No. 25-1

In the Supreme Court of the United States

JAMES SKINNER,

Petitioner,

v.

LOUISIANA,

Respondent.

On Petition for a Writ of Certiorari to Louisiana's 21st Judicial District Court

BRIEF OF TWO LOUISIANA PRISONERS, EVERETTE NORWOOD AND ERNEST ALLEN, AS AMICI CURIAE SUPPORTING PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Other Authorities:

INTEREST OF *AMICI CURIAE*[1]

Amici are two Louisiana prisoners—one former, one current—who are interested in the Louisiana courts' treatment of non-unanimous convictions and *Brady* claims.

Amicus Everette Norwood was wrongfully convicted by a non-unanimous Baton Rouge jury in 2004 of attempted armed robbery. His trial was marred by incompetent lawyering, a suggestive "show-up" identification, and inconsistencies in the prosecution's case. In 2013, his conviction was vacated by a state trial court on ineffective assistance of counsel grounds, but it was reinstated by an appellate court, which held, *inter alia*, that Mr. Norwood failed to demonstrate "prejudice" under *Strickland*. In 2023, he filed a new post-conviction relief petition in state court, again alleging ineffective assistance of counsel, which was granted. He is now home, working, and seeking to rebuild his life. But after serving two decades unconstitutionally imprisoned, Mr. Norwood remains interested in how the Louisiana courts review questions of "prejudice" or "materiality" in the cases of hundreds of others who remain imprisoned based on non-unanimous verdicts.

Amicus Ernest Allen was wrongfully convicted of first-degree murder in 1994. The prosecution's case rested entirely on the testimony a single unreliable

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[1] Pursuant to this Court's Rule 37, *Amici* affirm that no part of this brief was authored by any party's counsel, and no person or entity other than *amici* or their counsel funded its preparation or submission. *Amici* also affirm that all parties were timely notified of the filing of this brief.

eyewitness, who identified Mr. Allen and his co-defendant as the perpetrators of the drive-by shooting. In 2009, another eyewitness came forward and testified that she saw two *different* men, whom she knew by name, commit the shooting. The state courts held that the suppression of her identity—prosecutors knew that she witnessed the crime at the time of trial—did not violate *Brady*. The trial court explained that although the witness testified that she saw the two known men jump out of a vehicle with guns and then flee immediately after firing, she did not observe the precise moment they pulled the trigger, so her testimony was "of no moment." The intermediate appellate court and Louisiana Supreme Court denied review without explanation. In 2024, prosecutors revealed that their files and the grand jury transcript contained far more *Brady* material, prompting a new state-court petition for post-conviction relief. This time, the state trial court held that Mr. Allen's new *Brady* claims were "procedurally barred" by his prior *Brady* claims. The appellate court and Louisiana Supreme Court again denied review in summary orders. Mr. Allen is interested in highlighting the futility of litigating meritorious *Brady* claims in Louisiana courts.

SUMMARY OF ARGUMENT

Amici write in support of the Petitioner and to underscore two basic points—both specific to the Louisiana context—that militate in favor of granting prompt relief.

I. Convictions secured through non-unanimous verdicts, like the conviction in Mr. Skinner's case, warrant particular scrutiny. When assessing whether suppressed favorable evidence was "material" (or an attorney's deficient performance "prejudiced" the defendant, or whether a trial error was "harmless") the fact that one or more jurors remained unpersuaded of the defendant's guilt is a relevant fact that courts can and should consider. Indeed, in *Kyles v. Whitley*, this Court emphasized that a prior jury had deadlocked when assessing the "materiality" of the suppressed evidence. 514 U.S. 419, 454 (1995). Yet Louisiana courts have ignored this Court's admonition that "if the verdict is already of questionable validity, additional evidence of relatively minor importance might be sufficient to create a reasonable doubt." *United States v. Agurs*, 527 U.S. 97, 113 (1976).

II. The Louisiana courts' errors with the respect to *Brady* "materiality" are emblematic of a deeper, more pervasive problem: Regardless of verdict type, the Louisiana Supreme Court has demonstrated a persistent and systemic failure to enforce the constitutional protections guaranteed by *Brady v. Maryland*, 373 U.S. 83 (1963). Despite repeated reversals by this Court and other federal courts, Louisiana judges continue to reject even the most compelling *Brady* claims—often without analysis, explanation,

or due regard for the clearly established principles articulated by this Court. In 145 cases citing *Brady* issued since *Smith v. Cain*, 565 U.S. 73 (2012), the Louisiana Supreme Court has found a *Brady* violation in just two, and in one of these cases it promptly reversed itself. This Court's intervention is necessary because the Louisiana judiciary has effectively abdicated its duty to safeguard the due process rights of criminal defendants under *Brady*.

