No. 22-____

IN THE
Supreme Court of the United States

NATHANIEL LAMBERT,

Petitioner,

v.

LOUISIANA,

Respondent.

On Petition for a Writ of Certiorari to the Louisiana Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Respondent and Louisiana courts delayed *eighteen years* before sentencing petitioner on two criminal convictions. It is undisputed this delay prevented petitioner from pursuing a GED, enrolling in vocational programs, and participating in other rehabilitative programs. The first question presented, left open by this Court in *Betterman v. Montana*, 578 U.S. 437, 448 & n.12 (2016), is:

   > What test applies to excessive sentencing delay claims under the Due Process Clause, including whether prejudice is required and what prejudice counts?

2. On remand from this Court, Louisiana courts recognized that petitioner's conviction for aggravated burglary was imposed by a non-unanimous jury, but rejected relief under *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020). That holding was based on the conclusion that a defendant's conviction as to one count becomes "final as of defendant's first appeal" even if that first appeal resulted in a remand on other counts. This outlier position requires defendants to petition this Court as to individual counts rather than wait for resolution of all counts, in contravention of this Court's general policy against piecemeal review. The second question is:

   > Whether, in a prosecution under a multi-count indictment on a common set of facts, the judgment becomes final for purposes of *Griffith v. Kentucky*, 479 U.S. 314 (1987), when all counts are resolved, or whether defendants on direct appeal are required to seek certiorari from each count when other counts remain unresolved?

RELATED PROCEEDINGS

The following is a list of prior proceedings related to this case, all of which have completed**:**

State of Louisiana v. Nathaniel Lambert, Louisiana Supreme Court, No. 2022-K-00109, reported at 336 So. 3d 899 (La. 2022). Order denying review entered Apr. 26, 2022.

State of Louisiana v. Nathaniel Lambert, Louisiana Fourth Circuit Court of Appeal, No. 2018-KA-0777 c/w No. 2018-KA-1024, not reported. Opinion filed Dec. 15, 2021.

Nathaniel Lambert v. State of Louisiana, Supreme Court of the United States, No. 19-8149, reported at 141 S. Ct. 225 (2020). Order granting certiorari, vacating judgment, remanding entered Oct. 5, 2020.

State of Louisiana v. Nathaniel Lambert, Louisiana Supreme Court, No. 2019-KH-00736, reported at 291 So. 3d 1043 (La. 2020). Order denying review entered Jan 22, 2020.

State of Louisiana v. Nathaniel Lambert, Louisiana Fourth Circuit Court of Appeal, No. 2018-KA-0777 c/w NO. 2018-K-1024, reported at 267 So. 3d 648 (La. App. 4 Cir. 2019). Opinion entered March 27, 2019.

State of Louisiana v. Nathaniel Lambert, Louisiana Supreme Court, No. 2000-KH-1346, reported at 781 So. 2d 1258 (La. 2001). Order denying review entered Jan 26, 2001.

State of Louisiana v. Nathaniel Lambert, Louisiana Fourth Circuit Court of Appeal, No. 98-KA-0730, reported at 749 So. 2d 739 (La. App. 4 Cir. 1999). Opinion affirming convictions, vacating sentences in part filed Nov. 17, 1999.

State of Louisiana v. Nathaniel Lambert, Orleans Parish Criminal District Court, No. 387-752, not reported. Judgment entered Aug. 11, 1997.

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Nathaniel Lambert petitions for certiorari to review the judgment of the Louisiana Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The Fourth Circuit's opinion on remand from this Court (Pet. App. 2a-8a) is not yet published but available at 2021 WL 7162225. The Supreme Court of Louisiana's order denying review of that decision (Pet. App. 1a) is reported at 336 So. 3d 899.

The Fourth Circuit's decision concerning petitioner's excessive sentencing delay claim (Pet. App. 11a-23a) is reported at 267 So. 3d 648. The Supreme Court of Louisiana's order denying review of that decision (Pet. App. 10a) is reported at 291 So. 3d 1043. This Court's order granting, vacating, and remanding this case is reported at 141 S. Ct. 225. Pet. App. 9a.

