No.

IN THE SUPREME COURT OF THE UNITED STATES

ALEX ANTONIO BYNES, PETITIONER,

v.

STATE OF FLORIDA, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FOURTH DISTRICT COURT OF APPEAL OF FLORIDA

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a statute imposing on all convicted felons a lifetime ban on possession of a firearm or ammunition with no individualized finding of dangerousness violates the Second Amendment?

2. Whether a person charged with a felony in state court has the right to trial by a twelve-member of jury under the Sixth Amendment?

PARTIES TO THE PROCEEDING BELOW

In the court whose judgment is sought be reviewed, the parties were:

Alex Antonio Bynes

State of Florida

RELATED PROCEEDINGS

Fifteenth Judicial Circuit of Florida:

State v. Bynes, 50-2023-CF-000860-AXXX-MB (April 9, 2024)

Fourth District Court of Appeal of Florida:

Bynes v. State, 4D2024–2983 (January 8, 2026)

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STATE OF FLORIDA, RESPONDENT.

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PETITION FOR A WRIT OF CERTIORARI

Alex Antonio Bynes respectfully petitions for a writ of certiorari to review the judgment of the Fourth District Court of Appeal of Florida in this case.

OPINION BELOW

The decision of Florida's Fourth District Court of Appeal and the denial of rehearing, issuance of written opinion, and certification are reported together as *Bynes v. State*, 428 So. 3d 134 (Fla. 4th DCA 2026). They are reprinted in the appendix. 1a, 2a.

JURISDICTION

The petition seeks review of the decision of Florida's Fourth District Court of Appeal affirming Petitioner's convictions and sentences without written opinion on January 8, 2026, 1a, for which a timely motion for rehearing, issuance of written opinion and stay of mandate was denied on February 16, 2026. 2a.

The Florida Supreme Court is "a court of limited jurisdiction," *Mallet v. State*, 280 So. 3d 1091, 1092 (Fla. 2019) (citation omitted), Specifically, it has no jurisdiction to review district court of appeal decisions entered without written opinion. *Jackson v. State*, 926 So. 2d 1262, 1266 (Fla. 2006). Hence, Petitioner could not seek review in that court. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL, STATUTORY, AND RULES PROVISIONS

The Second Amendment

"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. Amend. II.

The Sixth Amendment

"In all criminal prosecutions, the accused shall enjoy the right

to a speedy and public trial, by an impartial jury … .” U.S. Const. Amend. VI.

The Fourteenth Amendment

> Section 1
>
> … . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. Amend. XIV.

Article I, section 22 of the Florida Constitution

> Trial by jury.—The right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, not fewer than six, shall be fixed by law.

Art. I, § 22, Fla. Const.

Section 913.10, Florida Statutes

> Number of jurors.—Twelve persons shall constitute a jury to try all capital cases, and six persons shall constitute a jury to try all other criminal cases.

§ 913.10, Fla. Stat.

Section 790.23, Florida Statutes

> (1) It is unlawful for any person to own or to have in his or her care, custody, possession, or control any firearm, ammunition, or electric weapon or device, or to carry a concealed weapon, including a tear gas gun or chemical

weapon or device, if that person has been:

(a) Convicted of a felony in the courts of this state;

…

(3) Except as otherwise provided in subsection (4), any person who violates this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

§ 790.23, Fla. Stat.

STATEMENT OF THE CASE

In 2024, Petitioner Alex Antonio Bynes was charged by amended information in Florida's Fifteenth Judicial Circuit with possession of a firearm or ammunition by a convicted felon contrary to section 790.23, Florida Statutes. R 74.

At trial, a six-member jury convicted Petitioner as charged. R 89.The court adjudicated him guilty and sentenced him to five years in prison with a three-year mandatory minimum term for actual possession of the firearm. R 90, 120–23.

