No. 25-166

In The
Supreme Court of the United States

JOSE JOYA PARADA, OSCAR ARMANDO SORTO ROMERO, MILTON PORTILLO RODRIGUEZ, AND JUAN CARLOS SANDOVAL RODRIGUEZ,

Petitioners,

v.

UNITED STATES,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF *AMICUS CURIAE* FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF PETITIONERS

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IDENTITY AND INTEREST OF *AMICUS CURIAE*

The Florida Association of Criminal Defense Lawyers ("FACDL") is a non-profit organization with a membership of over 1,000 attorneys and 29 chapters throughout Florida. Each of FACDL's members is a criminal defense attorney committed to protecting the rights of individuals in the criminal justice system. The question presented in this case has important implications for nearly all felony jury trials conducted in Florida, and the issue affects numerous criminal prosecutions.[1]

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This Court's decision in *Williams v. Florida*, 399 U.S. 78 (1970), is impossible to square with the ruling in *Ramos v. Louisiana*, 590 U.S. 83 (2020), that the term "trial by an impartial jury" in the Sixth Amendment encompasses what that term "meant at the time of the Sixth Amendment's adoption," *id*. at 90. What the term meant was a jury of twelve. As this

[1] FACDL certifies that no counsel for any party authored this brief in whole or in part, no party or its counsel made any monetary contribution intended to fund the preparation or submission of this brief and that no person or entity other than the amicus or its counsel made such a contribution. FACDL certifies that it notified the parties via email of its intent to file an amicus brief in support of this Court granting a writ of certiorari within the 10-day notice described in Sup. Ct. R. 37.2(a).

Court stated in *Ramos*, Blackstone recognized that under the common law, "no person could be found guilty of a serious crime unless 'the truth of every accusation . . . should . . . be confirmed by the unanimous suffrage of twelve of his equals and neighbors[.]" 590 U.S. at 90. "A 'verdict, taken from eleven, was no verdict' at all." *Id.*

The reverberations from *Williams*'s egregiously flawed analysis have detrimentally impacted criminal defendants in Florida for decades. Florida remains one of two states that regularly use six person juries to decide the outcome of criminal cases where life imprisonment is mandatory should the defendant be found guilty. Justice Gorsuch observed that, "[d]uring the Jim Crow era, some States restricted the size of juries and abandoned the demand for a unanimous verdict as part of a deliberate and systematic effort to suppress minority voices in public affairs." *Khorrami v. Arizona*, 143 S.Ct. 22, 27 (2022) (Gorsuch, J., dissenting) (citations omitted). Florida's jury of six arose in that Jim Crow era context of a "deliberate and systematic effort to suppress minority voices in public affairs." *Id.*

Even setting aside *Williams*'s now-disfavored functionalist logic, its ruling suffered from another significant flaw: it was based on research that was out of date shortly after the opinion issued. Twelve-person juries deliberate longer and share more facts, ideas, and challenges to conclusions during higher-quality deliberations. Furthermore, reducing jury size inevitably has a drastic effect on the representation of minority group members on the jury.

ARGUMENT

1. The Court Should Overrule *Williams v. Florida* Because Its Reasoning Is Contrary to Historical Practice

Although the Sixth Amendment guarantees criminal defendants the right to a trial by "jury" when charged with a serious offense, U.S. Const. Amend. VI, "its text does not specify all that the right entails." *Erlinger v. United States*, 602 U.S. 821, 862 (2024) (Kavanaugh, J., dissenting). Instead, defining the contours of the term "trial, by an impartial jury" requires looking to this Nation's "historical practice," *Oregon v. Ice*, 555 U.S. 160, 164 (2009), and what it "meant at the time" the Sixth Amendment was adopted. *Ramos v. Louisiana*, 590 U.S. 83, 90 (2020).

