IN THE STATE OF LOUISIANA
25th Judicial District Court
Plaquemines Parish

Reginald Reddick *Petitioner,* **DOC # 132955** -vs-	)	25th Judicial District Court Parish of Plaquemines
Darrel Vannoy, Warden Louisiana State Penitentiary *Respondent*	)	Case No. 93-3922-B

POST CONVICTION RELIEF APPLICATION

Introduction.

Mr. Reddick is being detained based upon a conviction by a non-unanimous jury. In *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020), the Supreme Court held that Louisiana's system allowing individuals to be convicted by non-unanimous juries of crimes for which they can be incarcerated for life violated the Sixth and Fourteenth Amendments. Justice Gorsuch asked, "On what ground would anyone have us leave Mr. Ramos in prison for the rest of his life?" *Id.* at 1408. The Court could find none because there are none. Failure to apply *Ramos* to Petitioner, who remains a victim of the Jim Crow jury system, would be express acquiescence in structural racism and would permit the ongoing detention of Petitioner based upon a patently unconstitutional conviction.

There is no debate that Petitioner's trial and conviction were unconstitutional; the question here is whether Petitioner has a remedy in this Court for that violation. Based upon the Uniform Application attached at Exhibit 1, the memorandum of law attached at Exhibit 2, and the following, the Court should grant Petitioner's application.

Applicable facts.

1. Reginald Reddick, DOC # 132955 is the Petitioner in this case. Petitioner is confined at the Louisiana State Penitentiary in violation of his rights under the United States Constitution.

2. Respondent, Darrel Vannoy currently serves as Warden of the Louisiana State Penitentiary and is custodian of Petitioner. Petitioner is entitled to post-conviction relief as he

remains in custody after a sentence, based upon a conviction that was obtained in violation of the Constitution of the United States (La. C. Cr. P. art. 930.3 (1)).

3. Petitioner was indicted on a charge of first degree murder and pled not guilty. On January 23, 1997, the jury returned with a verdict finding Petitioner guilty second degree murder. *See* Exhibit 3. He was sentenced to life at hard labor without the benefit of probation, parole or suspension of sentence. *See* Exhibit 3.

4. The jury in this case issued a non-unanimous verdict. Specifically, the jury voted ten to two. *See* Exhibit 3.

5. Timon V. Webre represented Petitioner at trial. 's address with the Louisiana Bar Association is 700 Camp St., Ste. 203, New Orleans, LA 70130.

6. Upon information and belief, Christopher Aberle represented Petitioner on appeal. Mr. Aberle's address with the Louisiana State Bar Association is 23146 Nelita Rd, Mandeville, LA 70471.

7. The Fourth Circuit Court of Appeals affirmed Petitioner's conviction on appeal on. *State v. Reddick*, No. 97 CA-1155.[1] The Supreme Court of the State of Louisiana denied writs on September 18, 1998. *State v. Reddick*, No. 98-KO-0664 (La. 1998).

8. This is a successive application.[2] This application for post-conviction relief is timely in accordance with La.C.Cr.P. art 930.8(2) it is filed within one year of a final ruling by the United States Supreme Court establishing a theretofore unknown interpretation of constitutional law and Petitioner establishes that this interpretation is retroactively applicable to his case. Specifically, this application relates to Ramos v. Louisiana, 140 S. Ct. 1390 (2020).

9. Petitioner initially filed for post-conviction relief on September 11, 1999. In this application, Petitioner raised the issue of ineffective assistance of counsel. This application was denied by the District Court on August 28, 2001. The Fourth Circuit Court of Appeal denied the application on November 7, 2001. *State v. Reddick*, No. 2001-K-1844 (La. App. 4 Cir 2001). The Supreme Court of Louisiana denied writs on November 1, 2002. *State ex rel. Reddick v. State*, No.

[1] After diligent search, the date of this decision was not located.

[2] All efforts were undertaken to research the full past procedural history of Petitioner's case. However, due to the age of the case, the lack of publically accessible electronic records and/or the restrictions on in-person research due to the worldwide Covid-19 pandemic, information of the past procedural history may be unobtainable to Petitioner

2001-KH-3343 (La. 2002).

10. It is clear that the non-unanimous jury verdict in Petitioner's criminal trial substantially impaired its truth-finding function and raises serious questions about the accuracy of guilty verdicts in past trials. In the instant case, the State failed to satisfy its constitutional burden and could not present a case which reached a unanimous verdict. For any number of reasons, the dissenting juror harbored reasonable doubts about Petitioner's guilt. Their reasonable doubts and their votes were effectively nullified by La. C. Cr. P. Art. 782 and Article 1 § 17 of Louisiana's Constitution.

CLAIM FOR RELIEF

11. Petitioner was convicted by a non-unanimous jury. The United States Supreme Court has held that non-unanimous convictions violate the Sixth and Fourteenth Amendments to the United States Constitution. *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020). As such, Petitioner has a meritorious constitutional claim for relief from his conviction for second degree murder under La. C. Cr. P. Art. 930.3 (1) ("The conviction was obtained in violation of the constitution of United States or the State of Louisiana.").

12. Because this application is being filed more than two years after the judgment of conviction and sentence has become final, Petitioner bears the burden to prove:

> i. The claim asserted in the petition is based upon a final ruling of an appellate court establishing a theretofore unknown interpretation of constitutional law;
>
> ii. The interpretation is retroactively applicable to his case; and
>
> iii. The petition is filed within one year of the finality of such ruling.

See La. C. Cr. P. art. 930.8 (A) (2).

13. The claim asserted in this petition is based upon *Ramos v. Louisiana*, which established an interpretation of constitutional law that was previously not abided in Louisiana. *Compare Ramos v. Louisiana*, *supra*, with *State v. Bertrand*, 2008-2215 (La. 3/17/09); 6 So.3d 738 (denying relief to claim. In *Bertrand*, the Louisiana Supreme Court rejected the argument that non-unanimous verdicts were unconstitutional:

> Because we are not presumptuous enough to suppose, upon mere speculation, that the United States Supreme Court's still valid determination that non-unanimous 12 person jury verdicts are constitutional may someday be overturned, we find that the trial court erred in ruling that Article 782 violated the Fifth, Sixth, and Fourteenth Amendments. With respect to that ruling, it should go without saying that a trial judge is not at liberty to

ignore the controlling jurisprudence of superior courts.

State v. Bertrand, 2008-2215 (La. 03/17/09), 6 So. 3d 738, 743.

14. The petition is filed within one year of *Ramos v. Louisiana*, decided on April 20, 2020.

15. For the reasons that Petitioner outlined in the attached memorandum on this issue, and will establish at a hearing, *Ramos* is retroactively applicable to his case because:

a) *Ramos v. Louisiana* established a **substantive protection** made applicable to Petitioner who is currently being detained without a valid conviction. *See Montgomery v. Louisiana*, 136 S. Ct. 718 (2015);

b) *Ramos v. Louisiana* reinstitutes an **old rule** that has been in effect since the adoption of the Constitution. *See Ramos*, 140 S. Ct. at 1399 ("How does the State deal with the fact this Court has said 13 times over 120 years that the Sixth Amendment does require unanimity? Or the fact that five Justices in *Apodaca* said the same?");

c) Retroactivity is controlled by stare-decisis, and the United States Supreme Court and the federal Fifth Circuit have already held retroactive a decision that non-unanimous six person juries were unconstitutional. *See Brown v. Louisiana*, 447 U.S. 323 (1980); *Atkins v. Listi*, 625 F.2d 525, 525-26 (5th Cir. 1980); *Thomas v. Blackburn*, 623 F.2d 383, 384 (5th Cir. 1980);

d) Even if *Teague v. Lane,* 489 U.S. 288 (1989), applied, the ruling in *Ramos* was a watershed rule of criminal procedure that directly impacts the reliability of the conviction; and

e) Even if the federal courts do not require Louisiana to provide a remedy to Petitioner's constitutional violation, the Louisiana courts should do so for the reasons set forth in the memorandum, including the history of racism, the threat to legitimacy of the courts, and the importance of protecting the rights of jurors and defendants. *See Danforth v. Minnesota*, 552 U.S. 264, 291 (2008).[3]

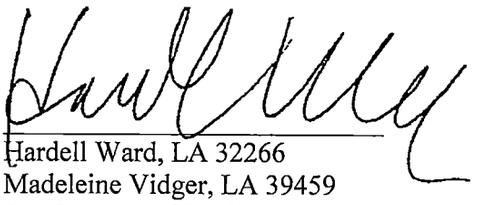
14. This Court, under Article I, Section 22 of the Louisiana Constitution, has an obligation to ensure that every person has an adequate remedy by due process of law and justice, administered without denial, to protect his right to liberty and freedom.

RELIEF REQUESTED

Wherefore, Reginald Reddick respectfully asks this Court to order a hearing on the allegations contained herein, to allow Petitioner to present evidence that his conviction was based upon a non-unanimous verdict, and to provide briefing on the application of *Ramos v. Louisiana* to his case, and to grant the motion for post-conviction relief.

[3] Petitioner further anticipates potential arguments about preservation of objections, and therefore further submits Petitioner's memorandum law showing why any alleged defect regarding preservation should be rejected or overcome with a finding of ineffective assistance.

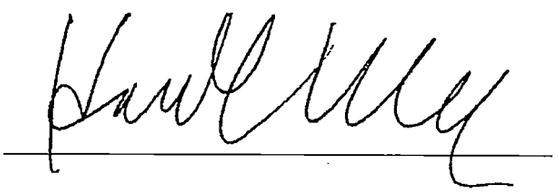
Respectfully submitted,



Hardell Ward, LA 32266
Madeleine Vidger, LA 39459
The Promise of Justice Initiative
1024 Elysian Fields Avenue
New Orleans, Louisiana 70117
Telephone: (504) 529-5955
Counsel for Reginald Reddick

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion has been served by hand or first class mail to the 25th Judicial District Court, to Charles J. Ballay, District Attorney for the 25th Judicial District, Plaquemines Parish, State of Louisiana, **333 F. Edward Hebert Blvd, Building 201, Belle Chasse, LA 70037** for Darrel Vannoy, Warden for Louisiana State Penitentiary and to Petitioner, Reginald Reddick, DOC 132955, **17544 Tunica Trace, Angola, LA 70712.**



Counsel for Reginald Reddick
Signed on this 26 of March, 2021.

IN THE STATE OF LOUISIANA
25th Judicial District Court
Plaquemines Parish

Reginald Reddick	)	25th Judicial District Court
Petitioner,	)	
DOC # 132955	)	Parish of Plaquemines
-vs-	)	
	)	
	)	
Darrel Vannoy, Warden	)	Case No. 93-3922-B
Louisiana State Penitentiary	)	
Respondent	)	
	)	

ORDER

On Mr. Reddick's Application for Post-Conviction Relief, the State is hereby ordered to show cause on 2nd of June why such relief requested therein should not be granted.

Signed on this 30th of March, 2021.

25th Judicial District Court Judge
Michael D. Clement, Div B
25th JDC

Exhibit 1

SECOND OR SUBSEQUENT UNIFORM APPLICATION FOR POSTCONVICTION RELIEF

Please review La. C.Cr.P. Arts. 924 – 930.9 for the correct procedure for filing an application for postconviction relief. This form does not modify the law or requirements as stated in those articles.

For the **Time Limitations** for filing this application, please see Louisiana Code of Criminal Procedure (La. C.Cr.P.) Art. 930.8(A), which states in part that "No application for post-conviction relief, including applications which seek an out-of-time appeal, shall be considered if it is filed more than two years after the judgment of conviction and sentence has become final under the provisions of Article 914 or 922 . . ."

See remainder of La. C.Cr.P. Art. 930.8 for the **Limited Exceptions** relating to the extension of this time period.

SECOND OR SUBSEQUENT APPLICATION INSTRUCTIONS – READ CAREFULLY

If this is **not** your **First Application** for postconviction relief, please carefully review all of the following instructions:

1. In accordance with La. C.Cr.P. Art. 930.4(D) or (E), you are entitled to file one application for postconviction relief after your conviction has become final and within the time limits provided in La. C.Cr.P. Art. 930.8.
2. If you are attempting to file a second or subsequent application, you **must use this form** and **justify your right to file a second or subsequent application** in accordance with La. C.Cr.P. Arts. 930.4 and 930.8. If you fail to use this form, your application may be automatically dismissed by the Court.

