
No. 25-1195

IN THE
Supreme Court of the United States

JOHN DAVID TRICE,
Petitioner,

v.

STATE OF TEXAS,
Respondent.

On Petition for Writ of Certiorari to the
Court of Appeals of Texas, Eleventh District

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

In lieu of Petitioner's Question Presented, Respondent, the State of Texas, suggests the following:

Texas Penal Code § 21.02 criminalizes the continuous sexual abuse of a child under the age of fourteen. As defined by that statute, a jury must unanimously agree that the defendant, during a period that is thirty or more days in duration, committed two or more acts of sexual abuse against one or more children. The commission of two or more acts of sexual abuse against a child under fourteen over a specified time period—i.e., the continuing pattern of behavior which the statute defines as a criminal offense—is the element on which the jurors must be unanimous to convict. However, § 21.02 explicitly provides that the jury is not required to agree unanimously on which specific and discreet acts of sexual abuse the defendant committed in support of the continuing conduct element. Hence, Petitioner's present challenge is to Texas's characterization of his continuous, but technically discreet, acts of sexual abuse against one or more children as a single crime, as to which the verdict need not have been limited to any one statutory alternative.

"The issue in this case, then, is one of the permissible limits in defining criminal conduct, as reflected in the instructions to jurors applying the definitions, *not one of jury unanimity*." *Schad v. Arizona*, 501 U.S. 624, 631 (1991) (plurality op.) (emphasis added), *abrogated on other grounds as recognized by Edwards v. Vannoy*, 593 U.S. 255, 265 n.4 (2021).

PARTIES TO THE PROCEEDING

Petitioner, John David Trice, is a Texas state prisoner serving a forty-year sentence for continuous sexual abuse of a child. Respondent is the State of Texas. Because no party is a corporation, a corporate disclosure statement is not required under Supreme Court Rule 29.6.

STATEMENT OF RELATED PROCEEDINGS

- *State of Texas v. John David Trice*, No. 23CRDC-00077, 266th District Court, Erath County, Texas. Judgment of Conviction entered January 26, 2024.
- *Trice v. State*, No. 11-24-00035-CR, Eleventh Court of Appeals of Texas. Judgment entered July 24, 2025. Pet. App. at 30A.
- *Trice v. State*, No. PD-0551-25, Texas Court of Criminal Appeals. Order denying petition for discretionary review entered January 15, 2026.

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BRIEF IN OPPOSITION

The Respondent (the “State”) respectfully submits this brief in opposition to the petition for a writ of certiorari (“Petition”) filed by Petitioner John David Trice.

INTRODUCTION

The countless individual acts of sexual abuse Trice committed against TG2¹ are not themselves elements of the continuous sexual abuse offense for which Trice was convicted. They are merely evidentiary facts. The *actus reus* of the offense is the *repeated* sexual abuse of one or more children during a period of thirty or more days. As such, the relevant statutory element is more than just the sum of its constituent offenses. When construed as the Texas Legislature intended, it plainly matters not whether a jury “unanimously” settled on the same two (or more) discreet incidents of sexual abuse because Texas here is punishing the *repeated* sexual exploitation of children.

No appellate court has ever determined that any of the numerous continuing-sexual-abuse statutes like the one at issue here violate the federal constitution. The decision below is consistent with this Court’s opinion in

¹ TG2 refers to “child victim #2.” To protect the identity of the victim, the State will refer to him as TG2. *See* Tex. Const. art. I, § 30(a)(1) (providing that a crime victim has “the right to be treated . . . with respect for the victim’s dignity and privacy throughout the criminal justice process”).

Schad, 501 U.S. at 630–45, and it is also consistent with the reasoning of both the majority and the dissent in *Richardson v. United States*, 526 U.S. 813 (1999).

CITATIONS TO OPINIONS BELOW

The Eleventh Court of Appeals’ opinion affirming Trice’s conviction and sentence (located at Pet. App. 1a–29a) is published, and can be found at *Trice v. State*, 721 S.W.3d 614 (Tex. App.—Eastland 2025, pet. ref’d). The Texas Court of Criminal Appeals’ order refusing Trice’s petition for discretionary review (located at Pet. App. 31a) is not reported.

