BRIEF

ORIGINAL

IN THE SUPREME COURT

STATE OF LOUISIANA

21 KP 1893

No. 2021-KP-01893

STATE OF LOUISIANA,

PETITIONER.

V.

REGINALD REDDICK,

RESPONDENT.

On Supervisory and/or Remedial Writ Court of Appeal, Fourth Circuit, Number(s) 2021-K-0589, Fourth Circuit Court of Appeal, No. 2021-K-0589, 25th Judicial District Court, Parish of Plaquemines, Docket No. 93-03922,

BRIEF OF LOUISIANA CENTER FOR CHILDREN'S RIGHTS AND HUMAN RIGHTS FOR KIDS AS AMICI CURIAE IN SUPPORT OF RESPONDENT.

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STATEMENT OF INTEREST OF AMICI[1]

The Louisiana Center for Children's Rights is a non-profit organization that represents over 90% of children in New Orleans who come into contact with the juvenile justice system and provides direct representation to youth facing life without parole sentences in Louisiana.

Human Rights for Kids (HRFK) is a non-profit organization dedicated to the promotion and protection of the human rights of children. We incorporate research and public education, coalition building and grassroots mobilization, as well as policy advocacy and strategic litigation, to advance critical human rights on behalf of children. A central focus of our work is advocating in state legislatures and courts for comprehensive justice reform for children consistent with the U.N. Convention on the Rights of the Child.

SUMMARY OF ARGUMENT

The impact of the unconstitutional non-unanimous jury rule has been disproportionately visited on Black children, who because of their vulnerability, are doubly impacted. Many of these children were given lengthy prison sentences for convictions that are constitutionally suspect. In addition, children in Louisiana whose parents were convicted by non-unanimous juries have also been harmed by this unconstitutional law. They grew up without their parents in their lives and have had to build relationships behind prison walls. In the interest of fairness to children who were convicted by non-unanimous juries, as well as children whose parents were incarcerated due to non-unanimous juries, the *Ramos v. Louisiana*[2] decision should be applied retroactively.

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[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici curiae or their counsel made a monetary contribution to its preparation or submission.
[2] *Ramos v. Louisiana*, 140 S.Ct. 1390 (2020).

ARGUMENT

I. BLACK CHILDREN HAVE BEEN UNFAIRLY TREATED AND DISPROPORTIONATELY HARMED BY THE NON-UNANIMOUS JURY RULE IN LOUISIANA

It has long been recognized in the law that children deserve many of the same protections in delinquency proceedings as adults in criminal court,[3] and that their child status entitles them to heightened constitutional protection.[4]

The U.S. Supreme Court has held that "failure to observe the fundamental requirements of due process has resulted in instances . . . of unfairness to individuals and inadequate or inaccurate findings of fact . . ."[5] Beginning with *Thompson v. Oklahoma*, [6] and continuing through *Miller v. Alabama*,[7] the Supreme Court has concluded that child status undermines "the penological justifications for imposing the harshest sentences on juvenile offenders." [8] These special protections have not been limited to the Eighth Amendment. In *JDB v. North Carolina*, for example, the Court considered child status when conducting a *Miranda* custody analysis under the Fifth Amendment.[9]

The Supreme Court's decisions stand for more than the proposition that "kids are different." They reflect a universal recognition that children are more vulnerable to government oppression and tyranny than adults because they lack the ability to defend themselves. In *Gault,*

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[3] *In re Gault*, 387 U.S. 1, 41 (1967).
[4] *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); and *Miller v. Alabama*, 567 U.S. 460 (2012).
[5] *Gault* at 20.
[6] *Thompson v. Oklahoma*, 487 U.S. 815, 838 (1988).
[7] 567 U.S. 460, 470-71 (2012).
[8] *Id.* at 472.
[9] *J.D.B. v. North Carolina*, 564 U.S. 261 (2011).

