No. 26-___

In The
Supreme Court of the United States

WILLIAM GEORGE DAVIS,
Petitioner,

v.

STATE OF TEXAS,
Respondent.

On Petition for a Writ of Certiorari to the Court of Criminal Appeals of Texas

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED:

CAPITAL CASE

Texas defines capital murder as, *inter alia*, murdering "more than one person" during different criminal transactions but pursuant to the same scheme or course of conduct. Tex. Penal Code § 19.03(a)(7)(B). Petitioner was charged under this provision with murdering four hospital patients on four dates over seven months. Over Petitioner's objection, the trial court instructed the jury that to convict him of capital murder, it had to agree unanimously that Petitioner had committed the "predicate offense" — the murder of the victim named first in the indictment — but that it "need not be unanimous" as to which, if any, of the other three named victims Petitioner had murdered, as long as all twelve jurors agreed that he had murdered at least one of them. The jury returned a general verdict finding Petitioner guilty of capital murder under § 19.03(a)(7)(B).

The Question Presented is:

May a State, consistent with the Sixth and Fourteenth Amendments, convict a defendant of capital murder for murdering "more than one person" in separate criminal transactions without requiring the jury to agree unanimously that he committed at least two specific acts of murder?

PARTIES TO THE PROCEEDINGS

All parties to the proceeding below appear in the caption. Petitioner William George Davis is an individual. Respondent is the State of Texas.

No party is a corporation. No corporate disclosure statement is required under this Court's Rule 29.6.

RELATED PROCEEDINGS

This case arises from the following proceedings:

- *State v. Davis*, No. 114-0696-21 (114th Dist. Ct., Smith Cnty., Tex.). Judgment entered October 27, 2021.

- *Davis v. State*, No. AP-77,106, ___ S.W.3d ___, 2026 WL 692433 (Tex. Crim. App.). Judgment entered March 12, 2026; rehearing denied June 25, 2026.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner William George Davis respectfully petitions this Court for a writ of certiorari to review the judgment of the Texas Court of Criminal Appeals in his case.

INTRODUCTION

Texas makes it a capital offense to murder "more than one person" in separate criminal transactions that are part of the same scheme or course of conduct. Tex. Penal Code § 19.03(a)(7)(B). The statute therefore requires proof of two or more separate murders, each with its own victim, its own date, and its own criminal transaction. The Texas Court of Criminal Appeals (CCA) has said as much. *Ex parte Milner*, 394 S.W.3d 502, 507–08 (Tex. Crim. App. 2013).

Petitioner William Davis was charged with the murders of four hospital patients — Christopher Greenaway, John Lafferty, Ronald Clark, and Joseph Kalina — on four dates over seven months. The trial court instructed jurors that they must agree unanimously that he murdered Greenaway, the first-named victim in the indictment, but "need not be unanimous as to which, if any," of the other three deaths he caused, so long as all twelve agreed he caused one of them. CR 510.[1] The prosecutor explained what that

[1] "CR" refers to the Clerk's Record. "RR" refers to the Reporter's Record, cited by volume and page. *See* Tex. R. App. P. 34.6(a) (defining "reporter's record"), 34.5(a) (defining "clerk's record"). "State's Br." refers to the State's brief filed in the Court of Criminal Appeals, and "Appellant's Br." to Petitioner's opening brief in that court. "Mot. for Reh'g" refers to Petitioner's motion for rehearing in that court. "App." refers to the appendix to this petition.

meant: "[Y]ou can all agree on different victims. So four of you can say, I believe he killed Mr. Greenaway and Ronald Clark, and four of you can say, I believe he killed Mr. Greenaway and Mr. Lafferty, and the other four of you can say, I believe he killed Mr. Greenaway and Mr. Kalina." RR 60:35–36. The jury returned a general verdict, so no one can know whether all twelve jurors ever agreed that Petitioner committed any specific second murder.

The CCA affirmed Petitioner's conviction and upheld the instruction. It did not dispute that the Sixth Amendment, as applied to the States in *Ramos v. Louisiana*, 590 U.S. 83 (2020), requires a unanimous verdict. It held instead that the murders of Lafferty, Clark, and Kalina were merely "alternate" ways of committing the capital murder of Greenaway, "morally and conceptually equivalent" to one another because the State had charged them together as part of a single scheme. App. at 10a, 12a.

That ruling conflicts with this Court's decisions. Jurors may disagree about *how* an act was done but not about *whether* it was done. *Schad v. Arizona*, 501 U.S. 624, 631–33 (1991) (plurality opinion). A "means" is a way of committing a charged act — for example, with a knife or a gun. But the murder of one person is not the "means" of committing the murder of another; in fact, Texas law treats every such murder as a "different offense." *Johnson v. State*, 364 S.W.3d 292, 296 (Tex. Crim. App. 2012) ("the murder of one individual is a different offense from the murder of a different individual"). In *Richardson v. United States,* 526 U.S. 813, 815 (1999), this Court held that jurors must agree on which specific violations make up a "continuing series of violations." In *Schad*, this Court recognized

due-process limits on a State's power to define different courses of conduct as mere alternative means of committing one offense. 501 U.S. at 632–33. Justice Scalia, who supplied the fifth vote, would have rejected an indictment charging that a defendant assaulted "X on Tuesday or Y on Wednesday." *Id.* at 651 (Scalia, J., concurring in part and concurring in the judgment). And a fact that makes a defendant eligible for death must be found by a jury, however the State labels it. *Ring v. Arizona*, 536 U.S. 584, 602 (2002).