DESCRIPTION OF STATUTORY PROVISION

Trice challenges the constitutionality of his conviction for continuous sexual abuse of a child, arguing that Texas Penal Code § 21.02 is unconstitutional. At the time he committed this offense (i.e., between May 15, 2010, and August 18, 2010), Texas Penal Code § 21.02 read, in relevant part:

- (a) In this section, “child” has the meaning assigned by Section 22.011(c).
- (b) A person commits an offense if:
 - (1) during a period that is 30 or more days in duration, the person commits two or more acts of sexual abuse, regardless of

- whether the acts of sexual abuse are committed against one or more victims; and
- (2) at the time of the commission of each of the acts of sexual abuse, the actor is 17 years of age or older and the victim is a child younger than 14 years of age.
- (c) For purposes of this section, “act of sexual abuse” means any act that is a violation of one or more of the following penal laws:
- (1) aggravated kidnapping under Section 20.04(a)(4), if the actor committed the offense with the intent to violate or abuse the victim sexually;
 - (2) indecency with a child under Section 21.11(a)(1), if the actor committed the offense in a manner other than by touching, including touching through clothing, the breast of a child;
 - (3) sexual assault under Section 22.011;
 - (4) aggravated sexual assault under Section 22.021;
 - (5) burglary under Section 30.02, if the offense is punishable under

Subsection (d) of that section and the actor committed the offense with the intent to commit an offense listed in Subdivisions (1)–(4); and

(6) sexual performance by a child under Section 43.25.

(d) If a jury is the trier of fact, members of the jury are not required to agree unanimously on which specific acts of sexual abuse were committed by the defendant or the exact date when those acts were committed. The jury must agree unanimously that the defendant, during a period that is 30 or more days in duration, committed two or more acts of sexual abuse.

Act of May 21, 2007, 80th Leg., R.S., ch. 593, § 1.17, Tex. Gen. Laws 593 (amended 2011) (current version at Tex. Penal Code § 21.02), Resp. App. 2a–5a.²

STATEMENT OF THE CASE

I. Relevant Procedural History

A. Conviction and sentence

² The State has included a copy of the 2010 version of § 21.02 at Resp. App. A. When referring to the operative statute, the State will cite its appendix.

In Count 1 of a multi-count indictment, a Texas grand jury charged Trice under § 21.02 of the Texas Penal Code with committing two or more acts of sexual abuse against “Child Victim #2” (i.e., TG2) during a three-month period beginning May 15, 2010, and ending August 15, 2010.³ *See* Resp. App. 8a (indictment). Trice pleaded not guilty, but a jury found him guilty of that offense as alleged in Count 1 of the indictment and sentenced him to forty years’ imprisonment. Resp. App. 11a–12a (judgment of conviction).

B. Direct appeal

Trice timely appealed this conviction with the benefit of counsel, but the intermediate state appellate court affirmed it in a published opinion. Pet. App. 29a (“We affirm the judgments of the trial court.”).

With the benefit of counsel, Trice then filed a petition for discretionary review in the Texas Court of Criminal Appeals (TCCA), but the TCCA refused it on January 15, 2026. *See* Pet. App. 31a.

³ The indictment included six additional counts against Trice alleging six separate, *non-continuous* instances of sexual abuse against additional child victims (i.e., Counts 2–7). Trice was found guilty of Counts 2–7 and received sentences ranging from 10–20 years for each. *See* Pet. Cert. at 4, n.1. All sentences were ordered to run concurrently. *Id.* Since Trice is here challenging only the constitutionality of his continuous sexual abuse conviction in Count 1, the State will make no further reference to them.

Trice filed this petition for writ of certiorari with the Court on April 15, 2026, and these proceedings followed.

II. Relevant Evidence at Trial

The evidence adduced at trial demonstrates that during the summer of 2010, Trice committed repeated and horrendous acts of sexual abuse against TG2 multiple times per week, and that Trice's constituent sex offenses were too numerous to count. Specifically, TG2 was 12 years old in the summer of 2010 when he began working for Trice at Trice's home doing chores, like mowing Trice's lawn and feeding his cows. 4RR.6–11.⁴

The first sexual abuse incident occurred in Trice's barn when Trice directed TG2 to lower his pants and then touched TG2's penis. 4RR.11–13. TG2 explained that Trice regularly gave him "Bud Light" before or during each instance of sexual abuse. 4RR.13. About two weeks after the first incident, Trice showed TG2 pornographic videos while they mutually masturbated each other using lotion. 4RR.14–16. This occurred at least one other time. 4RR.17.

