SUPREME COURT OF LOUISIANA

DOCKET NO 2021-KP-01893

STATE OF LOUISIANA

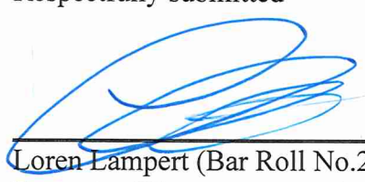
VERSUS

REGINALD REDDICK

ON GRANT OF APPLICATION FOR WRIT OF CERTIORARI FROM
THE COURT OF APPEAL, FOURTH CIRCUIT
DOCKET NO. 2021-K-0589
PARISH OF PLAQUEMINES, STATE OF LOUISIANA
TWENTY-FIFTH JUDICIAL DISTRICT COURT
HONORABLE MICHAEL CLEMENT, JUDGE PRESIDING
DOCKET NO. 93-3922-B

BRIEF OF AMICUS CURIAE ON BEHALF OF THE LOUISIANA DISTRICT ATTORNEYS ASSOCIATION IN SUPPORT OF THE APPELLANT, STATE OF LOUISIANA, ON GRANT OF APPLICATION FOR WRIT OF CERTIORARI

Respectfully submitted



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STATEMENT OF IDENTITY AND INTEREST OF AMICUS CURIAE

The Louisiana District Attorneys Association ("LDAA") is a Louisiana non-profit corporation which includes as members all of the district attorneys and assistant district attorneys in the State of Louisiana. One such member, the District Attorney of the Twenty-Fifth Judicial District, Parish of Plaquemines, is implicated as the original prosecuting attorney this cause on behalf of the State of Louisiana (although the State in this instant case is being represented by the Office of the Attorney General in and for the State of Louisiana).

The LDAA focuses on all aspects of law pertaining to Louisiana's criminal justice system as a whole, including but not limited to the Office of the District Attorney.[1] In this particular case, this Honorable Court's examination of whether *Ramos v. Louisiana*, 140 S.Ct. 1390, 206 L.Ed.2d 583 (2020) should be accorded retroactive effect, particularly in the context of the larger issue of whether this Court should maintain its adoption of the United States Supreme Court's non-retroactivity principle in *Teague v. Lane*, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989) as clarified by subsequent United States Supreme Court jurisprudence, has far reaching implications across the State.

STATEMENT OF THE CASE

Amicus Curiae respectfully adopts the statement of the case as set forth in the brief of the State of Louisiana.

ISSUES PRESENTED FOR REVIEW

1. Whether this Court should accord *Ramos* retroactive effect.
2. Whether this Court should maintain its adoption of the United States Supreme Court's non-retroactivity principle in *Teague* as clarified by subsequent United States Supreme Court jurisprudence.

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[1] The mission of the LDAA is to improve Louisiana's justice system and the Office of District Attorney by enhancing the effectiveness and professionalism of Louisiana's district attorneys and their staffs through education, legislative involvement, liaison, and information sharing.

ARGUMENT

Amicus submits that the only way to accord *Ramos* retroactive effect would be for this Court to take the extraordinary step of rescinding its adoption of the United States Supreme Court's non-retroactivity principle in *Teague v. Lane*, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989) as clarified by subsequent United States Supreme Court jurisprudence. This Court should decline to do so and should maintain its adoption of *Teague* and its progeny for reasons that follow.[2]

a. *Teague* as developed by the United States Supreme Court

The United States Supreme Court's non-retroactivity rule in *Teague* and its progeny, adopted by this Court in *State ex rel. Taylor v. Whitley,* 606 So.2d 1292 (La. 1992), essentially provided (until recently clarified by the United States Supreme Court, discussed infra) that a "new rule"[3] of constitutional criminal procedure is generally not retroactive to cases on collateral review unless the new rule falls into one of two exceptions. The United States Supreme Court in *Montgomery v Louisiana,* 136 S.Ct. 718, 193 L.Ed.2d 599 (2016) provided a distillation of this facet of the *Teague* rule:

> Justice O'Connor's plurality opinion in *Teague v. Lane*, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989), set forth a framework for retroactivity in cases on federal collateral review. Under *Teague*, a new constitutional rule of criminal procedure does not apply, as a general matter, to convictions that were final when the new rule was announced. *Teague* recognized, however, two categories of rules that are not subject to its general retroactivity bar. First, courts must give retroactive effect to new substantive rules of constitutional law. Substantive rules include "rules forbidding criminal punishment of certain primary conduct," as well as "rules prohibiting a certain category of punishment for a class of defendants because of their status or offense." *Penry v. Lynaugh*, 492 U.S. 302, 330, 109 S.Ct. 2934, 106 L.Ed.2d 256 (1989); see also *Teague*, *supra*, at 307, 109 S.Ct. 1060. Although *Teague* describes new substantive rules as an exception to the bar on retroactive application of procedural rules, this Court has recognized that substantive rules "are more accurately characterized as ... not subject to the bar." *Schriro v. Summerlin*, 542 U.S. 348, 352, n. 4, 124 S.Ct. 2519, 159 L.Ed.2d 442 (2004). Second, courts must give retroactive effect to new " ' "watershed rules of criminal procedure" implicating the fundamental fairness and accuracy

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[2] Amicus notes out of an abundance of caution that La. C.Cr.P. art. 930.3(1) provides in pertinent part that "[i]f the petitioner is in custody after sentence for conviction for an offense, relief shall be granted only on the following grounds...[t]he conviction was obtained in violation of the constitution of the United States or the state of Louisiana." There is clearly no violation of the Louisiana Constitution here given that the Louisiana Constitution at the time authorized non-unanimous verdicts and still facially authorizes non-unanimous verdicts for crimes committed before January 1, 2019. See La. Const. art. I § 17.

[3] Insofar as what constitutes a "new rule," the United States Supreme Court has discussed a "new rule" in terms of a rule that "breaks new ground," "imposes a new obligation on the States or the Federal Government," or was not "dictated by precedent existing at the time the defendant's conviction became final." *Saffle v. Parks*, 494 U.S. 484, 488. 110 S.Ct. 1257, 1260, 108 L.Ed.2d 415 (1990) (Quoting *Teague*, 489 U.S. at 301). *Ramos* most assuredly set forth a "new rule."

of the criminal proceeding.' " *Id.*, at 352, 124 S.Ct. 2519; see also *Teague*, 489 U.S., at 312–313, 109 S.Ct. 1060.
Montgomery, 136 S.Ct at 728.

Relative to the second "watershed" purported exception in *Teague,* even in *Teague* itself the United States Supreme Court suggested it unlikely that new "watershed" rules would emerge. *Teague,* 489 U.S. at 313. The United States Supreme Court subsequently and repeatedly reiterated it to be unlikely that our jurisprudence would see any actual new "watershed" rules emerge. See for example *Whorton v. Bockting*, 549 U.S. 406, 418, 127 S.Ct. 1173, 1182, 167 L.Ed.2d 1 (2007) (observing that this exception is "extremely narrow," that it is "unlikely that any such rules have yet to emerge," and that in the years since *Teague* the Court has rejected every claim that a new rule satisfied the requirements for watershed status). In Justice Kavanaugh's concurrence in *Ramos,* Justice Kavanaugh noted that "in 'the years since *Teague*, we have rejected every claim that a new rule satisfied the requirements for watershed status,'" and catalogued an extensive list of times that the United States Supreme Court has declined to accord a new rule "watershed" status. *Ramos,* 140 S.Ct. at 1419-1420, Kavanaugh, J., concurring.

