No. 25-__

IN THE
Supreme Court of the United States

JOSE JOYA PARADA, OSCAR ARMANDO SORTO ROMERO, MILTON PORTILLO RODRIGUEZ, AND JUAN CARLOS SANDOVAL RODRIGUEZ,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Ramos* v. *Louisiana*, 590 U.S. 83 (2020), this Court overruled *Apodaca* v. *Oregon*, 406 U.S. 404 (1972)—a case that had previously endorsed non-unanimous juries as constitutionally permissible. In so doing, *Ramos* clarified that the scope of the Sixth Amendment jury trial right is defined by "historical meaning," not by a "functionalist analysis." 590 U.S. at 89–90, 106.

Shortly before *Apodaca*, this Court had held in *Williams* v. *Florida*, 399 U.S. 78, 86, 98–99 (1970), that a 12-member panel "is not a necessary ingredient" of the Sixth Amendment jury trial right. The Court conceded that "the size of the jury at common law" was "fixed" at "12," and "the Framers, the First Congress, [and] the States in 1789" "may well" have had "the usual expectation * * * that the jury would consist of 12." *Id.* at 89–90, 98–99. The Court nevertheless concluded that 12-member panels were not required because the "function" of the jury does not depend on any "particular number" of jurors. *Id.* at 100–101.

The Federal Rules of Criminal Procedure, as amended following *Williams*, "permit a jury of 11 persons to return a verdict," even over a defendant's objection, "if the court finds good cause to excuse a juror." Fed. R. Crim. P. 23(b)(3). In this case, a federal district court applied that rule to accept a guilty verdict from 11 jurors after one of the originally empaneled jurors became ill during deliberations.

The question presented is:

Whether the Court should overrule *Williams* v. *Florida*, 399 U.S. 78 (1970).

PARTIES TO THE PROCEEDING

Jose Joya Parada, Oscar Armando Sorto Romero, Milton Portillo Rodriguez, and Juan Carlos Sandoval Rodriguez, petitioners on review, were appellants before the United States Court of Appeals for the Fourth Circuit, and defendants before the United States District Court for the District of Maryland.

The United States of America, respondent on review, was the appellee before the United States Court of Appeals for the Fourth Circuit, and the plaintiff before the United States District Court for the District of Maryland.

RELATED PROCEEDINGS

United States Court of Appeals for the Fourth Circuit:

United States v. *Parada et al.*, Nos. 22-4262, 22-4281, 22-4290, 22-4324 (4th Cir. Apr. 10, 2025) (reported at 134 F.4th 188).

United States v. *Sandoval-Rodriguez*, No. 22-4330 (4th Cir. Apr. 14, 2025) (unpublished).

United States District Court for the District of Maryland:

United States v. *Parada et al.*, Nos. 1:16-cr-00259-JKB-30; 1:16-cr-00259-JKB-29; 1:16-cr-00259-JKB-10; 1:16-cr-00259-JKB-11.

United States v. *Sandoval-Rodriguez*, No. 1:17-cr-00589-JKB-5.

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

Page(s)

CASES:

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

RULES:

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

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PETITION FOR A WRIT OF CERTIORARI

Jose Joya Parada, Oscar Armando Sorto Romero, Milton Portillo Rodriguez, and Juan Carlos Sandoval Rodriguez respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The Fourth Circuit's opinion is reported at 134 F.4th 188. *See* Pet. App. 1a-35a. The District Court's oral ruling on the size of the jury is not reported and is not publicly available, but a transcript of the ruling is included in the appendix. *See* Pet. App. 36a-60a.

JURISDICTION

The Fourth Circuit entered judgment on April 9, 2025. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Sixth Amendment to the U.S. Constitution provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

2. Federal Rule of Criminal Procedure 23(b) provides:

> (1) *In General.* A jury consists of 12 persons unless this rule provides otherwise.
>
> (2) *Stipulation for a Smaller Jury.* At any time before the verdict, the parties may, with the court's approval, stipulate in writing that:
>
> (A) the jury may consist of fewer than 12 persons; or
>
> (B) a jury of fewer than 12 persons may return a verdict if the court finds it necessary to excuse a juror for good cause after the trial begins.
>
> (3) *Court Order for a Jury of 11.* After the jury has retired to deliberate, the court may permit a

jury of 11 persons to return a verdict, even without a stipulation by the parties, if the court finds good cause to excuse a juror.

INTRODUCTION

At the time of the Sixth Amendment's adoption and for most of history, "no person could be found guilty of a serious crime unless 'the truth of every accusation * * * should * * * be confirmed by the unanimous suffrage of twelve of his equals and neighbors.'" *Ramos* v. *Louisiana*, 590 U.S. 83, 90 (2020) (quoting 4 William Blackstone, *Commentaries* *343). "A verdict, taken from eleven, was no verdict at all." *Id.* (quotation marks omitted).

Petitioners Jose Joya Parada, Oscar Armando Sorto Romero, Milton Portillo Rodriguez, and Juan Carlos Sandoval Rodriguez were convicted of serious crimes by an 11-member jury. The Fourth Circuit affirmed these convictions as a valid application of Federal Rule of Criminal Procedure 23(b)(3), which "permit[s] a jury of 11 persons to return a verdict" if the district court "finds good cause to excuse a juror." The "good cause" cited by the court here was that one of the 12 originally-empaneled jurors fell ill. Petitioners urged the court to either wait for her recovery, or to replace her with an alternate. Instead, the court pushed forward to verdict with the remaining 11 jurors.

Rule 23(b)(3)'s authorization of convictions by 11-member juries was made possible by this Court's decision in *Williams* v. *Florida*, 399 U.S. 78 (1970). There, this Court held that a 12-member panel "is not a necessary ingredient" of the right to trial by jury. *Id.* at 86. The Court conceded that the Framers "may well" have had "the usual expectation that the jury would consist of 12" members. 399 U.S. at 98–99. But

the Court claimed that such "purely historical considerations" are not dispositive. *Id.* at 99. The Court instead took a "function[al]" approach, reasoning that "the essential feature" of a jury is the reliance on the "commonsense judgment of a group of laymen" with "shared responsibility" for the verdict. *Id.* at 100–101. Because that function could be served by smaller juries, the Court concluded that the Sixth Amendment does not require a 12-member panel. *Id.*

Williams was wrong in its reasoning and wrong in its assessment of the implications. *Williams*'s rejection of "historical considerations" was already foreclosed by precedent when *Williams* was decided, and has been repudiated since. This Court acknowledged long ago that "a jury composed, as at common law, of twelve jurors was intended by the Sixth Amendment." *Maxwell* v. *Dow*, 176 U.S. 581, 586 (1900). And this Court has recently reaffirmed that the Sixth Amendment's scope is determined by its "original public meaning." *Ramos*, 590 U.S. at 92. *Williams's* holding to the contrary has had negative consequences. Among other problems, permitting smaller juries increases the odds of an erroneous conviction and decreases the representative nature of the jury.