GENERAL INSTRUCTIONS – READ CAREFULLY

In addition to the above instructions, please carefully review all of the following instructions:

1. **You must use this form or the District Court will not consider your application.** This could affect your ability to seek relief in accordance with the time limits established in La. C.Cr.P. Art. 930.8. Therefore, you must use this form or justify your failure to do so within the postconviction time limits.
2. This application must be clearly written or typed, signed by you or your attorney, and sworn to before a notary public or institutional officer authorized to administer an oath. Any false statement of a material fact may serve as the basis for a criminal prosecution. Answer questions concisely in the proper space on the form. You may attach additional pages stating the facts that support your claims for relief. No lengthy citations of authorities or legal arguments are necessary.
3. When the application is completed, **you must file the original application in the District Court for the parish in which you were convicted and sentenced**, and you must also send a copy to the State.
4. You must raise all claims for relief arising out of a single trial or guilty plea in one application.
5. You are only entitled to file an application for postconviction relief to challenge a **habitual offender adjudication or sentence within very limited circumstances**. In most cases, you can only challenge a habitual offender adjudication or sentence in an appeal.

REQUIRED ATTACHMENTS

A copy of **the Louisiana Uniform Commitment Order** of conviction and sentence **must** be attached to the application (if it is available), or the application must allege that it is unavailable.

You **must** attach a copy of **any judgment** by **any court** regarding prior postconviction applications, or this application may be dismissed by the district court. If you are unable to provide any judgments, please explain why.

Date of this Application:	3 / 26 / 2021	Name of Applicant:	Reginald Reddick
DOC Number:	132955	Place of Confinement:	Plaquemines
District Court Case Number:	93-3922-B	Parish of Conviction:	LSP

Name of Trial Judge:	Hon. William A. Roe
Offense(s) for which you were convicted:	Second Degree Murder
Do any of the convictions involve a sex offense or a human trafficking related offense where the victim was a minor under the age of eighteen years (see La. R.S. 46:1842(1.1) and 46:1844(W)(2))? [Check One]	Yes ☐ No ☒

Date of Conviction:	1 / 23 / 1997	Conviction by: [Check One]	Guilty Plea ☐ Trial by Jury ☒ Trial by Judge ☐
Date of Sentencing:	2 / 5 / 1997	Sentence:	
Name of Counsel who represented you at the time of trial, sentence and/or conviction:	Timon Webre		

Multiple Offender Proceeding: [Check One]	Yes ☐ No ☐
If yes, answer both of the following questions:	
Result of Proceeding: [Check One]	Pled ☐ Adjudicated to be a Multiple Offender ☐ Adjudicated No Bill ☐
Sentence on Multiple Offender Bill:	

Name of Counsel who represented you on appeal:	See Petition			
Appeal of conviction and sentence: [Check One]	Yes ☒	No ☐	Appellate Case #:	97CA-1155
Appeal of Multiple Bill: [Check One]	Yes ☐	No ☒	Appellate Case #:	
Writ to Louisiana Supreme Court: [Check One]	Yes ☒	No ☐	Supreme Court Case #:	98-KO-0664
Action by Supreme Court: [Check if Applicable]	Granted ☐ ☒	Denied	Date of Action:	9 / 18 / 1998
Rehearing to Supreme Court: [Check if Applicable]	Granted ☐ ☐	Denied	Date of Action:	/ /

PRIOR APPLICATIONS INSTRUCTIONS – READ CAREFULLY

Please provide a list below of all prior applications for postconviction relief filed by you or on your behalf in connection with the judgment of conviction and sentence challenged in this application. If you have filed more than two prior applications, provide the information for each additional application on a separate sheet of paper.

District Court Case Number:	93-3922-B	Parish of Conviction:	Plaquemines		
Date of Filing:	9 / 11 / 1999	Is this the same case challenged in this application? [Check One]	Yes ☒	No ☐	

Claims Raised:	1. Ineffective assistance of counsel 2. 3. 4. [Use Additional Sheet if Necessary]				
Was relief granted or denied? [Check One]	Yes ☐ No ☒	Date of Disposition:	8 / 28 / 2001		
Did you receive an evidentiary hearing? [Check One]	Yes ☐ No ☐ unknown	Did you file a writ to the Court of Appeal? [Check One]	Yes ☒ No ☐		
Which Circuit? [Check One]	1☐ 2☐ 3☐ 4☒ 5☐	Appellate Case #:	2001-K-1844		
Sought writ to Louisiana Supreme Court? [Check One]	Granted ☐ Denied ☒ Not Sought ☐	Supreme Court Case #:	2001-KH-3343		
		Date of Ruling	11 / 1 / 2002		

District Court Case Number:		Parish of Conviction:	
Date of Filing:	___ / ___ / ___	Is this the same case challenged in this application? [Check One]	Yes ☐ No ☐
Claims Raised:	1. 2. 3. 4. [Use Additional Sheet if Necessary]		
Was relief granted or denied? [Check One]	Yes ☐ No ☐	Date of Disposition:	___ / ___ / ___
Did you receive an evidentiary hearing? [Check One]	Yes ☐ No ☐	Did you file a writ to the Court of Appeal? [Check One]	Yes ☐ No ☐
Which Circuit? [Check One]	1☐ 2☐ 3☐ 4☐ 5☐	Appellate Case #:	
Sought writ to Louisiana Supreme Court? [Check One]	Granted ☐ Denied ☐ Not Sought ☐	Supreme Court Case #:	
		Date of Ruling	___ / ___ / ___

CLAIMS FOR RELIEF INSTRUCTIONS – READ CAREFULLY

You must include in this application **all allowable claims** relating to this conviction. If you do not, you may be **barred** from presenting additional claims at a later date. See La. C.Cr.P. Art. 930.4. You must **state the facts** upon which your claims are based. Do not just set out conclusions.

Please refer to La. C.Cr.P. Art. 930.3 (Grounds), which reads:

> "If the petitioner is in custody after sentence for conviction for an offense, relief shall be granted only on the following grounds:
>
> (1) The conviction was obtained in violation of the constitution of the United States or the state of Louisiana;
> (2) The court exceeded its jurisdiction;

(3) The conviction or sentence subjected him to double jeopardy;
(4) The limitations on the institution of prosecution had expired;
(5) The statute creating the offense for which he was convicted and sentenced is unconstitutional; or
(6) The conviction or sentence constitute the ex post facto application of law in violation of the constitution of the United States or the state of Louisiana.
(7) The results of DNA testing performed pursuant to an application granted under Article 926.1 proves by clear and convincing evidence that the petitioner is factually innocent of the crime for which he was convicted."

Using a separate sheet of paper, provide the following information as it relates to claims available under La. C.Cr.P. Art. 930.3.

For each claim:

(A) You **must** state your **claim**, the **ground** on which it is based under La. C.Cr.P. Art. 930.3, and the **facts** that support your claim.
(B) If there are witnesses who could testify in support of your claim, you **must** list their names and current addresses. If you cannot do so, explain why.
(C) If you failed to raise this claim in the trial court prior to conviction or on appeal, you **must** explain why. This is your opportunity to state reasons for your failure before the court considers dismissing the application in accordance with La. C.Cr.P. Art. 930.4(F).

In the following space, provide a brief summary of the reasons why you are legally entitled to file a second or subsequent application. If you fail to justify your right to file a second or subsequent application in accordance with La. C.Cr.P. Arts. 930.4 and 930.8, your application may be automatically dismissed.

Please see the attached post-conviction relief application pleading filed herewith. Petitioner references and incorporates that document, as if it was stated herein. All reasonable efforts were undertaken to confirm/discover information relating to the past procedural history and past filings in this case. Any missing information is due to age of case, lack of availability of publicly accessible electronic records and/or the restrictions on in-person research gathering caused by the international Covid-19 pandemic.

Petitioner is entitled to a successive PCR under La.C.Cr.P. art 930.8(2) because it is based upon a final ruling by the United States Supreme Court (Ramos v. Louisiana, 590 U.S. ___ (April 20, 2020)) establishing a theretofore unknown interpretation of constitutional law and Petitioner can establish that this interpretation is retroactively applicable to his case.

Wherefore, Applicant prays that the Court grant Applicant relief to which he/she may be entitled.

26 / 3 / 2021 [Day / Month/ Year]	[Signature of Applicant or Applicant's attorney]

AFFIDAVIT

STATE OF LOUISIANA

PARISH OF ORLEANS

Hardell H. Ward [Name of Applicant/Attorney], being first duly sworn says that he /she has read the application for postconviction relief and swears or affirms that all of the information therein is true and correct.

[Signature of Applicant or Applicant's attorney]

SWORN TO AND SUBSCRIBED before me this

26 day of 3, 2021

Bethany D. Samhan
Louisiana Notary Public
Notary ID No. 170484
My Commission is for Life

Commission is for Life
New Orleans, LA

NOTARY or person authorized to administer oath

Case Name:	**JUDGMENT** [May be used by the Court in lieu of or in addition to written reasons]	Case Number:

Considering the foregoing Application for Postconviction Relief, this Honorable Court hereby:

DENIES this application in accordance with La. C.Cr.P. Art.

926(E) ☐ 928 ☐ 929 ☐ 930.4 ☐ or 930.8 ☐ , or

ORDERS that the Applicant show cause in writing on or before the _____day of _____, 20_____ why the application should not be dismissed in accordance with La. C.Cr.P. Art.

926(E) ☐ 928 ☐ 929 ☐ 930.4 ☐ or 930.8 ☐ , or

ORDERS that the State be required to file a response to this application on or before the _____day of _____, 20_____.

Signed in _____, Louisiana, this _____day of _____, 20_____.

_____
JUDGE

Exhibit 2

IN THE STATE OF LOUISIANA
25th Judicial District Court
Plaquemines Parish

Reginald Reddick	)	25th Judicial District Court
Petitioner,	)	
DOC # 132955	)	Parish of Plaquemines
-vs-	)	
	)	
	)	
Darrel Vannoy, Warden	)	Case No. 93-3922-B
Louisiana State Penitentiary	)	
Respondent	)	

MEMORANDUM IN SUPPORT OF
POST CONVICTION RELIEF APPLICATION

TABLE OF CONTENTS

I. *Ramos v. Louisiana* establishes a **substantive protection** made applicable to Petitioner, who is currently being detained without a valid conviction.

> On what ground would anyone have us leave Mr. Ramos in prison for the rest of his life? Not a single Member of this Court is prepared to say Louisiana secured his conviction constitutionally under the Sixth Amendment. No one before us suggests that the error was harmless. Louisiana does not claim precedent commands an affirmance. In the end, the best anyone can seem to muster against Mr. Ramos is that, if we dared to admit in his case what we all know to be true about the Sixth Amendment, we might have to say the same in some others. But where is the justice in that? Every judge must learn to live with the fact he or she will make some mistakes; it comes with the territory. But it is something else entirely to perpetuate something we all know to be wrong only because we fear the consequences of being right.
>
> - *Ramos v. Louisiana*, 140 S. Ct. 1390, 1408 (2020) (plurality opinion).

The U.S. Supreme Court decided *Ramos v. Louisiana* on April 20, 2020. In that case, Evangelisto Ramos faced a charge of second-degree murder, for which he maintained his innocence and invoked his right to a jury trial. *Id.* at 1393–94. During that trial, two jurors believed that the State of Louisiana failed to prove Mr. Ramos's guilt beyond reasonable doubt. *Id.* at 1394. The two jurors voted to acquit. *Id.* The courts in 48 states would have acquitted Mr. Ramos in this circumstance, but in Louisiana—where the law allowed 10-2 and 11-1 non-unanimous jury convictions—Mr. Ramos received a life sentence, without the possibility of parole. *Id.*

In addition to being inconsistent with the vast majority of criminal procedure practices across the Country, Louisiana's non-unanimous jury rule—the *Ramos* Court explained—was born from the Jim Crow era. "With a careful eye on racial demographics, the [1898 Constitutional] convention delegates sculpted a 'facially race-neutral' rule permitting 10-to-2 verdicts in order 'to ensure that African-American juror service would be meaningless.'" *Id.* at 1394.