In *Edwards v. Vannoy,* 141 S.Ct. 1547, 209 L.Ed.2d 651 (2021), the United States Supreme Court referenced *Teague's* suggestion that it was "'unlikely' that such watershed 'components of basic due process have yet to emerge,'" reiterated that "in the 32 years since *Teague*...the Court has never found that any new procedural rule actually satisfies that purported exception," observed that "[i]n practice, the exception has been theoretical, not real," catalogued the significant historical landmark cases of constitutional criminal procedure that nevertheless did not warrant "watershed" status, questioned the existence of the "watershed" exception in light of such significant historical landmark cases not qualifying, and ultimately declared that:

> Continuing to articulate a theoretical exception that never actually applies in practice offers false hope to defendants, distorts the law, misleads judges, and wastes the resources of defense counsel, prosecutors, and courts. Moreover, no one can reasonably rely on an exception that is non-existent in practice, so no reliance interests can be affected by forthrightly acknowledging reality. It is time—probably long past time—to make explicit what has become increasingly apparent to bench and bar over the last 32 years: New procedural rules do not apply retroactively on federal collateral review. The watershed exception is moribund. It must "be regarded as retaining no vitality." *Herrera v. Wyoming*, 587 U. S. ——, ——, 139 S.Ct. 1686, 1697, 203 L.Ed.2d 846 (2019) (internal quotation marks omitted).
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> ...

> As noted above, no stare decisis values would be served by continuing to indulge the fiction that Teague's purported watershed exception endures. No one can reasonably rely on a supposed exception that has never operated in practice. And perpetuating what has become an illusory exception misleads litigants and judges, and needlessly expends the scarce resources of defense counsel, prosecutors, and courts. At this point, given that landmark cases like *Mapp*, *Miranda*, *Duncan*, *Batson*, *Crawford*, and now *Ramos* have not applied retroactively, we are simply acknowledging reality and stating the obvious: The purported watershed exception retains no vitality.
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> *Edwards v. Vannoy*, 141 S.Ct. 1547, 209 L.Ed.2d 651 (2021).

Based upon its abandoning the theoretical "watershed" exception, the United States Supreme Court in *Edwards* then distilled the correct *Teague* rule as:

> To summarize the Court's retroactivity principles: New substantive rules alter "the range of conduct or the class of persons that the law punishes." *Summerlin*, 542 U.S. at 353, 124 S.Ct. 2519. Those new substantive rules apply to cases pending in trial courts and on direct review, and they also apply retroactively on federal collateral review. New procedural rules alter "only the manner of determining the defendant's culpability." *Ibid.* (emphasis deleted). Those new procedural rules apply to cases pending in trial courts and on direct review. But new procedural rules do not apply retroactively on federal collateral review.
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> *Edwards,* 141 S.Ct. at 1562.

b. This Court in *Taylor* adopted *Teague* to govern Louisiana state post-conviction proceedings and should continue to maintain *Teague* as the governing standard

Accordingly, this case implicates far more than the issue of whether *Ramos* should be accorded retroactive effect. The larger, global issue is whether this Court should maintain its holding in *Taylor* adopting *Teague*, as clarified by subsequent jurisprudence from the United States Supreme Court, as governing Louisiana state post-conviction proceedings. For reasons that follow, this Court should maintain *Teague* and its progeny as the governing standard.

In *Taylor,* this Court chronicled the evolution of the United States Supreme Court's jurisprudence relative to the *Teague* non-retroactivity rule. This Court discussed the prior test enunciated in *Linkletter v. Walker,* 381 U.S. 618, 85 S.Ct. 1731, 14 L.Ed.2d 601 (1965)[4] and how the fact that the *Linkletter* test "led to confusion, and was criticized as creating 'incompatible rules and inconsistent principles'" led to

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[4] The *Linkletter* test as explained by this Court in *Taylor* set forth a three-pronged analysis to determine retroactivity: (a) the purpose to be served by the new standards, (b) the extent of reliance by law enforcement authorities on the old standards, and (c) the effect on the administration of justice of a retroactive application of the new standards.

