No. 25-166

# 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

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT*

**BRIEF FOR THE UNITED STATES IN OPPOSITION**

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## QUESTION PRESENTED

Whether this Court should overrule *Willams* v. *Florida*, 399 U.S. 78 (1970), and hold that the Sixth Amendment precludes a district court from invoking the procedure authorized by Federal Rule of Criminal Procedure 23(b)(3), which allows an 11-person jury to return a verdict when the court dismissed the 12th juror for good cause during deliberations.

**ADDITIONAL RELATED PROCEEDINGS**

United States District Court (D. Md.):

*Martinez-Aguilar* v. *United States*, No. 21-cv-1957 (Dec. 27, 2021)

*Mendez-Soto* v. *United States*, No. 23-cv-732 (Mar. 15, 2023)

*Sibrian Garcia* v. *United States*, No. 24-cv-2697 (Apr. 3, 2025)

*Gomez-Jimenez* v. *United States*, No. 25-cv-101 (Aug. 5, 2025)

United States Court of Appeals (4th Cir.):

*United States* v. *Martinez-Aguilar*, No. 19-4455 (Mar. 18, 2020)

*United States* v. *Brizuela*, No. 21-4134 (Jan. 13, 2022)

*United States* v. *Gomez-Jimenez*, No. 21-4254 (Dec. 29, 2022)

*United States* v. *Castillo*, No. 21-4564 (Feb. 22, 2023)

*United States* v. *Gomez-Jimenez*, No. 25-6710 (Aug. 19, 2025)

*United States* v. *Sibrian Garcia*, No. 25-6240 (Sept. 3, 2025)

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## OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-35a) is reported at 134 F.4th 188.

## JURISDICTION

The judgment of the court of appeals was entered on April 10, 2025. On July 2, 2025, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including August 8, 2025, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

Following a jury trial in the United States District Court for the District of Maryland, petitioners were convicted of racketeering conspiracy, in violation of 18 U.S.C. 1111, 1962(d), and 1963; racketeering, in violation

of 18 U.S.C. 1111, 1962(c), and 1963; attempted murder in aid of racketeering, in violation of 18 U.S.C. 1959(a); and assault with a dangerous weapon in aid of racketeering, resulting in serious bodily injury, in violation of 18 U.S.C. 1959(a). 22-4262 C.A. App. (C.A. App.) 150-151, 158-159, 168, 177-178. Petitioners Sorto Romero, Portillo Rodriguez, and Sandoval Rodriguez were also convicted of murder in aid of racketeering, in violation of 18 U.S.C. 1959(a)(1); and conspiring to commit murder in aid of racketeering, in violation of 18 U.S.C. 1959(a)(5). C.A. App. 158-159, 169, 177-178. The district court sentenced petitioner Parada to 600 months of imprisonment, to be followed by three years of supervised release, *id.* at 152-153; and sentenced the other three petitioners to life imprisonment, to be followed by three years of supervised release, *id.* at 160-162, 170-171, 179-180. The court of appeals affirmed. Pet. App. 1a-35a.

1. Petitioners were members of the transnational criminal street gang La Mara Salvatrucha, commonly referred to as MS-13. C.A. App. 1629. From 2015 to 2017, petitioners engaged in drug trafficking, extortion, and acts of violence against members and associates of rival gangs in an effort to increase MS-13's power in the Frederick County, Montgomery County, and Anne Arundel County areas of Maryland. *Id.* at 1629-1630.

In 2017, petitioners personally participated in four murders of suspected associates of rival gangs. C.A. App. 1630-1631. In March 2017, Portillo Rodriguez and Sandoval Rodriguez lured a 17-year-old boy to a park, where they, Parada, and other MS-13 members stabbed the victim more than 100 times, dismembered him, and removed his heart. *Ibid.* Two days later, Parada and other MS-13 members killed a second victim with a machete, and Sorto Romero assisted with that murder by

driving the victim to the wooded area where he was killed. *Id.* at 1631-1632. In June 2017, Portillo Rodriguez and Sandoval Rodriguez joined other MS-13 members in slashing and dismembering a 21-year-old woman with a machete. *Id.* at 1632. And in August 2017, Portillo Rodriguez and Sorto Romero participated in the murder of a fourth victim by repeatedly striking the victim with a machete. *Id.* at 1633.