Petitioner appealed his conviction and sentence. He argued that section 790.23 violates the Second Amendment. 3a–9a. Although the issue had not been raised at trial, the facial constitutionality of a statute may be raised for the first time on appeal. *See Edenfield v. State*, 379 So. 3d 5, 7 n. (Fla. 1st DCA 2023) ("The facial constitutional challenge to section 790.23(1)(a) was not made in the trial court. Nonetheless, we can consider this unpreserved issue because 'a conviction for the violation of a facially invalid statute would constitute fundamental error.' *Westerheide v. State*, 831 So. 2d 93, 105 (Fla. 2002) (quoting *Trushin v. State*, 425 So. 2d 1126, 1129 (Fla. 1982)); *see also Davis*

v. Gilchrist Cnty. Sheriff's Off., 280 So. 3d 524, 531 (Fla. 1st DCA 2019).").

Petitioner also argued that he was denied his Sixth Amendment right to trial by a twelve-member jury. 9a–13a. He acknowledged that this Court had held in *Williams v. Florida*, 399 U.S. 78 (1970), that state court juries as small as six are constitutionally permissible under the Sixth Amendment. 9a–10a.

Petitioner also acknowledged that the issue had not been raised in the trial court, but pointed out that waiver of the constitutional right of trial by the proper number of jurors must be made personally by the defendant under *Blair v. State*, 698 So. 2d 1210, 1217 (Fla. 1997) (finding valid defendant's agreement to verdict by five-member jury valid only because made "in a colloquy at issue here, including a personal on-the-record waiver," and sufficient to pass muster under the federal and state constitutions," and his decision was made "toward the end of his trial, after having ample time to analyze the jury and assess the prosecution's case against him," and he "affirmatively chose to proceed with a reduced jury"), and *Wallace v. State*, 722 So. 2d 913 (Fla. 2d DCA 1998) (reversing on grounds of fundamental error where appellant was

tried by five-member jury and judge did not inform the defendant of his right to six-person jury). 9a–13a.

As already noted, the Fourth District affirmed the conviction and sentence without a written opinion, and denied Petitioner's motion for rehearing, issuance of written opinion and stay of mandate. 1a, 2a.

REASONS FOR GRANTING THE PETITION

I. FLORIDA'S BROAD FELON-IN-POSSESSION STATUTE VIOLATES THE SECOND AMENDMENT.

Petitioner was charged with, and convicted of, possession of a firearm by a convicted felon, a second degree felony under section 790.23, Florida Statutes. R 74, 89, 90. He contended on appeal that the statute violates the Second Amendment. 3a–9a.

Section 790.23 operates as a life-long ban on possession of a firearm or ammunition by convicted felons regardless of why the firearm is possessed or how remote the felony conviction may be.

In *District of Columbia v. Heller*, 554 U.S. 570 (2008)], the Court wrote that at the time of the Founding the right to keep arms was "a common way of referring to possessing arms, for militiamen *and everyone else*." *Id.* at 583 (emphasis in original).

In *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), the Court wrote that, to justify a regulation on the right to bear arms, "the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.* at 17. The

Court emphasized this rule by repeating it at page 24 of *Bruen*.

The Court shed light on the rule's application in *United States v. Rahimi*, 602 U.S. 680 (2024).

In *Rahimi*, the Court noted the historical evolution of surety laws allowing for the limitation of a persons' right to bear arms based on an individualized determination that the person presented a physical threat to a person seeking the surety. *Id.* at 695–97. It also noted the parallel development of "going armed" laws" forbidding arming oneself "to the Terror of the people." *Id.* at 697.

Based on these developments, the Court wrote: "Taken together, the surety and going armed laws confirm what common sense suggests: When *an individual poses a clear threat of physical violence to another*, the threatening individual may be disarmed." *Id.* at 698 (emphasis added).

Rahimi involved a statute providing that a person could be deprived of the right to possess a firearm based on an individualized judicial determination that he or she presented a "a credible threat to the physical safety" of a specific person. *Id.* at 688–89. The Court determined that the law's "prohibition on the possession of firearms by those found by a court to present a threat to others fits neatly

within the tradition the surety and going armed laws represent." *Id.* at 688.

