No. _____

IN THE SUPREME COURT OF THE UNITED STATES

FRANCISCO PINEDA-BARRIENTOS,

Petitioner,

v.

STATE OF MARYLAND,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Maryland

PETITION FOR A WRIT OF CERTIORARI

Andrew V. Jezic, Esquire
The Law Offices of Jezic & Moyse, LLC
2730 University Blvd. W., Suite 604
Wheaton, Maryland 20902
(240) 292-7200
Andrew.Jezic@Jezicfirm.com
Counsel of Record

QUESTIONS PRESENTED

1. Whether the Sixth and Fourteenth Amendments require a criminal jury, on request, to be instructed on the presumption of innocence and the burden of reasonable doubt before the presentation of evidence.

2. Whether refusal to give an instruction, on request, on the presumption of innocence until final instructions is structural error, overruling Kentucky v. Whorton, 441 U.S. 786 (1979).

PARTIES TO THE PROCEEDING

Petitioner is Francisco Pineda-Barrientos, who was the defendant in the Circuit Court for Montgomery County, Maryland, the appellant in the Appellate Court of Maryland, and the petitioner in the Supreme Court of Maryland. Respondent is the State of Maryland.

RELATED PROCEEDINGS

Circuit Court for Montgomery County, Maryland: State v. Francisco Pineda-Barrientos, Case No. C-15-CR-22-001348. Judgment entered September 22, 2023.

Appellate Court of Maryland: Francisco Pineda-Barrientos v. State of Maryland, No. 1444, September Term, 2023. Judgment affirming conviction filed September 2, 2025; mandate issued October 6, 2025.

Supreme Court of Maryland: Francisco Pineda-Barrientos v. State of Maryland, Petition Docket No. 336, September Term, 2025. Petition for writ of certiorari denied December 23, 2025. Motion to reconsider denial of certiorari denied March 23, 2026.

TABLE OF CONTENTS

Questions Presented i

Parties to the Proceeding ii

Related Proceedings.. ii

Table of Authorities vi

Opinions Below 1

Jurisdiction 1

Constitutional Provisions Involved...........................2

Statement of the Case 3

Reasons for Granting the Petition 12

I. Before the Founding, the presumption of innocence and proof beyond a reasonable doubt formed the constitutional framework of a jury trial 15

II. The reasonable-doubt framework must be given before the jury hears evidence 18

III. The error is structural, or at minimum warrants review even under <u>Whorton</u> 21

IV. Ramos supplies the *stare decisis* framework for correcting Whorton 24

V. This case is a clean vehicle 28

Conclusion 28

Appendix

Appendix A. Opinion of the Appellate Court of Maryland (filed September 2, 2025)..........................1a

Appendix B. Order of the Supreme Court of Maryland denying certiorari (entered December 23, 2025) 67a

Appendix C. Order of the Supreme Court of Maryland denying reconsideration (entered March 23, 2026) 72a

Appendix D. Relevant excerpts from the jury-trial transcript (June 26, 2023) 78a

Appendix E. Petition for a Writ of Certiorari filed in the Supreme Court of Maryland (filed October 20, 2025) 108a

Appendix F. Motion to Reconsider Denial of Certiorari filed in the Supreme Court of Maryland (filed January 22, 2026) 112a

