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SUPREME COURT OF
LOUISIANA

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SUPREME COURT
OF LOUISIANA

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Docket No. 2021-KP-01893

STATE OF LOUISIANA

V.

REGINALD REDDICK,

Writ of Certiorari and/or Review From
The Court of Appeal, Fourth Circuit, No. 2021-K-0589

From the Twenty-Fifth Judicial District Court,
Parish of Plaquemines, State of Louisiana
No. 93-03922
Hon. Michael D. Clement, Presiding;

MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE*, INNOCENCE
PROJECT NEW ORLEANS, IN SUPPORT OF RESPONDENT, REGINALD
REDDICK

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**MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE*, INNOCENCE
PROJECT NEW ORLEANS, IN SUPPORT OF RESPONDENT, REGINALD REDDICK**

COMES NOW, Innocence Project New Orleans (IPNO), through undersigned counsel, and respectfully requests, pursuant to Rule VII, Section 12 of the Rules of the Supreme Court of Louisiana, that this Honorable Court grant IPNO leave of court to file the Brief of *Amicus Curiae* attached to this motion.

I. Statement of Interest of *Amicus Curiae*, Innocence Project New Orleans

Innocence Project New Orleans is a non-profit law office that provides free legal representation to prisoners with provable claims of actual innocence in Louisiana and those serving unjust sentences. IPNO represents prisoners in cases where DNA testing could provide conclusive proof of innocence, or where innocence may be proven with other evidence. Since IPNO was founded in 2001, its work has led to the exoneration or release of 40 innocent prisoners who, combined, spent over 933 years wrongly incarcerated for crimes that they did not commit.

In addition to working to exonerate and free the innocent, IPNO uses the lessons from these cases to advocate for changes in laws and policies that contribute to wrongful convictions. IPNO has a direct interest in redressing the injustices caused by non-unanimous jury verdicts of guilt in Louisiana, which created a high risk of wrongful convictions. IPNO's experience suggests that unanimous juries provide an important safeguard against convicting innocent men and women. IPNO has an interest in ensuring that no one remains wrongly convicted by a non-unanimous jury in Louisiana.

IPNO has represented the wrongly convicted prisoner in the majority (38) of the 70 known exonerations in Louisiana.¹ IPNO represented most of those prisoners who were exonerated after being convicted by a non-unanimous jury. In addition to its experience litigating cases of actual innocence, IPNO maintains a database of all applicants who have sought IPNO's legal assistance in challenging their final convictions. Furthermore, IPNO stays up-to-date with scientific and academic research on the causes and incidence rates of wrongful convictions in Louisiana and nationwide.

¹ In 29 cases, IPNO was counsel on the collateral challenge to the conviction that resulted in exoneration. In a further nine cases, IPNO represented the exonerated person in petitioning for compensation from the Louisiana Innocence Compensation Funds. *See* La. R.S. § 15:572.8.

II. Arguments Contributed by *Amicus Curiae*

Undersigned counsel for IPNO respectfully suggest that there are matters of fact that might otherwise escape the Court's attention without briefing by *Amicus Curiae* Innocence Project New Orleans. Counsel also submits that the information provided in the attached brief is not duplicative of those that will be made in any of the briefs to be filed by the parties.

Specifically, the brief of *Amicus Curiae* Innocence Project New Orleans will provide the Court with numerical data regarding the incidence of wrongful convictions in Louisiana and how many of those innocent persons were convicted by a non-unanimous jury verdict. Furthermore, the brief of *Amicus Curiae* provides data demonstrating that non-unanimous jury verdicts have led to a disproportionate number of innocent Black defendants being wrongfully convicted, and in those cases, the votes of Black jurors have been disproportionately ignored. Finally, the brief of *Amicus Curiae* will provide an estimate of the number of innocent men and women who are currently incarcerated in Louisiana's prisons on the basis of non-unanimous jury verdicts. This estimate is a product of a review of the most up-to-date academic research on the incidence of wrongful convictions and a review of IPNO's applicant database of over 5,000 Louisiana prisoners.

Counsel for *Amicus Curiae* respectfully suggest that Innocence Project New Orleans is in a unique position to provide the Court with this important information on the consequences of Louisiana's non-unanimous jury law. In 2020, Innocence Project New Orleans filed a Brief of *Amicus Curiae* in the United States Supreme Court providing then-current data to aid that Court's consideration of whether *Ramos* should be held retroactive in federal habeas proceedings. *Edwards v. Vannoy*, 141 S. Ct. 1547 (2021). The Louisiana Fourth Circuit Court of Appeal specifically referenced IPNO's Brief of *Amicus Curiae* in its ruling that the *Ramos* jury unanimity rule applies retroactively. *See State v. Jordon*, 21-0512, p. 14 (La. App. 4 Cir. 1/24/22); 2022 WL 214021 ("While the representation of the Innocence Project are not conclusive and may not be a legal argument for retroactivity, such information is relevant when weighing the considerations of fundamental fairness and accuracy of convictions versus the state's interest in finality of convictions."). In the attached brief, *Amicus Curiae* updates this data to reflect an additional eight exonerations, including five in which the innocent men were convicted by non-unanimous jury verdicts.

As a non-profit law office that primarily litigates post-conviction challenges based on actual innocence, Innocence Project New Orleans is uniquely qualified to offer the Court statistical data on the incidence of wrongful convictions in Louisiana and the impact of the non-unanimous jury law on Black defendants and Black jurors in cases of wrongful conviction.

WHEREFORE, Innocence Project New Orleans, respectfully requests that this Court grant it leave to file a Brief of *Amicus Curiae* in support of respondent Reginald Reddick in this case.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Motion for Leave to File Brief of *Amicus Curiae*, Innocence Project New Orleans, in Support of Respondent, Reginald Reddick has been served by mail upon all counsel of record, all of whom are identified as follows:

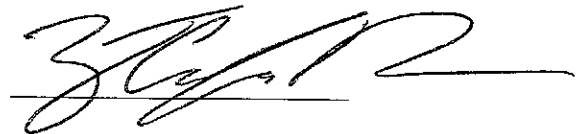
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Hon. Michael D. Clement, Presiding;

ORDER

Upon consideration of the foregoing *Motion for Leave to File Brief of Amicus Curiae, Innocence Project New Orleans, in Support of Respondent Reginald Reddick*, the motion is granted.

DONE, this ____ day of _____, 2022.

Justice, Louisiana Supreme Court

SUPREME COURT OF
LOUISIANA

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SUPPORT OF RESPONDENT, REGINALD REDDICK

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SUMMARY OF ARGUMENT

The non-unanimous verdict rule has repeatedly produced verdicts that are not accurate. These inaccurate verdicts disproportionately ignored Black jurors' accurate votes and convicted innocent Black defendants. Many innocent Louisianans are currently in prison based on these inaccurate verdicts.

Of the 70 known cases where a wrongly convicted innocent person was later exonerated in the state of Louisiana, 39 were tried in a way that permitted the defendant to be convicted by a non-unanimous jury. Of these 39 cases, at least 20 defendants were convicted by a non-unanimous jury. These 20 innocent people together spent nearly 300 years in Louisiana's prisons.

In *Ramos v. Louisiana*, the United States Supreme Court acknowledged that “non-unanimous juries can silence the voices and negate the votes of black jurors, especially in cases with black defendants . . .” 140 S. Ct. 1390, 1418 (2020) (Kavanaugh, J., concurring in part). These jury verdicts, poisoned by the underlying law's racist origins, *id.* at 1417, have created an unacceptable risk of convicting innocent Louisianans. Those wrongly convicted in Louisiana have overwhelmingly been young, Black men, including most of those convicted by non-unanimous juries. In this brief, *Amicus* offers updated research regarding the demographics of the juries that convicted them showing that Black jurors' opinions and votes were disproportionately ignored in the deliberations and erroneous verdicts. *Amicus* also estimates—based on its analysis of academic studies, statistics about the incarcerated population in Louisiana, and thousands of applications for IPNO's help—that there are currently at least 100 innocent people in prison in Louisiana that were convicted based on non-unanimous verdicts. Based on the innocent people already released from wrongful incarceration, the vast majority of these innocent people are likely to be Black.

