

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 THE INNOCENCE PROJECT, INNOCENCE
PROJECT OF FLORIDA, AND THE MIAMI LAW INNO-
CENCE CLINIC, *AMICI CURIAE*
IN SUPPORT OF PETITIONER**

M. CHRIS FABRICANT
MATTHEW A. WASSERMAN
INNOCENCE PROJECT
40 Worth Street, Ste. 701
New York, NY 10013

SETH E. MILLER
INNOCENCE PROJECT OF
FLORIDA, INC.
124 Marriott Dr., Ste. 104
Tallahassee, FL 32301

CRAIG J. TROCINO
MIAMI LAW INNOCENCE
CLINIC
1311 Miller Dr., Ste. B400
Coral Gables, FL 33146

ADAM GERSHENSON
Counsel of Record
WEIL, GOTSHAL & MANGES LLP
1001 Boylston St., Ste. 300
Boston, MA 02115
(617) 772-8310
adam.gershenson@weil.com

BRIAN G. LIEGEL
SARAH M. STERNLIEB
DYLAN C. BROWN
WEIL, GOTSHAL & MANGES LLP
1395 Brickell Ave., Ste. 1200
Miami, FL 33131

McKAYLA R. ROBINSON
WEIL, GOTSHAL & MANGES LLP
2001 M St., Ste. 600
Washington, D.C. 20036

Counsel for Amici Curiae

TABLE OF CONTENTS

	Page
Interest of <i>Amici Curiae</i>	1
Summary of argument.....	2
Argument.....	4
I. <i>Williams</i> rested on empirical predictions about smaller juries that subsequent research has disproved.....	4
A. Smaller juries are less representative and disproportionately exclude minority jurors	5
B. Smaller juries deliberate less thoroughly and produce less reliable results	7
II. Innocent people have repeatedly been convicted by non-twelve-person juries.....	9
A. James Tillman	11
B. Dontrell Baker	12
C. Eric Shaughnessy.....	13
D. Sidney Holmes.....	13
E. Andre Bryant.....	14
F. Wilton Dedge	15
G. Richard Paey.....	17
H. Jed Gressman and Troy Hancock	18
Conclusion	19

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Ballew v. Georgia</i> , 435 U.S. 223 (1978).....	3, 6, 7
<i>Cunningham v. Florida</i> , 144 S. Ct. 1287 (2024).....	3
<i>Flowers v. Mississippi</i> , 588 U.S. 284 (2019).....	6
<i>Gale v. State</i> , 726 So. 2d 328 (Fla. Dist. Ct. App. 1999)	12, 13
<i>Khorrami v. Arizona</i> , 143 S. Ct. 22 (2022).....	4
<i>Paey v. State</i> , 943 So. 2d 919 (Fla. Dist. Ct. App. 2006)	17
<i>Patton v. United States</i> , 281 U.S. 276 (1930).....	3
<i>Peña-Rodriguez v. Colorado</i> , 580 U.S. 206 (2017).....	6
<i>Pitchford v. Cain</i> , 146 S. Ct. 1345 (2026).....	6
<i>Powers v. Ohio</i> , 499 U.S. 400 (1991).....	7
<i>State v. Hancock</i> , 874 P.2d 132 (Utah Ct. App. 1994).....	18
<i>State v. Tillman</i> , 600 A.2d 738 (Conn. 1991).....	11
<i>Thompson v. Utah</i> , 170 U.S. 343 (1898).....	7

<i>Tillman v. Warden</i> , No. 90844, 1997 WL 374961 (Conn. Super. Ct. June 25, 1997), <i>aff'd sub</i> <i>nom. Tillman v. Comm'r of Corr.</i> , 738 A.2d 208 (Conn. App. Ct. 1999)	11
<i>Williams v. Florida</i> , 399 U.S. 78 (1970)	<i>passim</i>
Periodicals	
Alisa Smith & Michael J. Saks, <i>The</i> <i>Case for Overturning Williams v.</i> <i>Florida and the Six-Person Jury:</i> <i>History, Law, and Empirical</i> <i>Evidence</i> , 60 Fla. L. Rev. 441 (2008)	8
Armen H. Merjian, <i>Anatomy of a</i> <i>Wrongful Conviction: State v. Dedge</i> <i>and What It Tells Us About Our</i> <i>Flawed Criminal Justice System</i> , 13 U. Pa. J.L. & Soc. Change 137 (2010)	15
Clive A. Stafford Smith & Patrick D. Goodman, <i>Forensic Hair Comparison</i> <i>Analysis: Nineteenth Century Science</i> <i>or Twentieth Century Snake Oil?</i> , 27 Colum. Hum. Rts. L. Rev. 227 (1996).....	16
Craig Pittman, <i>Convicted Man Walks</i> <i>Free, But Jury Member in the Case</i> <i>Does Not</i> , St. Petersburg Times, Oct. 6, 1997	12
Hans Zeisel & Shari Seidman Diamond, <i>Convincing Empirical Evidence on</i> <i>the Six Member Jury</i> , 41 U. Chi. L. Rev. 281 (1974).....	8