JURISDICTION

The Louisiana Court of Appeals for the Fourth Circuit entered its judgment on December 15, 2021. The Supreme Court of Louisiana denied review on April 26, 2022. This Court has jurisdiction pursuant to 28 U.S.C. §1257(a).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment provides, in relevant part, that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, §1.

28 U.S. Code §1257(a) provides:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

INTRODUCTION

On November 17, 1999, the Louisiana Court of Appeals for the Fourth Circuit vacated two of petitioner's sentences and remanded his case for resentencing. That resentencing did not take place until April 3, 2018—*more than eighteen years later*. As the court below accepted and respondent has never disputed, this gross delay precluded petitioner from obtaining access to basic education, including preventing him from pursuing a GED and enrolling in vocational programs, as well as other rehabilitative programs. For almost two decades, Louisiana denied petitioner opportunities to learn and live a productive life in prison, likely prejudicing his ability to seek clemency.

In the proceedings below, petitioner challenged this excessive sentencing delay as a violation of due process. *See Betterman v. Montana*, 578 U.S. 437, 448 (2016) (recognizing that such a claim is properly asserted under the Due Process Clause). In conflict with three federal circuits and joining two others, Louisiana courts held that prejudice was an essential element of this claim. And in conflict with all of those courts, the court below held that the serious and direct impact on petitioner's life "do[es] not constitute prejudice as contemplated by" the Due Process Clause. The Court should grant certiorari to resolve the conflict and clarify the appropriate test.

The second question concerns an important procedural question that has major implications for criminal defendants and for this Court's certiorari docket.

In 2020, the Court GVR'd this case for further consideration based on *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020) (recognizing the constitutional right to a

unanimous jury verdict). On remand, without discussing or even citing any of this Court's controlling precedents, the court below held that *Ramos* did not apply to petitioner's conviction for aggravated burglary because it became "final as of defendant's first appeal" even though, in that appeal, Louisiana had remanded as to the other two counts against him. In other words, even though this Court has a "general prohibition against piecemeal appellate review," *United States v. MacDonald*, 435 U.S. 850, 854 (1978), the Louisiana courts would require criminal defendants to ask this Court to review each count in a multi-count indictment separately rather than raise all properly preserved federal claims in a single petition from the final judgment. The Court should grant certiorari to correct this problematic rule, which blatantly conflicts with this Court's own jurisprudence.

STATEMENT OF THE CASE

1. In 1997, petitioner was charged with aggravated rape, aggravated burglary, and aggravated crime against nature after a woman accused him of breaking down her back door with a hammer, forcing her to have sexual relations with him, and then falling asleep in her bed. He pled not guilty and demanded a jury trial. He has asserted his innocence for over two decades, maintaining that he and the complainant had consensual sex. Despite the fact that petitioner was barred from presenting multiple defense witnesses at trial,[1] the evidence led at least one juror to

[1] Petitioner was not allowed to call defense witnesses who had previously given crack cocaine to the complaining witness ("T.T.") in exchange for sex, as petitioner testified he did that night prior to having consensual sex. The trial judge ruled that their testimony was "not relevant." The jury also did not hear from a witness who, just 10 days after the purported incident,

vote "not guilty" as to the aggravated burglary and aggravated crime against nature charges.[2] On the aggravated rape charge, the record only contains eleven votes in support of the guilty verdict. Though a minute entry records the verdict as unanimous, the jurors' polling slips, preserved in the record, reveal that only eleven signed slips with votes in support of the guilty verdict were submitted, along with a twelfth slip that is present but blank.[3]

2. At the time of petitioner's trial, ten votes in favor of guilt were considered sufficient to convict, and thus the trial court was not required to order the final juror to record his vote on the charge of aggravated rape. Instead, the trial court accepted three guilty verdicts, each supported by only eleven or fewer votes in favor of the verdict. It recorded petitioner's verdicts and sentenced him to life imprisonment without the possibility of parole consecutive with additional terms.

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signed an affidavit saying that she witnessed T.T. welcome petitioner into her home through the front door on the evening of the incident.

[2] The original polling slips preserved in the record reveal the existence of non-unanimous verdicts as to aggravated burglary and aggravated crime against nature. One "not guilty" vote was signed and submitted for each of these two charges. On the aggravated burglary charge, there is also a twelfth polling slip that was submitted blank, leaving only ten recorded votes in support of the verdict.

