

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 DISTRICT COURT
OF APPEAL, FOURTH DISTRICT

**BRIEF OF HUMAN RIGHTS FOR KIDS AS *AMICUS*
CURIAE IN SUPPORT OF PETITIONER**

JAMES DOLD
Counsel of Record
TERESA KOMINOS
SUZANNE LA PIERRE
HUMAN RIGHTS FOR KIDS
P.O. Box 5960
Washington, DC 20016
(202) 573-7758
jdold@humanrightsforkids.org
Attorneys for Amicus Curiae

August 13, 2026

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INTEREST OF AMICUS¹

Human Rights for Kids is a non-profit organization dedicated to the promotion and protection of the human rights of children. We incorporate research and public education, coalition building and grassroots mobilization, as well as policy advocacy and strategic litigation, to advance critical human rights on behalf of children. A central focus of our work is advocating in state legislatures and courts for comprehensive justice reform for children consistent with the U.N. Convention on the Rights of the Child.

SUMMARY OF ARGUMENT

Children in states that empanel six-member juries are at an increased risk of wrongful conviction due to the decreased accuracy and reliability of their verdicts. Youth also suffer disparate treatment in capital cases when compared to their adult counterparts. In Florida, for example, children have been sentenced to die in prison (life without parole), after they've been convicted of first-degree murder by a six-member jury.² Adult defendants, on the other hand, are always entitled to twelve-member juries in such cases, even when prosecutors have waived the death penalty!³ This disparate treatment is incompatible with this Court's recognition that children

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

2. *State v. Hollowell*, No. 2019-CF-001099-A (Fla. Cir. Ct. Citrus Cnty.), aff'd, *Hollowell v. State*, 336 So. 3d 282 (Fla. 5th DCA 2022) (table).

3. *State v. Hogan*, 451 So.Sd 844, 845 (1984).

should be afforded greater protection, not less, when facing the loss of life or liberty.

Modern empirical research overwhelmingly confirms that twelve-member juries deliberate more thoroughly, recall evidence more accurately, and produce more reliable outcomes than six-member juries, thereby refuting the factual premises upon which *Williams v. Florida* relied.⁴ Most fundamentally, the twelve-member jury is inseparable from the constitutional protections that define a fair criminal trial. The presumption of innocence and the requirement that guilt be established beyond a reasonable doubt derive their practical force from a deliberative body capable of rigorously testing the government's evidence. Reducing the size of the jury correspondingly diminishes these foundational constitutional safeguards.

Finally, just as the *Ramos* Court recognized that the Sixth Amendment incorporates the historic requirement of jury unanimity, the same historical sources and constitutional principles compel recognition that the jury guaranteed by the Sixth Amendment consists of twelve members.⁵ Because the use of a constitutionally deficient jury alters the very framework within which guilt is determined, convictions returned by six-member juries constitute structural error requiring automatic reversal.⁶

Accordingly, the Court should rule in favor of the petitioner.

4. Michael J. Saks & Mollie Weighner Marti, *A Meta-Analysis of the Effects of Jury Size*, 21 Law & Hum. Behav. 451 (1997).

5. *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020).

6. *Arizona v. Fulminate*, 499 U.S. 299 (1991).

ARGUMENT**I. CHILDREN ARE UNFAIRLY TREATED AND DISPROPORTIONATELY HARMED BY THE USE OF JURIES WITH LESS THAN TWELVE MEMBERS**

Understanding that children are fundamentally different from adults, this Court has long upheld the need for heightened constitutional protection when they are involved in the criminal justice system. In holding that children subject to delinquency prosecution are entitled to the same due process protections available in the adult criminal justice system, the *Gault* Court expressly noted that “[f]ailure to observe the fundamental requirements of due process has resulted in instances, which might have been avoided, of unfairness to individuals and inadequate or inaccurate findings of fact and unfortunate prescriptions of remedy. Due process of law is the primary and indispensable foundation of individual freedom.”⁷ Subsequently, in a series of Eighth Amendment cases beginning with *Thompson v. Oklahoma*,⁸ the Court has repeatedly held that child status undermines “the penological justifications for imposing the harshest sentences on juvenile offenders.”⁹ And in *J.D.B. v. North*

7. *In re Gault* 387 U.S. 1, 19-20 (1967).

8. See *Thompson v. Oklahoma*, 487 U.S. 815 (1988); *Roper v. Simmons* 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *Miller v. Alabama* 567 U.S. 460 (2012).

9. *Miller* at 471-472.

Carolina,¹⁰ the Court’s Fifth Amendment Miranda analysis explicitly referenced the child status of the defendant.¹¹

The Court’s rulings reflect the extensive scientific evidence establishing structural differences in the brains of young people as compared to adults. As Justice Harlan noted in *Gault*, “Among the first premises of our constitutional system is the obligation to conduct any proceeding in which an individual may be deprived of liberty or property in a fashion consistent with the “traditions and conscience of our people. The importance of these procedural guarantees is doubly intensified here [where children are involved]”¹² As discussed below, the use of six member juries is a Sixth Amendment deprivation that also disproportionately harms children.

Full appreciation of the impact of the adult criminal justice system on children in the United States, requires an understanding of judicial transfer laws. Every year, approximately 53,000 children are prosecuted in the adult criminal justice system despite well-established neuroscience demonstrating that children differ from adults in development, judgement and capacity for change.¹³ The policy shift exposing children to increased

10. *J.D.B. v. North Carolina*, 564 U.S. 261 (2011).

11. *Id.*

12. *In re Gault*, 387 U.S. 1, 67 (1967) (Harlan, J., concurring in part and dissenting in part).

13. Charles Puzzanchera et al., National Center for Juvenile Justice, *Youth younger than 18 prosecuted in criminal court: National estimate, 2019 cases* (https://ncjj.org/pdf/NCJJ_Transfer_estimate_2019.pdf).

prosecution in adult court occurred in the 1990s in response to a fictionalized threat portraying youthful offenders as “super-predators”.¹⁴ Relying on racist tropes and coded references to Black “inner city” youth,¹⁵ this prediction was swiftly proven false: juvenile crime dropped by more than half instead of rising¹⁶ and the political scientist who authored the theory later renounced it.¹⁷

Nevertheless, every state and the Federal government still prosecutes children in adult court either through statutory exclusion, direct-file, prosecutorial discretion or judicial waiver. As a result, approximately 3 percent of our adult prison population consists of people serving adult sentences for crimes they allegedly committed as children.¹⁸

14. Patrick Griffin et al., *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting* (U.S. Dep’t of Just., Off. of Juv. Just. & Delinq. Prevention 2011).

