*****CAPITAL CASE*****
No. 21-7381

In the Supreme Court of the United States

JESSIE D. HOFFMAN, JR.,
Petitioner,

v.

LOUISIANA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE LOUISIANA SUPREME COURT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether this Court's decision in *Peña-Rodriguez v. Colorado*, 137 S. Ct. 855 (2016), applies retroactively to cases on state collateral review?

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INTRODUCTION

Petitioner Jessie Hoffman was charged with first-degree murder more than twenty years ago after he kidnapped, robbed, raped, and killed Mary Elliot. He was convicted and sentenced to death.

A few years after Hoffman's sentence and conviction became final, a juror made a statement suggesting that some jurors had considered Hoffman's race during their deliberations. Hoffman challenged his conviction in state and federal collateral review on those grounds, but his claim was barred under the "no-impeachment" rule.

In 2016, this Court announced a new procedural rule in *Peña-Rodriguez v. Colorado*: If "a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant," then "the no-impeachment rule [must] give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee." 137 S. Ct. 855, 869 (2017). Hoffman again sought collateral relief in state court, arguing that he should benefit from *Peña-Rodriguez*.

The Louisiana Supreme Court denied relief. It did not address the issue of *Peña-Rodriguez*'s retroactivity on state collateral review because Hoffman's claim was so weak. The juror's statement in Hoffman's case did not show that the jurors had relied on racial stereotypes or animus to convict or sentence Hoffman. Hoffman now seeks review from this Court.

The Court should deny certiorari for at least

three reasons. First, it is not clear how Hoffman expects the Court to grant him relief in the current procedural posture. This action arises from *state* collateral review. Whether to apply a new procedural rule retroactively on state collateral review is a question of state law. *See Danforth v. Minnesota*, 552 U.S. 264, 288 (2008); *Edwards v. Vannoy*, 141 S. Ct. 1547, 1559 n.6 (2021). And this Court does not resolve questions of state law. *DIRECTV, Inc. v. Imburgia*, 577 U.S. 47, 47 (2015); *Michigan v. Long*, 463 U.S. 1032, 1041 (1983).

Second, even if the Court can address the question presented, it should wait for a case that squarely implicates *Peña-Rodriguez*. The Louisiana Supreme Court was right to conclude that Hoffman's case is clearly distinguishable. Race was not a significant motivating factor for the jurors' decisions here. The jurors convicted Hoffman because he confessed to kidnapping Ms. Elliot, raping her, and killing her even though she begged for mercy: "What [Hoffman] did to that woman was really bad. It was clear to me as soon as I heard the evidence about what he did that he deserved the death penalty." App. C4.

Finally, Hoffman's petition amounts to a request for error correction. He does not point to any split in authorities. He does not contend *Peña-Rodriguez* is unclear. He merely argues the Louisiana Supreme Court misapplied this Court's precedent. This Court is not a court of error correction, and so it should deny review. *See* Supreme Ct. R. 10.

STATEMENT OF THE CASE

1. At gunpoint, Jessie Hoffman kidnapped Mary Elliot as she left her parking garage after work in downtown New Orleans. Hoffman forced her to drive them in her car to an ATM, where he took the $200 she withdrew from her account. The Louisiana Supreme Court later recounted that "[t]he ATM video tape shows the terror on Ms. Elliot's face as she withdrew money from her account, and Hoffman can be seen standing next to his victim." *State v. Hoffman*, 1998-3118 (La. 4/11/00), 768 So. 2d 542, 550, supplemented, 2000-1609 (La. 6/14/00), 768 So. 2d 592. "Hoffman did not leave Ms. Elliot at the ATM machine after he had already caused the most horrific night of her life." *Id.* Instead, they traveled to a boat launch on the Middle Pearl River in St. Tammany Parish, Louisiana. Hoffman raped Ms. Elliot before sending her on a "death march." App. A3. Hoffman stripped her naked and forced her to walk away from the boat launch area "down a dirt path which was overgrown with vegetation and in an area full of trash used as a dump." *Hoffman*, 768 So. 2d at 550. When she arrived at the dock, he shot her in the head "execution-style." App. A3. "Ms. Elliot likely survived for a few minutes after being shot, but she was left on the dock, completely nude on a cold November evening, to die." *Hoffman*, 768 So. 2d at 550.