What a "jury" meant to the Framers is clear—"a mountain of evidence suggests that, both at the time of the Amendment's adoption and for most of our Nation's history, the right to a trial by jury for serious criminal offenses *meant* a trial before 12 members of the community."[2] *Khorrami v. Arizona*, 143 S.Ct. 22,

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[2] The number twelve appears to have been chosen for its religious significance. *See* 1 Edward Coke, *The First Part of the Institutes of the Lawes of England* 155 (photo. reprint 1979) (1628) ("And that number of twelve is much respected in holy Writ, as [twelve] apostles, [twelve] stones, [twelve] tribes, etc."); John Proffatt,

23 (2022) (Gorsuch, J., dissenting). After the Sixth Amendment was enacted, a bevy of state courts likewise interpreted it to require a twelve-person jury. *See* Miller, Comment, *Six of One Is Not A Dozen of the Other*, 146 U. Pa. L. Rev. 621, 643 n.133 (1998) (collecting cases from the late 1700s to the 1860s).[3]

From the time of the Magna Carta to the Constitution's adoption, the concept of a trial by jury meant the unanimous verdict of twelve. *Ramos*, 140 S.Ct. at 1396 (citing 4 W. Blackstone, Commentaries on the Laws of England 343 (1769)); *see also Thompson v. Utah*, 170 U.S. 343, 350 (1898) ("[T]he jury referred to in the original Constitution and in the Sixth Amendment is a jury constituted, as it was at common law, of twelve persons, neither more nor less."); Richard S. Arnold, *Trial by Jury: The Constitutional Right to a Jury of Twelve in Civil Trials*, 22 Hofstra L. Rev. 1, 21 (1993) ("[I]n the days of the Framers . . . they all concurred that juries meant twelve.").

Trial by Jury 112 n.4 (San Francisco, Sumner Whitney & Co. 1877) ("[T]his number is no less esteemed by our own law than by holy writ. If the twelve apostles on their twelve thrones must try us in our eternal state, good reason hath the law to appoint the number twelve to try us in our temporal.").

[3] *See, e.g., Foote v. Lawrence,* 1 Stew. 483, 483 (Ala. 1828); *Vaughn v. Scade,* 30 Mo. 600, 604 (1860); *Legislative Power to Change Law in Relation to Juries, Op. Justices Supreme Judicial Court,* 41 N.H. 550, 551 (1860); *Cancemi v. New York*, 18 N.Y. 128, 138 (1858); *Whitehurst v. Davis*, 3 N.C. (2 Hayw.) 113, 113 (1800); *Work v. State*, 2 Ohio St. 296, 304 (1853); *Emerick v. Harris*, 1 Binn. 416, 426 (Pa. 1808); *Zylstra v. Corporation of Charleston*, 1 S.C.L. (1 Bay) 382, 395-96 (1794).

For more than seventy years, this Court recognized the basic principle that the Sixth Amendment requires a twelve-person jury in criminal cases. *See Thompson*, 170 U.S. at 349-60; *Maxwell v. Dow*, 176 U.S. 581, 586 (1900) (explaining that "there [could] be no doubt" "[t]hat a jury composed, as at common law, of twelve jurors was intended by the Sixth Amendment to the Federal Constitution"); *Patton v. United States*, 281 U.S. 276, 288 (1930) (reiterating that it was "not open to question" that "the phrase 'trial by jury'" in the Constitution incorporated juries' "essential elements" as "they were recognized in this country and England," including the requirement that they "consist of twelve men, neither more nor less"); *Duncan v. Louisiana*, 391 U.S. 145, 151-152 (1968) (remarking that "by the time our Constitution was written, jury trial in criminal cases had been in existence for several centuries and carried impressive credentials traced by many to Magna Carta," such as the necessary inclusion of twelve members).

In 1970, however, this Court in *Williams v. Florida*, 399 U.S. 78 (1970), overruled this line of precedent in a decision that Justice Harlan described as "stripping off the livery of history from the jury trial" and ignoring both "the intent of the Framers" and the Court's long held understanding that constitutional "provisions are framed in the language of the English common law [] and . . . read in the light of its history." *Baldwin v. New York*, 399 U.S. 117, 122-123 (1970) (citation omitted) (Harlan, J., concurring in the result in *Williams*).

Williams came to that conclusion not because of historical practice but in spite of it. *Williams* rejected a test governed by "purely historical considerations" in favor of a functionalist approach, all while

acknowledging that the historical record is clear that "the size of the jury at common law [was] fixed generally at 12." *Williams*, 399 U.S. at 89, 99; *accord Khorrami*, 143 S.Ct. at 23-24 (Gorsuch, J., dissenting) (summarizing history).

