

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 FOURTH
DISTRICT COURT OF APPEALS OF FLORIDA

MOTION FOR LEAVE TO FILE *AMICUS CURIAE*
BRIEF AND RELATED BRIEF ON BEHALF OF
THE LOUISIANA DISTRICT ATTORNEYS
ASSOCIATION IN IN SUPPORT OF
RESPONDENT

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**MOTION FOR LEAVE TO FILE *AMICUS CURIAE*
BRIEF**

NOW INTO COURT, come the District Attorneys of the State of Louisiana, through their undersigned counsel, the Executive Director of the Louisiana District Attorneys Association (“LDAA”), who respectfully move and request permission to file a brief as *amicus curiae* in Support of the Respondent, the State of Florida, in the above-captioned matter.

The mission of the LDAA is to improve Louisiana’s justice system and the offices of the District Attorneys by enhancing the effectiveness and professionalism of Louisiana’s district attorneys and their staffs through education, legislative involvement, liaison, and information sharing. LDAA is a Louisiana non-profit corporation which includes as its members all elected district attorneys and appointed assistant district attorneys in the State of Louisiana. The LDAA Board of Directors reviewed the above-captioned case and the potential impact that the petitioner’s requested relief would have on the State of Louisiana. The resolution of the issues at hand could have far-reaching effects throughout our State. Movant believes that permission to enter as *amicus curiae* is necessary to fully articulate and emphasize the vital statewide prosecutorial interests this case represents. Mover further certifies that prior to filing said brief that he will comply with the mandates set forth in the Rules of this Court relative to *amicus curiae*, including review of all parties’ briefs. Movant avers that the instant brief was drafted with an effort to avoid duplication of facts and arguments presented to this Court in other pleadings.

Respectfully submitted,

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To the Honorable Justices of the United States
Supreme Court:¹

INTEREST OF *AMICUS CURIAE*

The Louisiana District Attorneys Association (“LDAA”) is a Louisiana non-profit corporation which includes as its members all of the District Attorneys and assistant district attorneys in the State of Louisiana.² The LDAA is controlled by a 17-member Board of Directors composed of elected district attorneys and appointed assistant district attorneys. The petitioner’s requested relief could have far-reaching impact on the justice system in the State of Louisiana. The LDAA Board of Directors reviewed the above-captioned matter and authorized the instant filing.

The Mission of the LDAA focuses on the improvement of the Louisiana Criminal Justice System. A cornerstone of that system is the framework for criminal jury trials. Louisiana allows trial by a six-person jury for numerous offenses. The current structure has been established and utilized

¹ Rule 37.6 Disclosure: No counsel for any party authored this brief in whole or in part, and no person or entity other than *amicus* and their counsel funded its preparation or submission. Undersigned counsel contributed in part to the instant filing, along with W. Claire Howington, an LDAA Member and commissioned assistant district attorney in the 16th Judicial District of Louisiana, John Turner, an LDAA Member and assistant district attorney commissioned in the 14th Judicial District of Louisiana, Darren Allemand, an LDAA Member and assistant district attorney commissioned in the 24th Judicial District, Jacqueline Sanchez, an LDAA Staff Attorney, and Katie Leleux, an LDAA Staff Attorney.

² As of the date of the instant filing, all 42 elected District Attorneys and the 700-plus assistants are LDAA Members.

for more than 60 years prior to the grant of *certiorari* in the instant matter. Granting the requested relief would have substantial negative impact on the justice system in the State of Louisiana. That impact would be borne primarily by Louisiana's District Attorneys.

The *amicus curiae* is presented to this Honorable Court for consideration to support the Respondent and to highlight the substantial negative impact on the State of Louisiana. This is clearly within the mission statement of this Organization. Based on the above-described representations, the LDAA respectfully asserts that it has the requisite interest for the instant filing.