[3] The minutes from the case are demonstrably erroneous and replete with other errors, including the statement within the same minute entry that "The State called no witnesses in rebuttal," which is contradicted by the transcript, which documents the state calling two witnesses in rebuttal. Pet. App. 85a. Another minute entry also incorrectly records the names of the jurors who served in the case.

3. In 1999, the Louisiana Court of Appeal for the Fourth Circuit reversed in part. The court rejected petitioner's challenges to his convictions. However, it vacated his sentences on the aggravated rape and aggravated crime against nature counts because those had been imposed prior to the trial court ruling on his motion for new trial, in violation of state law. Pet. App. 35a-36a. The Fourth Circuit did not vacate petitioner's sentence for aggravated burglary because it had been imposed in accordance with state law. *Id.* The Fourth Circuit accordingly remanded the case for resentencing on the aggravated rape and aggravated crime against nature counts. The Louisiana Supreme Court denied review of the Fourth Circuit's decision. Pet. App. 26a.

4. Following remand in 1999, petitioner's case remained pending in the trial court for nearly twenty years without the State seeking a new sentence. During that time, petitioner filed multiple pro se motions raising his lack of sentences and, despite more than a half-dozen scheduled and docketed resentencing hearings, the trial court failed to resentence him.[4] The record shows that at least as early as 2006, petitioner complained in court filings that he had "never been resentenced" and that this had "precluded petitioner from seeking appellate and post-conviction review."[5] Petitioner was finally resentenced on April 3, 2018,

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[4] Exhibit K to Petitioner's Louisiana Supreme Court Writ Application, A-161-8 (docket sheet showing scheduled and rescheduled resentencing hearings).

[5] Pet. for Writ of Habeas Corpus at 8, 13, *Lambert v. Cain*, No. 2:06-cv-00721 (E.D. La. Feb. 13, 2006), ECF No. 1 (describing efforts to obtain resentencing and referring to 12 attached letters directed to courts regarding the same).

after the trial court denied his "motion to be discharged from custody because of unreasonable delay in sentencing on remand."[6] To this day, Louisiana has never offered any explanation for why it ignored petitioner's repeated requests for resentencing for nearly two decades.[7]

5. Because he was considered a pre-trial inmate during this eighteen-year delay, the State proceeded to deny petitioner access to basic educational and rehabilitative programming. For example, the court below accepted that, because of the delayed resentencing, petitioner was "prevented from enrolling into school to obtain a GED, working at the Angola Rodeo, . . . and enrolling in educational/trade programs." Pet. App. 19a. As the court below acknowledged—and respondent has never disputed—this delay prevented petitioner from gaining trusty status, *id*., which would have allowed to him to earn "privileges that are not available to the general prison population." LOUISIANA LEGISLATIVE AUDITOR, OVERSIGHT OF TRUSTY PROGRAMS (2016) (Report ID 40150030), at 1.

6. When petitioner was finally resentenced, he argued in the trial court that the excessive, nearly two-decade delay violated his right to due process. The

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[6] Exhibit L to Petitioner's Louisiana Supreme Court Writ Application, A-168.

[7] The closest the State has come to explaining the delay was when it represented to this Court that the delay was a "mere oversight" that "went unnoticed by the parties" because petitioner "slept on" his rights. Brief in Opposition 1, 6, 13, 14-15, 17-18, *Lambert v. Louisiana*, 141 S. Ct. 225 (2020) (No. 19-8149). The State further represented that petitioner was "promptly resentenced" when the delay "was brought to light." *Id.* at 13. These representations are belied by the record.

trial court rejected his argument. Pet. App. 15a. Petitioner appealed to the Fourth Circuit. Pet. App. 11a-23a. The Fourth Circuit affirmed the newly imposed sentences for aggravated rape and aggravated crime against nature, and denied petitioner's challenge to his aggravated burglary sentence.[8] Petitioner's subsequent application to the Supreme Court of Louisiana for writ of certiorari was also denied. Pet. App. 10a.

Petitioner then petitioned this Court to resolve the conflict among lower courts concerning the due process standard in excessive sentencing delay cases. While that petition was pending, this Court decided *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020). The Court granted, vacated, and remanded petitioner's case for further proceedings in light of *Ramos*. Pet. App. 9a.