15. John J. DiIulio Jr., *The Coming of the Super-Predators*, *The Weekly Standard* (Nov. 27, 1995), <https://www.washingtonexaminer.com/weekly-standard/the-coming-of-the-super-predators>.

16. Office of Juvenile Justice and Delinquency Prevention, U.S. Dept. of Justice, *Challenging the Myths, 1999 National Report Series: Juvenile Justice Bulletin* (February, 2000), <https://www.ojp.gov/pdffiles1/ojjdp/178993.pdf>.

17. John J. DiIulio, Jr., *Rethinking Crime—Again*, *Democracy Journal*, Spring 2010, at 46, 52–53.

18. Human Rights for Kids, *Crimes Against Humanity: The Mass Incarceration of Children in the United States*, 9 (2023).

**A. CHILDREN SUFFER DISPARATE HARM
WHEN DENIED THE RIGHT TO A TWELVE-
MEMBER JURY UNDER THE SIXTH
AMENDMENT**

Only seven states allow use of juries with less than twelve members when prosecuting felonies. While all of them draw different lines for when a jury of a certain size must be used, the one commonality they share is the twelve-member requirement in the most serious cases posing the most severe punishments. This peculiar practice begs an important question: if the procedural requirement of a six-or-eight-member jury has no material impact on the accuracy or reliability of a conviction, then why require twelve member juries at all? As the following review of these minority states' practices demonstrates, deviation from the common law twelve-member jury has had a particularly harmful impact on child defendants who, in the case of Florida, are treated worse than adult defendants.

Arizona only requires twelve member juries in cases involving the death penalty or imprisonment for thirty or more years.¹⁹ Today, there are approximately 933 people incarcerated in Arizona for crimes they allegedly committed as children, constituting 2.28 percent of the overall state prison population.²⁰ Approximately 15 percent are serving life sentences, with the rest serving

19. A.R.S. § 21-102.

20. Human Rights for Kids, *Crimes Against Humanity*, supra note 18, at 73.

term of years sentences.²¹ The average sentence is approximately 8.65 years.²² Because of the small number of youth serving life sentences and a relatively short average sentence length, it is likely that most youth who faced prosecution in Arizona's criminal court would not have had the procedural protections of a twelve-member jury.

Connecticut is one of the most pervasive violators of the jury trial right as it was understood at common law. Unless a child faces a sentence of life imprisonment, they are subjected to a six-member jury.²³ As of 2023, there were no children serving life sentences in the state.²⁴ It is thus highly unlikely that anyone currently incarcerated in Connecticut for an offense committed as a child would have been convicted by a twelve-member jury. However, there were 210 people, representing 2.4% of the state prison population, serving term-of-years sentences as children.²⁵ The average sentence of this subpopulation was just under 30 years.²⁶ Within this population, at least three individuals reported having been convicted by a six-member jury for offenses they allegedly committed

21. *Id.*

22. *Id.*

23. Conn. Gen. Stat. § 54-82.

24. Human Rights for Kids, *Crimes Against Humanity*, *supra* note 18, at 77.

25. *Id.*

26. *Id.*

as children.²⁷ Similar to Arizona, children in Connecticut faced a criminal justice system bereft of the protections that accompany a twelve-member jury.

Indiana extends the right to a twelve-member jury in cases involving murder or a Level 1 through Level 5 felony offense.²⁸ In all other criminal cases a six-member jury is empaneled.²⁹ While it is unlikely that most children prosecuted as adults in Indiana are deprived of a twelve-member jury, those charged with a felony offense not listed above, and who have either a prior felony or nontraffic misdemeanor conviction, could be subjected to a six-member jury.³⁰ The state has approximately 214 people who have been incarcerated since childhood, including 22 serving life sentences.³¹ This is approximately 0.79 percent of the state's prison population.³²

Louisiana is the only one of the seven states that completely excludes seventeen-year-olds from the jurisdiction of its juvenile courts.³³ While this practice arguably violates U.S. treaty obligations under the

27. Human Rights for Kids, *Survey of People Incarcerated for Crimes Committed as Children* (July 2, 2026) (unpublished survey prepared for *Kian v. Florida*, No. 123-456).

28. Ind. Code § 35-37-1-1 (2025).

29. *Id.*

30. Ind. Code § 31-30-3-6 (2025).

31. Human Rights for Kids, *Crimes Against Humanity*, *supra* note 18, at 85.

32. *Id.*

33. La. Ch. Code art. 804(1)(a).

ICCPR, it also exposes these youth to trial by six-member juries.³⁴ Louisiana empanels such juries when the offense carries a punishment that *may* include confinement at hard labor.³⁵ Approximately 2,277 people are incarcerated for crimes they allegedly committed as children in the state, including 617 who are serving life or de facto life sentences.³⁶ The remaining population is serving an average sentence of 13.4 years.³⁷ It is not known how many of these individuals may have been convicted by six-member juries.

In Massachusetts, the most serious felony cases proceed in Superior Court which requires the use of a twelve-member jury.³⁸ The District Court has jurisdiction over “all felonies punishable by imprisonment ... for not more than five-years.”³⁹ In these latter cases, twelve-member juries are not required.⁴⁰ Approximately 182 people are currently incarcerated in Massachusetts for crimes they allegedly committed as children, including 96

34. La. Const. art. I, § 17(A); La. Code Crim. Proc. art. 782(A).

35. *Id.*

36. Human Rights for Kids, *Crimes Against Humanity*, supra note 18, at 89.

37. *Id.*

38. Mass. Gen. Laws ch. 212, § 6.

39. *Commonwealth v. Muckle*, 90 Mass. App. Ct. 384, 59 N.E.3d 439 (Mass. App. 2016).