SUMMARY OF ARGUMENT

Louisiana's current constitution requires a graduated system of jury size for criminal settings, utilizing six-person juries. La. Const. art. I, §17; *see also* La. C.Cr.P. art. 782. The graduated structure expedites trial and creates efficiency in the system. There is no indication that Louisiana's legal framework produces unreliable convictions when utilizing six-person juries. The fundamental role of the jury to prevent governmental overreach is preserved. An overruling of the *Williams* decision would ignore significant historical perspectives and create substantial burden on the State of Louisiana. *Williams v. Florida*, 399 U.S. 78, 90 S.Ct. 1893, 26 L.Ed.2d 446.

ARGUMENT

I. Louisiana's Current Legal Framework

Under the Louisiana Constitution, there are four separate categories of criminal trials: capital, absolute felonies, relative felonies, and bench trials. *Id.* Undergirding this structure is the Louisiana Code of Criminal Procedure's basic taxonomy of offenses: a “felony” is any offense that might be punished by death or by imprisonment at hard labor, while a “misdemeanor” is any other offense. La. C.Cr.P. art. 933(3) and (4); *compare with* Fl. Stat. 775.08 (defining a felony as any offense with a potential punishment of imprisonment over one year).

Capital cases involve those where a sentence of death may be imposed. The 12-person jury is used in a bifurcated process, with separate phases for guilt and sentencing. La. Const. art. I, § 17; *see also* La. C.Cr.P. art. 905.2. The jury in a capital case determines guilt and the appropriate sentence. Our constitution prevents the joinder of capital matters with non-capital felonies. Absolute felonies carry a sentence that must be imposed with hard labor. They are tried before a jury of twelve. *State v. Breaux*, 24-737, (La. 5/9/25); 408 So.3d 899, 903. A relative felony carries a sentence that may either be imposed at hard labor or without hard labor. *Id.* The proviso “at hard labor” refers to the authority under which the incarceration is served. At hard labor sentences are served under the authority Louisiana Department of Public Safety and Corrections (DPS&C), rather than under the authority of a local sheriff. *See generally*, La. R.S. 15:824; *see also State v. Lisenby*, 534 So. 2d

996, 997 (La. Ct. App. 1988). This designation does not, alone, require a judge to impose a term of incarceration. La. C.Cr.P. art. 893.

Duncan misdemeanors are non-felony offenses which have sentences that are greater than 6 months but that cannot be imposed at hard labor. La. C.Cr.P. art. 779, see also: *Duncan v. Louisiana*, 391 U.S. 145, 88 S. Ct. 1444, 20 L. Ed. 2d 491 (1968). This encompasses a wide variety of crimes—from prohibitions on taking albino alligators (La. R.S. 56:280), to cyberstalking (La. R.S. 14:40.3), to graverobbing (La. R.S. 8:653). *Duncan* and its progeny indicate that the language of the constitution (“all crimes” and “all criminal prosecutions”) confers the jury trial right only to serious offenses. *Ballew v. Georgia*, 435 U.S. 223, 245, 98 S. Ct. 1029, 1041, 55 L. Ed. 2d 234 (1978); and *Burch v. Louisiana*, 441 U.S. 130, 136, 99 S. Ct. 1623, 1627, 60 L. Ed. 2d 96 (1979). Through this line of cases, this Court has assured the states that waived juries, guilty pleas, and bench trials for petty offenses were not impacted.

Homicide provides a clear example of how the graduated structure of offense and modes of trial is applied in Louisiana. Capital murder requires a twelve-person jury to determine both guilt and the appropriate sentence (life vs. death). La. R.S. 14:30. Second-degree murder carries a mandatory life sentence at hard labor and the 12-person jury determines only the guilt of the accused. Sudden heat of passion killings fall under manslaughter, another absolute felony carrying a potential 40-year sentence. A killing through criminal negligence is a relative felony punishable by up to 15 years and would be reviewed by a six-person jury. La. R.S. 14:32. A killing

through reckless operation of a watercraft is a *Duncan* misdemeanor and is tried before the smaller jury option. La. R.S. 34:851.6. Our legislature has separated out numerous “levels” of homicide based on the decreasing culpability of the accused. This balances efficiency with the heightened scrutiny preferred where severe sentences are more common.

