No. 19-5807

In the Supreme Court of the United States

THEDRICK EDWARDS, PETITIONER

v.

DARREL VANNOY, WARDEN

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

Whether this Court's decision in *Ramos* v. *Louisiana*, 140 S. Ct. 1390 (2020), applies retroactively to cases on federal collateral review.

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INTEREST OF THE UNITED STATES

This case presents the question of whether *Ramos* v. *Louisiana*, 140 S. Ct. 1390 (2020), which held that the Sixth Amendment requires a unanimous jury verdict to convict a defendant of a serious state crime, applies retroactively to cases on federal collateral review. Although unanimous jury verdicts have long been required in federal criminal trials, see Fed. R. Crim. P. 31(a), the United States has an interest in federal sentences predicated on prior state convictions that could be undermined by retroactive application of *Ramos*. See, *e.g.*, 18 U.S.C. 924(e). The United States also has a general interest in the framework for determining the retroactivity of rules of criminal procedure, which this Court has applied to federal and state convictions alike. See, *e.g.*, *Welch* v. *United States*, 136 S. Ct. 1257, 1264 (2016).

STATEMENT

Following a jury trial in Louisiana state court, petitioner was convicted on five counts of armed robbery, in violation of La. Rev. Stat. Ann. § 14:64 (Supp. 2006); one count of aggravated rape, in violation of La. Rev. Stat. Ann. § 14:42 (Supp. 2006); and two counts of aggravated kidnapping, in violation of La. Rev. Stat. Ann. § 14:44 (1997). See J.A. 195, 202, 242. He was sentenced to three consecutive life terms, and five consecutive 30-year terms, of imprisonment. J.A. 242. The state court of appeals affirmed, and the Louisiana Supreme Court denied review. *Ibid.* Petitioner subsequently sought state postconviction relief, which the state trial court denied, and the state appellate courts declined further review. J.A. 144, 148-149. Petitioner then filed a petition for a writ of habeas corpus in the United States District Court for the Middle District of Louisiana. J.A. 150-194. The district court denied relief, and the court of appeals denied a certificate of appealability. J.A. 278-281, 298-299.

1. In 2006, petitioner and an accomplice kidnapped a college student at gunpoint in Baton Rouge, Louisiana. J.A. 242-243. They hijacked his car and forced him to accompany them to several places, including his girlfriend's apartment. J.A. 243-244. There, petitioner and the accomplice raped two women and stole multiple items. J.A. 244. Two days later, petitioner and the accomplice kidnapped another man at gunpoint and forced him to withdraw money for them from an ATM. J.A. 244-245. Victims later identified petitioner as a participant in the crimes, and he confessed to his involvement. J.A. 244-245, 255; see J.A. 206-210.

Petitioner was charged with multiple state crimes and proceeded to trial. J.A. 242, 250. The jury found

him guilty of five counts of armed robbery, one count of aggravated rape, and two counts of aggravated kidnapping. J.A. 242; see J.A. 22, 114 (acquittal on attempted armed-robbery charge). At the time, Louisiana law permitted conviction based on a guilty verdict returned by at least 10 of 12 jurors. J.A. 250; see *Ramos* v. *Louisiana*, 140 S. Ct. 1390, 1394 (2020). Polling sheets indicated that ten jurors found respondent guilty on the armed-robbery counts and 11 jurors found him guilty on the aggravated-kidnapping and aggravated-rape counts. J.A. 17-21, 23-25. The court imposed consecutive sentences of life imprisonment on each of the aggravated-kidnapping and aggravated-rape counts and consecutive sentences of 30 years of imprisonment on each of the armed-robbery counts. J.A. 242.

Petitioner appealed to the Louisiana First Circuit Court of Appeals, which affirmed. J.A. 242. The Louisiana Supreme Court denied review. *Ibid.* His conviction became final when the time to file a petition for a writ of certiorari expired in March 2011. See *ibid.*; see also *Greene* v. *Fisher*, 565 U.S. 34, 39 (2011).

2. In December 2011, petitioner sought postconviction relief in Louisiana state court. J.A. 75-113, 242. Petitioner acknowledged that "well settled jurisprudence" based on this Court's decision in *Apodaca* v. *Oregon*, 406 U.S. 404 (1972), "uph[eld] the constitutionality" of Louisiana's law permitting conviction based on nonunanimous jury verdicts. J.A. 96. Petitioner contended, however, that this Court's discussion of incorporation principles in *McDonald* v. *City of Chicago*, 561 U.S. 742 (2010), had undermined that jurisprudence. J.A. 96-99.

The state trial court denied relief. J.A. 144. Both the state appellate court and the Louisiana Supreme Court denied further review. J.A. 148-149.

3. In May 2015, petitioner filed a petition for a writ of habeas corpus in federal district court. J.A. 150-194; see 28 U.S.C. 2254. He acknowledged that this Court's decision in *Apodaca* had upheld a "non-unanimous jury system," but again contended that *McDonald* had called that decision into question. J.A. 177; see J.A. 177-180. The district court denied the petition. J.A. 278-281. Adopting the report and recommendation of a magistrate judge, the court determined that, under this Court's "settled" decisions, "petitioner can claim no violation of federal law from his conviction by a non-unanimous verdict." J.A. 251. The court of appeals denied a certificate of appealability. J.A. 298-299.

In August 2019, petitioner filed a petition for a writ of certiorari, contending that this Court's decisions upholding convictions by nonunanimous juries had been undermined by subsequent developments and should be "explicitly reversed." Pet. 10; see Pet. 7-12. While the petition was pending, the Court addressed the constitutionality of nonunanimous criminal juries in *Ramos*. There, six Justices agreed that the Sixth Amendment requires a unanimous verdict to convict a defendant of a serious crime and that the unanimity requirement applies to the States. *Ramos*, 140 S. Ct. at 1397; *id.* at 1420-1421 (Thomas, J., concurring in the judgment).

Three of those Justices suggested that the Court's decision in *Apodaca* need not be regarded as "a controlling precedent" on the Sixth Amendment question. *Ramos*, 140 S. Ct. at 1404 (opinion of Gorsuch, J.). The other three of those Justices accepted *Apodaca* as controlling on the Sixth Amendment question but concluded it should be overruled or otherwise distinguished. *Id.* at 1409 (Sotomayor, J., concurring); *id.* at 1410, 1417 n.6 (Kavanaugh, J., concurring in part); *id.*

at 1424-1425 (Thomas, J., concurring in the judgment); cf. *id.* at 1404-1407 (majority opinion) (concluding in the alternative that *Apodaca* should be overruled). The three dissenting Justices stated that they would "not overrule *Apodaca*." *Id.* at 1425 (Alito, J., dissenting).