The question presented matters well beyond this case. *Ramos* held that unanimity is required in state court but did not decide what jurors must be unanimous about when a State aggregates separate acts into a single count. Lower courts have taken conflicting approaches to that problem, which arises under continuing-offense, racketeering, and course-of-conduct statutes across the country. This is a capital case. The question was preserved by timely objection, decided on the merits by the court below, and would be outcome-determinative. This Court should grant review to decide it.

OPINIONS BELOW

The opinion of the Texas Court of Criminal Appeals is reproduced at Appendix A and is reported at *Davis v. State*, No. AP—77,106, ___ S.W.3d ___, 2026 WL 692433 (Tex. Crim. App. Mar. 12, 2026). The court's order denying rehearing is reproduced at Appendix B and is unreported.

JURISDICTION

The Texas Court of Criminal Appeals affirmed Petitioner's conviction and death sentence on March

12, 2026. App. A. Petitioner's timely motion for rehearing was denied on June 25. App. B. On September 8, Justice Alito extended the time for Petitioner to file this petition to and including November 22. No. 26A311. This petition is timely filed. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

Section 1 of the Fourteenth Amendment provides in relevant part:

> "No State shall … deprive any person of life, liberty, or property, without due process of law. …"

Texas Penal Code § 19.03(a)(7)(B) provides:

> "(a) A person commits an offense if the person commits murder as defined under Section 19.02(b)(1) and … (7) the person murders more than one person … (B) during different criminal transactions but the murders are committed pursuant to the same scheme or course of conduct."

Texas Penal Code § 19.02(b)(1) provides:

> "(b) A person commits an offense if the person (1) intentionally or knowingly causes the death of an individual. …"

The Texas Constitution and the Texas Code of Criminal Procedure require unanimous verdicts in criminal cases. Tex. Const. art. V, § 13; Tex. Code Crim. Proc. art. 36.29(a).

STATEMENT OF THE CASE

I. STATUTORY BACKGROUND.

Texas defines murder as intentionally or knowingly causing an individual's death. Tex. Penal Code § 19.02(b)(1). Section 19.03(a) of the Penal Code then identifies the aggravating elements that elevate murder to capital murder. As relevant here, a person commits capital murder if he "murders more than one person" "during different criminal transactions but … pursuant to the same scheme or course of conduct." Tex. Penal Code § 19.03(a)(7)(B).

The CCA has held that a "plain reading" of this statute "shows that, in order to be convicted pursuant to [Penal Code] section 19.03(a)(7)(B), a defendant must commit both a murder under Texas Penal Code

§ 19.02(b)(1) *and at least one additional murder* during different criminal transactions, but pursuant to the same scheme or course of conduct." *Ex parte Milner*, 394 S.W.3d 502, 507 (Tex. Crim. App. 2013) (emphasis added). "[U]nlike all other capital murders [under the Texas Penal Code], which require only one victim," a prosecution under § 19.03(a)(7) "require[s] at least two murders to constitute a single offense." *Id.* at 508. And because "the murder of one individual is a different offense from the murder of a different individual," *Johnson*, 364 S.W.3d at 296, a conviction pursuant to § 19.03(a)(7)(B) always requires proof of at least two specific murders, each with its own victim, its own date, and its own "criminal transaction."

The Sixth Amendment — which "applies to state and federal criminal trials equally," *Ramos v. Louisiana*, 590 U.S. 83, 93 (2020) — recognizes that "[a] jury … must reach a unanimous verdict in order to convict." *Id.* at 90. Texas law independently requires unanimity in all criminal cases. Tex. Const. art. V, § 13; Tex. Code Crim. Proc. art. 36.29(a); *Landrian v. State*, 268 S.W.3d 532, 535 (Tex. Crim. App. 2008).

II. PROCEEDINGS BELOW.

Petitioner William Davis was a nurse in the cardiovascular intensive care unit at a hospital in Tyler, Texas. App. at 2a. A Smith County grand jury charged him with a single count of capital murder under Tex. Penal Code § 19.03(a)(7)(B). The indictment alleged:

> "[O]n or about the 4th day of August, 2017, … [Petitioner] did then and there intentionally and knowingly cause the

> death of an individual, namely Christopher Greenaway, by introducing air into the arterial system of Christopher Greenaway, and pursuant to the same scheme or course of conduct, but during different criminal transactions, on or about the 16th day of June, 2017, did then and there intentionally and knowingly cause the death of another individual, namely John Lafferty, by introducing air into the arterial system of John Lafferty, and on or about the 26th day of July, 2017, did then and there intentionally and knowingly cause the death of another individual, Ronald Clark, by introducing air into the arterial system of Ronald Clark, and on or about the 25th day of January, 2018, did then and there intentionally and knowingly cause the death of another individual, namely Joseph Kalina, by introducing air into the arterial system of Joseph Kalina."

App. at 55a–56a (controlling indictment).[2]

At the guilt-innocence phase of Petitioner's trial in October 2021, the State theorized that Petitioner deliberately injected air into the four patients' arterial

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[2] The State originally indicted Petitioner in June 2018 by charging him with intentionally and knowingly causing the deaths of John Lafferty, Ronald Clark, and Christopher Greenaway in order by date. App. at 63a (First Indictment). But in April 2021, four months before voir dire began, the State reindicted Appellant and changed the order of the named victims, re-positioning Greenaway in place of Lafferty as the "predicate" offense. App. at 55a–56a.

lines, causing fatal strokes. App. at 2a–4a. The State also presented evidence of uncharged allegations involving other patients. App. at 3a–4a.