Hans Zeisel, . . . <i>And Then There Were None: The Diminution of the Federal Jury</i> , 38 U. Chi. L. Rev. 710 (1971).....	8
John Tierney, <i>Punishing Pain</i> , N.Y. Times, July 19, 2005	17
Matt Kelly, <i>Innocent Quincy Man Finally Freed</i> , Patriot Ledger, Jan. 28, 1998	13
Michael J. Saks, <i>The Smaller the Jury, the Greater the Unpredictability</i> , 79 Judicature 263 (1996)	8
Richard O. Lempert, <i>Uncovering “Nondiscernible” Differences: Empirical Research and the Jury- Size Cases</i> , 73 Mich. L. Rev. 643 (1975)	7, 8
Samuel D. Hodge, Jr. & Amelia Holjencin, <i>A Post-Mortem Review of Forensic Hair Analysis – A Technique Whose Current Use in Criminal Investigations is Hanging on by a Hair</i> , 64 St. Louis U. L.J. 219 (2020)	16
Samuel R. Sommers, <i>On Racial Diversity and Group Decision- Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations</i> , 90 J. Personality & Soc. Psych. 597 (2006)	6
Shari Seidman Diamond et al., <i>Achieving Diversity on the Jury: Jury Size and the Peremptory Challenge</i> , 6 J. Empirical Legal Stud. 425 (2009)	5

Other Authorities

Def.'s Agreed Successive Mot. for Postconviction Relief at 64, <i>State v.</i> <i>Holmes</i> , No. 88-019279CF10A (Fla. 17th Cir. Ct. 2023)	14
Def.'s Am. Mot. for Postconviction Re- lief, <i>State v. Bryant</i> , No. 2006-CF- 003229 (Fla. 12th Cir. Ct. 2015).....	15
<i>Did Dog Handler Fake It Again?</i> , Orlando Sentinel (Oct. 25, 2009), https://www.orlandosentinel.com/2009/10/25/did-dog-handler-fake-it-again/	16
Edward L. Carter, <i>New Evidence Means Freedom for 2 Inmates</i> , Deseret News (June 13, 1996), https://www.deseret.com/1996/6/13/19248369/new-evidence-means-freedom-for-2-inmates/	18
<i>FBI Testimony on Microscopic Hair Analysis Contained Errors in at Least 90 Percent of Cases in Ongoing Review</i> , Fed. Bureau of Investigation (Apr. 20, 2015), https://www.fbi.gov/news/press-releases/fbi-testimony-on-microscopic-hair-analysis-contained-errors-in-at-least-90-percent-of-cases-in-ongoing-review	16
Jacob Sullum, <i>Pill Sham</i> , Reason (Apr. 23, 2004), https://reason.com/2004/04/23/pill-sham/	18

Jeff Blackburn, <i>Dog Scent Lineups: A Junk Science Injustice</i> (2009)	16
Maurice Possley, <i>Andre Bryant</i> , Nat'l Registry of Exonerations (Sep. 24, 2019), https://exonerationregistry.org/cases/11877	14
Maurice Possley, <i>Dontrell Baker</i> , Nat'l Registry of Exonerations (Sep. 14, 2015), https://exonerationregistry.org/cases/11864	12
Maurice Possley, <i>Eric Shaughnessy</i> , Nat'l Registry of Exonerations (Oct. 7, 2012), https://exonerationregistry.org/cases/11184	13
Maurice Possley, <i>James Calvin Tillman</i> , Nat'l Registry of Exonerations (Mar. 7, 2026), https://exonerationregistry.org/cases/10907	11
Maurice Possley, <i>Jed Allen Gressman</i> , Nat'l Registry of Exonerations (Aug. 16, 2017), https://exonerationregistry.org/cases/10496	18
Maurice Possley, <i>Sidney Holmes</i> , Nat'l Registry of Exonerations (Aug. 9, 2025), https://exonerationregistry.org/cases/13505	13

Maurice Possley, <i>Troy Jon Hancock</i> , Nat'l Registry of Exonerations (Aug. 29, 2011), https://exonerationregistry.org/cases/ 10505	18
Maurice Possley, <i>Wilton Dedge</i> , Nat'l Registry of Exonerations (Jan. 26, 2026), https://exonerationregistry.org/cases/ 10401	15
Stephanie Denzel, <i>Richard Paey</i> , Nat'l Registry of Exonerations (Aug. 31, 2011), https://exonerationregistry.org/cases/ 11006	17
<i>Understanding the Registry</i> , Nat'l Registry of Exonerations, https://exonerationregistry.org/under standing-registry (last visited Aug. 11, 2026)	10

INTEREST OF *AMICI CURIAE*¹

Amicus the Innocence Project is a nonprofit law office providing free legal representation to innocent people wrongfully convicted of crimes. Since it was founded in 1992, it has helped to free or exonerate more than 250 innocent individuals nationwide, who were wrongfully incarcerated for a total of more than 4,100 years in prison. In addition to working to exonerate and free the innocent, the Innocence Project has long studied the root causes of wrongful convictions and uses the lessons from these injustices to advocate for changes in laws and policies that contribute to wrongful convictions.