40. G. L. c. 218, § 26A.

who are serving life sentences.⁴¹ The remainder are serving an average sentence of 13.72 years.⁴² This represents 2.2 percent of the overall state prison population.⁴³ As of 2023, there were at least 12 individuals serving sentences of five years or less for offenses they committed as children.⁴⁴ While it is unclear how many of these cases were tried in District Court, those that were would have faced juries with less than twelve members.

Florida has the most onerous rule, restricting twelve-member jury trials solely to ‘capital cases.’⁴⁵ The Florida Supreme Court has further ruled that even if a crime is labeled a “capital offense,” a twelve-member jury is not required in cases “where the death penalty is no longer possible.”⁴⁶ That court has also ruled that where prosecutors waive the death penalty for adult defendants, it does not change the classification of first degree murder from a ‘capital offense’ to a non-capital offense, thereby depriving the defendant of his right to a twelve-member jury.⁴⁷ The controlling factor in this analysis is whether or not death is a viable penalty under statutory and constitutional law.⁴⁸

41. Human Rights for Kids, *Crimes Against Humanity*, supra note 18, at 92.

42. *Id.*

43. *Id.*

44. *Id.*

45. FL. R. Crim. P. 3.270.

46. *Hogan* at 845.

47. *Id.*

48. *Id.*

This has a particularly adverse effect on children. Invoking *Roper*'s prohibition of the death penalty for children, some Florida courts have ruled that the twelve-member jury requirement is inapplicable for child defendants in capital cases.⁴⁹ This has led to the grossly inequitable result of adult defendants having greater due process protections in first degree murder cases than children, even where the state is not seeking the death penalty.⁵⁰ In *Fucci v. State*, for example, a 14 year-old defendant faced a possible life sentence for first-degree murder, but was not entitled to a twelve-member jury.⁵¹ Such disparate treatment of child and adult offenders facing trial for first degree murder, even where the death penalty has been waived for the latter, defies logic.

Excluding first degree murder cases, approximately fifty-one children have been convicted in Florida by six-member juries and remain incarcerated today as a result.⁵² Including post-*Roper* first degree murder cases that have been independently verified by Amicus the number rises to fifty-seven.⁵³ It is worth noting that this

49. *Walling v. State*, 105 So.3d 660, 662-63 (2013); *see also Chavers v. State*, 359 So.3d 846 (2023).

50. *State v. Griffith*, 561 So.2d 528, 529 (Fla. 1990).

51. *Fucci v. State*, 420 So.3d 523, 526 (2023).

52. Human Rights for Kids, *Survey of People Incarcerated for Crimes Committed as Children*, *supra* note 52 (Survey responses indicating a six-member jury conviction in Florida were cross-referenced with publicly available court records for verification); *see also* Florida Department of Corrections, *All Offenses Committed Prior to 18th Birthday* (July 8, 2026) (unpublished report prepared in response to a data request).

53. *Id.*

data is a conservative approximation and is likely a severe undercount. Furthermore, it does not include individuals who were convicted by six-member juries, but were later exonerated and/or released.

There is conflicting data on the total number of people who have been incarcerated in Florida since childhood. The data in the preceding paragraph is largely based on a recent request to the Florida Department of Corrections, where it identified only 294 people convicted for crimes committed as children.⁵⁴ In a much more expansive 2023 analysis, however, 2,638 people, representing 2.75 percent of the state prison population, were identified as serving sentences for crimes committed as children.⁵⁵ Only 329 of the individuals in this subset were serving life sentences with the remaining serving term-of-years sentences,⁵⁶ suggesting that nearly all of these youth would not have been entitled to a twelve-member jury.

Most criminal trials in Utah are before eight-member juries, with the notable exception of ‘capital offenses,’ which require twelve members.⁵⁷ Unlike Florida, however, ‘capital’ offenses in Utah are not classified as such based solely on the availability of the death penalty.⁵⁸

54. *Id.*

55. Human Rights for Kids, *Crimes Against Humanity*, supra note 18, at 80.

56. *Id.*

57. *State v. James*, 30 Utah 2d 32, 33 512 P.2d 1031, 1032 (Utah 1973).

58. *Id.* at 36.

Instead, what constitutes a ‘capital’ offense is set by the legislature.⁵⁹ As a result, a defendant’s right in a ‘capital’ case to a twelve-member jury remains absolute regardless of whether the death penalty is technically available.⁶⁰ That being said, the Utah Legislature has specified that in certain instances aggravated murder is a noncapital crime, including in cases where the state does not file a notice of intent to seek the death penalty or where “the defendant was younger than 18 years old at the time the offense was committed.”⁶¹ Accordingly, as in Florida, child defendants in Utah are not entitled to twelve-member juries under any circumstances.

There are approximately 118 people incarcerated in Utah for crimes they allegedly committed as children.⁶² The average sentence of those not serving ‘life’ sentences is roughly 69.75 years (10.78 years when those serving sentences longer than 40 years are removed). This subpopulation represents 1.77 percent of Utah’s total prison population, the overwhelming majority of whom faced the prospect of a criminal trial without the benefit of a twelve-member jury.⁶³

Many of the children discussed in this section who were convicted by six-member juries are no longer on

59. *Id.*

60. *Id.*

61. Utah Code § 76-5-202.

62. Human Rights for Kids, *Crimes Against Humanity*, *supra* note 18, at 115.

63. *Id.*

direct appeal. Therefore, a ruling in favor of the Petitioner would not entitle them to a new trial.⁶⁴ Although not presented in this case, we would respectfully urge the Court to revisit its retroactivity doctrine in *Edwards v. Vannoy* to make an exception for child defendants.⁶⁵

B. DISPARATE RACIAL IMPACT ON CHILDREN PROSECUTED AS ADULTS

In states that permit jury trials with less than twelve members, Black youth are disproportionately convicted and incarcerated as adults.⁶⁶ In Arizona, they represent 24 percent of those incarcerated; in Connecticut, 61 percent; in Florida, 68.8 percent; in Indiana, 66.4 percent; in Louisiana, 83.3 percent; in Massachusetts, 44.5 percent; and in Utah, 12.7 percent.