Justice Harlan[5] suggesting a new test, which took into account Justice Harlan's belief in the importance of finality and which dictated that new rules would be applied on direct review but would not apply retroactively on collateral review, save for the exceptions for substantive new rules and for theoretical "watershed" procedural new rules (now recognized as defunct by the United States Supreme Court in *Edwards*). *Taylor,* 606 So.2d at 1293-1295. In *Teague,* the United States Supreme Court formally adopted Justice Harlan's proposed rule, which became the now ubiquitous *Teague* non-retroactivity rule. *Taylor,* 606 So.2d at 1294-1295. In *Taylor,* this Court formally adopted *Teague* as the standard to govern in Louisiana state post-conviction proceedings.

The State submits that this Court's adoption of *Teague* in *Taylor* was well-reasoned and should be maintained. In electing to adopt *Teague,* this Court in *Taylor* bemoaned the confusion and inconsistencies that occurred under the unclear *Linkletter* test and echoed Justice Harlan's cautionary note on the importance of finality:

> A rule of law that fails to take account of these finality interests would do more than subvert the criminal process itself. It would also seriously distort the very limited resources society has allocated to the criminal process. While men languish in jail, not uncommonly for over a year, awaiting a first trial on their guilt or innocence, it is not easy to justify expending substantial quantities of the time and energies of judges, prosecutors, and defense lawyers litigating the validity under present law of criminal convictions that were perfectly free from error when made final. This drain on society's resources is compounded by the fact that issuance of the habeas writ compels a State that wishes to continue enforcing its laws against the successful petitioner to relitigate facts buried in the remote past through presentation of witnesses whose memories of the relevant events often have dimmed. This very act of trying stale facts may well, ironically, produce a second trial no more reliable as a matter of getting at the truth than the first.
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> *Taylor,* 606 So.2d at 1297 (Citing *Mackey*, 401 U.S. at 691, 91 S.Ct. at 1179 (separate opinion of Harlan, J.) (citations omitted).

These concerns about the confusion and inconsistencies under the *Linkletter* test and the importance of finality in the criminal justice system echo what the United States Supreme Court observed in *Teague* itself. The United States Supreme Court in *Teague* first bemoaned that the *Linkletter* test "has not led to consistent results" and in particular has "also led to unfortunate disparity in the treatment of similarly situated defendants on collateral review," and that dissatisfaction with *Linkletter* led Justice Harlan to propose what would become the *Teague* non-retroactivity rule. *Teague,* 489 U.S. at 303-305. The United States Supreme Court then considered the purpose of federal collateral review (i.e., that federal

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[5] See *Mackey v. United States*, 401 U.S. 667, 91 S.Ct. 1160, 28 L.Ed.2d 404 (1970) (separate opinion of Harlan, J.)

collateral review is not a substitute for direct review and must take into account the importance of finality in the criminal justice system and that, as Justice Harlan noted, it is sounder on federal collateral review to apply the law prevailing at the time a conviction became final given that one of the purposes of federal collateral review is to serve as an incentive for trial and appellate courts to conduct their proceedings in accordance with then-established constitutional standards (which of necessity does not require retroactivity). *Teague,* 489 U.S. at 305-306. With this framework in mind, the United States Supreme Court, in adopting Justice Harlan's view and christening it the *Teague* non-retroactivity rule, cautioned that retroactive application of new rules on collateral review "seriously undermines the principle of finality which is essential to the operation of our criminal justice system," that the costs imposed upon the states by retroactivity on collateral review generally far outweigh any benefits of such retroactivity given that states are forced to marshal resources to retry long since final cases whose trials and appeals were conducted under then-established constitutional standards, and that state courts cannot "anticipate" United States Supreme Court decisions in advance and thus cannot "preemptively" comply with rules that do not yet exist. *Teague,* 489 U.S. at 310.