The *Ramos* Court reversed Mr. Ramos's conviction and held that Louisiana's scheme of non-unanimous jury verdicts violated the Sixth and Fourteenth Amendments of the United States Constitution. In doing so, Justice Gorsuch, writing for the five-justice majority, first articulated what the Court had "repeatedly" recognized over many years: the Sixth Amendment requires a unanimous jury verdict. *Id.* at 1396.[1] Inherent in this is the simple truth that those convicted with

[1] *See id.* at 1396 ("Wherever we might look to determine what the term 'trial by an impartial jury trial' meant at the time of the Sixth Amendment's adoption—whether it's the common law, state practices in the founding

non-unanimous jury verdicts failed to receive an adjudication that met the statutory elements of the crime for which those individuals were sentenced.

The *Ramos* Court addressed found that "[t]here can be no question either that the Sixth Amendment's unanimity requirement applies to state and federal criminal trials equally," as it is incorporated against the states under the Fourteenth Amendment. *Id.* at 1397. This understanding of incorporation had also been "long explained" by the Court and was supported by jurisprudence for over a half century. *Id.*[2] Lastly, the Court addressed *Apodaca v. Oregon,* 406 U.S. 464 (1972). In *Apodaca,* a majority of Justices recognized that the Sixth Amendment requires unanimity in jury verdicts. However, the Court nonetheless upheld Oregon's system of non-unanimous jury verdicts in "a badly fractured set of opinions." *Ramos*, 140 S. Ct. at 1392.

Four Justices in the *Ramos* Court found that *Apodaca* had little-to-no precedential value to the case before them.[3] Two Justices found that *Apodaca* was simply "irreconcilable" with the Court's constitutional precedent, or "egregiously wrong" and must be overturned.[4] The Court concluded: "We have an admittedly mistaken decision, on a constitutional issue, an outlier on the day it was decided, one that's become lonelier with time." *Id.* at 1408. The Court could not, and would not, rely on *Apodaca* to uphold Louisiana and Oregon's systems of non-unanimous verdicts.

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era, or opinions and treatises written soon afterward—the answer is unmistakable. A jury must reach a unanimous verdict in order to convict.")

[2] *Id.* at 1396 (Kavanaugh, J., concurring in part) ("the original meaning and this Court's precedents establish that the Fourteenth Amendment incorporates the Sixth Amendment jury trial right against the States"); *id.* at 1416 (Thomas, J., concurring in the judgement) ("There is also considerable evidence that this understanding [of the Sixth Amendment's unanimity requirement] persisted up to the time of the Fourteenth Amendment's ratification.").

[3] Joined by Justices Ginsberg and Breyer, Justice Gorsuch explained that "*Apodaca* yielded no controlling opinion at all," *id.* at 1403, and "not even Louisiana tries to suggest that Apodaca supplies a governing precedent." *Id.* at 1402. In his separate concurring opinion, Justice Thomas found *Apodaca* to be inapplicable in this case because it was decided on due process grounds, and, in his opinion, the Sixth Amendment is incorporated against the states through the Privileges and Immunity Clause of the Fourteenth Amendment: Because "*Apodaca* addressed the Due Process Clause, its Fourteenth Amendment ruling does not bind us because the proper question here is the scope of the Privileges or Immunities Clause." *Id.* at 1424-25 (Thomas, J., concurring in the judgement).

[4] In her concurrence, Justice Sotomayor wrote: *Apodaca* is "irreconcilable with not just one, but two, strands of constitutional precedent well established both before and after the decision. The Court has long recognized that the Sixth Amendment requires unanimity." *Id.* at 1409 (Sotomayor, J., concurring in part). In his concurring opinion, Justice Kavanaugh concluded that Apodaca must be reversed, as it is "Apodaca is egregiously wrong. The original meaning and this Court's precedents establish that the Sixth Amendment requires a unanimous jury. ... And the original meaning and this Court's precedents establish that the Fourteenth Amendment incorporates the Sixth Amendment jury trial right against the States." *Id.* at1416 (Kavanaugh, J., concurring in part).

The *Ramos* ruling is a substantive rule because it addresses a "substantive categorical guarante[e] accorded by the Constitution." *See Penry v. Lynaugh*, 492 U.S. 302, 329–30 (1989). When a state puts forth certain elements of a crime, and a trial proceeds before a trier of fact, that trier of fact must find those elements met in order to convict. In the case of non-unanimous jury verdicts, the trier of fact has not found those elements to have been met. When a substantive rule of constitutional law controls the outcome of a case, the Constitution requires state collateral review courts to give retroactive effect to that rule. *Montgomery v. Louisiana*, 136 S. Ct. 718, 723 (2016) (explaining that substantive rules include "rules forbidding criminal punishment of certain primary conduct," as well as "rules prohibiting a certain category of punishment for a class of defendants because of their status or offense.")

II. *Ramos v. Louisiana* reinstitutes an **old rule** that has been in effect since the adoption of the constitution.

> "How does the State deal with the fact this Court has said 13 times over 120 years that the Sixth Amendment does require unanimity? Or the fact that five Justices in Apodaca said the same?"
>
> - *Ramos*, 140 S. Ct. at 1399.

The Supreme Court, in *Ramos v. Louisiana*, returned to the original founding principles that were consistently applied, noting, "This Court has, repeatedly and over many years, recognized that the Sixth Amendment requires unanimity. As early as 1898, the Court said that a defendant enjoys a 'constitutional right to demand that his liberty should not be taken from him except by the joint action of the court and the unanimous verdict of a jury of twelve persons.'" *Id.* at 1396.

In *Teague v. Lane*, the U.S. Supreme Court laid out the test for determining the retroactive application of *future* newly announced rules. However, the *Teague* doctrine applies only to future decisions that announce "new rules" of criminal procedure, not to those that are "merely an application of the principle that governed" a prior Supreme Court case. *Teague v. Lane,* 489 U.S. 288, 307 (1989) (quotation and citation omitted); *see also id.* at 302 ("It is admittedly often difficult to determine when a case announces a new rule, and we do not attempt to define the spectrum of

what may or may not constitute a new rule for retroactivity purposes."). The *Ramos* decision falls into the latter category.[5]

If *Ramos* does not establish a new rule then the *Teague* doctrine does not apply, and *Ramos* is automatically applicable to non-unanimous cases on first post-conviction relief applications and also applicable to second and successive post-conviction relief application.

The Supreme Court, in no fewer than 14 opinions, has explained that the Sixth Amendment's Jury Trial Clause requires a "unanimous" verdict to convict, many before the Petitioner's conviction became final. The first time the U.S. Supreme Court discussed the issue, it pronounced that the Framers and the ratifying public believed "life and liberty, when involved in criminal prosecutions, would not be adequately secured except through the unanimous verdict of twelve jurors." *Thompson v. State of Utah*, 170 U.S. 343, 353 (1898). Other contemporaneous descriptions of the right to jury trial are in accord. *See Maxwell v. Dow*, 176 U.S. 581, 586 (1900); *Patton v. United States*, 281 U.S. 276, 288 (1930), abrogated on other grounds by *Williams v. Florida*, 399 U.S. 78 (1970).

Two generations after first addressing the unanimity issue, this Court returned to the subject in *Andres v. United States*, 333 U.S. 740 (1948). The issue there was whether a federal murder sentencing statute allowed juries to impose capital sentences by non-unanimous votes. *See id.* at 746-47. Emphasizing that the Sixth Amendment's Jury Trial Clause demands "[u]nanimity in jury verdicts," the Court construed the statute to require unanimity "upon both guilt and whether the punishment of death should be imposed." *Id.* at 748–49.

In *Apodaca v. Oregon*, 406 U.S. 404 (1972), a majority of the Court agreed yet again that the Sixth Amendment requires jury unanimity to convict. Justice Powell accepted the "unbroken line of cases reaching back into the late 1800's" holding that, under the Sixth Amendment, "unanimity is one of the indispensable features of federal jury trial." *Johnson v. Louisiana*, 406 U.S. 356, 369 (1972) (Powell, J., concurring in the judgment in *Apodaca*). Justice Stewart, writing

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[5] *Ramos*, 140 S. Ct. at 1437 (Alito, J., dissenting) ("*Teague* applies only to a 'new rule', and the positions taken by some of the majority may lead to the conclusion that the rule announced today is an old rule.")

for three Justices, likewise concluded that "the Sixth Amendment's guarantee of trial by jury embraces a guarantee that the verdict of the jury must be unanimous." *Apodaca*, 406 U.S. at 414–15 (Stewart, J., joined by Brennan & Marshall, J., dissenting). Justice Douglas similarly maintained that "the Federal Constitution require[s] a unanimous jury in all criminal cases." *Johnson*, 406 U.S. at 382 (Douglas, J., joined by Brennan & Marshall, JJ., dissenting in *Apodaca*).[6]

Subsequent decisions have continued to recognize that the Jury Trial Clause requires unanimity to convict someone of a crime. In a line of cases involving the scope of the jury trial right, this Court has repeatedly explained that the Sixth Amendment requires that "the truth of every accusation . . . be confirmed by the unanimous suffrage of twelve of [the defendant's] equals and neighbours." *Apprendi v. New Jersey*, 530 U.S. 466, 477 (2000) (quoting 4 W. Blackstone, Commentaries on the Laws of England 343; 349-50 (1769)); *accord S. Union Co. v. United States*, 567 U.S. 343, 356 (2012); *United States v. Booker*, 543 U.S. 220, 239 (2005); *Blakely v. Washington*, 542 U.S. 296, 301 (2004); *United States v. Gaudin*, 515 U.S. 506, 510 (1995).

The U.S. Supreme Court has similarly relied on *Andres* and Justice Powell's opinion in *Apodaca* to hold that "a jury in a federal criminal case cannot convict unless it *unanimously* finds" each element of a crime. *Richardson v. United States*, 526 U.S. 813, 817 (1999) (emphasis added); *see also Descamps v. United States*, 570 U.S. 254, 269 (2013) ("The Sixth Amendment contemplates that a jury…" will find the essential facts "unanimously and beyond a reasonable doubt."). The Supreme Court returned to the subject in two cases involving the incorporation of other provisions of the Bill of Rights. Referencing *Apodaca*, the U.S. Supreme Court has noted that "the Sixth Amendment right to trial by jury requires a unanimous jury verdict in federal criminal trials." *McDonald v. Chicago*, 561 U.S. 742, 766 n.14 (2010); *see also Timbs v. Indiana*, 139 S. Ct. 682, 687 n.1 (2019) (same); *see also Ramos*, 140 S. Ct. at 1397.

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[6] To be sure, four of these five Justices dissented on other grounds. But where five Justices expressly embrace a legal proposition, the consensus of the five Justices prevails over any separate opinions on that issue. *See, e.g., Alexander v. Choate*, 469 U.S. 287, 292-93, 293 n.9 (1985) (proposition adopted by one Justice in the majority and four in dissent in *Guardians Ass'n v. Civil Service Comm'n*, 463 U.S. 582 (1983), constituted a "holding").

The outcome in *Apodaca*, the U.S. Supreme Court has explained, resulted from Justice Powell's vote that the Fourteenth Amendment did not require states to fully abide by the Sixth Amendment. *See McDonald*, 561 U.S. at 766 n.14; *see also Ramos*, 140 S. Ct. at 1397. And in *Timbs*, the U.S. Supreme Court explained the reasoning in *Apodaca* was a sole outlier in Supreme Court jurisprudence. *Timbs*, 139 S. Ct. at 687, n.1.

As the *Ramos* Court acknowledged, Justice Powell's vote in *Apodaca* embraced a notion that had already been rejected by the Court: that "the Fourteenth Amendment applies to the States only a 'watered-down, subjective version of the individual guarantees of the Bill of Rights.'" *Ramos*, 140 S. Ct. at 1398; *Timbs*, 139 S. Ct. at 682. The outlier opinion in *Apodaca* is what the *Ramos* decision corrected. Therefore, for purposes of La. C. Cr. P. art. 930.8(2), the ruling is a "theretofore unknown interpretation of constitutional law," but is not a new rule under *Teague*. This is similar to *Stringer v. Black*, 503 U.S. 222 (1992), where the Court held that its decision in *Maynard v. Cartright*, 486 U.S. 356 (1988), did not announce a new rule because it "applied the same analysis and reasoning" found in a prior case. *Stringer*, 503 U.S. at 228.[7]

Here, in addition to the long line of above-cited cases supporting unanimous juries under the Sixth Amendment, every other provision of the Bill of Rights has been found incorporated to the states by the Fourteenth Amendment in a manner that shows "no daylight." *See Timbs*, 139 S. Ct. at 687 n.1; *Ramos*, 140 S. Ct. at 1405 n.63.