These conclusions are unsurprising. Louisiana created the non-unanimous verdict rule in the interest of white supremacy, not accurate trial verdicts. It “approved non-unanimous juries as one pillar of a comprehensive and brutal program of racist Jim Crow measures against African-Americans.” *Ramos*, 140 S. Ct. at 1417 (Kavanaugh, J., concurring in part). One hundred and twenty years after its passage, many of the still-living victims of this rule perform hard labor on a penal farm that was once a slave plantation. The State will no doubt ask this Court to avoid imposing on it the cost of vacating non-unanimous jury verdicts. But justice for innocent people

convicted by a racist law far outweighs the cost to the State of unconstitutional convictions being vacated.

ARGUMENT

I. Exonerations in Louisiana

Amicus is familiar with the 70 cases¹ prosecuted in state courts in Louisiana that resulted in an exoneration recorded by the National Registry of Exonerations (hereinafter NRE), which tracks exonerations that have occurred since 1989.² According to a NRE report in 2015, Louisiana is second only to Illinois in its per capita rate of exonerations.³ As of 2017, two Louisiana parishes—Orleans and Jefferson—ranked in the top ten of counties or parishes in exonerations per

¹ The National Registry of Exonerations (NRE) has 68 entries for exonerations in Louisiana state courts. See *List of Exonerations*, National Registry of Exonerations, <http://www.law.umich.edu/special/exoneration/Pages/browse.aspx> (last visited February 15, 2022). This includes a single entry for an exonerated man, Robert Jones, who was wrongly convicted by three distinct judgments of three distinct crimes. As a result, the NRE accounts for 70 exoneration cases. IPNO represented the prisoner in a collateral challenge to the conviction and/or compensation proceedings in 38 of these cases. IPNO is familiar with the remaining 32 cases because it collects and updates information from court records on Louisiana exoneration cases in order to maintain a central repository for information on exonerations in Louisiana.

² The NRE defines an exoneration as:

A person has been exonerated if he or she was convicted of a crime and later was either: (1) declared to be factually innocent by a government official or agency with the authority to make that declaration; or (2) relieved of all the consequences of the criminal conviction by a government official or body with the authority to take that action. The official action may be: (i) a complete pardon by a governor or other competent authority, whether or not the pardon is designated as based on innocence; (ii) an acquittal of all charges factually related to the crime for which the person was originally convicted; or (iii) a dismissal of all charges related to the crime for which the person was originally convicted, by a court or by a prosecutor with the authority to enter that dismissal. The pardon, acquittal, or dismissal must have been the result, at least in part, of evidence of innocence that either (i) was not presented at the trial at which the person was convicted; or (ii) if the person pled guilty, was not known to the defendant, the defense attorney and the court at the time the plea was entered. The evidence of innocence need not be an explicit basis for the official action that exonerated the person. A person who otherwise qualifies has not been exonerated if there is unexplained physical evidence of that person's guilt.

Glossary, National Registry of Exonerations, <http://www.law.umich.edu/special/exoneration/Pages/glossary.aspx> (last visited February 15, 2022). The NRE does not track the cases of innocent people that enter guilty or no contest pleas to resolve their cases and be immediately released from prison. IPNO has represented seven innocent people who have been “freed” but not technically exonerated. And, freed or exonerated people are only a subset of innocent people who are convicted.

³ See *The First 1600 Exonerations*, National Registry of Exonerations, 14 (2015), [law.umich.edu/special/exoneration/Documents/1600_Exonerations.pdf](http://www.law.umich.edu/special/exoneration/Documents/1600_Exonerations.pdf)

capita. Orleans Parish is the national leader, with nearly eight times more exonerations per capita than the national average.⁴ Since this list was published, there have been an additional seven exonerations in Orleans Parish.

In 39 of the 70 Louisiana exonerations, the jury was permitted to convict by a non-unanimous vote and at least 20 people were convicted by non-unanimous verdicts.⁵ (See Appendix I for the listed cases). In other words, in over half of all the exonerations in which a non-unanimous jury verdict was possible, at least one juror voted not to convict.⁶ Well over a quarter of all the convictions resulting in exoneration were a product of a non-unanimous jury verdict. These 20 innocent people spent a combined 296 years in prison.

II. The Non-Unanimous Verdict Rule Has Remained True to Its Origins—It is Used to Wrongly Incarcerate Black People by Removing the Power of Black Jurors.

Louisiana’s non-unanimous verdict rule was created by Confederate veterans, Redeemers and White Leaguers. When these men convened the 1898 Constitutional Convention, the first

⁴ See *Top Ten Counties*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/Top-Ten-Counties.aspx> (last visited February 15, 2022). The NRE defines the standardized rate of exonerations per capita as “the raw number of exonerations per capita divided by the national average of 0.75 exonerations per 100, 000. Thus, the Standardized Rate Per Capita for the nation as a whole is 1.00, by definition. . . . All rankings are based on 2017 data from the United States Census Bureau.”

⁵ Appendix I provides the case citations for all of the 70 exonerations identified by the National Registry of Exonerations listed by whether the jury verdict was non-unanimous, possibly non-unanimous but for which *Amicus* lacks sufficient information (or verdict was unanimous), unanimity was required because the case was tried as a capital case (first-degree murder or capital rape), or a non-unanimous verdict was not permitted for some other reason. In the 31 cases in which a conviction by non-unanimous jury was not permitted, 17 were tried as capital cases—either first-degree murder or capital rape. *State v. Goodley*, 398 So.2d 1068, 1071 (La. 1981). The remaining 14 were adjudicated by means other than a 12-person jury—bench trial, 6-person jury, or plea.

A disproportionate number of Louisiana exonerations are in cases that were tried as first-degree murders because post-conviction counsel is provided to individuals who are sentenced to death. La. R.S. § 15:169. In every exoneration case, the defendant has required the assistance of post-conviction counsel to obtain relief. Therefore, people sentenced to death are disproportionately likely to be exonerated, even though they cannot be convicted by non-unanimous verdict. See Samuel R. Gross & Michael Shaffer, *Exonerations in the United States: 1989-2012*, National Registry of Exonerations, 16 n.26 (June 2012), [law.umich.edu/special/exoneration/documents/exonerations_us_1989_2012_full_report.pdf](http://www.law.umich.edu/special/exoneration/documents/exonerations_us_1989_2012_full_report.pdf).

⁶ This represents only the number of cases where *Amicus* has been able to confirm that the jury verdict was non-unanimous. There are likely several more in this group that counsel cannot confirm. Complete information is not available in all of the 40 exonerations where the conviction could have been by non-unanimous verdicts. In some cases, the record is ambiguous. For example, in *State v. Nathan Brown*, Jefferson Parish Case No. 97-5794, the judge collected written polling slips and declared the verdict “legal” but then did not make the polling slips part of the record or otherwise record the specific vote count.

opportunity to craft a new State Constitution following Reconstruction, their stated purpose was “reimposing white southern rule and formulating the convict lease system.”⁷ Aware that any overt policy of discrimination would be struck down by the Supreme Court, the delegates “with a careful eye on racial demographics . . . sculpted a facially race-neutral rule in order to ensure that African-American juror service would be meaningless.” *Ramos*, 140 S. Ct. at 1394. The facts show that, 120 years later, the non-unanimous verdict rule still works as its white supremacist creators intended: it has continued to wrongly incarcerate Black people by removing the power of Black jurors.⁸

The rule has stayed true to its original purpose despite the fact that, when the rule was perpetuated in 1974, its proponents managed to refrain from publicly repeating the expressly racist justifications of the late Nineteenth Century. As former Chief Justice Johnson wrote, when the law was reauthorized, “the expected ease of convicting African Americans in Louisiana had come to simply be described as ‘judicial efficiency.’ . . . But despite ‘race neutral’ language justifying the law in 1974, it has continued to have a detrimental effect on African American citizens.” *State v. Gipson*, 19-1815 (La. 06/03/20); 296 So.3d 1051, 1053 (Johnson, C.J., dissenting from denial of *certiorari*).

A. The Innocent Men and Women Convicted By Non-Unanimous Juries Were Mostly Black and Faced Unreliable Evidence.

The use of an intentionally discriminatory jury scheme for 120 years has not worked to make convictions in Louisiana more accurate. Instead, Louisiana has the second highest per capita wrongful conviction rate in the United States. The non-unanimous jury rule has “allow[ed]

⁷ Thomas Aiello, *Jim Crow’s Last Stand: Nounanimous Criminal Jury Verdicts in Louisiana* 5, 10–14, 16–19 (2d ed. 2019); see also Thomas Frampton, *The Jim Crow Jury*, 71 Vand. L. Rev. 1593, 1615 (2018).