Moreover, in those states for which data is available, these racial disparities remain for youth convicted by six-member juries. In Connecticut, two-thirds of the children convicted by such juries were Black, while one-third was Hispanic.⁶⁷ In Florida, approximately 72 percent of youth convicted by six-member juries were Black, 18 percent were White, and 10 percent were Hispanic.⁶⁸ There are numerous systemic reasons for these disparities, but of

64. *Edwards v. Vannoy*, 593 U.S. 255 (2021).

65. *Id.*

66. Human Rights for Kids, *Crimes Against Humanity*, *supra* note 18, at 115.

67. Human Rights for Kids, *Survey of People Incarcerated for Crimes Committed as Children*, *supra* note 27.

68. *Id.*

major importance is the perception that Black children are more culpable than their biological age would indicate.⁶⁹ A 2012 study identifies the implications arising from the adultification of Black children in the minds of juries and judges alike, suggesting that “racial priming manipulation can affect the degree to which juveniles (in general) are afforded the established protections associated with their age status in the context of a severe crime... being primed over and over through exposure to Black individuals or racially coded language could produce changes in judges’ and juries’ perceptions of culpability and their ensuring punitive judgments.”⁷⁰ Participants in another study “began to think of black children” as early as age ten, “as significantly less innocent than other children at every age group.”⁷¹

The consequences of such beliefs do not exist in a vacuum. Black people face disproportionate outcomes at many stages of the criminal legal process with research revealing that Black people are 1.75 times more likely to be charged with offenses carrying a mandatory minimum sentence.⁷² Black children are also more likely

69. Rattan, Levine, Dweck & Eberhardt, *Race and the Fragility of the Legal Distinction between Juveniles and Adults*, 7 PLoS ONE 1, 3 (2020).

70. *Id.* at 4.

71. Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. Personality & Soc. Psych. 526, 527 (2014).

72. Starr & Rehavi, *Racial Disparity in Federal Criminal Charging and its Sentencing Consequences*, 122 J. Pol. Econ. 1320, 1323 (2012).

to be charged as adults,⁷³ and to be charged with felony murder.⁷⁴ Another study found that individuals were more likely to support life without parole sentences when told the defendant was Black.⁷⁵ In this context, the perception of youth matters and the implicit bias that exists within the jury pool towards Black youth cannot be ignored and is only exacerbated with juries of less than twelve members. These issues are central to the examination of how to ensure fairness and accuracy in the fundamental exercise of due process.

II. THE TWELVE-MEMBER JURY IS FUNDAMENTAL TO THE AMERICAN SCHEME OF JUSTICE AND SAFEGUARDS AGAINST WRONGFUL CONVICTIONS

A. THE FOUNDERS UNDERSTOOD THAT THE SIXTH AMENDMENT RIGHT TO A TRIAL BY AN IMPARTIAL JURY REQUIRED TWELVE MEMBERS

The Sixth Amendment establishes the right of criminal defendants to “a speedy and public trial, by

73. Smith & Levinson, *The Impact of Implicit Racial Bias on the Exercise of Prosecutorial Discretion*, 35 SEATTLE U. L. REV. 795 (2012).

74. Albrecht, *Data Transparency & The Disparate Impact of the Felony Murder Rule*, Duke Ctr. For Firearms Law (Aug. 11, 2020) <https://firearmslaw.duke.edu/2020/08/data-transparency-the-disparate-impact-of-the-felony-murder-rule>.

75. Rattan at 1, 3.

an impartial jury.”⁷⁶ The framers adopted the right from English common law and the Magna Carta, which enshrined the right to trial by a panel of “peers.”⁷⁷ A trial by one’s peers provides for community participation and the injection of civic ethos in criminal proceedings, safeguarding the accused from government overreach and the unjust deprivation of life, liberty, and property. Twelve-member panels appeared for the first time in England between 1083 and 1086 and were codified into English law by the fourteenth century.⁷⁸

In 1769, Blackstone explained that the common law jury trial right required that “the truth of every accusation ... should afterwards be confirmed by the unanimous suffrage of *twelve* of the defendant’s equals and neighbors.”⁷⁹ This right “came to America with English colonists.”⁸⁰ By the time of the U.S. Constitution’s drafting, unanimous, twelve-member verdicts were a procedural convention with a four-hundred-year history.⁸¹ Legal dictionaries, treatises, and scholarship at the time

76. U.S. Const. amend. VI.

77. See Robert H. 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, 637 (1998).

78. *Id.* at 635, 639–640.

79. *Apprendi v. New Jersey*, 530 U.S. 466, 477 (2000) (quoting 4 W. Blackstone, *Commentaries on the Laws of England* 343 (1769)).

80. *Duncan*, 391 U.S. at 152.

81. See *Miller*, *supra* note 8, at 643; see also *Khorrami v. Arizona*, 143 S. Ct. 22, 23 (2022) (Gorsuch, J., dissenting from the denial of certiorari).

of founding all establish the tradition and efficacy of the twelve-member jury.⁸² Such specification was echoed by Blackstone’s contemporaries in other leading treatises including Lord Edward Coke’s *Institutions of the Lawes of England*, Sir Matthew Hale’s *History of the Pleas of the Crown*, and Matthew Bacon’s *A New Abridgement of the Law*.⁸³

Giles Jacob’s popular legal dictionary, included in the private collections of John Adams and Thomas Jefferson, used “twelve men” interchangeably with “jury,” qualifying the word as a term of art to reference empaneling specifically twelve jurors.⁸⁴ However, the framers’ adoption of twelve was more intentional than a blind adherence to this centuries-long practice. At the time, larger juries were backed by qualitative support from French economist and mathematician Marquis Nicolas de Condorcet who used a probability calculus to demonstrate that larger juries were more accurate in his work *Essay on the Application of Mathematics to the Theory of Decision Making*.⁸⁵ This influential work was found in the collections of Thomas Jefferson and James Madison and was referenced frequently in letters between the two.⁸⁶

82. See Wanling Su & Rahul Goravara, *What is a Jury?*, N.C. L. Rev., 103 NCLR 969, 993 (2025) (quoting 1 William Blackstone, *Commentaries on the Laws of England* 343 (1769)).

83. *Id.* at 993-996.

84. *Id.* at 997 (quoting Giles Jacob, *A New Law Dictionary* 949 (10th ed. 1782)).

85. *Id.* at 1010-1012.