In sum, "*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." *Khorrami* v. *Arizona*, 143 S. Ct. 22, 23 (2022) (Gorsuch, J., dissenting from the denial of certiorari). Federal Rule of Criminal Procedure 23(b)(3) relies on and reproduces *Williams*'s error. The Court should grant certiorari, overrule *Williams*, invalidate Rule 23(b)(3), and reverse the judgment below.

STATEMENT

A. Legal Background

1. ***Williams* v. *Florida*, 399 U.S. 78 (1970)**. In *Williams*, this Court held that the Sixth Amendment does not require a jury in a criminal trial to consist of 12 members. 399 U.S. at 102. The petitioner there had been convicted in state court of robbery by a 6 member jury. *Id.* at 86. He argued that he had been denied his right to a "trial by jury" under the Sixth Amendment because the Florida court had not empaneled 12 jurors. *Id.* This Court rejected that argument. *Id.* at 102.

The Court began by acknowledging the historical tradition of 12-member criminal juries at common law. *Id.* at 87. From at least the 14th century, English criminal juries typically had 12 members, and by the time of the American founding, this feature was widely regarded as essential. *Id.* at 87–90. However, in the Court's view, "while sometime in the 14th century the size of the jury at common law came to be fixed generally at 12, that particular feature of the jury system appears to have been a historical accident, unrelated to the great purposes which gave rise to the jury in the first place." *Id.* at 89–90.

The Court next surveyed its precedent. The Court acknowledged that "earlier decisions" stated that "the jury referred to in the [Sixth] Amendment was a jury 'constituted, as it was at common law, of twelve persons, neither more nor less.'" *Id.* at 90 (quoting *Thompson* v. *Utah*, 170 U.S. 343, 349 (1898)). But the Court dismissed these statements as "dictum," because those decisions were "usually * * * relying—where there was any discussion of the issue at all—solely on the fact that the common-law jury consisted of 12." *Id.* at 91–92 (footnote and citations omitted).

The *Williams* Court then turned to the Sixth Amendment's text and drafting history. The Court noted that James Madison's original draft of the Sixth Amendment would have guaranteed a trial "with the accustomed requisites" of the common law jury, which the Court conceded would have connoted the 12-person requirement. *Id.* at 95. However, that language was later cut from the draft. *Id.* at 95–96.

Having found tradition, precedent, and textual indicators ambiguous, the Court concluded that "[t]he relevant inquiry * * * must be the function that the particular feature performs and its relation to the purposes of the jury trial." *Id.* at 99–100. The Court observed that "the essential feature of a jury obviously lies in the interposition between the accused and his accuser of the commonsense judgment of a group of laymen, and in the community participation and shared responsibility that results from that group's determination of guilt or innocence." *Id*. at 100.

And because "[t]he performance of this role is not a function of the particular number of the body that makes up the jury," *id*., the Court concluded that "the fact that the jury at common law was composed of precisely 12 is a historical accident, unnecessary to effect the purposes of the jury system and wholly without significance 'except to mystics,'" *id*. at 102 (quoting *Duncan* v. *Louisiana*, 391 U.S. 145, 182 (1968) (Harlan, J., dissenting)). And though the Court admitted that empirical evidence was limited, the Court said that "[w]hat few experiments have occurred—usually in the civil area—indicate that there is no discernible difference between the results reached by the two different-sized juries." *Id.* at 102.

There were several separate opinions, two of which are relevant here.

Justice Harlan wrote separately to object to the manner in which the majority had "stripp[ed] off the livery of history from the jury trial." *Baldwin* v. *New York*, 399 U.S. 117, 122 (1970) (Harlan, J., concurring in part).[1] As Justice Harlan explained, "[n]either" the Court's attempts to "liberate[] itself from the 'intent of the Framers'" nor "the policy protected by the jury guarantee," was "an acceptable reason for disregarding history and numerous pronouncements of this Court that * * * the Sixth Amendment's jury was one composed of 12 individuals." *Id.* at 122–123. Although recognizing that "history should not imprison those broad guarantees of the Constitution whose proper scope is to be determined in a given instance by a blend of historical understanding and the adaptation of purpose to contemporary circumstances," Justice Harlan argued that this method was inappropriate here because "[t]he right to a trial by jury * * * has no enduring meaning apart from historical form." *Id.* at 124–125.

Justice Marshall dissented for similar reasons, lamenting that the majority's decision to "overrule[]" an "unbroken line of precedent going back over 70 years." *Williams*, 399 U.S. at 117 (Marshall, J., dissenting). He would have "adhere[d] to the decision of the Court in *Thompson* v. *Utah*, 170 U.S. 343, 349 (1898), that the jury guaranteed by the Sixth Amendment consists 'of twelve persons, neither more nor less,'" opining

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[1] *Baldwin* and *Williams* were issued the same day and, although some separate opinions were attached to one decision or the other, the Justices addressed the two cases jointly.

that "the Court has not made out a convincing case that the Sixth Amendment should be read differently than it was in *Thompson* even if the matter were now before us de novo—much less that * * * precedent * * * should be overruled." *Id.*

2. **Federal Rule of Criminal Procedure 23(b)(3)**. Rule 23(b) outlines the procedural rules associated with the size of the jury in federal criminal trials. It provides that, "[i]n [g]eneral," a federal criminal jury "consists of 12 persons." Fed. R. Crim. P. 23(b)(1). There are two exceptions. First, "[a]t any time before the verdict, the parties may, with the court's approval, stipulate" that (A) "the jury may consist of fewer than 12 persons" or (B) "a jury of fewer than 12 persons may return a verdict if the court finds it necessary to excuse a juror for good cause after the trial begins." *Id.* at 23(b)(2). Second, "[a]fter the jury has retired to deliberate, the court may permit a jury of 11 persons to return a verdict, *even without a stipulation by the parties*, if the court finds good cause to excuse a juror." *Id.* at 23(b)(3) (emphasis added).

Rule 23(b)(3)'s provision permitting a district court to accept a verdict from a jury of 11 persons, even over the defendant's objection, was added to the Rules following *Williams*. The Advisory Committee Notes explain that Rule 23(b)(3) was added to address a situation "in which, after the jury has retired to consider its verdict and any alternate jurors have been discharged, one of the jurors is seriously incapacitated or otherwise found to be unable to continue service upon the jury." *See* Advisory Committee's Notes on 1983 Amendments to Fed. R. Crim. P. 23, 18 U.S.C. App., p. 1568. The Advisory Committee believed that, "when a juror is lost during deliberations," "it is essential

that there be available a course of action other than mistrial." *Id*. And, in considering the available solutions, the Advisory Committee noted that "[p]roceeding with the remaining 11 jurors, though heretofore impermissible under rule 23(b) absent stipulation by the parties and approval of the court, is constitutionally permissible." *Id.* (citation omitted).