7. On remand, the court below ruled that petitioner was ineligible for *Ramos* relief. It held that petitioner's aggravated burglary conviction was the result of a non-unanimous verdict, but became "final" for retroactivity purposes in 2001 while petitioner awaited resentencing on the two other convictions in his case. Pet. App. 5a.

The Supreme Court of Louisiana denied review on the *Ramos* claim. Pet. App. 1a. Two justices noted that they would have granted the writ. *Id.*

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[8] The Fourth Circuit rejected petitioner's claim that he was entitled to resentencing on the aggravated burglary count based on a mandatorily retroactive state law barring the form of sentencing enhancement used. The court held that while petitioner was technically entitled to resentencing on the aggravated burglary count under *State ex rel. Esteen v. State*, 239 So.3d 233 (La. 2018), there would be no ameliorative effect in correcting that sentence given that he had now been resentenced to life without parole on the aggravated rape count. Pet. App. 22a.

REASONS FOR GRANTING THE PETITION

This petition presents two questions worthy of this Court's consideration. The first has been the subject of a conflict among lower courts, and the second has significant ramifications for criminal defendants, the supremacy of federal law, and the equitable administration of justice.

I. The Court Should Resolve the Uncontested Conflict Over the Test That Applies to Excessive Sentencing Delay.

It is undisputed that petitioner went without a sentence on two of his convictions for nearly two decades. As respondent forthrightly admitted in the last round of certiorari briefing before this Court, that "is an extraordinary amount of time to wait for resentencing." Brief in Opposition at 17, *Lambert v. Louisiana*, 141 S. Ct. 225 (No. 19-8149). It is also undisputed that, during this eighteen-year period of petitioner's life, the lack of sentence meant that he could not enroll in school or obtain a GED, could not obtain vocational training in trade programs, and could not receive "trusty" status. In addition to depriving him of basic education and privileges that otherwise would have been available to him, each deprivation is relevant to his ability to seek clemency.

In the last round of certiorari briefing before this Court, respondent did not dispute that lower courts are in conflict over the standard that applies to excessive sentencing delay under the Due Process Clause, left open in *Betterman v. Montana*, 578 U.S. 437, 439 (2016). Respondent also did not dispute that Louisiana law is an outlier within that conflict. The Court should now grant certiorari to resolve the issue.

A. The question presented is the subject of an acknowledged conflict.

In *Betterman*, this Court held that the Speedy Trial clause does not limit delays in sentencing. The Court explained instead that "due process serves as a backstop against exorbitant delay" in sentencing. 578 U.S. at 448. Because the petitioner in *Betterman* had not advanced a due process claim, the Court left open the question of what test would apply under the Due Process Clause. Among the issues left open was the question of whether one of the "[r]elevant considerations," prejudice, is strictly required and, if so, what type of prejudice is relevant. *Id*. at 448 & n.12. Multiple Justices recognized the need to provide lower courts with clarity on the applicable test once presented with an appropriate case. *See id.* at 451 (Sotomayor, J., concurring) ("In the appropriate case, I would thus consider the correct test for a Due Process Clause delayed sentencing challenge."); *Id.* at 450 (Thomas, J., joined by Alito, J., concurring) ("We should await a proper presentation, full briefing, and argument before taking a position on this issue.").

Lower courts are in conflict as to the applicable test. As the earlier petition in this case explained, and respondent could not dispute, the Third, Fifth, and Tenth Circuits determine whether excessive sentencing delays violate due process using the factors that this Court has prescribed for assessing delays between arrest and trial, which are articulated in *Barker v. Wingo*, 407 U.S. 514 (1972). Under the *Barker* test, courts must consider the "[l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." *Id*. at 530. None of those four factors is "either a necessary or sufficient condition." *Id*. at 533.