ARGUMENT

I. A DIVIDED VERDICT SIGNALS WEAK EVIDENCE OF GUILT—AND SHOULD INFORM THE *BRADY* MATERIALITY ANALYSIS

Mr. Skinner, like amicus Mr. Norwood, was convicted by a non-unanimous jury (after a different jury deadlocked at his initial trial). The State's failure to secure a unanimous verdict is relevant to the *Brady* "materiality" inquiry because it signals that one or more jurors already had reasonable doubts about the State's case, even without hearing the suppressed evidence. The Louisiana Supreme Court's refusal to consider such factors when conducting its "materiality" analysis conflicts with decades of this Court's guidance regarding *Brady*.

Reviewing courts frequently assess whether trial errors were "material," "prejudicial," or "harmless" by estimating "the impact of the thing done wrong on the minds of other men, not on one's own, in the total setting." *Kotteakos v. United States*, 328 U.S. 750, 764 (1946). This inquiry, often speculative, is necessarily contextual: The suppression of favorable evidence may not violate the defendant's rights under *Brady* where there is overwhelming evidence of guilt; however, "if the verdict is already of questionable validity, additional evidence of relatively minor importance might be sufficient to create a reasonable doubt," *United States v. Agurs*, 527 U.S. 97, 113 (1976). In many cases, "the best we can hope to have is *circumstantial evidence* tending to show how a reasonable person in the decisionmaker's position

would act." Justin Murray, *Prejudice-Based Rights in Criminal Procedure*, 168 Penn. L. Rev. 277, 308 (2020).

But not always. *Id.* In some cases, *direct evidence* from the trial record—e.g., the delivery of an "*Allen* charge," the length of deliberations, specific questions posed by jurors, the verdict on other counts—sheds light on the strength of the prosecution's evidence and its reception by the jurors. When such evidence is available, this Court examines it, recognizing that such concrete and reliable benchmarks reduce the need for speculation about the import of the suppressed evidence. In *Kyles v. Whitley*, for example, this Court emphasized that the petitioner's first trial ended in a hung jury as part of its *Brady* "materiality" analysis. 514 U.S. 419, 421 (1995). As the Court explained in discussing the import of the suppressed evidence: "This [hypothetical retrial after disclosure of suppressed evidence] is not the 'massive' case envisioned by the dissent; it is a significantly weaker case than the one heard by the first jury, which could not even reach a verdict." *Id.* at 454.

Similar reasoning is a common feature of this Court's opinions addressing "prejudice" in related contexts. *See, e.g., United States v. U.S. Gypsum Co.*, 438 U.S. 422, 462 (1978) ("While it is, of course, impossible to gauge what part the disputed meeting [between judge and foreman] played in the jury's action of returning a verdict the following morning, this swift resolution of the issues in the face of positive prior indications of hopeless deadlock, at the very least, gives rise to serious questions in this regard."); *Rogers v. United States*, 422 U.S. 35, 40

(1975) (finding Rule 43 violation not "harmless" where length of previous deliberations and timing of verdict "strongly suggest[ed] that the trial judge's response may have induced unanimity"); *Parker v. Gladden*, 385 U.S. 363, 363 (1966) ("[T]he jurors deliberated for 26 hours, indicating a difference among them as to the guilt of the petitioner.").

Following this Court's lead, lower courts uniformly recognize that a jury's difficulty reaching unanimity can and should inform the *Brady* "materiality" or "prejudice" inquiries under *Strickland v. Washington*, 466 U.S. 668 (1984). *See Boyette v. Lefevre*, 246 F.3d 76, 92 (2d Cir. 2001) (finding state court's *Brady* materiality analysis "objectively unreasonable" under AEDPA, in part, because deadlocked jury in first trial demonstrated a "very close case"). *Cf. United States v. Harber*, 53 F.3d 236, 243 (9th Cir. 1995) ("This argument [that the error was harmless] is readily refuted by the fact that the jury reported that it was hopelessly deadlocked after deliberating for one day."); *United States v. Ince*, 21 F.3d 576, 585 (4th Cir. 1994) ("Had the case against him been as strong as the Government would have us believe, it seems unlikely that the first jury would have ended in deadlock."); *United States v. Stewart*, 907 F.3d 677, 689 (2d Cir. 2018) ("Given the difficult of objectively measuring [prejudice], appellate courts often look to the length of jury deliberations and the necessity of a modified *Allen* charge as useful proxies."). And sometimes, clues from the record, like questions submitted by jurors, help persuade a court to find that the defendant was *not* prejudiced by an error. *See, e.g., United States v. Valencia*, 600 F.3d 389 (5th Cir. 2010) (explaining "jury's lengthy

deliberations len[t] support to [petitioner's] argument that the case was close," but rejecting appeal, because "the jury's notes [indicated] that it mainly struggled to understand [other unchallenged] counts").

