No. 22-718

In The

Supreme Court of the United States

STATE OF LOUISIANA,

Petitioner,

v.

JAMAAL EDWARDS,

Respondent.

On Petition For Writ Of Certiorari To The Louisiana Supreme Court

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND BRIEF FOR *AMICUS CURIAE* THE LOUISIANA DISTRICT ATTORNEYS ASSOCIATION IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITIONER

NOW INTO COURT, come the District Attorneys of the State of Louisiana, through their undersigned counsel, Executive Director of the Louisiana District Attorneys Association ("LDAA"), who respectfully move and request permission to file a brief as *Amicus Curiae* in Support of the Petitioner, the State of Louisiana, in the above-captioned matter. The filing of this motion is necessary because counsel did not timely notify Respondent of its intent to file the *amicus* brief.

The mission of the LDAA is to improve Louisiana's justice system and the offices of the District Attorneys by enhancing the effectiveness and professionalism of Louisiana's district attorneys and their staffs through education, legislative involvement, liaison, and information sharing. LDAA is a Louisiana non-profit corporation which includes as its members all of the district attorneys and assistant district attorneys in the State of Louisiana. One such member, the Twenty-fourth District Attorney's Office, specifically, the Parish of Jefferson, has requested that the LDAA file an *Amicus Curiae* brief in these proceedings in support of State of Louisiana's position on this matter, which the LDAA Executive Board thereafter authorized. The resolution of the issues at hand could have far-reaching effects throughout the State of Louisiana. Movant believes that permission to enter as *Amicus Curiae* is necessary to fully articulate and emphasize the vital statewide prosecutorial interests this case represents. Mover further certifies that prior to filing said brief that he will

comply with the mandates set forth in the Rules of this Court relative to *Amicus Curiae*, including review of all parties' briefs.

Respectfully submitted,

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To the Honorable Justices of the United States Supreme Court:[1]

INTEREST OF THE *AMICUS CURIAE*

The Louisiana District Attorneys Association ("LDAA") is a Louisiana non-profit corporation which includes as members all of the District Attorneys and assistant district attorneys in the State of Louisiana.[2] One such member is the Honorable Paul D. Connick, the District Attorney of Jefferson Parish. This member requested that the LDAA file an *Amicus Curiae* brief in these proceedings to support his position on this matter. This action was approved and authorized by the LDAA Board of Directors.

The LDAA focuses on all aspects of law pertaining to Louisiana's criminal justice system, including but not limited to the Office of the District Attorney.[3] A

[1] Rule 37.6 Disclosure—No counsel for any party authored this brief in whole or in part, and no person or entity other than *amicus* and their counsel funded its preparation or submission. Undersigned counsel contributed in part to the instant filing along with Assistant District Attorney W. Claire Howington, LDAA member and commissioned assistant district attorney from the 16th Judicial District of Louisiana. Counsel notes it did not timely notify the Respondent of its intent to file the instant *amicus* brief and prays that such delay is not fatal.

[2] As of the date of the instant filing, all 42 elected District Attorneys and the 700-plus assistants are LDAA members.

[3] The mission of the LDAA is to improve Louisiana's justice system and the office of District Attorney by enhancing the effectiveness and professionalism of Louisiana's district attorneys and

substantial facet of that focus involves the continued dialogue between mental health systems and the criminal justice system. The instant matter will have wide-ranging implications for prosecutors across the nation. As detailed within the Petitioner's brief, there is a strong argument that the conduct of the respondent represents an abuse of the existing structure established by *Foucha v. Louisiana*. This abuse is not limited to the party-respondent as a unique situation. Rather, the lacuna created by the plurality opinion of *Foucha* allows for the abuse represented by Edward's conduct to continue: a dangerous person legally adjudicated not guilty by reason of insanity to be later referred for discharge after a medical diagnosis concludes that he was never insane. Despite ample evidence this type of party presents a danger to the public, the constraints of *Foucha* prevent his continued confinement.

This *amicus curiae* brief is presented to this Honorable Court for consideration to support the Petitioner and highlight the substantial impact the existing jurisprudential framework has upon the 42 members of the LDAA. The dire implications to public safety represented in the instant case are not novel. This is clearly within the mission statement of this Organization. A clear and concise opinion reconciling the issues which have accrued during the 30-year period since the *Foucha* opinion was rendered would also allow for a more consistent administration of justice. Based on the above-described representations, the

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their staffs through education, legislative involvement, liaison, and information sharing.

LDAA respectfully asserts that it has the requisite interest for the instant filing.