Justice Harlan emphasized that "among the first premises of our constitutional system is the obligation to conduct any proceeding in which an individual may be deprived of liberty or property in a fashion consistent with the 'traditions and conscience of our people.' The importance of these procedural guarantees is doubly intensified here [where children are involved]."[10] Accordingly, because children have been harmed by the violations at issue in this case, the importance of the related procedural guarantees are also *doubly intensified.*

To understand the full impact of the non-unanimous jury rule on children in Louisiana, it is important to review their treatment in the justice system over the past 40 years. Irrational policies rooted, in part by racism, spawned relaxed juvenile transfer laws beginning in the 1980s in nearly every state.[11] "These reforms lowered the minimum age for transfer, increased the number of transfer-eligible offenses, or expanded prosecutorial discretion and reduced judicial discretion in transfer decision-making."[12] As a result, over a six year period beginning in 1993, the number of children housed in adult jails more than doubled nationally.[13] By 2009, approximately 200,000 children were being tried as adults annually.[14]

This policy shift occurred alongside the emergence of the "super-predator theory"[15] that proclaimed the appearance of a new wave of children who were more violent and less remorseful than ever before.[16] Characterizing these kids as "Godless," "jobless," and "fatherless" monsters

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[10] *In re Gault*, 387 U.S. 1, 67 (J. Harlan, concurring and dissenting).
[11] *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*, Patrick Griffin, et. al, OJJDP (September 2011).
[12] *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, Richard E Redding, OJJDP, (June 2010).
[13] Statistical Briefing Book, OJJDP, (https://www.ojjdp.gov/ojstatbb/corrections/qa08700.asp)
[14] *National Prison Rape Elimination Commission Report*, pg. 155, (June 2009).
[15] *The Coming of the Super-Predators*, John DiLulio, Washington Examiner (November 27, 1995).
[16] *Id.*

with "no respect for human life,"[17] a major proponent of this now discredited theory emphasized that "the trouble will be greatest in black inner-city neighborhoods."[18] Media "depicted these 'teen killers' and 'young thugs' primarily as children of color."[19] One study found that minority youth appeared in crime news significantly more than white youth (52% versus 35%).[20]

The impact of this history is critical for understanding how the public views Black children in the criminal justice system. One study suggests that being primed "over and over through exposure to Black individuals or racially coded language could produce changes in judges' and juries' perceptions of culpability and their ensuring punitive judgements."[21] The association between "black" and criminality depicted in the study, raises concerns about "lay people's typical notions about the innocence of juveniles."[22] Another study noted that "dehumanization is a necessary precondition for culturally and/or state-sanctioned violence."[23] In this study, beginning at the age of 10, "participants began to think of black children as significantly less innocent than other children at every age group."[24] The authors rhetorically asked, "What might be the consequences of this innocence gap in criminal justice contexts, where perceiving someone as not innocent has the most severe consequences?"[25]

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[17] *Id.*
[18] *Id.*
[19] *Id.* at 583.
[20] *Id.*
[21] *Race and the Fragility of the Legal Distinction Between Juveniles and Adults*, Aneeta Rattan, et. al, PLoS One, pg. 4, May 2012, Volume 7, Issue 5.
[22] *Id.*
[23] *The Essence of Innocence: Consequences of Dehumanizing Black Children*, Phillip Goff, et. al, Journal of Personality and Social Psychology, 2014, Vol. 106, No. 4, 526 – 545, 527.
[24] *Id.* at 529.
[25] *Id.*

The legislative history of Louisiana's Constitution, as well as the social context in which it operated over the past 40 years, provides important background for the devastating impact the non-unanimous jury rule has had on Black and Brown children in particular. In Louisiana, approximately 2,277 individuals are serving adult prison sentences for offenses they were convicted of as children.[26] Eighty-three percent of them are Black![27] An in-depth analysis of this data reveals several significant findings. First, a little over 7% of the entire population was convicted prior to 1990.[28] The other 93% were convicted during the past thirty years. Approximately 341 children or 15% of the entire population were convicted between 1991 and 2000; 618 children, or 27% of the entire population, were convicted between 2001 and 2010; and 1,152 children or 50% of the entire population were convicted between 2011 and 2020.[29]

There is a noticeable increase of children convicted in adult court after 1990, coinciding with the easing of juvenile transfer laws, the advent of the super-predator theory, and the negative media portrayal of Black children.[30] These stark racial disparities are also consistent across sentencing and age ranges. Of the 387 children listed as having a life sentence, 81% are black.[31] Approximately 80% of children serving life were sentenced between 1981 and 2010.[32] Moreover,