The *Ramos* decision only reiterated what the Court had long found: that the constitutional right to a unanimous jury verdict applied equally in state and federal courts:

> This Court has repeatedly and over many years, recognized that the Sixth Amendment requires unanimity.... There can be no question either that the Sixth Amendment's unanimity requirement applies to state and federal criminal trials equally. This Court has long explained that the Sixth Amendment right to a jury

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[7] *See* also *Penry v. Lynaugh*, 492 U.S. 302 (1989) (finding that the relief a state prisoner sought would not create a new rule because it was dictated by *Lockett v. Ohio*, 438 U.S. 586 (1978), and *Eddings v. Oklahoma*, 455 U.S. 104 (1982), both of which were decided before the prisoner's conviction became final.) In that case, Penry sought relief based on the proposition that when a capital defendant presents mitigating evidence of mental retardation and an abused background, courts must "give[] jury instructions that make it possible for them to give effect to that mitigating evidence in determining whether a defendant should be sentenced to death." *Penry, 491 U.S. at 315.* Both *Lockett* and *Eddings* had held that sentencers in capital cases could not be precluded from considering certain potentially mitigating evidence. Even though those cases dealt with different kinds of mitigating evidence, this Court concluded that the rule Penry sought was "dictated by *Eddings* and *Lockett*." *Penry,* 492 U.S. at 319.

> trial is "fundamental to the American scheme of justice" and incorporated against the States under the Fourteenth Amendment. This Court has long explained, too, that incorporated provisions of the Bill of Rights bear the same content when asserted against States as they do when asserted against the federal government. So if the Sixth Amendment's right to a jury trial requires a unanimous verdict to support a conviction in federal court, it requires no less in state court.

Ramos, 140 S. Ct. at 1397.

The only exception had been *Apodaca*, but it was clear to all that the exception did not comport with the analysis and reasoning used for all other incorporation cases.[8] This was so apparent that the State of Louisiana did not even seek to support the *Apodaca* holding in its briefing in *Ramos* or at oral argument. The State's only defense in support of Mr. Ramos's judgment was that the Sixth Amendment does not require unanimity at all, that is, not in state courts or in federal courts—a position clearly contrary to the holding in *Apodaca*.[9]

If *Ramos* merely corrects a mistake made by the U.S. Supreme Court in *Apodaca* and restates a rule that had been present since the creation of the Fourteenth Amendment, then *Ramos* does not provide a "new rule," only a heretofore unknown interpretation for purposes of Louisiana Code of Criminal Procedure 930.8(2).

III. Retroactivity is controlled by stare decisis, and the United States Supreme Court and the federal Fifth Circuit have already held retroactive a decision that non-unanimous six person juries were unconstitutional.

Before a court looks to *Teague v. Lane*, it should look to see if there is already a rule in place that governs retroactivity. In the case of *Ramos*, there is. The U.S. Supreme Court and the Fifth Circuit Court of Appeals have already made clear that a determination that a non-unanimous verdict violates the Sixth and Fourteenth Amendments necessitates retroactive application.

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[8] "*Apodaca*... was on shaky ground from the start" *Ramos,* 140 S. Ct. at 1409 (Sotomayor, J., concurring).

[9] At oral argument, Justice Kavanaugh asked the State of Louisiana what its best argument would be if it were not to overrule the 14 cases in which it has said the Sixth Amendment requires a unanimous jury trial. "What are your best arguments, then, for why the right is not incorporated and relatedly your best arguments for not overruling Apodaca?" he asked. The State responded: "Justice Kavanaugh, they are concededly not very good... this Court at least at this point in time has taken a view of incorporation that says that there's no daylight. So if you find that unanimity is required, I find myself in a far more difficult position." *See* U.S. Supreme Court No. 18-5924, Oral Argument Transcript, p. 47-48; *see also Ramos*, 140 S. Ct. at 1399 ("Louisiana acknowledges the problem. The State expressly tells us it is not 'asking the Court to accord Justice Powell's solo opinion in *Apodaca* precedential force.'")

In *Burch v. Louisiana*, 441 U.S. 130 (1979), Mr. Burch was charged with exhibiting two obscene motion pictures. *Id.* at 132. Under Louisiana law, the court tried him before a six-person jury. *Id.* A jury poll indicated that the jury had voted five-to-one to convict him. *Id.* He appealed, arguing that the Louisiana law permitting conviction by a non-unanimous six-member jury violated his rights to a trial by jury guaranteed by the Sixth and Fourteenth Amendments. *Id.* at 132–33. The U.S. Supreme Court agreed and found that convictions by a non-unanimous six-member jury threatened the substance of the jury trial guarantee and violated the Constitution. *Id.* at 138.

In *Brown v. Louisiana*, 447 U.S. 323 (1980), the U.S. Supreme Court held that the constitutional principle announced in *Burch*—that conviction of a nonpetty criminal offense in a state court by a non-unanimous six-person jury violates the accused's right to trial by jury guaranteed by the Sixth and Fourteenth Amendments—"requires retroactive application." *Id.* at 334 ("It is difficult to envision a constitutional rule that more fundamentally implicates 'the fairness of the trial—the very integrity of the fact-finding process.' … Any practice that threatens the jury's ability properly to perform that function poses a similar threat to the truth-determining process itself. The rule in *Burch* was directed toward elimination of just such a practice. Its purpose, therefore, clearly requires retroactive application.").

In *Brown*, the Court stressed that:

> Where the major purpose of new constitutional doctrine is to overcome an aspect of the criminal trial that substantially impairs its truth-finding function and so raises serious questions about the accuracy of guilty verdicts in past trials, the new rule has been given complete retroactive effect. Neither good-faith reliance by state or federal authorities on prior constitutional law or accepted practice, nor severe impact on the administration of justice has sufficed to require prospective application in these circumstances.

Id. at 328 (quoting *Williams v. United States*, 401 U.S. 646, 653 (1971) (plurality opinion of WHITE, J.); *Ivan. v. City of New York*, 407 U.S. 203, 204 (1972)).

Stare decisis binds this Court to follow the decision by the United States Supreme Court in *Brown*. *See Ramos*, 140 S. Ct. at 1416 n.84 (Kavanaugh, J., concurring in part) ("vertical *stare decisis* is absolute, as it must be in a hierarchical system with 'one supreme court.' … In other

words, the state courts and the other federal courts have a constitutional obligation to follow a precedent of this Court unless and until it is overruled by this Court.").

Following the U.S. Supreme Court's decision in *Brown*, two Fifth Circuit Court of Appeals cases found that the Supreme Court's ruling on unanimous jury verdicts in cases with six-person juries required retroactive application to people seeking post-conviction relief. *Atkins v. Listi*, 625 F.2d 525, 525-26 (5th Cir. 1980); *Thomas v. Blackburn*, 623 F.2d 383, 384 (5th Cir. 1980). Considering the rulings in *Ramos*, *Brown*, *Atkins*, and *Thomas*, this Court should vacate the conviction of Petitioner, and remand for a new trial or set Petitioner free.

In *Teague v. Lane*, the U.S. Supreme Court laid out the test for determining the retroactive application of *future* newly announced rules. However, *Brown* had already laid down the rule for determining retroactivity of decisions concerning non-unanimous juries. *Teague* did not purport to overrule *Brown*, and indeed cites it as the case that determined the retroactivity of the rule in *Burch v. Louisiana*, 441 U.S. 130 (1979), prohibiting non-unanimous verdicts in six person juries. *Teague v. Lane*, 489 U.S. at 299.

IV. Even if *Teague v. Lane* applied, the ruling in *Ramos* was a watershed rule of criminal procedure that directly impacts the reliability of the conviction.

Even if *Teague* applies, *Ramos* reiterated a substantive rule requiring retroactivity for the reasons stated in Section I. But if this Court were to determine that the holding in *Ramos* somehow established a new rule, then *Teague* would also not bar applying it to Petitioner's claim because the *Ramos* rule qualifies as a "watershed rule[] of criminal procedure."

Ramos created a "'watershed rules of criminal procedure' implicating the fundamental fairness and accuracy of the criminal proceeding," like that of *Gideon v. Wainwright*, 372 U.S. 335 (1963), and should therefore have retroactive effect. *Saffle v. Parks*, 494 U.S. 484, 494–95 (1990) (citing *Teague*, 489 U.S. at 311 (plurality opinion)). To implicate "fundamental fairness and accuracy," the rule must be one "without which the likelihood of an accurate conviction is seriously diminished." *Schriro v. Summerlin*, 542 U.S. 348, 352 (2004) (internal citations omitted).

The Court has previously used *Gideon* as the lodestar for determining watershed cases. *See id.* In *Gideon*, the Court overruled *Betts v. Brady*, 316 U.S. 455 (1942), which had previously

refused to incorporate the Sixth Amendment Right to Counsel under the Fourteenth Amendment. 372 U.S. at 339. Ten years prior to *Betts*, the Court found that the right to counsel is fundamental and essential to a fair trial. *Powell v. Alabama*, 287 U.S. 45, 68 (1932). The Court reemphasized again in 1938 that the Sixth Amendment guaranteed a right to appointed counsel in federal prosecutions where the defendant is unable to employ counsel and that, unless the right is competently and intelligently waived, the "Sixth Amendment stands as a jurisdictional bar to a valid conviction and sentence depriving him of his life or his liberty." *Johnson v. Zerbst*, 304 U.S. 458, 468 (1938). The *Zerbst* Court went on to describe the assistance of counsel as "one of the safeguards of the Sixth Amendment Right deemed necessary to insure fundamental human rights of life and liberty." *Id.* at 462. The *Gideon* Court, in looking at this precedent, found *Betts* to be an aberration and its decision to be a restoration of "constitutional principles established to achieve a fair system of justice." 372 U.S. at 344.

Just like in *Gideon*, *Ramos* incorporated a Sixth Amendment right into the Fourteenth Amendment, following the foundation of prior minority opinions of the U.S. Supreme Court as to the fundamental nature of unanimity in jury verdicts. *See Ramos*, 140 S. Ct. at 1433; *Andres v. United States*, 333 U.S. 740, 748 (1948); *Johnson v. Louisiana*, 406 U.S. at 371 (Powell, J., concurring); *id.* at 397 (Stewart, J., dissenting).

In *Andres*, the Supreme Court unanimously held that the Bill of Rights required a unanimous jury verdict. 333 U.S. at 748 ("Unanimity in jury verdicts is required where the Sixth and Seventh Amendments apply."). Then, in *Johnson* and *Apodaca*, five justices agreed that the Sixth Amendment required unanimity. *See Johnson,* 406 U.S. at 371 (Powell, J., concurring) ("At the time the Bill of Rights was adopted, unanimity had long been established as one of the attributes of a jury conviction at common law. It therefore seems to me, in accord both with history and precedent, that the Sixth Amendment requires a unanimous jury verdict to convict in a federal criminal trial."); *id.* at 381–403 (dissenting opinions); *Apodaca,* 406 U.S. at. 414-15 (concurring and dissenting opinions). However, because Justice Powell did not believe that the right should be incorporated under the Fourteenth Amendment, state non-unanimous jury schemes were upheld as constitutional. *Johnson*, 406 U.S. at 371 (Powell, J., concurring) (concluding that unanimity is

required by the Sixth Amendment, but that "it is the Fourteenth Amendment, rather than the Sixth, that imposes upon the States the requirement that they provide jury trials to those accused of serious crimes.")

