No. 19-8149

IN THE SUPREME COURT OF THE UNITED STATES

NATHANIEL LAMBERT,

Petitioner,

v.

LOUISIANA,

Respondent.

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

SUPPLEMENTAL BRIEF CONCERNING *RAMOS V. LOUISIANA*

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April 22, 2020

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Pursuant to this Court's Rule 15.8, petitioner files this supplemental brief to address the Court's recent decision in *Ramos v. Louisiana*, 590 U.S. ___ (2020) (slip op.). As set forth herein, petitioner is one of the defendants in Louisiana "convicted of felonies by nonunanimous verdicts whose cases are still pending on direct appeal." *Ramos*, slip op. at 22. The Court should accordingly GVR this case for Louisiana courts to determine whether petitioner is entitled to relief under *Ramos*.

In 1997, petitioner was tried for three felonies and convicted by non-unanimous verdicts. *See* Pet. 2; Pet. App. 57-58 (juror verdict slips showing that one juror believed petitioner was not guilty as to counts two and three). After the trial court

sentenced petitioner for each of the three convictions, the court of appeal reversed two of the sentences and remanded to the trial court for resentencing. Pet. App. 5. On remand, the trial court did not resentence petitioner and his criminal case thus remained pending before the trial court. *Id*. Over eighteen years after petitioner's case was remanded for new sentences, respondent finally pursued resentencing for the outstanding counts, giving rise to this direct appeal. Pet. 3-5; Pet. App. 5-6.

The petition asks this Court to resolve the longstanding conflict left open in *Betterman v. Montana*, 136 S. Ct. 1609 (2016), concerning the proper test to evaluate claims for presentencing delay under the due process clause, including whether a specific showing of prejudice is strictly required in the face of exorbitant delay, and, if so, what type of prejudice suffices.[1] As the petition explains, the court below held that a claim for unreasonable sentencing delay is "irrelevant in the absence of prejudice to the defendant," Pet. App. 8-9, squarely presenting the conflict acknowledged in Justice Sotomayor's concurrence in *Betterman* as to how such claims are evaluated and whether any one of the "[r]elevant considerations" identified in the principal opinion, *Betterman*, 1609 S. Ct. at 1617-18 & n.12, is "necessary" and carries "a 'talismanic quality,'" *id.* at 1619 (Sotomayor, J., concurring); *see also* Pet. 7-9 (describing the persisting conflict between lower courts that apply the factors of

[1] *See Betterman v. Montana*, 136 S. Ct. at 1617-18 & n.12 (leaving open the question of how due process challenges to presentencing delay are to be evaluated, and opining that "the length of and reasons for delay, the defendant's diligence in requesting expeditious sentencing, and prejudice" "may" be "[r]elevant considerations"); *see also id*. at 1618 (Thomas, J., concurring) (observing that the Court's opinion left it "free to decide the proper analytical framework to analyze such claims if and when the issue is properly before us"); *id.* at 1619 (Sotomayor, J., concurring) (expressing the view that lower courts should evaluate due process claims by considering the "flexible" factors of *Barker v. Wingo*, 407 U.S. 514 (1972), under which no factor "is 'either necessary or sufficient,' and no one factor has a 'talismanic quality'").

Barker v. Wingo, 407 U.S. 514 (1972), treating no factor as necessary or sufficient, and lower courts that consider "evidence of 'actual' prejudice to be necessary as a threshold matter").

For the reasons stated in the petition, this case presents an exceptional opportunity to resolve this longstanding conflict, and the Court may ultimately grant certiorari to do so. However, because petitioner's convictions and sentences have never become final and petitioner remains on direct appeal, he is likely entitled to relief under the Court's recent decision in *Ramos*. In *Ramos*, the Court held that the Sixth Amendment prohibits states from allowing felony convictions based on non-unanimous verdicts. *Ramos*, slip op. at 7. In reaching that conclusion, the Court specifically recognized that its decision would apply to "defendants convicted of felonies by nonunanimous verdicts whose cases are still pending on direct appeal." *Id*. at 22; *see also Griffith v. Kentucky*, 479 U.S. 314, 328 (1987) ("[A] new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final.").

Petitioner is one of those defendants. At least two of petitioner's three convictions were the result of non-unanimous verdicts, *see* Pet. App. 57-58, and he has never reached the point of final conviction and sentence. Finality occurs only after direct appeal is exhausted and this Court has denied certiorari or the time to petition for certiorari has expired. *Griffith*, 479 U.S. at 321 n.6; *Graham v. Collins*, 506 U.S. 461, 467 (1993); *Stringer v. Black*, 503 U.S. 222, 226 (1992). Following the reversal of petitioner's sentences, this case remained stagnant in the district court awaiting

resentencing and, upon finally being resentenced, petitioner took this direct appeal.[2] The Court should accordingly GVR for Louisiana courts to consider in the first instance whether petitioner is entitled to relief under *Ramos*. *See Griffith*, 479 U.S. at 323 (recognizing that when confronted with a petition "pending on direct review" after this Court adopts a new rule, the proper course of action is to "instruct[] the lower courts to apply the new rule retroactively to cases not yet final").

Assuming the question left open in *Betterman* remains at issue after the lower courts' consideration of *Ramos*, petitioner can reassert it in a petition to this Court and, for the reasons stated in the petition, this Court may wish to grant certiorari to resolve the issue at that time.

CONCLUSION

For the forgoing reasons, the Court should GVR for consideration of petitioner's entitlement to relief under *Ramos* and defer resolution of the issue raised in the petition. In the alternative, the Court should grant certiorari to resolve the conflict set forth in the petition.

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[2] Because petitioner's convictions and sentences have never reached finality, his case does not implicate the principles governing retroactivity on collateral review under *Teague v. Lane*, 489 U. S. 288 (1989). This is also not a case in which a defendant's conviction and sentence "became final on direct review" and the state thereafter corrected the sentence as part of collateral review, *cf. McKinney v. Arizona*, 140 S. Ct. 702, 708 (2020); here, petitioner's convictions and sentences never became final.

Respectfully submitted,

/s/ Amir H. Ali

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