The Advisory Committee cited and relied on *Williams* to justify Rule 23(b)(3)'s constitutionality. *Id*. As the Committee explained, "*Williams* held that a six-person jury was constitutional because such a jury had the 'essential feature of a jury,' i.e., 'the interposition between the accused and his accuser of the common-sense judgment of a group of laymen.'" *Id.* (quoting *Williams*, 399 U.S. at 100). In light of the *Williams* Court's conclusion that "'the fact that the jury at common law was composed of precisely 12 is an historical accident, unnecessary to effect the purposes of the jury system and wholly without significance except to mystics,'" the Committee opined that "quite clearly the occasional use of a jury of slightly less than 12, as contemplated by the amendment to rule 23(b), is constitutional." *Id.* (quoting *Williams*, 399 U.S. at 102).

In the wake of the amendment, federal defendants challenged the constitutionality of Rule 23(b)(3). But the federal courts of appeals uniformly rebuffed these attempts, explaining that "[a] twelve-member jury was once thought to be a constitutional requirement in federal criminal trials, but the Supreme Court has more recently made clear that the Constitution does not require twelve jurors for conviction." *United States* v. *Stratton*, 779 F.2d 820, 831 (2d Cir. 1985), cert. denied, 476 U.S. 1162 (1986). As these courts explained, *Williams* "explicitly observed that the considerations

bearing on the desirability of a twelve-member jury in federal criminal trials were left 'to Congress.'" *Id.* And "[s]ince Congress may legislate as to jury size, the Supreme Court may prescribe by rule, pursuant to the Enabling Act, that under certain circumstances a trial judge may excuse a juror and accept a verdict of eleven jurors." *Id.*; *see also, e.g.*, *United States* v. *Ahmad*, 974 F.2d 1163, 1164 (9th Cir. 1992); *United States* v. *Gabay*, 923 F.2d 1536, 1543 (11th Cir. 1991); *United States* v. *Smith*, 789 F.2d 196, 204–205 (3d Cir. 1986), cert. denied, 479 U.S. 1017 (1986).

3. ***Ramos* v. *Louisiana*, 590 U.S. 83 (2020)**. Nearly 40 years later, in *Ramos*, this Court overruled *Apodaca* v. *Oregon*, 406 U.S. 404 (1972)—a case holding that the Sixth Amendment jury right does not include a unanimity requirement.

Apodaca was decided just two years after *Williams* and relied on *Williams* throughout. For instance, the *Apodaca* plurality reasoned that, as "we found in *Williams*," the Framers' deletion of "references to unanimity and to the other 'accustomed requisites' of the jury" was likely "intended to have some substantive effect." *Id.* at 409–410 (plurality op.). The plurality concluded, "[a]s in *Williams*," that "in determining what is meant by a jury we must turn to other than purely historical considerations." *Id.* at 410. And the plurality cited *Williams* for the proposition that "[o]ur inquiry must focus upon the function served by the jury in contemporary society." *Id.* at 410.

Ramos rejected this line of reasoning. It expressly denounced *Apodaca* for "subject[ing] the Constitution's jury trial right to an incomplete functionalist analysis of its own creation" rather than "grappling with the historical meaning of the Sixth Amendment's

jury trial right." 590 U.S. at 106. In *Ramos*'s view, the *Apodaca* plurality had "reframed" the "question before them []as whether unanimity serves an important 'function' in 'contemporary society'" and quickly concluded that "unanimity's costs outweigh its benefits in the modern era." *Id.* at 94. Not only was this "breezy cost-benefit analysis" "skimpy" in its reasoning, the Court explained, but it also "overlook[ed] the fact that, at the time of the Sixth Amendment's adoption, the right to trial by jury included a right to a unanimous verdict." *Id.* at 99–100. In other words, *Ramos* cautioned, it is "not our role to reassess whether" a right "enshrine[d] * * * in the Constitution" is "'important enough' to retain." *Id.* at 100.

In place of *Apodaca*'s functionalist approach, the *Ramos* Court, conducting the analysis anew, started with the premise that a "trial by an impartial jury" "meant something" because "[t]he text and structure of the Constitution clearly suggest that the term 'trial by an impartial jury' carried with it *some* meaning about the content and requirements of a jury trial." *Id.* at 89. The Court then reviewed the history and tradition of the jury trial right, considering its original meaning at common law and its place in the Anglo-American legal tradition. *Id.* at 90–93. Citing cases from the late 19th century and early 20th century to 1948, the *Ramos* Court also observed that "[a]s early as 1898, the Court [had] said that a defendant enjoys a 'constitutional right to demand that his liberty should not be taken from him except by the joint action of the court and the unanimous verdict of a jury of *twelve* persons.'" *Id.* at 92 (emphasis added).

B. Factual Background and Procedural History

1. In 2021, Petitioners were tried in federal district court on various racketeering offenses related to their alleged involvement with a gang. *See* Pet. App. 5a. At the start of trial, the District Court empaneled 12 jurors and 3 alternate jurors. *Id.* at 6a, 14a. These jurors then spent the next three months hearing evidence and arguments in the case. *Id.* at 14a.

Immediately prior to deliberations, the District Court conditionally excused the alternate jurors. *Id.* The court advised the alternates that if a juror became ill during the deliberations, the court would contact an alternate and summon that person back to the courthouse for deliberations. *Id.*

The 12-member jury deliberated for two days and then broke for the weekend. *Id.*

2. Over the weekend, one of the jurors contacted the Clerk of Court to report that she had tested positive for COVID-19. *Id.* Based on the court's standing order pertaining to COVID-19, the positive test meant that the ill juror would be unable to return to the courthouse for at least one week. *Id.* at 14a & n.3. The sick juror nevertheless inquired whether "Zoom would be an option." *Id.* The District Court advised the clerk to defer answering the sick juror's question about videoconferencing, but also directed that all three previously excused alternate jurors report to the courthouse on Monday. *Id.* at 15a.

3. When the parties returned to the courthouse on Monday morning, the District Court sought input from the parties regarding the appropriate path forward. *Id.*

The Government advocated proceeding under Rule 23(b)(3) with an 11-member jury. *Id.*

Petitioners disagreed, arguing that proceeding with an 11-member jury would violate their rights under the Sixth Amendment. *Id.* at 15a-16a. Petitioners also expressed "concern that the 11 other members of the jury would be eager to hurry up and be done in light of the fact that they may be exposed to someone [ill]" and therefore would "have very little incentive to slow down and go through the process if they're allowed to proceed with just 11." *See United States* v. *Parada*, No. 22-04262 (4th Cir.), Doc. 87 at JA1509.

Mistrial was not the only alternative to proceeding with an 11-member panel. The Petitioners urged the District Court to either wait for the sick juror to recover or to replace the sick juror with an alternate juror.[2] *Id.* at JA1504–1505. The Petitioners also noted "that Zoom [as] an option shouldn't be dismissed out of hand." *Id.*

The District Court adopted the government's proposal, excusing the twelfth juror and proceeding with an 11-person jury. *See* Pet. App. 16a. The District Court explained it had rejected the options pressed by the Petitioners because the court worried about the potential for delay: waiting for the sick juror's recovery would "require the suspension of this deliberation for at least seven days," and replacing the sick juror with an alternate would waste the two days that the

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[2] Federal Rule of Criminal Procedure 24 permits a district court to "replace[] a juror after deliberations have begun," with an alternate, but if such a replacement occurs, "the court must instruct the jury to begin its deliberations anew." Fed. R. Crim. P. 24(c)(3).

current jury had already spent on deliberations. *Id.* at 16a.

