No. _____

In The
Supreme Court of the United States

CHRYSTAL CLUES-ALEXANDER,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

On Petition for Writ of Certiorari
to the Supreme Court of Louisiana

PETITION FOR WRIT OF CERTIORARI

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SEPTEMBER 26, 2022

QUESTION PRESENTED

Whether this Court's decision in *Ramos v. Louisiana*, 590 U.S. ___ (2020), provides grounds for a defendant to withdraw her pre-*Ramos* plea of guilty before sentencing because the plea was entered without a knowing, intelligent, and voluntary waiver of the right to trial by a unanimous jury?

PARTIES TO THE PROCEEDINGS

Pursuant to Rule 14.1(b), the following list identifies all of the parties appearing before the Supreme Court of Louisiana:

The petitioner Chrystal Clues-Alexander was the Defendant-Appellant;

The respondent State of Louisiana was the Plaintiff-Respondent.

LIST OF PROCEEDINGS

Supreme Court of Louisiana

No. 2021-KK-00831

State of Louisiana v. Chrystal Clues-Alexander

Published: __ So. 3d __, 2022 WL 1514672 (per curiam)

Date of Opinion: May 13, 2022

Date Rehearing Denied: June 28, 2022

Court of Appeal of Louisiana, Third Circuit

No. KW 20-00471

State of Louisiana v. Chrystal Clues-Alexander

Published: Not published, available at 2021 WL 1904881

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Date Rehearing Denied: May 12, 2021

Sixteenth Judicial District Court, Parish of St. Martin, Louisiana

No. 14247175

State of Louisiana v. Chrystal Clues-Alexander

Published: Not published

Date of Ruling: August 20, 2020

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PETITION FOR WRIT OF CERTIORARI

Petitioner Chrystal Clues-Alexander respectfully petitions for a writ of *certiorari* to review the judgment of the Supreme Court of Louisiana in this case.

OPINIONS BELOW

The five-to-two published opinion of the Supreme Court of Louisiana reversing the Court of Appeal's grant of relief to Petitioner will appear in the Southern Reporter (Third) and is presently available at 2022 WL 1514672. The unanimous grant of relief to Petitioner by the Louisiana Court of Appeal is unpublished.

STATEMENT OF JURISDICTION

The judgment of the Supreme Court of Louisiana issued on June 28, 2022, upon the denial of Petitioner's timely petition for rehearing in that court. This petition was timely filed on September 26, 2022. The Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION

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 of the State and district wherein the crime shall have been committed . . . .

INTRODUCTION

There is no dispute that Petitioner Chrystal Clues-Alexander is a victim of severe physical domestic violence. Neither is there any dispute that, after more than a decade of this documented abuse, Petitioner killed her husband. The only question of fact in this case is whether she did so in self-defense. The only question of law is whether this domestic violence victim deserves the opportunity to present that defense at a trial.

Louisiana juries are notoriously skeptical of self-defense claims based on battered woman syndrome and Louisiana attorneys are notoriously ineffective when it comes to the hard work necessary to prepare and present such a defense. *See, e.g., State v. Curley*, 250 So. 3d 236 (La. 2018). So, knowing that she could be convicted by an 11-1 or 10-2 jury at the time, Petitioner elected not to chance a trial. She pleaded guilty to manslaughter on April 20, 2018.

Before Petitioner was sentenced, this Court issued its opinion in *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020), restoring to Americans their constitutional right to conviction by only a unanimous jury. As this dramatically changed her calculus on going to trial, Petitioner timely moved to withdraw her guilty plea, arguing that she had not knowingly, intelligently, and voluntarily waived the right to a unanimous

jury. The trial court denied relief; the Court of Appeal reversed and permitted her to withdraw her plea. The Supreme Court of Louisiana, in a five-to-two *per curiam* opinion, reversed the Court of Appeal.