Unlike the narrow statute in *Rahimi* with its individualized determination of dangerousness, section 790.23(1) has broad application, covering almost 10% of the adult population of Florida. In 2023, the Census Bureau put the total population of Florida at 22.6 million (an estimated 5% growth since 2020), of which 19.4% was under the age of 18, for a total adult population of over 18 million in 2023.[1] As of 2020, there were an estimated 1.6 million non-incarcerated convicted felons in Florida.[2]

And unlike the statute in *Rahimi*, the Florida statute imposes a lifetime ban on possession of a firearm.

The statute could not be judicially rewritten by a Florida court to produce an entirely different statute that comported with the Second Amendment. *See Westphal v. City of St. Petersburg*, 194 So.

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[1] https://www.census.gov/quickfacts/fact/table/FL/PST045223 (last visited December 5, 2024).

[2] ABC News, "Florida convicted felons allowed to vote for 1st time in presidential election after completing sentences" (Oct. 25, 2020). https://abcnews.go.com/Politics/convicted-florida-felons-allowed-vote-1st-time-presidential/story?id=73822173 (last visited December 5, 20204).

3d 311, 313–14 (Fla. 2016) ("The judiciary, however, is without power to rewrite a plainly written statute, even if it is to avoid an unconstitutional result.").

Florida's broad statute does not comport with the historical restrictions on the right to bear arms allowed by the Second Amendment. The Court should grant review to determine whether section 790.23(1) is constitutionally viable in light of *Rahimi*.

II. *WILLIAMS v. FLORIDA* SHOULD BE OVERRULED AND THE SIXTH AMENDMENT RIGHT TO A JURY OF TWELVE SHOULD BE RESTORED.

Petitioner was charged with a second degree felony. Pursuant to section 913.10, Florida Statutes, the case was tried by a six-member jury. He contended on his appeal that he was deprived of his right to a twelve-member jury under the Sixth Amendment. 9a–13a.

The Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury … ."

On its face, it does not define what is meant by a jury. It does not prescribe the number of jurors. It does not say their verdict must be unanimous, or even that a majority must concur in the

verdict. It does not say jurors must be laymen.

Given the Amendment's spare wording and absolute silence about these and similar questions, we have no option but to look to "the most likely public understanding of [this] particular provision at the time it was adopted." *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 828 (2010) (Thomas, J., concurring in part) (interpreting Second Amendment). Such "an approach grounded in history imposes limits on the judiciary that are more meaningful than any based on [an] abstract formula." *Obergefell v. Hodges*, 576 U.S. 644, 698 (2015) (Roberts, C.J., dissenting) (internal citation and quotation marks omitted). *See also Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 239 (2022) (opinion of Alito, J., for the Court) ("Historical inquiries … are essential whenever we are asked to recognize a new component of the 'liberty' protected by the Due Process Clause because the term 'liberty' alone provides little guidance."); *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 321–27 (2023) (Sotomayor, J., dissenting) (surveying understanding of Fourteenth Amendment at the time of adoption); *Consumer Fin. Prot. Bureau v. Cmty. Fin. Services Ass'n of Am., Ltd.*, 601 U.S. 416, 442 (2024) (Kagan, J.,

concurring) ("Long settled and established practice may have great weight in interpreting constitutional provisions about the operation of government.") (internal quotation marks and citations omitted); *Gamble v. United States*, 587 U.S. 678, 741 (2019) (Gorsuch, J., dissenting) (surveying how term "same offence" in Double Jeopardy Clause was understood at time of adoption); *United States v. Rahimi*, 602 U.S. 680, 715 (2024) (Kavanaugh, J., concurring) ("The first and most important rule in constitutional interpretation is to heed the text—that is, the actual words of the Constitution—and to interpret that text according to its ordinary meaning as originally understood."); *id.* at 737 (Barrett, J., concurring) (stating that to identify the scope of the Second Amendment "as it was originally understood … courts must examine the historical tradition of firearm regulation.") (internal citations and quotation marks omitted); *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 319–29, text and n.3 (2023) (Jackson, J., dissenting) (interpreting Fourteenth Amendment in accordance with understanding that, when adopted, it "was intended to undo the effects of a world where laws systematically subordinated Black people and created a racial caste system").

