No. 21-_____

In The

Supreme Court of the United States

NELSON DANIEL CENTENO,

Petitioner,

v.

PEOPLE OF PUERTO RICO,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Puerto Rico

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does this Court's decision in *Ramos v. Louisiana*, 590 U.S. ___, 140 S.Ct. 1390 (2020) bar Puerto Rico from continuing to authorize non-unanimous acquittals?

PARTIES TO THE PROCEEDING

Nelson Daniel Centeno, petitioner on review, was the respondent-appellee below.

The People of Puerto Rico, respondent on review, was the petitioner-appellant below.

RELATED PROCEEDINGS

The following proceedings are directly related to this case:

The People of Puerto Rico v. Nelson Daniel Centeno, 2021 PRSC 133 (2021), 108 PR Offic. Trans. ___ (2021), September 9, 2021, Reconsideration denied, November 2, 2021; Second Reconsideration denied, December 13, 2021.

The People of Puerto Rico v. Nelson Daniel Centeno, KLCE202100016, Comm. of Puerto Rico, Court of Appeals, March 31, 2021.

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PETITION FOR A WRIT OF CERTIORARI

Nelson Daniel Centeno respectfully petitions for a writ of certiorari to review the judgement of the Supreme Court of Puerto Rico in this case.

OPINIONS BELOW

The opinion of the Puerto Rico Supreme Court is reported in Spanish as *Pueblo v. Centeno*, 2021 PRSC 133; the official translation appears as, 108 PR Offic. Trans. ___ (2021), the certified translation appears in Petitioner's Appendix ("Pet. App.") at 9a-36a (majority);

38a-65a (dissenting opinion, Estrella, J.); 66a-91a (dissenting opinion, Colón Pérez, J.). The Opinion of the Court of Appeals is not published. A certified translation appears at Pet. App. at 93a-126a. The Opinion of the Court of First Instance is not reported. A certified translation appears at Pet. App. at 123a-138a.

JURISDICTION

The Supreme Court of Puerto Rico entered its initial judgment on September 9, 2021. Pet. App. at 8a. On November 1, 2021, it denied initial reconsideration. Pet. App. at 6a (certified translation). On December 10, 2021, it denied further and final reconsideration Pet. App. at 3a (certified translation). On March 10, 2022 Justice Breyer extended the deadline for filing this Petition to May 2, 2022. This Court's jurisdiction is invoked under 28 U.S.C. § 1258.

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. Article III, Sec. 2, cl. 3 provides:

> Trial by jury.
>
> The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial

shall be at such place or places as the Congress may by law have directed.

U.S. Const. Amend. VI provides:

Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

U.S. Const. Amend. XIV, Sec. 1 provides:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. Amend. V provides, in pertinent part:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand

> Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

P.R. Const. Art. II, § 7, L.P.R.A., tit. 1 provides, in pertinent part:

> Section 7. The right to life, liberty and the enjoyment of property is recognized as a fundamental right of man. The death penalty shall not exist. No person shall be deprived of his liberty or property without due process of law. * * *.

P.R. Const. Art. II, § 11, L.P.R.A., tit. 1 provides, in pertinent part:

> Section 11. In all criminal prosecutions, the accused shall enjoy the right to have a speedy and public trial, to be informed of the nature and cause of the accusation and to have a copy thereof, to be confronted with the witnesses against him, to have assistance of counsel, and to be presumed innocent.
>
> In all prosecutions for a felony the accused shall have the right of trial by an impartial jury composed of twelve residents of the district, who may render their verdict by

a majority vote which in no case may be less than nine.

No person shall be compelled in any criminal case to be a witness against himself and the failure of the accused to testify may be neither taken into consideration nor commented upon against him.

No person shall be twice put in jeopardy of punishment for the same offense. Before conviction every accused shall be entitled to be admitted to bail. Incarceration prior to trial shall not exceed six months nor shall bail or fines be excessive. No person shall be imprisoned for debt.