Ramos did not decide whether "the right to jury unanimity applies to cases on collateral review." 140 S. Ct. at 1407 (plurality opinion); see *id.* at 1419-1420 (Kavanaugh, J., concurring in part); *id.* at 1437 (Alito, J., dissenting). The plurality noted, however, that "newly recognized rules of criminal procedure do not normally apply in collateral review" and that the only exception is so "demanding * * * that this Court has yet to announce a new rule of criminal procedure capable of meeting it." *Id.* at 1407. Justice Kavanaugh's partial concurrence added that, "assuming that the Court faithfully applies" its retroactivity precedents, *Ramos* "will not apply retroactively on federal habeas corpus review and will not disturb convictions that are final." *Id.* at 1420.

The Court subsequently granted the petition in this case, limited to the question whether the decision in *Ramos* applies retroactively to cases on federal collateral review. 140 S. Ct. 2737, 2737.

SUMMARY OF ARGUMENT

This Court's decision in *Ramos* v. *Louisiana*, 140 S. Ct. 1390 (2020), announced a new rule of criminal procedure that does not apply retroactively to cases on federal collateral review.

A. The framework set forth in *Teague* v. *Lane*, 489 U.S. 288 (1989), limits the retroactivity of criminal-procedure rules on federal collateral review. Under that framework, a "new" rule—that is, one that was not "dictated by precedent existing at the time the defendant's

conviction became final"—generally provides no basis for upsetting final convictions. *Id.* at 301 (plurality opinion) (emphasis omitted).

The rule announced in *Ramos* is new. In *Apodaca* v. *Oregon*, 406 U.S. 404 (1972), this Court rejected a Sixth Amendment challenge to a state conviction obtained by a nonunanimous verdict. Over the ensuing decades, prior to *Ramos*, the Court repeatedly reiterated that such convictions were constitutionally permissible. Even if some ambiguity existed about the precedential status of *Apodaca*, the opposite rule announced in *Ramos* was in no way "apparent to all reasonable jurists," *Chaidez* v. *United States*, 568 U.S. 342, 347 (2013) (citation omitted), before that decision was issued. To the contrary, lower courts routinely relied on *Apodaca* to uphold convictions by nonunanimous juries, and six Justices in *Ramos* agreed that *Apodaca* was a precedential decision of this Court. Reliance on that understanding was at least reasonable.

Petitioner's contention that *Ramos* reflects a settled rule, rather than a new one, conflates the merits analysis in *Ramos* with the retroactivity question in this case. *Ramos*'s grounding in the original understanding of the Sixth Amendment does not make it a settled rule. In *Whorton* v. *Bockting*, 549 U.S. 406 (2007), for example, the Court held that *Crawford* v. *Washington*, 541 U.S. 36 (2004), announced a new rule, even though it relied principally on the original meaning of the Sixth Amendment's Confrontation Clause. And vacating long-final convictions simply because state courts failed to anticipate *Ramos*'s repudiation of *Apodaca* would apply a hindsight-based remedy at odds with *Teague*. The premise of *Teague* is that courts must reasonably apply then-existing law. *Teague* should not be interpreted to

invite, let alone require, lower courts to second-guess this Court's decisions by trying to anticipate whether a future Court would adhere to them.

B. Because the rule announced in *Ramos* is new—and is undisputedly a procedural rule, rather than a substantive one—it would be retroactive only if it were a "watershed" rule of criminal procedure. *Teague*, 489 U.S. at 311 (plurality opinion). But the only rule that this Court has ever indicated would be watershed is the right-to-counsel rule announced in *Gideon* v. *Wainwright*, 372 U.S. 335 (1963). The Court has expressed considerable doubt that any other watershed rules remain unannounced, and *Ramos* did not discover one.

Even under the less-stringent pre-*Teague* retroactivity framework, this Court held that the jury-trial right does not apply retroactively. See *DeStefano* v. *Woods*, 392 U.S. 631, 634 (1968) (per curiam). The Court has relied on that holding after *Teague* to conclude that subsidiary components of the jury-trial right—such as the right to have a jury find aggravating factors in a capital case—are likewise not watershed rules. See *Schriro* v. *Summerlin*, 542 U.S. 348, 356-358 (2004). Applying that same logic here compels the conclusion that the unanimity component of the jury-trial right announced in *Ramos* is likewise not a watershed rule.

Petitioner fails to show otherwise. A rule can be watershed only if it is both "necessary to [avoid] an impermissibly large risk of an inaccurate conviction" and also alters courts' "understanding of the bedrock procedural elements essential to the fairness of a proceeding." *Whorton*, 549 U.S. at 418 (citations and internal quotation marks omitted). Petitioner cannot show that the *Ramos* rule satisfies either criterion. He suggests that a unanimous verdict is necessary to a fair and accurate

verdict, but this Court rejected that proposition in *Johnson* v. *Louisiana*, 406 U.S. 356 (1972), which held that nonunanimous verdicts are consistent with the Due Process Clause. *Ramos*, which addressed only a Sixth Amendment challenge to nonunanimous verdicts, did nothing to disturb *Johnson*'s reasoning. And even if petitioner were writing on a blank slate, he does not present any sound empirical or legal basis for deeming *Ramos* to be comparable to *Gideon*. Among other things, if juror disagreement were in itself enough to substantially call into question the fairness and accuracy of a conviction, then the remedy for a hung jury—which by definition includes jurors who refuse to find guilt—would be an acquittal, rather than a retrial.

C. The reliance interests that the *Teague* framework protects further militate against applying *Ramos* retroactively on federal collateral review. Louisiana and Oregon have convicted thousands of defendants by nonunanimous juries in recent decades. Vacating those convictions would impose enormous costs on those States, the public, and victims of crime. The States would likely lack the resources to retry all of those defendants, and the staleness of evidence would make it impossible to reconvict many of them. Defendants whose convictions are remote in time because they received long sentences for serious violent crimes are among the most likely to benefit from such a windfall. Retroactive application of *Ramos* would also invite challenges to Louisiana and Oregon convictions involving guilty pleas or unanimous jury verdicts, and would disturb federal sentences imposed under recidivist sentencing statutes. Such disruptive results are precisely what the *Teague* framework was designed to preclude.

