

No. 25-6623

IN THE
Supreme Court of the United States

HAMED KIAN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

**On Writ of Certiorari to the
Florida Fourth District Court of Appeal**

**BRIEF OF THE NATIONAL ASSOCIATION OF
CRIMINAL DEFENSE LAWYERS AS AMICUS
CURIAE IN SUPPORT OF PETITIONER**

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INTEREST OF AMICUS CURIAE*

The National Association of Criminal Defense Lawyers, or NACDL, is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crimes or misconduct. NACDL was founded in 1958 and has a nationwide membership of many thousands of direct members

* No counsel for a party authored this brief in whole or in part, and no entity or person other than NACDL, its members, and its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

and up to 40,000 attorneys in affiliate organizations. NACDL is dedicated to advancing the proper, efficient, and fair administration of justice. NACDL files many amicus briefs each year in this Court and other federal and state courts, seeking to assist in cases presenting issues important to criminal defendants, criminal defense lawyers, and the criminal legal system as a whole.

SUMMARY OF ARGUMENT

I. Few rights were as cherished or as well settled at the time of the Founding as the right to a trial by jury in criminal cases. And when that right was twice written into the Constitution, it carried established characteristics—including that conviction required “the unanimous consent of twelve.” 3 Blackstone, *Commentaries on the Laws of England* 379 (1768). The rule that trial by jury meant trial by twelve was so firmly cemented at common law and so consistently recognized by sources before, at, and following the Founding that this Court once called the constitutional requirement of a twelve-person jury in criminal cases “not open to question.” *Patton v. United States*, 281 U.S. 276, 288 (1930).

II. Only in *Williams v. Florida*, 399 U.S. 78 (1970), did this Court depart from the path. There, the Court recognized the historical, common-law, and constitutional heritage of twelve-member juries. But the Court discarded that evidence on the basis that, in its judgment, a jury of twelve was no longer worth requiring as a practical matter. That was a grave mistake. For one thing, a rich common-law tradition warrants respect because it reflects “the wisdom, counsel, experience and observation of many ages.” *Wheaton v. Peters*, 33 U.S. (8 Pet.) 591, 672 (1834). For another, each of the vital interests served by the jury-trial right

is undermined by permitting criminal trials with six- or eight- rather than twelve-member juries. Juries of twelve counteract prosecutorial and judicial overreach, produce accurate and sensible decisions, and facilitate broad community participation in the criminal system. Reducing the number of jurors leads to unjust convictions, overzealous prosecutions, and serious deficiencies in juror deliberations and reasoning.

III. Overruling *Williams* to restore the centuries-old requirement of a twelve-member jury would not have undue consequences. The vast majority of the States already comply with the Constitution’s original meaning. The federal system does, too, permitting departures from twelve-member juries only in extraordinary circumstances that are not presented here. Plus, any decision restoring the jury-trial right as the Framers intended it would not yield any path to collateral attacks in cases involving final convictions. Ultimately, any disruption involved in correcting course and sweeping *Williams* into the dustbin of history “cannot outweigh the interest we all share in the preservation of our constitutionally promised liberties.” *Ramos v. Louisiana*, 590 U.S. 83, 110-11 (2020) (opinion of Gorsuch, J.). This Court should overrule *Williams* and reverse the judgment below.

ARGUMENT

I. The right to trial by jury always meant a right to a jury of twelve.

Jury trials weren’t a new idea in 1791. When the “Constitution was written, jury trial in criminal cases had been in existence in England for several centuries and carried impressive credentials traced by many to Magna Carta.” *Duncan v. Louisiana*, 391 U.S. 145, 151 (1968). The Framers valued that right so much

that they enshrined it in the Constitution twice over. U.S. Const. art. III, § 2 (“Trial of all Crimes . . . shall be by Jury”); *id.* amend. VI (criminal defendants shall have the right to trial “by an impartial jury” in “all criminal prosecutions”). When the Framers twice insisted on trial by jury in criminal cases, they were drawing from centuries of inherited “meaning about the content and requirements of a jury trial.” *Ramos v. Louisiana*, 590 U.S. 83, 89 (2020); *accord, e.g., Ex parte Grossman*, 267 U.S. 87, 108-09 (1925) (the “language of the Constitution cannot be interpreted safely except by reference to the common law and to British institutions as they were when the instrument was framed and adopted”).