2. Petitioners were indicted on various racketeering charges based on their MS-13 activities, and they proceeded to trial in October 2021. Pet. App. 5a-6a. Following four days of jury selection, the district court empaneled a 12-member jury and six alternates. *Id.* at 6a. The trial lasted for 34 days (excluding deliberations) over the next three months. *Id.* at 14a. The length of the trial stemmed, in part, from the COVID-19 protocols that the court was employing at the time. *Id.* at 14a & n.2. The case was sent to the jury on Thursday, January 20, 2022, and the court conditionally excused the three remaining alternate jurors the same day. *Id.* at 14a. The 12-member jury proceeded to deliberate for two full days before breaking for the weekend. *Ibid.* Over the course of those deliberations, the jury submitted five questions to the court. *Id.* at 49a.

On Sunday, January 23, 2022, Juror 9 informed the district court that she was ill and had tested positive for COVID-19. Pet. App. 14a, 39a. At the time, a Standing Order prohibited anyone who had tested positive for COVID-19 from entering the courthouse within five days of infection. *Id.* at 14a n.2. Juror 9 asked whether "Zoom would be an option to allow us to close out," stating, "[W]e are so very close to the finish." *Id.* at 14a (quoting *id.* at 40a). The next day, the court sought the

parties' input regarding the appropriate path forward. *Id.* at 15a, 41a-42a.

The district court gave the parties the following options: (1) proceed with 11 jurors under Federal Rule of Criminal Procedure 23(b)(3); (2) replace Juror 9 with an alternate juror; (3) postpone the continuation of deliberations until Juror 9 recovered from COVID-19; or (4) allow Juror 9 to participate in deliberations via Zoom. Pet. App. 15a. Rule 23(b)(3) provides that, "[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." Fed. R. Crim. P. 23(b)(3). If the court instead decides to replace a juror with an alternate after deliberations have begun, "the court must instruct the jury to begin its deliberations anew." Fed. R. Crim. P. 24(c)(3).

The Advisory Committee's notes to Rule 23(b) observe that its procedure is "constitutionally permissible" under this Court's decision in *Williams* v. *Florida*, 399 U.S. 78 (1970), which held that a 12-member verdict is "is not a necessary ingredient of 'trial by jury'" under the Sixth Amendment. *Id.* at 86; Fed. R. Crim. P. 23 advisory committee's note (1983 Amendments). And the notes also reflect the Advisory Committee's "judgment," after reviewing cases in which jurors had developed health problems following a lengthy trial, that "it is essential that there be available a course of action other than a mistrial" when "a juror is lost during deliberations." Fed. R. Crim. P. 23 advisory committee's note (1983 Amendments) (citing cases involving a heart attack and a psychiatrist's recommendation that a juror be removed).

The government argued in favor of proceeding with an 11-member jury, pursuant to Rule 23(b)(3), to avoid additional delay. Pet. App. 15a, 42a-44a. Petitioners disagreed, arguing that the district court should either pause deliberations to give Juror 9 time to recover or replace Juror 9 with an alternate. *Id.* at 15a, 44a-51a. Petitioners acknowledged, however, that the court had discretion to excuse Juror 9 and proceed with the 11 remaining jurors. *Id.* at 15a-16a, 47a-49a. Following those discussions, the court determined that good cause existed to excuse Juror 9 and proceed with deliberations with the remaining 11 jurors pursuant to Rule 23(b)(3), and that doing so was the best course of action. Pet. App. 15a-16a, 52a-58a.