Justice Stewart's opinion provides an argument for fundamentality that echoes the sentiments that the *Gideon* Court made regarding the fundamentality of the right to appointed counsel:

> The guarantee against systematic discrimination in the selection of criminal court juries is a fundamental of the Fourteenth Amendment. That has been the insistent message of this Court in a line of decisions extending over nearly a century. The clear purpose of these decisions has been to ensure universal participation of the citizenry in the administration of criminal justice. Yet today's judgment approves the elimination of the one rule that can ensure that such participation will be meaningful—the rule requiring the assent of all jurors before a verdict of conviction or acquittal can be returned. Under today's judgment, nine jurors can simply ignore the views of their fellow panel members of a different race or class.

Johnson, 406 U.S. at 397 (Stewart, J., dissenting). Justice Brennan and Justice Marshall joined in Justice Stewart's dissent, which went on to criticize the majority for failing to recognize the reality that non-unanimous juries grossly undermine the basic assurances of a fair criminal trial and public confidence in its result. *Id.* at 398. Justice Marshall's dissent, joined by Justice Brennan, contained even stronger words than those of Justice Stewart:

> Today the Court cuts the heart out of two of the most important and inseparable safeguards the Bill of Rights offers a criminal defendant: the right to submit his case to a jury, and the right to proof beyond a reasonable doubt. Together, these safeguards occupy a fundamental place in our constitutional scheme, protecting the individual defendant from the awesome power of the State.

Id. at 399–400 (Marshall, J., dissenting). What the dissenters in *Johnson* rightfully point out, and what underlies the *Ramos* decision, is that non-unanimous jury verdicts seriously diminished the likelihood of accurate convictions, especially in states during periods of intense racial discrimination.

Furthermore, a non-unanimous verdict is a structural error because it is a "defect affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself." *Arizona v. Fulminante*, 499 U.S. 279, 310 (1991). Such an error causes the criminal trial to become less reliable in determining guilt or innocence. *Id.* Although structural error is not coextensive with *Teague's* watershed procedural rule exception, *Tyler v. Cain*, 533 U.S. 656, 666

(2001), a structural error that strikes at the fundamental fairness and accuracy of the criminal prosecution meets the standard of qualifying as a new procedural rule for retroactive application.

As the Court pointed out in *Schriro* and *Teague*, "[t]hat a new procedural rule is 'fundamental' in some abstract sense is not enough; the rule must be one 'without which the likelihood of an accurate conviction is *seriously* diminished." *Schriro*, 542 U.S. at 352 (citing *Teague*, 489 U.S. at 313). Unanimous juries are concretely fundamental – not in an abstract way.

In line with *Gideon*, *Ramos* is remarkable in its primacy and centrality of the truth-finding process. The U.S. Supreme Court has "long explained that the Sixth Amendment right to a jury trial is 'fundamental to the American scheme of justice.'" *Ramos*, 140 S. Ct. at 1397. The unanimity of the jury verdict is "an ancient guarantee"; "the American people chose to enshrine that right in the Constitution. . . . They were seeking to ensure that their children's children would enjoy the same hard-won liberty they enjoyed." *Id.* at 1402.

The unconstitutional nature of a non-unanimous jury verdict fundamentally harms the accuracy and fairness of the proceedings. *Ramos* corrects the mistake of the "universe of one" that is *Apodaca*, and affords Louisiana the ability to bring fairness to those individuals convicted outside of constitutional precedent occurring before and after *Apodaca*. *Id.* at 1409 (Sotomayor, J., concurring in part). *Ramos* meets the threshold set out in *Teague*. It is a watershed case that encompasses the core of the right to a trial by jury, and as such, this Court should apply *Ramos* retroactively to Petitioner's case.

V. Even if the federal courts do not require Louisiana to provide a remedy to Petitioner's constitutional violation, the Louisiana courts should do so for multiple reasons, including the history of racism, the threat to the legitimacy of the courts, and the importance of protecting the rights of jurors and defendants.

Failure to apply *Ramos* to Petitioner and to those like him who are the victims of the Jim Crow jury system would be express acquiescence in structural racism, and would discredit the judicial system in Louisiana. The Court must grant Petitioner's application.

Danforth v. Minnesota makes clear the states are free to provide their own standards for retroactivity. *Danforth v. Minnesota*, 552 U.S. 264, 289 (2008). In 1992, Louisiana decided on a standard similar to that of *Teague v. Lane*, but it is clear that the rationale for doing so does not

mandate such application in these circumstances. *See State ex rel. Taylor v. Whitley*, 606 So.2d 1292, 1296–97 (1992).

In *Taylor*, over the dissents of Chief Justice Calogero, 606 So.2d at 1300–02, and Justice Dennis, *id.* at 1302–04, the Louisiana Supreme Court adopted the restrictive view of retroactivity espoused on the United States Supreme Court by Justice Harlan in *Mackey v. United States,* 401 U.S. 667, 690–93 (1970) (separate opinion), and ultimately adopted in *Teague v. Lane*, 489 U.S. 288 (1988). The *Taylor* majority recognized that it was under no obligation to adopt *Teague*. *Id.* at 1296 ("[W]e recognize that we are not bound to adopt the *Teague* standards . . . ."). The United States Supreme Court has since expressly confirmed that point:

> States that give broader retroactive effect to this Court's new rules of criminal procedure do not do so by misconstruing the federal *Teague* standard. Rather, they have developed state law to govern retroactivity in state postconviction proceedings.

Danforth v. Minnesota, 552 U.S. 264, 289 (2008). The change announced in *Taylor* appeared to rest principally on the notion of finality, as stated by Justice Harlan in his separate opinion in *Mackey v. United States*, 401 U.S. 667, 690 (1970):

> It is, I believe, a matter of fundamental import that there be a visible end to the litigable aspect of the criminal process. Finality in the criminal law is an end which must always be kept in plain view.

In fact, Justice Harlan's view of "finality" rested upon his own thinking about the limited role that *federal* habeas corpus review should have and on three influential articles: Bator, *Finality in Criminal Law and Federal Habeas Corpus for State Prisoners*, 76 HARV. L. REV. 441, 463 (1963), Friendly, *Is Innocence Irrelevant? Collateral Attack on Criminal Judgments*, 38 U. CHI. L. REV. 142 (1970), and Mishkin, *The Supreme Court, 1964 Term Forward: The High Court, the Great Writ and the Due Process of Time and Law*, 79 HARV. L. REV. 56 (1965). The genesis of Justice Harlan's thinking appears to lie in a passage from Judge Friendly's article:

> First, as Professor Bator has written, "it is essential to the educational and deterrent functions of the criminal law that we be able to say that one violating that law will swiftly and certainly become subject to punishment, just punishment." It is not an answer that a convicted defendant generally remains in prison while collateral attack is pending. Unbounded willingness to entertain attacks on convictions must interfere with at least one aim of punishment-"a realization by the convict that he is *justly subject to sanction,* that he stands in need of rehabilitation."

Friendly, *supra*, at 146 (emphasis added).

Justice Harlan cited both Professor Bator and Judge Friendly as the basis for his position in *Mackey*, stating:

> It is, I believe, a matter of fundamental import that there be a visible end to the litigable aspect of the *criminal process.* [Citing Bator and Friendly articles.] As I have stated before, "Both the individual criminal defendant and society have an interest in insuring that there will at some point be the certainty that comes with an end to litigation, and that attention will ultimately be focused not on whether a conviction was free from error but rather on whether the prisoner can be restored to a useful place in the community." Sanders v. United States, 373 U.S., at 24-25 (HARLAN, J., dissenting). At some point, *the criminal process,* if it is to function at all, must turn its attention from whether a man ought properly to be incarcerated to how he is to be treated once convicted. If law, criminal or otherwise, is worth having and enforcing, it must at some time provide a definitive answer to the questions litigants present or else it never provides an answer at all. Surely it is an unpleasant task to strip a man of his freedom and subject him to institutional restraints. But this does not mean that in so doing, we should always be halting or tentative. No one, not criminal defendants, not the judicial system, not society as a whole is benefited by a judgment providing a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation on issues already resolved.

Mackey, 401 U.S. at 690–91 (emphasis added).

As Justice Harlan made clear in *Mackey*, however, there is a precondition for recognizing a state's interest in finality: "Typically, it should be the case that any conviction free from federal constitutional error at the time it became final, will be found, upon reflection, to have been *fundamentally fair and conducted under those procedures essential to the substance of a full hearing.*" *Id.* at 693 (emphasis added). Put in simplest terms, this principle reduces to the following statement: If the party seeking retroactive application of current constitutional standards had a trial that was *fair enough* when measured by constitutional standards in effect at the time, he or she is not entitled to *fairer* trial now.

That is the first reason why *Taylor* does not apply to Petitioner's application. Petitioner's original trial and conviction by a non-unanimous jury was ***neither*** fundamentally fair ***nor*** conducted under those procedures essential to the substance of a full hearing. The state of Louisiana cannot and does not have any legitimate interest in the finality of a criminal conviction obtained through a system consciously designed to create structural discrimination, enable convictions by less than proof beyond a reasonable doubt, and permit prosecutorial misconduct. When Petitioner went to trial, the "fix was in." *Taylor* therefore does not apply.

Taylor does not apply for a second reason: it is not mandated by the United States or Louisiana Constitutions. *Linkletter v. Walker*, 381 U.S. 618, 629 (1965); *Taylor*, 606 So.2d 1292. It follows, therefore, that the *Taylor* criteria must give way where a specific constitutional command applies. *Withrow v. Williams*, 507 U.S. 680, 686 (1993). *Cf. City of New Orleans v. Bd. of Comm'rs*, 640 So.2d 237, 256 (La. 1994) ("[T]he courts of this state . . . are not at liberty to borrow and apply judge made rules in disregard of our fundamental law or to reweigh balances of interests and policy considerations already struck by the framers of the constitution and the people who ratified it.").

Applying *Taylor* to non-unanimous jury verdicts also violates Louisiana's Declaration of the Right to Individual Dignity contained in Article I, Section 3 of the Louisiana Constitution:

> No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. Slavery and involuntary servitude are prohibited, except in the latter case as punishment for crime.

The Declaration of the Right to Individual Dignity was written to go "beyond the decisional law construing the Fourteenth Amendment." *Sibley v. Bd. of Supervisors of La. State Univ.*, 477 So.2d 1094, 1108 (La. 1985). *Accord State v. Granger*, 982 So.2d 779, 787–88 (La. 2008). As stated in *Granger*:

> Article I, Section 3 commands the courts to decline enforcement of a legislative classification of individuals in three different situations: (1) When the law classifies individuals by race or religious beliefs, *it shall be repudiated completely;* (2) When the statute classifies persons on the basis of birth, age, sex, culture, physical condition, or political ideas or affiliations, its enforcement shall be refused unless the state or other advocate of the classification shows that the classification has a reasonable basis; (3) When the law classifies individuals on any other basis, it shall be rejected whenever a member of a disadvantaged class shows that it does not suitably further any appropriate state interest.

Id. at 788–89 (quoting *Sibley*, 477 So.2d at 1107–08 (emphasis added)). *See also Moore v. RLCC Techs., Inc.*, 668 So.2d 1135, 1140 (La. 1996) (citing L. Hargrave, THE LOUISIANA CONSTITUTION, A REFERENCE GUIDE, at 24 (1991)) ("The second sentence [of Article I, § 3] uses absolute language, permitting no discrimination with respect to race or religion."). Even a facially neutral enactment can be unconstitutional if it was enacted because of a discriminatory purpose. *Granger*, 982 So.2d at 789 n.10. *See also State v. Baxley*, 656 So.2d 973, 978 (La. 1995).

There can be no doubt that the constitutional and statutory provisions allowing for non-unanimous jury verdicts were expressly designed to discriminate against Blacks and other minorities on the basis of race. Every Louisiana Constitution prior to 1898 included a right to a unanimous jury trial identical to that contained in the Sixth Amendment:

- Constitution of 1812, Art. VI, § 18th: "In all criminal prosecutions, the accused have the right of being heard by himself or counsel, of demanding the nature and cause of the accusation against him, of meeting the witnesses face to face, of having compulsory process for obtaining witnesses in his favour, and prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage, nor shall he be compelled to give evidence against himself."