ARGUMENT

RAMOS ANNOUNCED A NEW RULE OF CRIMINAL PROCEDURE THAT DOES NOT APPLY RETROACTIVELY TO CASES ON FEDERAL COLLATERAL REVIEW

Under the framework set forth in *Teague* v. *Lane*, 489 U.S. 288 (1989), a new procedural rule does not apply retroactively to cases on federal collateral review unless it is a "watershed rule[] of criminal procedure." *Id.* at 311 (plurality opinion); see, *e.g.*, *Penry* v. *Lynaugh*, 492 U.S. 302, 313-314 (1989) (adopting the *Teague* plurality's approach to retroactivity). The jury-unanimity rule of *Ramos* v. *Louisiana*, 140 S. Ct. 1390 (2020), is a new procedural rule that does not fall within that exception. The rule is new because it was not dictated by existing precedent—indeed, it held that a prior decision of this Court reached the wrong result. And it is not a watershed rule, because this Court's precedents make clear that it is not necessary to ensure fundamental accuracy and fairness. It accordingly does not apply retroactively on federal collateral review.*

* A *Teague* retroactivity analysis suffices to resolve this case without any need to consider whether the limits on federal habeas review in 28 U.S.C. 2254(d) would likewise preclude relief. See *Horn* v. *Banks*, 536 U.S. 266, 272 (2002) (per curiam) (explaining that a court "must conduct a threshold *Teague* analysis when the issue is properly raised"). For that reason, and because the question presented does not clearly reference Section 2254(d), the government does not address that provision in this brief. If the Court wishes to consider Section 2254(d) in this case, the government respectfully requests the opportunity to submit a supplemental brief.

A. *Ramos* Announced A New Procedural Rule That Would Apply Retroactively On Federal Collateral Review Only If It Were A "Watershed Rule Of Criminal Procedure"

The "[a]pplication of constitutional rules not in existence at the time a conviction became final seriously undermines the principle of finality which is essential to the operation of our criminal justice system." *Teague*, 489 U.S. at 309 (plurality opinion). Accordingly, under the *Teague* framework, courts adjudicating collateral attacks "generally * * * apply the law prevailing at the time a conviction became final." *Id.* at 306 (citation omitted). A decision issued after that time is automatically retroactive "[o]nly when [it] appl[ies] a settled rule." *Chaidez* v. *United States*, 568 U.S. 342, 347 (2013). *Ramos*, however, did not "apply a settled rule," but instead announced a "'new rule'" of criminal procedure, *ibid.*, which would apply retroactively only if it were so uniquely critical to accuracy and fairness as to be a "[w]atershed rule[]," *id.* at 347 n.3.

1. The rule announced in Ramos *is new*

As the opposite of a "settled rule," *Chaidez*, 568 U.S. at 347, a "new rule" includes any rule "not *dictated* by precedent existing at the time the defendant's conviction became final," *Teague*, 489 U.S. at 301 (plurality opinion). The starkest example of a new rule is one that constitutes the "overruling of an earlier holding." *Whorton* v. *Bockting*, 549 U.S. 406, 416 (2007) (citation omitted). But the "spectrum" of new rules, *Teague*, 489 U.S. at 301 (plurality opinion), includes any rule that would not have been "apparent to all reasonable jurists" at the time the defendant's conviction became final, *Chaidez*, 568 U.S. at 347 (citation omitted). *Ramos*'s unanimous-jury rule—which reversed the uniform ap-

proach taken after the Court's prior decision in *Apodaca* v. *Oregon*, 406 U.S. 404 (1972)—was far from apparent to all reasonable jurists.

a. Before this Court's decision in *Duncan* v. *Louisiana*, 391 U.S. 145 (1968), the Sixth Amendment's jury-trial right did not apply to the States. States were accordingly free to determine whether, in a state criminal trial, "the verdict must be unanimous or not." *Maxwell* v. *Dow*, 176 U.S. 581, 605 (1900). Beginning in the 1890s and 1930s, respectively, Louisiana and Oregon chose to allow state criminal convictions by nonunanimous juries. See *Ramos*, 140 S. Ct. at 1394. In incorporating the jury-trial right against the States, the Court in *Duncan* "left open the question" whether "a right not to be convicted except by a unanimous verdict" applied. *DeStefano* v. *Woods*, 392 U.S. 631, 632-633 (1968) (per curiam).

The Court addressed that question in *Apodaca*. Five Justices concluded, based on different reasoning, that an Oregon conviction by a nonunanimous jury was constitutionally valid. 406 U.S. at 406 (plurality opinion); see *Johnson* v. *Louisiana*, 406 U.S. 356, 369-380 (1972) (Powell, J., concurring) (explaining vote in *Apodaca*). Over the ensuing decades, Louisiana and Oregon conducted thousands of criminal jury trials without requiring unanimity. See *Ramos*, 140 S. Ct. at 1406 & n.68; *id.* at 1436 (Alito, J., dissenting). And courts in both States routinely upheld convictions by nonunanimous juries based on *Apodaca*. See *id.* at 1428 & n.9.

Until last Term, this Court did not review any of those state-court decisions relying on *Apodaca*. And the Court itself cited *Apodaca* for the proposition that a state criminal "jury's verdict need not be unanimous

to satisfy constitutional requirements." *Burch* v. *Louisiana*, 441 U.S. 130, 136 (1979); see, *e.g.*, *McDonald* v. *City of Chicago*, 561 U.S. 742, 766 n.14 (2010) (describing *Apodaca* as having "held" that the Sixth Amendment "does not require a unanimous jury verdict in state criminal trials"); *Schad* v. *Arizona*, 501 U.S. 624, 634 n.5 (1991) (plurality opinion) (citing *Apodaca* for the principle that "a state criminal defendant, at least in noncapital cases, has no federal right to a unanimous jury verdict"); *Brown* v. *Louisiana*, 447 U.S. 323, 330-331 (1980) (plurality opinion) (citing *Apodaca* for the principle that a "10-to-2 vote in [a] state trial does not violate the Constitution"). Leading treatises similarly understood *Apodaca* to mean that "the Sixth Amendment does not require jury unanimity in state criminal trials." 6 Wayne R. LaFave et al., *Criminal Procedure* § 22.1(e), at 20 (3d ed. 2007); see, *e.g.*, 2 William J. Rich, *Modern Constitutional Law* § 30:27, at 455 (3d ed. 2011) (similar).

b. When this Court granted a writ of certiorari in *Ramos* and held that the Sixth Amendment requires a unanimous jury verdict to convict a state defendant of a serious crime, 140 S. Ct. at 1397, it brought an end to nearly four decades of reliance on *Apodaca*. In doing so, it announced a new rule.