Petitioner contested that theory as to each patient named in the indictment. The defense presented expert testimony that the State's air-injection hypothesis was "anatomically and physiologically" impossible, and that each of the four men — all of whom were recovering from major surgery and suffered from life-threatening cardiac and other conditions — had died of post-surgical complications. RR 58:126–61.

III. THE NON-UNANIMITY INSTRUCTION.

Over Petitioner's objection, the trial court instructed the jury that it could convict Petitioner of capital murder if it found beyond a reasonable doubt that (1) he intentionally or knowingly caused Christopher Greenaway's death; (2) he "committed one or more of" the murders of John Lafferty, Ronald Clark, or Joseph Kalina; and (3) those murders "were committed during different criminal transactions but pursuant to the same scheme or course of conduct." CR 509—10; App. at 5a–6a. While the charge required jurors to agree unanimously that Petitioner murdered Greenaway, it expressly relieved them of any obligation to agree on which of the three additional victims' deaths Petitioner had caused:

> "The jury must unanimously agree that the State proved all of the elements of this case beyond a reasonable doubt[,] except that *the jury need not be unanimous as to which, if any, of the deaths of John Lafferty, Ronald Clark, and Joseph Kalina were intentionally or knowingly caused by the defendant, in the manner*

> *alleged above, so long as all members of the jury unanimously find beyond a reasonable doubt that the defendant intentionally or knowingly caused at least one of those deaths*, in the manner alleged above, in addition to the defendant having intentionally or knowingly caused the death of Christopher Greenaway in the manner alleged above."

CR 510; App. at 58a (emphasis added).

At the charge conference, defense counsel objected that the instruction told jurors "that they do not have to be individually unanimous on the aggravating charges so long as they are unanimous that there is an aggravating charge for which Mr. Davis is guilty." RR 60:11–12; App. at 61a. Counsel protested that this deprived Petitioner of his "fundamental right" under "the Sixth, Eighth, and Fourteenth Amendments of the Constitution." *Id*. The trial court overruled the objection. *Id*.

In closing argument, the State urged the jury to use the license given by the instruction:

> "[N]ow … we have to prove he killed Christopher Greenaway. And then we have to prove that he either killed John Lafferty, Ronald Clark, or Joseph Kalina, okay? … *[Y]ou can all agree on different victims. So four of you can say, I believe he killed Mr. Greenaway and Ronald Clark, and four of you can say, I believe he killed Mr. Greenaway and Mr. Lafferty, and the other four of you can say, I believe he killed Mr. Greenaway and Mr.*

> *Kalina*. … You don't have to be unanimous as to all four. The only thing you have to be unanimous on, all 12 of y'all, is that he killed Greenaway and that he killed one of the three, okay?"

RR 60:35–36 (emphasis added).

Thus, the State told jurors they could convict Petitioner of capital murder even if only four jurors believed he killed Lafferty, only four believed he killed Clark, and only four believed he killed Kalina — in short, even if as to each of the three eight of the twelve jurors concluded he had *not* killed that victim. *See id.*

The jury returned a general verdict finding Petitioner "guilty of capital murder, as alleged in the indictment." RR 60:155; *see* Tex. Code Crim. Proc. art. 37.071, § 1(a). Nothing in the verdict revealed which, if any, of the three alleged "non-predicate" murders all twelve jurors found. After a separate punishment hearing, the jury answered the statutory special issues, and the trial court sentenced Petitioner to death. Tex. Code Crim. Proc. art. 37.071, § 2(b), (e), (g); App. at 1a.

IV. THE DECISION BELOW.

On direct appeal, Petitioner argued in separate points of error that the non-unanimity instruction violated his right to a unanimous verdict under Texas law and under the Sixth and Fourteenth Amendments. App. at 4a–5a. The State agreed that the federal constitutional claim was preserved for review. State's Br. 135 n.10.

The CCA affirmed. Addressing the state-law point, it reasoned that the "gravamen" of capital murder is

"intentionally (or knowingly) causing a death, plus any one of various different types of aggravating elements," App. at 7a, and that under its precedents a "single capital murder" may contain "alternate underlying offenses that are the same statutory offense but with different victims," so long as the same victim is alleged for the predicate murder. *Id.* at 10a (quoting *(Selwyn) Davis v. State*, 313 S.W.3d 317, 342 (Tex. Crim. App. 2010)).[3] On that view, the murders of Lafferty, Clark, and Kalina were merely "different capital murder theories" of committing the predicate murder

[3] In the earlier *Davis* case (no relation to Petitioner), the defendant was charged with capital murder under Tex. Penal Code § 19.03(a)(2) (murder in the course of committing or attempting to commit burglary). At trial, the jury was instructed that it could find him guilty on several theories, including (1) that he killed the apartment's occupant in the course of unlawfully entering the apartment to steal her property or (2) that he killed the same person in the course of unlawfully entering the apartment to sexually assault another individual. On appeal, Davis argued that the jury should have been required to agree unanimously on the applicable theory of burglary. Because the predicate homicide victim in both instances was the same, the CCA rejected Davis's argument. *Davis*, 313 S.W.3d at 342. But in *Davis*, the capital charge required proof of only one murder, not two. The CCA has recognized that "unlike all other capital murders [under Texas law], which require only one victim," a prosecution under § 19.03(a)(7) "require[s] at least two murders to constitute a single offense." *Milner*, 394 S.W.3d at 508. Thus, unlike the burglary theories in *Davis*, a second murder is not a "theory" or "means" by which the jury may find that the predicate offense was committed, but instead an independent element of the charged offense.

of Greenaway, and Petitioner "received the unanimous verdict guaranteed him under Texas law." *Id.* at 8a.