- Constitution of 1845, Title VI, Art. 107: "Prosecutions shall be by indictment, or information. The accused shall have a speedy public trial by an impartial jury of the vicinage; he shall not be compelled to give evidence against himself; he shall have the right of being heard by himself or counsel; he shall have the right, unless he shall have fled from justice, of meeting the witnesses face to face, and shall have compulsory process for obtaining witnesses in his favor."

- Constitution of 1852, Title VI, Art. 103: "Prosecutions shall be by indictment or information. The accused shall have a speedy public trial by an impartial jury of the vicinage; he shall not be compelled to give evidence against himself; he shall have the right of being heard by himself or counsel; he shall have the right of meeting the witnesses face to face, and shall have compulsory process for obtaining witnesses in his favor."

- Constitution of 1864, Title VI, Article 105: "Prosecutions shall be by indictment or information. The accused shall have a speedy public trial, by an impartial jury of the parish in which the offence shall have been committed. He shall not be compelled to give evidence against himself; he shall have the right of being heard, by himself or counsel; he shall have the right of meeting the witnesses face to face, and shall have compulsory process for obtaining witnesses in his favor. He shall not be twice put in jeopardy for the same offence."

- Constitution of 1868, Title I – BILL OF RIGHTS, Art. 6: Prosecutions shall be by indictment or information. The accused shall be entitled to a speedy public trial by an impartial jury of the parish in which the offence was committed, unless the venue be changed. He shall not be compelled to give evidence against himself; he shall have the right of being heard by himself or counsel; he shall have the right of meeting the witnesses face to face, and shall have compulsory process for obtaining witnesses in his favor. He shall not be tried twice for the same offense.

- Constitution of 1879, BILL OF RIGHTS, Art. 7: In all criminal prosecutions, the accused shall enjoy the right to a speedy public trial by an impartial jury, except that, in cases where the penalty is not necessarily imprisonment at hard labor or death, the General Assembly may provide for the trial thereof by a jury of less than twelve in number;*provided,* that the accused in every instance shall be tried in the parish where the offense shall have been committed except in cases of change of venue.

Compare the operative language:

LOUISIANA CONSTITUTIONS	SIXTH AMENDMENT
BEFORE 1879: The accused shall have a speedy public trial by an impartial jury	In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . .
1879: In all criminal prosecutions, the accused shall enjoy the right to a speedy public trial by an impartial jury . . .	

State v. Ardoin, 51 La. Ann. 169, 24 So. 802 (Sup. 1899), demonstrates convincingly that Louisiana required jury unanimity prior to 1898. The Supreme Court's statement of the case could not be clearer:

> The accused, convicted of burning a vacant dwelling, punishable with imprisonment at hard labor, takes this appeal from the sentence.
>
> He assigns as error patent on the record, that the offence of which he was convicted, was committed prior to the adoption of the present Constitution, authorizing convictions on the concurrence of nine of the jury, that the constitutional provision in this respect as applied to offences before the Constitution was adopted, is ex post facto legislation, and hence the sentence based on the verdict concurred in by nine only of the jury that tried him cannot stand. *The argument is that when the offence was committed there could be no conviction without the concurrence of the jury of twelve, and that the Constitution of the State in dispensing with that unanimity, substituting the concurrence of nine only of the jury, violates the article of the Constitution of the United States prohibiting ex post facto legislation by the State.*

Id. at 170. The Louisiana Supreme Court found *Thompson v. Utah*, 170 U.S. 343 (1898), to be controlling. It stated:

> The change made by the Constitution of Utah was the provision of a jury of eight in courts of general jurisdiction except in capital cases, but required unanimity of the jury in rendering their verdict. Our Constitution, in so far as it bears on this controversy, provides for a jury of twelve in prosecutions for offences necessarily punishable with imprisonment at hard labor, but authorizes the verdict by nine concurring jurors. In the Utah case the verdict was found by the eight composing the jury. In this case the verdict found is by eleven jurors. In each case the

> conviction is by less than what the Supreme Court of the United States terms the "historical" Constitutional jury of twelve.
>
> * * * *
>
> The argument supposes, too, that the provision in the Utah Constitution construed in 170th U.S., differs from that of our Constitution under discussion. The difference is supposed to be in the fact that under the Constitution of Utah a jury of eight only was provided, while our Constitution provides for the jury of twelve, but authorizes the verdict by the concurrence of nine. It is claimed this gives the accused the chance of an acquittal by nine. *This chance of acquittal under the exposition of the Supreme Court of the United States, cannot be deemed to answer the requirement there can be no conviction at all, unless by the verdict of twelve, the only jury recognized in determining the question in this case.* All the other aspects discussed in the trial and argument for the State had our attention. We think the decision of the Supreme Court of the United States makes it imperative to hold that Article 116 of the Constitution cannot be applied to offences committed prior to the adoption of that instrument.

Id. at 171, 172 (emphasis added). *See also State v. St. Clair*, 42 La. Ann. 755, 758, 7 So. 713 (Sup. 1890) ("The defendants made no complaint of the first verdict. They certainly made no motion for a new trial. There was no mistrial, because there was a unanimous verdict. They filed no motion in arrest of judgment.").

"The present constitution" referred to in *Ardoin* was the product of the 1898 Louisiana Constitutional Convention. Ernest Benjamin Kruttschnitt, its President, made it clear from the outset that the Convention's purpose was to minimize or eliminate the political power of Black Louisianans. OFFICIAL JOURNAL OF THE PROCEEDINGS OF THE CONSTITUTIONAL OF THE STATE OF LOUISIANA: HELD IN NEW ORLEANS, TUESDAY, FEBRUARY 8, 1898 [hereinafter "JOURNAL"], at 380. Judge Thomas Semmes, Chair of the Convention's Judiciary Committee, stated its purpose clearly: "We [are] here to establish the supremacy of the white race . . . ." *Id.* at 374.

Article 116 of the 1898 Louisiana Constitution, which later became Article I, § 17, the article in effect when Petitioner was tried, was a part of a much larger package of measures adopted in the Convention, all of which were enacted in furtherance of the white supremacist intent and agenda of the delegates. *See United States v. Louisiana*, 225 F. Supp. 353 (E.D. La. 1963).

The proponents of this non-unanimous jury system justified its creation on the belief Black jurors would become the champion of a Black defendant solely because of the Defendant's race:

> He [the freed slave] does not appear to much advantage in any capacity in the courts of law . . . . As a juror, he will follow the lead of his white fellows in causes

> involving distinctive white interests; but if a negro be on trial for any crime, he becomes at once his earnest champion, and a hung jury is the usual result.

"Future of the Freedman," Daily Picayune, August 31, 1873, at 5, quoted in R. Smith & B. Sarma, *How and Why Race Continues to Influence the Administration of Criminal Justice in Louisiana*, 72 LA. L. REV. 361, 376 (2012) [hereinafter "Smith & Sarma"].

There can be no doubt that this provision was written into the Louisiana Constitution to ensure that Blacks charged with crimes were convicted. In a comment worthy of Dante's *Inferno*, one newspaper went so far as to argue that "if the jury system be so reformed that a majority may bring in a verdict, that lynching will be absolutely prevented." "Remedy for Lynching," DAILY COM. HERALD, Sept. 11, 1894, at 2, quoted in Brief of Amici Curiae Center on Race, Inequality and the Law et al., *Edwards v. Vannoy,* No. 19-5807 (U.S. Sup. Ct., July 21, 2020), at 9. Obviously, non-unanimous juries did not end lynching and Blacks were not fairly tried in Louisiana courts.

The enactments in 1898 constituted the deliberate abandonment of the unanimous jury verdict to ensure the conviction of Blacks, a clear legislative classification based on race. The non-unanimous jury rule served a second purpose and created a second classification. At the time of the 1898 Convention, federal authorities were investigating the exclusion of Blacks from Louisiana juries. T.W. Frampton, *The Jim Crow Jury,* 71 VAND. L. REV. 1593, 1616-18 (2018). Federal scrutiny made an outright ban on Black jury service impracticable, but adoption of non-unanimity accomplished the same thing: it "ensure[d] that African-American juror service would be meaningless." *Ramos,* 140 S. Ct. at 1394 (quoting *State v. Maxie*, No. 13-CR-72522 (La. 11th Jud. Dist., 10/11/18.*) See also* Brief of Amicus Curiae JonRe Taylor in Support of Petitioner, *Edwards v. Vannoy*, No. 19-5807 (U.S. Sup. Ct., July 21, 2020) at 7–13 ("Taylor brief;" describing Ms. Taylor's experience as a dissenting vote on the Edwards jury).[10] Put another way, the state of Louisiana set out to do indirectly what it was prohibited from doing directly. *See, e.g., Bd. of Cty. Comm'rs v. Umbehr*, 518 U.S. 668, 674 (1996).

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[10] Available at https://www.supremecourt.gov/DocketPDF/19/19-5807/148503/20200723130543252_19-5807%20Edwards.Vannoy.AmicusJonReTaylor%20-%20FILED.pdf.

Numerous commentators have noted that the non-unanimous jury verdict rule functioned just as its white supremacist framers intended. *See, e.g.*, Smith & Sarma, *supra*, at 376–77; Frampton, *supra*, at 1599; Angela A. Allen-Bell, *How the Narrative About Louisiana's Non-Unanimous Criminal Jury System Became a Person of Interest in the Case Against Justice in the Deep South*, 67 MERCER L. REV 585, 596 (2016). Black participation on juries was nullified and continued to be nullified until finally abrogated. *State v. Maxie,* No. 13-CR-72522 (La. 11th Jud. Dist., October 11, 2018) ("[T]he comparative disparities are statistically significant and startling[;] African-American jurors are casting empty votes 64 percent above the expected outcome[.]")[11] This, in addition to creating a race-based classification as to defendants, Article I, § 13 and its statutory counterpart created a second race-based classification: the exclusion of Black jurors from meaningful participation in the criminal process.

Revision of the Constitution in 1974 did not remove the discriminatory classification contained in the original Article I, § 13 and implementing sections of the Code of Criminal Procedure. It simply decreased the impact by eight and one third percent. As described in the Amicus Brief of Jonre Taylor, the dissenting juror in State of *Lousiana v. Thedrick Edwards*, the 11-1 conviction case presently before the United States Supreme Court:

When introducing language imposing the more demanding standard to the Convention as a whole, Vice Chairman of the Convention Chris J. Roy held aloft a picture of Wilbur McDonald, a man recently exonerated after being convicted of rape and murder in Illinois. {Citation omitted.] Roy argued that adopting a more stringent 10-2 requirement was the bare minimum delegates should do to ensure accuracy:

> I've had enough of it, I've had to bring with me—let me show you a picture, this fellow [McDonald] here . . . Three years later after every benefit of doubt had been accorded to him the real culprit came up . . . and admitted his guilt. . . . . We ask you to consider what 'beyond reasonable doubt' means. If it means to you that it takes only seventy-five percent to send a man to Angola . . . if that's what you want to do, then do it. But let's not say that you weren't told. Let's not argue about ten out of twelve being too much to ask for.

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[11] Petitioner seeks to include within the evidence of his conviction, the full transcript of Maxie available at https://drive.google.com/file/d/1_Wzi6fuDopqcHwmhLlNRejJ96stBLfAN/view?usp=sharing.

Taylor Brief, at 21–22. *See also* J. Grisham, *A Time to Kill* (1996). Decreasing the invidious impact of non-unanimous juries eight and a third percent while allowing the practice to continue perpetuates systemic discrimination.

It appears that the 1973 Convention justified allowing the non-unanimous jury verdict system to continue based on a perception that it would promote judicial efficiency. *State v. Hankton*, 122 So. 3d 1028, 1038 (La. App. 4 Cir. 08/02/13). In fact, as noted in *Hankton*, the basis for continuing the non-unanimous jury verdict system appears to have been crystallized in the following statement:

> We have changed this to ten. This proposal of having less than a majority to reach a verdict in the case has been approved by the United States Supreme Court; *this issue of whether you need a unanimous verdict in all cases has been reviewed by the Supreme Court, and you may have less than a unanimous verdict.* It then becomes a question of degree ... at what point to do draw the line? Do you draw it at eight, or nine, or ten ... we felt, after putting all of our heads together, that ten was a reasonable amount on this. It leads to a situation where you'll get a definitive action in more cases rather than have a hung jury. Because if it required twelve out of twelve to render a verdict, that means if you had anything less than twelve out of twelve, either for innocence or for guilt, you would have what's called a hung jury, and that means that you would have to go back and do it all over again. And this is one of the modernizations of our criminal procedure, quite frankly of which Louisiana is one of the leaders in the field.