Far from being "apparent to all reasonable jurists," *Chaidez*, 568 U.S. at 347 (citation omitted), the rule announced in *Ramos* does not appear to have been applied by any jurist before this Court's decision. Petitioner and his amici do not cite a single decision by any court that declined to follow the result of *Apodaca* and instead applied the rule that *Ramos* adopted. The uniform results of "every court decision [anyone is] aware of" are compelling evidence that "a jurist considering all the

relevant material" available at the time "could reasonably have reached a conclusion contrary to [this Court's later] holding." *Lambrix* v. *Singletary*, 520 U.S. 518, 538 (1997).

Indeed, *Ramos* is at least akin to—if not an actual example of—the "explicit overruling of an earlier holding," which "no doubt creates a new rule." *Whorton*, 549 U.S. at 416 (quoting *Saffle* v. *Parks*, 494 U.S. 484, 488 (1990)). As state courts' adherence to *Apodaca* makes clear, none of them would have felt free to question that decision and overturn convictions like petitioner's. As lower courts in a system of "vertical *stare decisis*," the state courts had "a constitutional obligation to follow" the "*result* of" this Court's decision in *Apodaca*—that state criminal convictions obtained by a nonunanimous jury do not violate the Sixth Amendment. *Ramos*, 140 S. Ct. at 1416 nn.5-6 (Kavanaugh, J., concurring in part); see *Rodriguez de Quijas* v. *Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989).

Even in this Court, a total of "six Justices" in *Ramos* "treat[ed] the result in *Apodaca* as a precedent for purposes of *stare decisis* analysis." *Ramos*, 140 S. Ct. at 1417 n.6 (Kavanaugh, J., concurring in part). And the three Justices who questioned *Apodaca*'s precedential status stated that "no one has found a way to make sense of" the decision. *Id.* at 1399 (plurality opinion). At a minimum, the opinions in *Ramos* illustrate that *Apodaca*'s status—and the constitutionality of non-unanimous juries—was "susceptible to debate among reasonable minds." *O'Dell* v. *Netherland*, 521 U.S. 151, 160 (1997) (citation omitted). Accordingly, the contrary result that the Court reached in *Ramos* was based on a new rule.

2. *Petitioner errs in characterizing* Ramos *as a settled rule*

Petitioner nevertheless contends (Br. 12-22) that the rule announced in *Ramos* broke no new ground. That contention is at odds with both longstanding pre-*Ramos* practices and the basic rationale of *Teague*.

a. In determining whether a rule announced by this Court was new, a court "must ascertain the 'legal landscape'" at the time that "the defendant's conviction became final," and "ask whether the Constitution, *as interpreted by the precedent then existing*, compel[led] the rule." *Beard* v. *Banks*, 542 U.S. 406, 411 (2004) (emphasis added; citation omitted). The Court's decision in *Apodaca* thus poses an insuperable obstacle to petitioner's efforts (Br. 13) to classify *Ramos* as simply reflecting the application of "well-settled principles."

Even assuming that the law could have been regarded as clear at some earlier time, *Apodaca* itself unsettled it. As noted above, six Justices in *Ramos* would have given *stare decisis* effect to *Apodaca*, and even the three Justices who questioned *Apodaca*'s precedential value described it as a "strange turn" in "the Sixth Amendment's otherwise simple story." 140 S. Ct. at 1397. No Justice suggested that lower courts would have been free to disregard it. To the extent that *Apodaca* was "shaky ground" for Louisiana's and Oregon's nonunanimous-jury practices, *id.* at 1398 (plurality opinion), it was "ground" nonetheless. The state courts in petitioner's case were thus not "act[ing] objectively unreasonably," *O'Dell*, 521 U.S. at 156, by relying on it.

Furthermore, even before *Apodaca*, the Court had sent mixed signals about whether the Sixth Amendment requires jury unanimity. In *Williams* v. *Florida*, 399 U.S. 78 (1970), for example, the Court "intimate[d] no

view whether or not the requirement of unanimity is an indispensable element of the Sixth Amendment jury trial" while concluding that the common-law requirement for 12 jurors is not. *Id.* at 101 n.46. And until *Ramos*, the Court had never held that a unanimous-jury requirement is incorporated against the States. Indeed, just a year earlier, the Court acknowledged the anomaly that "the Sixth Amendment requires jury unanimity in federal, but not state, criminal proceedings." *Timbs* v. *Indiana*, 139 S. Ct. 682, 687 n.1 (2019); see *McDonald*, 561 U.S. at 766 n.14 (similar).

b. This Court has rejected petitioner's suggestion that a rule is not "new" simply because this Court relies on constitutional first principles in announcing it. Br. 13-14 (citation omitted). In *Whorton* v. *Bockting*, *supra*, the Court held that its interpretation of the Confrontation Clause in *Crawford* v. *Washington*, 541 U.S. 36 (2004), was a new rule, notwithstanding that "the Framers' understanding of the meaning of the Confrontation Clause" was "the basis for the *Crawford* decision." *Whorton*, 549 U.S. at 417. And this is an even clearer case of a new rule than *Whorton*. There, at least, the results of the Court's pre-*Crawford* decisions were generally "consistent with the rule announced in *Crawford*." *Id.* at 413. That is far from true here.

Petitioner identifies no precedent for granting collateral relief under the *Teague* framework in circumstances like these. He attempts (Br. 12-13) to analogize this case to *Stringer* v. *Black*, 503 U.S. 222 (1992), but the analogy is unsound. *Stringer* determined that *Maynard* v. *Cartwright*, 486 U.S. 356 (1988), and *Clemons* v. *Mississippi*, 494 U.S. 738 (1990), which invalidated state capital-sentencing schemes, did not announce new rules because their holdings "follow[ed] *a*

fortiori" from *Godfrey* v. *Georgia*, 446 U.S. 420 (1980), which invalidated a similarly worded scheme. *Stringer*, 503 U.S. at 229. No such clear precedent dictated the result in *Ramos*. To the contrary, decades of decisions reaching the *opposite* result belie petitioner's assertion (Br. 17) that "nothing in *Ramos* could be described as a novel doctrine, doctrinal development, or doctrinal evolution."

c. Petitioner's narrow conception of a "new rule" essentially collapses the distinction between the merits question in *Ramos* and the retroactivity question in this case. If his position were accepted, criminal-procedure decisions would routinely apply retroactively on federal collateral review. That approach cannot be squared with *Teague*, which consciously adopted a stricter standard for the retroactive application of criminal-procedure rules in order to provide greater assurance that final criminal judgments would in fact remain final. See 489 U.S. at 300-310 (plurality opinion); see also, *e.g.*, *Danforth* v. *Minnesota*, 552 U.S. 264, 271-275 (2008); *Stringer*, 503 U.S. at 228.