4. The remaining jurors resumed deliberations, and later that day, returned guilty verdicts. *Id.* at 17a. The District Court later sentenced Portillo Rodriguez, Sandoval Rodriguez, and Sorto Romero to life imprisonment, and Parada to fifty years' imprisonment. *Id.*

5. Petitioners appealed. Among other arguments, the Petitioners pressed the argument that the District Court's decision to proceed with 11 jurors was erroneous and violated their Sixth Amendment rights. *Id.* at 17a–18a; *see also United States* v. *Parada*, No. 22-04262 (4th Cir.), Doc. 84 at 50–52; *Id.* at Doc. 140 at 19–22.

The Fourth Circuit affirmed. Pet. App. 33a. With respect to the District Court's decision to proceed with an 11-member jury, the Fourth Circuit first observed that "Rule 23(b)—and our case law—explicitly permit the course of action taken by the district court," and that "[w]e have applied Rule 23 on various occasions to affirm the excusal of a single juror during deliberations." *Id.* at 32a (collecting cases). The remaining question, then, was "whether the district court sufficiently considered and explained its decision." *Id*. Finding that the District Court did so, the court of appeals affirmed. *Id.* at 33a.

This petition follows.

REASONS FOR GRANTING THE PETITION

I. THE COURT SHOULD OVERRULE *WILLIAMS*.

Williams is not just wrong, it is egregiously wrong. It was demonstrably erroneous the day it was decided, and its foundations have been further eroded over the

past 50 years. Indeed, all of the considerations that come into play when determining whether to revisit precedent—the quality of the reasoning, consistency with prior and subsequent decisions, and workability and reliance interests, *see, e.g.*, *Ramos*, 590 U.S. at 106—counsel strongly in favor of overruling *Williams*. That is especially so given that stare decisis "is at its weakest" when it comes to constitutional questions like this one. *Janus* v. *American Fed'n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 917 (2018).

A. *Williams* Was Wrong The Day It Was Decided.

The *Williams* Court's analysis proceeded in four steps: *first*, the Court considered and rejected evidence regarding the history and tradition of 12-person juries; *second*, the Court reviewed its precedent regarding 12-person juries and dismissed its prior statements as dicta; *third*, the Court discussed the Sixth Amendment's drafting history and concluded that it was not dispositive as to the Framers' intent; and *fourth*, the Court turned to a functional analysis, in which it concluded that smaller juries work just as well as 12-person juries. *See supra* at 5–8. The *Williams* Court erred at each step of this analysis.

1. Williams *discarded history and tradition.*

Start with history and tradition. As the *Williams* Court conceded, "the size of the jury at common law" was "fixed generally at 12." 399 U.S. at 89.

Indeed, the historical tradition of the 12-person criminal jury lies at the foundation of the English legal system. "When Magna Charta declared that no freeman should be deprived of life, etc., 'but by the judgment of his peers or by the law of the land,' it referred to a trial by twelve jurors." *Thompson*, 170 U.S.

at 349. Blackstone similarly explained in his Commentaries on English Law that "no person could be found guilty of a serious crime unless 'the truth of every accusation" was "confirmed by the unanimous suffrage of twelve of his equals and neighbors.'" *Ramos*, 590 U.S. at 90 (quoting 4 William Blackstone, *Commentaries* *343). A '"verdict, taken from eleven, was no verdict' at all." *Id.* (quoting James Bradley Thayer, *A Preliminary Treatise on Evidence at the Common Law* 88–89 n.4 (Boston, Little, Brown & Co. 1898)); *see also, e.g.*, 1 Edward Coke, *The Institutes of the Lawes of England* 155 (London 3d ed. 1633) (noting that the law "delighteth her selfe in the number of 12[;] for there must ... be 12 Jurors for the tryall of all matters of fact").

And in a passage that bears a startling resemblance to the fact pattern in this case, Hale similarly insisted that if the jurors numbered less than twelve, they had no power to act. 2 Matthew Hale, *Historia Placitorum Coronae: The History of the Pleas of the Crown* 293 (London, 1736). If one juror "goes out of town," he noted, "whereby only eleven remain, these eleven cannot give any verdict without the twelfth." *Id.* at 295. To reach a valid verdict, the eleven remaining jurors had to "be discharged, and a new jury sworn, and new evidence given, and the verdict taken of the new jury." *Id.* at 295–296. Likewise, "[i]f only eleven be sworn by mistake, no verdict can be taken of the eleven." *Id.* at 296.

America's forbearers "brought this great privilege [of trial by jury] with them, as their birthright and inheritance." 2 Joseph Story, *Commentaries on the Constitution of the United States* § 1779, at 559 (Boston, Little, Brown & Co. 1891). And those forbearers

"understood" that privilege to include "a trial by a jury of *twelve* men, impartially selected, who must unanimously concur in the guilt of the accused before a legal conviction can be had." *Id.* at 559 n.2 (emphasis in original); *see also, e.g.*, 1 Joel Prentiss Bishop, *Commentaries on the Law of Criminal Procedure* § 897, at 546 (Boston, Little, Brown & Co. 1872) ("in a case in which the Constitution guarantees a jury trial," a statute allowing "a verdict upon any thing short of the unanimous consent of the twelve jurors" is "void"); Joel Tiffany, *A Treatise on Government and Constitutional Law* § 549, at 367 (Albany, W.C. Little 1867) ("a trial by jury is understood to mean–generally–a trial by a jury of twelve men").

Early state court decisions confirm that understanding. As Justice Johnson of the Constitutional Court of Appeals of South Carolina put it shortly after the Founding, "[t]o constitute a jury, every lawyer knows that twelve lawful men are necessary, and that without this number no jury can exist." *State* v. *Burket*, 9 S.C.L. 155, 155 (S.C. Const. Ct. App. 1818). His contemporaries agreed. *See, e.g. Respublica* v. *Oswald*, 1 Dall. 319, 323 (Pa. 1788) ("I have always understood it to be the law, independent of [the state constitution's bill of rights]," that there should be "twelve jurors."); *Burk* v. *State*, 2 H. & J. 426, 426 (Md. 1809) (referring to "the legal number of twelve sworn on the jury"); *Foote* v. *Lawrence*, 1 Stew. 483, 483 (Ala. 1828) ("The term *jury* is well understood to be twelve men."); *Byrd* v. *State*, 2 Miss. 163, 177 (1834) ("[T]he number twelve, known as the number at common law, is no doubt what is meant by the constitution and all the statutes, when a jury is mentioned."); *Grayson* v. *Cummins*, Dallam 391, 393 (Tex. 1841) ("[A] less number than twelve is no jury.").