Those centuries of practice taught a simple lesson: a trial by “jury” meant trial by twelve, not six or eight. That uninterrupted rule spanned 600 years, from its common-law origins to early American practice through this Court’s precedents up until 1970. *See* Pet. Br. 18-23.

Start with the common law. The “twelve-person unanimous criminal jury was an institution with a nearly four-hundred-year-old tradition in England” before the Sixth Amendment’s ratification. Miller, *Six of One Is Not a Dozen of the Other: A Reexamination of Williams v. Florida and the Size of State Criminal Juries*, 146 U. Pa. L. Rev. 621, 643 (1998). Leading English authorities equated the jury-trial right with a right to trial by twelve jurors. *See Kahler v. Kansas*, 589 U.S. 271, 279 (2020) (in assessing “historical practice,” this Court “look[s] primarily to eminent common-law authorities (Blackstone, Coke, Hale, and the like)”). Blackstone, for instance, explained that a person couldn’t be “affected either in his property, his liberty, or his person, but by the unanimous consent

of twelve of his neighbours and equals.” 3 Blackstone, Commentaries on the Laws of England 379 (1768). Another influential treatise observed that a jury consists of “twelve, and can be neither more nor less.” 3 Bacon, A New Abridgment of the Law 234 (4th ed. 1778); see *Thompson v. Utah*, 170 U.S. 343, 350 (1898) (citing Bacon’s Abridgment to underscore that trial by jury was one of “the principal excellencies of our constitution” and required a “verdict of twelve”).

The colonists brought that common-law tradition with them when they crossed the Atlantic. Several of the colonies’ foundational documents used “twelve men” as a proxy for the word “jury.” In its first legislative session, the New York General Assembly provided that “Tryalls shall be by the verdict of twelve men.” N.Y. Charter of Liberties & Privileges § 17 (1683), in 1 Lincoln, *The Constitutional History of New York* 101 (1906). The Pennsylvania Frame of Government likewise stated that “[a]ll trials shall be by twelve men.” See Su & Goravara, *What Is a Jury?*, 103 N.C. L. Rev. 969, 998 (2025). And early settlements in Virginia and New Plymouth had scarcely gained a foothold in the territory before the settlers began insisting on twelve-person juries in criminal cases. Bates, *Trial by Jury After Williams v. Florida*, 10 Hamline L. Rev. 53, 65 (1987).

Even where state constitutions didn’t specify that the right to trial by “jury” meant a trial by twelve, no one was confused about what “jury” meant. A South Carolina court, for example, understood “jury” to mean “12 men . . . indiscriminately drawn from every class of their fellow citizens.” *Zylstra v. Corp. of Charleston*, 1 S.C.L. (1 Bay) 382, 389 (Ct. Com. Pl. 1794). The Supreme Court of Pennsylvania similarly explained that the unadorned term “trial by jury” in

its 1776 constitution preserved the requirement “that all trials shall be by twelve men.” *Emerick v. Harris*, 1 Binn. 416, 426 (Pa. 1808). And state high courts in later decades continued the tradition of reading “jury” in criminal cases to mean twelve people. *See, e.g., Cancemi v. People*, 18 N.Y. 128, 138 (1858); *Work v. State*, 2 Ohio St. 296, 304 (1853); *Carpenter v. State*, 5 Miss. (4 Howard) 163, 166-67 (High Ct. Err. & App. 1839); *Footte v. Lawrence*, 1 Stew. 483, 483 (Ala. 1828); *Whitehurst v. Davis*, 3 N.C. (2 Hayw.) 113, 113 (1800) (per curiam).