TABLE OF AUTHORITIES

Cases

Alleyne v. United States, 570 U.S. 99 (2013) 21, 25

Apodaca v. Oregon, 406 U.S. 404 (1972) 14, 25

Apprendi v. New Jersey, 530 U.S. 466 (2000) 21

Boumediene v. Bush, 553 U.S. 723 (2008) 5

Coffin v. United States, 156 U.S. 432 (1895) .. 4, 5, 16, 28

Dep't of Homeland Sec. v. Thuraissigiam, 591 U.S. 103, 107 (2020) 5

Duncan v. Louisiana, 391 U.S. 145 (1968) 24

Edwards v. Vannoy, 593 U.S. 255 (2021) 27

Erlinger v. United States, 602 U.S. 821 (2024) .. 6, 15, 19, 20, 24

Estelle v. Williams, 425 U.S. 501 (1976)............19, 20

Gamble v. United States, 587 U.S. 678 (2019)........14

In re Winship, 397 U.S. 358 (1970)..........6, 17, 20, 28

Johnson v. Louisiana, 406 U.S. 356 (1972).............25

Kentucky v. Whorton, 441 U.S. 786 (1979) ...i, 13, 15, 24, 26, 27

Neder v. United States, 527 U.S. 1 (1999)...............13

Ramos v. Louisiana, 590 U.S. 83 (2020) .5, 13, 14, 16, 17, 24, 25, 27, 28

Sullivan v. Louisiana, 508 U.S. 275 (1993)...6, 12, 17, 22, 28

Taylor v. Kentucky, 436 U.S. 478 (1978) ...6, 7, 19, 28

Vasquez v. Hillery, 474 U.S. 254 (1986) 22

Constitutional Provisions

U.S. CONST. amend. VI..................i, 2, 13, 16, 22, 24

U.S. CONST. amend. XIV ....i, 2

Statutes and Rules

28 U.S.C. § 1257(a) 2

Sup. Ct. R. 10 14

Sup. Ct. R. 13 2

Md. Rule 4-325...11

MPJI-Cr 1:00..9

Other

Daniel Pi et al., Quantifying Reasonable Doubt, 72 RUTGERS U.L. REV. 455 (2020)...............................4

Francois Quintard-Morenas, The Presumption of Innocence in the French and Anglo-American Legal Traditions, 58 AM. J. COMP. L. 107 (2010) 4

Henry L. Chambers, Jr., Reasonable Certainty and Reasonable Doubt, 81 MARQ. L. REV. 655 (1998)....7

Keith Burghardt et al., Evidence of Herding and Stubbornness in Jury Deliberations (2017).............23

Lawrence S. Wrightsman & Saul M. Kassin, The American Jury on Trial: Psychological Perspectives 144 (1988)...3

Maria Cuellar et al., A Probabilistic Formalization of Contextual Bias in Forensic Analysis: Evidence that Examiner Bias Leads to Systemic Bias in the Criminal Justice System (2021) 23

Michael D. Cicchini, Is Reasonable Doubt Self-Defining?, 64 VILL. L. REV. 1 (2019) 4

Mitchell J. Frank et al., The Silent Criminal Defendant and the Presumption of Innocence, 10 LEWIS & CLARK L. REV. 237 (2006) 3, 4

Reid Hastie, Inside the Juror: The Psychology of Juror Decision Making 98 (1993) 3

Thomas P. Gallanis, Reasonable Doubt and the History of the Criminal Trial, 76 U. CHI. L. REV. 941 (2009) 4

William S. Laufer, The Rhetoric of Innocence, 70 WASH. L. REV. 329 (1995) 7

OPINIONS BELOW

The unreported opinion of the Appellate Court of Maryland affirming Petitioner's conviction was filed on September 2, 2025, in Francisco Pineda-Barrientos v. State of Maryland, No. 1444, September Term, 2023, ACM-REG-1444-2023. Pet. App. 1a–66a.

The Supreme Court of Maryland denied discretionary review on December 23, 2025. Pet. App. 67a–71a. Francisco Pineda-Barrientos v. State of Maryland, SCM-PET-0336-2025. The Supreme Court of Maryland denied reconsideration on March 23, 2026. Pet. App. 72a–77a. Francisco Pineda-Barrientos v. State of Maryland, SCM-PET-0336-2025.

JURISDICTION

The Appellate Court of Maryland affirmed Petitioner's conviction on September 2, 2025. The

Supreme Court of Maryland denied discretionary review on December 23, 2025. Petitioner timely moved for reconsideration of that denial, and the Supreme Court of Maryland denied reconsideration on March 23, 2026. This petition is timely under Supreme Court Rule 13.3 because it is filed within ninety days of the order denying timely reconsideration. Sup. Ct. R. 13.3. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment provides, in relevant part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury."

The Fourteenth Amendment provides, in relevant part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

At the beginning of a criminal trial, Petitioner requested Maryland's pattern introductory instruction on the presumption of innocence and the burden of reasonable doubt. The trial court refused. Pet. App. 8a–22a, 95a–107a

It was not until the end of the trial that the jury was first instructed to apply the burden of reasonable doubt and to presume the Petitioner innocent "throughout every stage of the trial." Pet. App. 12a, 22a. For the Petitioner, whose jury was bereft of these most basic constitutional mandates, it was too late: "When was the last time you learned the rules of the game after you played it?" Lawrence Wrightsman & Saul Kassin, American Jury on Trial: Psychological Perspectives 144 (1988).[1]