2. Authorities arrested Hoffman and questioned him. In a videotaped confession, he admitted to kidnapping, robbing, raping, and shooting Ms. Elliot. The district attorney charged Hoffman with first-degree

murder, and the jury returned a unanimous guilty verdict. After a capital sentencing hearing, the jury deliberated over the appropriate sentence for Hoffman. During the deliberations, the jury submitted a question to the judge: "If Jesse Hoffman had any kind of juvenile record, would the State have access to it and would we have been aware of it?" *Id.* at 569. The judge responded, "This question cannot be answered." *Id.* The jury recommended a death sentence.

Hoffman's conviction and sentence were upheld on direct review. *See id.* His case became final on October 16, 2000, when this Court denied his petition for a writ of certiorari. *See Hoffman v. Louisiana*, 531 U.S. 946 (2000).

In state collateral proceedings in 2003—several years after the trial court sentenced Hoffman to death—Hoffman introduced a statement from a juror, which explained that during deliberations the jurors had "speculated" about whether defense counsel had "play[ed] the race card." Pet. 10; App. C5. The jurors also wanted to know Hoffman's background and whether he had a juvenile record. *Id.* at 11. Hoffman contended that these discussions violated his constitutional rights. But the State's no-impeachment rule prevented consideration of the jurors' statement. *Id.*; *see* La.C.E. art. 606(B); App. A6 n.1.

Hoffman also sought federal habeas relief on this ground. *See Hoffman v. Cain*, 752 F.3d 430, 450–52 (5th Cir. 2014). The Fifth Circuit observed that the no-impeachment ruled barred relief. But the court further noted that, even leaving "[t]he evidentiary bar

aside, the state court could have concluded that *the evidence did not support a finding of intentional bias or discrimination*." *Id.* at 451 (emphasis added).

In 2016, roughly sixteen years after Hoffman's case became final, this Court held in *Peña-Rodriguez* that "where a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee." 137 S. Ct. at 869. In early 2019, Hoffman filed a second application for post-conviction relief in state court. App. A4. He argued that *Peña-Rodriguez* sufficiently changed the legal landscape to allow him to again raise the issue. La.C.Cr.P. art 930.4. The Louisiana Supreme Court agreed that Hoffman's claim was not procedurally barred, as the state district court had concluded. App. A7–8 (concluding that "the district court erred when it found the claim was previously litigated").

The Louisiana Supreme Court denied relief to Hoffman on the merits of his *Peña-Rodriguez* claim, however. Importantly, the court saw no need to address the issue of whether *Peña-Rodriguez* should apply retroactively on state collateral review because Hoffman's claim was so weak. App. A8 ("Even if *Peña-Rodriguez* applied retroactively to Hoffman's case, Hoffman has not met the showing required by *Peña-Rodriguez* to pierce Louisiana's no-impeachment rule."). The court reasoned that "the statements by

Hoffman's jurors are not nearly as 'egregious and unmistakable' as those presented in *Peña-Rodriguez*." *Id.* (quoting *Peña-Rodriguez*, 137 S. Ct. at 870). Moreover, "the evidence presented by Hoffman does not amount to '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.* A9 (quoting *Peña-Rodriguez*, 137 S. Ct. at 861).

Hoffman seeks a petition for a writ of certiorari from this Court, again raising his claim under *Peña-Rodriguez*.