34 L.P.R.A. App. II, Rule 112 provides:

JURY; NUMBER OF JURORS; VERDICT
Juries shall be of twelve (12) residents of the district, who shall render a verdict by the concurrence of not less than nine (9) votes.

INTRODUCTION

On the heels of this Court's decision in *United States v. Vaello Madero*, 596 U.S. ___, ___ (2022), 2022 WL 1177499, this case asks whether the procedural rule announced in *Ramos v. Louisiana*, 590 U.S. ___, 140 S.Ct. 1390, 1395 (2020) has implicitly invalidated Puerto Rico's Constitutional provision authorizing acquittals by a majority of nine or more.

Exactly a century ago, in *Balzac v. Porto Rico*, 258 U.S. 298, 306, 308-10 (1922), this Court rejected application of the Sixth Amendment to Puerto Rico, based upon its civil-law heritage, if not also "ugly racial stereotypes." (*Vaello Madero*, 2022 WL 1177499 at *13 (Gorsuch, J., concurring). Since 1952, Puerto Rico's legal tradition has required jury trials in felony cases under its own Bill of Rights, which requires majority verdicts of no less than nine.

In light of *Ramos*, Puerto Rico's Supreme Court requires unanimity to convict. (*People of Puerto Rico v. Torres-Rivera*, 204 D.P.R. ___, 2020 TSPR 42 (May 8, 2020) (Pet. App. at 139a-169a)). The question presented here is whether, when this Court ruled that the Sixth Amendment means that "[a] jury must reach a unanimous verdict in order to convict" (*Ramos*, 140 S.Ct. at 1395), it meant to say that the Sixth Amendment requires a jury to reach a unanimous verdict to **acquit**.

While Puerto Rico's Supreme Court expressed "no doubt that [*Ramos*] overturned our constitutional clause" with respect to acquittals (Pet. App. at 33a), that question was not before this Court then, and it has never so ruled.

The decision below hardly rests on a sturdy foundation. Two separate dissents expressed no doubt that this Court had done nothing of the sort. One called the majority ruling "the polar opposite" (Pet. App. at 65a) of this Court's decision. Both dissenting opinions echoed the unanimous decision in the Puerto Rico Court of Appeals, affirming the trial court's rejection of the view that *Ramos* requires unanimous acquittals. They

agreed with the Supreme Court of Oregon that "*Ramos* does not imply that the Sixth Amendment prohibits acquittals based on nonunanimous verdicts," *State v. Ross*, 481 P.3d 1286, 1293 (2021).

Because it misconstrues this Court's ruling in *Ramos* to require Puerto Rico to modify their constitutions to demand unanimity to acquit, the decision below creates a direct conflict with the highest court of Oregon. Because the Sixth Amendment was intended to serve as a protector of rights, not a straight jacket to impose federal rules of procedure, *certiorari* should be granted and the decision below reviewed and reversed.

STATEMENT

A. Legal Background: Puerto Rico's Constitution and Trial by Jury.

Art. III, § 2, of the United States Constitution provides: "The Trial of all Crimes . . . shall be by Jury." The Sixth Amendment elaborates on that: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed."

The Sixth Amendment right to jury trial was the last to be enforced against the states. *See McDonald v. City of Chicago*, 561 U.S. 742, 766 (at n. 12–n. 14) (2010). The only federal court to review the claim that unanimity was required to convict in Puerto Rico

consistently rejected that claim. *Torres v. Delgado*, 510 F.2d 1182, 1183 (1st Cir. 1975); *Fournier v. González*, 269 F.2d 26, 28-29 (1st Cir. 1959).

When, after fifty-four years of direct legislation for Puerto Rico, Congress authorized Puerto Rico to enact a Constitution of its own in 1952,[1] its Bill of Rights provided that, in all felony prosecutions, "the accused shall have the right of trial by an impartial jury composed of twelve * * * , who may render their verdict by a majority vote which in no case may be less than nine." P.R. Const. Art. II, § 11, LPRA, tit. 1.