The district court found that waiting for Juror 9 to recover was "'not a practical option'" because of the "'great uncertainty'" about when Juror 9 would be able to return to the courthouse and resume deliberations. Pet. App. 16a (quoting *id.* at 53a). With respect to proceeding over Zoom, the court expressed concern about whether "'the deliberations would remain private'" and whether "all jurors 'would be on equal footing and have an equal opportunity to be heard and contribute' through such a medium." *Ibid.* (quoting *id.* at 53a). And the court found that seating an alternate juror was "a 'less attractive option,' in view of the extensive deliberative process already undertaken by the current jury." *Ibid.* (quoting *id.* at 54a); see *id.* at 16a-17a.

When the jurors returned to the courtroom, the district court informed them that Juror 9 had been excused and that the remaining 11 jurors should continue their deliberations. Pet. App. 17a. The court also told the jury to "take the time that [it] need[s] to fairly consider the evidence that has been presented" and to "take the

time necessary to render fair and accurate verdicts." *Ibid.* (citation omitted; brackets in original). The jury resumed deliberations and returned a verdict later that day. *Ibid.* The jury found petitioners Parada, Portillo Rodriguez, and Sandoval Romero guilty on all charges and found petitioner Sorto Romero guilty on most charges, but not guilty on charges relating to one of the murders. *Ibid.* The court later sentenced Portillo Rodriguez, Sandoval Rodriguez, and Sorto Romero to life imprisonment, and Parada to 600 months of imprisonment. *Ibid.*

3. The court of appeals affirmed. Pet. App. 1a-35a. Among other things, the court of appeals rejected petitioners' contention that the district court abused its discretion in dismissing Juror 9 and proceeding with an 11-member jury. *Id.* at 31a-33a. The court observed that Rule 23(b) and circuit precedent "explicitly permit the course of action taken by the district court" in this case. *Id.* at 32a. The court of appeals also determined that the district court had "sufficiently considered and explained its decision" because it dismissed Juror 9 and proceeded with an 11-person jury only after soliciting the opinions of counsel and thoroughly considering all possible alternatives. *Ibid.* Because the court of appeals found nothing "arbitrary or capricious" about the district court's process or explanation, the court of appeals affirmed the district court's decision to permit an 11-person jury to continue deliberations. *Id.* at 33a. The court did not address petitioners' contention that *Williams* "rests on constitutionally infirm reasoning." Pets. Opening C.A. Br. 50; see Pet. App. 31a-33a.

## ARGUMENT

Petitioners contend (Pet. 14-35) that this Court should overrule its decision in *Williams* v. *Florida*, 399

U.S. 78 (1970), and hold that the Sixth Amendment right to a trial by "jury" necessarily requires a 12-person jury. Petitioners fail to provide a sound reason to reexamine *Williams* in this case. This Court has recently and repeatedly denied petitions for writs of certiorari pressing similar requests to overrule *Williams*. See *Cunningham* v. *Florida*, 144 S. Ct. 1287 (2024) (No. 23-5171); *Khorrami* v. *Arizona*, 143 S. Ct. 22 (2022) (No. 21-1553); *Phillips* v. *Florida*, 142 S. Ct. 721 (2021) (No. 21-6059); *Logan* v. *Florida*, 552 U.S. 1189 (2008) (No. 07-7264) (cited by *McDonald* v. *City of Chicago*, 561 U.S. 742, 868 n.12 (2010) (Stevens, J., dissenting)). The Court should follow the same course in this case, which involves a much narrower issue—namely, whether the Sixth Amendment precludes a trial court from allowing an 11-person jury to return a verdict where, as here, the court dismissed the twelfth juror for good cause after the 12-person jury had already engaged in extended deliberations—on which petitioners have demonstrated no entitlement to relief.