REASONS FOR DENYING THE PETITION

I. WHETHER *PENA-RODRIGUEZ* APPLIES RETROACTIVELY ON STATE COLLATERAL REVIEW IS A QUESTION OF STATE LAW

Hoffman asks the Court to decide whether "the Louisiana Supreme Court err[ed] in failing to consider clear evidence of juror racial bias under *Peña-Rodriguez*." Pet. i. But Hoffman never explains how he expects the Court to grant him relief in the procedural posture of this litigation. Because this action arises on *state* collateral review, Hoffman could not obtain relief unless *Peña-Rodriguez* applies retroactively in these proceedings. In light of the weakness of his claim, the Louisiana Supreme Court did not address the threshold question of whether *Peña-Rodriguez* applies retro-

actively on state collateral review. Whether a rule applies retroactively on state collateral review is a question of state law. *See Danforth*, 552 U.S. at 288. And this Court does not resolve questions of state law. *DIRECTV, Inc.*, 577 U.S. at 47; *Long*, 463 U.S. at 1041.

1. This Court has said many times that States alone have the power to determine the content, meaning, and application of state law. *See, e.g., DIRECTV, Inc.*, 577 U.S. at 47 ("State courts are the ultimate authority on that state's law."); *Dickerson v. United States*, 530 U.S. 428, 431 (2000) ("Federal courts hold no supervisory authority over state judicial proceedings and may intervene only to correct wrongs of constitutional dimension."); *Huddleston v. Dwyer*, 322 U.S. 232, 233 (1944) ("The decisions of the highest court of a state on matters of state law are in general conclusive upon the Supreme Court of the United States."). If a state-law basis for the judgment is adequate and independent, then this Court lacks jurisdiction because its review of the federal question would be purely advisory. *Coleman v. Thompson*, 501 U.S. 722, 729 (1991).

Moreover, this Court has explained that whether to provide retroactive relief in a state collateral proceeding is a question of state law. In *Danforth v. Minnesota*, the Court observed that its cases about "civil retroactivity" demonstrate that the "remedy a state court chooses to provide its citizens for violations of the Federal Constitution is primarily a question of state law." 552 U.S. at 288; *Edwards*, 141 S. Ct. at

1559 n.6 ("States remain free, if they choose, to retroactively apply the jury-unanimity rule *as a matter of state law* in state post-conviction proceedings." (emphasis added)). "Federal law simply 'sets certain minimum requirements that States must meet but may exceed in providing appropriate relief." *Id.* (quoting *Am. Trucking Assns., Inc. v. Smith*, 496 U.S. 167, 178–79 (1990) (plurality opinion)). Although this Court has "ample authority to control the administration of justice in the federal court—particularly in their enforcement of federal legislation—[the Court has] no comparable supervisory authority over the work of state judges." *Danforth*, 552 U.S. at 289 (citing *Johnson v. Fankell*, 520 U.S. 911 (1997)).

Even if a State has purported to adopt the *Teague v. Lane* framework to guide state retroactivity jurisprudence—as the Louisiana Supreme Court has done—this Court does not have jurisdiction to consider the State's retroactivity rulings for the purposes of state law. *See State ex rel. Taylor v. Whitley*, 606 So. 2d 1292, 1297 (La. 1992) (adopting the general retroactivity bar of *Teague v. Lane*, 489 U.S. 288 (1989), for state collateral review). On the contrary, "[i]f a state court chooses merely to rely on federal precedents[,] . . . then it need only make clear by a plain statement in its judgment or opinion that the federal cases are being used only for the purpose of guidance, and do not themselves compel the result that the court has reached." *Long*, 463 U.S. at 1041. And, when adopting *Teague*'s standard to guide state courts in collateral proceedings, the Louisiana Supreme Court

emphasized that it was "not bound to adopt the *Teague* standards." *See Taylor*, 606 So. 2d at 1297. Louisiana courts merely use *Teague* as guidance.