---

[1] Reid Hastie, Inside the Juror: The Psychology of Juror Decision Making, CAMBRIDGE U. PRESS 98 (1993) ("Most of the empirical studies provide evidence for subjects' initial inclination to distribute uncertainty approximately in a 50-50 manner between guilty-innocent options…."); Mitchell J. Frank

By the Founding,[2] the criminal jury's task was already governed by two settled principles: "one can be accused of a crime without being a criminal,[3]" and "wherever doubt existed in a criminal case, acquittal must follow." Coffin v. United States, 156 U.S. 432, 460 (1895). This Court in Coffin recognized that, whatever uncertainty may exist about when the presumption of innocence was first stated "in precise

---

et al., The Silent Criminal Defendant and the Presumption of Innocence, 10 LEWIS & CLARK L. REV. 237, 250 (2006) (reporting that 82% of potential jurors in one study did not understand a simplified presumption-of-innocence instruction); Daniel Pi et al., Quantifying Reasonable Doubt, 72 RUTGERS U.L. REV. 455, 457 (2020) (noting that laypeople and lawyers vary widely in understanding "reasonable doubt"); Michael D. Cicchini, Is Reasonable Doubt Self-Defining?, 64 VILL. L. REV. 1, 24 (2019) (discussing empirical evidence that jurors may apply improperly low probability thresholds).

[2] Thomas P. Gallanis, Reasonable Doubt and the History of the Criminal Trial, 76 U. CHI. L. REV. 941, 941, 948–49 (2009) (using the 1784 Old Bailey arson trial as an example that by 1784 English judges were instructing juries, "if there is a reasonable doubt, in that case that doubt ought to decide in favor of the prisoner.").

[3] Francois Quintard-Morenas, The Presumption of Innocence in the French and Anglo-American Legal Traditions, 58 Am. J. Comp. L. 107 (2010).

words," "the practice which flowed from it has existed in the common law from the earliest time," including in the writings of Fortescue, Hale, and Blackstone. 156 U.S. at 455–56. The Court in Ramos v. Louisiana directed courts to determine the contours of a jury-trial right by looking to "the common law, state practices in the founding era, or opinions and treatises written soon afterward." Ramos v. Louisiana, 590 U.S. 83, 90 (2020). Because constitutional guarantees are measured by their scope "when the Constitution was drafted and ratified," the common-law practice described in Coffin identifies the jury-trial framework the Constitution preserved: jurors were to approach accusation, proof, and doubt through the presumption of innocence before they could convict. Dep't of Homeland Sec. v. Thuraissigiam, 591 U.S. 103, 107 (2020) (quoting Boumediene v. Bush, 553 U.S. 723, 746 (2008)).

1. The constitutional framework.

The presumption of innocence and proof beyond a reasonable doubt are basic constitutional precepts that instruct jurors how to interpret the evidence from the start. Proof beyond a reasonable doubt gives the presumption of innocence its constitutional force. See In re Winship, 397 U.S. 358, 363 (1970); Sullivan v. Louisiana, 508 U.S. 275, 278, 281 (1993). Those rules are not "procedural formalit[ies]" but "fundamental reservation[s] of power" because they require proof beyond a reasonable doubt before a jury may authorize criminal punishment. Erlinger v. United States, 602 U.S. 821, 832 (2024).

Those principles must operate while the jury hears the evidence, not merely *after* the evidence has closed. This Court in Taylor, quoting Wigmore, described the effect of the presumption of innocence as one that "conveys for the jury a special and additional caution . . . to consider, in the material for their belief, *nothing but the evidence, i.e.*, no surmises based on the present situation of the accused. This caution is indeed particularly needed in criminal cases." Taylor v. Kentucky, 436 U.S. 478, 484 (1978) (quoting 9 J. Wigmore, Evidence § 2511, 407 (3d ed. 1940)) (emphasis in original); see also Henry L. Chambers, Reasonable Certainty and Reasonable Doubt, 81 MARQ. L. REV. 655, 671 (1998) ("The presumption of innocence effectively requires that jurors begin and end their inquiry with a skeptical mindset."). Besides these historical roots, such constitutional instructions have additional practical significance: studies show that jurors "quickly abandon a presumption of innocence when presented with any incriminating evidence." William S. Laufer, The Rhetoric of Innocence, 70 WASH. L. REV. 329, 367 (1995).