Amicus Innocence Project of Florida (“IPF”) provides pro bono legal services to indigent individuals whose actual innocence may be established through post-conviction DNA testing or other evidence. The work of *amicus* has led to the exoneration or release of 38 individuals who have spent a combined 885 years in prison for crimes they did not commit. IPF also assists freed wrongfully convicted individuals rebuilding their lives after release and works to prevent future wrongful convictions by researching their causes and pursuing legislative and administrative reforms to enhance the truth-seeking function of the criminal justice system.

Amicus the Miami Law Innocence Clinic is a pro bono legal clinic at the University of Miami School of Law dedicated to providing legal and/or investigative

¹ Pursuant to Sup. Ct. R. 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person or entity other than *amici* and counsel made a monetary contribution to its preparation or submission.

services to Florida prisoners for whom evidence discovered post-conviction can provide conclusive proof of innocence. The Innocence Clinic is a member of the Innocence Network, an affiliation of seventy-four organizations worldwide that provide pro bono legal services to those seeking to prove their innocence. The Innocence Clinic's mission is to represent those with claims of actual innocence and to seek to improve the accuracy and reliability of the criminal justice system in future cases.

Amici have an interest in putting an end to less-than-twelve-person juries in Arizona, Connecticut, Florida, Indiana, Louisiana, Massachusetts, and Utah, because twelve-person juries provide an important safeguard against convicting innocent people. Therefore, in the interest of ending the unacceptably high risk of wrongful convictions by undersized juries, *amici* respectfully file this brief in support of Petitioner Hamed Kian.

SUMMARY OF ARGUMENT

Amici's role in the criminal legal system is to free innocent people. That work provides the basis for the case histories below, detailing real-world trials where undersized juries repeatedly sent innocent individuals to prison. These stories are not isolated incidents. Drawing on decades of experience with the legal systems of Arizona, Connecticut, Florida, Indiana, Louisiana, Massachusetts, and Utah—states permitting juries of fewer than twelve in some felony cases—*amici* have observed how smaller juries weaken safeguards essential to accurate verdicts. Undersized juries narrow community representation, reduce the likelihood that minority perspectives will be meaningfully heard, and diminish the rigor of deliberations. The result is an increased risk of unreliable verdicts, including the gravest error the

criminal legal system can commit: convicting an innocent person.

As Justice Gorsuch has explained, these states “do[] what the Constitution forbids”—a result this Court sanctioned in *Williams v. Florida*, 399 U.S. 78 (1970)—by substituting flawed “social science for careful attention to the Constitution’s original meaning.” *Cunningham v. Florida*, 144 S. Ct. 1287, 1287 (2024) (Gorsuch, J., dissenting from denial of certiorari). In holding that a six-person jury could satisfy the Sixth and Fourteenth Amendments, *Williams* departed from this Court’s longstanding precedents recognizing twelve members as essential to the jury-trial right. See *Patton v. United States*, 281 U.S. 276, 288–89 (1930), *abrogated by Williams v. Florida*, 399 U.S. 78 (1970).

Williams justified that departure by speculating that reducing a criminal jury from twelve members to six would not materially diminish its representativeness, the quality of its deliberations, or the reliability of its verdicts. See 399 U.S. at 100–02. That prediction quickly proved false. Within eight years, this Court acknowledged empirical evidence indicating that smaller juries deliberate less effectively, produce less consistent and potentially less accurate results, and are less likely to reflect the demographic makeup of the community. *Ballew v. Georgia*, 435 U.S. 223, 232–38 (1978). Subsequent research has only deepened those concerns.

These concerns are not hypothetical or theoretical. They are borne out in the experiences of innocent people convicted by juries of fewer than twelve, imprisoned, and later exonerated. Their cases put a human face on the risks identified by the research: when a smaller jury

narrows community representation, suppresses minority viewpoints, or shortchanges deliberation, the resulting error can cost an innocent person years—or decades—of freedom. No system can be perfect, but these kinds of imperfections cannot be accepted in our system of ordered liberty.

ARGUMENT

I. *Williams* Rested on Empirical Predictions About Smaller Juries That Subsequent Research Has Disproved.

In *Williams v. Florida*, this Court held that “the 12-man requirement cannot be regarded as an indispensable component of the Sixth Amendment.” 399 U.S. 78, 100 (1970). That departure from more than seven centuries of common-law tradition rested substantially on flawed predictions. Justice Gorsuch has described that tradition as “a mountain of evidence” showing that “the right to a trial by jury for serious criminal offenses *meant* a trial before 12 members of the community—nothing less.” *Khorrami v. Arizona*, 143 S. Ct. 22, 23 (2022) (Gorsuch, J., dissenting from denial of certiorari). Yet the *Williams* Court expected that six-person juries would “probably” deliberate as effectively as twelve-person juries and that reducing jury size would have no meaningful effect on community representation. *Williams*, 399 U.S. at 100–02. Those predictions did not withstand scrutiny, then or now. Research available before *Williams*—and research published since—showed that smaller juries are less representative, deliberate less effectively, and produce less reliable results.

The math is, in some ways, quite simple. If the jury in the movie *12 Angry Men* had only six members, Henry Fonda’s character, the famous juror number eight, would never have been seated, and the result would have been a swift, and likely wrongful, conviction.