SUMMARY OF THE ARGUMENT

More than 30 years ago, this Court rendered a split decision in *Foucha v. Louisiana*, 504 U.S. 71, 112 S. Ct. 1780 (1992). As relevant herein, *Foucha* has generally been understood to stand for the proposition that Due Process prohibits a state from continuing to involuntarily commit an individual who was found not guilty by reason of insanity unless that individual is both mentally ill and dangerous. As noted by the Louisiana Supreme Court, Louisiana's current statutory scheme was enacted to comply with this Court's decision in *Foucha*.

As a result of that decision, our legal system is equipped to address those individuals committed to a psychiatric institution after a not guilty by reason of insanity verdict who remain both mentally ill and dangerous as well as those individuals who are mentally ill but no longer dangerous. However, those individuals who are dangerous but not mentally ill pose a unique threat to public safety. Thus, individuals like Jamaal Edwards who have been diagnosed with a personality disorder—and are thus not considered to be mentally ill—but whose "potential for future violence is clear and apparent" must be released with little regard for public safety.

Foucha attempts to resolve the legitimate issues about the balance between the need for public safety and the penological goals of incapacitation and rehabilitation with an insanity acquittee's liberty interests. This Court should reconsider its judgment in *Foucha* with regard to constraining the States' ability to define "mental illness" for purposes of the continued commitment of insanity acquittees and with regard to whether a state may continue to confine an insanity acquittee who is no longer mentally ill but is demonstrably dangerous. As eloquently discussed by both members of this Court as well as the Louisiana Supreme Court and the Louisiana Fifth Circuit Court of Appeal, without those constraints, it is possible to narrowly tailor the continued commitment of insanity acquittees who are no longer mentally ill but who are demonstrably dangerous to comport with the requirements of Due Process.

ARGUMENT

As a Result of the Constraints Required by *Foucha*, Uniquely Dangerous Individuals Must Be Released with Inadequate Supervision and Little Regard for Public Safety

In April of 1996, Anthony Montwheeler armed himself with a rifle and held his then-wife and their three-year-old son hostage for approximately five hours. Montwheeler not only threatened to kill his family but fired the rifle at responding police officers. *Harmon v. Psych. Sec. Rev. Bd.*, 514 P.3d 1131 (Or. Ct.

App. 2022). Montwheeler was criminally charged but was eventually found "guilty except insane" and placed in an Oregon state mental facility.

Although Montwheeler had been initially diagnosed with bipolar disorder, it eventually came to light that Montwheeler's attorney had "g[iven] him a copy of the DSM and coached him well on how to act as if he had a mental illness." *Id*. at 1139. Psychiatric professionals eventually concluded that Montwheeler had a personality disorder but not a mental illness. A mandated risk review concluded that Montwheeler would engage in substantially dangerous behavior if released without supervision and expressed specific concern about the risk of violence to Montwheeler's intimate partner or other family members. However, because Montwheeler no longer suffered from a qualifying mental disorder, he was ordered discharged from the Oregon state mental facility in December of 2016.

Less than a month later, he kidnapped his ex-wife, Annita Harmon, and stabbed her to death. While fleeing from that crime, Montwheeler swerved into oncoming traffic and collided head-on with an SUV, killing David Bates and seriously injuring his wife, Jessica Bates. *Id*.; Jayme Fraser, *He Said He Faked Mental Illness to Avoid Prison. Now, Accused in 2 Killings, He's Sent Back to a State Hospital*, The Malheur Enterprise (Sept. 24, 2018), https://www.propublica.org/article/anthony-montwheeler-sent-back-to-hospital.

Like Montwheeler, the respondent in this case, Jamaal Edwards, was released from the Louisiana state

mental hospital because, although dangerous, his antisocial personality disorder does not qualify as a treatable "mental illness" that would justify his continued detention. Edwards murdered his girlfriend, Tracy Nguyen, but was subsequently found not guilty by reason of insanity and committed to the state mental hospital. Also, like Montwheeler, Edwards has not shown any symptoms of a treatable mental illness since his initial commitment. It has become clear that Edwards does not have a treatable "mental illness" but instead has antisocial personality disorder. The haunting similarities between Edwards and Montwheeler call for decisive action to close a volatile loophole in how criminally insane acquittees are addressed.

Concerning Edwards' dangerousness, Edwards "has a documented history of 'multiple violent attacks . . . on other patients and hospital staff as well as sexually aggressive behavior toward female staff.'" *State v. Edwards*, 22-983 (La. 11/1/22), 348 So.3d 1269, 1270. The Louisiana Supreme Court found that

> Respondent's potential for future violence is clear and apparent. His antisocial personality disorder in conjunction with his persistent substance abuse is a recipe for almost certain disaster. However, his diagnosis, according to expert testimony presented here, does not constitute a treatable mental illness that would justify his continued involuntary inpatient hospitalization under existing law.