Even before *Teague*, this Court "never ha[d] defined the scope of [collateral review] simply by reference to a perceived need to assure that an individual accused of crime is afforded a trial free of constitutional error." *Teague*, 489 U.S. at 308 (plurality opinion) (citation omitted). And in replacing the more ad hoc retroactivity regime that preceded it, *Teague* attached even greater weight to the "interests of comity and finality" in a conviction that has become final on direct review. *Ibid.* *Teague* recognizes, among other things, that "state courts are understandably frustrated when they faithfully apply existing constitutional law only to have a federal court discover, during a habeas proceeding,

new constitutional commands." *Id.* at 310 (brackets and citation omitted). Its retroactivity test accordingly "asks state-court judges" only "to judge reasonably, not presciently." *O'Dell,* 521 U.S. at 166.

Faulting state courts for adhering to *Apodaca* would not only be an inappropriate application of 20/20 hindsight, but would conflict with the basic goal of habeas review. Under petitioner's approach, state courts would be held retroactively accountable for declining on their own to resolve perceived tension in this Court's case law, even if doing so would require declaring a decision of this Court to be unsound. But the "threat of habeas" is designed as an "incentive" for lower courts to decide cases "consistent with *established* constitutional standards," *Teague*, 489 U.S. at 306 (plurality opinion) (emphasis added; citation omitted)—not to decide for themselves that this Court got something wrong.

Even if a state court could have applied constitutional first principles to reach the result that the Court ultimately reached in *Ramos*, "[t]he 'new rule' principle * * * validates reasonable, good-faith interpretations of existing precedents made by state courts even though they are shown to be contrary to later decisions." *Butler* v. *McKellar*, 494 U.S. 407, 414 (1990). Because the uniform interpretation of *Apodaca* in the state courts was at least "reasonable" and undertaken in "good-faith," the contrary rule of *Ramos* is new.

B. *Ramos* Did Not Announce A Watershed Procedural Rule

Ramos's new rule does not apply retroactively to final convictions like petitioner's. Although "[n]ew *substantive* rules generally apply retroactively," *Schriro* v. *Summerlin*, 542 U.S. 348, 351 (2004), petitioner does not dispute that the number of jurors necessary to provide a valid verdict is a "procedural" rule. And a new

procedural rule applies retroactively only if it is "a 'watershed rule of criminal procedure.'" *Whorton*, 549 U.S. at 417 (brackets and citation omitted). The Court has previously "observed that it is 'unlikely' that any such rules 'have yet to emerge,'" and "in the years since *Teague*," the Court has "rejected every claim that a new rule satisfied the requirements for watershed status." *Id.* at 417-418 (brackets and citation omitted). The Court should likewise reject petitioner's claim of watershed status for the *Ramos* rule.

1. *The* **Ramos** *rule neither prevents an impermissibly large risk of inaccuracy nor alters the understanding of bedrock procedures essential to fairness*

As might be expected of an exception that has never been applied to any post-*Teague* rule—and that the Court has doubted ever will be applied to any future rule—the "watershed rule" exception is "extremely narrow." *Whorton*, 549 U.S. at 417 (brackets and citation omitted). To qualify as watershed, "a new rule must meet two requirements." *Id.* at 418. First, the rule "must be necessary to prevent an impermissibly large risk of an inaccurate conviction." *Ibid.* (citation and internal quotation marks omitted). Second, the rule "must 'alter our understanding of the bedrock procedural elements essential to the fairness of a proceeding.'" *Ibid.* (citation omitted). The *Ramos* rule does not qualify on either dimension.

a. Nothing in *Ramos* suggests that the jury-unanimity rule meets either of the watershed-rule prerequisites. *Ramos*'s conclusion that the Sixth Amendment requires state criminal juries to be unanimous relied on historical considerations, not considerations of accuracy or fairness.

Unlike the plurality in *Apodaca*, the majority in *Ramos* refused to undertake a "functionalist assessment" of the benefits of jury unanimity to determine whether the Sixth Amendment requires it. 140 S. Ct. at 1402. Although the *Ramos* majority raised questions about the thoroughness of the *Apodaca* plurality's "cost-benefit analysis," the *Ramos* majority made clear that its "real objection" was that *Apodaca* "subjected the ancient guarantee of a unanimous jury verdict to its own functionalist assessment in the first place." *Id.* at 1401-1402. And this Court has made clear that a rule does not attain watershed status for *Teague* purposes simply because it comports "with the original understanding of the" Constitution. *Whorton*, 549 U.S. at 419.

For example, notwithstanding the history-based rationale of *Crawford*, the Court in *Whorton* found it to be "in no way comparable" to *Gideon* v. *Wainwright*, 372 U.S. 335 (1963), "the only case" that the Court has "identified as qualifying" for watershed-rule status. *Whorton*, 549 U.S. at 419; see *Beard*, 542 U.S. at 417 ("In providing guidance as to what might [be a watershed rule], we have repeatedly referred to the rule of *Gideon* * * * and only to this rule.") (citation omitted). *Gideon*, which "held that counsel must be appointed for any indigent defendant charged with a felony," was premised on serious concerns about both the accuracy and fairness of convictions obtained in the absence of the right it recognized. *Whorton*, 549 U.S. at 419; see *Beard*, 542 U.S. at 417. "When a defendant who wishes to be represented by counsel is denied representation, *Gideon* held, the risk of an unreliable verdict is intolerably high." *Whorton*, 549 U.S. at 419 (citing *Gideon*, 372 U.S. at 344-345). *Gideon* also emphasized that the right

to counsel was "designed to assure fair trials" and "essential to fair trials." *Beard*, 542 U.S. at 418 (quoting *Gideon*, 372 U.S. at 344) (emphasis omitted). No similar considerations undergird the holding in *Ramos*.