Turning to the federal point, the CCA acknowledged that the Sixth Amendment requires a unanimous verdict and that due process limits a State's power to "define different courses of conduct … as merely alternative means of committing a single offense." *Id.* at 11a (citing *Ramos*, 590 U.S. at 93, and *Schad v. Arizona*, 501 U.S. 624, 631–32 (1991) (plurality opinion)). But the court resolved the federal question entirely by applying its own gloss, holding that because the non-predicate murders charged under § 19.03(a)(7)(B) "invariably share at least two common nexuses" — being alleged alongside a single "predicate" murder and allegedly committed pursuant to the same scheme or course of conduct — they were "morally and conceptually equivalent,"[4] and thus could be treated not as "different courses of conduct" subject to the unanimity requirement but instead as "merely alternative means of committing a single offense." *Id*. at 11a (citing *O'Brien v. State*, 544 S.W.3d 376, 383–84 (Tex. Crim. App. 2018) (quoting *Jefferson v. State*, 189 S.W.3d 305, 313–14 (Tex. Crim. App. 2006))) (quoting *Schad*, 501 U.S. at 631–32). The CCA concluded that "Appellant received the unanimous verdict guaranteed him by the United States Constitution." *Id.* at 12a–13a (citing *Ramos*, 590 U.S. at 93).

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[4] The CCA borrowed this phrase, by way of its own precedents, from *Schad*'s inquiry into whether alternative means are equivalent in culpability. App. at 11a–12a. But while *Schad* used it to ask whether alternative mental states for a single murder were equivalent in culpability, the CCA applied it to treat separate victims as interchangeable.

Petitioner moved for rehearing, again pressing the federal claim under *Schad* and *Richardson* and arguing that the CCA's ruling contradicted *Milner*. Mot. for Reh'g. The CCA denied rehearing on June 25, 2026. App. B. This petition follows.

REASONS TO GRANT THE PETITION

This Court may elect to grant review where a state court of last resort "has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals," where such a court "has decided an important question of federal law that has not been, but should be, settled by this Court," or where it "has decided an important federal question in a way that conflicts with relevant decisions of this Court." Sup. Ct. R. 10(b), (c). This case satisfies each of these considerations.

I. THE DECISION BELOW CONFLICTS WITH THIS COURT'S DECISIONS IN *RAMOS*, *RICHARDSON*, *SCHAD*, AND *RING*.

A. The decision below cannot be reconciled with *Ramos*.

The Sixth Amendment's unanimity requirement "applies to state and federal criminal trials equally." *Ramos*, 590 U.S. at 93. A verdict may not be a composite assembled from shifting factions but must represent the actual agreement of twelve jurors that the prosecution has proved every element of the offense beyond a reasonable doubt. *See In re Winship*, 397 U.S. 358, 364 (1970) (Due Process Clause "protects the accused against conviction except upon proof beyond a reasonable doubt of *every fact* necessary to constitute the crime with which he is charged") (emphasis

added). Under the common-law rule that the Sixth Amendment carries forward, a "'verdict, taken from eleven, was no verdict'" at all. *Ramos*, 590 U.S. at 90 (quoting *Thompson v. Utah*, 170 U.S. 343, 351 (1898)).

The verdict in this case is precisely that kind of non-verdict. To convict Petitioner of capital murder, the State was required to prove that he murdered "more than one person," Tex. Penal Code § 19.03(a)(7)(B), and Petitioner was charged with committing the murders of four specific persons. Yet the court told jurors they could convict while disagreeing about which second person Petitioner murdered — that four could believe it was Lafferty, four Clark, and four Kalina. RR 60:35–36. One cannot know whether twelve jurors so instructed ever agreed that Petitioner committed any second specific and distinct act of murder beyond causing the death of Christopher Greenaway. Eight jurors may well have doubted that he killed Lafferty, a different eight that he killed Clark, and yet another eight that he killed Kalina. If so, the resulting verdict would not reflect unanimous agreement that Petitioner committed a second distinct act of murder but instead only an aggregate of inconsistent judgments. Under *Ramos* and at common law, that is no verdict at all.

B. The "alternative means" exception to the unanimity requirement cannot make one murder a "means" of committing another.

The CCA held that the murders of Lafferty, Clark, and Kalina are "alternate underlying offenses," "different capital murder theories," and "alternate aggravating murders" of a single capital murder whose "predicate" is the murder of Greenaway. App. at 7a–10a, 11a–12a. That is the alternative-means exception

to the unanimity requirement: jurors need not agree "upon a single means of commission," *Schad*, 501 U.S. at 631 (plurality opinion), or on "which of several possible means the defendant used to commit an element," *Richardson*, 526 U.S. at 817. The exception has a premise that is absent here. A means is a way of doing the charged act: for example, the knife or the gun used to create the threat of force in a robbery. *Id*. Jurors may disagree about how, but never about whether.

Here, the indictment, the statute, and the CCA's own precedent each show that the murders of Lafferty, Clark, and Kalina are not the "means" of anything.