Throughout the entire summer, Trice sexually abused TG2 by making him either touch his own penis or by engaging in incidents of mutual masturbation.

⁴ "4RR" refers to the fourth volume the reporter's record at trial for cause number 23CRDC-00077 followed by the page number.

4RR.16–17. This sexual abuse occurred “a lot. . . . Sometimes back to back days” and sometimes “two or three times a week[.]” 4RR.17–18. There was also an incident in which Trice took TG2 to a neighbor’s pool, made him swim nude, and touched TG2’s penis. 4RR.18–20. Finally, on at least two occasions, Trice had sexual intercourse with a horse while TG2 watched. 4RR.20–21. And on at least one occasion, TG2 participated in having sex with a horse after Trice convinced him it was normal. 4RR.29–30.

SUMMARY OF THE ARGUMENT

The Court should deny this certiorari petition for three reasons. First, the Sixth Amendment’s juror unanimity requirement, which the Court incorporated against the states in *Ramos*, has no application here because it is already required in all Texas criminal prosecutions. Instead, the issue here concerns the due process limits in defining criminal conduct, i.e., whether a particular “fact” constitutes an element of the offense or is merely a “manner and means” upon which the jury need not agree. Second, the decision below is fully consistent with this Court’s relevant precedent. Third, the decision below is splitless and correct.

ARGUMENT

I. The Statutory Framework for the Charged Offense

At the time he committed this offense, Texas Penal Code § 21.02 criminalized the continuous sexual abuse of a child under the age of fourteen. *See* Resp. App. 2a. As required by that statute, a jury must “unanimously” agree that the defendant, during a period that is thirty or more days in duration, committed two or more acts of sexual abuse, against one or more children. *Id.* (b)(1). Section 21.02 identifies six qualifying “acts of sexual abuse,” as violations of one or more of the following Texas penal laws:

- (1) aggravated kidnapping under Section 20.04(a)(4), if the actor committed the offense with the intent to violate or abuse the victim sexually;
- (2) indecency with a child under Section 21.11(a)(1), if the actor committed the offense in a manner other than by touching, including touching through clothing, the breast of a child;
- (3) sexual assault under Section 22.011;
- (4) aggravated sexual assault under Section 22.021;
- (5) burglary under Section 30.02, if the offense is punishable under Subsection (d) of that section and the actor committed the offense with the intent to commit an offense listed in Subdivisions (1)–(4); and
- (6) sexual performance by a child under Section 43.25.

Resp. App. 2a–3a (c). Finally, each constituent act of sexual abuse must have been committed while the actor was at least 17 years old, and the victim was younger than 14. Resp. App. 2a (b)(2).

Pursuant to the Texas Legislature’s explicit command, “members of the jury are not required to agree unanimously on which specific acts of sexual abuse were committed by the defendant or the exact date when those acts were committed.” *Id.* (d). Thus, whether a defendant committed two or more acts of sexual abuse against a child under fourteen, over a specified time period—i.e., the pattern of behavior or the series of acts defined by the statute—is the *element* as to which the jurors must be unanimous in order to convict. *See id.* (“The jury must agree unanimously that the defendant, during a period that is 30 or more days in duration, committed two or more acts of sexual abuse.”); *see also Price v. State*, 434 S.W.3d 601, 605–06 (Tex. Crim. App. 2014) (describing the Legislature’s intent to authorize a conviction even if the jury lacks unanimity as to each of the particular sexual acts or their time of occurrence, so long as the jury members agree that at least two acts occurred during a period that is thirty or more days in duration).

In short, penal code § 21.02(d) establishes that the underlying acts of sexual abuse—in this case the constituent sexual incidents making up the continuous offense—are not themselves elements of the offense for which Trice was charged; they are merely evidentiary

facts upon which the jury need not agree. In other words, they represent the manner and means by which the *actus reus* element of § 21.02 is committed. When properly framed, the relevant statutory element is more than just the sum of its constituent offenses; rather, it targets a class of offenders who repeatedly abuse and molest children.