The odds of having robust dialogue and an effective decision-making process naturally increase when the twelve-person requirement is satisfied.

A. Smaller Juries Are Less Representative and Disproportionately Exclude Minority Jurors.

Williams wrongly predicted that a dwindling jury of fewer than twelve members would remain large enough to provide “a fair possibility for obtaining a representative cross-section of the community.” 399 U.S. at 100. It further asserted 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.

The evidence has proved otherwise. Reducing jury size reduces opportunities for members of marginalized communities (including Black and brown citizens) to serve, making smaller juries substantially less likely to reflect their communities. A 2009 study of 277 trial juries illustrates the effect: 28.1% of six-person juries included no Black juror, compared to only 2.1% of twelve-person juries. Shari Seidman Diamond et al., *Achieving Diversity on the Jury: Jury Size and the Peremptory Challenge*, 6 J. Empirical Legal Stud. 425, 442 (2009). The same study found qualified Hispanic jurors were also disproportionately less likely to serve on six-person juries. *Id.* at 444.

The consequences fall hardest on Black and brown people, who are disproportionately represented among those facing criminal charges but disproportionately absent from the smaller jury pools that decide their fate—a disparity compounded by felony disenfranchisement laws that further thin minority representation in jury venires.

In this context, representation matters. Recent research confirms that racial diversity improves the quality of jury deliberations. Diverse juries deliberate longer, consider a broader range of facts and perspectives, make fewer factual errors, and are more likely to correct inaccuracies during deliberations. Samuel R. Sommers, *On Racial Diversity and Group Decision-Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations*, 90 J. Personality & Soc. Psych. 597, 603–06 (2006).

These disparities are statistically significant and compelling, with downstream effects. The exclusion of minority jurors affects both the reality and the public perception of the legitimacy of jury decision-making. This Court has recognized that jury composition bears directly on the jury’s ability to bring diverse experiences and perspectives to deliberations. See, e.g., *Peña-Rodriguez v. Colorado*, 580 U.S. 206, 223 (2017) (“Permitting racial prejudice in the jury system damages ‘both the fact and the perception’ of the jury’s role as ‘a vital check against the wrongful exercise of power by the State.’” (citations omitted)); *Ballew v. Georgia*, 435 U.S. 223, 236–37 (1978) (smaller juries “foretell[] problems not only for jury decision-making, but also for the representation of minority groups in the community”). Indeed, this Court has continued to recognize that the “[s]imple math” of minority population percentages can systematically produce juries without Black members—and that “[e]qual justice under law requires a criminal trial free of racial discrimination in the jury selection process.” *Flowers v. Mississippi*, 588 U.S. 284, 295–96, 301 (2019); see also *Pitchford v. Cain*, 146 S. Ct. 1345, 1349–53 (2026) (reaffirming *Batson*’s protections where the prosecutor struck four of five Black prospective jurors

and the trial court denied defense counsel the opportunity to rebut the proffered race-neutral reasons at the third step).

Since the Magna Carta, people charged with crimes have had a right to a “jury of one’s peers.” See *Thompson v. Utah*, 170 U.S. 343, 349–50 (1898). A jury that is systematically less representative is necessarily less capable of performing the constitutional function that *Williams* itself identified: placing the commonsense judgment of the community between the accused and the State. Juries of fewer than twelve members therefore diminish public confidence in jury verdicts and deprive people accused of crimes of the full protection of the jury-trial right. That result is especially troubling because the jury serves as a critical safeguard against the State’s “wrongful exercise of power.” *Powers v. Ohio*, 499 U.S. 400, 411 (1991).

B. Smaller Juries Deliberate Less Thoroughly and Produce Less Reliable Results.

As this Court recognized in *Ballew*, social-science evidence that emerged after *Williams* undermined its assumption that six-person juries would deliberate as effectively as twelve-person juries. Studies showed smaller juries are less likely to foster effective group deliberation and more likely to produce inconsistent results. *Ballew*, 435 U.S. at 232–35.

Subsequent research confirms that jury size affects both the depth and quality of deliberation. Smaller juries discuss fewer facts, recall evidence less accurately, deliberate less, and are less likely to correct erroneous statements. They generate fewer competing perspectives and place greater pressure on dissenters to yield to the majority. See, e.g., Richard O. Lempert, *Uncovering*

“Nondiscernible” Differences: Empirical Research and the Jury-Size Cases, 73 Mich. L. Rev. 643, 646–47 (1975) (explaining why aggregate comparisons of the kind used in the studies cited in *Williams* may fail to detect differences between six- and twelve-member juries); Michael J. Saks, *The Smaller the Jury, the Greater the Unpredictability*, 79 Judicature 263, 264–65 (1996) (noting the pressure to capitulate placed on dissenting jurors in smaller juries); Alisa Smith & Michael J. Saks, *The Case for Overturning Williams v. Florida and the Six-Person Jury: History, Law, and Empirical Evidence*, 60 Fla. L. Rev. 441, 463–69 (2008) (collecting social science research indicating larger juries are more representative of communities, have higher quality discussions, resist pressures on minority perspectives better, and more reliably decide cases); Hans Zeisel, . . . *And Then There Were None: The Diminution of the Federal Jury*, 38 U. Chi. L. Rev. 710, 713–15 (1971) (statistically demonstrating greater variability and less representation in six-person jury verdicts); Hans Zeisel & Shari Seidman Diamond, *Convincing Empirical Evidence on the Six Member Jury*, 41 U. Chi. L. Rev. 281, 283–92 (1974) (discussing the weakness of studies purporting to support smaller juries).