Indeed, even before *Teague*, the United States Supreme Court had remarked about the substantial costs of retroactivity on collateral review. In his concurrence in *Solem v. Stumes,* 465 U.S. 638, 104 S.Ct. 1338, 79 L.Ed.2d 579 (1984), Justice Powell, in noting that he previously urged the adoption of Justice Harlan's view which would only five years later become the *Teague* non-retroactivity rule, posited that Justice Harlan's view "follows directly from a proper conception of the scope of the writ of habeas corpus, as contrasted to direct review," which Justice Powell suggested to be to ensure that trial and appellate courts conduct proceedings in conformity with then-established constitutional standards, and further posited that the costs of retroactivity on collateral review, which include "the burden on judicial and prosecutorial resources entailed in retrial" and "the miscarriage of justice that occurs when a guilty offender is set free only because effective retrial is impossible years after the offense," generally far outweigh the benefits of such retroactivity. *Solem,* 465 U.S. at 653-654, Powell, J., concurring. More broadly, while in *Danforth v. Minnesota,* 552 U.S. 264, 128 S.Ct. 1029, 169 L.Ed.2d 859 (2008) the United States Supreme Court held that a state is not "limited" by *Teague* but rather may choose a "broader"

retroactivity rule for new rules of federal constitutional criminal procedure,[6] Chief Justice Roberts dissented, joined by Justice Kennedy, positing that states were not free to choose a "broader" retroactivity rule for new rules of federal constitutional criminal procedure. This dissent is obviously just that: a dissent. However, Chief Justice Roberts nevertheless fleshes out compelling reasons for why even though a state court is "permitted" by the United States Supreme Court to diverge from *Teague* in this regard, a state court should decline to do so. Chief Justice Roberts tellingly explained that the reasons for the *Teague* non-retroactivity rule go far beyond mere concerns of federalism or comity or the limited purposes of federal habeas corpus review and are thus instructive for state collateral review as well:

> Moreover, the reasons the *Teague* Court provided for adopting Justice Harlan's view apply to state as well as federal collateral review. The majority is quite right that *Teague* invoked the interest in comity between the state and federal sovereigns. *Id.*, at 308, 109 S.Ct. 1060. But contrary to the impression conveyed by the majority, there was more to *Teague* than that. *Teague* also relied on the interest in finality: "Application of constitutional rules not in existence at the time a conviction became final seriously undermines the principle of finality which is essential to the operation of our criminal justice system. Without finality, the criminal law is deprived of much of its deterrent effect." *Id.*, at 309, 109 S.Ct. 1060. [...]
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> *Teague* was also based on the inequity of the *Linkletter* approach to retroactivity. After noting that the disparate treatment of similarly situated defendants led us in *Griffith* to adopt Justice Harlan's view for cases on direct appeal, the Court then explained that the "*Linkletter* standard also led to unfortunate disparity in the treatment of similarly situated defendants on collateral review." 489 U.S., at 305, 109 S.Ct. 1060 (plurality opinion). See also *id.*, at 316, 109 S.Ct. 1060 (the Court's new approach to retroactivity "avoids the inequity resulting from the uneven application of new rules to similarly situated defendants").
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> *Danforth,* 552 U.S. at 300-301, Roberts, C.J., dissenting.

As such, the reasons for the importance of the *Teague* non-retroactivity rule resonate far beyond interests of federalism and comity or the limited purposes of federal habeas corpus review; such reasons go squarely to the importance of finality in the criminal justice system.[7] Further as to this point, in *Edwards*, the most recent ruling from the United States Supreme Court on *Teague,* the United States

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[6] In *Danforth,* the United States Supreme Court noted that state courts already assumed this to be true, observing that "for many years following *Teague*, state courts almost universally understood the Teague rule as binding only federal habeas courts, not state courts." *Danforth,* 552 U.S. at 281. Indeed, in *Taylor,* sixteen years before *Danforth,* this Court in adopting *Teague* observed that "[i]n doing so, we recognize that we are not bound to adopt the *Teague* standards." *Taylor,* 606 So.2d at 1296-1297.