In addition to graduated penalties, the mode of trial also correlates with the imposition of sentence. An offender convicted of an absolute felony must be sentenced to hard labor and be housed under the custody of the DPS&C. Judges retain discretion over the sentences in relative felonies and misdemeanors. They retain control on *how* the felony sentence is imposed; either with hard labor or without hard labor. This discretion maximizes the ability of the judge to craft a narrowly tailored sentence for each unique criminal defendant. The judge also has greater discretion to reduce or suspend those sentences. La. C.Cr.P. art. 881. The relative felony can also receive greater consideration for alternatives to jail, like home incarceration or commitment to a community rehabilitation facility. La. C.Cr.P. art. 894.2 & La. R.S. 15:1133. Imprisonment under the custody of the local sheriff has traditionally allowed greater access to trustee status and provides fewer barriers to participation in work release programs. La. R.S. 15:711, *see also* La. R.S. 15:708.

The six-person jury has never been Louisiana's default rule for all offenses. The graduated system allows for the balance of efficiency with the protection against state over-reach guaranteed by the Sixth Amendment. A trial before a six-person jury for simple drug possession could be accomplished in a

single day. Conversely, voir dire to select a death-penalty qualified jury panel could, alone, take weeks. A defendant facing the possibility of death is not similarly situated to a defendant facing six months and a day. Weeks-long voir dire on every routine drug possession case would be completely untenable. Louisiana's system accounts for these realities.

II. Louisiana, Jurisprudence, and History

Louisiana's structure has functioned well for more than a century. Louisiana's criminal justice system has substantial roots in this reliable and efficient structure for criminal trials.

Any historical review of the jury trials in the English common law must also acknowledge the governmental structure and the likely criminal sanction involved with those proceedings. From the medieval period forward, death was described as the "sanction for all English felonies, including minor instances of larceny." Robert L. Jones, *Finishing a Friendly Argument: The Jury and the Historical Origins of Diversity Jurisdiction*, 82 N.Y.U. L. Rev. 997, 1026 (2007). The death penalty was so ubiquitous that the English capital code of the eighteenth century was nicknamed the "Bloody Code" and "subjected a vast and increasing number of property crimes to the death penalty." Peter King & Richard Ward, *Rethinking the Bloody Code in Eighteenth-Century Britain: Capital Punishment at the Centre and on the Periphery*, 228 Past & Present 159 (2015). The prevalence of a 12-person jury makes sense in this context: all felons met the same end and deserved the same protection. The current system reserves capital punishment for the most severe of offenders.

Historically, juries themselves were far different from those in our current system. They were at liberty to ignore the judge and the law. Jones, *Finishing a Friendly Argument* at 1026. The courts in England at the time of the founding were answerable to the Crown and the jury was a method of preserving local autonomy. *Id.* at 1027. Corruption of common law jurors may have occurred regularly, and jurors would acquit for reasons completely unrelated to the facts or law (e.g. “reputation of the accused” or disagreement on the severity of the offender’s *particular* rape). Thomas Andrew Green, *Verdict According to Conscience: Perspectives on the English Criminal Trial Jury, 1200–1800*, at 26 (1985). The Constitution balanced the potential vices of the juries, the severity of criminal punishments, and the power of the judiciary.

Interestingly, the right of a jury trial in English common law was predicated on the consent of the accused. Consent had a definition at the time that “somewhat different than our own.” *Singer v. United States*, 380 U.S. 24, 27, 85 S. Ct. 783, 786, 13 L. Ed. 2d 630 (1965). This Court acknowledged that the *peine forte et dure* existed at the same time our Founders were confronting the impending Revolution. *Id.* That practice tortured non-consenting criminal defendants until they died or consented to a jury trial. *Id.* The practice was only abolished in 1772. *Id.* The replacement deemed those who stood mute in a criminal proceeding and failed to consent to a jury to have pleaded guilty. *Id.* This was the English law effective at the time our Constitution was enshrined. These practices would have been as synonymous with the word “jury” as the composition of 12 persons.