Citing “[s]tudies of the operative factors contributing to small group deliberation and decisionmaking,” *Williams* also predicted that a lone dissenter on a six-person jury would not feel pressured to abandon his or her position. 399 U.S. at 101 n.49. The studies on which the Court relied, however, actually pointed in the opposite direction because one juror facing five counterparts is more likely to abandon consciously held beliefs, whereas two jurors facing ten counterparts are more likely to advocate for thorough deliberation. “[T]he juror who is a

minority of one on a jury of six is in a much weaker psychological position to resist the majority than the juror who has one ally with whom to confront a majority of 10.” Saks, *The Smaller the Jury*, *supra*, at 265.

The point is intuitive as well as empirical. A dissenting juror on a larger panel is more likely to find (or create) an ally, sustain meaningful discussion, and ensure that the majority confronts contrary evidence or an alternative view of the case. On a smaller jury, isolation increases the pressure to conform and makes premature unanimity more likely.

Real-world evidence thus refutes the assumptions on which *Williams* relied. Smaller juries are less representative, deliberate less fully, generate fewer competing perspectives, and pressure dissenters to capitulate. These are not minor defects—they undermine the jury’s core function as a deliberative safeguard and increase the risk that an innocent person will be convicted.

II. Innocent People Have Repeatedly Been Convicted by Non-Twelve-Person Juries.

Seven states—Arizona, Connecticut, Florida, Indiana, Louisiana, Massachusetts, and Utah—permit criminal juries of fewer than twelve persons in at least some felony cases. A review of exonerations from those states, as tracked and defined by the National Registry of Exonerations (the “NRE”), illustrates the real-world risks discussed above.² The cases discussed below show

² The NRE is not an exhaustive measure of wrongful or unreliable convictions: it excludes ongoing cases and cases in which people convicted of crimes obtained other forms of relief without satisfying its definition of “exoneration.” The NRE defines an exoneration as:

A person has been exonerated if he or she was convicted of a crime and, following a post-conviction re-examination of

how the structural limitations of juries composed with fewer than twelve persons, as identified by empirical research, can contribute to unreliable verdicts.

Each of these miscarriages of justice is unique, but the pattern is familiar: juries of fewer than twelve convicted individuals despite exculpatory evidence presented at trial. The following examples show the human

the evidence in the case, was relieved of all the consequences of the criminal conviction, and either: (1) was declared to be factually innocent by a government official or agency with the authority to make that declaration; or (2) received (i) a complete pardon by a governor or other competent authority, whether or not the pardon is designated as based on innocence, or (ii) an acquittal of all charges factually related to the crime for which the person was originally convicted, in a court of the jurisdiction in which the person was convicted, or (iii) a dismissal of all charges related to the crime for which the person was originally convicted, by a court or by a prosecutor with the authority to enter that dismissal. The pardon, acquittal, or dismissal must have occurred after evidence of innocence became available that either (i) was not presented at the trial at which the person was convicted; or (ii) if the person pled guilty, was not known by the defendant and the court at the time the plea was entered. The evidence of innocence need not be an explicit basis for the official act that exonerated the person. Despite any other facts, a defendant is not exonerated if there is undisputed evidence that the defendant knowingly possessed physical objects the possession of which directly proves the defendant's guilt of the crime for which the defendant was convicted, or a factually related crime.

Understanding the Registry, Nat'l Registry of Exonerations, <https://exonerationregistry.org/understanding-registry> (last visited Aug. 11, 2026).

cost of entrusting life-and-liberty decisions to undersized juries.

James Tillman, Dontrell Baker, Eric Shaughnessy, Sidney Holmes, Andre Bryant, Wilton Dedge, Richard Paey, Jed Gressman, and Troy Jon Hancock collectively spent over 89 years wrongly imprisoned. *Amici* and other innocence organizations proudly represented many of these men.

A. James Tillman

In 1989, James Tillman, a lifelong Hartford, Connecticut, resident in his mid-twenties, was convicted by a six-person jury of kidnapping, sexual assault, assault, larceny, and robbery.³ He was sentenced to forty-five years in prison. The case rested on a white woman's identification of Mr. Tillman, a Black man, after she viewed his photograph at a Hartford police station. At trial, the only forensic evidence merely placed the perpetrator within a pool of roughly 20% of males, including Mr. Tillman.

The six-person jury had no Black members and only one Hartford resident. The Connecticut Supreme Court recognized that the jury selection procedure described by defense counsel involved systematic exclusion, and a court clerk later conceded that “many more minorities than others were excused from service.” *State v. Tillman*, 600 A.2d 738, 741 (Conn. 1991); *Tillman v. Warden*, No. 90844, 1997 WL 374961, at *6 (Conn. Super. Ct. June 25, 1997), *aff'd sub nom. Tillman v. Comm'r of Corr.*, 738 A.2d 208 (Conn. App. Ct. 1999).