2. The trial.

Petitioner was tried in the Circuit Court for Montgomery County, Maryland, on allegations of sexual abuse. The case turned heavily on credibility. The complainant testified to events alleged to have occurred years earlier. Petitioner testified, denying the allegations, and called witnesses in his defense.

Before the presentation of evidence, defense counsel asked the trial court to give Maryland's pattern introductory instruction on the presumption of innocence and the burden of reasonable doubt. Pet. App. 8a–17a, 95a–107a. The jury would have been instructed, among other things: "The defendant is presumed to be innocent of the charges. This presumption remains throughout every stage of the trial and is not overcome unless you are convinced beyond a reasonable doubt that the defendant is guilty." MPJI-Cr 1:00. The trial court denied the request. [4]

---

[4] The relevant part of the instruction reads as follows:

The defendant is presumed to be innocent of the charges. This presumption remains throughout every stage of the trial and is not overcome unless you are convinced beyond a reasonable doubt that the defendant is guilty.

The State has the burden of proving the guilt of the defendant beyond a reasonable doubt. This means that the State has the burden of proving, beyond a reasonable doubt, each and every element of the (crime(s)) charged. The elements of a crime are the component parts of the crime about which I will instruct you later. This burden remains on the State throughout the trial. The defendant is not required to prove (pronoun) innocence. However, the State is not required to prove guilt beyond all possible doubt or to a mathematical certainty. Nor is the State required to negate every conceivable circumstance of innocence.

A reasonable doubt is a doubt founded upon reason. Proof beyond a reasonable doubt requires such proof as would convince you of the truth of a fact to the extent that you would be willing to act upon such belief without reservation in an important matter in your own business or personal affairs. If you are not satisfied of the defendant's guilt to that extent for each and every element of [a] [the] crime charged, then reasonable doubt exists and the defendant must be found not guilty of [that] [the] crime.

MPJI-Cr 1:00.

Defense counsel renewed the request. Counsel explained that the jury had never been told that the presumption of innocence applies "to every stage of the case." Pet. App. 97a–99a. Counsel requested at minimum, a narrowed instruction that the presumption of innocence "applies throughout every stage of the case" and a more concise recitation of the burden of reasonable doubt, without defining it.

The trial court relied on voir dire. During voir dire, the court had asked prospective jurors whether they disagreed with the statement that the defendant was presumed innocent. The trial court had also said during voir dire that the State must prove guilt beyond a reasonable doubt and that it would "read you an instruction on that at the end of the case." Those voir dire questions did not provide any explanation of those constitutional principles, nor did they instruct the jurors that the presumption of innocence must be applied throughout every stage of the trial.

The jury therefore heard the State's opening statement, the complainant's testimony, the State's evidence, the defense case, and Petitioner's own testimony before receiving any constitutional instruction that Petitioner was presumed innocent, that the presumption remained throughout every stage of trial, or that the State bore the burden of proving guilt beyond a reasonable doubt. Pet. App. 17a–22a, 95a–107a.

3. The state appellate proceedings. The Appellate Court of Maryland affirmed. Pet. App. 23a–25a. It reasoned that Maryland Rule 4-325 makes preliminary instructions discretionary and that the trial court did not abuse its discretion because jurors had been generally informed of the presumption of innocence and reasonable doubt during voir dire and later received final instructions.

Petitioner sought review in the Supreme Court of Maryland, arguing that, on request, jurors must receive preliminary instructions on these fundamental principles so that they understand and apply them throughout trial. The Supreme Court of Maryland denied review and later denied reconsideration. Pet. App. 67a–77a.

REASONS FOR GRANTING THE PETITION

This case asks whether jurors may hear evidence before they are told the two most basic constitutional principles that define a lawful conviction: the defendant is presumed innocent throughout every stage of the trial, and the State must prove the defendant's guilt beyond a reasonable doubt.[5] Those rules are the foundational bedrock for all criminal trials.

---

[5] Sullivan held that a constitutionally deficient reasonable-doubt instruction is structural error because the reasonable-doubt requirement and the jury-trial right are "interrelated": "the jury verdict required by the Sixth Amendment is a jury

This error is structural because no reviewing court can reconstruct how jurors would have heard the evidence had they been instructed on the proper framework from the start. Neder v. United States, 527 U.S. 1, 8–9 (1999) (defining structural errors as those that "infect the entire trial process" and deprive the accused of "basic protections without which a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence."). The Court in Kentucky v. Whorton, 441 U.S. 786 (1979), appears to have held that the failure to instruct on the presumption of innocence is not structural error.

