finding that they "dovetail[ed] into a common racial stereotype that black men are prone to violence"). *See also*, *Buck,* 137 S Ct. 777 (finding that the injection of a "powerful racial stereotype" that was "directly pertinent on the question of life or death" undermined the reliability of the verdict).

As discussed further below, the Louisiana Supreme Court failed to apply the proper legal standard, and failed to give meaningful consideration to the content of

the statement and other relevant facts and circumstances when determining the admissibility of the juror's statement under *Peña-Rodriguez*.

Consequently, it failed to recognize clear evidence indicating that race was a significant factor in the juror's verdict, preventing Mr. Hoffman from obtaining relief from his unconstitutional death sentence.

I. The Louisiana Supreme Court Applied the Wrong Standard and Failed to Meaningfully Consider the Juror's Statement in Light of the Circumstances as *Peña-Rodriguez* Requires

The Louisiana Supreme Court applied the wrong standard and failed to consider the juror's statements in light of the relevant facts when assessing the juror's affidavit under the *Peña-Rodriguez* exception. It rejected his evidence because Mr. Hoffman did not "prove" that "racial animus was a significant motivating factor in the juror's vote." *Hoffman*, 326 So. 3d at 238. However, in defining the threshold, the Court made clear that the defendant need not *prove* bias at this stage, but merely present evidence that "*tend[s]* to show that racial animus was a significant motivating factor" in the juror's vote. *Peña-Rodriguez*, 137 S. Ct. at 869. Although the juror's statement should be "clear," it need only be "indicat[ive]" of racial animus or stereotyping in order to pierce the jury shield law. *Id.*[16] *See also, id.,* (there must be

[16] Presenting evidence that "indicates," meaning "to point out or point to," requires much less of a moving party. *See* Merriam Webster Dictionary, https://www.merriam-webster.com/dictionary/indicate (last visited February 23, 2022). Similarly, by definition, "tend" is not as high of a requirement as proof. *See* Merriam Webster Dictionary, https://www.merriam-webster.com/dictionary/tendency (last visited February 22, 2022) (definition of *tendency* 1 a: a proneness to a particular kind of thought or action b: direction or approach toward a place, object, effect, or limit). Furthermore, the 'tend to show" threshold is not a high legal standard, in fact, it is commonly a low threshold governing the admission of evidence. *See* Fed. R. Evid. 410 ("Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence . . .").

a "*showing* that one or more jurors made statements exhibiting overt racial bias that cast serious doubt on the fairness and impartiality of the jury's deliberations and resulting verdict") (emphasis added).

At the same time, the Louisiana Supreme Court failed to consider the statement "in light of all the circumstances, including the content and timing of the alleged statements." *Peña-Rodriguez*, 137 S. Ct. at 869. Despite recognizing that "jurors may have had beliefs based on racial stereotypes," it summarily found that Mr. Hoffman failed to meet *Peña-Rodriguez*'s threshold standard without any discussion at all of the statement itself, the nature of the stereotypes, their relevance to the jury's sentencing decision, and other circumstances of the case.

Had the Louisiana Supreme Court applied the proper standard and considered the relevant evidence, it would have found that when viewed "in light of all the circumstances," the juror's statement clearly indicates that she and other jurors "relied on racial stereotypes or animus" to reach their verdict, and "tends to show that racial animus was a significant motivating factor in the juror's vote." *See* 137 S. Ct. at 869.

II. Viewed In Light of all Relevant Circumstances, the Evidence Tends to Show that Racial Animus was a Significant Motivating Factor in the Juror's Decision to Vote for Death

Mr. Hoffman's evidence meets the *Peña-Rodriguez* threshold.

