

SCOTUS Opinion: Court Abolishes Non-Unanimous Criminal Convictions

21 Apr 2020

The Supreme Court had previously ruled in *Apodaca v. Oregon*, 406 U.S. 404 (1972), that the Sixth Amendment did not forbid non-unanimous verdicts in state criminal trials. Today, only Louisiana and Oregon still permit non-unanimous convictions. In *Ramos v. Louisiana*, a 6-3 majority of the Court, in an opinion by Justice Gorsuch, discarded that precedent and held that the Sixth Amendment's requirement of a unanimous jury was fully incorporated against the states through the Due Process Clause of the Fourteenth Amendment. The majority determined that stare decisis did not save *Apodaca* because its underlying reasoning was "gravely mistaken," including the notion of "dual-track incorporation" relied upon by the concurring fifth vote by Justice Powell, which no majority of the Court has supported. Accordingly, convictions in all state courts must now be by unanimous juries.

Justice Sotomayor penned a concurrence to point out race-biased origins for Louisiana and Oregon's laws, and why she thought it compelling to overrule *Apodaca*. Justice Kavanaugh submitted a concurrence explaining his view of how the doctrine of stare decisis applied in this case, and how he found *Apodaca* to be "egregiously wrong" in reasoning and racist in application. Justice Thomas filed a concurrence arguing that the same result should have been achieved through the Privileges and Immunities Clause of the Fourteenth Amendment instead. Justice Alito, joined by Chief Justice Roberts and Justice Kagan, dissented, arguing that ad hominem attacks of racism against non-unanimous jury verdicts were inappropriate, and *Apodaca* should have been upheld under stare decisis. A link to the decision is here: https://www.supremecourt.gov/opinions/19pdf/18-5924_n6io.pdf

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TAGGED: Sixth Amendment, Fourteenth Amendment, Due Process Clause, Due Process, *Apocada v. Oregon*, *Ramos v. Louisiana*, stare decisis, Privileges and Immunities Clause