This Court should grant *certiorari* to address this issue not because of its large numerical impact—there are very few defendants left who pleaded guilty pre-*Ramos* but are still awaiting sentencing—but because of the importance of the doctrinal issue and its unsettled status in the other jurisdictions, Oregon and Puerto Rico, affected by *Ramos*. A plea made in reliance on a constitutional precedent so egregiously wrong as to justify departing from the principle of *stare decisis* is not a knowing or intelligent plea, even if it may have been voluntary. Any other approach would do violence to the ordinary meaning of those words. This Court's intervention to settle that issue is necessary to show that the Court's approach to precedent is consistent and fair, with jurisprudential winners given the full benefit of their wins as much as jurisprudential losers must suffer the full pains of their losses.

STATEMENT OF THE CASE

Chrystal Clues-Alexander began working for the St. Martin Parish Sheriff's Office in 1999 and has no criminal record. R. 1674.[1] Around the same time, she met Kendall Alexander, and they began an intimate relationship and married on April 8, 2008. R. 1679. Their relationship was extremely volatile, and from 2002 until 2013, there are numerous, documented instances of severe emotional and physical abuse perpetuated by Kendall.[2]

As outlined in Ms. Clues' voluntary testimony before the grand jury, in approximately September of 2013, she discovered Kendall was having an affair and asked for a divorce. R. 1685. For the next three months, Kendall "continued to be very hostile . . . the mental abuse, he killed one of my fish, began hiding my keys from

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[1] The record in this matter consists of 13 volumes and is cited as R.

[2] For example, in 2002, Ms. Clues' mother, Mary Williams, witnessed Kendall punch and kick Ms. Clues. R. 1521-22. In 2003, Ms. Clues' son, Jalen, witnessed Kendall hit Ms. Clues. R. 576. In 2005, Ms. Clues obtained a restraining order against Kendall after he choked and punched her. R. 1493-1512. From 2005 through 2007, the record contains 10 different incident reports in which Ms. Clues was the victim of physical and emotional abuse. R. 541-87. These instances include a 2007 event in which Kendall punched Ms. Clues in the face and a separate instance in which he threatened to break her jaw in the presence of a patrol commander. R. 548, 1601-02. The record also contains the testimonies of nine responding law enforcement officers, corroborating the events detailed in the police reports. R. 1569-1654.

me, hiding my vehicle, trashing my apartment on more than one occasion[.]" R. 1688. On December 23, 2013, a few days before the incident, Kendall sent threatening text messages to Ms. Clues and specifically wrote, "OK I will kill u before then real talk[.]" R. 1779, 1781.

On December 29, 2013, Kendall arrived at Ms. Clues' apartment before she woke up and they spent the day babysitting his cousin's child. R. 1687. After the child left in the evening, the only individuals in the apartment were Kendall and Ms. Clues.

Kendall became verbally hostile and asked Ms. Clues if she wanted to die and whether she wanted a divorce. R. 1687-88. As their argument escalated, Ms. Clues attempted to leave the house and Kendall grabbed her by the hair, pulled her through the apartment, and told her she was going to die. R. 1693. Ms. Clues testified that Kendall choked her, straddled her on the ground, and began to bang her head against a tile floor. R. 1695. Ms. Clues testified that she heard and saw Kendall cock one of his guns, point it at himself, and squeeze the trigger. R. 1696. He then pointed the empty gun at Ms. Clues and pulled the trigger again, telling her not to worry because he had enough ammunition to kill her and her son. R. 1697.

Ms. Clues testified that she blacked out and when she woke, she was alone on

the floor of her bedroom and Kendall was in the living room talking on the phone. R. 1697. Ms. Clues carefully grabbed her keys, armed herself with her state-issued handgun, and ran for the door to the outside. R. 1677-78, 1699. Kendall refused to let Ms. Clues leave, threw her into a recliner and began to hit and choke her. R. 1699-1701. Ms. Clues bit Kendall and was able to push him off and grab her gun. R. 1701. At which point she screamed for him to stop and he "continued to come towards me." R. 1701. Ms. Clues fired multiple rounds which struck and killed Kendall. According to the crime lab report, his clothing contained "copious amounts of gunpowder" which indicate the shots were fired from a range of 12 to 42 inches. R. 675.