That proportion was deliberate, and made subject to legislative amendment. *See* Pet. App. at 22a-28a (majority opinion); 61a-64a (Estrella, J., dissenting); 73a-79a (Colón Pérez, J., Dissenting). As this Court noted in *Puerto Rico v. Sanchez Valle*, 579 U.S. 59, 67 136 S.Ct. 1865, 1869 (2016), the approval of Puerto Rican voters did not suffice; Congress reviewed and amended parts before approving it.

The non-unanimous jury provision was not amended by Congress, and was the law in Puerto Rico until after this Court decided *Ramos*. Shortly thereafter, Puerto Rico's Supreme Court ruled in *Torres-Rivera*, supra (official translation attached at Pet. App. at 139a-169a).

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[1] Public Law 447, 82nd Cong. (66 Stat. 327).

B. The Proceedings Below: The Prosecution Argues *Ramos* Requires Unanimous Acquittals.

Nelson Daniel Centeno was charged with felony offenses ranging from burglary and firearms possession to first degree and attempted murder. The prosecution requested that jurors be instructed that either verdict must be unanimous. Specifically: " you must all agree and vote, unanimously, whether to find the defendant guilty or to find him not guilty." Pet. App. at 12a.

The defense opposed, and proposed an instruction requiring unanimity to convict, but retaining the language of the existing model instruction, requiring at least nine votes for acquittal. The defense instruction is quoted at Pet. App. at 69a.

C. The Trial Court and Court of Appeals Reject that Argument.

The trial court adopted the defense request. *Ramos* was limited to whether the Sixth Amendment "demands a unanimous verdict to convict a person accused of crime, . . . not an acquittal," it ruled. Pet. App. at 136a. The prosecution's motion for reconsideration was denied. Pet. App. at 69a.

In the Court of Appeals, the Solicitor General argued that "under the Constitution of the United States, a verdict – whether to convict or to acquit – that fails to meet the unanimity requirement is constitutionally invalid." Pet. App. at 15a. The defense asked that court

to take notice of the decision of Oregon's Supreme Court in *State v. Ross*, 367 Or. 560, 481 P.3d 1286 (2021), arguing that *Ramos* did not invalidate the non-unanimous provision of Puerto Rico's Constitution with respect to acquittals. Pet. App. at 98a-99a.[2]

The Court of Appeals affirmed, quoting from *Ramos*, rejecting the argument "that a nonunanimous verdict . . . [of] not guilty would be contrary to *Ramos v. Louisiana*" (Pet. App. at 104a). *Ramos* "solely and exclusively addressed the unanimity requirement in the context of finding a defendant *guilty* of a felony." It rejected an invitation to read *Ramos* expansively. *Id*. at 106a.

Because "the only legal basis to support the State's contention, *Ramos* . . . , does not address the controversy here" (Pet. App. at 111a), Puerto Rico remains free to provide broader protections to the accused than the minimum required by the Sixth Amendment. "After all, it [has] a Bill of Rights that was adopted more than a century after the Bill of Rights of the United States Constitution." (*Id.* at 110a, n. 8, quoting *Pueblo v. Diaz Bonanano*, 176 D.P.R. 601, 622, 76 PR Offic. Trans. 37 (2009)). *And see* Rodríguez Casillas, J., concurring (Puerto Rico's "is a cutting-edge vision of individual liberties, which itself provides that it "shall not be construed restrictively, ...") Pet. App. at 119a.

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[2] Mr. Centeno has not been tried. Here, as in *Ross*, the question has been finally determined at the only opportune moment. In the event of an acquittal, the prosecution could not appeal, and in the event of a conviction by unanimous jury, it would be impossible to prove prejudice.

D. Puerto Rico's Supreme Court Rules that *Ramos* Mandates Unanimity for Acquittal.

From that decision, Puerto Rico's Solicitor General sought *certiorari* from the Supreme Court. In an opinion issued under an expedited proceeding,[3] that court reversed. Noting that it had rejected Sixth Amendment challenges to nonunanimous verdicts of guilt on least eight occasions prior to *Ramos*, (Pet. App. at 18a-19a, n. 16) it proceeded to "analyze the implicit effect of *Ramos*" on the requirement for acquittals. *Id*. at 19a.