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[26] *A Statistical Report on Children Convicted in Criminal Court in Louisiana and Oregon*, Human Rights for Kids (July 16, 2020) (https://humanrightsforkids.org/wp-content/uploads/2020/07/A-Statistical-Report-on-Children-Convicted-in-Criminal-Court-in-Louisiana-and-Oregon.pdf).
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.*

86% of 13 and 14 year-olds, 83% of 15 year-olds, 86% of 16 year-olds, and 82% of 17 year-olds who were convicted of offenses in Louisiana and are currently incarcerated, are Black.[33]

As of 2020, approximately 102 of these children were convicted by non-unanimous juries.[34] Ninety-one of them or 89 percent are black; 83 of them, or 81 percent, are serving life or de facto life sentences, meaning they may die in prison unless this Court finds that the *Ramos* decision applies retroactively in Louisiana.[35]

Louisiana has had a significant history of Constitutional and human rights violations against children in the legal system. The effective convergence of the violations identified in *Miller v. Alabama* and *Ramos v. Louisiana* has exacerbated the conviction and incarceration of Black children in the state. In 2020, this Court granted the motion filed by Brandon Boyd and remanded his case for reconsideration in light of the *Ramos* decision.[36] Mr. Boyd, who is black and was 17 years old at the time of the alleged offense, pled not guilty to second degree murder, but was subsequently convicted by a non-unanimous jury.[37] His sentence of life without parole had been affirmed the previous year.[38] In addition to the questionable grounds on which Mr. Boyd's sentence was affirmed,[39] reasonable doubt also exists as to his guilt. Because his case was still

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[33] *Id.*
[34] *See Brief of the Promise of Justice Initiative* as Amici Curiae in Support of Petitioner, *Edwards v. Vannoy*, No. 19-5897 cert. granted May 4, 2020.
[35] *Id.*
[36] *The State of Louisiana v. Brandon Boyd*, Per Curiam, No. 2019-KP-00953 (June 3, 2020).
[37] *Id.*; see also *Louisiana v. Brandon Boyd*, Louisiana First Circuit Court of Appeals, No. 2017-KA-0014R (2019).
[38] *Id.*
[39] *Brief of Juvenile Law Center, NAACP Legal Defense & Educational Fund, Inc., Lawyer's Committee for Civil Rights Under Law, and 65 Other Organizations and Individuals* as Amici Curiae in Support of Petitioner, Jones v. Mississippi, No. 18-1259, cert. granted March 9, 2020.

pending on direct appeal, he received the benefit of the *Ramos* decision. He is currently awaiting retrial.

The procedural importance of jury unanimity in safeguarding the fairness of a trial and the accuracy of a conviction dictates that all children should receive the retroactive benefit of *Ramos,* like Mr. Boyd. Recalling Justice Harlan, when children are involved, "the importance of these procedural guarantees is doubly intensified . . ."[40] Without retroactive application of this rule, the lives of innocent children, who were unfairly convicted, may be lost forever. The stories of several Black children in Louisiana who were convicted by non-unanimous juries are detailed below.

A. JEROME MORGAN[41]

Jerome Morgan is an African American who entered the foster care system when he was three years old, remaining there until he was 13. Despite growing up in a foster home, Jerome was an exceptional student, earning his way into McDonogh high school, a highly selective magnet school. In May 1993, Jerome attended a birthday party at a hotel ballroom in New Orleans. He was at the back of the room hanging out with friends when the room all-of-the-sudden lit up followed by several loud bangs. Jerome took cover until the shooting ended. The gunman immediately fled the scene and a witness to the shooting, Kevin Johnson, unsuccessfully chased him. Within minutes the police arrived and everyone at the party, including Jerome, provided them with their names and contact information.

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[40] *In re Gault*, 387 U.S. 1, 67 (J. Harlan, concurring and dissenting).

[41] The narrative of Jerome Morgan was constructed through Mr. Morgan's recollection and the available record in *State v. Morgan*, 671 So. 2d 998 (La. Ct. App. 1996).