On the rare occasions when cases were tried to putative juries of eleven, the resulting judgments were accordingly reversed. *See, e.g.*, *Briant* v. *Russel*, 2 N.J.L. 146, 146 (1806) ("It appeared by the record, that the cause was tried by eleven jurors; for which cause the judgment was reversed."); *Doebler* v. *Commonwealth*, 3 Serg. & Rawle 237, 237 (Pa. 1817) (reversing conviction obtained by a jury of eleven); *Dixon* v. *Richards*, 3 Miss. 771, 771 (1838) ("The third error assigned is fatal. A jury must consist of twelve men: no other number is known to the law: here there was but eleven."); *Jackson* v. *State*, 6 Blackf. 461, 461 (Ind. 1843) ("The judgment must be reversed. It appears from the transcript of the record, that the jury that tried the cause was composed of eleven men only, and not twelve as the law requires."); *State* v. *Meyers*, 68 Mo. 266, 266 (1878) ("It appears from the record that only eleven jurors were present when the verdict of the jury was received by the court. This is a fatal defect, and the judgment must, therefore, be reversed.").

The *Williams* Court gravely erred in dismissing this evidence as "a historical accident." 399 U.S. at 89–90. As this Court has repeatedly held in its Sixth Amendment jurisprudence, "historical background" is the touchstone of Constitutional interpretation. *Crawford* v. *Washington*, 541 U.S. 36, 43–50 (2004); *see also, e.g.*, *Argersinger* v. *Hamlin*, 407 U.S. 25, 30 (1972) (analyzing historical support in relation to right to assistance of counsel). The scope of the Sixth Amendment jury trial right is defined by its "original public meaning," which is determined from, *inter alia*, "the common law, state practices in the founding era, or opinions and treatises written soon afterward." *Ramos*, 590 U.S. at 90, 92.

2. Williams *departed from precedent.*

"The Court first addressed the question of jury composition in 1898," repeatedly reaffirmed that a criminal jury must be comprised of 12 persons in the years that followed, and "[b]y 1930, the Court declared that it was 'not open to question' that the right to trial by jury" requires twelve members. *Khorrami*, 143 S. Ct. at 24 (quoting *Patton* v. *United States*, 281 U.S. 276, 288 (1930)); *see also, e.g.*, *Thompson*, 170 U.S. at 349 ("[T]he 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."); *Capital Traction Co.* v. *Hof*, 174 U.S. 1, 13 (1899) ("'Trial by jury,' in the primary and usual sense of the term at the common law and in the American constitutions, is * * * a trial by a jury of 12 men.").

The *Williams* Court dismissed these statements as "dictum," 399 U.S. at 92, but several of these cases directly presented the question whether a conviction could stand even when the jury included fewer than 12 members.

In *Rassmussen* v. *United States*, for example, the Court invalidated a statute as unconstitutional precisely because it permitted 6-person juries. 197 U.S. 516, 528 (1905). The case involved a conviction for "the keeping of a disreputable house" in violation of a federal statute that had provided a criminal code for Alaska. *Id.* at 518. The "cause [was] tried before a jury composed of six jurors," *id.* at 519, and the conviction was "prosecuted directly to this court," in "reliance" on an argument that a "violation of the Constitution [was] alleged to have resulted from the trial of the case by a jury of six persons," *id.* The Court agreed with the petitioner, concluding that "the provision of the act of

Congress under consideration, depriving persons accused of a misdemeanor in Alaska of a right to trial by a common-law jury, was repugnant to the Constitution and void." *Id.* at 528; *see also id.* at 529 (Harlan, J., concurring) ("The constitutional requirement that 'the trial of all crimes * * * shall be by jury,' means, as this court has adjudged, a trial by the historical, common-law jury of twelve persons.").

The size of the jury was similarly central to *Thompson* v. *Utah*, where the defendant had been tried for grand larceny by an 8-person jury, and argued that the Ex Post Facto Clause prohibited the application to his case of a change in Utah law reducing the size of juries in criminal cases from 12 persons to 8. 170 U.S. at 349. The case required the Court to decide "whether 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." *Id*. And the Court concluded that "[t]his question must be answered in the affirmative." *Id.* As the Court explained, "when Thompson committed the offense of grand larceny in the Territory of Utah—which was under the complete jurisdiction of the United States for all purposes of government and legislation—the supreme law of the land required that he should be tried by a jury composed of not less than twelve persons." *Id.* at 350.

These cases contradict the claim that the Court's prior decisions acknowledged the common law tradition of 12-person juries only in "dictum." *Williams*, 399 U.S. at 92. As Justice Marshall explained in dissent in *Williams*, an "unbroken line of precedent going back over 70 years" recognized that "the jury guaranteed by the Sixth Amendment consists of twelve

persons." *Williams*, 399 U.S. at 117 (Marshall, J., dissenting) (quotation marks omitted).

3. Williams*'s textual analysis was flawed.*

The Court in *Williams* relied primarily on the drafting history of the Sixth Amendment to support its conclusion that the Framers did not mean to include the essential features of the jury from the common law in the Constitution, noting that "provisions spelling out such common-law features of the jury as 'unanimity' or 'the accustomed requisites'" that appeared in James Madison's original draft were omitted from the final version. *Williams*, 399 U.S. at 93–96. That omission suggested to the *Williams* Court that the Sixth Amendment was not intended to include a jury's "accustomed requisites," such as the common law practice of including 12 members. *Id.* at 95–97.

But founding-era legal dictionaries contradict the *Williams* Court's interpretation of the text. Those legal dictionaries use the term "twelve men" synonymously with the term "jury." For example, Giles Jacob's *A New Law Dictionary*—which "[a]mong dictionaries available at the Founding * * * enjoyed unparalleled popularity in law libraries," and has "been catalogued in the private libraries of Founders, and later Presidents, John Adams and Thomas Jefferson"—defines the term "Twelve Men" to mean "*twelve* persons or upwards, by whom and whose oath * * * all trials pass," and states that "[t]hey are otherwise called the *jury* or *inquest*." Wanling Su & Rahul Goravara, *What Is A Jury?*, 103 N.C. L. Rev. 969, 997 (2025) (quoting Giles Jacob, *A New Law Dictionary* 949 (J. Morgan ed., London, W. Strahan & W. Woodfall 10th ed. 1782)). The definition of the term "verdict" similarly suggests that a jury must be comprised of 12

people. "Jacob defines 'verdict' as 'the answer of a jury given to the court, concerning the matter of fact in any cause committed to their trial; wherein every one of the *twelve* jurors must agree or it cannot be a *verdict*.'" *Id.* (quoting Jacob, supra, at 954).

Even if you could set the dictionary evidence aside, the *Williams* Court's analysis would still be flawed. The *Williams* Court relied only on omitted language, and "[i]t is always perilous to derive the meaning of an adopted provision from another provision deleted in the drafting process." *District of Columbia* v. *Heller*, 554 U.S. 570, 590 (2008). And, as this Court pointed out in *Ramos*, *Williams*'s interpretation of the drafting history proves too much because it requires the Court to discard "everything history might have taught us about what it means to have a jury trial," which would "leave the right to a 'trial by jury' devoid of meaning." *Ramos*, 590 U.S. at 98. Instead, these deletions "just as easily support" the inference that the language was unnecessary in light of the well-understood meaning of the term "jury" at common law. *Id.* at 97; *see also Baldwin*, 399 U.S. at 123 n.9 (Harlan, J., dissenting) (similarly noting that "a more likely explanation of the Senate's action is that it was streamlining the Madison version on the assumption that the most prominent features of the jury would be preserved as a matter of course").