II. Certiorari Should Be Denied Because *Ramos v. Louisiana* Finds No Application Here.

Trice urges the Court to consider the constitutionality of Texas’s continuous sexual abuse of a child statute in light of the Court’s juror-unanimity holding in *Ramos v. Louisiana*, 590 U.S. 83 (2020). Pet. Cert. at 4–5. This Court in *Ramos* held that the Sixth Amendment right to a jury trial—as incorporated against the States by the Fourteenth Amendment—requires a unanimous verdict to convict a defendant of a serious offense. *Id.* at 92–93. *Ramos* can provide no assistance to Petitioner here because jury unanimity of the variety described in that case is already required in all Texas criminal prosecutions pursuant to the Texas Constitution. *See Young v. State*, 341 S.W.3d 417, 422 (Tex. Crim. App. 2011) (citing Tex. Const. art. V, § 13). Because Texas already requires juror unanimity of the *Ramos* variety—and because Trice benefited from that constitutional rule in this case—his petition does not present a vehicle to examine *Ramos*.

Instead, Trice’s constitutional complaint could only be of the variety described in *Schad v. Arizona*, i.e., whether, under the Due Process Clause, the Texas Legislature’s decision to characterize continuous, but technically discreet, sexual offenses against one or more children as a single crime, to which a verdict need not be limited to any one statutory alternative. *See Schad*, 501 U.S. at 631 (“The issue in this case, then, is one of the permissible limits in defining criminal conduct, as reflected in the instructions to jurors applying the definitions, not one of jury unanimity.”).

III. Certiorari Should Be Denied Because the Decision Below Is Fully Consistent with This Court’s Precedent.

The decision below is fully consistent with the Court’s plurality opinion in *Schad*,⁵ and it is also consistent with the reasoning of both the majority and the dissent in *Richardson v. United States*, 526 U.S. 813 (1999).⁶

⁵ The Court in *Schad* produced three opinions: (i) a plurality opinion by Justice Souter (joined by Chief Justice Rehnquist and Justices O’Connor and Kennedy); (ii) an opinion by Justice Scalia, concurring in part and concurring in the judgment; and (iii) a dissenting opinion by Justice White (joined by Justices Marshall, Blackmun, and Stevens).

⁶ In *Richardson*, Justice Breyer authored the majority opinion (joined by Chief Justice Rehnquist, and Justices Stevens, Scalia, Souter, and Thomas). Justice Kennedy filed a dissenting opinion (joined by Justices O’Connor and Ginsburg).

A. *Schad v. Arizona*

In *Schad*, a plurality of the Court confirmed that a constitutionally valid conviction could be obtained by means of a general verdict, even where jurors did not agree on either the probative force of any particular item of evidence, or the particular means a defendant used to commit an element of a crime. 501 U.S. at 631–32. In such cases, as in litigation generally, “different jurors may be persuaded by different pieces of evidence, even when they agree upon the bottom line.” *Id.* at 631–32. “Plainly there is no general requirement that the jury reach agreement on the preliminary factual issues which underlie the verdict.” *Id.* And on this point, Justice Scalia appears to have provided a fifth vote. See *Schad*, 501 U.S. at 649 (Scalia, J., concurring in part and concurring in the judgment) (“[I]t has long been the general rule that when a single crime can be committed in various ways, jurors need not agree upon the mode of commission.”). Notably, six members of the Court in *Richardson* refer to this portion of the *Schad* plurality with approval. *Richardson*, 526 U.S. at 817 (“The question before us arises because a federal jury need not always decide unanimously which of several possible sets of underlying brute facts make up a particular element, say, which of several possible means the defendant used to commit an element of the crime.”) (citing *Schad*, 501 U.S. at 631–32).

And as the *Schad* plurality further reasoned, the

question of whether a particular fact constitutes an element of an offense, or is merely one means for proving that element, is primarily a question of statutory interpretation. *Schad*, 501 U.S. at 635–36. This is because “legislatures frequently enumerate alternative means of committing a crime without intending to define separate elements or separate crimes The question whether statutory alternatives constitute independent elements of the offense . . . is a substantial question of statutory construction.” *Id.* at 636.

The Court in *Schad* also acknowledged that the Due Process Clause nevertheless placed limits on that legislative power. To this end the plurality reasoned that “nothing in our history suggests that the Due Process Clause would permit a State to convict anyone under a charge of ‘Crime’ so generic that any combination of jury findings of embezzlement, reckless driving, murder, burglary, tax evasion, or littering, for example, would suffice for conviction.” *Schad*, 501 U.S. at 633.⁷ As the plurality reasoned, such a statute might well violate the due process norms of “fundamental fairness” and “rationality.” *Id.* at 637.