As to the understanding of the jury trial right at the time of its adoption, we are on safe ground.

Throughout the Founding Era it was understood that a criminal conviction required a verdict by a unanimous twelve-man jury.

The Framers looked to the common law as set out by Blacksone. *See United States v. Wood*, 299 U.S. 123, 138 (1936) ("Undoubtedly, as we have frequently said, the framers of the Constitution were familiar with Blackstone's Commentaries. Many copies of the work had been sold here and it was generally regarded as the most satisfactory exposition of the common law of England."); *Schick v. United States*, 195 U.S. 65, 69 (1904).

Blackstone wrote:

> Our law has therefore wisely placed this strong and two-fold barrier, of a presentment and a trial by jury, between the liberties of the people, and the prerogative of the crown. . . . [T]he founders of the English law have, with excellent forecast, contrived, that . . . the truth of every accusation, whether preferred in the shape of indictment, information, or appeal, should afterwards be confirmed by the unanimous suffrage of *twelve* of his equals and neighbours, indifferently chosen and superior to all suspicion.

4 W. Blackstone, Commentaries on the Laws of England 343 (1769) (emphasis added). *See also* 3 Matthew Bacon, A New Abridgment of the Laws of England 234 (1768) (stating petit jury must consist "of twelve, and can be neither more nor less"); 1 Matthew Hale, Pleas of the Crown 33 (1836 ed.). *See generally Thompson v. State of Utah*, 170 U.S. 343, 350 (1898) (discussing historical background of Jury Trial Clause). The only constitutional alteration is that, via the Equal Protection Clause, eligibility has broadened, so that, for instance, women may also serve as jurors.

So far so good.

In 1875, as Reconstruction was drawing to an end, the Jury Clause of Florida's 1868 constitution was amended to provide that the number of jurors "may be fixed by law." *See Florida Fertilizer & Mfg. Co. v. Boswell*, 34 So. 241, 241 (Fla. 1903). The common law rule of a jury of twelve continued in Florida until the Legislature enacted a law specifying a jury of six in Chapter 3010, section 6, Laws of Florida (1877). *See Gibson v. State*, 16 Fla. 291, 297–98 (1877); *Florida Fertilizer*, 34 So. at 241.

This jury-of-six provision was enacted on February 17, 1877 — less than a month after the last federal troops were withdrawn

from Florida in January 1877. *See Gibson*, 16 Fla. 294 (1877), and Jerrell H. Shofner, *Reconstruction and Renewal, 1865–1877*, in *The History of Florida* 273 (Michael Gannon, ed., first paperback edition 2018) ("there were [no federal troops] in Florida after 23 January 1877").

This law was consistent with a common effort in the former Confederate states as they "restricted the size of juries and abandoned the demand for a unanimous verdict as part of a deliberate and systematic effort to suppress minority voices in public affairs." *Khorrami v. Arizona*, 598 U.S. ____ (2022) (Gorsuch, J., dissenting from denial of certiorari). *Cf. Ramos v. Louisiana*, 590 U.S. 83, 126–27 (2020) (Kavanaugh, J., concurring) (non-unanimity was enacted "as one pillar of a comprehensive and brutal program of racist Jim Crow measures against African-Americans, especially in voting and jury service."). Florida's jury of six is the child of the same historical context.

This offspring of the benighted Jim Crow era was upheld in *Williams v. Florida*, 399 U.S. 78 (1970), holding that trial by a jury of six does not violate the Sixth Amendment.