As the Third Circuit reiterated shortly after the earlier petition in this case: "while *Betterman* overruled our speedy sentencing precedent under the Sixth Amendment, our precedent under the Due Process Clause survives. Under that precedent, we apply the same framework adopted by the Supreme Court in *Barker v. Wingo*." *United States v. Lacerda*, 958 F.3d 196, 219 (3d Cir. 2020); *see also Burkett v. Cunningham*, 826 F.2d 1208, 1219 (3d Cir. 1987) (applying the *Barker* test and recognizing that its factors "are guidelines, not rigid tests" and "no single factor is 'either a necessary or sufficient condition of the deprivation of a right to a speedy trial'" (quoting *Perez v. Sullivan*, 793 F.2d 249, 254 (10th Cir. 1986); *Barker*, 407 U.S. at 533))); *United States v. Campbell*, 531 F.2d 1333, 1335 (5th Cir. 1976) (holding that a defendant "need not necessarily show affirmative prejudice or any particular one of these factors to justify a finding by the court that there has been a denial of his right to a speedy trial"); *United States v. Washington*, No. 626 F. App'x 485, 487-89 (5th Cir. 2015), as revised (Feb. 1, 2016) (citing *Campbell*, applying the *Barker* factors, and vacating a sentence due to excessive delay in resentencing the defendant). Multiple state courts have adopted the same interpretation of the Due Process Clause.[9]

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[9] *See, e.g.*, *Commonwealth v. West*, 938 A.2d 1034, 1045, 1049 (Pa. 2007) (observing that the court has repeatedly held "that the *Barker* factors were applicable in analyzing [. . .] due process claim[s] regarding the delay between conviction and sentencing" and "[w]eighing all of the *Barker* factors" even though the court "[did] not find that [defendant] suffered actual prejudice"); *Commonwealth v. Glass*, 586 A.2d 369, 371-73 (1991); *Commonwealth v. Glover*, 458 A.2d 935, 937-38 (1983); *People v. Johns*on, 2019 Ill. App. 5th 160241-U, ¶¶ 55-66 (evaluating claim that excessive

The Second and Sixth Circuits, on the other hand, apply the test for delay prior to indictment articulated in *United States v. Lovasco*, under which "proof of prejudice is generally a necessary but not sufficient element of a due process claim." 431 U.S. 783, 790 (1977). The Second Circuit applies that test on its terms. *United States v. Ray*, 578 F.3d 184, 199 (2d Cir. 2009) (applying *Lovasco* and holding that "prejudice is . . . necessary but not sufficient"); *United States v. Cain*, 734 F. App'x 21, 25 (2d Cir. 2018). The Sixth Circuit has similarly extended the pre-indictment delay test from *Lovasco* to sentencing delay and generally requires prejudice, but reserves an exception for "lengthy delay that is shown to be the product of bad faith or unfair dealing on the part of the government [which] does not require a showing of prejudice." *United States v. Sanders*, 452 F.3d 572, 580-81 & n.6 (6th Cir. 2006).

Finally, as explained in and again undisputed in the last round of certiorari briefing, Louisiana has adopted a hybrid approach. It adopts the factors from *Barker* and then "dictate[s] that prejudice to the defendant is the controlling factor." Pet. App. 17a-18a n.4. Accordingly, like the Second Circuit, the court below held that the "unreasonableness of a sentencing delay is irrelevant in the absence of prejudice." Pet. App. 17a.[10] The court further reasoned that the particular prejudice in this case—a nearly two-decade

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sentencing delay violated due process in light of all four *Barker* factors despite absence of prejudice).

[10] Respondent's prior BIO cited one circuit that appears to adopt a similar hybrid approach. In *United States v. Yupa Yupa*, the Seventh Circuit recognized that *Barker* "is the test our circuit has been using for some time"; however, it suggested that in the

deprivation of the ability to enroll in school and obtain a GED, to obtain vocational training in trade programs, or receive "trusty" status—"do[es] not constitute prejudice as contemplated by the jurisprudence." Pet. App. 19a.

The latter reasoning renders Louisiana an outlier among the lower courts. Courts on both side of the conflict have concluded that "specific problems of personal prejudice" count in both the *Barker* and *Lovasco* analyses. *United States v. James*, 712 F. App'x 154, 163 (3d Cir. 2017) (quoting *Heiser v. Ryan*, 15 F.3d 299, 305 (3d Cir. 1994)). For instance, the Third Circuit has recognized when applying its *Barker* standard to sentencing delay, "there may be cognizable prejudice stemming from being confined to a local jail rather than a . . . prison better equipped for long-term incarceration." *Id.* The Second Circuit has similarly recognized when applying its *Lovasco* test that "[a] defendant may demonstrate prejudice if he or she can show that the delay in sentencing undermines successful rehabilitation." *Cain*, 734 F. App'x at 25 (cleaned up) (quoting *Ray*, 578 F.3d at 201).