That night 17-year old Jerome helped save the life of Rogers Mitchell, one of the gunshot victims. Instead of being hailed as a hero, he was wrongly identified as the shooter and charged with murder. At trial, the prosecution relied mainly on eye witness identifications to establish their case. The defense presented several witnesses establishing that Jerome was not the shooter, including Rogers Mitchell. After a one-day trial, a jury voted to convict Jerome of second-degree murder by a vote of 10-2. The jurors who voted to acquit were the only two black jurors on the panel. Jerome was sentenced to life in prison without the possibility of parole.

In 2001, the Innocence Project discovered a 911 call log that prosecutors failed to disclose establishing that it was impossible for Jerome to have been the shooter. The prosecution's witnesses also recanted their identification of Jerome and admitted that they were coerced by the detectives to name him as the gunman. Thankfully, Jerome's murder conviction was overturned on January 17, 2014. His case was finally dismissed by the District Attorney on May 27, 2016. Since his release, Jerome has become a dedicated family man and advocate. He helped lead the effort to pass Amendment 2 in 2018, which abolished non-unanimous jury verdicts in Louisiana.

B. COREY ROBINSON[42]

One of six children, Corey Robinson is an African American male who, prior to his incarceration, resided with his mother, stepfather and siblings. Corey's biological father was not consistently present in his childhood due to his own challenges with the criminal justice system.

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[42] The narrative was constructed through the recollection of Mr. Robinson's trial counsel, Candace Chambliss, and the appellate record, *Louisiana v. Corey Robinson,* No. 2009-KA-0922 (2010).

In August 2005, Hurricane Katrina struck New Orleans. Corey's family did not evacuate and thus experienced much of the trauma that so many residents suffered in the notorious Superdome relocation and subsequent emergency removal efforts. In the process, Corey and his siblings became separated from their mother. Sadly, her pre-existing health problems became more pronounced in the aftermath of Katrina, and she was taken to a hospital, where she passed away. Corey was reunited with his stepfather at a shelter in Texas, where he learned of his mother's death.

Corey and his two brothers returned to New Orleans to live with their aunt, who had seven children of her own. Corey's sisters and stepfather remained in Texas. Corey's aunt resided in the 9th Ward, a low-income area that suffers from over- policing and extensive drug use and trafficking.

At age 15, Corey was arrested and charged with armed robbery. The victim, who was white, made a night-time, in-person, cross-racial identification of Corey after he had been detained by police officers near the scene of the alleged crime. Within 48 hours, Corey was taken to juvenile court for a probable cause hearing where he was assigned to the public defender on duty.

Corey's case did not go to trial until March 12, 2009. Much of this time, Corey was either living with his aunt, in a group home or with a foster family as a result of juvenile charges. At trial, a 12-member non-unanimous jury found Corey guilty of armed robbery with use of a firearm. The overly suggestive identification was admitted at trial. A firearm was never recovered or presented at trial and other evidence in the defense's favor was barred.

There was one not guilty vote that came from a former attorney. Corey was thus convicted in violation of the rule announced in *Ramos*, and sentenced to 15 years in prison, despite the fact

that at least one member of the jury had reasonable doubt about his guilt. He served part of his sentence in Angola State Penitentiary, where he was reunited with his biological father. Corey is still incarcerated and maintains his innocence to this day.

C. WILLIE GIPSON[43]

In 1996 when he was 17 years old, Willie Gipson was convicted of second degree murder by a jury vote of 10-2.[44] He was sentenced to life without the possibility of parole. In February 2017, pursuant to the Supreme Court's rulings in *Miller* and *Montgomery*, Mr. Gipson received a new sentencing hearing where he received life with the possibility of parole.