Williams recognized that the Framers "may well" have had "the

usual expectation" in drafting the Sixth Amendment "that the jury would consist of 12" members. *Id.*, 399 U.S. at 98–99. But it concluded that such "purely historical considerations" were not dispositive. *Id.* at 99. Rather, it focused on the "function" that the jury plays in the Constitution, concluding that the "essential feature" of a jury is it leaves justice to the "commonsense judgment of a group of laymen" and thus allows "guilt or innocence" to be determined via "community participation and [with] shared responsibility." *Id.* at 100–01. It wrote that "currently available evidence [and] theory" suggested that function could just as easily be performed with six jurors as with twelve. *Id.* at 101–102 & n.48; *cf. Burch v. Louisiana*, 441 U.S. 130, 137 (1979) (acknowledging that *Williams* and its progeny "departed from the strictly historical requirements of jury trial").

Petitioner respectfully submits that the ahistorical, functionalist social science approach of *Williams* was erroneous as it is contrary to the understanding of the Founding Era that criminal defendants have the right to the unanimous verdict of a jury of twelve. *See*, *Khorrami* 598 U.S. at ____ ("*Williams* was wrong the day it was decided, it remains wrong today, and it impairs both

the integrity of the American criminal justice system and the liberties of those who come before our Nation's courts.") (Gorsuch, J., dissenting from denial of certiorari).

Due to this erroneous ruling, Florida courts have uniformly rejected arguments that Florida's practice of trial by six-member juries violates the Sixth Amendment, and the state supreme court has refused to consider the matter. *See Brown v. State*, 359 So. 3d 408, 410 n.1 (Fla. 1st DCA 2023) (rejecting as "nearly frivolous" claim that defendant charged with armed robbery and kidnapping was entitled to trial by jury of twelve); *Serrano-Delgado v. State*, 392 So. 3d 251 (Fla. 2d DCA 2024) (citing *Williams* and holding defendant was not entitled to jury of twelve on charge of sexual battery on a child under age of twelve); *Kain v. State*, 393 So. 3d 786, 787 (Fla. 3d DCA 2024) ("Affirmed. *See Williams v. Florida*, 399 U.S. 78, 90 S.Ct. 1893, 26 L.Ed.2d 446 (1970) (holding Florida's use of six-member jury in non-capital cases does not violate the Sixth Amendment right to trial by jury)."); *Guzman v. State*, 350 So. 3d 72 (Fla. 4th DCA 2022) (citing *Williams* and holding defendant was not entitled to twelve-member jury at trial for sexual battery on a child under age of twelve), *rev. denied* SC2022–1597 (Fla. June 6,

2023), *cert. denied* 144 S. Ct. 2595 (2024); *Simpson v. State*, 368 So. 3d 513, 514 (Fla. 5th DCA 2023) (noting that panel was rejecting claim that defendant charged with attempted murder was entitled to trial by a jury of twelve persons).

These decisions are binding on the trial courts of Florida. *See Pardo v. State*, 596 So. 2d 665, 666 (Fla. 1992) ("in the absence of interdistrict conflict, district court decisions bind all Florida trial courts"). Further, the state constitution and state law specifically authorize six-member juries in noncapital criminal cases. Fla. Const., art. I, § 22 ("The qualifications and the number of jurors, not fewer than six, shall be fixed by law."; § 913.10, Fla. Stat. ("Twelve persons shall constitute a jury to try all capital cases, and six persons shall constitute a jury to try all other criminal cases.").

So only this Court can right the dilution of the Sixth Amendment wrought in *Williams*. *See Drinkard v. State*, No. 1D2024-1844 (Fla. 1st DCA May 6, 2026) ("unless the United States Supreme Court chooses to reconsider *Williams*, in Florida criminal trials a twelve-person jury is only required for capital cases") (Bilbrey, J., concurring in part and in result).

Petitioner calls upon this Court to grant this petition, recede

from *Williams*, restore the ancient right to a twelve-member jury, and reverse Petitioner's convictions.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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