A. The Juror's Statement Indicates that Jurors Explicitly Discussed Mr. Hoffman's Race throughout Deliberations and Relied on Prejudicial Opinions Based on Racial Stereotypes

i. Jurors explicitly discussed Mr. Hoffman's race throughout deliberations

From jury selection (where jurors surmised that Mr. Hoffman ensured "there were no black people on the jury" as a way to get off later), through sentencing (where jurors believed Mr. Hoffman "played the race card" to avoid the death penalty), Mr. Hoffman's race was on the jury's mind. This Court has recognized that explicit references to a subject's race can be indicative of racial bias in decision making. *See Foster v. Chatman*, 578 U.S. 488, 514 (2016) (finding prosecution voir notes that repeatedly referenced race of jurors "plainly demonstrate[d]" race discrimination in exercise of peremptory strikes); *Miller-El v. Dretke*, 545 U.S. 231, 264-66 (2005) (finding prosecutor's marking of juror's race on juror cards supported the proposition that race was a factor). It certainly was for Mr. Hoffman's jurors who were influenced by pernicious racial stereotypes when deciding that he should be put to death.

ii. Jurors compared Mr. Hoffman to O.J. Simpson, and relied on racial stereotypes that Black people "play the race card" to escape responsibility

At the time of Mr. Hoffman's arrest and trial, the stereotype that Black people use race as an excuse to escape responsibility (playing the race card), had taken a particularly virulent form following the O.J. Simpson trial. Mr. Simpson was acquitted by a majority Black jury after arguing he was wrongly accused because he was Black. Widely heralded as one of the most racially polarizing trials in American history, many predominantly White people perceived that Mr. Simpson "played the

race card" and "got away with murder."[17] "Playing the race card" became a particularly hostile and pejorative reference to African Americans believed to be disingenuously relying on race to escape responsibility.[18]

The juror's affidavit shows that Mr. Hoffman's jury was influenced by this prejudicial and wholly inapplicable racial stereotype.[19] The juror states that during deliberations, jurors discussed their belief that "from the start of trial," Mr. Hoffman "play[ed] the race card"; and that he tried to make the jury "feel sorry for him being a poor black man from the projects" in an attempt to avoid punishment, "to get off" "[l]ike O.J. Simpson." App. C at C3. In fact, as the record shows, Mr. Hoffman never once used the fact that he is a Black man as a plea for a sentence less than death or to escape punishment altogether. Other than both being Black males charged with killing White women, there were no similarities between Mr. Hoffman and Mr. Simpson or their cases.

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[17] *See e.g.,* Leonard Greene, *Racism is Still the Hot Coal the Nation Refuses to Touch*, BOSTON HERALD, Oct. 2, 1995 (characterizing the case as "one of the most racially divisive trials in our history."). Local press coverage illustrates the racially divided response. *See* John Pope, *Some in N.O. Elated, Some Stunned,* TIMES-PICAYUNE, Oct. 4. 1995, at A4 (Noting that the "cheers and whistles from the mostly African-American group that greeted O.J. Simpson's acquittal" was in marked contrast to the "stony silence" at a restaurant "popular with lawyers and other white professionals," and quoting a local white business man as saying in disgust, "There is no other way to put it. He's got away with murder."); *Not Guilty; BR-area Reactions Range From Cheers to Disbelief*, THE ADVOCATE (Baton Rouge), Oct. 4, 1995, at 1A ("Race . . . appeared to influence . . . individuals reactions").

[18] See Margaret M. Russell, Beyond "Sellouts" and Race Cards": Black Attorneys and the Straitjacket of Legal Practice, 95 MICH. L. REV. 766, 792 (1997) (discussing the "far reaching animus" associated with the "invocation of the race-card accusation"); Mary Bowman, Confronting Racist Prosecutorial Rhetoric At Trial 71 CASE W. RES. 39, 79. (Describing the "pejorative" use of the term "playing the race card" to suggest "a dirty trick" to secure some advantage) (citations omitted).

[19]In another manifestation of this race-based stereotype, jurors inaccurately perceived that Mr. Hoffman had engineered an all-White jury to use that to "play the race card" "and get [ ] off later." Jurors "speculated about this during the trial." App. C at C3.