1. The Sixth Amendment provides criminal defendants with "the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed." U.S. Const. Amend. VI. Fifty-five years ago, this Court held in *Williams* that "the constitutional guarantee of a trial by 'jury'" does not "necessarily require[] trial by exactly 12 persons, rather than some lesser number." 399 U.S. at 86. Petitioners do not dispute that, under *Williams*, the Sixth Amendment allowed an 11-person jury to return the verdict at their trial. Petitioners contend (Pet. 14), however, that *Williams* "is egregiously wrong" and inconsistent with historical practice and this Court's precedents. See Pet. 14-21. But at least to the extent that

*Williams* might be necessary to support the particular procedure here—under which a 12-member jury was empaneled, but a juror was excused for cause under Federal Rule of Criminal Procedure 23(b)(3)—petitioner's contention lacks merit.

a. This Court's analysis in *Williams* refutes petitioners' claim that *Williams* "failed to 'grappl[e] with the historical meaning of the Sixth Amendment's jury trial right [or] this Court's long-repeated statements that it demands [a jury of 12 members].'" Pet. 24-25 (quoting *Ramos* v. *Louisiana*, 590 U.S. 83, 106 (2020)). *Williams* in fact devoted extensive attention to the "history of the development of trial by jury in criminal cases," 399 U.S. at 86-87; to "[t]his Court's earlier decisions," *id.* at 90; and to "the relevant constitutional history," *id.* at 92.

In reviewing the common-law history, the Court noted that "sometime in the 14th century the size of the jury at common law came to be fixed generally at 12," *Williams*, 399 U.S. at 89. But it found that "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. And it subsequently noted, *inter alia*, that during the colonial period, Pennsylvania "employed juries of six or seven," and that the South Carolina Constitution's "provision for trial by 'jury'" was not understood to incorporate a "12-man requirement." *Id.* at 98 n.45.

Turning to an examination of "whether this accidental feature of the jury has been immutably codified into our Constitution," the Court acknowledged that "[t]his Court's earlier decisions ha[d] assumed" that the Sixth Amendment requires a 12-person jury. *Williams*, 399 U.S. at 90. But it explained that "the relevant

constitutional history casts considerable doubt on the easy assumption in [this Court's] past decisions that if a given feature existed in a jury at common law in 1789, then it was necessarily preserved in the Constitution." *Id.* at 92-93.

Then, after reviewing the history of the Sixth Amendment's drafting and passage, *Williams*, 399 U.S. at 93-97, the Court found "absolutely no indication in 'the intent of the Framers' of an explicit decision to equate the constitutional and common-law characteristics of the jury," *id.* at 99. The Court accordingly determined that "[n]othing in this history suggests" that the Court would "do violence to the letter of the Constitution by turning to other than purely historical considerations to determine which features of the jury system, as it existed at common law, were preserved in the Constitution." *Ibid.*

b. Petitioners assert (Pet. 15-18) that common-law sources support their theory that the Framers intended the Sixth Amendment to invariably require 12-member jury, but this Court in *Williams* already considered most of petitioners' cited Founding Era authorities. Compare 399 U.S. at 87-88 & n.22, 90 n.25, 91 n.27, 93 n.35 (addressing Magna Carta, Blackstone, and Coke, as well as 1 James Bradley Thayer, *A Preliminary Treatise on Evidence at the Common Law* (1896) (Thayer)), with Pet. 15-16 (same). Those authorities, however, showed only that "at common law the jury did indeed consist of 12"—not why that would be an invariant requirement or whether the Sixth Amendment itself incorporated such a requirement. *Williams*, 399 U.S. at 91; see *id.* at 87-103. Much less do they show that a 12-person jury is disabled from returning a valid verdict when one member is excused for good cause.