4. Williams *relied on bad science.*

Having dismissed tradition, precedent, and textual indicators, the *Williams* Court decided to pin its analysis on "the function" of the criminal jury and how many jurors are needed to serve that function. 399 U.S. at 99–100. It concluded that "the essential feature" of a jury is that it leaves justice to the

"commonsense judgment of a group of laymen," and "[w]hat few experiments have occurred—usually in the civil area—indicate that there is no discernible difference between the results reached by the" 6-person and 12-person juries. *Id.* at 100–101 & n.48. This, too, was error.

For one thing, this functionalist approach is disfavored. As this Court explained in *Giles* v. *California*, 554 U.S. 353 (2008), when addressing the scope of the Confrontation Clause, courts should not "extrapolate from the words of the Sixth Amendment to the values behind it, and then to enforce its guarantees only to the extent they serve (in the courts' views) those underlying values." *Id.* at 375. "The Sixth Amendment seeks fairness indeed—but seeks it through very specific means * * * that were the trial rights of Englishmen." *Id.*; *see also, e.g.*, *Crawford*, 541 U.S. at 43–50 (looking to "historical background," including the common law and early state practices, to determine the meaning of the Confrontation Clause); *Blakely* v. *Washington*, 542 U.S. 296, 313 (2004) (emphasizing that what matters is not "whether or to what degree trial by jury impairs the efficiency or fairness of criminal justice," but rather "the Framers' paradigm for criminal justice," in holding that factors that increase a defendant's sentence must be proven to a jury beyond a reasonable doubt).

For another, as the *Williams* Court conceded, there wasn't enough relevant evidence to test the Court's hypothesis. The only "experiments" the Williams Court cited to support six-member juries came from the "civil" context, 399 U.S. at 101, which is meaningfully different from the criminal context. Criminal trials involve a different standard of proof, assess guilt

rather than mere liability, and may result in deprivations of life and liberty rather than merely money or property. Moreover, these so-called experiments "were not empirical studies." Patrick E. Higginbotham, Lee H. Rosenthal & Steven S. Gensler, *Better By the Dozen: Bringing Back the Twelve-Person Civil Jury,* 104 Judicature 47, 52 (2020). Instead, they were merely "conclusory statements * * * supported at best by limited experience and anecdote." *Id.* And those conclusory statements were belied by "well established elementary statistical theory" that was known at the time. Hans Zeisel, *And Then There Were None: The Diminution of the Federal Jury,* 38 U. Chi. L. Rev. 710, 715 n.32 (1971).

The dangers of this approach were immediately borne out. Empirical research published shortly after *Williams* undermined the literature relied on by the Court. That research showed that "smaller juries are less likely to foster effective group deliberation[s]," are less likely to be accurate, are less likely to hang, and are less likely to be "'truly representative of the community." *Ballew* v. *Georgia*, 435 U.S. 223, 232–237 (1978); *see also, e.g.*, T. Ward Frampton, *The Uneven Bulwark: How (And Why) Criminal Jury Trial Rates Vary By State*, 100 Calif. L. Rev. 183, 218 (2012) (explaining that this body of research "persuasively articulated many of the reasons why juries with less than twelve jurors significantly disadvantage criminal defendants.")

* * *

In sum, the *Williams* Court failed to "grappl[e] with the historical meaning of the Sixth's Amendment's jury trial right [or] this Court's long-repeated statements that it demands [a jury of 12 members]" and

instead "subjected the Constitution's jury trial right to an incomplete functionalist analysis of its own creation." *Ramos*, 590 U.S. at 106. *Williams* is therefore "not just wrong"—it is "egregiously wrong." *Id.* at 121 (Kavanaugh, J., concurring in part).

B. *Williams*'s Reasoning Has Been Further Eroded By Subsequent Legal And Factual Developments.

"Developments since" this Court decided *Williams* have further "'eroded' the decision's 'underpinnings,'" leaving "it an outlier." *Janus*, 585 U.S. at 924.

1. *This Court fatally undermined* Williams*'s reasoning in subsequent cases.*

The Court began to express doubts about the *Williams* decision shortly after its issuance. Just eight years after *Williams*, this Court held in *Ballew* v. *Georgia*, that the Sixth Amendment barred the use of a five-person jury. 435 U.S. at 229. The *Ballew* Court emphasized how empirical studies conducted since *Williams* showed that smaller juries can "promote[] inaccurate and possibly biased decisionmaking, … cause[] untoward differences in verdicts, and … prevent[] juries from truly representing their communities." *Id.* at 239; *see also id.* at 232–239. And the Court "admit[ted]" that it "d[id] not pretend to discern a clear line between six [jurors] and five," effectively concluding that the mode of constitutional analysis and the "experiments" that the *Williams* Court had relied on were undermined by the empirical evidence the *Ballew* Court reviewed. *Id.* at 239; *see also id.* at 245–246 (Powell, J., concurring) (observing that "the line between five- and six-member juries is difficult to justify"). In the years that followed, this Court repeatedly noted—often with regret—that *Williams* had

"departed from the strictly historical requirements of jury trial." *Burch* v. *Louisiana*, 441 U.S. 130, 137 (1979).

More recently, the Court has moved from expressing skepticism about the *Williams* Court's reasoning to affirmatively disavowing that reasoning. Five years ago, in *Ramos*, this Court overruled *Apodaca*, expressly rejecting its functional approach; its failure to reckon with the "historical meaning of the Sixth Amendment"; and its reassessment of whether certain "'accustomed prerequisites'" to the jury trial were "'important enough' to retain." 590 U.S. at 97, 100, 106.

Nearly every error that the *Ramos* Court pointed to in *Apodaca* can also be found in *Williams*. Indeed, the *Apodaca* Court recognized that *Williams* "consider[ed] a related issue" and used *Williams* as the blueprint for its reasoning. *Apodaca*, 406 U.S. at 406–414; *see also Ramos*, 590 U.S. at 152 (noting that Justice White authored both opinions and that "in *Apodaca*, he built on the analysis in *Williams*") (Alito, J., dissenting). The *Apodaca* plurality cited *Williams* (1) to "cast[] considerable doubt on the easy assumption * * * that if a given feature existed in a jury at common law in 1789, it was necessarily preserved in the Constitution," (2) to conclude that "[o]ur inquiry must focus on the function served by the jury in contemporary society," and (3) to hold that the only "essential feature of a jury" is that it must "consist[] of a group of laymen representative of a cross section of the community who have the duty and the opportunity to deliberate[.]" 406 U.S. at 408–410 (quoting *Williams*, 399 U.S. at 92–93, 99–100).