⁸ The disproportionate impact of a non-unanimous jury verdict scheme on Black defendants is not unique to Louisiana. In Oregon, the only other state to use a non-unanimous jury verdict scheme prior to 2020, the proportion of Black defendants convicted by non-unanimous jury verdict vastly outpaced Black representation in the overall population. Despite comprising only 2.2% of the state’s population, Black people made up 15.5% of those challenging their convictions by non-unanimous jury verdict on direct appeal after *Ramos* and 18% of those challenging final convictions based on non-unanimous jury verdicts. This disproportionate outcome is further demonstrated by the fact that Black people made up only 6.5% of Oregon’s total felony convictions. Brief of *Amicus Curiae* Criminal Justice Reform Clinic at Lewis & Clark Law School at 15–17, *Watkins v. Ackley*, 368 Or. 562 (Or. 2021) (S068825).

convictions of some who would not be convicted under the proper constitutional rule.” *Ramos*, 140 S. Ct. at 1419 (Kavanaugh, J., concurring in part). It has “cavalierly dismissed as meaningless” the not-guilty votes that in 48 other states would have protected the innocent from wrongful convictions. *Gipson*, 296 So.3d at 1054 (Johnson, C.J., dissenting from denial of writ of certiorari).

There are 20 innocent people who are known to have been wrongfully convicted by non-unanimous verdicts in Louisiana. Their names and ages at the time of wrongful arrest are as follows: Reginald Adams (26), Gene Bibbins (29), David Bueso (19), Gerald Burge (29), Darwin Castro Santos (20), Royal Clark (24), Catina Curley (32), Glenn Davis (19), Larry Delmore (22), Douglas Dilosa (35), Robert Hammons (31), Jermaine Hudson (20), Travis Hayes (17), Willie Jackson (17), Terrence Meyers (21), Troy Rhodes (34), Michael Shannon (41), Kaleigh Smith (31), Kia Stewart (17), Archie Williams (22). All but Ms. Curley are male. Fifteen are Black, including four of the five who were teenagers when wrongly arrested.

Fourteen of these innocent men and women were sentenced to life in prison without the possibility of parole based on a non-unanimous jury verdict. None of them received a sentence of less than 40 years.

These 20 people were convicted based on questionable evidence at cursory trials. Fourteen of the 20 cases involved incorrect eyewitness identification. Ten innocent people were tried at proceedings that lasted less than a day; several were convicted after startlingly brief jury deliberations. And, most were convicted in parishes where other kinds of racial discrimination regarding jury service are prevalent.⁹

⁹ Seven of the known wrongful convictions by non-unanimous verdict happened in Jefferson Parish and another two in East Baton Rouge Parish. Jefferson Parish prosecutors have disproportionately removed Black jurors and have been found to have violated *Batson v. Kentucky*, 476 U.S. 79 (1986). See *Snyder v. Louisiana*, 552 U.S. 472 (2008); *State v. Harris*, 01-0408 (La. 6/21/02); 820 So.2d 471; *State v. Bridgewater*, 00-1529 (La. 1/15/02); 823 So.2d 877; *State v. Neal*, 00-0674 (La. 6/29/01); 796 So.2d 649; *State v. Taylor*, 99-1311 (La. 1/17/01); 781 So.2d 1205; *State v. Jacobs*, 99-1659 (La. 6/29/01); 789 So.2d 1280; *State v. Myers*, 99-1803 (La. 4/11/00); 761 So.2d 498; *State v. Seals*, 95-0305 (La. 11/25/96); 684 So.2d 368; *State v. Durham*, 94-1036 (La. App. 5 Cir. 4/16/96); 673 So.2d 1103. In East Baton Rouge, defendants have been found to be victims of systematic discrimination against Black jurors that violates *Swain v. Alabama*, 380 U.S. 202 (1965). *State v. Washington*, 375 So.2d 1162 (La. 1979); *State v. Brown*, 371 So.2d 751 (La. 1979).

These 20 innocent people's cases are profiled in the incorporated Appendix II. They include: Travis Hayes, who was convicted by ten jurors that discounted exculpatory DNA evidence and sent an innocent teenager to prison for life; Jermaine Hudson, who was convicted by ten jurors—after a five-hour trial and 50 minutes of deliberation—of a fabricated armed robbery made up by a teenager to hide from his father that he spent his paycheck to buy drugs; Archie Williams, who was convicted based on testimony of an eyewitness that had twice failed to identify him, even though he was excluded as the source of bloody fingerprints at the scene; Glenn Davis, Larry Delmore, and Terrence Myers, three young cousins that were convicted based on the implausible account of a person who admitted to being a drug addict; Kia Stewart, another teenager sentenced to life without parole by a non-unanimous verdict reached after 73 minutes of deliberation; Robert Hammons, who was convicted even though a police officer and eleven other witnesses placed him in Alabama at the time of the crime; and Reginald Adams, convicted based solely on a confession that in no way matched the facts of the crime.

All 20 of these innocent people had the relative good fortune that they had post-conviction lawyers and that, while it sometimes took decades, new evidence emerged to prove them innocent. Travis Hayes and Archie Williams would be performing penal labor or buried in a prison graveyard if exculpatory forensics had not been matched with the actual perpetrators after their trials. The same would be true of Robert Hammons and Kia Stewart if the true perpetrators of the crimes had not bragged about their guilt and, also, of Glenn Davis, Larry Delmore, Terrence Myers, Gerald Burge, and Reginald Adams if hidden police documents establishing the guilt of others were not eventually discovered. Jermaine Hudson was preparing to plead guilty to a lesser sentence to secure his release after serving twenty years when the alleged victim came forward as part of a drug rehabilitation program to say he had fabricated the armed robbery and picked Mr. Hudson at random from a photo array. There are many innocent people currently in prison based on weak cases that will never be this lucky.

B. The Jurors That Had Their Votes Discounted Were Three Times More Likely to be Black than White.

The racist agenda of the creators of the non-unanimous verdict rule has operated in the modern court room through policies and biases that exclude many non-White jurors from the jury,¹⁰ and majority rule dynamics that allow for minority viewpoints—those more likely to be held by non-White jurors—simply to be ignored. See Kim Taylor Thomas, *Empty Votes in Jury Deliberations*, 113 Harv. L. Rev. 1261, 1261–64 (2000). As Justice Kavanaugh noted in *Ramos*, “the math has not changed. Then and now, non-unanimous juries can silence the voices and negate the votes of black jurors, especially in cases with black defendants or black victims, and only one or two black jurors.” *Ramos*, 140 S. Ct. at 1417 (Kavanaugh, J., concurring in part).

Data presented to the United States Supreme Court in *Ramos* showed the extent to which Black jurors’ votes are ignored by non-unanimous jury verdicts.¹¹ Black jurors casted “empty votes”—ignored votes to acquit—at 64% above the expected rate if empty votes were evenly dispersed amongst all jurors. White jurors casted such “empty votes” at 32% below the expected rate. It is no surprise that the same data showed Black defendants have been 30% more likely to be convicted by non-unanimous juries than White defendants. *State v. Maxie*, 13-CR-72522 (11th Jud. Dist. Ct. October 11, 2018); 2018 WL 8545357, at *49–*52.

Amicus’s own research demonstrates how these dynamics have played out in the cases of innocent people. *Amicus* has worked to systematically gather data on the juries in the 20 cases in

¹⁰ Statistical analysis, performed by *The Advocate* in its investigative series, “Tilting the Scales,” and entered into evidence in *State v. Maxie*, showed that on average there were two fewer Black individuals on juries than should be expected compared to the racial demographics of the parish in which they lived. Statistical analysis of the use of peremptory strikes reflected that minority jurors were struck at a statistically significant rate and non-minority jurors were not. *State v. Maxie*, 13-CR-72522 (La. 11th Jud. Dist. Ct. October 11, 2018); 2018 WL 8545357, at *36–*37. *The Advocate*’s study looked at information collected in 2,931 of the 3,906 cases reported to this Court between 2011 and 2016, including nine of the ten busiest jurisdictions in the state. 2018 WL 8545357, at *35–*36.

¹¹ Professor Thomas Frampton performed independent empirical analysis of the data collected by *The Advocate* and testified as an expert witness in *State v. Maxie*. 13-CR-72522 (La. 11th Jud. Dist. Ct. October 11, 2018). The district court’s findings were admitted as part of the joint appendix in *Ramos v. Louisiana*. 2018 WL 8545357, at *49–*53.

which people were wrongly convicted based on non-unanimous verdicts.¹² This data establish that, of the 125 votes that are known to have been cast by White jurors, only 8 were discounted. However, of the 68 votes cast by Black jurors, 16 were discounted. Based on this data, *Amicus* estimates a White juror has a 6.4% chance of having his or her vote discounted and an innocent person convicted over his or her objection, but a Black juror has a 23.5 % of this happening to them. In other words, a Black juror is nearly four times as likely as their White counterparts to have their vote to acquit ignored and an innocent person convicted.