As for sources not explicitly consulted in *Williams*, petitioners are mistaken in invoking Matthew Hale's *Historia Placitorum Coronae: The History of the Pleas of the Crown* (1736), for the proposition that, at common law, an 11-person jury had "no power to act," Pet. 16. Hale did indicate that 12 jurors "[we]re *sworn*" at the beginning of trial, 2 Hale 293 (emphasis added), and that if one of those jurors "wil[l]fully goes out of town," the 11 remaining jurors "cannot give any verdict without the twelfth," *id.* at 295. But Hale also recognized that "[t]he justices at common law may upon a just cause remove a juror after he is sworn." *Id.* at 296. Unlike in the case of the absconding juror, Hale does not specify a remedy under which the "jury may be discharged, and a new jury sworn, and new evidence given, and the verdict taken of the new jury," *id.* at 295-296, when a good-cause dismissal occurs, suggesting that the jury could continue without its full complement.

Petitioners additionally contend (Pet. 21-22) that *Williams* misconstrued "the drafting history of the Sixth Amendment," asserting that Founding Era dictionaries "use[d] the term 'twelve men' synonymously with the term 'jury.'" Petitioners cite only one dictionary in support of that assertion, see Pet. 21-22 (discussing Giles Jacob, *A New Law-Dictionary* (10th ed. 1782)), and even that dictionary does not state that the word "jury" necessarily referred to a 12-person panel. Instead, that dictionary defines "jury" to mean "*a certain Number of Men* sworn to inquire of and try the Matter of Fact, and declare the Truth upon such Evidence as shall be delivered them." Giles Jacob, *A New Law-Dictionary* 407 (1st ed. 1729) (emphasis added). The definition then goes on to explain that "[t]he Grand Jury generally consists of Twenty-four Men * * * and

the Petit Jury consisteth of twelve Men," *id.* at 408, but that observation merely reflects "the fact that the common-law jury consisted of 12," *Williams*, 399 U.S. at 92; see 1 Samuel Johnson, *A Dictionary of the English Language* (1773) (defining "jury" as "a company of men, as twenty-four or twelve, sworn to deliver a truth upon such evidence as shall be delivered them touching the matter in question"). It does not speak to, much less undermine, the proposition that a unanimous 11-member verdict is valid when one juror is excused for good cause during deliberations.

c. As petitioners observe (Pet. 19-21), some of this Court's cases before *Williams* "assumed" that the Constitution had "immutably codified" a 12-person-jury requirement because 12-person juries existed at common law in 1789. *Williams*, 399 U.S. at 90. But this Court in *Williams* reviewed those earlier cases and explained that they did not require "read[ing] the Sixth Amendment as forever codifying" a 12-person-jury requirement. *Id.* at 102-103; see *id.* at 90-92.

For example, *Williams* recognized that in *Thompson* v. *Utah*, 170 U.S. 343 (1898), the Court had included a statement—"[a]rguably unnecessary for the result"—that the jury referenced in the Sixth Amendment "was a jury 'constituted, as it was at common law, of twelve persons, neither more nor less.'" *Williams*, 399 U.S. at 90 (quoting *Thompson*, 170 U.S. at 349). *Williams* observed, however, that *Thompson* did not discuss whether "every feature of the jury as it existed at common law—whether incidental or essential to that institution—was necessarily included in the Constitution wherever that document referred to a 'jury.'" *Id.* at 91.

*Williams* also observed that when later cases, including *Rassmussen* v. *United States*, 197 U.S. 516

(1905), had "reaffirmed the announcement in *Thompson*," they "often" did so "in dictum," and "usually by relying—where there was any discussion of the issue at all—solely on the fact that the common-law jury consisted of 12." 399 U.S. 91-92 (footnotes omitted). Thus, although the Court appropriately paid attention to the role, or lack thereof, that such statements played in the *ratio decidendi* of the relevant decision, petitioners are incorrect to suggest (Pet. 19) that the Court simply dismissed them as dictum without also otherwise considering what weight they might have in the overall analysis. Petitioners have thus failed to show that *Williams* either misconstrued this Court's prior precedents or gave them insufficient respect.