Id. at 1040–41 (remarks of Delegate Lamar; emphasis added). Delegate Lamar's concerns about hung juries should result in a sense of déjà vu in two ways. First, to repeat:

> He [the freed slave] does not appear to much advantage in any capacity in the courts of law . . . . As a juror, he will follow the lead of his white fellows in causes involving distinctive white interests; but if a negro be on trial for any crime, he becomes at once his earnest champion, *and a hung jury is the usual result.*

"Future of the Freedman," DAILY PICAYUNE, August 31, 1873, at 5 (quoted in Smith & Sarma, *supra*, at 376 (emphasis added)). Second, note also the italicized passage from Delegate Lamar's remarks, which unquestionably is a reference to *Johnson* and *Apodaca.*

The argument that the Supreme Court laid to rest the question of constitutional propriety of non-unanimous verdicts was deceptive and potentially mendacious. *State v. Johnson*, 255 La. 314, 230 So.2d 825 (La. 1970), the case forming the basis for *Johnson v. Louisiana*, made no mention of the racial discrimination baked into the non-unanimous jury verdict system. As can be seen from a review of the opinion, the case mostly concerned an allegedly improper line-up. The

specification of error concerning the non-unanimous verdict did not mention racial discrimination: "The verdict of guilty in which only nine out of twelve jurors concurred denied appellant due process and equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution." *Johnson*, 255 La. at 316.

Importantly, neither *Johnson* nor *Apodaca* discussed the overtly racially discriminatory purpose of the Louisiana and Oregon systems. The evidence available, including the oral arguments of each case (*see* https://www.oyez.org/cases/1970/69-5035 (Johnson) and https://www.oyez.org/cases/1971/69-5046 (Apodaca)), contain no reference to the expressly racist purpose of the Louisiana majority verdict provision and at most a fleeting reference to equal protection concerns.[12] State decisions after *Johnson* and *Apodaca* summarily upheld non-unanimous verdicts based on the two U.S. Supreme Court cases and did not discuss the overtly racist purpose for the system. *See State v. Bertrand*, 6 So.3d 738 (La. 2009); *State v. Edwards*, 420 So.2d 663 (La. 1982); *State v. Simmons*, 414 So.2d 705 (La. 1982); *State v. Jones*, 381 So.2d 416 (1980).

The plurality opinions in *Johnson* and *Apodaca* phrased the core question as being whether unanimity served an important "function" in "contemporary society." *Ramos*,140 S. Ct. at 1398 (*quoting Apodaca*, 406 U.S. at 410). It is safe to say that both *Apodaca* and *Johnson* likely would have come out differently if the Court had been aware of why Oregon and Louisiana allowed non-unanimity, as *Ramos* showed.

Failing to apply *Ramos* retroactively to Petitioner and others like him violates the letter and spirit of Louisiana's Declaration of the Right to Individual Dignity and the jurisprudence implementing it. It disregards the principle that when a law classifies individuals by race or religious beliefs, the law shall be repudiated *completely*. There can be no doubt that non-unanimous jury verdicts operated to create two invidious racial classifications, the first to

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[12] Reargument of Appellant, *Johnson v. Louisiana*, January 10, 1972: "Also by excluding the viewpoints of three minority jurors is very doubtful whether this verdict represents a common sense judgment of the jury panel of the 12 jurors. Furthermore, appellant's conviction by a divided jury is a denial of a due process requirement that the state prove defendant's guilt beyond a reasonable doubt. The purposes for the reasonable doubt standard make little sense without the unanimity rule."

efficiently convict Blacks and minorities and the second to nullify the voices of Black and minority jurors. Failing to apply *Ramos* to cases on collateral review does not "repudiate completely" the legislative classifications based on race.

It is likely that there will be arguments that it will be difficult or expensive to retry individuals who were convicted many years ago. This argument is frivolous at best. The "judicial efficiency" discussed in *Hankton* – the time and expense saved – rested upon a shortcut that was abused over many years. As the Brief of Amici Curiae The Promise of Justice Initiative et al, *Edwards v. Vannoy*, No. 19-5807 (U.S. Sup. Ct., July 21, 2020) points out:

> In reality, this Court's ruling in favor of Petitioner would likely require reversal of approximately sixteen hundred convictions. That means, retroactive application of *Ramos* will increase the number of criminal cases in Louisiana by less than 2%. The majority of these cases will either be resolved with a plea agreement or dismissed. Even assuming a rate of re-trials that is ten times the current-trial rate, the net effect of retroactive application will be one additional jury trial per year per assistant district attorney, spread over two years.[13]

Moreover, as previously noted, *Taylor* does not apply when the initial trial was not fair. *Taylor* does not apply to this unique situation. The Louisiana Constitution's Declaration of the Right to Individual Dignity and the jurisprudence implementing it does apply. The declaration mandates completely repudiating non-unanimous jury verdicts by making *Ramos* retroactive.

Courts in Louisiana have their own obligation to enforce the Constitutional guarantees and can ensure constitutional protections broader than those articulated in *Teague v. Lane.* As *Danforth v. Minnesota* held, *Teague* does not constrain the authority of state courts to give broader effect to new rules of criminal procedure than is required by that opinion. 552 U.S. at 291. It is significant to note that *Teague v. Lane* announces only a rule for prospective federal habeas review – leaving to the states the obligation to fulfill their constitutional responsibilities. For the reasons above, this Court can do so and should find *Ramos* retroactive.

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[13] Available at https://www.supremecourt.gov/DocketPDF/19/19-5807/148311/20200721163238941_19-5807.Edwards.Vannoy.Amicus.Promise%20of%20Justice%20Initiative.pdf.

In doing so it can adopt one of the below rules to apply in the future:

a. Where the major purpose of constitutional doctrine is to overcome a practice rooted in extreme systemic racism so as to substantially impair the legitimacy of Louisiana's criminal justice system—and impair the truth-finding function of criminal trials raising serious questions about the accuracy of guilty verdicts in past trials—the new rule will be given complete retroactive effect. Neither good-faith reliance by state or federal authorities on prior constitutional law or accepted practice, nor severe impact on the administration of justice justify requiring prospective application in these circumstances;

b. Where the major purpose of a constitutional doctrine is to overcome an aspect of the criminal trial that substantially impairs its truth-finding function and so raises serious questions about the accuracy of guilty verdicts in past trials, the rule will be given complete retroactive effect; or

c. Where the major purpose of a constitutional doctrine is to restore credibility and faith in the criminal justice system, the rule should apply to all litigants.

The evidence of wrongful convictions relating to non-unanimous jury verdicts are significant. *See* Brief of Amicus Curiae Innocence Project New Orleans, *Edwards v. Vannoy*, No. 19-5807 (U.S. Sup. Ct., July 21, 2020).[14] Non-unanimous jury convictions systemically discounted the opinions of jurors of color and contributed to a significant number of wrongful convictions, some of which later led to exonerations. It corrupted the jury process by silencing skeptical viewpoints, depriving the other jurors of a full view of the evidence. This practice stripped the Louisiana criminal justice system of credibility, making all Louisianans less safe. *Ramos* should be applied retroactively.

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[14] Available at https://www.supremecourt.gov/DocketPDF/19/19-5807/148364/20200722123734456_Edwards%20v%20Vannoy%20No%20195807%20IPNO%20Amicus%20FINAL.pdf.

VI. Preservation is not required in order to raise the issue of non-unanimous jury verdicts.[15]

Although State law requires that the defense bring error to the attention of the trial court within a reasonable time, La. Code Crim. Pro. Ann. arts. 770, 771, 841, there is a long-established exception to this contemporary objection regime where the objection would be "a vain and useless act." *State v. Ervin*, 340 So.2d 1379 (La. 1976); *State v. Lee*, 346 So.2d 682 (La. 1977). The unanimity claim raised here was not remotely available at the time of Petitioner's trial (or appeal). Rather, it had been foreclosed by the Supreme Court's *Apodaca v. Oregon* and *Johnson v. Louisiana* rulings.

No court—state or federal—below the Supreme Court, could alter *Apodaca* or *Johnson*. *See Agostini v. Felton*, 521 U.S. 203, 237-38 (1997) ("'if a precedent of this Court has direct application to a case, yet appears to rest on reasons rejected in some other line of cases, the [lower courts] should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions,'") (quoting *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989)). Thus, because this rule was not available until the Court's decision in *Ramos* overruling *Apodaca*, it was not reasonably available and there is adequate cause to excuse it not being presented sooner. *See Reed v. Ross,* 468 U.S. 1, 17 (1984).

Moreover, the conviction based upon a non-unanimous verdict is error patent, reviewable on appeal without an assignment of error based upon La. C. Cr. P. art. 920 (detailing the matters that may be considered on appeal: "2) An error that is discoverable by a mere inspection of the pleadings and proceedings and without inspection of the evidence.") *See also State v. Wrestle Inc.*, 360 So. 2d 831, 837 (La. 1978) ("[W]e have held without discussion that under such circumstances we may, from the minute entry, discover by mere inspection the basis for a defendant's contention that a non-unanimous jury verdict represents constitutional error patent on the face of the proceedings.") The Louisiana Supreme Court has made clear that a non-unanimous verdict is subject to review as error patent. The matter is remanded to the court of appeal for further

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[15] As Petitioner does not believe preservation is necessary, this brief takes no position on whether petitioner appropriately preserved the issue, but presents this argument in advance, if any procedural defect may be raised against Petitioner.

proceedings and to conduct a new error patent review in light of *Ramos v. Louisiana*. *State v. Williams*, No. 2019-01690 (La. 06/12/20) ("If the non-unanimous jury claim was not preserved for review in the trial court or was abandoned during any stage of the proceedings, the court of appeal should nonetheless consider the issue as part of its error patent review. *See* La.C.Cr.P. art. 920(2)."); *State v. Jackson*, 2019-02023 (La. 06/12/20) ("Application for reconsideration granted. The matter is remanded to the court of appeal for further proceedings in light of *Ramos v. Louisiana*, 590 U.S. , 2020 WL 1906545 (2020). If the non-unanimous jury claim was not preserved for review in the trial court, the court of appeal should consider the issue as part of an error patent review. *See* La.C.Cr.P. art. 920(2)"); *State v. Richardson*, 2019-00175 (La. 06/03/20) ("The matter is remanded to the court of appeal for further proceedings and to conduct a new error patent review in light of *Ramos v. Louisiana*, 590 U.S. , 140 S.Ct. 1390, 206 L.Ed.2d 583 (2020). If the non-unanimous jury claim was not preserved for review in the trial court or was abandoned during any stage of the proceedings, the court of appeal should nonetheless consider the issue as part of its error patent review. See La.C.Cr.P. art. 920(2).").

If the Court follows the appropriate law above, the Court can rule solely on the issue of whether Petitioner's conviction should be reversed as unconstitutional.

However, if this Court finds that Petitioner did not preserve and is somehow foreclosed from relief for failing to raise the non-unanimous jury claim at any point specific in the proceeding prior to the application for post-conviction relief, Petitioner asserts that Petitioner's counsel was ineffective for this failure.

Under the standard set out in *Strickland v. Washington*, 466 U.S. 668 (1984), and *State v. Washington*, 491 So.2d 1337 (La. 1986), a conviction must be reversed if the petitioner proves (1) that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms, and (2) counsel's inadequate performance prejudiced defendant to the extent that the trial was rendered unfair and the verdict suspect. *State v. Legrand*, 2002-1462 (La. 12/03/03); 864 So.2d 89. When determining whether the first prong of the ineffective assistance of counsel prong is met, the inquiry is whether defense counsel's conduct was deficient. In *State ex rel. Craddock v. State*, 2016-0912 (La. 09/15/17); 225 So. 3d 452, 455, the Louisiana Supreme

Court stated the "proper standard for attorney performance is that of reasonably effective assistance." Failing to object may be deficient conduct sufficient to reach ineffective assistance of counsel if counsel should have objected. In *State v. Truehill*, the Third Circuit Court of Appeals analyzed the accused counsel's failure to object to inadmissible evidence under the Louisiana Code of Evidence. *State v. Truehill*, 2009-1546 (La. App. 3 Cir. 06/02/10); 38 So. 3d 1246, 1253. In that case, hearsay statements were admitted, a violation of Louisiana Code of Evidence article 804. The court found that, "[b]ecause the evidence was inadmissible under La. Code Evid. art. 804, defense counsel's failure to object to the evidence constituted a deficient performance." *Id.*

Here, if the Court finds any defect in preservation and requires some form of preservation, then it is clear that counsel should have raised such an objection and may remain incarcerated for no other reason.