However, the Court's recent holding in Ramos v. Louisiana, 590 U.S. 83 (2020), supplies the path for limiting or overruling Whorton. Ramos stands for the proposition that when an under-reasoned precedent cuts down a core jury-trial protection, this

---

verdict of guilty beyond a reasonable doubt." 508 U.S. 275, 278 (1993).

Court may correct course. 590 U.S. 83, 90–93 (2020) (overruling Apodaca v. Oregon, 406 U.S. 404 (1972)); Sup. Ct. R. 10.

In Ramos, Justice Kavanaugh's concurrence explained why *stare decisis* does not protect a grievously wrong criminal-procedure precedent with weak reliance interests. Id. at 115 (Kavanaugh, J., concurring). Justice Thomas's concurrence grounded incorporation of the jury guarantee in the Privileges or Immunities Clause's original meaning. Id. at 132 (Thomas, J., concurring). Justice Alito's dissent identified the key practical concern: whether overruling precedent will unsettle final convictions. Id. at 140 (Alito, J., dissenting); see also Gamble v. United States, 587 U.S. 678, 711–12 (Thomas, J., concurring) ("By applying demonstrably erroneous precedent instead of the relevant law's text—as the Court is particularly prone to do when expanding federal power or crafting new individual rights—the

Court exercises "force" and "will," two attributes the People did not give it."). This case answers that concern: limiting or overruling Whorton would not create a cascade of overturned convictions because the constitutional rule sought here requires only a requested preliminary instruction in pending trials and cases still on direct review.

I. BEFORE THE FOUNDING, THE PRESUMPTION OF INNOCENCE AND PROOF BEYOND A REASONABLE DOUBT FORMED THE CONSTITUTIONAL FRAMEWORK OF A JURY TRIAL

The Constitution requires a criminal jury to decide guilt under a framework that begins with innocence and ends only with the standard of proof beyond a reasonable doubt. The Fifth and Sixth Amendments preserve the "ancient rule" that the government must prove its charges "to a jury" and "beyond a reasonable doubt." Erlinger v. United

States, 602 U.S. 821, 831 (2024). That constitutional framework must not be withheld from the jury until the evidence is over. Without preliminary instructions, jurors may start with strong suspicion, or likelihood of guilt, rather than innocence.

Coffin traced the presumption-of-innocence principle through Deuteronomy, Ancient Greece, Roman law, and the common law, explaining that common-law lawyers traced the doctrine of doubt to "its true origin, the presumption of innocence." 156 U.S. 432, 453–61 (1895). Justice White, in Coffin, noted "the fact that the presumption of innocence is so elementary that instances of denial to charge it upon request have rarely occurred." Id. at 458 (describing the presumption of innocence as "axiomatic and elementary."). This Court in Ramos also cited Justice Story's postadoption account of the jury-trial right: "in common cases, the law not only presumes every man innocent, until he is proved guilty; but unanimity in the verdict of the jury is indispensable." Ramos, 590 U.S. at 91–92 (quoting 2 J. Story, Commentaries on the Constitution of the United States §777, p. 248 (1833) and noting that "[s]imilar statements can be found in American legal treatises throughout the 19th century.").

In In re Winship, this Court held that the reasonable-doubt standard "plays a vital role in the American scheme of criminal procedure," is a "prime instrument for reducing the risk of convictions resting on factual error," and "provides concrete substance for the presumption of innocence." 397 U.S. 358, 363 (1970) (held that proof beyond a reasonable doubt gives substance to the presumption of innocence and reduces the risk of wrongful conviction). This Court in Sullivan then made the structural point: a defective reasonable-doubt instruction "vitiates *all* the jury's findings," and harmless-error review cannot substitute appellate speculation for the constitutionally required "jury verdict of guilty beyond a reasonable doubt." 508 U.S. 275, 278, 281 (1993) (emphasis in original).

II. THE REASONABLE-DOUBT FRAMEWORK MUST BE GIVEN BEFORE THE JURY HEARS EVIDENCE

The State's position below confirms why review is needed. The State characterized the requested preliminary instruction as merely telling jurors about these concepts a "third time," counting voir dire questions and final instructions. Voir dire questions merely ask prospective jurors whether they can accept abstract propositions; they do not instruct the jury what the principle means or how it must govern the trial.[6] Final instructions arrive too late to shape the jury's evaluation of the evidence as it unfolds.