This case squarely presents the opportunity to answer the question left open in *Betterman*: what test should lower courts use to evaluate excessive sentencing delay claims under the Due Process Clause?[11]

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due process context, *Barker* "require[s] that a defendant demonstrate prejudice." 796 F. App'x 297, 299 (7th Cir. 2019),

[11] Respondent's earlier BIO did not dispute any of this. Instead, respondent argued that the issue had "not percolated sufficiently" because "[o]nly four federal circuits" had weighed in on the issue since *Betterman* was decided in 2016. Brief in Opposition at 13, *Lambert*, 141 S. Ct. 225 (No. 19-8149). That, of course, makes no sense: *Betterman* explicitly refrained from weighing in

B. The decision below is wrong.

Louisiana's outlier position below directly conflicts with this Court's precedent.

First, the lower court's conclusion that the *Barker* test "dictates that prejudice to the defendant is the controlling factor," Pet. App. 17a n.4, squarely conflicts with this Court's instruction in *Barker* that no one factor is "either a necessary or sufficient condition," *Barker*, 407 U.S. at 533.

Second, the lower court grossly erred in concluding that the nearly two-decade deprivation of education and vocational training "do[es] not constitute prejudice as contemplated by the jurisprudence." Pet. App. 19a. *Barker* itself identified numerous types of prejudice related to individual autonomy and security that must be considered in cases of excessive delay, including "anxiety and concern" and "disrupt[ion] [to] family life" as forms of cognizable prejudice, 407 U.S. at 532. This Court noted in *Barker* that a defendant could be prejudiced by being "subjected to public scorn, deprived of employment, and chilled in the exercise of his right to speak for, associate with, and participate in unpopular political causes." *Id.* at 532 n.33.

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on the due process test. *Betterman*, 578 U.S. at 448 & n.12 (recognizing that the defendant retains a due process challenge to sentencing delay, but "express[ing] no opinion" on the proper standard because it had not been asserted); *id.* at 450 (Thomas, J., concurring) (same); *id.* at 451 (Sotomayor, J., concurring) (same). Accordingly, courts have uniformly recognized that *Betterman* had no impact on due process precedent. *See* Reply Brief at 12-13, *Lambert*, 141 S. Ct. 225 (No. 19-8149).

C. This case squarely presents the issue.

This case squarely presents the question left open in *Betterman*. It is undisputed that petitioner was subject to nearly two decades of sentencing delay. As the lower court observed and respondent has never disputed, that delay "prevented [him] from enrolling into school to obtain a GED, working . . . and enrolling in educational/trade programs." Pet. App. 19a. And it is undisputed that petitioner challenged this delay as a violation of due process at every stage. The decision below explicitly rejected his argument on the grounds that petitioner was required to prove prejudice and that the types of prejudice he experienced did not count.

II. This Court Should Correct the Lower Court's Blatantly Wrong and Problematic Understanding of Finality.

This Court has repeatedly held that "new procedural rules apply to cases pending in trial courts and on direct review." *Edwards v. Vannoy*, 141 S. Ct. 1547, 1562 (2021). Until a case has completed direct appellate review, it is not yet "final" and new procedural rules announced before it becomes final must be applied to the case. *Id.* at 1560; *see also Teague v. Lane*, 489 U.S. 288, 310 (1989).

"Finality has a long-recognized, clear meaning" provided by federal law. *Clay v. United States*, 537 U.S. 522, 527 (2003). The only case that may be deemed to have completed direct review and become final is "a case in which a judgment of conviction has been rendered, the availability of appeal exhausted, and the time for a petition for certiorari elapsed or a petition for certiorari finally denied." *Griffith v. Kentucky*, 479 U.S. 314, 321 n.6 (1987). The Louisiana

courts ignored *Griffith* and its progeny in holding that petitioner's aggravated burglary conviction became final before the availability of appeal was exhausted in this case.

On remand from this Court, the court below adopted a piecemeal view of finality without discussing, or even citing, any authority in support of that view. Pet. App. 3a-8a.