The Court could not establish a uniform test to

⁷ And on this point, Justice Scalia again appears to have agreed. *See Schad*, 501 U.S. at 650 (“[O]ne can conceive of novel ‘umbrella’ crimes (a felony consisting of either robbery or failure to file a tax return) where permitting a 6-to-6 verdict would seem contrary to due process.”).

measure the constitutional limits of a legislature's power to define the elements of an offense in this context. *Schad*, 501 U.S. at 637. Instead, the plurality identified and examined three general considerations to be used when analyzing the constitutionality of continuing-offense statutes like Texas Penal Code § 21.02.

First, the plurality confirmed that the decision of whether a particular “fact” constitutes an element of the offense—or is merely a “manner and means” upon which the jury need not agree—is a “value choice[] more appropriately made in the first instance by a legislature than by a court[.]” *Id.* at 638. The Court also made plain that its respect “for this legislative competence counsels restraint against judicial second-guessing.” *Id.* Ultimately, a legislature’s definition of the elements of the offense “is usually dispositive.” *Id.* at 639 (internal quotation marks omitted).

Second, the plurality reasoned that where a legislature’s statutory definition of a particular crime has either a long history, or is in widespread use, such a statute would be more difficult to challenge. *Id.* at 640. Conversely, “freakish” definitions, or those that create a single, “umbrella” crime by fusing multiple, “inherently separate” offenses together, would be subject to greater scrutiny, and hence easier to challenge. *Id.* at 640.

Third, where the constituent facts that underlie the relevant element reflect equal degrees of

blameworthiness and culpability, the legislature's determination to treat those facts as means rather than as elements, is given considerable deference. *Id.* at 643. The more the underlying, constituent incidents are morally equivalent, the less reason to require juror concurrence—even with respect to relatively novel offenses. *See id.* at 643–44. Thus, moral equivalence carried considerable weight in the plurality's analysis. *Id.* at 643 (subsuming due-process considerations of history and current practice into a “critical examination” of moral equivalence); *id.* at 651 (Scalia, J., concurring in part and concurring in the judgment) (noting that the plurality utilized moral equivalence as “a substitute for reliance upon historical practice”).

B. *Richardson v. United States*

Trice devotes much of his petition to arguing that § 21.02 is in tension with the due process concerns identified in *Richardson*, Pet. Cert. at 9–13, but this argument fails for at least three reasons.

First, although the majority in *Richardson* did not fully adopt the plurality's *Schad* analysis, the Court did, nevertheless, refer to that portion of the *Schad* plurality with approval. *See Richardson*, 526 U.S. at 820 (“Finally, this Court has indicated that the Constitution itself limits a State's power to define crimes in ways that would permit juries to convict while disagreeing about means, *at least where that definition risks serious unfairness and lacks support in history or tradition.*”)

(citing *Schad*, 501 U.S. at 631–32) (emphasis added).

Second, both the majority and the dissent in *Richardson* favorably acknowledged, and explicitly distinguished, state laws permitting convictions for continuing-course offenses involving the sexual abuse of children—despite the lack of jury agreement as to the specific underlying acts. *See Richardson*, 526 U.S. at 821 (“The state practice may well respond to special difficulties of proving individual underlying criminal acts . . . which difficulties are absent here.”); *id.* at 833 (Kennedy, J., dissenting) (“States have also chosen to define as continuous some crimes that involve repeated conduct where the details of specific instances may be difficult to prove, as in cases of child molestation or promoting prostitution.”).

Third, the federal statute at issue in *Richardson* is nothing like penal code § 21.02. For example, the Court in *Richardson* was concerned that the term “violations” as defined in the federal statute covered a wide range of behavior with varying degrees of seriousness, spread out over approximately ninety statutory sections. *Richardson*, 526 U.S. at 819. Moreover, the Court was concerned that the wide range of constituent criminal incidents defined by that federal statute might permit a jury to avoid discussing the specific factual details of each violation, which could in turn mask wide disagreement among the jurors about what the defendant did or did not do. *Id.* To this end, the majority reasoned that where the jury is presented with such a

wide range of dissimilar and potentially illegal misconduct, jurors might not focus on specific factual details and simply convict based only on allegations of wide-ranging criminal acts because “where there is smoke there must be fire.” *Id.* These concerns are categorically absent from Texas Penal Code § 21.02.