Against that backdrop, the development of Louisiana's law surrounding juries is logical. The Louisiana Territory was purchased little more than a decade after the ratification of the Constitution. Shortly thereafter, the territorial legislature endeavored to incorporate English common law. La. Acts of 1805, C. 50 §33; *see also* J. Denson Smith, *The Louisiana Criminal Code: Its Background and General Plan*, 5 La. L. Rev. 1 (1942). The 1805 "Crimes Act" gave wholesale adoption of English legal tradition. *Id.* Irony, considering that the Act was simultaneously published in French. This was a system of law "about which at that time the people of Louisiana knew and could know practically nothing about." *Id.* at 2. The results were problematic. It was eloquently described that "the Louisiana lawyer was forced to resort to the confusing precedents and obtuse distinctions of the English common law." Dale E. Bennett, *Louisiana Criminal Procedure—A Critical Appraisal*, 14 La. L. Rev. 1 (1953). The disfavor of a wholesale adoption of other systems of law was quickly expressed in the Louisiana Constitution of 1812, after statehood was achieved. There, the adoption of laws or legal systems by general reference was overtly prohibited. La. Const. of 1812, art. IV § 11. This provision survives 214 years later in our current state constitution. La. Const. art. III, § 15. A grant of relief in the instant matter would require exactly that: a State with a strong civilian history would be forced into adoption of a system of laws through the historical divinations of a federal judge.

The distinctions between the U.S. Constitution, Louisiana's history, and the English common law at the time of the founding can be seen

in other areas. As noted on pages 9-10 of the respondents brief in opposition of *certiorari*, the “vicinage” requirement for jury trials existed at the time of the founding in English common law. Some Framers advocated for its inclusion in the Bill of Rights, but it was not adopted into the Sixth Amendment. Contrast that to Louisiana’s first two constitutions which guaranteed “a speedy public trial by an impartial jury of the vicinage.” La. Const. of 1812, art. VI, § 18; La. Const. of 1845, art. VI, § 107. The state constitution diverged from its federal counterpart until 1864, where the “district” language was adopted. La. Const. of 1864, art. VII § 105. Customs gave way to clarity and vicinage gave way to district.

The first reference to a specific *number* of jurors appeared in Louisiana’s Constitution of 1879. La. Const. of 1879, art. VII. The importance of a local jury was emphasized and authority over a jury’s size was expressly granted to the Legislature. This was contained in the same constitution which insisted that “[n]o qualification of any kind for suffrage or office, nor any restraint upon the same, on account of race, color, or previous condition shall be made by law.” La. Const. of 1879, art. 188. In the same constitution that outlawed racial discrimination for voting and office, the jury size was addressed. As with vicinage, we see a potential remnant of English Common law shed in favor of the graduated framework of jury sizes that continues until today.

The need for this change was summarized well in *State v. White*. There, the court analyzed the changes in mode of trial that occurred between state constitutions. *State v. White*, 33 La. Ann. 1218, 1220

(1881). Earlier constitutions organized parish courts which convened monthly. *Id.* The 1879 Constitution abolished the parochial courts and mandated two regular jury terms a year for district courts. This was balanced by authorizing trial for lesser offenses by a five-person jury. Succinctly stated: “[t]he object which they [the legislature] had in view is very apparent; it was to secure the chances of a speedy trial to the accused and to relieve the parishes of the enormous expense and great inconvenience of drawing, summoning, and empaneling large numbers of jurors five or six times a year.” *Id.* Ironically, that court grappled with a similar argument made by the petitioner: that the origins of common law juries prohibited Louisiana’s approach. In response, the court stated “[w]e cannot agree with counsel for the accused in their patriotic alarm for the safety of the principles of Magna Charta [sic] under such a construction, or that such a doctrine is repugnant to common law traditions or jurisprudence.” *Id.* A trial before the smaller jury could be conducted in a shorter time and at a lower cost, while still affording the accused sufficient protection from state overreach.