³ Maurice Possley, *James Calvin Tillman*, Nat'l Registry of Exonerations (Mar. 7, 2026), <https://exonerationregistry.org/cases/10907>.

Yet the conviction remained until, in 2005, DNA testing of the semen sample excluded Mr. Tillman. In 2006, after eighteen years of wrongful incarceration, his conviction was vacated, and he was released. Since his exoneration, Mr. Tillman has married, enrolled in college to study human services, mentored students, and worked with the Capitol Region Education Council.

B. Dontrell Baker

In 1997, eighteen-year-old Dontrell Baker was convicted by a six-person Florida jury of robbery based on a misidentification and hair evidence that an analyst said was merely “similar” to his.⁴ Two masked men had robbed a hotel, but the victims could not identify them. A nearby witness later misidentified Mr. Baker and another teenager in a photo lineup. Other witnesses likewise testified that Mr. Baker and the other teenager were the perpetrators. See *Gale v. State*, 726 So. 2d 328, 328 (Fla. Dist. Ct. App. 1999).

During trial, one witness confused Mr. Baker with another teenage defendant, David Shavers. Craig Pittman, *Convicted Man Walks Free, But Jury Member in the Case Does Not*, St. Petersburg Times, Oct. 6, 1997, at 3B. The jury convicted Mr. Baker and Milton Gale but not the other teenager, Mr. Shavers. The convictions were later vacated due to juror misconduct.

Before a retrial, prosecutors finally requested DNA testing on hair recovered from the ski masks used by the

⁴ Maurice Possley, *Dontrell Baker*, Nat’l Registry of Exonerations (Sep. 14, 2015), <https://exonerationregistry.org/cases/11864> (confirming six-person jury).

robbers. DNA testing excluded Mr. Baker as the source of the hair, and prosecutors dismissed the charges.⁵

C. Eric Shaughnessy

Eric Shaughnessy, at twenty-two, was convicted of assault at a 1996 St. Patrick's Day parade after a six-person jury deliberated for fifteen minutes.⁶ The case rested on a sixteen-year-old's photo identification; Mr. Shaughnessy testified that he was home at the time. He was sentenced to five years in prison. Matt Kelly, *Innocent Quincy Man Finally Freed*, Patriot Ledger, Jan. 28, 1998, at 17, 21.

After the conviction was reported in the news, supporters located seven eyewitnesses who said Mr. Shaughnessy was not involved, including one who admitted to participating in the attack. *Id.* at 21. After he spent several months in prison, Mr. Shaughnessy's motion for new trial based upon this new evidence was granted. Prosecutors subsequently dropped all charges.

D. Sidney Holmes

In 1989, twenty-three-year-old Sidney Holmes was convicted of robbery by a six-person jury and sentenced to 400 years, largely because his car resembled the robber's—except that it lacked the distinctive trunk defect described by the witnesses.⁷ Mr. Holmes, a father of a seven-month-old baby girl, was at home celebrating Father's Day when the robbery occurred. Def.'s Agreed

⁵ Mr. Gale's conviction was later reversed on appeal due to insufficient evidence. *Gale*, 726 So. 2d at 329–30.

⁶ Maurice Possley, *Eric Shaughnessy*, Nat'l Registry of Exonerations (Oct. 7, 2012), <https://exonerationregistry.org/cases/11184>.

⁷ Maurice Possley, *Sidney Holmes*, Nat'l Registry of Exonerations (Aug. 9, 2025), <https://exonerationregistry.org/cases/13505>.

Successive Mot. for Postconviction Relief at 64, *State v. Holmes*, No. 88-019279CF10A (Fla. 17th Cir. Ct. 2023).

One victim never positively identified any perpetrator, while the other victim’s descriptions of the man and car grew more specific over time, after conversations with his brother about a similar robbery. *Id.* at 5–7. The brother later tracked down Mr. Holmes’s car, though its trunk lock worked normally. Police showed Mr. Holmes to witnesses in multiple lineups; a witness did not identify him until a suggestive live lineup in which he was the only person who had appeared in every lineup and the only person not facing forward.

Despite four alibi witnesses and a stark physical mismatch—the attacker was described as about 5’6” and overweight, while Mr. Holmes was six feet and 183 pounds—the jury convicted him. *Id.* at 52.

In 2023, after more than thirty-three years in prison, Mr. Holmes was exonerated based on the discrepancies in the identifications, the suggestiveness of the lineups, and the car evidence’s limited value given how common the model was.

E. Andre Bryant

In 2007, twenty-year-old Andre Bryant was convicted by an undersized jury of an armed robbery for \$10 and sentenced to thirty years in prison—even though he had \$1,323 in cash on him at the time, and an alibi placing him six miles away.⁸ The robber was described as a 5’8” to 6’ Black man with dreadlocks, a durag, a yellow Hawaiian shirt, and facial marks. In contrast, Mr. Bryant was 6’2”, had facial hair and gold teeth, and did not

⁸ Maurice Possley, *Andre Bryant*, Nat’l Registry of Exonerations (Sep. 24, 2019), <https://exonerationregistry.org/cases/11877>.

otherwise match the description. Def.’s Am. Mot. for Postconviction Relief at 5, 10, *State v. Bryant*, No. 2006-CF-003229 (Fla. 12th Cir. Ct. 2015).