Perhaps the clearest possible marker that a "verdict is already of questionable validity," *Agurs*, 527 U.S. at 113, is that the verdict does not comport with the Sixth Amendment. *See Ramos v. Louisiana*, 590 U.S. 83, 111 (2020) ("Not a single Member of this Court is prepared to say Louisiana secured his conviction constitutionally under the Sixth Amendment."); *id.* at 90 ("A verdict, taken from eleven, [is] no verdict at all") (cleaned up). Even when affirming the lawfulness of such verdicts in 1972, this Court recognized that the fact of non-unanimity logically implicates the strength of the State's proof. *Johnson v. Louisiana*, 406 U.S. 356, 362 (1972) ("Of course, the State's proof could perhaps be regarded as more certain if it had convinced all 12 jurors . . ."). When the underlying conviction is produced by a non-unanimous verdict, "[t]he prosecution's demonstrated inability to convince all the jurors of the accused's guilt" necessarily raises "concern[s] about the reliability and accuracy of the jury's verdict." *Brown v. Louisiana*, 447 U.S.323, 333 (1980); *accord State v. Lee*, 370 So.3d 408, 438 (La. 2023) (Weimer, C.J., dissenting) (emphasizing connection between non-unanimous verdicts, Louisiana's extreme incarceration rates, and the "significant number of exonerations of incarcerated individuals" convicted in Louisiana courts).

But the basic proposition that non-unanimity is relevant to the *Brady* "materiality" analysis—dictated both by logic and this Court's precedents—has been adamantly resisted in Louisiana. Most recently, in *Quinn v. Vannoy*, 248 So.3d 1276 (La. 2018), a Louisiana prisoner convicted of murder by a 10-2 vote (also after an earlier trial ended in a hung jury) urged that he was denied effective assistance of counsel. The Louisiana Supreme Court agreed that Mr. Quinn's counsel was "deficient" under *Strickland*, *id.* at 1278-79, but—reversing the trial court and intermediate appellate courts—it concluded that the petitioner he was not "prejudiced" by his attorneys' manifest errors. *Id.* at 1279.[2] In his petition for certiorari, Quinn urged that the Louisiana Supreme Court's refusal to consider the fact of his 10-2 conviction when weighing "prejudice" flouted the basic teachings of *Strickland v. Washington* and conflicted with Oregon's approach. Pet. for Cert. in No. 18-9744 at 10-13. *See, e.g., State v. Brunnemer*, 401 P.3d 1226, 1230 (Or. App. 2017) (rejecting argument that error was harmless due to non-unanimous verdict); *State v. Logston*, 347 P.3d 352, 358 (Or. App. 2015) (same). Louisiana's Attorney General replied:

> A non-unanimous jury is irrelevant to the *Strickland* prejudice inquiry. . . . A non-unanimous jury verdict is irrelevant because the

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[2] For more background on the *Quinn* case, see Radley Balko, *How two overworked public defenders and six judges left a New Orleans man with a life sentence*, WASHINGTON POST, Aug. 28, 2019.

> jury count is outside of the control of the defendant's attorney. . . . Reading anything into a jury vote is a speculative enterprise. . . . No Court has ever engaged in such a speculative enterprise.

Br. in Opp. in No. 18-9744 at 10-11. (This Court denied certiorari. 140 S. Ct. 524 (2019).)

Of course, the suppression of favorable evidence (or the deficient performance of counsel) is not *always* outcome-determinative in non-unanimous verdict cases. Nor should the fact of a unanimous verdict—now required everywhere and in 48 states pre-*Ramos*—preclude a finding of "materiality" or "prejudice." But in cases where the record reveals objective indicia of a "close case," as in this one, the refusal to consider such evidence directly contravenes clearly established law (and disregards the Court's own emphasis on identical factors in cases like *Kyles*). *See also* Brandon L. Garrett and Adam Gershowitz, *The Brady Materiality Standard*, 78 Stan. L. Rev. ___ (forthcoming 2026) (noting "[t]he materiality standard, by setting a potentially manipulable bar for finding a *Brady* violation, may give license to courts to 'explain away' government misconduct").