The 1898 Constitution further codified this practice. La. Const. of 1898, art. 116. After its adoption, Louisiana courts consistently interpreted this provision as a non-waivable jurisdiction limitation. *State v. Reeves*, 128 La. 37, 39, 54 So. 415, 415 (1911). Legislative authority over the juror qualifications was clearly established by Louisiana’s state supreme court. *State v. Jones*, 8 Rob. (LA) 573, 582 (1845). This was extended over the number of persons that qualified as a valid jury. *State v. Gutierrez*, 15 La. Ann. 190, 192 (1860). The *Reeves*

analysis remained in effect until 2006, when it was re-examined in Louisiana. *State v. Jones*, 2005-0226 (La. 2/22/06), 922 So. 2d 508. In this latter *Jones* matter (2006), heavy reliance was placed on the *Williams* holding to conclude that an impermissibly larger jury was a harmless error. *Id.* at 510-12. Petitioner now urges this Court to overturn *Williams*. Absent that reliance, relative felonies in Louisiana may become un-prosecutable. The state constitution would place a jurisdiction limit on presenting a relative felony to a 12-person jury and petitioner's requested relief would prevent the use of anything else.

The development of the jury size occurred as the Legislature's organization of the courts progressed in the State. This slow progression is a far cry from the historical perspective that the petitioner urges this Court to accept: that the smaller jury sprang to life in the heads of newly unencumbered racists at the end of Reconstruction. The consistent effort toward a more efficient justice system is the cornerstone of this procedure. The conclusion that a twelve-person jury was an "accidental feature" of the Sixth Amendment was adopted and enshrined in Louisiana jurisprudence.

III. Detrimental Impact

The petitioner's requested relief would negatively impact the administration of Louisiana's criminal justice system. The District Attorneys of Louisiana urge that the State's reliance interest in preserving these convictions is strong. The jurisdictional crisis that such relief creates, as discussed above, would require substantial legislation and a constitutional amendment to remedy. Beyond

that, burden placed upon local courts could be overwhelming.

There are over 400 relative felony offenses in Louisianan’s legal framework. This encompasses nearly every conceivable designation of offense from vehicular homicides (impaired driving homicide, La. R.S. 14:32.1), provisions of our criminal hazing law (La. R.S. 14:40.8) and many Louisiana felony-level drug possession statutes (La. R.S. 40:967(C), 40:968(C), and 40:969(C)). Louisiana law embraces the graduated system of offenses described in section one of the instant filing. The need for efficiency in the system is paramount.

At the time of the instant filing, official La. DPS&C data reflects an inmate population of 31,412.³ This represents those that have been convicted of a felony and who received a sentence at hard labor within Louisiana. Nearly half of that population, some 15,273 inmates, are currently serving a sentence for a relative felony. For 7,106 of those inmates, a relative felony is their longest sentence of conviction. This does not include those who receive a sentence for a relative felony that is not at hard labor or those who are incarcerated on a *Duncan* misdemeanor.

There is no readily available method to identify which of those convictions were the result of a jury trial. Similarly, there is no readily available method to determine which of these cases are currently pending on direct appeal. This number would increase when accounting for cases with sentences that are

³ Demographic information was provided by the Executive Counsel for La. DPS&C and the Departments’ publicly available “Demographic Dashboard” website.

“without hard labor,” *Duncan* misdemeanors, and those that the trial court placed on a suspended sentence (i.e. probation). The potential impact of the petitioner’s requested relief could upset thousands of convictions in Louisiana.

Petitioner’s requested relief would create unintended consequences. The instant matter involves a felony. Petitioner’s requested relief is not attached to the level of offense, but rather the mode of trial. The overruling of *Williams* would not inherently alter the opinion in *Duncan*. In Louisiana, this would extend the impact of petitioner’s requested relief to more than 300 additional offenses.