Moreover, petitioners fail to identify any prior decision of this Court holding that either the common law or the Sixth Amendment would preclude a trial court from allowing an 11-person jury to return a verdict in a case where, as here, a 12-person jury was sworn and the court had good cause to dismiss one of the jurors after the jury had retired to deliberate. Petitioners repeatedly quote (Pet. 3, 15, 32) the statement in *Ramos*, *supra*, that at common law, "[a] verdict, taken from eleven, was no verdict at all." *Ramos*, 590 U.S. at 90 (quoting Thayer at 89 n.4 (1896) (Thayer)). But that quotation, like *Ramos* itself, concerned a situation of failure to achieve jury unanimity—there, the taking of a verdict from 11 of the 12 sworn jurors (accompanied by the imprisonment of the holdout). See Thayer at 89 n.4. It does not undermine Hale's indication that a 12-member jury could return a valid verdict even after a juror was dismissed for good cause. See p. 10, *supra*.

d. This Court's analysis in *Williams* also refutes petitioners' suggestion (Pet. 22-25) that *Williams*'s

holding rested principally on the "few experiments" referenced in that opinion, 399 U.S. at 101. To determine "which features of the jury system, as it existed at common law, were preserved in the Constitution," the Court in *Williams* examined "the function that the particular feature performs and its relation to the purposes of the jury trial." *Id.* at 99-100. "The purpose of the jury trial," *Williams* explained, "is to prevent oppression by the Government," and in light of that purpose, "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 *Williams* then determined that "[t]he performance of this role is not a function of the particular number of the body that makes up the jury." *Ibid.*

In reaching that determination, *Williams* observed that "[i]t might be suggested that the 12-man jury gives a defendant a greater advantage" than a six-man jury because "he has more 'chances' of finding a juror who will insist on acquittal and thus prevent conviction." 399 U.S. at 101. But *Williams* rejected that suggestion on two grounds. See *id.* at 101-102. First, *Williams* recognized that "the advantage" of the larger jury "might just as easily belong to the State, which also needs only one juror out of twelve insisting on guilt to prevent acquittal." *Id.* at 101. Second, *Williams* found 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." *Ibid.* The Court did not otherwise reference "experiments" in *Williams*, nor did the Court suggest

that those experiments played a significant role in its Sixth Amendment analysis. To the contrary, the Court's one-sentence reference to a "few experiments * * * in the civil area" indicates that the Court in *Williams* recognized the limited probative value of those experiments. *Ibid.*

Accordingly, the newer "[e]mpirical evidence" that petitioners identify (Pet. 24, 27-28) does not undercut *Williams*'s reasoning. Nor, for that matter, does empirical evidence necessarily support the proposition that 12-person bodies make better decisions than 11-person ones. See Br. in Opp. at 14-16, *Cunningham*, *supra* (No. 23-5171) (citing studies and statistics). And in circumstances like those here, where the deliberations included 12 jurors for nearly the entirety of their duration, with the excused juror indicating that the jury had comparatively little left to do, any possible practical benefit of 12 jurors until the very end of deliberations was quite likely to be negligible.

2. Petitioners additionally err in contending (Pet. 25-27) that legal developments since *Williams* have eroded the decision's underpinnings in any relevant respect.

a. To begin, no conflict exists between *Williams*, which held that the Sixth Amendment permits trial by a six-person jury, 399 U.S. at 86, and *Ballew* v. *Georgia*, 435 U.S. 223 (1978) (plurality opinion), which held (in separate opinions) that the Sixth Amendment prohibits a five-person jury in non-petty criminal cases. See *Burch* v. *Louisiana*, 441 U.S. 130, 133, 136-137 (1979) (describing *Ballew*'s holding). No opinion in *Ballew* garnered a majority, but "at least five Members of the Court believed that reducing a jury to five persons in nonpetty cases raised sufficiently substantial doubts as

to the fairness of the proceeding and proper functioning of the jury to warrant drawing the line at six." *Id.* at 137. As this Court subsequently made clear, *Williams* and *Ballew* collectively hold that "the Constitution permits juries of less than 12 members" but "requires at least 6." *Ibid.*