This Court's *Williams* decision is impossible to square with the more recent ruling in *Ramos*, that the term "trial by an impartial jury" in the Sixth Amendment encompasses what that term "meant at the Sixth Amendment's adoption," 140 S. Ct. at 1395. Had *Williams* applied the *Ramos* test, it could not have reached the same result. *See, e.g., Blakely v. Washington*, 542 U.S. 296, 301 (2004) (holding that the Sixth Amendment requires "that the 'truth of every accusation' against a defendant 'should afterwards be confirmed by the unanimous *suffrage of twelve* of his equals and neighbors.'" (emphasis added)); *Southern Union Co. v. United States*, 567 U.S. 343, 356 (2012).

2. Florida's Six-Member Jury Provision Originates From the Racist Jim Crow Era

The reverberations from *Williams*'s egregiously flowed analysis have detrimentally impacted criminal defendants in Florida for decades because the Sixth Amendment applies equally to state juries through the doctrine of incorporation. *See Duncan*, 391 U.S. at 148-50. Until *Williams*, the Florida Supreme Court acknowledged—consistent with *Ramos*—that the "right to trial by jury" means "a jury, according to the common law, to be composed of twelve persons." *Gibson v. State*, 16 Fla. 291, 300 (1877).

Florida remains an outlier in that it is one of only two states that regularly use six person juries to decide the outcome of criminal cases, including those where life imprisonment is mandatory should the

defendant be found guilty—the other being Connecticut.[4] *See* David B. Rottman & Shauna M. Strickland, *State Court Organization 2004*, United States Department of Justice, Bureau of Justice Statistics, Table 42 at 233-36, available at http://www.bjs.gov/content/pub/pdf/sco04.pdf (last visited October 8, 2025).

Justice Gorsuch has observed that, "[d]uring the Jim Crow era, some States restricted the size of juries and abandoned the demand for a unanimous verdict as part of a deliberate and systematic effort to suppress minority voices in public affairs." *Khorrami*, 143 S.Ct. at 27 (Gorsuch, J., dissenting) (citations omitted). He noted, however, that Arizona's law was likely motivated by costs not race. *Id*. But Florida's jury of six did arise in that Jim Crow era context of a "deliberate and systematic effort to suppress minority voices in public affairs." *Id*.

In 1875, the Jury Clause of the 1868 Florida Constitution was amended to provide that the number

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[4] Although Indiana and Massachusetts allow some felony cases to be tried by juries as small as six members, these States require twelve-person juries for more serious felonies. In Utah, criminal juries are comprised of eight people for non-capital cases and twelve people for capital cases. In Arizona, criminal defendants are guaranteed "a twelve-person jury in cases when the sentence authorized by law is death or imprisonment for thirty years or more. . . . Otherwise, a criminal defendant may be tried with an eight-person jury." *State v. Khorrami*, No. 1 CA-CR 20-0088, 2021 WL 3197499, at *8 (Ariz. Ct. App. July 29, 2021) (citations omitted). Florida juries are smaller (six versus eight), and those smaller juries are mandated in every case except capital cases. Art. I, § 22, Fla. Const.; § 913.10, Fla. Stat.; Fla. R. Crim. P. 3.270.

of jurors "for the trial of causes in any court may be fixed by law." *See Florida Fertilizer & Mfg. Co. v. Boswell*, 34 So. 241, 241 (Fla. 1903). The common law rule of a jury of twelve was still kept in Florida while federal troops remained in the state. There was no provision for a jury of less than twelve until the Florida Legislature enacted a provision specifying a jury of six in Chapter 3010, section 6. *See Gibson v. State*, 16 Fla. 291, 297–98 (1877); *Florida Fertilizer*, 34 So. at 241.