Prominent legal thinkers at the Founding and in later decades were on the same page. In lectures delivered in Philadelphia “drawing on his experience as one of the most active members of the Constitutional Convention,” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964), Justice Wilson expressed the view that “[t]o the conviction of a crime, the undoubting and the unanimous sentiment of the twelve jurors is of indispensable necessity.” Wilson, *Of Juries*, in 2 *Collected Works of James Wilson* 985 (Hall & Hall eds. 2007). Later treatises echoed the same view that “[a] jury of less than twelve men is not a jury” at all, so “a statute authorizing a jury of less, in a case in which the constitution guarantees a jury trial, is void.” 1 Bishop, *Commentaries on the Law of Criminal Procedure* § 761, at 532 (1866); *accord, e.g., Cooley, Constitutional Limitations* 319 (1868).

Before 1970, this Court too consistently recognized that the “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.” *Thompson*, 170 U.S. at 349; *accord Cap. Traction Co. v. Hof*, 174 U.S. 1, 13 (1899); *Maxwell v. Dow*, 176 U.S. 581, 586 (1900); *Rassmussen v. United*

States, 197 U.S. 516, 529 (1905); *Patton v. United States*, 281 U.S. 276, 288 (1930). This right is so “fundamental to the American scheme of justice” that it is incorporated against the States by the Fourteenth Amendment. *Duncan*, 391 U.S. at 149, 158 n.30 (disregarding concerns about the practicability of enforcing the requirement of a twelve-member jury).

This Court had it right long ago: given the overwhelming historical record of what a “jury” in criminal cases meant, the constitutional requirement of a twelve-person jury “is not open to question.” *Patton*, 281 U.S. at 288.

II. *Williams* is grievously wrong and inflicting grave harms.

Then came *Williams v. Florida*, 399 U.S. 78 (1970), in which this Court took an unwarranted detour from the common-law and constitutional tradition—and in the process seriously undermined the jury-trial right. *Williams* dismissed the requirement of a twelve-person jury based on a smattering of since-debunked social-science studies and its own views about the importance of jury size. That analysis was erroneous at the time the Court decided *Williams*, and its harmful ramifications are even more apparent in hindsight.

A. *Williams* hastily balanced away a key constitutional guarantee.

Williams got off on the wrong foot by overlooking the time-tested wisdom of the common law. This Court did not deny the extensive history underlying the twelve-member jury. *Williams*, 399 U.S. at 93-96. But in the Court’s view, that historical tradition amounted to little more than “mystical or superstitious insights” supporting an “accidental feature” of the jury trial. *Id.* at 88, 90.

Instead of respecting the lessons and experiences that informed the dedication to a twelve-person jury, the Court in *Williams* attempted to weigh for itself whether the jury’s size was “important enough” to preserve. *Ramos*, 590 U.S. at 98. In doing so, the Court relied on a handful of dubious “experiments” to conclude that “the particular number of the body that makes up the jury” was not an “essential feature” of the right. *Williams*, 399 U.S. at 100-01. That was a grave mistake.

Williams eschewed the wisdom inherent in “centuries of historical practice” in favor of “bad social science.” *Cunningham v. Florida*, 144 S. Ct. 1287, 1287-88 (2024) (Gorsuch, J., dissenting from denial of certiorari). Scholars debunked the studies on which *Williams* rested almost immediately. See, e.g., Zeisel, ... *And Then There Were None: The Diminution of the Federal Jury*, 38 U. Chi. L. Rev. 710, 713-15 (1971) (noting the “scant evidence” underpinning *Williams*); Miller, *supra*, at 651 n.163 (collecting contemporaneous studies). And just a few years later, the Court itself acknowledged research “rais[ing] doubts about the accuracy of the results achieved” by smaller juries, which are “less likely to foster effective group deliberation.” *Ballew v. Georgia*, 435 U.S. 223, 232-38 (1978) (plurality opinion).

By dismissing the past commitment to a twelve-member jury as arbitrary, *Williams* improvidently cast off “everything history might have taught us about what it means to have a jury trial.” *Ramos*, 590 U.S. at 98 (emphasis omitted). The common-law tradition “is not the product of the wisdom of some one man, or society of men, in any one age, but of the wisdom, counsel, experience and observation of many ages of wise and observing men.” *Wheaton v. Peters*,

33 U.S. (8 Pet.) 591, 671-72 (1834). And long-held traditions “may serve purposes evading our current notice.” *Ramos*, 590 U.S. at 100.