The primary evidence against Mr. Gipson was that of a single eyewitness who, before identifying him from a photo array, told police "it would be kind of like hard to [identify the perpetrator]" and "maybe if I see the photos I probably could [identify the perpetrator] because I really didn't look, you know, really see him that well."[45] According to her testimony, the perpetrator "rolled up" on a bicycle as he shot the victim, but did not stop.[46] Although a bicycle was recovered by detectives at a nearby apartment complex, Mr. Gipson's fingerprints were not found on it, nor did he live at the complex.[47]

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[43] This narrative was constructed through the recollection of Mr. Gipson's lawyer, Sarah O'Brien, and the appellate record in *Louisiana v. Gipson*, Supreme Court of Louisiana, No. 2019-KH-01815, and *Louisiana v. Gipson*, Court of Appeals of Louisiana, Fourth Circuit, No. 98-KA-0177 (November 17, 1999).
[44] *Louisiana v. Gipson*, Supreme Court of Louisiana, No. 2019-KH-01815, pg. 8, C.J. Johnson, (dissenting).
[45] *Id.*
[46] *Louisiana v. Gipson*, Court of Appeals of Louisiana, Fourth Circuit, No. 98-KA-0177, pg. 2, (November 17, 1999).
[47] *Id.*

Despite the lack of any reliable evidence, a non-unanimous jury nevertheless convicted Mr. Gipson over the objections of two jurors.[48] Mr. Gipson's state habeas petition was denied in 2020 after the Ramos decision was announced, despite then Louisiana Supreme Court Chief Justice Johnson's opposition.[49] His conviction for second degree murder was subsequently vacated, however, and he pled to the lesser charge of manslaughter in exchange for a sentence of time served on April 21, 2021. Although there was little to no evidence of his guilt, Mr. Gipson was eager to move on with his life and did not want to go through another trial, which is why he took the plea deal. Since his release Mr. Gipson has established a new life for himself in Louisiana. He works a few different jobs, is about to get his CDL license, and recently started his own pressure washing company. He has always dreamed of owning his own business. Mr. Gibson is a great example of how cases involving non-unanimous jury convictions on collateral review can be resolved without being a burden on the legal system. Thanks to the resolution in his case, Mr. Gibson is now able to spend time with his mother and live out his dreams. All children convicted by non-unanimous juries in Louisiana deserve the same opportunity that Mr. Gipson has been given.

II. BLACK CHILDREN HAVE UNFAIRLY LOST THEIR PARENT'S TO INCARCERATION AS A RESULT OF THE NON-UNANIMOUS JURY RULE IN LOUISIANA

Children convicted by non-unanimous juries are not the only children in Louisiana who have been harmed by this now unconstitutional practice. Every child whose mother or father was wrongly convicted by a non-unanimous jury has also carried this burden alongside their parents.

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[48] *Id.*
[49] *Id.*

It has been particularly devastating to Black families and the Black community in Louisiana. As Former-Chief Justice Bernette Johnson observed in *State v. Gibson*:

> Approximately 32% of Louisiana's population is Black. Yet according to the Louisiana Department of Corrections, 69.9% of prisoners incarcerated for felony convictions are Black. Against this grossly disproportionate backdrop, it cannot be seriously contended that our longtime use of a law deliberately designed to enable majority-White juries to ignore the opinions and votes of Black jurors at trials of Black defendants has not affected the fundamental fairness of Louisiana's criminal legal system.[50]

The Chief Justice concluded in *Gipson* that the negative effects of the non-unanimous jury rule on the accuracy of Louisiana's convictions required retroactive application of the Supreme Court's decision in *Ramos.*[51] At stake in this case is the freedom of not just innocent men and women who were wrongly convicted, but that of their children, who now look to this Court for hope and a chance to be reunited with their parents. Children like Ri'keya Francois whose father, Rodney Glover, was arrested a month after she was born and subsequently convicted by a non-unanimous jury.[52] Ri'keya's first memory of her father was visiting him in prison as a five year old.[53] Today, she is nineteen and lives with the scars of a broken childhood. These are the scars of "abandonment," "not feeling protected or loved," and "having a hole in your soul that causes you to look for love in the wrong places."[54] They are scars that too many Black children in Louisiana bear because of an unconstitutional law. While this harm cannot be undone, this Court can make it possible for Ri'keya and other children to be reunited with their parents. The stories of several

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[50] *State v. Gipson*, No. 2019-KH-01815, at 4 (La. June 3, 2020) (C.J. Johnson dissenting in denial of certiorari).
[51] *Id.* at 5.
[52] Based on the recollection of Ms. Francois, as well as the available record in *State of Louisiana v. Rodney Glover*, NO. 2004-KA-1868, Court of Appeals of Louisiana, Fourth Circuit.
[53] *Id.*
[54] *Id.*

other Black children in Louisiana whose parents were convicted by non-unanimous juries are detailed below.