In essence, the majority adopted the Solicitor General's argument that "under the Constitution of the United States, a verdict – whether to convict or to acquit – that fails to meet the unanimity requirement is constitutionally invalid." *Id*. at 14a. It emphasized this Court's application "to state and federal criminal trials equally," citing *Ramos*, 140 S.Ct. at 1397.

While acknowledging that "*Ramos* was most certainly circumscribed to non-unanimous guilty verdicts," the majority ruled that "we have no doubt that this decision overturned our constitutional clause." Pet. App. at 33a. Thus, it reasoned, "the binding nature of the verdict to convict in *Ramos* established for the benefit of the defendant also binds us, in our jurisdiction to the unanimity of verdicts to acquit." *Id*. at 34a.

That decision provoked two lengthy and vigorous dissents. The first, by Justice Estrella Martínez, quotes the decision of the Supreme Court of Oregon ruling

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[3] *See* dissenting opinion at Pet. App. 67a.

that "'*Ramos* does not imply that the Sixth Amendment prohibits acquittals based on nonunanimous verdicts . . .'" (quoting from *State v. Ross* 367 Or. 560, 573 (2010)) Pet. App. at 48-49a (Estrella, J., dissenting). Like that court, he believed that *Ramos* "left open for state courts to construe their respective constitutions on the issue of acquittals by a majority vote" (Pet. App. at 37a-38a).

In his dissent, Justice Colón Pérez also adopted the language from *Ross* quoted above, agreeing with the opinion of the Court of Appeals. Pet. App. at 70a, n. 91. With respect to whether *Ramos* "completely superseded the standard" established in Puerto Rico's Constitution, Justice Colón Pérez emphasized that it did so with respect to guilty verdicts only. *Id.* at 86a-87a.

REASONS FOR GRANTING THE PETITION

I. THE PETITION PRESENTS AN IMPORTANT QUESTION OF FEDERAL CONSTITUTIONAL LAW THAT THIS COURT HAS NOT ADDRESSED.

A. This question was not before this Court in *Ramos*, which was limited to correcting a discriminatory deprivation of Sixth Amendment rights.

The Puerto Rico Supreme Court based its decision on an inference about an issue this Court did not address in *Ramos.* It is, in fact, an issue of federal law that this Court has never addressed. The decision in *Ramos* was

limited to eliminating the vestiges of laws in two states that permitted conviction without meeting the constitutional minimum of unanimity. It reversed half a century of precedent, and extended or incorporated an unarticulated understanding that the Sixth Amendment requires unanimity for conviction in the states. *See Timbs v. Indiana*, 586 U.S. ___, ___, 139 S.Ct. 682, 687 (2019).

In taking that step, this Court did not provide an advisory opinion about acquittals. It had no reason to. Still less did it have reason to consider the extent to which the requirement of unanimity to guilty verdicts should also bind the fruit of the United States "burgeoning colonial ambitions" (*United States v. Vaello Madero*, supra, 2022 WL 1177499 at *11) in Puerto Rico, with a legal tradition not rooted in the common law of England.[4] Common law tradition is a poor guide to the express intent of Puerto Rico's Constituent Assembly's deliberate decision to reject unanimity and make the number of votes required subject to legislative modification. The fact that they erred in depriving defendants of the right to require unanimity for

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[4] *Puerto Rico v. Sanchez Valle*, 136 S.Ct. at 1884 (Puerto Rico's legal heritage lies in European civil codes and Roman law) (Breyer, J., and Sotomayor, J., dissenting); *Reid v. Covert*, 354 U.S. 1, 13 (1957) (Art. III, cl. 2, does not apply to Puerto Rico, which "had entirely different cultures and customs from those of this country"); *Boumediene v. Bush*, 553 U.S. 723, 757 (2008) ("the former Spanish colonies operated under a civil-law system, without experience in the various aspects of Anglo-American legal tradition, for instance, the use of grand and petit juries.")

conviction does authorize a remedy making it harder to acquit them.