II. THE LOUISIANA COURTS' DISMAL RECORD ON *BRADY* REQUIRES THIS COURT'S INTERVENTION

The Louisiana Supreme Court's unwillingness to consider non-unanimity when assessing *Brady* materiality is part of a deeper problem: It has virtually stopped recognizing *Brady* violations altogether. Although this Court has "repeatedly reversed lower

courts—and Louisiana courts, in particular" in *Brady* cases, *Brown v. Louisiana*, 143 S. Ct. 886, 888 (2023) (Jackson, J., dissenting from denial of certiorari), Louisiana courts continue to disregard this Court's precedent and place their imprimatur on the unlawful suppression of material evidence in criminal cases.

This trend is not new. In *Kyles v. Whitley*, the state trial court breezily dismissed the import of the suppressed evidence and declared that the "evidence in this case is overwhelming," even though an earlier trial had ended with a hung jury. *See Kyles v. Whitley*, No. 93-7927, J.A. at 35. The Louisiana Supreme Court declined to review the denial of relief without providing reasons (though two justices would have granted review). *Compare State ex rel. Kyles v. Butler*, 566 So.2d 386 (La. 1990), *with Kyles v. Whitley*, 5 F.3d 806, 820 (5th Cir. 1993) (King, J., dissenting) ("I have participated in the decision of literally dozens of capital habeas cases—[and for the first time] I have serious reservations about whether the State has sentenced to death the right man."). District Attorney Harry Connick, Sr. sought to try Kyles three additional times after this Court granted relief, but all three juries deadlocked; the State ultimately dropped the charges. *See* JED HORNES, DESIRE STREET: A TRUE STORY OF DEATH AND DELIVERANCE (2005). This subsequent history vindicates the position of the *Kyles* majority: There was more than a "reasonable probability" the suppressed evidence would have altered the outcome of Mr. Kyles's trial and death sentence. *But see Kyles*, 514 U.S. at 463 n.2 (Scalia, J., dissenting) ("[P]etitioner must lose

because there was, is, and will be *overwhelming* evidence to convict, so much evidence that disclosure would not 'have made a different result reasonably probable.'") (emphasis in original).

In *Smith v. Cain*, the state court rulings reflected even greater indifference to the rights of the petitioner. After a four-day evidentiary hearing at which voluminous suppressed evidence came to light, the state trial judge's *Brady* ruling, in its entirety, was as follows: "I am ready to rule in the case. I don't have to take any time for this. I have been listening to this for quite a while. I am denying postconviction relief." No. 10-8145, J.A. 576. The intermediate appellate court declined to review that ruling (3-0) as did the Louisiana Supreme Court (7-0). App. B to Pet. for Cert. in No. 10-8145 (intermediate appellate ruling); 45 So.3d 1065 (La. 9/24/10). At oral argument, members of this Court expressed incredulity that the State had not simply conceded error. *See* Adam Liptak, *Justices Rebuke a New Orleans Prosecutor*, N.Y. TIMES, Nov. 8, 2011, at A18. But in a system where Louisiana courts routinely excuse sloppy or strained prosecutorial arguments as to *Brady*—including ones that disregard clearly established Supreme Court precedent—it is unsurprising that prosecutors saw no need to acknowledge their mistakes.

And in *Wearry v. Cain*, 577 U.S. 385 (2016), once more, not one of the state court judges to review the case saw a *Brady* violation. The state trial court ruled that, in an abundance of caution, the suppressed evidence "probably ought to have" been shared with the defendant. App. to Pet. for Cert. in

14-10008, B-6. But nevertheless, the trial court concluded that the suppressed evidence was not "material." *Id.* Wearry appears to have sought a writ of review directly from the Louisiana Supreme Court, but again, no member of the Louisiana Supreme Court took issue with the *Brady* ruling (although two justices would have granted relief on other grounds). *State ex rel. Wearry v. Cain*, 161 So.3d 620 (La. 2015).