A. JUSTIN EDWARDS[55]

Justin's father is Jerome Morgan whose case was previously profiled. His mother was pregnant with him when his father was wrongly convicted by a non-unanimous jury. For much of his life, Justin was kept in the dark about his biological father's true identity. His mother was concerned about the impact it would have on him. Nevertheless, his mother took him to visit Mr. Morgan at Angola State Penitentiary when he was just 7 or 8 years old during an event called "One Day with God." Justin remembers meeting his father for the first time, although his mother maintained that Mr. Morgan was just a "friend." She was afraid that if she told him the truth he would fall victim to the streets. During that first visit, Justin remembers playing basketball with his dad and talking with him for several hours. It was a good memory.

Justin's mother desperately wanted him to feel like he had a dad who wasn't in prison, so she maintained that another man was his father. However, as Justin got older he began to question who his real father was. He only spoke to Mr. Morgan on occasion and saw him the one time while he was incarcerated. This confusion about his parentage led Justin to get into some trouble as a youth. At thirteen he was picked up twice by law enforcement for fighting and vandalism. When he was fifteen or sixteen he was hospitalized after being pistol whipped by another boy during a fight over a girl. Justin always felt that had his father been around he would have stayed out of trouble as a youth.

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[55] The narrative of Justin Edwards was constructed through Mr. Edwards' recollection.

Justin's mother finally told him the truth about Mr. Morgan being his father when he was around 19 or 20 years old. At the time the family had just learned that Mr. Morgan's innocence claim had prevailed and that he would be coming home. It was difficult for her to admit the truth to Justin because she had been trying to protect her son for so long. Justin wanted the Court to know the impact the non-unanimous jury rule had on him:

> "It messed up my whole life. I didn't have my Dad. I have no idea who I might have been had he been around. You can't take money and buy time. Its time I will never have again. For my dad to do 20 years for something he didn't do is a condemnation of the entire system. This is America. It is supposed to be the land of the free. This is something that is supposed to happen in other countries, it is not supposed to happen here."

Sadly, this injustice did happen here in Louisiana. Justin and his father are trying to make the most of their time together now. Justin is 27 years old and has two children of his own who love spending time with their grandfather. It's a blessing for Mr. Morgan and Justin in many ways, but it is also tough for them both seeing what they didn't get to have together. They were robbed of time and memories, and are left to contemplate what their relationship and their lives might have been. For his part, Justin has been able to connect with family that he never knew he had on Mr. Morgan's side. While Justin and Mr. Morgan have a strong relationship today, the life experiences and early bond they lost is but another tragic consequence of the non-unanimous jury rule and its impact on children.

B. **MIRANDA GABRIEL**[56]

Miranda Gabriel was 17 years old when her mother, Rhonda Jordan, was first arrested for a crime committed while protecting Miranda and her other children from an assault in which she

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[56] The narrative of Miranda Gabriel was constructed through the recollection of Mrs. Gabriel, as well as the available record in *State v. Jordan*, 2014 KA 1083, (La. Ct. App. Mar. 6, 2015).

was also the victim. On October 17, 2009, a homeless man by the name of Isaac Shelmire, Jr., showed up at Ms. Jordan's apartment in Baton Rouge, Louisiana.[57] Ms. Jordan would sometimes provide left over food to Mr. Shelmire so he wouldn't go hungry. On this particular occasion, Ms. Jordan suspected that he was intoxicated and she subsequently asked him to leave which is when he began to attack her in front of her children.[58] Miranda tried to get in between her mother and Mr. Shelmire so he would stop trying to hit her, but she ended up getting hit by him in the process.[59] Prior to the fight breaking out, he had begun kicking down the door of their home to the point where wood chips were flying off.[60] By this point the police had been called, but no one had arrived to protect the mother and her children from a man who began to attack them out of nowhere. Ms. Jordan, fearing for the safety and well-being of her children, confronted the man at the bottom of the steps.[61] He came down swinging at her, presumably to cause as much damage as he could and possibly kill her. To defend herself and her children, she stabbed him.[62] Again, Miranda tried to intervene to stop this deranged man from attacking her mother. He subsequently retrieved a sludge hammer from an unoccupied vehicle parked nearby and began to chase Miranda before falling to the ground.[63]