First, the indictment itself identifies the "means," and the murders of Lafferty, Clark, and Kalina are not among them. The indictment and charge allege the same manner for every death: "by introducing air into the arterial system of" each patient. App. at 55a–56a (indictment); *id.* at 57a–58a (jury charge). The charge told the jurors to find each death "in the manner alleged above." *Id.* at 58a. What varied was not the manner of death but the victim and the date. Texas law treats those features as defining a distinct offense: "the murder of one individual is a different offense from the murder of a different individual," while "the method by which a murder is committed" does "not relate to the allowable unit of prosecution." *Johnson*, 364 S.W.3d at 296. The CCA's own precedent recognized the very line its decision here erased.

Second, the statute confirms that a second murder is a separate element of the offense, not a means of committing the first. Section 19.03(a)(7)(B) requires that the defendant murder "more than one person." The CCA has held that this requires "both a murder

… and at least one additional murder," that is, "at least two murders to constitute a single offense." *Milner*, 394 S.W.3d at 507–08. The statute demands two murders, but the charge demanded unanimity as to only one. The only murder on which jurors had to agree was Greenaway's. On the element that makes this offense capital, they had to agree only that Petitioner murdered someone other than Greenaway.

Third, the Legislature defined the offense by separateness. Subsection (B) applies to murders committed "during different criminal transactions." Murders in different transactions, here as much as seven months apart, cannot be the manner of committing one another. The "same scheme or course of conduct" requirement is a relationship the State must prove among separate murders. It does not merge them. The CCA's "two common nexuses" confuse the link between acts with the identity of the act. App. at 12a. By that logic, the hypothetical indictment for assaulting "X on Tuesday or Y on Wednesday" that Justice Scalia would not permit, *see Schad*, 501 U.S. at 651 (Scalia, J., concurring), could be made constitutional simply by adding the word "scheme."

Finally, the CCA's "predicate" label cannot rescue its holding, because it is a charging label, not a statutory category. The statute does not distinguish a "predicate" murder from an "additional" one. Texas treats the designation as a charging choice by the prosecutor. *See Saenz v. State*, 451 S.W.3d 388, 391–92 (Tex. Crim. App. 2014). Whether a juror's vote must be pooled with another's cannot turn on the prosecutor's choice to anoint Greenaway the "predicate victim." Here, Lafferty (on June 16) and Clark (on July 26) died

before Greenaway (on August 4). Had the State so designated Lafferty instead—as it did initially in this case—the same instruction would have required unanimity as to Lafferty and allowed disagreement as to Greenaway, Clark, and Kalina. Under the CCA's rule, the State's drafting choice alone decides whose death twelve jurors must agree on. That is not a rule about what counts as a "means." It is a rule that lets the State decide which elements of the offense will require unanimity for a conviction, and that is exactly what the State did here. *See* App. at 55a–56a, 63a–64a.

C. The decision below exceeds the due-process limits recognized in *Schad*.

Even if the constituent murders could somehow be regarded as "alternative means" of committing the predicate offense, the Due Process Clause limits a State's power to "define different courses of conduct … as merely alternative means of committing a single offense." *Schad*, 501 U.S. at 631–32. "Just as the requisite specificity of the charge may not be compromised by the joining of separate offenses," the *Schad* plurality explained, "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." *Id.* at 633. As noted, Justice Scalia, concurring in part and concurring in the judgment and providing the fifth vote, was more concrete still: "We would not permit … an indictment charging that the defendant assaulted either X on Tuesday or Y on Wednesday, despite the 'moral equivalence' of those two acts." *Id.* at 651 (Scalia, J., concurring).

This case is Justice Scalia's cautionary hypothetical brought to life — and worse. Petitioner was convicted of capital murder on a charge that he killed Christopher Greenaway on August 4, 2017, *and* that he killed *either* John Lafferty on June 16, 2017, *or* Ronald Clark on July 26, 2017, *or* Joseph Kalina on January 25, 2018. A Constitution that, as Justice Scalia read it, bars conviction for assaulting "X on Tuesday or Y on Wednesday" cannot permit conviction for the murder of Greenaway *and* the murder of *either* Lafferty *or* Clark *or* Kalina, each allegedly committed on three separate dates over the course of seven months, without requiring unanimous agreement about which, if any, second specific act of murder was committed.

Neither history nor *Schad*'s method supports the CCA's ruling. *Schad* sustained the instruction because premeditation and felony murder had "substantial historical and contemporary echoes" as alternative routes to the malice aforethought of a single killing of one victim. 501 U.S. at 640–42. The CCA identified no tradition, common-law or otherwise, of treating one homicide as a means of committing another. The *Schad* plurality warned that a "freakish definition" of an offense with no analogue in history or in other jurisdictions makes a due-process challenge easier to sustain. *Id.* at 640. In place of history the CCA relied on a finding that the murders were "morally and conceptually equivalent." App. at 12a. But the *Schad* plurality's equivalence inquiry concerned alternative *mental states* for the same act. *Id.* at 643. Justice Scalia observed that equivalence "[p]erhaps" is "a necessary condition" but "surely" not "sufficient." *Id.* at 651 (Scalia, J., concurring). And the CCA's equivalence is

circular: the murders are only "equivalent" because the State chose to charge them together.