86. *Id.*

Documents from states' ratifying conventions memorialize how state officials and judges all interpreted a "jury," in the words of Virginia's then-Governor Patrick Henry, to be comprised of "twelve impartial men".⁸⁷ Following the Constitutional Convention, a stream of state-court decisions concretized the interpretation of "jury" as a body of twelve into common law.⁸⁸

Federal courts followed suit and between founding and 1970, Supreme Court precedent cemented the twelve-member jury as enjoying six hundred years of formal recognition. Beginning with *Thompson v. Utah* in 1898 this Court has uniformly held principally or in dicta 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."⁸⁹ This history provides great evidence for how the framers' use of the word "jury" in the Sixth Amendment would have carried the plain meaning and common understanding of a panel of twelve, as it had for centuries in English common law.

Against this backdrop, the decision to disappear the twelve-member requirement in *Williams v. Florida* appears anomalous and was hinged upon conjecture. With scant support, the court surmised that smaller juries

87. *Id.* at 991-992.

88. See Miller, *supra* note 8, at 643.

89. *Thompson v. Utah*, 170 U.S. 343, 349 (1898). See *Capital Traction Co. v. Hof*, 174 U.S. 1, 13 (1899); *Maxwell v. Dow*, 176 U.S. 581, 586. (1900); *Rasmussen v. United States*, 197 U.S. 516, 527 (1905); *Patton v. United States*, 281 U.S. 276, 288; *Duncan v. Louisiana*, 391 U.S. 145, 151-152 (1968).

would satisfy the two goals of juries, which are to be “large enough to promote group deliberation” and to “provide a fair possibility for obtaining a representative cross-section of the community.”⁹⁰ While *Williams* asserted that jury size is “unrelated to the great purposes which gave rise to the jury in the first place,” as discussed below, research emerging immediately thereafter and built upon in recent decades, has uncontrovertibly refuted that contention.

B. EMPIRICAL RESEARCH DEMONSTRATES THAT TWELVE-MEMBER JURIES PRODUCE MORE ACCURATE AND RELIABLE OUTCOMES

In the wake of *Williams*, the Court was confronted with the question of whether states could further restrict a defendant’s due process by using five-member juries. Relying heavily on post-*Williams* empirical research, the *Ballew* Court held that the use of juries with less than six members violates the Sixth and Fourteenth Amendments⁹¹ because smaller juries foster less effective group deliberation, produce less accurate and more inconsistent verdicts, leave biases less counterbalanced, hang less often to the detriment of the defense, and impair the representation of minority members of the community.⁹² One study noted “that the risk of convicting an innocent person ... rises as the size of the jury diminishes,”⁹³ while another found significant variations

90. *Williams v. Florida*, 399 U.S. 78, 100 (1970).

91. *Ballew v. Georgia*, 435 U.S. 223 (1978).

92. *Id.* at 232-39.

93. *Id.* at 234.

between the conviction rates of twelve and six-member juries.⁹⁴ Critically, while the empirical literature the Court found persuasive compared juries of six with juries of twelve, the Court could not identify a principled line between six members and five; a line Justice Powell conceded was “difficult to justify.”⁹⁵

In the decades since *Ballew*, research such as that canvassed in Saks and Marti’s meta-analysis of seventeen empirical studies spanning 2,061 juries and roughly 15,000 individual jurors, has unequivocally reinforced these findings: twelve-member juries recall the evidence more accurately and deliberate longer; reducing jury size from twelve to six reduces the opportunity for minority representation from approximately 63 percent to approximately 37 percent, the largest effect of any variable studied;⁹⁶ and twelve-member juries hang more often, precisely because a juror harboring reasonable doubt is more likely to have an ally.⁹⁷ The authors concluded that the studies on which *Williams* relied to declare six- and twelve-member

94. *Id.* at 235.

95. *Id.* at 245-46 (Powell, J., concurring in the judgment); *see id.* at 239 (plurality opinion).

96. *Id.*; *See also* Shari Seidman Diamond et al., *Achieving Diversity on the Jury: Jury Size and the Peremptory Challenge*, 6 J. Empirical Legal Stud. 425, 442 (2009).

97. Michael J. Saks & Mollie Weighner Marti, *A Meta-Analysis of the Effects of Jury Size*, 21 Law & Hum. Behav. 451 (1997); *See also* Horowitz, I. A., & Bordens, K. S., *The Effects of Jury Size, Evidence Complexity, and Note Taking on Jury Process and Performance in a Civil Trial* (2002).

juries functionally equivalent have been discredited by subsequent scholarly analyses.⁹⁸

What the studies predict, courtroom data confirm: smaller juries convict where larger juries would hang. Zeisel’s study of felony trials found that six-member juries hang in only 2.4 percent of cases, compared with 5.0 percent for twelve-member juries.⁹⁹ Because criminal juries generally hang with only one or two jurors remaining unconvinced of guilt, this Court recognized in *Ballew* that the variance produced by smaller juries “amounts to an imbalance to the detriment of one side, the defense.”¹⁰⁰

Reviewing the field in 2020, Judge Higginbotham and his co-authors observed that every study since 1996 has supported the earlier research and the underlying statistical and decision-making theories, and that no new study or theory refutes them.¹⁰¹ The American Bar Association agrees, finding “significant differences between the effectiveness of six and twelve member juries” and concluding that the supposed efficiency gains

98. Smith, A. & Saks, M. J., *The Case for Overturning Williams v. Florida and the Six-Person Jury: History, Law, and Empirical Evidence*, 60 Fla. L. Rev. 441, 465-67 (2008).

99. Zeisel, H., ... *And Then There Were None: The Diminution of the Federal Jury*, 38 U. Chi. L. Rev. 710, 719-20 (1972).

100. *Ballew*, 435 U.S. at 236.