The data also establish that, while nearly 90% of those people wrongly convicted by non-unanimous verdicts were Black, at least one non-White juror voted to acquit and was ignored in all but two of the cases in which the dissenting jurors have been identified.

The data collected by *Amicus* are collected in the incorporated Appendix III.

III. *Amicus* Estimates That There are 100 Innocent People Currently in Louisiana Prisons Based on Non-Unanimous Verdicts.

The 20 wrongfully convicted individuals addressed in this brief certainly do not represent every innocent person that has been convicted by non-unanimous verdict in Louisiana. *Amicus* has current clients who are still incarcerated despite strong evidence of innocence, potential innocence cases that it is investigating, and is aware of many more cases that would be investigated if resources were available. The State of Louisiana has lamented the burden that it would face if all non-unanimous verdicts were vacated. Brief of Respondent at 49, *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020); Brief of Respondent at 40, *Edwards v. Vannoy*, 141 S. Ct. 1547 (2021). But, reason dictates that some significant number of the people currently imprisoned because of these verdicts are innocent. Presumably, the State would concede that it does not have a legitimate interest in maintaining the convictions of innocent people.

¹² The identities of the jurors were established from reviewing court records. The races of the jurors were primarily identified from voter records, with supplementary online research. The identities of the jurors that did not vote guilty were identified by court records in cases in which that information had been obtained prior to the passage of Act 335 of 2018, which allowed for mass sealing of the relevant court records. In other cases, interviews with jurors or trial counsel were used. Supporting documentation is maintained at undersigned counsel's office.

In 2020, IPNO identified 100 individuals incarcerated based on non-unanimous jury verdicts whose cases contain indicia of innocence. This number was determined by cross-referencing its case/applicant database of over 5,000 applicants with data on cases in which there is evidence of a non-unanimous verdict. Brief of *Amicus Curiae* Innocence Project New Orleans at 15, *Edwards v. Vannoy*, 141 S. Ct. 1547 (2021). These 100 individuals are current IPNO clients or people that have had their cases selected for current or future investigation by IPNO because of case facts that match indicators of actual innocence.¹³ Ninety-one of these individuals are Black, suggesting that 91% of innocent Louisianans currently in prison because of verdicts made possible by a white supremacist law are Black.

This estimate is likely to be under-inclusive. Some innocent individuals in Louisiana who were convicted by non-unanimous verdicts will not have completed the IPNO application process or will not fall within its mandate.¹⁴ Nevertheless, the estimate is a useful guide to the scale of the problem.

The estimate is also compatible with academic studies of wrongful conviction rates. The estimated wrongful conviction rate for individuals sentenced to death from 1973 to 2004 is 4.1%.¹⁵ The estimated rate of innocent people convicted of capital rape-murder cases in the 1980s is between 3.3% and 5%.¹⁶ The estimated wrongful conviction rate for incoming prisoners committed into the custody of the Pennsylvania Department of Corrections from November 2015

¹³ While IPNO has received thousands of applications from people claiming to be innocent, it does not have the resources to investigate or even plan to investigate every case. Therefore, IPNO prioritizes cases through a grading system, setting for investigation those cases that receive one of its top two grades. These grades mean that, based on information provided by the applicant and the existing court record, “[n]ew evidence appears to give strong indication of innocence[,] . . . [o]riginal conviction based on weak case[,] or new evidence appears to partially undermine the state’s case.”

¹⁴ See *supra* Note 13. Additionally, IPNO’s mandate only allows it to investigate the cases of prisoners claiming to be innocent who have final convictions and a life or near-life sentence (or, in clear DNA cases, are serving a sentence of at least 10 years).

¹⁵ Samuel R. Gross *et al.*, *Rate of False Conviction of Criminal Defendants Who Are Sentenced to Death*, 111 *Proceeding of the National Academy of Sciences* 7230 (2014).

¹⁶ D. Michael Risinger, *Innocents Convicted: An Empirically Justified Factual Wrongful Conviction Rate*, 97 *J. Crim. L. & Criminology* 761 (2007).

to March 2016 is 6.2%.¹⁷ These sample estimates give a range of 3.3% to 6.2%.¹⁸ According to the data provided to the United States Supreme Court in *Edwards v. Vannoy*, the best estimate of the number of individuals incarcerated in Louisiana based solely on a final conviction produced by a non-unanimous jury verdict was 1,558 people.¹⁹ Applying a range of 3.3% to 6.2% to this number—which merely assumes that people convicted by non-unanimous verdicts are no more likely to be innocent than the populations in these studies—would lead to an estimate that there are between 51 and 97 innocent people doing hard labor in prison in Louisiana based on non-unanimous jury verdicts.

It is unsurprising that the estimate from IPNO’s case information falls narrowly outside the upper end of the range calculated from studies of possible overall wrongful conviction rates. None of the academic studies are specific to Louisiana, and, as noted above, Louisiana has the second highest wrongful conviction rate in the country. Consistent with this, it seems reasonable to assume that allowing a guilty verdict to be returned when up to two jurors have a reasonable doubt as to the defendant’s guilt would lead to a higher wrongful conviction rate.

¹⁷ Charles E. Loeffler, Jordan Hyatt, & Greg Ridgeway, *Measuring Self-Reported Wrongful Convictions Among Prisoners*, 35 J. Quantitative Criminology 259 (2019).

¹⁸ This range omits estimates on the high and low ends of the spectrum. A Department of Justice funded study examining 714 convictions for homicide and sexual assault in Virginia in the 1970s and 1980s produced an estimate of 11.6% for cases involving testable physical evidence. Kelly Walsh *et al.*, *Estimating the Prevalence of Wrongful Convictions*, Office of Justice Programs’ National Criminal Justice Reference Service, (September 2017), available at https://www.ojp.gov/pdffiles1/nij/grants/251115.pdf?campaign_id=9&emc=edit_nn_20211206&instance_id=47090&nl=themorning®i_id=71503196&segment_id=76211&te=1&user_id=f9e70a694c7ae6f710e7145a0be61cbd (last visited February 21, 2022). An additional paper offers a rate of 0.031%. Paul G. Cassell, *Overstating America’s Wrongful Conviction Rate? Reassessing the Conventional Wisdom about the Prevalence of Wrongful Convictions*, 60 Ariz. L. Rev. 815 (2018). Even assuming this paper was methodically sound, its focus on cases resolved by pleas means it is inapplicable to the population at issue here—individuals that went to trial and were convicted by non-unanimous verdicts.

¹⁹ Brief of *Amici Curiae* The Promise of Justice Initiative, the Louisiana Association of Criminal Defense Lawyers, and the Orleans Public Defender at 12–14, *Edwards v. Vannoy*, 141 S. Ct. 1547 (2021). Only district attorneys in Orleans and Caddo parishes have announced any intention to independently review final convictions produced by non-unanimous jury verdicts. As of late September 2021, only 43 convictions out of over 300 had been vacated in Orleans Parish. See Nicholas Chrastil, *A ‘Jim Crow Jury’ prisoner fights for freedom*, THE LENS, Oct. 4, 2021 <https://thelensnola.org/2021/10/04/a-jim-crow-jury-prisoner-fights-for-freedom/> (last visited February 21, 2022). Even if other Louisiana district attorneys were reviewing non-unanimous jury verdicts at this rate, the overall decline in the number of people incarcerated solely on account of a final conviction produced by a non-unanimous jury verdict would not be so great as to alter *Amicus*’s estimated range.

Even if there are only 51 innocent people currently in prison based on non-unanimous verdicts, these 51 people—most of whom, statistically, are Black—are performing hard labor on penal farms because they were found guilty of crimes that they did not commit as a result of an unconstitutional white supremacist law.

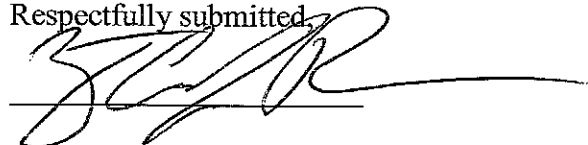
CONCLUSION

The United States Supreme Court’s decision in *Ramos* that non-unanimous juries should be “relegated to the dustbin of history,” *Ramos*, 140 S. Ct. at 1410 (Sotomayor, J., concurring), did not free the innocent people in prison whose convictions based on non-unanimous verdicts were final. Nor did that Court’s decision in *Edwards*, pertaining as it did to federal collateral challenges to final convictions, dictate the outcome for this Court in deciding whether to allow these people back into court to seek justice.