2. Importantly, the federal constitution does not require States to apply new *procedural* rules retroactively on state collateral review. To be sure, as this Court explained in *Montgomery v. Louisiana*, "when a new *substantive* rule of constitutional law controls the outcome of a case, the Constitution requires state collateral review courts to give retroactive effect to that rule." 577 U.S. 190, 200 (2016) (emphasis added). But the Court limited its holding to new substantive rules and left open the question of whether the constitution requires state courts to apply new procedural rules retroactively on collateral review. *Id.*

In *Edwards v. Vannoy*, however, this Court "acknowledged what has become unmistakably clear: The purported watershed exception [to *Teague*'s retroactivity bar] is moribund." 141 S. Ct. at 1561. In light of this Court's decision in *Edwards*, this Court will never identify a new watershed rule of criminal procedure. Thus, the question of whether the federal constitution requires States to apply such rules retroactively on collateral review will remain unanswered.

There can be little doubt that *Peña-Rodriguez* issued a new procedural rule. Rules are procedural if they "regulate only the manner of determining the defendant's culpability." *Schriro v. Summerlin*, 542 U.S. 348, 353 (2004). Under *Peña-Rodriguez*, the "no-impeachment rule" must "give way" to allow courts to

consider jurors' statements in light of "racial stereotypes or animus to convict a criminal defendant." 137 S. Ct. at 869. This rule clearly regulates only the manner of determining the defendants' culpability. It is not a substantive rule because it does not "forbid[] criminal punishment of certain primary conduct." *Montgomery*, 577 U.S. at 198. Nor does it "prohibit[] a certain category of punishment for a class of defendants because of their status or offense." *Id.* As the Louisiana Supreme Court noted, federal circuit courts have addressed this issue and concluded *Peña-Rodriguez* is procedural and should not apply retroactively. *See* App. A8 n.4 (citing *Tharpe v. Warden*, 898 F.3d 1342, 1346 (11th Cir. 2018); *Richardson v. Kornegay*, 3 F.4th 687, 707 (4th Cir. 2021)).

Because the rule of *Peña-Rodriguez* is procedural, whether or not to apply it retroactively is a pure question of state law. Thus, the Louisiana Supreme Court is under no obligation by the federal constitution to apply *Peña-Rodriguez* retroactively.

3. If the question of whether *Peña-Rodriguez* applies retroactively ever does squarely come before the Louisiana Supreme Court, the answer is almost certainly "no." In the 30 years since adopting the *Teague* retroactivity framework, despite wielding unfettered authority to fashion remedies on state collateral review, the Louisiana Supreme Court has *never* applied any new procedural rule retroactively. *See, e.g.*, *Taylor*, 606 So. 2d at 1296 (rejecting retroactivity of *Cage v. Louisiana*, 498 U.S. 39 (1990)); *State v. Tate*,

2012-2763 (La. 11/5/13), 130 So. 3d 829, 841 (concluding that *Miller v. Alabama*, 567 U.S. 460 (2012), was procedural and not retroactive)[1]; *Stewart v. State*, 95-2385 (La. 7/2/96), 676 So. 2d 87, 87 (rejecting retroactivity of *State v. Hattaway*, 621 So. 2d 796 (La. 1993), in which the Louisiana Supreme Court determined that the right to counsel guaranteed by Louisiana constitution article I, § 13 attaches no later than the first court appearance or judicial hearing, rather than at the time of indictment as previously understood).

In a case called *Louisiana v. Reddick*, the Louisiana Supreme Court is currently considering whether to retroactively apply on state collateral review this Court's decision in *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020)—which prohibits States from accepting non-unanimous jury verdicts. *Louisiana v. Reddick*, No. 2021-KP-01893 (argued May 10, 2022). The State has urged the Louisiana Supreme Court to follow this Court's lead in *Edwards* and declare *Teague*'s second exception "moribund" for the purposes of state collateral review. 141 S. Ct. at 1561. A decision is expected in the next several months.

In any event, this Court should not consider or decide whether *Peña-Rodriguez* applies on state collateral review because, again, it is a pure question of state law.