Miranda's mother was a victim of random violence, but was nevertheless convicted by a non-unanimous jury for the actions she took to defend herself and her children.[64] The dissenting

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[57] *State v. Jordan*, 2014 KA 1083, 2 (La. Ct. App. Mar. 6, 2015).
[58] *Id.*
[59] *Id.* at 3.
[60] *Id.*
[61] *Id.*
[62] *Id.*
[63] *Id.*
[64] *Id.* at 2.

jurors did not believe the state proved beyond a reasonable doubt that she was not acting in self-defense.[65] And yet, the resulting injustice of her conviction has reverberated throughout her family and community. At the time of her arrest Ms. Jordan was the sole provider for Miranda and her 4 other siblings, including an 8-year-old daughter, 11-year-old twins (son and daughter), and an 18-year-old son. They depended on their mother for everything. Unfortunately, Miranda's father was incarcerated at the time and she did not have much family she could turn to for help. As a result, their family was broken up while Ms. Jordan awaited trial. Miranda lived with her grandmother temporarily and found herself homeless. She would stay with friends whose parents were sympathetic and wanted to help. Her other siblings were sent to live with their uncles for a time. Her older brother also found himself homeless and ended up becoming system-involved himself while trying to survive. For her part, Miranda fought to get her education and was still able to graduate from high school and enroll in college as her mom awaited trial.

Miranda was 21 years old when her mom was convicted by a non-unanimous jury. With her mother gone, Miranda took legal custody of her siblings and raised them on her own. The children lived with Miranda on-and-off through the years, but her youngest sister and younger brother remained her wards until they turned eighteen. With her guidance and love as a surrogate mother, her sisters both graduated from high school and her youngest sister recently applied to attend college at their local HBCU. This did not come without its cost, however. Miranda did not get to experience life in the way that most children and young adults do. She wasn't able to date or hang out with friends. She was too busy raising children and reflecting on how her behavior influenced her younger siblings.

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[65] *Id.* at. 7.

The loss of their mother had a profound impact on all of their lives. Prior to coming to live with Miranda, her siblings experienced both physical and sexual abuse. They felt abandoned with no father or mother to look after them. The scars of the non-unanimous jury rule in Louisiana run deep, especially for innocent Black children who, without their mother's protection, are left as sheep to the wolves in a harsh and uncaring world. Abuse, homelessness, incarceration, depression, and isolation are but a few of the experiences that came to define the lives of Miranda and her siblings as they struggled to move past their mother's incarceration. Miranda wanted the court to know how the non-unanimous jury rule in Louisiana has impacted her family:

> "As children our voices were not heard and we were abandoned by the community. People were more concerned about winning cases than the livelihood of children. Where is the compassion in making sure that children are not left behind? Justice is making sure that the community is still taking care of its children regardless of the outcome in a criminal case. But my mom was the victim. She was attacked. The outcome in her case minimizes violence against Black women. It minimizes the impact that violence has on their children. No one helped my Mom. Even when the police were called it took them forever to arrive. She became an "offender" because no one helped her and she was forced to defend herself and her children."

Today, Miranda is an entrepreneur and small business owner in Louisiana. She has a great relationship with her mother, who she regularly visits and speaks with. Despite her ordeal Ms. Jordan is a hopeful, strong woman, who has come to develop an even stronger bond with her daughter. A favorable ruling in this case will give Ms. Jordan the opportunity to demonstrate her innocence under the constitutional framework the founders envisioned. Most importantly, it will give her and her children the chance to be reunited and to experience life events together. Ms. Jordan missed Miranda's wedding and the birth of her grandchildren. Miranda hopes her mom will be able to be there for other important life events. It is not just innocent defendants who have

suffered injustice because of the non-unanimous jury rule. Miranda and her siblings have also borne the burden. They bear it still.