As to the second prong, the U.S. Supreme Court has held that the benchmark for judging a charge of ineffectiveness is whether the attorney's conduct was so ineffective that it undermined the proper functioning of the adversarial process that the trial cannot be considered to have produced a just result. *United States v. Cronic*, 466 U.S. 648 (1984); *Strickland v. Washington*, 466 U.S. 668 (1984). Proving prejudice requires that a petitioner demonstrate that there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different," and a reasonable probability "is a probability sufficient to undermine confidence in the outcome." *Id.* at 694.

For the reasons asserted above, and in *Ramos*, it is clear that non-unanimous juries undermine the proper functioning of the court system. Non-unanimous jury convictions systemically discounted the opinions of jurors of color and contributed to a significant number of wrongful convictions, some of which later led to exonerations. The practice corrupted the jury process by silencing skeptical viewpoints, depriving the other jurors of a full view of the evidence. This practice stripped the Louisiana criminal justice system of credibility, making all Louisianans less safe. Louisiana courts inherited a practice that undermined the proper functioning of the adversarial process, and if a remedy is unavailable to Petitioner, it should follow that the second prong of the ineffective assistance of counsel analysis is met.

Failure to object to the constitutionality of the non-unanimous verdict constituted deficient performance by defense counsel. *See e.g. Glover v. United States*, 531 U.S. 198, 203 (2001); *Scott v. Louisiana*, 934 F.2d 631, 634 (5th Cir. 1991) (finding failure to object to an instruction allowing conviction of attempted second degree murder where there was only the intent to commit serious bodily harm constitutes deficient performance); *Gray v. Lynn*, 6 F. 3d 265, 269 (5th Cir. 1993) ("the failure by Gray's counsel to object to the erroneous instruction "cannot be considered to be within the 'wide range of professionally competent assistance'"); *Summit v. Blackburn*, 795 F.2d 1237 (5th Cir. 1986); *Henry v. Scully*, 78 F.3d 51, 53 (2nd Cir. 1996) (counsel ineffective for failing to object to instruction); *State v. Jackson*, 97-2220 (La. App. 4 Cir. 05/12/99); 733 So. 2d 736 (counsel ineffective for failing to request a specific instruction); *State v. Cole*, 97-348 (La. App. 3 Cir. 10/08/97); 702 So. 2d 832, 839 (La. Ct. App. 1997) (counsel ineffective for failing to object to instructions); *State v. Ball*, 554 So. 2d 114, 115 (La. Ct. App. 1989) (counsel in attempted murder case ineffective for failing to object to state argument and judge's erroneous instructions which told jury that intent to inflict bodily harm would support the conviction because an attempted murder requires a specific intent to kill). Even if the objection would have been rejected, counsel still had an obligation. *C.f. Engle v. Isaac*, 456 U.S. 107, 130 (1982) ("If a defendant perceives a constitutional claim and believes it may find favor in the federal courts, he may not bypass the state courts simply because he thinks they will be unsympathetic to the claim. Even a state court that has previously rejected a constitutional argument may decide, upon reflection, that the contention is valid.").

To the extent the State argues that the failure to challenge the constitutionality of Louisiana's non-unanimous verdict, and/or the failure to raise the issue on appeal, constitutes a procedural bar preventing petitioner from raising the claim today, Petitioner was prejudiced from counsel's failure to raise the issue.

VII. Conclusion

The U.S. Supreme Court has now explicitly found that *Apodaca* was an "an admittedly mistaken decision," *Ramos*, 140 S. Ct. at 1408. Justice Kavanaugh, in a separate concurrence, found that *Apodaca* was "egregiously wrong" and incompatible with the original meaning of the

Sixth and Fourteenth Amendments. *Id.* at 1420 (Kavanaugh, J., concurring). Justice Sotomayor found that *Apodaca* was "irreconcilable with not just one, but two, strands of constitutional precedent well established both before and after the decision." *Id.* at 1409 (Sotomayor, J., concurring). Not even the dissenting Justices defended the *Apodaca* opinion, finding only that "whatever one may think about the correctness of the decision, it has elicited enormous and entirely reasonable reliance." *Id.* at 1425 (Alito, J., dissenting). If it were not for the error of the U.S. Supreme Court, Petitioner would have had the jury trial the Constitution intended to afford Petitioner.

The State of Louisiana did not even believe *Apodaca* was correctly decided. As previously discussed, the State did not argue that *Apodaca* was good law, the citizens of Louisiana have rejected non-unanimous jury verdicts, and even the dissent of *Ramos* "tacitly,...admit[s] that the Constitution forbids States from using nonunanimous juries." *Ramos*, 140 S. Ct. at 1395. Petitioner should not be permanently deprived of Petitioner's constitutional rights because of an admittedly faulty "egregiously wrong" interpretation of law controlled. *Id.* at 1420 (Kavanaugh, J. concurring). Louisiana cannot allow Petitioner's conviction to stand merely to "perpetuate something we all know is wrong only because we fear the consequences of being right." *Id.* at 1408.

Exhibit 3

TUESDAY, JANUARY 23, 1997

PURSUANT TO ADJOURNMENT, THE COURT MET:

PRESENT: HON. WILLIAM A. ROE, JUDGE, DIV. "B"

HON. ANTHONY D. RAGUSA, JR., ASSISTANT DISTRICT ATTORNEY

PETER P. BORRELLO, JR., OFFICIAL COURT REPORTER

NO. 93-3922-F

REGINALD REDDICK — Indictment For:

Second Degree Murder

This matter having been continued as an open case from Wednesday, January 22, 1997 as a jury trial was called and taken up.

PRESENT: Anthony D. Ragusa, Attorney for State

Timon Webre, Attorney for Defendant

Reginald Reddick, Defendant

The jury was returned to the Courtroom and the Court ordered the jury to be polled by the Clerk.

Closing argument was presented to the Court by Mr. Ragusa commencing at 9:17 a.m.

Closing argument was presented to the Court by Mr. Webre commencing at 10:19 a.m.

The Court took a recess. Recess over; Court reconvened at 11:06 a.m. The jury was returned to the Courtroom and polling was waived.

Rebuttal argument was presented to the Court by Mr. Ragusa commencing at 11:06 a.m. and ending at 11:29 a.m.

The Court then proceeded to charge the jury.

The jury retired to the jury room for deliberations and the Court declared a recess at 11:47 A.M.

Recess over; Court reconvened at 1:47 P.M. The jury was returned to the Courtroom and polling was waived.

Reginald Reddick #133955

The Court inquired of the jury if they had selected a foreperson and they answered affirmatively. The Court inquired if the jury had reached a verdict and they again answered affirmatively. The verdict was received by the Clerk and handed to the Court. After examining the verdict, the Court directed that it be read, whereupon, the Clerk read aloud -- "We the Jury Find the Defendant, Reginald Reddick, Guilty of Second Degree Murder; Foreperson: Dominick Pittari, Date: January 23, 1997."

The jury was polled by the Clerk and ten answered affirmatively that this was their verdict.

The jurors were thanked by the Court and they were discharged.

The Court set sentencing in this matter for February 5, 1997. Defendant notified in open Court.

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Reginald Reddick #182955

N.O. man guilty in killing near bar

It was 2nd trial in Davant death

By STEVE CANNIZARO
St. Bernard/Plaquemines bureau

A New Orleans man was convicted of second-degree murder Thursday in the August 1993 shooting and robbery of a man outside a Plaquemines Parish lounge.

Reginald Reddick, [redacted] was found guilty by a Plaquemines jury that deliberated about two hours after a two-day trial before state District Judge William Roe.

The jury split 10-2 in favor of a guilty verdict. Ten is the minimum number of jurors needed for a felony conviction in state court.

Roe set a Feb. 5 sentencing for Reddick, who faces life in prison without parole. Reddick remains in the Plaquemines Parish prison.

This is the second time Reddick has been tried and convicted for the killing of Al Moliere, [redacted] of Pointe a la Hache.

Reddick was convicted in 1994, but an appeals court ordered a new trial.

Moliere was found dead in his car Aug. 19, 1993, near Johnny's Bar in Davant.

Detectives suspected robbery as the motive and Reddick was arrested several days later.

Moliere, who frequented the lounge, was an oysterman employed by Port Sulphur Fisheries on the west bank of Plaquemines Parish.

A gun believed to be the murder weapon was found four months after the killing, along the Mississippi River batture in Davant.

X-39/Reginald Reddick
#132755
Reginald Reddick

C.C.

Exhibit 4

FEBRUARY 5, 1997

PURSUANT TO ADJOURNMENT, THE COURT MET:

PRESENT: HON. WILLIAM A. ROE, JUDGE, DIV. "B"

HON. ANTHONY D. RAGUSA, JR., ASSISTANT DISTRICT ATTORNEY

PETER P. BORRELLO, JR., OFFICIAL COURT REPORTER

NO. 93-3922-F

REGINALD REDDICK — Indictment For:

Second Degree Murder

This matter came on this day for sentencing and on a Motion for a New Trial and the defendant appeared.

PRESENT: Anthony D. Ragusa, Attorney for State

Timon Webre, Attorney for Defendant

Reginald Reddick, Defendant

The matter being submitted, the Court denied the motion for a new trial.

The Court sentenced the defendant to serve a Life Sentence in the custody of the Louisiana Department of Corrections without the benefit of Probation, Parole or the suspension of sentence and given credit for time served.

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Reginald Reddick
132955

THE PROMISE OF JUSTICE INITIATIVE

March 26, 2021

Plaquemines Parish Clerk of Court
Criminal Division
25th JDC Judicial District
P.O. Box 40
Belle Chasse, LA 70037

Re: State v. Reginald Reddick, No. 93-3922-F

Dear Clerk of Court for Plaquemines Parish:

Please find enclosed the Petition for Post-Conviction Relief with Exhibits and accompanying Order. We have also provided a Motion to Enroll and a Motion to Stay. We humbly request that these pleadings be accepted and filed into the record of the above-captioned case.

If there are any questions or concerns please contact our office immediately via phone or email as provided below. Thank you for your time and consideration in these matters and for working diligently during this time.

In Solidarity,

Hardell Ward, LA#32266
Promise of Justice Initiative
1024 Elysian Fields Ave.,
New Orleans, LA 70117
504.529.5955
hward@defendla.org

25TH JUDICIAL DISTRICT COURT
PARISH OF PLAQUEMINES – STATE OF LOUISIANA

WEDNESDAY, AUGUST 25, 2021

PURSUANT TO ADJOURNMENT, THE COURT MET:

PRESENT: HON. MICHAEL D. CLEMENT, JUDGE, DIV. "B"

JASON NAPOLI, ASSISTANT DISTRICT ATTORNEY

MICHELE LAFRANCE, OFFICIAL COURT REPORTER

AMY M. MORROW, DEPUTY CLERK

STATE OF LOUISIANA **CASE #: 93-03922**
VS CHARGE:
REGINALD REDDICK SECOND DEGREE MURDER

This matter came on this date for a Motion for Post-Conviction Relief.

PRESENT: JASON NAPOLI, Attorney for the State

HARDELL WARD, Attorney for Reginald Reddick, Defendant

REGINALD REDDICK, Defendant, via zoom

Hardell Ward argued. The Court questioned Hardell Ward and he responded.

Jason Napoli argued.

Hardell Ward argued on rebuttal.

FOR REASONS ORALLY ASSIGNED, the Court granted the Motion for Post-Conviction Relief.

Jason Napoli requested a Stay because he intends to take a Writ to the 4th Circuit Court of Appeals. The Court granted the Stay until the ruling by the 4th Circuit Court of Appeals.