D. The decision below conflicts with *Richardson*.

In *Richardson v. United States*, 526 U.S. 813 (1999), this Court construed the federal continuing-criminal-enterprise statute, which makes it a single offense to commit a "continuing series of violations" of the drug laws. The Court held that a jury must "agree unanimously about which specific violations" make up the series, *id.* at 815, because a federal criminal jury "cannot convict unless it unanimously finds that the Government has proved each element," *id.* at 817 — and each violation in the series is such an element, not a mere "means" of committing the offense.

Richardson recognized that the Constitution limits a legislature's power to define crimes so that juries may convict while disagreeing about means, at least where the definition risks serious unfairness and lacks support in history or tradition. *Id.* at 819–20. Treating the continuing-criminal-enterprise violations as fungible "means," the Court explained, would "cover up wide disagreement among the jurors about just what the defendant did, or did not, do," *id.* at 819, and the Court saw "no reason to believe that Congress intended to come close to, or to test, those constitutional limits." *Id.* at 820.

Richardson distinguished state continuous-abuse statutes because this Court had "not held that the Constitution imposes a jury-unanimity requirement" on States. *Id.* at 821–22. After *Ramos*, that caveat is gone. *Richardson*'s reasoning therefore applies to the States with full force: the reason this Court gave for

setting state offenses to one side no longer exists. *Richardson* points to the conclusion that each constituent allegation of murder in Petitioner's indictment required unanimity.

E. Under *Ring* and *Apprendi*, the jury must unanimously find whatever facts make Petitioner death-eligible.

The constitutional inquiry into whether a fact must be found by a jury beyond a reasonable doubt "is one not of form, but of effect." *Apprendi v. New Jersey*, 530 U.S. 466, 494 (2000). "If a State makes an increase in a defendant's authorized punishment contingent on the finding of a fact, that fact — no matter how the State labels it — must be found by a jury beyond a reasonable doubt." *Ring v. Arizona*, 536 U.S. 584, 602 (2002). The additional murder required by § 19.03(a)(7)(B) is precisely such a fact: without proof of a second murder, Petitioner could not have been convicted of capital murder or sentenced to death. *See Mosley v. State*, 983 S.W.2d 249, 263 n.18 (Tex. Crim. App. 1998) (the death-eligibility requirement "is satisfied in Texas by aggravating factors contained within the elements of the offense," as well as sentencing phase "special issue" questions).

The CCA's answer is to call the additional murders "aggravating" murders[5] rather than elements requiring unanimity — a distinction the Sixth Amendment

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[5] "The jury charge in this case no doubt set out multiple murder victims — one predicate murder victim plus three *aggravating* murder victims." App. at 10a. *See also id.* at 12a ("When a defendant is alleged to have committed capital murder under Penal Code Section 19.03(a)(7)(B),

does not recognize. *Ring*, 536 U.S. at 602. It would invert both *Ring* and *Ramos* to hold that the single finding that makes a Texas defendant charged under § 19.03(a)(7)(B) eligible for death — that he also murdered a second, specific human being — need not be found by a unanimous jury but instead may be cobbled together by aggregating the views of shifting juror factions.

II. THE DECISION BELOW CONFLICTS WITH THE APPROACH OF FEDERAL AND STATE COURTS ELSEWHERE, AND LEAVES LOWER COURTS WITHOUT GUIDANCE ON WHEN THE CONSTITUTION REQUIRES SPECIFIC UNANIMITY.

Courts across the country have long recognized that when a single count is supported by evidence of multiple discrete criminal acts, the jury must unanimously agree on the specific act supporting the conviction. The Fifth Circuit has held that "[t]he unanimity rule … requires substantial agreement as to just what a defendant did as a step preliminary to determining whether the defendant is guilty of the crime charged." *United States v. Gipson*, 553 F.2d 453, 457–58 (5th Cir. 1977). The Sixth Circuit requires a specific unanimity instruction where necessary to avert a composite or "patchwork" verdict inconsistent with the Sixth Amendment. *United States v. Duncan*, 850 F.2d 1104, 1110–15 (6th Cir. 1988). The Ninth Circuit requires one whenever "there is a genuine possibility … that a

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and the indictment sets out multiple alternate *aggravating* murders in addition to a predicate murder, the *aggravating* murders will invariably share at least two common nexuses.... [A]s with every capital murder theory set out in Section 19.03, the *aggravating* murders will be alleged alongside a single 'predicate' murder.") (emphasis added).

conviction may occur as the result of different jurors concluding that the defendant committed different acts." *United States v. Gonzalez*, 786 F.3d 714, 717 (9th Cir. 2015) (quoting *United States v. Echeverry*, 719 F.2d 974, 975 (9th Cir. 1983)). In each, a single count rested on evidence of several discrete acts, and the court required jurors to agree on which act supported the conviction.

State courts of last resort agree.[6] Utah requires that "[i]f the statute under which the defendant is convicted actually defines more than one crime and not merely one crime which may be committed in several different ways, the defendant is entitled to jury unanimity on which crime he is guilty of committing." *State v. Russell*, 733 P.2d 162, 166–67 (Utah 1987). California requires the prosecutor to choose which act the jury will consider, or the court to give a specific-unanimity instruction whenever the evidence shows more than one discrete act that could constitute the charged offense, to "eliminate the danger that the defendant will be convicted even though there is no single offense which all the jurors agree the defendant committed." *People v. Russo*, 25 P.3d 641, 645 (Cal.