Id. As the Louisiana Supreme Court observed, Louisiana's law was enacted to implement the directives of this Court in *Foucha*.

When individuals are found not guilty by reason of insanity, this Court's jurisprudence permits the state to commit that individual to a mental institution until "he has recovered his sanity or is no longer dangerous[.]" *Jones v. United States*, 463 U.S. 354, 368, 103 S. Ct. 3043, 3052 (1983). This approach is well equipped to address when an insanity acquittee remains both mentally ill and dangerous or when an insanity acquittee is mentally ill but no longer dangerous. While these are only two examples, the LDAA respectfully submits that the *Foucha* approach fails for uniquely dangerous individuals like Anthony Montwheeler and Jamaal Edwards who are no longer "mentally ill" but are demonstrably dangerous.

This Court Should Revisit *Foucha* to Address the Resulting Public Safety Concerns

In *Foucha*, this Court addressed several issues related to individuals who were charged with criminal offenses and found not guilty by reason of insanity. As relevant here, one of those issues was the criteria for the continued commitment of insanity acquittees in a state mental institution. In a plurality opinion, this Court held that an insanity acquittee may be committed to a mental institution so long as he remains both mentally ill and dangerous. *Foucha*, 504 U.S. at 78. The majority concluded that Due Process requires that

involuntary commitment must end if the individual is no longer mentally ill. Further, this Court expressed concern that detention based on a personality disorder, "a disorder for which there is no effective treatment" might result in the indefinite detention of "any other insanity acquittee not mentally ill who could be shown to have a personality disorder that may lead to criminal conduct." *Id*. at 82.

While *Foucha* addressed legitimate concerns about the intersection between the state's interest in public safety and an insanity acquittee's liberty interest, the LDAA urges this Court to revisit *Foucha* because of the exceptional risk that individuals such as Anthony Montwheeler and Jamaal Edwards pose to public safety.

Foucha **Interferes with the States' Traditional Role in Defining the Relationship Between Mental Illness and Criminal Culpability**

As foreshadowed by Justice Kennedy's dissent, one of the consequences of the Court's decision in *Foucha* is that it has constrained the States from exercising their traditional roles in determining policy and defining the contours of mental illness *vis-à-vis* criminal responsibility. As previously mentioned, Louisiana's current statutory scheme for the commitment of individuals found not guilty by reason of insanity was enacted to comply with this Court's decision in *Foucha*. This is at least in part because of language in the *Foucha* decision that suggests that personality

disorders should not be treated as mental illnesses but instead as dangerous character traits. *Foucha*, 504 U.S. at 80. Thus, in Louisiana—like other states—personality disorders such as antisocial personality disorder are not considered "mental illness."

However, as Justice Kennedy noted in his dissent in *Foucha*, there are "profound differences between clinical insanity and state-law definitions of criminal insanity[.]" *Foucha*, 504 U.S. at 96 (Kennedy, J., dissenting). Thus, the jurisprudence in other states—such as California and Hawai'i—suggest that those states have sidestepped the issue by finding that diagnoses such as antisocial personality disorder or paraphilias such as sexual sadism can qualify as a "mental illness" for purposes of continued commitment. *See*, *e.g.*, *People v. Sup. Ct. (Blakely)*, 60 Cal. App. 4th 202, 70 Cal. Rptr. 2d 388 (Cal. Ct. App. 1997) (whether personality disorder was a mental illness is question of fact); *State v. Miller*, 933 P.2d 606, 615 (Haw. 1997) (sexual sadism was mental illness justifying continued detention of insanity acquittee). It is unclear to *amicus* whether such a legal fiction comports with either the letter or the spirit of *Foucha*. Further there may be consternation in legislative expansion of the definition of "mental illness" regarding continued commitment. Any legislative adjustments may inadvertently affect the scope of not-guilty by reason of insanity defenses. Thus, legislative remedies may not fully address the issue faced by Louisiana courts regarding *Foucha*. At minimum, Louisiana's reliance on this Court's pronouncement in

Foucha has constrained Louisiana from addressing that issue.