101. Higginbotham, P. E. et al., *Better by the Dozen: Bringing Back the Twelve-Person Civil Jury*, 104 *Judicature* 47 (2020) (analyzing 1,831 civil jury trials across fifteen federal districts, 2016-2018).

of the smaller jury are illusory because “little court time is saved by reducing jury size.”¹⁰²

C. UNANIMOUS TWELVE-MEMBER JURIES ARE INTERWOVEN WITH THE “PRESUMPTION OF INNOCENCE” AND THE “BEYOND A REASONABLE DOUBT” STANDARD THAT SAFEGUARD THE FAIRNESS AND ACCURACY OF CRIMINAL JURY TRIALS

As discussed above there is a mountain of empirical evidence demonstrating how twelve member juries reach more accurate and reliable outcomes. It is not simply the number of jurors, however, that leads to increased accuracy, but rather the interwoven features of the jury trial right that safeguard citizens from government tyranny. In *Ramos v. Louisiana*, the Court affirmed the importance of the Sixth Amendment to the “*American scheme of justice*,” and found that the term “trial by an impartial jury” carried with it *some* meaning about the content and requirements of a jury trial.¹⁰³ In discussing these requirements, Justice Story explained that “the law not only presumes every man innocent, until he is proved guilty; but unanimity in the verdict of the jury is indispensable.”¹⁰⁴ Expanding on this principle, the Court in *Winship* found the presumption of innocence to be

102. ABA Principles for Juries and Jury Trials, Principle 3 & cmt. (2005).

103. *Ramos v. Louisiana*, 140 S. Ct. 1390, 1395 (2020).

104. J. Story, Commentaries on the Constitution of the United States §777, p. 248 (1833)

inextricably linked to the government's burden of proof beyond a reasonable doubt.

The reasonable doubt standard plays a vital role in the American scheme of criminal procedure. It is a prime instrument for reducing the risk of convictions resting on factual error. The standard provides concrete substance for the presumption of innocence, that bedrock "axiomatic and elementary" principle whose "enforcement lies at the foundation of the administration of our criminal law."¹⁰⁵

The Winship Court believed it was "critical that the moral force of the criminal law not be diluted by a standard of proof that *leaves people in doubt whether innocent men are being condemned*," a sentiment long echoed by the founders.¹⁰⁶ These pillars of American jurisprudence reflect the belief that it is better to "err on the side of letting the guilty go free rather than sending the innocent to jail."¹⁰⁷ The reasonable doubt standard, however, does not administer itself. It is applied by a deliberating body of citizens, and its rigor depends on the capacity of that body to test the government's proof.

A unanimous jury of twelve supplies that capacity in a way a jury of six cannot. Each juror is an independent check on the recollection of the evidence, an additional perspective against which the prosecution's case must be

105. *In re Winship*, 397 U.S. 358, 363 (1970).

106. *Id.* at 363-64.

107. *Id.*

measured, and a potential voice of reasonable doubt that the majority must persuade rather than overpower. Just as the unanimity of a verdict is “inextricably interwoven with the required measure of proof,”¹⁰⁸ so too is the size of the body that renders it. Halving the jury halves the number of minds the State must convince beyond a reasonable doubt, and thereby dilutes the standard itself. When the deliberating body is too small to recall the evidence accurately, to sustain genuine deliberation among an accurate cross-section of the community, or to shelter reasoned dissent from the pressure to conform, the reasonable doubt standard cannot perform its function of ensuring that innocent people are not condemned.¹⁰⁹

The Court’s reasoning in *Williams* rested on two premises, one methodological and one empirical, and both have since collapsed.¹¹⁰ The Court in *Ramos* rejected this mode of analysis, emphasizing that judges may not decide which historic features of the jury trial right are “important enough” to survive, nor balance the right away in reliance on social statistics.¹¹¹ What *Ramos* did to *Williams*’ method, fifty years of research has done to its empirical foundation. A half century of research has established that straying from the twelve-member jury significantly undermines the fairness and accuracy of criminal jury trials, and that the loss of accuracy directly increases the risk of wrongful convictions.

108. *Hibdon v. United States*, 204 F.2d 834, 838 (6th Cir. 1953).

109. *Winship*, 397 U.S. at 364.

110. *Williams v. Florida*, 399 U.S. 78 (1970).

111. *Ramos*, 140 S. Ct. at 1400-01.

The deficits cataloged above translate directly into wrongful convictions. Statistical modeling confirms that the risk of convicting an innocent person increases as the size of the jury decreases.¹¹² A six-member jury deliberates less, remembers less, silences dissent more readily, and hangs less often. Each of those deficits removes a safeguard that stands between an innocent defendant and conviction.

The seven states¹¹³ that try felonies with six-member juries have compiled a record of wrongful convictions consistent with these findings. According to the National Registry of Exonerations, these seven states have produced 494 exonerations, representing 5,671 years of sentences wrongfully served, and accounting for approximately 11 percent of the 4,325 exonerations recorded nationwide.¹¹⁴ Florida alone accounts for 118 exonerations, among the highest totals of any state in the nation.¹¹⁵

The human toll is illustrated by the case of sixteen-year-old Kenneth Atkins, who was convicted by a six-member jury of sexual battery in 2004 and sentenced

112. Nagel, S. & Neef, M., *Deductive Modeling to Determine an Optimum Jury Size and Fraction Required to Convict*, 1975 Wash. U. L.Q. 933, discussed in Moore & Panken, *Jury Size: Less Is Not More*, Cornell U.L., Social Science and Law (2010).

113. See Ariz. Rev. Stat. Ann. § 21-102; Conn. Gen. Stat. § 54-82; Fla. Stat. § 913.10; Ind. Code § 35-37-1-1; La. Const. art. I, § 17(A) & La. Code Crim. Proc. art. 782(A); Mass. Gen. Laws ch. 218, § 19B; Utah Code Ann. § 78B-1-104.

114. Nat'l Registry of Exonerations, <https://exonerationregistry.org> (last visited August 12, 2026).

115. *Id.*

to ten years in prison.¹¹⁶ In March 2006, the Florida Appeals Court reversed the conviction and ordered a new trial based on an illegally recorded conversation that was used to impeach the testimony of one of the defense witnesses.¹¹⁷ On retrial, the defense demonstrated that it would have been physically impossible for Atkins to have raped the victim based on the construction of the lounge chair where the rape was alleged to have occurred.¹¹⁸ He was subsequently acquitted.

A twelve-member jury cannot eliminate every wrongful conviction. The Constitution does not promise infallibility. It does, however, require procedures that maximize the reliability of criminal verdicts before the government deprives an individual of liberty. For more than four centuries, the unanimous jury of twelve has served that constitutional function. History, this Court's precedents, and modern empirical research all lead to the same conclusion: the twelve-member jury is an indispensable component of the presumption of innocence and the requirement of proof beyond a reasonable doubt. A six-member jury simply cannot provide the level of protection that the Sixth and Fourteenth Amendments guarantee.