On June 26, 2014, a grand jury in St. Martin Parish indicted Ms. Clues with one count of second-degree murder. R. 52. On December 7, 2016, counsel filed a notice of Ms. Clues' intent to assert a defense of justifiable homicide. R. 289.

On May 30, 2017, counsel for Ms. Clues filed a motion to declare Louisiana's majority verdict system unconstitutional. R. 331. On July 19, 2017, Ms. Clues was present in court as counsel presented the motion and requested a ruling from the court because "we think eventually that [Louisiana's majority verdict system] will be reversed . . . by the United States Supreme Court." R. 619. The court denied the

motion, finding Louisiana's majority verdict system "is not unconstitutional, although we are waiting for it to be changed." R. 620.

On January 29, 2018, Ms. Clues was present in court for a hearing on motions in limine and counsel informed the court that it would be filing another motion challenging Louisiana's majority verdict system as unconstitutional, on the belief that a United States Supreme Court ruling would be imminent. Counsel argued that if the Supreme Court were to decide a non-unanimous verdict "is unconstitutional, it has to be unanimous" the defense wanted the issue preserved. R. 1249. The court noted it would rule on the motion prior to trial but intended to follow the jurisprudence from the Louisiana Supreme Court. On February 6, 2018, counsel filed a written motion challenging Louisiana's majority verdict system and specifically noted the motion was "to preserve defendant's right of a unanimous jury." R. 1210.

On March 20, 2018, Ms. Clues was present for a hearing in which the court discussed the majority verdict system and noted it would deny the motion as premature, as Ms. Clues had yet to stand trial. R. 2751. The court further stated that even if the motion was not premature:

> I find that the case of State v. Bertrand has found that the 10/2 verdict as discussed in Article 782 is not unconstitutional and doesn't violate the fifth, sixth and fourteenth amendments as outlined by the

> United States Supreme Court. Therefore, I find that it's without merit. I overrule it.

R. 2751.

One month later, on April 20, 2018, Ms. Clues pled guilty to manslaughter and faced a sentence of up to 40 years at hard labor. R. 26. Prior to accepting her plea, the trial court informed Ms. Clues of her constitutional rights and specifically stated, "You have the right to a jury trial. Do you understand the right to a trial?" R. 2711. In response, Ms. Clues answered affirmatively.

On July 12, 2018, counsel for Ms. Clues filed a motion to recuse the trial court and the matter was referred to a different section of court. The district court initially ordered the recusal of the trial court, and the State filed a writ, which was denied by the Third Circuit and granted by the Louisiana Supreme Court on February 10, 2020. *State v. Clues-Alexander*, 289 So.3d 47 (La. 2020). While the recusation issue was pending, Ms. Clues' sentencing was stayed.

On April 20, 2020, this Court held that Louisiana's majority verdict system was contrary to the fundamental right to a trial by jury. *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020) (plurality opinion). Following the *Ramos* decision, Ms. Clues filed a motion to withdraw her guilty plea and requested to proceed to trial on her original

charge of second-degree murder. R. 2856.

On August 20, 2020, a hearing on Ms. Clues' motion to withdraw plea occurred in which she testified that a "driving force" behind her decision to plead guilty to manslaughter was the knowledge that she could be convicted by a 10-2 or 11-1 verdict. R. 2874. Ms. Clues stated that she knew "under Louisiana law, I could get convicted of second-degree murder or manslaughter with a non-unanimous jury." R. 2871. Ms. Clues testified "with a non-unanimous jury ten or eleven jury members might not understand my case going forward as a victim of domestic violence. They might not understand the issues." R. 2872. Ms. Clues further stated she was present in court one month before her plea and heard the court deny her request for a unanimous jury. R. 2875. When asked whether she understood her right to a jury trial during her plea, Ms. Clues testified that she understood the right to a jury trial "was a non-unanimous jury. That I could be convicted by ten or eleven jury members." R. 2875.