IV. Conclusion

The negative impact of petitioner’s requested relief on Louisiana would be significant. Our State would immediately inherit an unknown number of cases for re-trial. Substantial portions of our statutory structure would require revision. A constitutional crisis would be foisted upon our state courts to resolve. Hundreds to thousands of convictions would be upset. If that number was sufficiently high, prosecutors may be forced to triage their caseloads, rather than seek justice in each matter.

A broad decision in this matter would give chilling corporeality to the specter of additional jury-related claims. The *Ramos* definition adopted a common law preference for unanimity. *Ramos v. Louisiana*, 590 U.S. 83, 140 S.Ct. 1390, 206 L.Ed.2d 583. Relief in this matter would mandate a common law fixation on 12-person juries. The future of jury trial waivers, guilty pleas, and other rights that have become essential to our system would seem suddenly

unsettled. Most states define what qualifies as a juror. Many people who serve on modern juries would have been unjustly denied participation at the time of the founding: women, people of color, non-landowners, convicted felons, etc. Incorporating a 250-year-old definition of jury size, without also incorporating the companion definitions of a “juror” is inconsistent.

The Sixth Amendment guarantees a trial before a jury. The Amendment does not provide a number for a group to become a jury and that appears intentional. The only descriptive word assigned to the jury was impartial. Contrast that with the adjectives attached to the trial itself: speedy and public. The use of a six-person jury greatly reduces the cost and time of a jury trial. This is uncontrovertibly true. As argued, the District Attorneys of Louisiana believe that the six-person jury is a reliable and thorough protection for the accused. The relief sought would have this Court act as editors of the Constitution, rather than interpreters. It asks that you insert a number that does not exist and bold a section that bears no such emphasis. Creating a uniform requirement for a 12-person jury would be done at the cost of the Framers’ actual emphasis: the right of an accused to quickly dispose of the controversy.

Assuming *arguendo* that this court finds for the petitioner, application should be prospective only. Retroactive application thwarts the intent of the criminal justice system, undermines the solemnity of juror participation, retraumatizes victims, and places an insurmountable burden on a state whose resources are stretched nearly threadbare. The administration of justice requires a level of certainty, and as the

Court noted in *Edwards v. Vannoy*, quoting *Teague*, “constitutional rules not in existence at the time a conviction became final seriously undermines the principle of finality which is essential to the operation of our criminal justice system.” *Edwards v. Vannoy*, 593 U.S. 255, , 141 S. Ct. 1547, 1554, 209 L. Ed. 2d 651 (2021). In this matter, retroactive application of any new procedural rule would force the state’s hand in retrying thousands of cases. The Court further noted that it has repeatedly held that new rules of criminal procedure do not apply retroactively on federal collateral review. Depiction of the watershed rule as “moribund” should be sufficient. *Id.* at 272. The prosecutors of Louisiana faced the tidal wave of collateral relief claims related to *Ramos* and the likelihood of the same impact here is high, should this Court grant petitioner’s relief. As *Edwards* followed *Ramos*, so too would *Kian* likely beckon additional cases to seek this Court’s review.

The Constitution guarantees a trial, which petitioner received. It guarantees a jury, which petitioner received. The guarantees of due process, as imposed on the States through the Fourteenth Amendment, have been satisfied. The petitioner was advised of the charges against him and presumably represented by counsel at all critical stages. There was no compulsion to incriminate himself and there is no indication in the pleadings that he was denied compulsory process. Petitioner’s path to the jury was vastly different than that of the 18th-century English defendant. With the protections provided on that path, State of Florida proved his accusations beyond a reasonable doubt. Petitioner’s injury, if any exists, is that a greater swath of the public was not forced to

surrender their time to assess his flagrant and criminal conduct. The argument makes no real effort to even assert that a greater jury size would have garnered a different result *in this case*. The six-person jury that unanimously found this offender guilty provided a sufficient safeguard against a “corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge.” *Duncan*, 391 U.S. at 156. The protections of the Constitution were satisfied.

Amici respectfully prays that the petitioner’s relief be **denied**.

Respectfully submitted,

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