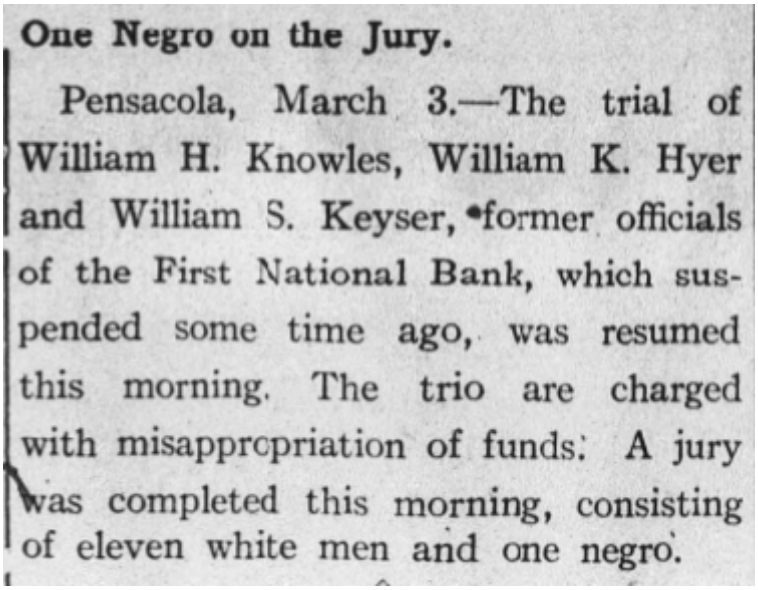
The Florida Legislature enacted chapter 3010 with the jury-of-six provision on February 17, 1877. *Gibson*, 16 Fla. 294. This was less than a month after the last federal troops were withdrawn from Florida in January 1877. *See* Jerrell H. Shofner, *Reconstruction and Renewal*, 1865-1877, in The History of Florida 273 (Michael Gannon, ed., first paperback edition 2018). The jury-of-six thus first saw light at the birth of the Jim Crow era as former Confederates regained power in southern states and prosecutors made a concerted effort to prevent African Americans from being jurors.

When the Florida Legislature reduced the size of juries from twelve to six in 1877, it also re-established the "integrity, fair character, sound judgment and intelligence" test for jury service. Ch. 3010, Laws of Fla. (1877). This discretionary standard was "used to eliminate almost every black citizen from the southern trial venire." Douglas L. Colbert, *Challenging the Challenge: Thirteenth Amendment as a Prohibition against the Racial Use of Peremptory Challenges*, 76 Corn. L. Rev. 1, 89-90 (1990).

So rare was it for an African American to serve on a jury that it was worthy of a news article, even well into the twentieth century:

- "It is strange that the presence of a negro on the jury should not have attracted sufficient

attention to have caused an inquiry into his eligibility as a jury man." *That Federal Jury*, Panama City Pilot, Nov. 27, 1924, at 1.

- "A negro juror was picked today to try Felix Combs, a negro roustabout, for raping a Clearwater woman. Selection of Henry Davis of Tarpon Springs marked one of the few times a negro has been selected for jury duty." *Negro Juror*, Sanford Herald, Oct. 4, 1948, at 1.
- "The names of several Negroes were included in the 1950 jury list. Last fall, the county's first Negro juror served when Calvin Smith was named on the venire which heard a cattle rustling case in Circuit Court." *First Two Women are Picked for Possible Jury Duty in County*, Citrus Cnty. Chron., Feb. 16, 1950, at 1
- 

One Negro on the Jury.

Pensacola, March 3.—The trial of William H. Knowles, William K. Hyer and William S. Keyser, former officials of the First National Bank, which suspended some time ago, was resumed this morning. The trio are charged with misappropriation of funds. A jury was completed this morning, consisting of eleven white men and one negro.

One Negro on the Jury, DeLand Daily News, March 3, 1915, at 3.

To top it off, the Legislature in that same session established convict leasing. Ch. 3034, Laws of Fla. (1877) (state prisoners); Ch. 2090, Laws of Fla. (1877) (county prisoners). "By 1900, the South's judicial system had been wholly reconfigured to make one of its primary purposes the coercion of African Americans to comply with the social customs and labor demands of whites." Douglas A. Blackmon, SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK PEOPLE IN AMERICA FROM THE CIVIL WAR II 7-8 (2008); Matthew J. Mancini, ONE DIES, GET ANOTHER: CONVICT LEASING IN THE AMERICAN SOUTH, 1866-1928 (1996) (noting the steady growth of Southern prison populations after the establishment of convict leasing: "Florida, with 125 prisoner in 1881, had 1,071 by 1904.").