[6] In this case, one prospective juror expressed confusion about reasonable doubt, and the trial court said it would explain that concept only at the end. Pet. App. 90a–91a.

Taylor shows why timing matters. The presumption of innocence keeps jurors from treating "official suspicion, indictment, continued custody," or courtroom status as proof of guilt. Id. at 485–86. Those risks arise immediately. See id. at 487–88. In Erlinger, this Court emphasized the importance of such timing because, "once a jury is lawfully empaneled," the government must prove its case "beyond a reasonable doubt to a unanimous jury." Erlinger, 602 U.S. at 847. A voir dire question to prospective jurors cannot perform that function for the sworn jury once the trial begins.

This Court's courtroom-practice cases reinforce the same point. In Estelle v. Williams, 425 U.S. 501 (1976), the Court recognized that an accused should not be compelled to appear before the jury in prison clothing because of the "possible impairment of the presumption so basic to the adversary system." 425 U.S. at 504–05. The problem was not limited to deliberations; the Court explained that prison clothing is “so likely to be a continuing influence throughout the trial” that it creates “an unacceptable risk” of impermissible factors affecting the jury. Id. at 505. The Estelle Court emphasized that “[t]o implement the presumption [of innocence], courts must be alert to factors that may undermine the fairness of the factfinding process. . . . [and] carefully guard against dilution of the principle that guilt is to be established by probative evidence and beyond a reasonable doubt.” Id. at 503 (citing In re Winship, 397 U.S. 358, 364 (1970)). The same logic applies here: withholding the instruction that gives the presumption legal force will obviously erode the presumption precisely because of its complete absence.

Reasonable doubt has the same temporal dimension. It is the burden under which the State must prove guilt throughout trial. See Erlinger v.

United States, 602 U.S. 821, 831 (2024) (describing the “ancient rule” that the government must prove its charges “to a jury . . . beyond a reasonable doubt”); Alleyne v. United States, 570 U.S. 99, 104 (2013) (“This right, in conjunction with the Due Process Clause, requires that each element of a crime be proved to the jury beyond a reasonable doubt”); Apprendi v. New Jersey, 530 U.S. 466, 477 (2000) (“Taken together,” due process and jury-trial rights “indisputably entitle a criminal defendant to a jury determination” of guilt beyond a reasonable doubt).

III. THE ERROR IS STRUCTURAL, OR AT MINIMUM WARRANTS REVIEW EVEN UNDER WHORTON

The error here is structural because it affected the framework within which the entire trial proceeded. Structural error includes defects that compromise the trial framework itself, even when a reviewing court might think the evidence was strong.

See Vasquez v. Hillery, 474 U.S. 254, 263–64 (1986). The jury heard the evidence without instruction on the reasonable-doubt framework. That defect was not isolated; it shaped how jurors received every witness, credibility dispute, and piece of evidence.

Sullivan supplies the solution. See Sullivan, 508 U.S. at 278. There, the Court held that proof beyond a reasonable doubt and the jury-trial right are "interrelated," because "the jury verdict required by the Sixth Amendment is a jury verdict of guilty beyond a reasonable doubt." Id. A defective reasonable-doubt instruction is structural because it prevents the jury from making the finding the Constitution requires, leaving "no object . . . upon which harmless-error scrutiny can operate." Id. at 280–81. The same harmless-error problem exists here. Where jurors hear opening statements, witnesses, and credibility disputes before receiving the presumption-of-innocence and reasonable-doubt constitutional framework, an appellate court cannot know how a properly instructed jury would have heard and evaluated the evidence from the start.

Social-science research reinforces why this error resists harmless-error review. Jury-dynamics research indicates that jurors' views are shaped by herding effects and increasing stubbornness once opinions begin to form. Keith Burghardt et al., Evidence of Herding and Stubbornness in Jury Deliberations (2017); see also Maria Cuellar et al., A Probabilistic Formalization of Contextual Bias in Forensic Analysis: Evidence that Examiner Bias Leads to Systemic Bias in the Criminal Justice System (2021) (showing that early distortions in a criminal case can become "baked in" and compound by the time the case reaches the final determination of guilt).