Williams was wrong to discard those traditions out of hand. This Court should correct course, restore the historical and common-law right on which the Framers insisted, and overrule *Williams*.

B. A jury of twelve better serves the purposes of the jury-trial right.

Williams also should be overruled because its rushed analysis of the purposes and effects of the twelve-member jury requirement has not withstood the test of time. This Court has identified three primary goals that the jury-trial right serves: (1) “the interposition between the accused and his accuser of the commonsense judgment of a group of laymen,” *Williams*, 399 U.S. at 100; (2) “promot[ing] group deliberation,” *Ballew*, 435 U.S. at 230 (plurality opinion); and (3) “provid[ing] a representative cross-section of the community,” *ibid.* Social science and experience alike reveal that a jury of twelve better serves each of these goals as compared to six- or eight-member juries of the kind seen in select States. *See* Pet. Br. 30-34. Ultimately, then, restoring the twelve-person jury guaranteed at common law will not only bring the Constitution back in line with original public meaning, but also ensure that the various benefits of the twelve-person jury are felt across the criminal system—and by the public more generally.

1. Juries are an essential democratic check against prosecutorial and judicial overreach. 3 Story, *Commentaries on the Constitution of the United States* § 1774, at 653 (1833). Because juries are outside the government, they “function as [the]

circuitbreaker in the [government's] machinery of justice." *Blakely v. Washington*, 542 U.S. 296, 306 (2004). The government and the judge are both "repeat player[s] in the criminal justice process," and as a result they can "become desensitized to the enormity of what is at stake in a criminal proceeding." Barkow, *Recharging the Jury: The Criminal Jury's Constitutional Role in an Era of Mandatory Sentencing*, 152 U. Pa. L. Rev. 33, 72 (2003).

Requiring trial by jury ensures that criminal cases are seen "with a fresh set of eyes" and with "no institutional bias." Barkow, *supra*, at 72. Juries impose their own sense of fair play and are not desensitized to the stakes of one prosecution for having seen so many other prosecutions. In short, wherever a defendant "preferred the common-sense judgment of a jury," he "was to have it." *Duncan*, 391 U.S. at 156.

It is easy to see why a jury of fewer than twelve provides less of a bulwark. "To obtain a conviction under the unanimity rule, the prosecutor must persuade the juror with the highest standard" of reasonable doubt. Zeisel, *supra*, at 721. The prosecutor's job becomes easier with every person plucked from the common-law rule of twelve because she can more likely avoid "the class of jurors who are most difficult to convince." *Ibid.* With only six or eight jurors, it becomes far less likely that prosecutors will encounter the "representatives of [the doubtful] minority" on which our criminal system depends. *Ibid.*

Empirical studies in the wake of *Williams* have demonstrated, even under experimental conditions designed to engender reasonable doubt, that smaller juries favor conviction at higher rates. In one such experiment, six-member juries voted to convict nine out of ten times, while twelve-person juries did so in

only two. Valenti & Downing, *Six Versus Twelve Member Juries: An Experimental Test of the Supreme Court Assumption of Functional Equivalence*, 1 Personality & Soc. Psychol. Bull. 273, 274 (1974). Another study confirmed that smaller juries are more likely to convict in cases for which twelve-person juries might harbor doubts and hang. Roper, *Jury Size and Verdict Consistency: "A Line Has to Be Drawn Somewhere"?*, 14 L. & Soc'y Rev. 977, 990 (1980). "[B]y permitting criminal juries to be reduced in size," *Williams* "quiets voices of reasonable doubt, potentially leading to more unjust convictions." Miller, *supra*, at 674. Undoing *Williams*, then, would restore the jury's role as a check against overreach.