Following Ms. Clues' testimony, the court noted that the plea transcript was "perfect" because the court did not disclose how many votes were needed to convict. R. 2888. The court denied the motion, finding that Ms. Clues' guilty plea "waived any defect in the proceedings." R. 2897. The court also found that Ms. Clues'

unqualified guilty plea did not reserve her right to appeal the issue. R. 2897.

The defense filed a timely writ application and on November 16, 2020, a unanimous panel of the Third Circuit Court of Appeal granted the writ and held the trial court's refusal to permit Ms. Clues to withdraw her plea was an abuse of discretion. R. 2947-48. The court held the issue was not whether Ms. Clues' guilty plea had waived a pre-plea defect, but rather the *Ramos* decision altered the right to a trial by jury, which meant the "trial court's advisement of the right to trial by jury [in 2018] was incorrect based on everyone's understanding of what a trial by jury meant." R. 2948.

The State filed a request for rehearing, which the Third Circuit unanimously denied on May 12, 2021. R. 2970. Thereafter, the State petitioned for certiorari from the Louisiana Supreme Court, which granted writs and, in a per curiam opinion, reversed the Third Circuit over the dissent of two of the seven justices. Without squarely addressing the state-law-based abuse-of-discretion argument Ms. Clues raised, the Louisiana Supreme Court held on May 13, 2022, that her waiver of the right to trial by jury was knowing, intelligent, and voluntary as required by *Boykin v. Alabama*, 395 U.S. 238 (1969). On that federal constitutional basis, it reversed the Court of Appeal and refused to allow Ms. Clues to withdraw her guilty plea and to

proceed to trial.

Ms. Clues timely petitioned for rehearing, urging the Louisiana Supreme Court to address the actual basis of the Court of Appeal's opinion, the state-law issue of abuse of discretion, which is not at issue in this petition. That court denied rehearing, again by a vote of five-to-two, on June 28, 2022. This timely petition limited to the federal constitutional issue of the knowingness, intelligence, and voluntariness of her guilty plea based on an erroneous understanding of the Sixth Amendment's Jury Clause follows.

REASONS FOR GRANTING THE PETITION

I. The state courts of Louisiana, Oregon, and Puerto Rico deserve guidance on this issue.

While the opinion below conclusively resolves this issue in Louisiana, Oregon cases have addressed only whether it is *plain error* for a trial court to refuse to permit a defendant to withdraw a guilty plea in light of *Ramos*. *State v. Austin*, 501 P.3d 1136, 1138 (Or. App. Ct. 2021), *review denied*, 369 Or. 675, 508 P.3d 502 (2022) (deciding issue whether *Ramos* vitiated knowing waiver but "[r]eiterating that the issue is before us in a plain-error posture"); *State v. Gomez*, 485 P.3d 314, 314-15 (Or. App. Ct. 2021) (rejecting claim that plea was involuntary based on insufficiency of

record to decide issue). Counsel has not found a case from the Article IV courts of Puerto Rico addressing this issue. The question Petitioner presents is one of federal law, occurring as a direct consequence of this Court's ruling on a matter of federal law, and only one of the three affected jurisdictions has squarely and authoritatively decided the issue. This Court's intervention is therefore necessary and appropriate.

II. The federal courts face an analogous issue with frequency and are in conflict.

It is not simply changes in constitutional law that call into question the enforceability of a pre-sentence plea, although that occurs more frequently than one might imagine. *E.g., United States v. Martinez*, 277 F.3d 517, 530 (4th Cir. 2002) (analyzing withdrawal of guilty plea after *Apprendi v. New Jersey*, 530 U.S. 466 (2000), removed the possibility of a mandatory minimum sentence). Changes to statutory law, which are not uncommon in the federal system, present a similar question. Consider the Fair Sentencing Act of 2010. After its enactment and clarification by this Court in *Dorsey v. United States*, 567 U.S. 260 (2012), the Courts of Appeal recognized that defendants erroneously advised of the pre-FSA sentencing range as part of the plea process had pleas that were made without a knowing, intelligent, and voluntary waiver. *E.g., United States v. Hughes*, 726 F.3d 656, 661-