The "racially inflammatory" nature of comparisons to O.J. Simpson during this time period was expressly acknowledged by many members of the Louisiana Supreme Court in relation to the capital trial of Allen Snyder—another Black man sentenced to death by an all-White jury in Louisiana in the 1990s.[20] In *Snyder*, the reference to O.J. Simpson did not mention race. In Mr. Hoffman's case, the reference was explicit.

The impact of this insidious racial stereotype on the jury's deliberations in Mr. Hoffman's case is clear from the juror's affidavit. It transformed the jury's perception of Mr. Hoffman's case for life. Although Mr. Hoffman attempted to persuade jurors with evidence of his good character, kindness to others and lack of prior record, his efforts fell on deaf ears; jurors saw only a "poor black man from the projects" who was "playing the race card" to escape responsibility.

At the same time, this decidedly hostile brand of racial animus injected into the deliberations an explicitly race-based incentive for jurors to vote for death: to prevent this Black man from winning his race-card game and escaping punishment. Or as the prosecutor argued in closing: to prevent him from "get[ting] away with murder."[21] R. 4521.

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[20] *See State v. Snyder*, 750 So.2d 832, 864 (La. 1999) (Lemmon, J., concurring and dissenting in part) (describing comment during the penalty phase that O.J. Simpson "got away with it" as "racially inflammatory"), *rev'd Snyder v. Louisiana*, 545 U.S. 1137 (2005); *id.* at 866 (Johnson, J., dissenting) (comparison of the case to the O.J. Simpson trial at penalty phase was "prejudicial and inflammatory" and required reversal of death sentence); *State v. Snyder*, 1998-1078 (La. 9/06/06), 942 So. 2d 484, 505 (Kimball J., dissenting, joined by Calegero C.J.) (reference to O.J. Simpson "injected race" into penalty phase proceedings at trial of Black defendant and supported finding of *Batson* violation), *rev'd Snyder v. Louisiana*, 552 U.S. 472 (2008) (reversing conviction due to *Batson* violation).

[21] Although the prosecutor did not reference race or O.J. Simpson specifically, the association of this prevalent racist trope would have been understood by jurors, who clearly had O.J. Simpson on their mind.

iii. Jurors relied on prejudicial racial stereotypes about the dangerousness and criminality of young Black men

Jurors also relied on prejudicial stereotypes about the dangerous and criminal character of inner-city Black youth, a particularly toxic manifestation of racial bias. *Buck, 137* S. Ct. at 759 (describing the "powerful racial stereotype" of "black men as violence prone" as a "particularly noxious strain of racial prejudice") (citations omitted).

The juror's affidavit indicates that despite unrebutted evidence to the contrary at trial, members of the jury believed that Mr. Hoffman, who they characterized as a "poor black man from the projects" might have an undisclosed "juvenile record." Specifically, they "thought that given his background he may have a history of drugs and things like that. We wondered if he was in a gang." App. C at C4.

In fact, as the record shows, there was no evidence at all that Mr. Hoffman was involved in drugs or gangs, or had any prior involvement in criminal activity. All evidence was to the contrary.

It is a classic racial stereotype to assume, as the all-White jury did here, that a Black teenager from inner-city New Orleans, as the jury knew Mr. Hoffman to be, was involved in gang and drug activity.[22] This stereotype, along with that of the Black

[22] *See City of Cuyahoga Falls, Ohio v. Buckeye Cmty. Hope Found.*, 538 U.S. 188; 123 (2003) (finding that statements made about low-incoming housing can "be seen as expression of racial bias against blacks especially given the fact that racial stereotypes prevalent in our society associate blacks with crime, drugs . . .") (citing David Cole, No Equal Justice: Race and Class in the American Criminal Justice System 34, 42 (1999)). *See also* Jon Hurwitz et.al., *Racial Stereotypes and Whites' Political Views of Blacks in the Context of Welfare and Crime*, 41 AMERICAN J. POL. SCI. 30 (1997) (discussing how being from the "projects" or receiving welfare assistance is seen as black, criminal, and evidence of shirking personal responsibility and criminality).