Like every other post-*Teague* rule this Court has considered, *Ramos* falls well short of *Gideon*'s benchmark. Petitioner's assertion (Br. 11) that *Ramos* is "uniquely akin to *Gideon*" is irreconcilable with the Court's treatment of other decisions construing the jury-trial right. Shortly after *Gideon*, the Court in *DeStefano* v. *Woods*, *supra*, "refused to give retroactive effect to *Duncan* v. *Louisiana*, [*supra*], which applied the Sixth Amendment's jury-trial guarantee to the States." *Summerlin*, 542 U.S. at 356-357. Although "*DeStefano* was decided under [the] pre-*Teague* retroactivity framework," the Court has since recognized that "its reasoning is germane" to the watershed-rule analysis. *Id.* at 357. And while *DeStefano* acknowledged that "the right to jury trial generally tends to prevent arbitrariness and repression," it declined to classify "'every criminal trial—or any particular trial—held before a judge alone'" as "'unfair.'" 392 U.S. at 633-634 (citation omitted). The Court in *DeStefano* instead reasoned that the "values implemented by the right to jury trial would not measurably be served by requiring retrial of all persons convicted in the past by procedures not consistent with the Sixth Amendment right to jury trial." *Id.* at 634.

The reasoning of *DeStefano* with respect to the complete denial of a jury makes clear that subsidiary jury-trial rights—like the unanimity requirement of *Ramos*—likewise do not justify reopening final convictions. In *Schriro* v. *Summerlin*, *supra*, for example, the Court

relied on *DeStefano* to reject a claim of watershed status for the rule that a jury, rather than a judge, must find the statutory aggravating factors that rendered a murder defendant eligible for the death penalty. 542 U.S. at 351-358 (citing *Ring* v. *Arizona*, 536 U.S. 584 (2002)). Notwithstanding that the aggravating factors "effectively were elements" of the offense, *id.* at 354 (emphasis omitted), and that the "right to jury trial is fundamental to our system of criminal procedure," *id.* at 358, the Court in *Summerlin* found it "hard to see" how the case could be distinguished from *DeStefano*, which allows a final conviction to stand even when *no* offense element has been submitted to *any* juror, *id.* at 357. It is likewise "hard to see" how this case can be distinguished from *DeStefano*. If the right to a jury is not itself a watershed rule, then it follows that the subsidiary right to a unanimous jury also is not.

Petitioner fails to address *Summerlin*'s reliance on *DeStefano* in an analogous context. He instead attempts (Br. 32-33) to dismiss the relevance of *DeStefano* by positing that "an otherwise trustworthy judge" is inherently more accurate or fairer than a nonunanimous jury. But he provides no legal or empirical support for the proposition that a single judge is more likely to reach the correct result than a supermajority of a deliberating body. Indeed, the Constitution's provision of a jury-trial right reflects concerns that a judge may in fact be *less* fair than a jury. The right to a jury, rather than a judge, ensures that a defendant's "peers" act as an "safeguard" against the "more tutored but perhaps less sympathetic reaction of the single judge," against the "compliant, biased, or eccentric judge," and against "entrust[ing] plenary powers over the life and liberty of the citizen to one judge" more generally. *Duncan*, 391

U.S. at 156. Those concerns have no analogue in the context of *Ramos*'s unanimous-jury rule.

b. *Ramos* also does not address, let alone repudiate, the reasoning of *Johnson* v. *Louisiana*, *supra*, which *did* address considerations of accuracy and fairness in rejecting a due-process challenge to a 9-3 jury verdict (as authorized by Louisiana law at that time). 406 U.S. at 358-363. The *Ramos* majority briefly noted the existence of that "companion case" to *Apodaca*, see 140 S. Ct. at 1397, and *Johnson* no longer has any direct application now that *Ramos* has held such verdicts to be unconstitutional under the Sixth Amendment. But the *Johnson* majority's analysis, on direct review, of the due-process challenge is pertinent to the accuracy and fairness considerations at issue in the retroactivity question here. *Johnson*'s determination "that the fact of three dissenting votes to acquit raises no question of constitutional substance about *either the integrity or the accuracy* of the majority verdict of guilt," 406 U.S. at 360 (emphasis added), directly contradicts the claim that 10-2 verdicts like petitioner's implicate considerations of accuracy and fairness to such an extent that all such verdicts must be retroactively undone.

As the reasoning of *Johnson* illuminates, classifying *Ramos* as a watershed rule would be difficult to square with the variety of circumstances in which the law accepts the validity of a jury verdict even when its correctness is called into question. "Jury verdicts finding guilt beyond a reasonable doubt are regularly sustained even though the evidence was such that the jury would have been justified in having a reasonable doubt"; "the trial judge might not have reached the same conclusion as the jury"; or "appellate judges are closely divided on

the issue whether there was sufficient evidence to support a conviction." *Johnson*, 406 U.S. at 362-363. None of those circumstances is thought to impugn basic notions of accuracy or fairness.

Likewise, a verdict can be considered sufficiently accurate and fair even when not every *juror* who has considered defendant's conduct agrees that he is guilty. As *Johnson* pointed out, the remedy for a hung jury—*i.e.*, one in which fewer than the required number of jurors support a guilty verdict—is that "the defendant is not acquitted, but is merely given a new trial." 406 U.S. at 363. Thus, both before and after *Ramos*, the unanimous verdict of a later set of jurors would be valid irrespective of the views of earlier ones. But if unanimity were necessary to avoid an inaccurate or unfair determination of guilt, it would "appear that a defendant" who initially receives a nonunanimous vote on his guilt "should receive a directed verdict of acquittal rather than a retrial." *Ibid.*

The fraction of jurors who voted in favor of guilt in this case (10/12) is the mathematical equivalent of the fraction of total jurors voting in favor of guilt in a case in which a jury votes 12-0 in favor of guilt after an initial 8-4 vote in favor of guilt by a hung jury. Indeed, a case could at least theoretically arise in which even fewer jurors are convinced of a defendant's guilt (say, a trial resulting in a 6-6 vote before a second jury unanimously finds the defendant guilty), yet the final verdict would stand. And whatever distinctions might be drawn between disagreements across successive juries and nonunanimity within a single jury, none is powerful enough to justify treating the former as constitutionally permissible and the latter as so impermissible that it justifies upsetting convictions that became final long ago.

2. Petitioner fails to show that Ramos *satisfies either prerequisite for a watershed rule*

Petitioner identifies no sound reason why the *Ramos* rule stands so far above every other post-*Teague* rule so as to qualify as "watershed." He asserts (Br. 22-29) that it meets both prerequisites for watershed status, but he fails to show that it satisfies either.

a. Petitioner errs in contending that the *Ramos* rule "assures that no man has been incarcerated under a procedure which creates an impermissibly large risk that the innocent will be convicted." Br. 27 (brackets and citation omitted). To satisfy the accuracy component of the watershed-rule test, it is "not enough . . . to say that the rule is aimed at improving the accuracy of trial," is "directed toward the enhancement of reliability and accuracy in some sense," or actually results in a "net improvement" to accuracy. *Whorton*, 549 U.S. at 418 (brackets and citation omitted). Rather, the relevant question is whether, in the absence of the rule, "the likelihood of an accurate conviction is *seriously* diminished." *Teague*, 489 U.S. at 313 (plurality opinion) (emphasis added).