62 (5th Cir. 2013) (denying relief, however, on plain error review); *see United States v. Barrow*, 557 F. App'x 362, 366 n.14 (5th Cir. 2014) (collecting cases). Yet some of the same courts held that the passage of the First Step Act of 2018 did not have the same consequence for guilty pleas. *E.g.*, *United States v. Hardy*, 838 F. App'x 68 (5th Cir. 2020). Further, there are broad statements floating in the law of many circuits to the effect that no favorable change in law post-plea can ever render the plea unknowing or involuntary. *United States v. Cortez-Arias*, 425 F.3d 547, 548 (9th Cir. 2005) ("[A] favorable change in the law does not entitle a defendant to renege on a knowing and voluntary guilty plea."); *United States v. Morgan*, 406 F.3d 135, 137 (2d Cir. 2005) ("[T]he possibility of a favorable change in the law after a plea is simply one of the risks that accompanies pleas and plea agreements."); *United States v. Bradley*, 400 F.3d 459, 463-64 (6th Cir. 2005) ("[W]here developments in the law later expand a right that a defendant has waived in a plea agreement, the change in law does not suddenly make the plea involuntary or unknowing or otherwise undo its binding nature. A valid plea agreement, after all, requires knowledge of existing rights, not clairvoyance.").

The question whether any favorable change in law can ever render a guilty plea invalid does not have a clear answer from this Court. While Louisiana, Oregon,

and Puerto Rico could benefit from a ruling on this issue in this specific context, all states and all federal courts could benefit from clarity on the more general issue. Should pre-sentence defendants be held to the terms of plea deals that they would never have taken just a month, or even a day, before?

III. The Supreme Court of Louisiana has decided an important question of federal law wrongly in a case that presents an excellent vehicle for decision.

"[A] plea of guilty is more than an admission of conduct; it is a conviction. Ignorance, incomprehension, coercion, terror, inducements, subtle or blatant threats might be a perfect cover-up of unconstitutionality." *Boykin v. Alabama*, 395 U.S. 238, 242-43 (1965) (emphasis added). "Moreover, because a guilty plea is an admission of all the elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts." *McCarthy v. United States*, 394 U.S. 459, 466 (1969).

Louisiana's majority verdict system was implemented in 1898 and provided for non-unanimous verdicts in non-capital cases in which the "punishment is necessarily confinement at hard labor[.]" See La. Const. Art. 1, § 17(A); *Ramos v. Louisiana*, 140 S.Ct. 1390, 1394 (2020). Louisiana and Oregon were formerly the only states that allowed convictions based on non-unanimous jury verdicts. These systems were

upheld as constitutional in *Apodaca v. Oregon*, 406 U.S. 404 (1972), and *Johnson v. Louisiana*, 406 U.S. 356 (1972). *Apodaca*'s plurality opinion concluded that while the Sixth Amendment of the Federal Constitution requires jury unanimity for a verdict, this did not apply to States because the right was not incorporated via the Fourteenth Amendment's Due Process Clause. *Id.* at 406.

When Petitioner pled guilty on April 20, 2018, she was fully aware that the right to a jury trial in Louisiana meant that she could be convicted of murder or manslaughter by 10 or 11 jurors. Despite the trial court's assertion that the record was "perfect" because the court informed her of a right to a jury trial without stating the numbers of jurors needed to convict, the Court of Appeal found that argument specious. R. 2948. As indicated by the record, counsel filed two different motions attacking Louisiana's majority verdict system and argued these motions on three different court appearances. R. 331, 1210, 10, 19, 23. The number of jurors needed to convict Petitioner was repeatedly mentioned in open court, in her presence, with the final hearing occurring one month prior to her plea, in which the court stated that non-unanimous verdicts were found constitutional by this Court.