C. *Mathis v. United States*

Finally, this Court reaffirmed *Schad*’s continued viability in *Mathis v. United States*, 579 U.S. 500, 506 (2016). There, the Court resolved that a conviction under Iowa’s burglary statute could not be used as a predicate to justify the 15-year mandatory minimum sentence under the federal Armed Career Criminal Act. *Id.* at 520. To answer that question, the Court imagined a statute that requires “use of a ‘deadly weapon’ as an element of a crime and further provides that the use of a ‘knife, gun, bat, or similar weapon’ would all qualify.” *Id.* at 506. Such a statute, like the one in *Schad*, “enumerates various factual means of committing a single element.” *Id.* (citing *Schad*, 501 U.S. at 636). Because the Iowa statute “merely specifies diverse means of satisfying a single element of a single crime—or otherwise said, spells out various factual ways of committing some component of the offense—a jury need not find (or a defendant admit) any particular item[.]” *Id.* In other words, “[a] jury could convict even if some jurors conclude[d] that the defendant used a knife while others conclude[d] he used a gun, so long as all agreed that the defendant used a deadly weapon.” *Id.* (internal

quotation marks omitted) (alterations in original).

Iowa’s burglary offense was the kind of statute that the *Schad* plurality found constitutional. *Id.* at 517–18 (citing *State v. Duncan*, 312 N.W.2d 519, 523 (Iowa 1981) (holding under Iowa’s burglary statute that jury need not agree whether the burgled location was a building, other structure, or vehicle because they are “alternative method[s]” of committing one offense)).

D. Texas Penal Code section 21.02 is fully consistent with *Schad* and *Richardson*.

1. The Texas Legislature’s intent is clear and controlling.

The Legislature’s explicit statutory command in section 21.02(d) establishes that the underlying facts—in this case the constituent sexual incidents making up the continuous offense—are merely the manner and means upon which the jury need not agree. This “value choice” deserves respect and resists judicial second-guessing.

2. The legitimate purpose of the Texas statute

Like other jurisdictions that have enacted similar continuing child-sex-abuse statutes, Texas is here responding to the serious and legitimate concern that many children who have been victimized by repeated incidents of sexual abuse over a period of time, and by

the same assailant, may not be able to identify those discrete acts of molestation. *See Price*, 434 S.W.3d at 607–08. The TCCA described this aim as follows:

[A] young child is repeatedly molested by an authority figure—usually a step-parent, grandparent, uncle or caregiver; there is (or is not) medical evidence of sexual contact; and the child is too young to be able to differentiate one instance of sexual exposure, contact, or penetration from another or have an understanding of arithmetic sufficient to accurately indicate the number of offenses. As in this case, ‘he did it 100 times.’ The real gravamen of this criminal behavior is the existence of a sexually abusive relationship with a young child . . . marked by continuous and numerous acts of sexual abuse of the same or different varieties.

Id. (quoting *Dixon v. State*, 201 S.W.3d 731, 737 (Tex. Crim. App. 2006) (Cochran, J., concurring)). And there was a second reason for Texas to create continuous course of conduct crimes targeting the sexual abuse of children: Because the constituent incidents occurring over a substantial time frame generally resulted in *cumulative* injury; and hence, the continuous pattern constituted an analytically distinct crime. *See Dixon*, 201 S.W.3d at 737 (“[T]he simple fact that the criminal conduct at issue is not really one specific act at one specific moment.”).

3. The constituent incidents of sexual abuse are morally equivalent.

Here, the “acts of sexual abuse” defined by Texas Penal Code § 21.02(c) are found in only six penal statutes (although these statutes sometimes define more than one offense). *See* Resp. App. 2a–3a. They all involve sexual abuse or sexual assault on children and each of the alleged constituent acts are either first- or second-degree felonies. Their moral and factual equivalence is mutually reinforcing, which supports the legislative determination to construe those underlying “facts” as the manner and means to commit the continuing offense. Finally, Texas Penal Code § 21.02 is not remotely akin to a statute permitting a conviction on any combination of jury findings of embezzlement, reckless driving, murder, burglary, tax evasion, or littering to suffice for conviction, *Schad*, 501 U.S. at 633, or a crime consisting of either robbery or failure to file a tax return, *id.* at 650 (Scalia, J., concurring in part and concurring in the judgment).