Since *Smith v. Cain* was decided in 2012, the Louisiana Supreme Court has released 145 opinions or orders citing *Brady, Smith*, or *Wearry*[3]; the court has found *Brady* violations in just two cases.[4] In the

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[3] This survey updates one conducted by the National Association of Criminal Defense Lawyers for an amicus submission in *Brown v. Louisiana*. Brief of Amici Curiae NACDL in Support of Petitioner, *Brown v. Louisiana*, No. 22-77 (U.S.), 2022 WL 3757457. Undersigned counsel performed a search via Westlaw for all cases decided between January 10, 2012 (the date *Smith* was decided) and July 29, 2025 citing the aforementioned cases.

This figure (145) likely significantly undercounts the number of *Brady* claims that have been presented to the Louisiana Supreme Court, however, because it omits those cases where review was denied with single-word orders. *Compare, e.g., State v. Neal*, 168 So.3d 391 (La. 2015) (omitted from count because order reads only "Denied"), *with Neal v. Vannoy*, 603 F.Supp.3d 310 (E.D. La. 2022) (granting habeas relief on *Strickland* claim but noting proper exhaustion of *Brady* claims), *aff'd*, 78 F.4th 775 (5th Cir. 2023). By a similar token, it may omit cases where the Louisiana Supreme Court summarily affirmed lower court determinations that *Brady* violations did occur, though as explained below, there is good reason to believe that such cases are vanishingly rare.

[4] The Court has also remanded cases for evidentiary hearings—or the possibility of evidentiary hearings—in seven matters apart from this case and that of Mr. Skinner's co-defendant. *State v. Mire*, 24-1148 (La. 12/11/24), 396 So.3d 944;

most recent, after initially vacating the petitioner's capital conviction by a 4-3 vote, the Court subsequently granted rehearing and reversed itself (thus returning Mr. Robinson to death row). *State ex rel. Robinson v. Vannoy*, 21-00812 (La. 1/26/24), 378 So.3d 11 (granting relief under *Brady*); 397 So.3d 333 (La. 12/13/24) (reinstating conviction and capital sentence upon rehearing); --- So.3d ---, 2025 WL 1788218 (La. 06/27/25) (affirming reinstatement of conviction and capital sentence notwithstanding *Glossip*).

In the other case, the defendant was convicted by a 10-2 vote of a rape that occurred twenty-eight years prior. *State v. Warner*, 274 So.3d 72, 87-88 (La. App. 4 Cir. 2019) (rejecting non-unanimous verdict claim). The victim could not identify the attacker (either at the time of the offense or at trial), but the defendant was linked to the case by a "DNA hit." *See State v. Warner*, 22-K-0654 (La. App. 4 Cir. 11/30/22) (unpublished). Prosecutors concealed the identity of

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State v. Parker, 24-457 (La. 11/15/24), 396 So.3d 57 (remanding *Brady* claim for initial consideration of whether evidentiary hearing should be held); *Ezidore v. Hooper*, 23-1312 (La. 5/7/24), 384 So.3d 341; *State v. Robertson*, 18-1006 (La. 05/20/18), 271 So.3d 190; *State v. Newton*, 17-926 (La. 02/11/19), 263 So.3d 421; *Jones v. Vannoy*, 17-101 (La. 06/16/17), 221 So.3d 850; *State v. Robertson*, 15-1911 (La. 1/8/16), 182 So.3d 942 (authorizing *in camera* inspection of evidence to assess possible *Brady* claim). In an eighth case, the Louisiana Supreme Court remanded for an evidentiary hearing at the trial court, despite the fact that the intermediate appellate court had already reviewed the evidence in question (a grand jury transcript) and concluded that a *Brady* violation had occurred. *State v. Serigne*, 16-1034 (La. 12/6/17), 232 So.3d 1227, 1228-29.

the victim, however, so the accused had no way of knowing that the victim was a former sexual partner until *after* jeopardy had attached. *Id.* at *3. The trial court vacated the conviction on both *Strickland* and *Brady* grounds, and the intermediate appellate court unanimously affirmed:

> We agree, especially considering the facts that Defendant asserts (and the victim [now] agrees [in her affidavit]) that he and the victim participated in a consensual sexual relationship, that the victim's own affidavit explicitly states that she personally knew the Defendant, that she was indeed capable of identifying the Defendant [though testified at trial she could not identify her attacker], and that 'the only reason I said I couldn't see the offender at all during trial was because the DA told me to say that[.]'

Id. at *4. The Louisiana Supreme Court denied review, but three justices dissented. 369 So.3d 1264 (La. 2023).