At minimum, this case warrants review even if the Court applies the totality approach outlined in

Whorton. The totality here confirms the need for review. The case turned on credibility. The court refused both the full pattern instruction and a narrowed request. The court denied the requested instruction as "unwieldy," but "[t]here is no efficiency exception to the Fifth and Sixth Amendments." Erlinger v. United States, 602 U.S. 821, 848 (2024). That is precisely the kind of functional trimming Ramos rejected. Courts may not subject historic jury-trial protections to a "cost-benefit analysis" or displace an "ancient guarantee" through a modern "functionalist assessment." Ramos, 590 U.S. at 100.

IV. RAMOS SUPPLIES THE *STARE DECISIS* FRAMEWORK FOR CORRECTING WHORTON

The jury right applies to the States because trial by jury in serious criminal cases is "fundamental to the American scheme of justice." Duncan v. Louisiana, 391 U.S. 145, 149 (1968). Ramos applied that principle when it overruled

Apodaca v. Oregon, 406 U.S. 404 (1972), and displaced Johnson v. Louisiana, 406 U.S. 356 (1972), which had tolerated divided guilty verdicts despite the reasonable-doubt requirement. 590 U.S. at 89–93. Ramos matters here because it confirms that this Court will not protect a criminal-procedure precedent that weakens a core jury-trial protection. See id.

Justice Kavanaugh's concurrence identified three questions relevant to overruling constitutional precedent: (1) whether the prior decision was grievously wrong, (2) whether it has caused significant negative jurisprudential or real-world consequences, and (3) whether overruling it would unduly upset reliance interests. Ramos, 590 U.S. at 115–40 (Kavanaugh, J., concurring in part); see also Alleyne v. United States, 570 U. S. 99, 116, n.5 (2013) ("[t]he force of *stare decisis* is at its nadir in cases concerning [criminal] procedur[e] rules that implicate fundamental constitutional protections.”). Read that broadly, Whorton cannot justify what occurred here.

Whorton, a brief, *per curiam* opinion from 1979, held that the failure to give a requested presumption-of-innocence instruction does not automatically violate due process and must be evaluated under the totality of circumstances. 441 U.S. at 789. Whorton did not: (1) give a historical account of the reasonable-doubt framework; (2) ask whether a jury-trial guarantee rooted in pre-Founding criminal practice permits jurors to hear the State’s case before receiving the rules that define lawful conviction; (3) involve a trial judge who refused even a narrowed instruction that the presumption remains throughout every stage of trial; or (4) address the combined absence of preliminary instruction on both the presumption of innocence and proof beyond a reasonable doubt.

Nor would limiting Whorton create reliance concerns. See Whorton, 441 U.S. at 789 (considering whether omission of a presumption-of-innocence instruction, standing alone, automatically violates due process, without considering any timing concerns). A rule requiring preliminary instructions on request would be simple and effectively prospective. Trial judges can give the instruction in minutes. Prosecutors have no legitimate reliance interest in a jury hearing evidence before being told the defendant is presumed innocent and that guilt requires proof beyond a reasonable doubt. And under Edwards v. Vannoy, 593 U.S. 255 (2021), even major new rules of criminal procedure do not apply retroactively on federal collateral review. The parade of reopened final convictions that concerned Justice Alito in his dissent in Ramos is not present here. Thus, if Whorton is read to authorize this timing defect, Ramos supplies the framework for limiting or overruling it.

V. THIS CASE IS A CLEAN VEHICLE

This case cleanly presents the question. Petitioner requested the instruction before evidence began. The court denied it. The reasons are clear, the state appellate court addressed the issue, and the federal question was preserved.

The rule is modest: upon timely request, before opening statements and evidence, the jury must be told that the defendant is presumed innocent throughout trial and that the State must prove guilt beyond a reasonable doubt. That rule follows Coffin, In re Winship, Taylor, Ramos, and Sullivan. It is easy to administer and would not unsettle final convictions.

CONCLUSION

For the foregoing reasons, Mr. Pineda-Barrientos respectfully requests that this Court issue a writ of certiorari to review the judgment of the Appellate Court of Maryland.

Respectfully submitted,

Andrew V. Jezic, Esquire
The Law Offices of Jezic & Moyse, LLC
2730 University Blvd. W., Suite 604
Wheaton, Maryland 20902
(240) 292-7200
Andrew.Jezic@Jezicfirm.com
Counsel for Petitioner
Dated this 31st day of August 2026