While the State of Florida attempts to argue, with astonishing incredulity, that decisions reached by a six-member jury are just as accurate as those of a twelve-

116. Nat'l Registry of Exonerations, *supra* note 114, <https://exonerationregistry.org/cases/11410>.

117. *Atkins v. State*, 930 So.2d 678 (Fla. App. 2006).

118. Nat'l Registry of Exonerations, *supra* note 114.

member jury, their practices tell a different story. Florida and the six other states that utilize six and eight member juries all require unanimous twelve-member jury verdicts before a defendant can be convicted of a capital offense or an otherwise serious felony accompanied by a lengthy prison sentence. Despite their protest to the contrary, they too recognize that with so much at stake in such cases, the accuracy and reliability of twelve member juries significantly reduce the risk that an innocent person might be subject to a life sentence or be put to death. For them, the risk of an innocent person being convicted of a lesser offense that carries a five-, ten-, or fifteen-year sentence is a fair price to pay for the sake of judicial economy. But as this Court emphasized in *Ballew*:

The problem with this argument is that the purpose and functions of the jury do not vary significantly with the importance of the crime . . . We cannot conclude that there is less need for the imposition and the direction of the sense of the community in this case than when the State has chosen to label an offense a felony.¹¹⁹

The right to a jury trial does not depend on whether a defendant faces the death penalty or the deprivation of his liberty for any number of years. The right is absolute and is interwoven with the presumption of innocence and the requirement that the government prove its case beyond a reasonable doubt before life or liberty may be taken away. Such protections are even more important when the life and liberty of the nation's children are at stake.

119. *Ballew* at 240.

**D. THE COURT’S REASONING IN *RAMOS*
REQUIRES OVERTURNING *WILLIAMS*
AND RETURNING TO THE ORIGINAL
UNDERSTANDING OF THE JURY TRIAL
AS REQUIRING TWELVE MEMBERS IN
CRIMINAL CASES**

Instructive for this case are the parallel circumstances of *Ramos* where this Court looked to historical precedent and practice to overrule *Apodaca v. Oregon* in upholding its 120-year commitment to the understanding that the Sixth Amendment includes the right to a unanimous jury verdict. The Court reasoned that failure to consider these existing practices would eliminate consideration of

everything history might have taught us about what it means to have a jury trial....leav[ing] the right ... devoid of meaning. A right mentioned twice in the Constitution would be reduced to an empty promise. That can’t be right.¹²⁰

When the Sixth Amendment was drafted, the historical practice establishing the requisite number of juror members at twelve existed alongside, complemented, and was equally as important as the unanimity requirement upheld in *Ramos*.¹²¹ The unanimous verdict requirement returned by a jury of twelve members, was the undisputed law of the land for over 70 years, until the Court’s abrupt departure in *Williams v. Florida*.¹²²

120. *Ramos* at 98.

121. See discussion in Section II (A), *supra*.

122. *Cunningham v. Florida*, 144 S Ct 1287 (2024) (Gorsuch dissent) citing *Thompson v. Utah*, 170 U. S. 343, 349 (1898); *Patton v. United States*, 281 U. S. 276, 288 (1930)

The rationale for recognizing the twelve-member rule as one of the core aspects of the Sixth Amendment right to jury trial is identical to that adopted by the *Ramos* Court, a conclusion recognized by amicus Oregon in its filings in *Ramos* and further anticipated by Justice Alito.¹²³

The historical sources informing the rule of 12 and the unanimity rule are substantially identical. Indeed, one could mount a challenge to *Williams* by taking much of the briefing in this case and substituting *Williams* for *Apodaca* and “the rule of 12” for unanimity.¹²⁴

Amicus agrees with Oregon’s analysis. Given the Court’s decision in *Ramos*, there is no principled way to limit the scope of the right to a jury trial to include the unanimity requirement and reject the twelve-member rule.

Indeed, as Oregon further predicted: “[O]verruling *Apodaca* ... expose[d] and “unsettle[d]” potentially fragile case law involving whether the Sixth Amendment permits fewer than 12 jurors in criminal cases.”¹²⁵ Oregon is once again correct. The logical extension of this Court’s overruling *Apodaca* leads inexorably to overturning *Williams*.

The *Ramos* majority explicitly rejected the state’s reliance interests and any burden associated with the

123. *Ramos*, 590 U.S. at 158 (Alito, J., dissenting).

124. Brief for the State of Oregon as Amicus Curiae Supporting Respondent at 27, *Ramos v. Louisiana*, 590 U.S. 83 (2020) (No. 18-5924).

125. *Id.* at 28.

need to retry multiple cases as a reason to invoke *stare decisis* to uphold *Apodaca*. The Court held such a ruling

would have us discard a Sixth Amendment right in perpetuity rather than ask two States to retry a slice of their prior criminal cases. Whether that slice turns out to be large or small, it cannot outweigh the interest we all share in the preservation of our constitutionally promised liberties.¹²⁶

Moreover, the accuracy of the social studies relied upon by the *Apodaca* and *Williams* courts in their predictions of constitutional sufficiency of the challenged practices have been thoroughly debunked.¹²⁷

The *Ramos* majority thus rejected *Apodaca* as “gravely mistaken.”¹²⁸ The opinion’s author, Justice Gorsuch, similarly characterized *Williams* as “an embarrassing mistake.”¹²⁹ This Court should come to the same conclusion here. *Williams*, like *Apodaca*, is an outlier.¹³⁰ As only seven states allow less than twelve-member juries, “it is difficult to reconcile their outlying practices with the Constitution.”¹³¹

126. *Id.* at 110-11.

127. See discussion in Section II (B).

128. *Ramos*, 590 U.S. at 106.

129. *Cunningham*, 144 S.Ct. at 1287 (Gorsuch, J., dissenting).

130. *Ramos*, 590 U.S. at 111.

131. *Khorrami*, 143 S. Ct. 22 (Gorsuch, J., dissenting).