[7] See also *Barajas v. United States,* 877 F.3d 378, 382 (8th Cir. 2017) (observing that while *Teague* was partially rooted in federalism and comity, *Teague* was also independently rooted in "the importance of finality more generally" and that "[t]hese finality concerns are conceptually distinct from concerns about federalism and comity.").

Supreme Court again reiterated the reasons for the necessity of the *Teague* non-retroactivity rule, observing once again how the costs of retroactivity on collateral review far outweigh the benefits given the importance of finality:

> As the Court has explained, applying "constitutional rules not in existence at the time a conviction became final seriously undermines the principle of finality which is essential to the operation of our criminal justice system." *Id.*, at 309, 109 S.Ct. 1060. Here, for example, applying *Ramos* retroactively would potentially overturn decades of convictions obtained in reliance on *Apodaca*. Moreover, conducting scores of retrials years after the crimes occurred would require significant state resources. See *Teague*, 489 U.S. at 310, 109 S.Ct. 1060 (plurality opinion). And a State may not be able to retry some defendants at all because of "lost evidence, faulty memory, and missing witnesses." *Allen v. Hardy*, 478 U.S. 255, 260, 106 S.Ct. 2878, 92 L.Ed.2d 199 (1986) (per curiam) (internal quotation marks omitted). When previously convicted perpetrators of violent crimes go free merely because the evidence needed to conduct a retrial has become stale or is no longer available, the public suffers, as do the victims. See *United States v. Mechanik*, 475 U.S. 66, 72, 106 S.Ct. 938, 89 L.Ed.2d 50 (1986). Even when the evidence can be reassembled, conducting retrials years later inflicts substantial pain on crime victims who must testify again and endure new trials. In this case, the victims of the robberies, kidnappings, and rapes would have to relive their trauma and testify again, 15 years after the crimes occurred.
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> *Edwards,* 141 S.Ct. at 1554-1555.[8]

As such, the *Teague* non-retroactivity rule ensures a consistent, predicable, and eminently workable standard, unlike the now-defunct standard in *Linkletter* that proved itself to be confusing and prone to inconsistencies.[9] Moreover, the *Teague* non-retroactivity rule fully respects the important need for finality, given the significant drain that would be imposed upon State resources if retroactivity were

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[8] In his concurrence in *Edwards*, Justice Thomas also reiterated that the rule in *Linkletter* taking into account "the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation" did not lend itself to consistency, necessitating the replacement of *Linkletter* with the *Teague* non-retroactivity rule. *Edwards,* 141 S.Ct. at 1564, Thomas, J., concurring.

[9] See for example *Thiersaint v. Commissioner*, 111 A.3d 829, 843 (Conn. 2015) (observing in maintaining reliance on *Teague* that "*Teague* provides a framework that is relatively easy for courts to apply and achieve consistent results."); *Kersey v. Hatch,* 237 P.3d 683, 691 (N.M. 2010) (observing in following *Teague* that "[w]e agree with the United States Supreme Court that the *Linkletter* standard fails to yield consistent results, and that the *Teague* standard, which focuses on the function and purpose of the writ of habeas corpus, is the proper standard by which to determine whether new rules should apply retroactively to habeas corpus proceedings."); *Siers v. Weber,* 851 N.W.2d 731, 741-742 (S.D. 2014) (observing in adopting *Teague* that "[t]he *Teague* rule is also 'grounded in concerns over uniformity and the inequity inherent in the *Linkletter* approach,'" that "[t]his Court has an interest in consistent results and avoiding 'disparate treatment of similarly situated defendants,'" that "[a]pplication of the *Linkletter* factors requires some subjective weighing because there is no clear standard as to what weight should be given to each factor," that "[t]he *Teague* rule removes these subjective and speculative elements from our retroactivity review," that "this Court has an interest in uniformity with the federal standard that is not being properly addressed under our current application of the *Linkletter* test," and that "[b]y applying the *Teague* test for retroactivity, this Court can better address concerns for finality, consistency, and uniformity—all by way of a simpler, more straightforward test.").