"super-predator,"[23] was commonplace throughout the late 1990s. It was prevalent in in New Orleans and St. Tammany Parish at this time, given the dramatic increase in violent crime which swept the city. The sentiment and fear of white residents of New Orleans and St. Tammany parishes is chronicled in the Times Picayune "*Together Apart: The Myth of Race*" series showing the heightened racial tension between the two racial groups and the two parishes.

Racial stereotypes that Black men are "dangerous" and "criminals" pose a particular risk in capital sentencing. "A juror who believes that blacks are violence prone . . . might well be influenced by that belief" in deciding whether to impose death. *Turner*, 476. U.S. at 35. *See Buck*, 137 S. Ct. at 777 (referring to racial stereotypes at the penalty phase of a capital trial as a "toxins" that are "deadly," even "in small doses") (reversing death sentence where defense expert testified that Black people are statistically more likely to be violent although Mr. Buck himself likely would not be violent in the future).

The impact of this toxic stereotype in Mr. Hoffman's case is clear as it tainted the juror's consideration of his uncontradicted mitigating evidence, and their assessment of his "character and propensities," the very "focus" of the sentencing proceedings.

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[23] *See* John J. DiIulio, *The Coming of the Super-Predator*, THE WEEKLY STANDARD, Nov. 27, 1995, at 23 (coining the term "super-predator," which characterized African-American youth in the mid-to-late 1990s as being particularly vicious and amoral; beyond rehabilitation). Mr. DiIulio himself has come to recognize the devastating impact this racist notion came to have on a whole generation of African-Americans—of which Mr. Hoffman is a member. *See* Elizabeth Becker, *Ex-Theorist on Young, 'Superpredators,' Bush Aide has Regrets*, NEW YORK TIMES, Feb. 9, 2001. *See also* Eberhardt, J. L., Goff, P. A., Purdie, V. J., & Davies, P. G. *Seeing Black: Race, Crime, and Visual Processing* J. PERS. SOC. PSYCHOL., 87, 876-893 (2004)

Not only did jurors doubt the veracity of the uncontradicted testimony of multiple witnesses, assuming that he might be a drug involved gang member with a juvenile criminal record, they were so convinced of his violent criminal nature, they believed that if he were "released one day or escape[d]," he would kill other young women. App. C at C2. The author of the statement was "sure of it." *Id.* As the statement indicates, this view of Mr. Hoffman's character and propensities was "very important" to the jury's decision to sentence him to death." *Id.*

iv. Racial stereotypes were not "offhand comments" but went directly to central issue at sentencing and the heart of the defense case for life

The racial statements of jurors cannot be dismissed as "offhand comments" in the circumstances of this case. *Peña-Rodriguez*, 137 S. Ct. at 869.

Cases where statements of racial animus or stereotypes have been deemed too "offhand" to qualify, fall into categories that are clearly distinguishable. This includes, for example, cases where the racial animus is directed towards people other than the defendant.[24] It includes cases where the jurors' statements lacked sufficient

[24] *See, e.g.; Richardson v. Kornegay*, 3 F.4th 687, 707 (4th Cir. 2021) (affidavits describing racial hostility to juror who felt pressured to vote to convict, insufficient to show verdict based on racial animus to defendant); *Orellana v. State*, 487 P.3d 390 (Nev. 2021) (affidavit by juror alleging other jurors bullied her and accused her of racism insufficient); *Commonwealth v. Rosenthal*, 233 A.3d 880, 886 (Pa. Super. 2020) (jurors' racist jokes referencing those with Italian and Irish ancestry in case where neither the defendant or any other trial participant belonged to either ethnic group insufficient); *United States v. Robinson*, 872 F.3d 760, 770–71 (6th Cir. 2017) (racist statements made to other jurors insufficient); *Williams v. Price*, No. 2:98cv1320, 2017 U.S. Dist. LEXIS 213087, at *23 (W.D. Pa. Dec. 29, 2017) (racial slur directed towards a witness rather than the defendant insufficient).

indicia of race or racial stereotypes.[25] And, it includes statements that bore no relation to the verdict.[26]

In contrast, in Mr. Hoffman's case, the statements of racial bias are (1) directed firmly at Mr. Hoffman, (2) involve explicitly race-based hostility (playing the race card to get off, like O.J, Simpson) or classic racial stereotypes (assumption of drug and gang involvement), and (3) relate directly to key issues in the jury's determination of sentence (consideration of mitigating evidence, and assessment of defendant's character and propensities).