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[1] To be sure, *Tate* was abrogated by *Montgomery v. Louisiana*, 577 U.S. 190 (2016), which concluded *Miller* announced a substantive rule of criminal procedure. But that does not alter the key point, which is that the Louisiana Supreme Court has not found any so-called "watershed" rules.

4. In footnote 15 of his petition, Hoffman acknowledges that the retroactivity of *Peña-Rodriguez* is a "potential impediment to this Court's intervention." Pet. 14 n.15. Hoffman attempts to circumvent the problem by asserting that "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." *Id.* (citing La. C.Cr.P. art. 930.8(2), (4)). If Hoffman is suggesting that new rules apply retroactively to his case under this provision, he is mistaken. Hoffman cites no case law supporting such an interpretation of article 930.8. That is not surprising. The position is plainly refuted by the text of article 930.8 and case law from the Louisiana Supreme Court.

Start with the text. Article 930.8 states: "No application for post conviction relief, including applications which seek an out-of-time appeal, shall be considered if it is filed more than two years after the judgment of conviction and sentence has become final . . . unless any of the following apply." La. Code Crim. Proc. art. 930.8(A). In other words, unless an out-of-time post-conviction application meets one of the exceptions listed in the article, the application must be summarily dismissed. Hoffman points to two listed exceptions to support his position. Neither exception allows Hoffman to retroactively benefit from *Peña-Rodriguez*.

First, he cites article 930.8(A)(2), which creates an exception to the summary-dismissal rule if "[t]he

claim asserted in the petition is based upon a final ruling of an appellate court establishing a theretofore unknown interpretation of constitutional law *and petitioner establishes that this interpretation is retroactively applicable to his case*, and the petition is filed within one year of the finality of such ruling." Art. 930.8(A)(2) (emphasis added). This provision does not exempt petitioners from establishing the retroactivity of new rules. On the contrary, it plainly *requires* petitioners to "establish[]" that the interpretation "is retroactively applicable to his case." *Id.*

Second, he points to article 930.8(A)(4), which creates an exception to the summary-dismissal rule if "[t]he person asserting the claim has been sentenced to death." Art. 930.8(A)(4). Everyone agrees Hoffman has been sentenced to death. But his death sentence gives him the right to file untimely applications without suffering summary dismissal. It does not allow him to benefit from new rules that do not apply retroactively on collateral review.

The Louisiana Supreme Court has explained article 930.8 is "simply a rule of timeliness; it does not govern the substantive law of retroactivity." *State ex rel. Guillot v. Whitley*, 606 So. 2d 1305, 1306 n.3 (La. 1992); *see Taylor*, 606 So. 2d at 1300 n.6. Hoffman's petition was timely and it was not summarily dismissed. But article 930.8 plainly does not require retroactive application of *Peña-Rodriguez* to Hoffman's case on state collateral review.

At bottom, granting relief to Hoffman would require the Court to address the threshold state-law

question of whether *Peña-Rodriguez* should apply retroactively on state collateral review. The Court does not decide questions of state law, and so it should not grant Hoffman's petition.

II. THIS CASE IS A BAD VEHICLE TO CONSIDER THE QUESTION PRESENTED

Even assuming the Court can consider the question presented, the Court should wait for a case that cleanly implicates *Peña-Rodriguez*. The Louisiana Supreme Court got it right: Hoffman's case is clearly distinguishable.

As Hoffman's petition correctly acknowledges, this Court explained in *Peña-Rodriguez* that "'[n]ot every offhand comment indicating racial bias or hostility' is sufficient." Pet. 14 (quoting *Peña-Rodriguez*, 137 S. Ct. at 869). Hoffman has the burden of 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.* (emphasis added). Moreover, "the statement must 'tend to show that racial animus was a *significant motivating factor* in the juror's vote to convict.'" *Id.* (emphasis added)

The statements made by the juror in Hoffman's case clearly fall short of this demanding standard. In 2014, admittedly without the benefit of this Court's decision in *Peña-Rodriguez*, the Fifth Circuit considered the juror's statements and noted that "the state court could have concluded that *the evidence did not*

support a finding of intentional bias or discrimination." *Id.* at 451 (emphasis added).