2. The jury's truth-seeking function also is better served by having twelve-person juries rather than juries of only six or eight. In the half-century since *Williams*, studies have shown that the traditional twelve-person jury is better able to process the evidence, arguments, and instructions in a lengthy or complex trial. More jurors mean more resources to improve reasoning, whether through "recollection of testimony, recognition of inconsistencies, or comprehension of the court's instructions." Kaye, *And Then There Were Twelve: Statistical Reasoning, the Supreme Court, and the Size of the Jury*, 68 Calif. L. Rev. 1004, 1020 (1980); accord Saks & Marti, *A Meta-Analysis of the Effects of Jury Size*, 21 Law & Hum. Behav. 451, 458 (1997) ("the larger the decision-making group, the better the decisions will be because of the increased resources provided by having more group members"); Carrington, *The Seventh Amendment: Some Bicentennial Reflections*, 1990 U. Chi. Legal F. 33, 54 ("larger groups such as full juries have greater resources of memory and cognitive understanding . . . and for these reasons make more accurate factual determinations").

As a result, the traditional twelve-person jury is “more sensitive to the ‘ambiguities in the case’” that could produce reasonable doubt. Miller, *supra*, at 671. Research bears out that conclusion. “Studies have demonstrated that seating twelve jurors will result in a verdict that is a more reliable reflection of the statistical community average.” Su & Goravara, *supra*, at 1020. Juries with fewer members, conversely, “are more likely to produce outlier verdicts inconsistent with community values.” *Ibid.*

Relatedly, many studies “have demonstrated that the quality of the jury’s discussion and deliberation is better in larger groups than in smaller ones.” Arnold, *Trial by Jury: The Constitutional Right to a Jury of Twelve in Civil Trials*, 22 Hofstra L. Rev. 1, 31 & n.216 (1993) (collecting studies). Twelve-member juries subject the jurors’ initial impressions, memories, and conclusions to “more viewpoints, types of expertise, and mutually cancelling biases.” Kaye, *supra*, at 1020; accord Saks & Marti, *supra*, at 458 (observing “more substantive deliberation” among twelve jurors, involving “the sharing of more facts, more ideas, and more challenges to the tentative conclusions of others”). Because of the greater variety of views present, “twelve-person juries facilitate minority resistance to conformity pressure from the majority, promote a more vigorous deliberation of the issues, and deter immediate decisions in all but the most clear-cut cases.” Miller, *supra*, at 673.

The twelve-member jury’s capacity for “better testing of ideas and reactions” yields “more accurate factual determinations.” Carrington, *supra*, at 54. And improved accuracy shields the innocent from erroneous conviction—without making conviction of the guilty unduly difficult.

3. Finally, juries of twelve better achieve “community participation and shared responsibility” in deciding the guilt of the accused. *Williams*, 399 U.S. at 100.

“[T]he Sixth Amendment’s promise of a jury of one’s peers means a jury selected from a representative cross section of the entire community.” *Ramos*, 590 U.S. at 100 n.47. Twelve-person juries deliver on that promise more faithfully than six- or eight-person juries because they are more likely to suitably represent a variety of voices and perspectives. In contrast, juries with fewer members “threaten to deprive defendants of a fair possibility of obtaining a jury composed of a representative cross-section of the community.” *Khorrami v. Arizona*, 143 S. Ct. 22, 26 (2022) (Gorsuch, J., dissenting from denial of certiorari).

Williams itself recognized that a jury must be sizeable enough that it “provide[s] a fair possibility for obtaining a representative cross-section of the community.” 399 U.S. at 100. Yet the Court satisfied itself with speculation that “the difference between the 12-man and the six-man jury in terms of the cross-section of the community represented” was “likely to be negligible.” *Id.* at 102.

Eliminating half the opportunity for a fair cross-section is anything but negligible. “[I]f we want individual juries to be cross-sectional, . . . we should want each jury to be of substantial size.” Amar, *Reinventing Juries: Ten Suggested Reforms*, 28 U.C. Davis L. Rev. 1169, 1188 (1995) (emphasis omitted). Twelve-member juries are better able to “draw citizens from different backgrounds,” *ibid.*, improving the deliberative process and ensuring a broader check on government abuses. Meanwhile, “the smaller the size of the jury, the less frequently it even *approaches* community representation.” Zeisel, *supra*, at 716 (emphasis

added). As jury size decreases, the odds that a jury will not include a juror representing a minority population—racial, ideological, or otherwise—increase considerably. Saks & Marti, *supra*, at 457 (“12-person juries are more likely than 6-person juries to contain at least one member of whatever minority group is under consideration.”); Arnold, *supra*, at 30 (discussing a study showing that 72% of twelve-person juries included minority jurors as compared to 47% of six-person juries).