No physical evidence tied Mr. Bryant to the robbery: police found no yellow shirt, durag, wallet, or matching weapon in his SUV or his girlfriend’s home; and the wallet items found far from his SUV’s tracked route did not bear his fingerprints. *Id.* at 7–8. A neighbor who reviewed surveillance footage said the person depicted was not Mr. Bryant. Yet he was convicted after a victim who had twice signed photo-lineup forms selecting “none” falsely testified at trial that she had identified him, first with 80% and then 98% certainty.

Seven years after his conviction, the Sarasota Herald-Tribune reported that someone else had twice confessed to the robbery. After eight and a half years in prison for a crime he did not commit, Mr. Bryant’s conviction was vacated.

F. Wilton Dedge

Wilton Dedge was twenty-two when a six-person Florida jury convicted him of sexual assault and sentenced him to thirty years in prison.⁹ The victim described a large, muscular attacker six feet to six feet two inches tall, weighing 160 to 200 pounds, with hazel eyes, a receding hairline, and long blond hair. Mr. Dedge was 5’5”, 125 pounds, blue-eyed, and had a full head of hair. He was also forty-seven miles away repairing a transmission at the time of the crime. See Armen H. Merjian, *Anatomy of a Wrongful Conviction: State v. Dedge and*

⁹ Maurice Possley, *Wilton Dedge*, Nat’l Registry of Exonerations (July 23, 2026), <https://exonerationregistry.org/cases/10401>.

What It Tells Us About Our Flawed Criminal Justice System, 13 U. Pa. J.L. & Soc. Change 137, 141 (2010).

Even though six witnesses and a check cashed by Mr. Dedge across the street from where he was performing the repair supported his alibi, the prosecution secured a conviction based on a shaky identification, inconclusive microscopic-hair evidence,¹⁰ and a dog that purportedly traced Mr. Dedge's scent from paper towels to months-old bedsheets.¹¹ *Id.* at 142–48. At a second trial, after the initial conviction was reversed for evidentiary

¹⁰ Hair-microscopy evidence has not been scientifically validated in the same way as DNA testing and retrospective analysis has indicated frequent errors in its usage. See *FBI Testimony on Microscopic Hair Analysis Contained Errors in at Least 90 Percent of Cases in Ongoing Review*, Fed. Bureau of Investigation (Apr. 20, 2015), <https://www.fbi.gov/news/press-releases/fbi-testimony-on-microscopic-hair-analysis-contained-errors-in-at-least-90-percent-of-cases-in-ongoing-review>; see also Clive A. Stafford Smith & Patrick D. Goodman, *Forensic Hair Comparison Analysis: Nineteenth Century Science or Twentieth Century Snake Oil?*, 27 Colum. Hum. Rts. L. Rev. 227, 233 (1996) (finding that forensic hair comparisons have not been subjected to the same validation as more legitimate forensic sciences accepted in criminal prosecutions); Samuel D. Hodge, Jr. & Amelia Holjencin, *A Post-Mortem Review of Forensic Hair Analysis – A Technique Whose Current Use in Criminal Investigations is Hanging on by a Hair*, 64 St. Louis U. L.J. 219, 220 (2020) (noting that no uniform standard exists for calculating the frequency of hair characteristics).

¹¹ See Jeff Blackburn, Innocence Project of Tex., *Dog Scent Lineups: A Junk Science Injustice* 4–6 (2009); *Did dog handler fake it again?*, Orlando Sentinel (Oct. 25, 2009), <https://www.orlandosentinel.com/2009/10/25/did-dog-handler-fake-it-again/> (citing multiple exoneration cases where John Preston testified and a Florida judge who stated that “[Preston’s] dog simply could not track anything. In short, I believe that Preston was regularly retained to confirm the state’s preconceived notions about cases.”).

errors, a jailhouse informant testified that Mr. Dedge had confessed, but the prosecution did not disclose that the informant had received a 120-year sentence reduction for prior testimony—and was seeking more.

After more than twenty-two years in prison, DNA testing of pubic hair found at the scene excluded Mr. Dedge as a possible perpetrator, and he was exonerated.

G. Richard Paey

Richard Paey, a husband and father of three in his mid-forties, was wrongfully convicted in Florida in 2004 of drug trafficking, prescription forgery, and unlawful possession of a controlled substance.¹² He suffered disabling pain from a car crash, failed back surgeries, and multiple sclerosis, for which he had been prescribed substantial pain medication. Although his physician initially confirmed the prescriptions, he declared them forged when police threatened to prosecute the physician based on a false claim that Mr. Paey had confessed. See *Paey v. State*, 943 So. 2d 919, 920 (Fla. Dist. Ct. App. 2006).