B. This is an issue of unusual public importance.

Like *Ramos*, this petition poses a question about a fundamental right of a person accused in our system of criminal justice. *See*, *e.g., Williams v. Florida*, 399 U.S. 78, 100 at n. 46 (1970) (six member jury not unconstitutional, but unanimity "may well serve an important role in the jury function, for example, as a device for insuring that the Government bear the heavier burden of proof.") (Citation omitted). On a deeper level, it asks whether the Constitution requires symmetry, balance, or equivalence between factors that favor the prosecution and the defense, or is designed to serve as a counterweight to the mighty powers of the State.

And, inevitably, it again implicates this Court's jurisprudence regarding the uncomfortable relation between the Constitution and Puerto Rico.[5] It does so in a context that illustrates the dangers of assuming that respect for its "territory" means the mechanical application of rules fashioned in the fifty states, without individualized consideration of more than five centuries of Puerto Rican history resulting in a distinctly different civic and legal culture.

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[5] *See, e.g.*, David Helfeld, *How Much of the United States Constitution and Statutes are Applicable to the Commonwealth of Puerto Rico?* 110 F.R.D. 449 (1985).

C. *Ramos* establishes a rule of criminal procedure, not a constitutional mandate reaching beyond its clear holding to invalidate constitutional provisions permitting acquittals.

In *Edwards v. Vannoy*, ___ U.S. ___, 141 S.Ct. 1547 (2021), this Court was called upon to determine the impact of *Ramos* on "the only two States that still allowed non-unanimous juries" (141 S.Ct. at 1554) (referring to Oregon and Louisiana). Critical to the determination that *Ramos* does not apply retroactively on federal collateral review is the fact that, notwithstanding its roots in the Sixth Amendment, it is a "new rule of criminal procedure." 141 S.Ct. at 1554.

From this fact, the rule of non-retroactivity flows. *Ramos* establishes that unanimity to convict is a protection for the accused deeply rooted in the common law. That procedural rule, profoundly important though it be, should not be read to correct past denials of the requirement of its command by abolishing non-unanimous acquittals. Much less should it be permitted to do so *sub silencio*, without considering the particular case of Puerto Rico.

D. The decision below creates a direct conflict with the highest court of a state.

Leaving this issue subject to interpretation from what this Court has *not* said predictably leads to contradictory results: here, from the highest courts of Oregon and Puerto Rico. Two jurisdictions, faced with

precisely the same question in relation to a recent decision of this Court, have been answered it in diametrically opposite ways.

This conflict will not resolve itself. It is firmly entrenched. Oregon's Supreme Court determined that *Ramos* left unaffected its essentially identical constitutional provision.[6] Since the decision in *Ross*, its Court of Appeals has consistently required that *Ross* be followed. *State v. Patino-Ochoa*, 316 Or. App. 478, (Ct. App. 2021) ("'[W]e note that "Oregon law requires a unanimous guilty verdict for all charges" but "permits a not-guilty verdict by a vote of 11 to one or 10 to two,"'" citing *Ross*, 481 P.3d 1286, n. 1 (2021); *State v. Scott*, 311 Or. App. 175, 176, n. 1 (Ct. App. 2021); *State v. Martineau*, 317 Or. App. 590 (Ct. App. 2022) (harmless because guilty verdicts were unanimous).

Notwithstanding the prominent role of *Ross* in the decision it reversed, Puerto Rico Supreme Court's

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[6] ORS 136.450 provides:

> "Except as otherwise provided, the verdict of a trial jury in a criminal action shall be by concurrence of at least 10 of 12 jurors except in a verdict for murder which shall be unanimous."