A significant majority of the 145 opinions appear to be identical "template" opinions reciting that the petitioner "fails to show the state withheld material exculpatory evidence in violation of *Brady*" without further discussion or explanation. *Cf. Schexnayder v. Vannoy*, 140 S.Ct. 354, 354-55 (2019) (Sotomayor, J., statement respecting denial of certiorari) (noting Louisiana appellate court's 13-year policy of summarily denying *pro se* appeals without judicial involvement). The majority frequently declines to offer reasons where dissenting votes are noted, *see, e.g., State v. Johnson*, 400 So.3d 916, 917 (La. 2025); *State v. Kitzler*, 333 So.3d 823 (La. 2022); *State ex*

rel. Ray v. State, 211 So.3d 1159 (La. 2017), or when dissenting opinions are filed, *see, e.g., Whitmore v. State*, 269 So. 3d 696 (La. 2019), *State ex. rel. Hampton v. Cain*, 85 So.3d 1241 (La. 2011).

The deferential standard of review mandated by AEDPA limits the ability of the federal courts to function as a backstop when Louisiana courts fail to ensure that prosecutors adhere to their *Brady* obligations. For example, Jessie Grace's murder conviction was vacated by a Louisiana trial court under *Brady* in 2017 because prosecutors "failed to disclose grand jury testimony that contained favorable impeachment evidence, including inconsistent statements about a pre-trial identification of the shooter; [Grace's] presence at the crime scene; and a crucial state witness's motivation for testifying." *State v. Grace*, 264 So.3d 431, 432 (La. 2019) (Hughes, J., dissenting). By a 4-3 vote, the Louisiana Supreme Court reinstated the conviction. *Id.* A federal district court granted habeas relief twice (first in 2021 and again in 2024). Order and Reasons, *Grace v. Cain*, No. CV 02-3818, 2021 WL 5711942 (E.D. La. Dec. 2, 2021); 723 F. Supp. 3d 475 (E.D. La. 2024). Both times, the Fifth Circuit reversed, explaining that even if the Louisiana courts erred, the district court failed to show the "deference that § 2254(d)(1) requires." *Grace v. Hooper*, No. 21-30753, 2023 WL 2810059 (5th Cir. Apr. 6, 2023); *Grace v. Hooper*, 123 F.4th 800, 807 (5th Cir. 2024) (explaining "fair-minded jurists might disagree" as to whether a *Brady* violation occurred). At no point did the federal courts conclude that prosecutors complied with their constitutional obligations, but Mr. Grace will die in

prison, despite strong reason to believe he is innocent and that his rights under *Brady* were violated.

Notwithstanding the high hurdles imposed by AEDPA, the federal courts have frequently corrected egregious miscarriages of justice when it comes to *Brady* violations by Louisiana prosecutors. *See, e.g., Johnson v. Cain*, 68 F.Supp.3d 593, 610 n.11 (E.D.La. 2014) (explaining the Louisiana courts refused to consider a meritorious *Brady* claim because they made a "[s]imple math" error when rejecting Johnson's timely post-conviction relief petition); *LaCaze v. Warden Louisiana Correctional Institute for Women*, 645 F.3d 728, 736 (5th Cir. 2011) (emphasizing similarity to previously Fifth Circuit *Brady* cases and fact that Louisiana Supreme Court "neither cited nor applied" materiality standard of *Kyles*); *Tassin v. Cain*, 517 F.3d 770, 775-77 (5th Cir. 2008) (finding secret promises to key witness for prosecution was "a Fourteenth Amendment under the clear precedent of *Giglio*, *Napue*, and *Brady*"); *Mahler v. Kaylo*, 537 F.3d 494, 498 (5th Cir. 2008) (faulting trial court for ignoring *Kyles* materiality standard and Louisiana Supreme Court's unexplained denial of application for review); *DiLosa v. Cain*, 279 F.3d 259, 265 (5th Cir. 2002) ("The state court's legal conclusion to the contrary is not simply a misconstruction of *Brady*, but one serious enough to be unreasonable."). All of the foregoing were capital murder or second-degree murder cases.

As this Court recently explained, the limitations on the power of federal courts imposed by AEDPA "respect[] the authority and ability of state courts and their dedication to the protection of constitutional rights." *Shoop v. Hill*, 586 U.S. 45, 48 (2019).

But *amici* fear there is reason to question the dedication of the Louisiana courts to protecting the constitutional right of criminal defendants to favorable, material evidence under *Brady*.

CONCLUSION

For the foregoing reasons, *amici* respectfully ask the Court to grant the pending petition.

Respectfully submitted,

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