There are undoubtedly innocent people sitting in Louisiana prisons with final convictions made possible by an unconstitutional jury scheme devised by Nineteenth Century white supremacists. To again quote former Chief Justice Johnson: “Simply pledging to uphold the Constitution in future criminal trials does not heal the wounds already inflicted on Louisiana’s African American community by the use of this law for 120 years.” *Gipson*, 296 So.3d at 1057. Nor does it provide an avenue for relief for those innocent men and women imprisoned by the State of Louisiana suffering under convictions made possible by a jury scheme recognized as unconstitutional.

As a result, *Amicus* files this Brief in support of Mr. Reddick.

Respectfully submitted,



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APPENDIX I: List of All 70 Louisiana Innocence Cases, Arranged by Jury Verdict Scheme

Cases of innocence involving non-unanimous jury verdicts
1) <i>State v. Reginald Adams</i> , Orleans Parish Case No. 278-951
2) <i>State v. Gene Bibbins</i> , East Baton Rouge Parish Case No. 2-87-979
3) <i>State v. David Bueso</i> , East Baton Rouge Parish Case No. 12-17-0089
4) <i>State v. Gerald Burge</i> , St. Tammany Parish Case No. 147-175
5) <i>State v. Darbin Castro Santos</i> , St. Bernard Parish Case No. 346-637
6) <i>State v. Royal Clark</i> , Jefferson Parish Case No. 02-0895
7) <i>State v. Catina Curley</i> , Orleans Parish Case No. 461-907
8) <i>State v. Glenn Davis</i> , Jefferson Parish Case No. 92-4541
9) <i>State v. Larry Delmore</i> , Jefferson Parish Case No. 92-4541
10) <i>State v. Douglas Dilosa</i> , Jefferson Parish Case No. 87-105
11) <i>State v. Robert Hammons</i> , St. Tammany Parish Case No. 136-658
12) <i>State v. Travis Hayes</i> , Jefferson Parish Case No. 97-3780
13) <i>State v. Jermaine Hudson</i> , Orleans Parish Case No. 407-888
14) <i>State v. Willie Jackson</i> , Jefferson Parish Case No. 87-205
15) <i>State v. Terrence Meyers</i> , Jefferson Parish Case No. 92-4541
16) <i>State v. Troy Rhodes</i> , Orleans Parish Case No. 432-709
17) <i>State v. Michael Shannon</i> , Orleans Parish Case No. 478-693
18) <i>State v. Kaleigh Smith</i> , Orleans Parish Case No. 475-055
19) <i>State v. Kia Stewart</i> , Orleans Parish Case No. 464-435
20) <i>State v. Archie Williams</i> , East Baton Rouge Case No. 01-83-0234
Cases of innocence that could have involved non-unanimous jury verdicts, but <i>Amicus</i> lacks affirmative evidence of a non-unanimous verdict, or verdict was unanimous
1) <i>State v. Malcolm Alexander</i> , Jefferson Parish Case No. 80-1260
2) <i>State v. Jarvis Ballard</i> , St. Bernard Parish Case No. 208-545
3) <i>State v. Cheryl Beridon</i> , Terrebonne Parish Case No. 78,042
4) <i>State v. Gregory Bright</i> , Orleans Parish Case No. 252-514
5) <i>State v. Dennis Brown</i> , St. Tammany Parish Case No. 128-634
6) <i>State v. Nathan Brown</i> , Jefferson Parish Case No. 97-5794
7) <i>State v. Vernon Chapman</i> , St. Tammany Parish Case No. 71,385
8) <i>State v. Clyde Charles</i> , Terrebonne Parish Case No. 106,980
9) <i>State v. Anthony Daye</i> , Iberia Parish Case No. 11-102
10) <i>State v. Henry James</i> , Jefferson Parish Case No. 81-4366
11) <i>State v. Anthony Johnson</i> , Washington Parish Case No. 89-CRC-39701
12) <i>State v. Craig Johnson</i> , Orleans Parish Case No. 380-395
13) <i>State v. Rickey Johnson</i> , Sabine Parish Case No. 30,770
14) <i>State v. Robert Jones</i> , Orleans Parish Case No. 356-745
15) <i>State v. Ryan Lewis</i> , Orleans Parish Case No. 432-553
16) <i>State v. Jerome Morgan</i> , Orleans Parish Case No. 367-809
17) <i>State v. John Thompson</i> , Orleans Parish Case No. 306-526
18) <i>State v. Earl Truvia</i> , Orleans Parish Case No. 252-514
19) <i>State v. Michael Anthony Williams</i> , Jackson Parish Case No. 20,387
Cases of innocence where non-unanimous jury verdicts were not permitted because case was tried as capital
1) <i>State v. Dan Bright</i> , Orleans Parish Case No. 375-994
2) <i>State v. Albert Burrell</i> , Union Parish Case No. 28,734

3) <i>State v. Shareef Cousin</i> , Orleans Parish Case No. 376-479
4) <i>State v. Rodricus Crawford</i> , Caddo Parish Case No. 304-048
5) <i>State v. Glenn Ford</i> , Caddo Parish Case No. 126,005
6) <i>State v. Roland Gibson</i> , Orleans Parish Case No. 203-904
7) <i>State v. Michael Graham</i> , Union Parish Case No. 28,734
8) <i>State v. Larry Hudson</i> , Orleans Parish Case No. 199-523
9) <i>State v. Wilbert Jones</i> , East Baton Rouge Parish Case No. 90,052
10) <i>State v. Anthony Keko</i> , Plaquemines Parish Case No. 92-3292
11) <i>State v. Isaac Knapper</i> , Orleans Parish Case No. 270-437
12) <i>State v. Curtis Kyles</i> , Orleans Parish Case No. 303-970
13) <i>State v. Dwight Labran</i> , Orleans Parish Case No. 388-287
14) <i>State v. Ryan Matthews</i> , Jefferson Parish Case No. 97-3780
15) <i>State v. Damon Thibodeaux</i> , Jefferson Parish Case No. 96-4522
16) <i>State v. John Thompson</i> , Orleans Parish Case No. 305-826
17) <i>State v. Calvin Williams</i> , Orleans Parish Case No. 259-071
Cases of innocence where non-unanimous jury verdicts were not permitted because case not tried before a twelve-member jury
1) <i>State v. Yutico Briley</i> , Orleans Parish Case No. 514-608 (bench trial)
2) <i>State v. Allen Coco</i> , Calcasieu Parish Case No. 14891-95 (bench trial)
3) <i>State v. John Floyd</i> , Orleans Parish Case No. 280-729 (bench trial)
4) <i>State v. Kendall Gordon</i> , Orleans Parish Case No. 492-470 (bench trial)
5) <i>State v. Darrin Hill</i> , Orleans Parish Case No. 359-046 (adjudged not guilty by reason of insanity and involuntarily detained for 20 years)
6) <i>State v. Robert Jones</i> , Orleans Parish Case No. 357-917 (guilty plea)
7) <i>State v. Robert Jones</i> , Orleans Parish Case No. 356-745, Count 7 (guilty plea)
8) <i>State v. David Lazzell</i> , Iberia Parish Case No. 46779 (guilty plea)
9) <i>State v. Hollie Ramirez-Power</i> , St. Tammany Parish Case No. 587-095 (six-person jury with unanimity requirement)
10) <i>State v. Julio Ruano</i> , Orleans Parish Case No. 500-456 (bench trial)
11) <i>State v. Eddie Triplett</i> , Orleans Parish Case No. 400-740 (six-person jury with unanimity requirement)
12) <i>State v. Hayes Williams</i> , Orleans Parish Case No. 199-523 (guilty plea)
13) <i>State v. Michael Williams</i> , Jefferson Parish Case No. 96-2599 (bench trial)
14) <i>State v. Calvin Willis</i> , Caddo Parish Case No. 118,517 (bench trial)

APPENDIX II: Innocent People Convicted by Non-Unanimous Juries

The following 20 men and women are innocent people convicted by non-unanimous juries. *Amicus* represented twelve of these people.²⁰

Jermaine Hudson²¹

Jermaine Hudson was 22 years old when he was picked out of a photo array and charged with armed robbery. Mr. Hudson's White teen-aged accuser told his father that he had been robbed at gunpoint as he rode his bicycle home from a bartending job in Algiers. He described his assailant as a "black male, blue cap, black short-sleeve shirt, and blue jeans." Two months later, he picked Mr. Hudson out of a photo array. At trial, the alleged victim identified Mr. Hudson and testified that he was good at remembering faces: "I make my money by remembering people's first names and remembering their faces." Defense counsel refused to call two subpoenaed alibi witnesses. After a five-hour trial and 50 minutes of jury deliberation, the jury voted 10-2 to convict. Mr. Hudson was sentenced to 99 years at hard labor.