Specifically, the court below indicated that petitioner's time for seeking direct review of his aggravated burglary conviction before this Court elapsed while he awaited sentencing at the trial court, after two of his three sentences had been vacated on direct appeal. Because he did not petition this Court for certiorari as to his aggravated burglary conviction while his case was on remand at the trial court, the court below held that petitioner waived his opportunity to seek this Court's review of that count in 2001, and that his aggravated burglary conviction thus became final before this Court decided *Ramos*.[12]

A. The court below ignored this Court's precedent in ruling that petitioner's convictions were final and denying him *Ramos* relief.

The holding of the court below conflicts with the clear mandate of *Griffith*. Under *Griffith*, cases become final, not individual convictions within a case.

The ruling of the court below also ignores long-established precedent that 1) final judgment in a case

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[12] The court below held, "defendant's conviction and sentence of aggravated burglary were both final as of defendant's first appeal. *Lambert*, 1998-0730, p. 45, 749 So.2d at 767, *writ denied*, 2000-1346 (La. 1/26/01), 781 So.2d 1258." Pet. App. 5a.

requires a conviction and a sentence, and 2) a petitioner is not required to bring his case to this Court in fragments through separate petitions pertaining to each individual count.

First, this Court has long held that the "[f]inal judgment in a criminal case means sentence. The sentence is the judgment." *Berman v. United States*, 302 U.S. 211, 212 (1937); *see also Flynt v. Ohio*, 451 U.S. 619, 620 (1981); *Florida v. Thomas*, 532 U.S. 774, 777 (2001). Because petitioner's sentences for aggravated rape and aggravated crime against nature were vacated in 1999, the "highest court of a State in which a decision could be had" never rendered a §1257(a) "final judgment" against him until he was finally sentenced and exhausted his state appeals against those sentences in 2020. *See Thomas*, 532 U.S. at 777. Because petitioner filed a timely petition for certiorari once he finally had a §1257(a) "final judgment," and because this Court granted that petition, petitioner's case has never become final under *Griffith*. The ruling of the court below that, while lacking two of three sentences, petitioner's convictions became final, Pet. App. 6a-8a, is contrary to this Court's precedent.

Second, it is well-established that petitioners are not required to seek review from this Court until the prosecution against them has been completed in the lower courts. This Court has long discouraged petitioners from pursuing piecemeal review: "A case may not be brought here by appeal or writ of error in fragments. . . . the judgment must be, not only final, but complete." *Collins v. Miller*, 252 U.S. 364, 370 (1920) (holding that a "judgment to be appealable should be final . . . as to the whole subject-matter and as to all the causes of action involved") Far from mandating review of individual counts within a case, the Court has

repeatedly encouraged petitioners to seek review after the conclusion of the prosecution against them: "review must await the conclusion of the 'whole matter litigated' between the Government and the petitioner." *Parr v. United States*, 351 U.S. 513, 518 (1956). Petitioner's case was plainly incomplete as to the whole matter litigated and thus his time for seeking review from this Court did not elapse until he had a final judgment from the Louisiana Supreme Court as to all convictions and sentences within his case.

B. The decision of the court below leads to perverse results.

Under this Court's longstanding rules, petitioner was not required to seek direct review from this Court until he had exhausted state appellate review as to his entire case. *St. Louis, I.M. & S. Ry. Co. v. S. Express Co.*, 108 U.S. 24, 28-29 (1883) (holding "a decree is final, for the purposes of an appeal to this court, when it terminates the litigation between the parties on the merits of the case, and leaves nothing to be done but to enforce by execution what has been determined"). The ruling of the court below, should it stand, requires Louisiana defendants to do what this Court has discouraged—to immediately seek piecemeal review by this Court of every individual claim within a case on which the state's highest court has ruled, without waiting for the conclusion of state appellate review of the entirety of the case.

Specifically, the ruling of the court below requires Louisiana defendants for whom the Louisiana Supreme Court affirms one conviction or sentence within their case prior to the rest of their case coming before the Louisiana Supreme Court, to either repeatedly petition this Court for certiorari or else be deemed to

have abandoned direct appeal on that individual conviction or sentence. In reaching this holding, Louisiana's courts have flouted this Court's "general prohibition against piecemeal appellate review," *United States v. MacDonald*, 435 U.S. 850, 854 (1978).