Article I, section 11, of the Oregon Constitution provides, in part:

> "In all criminal prosecutions, the accused shall have the right to public trial by an impartial jury * * * provided, however, that in the circuit court ten members of the jury may render a verdict of guilty or not guilty, save and except a verdict of guilty of first degree murder, which shall be found only by a unanimous verdict, and not otherwise[.]"

majority opinion fails to mention it. The two decisions cannot be harmonized. Such diametrically opposite readings of this Court's decision on a fundamental constitutional right defeats the objective of uniformity of interpretation of those rights – one of the very objectives of *Ramos*.

This Court should grant review to eliminate confusion with respect to whether the Sixth Amendment requires unanimity to acquit, or leaves Oregon or Puerto Rico (now) to establish their own rules to distinguish between hung juries and acquittals – and other states to do so in the future.

E. This case is the perfect vehicle for resolution of the conflict, and the issue.

This petition presents a pure question of law. It has been thoroughly explored below, and could be developed no further. All three levels of the lower courts have issued written opinions which include dissenting and concurring opinions about what their authors believe this Court intended to say, implied, or would say if directly presented with this question.

There is nothing salutary about the contradictory answers given by the courts below, nor the contradiction between the those of the Supreme Court of Oregon and the majority below. There is neither room nor need for further development, as these are the only two jurisdictions presently authorizing non-unanimous acquittals. There is a need for this Court to answer the question presented when it is presented directly,

rather than let stand a decision based upon an educated guess about what that answer would be.

II. THE DECISION BELOW IS WRONG.

The decision below should be reversed, not merely because it conflicts with *Ross*, but because it is wrong. Oregon's Supreme Court correctly understood that this Court overruled *Apodaca v. Oregon*, 406 U.S. 404 (1972) because the Sixth Amendment protects the rights of the accused by requiring unanimity to convict. Puerto Rico's did not. It adopted the view of its Solicitor General that "under the Constitution of the United States, a verdict – *whether to convict or to acquit* – that fails to meet the unanimity requirement is constitutionally invalid." Pet. App. at 15a. This is ultimately posited as the "implicit effect of *Ramos*." *Id*. at 20a.

The Sixth Amendment offers no protection to the prosecution. Nor does it establish the practice in federal courts as embodying requirements of the Constitution.[7] The logic of symmetry has no place in our system of constitutional criminal law. Avoiding the Scylla of non-unanimous guilty verdicts does not require crashing into the Charybdis of requiring unanimity for acquittals.

The fact that "a single juror's vote to acquit is enough to prevent a conviction" (*Ramos*, 140 S.Ct. at

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[7] Fed. R. Crim. P. 31(a) provides:

(a) Return. The jury must return its verdict to a judge in open court. The verdict must be unanimous.

1394) does not logically imply that the vote of two or three should not suffice to acquit. "In every substantial sense our constitutional provisions in respect to jury trials in criminal cases are for the protection of the interests of the accused," not "part of the structure of government." *Patton v. United States*, 281 U.S. 276, 296 (1930).

Protecting the defendant from the Executive branch has long been part and parcel of an asymmetry deeply rooted in the common law. Defending British soldiers accused of murder during the Boston Massacre, John Adams explained: "We find, in the rules laid down by the greatest English Judges, who have been the brightest of mankind; We are to look upon it as more beneficial, that any guilty persons should escape unpunished, than one innocent person should suffer."[8]

The court below relied upon this Court's discussion of the Anglo-American history of juries in *Ramos*, while ignoring salient facts. In Puerto Rico, jury trials were unknown for the first four centuries of European colonization.[9] As this Court has acknowledged in the

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[8] John Adams, at "Founders Online: Adams' Argument for the Defense: 3-4 December 1770", apparently alluding to 4 William Blackstone, Commentaries on the Laws of England *352 (1769) ("all presumptive evidence of felony should be admitted cautiously: for the law holds that it is better that ten guilty persons escape than that one innocent suffer.") https://founders.archives.gov/documents/Adams/05-03-02-0001-0004-0016 (last viewed 4/16/22).