Petitioner can show only a limited connection between unanimity and accuracy. To begin with, in the context of juries, the existence of holdouts does not in itself cast doubt on the other jurors' findings. Had the additional jurors' votes been necessary to the verdict, deliberations would have continued, and they "might well have ultimately voted to convict." *Ramos*, 140 S. Ct. at 1438 (Alito, J., dissenting). "Studies show that when a supermajority votes for a verdict near the beginning of deliberations, a unanimous verdict is usually reached." *Id.* at 1438 n.32; cf. *Lowenfield* v. *Phelps*, 484 U.S. 231, 237-238 (1988) (noting Court's approval of an

"*Allen* charge" in which the trial judge urges a putatively deadlocked jury to strive for unanimity). Furthermore, even in cases where that might not occur, the holdout votes may reflect an "insist[ence] upon acquittal without having persuasive reasons in support of [that] position," which would not call into question the accuracy of the supermajority's determination. *Johnson*, 406 U.S. at 361; see, *e.g.*, *United States* v. *Powell*, 469 U.S. 57, 65 (1984) (observing that a juror's vote may reflect "mistake, compromise, or lenity," rather than a factually accurate decision about the strength of the evidence).

Petitioner contends (Br. 27) that unanimity is necessary to "put[] the government to its proper burden of proof in the fact-finding process." But this Court directly rejected that contention in *Johnson*, which held that a nonunanimous verdict "is not in itself equivalent to a failure of proof by the State, nor does it indicate infidelity to the reasonable-doubt standard." 406 U.S. at 362. And petitioner identifies no empirical basis for automatically mistrusting the strength of the government's proof in cases involving nonunanimous juries. He points (Br. 27-29) to an amicus brief showing that some exonerated defendants in Louisiana were convicted based on nonunanimous jury verdicts. But that brief indicates that even more exonerated defendants in Louisiana have been convicted based on unanimous verdicts. Innocence Project New Orleans Amicus Br. at 3, *Ramos*, *supra* (No. 18-5924). And Oregon, which has likewise long allowed nonunanimous criminal jury verdicts, has a "lower rate per capita" of wrongful convictions than many States with unanimity requirements. Oregon Amicus Br. at 8 & n.6, *Ramos*, *supra* (No. 18-5924).

Petitioner separately contends (Br. 28) that allowing nonunanimous verdicts creates a serious risk that a majority of jurors will "overrule or ignore the perspective of dissenting jurors." But *Johnson* expressly rejected the argument that "when minority jurors express sincere doubts about guilt, their fellow jurors will nevertheless ignore them and vote to convict even if deliberation has not been exhausted and minority jurors have grounds for acquittal which, if pursued, might persuade members of the majority to acquit." 406 U.S. at 361. Petitioner cites (Br. 28-29) studies purportedly showing that "unanimous juries apply facts to law more accurately than nonunanimous juries." But the empirical evidence is not at all clear that unanimity affects accuracy. See, *e.g.*, Robert T. Roper, *The Effect of a Jury's Size and Decision Rule on the Accuracy of Evidence Recall*, 62 Soc. Sci. Q. 352, 359 (1981) (finding no statistically significant correlation between a jury's decisionmaking rule and ability to accurately recall evidence). Even in the single empirical study cited by petitioner, the authors attributed much of the difference in outcomes to sampling variability, concluding that unanimous and nonunanimous juries "are equally likely to reach the" verdict deemed "proper" by the designers of the study. Reid Hastie et al., *Inside the Jury* 61, 63 (1983); see *id.* at 63 (describing any differences as having "marginal statistical levels of significance"). As with other non-watershed procedural rules, the "evidence is simply too equivocal to support th[e] conclusion" that unanimous juries are meaningfully more accurate. *Summerlin*, 542 U.S. at 356.

Finally, petitioner contends that unanimity "ensures public 'confidence in jury verdicts.'" Br. 29 (citation omitted). It is far from clear how public confidence

would bear on "accuracy." *Teague*, 489 U.S. at 312 (plurality opinion). And *Teague* itself rejected watershed status for a rule that was expressly rooted in "public confidence in the fairness of the criminal justice system." *Taylor* v. *Louisiana*, 419 U.S. 522, 530 (1975); see *Teague*, 489 U.S. at 314 (plurality opinion); see also *Allen* v. *Hardy*, 478 U.S. 255, 259 (1986) (per curiam) (rejecting watershed status for the rule of *Batson* v. *Kentucky*, 476 U.S. 79 (1986), even though it "strengthens public confidence in the administration of justice"). In any event, petitioner cites no evidence that the public has more confidence in unanimous verdicts.

b. Even if petitioner could show that the *Ramos* rule is necessary to avoid a serious risk of an inaccurate conviction, that would satisfy only "half of [the] definition of the [watershed] exception." *Sawyer* v. *Smith*, 497 U.S. 227, 242 (1990). And his argument on the other half—that "*Ramos* 'altered our understanding of the bedrock procedural elements that must be found to vitiate the fairness of a particular conviction,'" Br. 24 (citation omitted)—rests solely on contentions that this Court has already rejected.

Petitioner's reliance (Br. 24-25) on *Ramos*'s historical grounding cannot be squared with *Whorton*'s holding that *Crawford*, which had similar historical grounding, did not satisfy the bedrock-fairness requirement for a watershed rule. See *Whorton*, 549 U.S. at 420-421. The Court in *Whorton* emphasized that the "requirement cannot be met simply by showing that a new procedural rule is *based on* a 'bedrock' right." *Ibid.* "Similarly, that a new procedural rule is fundamental in some abstract sense is not enough." *Id.* at 421 (brackets, citation, and internal quotation marks omitted).

Particularly given that the Court has rejected retroactivity for the more foundational rule requiring a jury rather than a judge, see *DeStefano*, 392 U.S. at 633-634, petitioner's appeal to history here is simply too generalized to satisfy the second component of the watershed-rule test.