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[6] Before this Court's decision in *Ramos* in 2020, state courts usually addressed these questions as a matter of state law, including state-constitutional unanimity requirements. The rules described in this paragraph, announced in Utah, California, and Washington, developed from state law without reliance on *Schad* or *Richardson*. Petitioner points to these cases to show settled practice applying unanimity principles, not to suggest that they construe this Court's decisions. The decisions discussed in the following paragraphs, by contrast, do.

2001) (internal quotation marks omitted); *see also People v. Diedrich*, 643 P.2d 971, 980–81 (Cal. 1982). Washington imposes the same choice. *State v. Petrich*, 683 P.2d 173, 178 (Wash. 1984).

Recent decisions of other jurisdictions' highest courts rest expressly on *Schad* and *Richardson*. The Connecticut Supreme Court has read those decisions as elements cases, each involving a single count alleging violations of several statutory provisions, which implicitly assume that a count charging one statutory violation on several separate occasions requires unanimous juror agreement on which occasion the violation occurred. It drew that premise from Justice Scalia's "X on Tuesday or Y on Wednesday" example and from *Richardson*'s reliance on it. *State v. Douglas C.*, 285 A.3d 1067, 1082 (Conn. 2022). The District of Columbia's highest court likewise rejected the government's argument that *Schad* "overturned the requirement of juror unanimity with respect to the particular violation that establishes a defendant's guilt of a single charge." *Williams v. United States*, 981 A.2d 1224, 1228 (D.C. 2009). "The issue in *Schad* was not whether jury unanimity is required when one count encompasses factually separate incidents, but only whether unanimity is required when the jury is presented with alternative theories of criminal liability for a single incident." *Id.* Relying on *Richardson*, the court held that when one count encompasses factually separate incidents, each incident functions as an element on which jurors must agree, as each drug violation did in *Richardson*. *Id.* at 1230.

Within a month after rehearing was denied in this case, the Minnesota Supreme Court decided *State v. Keyes*, 38 N.W.3d 21, 32–45 (Minn. 2026), and *State v.*

Yang, 38 N.W.3d 74, 84–88 (Minn. 2026). After reviewing *Schad* and *Richardson*, *Keyes* adopted a statute-based framework: identify the offense's elements by interpreting the statute, set aside any specified means, and ask whether the alleged conduct consisted of distinct acts, each of which could satisfy the elements. *Keyes*, 38 N.W.3d at 41–42. If it did, specific unanimity is required. *Id*. *Yang* applied that framework over the State's argument that the different acts were mere means, an argument the court rejected as a misreading of *Schad* and *Richardson*. *Yang*, 38 N.W.3d at 84–86. The court explained that "when multiple distinct acts are alleged, each of which on its own could prove the elements of the charged offense, a jury must unanimously agree on which act the defendant committed." *Id*. at 85. *Yang* also invoked *Richardson*'s concern that generalized allegations of many acts invite jurors to convict without focusing on any specific act and reversed the defendant's conviction where the prosecutor had capitalized on the vagueness of the allegations. *Id.* at 87. The prosecutor here went further, telling jurors expressly that they need not agree. RR 60:35–36.

Other courts have read the same two decisions to say much less, and that is the problem. Courts on both sides agree that *Schad* and *Richardson* are, at bottom, decisions about elements and means. They disagree about whether those decisions also speak to a count that rests on several separate acts. Maine's highest court has described *Richardson* as the application of existing principles to a single federal statute, not a blanket rule for every course-of-conduct statute. *Casella v. State*, 802 A.2d 404, 408 (Me. 2002). Dissenting justices in *Keyes* and *Yang* took a similar view, reasoning that *Schad* and *Richardson* neither compel a per

se rule of specific unanimity nor address unanimity as to multiple instances charged in one count. *Keyes*, 38 N.W.3d at 50–56 (dissenting opinion); *Yang*, 38 N.W.3d at 88–92 (dissenting opinion). The Ohio Supreme Court distinguished *Richardson* because, unlike the Ohio statute before it, the federal statute necessarily involves multiple acts in every prosecution. *State v. Gardner*, 889 N.E.2d 995, 1008–09 (Ohio 2008). The description of the federal statute fits § 19.03(a)(7)(B), which cannot be violated without at least two murders. *Milner*, 394 S.W.3d at 507–08.

A further group of decisions upholding continuous-abuse and pattern statutes relies on *Richardson*'s observation that this Court had "not held that the Constitution imposes a jury-unanimity requirement" on the States, 526 U.S. at 821–22, and on its recognition that such statutes respond to special problems of proof. *See State v. Sleeper*, 846 A.2d 545, 549–51 (N.H. 2004); *State v. Ramsey*, 124 P.3d 756, 762–65 (Ariz. Ct. App. 2005); *see also State v. Johnson*, 627 N.W.2d 455, 459–64 (Wis. 2001) (upholding repeated-sexual-assault statute under *Richardson* and *Schad*). Each of those decisions predates *Ramos*, and each rests on the caveat that *Ramos* removed. *See* Part I.D, *supra*. State high courts have also split on whether a legislature may define a series of discrete acts as a single continuing offense to avoid triggering a requirement of act-level unanimity. *Compare Sleeper*, *supra*, and *State v. Johnson*, *supra*, *with State v. Rabago*, 81 P.3d 1151, 1167–69 (Haw. 2003) (multiple sexual acts against a child are separate and discrete and cannot be treated as a continuing offense). The decision below falls on neither side of that division. The statutes at issue in those cases define the offense by reference to a pattern

or course of conduct rather than any specific act. Section 19.03(a)(7)(B) makes separate murders committed "during different criminal transactions" the offense and contains no provision dispensing with the requirement that jurors agree on which murders occurred.