[9] Puerto Rico's Constitution incorporates neither grand jury nor civil jury trials. *See Marshall v. Perez Arzuaga*, 828 F.2d 845, 849 (1st Cir. 1987); Gustavo A. Gelpi, *The Insular Cases: A*

cases cited at page 13 of this Petition, the common law is not part of its tradition. This does not mean that Puerto Rico had no established legal system for the first four centuries. It had, and has, a different one.[10]

When Puerto Rico adopted jury trials as part of its Constitution, it did so in a manner more specific than the text of the Sixth Amendment, and specifically contemplated enlargement by positive law, consistent with the practice in civil-law jurisdictions. Did it succumb to the temptation of making it easier to convict at a moment of political crisis? It did.[11] That error cannot be corrected by making it harder to acquit.

Nor can earlier refusals to extend the right to jury trial to Puerto Rico for reasons at once racist and

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Comparative Historical Study of Puerto Rico, Hawai'i, and the Philippines, 58 THE FEDERAL LAWYER 22, 24, n. 11 (Mar./Apr. 2011).

[10] *Valle v. American Int'l Ins. Co.*, 108 D.P.R. 692, 697-98, 1979 WL 59104 (P.R. 1979) condemned the practice of "applying common law principles and methods of adjudication inconsistent with Puerto Rico's civil law system," as foreign to Puerto Rico's roots in the Spanish legal tradition." Its author, José Trías Monge served as Chief Judge of the Supreme Court, delegate to Puerto Rico's Constitutional Convention, Puerto Rico's Attorney General, and was the author of the 5 volume *Historia Constitucional de Puerto Rico* (*Constitutional History of Puerto Rico*) Editorial Universitaria (1980). *And see*, *e.g.*, *FDIC v. Arrillaga-Torrens*, 212 F. Supp. 3d 312 (2016).

[11] *See* Pet. App. at 29a, 52a, 76a. The intent was to facilitate conviction of members of the Nationalist Party and quell support for independence, in light of the release of its President, Pedro Albizu Campos, from prison and his return to Puerto Rico in 1948.

rational[12] be remedied by inferring from this Court's extension of this right to states an intention to prohibit it, or Oregon, from preserving their constitutional provisions for non-unanimous acquittals.

The majority decision below relies upon abstract logic rather than any analysis of the purpose and meaning of the Sixth Amendment and its application in Puerto Rico. The dissenting opinions, like the Court of Appeals and trial court, correctly posited that the rights established in the Bill of Rights are extended to non-federal jurisdictions for the purpose of expanding, not restricting their exercise. Dissent of Estrella Martínez Pet. App. at 39a-40a. As a matter of federal law, they are right. In *Ramos*, this Court repeatedly expressed the function of the unanimous verdict as protecting the defendant, referring to the fact that a "single juror's vote to acquit is enough to prevent a conviction." 140 S.Ct. at 1394. An accused has a "constitutional right to demand that his liberty should not be taken" without unanimous verdict. *Id*. at 1396-96.

It cannot be argued that nonunanimous acquittals restrict the right of defendants to a jury of their peers. They restrict no rights. They protect them, by

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[12] *Balzac v. Puerto Rico*, 258 U.S. 298, 304-305 (1922); *Dorr v. United States*, 195 U.S. 138, 148 (1904) describing "unincorporated territories" as places where "jury trials are unknown, but a method of fair and orderly trial prevails under an acceptable and long-established code," as a reason to respect "the preference of the people" and not reject "their established customs" to replace them with "a system of trial unknown to them and unsuited to their needs." *Id*. at 310.

prohibiting yet another trial when, after collective deliberation, the prosecution's proof fails to convince one or more, but fewer than twelve jurors of a defendant's guilt beyond a reasonable doubt. Such a rule is more consistent with *Ramos* and the Sixth Amendment than the decision below.

CONCLUSION

The Petition for writ of certiorari should be granted.

Respectfully submitted,

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