Stern and Gressman's *Supreme Court Practice* emphasizes the fallacy of the notion that litigants must seek review ahead of the conclusion of their case or risk abandoning that claim:

> It is one thing to hold that a litigant may seek early review of a state court decision because otherwise the federal constitutional issue might disappear or be eroded. But it is quite a different matter to hold that a litigant is precluded from review if, having carefully preserved his constitutional claims on the remand, he waits for the end of the state court litigation before bringing his federal claims to the Supreme Court. Finality is too practical a doctrine to be turned into such a trap for litigants . . . .

STEPHEN M. SHAPIRO, ET AL., SUPREME COURT PRACTICE § 3 (11th ed. 2019). However, the court below has set exactly that trap. Louisiana defendants, like petitioner, who preserved their federal claims and waited to bring them before this Court until they had exhausted state appellate review of their entire case are now inequitably denied relief in violation of this Court's clear directives. Meanwhile, defendants in the rest of the country receive the benefit of new procedural rules announced by this Court while their cases remain pending.

Most courts have correctly applied this Court's precedent and hold that a case remains on direct appeal until the entirety of the case has completed review by the highest court in which a decision could be had. Courts that have explicitly addressed this include the First,[13] Second,[14] and Ninth Circuits,[15] as well as the Kansas Supreme Court,[16] and the Colorado Supreme Court.[17]

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[13] *United States v. Pizarro*, 772 F.3d 284, 290-91 (1st Cir. 2014) (holding that defendant's conviction was invalid under newly recognized procedural rule because, even though the conviction had been affirmed, the defendant's appeal from resentencing was pending which meant that the entire case had not become final). In the context of *Griffith* finality, the First Circuit has approvingly cited a Fourth Circuit AEDPA finality case for the proposition that when a "court of appeals affirms convictions but vacates sentence and remands for resentencing on any count, judgment of conviction is not final as to all counts." *Id.* at 290.

[14] *See Burrell v. United States*, 467 F.3d 160, 168 (2d Cir. 2006) ("[W]e do not adopt the view [. . .] that a defendant can have multiple judgments of conviction in a single case.").

[15] *See United States v. Whitmore*, 682 F. App'x 626, 627 (9th Cir. 2017) (holding that a defendant's case did not become final while resentencing was pending); *see also United States v. Colvin*, 204 F.3d 1221, 1224 (9th Cir. 2000) ("The Supreme Court has defined a final judgment in the retroactivity context as one where the 'availability of appeal [has been] exhausted,' and we think it clear that a judgment cannot be considered final as long as a defendant may appeal either the conviction or sentence."(citation omitted))

[16] *See State v. Kleypas*, 382 P.3d 373, 405-06 (Kan. 2016) (cleaned up) ("Kansas follows the same rule for finality for purposes of the retroactive applicability of a new rule set forth in *Griffith*. . . . A conviction is not final until final judgment on both the conviction and the sentence has been entered on direct appeal.").

[17] *See Sharp v. People*, No. 06SC18, 2006 WL 2864916 (Colo. Oct. 10, 2006) (rejecting the notion that a case on appeal from resentencing was final and directing the Colorado Court of Appeals to

Only the Seventh Circuit[18] and Louisiana have failed to apply the clear rule from *Griffith* and its progeny, instead holding that a defendant's opportunity to petition this Court can elapse as to part of a case prior to the conclusion of direct review as to the entire case. In doing so, these courts have controverted this Court's precedents and failed to apply new rules of constitutional procedure to defendants who would benefit from those rules anywhere else in the country.

This Court should grant certiorari to correct the failure of the court below to obey this Court's mandate to apply new procedural rules to cases that have not yet become final, and to ensure that this Court's constitutional criminal procedure decisions are applied evenly to all similarly-situated defendants.

CONCLUSION

The petition for a writ of certiorari should be granted.

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apply two cases clarifying Confrontation Clause rights where defendant's case had been pending on appeal from resentencing when those cases had been decided).

[18] *See e.g. Holman v. Gilmore*, 126 F.3d 876, 881 (7th Cir. 1997) (holding that a conviction could become final under *Griffith* while resentencing on that conviction was pending).

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