After Mr. Hudson had served twenty years of his sentence, attorneys filed a petition for post-conviction relief based on the Supreme Court's *Ramos* decision. The Orleans Parish District Attorney's office reached an agreement with Mr. Hudson to vacate his conviction, for Mr. Hudson to plead guilty to armed robbery, and be released on time served. Because of scheduling issues, Mr. Hudson's plea date was pushed back, and, during that time, the district attorney's office heard from a counselor at a drug treatment facility in Terrebonne Parish that the alleged victim, now in his 40s and a patient at the facility, had recanted his testimony. In an affidavit, Mr. Hudson's accuser stated that he fabricated the robbery because he was afraid to tell his father that he had spent his paycheck on drugs and had picked Mr. Hudson at random when presented with a photo array. Prosecutors dismissed the charge against Mr. Hudson.

²⁰ *Amicus* has verified that all of the following cases are non-unanimous by either ascertaining the jury verdict from trial counsel or reviewing the trial court records. All of the facts contained in the descriptions of these cases are contained in district and appellate records of the cases. For ease of reading, *Amicus* has removed in-text citations. However, all of the underlying documentation and records are contained in *Amicus*'s files and the court files and are available upon request. In addition, the National Registry of Exonerations case profile is cited for each person.

²¹ *Jermaine Hudson*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5945> (last visited February 20, 2022).

Darvin Castro Santos²²

Darvin Castro Santos was 20 years old when he was arrested as the passenger in a stolen Dodge Durango in Natalia, Texas. Because the vehicle had been used in an armed robbery in St. Bernard Parish, Mr. Castro Santos and the driver of the car, Selvin Rodriguez, were extradited to Louisiana and charged with armed robbery. During the armed robbery, four Hispanic men went into the Gold Star Diner, ordered food, and under the guise of wishing to cash a check, pulled guns and demanded money. Neither the waitress nor the owner made a pretrial identification of Mr. Castro Santos, but a customer who interrupted the robbery identified Mr. Castro Santos as the man who held a gun to his head at one point in the robbery. At trial, all three testified that they had made a pre-trial identification of Mr. Castro Santos and again identified him as one of the assailants.

Mr. Castro Santos testified through a translator that he had been in Houston at the time of the robbery. The man arrested with him, Mr. Rodriguez, pleaded guilty and, despite prosecutors delaying his sentencing until after Mr. Castro Santos's trial, testified for the defense that he had committed the robbery with three other men—Raul, Eldon, and Rene—and that Mr. Castro Santos was not involved. Mr. Rodriguez had told police about these other men before trial.

Mr. Castro Santos's race and immigration status were highlighted by both the prosecution and the defense, with defense counsel telling jurors: "Mr. Darvin Castro is an illegal alien. . . . If you go to any Home Depot you're probably going to see a lot of them, short and stocky." He later told jurors that if his client was found not guilty he would be put instantly into federal custody because of his immigration status. According to the lone juror who voted to acquit, this played a critical role in jury deliberations, with one juror commenting on the credibility of the defense witnesses that "she worked with Spanish people and they lie." The jury voted 11-1 to convict Mr. Castro Santos. He was sentenced to 50 years in prison.

IPNO sought DNA testing on items used in the robbery—a plastic shopping bag and zip ties used to bind the victims. The testing excluded Mr. Castro Santos. Cell phone records that had been obtained by law enforcement before trial, supported Mr. Rodriguez's testimony that "Rene" was the lead robber, not Mr. Castro Santos. Additionally, IPNO spoke with alibi witnesses who had been with Mr. Castro Santos

²² *Darvin Castro Santos*, National Registry of Exonerations, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=6013> (last visited February 20, 2022).

in Texas on the day of the robbery. Based on this new evidence, the St. Bernard Parish District Attorney moved to vacate Mr. Castro Santos's conviction. He was released after being wrongfully imprisoned for nearly 12 years.

Kaliegh Smith²³

Kaliegh Smith was convicted of second-degree murder by a split 10-2 jury verdict based on the account of a single unreliable eyewitness. Cynthia Shezbie told police that she saw the victim struggling in the street with a shorter man, who then grabbed the victim by the shirt and shot him. Ms. Shezbie picked Mr. Smith, who was two inches taller than the victim, out of a photo array and identified him as the shooter. However, prior to trial, Ms. Shezbie told officers about a recent altercation between the victim and another man who matched the height description she had given police, was connected to the neighborhood, and suspected of involvement in other murders. Police did not follow up on this, and this information, recorded in the detective's notes, did not go into the official case report. Separately, police recovered the murder weapon from a man with no connections to Mr. Smith.

Despite telling the lead prosecutor days before trial that Mr. Smith "definitely was not the guy" and that the talk in the neighborhood was that the real shooter was another man, Ms. Shezbie identified Mr. Smith as the shooter at trial. The victim's fiancée testified, contrary to her initial statement, that she too had seen Mr. Smith running from the scene after the shooting. Mr. Smith was convicted and sentenced to life without parole.

After DNA testing of the victim's shirt revealed male DNA that did not come from the victim or Mr. Smith, IPNO enrolled in the case and unearthed numerous pieces of exculpatory evidence in the State's possession that had not been turned over to Mr. Smith's trial counsel. Among these were: (1) documents showing that Ms. Shezbie had received nearly \$2,500 in benefits from the D.A.'s office before trial, along with a note to give her "whatever she needed" after trial, amounting to nearly \$2,000 in housing assistance; (2) documents showing that prosecutors failed on numerous occasions to correct their witnesses' false testimony; (3) documents showing how the State's primary witnesses' accounts changed over time. Based on this evidence of prosecutorial misconduct, the District Attorney's office moved to vacate Mr. Smith's conviction in May 2021.

²³ *Kaliegh Smith*, National Registry of Exonerations, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5982> (last visited February 21, 2022).

Glenn Davis, Jr.,²⁴ Larry Delmore,²⁵ and Terrence Meyers²⁶

Glenn Davis, Larry Delmore, and Terrence Meyers were arrested at 19, 22, and 21 years old, respectively, and convicted based on the testimony of a single eyewitness who was lying. The witness testified that he saw the three men perpetrate the drive-by shooting of Samuel George, Jr. However, he also admitted to smoking crack about an hour before the crime, had a long history of arrests, and his story was implausible. The witness claimed that he could identify three perpetrators, including Glenn Davis whom the witness testified was the back-seat passenger. However, the crime was committed using a two-door Cutlass with inoperable back-seat windows. In the witness's scenario, Mr. Davis would have had to lean forward and over the top of the front-seat passenger and stick his head out of the front passenger window for the witness to have seen his face.

After three hours of deliberation, ten of the jurors found the witness credible beyond a reasonable doubt, but two did not. The views of these two jurors were disregarded and the three men were convicted and sentenced to life without parole. Evidence discovered after trial demonstrated that the State's eyewitness was not at the crime scene when the shooting occurred. Other evidence, much of which was in the possession of the State at the time of trial, showed the identity of the likely true perpetrator. This new evidence led to the court vacating the three men's convictions, and the State dropped all charges against them.

Kia Stewart²⁷

Kia Stewart was also convicted based on the testimony of a single eyewitness. He was mistakenly identified as the man who shot Bryant Craig on a public street in broad daylight on the morning of July 31, 2005, just a month before Hurricane Katrina. Mr. Craig had been driving with a friend, Mr. Alexander,

²⁴ *Glenn Davis, Jr.*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3158> (last visited February 21, 2022).

²⁵ *Larry Delmore*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3170> (last visited February 21, 2022).

²⁶ *Terrence Meyers*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3441> (last visited February 21, 2022).

²⁷ *Kia Stewart*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4675> (last visited February 21, 2022).

to his mother's house in the Lafitte Housing Project area of New Orleans. Mr. Craig got out of his car to talk with a pedestrian, who shot him. Police developed Mr. Stewart as a suspect based on an inaccurate anonymous tip and, having done no further investigation, included Mr. Stewart's photograph in an array for Mr. Alexander to identify, which he did.