the rule, given the significant societal costs of violent criminals such as rapists and murderers going free if the State is unable to retry cases after an extended lapse in time despite the State having tried those cases in conformity with then-existing constitutional standards, and most importantly given the trauma it would inflict upon innocent victims of violent crime and their families to have to relive their trauma decades later despite again the State having tried those cases in conformity with then-existing constitutional standards (or even worse being re-victimized should a violent criminal who victimized them or their loved ones go free because the State is now unable to retry the case). Indeed, the finality interests echoed in *Edwards* ring true not just for the new rule enunciated in *Ramos,* but for every new rule of constitutional criminal procedure. As such, the finality interests echoed in *Edwards* relate more to the purpose behind the *Teague* non-retroactivity rule itself than they relate to just *Ramos*, and the importance of maintaining *Teague* and its progeny resonates far beyond *Ramos* itself.

c. This Court should, going forward, use the *Teague* rule as clarified in *Edwards*

While defendants may argue that this Court should continue using the "old" version of *Teague* which included the theoretical "watershed" exception, Amicus would submit that, going forward, this Court should instead use the *Teague* non-retroactivity rule as clarified by *Edwards* such that this theoretical "watershed" exception is moribund and should be rejected as a mere conjecture that does not exist in actuality, thus clarifying that the *Teague* non-retroactivity rule dictates quite simply that substantive new rules apply retroactively on collateral review and procedural new rules do not.[10] In *Taylor,* this Court noted that the United States Supreme Court even up to that point had "concentrated on applying and refining the *Teague* analysis" and that in adopting the *Teague* non-retroactivity rule, this Court "adopt[s] Justice Harlan's views on retroactivity, as modified by *Teague* and subsequent decisions, for all cases on collateral review in our state courts." *Taylor,* 606 So.2d at 1295-1296. This clearly evidences this Court's well-reasoned acknowledgment that the United States Supreme Court would continue to clarify *Teague* and thus lend further clarity to this Court's adoption of *Teague.*[11] As such, this

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[10] Amicus notes that *Ramos* is obviously not a "substantive" rule. Amicus further notes that given the very nature of new "substantive" rules, finality is not nearly as much of a concern as it is with new "procedural" rules.

[11] This is further evidenced by jurisprudence from this Court, in *Teague* analyses, citing to post-*Taylor* jurisprudence from the United States Supreme Court which further explained and clarified the standards of *Teague*. See for example *State v. Tate,* 12-2763 (La. 11/5/13), 130 So.3d 829.

Court's adoption of *Teague* in *Taylor* implies the adoption of *Teague* as it will be further developed, explained, and clarified by the United States Supreme Court, including the United States Supreme Court's acknowledgment in *Edwards* relative to the theoretical "watershed" exception being in fact non-existent.[12]

Regardless of whether *Taylor* already compels that *Teague* as clarified by *Edwards* governs in Louisiana, this Court should nevertheless, in maintaining its adoption of *Teague* for the purposes of Louisiana state post-conviction proceedings, explicitly hold that it adopts *Teague* as clarified by subsequent rulings from the United States Supreme Court, including *Edwards.* The same purposes that led the United States Supreme Court (and this Court) to reject the *Linkletter* standard in favor of *Teague* counsel why to reject as unworkable and non-existent the theoretical "watershed" exception. *Linkletter*, as discussed above, led to confusion and inconsistencies, largely because its parameters were so vague. *Teague* lends itself to clarity and consistency, largely because its parameters are easy to understand and apply: new rules are not retroactive on collateral review save for substantive rules (a class comparatively easy to identify and define). To the extent that the United States Supreme Court suggested that "watershed" rules might exist prior to *Edwards*, that stood as the last remaining vestige of uncertainty and vagueness in *Teague,* a vestige rightly purged in *Edwards* which this Court should also now purge (although Amicus again submits that this Court has already done so tacitly in *Taylor* and that this Court should acknowledge as much). The terms used by the United States Supreme Court between *Teague* and *Edwards* in describing this theoretical "watershed" exception counsel just how much uncertainty such a theoretical exception would countenance. The jurisprudence has described this theoretical "watershed" exception such that "whatever the precise scope of this exception, it is clearly meant to apply only to a small core of rules requiring observance of those procedures that ... are implicit in the concept of ordered liberty." *Graham v. Collins*, 506 U.S. 461, 477-478, 113 S. Ct. 892, 122 L.Ed.2d 260 (1993). See also