Thus, not only is *Foucha* applied inconsistently among the States, the LDAA suggests that the Court's language in *Foucha* interferes with the States' traditional roles in defining mental illness itself as well as the balance between mental illness and criminal culpability. The LDAA also notes that *Foucha* restricts the legitimate penological goals of incapacitation and rehabilitation. This Court recently reiterated that the States have a "paramount role" in setting "standards of criminal responsibility" and in defining the contours of legal insanity. *Kahler v. Kansas*, ___ U.S. ___, 140 S. Ct. 1021, 1029 (2020). The LDAA submits that the States should also retain that role in determining what constitutes continuing mental illness for those individuals who have been found not guilty by reason of insanity. Thus, to the extent that this Court's decision in *Foucha* has constrained the various States to exclude certain diagnoses from the definition of mental illness, the LDAA respectfully requests that this Court revisit *Foucha* and clarify that issue.

Pursuing Traditional Criminal Remedies Against Individuals Such as Respondent Face Significant Practical and Procedural Hurdles

Both this Court and the Louisiana Supreme Court have both questioned why the State's "interest would not be vindicated by the ordinary criminal processes involving charge and conviction," rather than

continued commitment. The LDAA notes that, assuming that an insanity acquittee commits violent acts or sexual violence against other patients or staff while in an inpatient mental facility, there is an initial difficulty in determining which incidents are related to mental illness and which are criminal acts. Related to that difficulty, as a matter of clinical judgment, incidents involving in-patient psychiatric patients may not always be reported to law enforcement.[4] Further, even if an incident is reported to law enforcement, practical considerations limit the ability of the state to pursue traditional criminal processes. For instance, prosecution is limited by both statutory and constitutional speedy trial limitations—both for the institution of prosecution and limitations on trial—limitations which become increasingly complex when the offender and witnesses and/or victims are inpatient psychiatric patients. Similarly, the feasibility of imposing penal sentences on defendants who are committed to the custody of an inpatient mental institution limits the ability of the prosecuting authority to effectively pursue traditional criminal remedies.

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[4] The Bureau of Labor Statistics reported in 2018 that psychiatric and substance abuse hospitals had an almost ten-fold increase in violence against hospital employees compared to other healthcare settings. United States Bureau of Labor Statistics, Fact Sheet—Workplace Violence in Healthcare, 2018, https://www.bls.gov/iif/factsheets/workplace-violence-healthcare-2018.htm.

The Road Map for Crafting a Narrowly Tailored Solution Has Already Been Drawn; Revisiting *Foucha*'s Limitation on Continued Confinement Would Enable Louisiana to Pursue those Solutions

As previously mentioned, *Foucha* attempts to resolve the legitimate issues about the balance between the need for public safety and an insanity acquittee's liberty interests. This Court should reconsider its judgment in *Foucha* with regard to whether continued commitment of insanity acquittees requires that they be both dangerous and mentally ill. As Justice O'Connor noted in her concurrence, it may be permissible to confine an insanity acquittee who has regained sanity if the nature and duration of the detention were tailored to reflect pressing public safety concerns. *Foucha*, 504 U.S. at 87-88 (O'Connor, J., concurring). Both the Court and Justice O'Connor individually *Foucha* expressed concern that an insanity acquittee who is no longer mentally ill may suffer from "indefinite detention." *Id.* at 83. But, as Justice Thomas observed in his dissent, when *Foucha* was decided, Louisiana provided opportunities for insanity acquittees to obtain release and for judicial review of those decisions. That has not changed—Louisiana currently provides insanity acquittees with the opportunity for annual review of their commitment. *E.g.* La.Code Crim.P. art. 655.

To that point, if this Court reconsiders the limitations on detention of demonstrably dangerous insanity acquittees, options exist for narrowly tailored solutions that would address the concerns raised by the Court in

Foucha and by Justice O'Connor in her concurrence. As the Louisiana Supreme Court observed in the proceedings below

> Judge Molaison, concurring in the court of appeal, is critical of the *Foucha* decision, and proposes that a legislative solution is needed to address the troubling situation presented here. Judge Wicker, also concurring in the court of appeal, offers a potential legislative roadmap. Judge Wicker reviewed legislation from several jurisdictions that had narrowly tailored enactments, within the parameters set by the United States Supreme Court in *Foucha*, designed to allow a limited form of continued confinement under certain circumstances when there is a substantial likelihood a person, if released, will commit criminal acts jeopardizing public safety, or will present a reasonably foreseeable danger to self or the community. We join Judges Wicker and Molaison in urging the Legislature to examine the concerning situation presented here and carefully craft a legislative solution to better protect the public.

Edwards, 348 So.3d at 1272-73. The LDAA also urges the Court to revisit *Foucha* to address the risk that

these uniquely dangerous individuals pose to public safety.

CONCLUSION

For the foregoing reasons the Court should grant the petition for writ of certiorari.

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