On its face, the 1868 Florida Constitution extended the franchise to black men. But the historical context shows that that it was part of the overall resistance to Reconstruction efforts to protect the rights of black citizens. The Florida constitution was the product of a remarkable series of events including a coup in which leaders of the white southern (or native) faction took possession of the assembly hall in the middle of the night, excluding Radical Republican delegates from the proceedings. See Richard L. Hume, *Membership of the Florida Constitutional Convention of 1868: A Case Study of Republican Factionalism in the Reconstruction South*, 51 Fla. Hist. Q. 1, 5-6 (1972); Shofner at 266. A reconciliation was effected as the "outside" whites "united with the majority of the body's native whites to frame a constitution designed to continue white dominance." Hume at 15.

The purpose of the resulting constitution was

spelled out by Harrison Reed, a leader of the prevailing faction and the first governor elected under the 1868 constitution, who wrote to Senator Yulee that the new constitution was constructed to bar black citizens from legislative office: "Under our Constitution the Judiciary & State officers will be appointed & the apportionment will prevent a negro legislature." Hume, 15-16; *see also* Shofner 266.

In *Ramos*, Justice Gorsuch noted that the Louisiana non-unanimity rule arose from Jim Crow era efforts to enforce white supremacy. 140 S.Ct. at 1394; *see also id.* at 1417 (Kavanaugh, J., concurring) (non-unanimity was enacted "as one pillar of a comprehensive and brutal program of racist Jim Crow measures against African-Americans, especially in voting and jury service."). The history of Florida's jury of six arises from the same historical context. And, unfortunately, Florida has not been alone in its racist efforts to curtail minorities from serving on juries as some States "restricted the size of juries . . . to suppress minority voices in public affairs," *Khorrami*, 143 S.Ct. at 27 (Gorsuch, J., dissenting).

This Court should intervene, as it has done before, to prevent further abuse. *See, e.g., Strauder v. West Virginia*, 100 U.S. 303 (1879) (intervening after West Virginia moved to prohibit black citizens from jury service); *Norris v. Alabama*, 294 U.S. 587 (1935) (reversing the conviction of a black defendant where evidence showed that no black member of the community had been selected for jury service in living memory); *Batson v. Kentucky*, 476 U.S. 79 (1986) (prohibiting the prosecution from racially-motivated use of peremptory challenges to ensure conviction of black defendants).

3. There Are Significant Negative Consequences of Juries Comprised of Less Than Twelve

Although recognizing that the Framers "may well" have had "the usual expectation" in drafting the Sixth Amendment "that the jury would consist of 12" members, the *Williams* Court focused on the "function" that the jury plays in the Constitution, concluding that the "essential feature" of a jury is that it leaves justice to the "commonsense judgment of a group of laymen" and thus allows "guilt or innocence" to be determined via "community participation and [with] shared responsibility." 399 U.S. at 99-101. According to the *Williams* Court, both "currently available evidence [and] theory" suggested that function could just as easily be performed with six jurors as with twelve. *Id.* at 101-102 & n.48.

Ramos rejected the same kind of "cost-benefit analysis" the Court undertook in *Williams*, observing that it is not the Court's role to "distinguish between the historic features of common law jury trials that (we think) serve 'important enough functions to migrate silently into the Sixth Amendment and those that don't.'" 590 U.S. at 98. Ultimately, *Ramos* explained, the question is whether "at the time of the Sixth Amendment's adoption, the right to trial by jury included" the particular feature at issue. *Id.* at 90.

But even setting aside *Williams*'s now-disfavored functionalist logic, its ruling suffered from another significant flaw: it was based on research that was out of date shortly after the opinion issued. Specifically, *Williams* "f[ou]nd little reason to think" that the goals of the jury guarantee—including, among others, "to provide a fair possibility for obtaining a representative[] cross-section of the community"—"are

in any meaningful sense less likely to be achieved when the jury numbers six, than when it numbers 12." *Id*. at 100. The Court theorized that "in practice the difference between the 12-man and the six-man jury in terms of the cross-section of the community represented seems likely to be negligible." *Id*. at 102.

In the time since *Williams*, that determination has proven incorrect. Indeed, the Court acknowledged as much just eight years later in *Ballew v. Georgia*, 435 U.S. 223 (1978), when it concluded that the Sixth Amendment barred the use of a five-person jury. Although *Ballew* did not overturn *Williams*, the *Ballew* Court observed that empirical studies conducted in the handful of intervening years highlighted several problems with *Williams*' assumptions. Moreover, *Ballew* "admit[ted]" that it "d[id] not pretend to discern a clear line between six members and five," effectively acknowledging that the studies it relied on also cast doubt on the effectiveness of the six-member jury. *Id*. at 239.