At the hearing on the motion to withdraw plea, Petitioner testified that she met with her attorneys prior to pleading guilty and the majority verdict system was

discussed at length and became a "driving force" for her to plead guilty. R. 2874. "[W]ith a non-unanimous jury ten or eleven jury members might not understand my case going forward as a victim of domestic violence. They might not understand the issues." R. 2872. Petitioner also testified that she was in court one month prior to her plea and heard the court state that a non-unanimous verdict was constitutional for a conviction. R. 2875.

Given the multiple court hearings in which Louisiana's majority verdict system was discussed, and Petitioner's testimony at the motion to withdraw plea hearing, the Louisiana Court of Appeal correctly concluded that the 2018 plea colloquy in which Petitioner was advised of her right to a jury trial "was absolutely an advisement that Defendant could be convicted by a vote of 10-2 or 11-1." R. 2848.

As Petitioner has yet to be sentenced, her conviction is not yet final, and she is entitled to the benefit of a new rule of criminal procedure. *See Griffin v. Kentucky*, 479 U.S. 314 (1987) ("A new rule for the conduct of criminal prosecutions…applies retroactively to all cases…pending on direct review or not yet final, with no exception for cases in which the new rule constitutes a 'clear break' with the past."). Moreover, had Petitioner not pled guilty, been convicted by a less-than-unanimous verdict, and that conviction pending on direct appeal at the time this Court decided *Ramos,* she

would have without question been afforded a new trial in which she could only be convicted by a unanimous verdict.

There are only three constitutional rights which must be knowingly, intelligently, and voluntarily waived under *Boykin*: the right to a jury trial, the privilege against self-incrimination, and the right to confront one's accusers. *Boykin v. Alabama*, 395 U.S. 238, 243 (1965). This limits the universe of issues that, as a constitutional matter, can affect the validity of a guilty plea. Petitioner was repeatedly told that her right to a jury trial meant a right to conviction by a non-unanimous jury. This radical misinterpretation of the Sixth Amendment, so radical as to eventually require departure from the principles of *stare decisis*, fundamentally changed the nature of the right about which Petitioner was advised.

"Knowing" means "Having or showing awareness or understanding; well-informed <a knowing waiver of the right to counsel>." Black's Law Dictionary (11th ed. 2019). "Intelligent" means "revealing or reflecting good judgment or sound thought." Merriam-Webster, Merriam-Webster.com Dictionary, *available at* https://www.merriam-webster.com/dictionary/intelligent (last accessed Sept. 25, 2022). If the law exists apart from individual desires or opinions, if it reflects an objective truth ascertainable through the application of a methodology, then the Sixth

Amendment at the time Petitioner pled guilty meant the same thing it always has: Americans enjoy the right to freedom from criminal conviction except upon conviction by a unanimous jury, in addition to other rights. *Ramos* retrieved this truth from history; it did not invent it. At the time she pleaded, therefore, Petitioner was thoroughly—indeed, by her own trial judge, at least three times—misinformed about the nature of the right to trial by jury. Her decision to waive that right therefore did not reflect "awareness" or "understanding" or the right to trial by jury, and to accept the trial court's misstatement of the law did not reflect "good judgment" or "sound thought."

Petitioner's plea was not knowing or intelligent and she should therefore be permitted to withdraw it and proceed to trial. The clarity of the record established at the evidentiary hearing in this case makes it an ideal vehicle for addressing this issue.

CONCLUSION

Chrystal Clues-Alexander shot her husband after enduring over a decade of physical and emotional abuse. In 2018, she waived her right to trial because she was afraid a non-unanimous jury would not understand that she was a battered woman and would convict her of murder or manslaughter. The law has changed and now

requires a unanimous verdict to convict Petitioner. As such, her 2018 waiver of her right to a jury trial was based on ignorance of the law and was therefore unknowing and unintelligent. The Louisiana Court of Appeal correctly held that Petitioner should have been permitted to withdraw her plea, assume all future risks, and proceed to trial. The Supreme Court of Louisiana's non-unanimous reversal of that ruling was error. Petitioner respectfully prays that a writ of *certiorari* issue and, after due proceedings, the judgment of the Supreme Court of Louisiana be reversed.

Respectfully submitted:

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