In 2021, with the benefit of *Peña-Rodriguez*, the Louisiana Supreme Court rejected Hoffman's claim on state collateral review for essentially the same reason—"the evidence presented by Hoffman does not amount to '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." App. A9.

In *Peña-Rodriguez*, a member of the jury "told the other jurors that he believed the defendant was guilty because, in [the juror's] experience as an ex-law enforcement officer, Mexican men had a bravado that caused them to believe they could do whatever they wanted with women." 137 S. Ct. at 862 (internal quotation marks omitted). And, "I think he did it because he's Mexican and Mexican men take whatever they want." *Id.* And, "nine times out of ten Mexican men were guilty of being aggressive toward women and young girls." *Id.*

Nothing in the juror's statement puts Hoffman's case in the realm of *Peña-Rodriguez*. According to the juror's statement, jury members speculated whether Hoffman's defense attorney wanted to remove black people from the jury so the attorney could "play the race card" "like O.J. Simpson" and "get [Hoffman] off later" on a "technicalit[y] like that." App. C3; *accord* Pet. 20–22. The jurors also wondered whether

Hoffman had an undisclosed "juvenile record," "a history with drugs," or "if he was in a gang." App. C4; *accord* Pet. 23. None of these statements suggests the jurors acted with overt racial bias or that race was a significant motivating factor in the jury's decisions.

Other comments in the juror's statement reveal the motivating factors behind the jury's actions: "What [Hoffman] did to that woman was really bad. It was clear to me as soon as I heard the evidence about what he did that he deserved the death penalty." App. C4. And, "[t]he defendant showed no remorse throughout the trial and came across as very cold-blooded." App. C2. And, "I felt sure that if he were ever to get out of prison he would do it again." *Id.*

Even if the Court is interested in considering whether *Peña-Rodriguez* applies retroactively on state collateral review, it should wait for a case that squarely raises the issues of *Peña-Rodriguez*.

III. HOFFMAN SEEKS ERROR CORRECTION

Hoffman does not argue that this Court's decision in *Peña-Rodriguez* was unclear. He points to no split of authority between the Louisiana Supreme Court and other state supreme courts or federal circuit courts. Hoffman argues merely that "[h]ad the Louisiana Supreme Court applied the proper standard and considered the relevant evidence," the court would have ruled in his favor. Pet. 19. The *amicus* brief of the Lawyers' Committee for Civil Rights Under Law agrees: "Certiorari is warranted because the Louisiana Supreme Court decided an important federal

question in a way that conflicts with relevant decisions of this Court." *Amicus* Br. at 2.

Essentially, Hoffman and his *amicus* seek error correction. For the reasons described above, the Louisiana Supreme Court's decision was entirely consistent with this Court's decision in *Peña-Rodriguez*. But, in any event, this Court is "not a court of error correction." *Martin v. Blessing*, 134 S. Ct. 402, 405 (2013) (Statement of Alito, J., respecting the denial of certiorari); *see Cavazos v. Smith*, 565 U.S. 1, 11 (2011) (Ginsburg, J., dissenting) (quoting E. Gressman, K. Geller, S. Shapiro, T. Bishop, & E. Hartnett, Supreme Court Practice § 5.12(c)(3), p. 351 (9th ed. 2007)); Supreme Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law.").

Hoffman's crime is especially heinous. He confessed that Ms. Elliot "offered herself" to him "while begging him not to hurt her." *Hoffman*, 768 So. 2d at 550. After raping her, Hoffman sent her on a death march and executed her. Even assuming the Louisiana Supreme Court misapplied this Court's precedent, this is certainly not the "rare[]" case warranting error correction. Supreme Ct. R. 10.

CONCLUSION

The State of Louisiana respectfully asks the Court to deny Hoffman's petition for a writ of certiorari.

Respectfully Submitted,

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