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[12] The State notes the Third Circuit's ruling in *State v. Nelson,* 21-461 (La. App. 3 Cir. 11/10/21), 330 So.3d 336, in which the Third Circuit noted that "[w]e cannot be so bold as to extent *Taylor* beyond the narrower interpretation" and thus assuming that the "watershed" exception retained vitality in Louisiana (and ultimately concluding though that *Ramos* did not satisfy watershed status). While Amicus submits that the Third Circuit was incorrect in this regard, it is clear that the Third Circuit was understandably deferring judgment on this question to this Court, which handed down *Taylor*. Amicus also submits that even if the "watershed" exception were to retain vitality in Louisiana (which it clearly does not and should not), the Third Circuit correctly determined in its well-reasoned opinion that *Ramos* would not be able to satisfy "watershed" status.

Saffle v. Parks, 494 U.S. 484, 495, 110 S.Ct. 1257, 108 L.Ed.2d 415 (1990) (observing as to the "watershed" exception that "...the precise contours of this exception may be difficult to discern..."). This candid acknowledgement of uncertainty does not lend itself to clear and consistent interpretation; rather, the theoretical "watershed" exception itself echoes back to the failed experiment that was the *Linkletter* standard. Indeed, in his concurrence in *Edwards,* Justice Gorsuch observed that in recognizing that the theoretical "watershed" exception is "no exception at all," the Court made "express what has long been barely implicit" and the Court eliminated a theoretical exception "whose contours remain unknowable decades later." *Edwards,* 141 S.Ct. at 1573, Gorsuch, J., concurring. Learned judges of good faith could and did disagree about whether a new rule qualified for the theoretical "watershed" exception with no discernable guidance (nor with the realistic possibility of any discernable guidance). And with this lack of clarity came a potential infringement on the important interest in finality, a potential infringement neutralized by the United States Supreme Court in *Edwards*.

Moreover, in his dissent in *Taylor,* Justice Dennis cautioned that terms such as "bedrock procedural elements" and "watershed rules" would not impart "'finality' through 'clarity.'" *Taylor,* 606 So.2d at 1304, Dennis, J., dissenting. While Amicus respectfully disagrees with other concerns raised by Justice Dennis (including his concern that a determination of whether a rule is new would also lend itself to undue confusion), Justice Dennis's dissent does inform that for a legal test that prides itself on clarity and ease of use, *Teague's* theoretical "watershed" exception perhaps had more in common with *Linkletter* that with the rest of *Teague* itself. In *Teague,* the United States Supreme Court rejected the *Linkletter* test as too unclear and prone to inconsistencies. In *Edwards*, the United States Supreme Court purged what might be considered the last gasp of the subjectivity, uncertainty, and inconsistencies of *Linkletter* when it abrogated the theoretical "watershed" exception. So too should this Court.

CONCLUSION

For the foregoing reasons, Amicus submits that this Honorable Court should rule in favor of the State of Louisiana, maintain this Court's adoption of *Teague* as clarified by *Edwards*, and hold that *Ramos* is not retroactive on Louisiana state post-conviction relief.

CERTIFICATE

I hereby certify that a copy of the above and foregoing Amicus Curiae Brief has been served on all counsel of record by electronic mail and/or by U.S. Mail on this 8th day of April, 2022.

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