E. FLORIDA’S FAILURE TO USE TWELVE-MEMBER JURIES IN SERIOUS CRIMINAL CASES IS STRUCTURAL ERROR REQUIRING AUTOMATIC REVERSAL

The structural error doctrine was first delineated as such by the Court in *Arizona v. Fulminate*,¹³² although the core principle was applied in the earlier cases of *Tumey v. Ohio*¹³³ and *Gideon v. Wainwright*.¹³⁴ Cases with structural error “contain a ‘defect affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself,’” and as such are not amenable to harmless error analysis.¹³⁵ “Such errors ‘infect the entire trial process,’ ... and ‘necessarily render a trial fundamentally unfair....’”¹³⁶ Moreover, “[e]rrors of this type are so intrinsically harmful as to require automatic reversal (*i.e.*, “affect substantial rights”) without regard to their effect on the outcome.”¹³⁷ The structural error doctrine “ensure[s] insistence on certain basic, constitutional guarantees that should define the framework of any criminal

132. *Arizona v. Fulminante*, 499 U.S. 279, 309–10 (1991).

133. *Tumey v. Ohio*, 273 U.S. 510 (1927).

134. The Court has identified the complete denial of counsel as a structural error. *Weaver v. Massachusetts*, 582 U.S. 286, 296 (2017) (citing *Gideon v. Wainwright*, 372 U.S. 335 (1963)).

135. *Neder v. United States*, 527 U.S. 1, 8 (1999).

136. *Id.*

137. *Id.* at 7. “Put another way, these errors deprive defendants of ‘basic protections’ without which ‘a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence . . . and no criminal punishment may be regarded as fundamentally fair.’” (citation omitted).

trial.”¹³⁸ While the *Weaver* Court identified three broad rationales for finding structural error, of most relevance to this case, is a finding that “the error always results in fundamental unfairness.”¹³⁹

Failure to adhere to the twelve-member jury requirement is classic structural error - one that so alters the constitutional framework of *any* such trial that the fairness of the proceedings is destroyed. It is undeniably a substantial right of a defendant to have a fair trial.¹⁴⁰ In *Neder*, Justice Scalia explicitly cautioned against taking *any* actions infringing on the traditional jury trial right:

The Sixth Amendment provides: ‘In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury. . . .’ When this Court deals with the *content* of this guarantee — the only one to appear in both the body of the Constitution and the Bill of Rights — it is operating upon the spinal column of American democracy.¹⁴¹

Citing Blackstone, Justice Scalia further described the traditional right to trial by jury in criminal cases as “the grand bulwark of [the Englishman’s] liberties.” In characterizing the right to an impartial jury trial as a cornerstone of American democracy, he notes that it is “the only guarantee common to the 12 state constitutions that predated the Constitutional Convention... appear[ing]

138. *Weaver* at 294-95.

139. *Id.* at 294-96.

140. *Neder v. United States*, 527 U.S. 1, (1999).

141. *Id.* at 30 (emphasis added) (Scalia, J., dissenting).

in the constitution of every State to enter the Union thereafter.”¹⁴²

Justice Scalia’s discussion in *Neder* of the fundamental importance of the right to a jury trial parallels this Court’s analysis in *Ramos* in which it concluded that jury unanimity is a fundamental Sixth Amendment requirement.¹⁴³ Both analyses invoke the same historical precedent in support of their conclusions. As previously discussed, the twelve-member jury rule has this same “sacrosanct” status. Accordingly, this Court should rule that failure to use a twelve-member jury *always* affects fundamental fairness, as it impermissibly operates “on the spinal column of American democracy,” in every case in which it is employed, and thus qualifies as structural error.

“The very premise of structural-error review is that even convictions reflecting the ‘right’ result are reversed for the sake of protecting a basic right.”¹⁴⁴ In the years since *Williams* the Court’s cases “have insisted, repeatedly, that the right to trial by jury should mean no less today, and afford no fewer protections for individual liberty, than it did at the Nation’s founding . . . Repeatedly, too, our cases have warned of the dangers posed by the gradual ‘erosion’ of the jury trial right.”¹⁴⁵

142. *Id.* at 31 “citing” Albert W. Alschuler & Andrew G. Deiss, *A Brief History of the Criminal Jury in the United States*, 61 U. Chi. L. Rev. 867, 870, 875 n.44 (1994).

143. *Ramos* at 90-91.

144. *Neder*, 527 U.S. at 34.

145. *Cunningham v. Florida*, 144 S Ct at 1287 (Gorsuch, J., dissenting) citing *Apprendi v. New Jersey*, 530 U. S. 466, 483 (2000)

Despite Respondent’s conclusory statement to the contrary,¹⁴⁶ use of a six-member jury implicates the most fundamental protections afforded by the constitution in an area “that ranks among the most essential- the right to put the state to its burden, in a jury trial that comports with the Sixth Amendment.”¹⁴⁷ The use of a six-member jury on any occasion is a defect that so alters the foundational constitutional framework of a case that the process itself has become defective and is no longer constitutionally adequate. As such it is a structural error requiring automatic reversal.¹⁴⁸

quoting *Jones v. United States*, 526 U. S. 227, 248, (1999); *Ramos v. Louisiana*, 590 U. S. 83 (2020).

146. Brief in Opposition at 20, *Kian v. Florida*, No. 25-6623 (U.S.).

147. *Ramos*, 590 U.S. at 113 (Sotomayor, J., concurring as to all but Part IV-A) (citing *Codispoti v. Pennsylvania*, 418 U.S. 506, 515–16 (1974)).

148. Respondents’ arguments that the evidence shows that the *outcome* would have been the same even if a twelve-member jury had been impaneled (Brief in Opposition at 21-22) would only be relevant in a harmless error inquiry. But under structural error analysis, the outcome is irrelevant; it is the impermissible effects on the framework of the proceedings that are at issue.

CONCLUSION

For the foregoing reasons the Court should reverse the decision below.

Respectfully submitted,

JAMES DOLD

Counsel of Record

TERESA KOMINOS

SUZANNE LA PIERRE

HUMAN RIGHTS FOR KIDS

P.O. Box 5960

Washington, DC 20016

(202) 573-7758

jdold@humanrightsforkids.org

Attorneys for Amicus Curiae

August 13, 2026