Ramos repudiated precisely this reasoning as an improperly "muddy yardstick" for safeguarding "the

right to jury trial" that the "American people chose to enshrine * * * in the Constitution." 590 U.S. at 99. In sum, the *Ramos* Court rejected the "same fundamental mode of analysis as that in *Williams*," casting serious doubt on the continuing vitality of that decision. *Ramos*, 590 U.S. at 157 (Alito, J., dissenting); *see also, e.g.*, *Phillips* v. *State*, 316 So. 3d 779, 788 (Fla. Dist. Ct. App. 2021) (Makar, J., concurring) ("It seems a small step from the demise of the reasoning in *Apodaca* and *Johnson* as announced in *Ramos* to conclude that the reasoning in *Williams*, upon which both decisions relied, is also in jeopardy.").

2. Empirical evidence shows that Williams*'s analysis is factually flawed.*

Even "[b]efore the ink dried on the decision, scholars began criticizing *Williams* for overreading the handful of studies it cited to support its tepid assertion that 6-member panels would 'probably' operate as well as 12-member juries." *Khorrami*, 143 S. Ct. at 26 (citing Zeisel, *supra*, at 712–715). A year after *Williams*, scholars asserted that "the six-member jury" has a "tendency to be less representative and to produce more varied damage verdicts," and is also "likely to yield fewer examples of . . . the hung jury." Zeisel, *supra*, at 719. And, fewer hung juries "[are] but the combined result of less representative, more homogeneous juries and of a reduced ability to resist the pressure for unanimity." *Id.* at 720.

And as the years have passed, "[a]n array of studies" have continued to "undermine[] the entire functionalist rationale on which *Williams* rested." *Khorrami*, 143 S. Ct. at 26. These studies have shown, inter alia, that: (1) "[i]ncreasing the size of panels, conclusively, increases the chance that the accused

will be found not guilty of the Government's allegations," Isaac Kennen, et al., *The Impact of Panel Size on the Reliability of Criminal Verdicts in a Military Justice Context*, 231 Mil. L. Rev. 301, 329 (2024); (2) larger-sized juries also take more time to "reach a decision . . . [which] may also reflect more substantive deliberation: the sharing of more facts, more ideas, and more challenges to the tentative conclusions of others," Michael J. Saks & Mollie Weighner Marti, *A Meta-Analysis of the Effects of Jury Size*, 21 Law & Hum. Behav. 451, 458 (1997); and (3) "a larger jury may be more likely to render more accurate verdicts," Daniel E. Cummins, *Does Jury Size Really Matter? Maybe. Maybe Not.*, 60 Judges J. 26, 27 (2021).

"These empirical findings directly contradict the [*Williams*] Court's assumption that six-person juries could adequately fulfill the essential function of promoting thorough group deliberation." Su & Goravara, *supra*, at 1019. To the contrary, "the research suggests that the traditional twelve-person jury size evolved precisely because it creates optimal conditions for the kind of robust collective decision-making that lies at the heart of the jury's constitutional role." *Id.*

C. All Remaining Criteria Counsel In Favor Of Overruling *Williams*.

As the foregoing illustrates, neither *Williams*'s result nor *Williams*'s reasoning is defensible, particularly given intervening developments in the law. Other factors that this Court traditionally considers in the stare decisis analysis also counsel in favor of overruling *Williams*.

To start, "[t]he force of *stare decisis* is at its nadir in cases" like this one, which "concern[] procedural rules

that implicate fundamental constitutional protections." *Alleyne* v. *United States*, 570 U.S. 99, 116 n.5 (2013); *see also, e.g., United States* v. *Dixon*, 509 U.S. 688, 712 (1993) (noting a prior decision must be overruled and holding that the Fifth Amendment bars prosecution of a defendant on criminal charges based on conduct for which he was held in criminal contempt); *Ring* v. *Arizona*, 536 U.S. 584, 589 (2002) (overruling a prior decision in relevant part and holding the Sixth Amendment requires that capital defendants receive "a jury determination of any fact on which the legislature conditions an increase in their maximum punishment"); *Ramos*, 590 U.S. at 113 (overruling a prior decision and holding that the Sixth Amendment requires that convictions for serious offenses be issued by unanimous juries).

Williams's (un)workability also weighs in favor of overruling it. The Court has been unable to articulate a reason why any particular number of jurors—below 12—is sufficient to carry out the jury's function. *See, e.g.*, *Burch*, 441 U.S. at 137 ("[W]e do not pretend the ability to discern *a priori* a bright line below which the number of jurors participating in the trial or in the verdict would not permit the jury to function in the manner required by our prior cases."); *Baldwin*, 399 U.S. at 122 (Harlan, J., concurring in part) ("For if 12 jurors are not essential, why are six? What if New York, now * * * concludes that three jurors are adequate * * *? The Court's elaboration of what is required provides no standard and vexes the meaning of the right to a jury trial in federal courts, as well as state courts, by uncertainty."). Drawing the line at 12 honors traditional common-law principles. *See Baldwin*, 399 U.S. at 122 (Harlan, J., concurring in part) (noting that if "the number '12' is a historical accident"

it is "one that has recurred without interruption since the 14th century"). Drawing the line anywhere else is simply arbitrary. *Compare, e.g.*, *Janus*, 585 U.S. at 921 (finding prior precedent unworkable where the "line" it created "has proved to be impossible to draw with precision"). Worse, it violates constitutional rights.

Moreover, overruling *Williams* would not interfere with any substantial—let alone, valid—reliance interests. *See Ramos*, 590 U.S. at 107–108. *Williams*'s rule is not necessary to avoid retrials: Where, as here, a juror becomes unable to attend deliberations, a variety of procedural solutions exist. Alternate jurors can be summoned back to the courtroom, deliberations can be postponed, or remote proceedings can be held. *See supra* p. 13 & n.2. Moreover, even if the threat of retrials in *Williams*'s absence were a concern, there does not appear to be a single "case in which the one-time need to retry defendants has *ever* been sufficient to inter a constitutional right forever." *Ramos*, 590 U.S. at 111. The government has no legitimate interest in continuing to deprive individuals of their liberty based on a decision that defies both the Constitution and the common law. *See United States* v. *Gaudin*, 515 U.S. 506, 521 (1995). The overwhelming weight of the stare decisis factors thus makes clear that *Williams*'s days should be numbered.

II. THIS CASE IS AN EXCELLENT VEHICLE FOR RECONSIDERATION OF *WILLIAMS*.

This case presents the ideal vehicle for the Court to revisit *Williams* v. *Florida*, 399 U.S. 78 (1970), and decide whether the Sixth Amendment requires a twelve-member jury in federal felony prosecutions. In

particular, five features distinguish this petition from prior petitions urging the Court to overrule *Williams* and eliminate vehicle problems that may have precluded review in those cases.