Excluding minority views undermines the jury’s representative function in stark ways. With homogeneity, the jury’s deliberative capacities weaken because there is less “competition among views” putting “ideas and reactions” to a rigorous test. Carrington, *supra*, at 54. Lone dissenters—more likely in smaller juries—are more easily pressured to conform with the majority. Miller, *supra*, at 673. Permitting trial by fewer than twelve jurors thus weakens the bulwark against “unfounded criminal charges brought to eliminate enemies,” both because it is easier to exclude sympathetic community members from a smaller panel and because potential dissenters are less likely to resist the majority. *Duncan*, 391 U.S. at 156.

The effect of omitting minority perspectives from criminal juries is neither accidental, *see* Pet. Br. 36-37, nor theoretical. Experience in the decades since *Williams* reveals the measurable and unsettling impact of jury homogeneity. One study of over 700 felony jury trials in Florida found that all-white jury pools yielded a 16-percentage-point increase in conviction rates for Black defendants compared to white defendants. Anwar et al., *The Impact of Jury Race in Criminal Trials*, 127 Q. J. Econ. 1017, 1019-20, 1027-28, 1034-35 (2012). Meanwhile, that gap was “eliminated” when

the jury pool included at least one Black member. *Id.* at 1035. Another study similarly demonstrated that white jurors voted to convict Black defendants less frequently when part of a racially diverse jury. Sommers & Ellsworth, *How Much Do We Really Know About Race and Juries?: A Review of Social Science Theory and Research*, 78 Chi.-Kent L. Rev. 997, 1028-29 (2003). By improving cross-sectional representation, twelve-member juries protect against these harmful outcomes more effectively than their smaller counterparts.

The harmful effects of six- and eight-person juries extend well beyond particular cases. Juries are a vital stand-in for the “community participation in the determination of guilt or innocence” on which the Framers insisted. *Duncan*, 391 U.S. at 156. Enforcing the historical jury-trial right is thus “critical to public confidence in the fairness of the criminal justice system,” *Taylor v. Louisiana*, 419 U.S. 522, 530 (1975), and “ensures continued acceptance of the laws by all of the people,” *Powers v. Ohio*, 499 U.S. 400, 407 (1991). Deviating from that right, and permitting conviction by a six- or eight-member jury far less likely to contain a fair cross-section of the community, risks poisoning the well and increasing public skepticism or even hostility to the criminal system. *See* Pet. Br. 35-36.

* * *

Williams represented both an abandonment of historical wisdom and a “misapplication of social-science research.” Miller, *supra*, at 622. These errors combined to “trigger[] the ‘unthinkable’ dismantling of an irrevocable constitutional cornerstone.” *Ibid.* “Before the ink dried on the decision” and even more “in the years since,” social science and experience have confirmed *Williams*’s errors—and demonstrated how the

common law serves the important goals of the jury system far better than does a jury of fewer. *Khorrami*, 143 S. Ct. at 26-27 (Gorsuch, J., dissenting from denial of certiorari).

This Court has already undercut *Williams* to the point that the decision should “be regarded as retaining no vitality.” See *Herrera v. Wyoming*, 587 U.S. 329, 342 (2019). In *Ramos*, this Court squarely rejected the same sort of “breezy cost-benefit analysis” that this Court used in *Williams* to depart from centuries of common-law wisdom. *Ramos*, 590 U.S. at 99-100. As the Court explained, “[w]hen the American people chose to enshrine” the jury-trial right “in the Constitution, they weren’t suggesting fruitful topics for future cost-benefit analyses.” *Id.* at 100. They were instead striving “to ensure that their children’s children would enjoy the same hard-won liberty they enjoyed.” *Ibid.* And there is no doubt what right had been cemented in constitutional text: “no person could be found guilty” except by “the unanimous suffrage of twelve of his equals and neighbors.” *Id.* at 90.