C. R.G.K[66]

R.G.K. was just 17 days old when his father, Rayshaud Green, was arrested for a crime he didn't commit. On October 19, 2008, Johan Nahun Agurcia, was robbed at gun point and had his vehicle stolen after a night out on Bourbon Street.[67] Approximately 10 hours after the incident, police notified Mr. Agurcia that they had found his car.[68] At the scene he was asked to identify three suspects who police had detained, Mr. Green being one of them.[69] At trial, Mr. Agurcia admitted that he saw "only the hair and the shirt" of the robber in the white shirt and did not actually see his face.[70] Despite the highly suggestive nature of the police lineup (the victim was asked to identify three suspects, one of which was in the back of a police car, across the street from where his car was located) and the fact that the victim did not see Mr. Green's face,[71] he was nevertheless convicted by a 10 – 2 jury on August 24, 2009 and sentenced to 50 years in prison.[72] Although he is innocent, Mr. Green accepted a plea to carjacking in exchange for a sentence of time served on March 31, 2020, so that he could come home to be with his son and help take care of his grandmother.

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[66] The initials R.G.K., who is still a minor, are used to protect his identity. The narrative of R.G.K. was constructed through the recollection of R.G.K. and his father, Mr. Green, as well as the available record in *State v. Green*, 84 So. 3d 573 (La. Ct. App. 2011).
[67] *State v. Green*, 84 So. 3d 573, 576 (La. Ct. App. 2011).
[68] *Id.* at 577.
[69] *Id.*
[70] *Id.* at 578.
[71] *Id.* at 581-82.
[72] *Id.* at 576.

For R.G.K., a now thirteen-year-old teenager, the impact of his father's wrongful conviction and incarceration has been devastating. His mother did not have a lot of support after his father was incarcerated so they moved around a lot which made it even harder for him to have consistent communication with his father. Because his other brothers were able to go and visit their father during the summer, R.G.K. often felt alone and isolated. He stayed in his room all the time. Making matters worse, kids at school would tease him about his father being in prison. This led R.G.K. to get into fights with kids who picked on him. He also had other behavioral issues in school that came up because he "blamed himself for his father being incarcerated." Why? "Because his father was sent to prison after he was born." He thought his birth was the cause of his father's situation. While R.G.K. now knows that it wasn't his fault and that his father was the victim of an unconstitutional law rooted in racial animus, it doesn't change the fact that for most of his young life he never got to see his father's face or experience the warm hug that only a father can give.

When he first heard that his Dad was coming home, R.G.K. was "nervous and very happy." He was nervous because he had never met his father in person. The very first thing Mr. Green did upon his release was to drive to Baton Rouge to visit his son. Like every loving father, Mr. Green couldn't hug his son enough when they were reunited. It was something he had been looking forward to since he was first incarcerated in 2008. He took and taught parenting classes in prison to prepare himself to be a great father once he returned home. Today, R.G.K. and his Dad talk and visit frequently. Over the past year his grades and behavior in school have also improved. His favorite memory since his Dad has been home was going to the Crawfish Festival Fair in New Orleans where he got to spend the entire day "playing games and eating nachos" with his father. Mr. Green is grateful for the time he's been given with his son. He wanted the Court to know: "I

love my son. We have lives too. Since I've been home I've been able to love my son and experience his love. Whose right is it to take that away from an innocent man?" For his part, R.G.K. wanted the Court to know that other "kids need their dad because they need to experience love."

The injustice of non-unanimous jury convictions goes beyond silencing the voices of Black jurors and convicting innocent Black men and women. The law has also done irreparable harm to the innocent Black children whose parents were wrongfully convicted. These children were robbed of their childhood and deprived of a life that could have been. Taking a parent's love away from an innocent child is perhaps the greatest sin of all of the non-unanimous jury rule in Louisiana.

CONCLUSION

For the foregoing reasons the Court should rule in favor of Mr. Reddick and apply the prohibition against non-unanimous jury convictions in *Ramos v. Louisiana* retroactively.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing brief has been served on counsel of record listed below by electronic mail or United States mail this 2nd day of May, 2022.

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