Petitioners suggest (Pet. 25) that *Ballew* has "undermined" *Williams*'s reasoning because, in *Ballew*, Justice Blackmun found that "scholarly work on jury size" since *Williams* had "raise[d] significant questions about the wisdom and constitutionality of a reduction below six." 435 U.S. at 231-232; see *id.* at 232-239 (describing various studies). But only Justice Stevens joined Justice Blackmun's opinion in *Ballew*, see *id.* at 224, and Justice Powell, in a concurring opinion joined by two other Justices, expressed "reservations as to the wisdom—as well as the necessity—of Mr. Justice Blackmun's heavy reliance on numerology derived from statistical studies," *id.* at 246. And even Justice Blackmun did not address the specific circumstance of a juror who is dismissed from a 12-person jury for good cause.

b. This Court's more recent decision in *Ramos* likewise does not undermine *Williams*'s reasoning or vitality. In *Ramos*, the Court held that the Sixth Amendment requires a unanimous verdict to convict a defendant of a serious crime. 590 U.S. at 92-93. In so doing, "*Ramos* repudiated this Court's 1972 decision in *Apodaca* v. *Oregon*, 406 U.S. 404, which had allowed non-unanimous juries in state criminal trials." *Edwards* v. *Vannoy*, 593 U.S. 255, 258 (2021). *Ramos* criticized the four-Justice plurality in *Apodaca* for "spen[ding] almost no time grappling with the historical meaning of the Sixth Amendment's jury trial right, [or] this Court's long-repeated statements that it demands unanimity"

and for relying instead on "an incomplete functionalist analysis of its own creation for which it spared one paragraph." 590 U.S. at 106; see also *id.* at 98-100.

But for reasons previously explained (see pp. 7-10, *supra*), those criticisms do not apply to the decision in *Williams*. The Court there examined the common law and history of the Sixth Amendment in detail before determining that "the fact that the jury at common law was composed of precisely 12 is a historical accident" that the Sixth Amendment had not codified. 399 U.S. at 102-103; see *id.* at 86-99. And one of the key reasons why *Ramos* refused to accord *stare decisis* effect to *Apodaca*—*Apodaca*'s unusual fracture, in which even the five Justices who agreed with the result were opposed on the rationale, *id.* at 102—is not present in *Williams*.

3. Even if the Court were inclined to reconsider *Williams*, this case would be an unsuitable vehicle for doing so. As discussed, this case does not involve a jury into which fewer than 12 jurors were sworn, but instead a 12-person jury from which one juror was excused for good cause during deliberations. In petitioners' case, a 12-person jury was sworn, heard all of the evidence at trial, and engaged in two full days of deliberations before Juror 9 became ill with COVID-19. See Pet. App. 14a. In their petition to this Court, petitioners do not dispute that the district court had good cause to remove Juror 9 from the 12-person panel or that the 12-person jury had already undertaken an "extensive deliberative process" (*id.* at 16a) when the court made that decision.

Petitioners' case thus presents only a narrow question: whether the Sixth Amendment precludes a trial court from allowing an 11-person jury to return a verdict, where the court dismissed the twelfth juror for

good cause after the 12-person jury has already engaged in extended deliberations. While that procedure is clearly constitutional under *Williams*, it would not necessarily be unconstitutional if *Williams* were overruled. This case is not directly about whether the Sixth Amendment requires 12-person juries, but instead about the procedures to be applied to such juries when an emergency arises toward the end of deliberations. As previously discussed (see p. 10, *supra*), one of petitioners' principal authorities suggests that, in that circumstance, the common law would allow a verdict from an 11-person jury. 2 Hale 296 ("The justices at common law may upon a just cause remove a juror after he is sworn."). And petitioners have not shown that other common-law sources, this Court's precedents, or empirical evidence would support an interpretation of the Sixth Amendment that precludes that practice.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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