Pursuant to Louisiana's capital sentencing statute, "the character and propensities of the offender" were a key "focus" for the jury at the penalty phase. La. C.Cr.P. art. 905.2.[27] Jurors were required to consider any mitigating circumstances before reaching their verdict, La. C.Cr. P. art. 905.3, including that the "defendant has no significant prior history of criminal activity," La. C.Cr.P. art. 905.5(a), which by law, "*shall* be considered mitigating." La. C.Cr.P. art. 905.5 (emphasis added).

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[25] *See United States v. Baker*, 899 F.3d 123 (2d. Cir. 2018) (finding statement that juror "knew the defendant was guilty the first time he saw him" insufficient to show the juror was animated by racial bias or hostility); *See also People v. Whetstone*, 2020 IL App (2d) 170919-U, 2020 WL 4784756 at *11–12 (Ill. 2020) (finding that juror notes expressi ng it was difficult to take notes with the defendant standing next to the jury, and discomfort with the defendant's proximity in the parking lot, did not reflect racial prejudice toward the defendant).

[26] *See United States v. Wilbern*, 484 F. Supp. 3d 79 (W.D.N.Y. 2020) (allegation that juror made "racist" statements about skin color, without more was insufficient to show verdict infected by racial animus); *see also*, *e.g.*, *Thomas v. Lumpkin*, 995 F.3d 432 (5th Cir. 2021) (statements disapproving of inter-racial marriages did not warrant habeas relief); *Robinson*, 872 F.3d at 771 (finding that statements evidencing racial bias towards fellow juror did not indicate race was a significant motivating factor in the verdict, because stereotype was not directed toward defendant).

[27] La. C.Cr.P. art. 905.2 provides: "The sentencing hearing shall focus on the circumstances of the offense, the character and propensities of the offender, and the victim, and the impact that the crime has had on the victim, family members, friends, and associates."

Mr. Hoffman's entire penalty phase presentation was dedicated to these areas as he presented uncontradicted evidence from nine witness that the crime was a complete anomaly in Mr. Hoffman's life, nd that he was a kind, good person, who was never violent or a trouble maker, and had no history of criminal activity.

The racial stereotypes discussed in the juror's affidavit—that Mr. Hoffman was a dangerous Black man from the projects, with a history of criminal activity, including drug and gang involvement, who remorselessly tried to play the race card to "get off"—were directly relevant to jurors' consideration of these key factors. As discussed above, they undermined meaningful consideration of Mr. Hoffman's entire penalty phase case, distorted juror's view of his "character and propensities" and resulted in a race-based motivation to impose the death penalty.

While the juror statement does not include the words "I sentenced Mr. Hoffman to death because he is Black," it is none the less clear—from the jury's explicit discussions of race, race-based hostility, and reliance on racial stereotypes—that race was a significant motivating factor in the verdict. The statement "cast[s] serious doubt on the fairness and impartiality of the jury's deliberations and resulting verdict" in this capital case. *Peña-Rodriguez*, 137 S. Ct. at 869. *See Buck,* 137 S Ct. at 777 (finding that the injection of a "powerful racial stereotype" that was "directly pertinent on the question of life or death" undermined the reliability of the verdict).