First, Petitioners have preserved their Sixth Amendment objection. Petitioners asked the District Court to either wait until the juror recovered before resuming deliberations or replace the juror with an alternate. *See Parada*, No. 22-04262 (4th Cir.), Doc. 87 at JA1504–05. Petitioners' counsel also argued that a 12-person jury is a constitutional requirement, citing "the historical standard of 12-person juries," referring to recent "scholarship," and suggesting that "the Supreme Court got it wrong in 1970." *Id*. at 1521. Petitioners also pressed this argument on appeal. *See* Pet. App. 18a. *Compare Phillips* v. *Florida,* No. 21-6059 (petition asking the Court to overrule *Williams*) *with Phillips,* 316 So. 3d at 786–787 (underlying decision noting that the petition had failed to preserve the "constitutional issue").

Second, Petitioners' convictions for serious offenses place them squarely within the scope of the Sixth Amendment's protection. *Compare, e.g.*, *Ramin Khorrami, Petitioner*, v. *State of Arizona, Respondent*, 2022 WL 3371181, at *6 (brief in opposition to petition asking the Court to overrule *Williams*, arguing that petitioners' "minimal punishment" of "two years' supervised probation and a mere two-month jail term" meant that his crime of conviction was not a "serious offense" within the meaning of the Sixth Amendment's jury trial right) with Pet. App. 16a (noting that the District Court here sentenced three of the Petitioners to life imprisonment and the fourth to 50 years' imprisonment).

Third, this case comes to the Court on direct appeal from a final judgment of Petitioners' convictions. The procedural posture of this case ensures that the Court will be able to reach the question presented. *C.f., e.g.*, *Carey* v. *Musladin*, 549 U.S. 70, 81 (2006) (Kennedy, J., concurring) (explaining that a rule should be "established in this Court before it can be grounds for relief" on collateral review).

Fourth, this case originated in the federal system, meaning that the Court need not address incorporation doctrines or state procedural barriers. *Compare, e.g.*, *Ramin Khorrami, Petitioner* v. *State of Arizona, Respondent*, 2022 WL 3371181, at *28–30 (brief in opposition to petition asking the Court to overrule *Williams*, discussing various theories of incorporation under the Fourteenth Amendment); *Natoya Cunningham, Petitioner* v. *State of Florida, Respondent*, No. 23-5171, at 4 (brief in opposition to petition asking the Court to overrule *Williams*, arguing that petitioner "failed to exhaust" her state court remedies).

Fifth, Rule 23(b)(3)'s focus on 11-person juries—just one juror shy of the 12 persons required at common law—eliminates the line drawing problems that the Court has previously grappled with regarding jury size under the functionalist analysis because this case clearly presents the question of whether 12-member juries are required. *Compare e.g.*, *Williams*, 399 U.S. at 101–103 (permitting 6-person criminal juries) *with, e.g.*, *Ballew*, 435 U.S. at 232–239 (prohibiting 5-person criminal juries, but expressing doubts about the difference between 5-person and 6-person juries). This petition would allow the Court to test Blackstone's position—endorsed in *Ramos*—that a "verdict, taken from eleven," is "no verdict at all." *Ramos*, 590 U.S. at

90 (quoting 4 William Blackstone, *Commentaries* *343). The issue here is not what size jury would be constitutionally sufficient, but simply whether 12 is required.

III. THE QUESTION PRESENTED IS IMPORTANT AND RECURRING.

1. State and federal courts alike have expressed confusion regarding the continuing vitality of *Williams* following *Ramos*. *See, e.g.*, *Guzman* v. *State*, 350 So. 3d 72, 78 (Fla. Dist. Ct. App. 2022) (Gross, J., concurring) ("At a minimum, *Ramos*—which relied on the original meaning of the Sixth Amendment rather than an analysis of the jury's role in contemporary society—suggests that *Williams* was wrongly decided."); *Phillips*, 316 So. 3d at 788 ("It seems a small step from the demise of the reasoning in *Apodaca* and *Johnson* as announced in *Ramos* to conclude that the reasoning in *Williams*, upon which both decisions relied, is also in jeopardy."); *Wofford* v. *Woods*, 969 F.3d 685, 707 n.27 (6th Cir. 2020) ("*Williams* may no longer be completely sound after *Ramos*.").

2. Worse, skepticism regarding *Williams* may already be "distort[ing]" other strains of jurisprudence. *Dobbs* v. *Jackson Women's Health Org.*, 597 U.S. 215, 287 & n.65 (2022).

For example, courts have debated whether a court's error in accepting a verdict from fewer than 11 jurors should be considered a structural—or merely harmless—error. *Compare, e.g.*, *United States* v. *Johnson*, 117 F.4th 28, 43 (2d Cir. 2024) (panel "declin[ing] to recognize a new type of structural error" because the "there are not yet four votes on [the Supreme] Court to take up the question whether *Williams* should be overruled," and the lower court "remain[s] bound to

follow that precedent") (internal quotation marks and citation omitted) *with, e.g.*, *id.* at 59 (Chin, J., dissenting) (urging the court to recognize the error as structural even though "*Williams* suggests that the absolute right to a jury of twelve is no longer viewed as a substantial right by the Supreme Court") (internal quotation marks and alteration omitted).

Courts have likewise debated whether a criminal defense "attorney render[s] inadequate counsel" in "choosing to proceed with an eleven-member jury." *Sweeney* v. *Graham*, No. 22-6513, 2025 WL 800452, at *14 (4th Cir. Mar. 13, 2025). Citing and relying on Justice Gorsuch's dissent from the denial of certiorari in *Khorrami*, some judges have suggested that "proceeding with an eleven-person jury in any murder case * * * is questionable" and "[n]o objectively reasonable lawyer would allow his client to waive his right to a twelve-person jury." *Id.* at *16. Others disagree. *See id.* at *32–33 (Quattlebaum, J., dissenting).

These debates would be conclusively resolved by a decision in this case granting certiorari and overruling *Williams*. Without further review here, the uncertain status of *Williams* as a precedent will continue to confound lower courts.

3. Indeed, federal courts routinely face questions regarding proceeding with fewer than 12 jurors that implicate *Williams*'s continuing vitality. *See, e.g., United States* v. *Armstead*, 116 F.4th 519, 524–525 (D.C. Cir. 2024); *United States* v. *Islam,* 102 F.4th 143, 150 (3d Cir. 2024); *Wofford* v. *Woods*, 969 F.3d 685, 701–705 (6th Cir. 2020); *United States* v. *Ramos*, 801 F. App'x 216, 221 (5th Cir. 2020); *United States* v. *Garske*, 939 F.3d 321, 336 (1st Cir. 2019).

The time has come for this Court to intervene to resolve this important and recurring issue. "It is this Court's prerogative alone to overrule one of its precedents." *Bosse* v. *Oklahoma*, 580 U.S. 1, 2 (2016) (Thomas, J., concurring) (collecting cases). Any future, lower court confronted with the question presented will take the same approach as the Fourth Circuit did here and refuse to reject the *Williams* rule. This Court alone can correct the "strange turn," *Ramos*, 590 U.S. at 93, taken by the *Williams* Court fifty years ago.

CONCLUSION

The Court should grant certiorari, overrule *Williams*, invalidate Rule 23(b)(3), and reverse the judgment below.

Respectfully submitted,

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