4. Historical roots and contemporary support

There has been a modern trend to criminalize the continuous sexual abuse of children, and to permit such convictions without requiring jury unanimity with respect to the constituent incidents supporting the continuous offense element. This trend, combined with Trice’s failure to identify state or federal court precedent

declaring such statutes to be a due process violation, suggests that the model is, or is becoming, widely accepted.

And while the Texas statute cannot easily trace its ancestry to a firmly rooted common-law practice, the plurality in *Schad* noted the “obvious” proposition that “history will be less useful as a yardstick in cases dealing with modern statutory offenses lacking clear common-law roots, than in cases . . . that deal with crimes that existed at common law.” *Schad*, 501 U.S. at 640 n.7. This proposition is perhaps “obvious” because as law enforcement requirements change, “legislative bodies must have the freedom, within constitutional limits, to devise new ways of responding to those changes, including the creation of new crimes that are not closely modelled on any common law antecedents.” *United States v. Edmonds*, 80 F.3d 810, 835 (3d Cir. 1996) (Alito, J., concurring in part and dissenting in part). Finally, there is nothing “freakish” about this statute. Texas Penal Code § 21.02 is compact, and the underlying incidents of sexual abuse are tightly interwoven, both logically and morally. Indeed, the overarching legislative purpose of the statute—to punish those who repeatedly sexually abuse children—serves an important and distinct function, which is far more focused than the federal statute at issue in *Richardson*.

* * *

In sum, there is no support for Trice’s view that *Ramos* speaks to the continuing viability of *Schad* and

Richardson. *Ramos*'s juror unanimity holding derives from the Sixth and Fourteenth Amendments. Conversely, the constitutional concerns in *Schad* and *Richardson* flow from the Due Process Clause.

IV. Certiorari Should Be Denied Because The Decision Below is Splitless and Correct.

A. Trice fails to identify a split of authority between this case and any decision of a state or federal court.

When construed as the Texas Legislature intended, Trice's jury was not required to "unanimously" agree on the same two (or more) discreet incidents of sexual abuse because Texas here is punishing the continuous and repeated sexual exploitation of children. Trice fails to show that the decision below conflicts with any decision of *any* court—state or federal. Trice fails even to identify a decision that holds that *Ramos* overruled *Schad*.

Indeed, according to Professor LaFave, the opposite is true:

Ramos did not change the law regarding which findings must be made unanimously, other than to overturn *Apodaca* [*v. Oregon*, 406 U.S. 404 (1972)], and hold that states too are bound by the Sixth Amendment's requirement that when that amendment's Jury Clause provides a right to jury, a verdict of guilt must be unanimous.

6 Wayne R. LaFave, Jerold H. Israel & Nancy J. King, Criminal Procedure § 22.1(e) (5th ed. 2025). And as one court recently held, “[t]he growing body of post-*Ramos* state and federal case law confirms that *Ramos* did not disturb the well-established doctrine that the Sixth Amendment . . . does not require jury unanimity as to specific underlying facts or ‘means’ to convict a defendant of a continuing course of conduct offense, such as that which is at issue here.” *State v. Tran*, 549 P.3d 296, 304 (Haw. 2024) (collecting federal and state cases). This should be the end of it.

B. The decision below is correct.

By failing to present a circuit split or *any* disagreement as to the legal issue decided below, Trice necessarily seeks fact-bound error correction of a properly stated rule of law. This is reason alone to deny certiorari. *See* Sup. Ct. Rule 10. More importantly, there is no error to correct because the lower court did not err. Instead, it fully and faithfully considered and rejected *Ramos*’s applicability here. *See Trice*, 721 S.W.3d at 626–29. It rejected Trice’s argument that *Ramos* overturned this Court’s earlier precedent which held that a jury “need not always decide unanimously which of several possible sets of underlying brute facts make up a particular element, say, which of several possible means the defendant used to commit an element of the crime.” *Id.* at 628 (quoting *Richardson*, 526 U.S. at 817). Finally, the intermediate court surveyed several post-

Ramos appellate decisions and found no authority “deviating from the predominate appellate-court precedent that individual acts of sexual abuse are merely the manner and means of committing an element of the offense defined in Section 21.02[.]” *Id.* at 629.

CONCLUSION

Based on the foregoing, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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