The Court should overrule *Williams*—if indeed anything is left of it, see Pet. Br. 24-27—to restore the jury to its full constitutional vigor.

III. Overruling *Williams* would not have undue consequences.

Re-enshrining the twelve-member jury as a constitutional requirement would be minimally disruptive to the state and federal criminal systems. Both sets of systems are well equipped to hold trials with twelve jurors, as they already do in most circumstances. Restoring the historical meaning of the Sixth Amendment would not affect final convictions, and any small impact on pending cases “cannot outweigh

the interest we all share in the preservation of our constitutionally promised liberties.” *Ramos*, 590 U.S. at 110-11 (opinion of Gorsuch, J.).

At the state level, the enormous majority of criminal trials already comport with the historical demands of the Sixth Amendment. All but seven States generally require a twelve-person jury for serious offenses. *See* Pet. Br. 13-14. Even Florida requires twelve jurors, if only in capital cases. Fla. Stat. § 913.10. So even though a ruling on the Sixth Amendment jury-trial right would apply to all States through the Fourteenth Amendment, *Duncan*, 391 U.S. at 149, 156-58, it would only require a system that almost every State is already using.

Nor would a ruling in petitioner’s favor unduly disrupt the federal system. There (as in States with analogous rules), the only permitted departures from the twelve-person jury are (1) those to which the defendant consents and (2) those involving excusal of a juror for “good cause” “[a]fter the jury has retired to deliberate.” Fed. R. Crim. P. 23(b)(2)-(3). The former is uncontroversial; a defendant with a right to trial by jury has the corresponding ability to “consent to be tried by a less number than twelve.” *Patton*, 281 U.S. at 290. And the latter is no reason to preserve *Williams* and the six- and eight-person jury trials it permits. The Court could reserve Rule 23(b)(3) for a case that presents the issue. *See* Pet. Br. 13 n.4. Besides, that rule is limited to rare situations in which a juror “is seriously incapacitated” or unable to continue, Fed. R. Crim. P. 23 advisory committee’s notes to 1983 amendments, and those situations are becoming rarer still now that judges can seat alternates, Fed. R. Crim. P. 24 advisory committee’s notes to 1999 amendments, and take advantage of remote deliberations where

appropriate, see Rossner & Tait, *Virtual Technology and the Changing Rituals of Courtroom Justice*, 98 Chi.-Kent L. Rev. 251, 277 (2023).

Overruling *Williams* also would not subject final state or federal convictions by fewer than twelve jurors to belated attack. Any rule reversing *Williams* and restoring the twelve-member jury-trial right “will not be applicable to those cases which have become final before the new rules are announced.” *Teague v. Lane*, 489 U.S. 288, 310 (1989). This Court has also clarified that there is no exception for “watershed” rules, *Edwards v. Vannoy*, 593 U.S. 255, 272 (2021), even when a case restores “the original meaning” of a constitutional provision, *Danforth v. Minnesota*, 552 U.S. 264, 270 (2008).

For pending cases, reinstating the historical requirements of the jury-trial right may impose some additional burdens on criminal systems, but that is an inherent feature of any new rule of criminal procedure. When, for instance, this Court’s holding that the Federal Sentencing Guidelines must be only advisory led it to “vacate[] and remand[] nearly 800 decisions to the courts of appeals,” *Ramos*, 590 U.S. at 108, that was a small price to pay for “preserving [the] ancient guarantee” enshrined in the Sixth Amendment, *United States v. Booker*, 543 U.S. 220, 237 (2005).

So too here. Whatever minor disruptions may result from overruling *Williams* are the necessary result of the balance the Framers struck long ago. “[A]dministrative conveniences,” *Baldwin v. New York*, 399 U.S. 66, 73 (1970) (plurality opinion), are no justification for flagrant violations of one of the Constitution’s most cherished rights, *Ramos*, 590 U.S. at 89. The Court should once again acknowledge “what we all

know to be true about the Sixth Amendment.” *Id.* at 111 (opinion of Gorsuch, J.).

CONCLUSION

The judgment of the Florida Fourth District Court of Appeal should be reversed.

Respectfully submitted.

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