Petitioner's reliance (Br. 26) on "[s]tructural error" doctrine is similarly misplaced. As this Court has explained, the "standard for determining whether an error is structural[] is *not* coextensive with the * * * *Teague* exception" for watershed rules. *Tyler* v. *Cain*, 533 U.S. 656, 666 (2001) (emphasis added; citation omitted). Accordingly, "a holding that a particular error is structural does not logically dictate the conclusion that the second *Teague* exception has been met." *Id.* at 666-667; see *id*. at 666 n.6 ("Classifying an error as structural does not necessarily alter our understanding of these bedrock procedural elements.").

c. To the extent that petitioner relies (Br. 34-35) on *Brown* v. *Louisiana*, *supra*, to support his claim of retroactivity, that argument is flawed on multiple levels. *Brown* was a pre-*Teague* decision in a line of cases about the *total number* of jurors necessary to provide a valid jury verdict. It has no significant bearing on the separate jury-unanimity question presented here.

In *Ballew* v. *Georgia*, 435 U.S. 223 (1978), the Court held, based in part on accuracy concerns, that a State may not convict a defendant based on the verdict of a five-member jury, even where the jurors were unanimous. *Id.* at 245. In *Burch* v. *Louisiana*, *supra*, the Court relied on *Ballew* to hold that a conviction may not be premised on a verdict supported "by only five members of a six-person jury." 441 U.S. at 138. Finally, in

Brown, the Court applied *Burch* to a Louisiana defendant whose case was still on direct review, but whose jury had been empaneled before *Burch* was decided. 447 U.S. at 329-330, 337 (plurality opinion).

The requirement that at least five jurors find guilt for a jury verdict to be valid rests on considerations of jury size separate and apart from the jury-unanimity issue in *Ramos*. See *Brown*, 447 U.S. at 331-332 (plurality opinion) (describing reasoning of *Ballew* and *Burch*). *Ballew*, *Burch*, and *Brown* have all existed alongside *Apodaca*—as well as *Johnson*, which rejected accuracy concerns with 9-3 jury votes, see 406 U.S. at 359-363—for decades. In any event, even assuming that the two lines of cases were intertwined, petitioner errs in suggesting (Br. 34-35) that *Brown*'s "retroactivity" holding would support disruption of final convictions. *Brown* did not extend *Burch* to cases on collateral review. As petitioner recognizes, at the time *Brown* was decided, "'new rules' did not automatically apply retroactively to cases on *direct* review," Br. 34 n.12 (emphasis added; citation omitted), and Justice Powell's concurring opinion—which was necessary to the result—was limited to the direct-review context. *Brown*, 447 U.S. at 337; see *Marks* v. *United States*, 430 U.S. 188, 193 (1977) (explaining that narrower concurring opinion would control over broader plurality opinion).

Furthermore, because *Teague* significantly narrowed the circumstances in which this Court will find a decision retroactive, see 489 U.S. at 300-310 (plurality opinion), pre-*Teague* decisions holding that a rule *is* retroactive (like *Brown*) would not have the relevance of pre-*Teague* decisions holding that a rule is *not* retroactive (like *DeStefano*). And both *DeStefano*'s lodestar

and *Teague*'s watershed-rule requirements dictate that *Ramos* does not apply retroactively to final convictions.

C. Retroactive Application Of The *Ramos* Rule To Upset Final State Convictions Would Be Unduly Disruptive

If any doubt about *Ramos*'s retroactivity remained, that doubt should be resolved in favor of leaving the final convictions of Louisiana and Oregon defendants in place. This Court's "new rule jurisprudence" reflects the States' "interests in finality, predictability, and comity." *Stringer*, 503 U.S. at 228. And the watershed-rule test "is demanding by design, expressly calibrated to address the reliance interests States have in the finality of their criminal judgments." *Ramos*, 140 S. Ct. at 1407 (plurality opinion). The *Teague* framework should not be applied to undermine the States' interest in the continued validity of decades' worth of convictions entered in reliance on this Court's decision in *Apodaca*.

Although retroactive application of *Ramos* would affect only two States directly, the vacatur of every single Oregon and Louisiana conviction premised on a non-unanimous verdict would be massively disruptive in those States. Louisiana and Oregon have conducted "thousands of trials under rules allowing non-unanimous verdicts." *Ramos*, 140 S. Ct. at 1436 (Alito, J., dissenting). Many of the ensuing convictions could be subject to collateral attack if *Ramos* applies retroactively, a result that would "seriously undermine[] the principle of finality which is essential to the operation of our criminal justice system." *Teague*, 489 U.S. at 309 (plurality opinion).

This case illustrates those potential costs. Petitioner was tried 13 years ago. J.A. 242. The rape and robbery victims testified at his trial, see No. 07-06-32 Trial Tr.

659-699, 750-760 (Dec. 5, 2007), and would presumably have to do so again. Requiring them to "relive their disturbing experiences" could be traumatic, and locating other witnesses and evidence may be difficult. *United States* v. *Mechanik*, 475 U.S. 66, 72 (1986); see, *e.g.*, *Engle* v. *Isaac*, 456 U.S. 107, 127-128 (1982) (noting that the "[p]assage of time, erosion of memory, and dispersion of witnesses may render retrial difficult, even impossible"). The consequence of applying *Ramos* retroactively thus may be the release of violent offenders who cannot practically be retried.

Moreover, nothing assures that the effect of holding the *Ramos* rule retroactive would be limited to convictions based on jury trials with nonunanimous verdicts. Some defendants have filed federal collateral-review motions seeking to extend *Ramos* to cover *unanimous* convictions in Oregon or Louisiana on a structural-error theory. See, *e.g.*, Appellant Br. at 40, *Almanza-Garcia* v. *Amsberry*, No. 20-35260 (9th Cir. July 17, 2020). And although petitioner asserts (Br. 35-37) that a defendant who pleaded guilty or opted for a bench trial "has no viable claim under *Ramos*," other defendants who are not bound by that concession may make such claims.

Nor are the costs of applying *Ramos* retroactively on collateral review limited to state convictions. Under some federal statutes, courts must impose a minimum term of imprisonment if a defendant convicted of certain offenses has a particular set of prior convictions—which may include prior state convictions. See, *e.g.*, 18 U.S.C. 924(e). The vacatur of Louisiana and Oregon convictions based on a retroactive application of *Ramos* could therefore unsettle a significant number of federal sentences.

This case, in short, exemplifies the Court's observation that the "costs imposed upon the States by retroactive application of new rules of constitutional law on habeas corpus * * * generally far outweigh the benefits of this application." *Sawyer*, 497 U.S. at 242 (brackets and citation omitted). The *Teague* framework is designed to avoid such results, and should not be applied to impose them here.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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