At his third and final trial—following a mistrial and an overturned verdict—pharmacists testified that they had confirmed the prescriptions with the physician. John Tierney, *Punishing Pain*, N.Y. Times, July 19, 2005, at A21. Notwithstanding the absence of evidence that Mr. Paey sold any drugs, Florida law allowed the jury to infer trafficking from quantity alone. A six-person jury convicted him.

One juror later admitted that he did not believe Mr. Paey was guilty but voted to convict rather than be the

¹² Stephanie Denzel, *Richard Paey*, Nat'l Registry of Exonerations (Aug. 31, 2011), <https://exonerationregistry.org/cases/11006>.

lone holdout among six; the foreperson had assured the holdout that the judge would give Mr. Paey probation. Jacob Sullum, *Pill Sham*, Reason (Apr. 23, 2004), <https://reason.com/2004/04/23/pill-sham/>. Mr. Paey instead received a twenty-five-year mandatory minimum sentence. After three and a half years in prison, he received a full pardon in 2007.

H. Jed Gressman and Troy Hancock

In 1992, Jed Allen Gressman¹³ and Troy Jon Hancock,¹⁴ two young men, were convicted of aggravated sexual assault by an undersized Utah jury after offering a ride to a woman looking for her husband near a reservoir. She later accused them of driving her away from the reservoir, restraining her, and sexually assaulting her. *State v. Hancock*, 874 P.2d 132, 133–34 (Utah Ct. App. 1994). The men said their truck had become stuck in sand and that the woman walked away while they were freeing it.

The accusation changed over time: the woman initially identified a different man named Jed and described a gray truck, then months later identified Mr. Gressman and revised the description to match Mr. Hancock’s orange truck with a black stripe. A DNA expert testified that only about 21% of men—including Mr. Gressman but not Mr. Hancock—could have contributed the semen, and no other physical evidence or injuries supported the accusation. Edward L. Carter, *New Evidence Means Freedom for 2 Inmates*, Deseret

¹³ Maurice Possley, *Jed Allen Gressman*, Nat’l Registry of Exonerations (Aug. 16, 2017), <https://exonerationregistry.org/cases/10496>.

¹⁴ Maurice Possley, *Troy Jon Hancock*, Nat’l Registry of Exonerations (Aug. 29, 2011), <https://exonerationregistry.org/cases/10505>.

News (June 13, 1996), <https://www.deseret.com/1996/6/13/19248369/new-evidence-means-freedom-for-2-inmates/>. The jury acquitted both men of rape and kidnapping but convicted them of aggravated sexual assault, and they were each sentenced to five years to life in prison.

Reinvestigation revealed that the accuser had previously made a false rape allegation and that her family scouted Mr. Hancock's truck before the description changed. Advanced DNA testing excluded both men, and prosecutors dismissed the charges. Both were released in June 1996, after forty-one months in prison.

CONCLUSION

The wrongful convictions described above have been discovered and proven; many more have not been, and in all likelihood never will be. Each occurred—often quickly and easily—in a state that has, for generations, allowed a person to be convicted of a felony by an undersized jury. And a significant number arose in precisely the circumstances where the deliberation of a full jury matters most: cases built on mistaken identification, incentivized witnesses, and discredited forensic science, where one more voice in the jury room might have meant the difference between a hung jury or possible acquittal and a ruined life.

To be sure, states requiring twelve jurors have also wrongly convicted innocent people. But a twelve-person jury is one protection against wrongful conviction, and the cases discussed above illustrate the grave consequences that follow when the Constitution's safeguards against wrongful conviction are diminished in the name of efficiency. Each protection provides an additional barrier against an erroneous conviction—and, when those

protections are weakened, the risk of irreversible injustice increases. Efficiency was the six-person jury's principal justification when *Williams* sanctioned it, but the Constitution's safeguards exist precisely because this Court has long recognized that accuracy, fairness, and liberty cannot be sacrificed for the sake of expediency.

For the foregoing reasons, the Court should grant the relief requested by the Petitioner.

Respectfully submitted.

M. CHRIS FABRICANT	ADAM GERSHENSON
MATTHEW A. WASSERMAN	<i>Counsel of Record</i>
INNOCENCE PROJECT	WEIL, GOTSHAL & MANGES LLP
40 Worth Street, Ste. 701	1001 Boylston St., Ste. 300
New York, NY 10013	Boston, MA 02115
	(617) 772-8310
	adam.gershenson@weil.com
SETH E. MILLER	
INNOCENCE PROJECT OF	BRIAN G. LIEGEL
FLORIDA, INC.	SARAH M. STERNLIEB
124 Marriott Dr., Ste. 104	DYLAN C. BROWN
Tallahassee, FL 32301	WEIL, GOTSHAL & MANGES LLP
	1395 Brickell Ave., Ste. 1200
CRAIG J. TROCINO	Miami, FL 33131
MIAMI LAW INNOCENCE	
CLINIC	MCKAYLA R. ROBINSON
1311 Miller Dr., Ste. B400	WEIL, GOTSHAL & MANGES LLP
Coral Gables, FL 33146	2001 M St., Ste. 600
	Washington, D.C. 20036

Counsel for Amici Curiae

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