Even courts agreeing that act-level unanimity is sometimes required have no agreed method for deciding when. The Minnesota Supreme Court described a patchwork of decisions applying *Schad* and *Richardson*, including a line of cases asking whether the acts constituted a single behavioral incident. *Keyes*, 38 N.W.3d at 35–38. It rejected that approach as unable to distinguish means from elements, hard to apply consistently, and at odds with the statute-first inquiry *Schad* and *Richardson* direct. *Id*. at 40–43. The Connecticut Supreme Court asks instead, in a test drawn from federal appellate decisions, whether a count charges one statute in multiple separate instances; whether each instance is a separate violation or the statute instead criminalizes a continuing course of conduct; and, if the count is duplicitous, whether a bill of particulars or a specific-unanimity instruction cured it. *Douglas C.*, 285 A.3d at 1078–79. Connecticut still endeavors to separate elements from means by applying *Schad*'s multi-factor inquiry, covering statutory language, history, structure, tradition, moral and practical equivalence, and unfairness. *State v. Inzitari*, 329 A.3d 215, 232–33 (Conn. 2025). The CCA below applied yet another approach, treating a finding that separate killings are "morally and conceptually equivalent" as sufficient to deem them mere means. App. at 11a–12a. When courts proceeding from the same two precedents reach such conflicting results,

they need this Court's guidance on which reading is correct.

Had Petitioner been tried in federal court, or in California, Washington, Utah, Connecticut, Minnesota, or the District of Columbia, jurors could not have convicted him without first agreeing unanimously whose death, beyond Christopher Greenaway's, he caused. But at Petitioner's trial in Texas, the jury was expressly authorized to convict him without any such agreement and may well have done so; nothing in the general verdict suggests otherwise. Even within Texas, the decision below is an outlier: at least one court of appeals has held that "[w]hen a defendant is charged with capital murder of multiple persons under Section 19.03(a)(7) of the Penal Code, the unanimity requirement is violated if the charge does not require the jury to agree [unanimously] on which alleged victims the defendant murdered." *Harper v. State*, 540 S.W.3d 223, 232 (Tex. App.—Houston [1st Dist.] 2018, no pet.).[7] The disagreement is real, it is outcome-determinative in this case, and it will persist and deepen until this Court clarifies what the Sixth Amendment requires when a State aggregates separate criminal transactions into a single count.

[7] Petitioner's opening brief below directed the CCA to the holding in *Harper*. Appellant's Br. 51 n.18. The court's opinion does not address *Harper*.

III. THE QUESTION PRESENTED IS EXCEPTIONALLY IMPORTANT, AND THIS CASE IS AN IDEAL VEHICLE FOR RESOLVING IT.

A. The question is important and recurring.

Ramos resolved *whether* the Sixth Amendment requires unanimity in state court. It did not resolve *what* the jury must be unanimous about when a single count effectively aggregates what are substantively multiple discrete offenses. That question arises under aggregated-offense statutes across the country, including continuing criminal enterprises, racketeering predicates, financial crimes, continuous-abuse statutes, and course-of-conduct murder provisions like § 19.03(a)(7)(B). This Court's decision in *Schad* produced no majority rationale, and *Richardson* rested on federal statutory grounds. Lower courts need this Court's guidance on the constitutional floor.

The question is most acute in a capital case like Petitioner's. This Court has long demanded heightened reliability before a State may take a life, recognizing that death differs in kind from other punishments. *See Woodson v. North Carolina*, 428 U.S. 280, 305 (1976) (plurality opinion); *Beck v. Alabama*, 447 U.S. 625, 637–38 (1980). The instruction given here produced the opposite of reliability: a death sentence resting on a verdict in which — for all anyone can know — no twelve jurors ever agreed that Petitioner committed any single second murder.

B. This case is an ideal vehicle.

The federal constitutional issue was preserved by a timely objection, RR 60:11–12, as the State acknowledged below. State's Br. 135 n.10. The CCA decided

the federal question on the merits. App. at 11a–13a. No antecedent state-law question stands in the way: the court construed § 19.03(a)(7)(B) to permit the non-unanimity instruction, *id.* at 7a–10a, and that construction of state law binds this Court. Nor does the CCA's state-law holding supply an independent state ground, because the court separately decided the federal claim on its merits. The federal constitutional question is therefore unavoidable and cleanly presented. Nor is there any factual dispute about what jurors were told — the instruction and the State's closing argument are in the record.

And the constitutional violation here was manifestly harmful. A non-unanimous verdict is no verdict at all, and where a jury never performed its constitutional function, there "has been no jury verdict [of conviction] within the meaning of the Sixth Amendment." *Cf. Sullivan v. Louisiana*, 508 U.S. 275, 279–80 (1993). In any event, on this general verdict the State cannot "prove beyond a reasonable doubt that the error … did not contribute to the verdict obtained." *Chapman v. California*, 386 U.S. 18, 24 (1967). The record establishes that the State expressly invited the jury to convict without agreeing on any second victim, RR 60:35–36, and no one can say the jury declined the invitation.

The Court should grant the writ to decide whether the Sixth and Fourteenth Amendments permit a State to do what was done here: convict a defendant of capital murder on the theory that he murdered more than one person, without any twelve jurors ever agreeing that he committed a second specific murder.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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