Post-*Ballew* research has further undermined *Williams*. Current empirical evidence indicates "reducing jury size inevitably has a drastic effect on the representation of minority group members on the jury." Diamond et al., *Achieving Diversity on the Jury: Jury Size and the Peremptory Challenge*, 6 J. of Empirical Legal Stud. 425, 427 (Sept. 2009); *see also* Higginbotham et al., *Better by the Dozen: Bringing Back the Twelve-Person Civil Jury*, 104 Judicature 47, 52 (Summer 2020). Because "the 12-member jury produces significantly greater heterogeneity than does the six-member jury," Diamond et al., *Achieving Diversity on the Jury*, *supra*, at 449, it increases "the opportunity for meaningful and appropriate representation" and helps ensure that juries

"represent adequately a cross-section of the community." *Ballew*, 435 U.S. at 237.

Twelve-person juries deliberate longer and share more facts, ideas, and challenges to conclusions during higher-quality deliberations. *E.g.,* Saks & Marti, *A Meta-Analysis of the Effects of Jury Size*, 21 Law & Hum. Behav. 451, 458-459 (1997) (considering 17 studies); *see generally* ABA, *Principles for Juries and Jury Trials*, Principle 3 cmt., at 17-21 (2005) (collecting studies and endorsing 12-member-jury rule). Even States like Florida that permit juries less than twelve tacitly acknowledge these benefits by requiring 12-person juries on capital cases. *See* Ariz. Const. art. 2, sec. 23; Conn. Const. amend. art. IV; Fla. R. Crim. P. 3.270; Ind. Code § 35-37-1-1(b)(1); Utah Const. art. I, sec. 10.

Then-Judge Kavanaugh recognized this principle in analogous circumstances when he explained why the decisions that multimember commissions reach are better than the decisions that single-director agencies make. Among other things, Judge Kavanaugh observed that "multiple voices and perspectives make it more likely that the costs and downsides of proposed decisions will be more fully ventilated;" and "multi-member structure—and its inherent requirement for compromise and consensus—will tend to lead to decisions that are not as extreme, idiosyncratic, or otherwise off the rails," because "[a] multi-member independent agency can only go as far as the middle vote is willing to go." *PHH Corp. v. Consumer Fin. Prot. Bureau*, 839 F.3d 1, 27-28 (D.C. Cir. 2016), *reh'g en banc granted, order vacated* (Feb. 16, 2017), *on reh'g en banc*, 881 F.3d 75 (D.C. Cir. 2018). Judge Kavanaugh grounded these benefits of multimember commissions in a "consistent

historical practice" that "reflects the deep values of the Constitution," including the "the bedrock principle that dividing power among multiple entities and persons helps protect individual liberty." *Id*. at 28.

On the other hand, empaneling a smaller jury decreases the probability that members of minority groups (be they racial, religious, political, or socio-economic) will serve. *See, e.g.,* Rose et al., *Jury Pool Underrepresentation in the Modern Era*, 15 J. Empirical Legal Stud. 2 (2018); *see also* Shamena Anwar, et al., *The Impact of Jury Race In Criminal Trials*, 127 Q.J. Of Econ. 1017, 1049 (2012) (finding that "increasing the number of jurors on the seated jury would substantially reduce the variability of the trial outcomes, increase black representation in the jury pool and on seated juries, and make trial outcomes more equal for white and black defendants").

Furthermore, *Williams* has had negative real-world consequences, as a "drop in jury size" poses a threat to the "representativeness" of the jury and the "reliability" of the verdict. ABA, *Principles for Juries and Jury Trials*, Principle 3 cmt., at 19-20; *see also supra* p. 8. "[T]hat smaller panels tend to skew jury composition and impair the right to a fair trial … is a sad truth borne out by hard experience." *Khorrami*, 143 S.Ct. at 27 (Gorsuch, J., dissenting). For example, looking at civil cases in Illinois, one study has shown that jury size, rather than the peremptory challenge process, had a substantial effect on minority jury representation. Diamond et al., *Achieving Diversity on the Jury*, *supra* at 425.