B. The Jury's Question to the Judge during Penalty Phase Deliberations Demonstrates the Significance of Racial Stereotypes

The jury's question to the judge during penalty phase deliberations confirms the significant role that racial stereotypes played in deliberations. The jury asked: "If

Jessie Hoffman had any kind of juvenile record, would the State have had access to it and would we have been made aware of it?" R. 4543. As the juror's affidavit makes clear, the question was prompted by juror's assumptions that Mr. Hoffman was "involved in drugs" and "in a gang," classic racial stereotypes that bore no relation to the actual evidence. The trial court's response that "this question cannot be answered" *id.,* did nothing to curb the jurors' rank speculation about a non-existent record and reliance on the prejudicial racial stereotypes which prompted the question.

As the *only* question the jury asked the judge during the penalty phase deliberations, it provides further evidence that racial stereotypes were a significant factor in the jury's verdict. *See Buck*, 137 S. Ct. at 776 (relying on fact that the jury asked during deliberations to see the expert report which contained racial stereotypes when finding a reasonably probability that those opinions prejudiced the verdict).

C. Racial Bias is Uniquely Harmful in Capital Sentencing

The jury's consideration of race or racial stereotypes in the penalty phase of a capital trial injects an inherently arbitrary and prejudicial factor into the proceedings and undermines the defendant's fundamental right to an individualized sentencing determination. To prevent the arbitrary application of the death penalty, the Eighth Amendment and due process require an individualized sentencing hearing based upon the unique characteristics of the defendant. *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976) (individualized sentencing determination is a "constitutionally indispensable part of the process of inflicting the penalty of death."); *McCleskey v. Kemp*, 481 U.S. 279, 336 (1987) (Brennan, J. dissenting) (defendant enjoys the fundamental right to be "evaluated as a unique human being."); *Zant*, 462 U.S. at

900 (Rehnquist, J., concurring in judgment) (character and propensities of the defendant are part of a "unique, individualized judgment regarding the punishment that a particular person deserves"). It is for this reason that jurors are required to consider all mitigating evidence before determining sentence. *See e.g. Eddings v. Oklahoma*, 455 U.S. 104, 114 (1982).

Crucially, this assessment must be based on accurate information to ensure the heightened reliability that the Eighth Amendment requires when the death penalty is at issue. *See Deck v. Missouri*, 544 U.S. 622, 632-33 (2005) (recognizing the "acute need" for accuracy in capital sentencing, reversing death sentence because of the risk that shackling the defendant falsely distorted jurors' perception of his dangerousness and character).

A capital juror's reliance on false and dehumanizing racial stereotypes in making this inquiry does the opposite, undermining the reliability and individualized basis of the juror's sentencing decision. In this case, the juror's affidavit indicates that instead of considering Mr. Hoffman's mitigating evidence of good character and lack of criminal record, jurors assessed his character and propensities in light of prejudicial stereotypes about young Black men from the inner cities having criminal records involving drug and gang activity, and avoiding responsibility for their actions by playing the race card—none of which applied to Mr. Hoffman, as the evidence before the jury shows.

Having a reliable sentence based on the evidence presented "is necessary to prevent a systemic loss of confidence in jury verdicts, a confidence that is a central

premise of the Sixth Amendment trial right." *Peña-Rodriguez*, 137 S. Ct. at 859. Despite the Court's "unceasing efforts" to eradicate racial prejudice from criminal justice system (especially in capital cases), *McCleskey*, 481 U.S. at 309, the jury that decided whether Mr. Hoffman would live or die discussed his race expressly, and relied on prejudicial stereotypes when determining that he should be put to death.

This Court should intervene in this important case, to make clear that the fundamental constitutional guarantees designed to guard against the insidious influence of race in capital sentencing, must be upheld.

CONCLUSION

For the foregoing reasons, the Court should grant Petitioner's petition and issue a writ of certiorari to review the decision of the Louisiana Supreme Court. Alternatively, this Court should grant the writ and remand this case back to the Louisiana Supreme Court for merits review of the Petitioner's claim of juror racial bias at the penalty phase of his capital trial in a manner consistent with this Court's decision in *Peña-Rodriguez v. Colorado*.

Respectfully submitted,

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March 4, 2022