When 17-year-old Kia Stewart heard that there was a warrant for his arrest, he turned himself in to the police so that he could clear his name. Because Hurricane Katrina hit three weeks later, he waited four years in jail for a trial. His defense counsel were two law students. The State presented the one eyewitness. The defense presented no witnesses. The jury deliberated for 73 minutes before finding him guilty by a 10-2 jury verdict. Mr. Stewart was sentenced to spend the rest of his life in prison.

IPNO later discovered at least 18 witnesses who saw the crime and knew that Mr. Stewart was not the shooter, heard the true perpetrator confess to the crime, were with the perpetrator in the immediate aftermath of the crime, or proved Mr. Stewart's alibi. In 2015, the trial court vacated Mr. Stewart's conviction. The DA's office immediately dismissed all charges and Mr. Stewart was released after spending almost ten years in prison for a murder he did not commit.

Reginald Adams²⁸

Reginald Adams was indicted for the murder of Cathy Ulfers, the wife of a New Orleans Police Department officer, who was shot and killed in her home on October 7, 1979.

The evidence against Mr. Adams consisted exclusively of his confession, made to an NOPD detective and the District Attorney's investigator while Mr. Adams was in jail awaiting trial on an unrelated burglary charge. The "confession" was inconsistent with the known facts of the murder. The jury was told that there was no physical evidence linking Mr. Adams to the crime and no gun was recovered. Nevertheless, after three hours and 25 minutes of deliberation, the jurors voted 10-2 to convict. Reginald Adams was sentenced to life without parole.

In 2014, IPNO discovered a police report that carefully documented the initial police investigation. Prior to Mr. Adams' arrest, police had recovered the weapon used to kill Ms. Ulfers and property stolen from her home from a brother and sister who had absolutely no connection to Reginald Adams and who

²⁸ *Reginald Adams*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4430> (last visited February 21, 2022).

fled the area soon after the murder. After serving 34 years wrongfully imprisoned, Mr. Adams was exonerated on May 12, 2014.

Travis Hayes²⁹

Travis Hayes was six weeks past his seventeenth birthday when he was arrested and charged with being the getaway driver for a gunman who murdered a local corner store owner during an armed robbery. Travis Hayes and Ryan Matthews were arrested in a traffic stop several hours after the murder and miles away. At trial, the jury heard that, after around six hours of through-the-night interrogation, the 17-year-old Travis Hayes had accepted the police's accusation that his friend, Ryan Matthews, was the murderer and he was the getaway driver. Additionally, two witnesses to the aftermath of the crime identified Mr. Hayes's car as having driven away from the scene.

The defense's main evidence was that DNA from a ski mask left at the scene by the perpetrator did not match Travis Hayes or Ryan Matthews. The defense also presented evidence that the window of Mr. Hayes's front passenger car door was stuck in the up position and would not go down, making it impossible for witnesses to have seen the gunman jump through that passenger window and discard his ski mask, shirt, and glove out of that window. Ten jurors heard this evidence and were certain of Mr. Hayes's guilt beyond a reasonable doubt. Two jurors, including the only Black juror, voted not to convict.

After the verdict, additional evidence of innocence emerged. Most significantly, the unaccounted-for DNA from the perpetrator's ski mask was matched to a man who more closely matched the description of the perpetrator than Ryan Matthews. This man had bragged repeatedly about killing the grocery store owner and committed another murder nearby soon after. Mr. Matthews—who had been tried separately from Mr. Hayes—was exonerated in 2004, but Mr. Hayes' conviction was not vacated until December 2006. Mr. Hayes was released at 26 years old after having spent almost 10 years wrongfully imprisoned. The State dropped charges soon after.

²⁹ *Travis Hayes*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3289> (last visited February 21, 2022).

Archie Williams³⁰

Archie Williams was tried for the 1982 rape and stabbing of a woman in her Baton Rouge home. The assailant had forced his way into the victim's house and attacked her in an upstairs bedroom. When a neighbor came in, the assailant stabbed the victim and fled. The victim and neighbor described the perpetrator as being taller than 5'7"—about 5'9 to 5'11". Williams is 5'4", and had an alibi—three people testified at his trial that he was home asleep when the attack occurred. The physical evidence—including fingerprints and semen—did not point to Mr. Williams as the assailant. In fact, the jury heard that the fingerprints lifted from the scene, even those found in smears of the victim's blood, were not from Mr. Williams.

Nearly one month after the crime, the victim was shown a photo array that included Mr. Williams, but she did not select him as the assailant. She did, however, tell police officers that they should look for an individual who resembled his photo. Police showed the victim a second array and again she did not select Mr. Williams, but again told police to look for someone who resembled him. Only after observing Mr. Williams's face during a third photo array did the victim select him as the assailant. Both the victim and her neighbor were shown an in-person line up with Mr. Williams. The neighbor selected a filler. The victim, now having seen Mr. Williams a fourth time, identified him. Mr. Williams was found guilty by an 11-1 jury verdict.

Thirty-five years later, the unidentified prints found at the scene of the crime were run through the FBI's new Next Generation Identification fingerprint database and were found to match a convicted serial rapist who committed several other home-invasion rapes in the area at the time and who exactly matched the victim's initial composite sketch of her attacker. Mr. Williams's conviction was promptly vacated and he was released. He had spent 36 years wrongfully imprisoned.

Royal Clark, Jr.³¹

Royal Clark was arrested in 2001 for the armed robbery of a Burger King after several of the witnesses to the crime picked him out of a photo array. Fingerprints lifted from a cup that the robber had

³⁰ *Archie Williams*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5529> (last visited February 21, 2022).

³¹ *Royal Clark, Jr.*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5588> (last visited February 21, 2022).

been drinking from before the crime were claimed to be unusable. At trial, six employees of the restaurant testified to varying descriptions of the robber, some of which did not match Mr. Clark. The investigating detective said that the witnesses had all claimed that the robber had gold teeth, as Mr. Clark did, but all of the witnesses denied saying this. After 78 minutes of deliberation, Royal Clark was convicted by a 10-2 jury verdict. He was sentenced to 49 ½ years in prison without parole.

In 2018, IPNO sought to have the robber's fingerprints reexamined. Advances in latent print examination resulted in a positive match between the prints and a serial armed robber who was still incarcerated for a string of robberies committed a few months after Mr. Clark's arrest. Mr. Clark was exonerated in June 2019 after more than 17 years in prison.

Troy Rhodes³²

Troy Rhodes was convicted of attempted murder and armed robbery in 2004 based on a single eyewitness identification. A delivery truck driver was getting into his truck when a man with a sawed-off shotgun entered the passenger side, demanded money, and shot the driver in the chest. In the days that followed, the driver underwent numerous surgeries and was shown multiple photographic lineups by police. On the day of his third surgery, the driver identified Mr. Rhodes based on his facial expression.

At trial, the driver identified Mr. Rhodes and testified that he was not on any pain medications at the time he made the identification. The victim's medical records showing that he was both on pain medication and experiencing the effects of general anesthesia had been entered into evidence. Yet, Mr. Rhodes's trial counsel failed to impeach the victim with these records. Mr. Rhodes was convicted by a 10-2 jury verdict and sentenced to 149 years in prison.

Mr. Rhodes filed multiple petitions for post-conviction relief, all of which were denied in state court. In 2014, a federal district court found that Mr. Rhodes's trial counsel had in fact been ineffective, but ruled his claim procedurally barred for being filed too late. Mr. Rhodes's conviction was finally overturned in 2018 when a different federal court judge ruled that Mr. Rhodes had also received ineffective post-conviction counsel, an exception to the procedural default. Nearly three years later, on November 3, 2021, the State dismissed the charges against him.

³² *Troy Rhodes*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=6070> (last visited February 21, 2022).

David Bueso³³

David Bueso was 19 years old when he was arrested for the murder of his 22-year-old roommate. Both Mr. Bueso and the victim were Honduran immigrants living in the U.S. illegally. At trial, the State played a crime scene video depicting the victim lying partially on his mattress with his head split open and blood splattered on the walls. The state's theory was that the 5'3", 120 pound Mr. Bueso bludgeoned his 5'8", 191 pound roommate with the plastic handle of a machete found at the scene. DNA testing was performed on Mr. Bueso's clothing and shoes, the machete, and a bottle of bleach found in the apartment. No blood was found on the machete, but both men's DNA were found on the bottle of bleach. Additionally, the victim's blood was identified on the back of Mr. Bueso's pants. The jury voted 11-1 to convict Mr. Bueso of second-degree murder with a lone Black female juror voting not guilty. Mr. Bueso was sentenced to life without parole.