A twelve-person jury will sweep in a broader cross-section of the community than a six-member body. The available evidence establishes that the twelve-member-jury requirement at least increases

the odds that jurors will embody the cross-section of humanity in the venire—an outcome *Williams* wrongly dismissed as "unrealistic," 399 U.S. at 102.

More jurors not only equates to a better deliberative process and a higher probability of a diverse jury but also jurors afterwards make better citizens. Research supports "that jury service can promote civil engagement." John Gastil, Laura W. Black, E. Pierre Deess, Jay Leighter, *From Group Member to Democratic Citizen: How Deliberating with Fellow Jurors Reshapes Civic Attitudes*, 34 Human Communication Research 137 (2008). And studies have "bolster[ed] the claim of deliberative democratic theorists that the experience of consequential face-to-face talk can make private individuals into public citizens by reinforcing their confidence in fellow citizens and public institutions." *Id.*

Finally, this Court has instructed that a law that is facially constitutional may nevertheless be unconstitutional as applied because it has been put to an "abusive end." For example, in the Second Amendment case of *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, this Court wrote in a footnote that nothing in the decision "should be interpreted to suggest the unconstitutionality of . . . 'shall-issue' licensing regimes, under which 'a general desire for self-defense is sufficient to obtain a [permit]." 597 U.S. 1, 39 n. 9 (2022). This Court stated that shall-issue licensing regimes pass constitutional muster given that these regimes only seek to ensure that those carrying firearms are responsible law-abiding citizens. However, this Court also stated that "[b]ecause any permitting scheme can be put toward abusive ends, we do not rule out constitutional challenges to shall-issue regimes where, for example, lengthy wait times in

processing license applications or exorbitant fees deny ordinary citizens their right to public carry." *Id*.

As applied to Florida's six-person jury provision, even if such law is facially constitutional, the law's racist Jim Crow era origins, taken in conjunction with its significant negative consequences, creates oppressive results such that it is being employed unconstitutionally to fulfill an "abusive end."

4. *Stare Decisis* Does Not Preclude This Court From Reconsidering *Williams*

This Court has not hesitated to overturn precedent when the circumstances dictate doing so. *See, e.g., Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022). "[S]tare decisis is at its nadir" in cases "concerning [criminal] procedur[e] rules that implicate fundamental constitutional protection." *Alleyne v. United States*, 570 U.S. 99, 116 n.5 (2013). Furthermore, stare decisis has minimal force when the decision "involves collision with prior doctrine more embracing in its scope, intrinsically sounder, and verified by experience." *Helvering v. Hallock*, 309 U.S. 106, 119 (1940).

There are numerous examples where this Court has concluded that it is appropriate to reinstate a prior doctrine. *See e.g., United States v. Dixon*, 509 U.S. 688, 704 (1993) (overruling recent decision that "lack[ed] constitutional roots" and was "wholly inconsistent with earlier Supreme Court precedent"); *Solorio v. United States*, 483 U.S. 435, 439-41 (1987) (overruling decision that had broken from an earlier line of decisions "from 1866 to 1960"). Therefore, FACDL submits that the doctrine of stare decisis should not stand in the way of this Court's reconsidering *Williams* in light of this Court's recent approach to the Sixth

Amendment.

That overruling *Williams* would require a slice of cases to be retried in a half-dozen States is the "usual" consequence of adopting a "new rule[] of criminal procedure." *Ramos*, 590 U.S. at 108. This Court vacated "nearly 800 decisions" following *Booker v. United States* and "[s]imilar consequences likely followed" other landmark rulings. *Id.* Here, nearly 50 million Americans are currently being denied their right to a twelve-person jury in nearly all circumstances. "[T]he competing interests" of a handful of States cannot outweigh "the reliance the American people place in their constitutionally protected liberties." *Id.* at 111 (plurality op.).

Finally, one Florida appellate court has already held that by failing to raise a twelve-person jury argument in the trial court, the defendant failed to preserve his argument for appeal and was precluded from relief. *Albritton v. State*, 360 So. 3d 1145, 1147 (Fla. 4th DCA 2023). While FACDL does not endorse the Florida court's decisional outcome, its ruling demonstrates that the floodgates would not be swung open because relief may be limited to the share of defendants who preserved the issue in the trial court and raised the argument in a pending direct appeal.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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