While the case was pending on direct review, the United State Supreme Court ruled in *Ramos* that non-unanimous jury verdicts were unconstitutional. After Mr. Bueso's conviction was overturned, the East Baton Rouge District Attorney's Office dismissed the case based on new information that indicated Mr. Bueso and the victim were the victims of a robbery and that Mr. Bueso had not come forward because he feared deportation. A grand jury declined to return an indictment against Mr. Bueso and he was deported.

Catina Curley³⁴

Catina Curley spent nearly 11 years in prison for shooting her abusive husband after an argument during which he pushed her against a wall, choked her, and threw a can of soda at her. At trial, jurors heard that Ms. Curley's husband was abusive, but Ms. Curley's attorney offered no evidence or expert testimony about Battered Women's Syndrome (BWS). Ms. Curley was convicted by a vote of 11-1. The Louisiana Supreme Court overturned her conviction based on her lawyer's failure to offer expert testimony. During the retrial before a judge, almost every witness who knew the couple testified that Ms. Curley's husband frequently abused her. The defense presented several expert witnesses who testified that

³³ *David Bueso*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=6006> (last visited February 21, 2022).

³⁴ *Catina Curley*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5520> (last visited February 21, 2022).

she had BWS and post-traumatic stress disorder and lived in fear for her life. The judge found the killing to be justified. Ms. Curley was acquitted.

Gene Bibbins³⁵

Gene Bibbins was convicted of rape by a non-unanimous jury in Baton Rouge in 1987 based solely on an eyewitness identification. He was found with a radio that had been stolen from the victim's apartment, but explained that he had found it nearby. He was identified by the victim shortly after the crime when he was brought to her house in a police car with a flashlight shining in his face. His clothing and hair did not match her description of the rapist. Despite testimony at trial that fingerprints at the scene might have been his, a separate crime lab report concluded that they could not have been. He spent almost 17 years wrongfully imprisoned before DNA testing of the rape kit showed conclusively that he was not the rapist.

Gerald Burge³⁶

Gerald Burge was convicted of murder by a non-unanimous jury in St. Tammany Parish in 1986 based on the testimony of a co-defendant, Joe Pearson, and the testimony of the victim's mother and sister, who alleged that Mr. Burge told them details of the crime that only the perpetrator could have known. Mr. Burge's co-defendant had previously confessed to committing the crime by himself and then changed his story to include Mr. Burge, for which he received a three year sentence. Mr. Burge was exonerated after the detective who completed the initial investigation admitted to keeping tapes from his interviews in the trunk of his car and not turning them over to either the prosecution or the defense. The tapes revealed that the victim's mother's initial statement contradicted her trial testimony, and other witnesses, including Mr. Pearson's girlfriend, had told investigators that Mr. Pearson had confessed to the crime. The initial investigator, who was now married to the victim's sister, also admitted to persuading the victim's sister and mother to lie on the stand. Mr. Burge was granted a new trial, and a second jury acquitted him of all charges.

³⁵ *Gene Bibbins*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3027> (last visited February 21, 2022).

³⁶ *Gerald Burge*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3071> (last visited February 21, 2022).

Douglas Dilosa³⁷

Douglas Dilosa was convicted by a non-unanimous jury in Jefferson Parish of murdering his wife in 1987 after emergency services found him bound up in his own home. His son had called 911. Claiming they found no physical or other corroborating evidence of Mr. Dilosa's story of two black male intruders in the home and determining he had motive to kill his wife, authorities charged Mr. Dilosa and eleven of the jurors at his trial voted to convict him. He was exonerated in 2003 when a supplemental police report revealed unidentified fingerprints in the home, hair that could have come from a Black person (the Dilosas are White), reports of a possible attempted break-in nearby, and a cab driver who saw two Black men driving out of the apartment complex around the time of the crime looking tense and driving slowly.

Robert Hammons³⁸

Robert Hammons was convicted by a non-unanimous jury of the 1984 armed robbery of a St. Tammany Parish pharmacy based on several eyewitness identifications by pharmacy employees. The witnesses described the perpetrator as having a short beard while Mr. Hammons had a long, bushy beard, and a print found on tape used by the robber did not match Mr. Hammons. At trial, Mr. Hammons presented twelve alibi witnesses who testified that he was at home in Alabama when the crime occurred. This included a police officer who testified that Hammons drove his tow truck to the scene of an accident at a time that would have been impossible if he was driving back from committing a robbery in Slidell, Louisiana. Nonetheless, the jury took less than two and a half hours to deliberate and returned a 10-2 verdict to convict. Mr. Hammons moved for a new trial based on evidence that another man, who looked strikingly similar to Mr. Hammons, had bragged about committing the crime. In vacating his conviction, the Louisiana Supreme Court observed that the jury's verdict against Hammons was unreliable because "the same jury also found (Hammons's) father guilty of every essential element of the crime of armed robbery, when there was absolutely no evidence presented to the jury that (his) father had anything whatsoever to do with the perpetration of the robbery . . ." Rather than seek a retrial, the State dismissed the charges, and Mr. Hammons was released after serving six years wrongfully imprisoned.

³⁷ *Douglas Dilosa*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3178> (last visited February 21, 2022).

³⁸ *Robert Hammons*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5471> (last visited February 21, 2022).

Willie Jackson³⁹

Willie Jackson was convicted in 1989 by a non-unanimous jury of attempted aggravated rape and robbery in Jefferson Parish. He was convicted—despite strong evidence that his brother may have been the perpetrator and alibi witnesses putting him at home in Mississippi at the time of the crime—based on the victim’s identification and a forensic odontologist’s conclusion that bite marks on the victim were from Mr. Jackson. In 2003, DNA testing excluded Willie Jackson and proved that his brother, by then serving a life sentence for another rape, was the actual perpetrator. Willie Jackson was released after over 18 years in prison.

Michael Shannon⁴⁰

Michael Shannon was convicted by a non-unanimous jury after spending 12 years in prison (six of which were awaiting trial). His conviction was based on eyewitness testimony alone. He was exonerated in 2017 when numerous witnesses testified that he could not have been the gunman and the rationale for his becoming a suspect (that he was related to the victim) was thoroughly undermined.

³⁹ *Willie Jackson*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3319> (last visited February 21, 2022).

⁴⁰ *Michael Shannon*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5278> (last visited February 21, 2022).

**APPENDIX III: The Races of Jurors in the Trials of Innocent People Convicted
Non-Unanimously**

Case	Races of All Voting Jurors					Races of Dissenting Jurors				
	White	Black	Asian	Hispanic	Unknown	White	Black	Asian	Hispanic	Unknown
<i>Adams</i>	2	9	1	0	0	0	0	0	0	2
<i>Bibbins</i>	7	1	0	0	4	2	0	0	0	0
<i>Bueso</i>	5	6	1	0	0	0	1	0	0	0
<i>Burge</i>	6	1	0	0	5	2	0	0	0	0
<i>Castro Santos</i>	10	2	0	0	0	1	0	0	0	0
<i>Clark</i>	4	4	1	0	3	1	0	1	0	0
<i>Curley</i>	0	1	0	0	11	0	1	0	0	0
<i>Davis</i>	9	3	0	0	0	0	2	0	0	0
<i>Delmore</i>	9	3	0	0	0	0	2	0	0	0
<i>Dilosa</i>	8	0	0	0	4	0	0	0	0	1
<i>Hammons</i>	6	3	0	0	3	0	0	0	0	2
<i>Hayes</i>	9	1	0	0	2	1	1	0	0	0
<i>Hudson</i>	5	4	0	0	3	0	0	0	0	2
<i>Jackson</i>	6	3	0	0	3	0	0	0	0	2
<i>Rhodes</i>	5	6	0	0	1	0	2	0	0	0
<i>Shannon</i>	4	7	0	0	1	0	2	0	0	0
<i>Stewart</i>	8	4	0	0	0	1	1	0	0	0
<i>Smith</i>	6	5	0	1	0	0	2	0	0	0
<i>Meyers</i>	9	3	0	0	0	0	1	0	0	0
<i>Williams</i>	7	2	0	0	3	0	1	0	0	1
Total	125	68	3	1	43	8	16	1	0	10