

No. 25-6623

IN THE
Supreme Court of the United States

HAMED KIAN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

RESPONDENT'S BRIEF

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QUESTION PRESENTED

Florida has long used six-person juries to try non-capital offenses. In *Williams v. Florida*, 399 U.S. 78 (1970), this Court upheld that practice as consistent with the Sixth Amendment. After carefully examining text and history, this Court concluded that nothing in the Sixth Amendment clearly required 12-person criminal juries. Instead, a smaller jury fulfills the constitutional guarantee when it remains an “interposition between the accused and his accuser of the commonsense judgment of a group of laymen, and . . . the community participation and shared responsibility that results from that group’s determination of guilt or innocence.” *Id.* at 100. For 56 years, Florida and other states have relied on *Williams*, convicting countless defendants using that procedure and building courtrooms tailored for six-person juries. Presently, 5,200 criminal direct appeals await resolution in Florida; many concern convictions rendered by six-person juries.

Petitioner’s is one such case. Florida suspended his chiropractor license after multiple female patients reported he was sexually abusing them. Undeterred, Petitioner continued to practice chiropractic medicine—a felony under Florida law. A six-person jury unanimously convicted him of five counts.

The question presented is:

Whether the Court should overrule *Williams* and hold that the Sixth and Fourteenth Amendments require the use of 12-person juries.

TABLE OF CONTENTS

QUESTION PRESENTED.....	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES.....	iv
INTRODUCTION.....	1
STATEMENT OF THE CASE	2
A. Legal background	2
B. Factual and procedural background.....	3
SUMMARY OF ARGUMENT.....	4
ARGUMENT.....	6
I. <i>Williams</i> correctly held that the Sixth Amendment does not compel the use of 12- person juries.....	6
A. The Sixth Amendment does not speak to jury size.....	6
B. 12-person juries were not so essential to the 18th century notion of a “jury” as to be impliedly codified in the Sixth Amendment....	9
1. Historically, jury size varied and was subject to legislative modification	10
2. 12-person juries are unnecessary to achieve the purposes of the right to trial by jury	22
3. No one thinks that the Sixth Amendment codified every common-law incident of the jury	24

II. At the very least, <i>stare decisis</i> warrants retaining <i>Williams</i>	32
A. <i>Stare decisis</i> serves critical interests and applies in this case	33
B. All five traditional <i>stare decisis</i> factors support preserving <i>Williams</i>	35
1. The state and federal governments' reliance on <i>Williams</i>	35
2. The quality of <i>Williams</i> ' reasoning.....	38
3. Workability.....	40
4. Consistency with other cases.....	41
5. Post-decision developments	41
C. Overruling <i>Williams</i> would cast doubt on numerous other criminal law and procedure precedents.....	44
CONCLUSION	52

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Abbot v. Holt</i> , Trin. 1651 B.R.....	12
<i>Aike & Eamon v. Hunkin</i> , 1 Sid. 233, 82 Eng. Rep. 1077 (1664)	12
<i>Arizona v. Rumsey</i> , 467 U.S. 203 (1984).....	33
<i>Atkins v. Virginia</i> , 536 U.S. 304 (2002).....	47
<i>Ballew v. Georgia</i> , 435 U.S. 223 (1978).....	5, 40
<i>Baze v. Rees</i> , 553 U.S. 35 (2008).....	47
<i>Berghuis v. Smith</i> , 559 U.S. 314 (2010).....	26
<i>Capital Tractor Co. v. Hof</i> , 174 U.S. 1 (1899).....	21
<i>Coker v. Georgia</i> , 433 U.S. 584 (1977).....	47
<i>Colgrove v. Battin</i> , 413 U.S. 149 (1973).....	38
<i>Collins v. Virginia</i> , 584 U.S. 586 (2018).....	46
<i>Dobbs v. Whole Women’s Health Org.</i> , 597 U.S. 215 (2022).....	6
<i>Duncan v. Louisiana</i> , 391 U.S. 145 (1968).....	23, 24, 35
<i>Franchise Tax Bd. of Cal. v. Hyatt</i> , 587 U.S. 230 (2019).....	33

<i>Gamble v. United States</i> , 587 U.S. 678 (2019).....	39
<i>Garza v. Idaho</i> , 586 U.S. 232 (2019).....	45
<i>Georgia v. Brailsford</i> , 3 U.S. 1 (1794).....	30
<i>Gideon v. Wainwright</i> , 372 U.S. 335 (1963).....	45
<i>Graham v. Florida</i> , 560 U.S. 48 (2010).....	47
<i>Harmelin v. Michigan</i> , 501 U.S. 957 (1991).....	46
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<i>In re Winship</i> , 397 U.S. 358 (1970).....	24
<i>Johnson v. Zerbst</i> , 304 U.S. 458 (1938).....	45
<i>Khorrami v. Arizona</i> , 143 S. Ct. 22 (2022).....	49
<i>Kimble v. Marvel Entm't, LLC</i> , 576 U.S. 446 (2015).....	33, 36
<i>Lockett v. Ohio</i> , 438 U.S. 586 (1978).....	47
<i>Loper Bright Enters. v. Raimondo</i> , 603 U.S. 369 (2024).....	34
<i>Mapp v. Ohio</i> , 367 U.S. 643 (1961).....	46
<i>Maxwell v. Dow</i> , 176 U.S. 581 (1900).....	21
<i>McGautha v. California</i> , 402 U.S. 183 (1971).....	48
<i>Miranda v. Arizona</i> , 384 U.S. 436 (1966).....	48

<i>Padilla v. Kentucky</i> , 559 U.S. 356 (2010).....	45
<i>Patterson v. McLean Credit</i> , Un., 491 U.S. 164 (1989).....	35
<i>Patton v. United States</i> , 281 U.S. 276 (1930).....	21, 30
<i>Payne v. Tennessee</i> , 501 U.S. 808 (1991).....	33
<i>Ramos v. Louisiana</i> , 590 U.S. 83 (2020).....	passim
<i>Rasmussen v. United States</i> , 197 U.S. 516 (1905).....	21
<i>Roper v. Simmons</i> , 543 U.S. 551 (2005).....	47
<i>San Antonio Independent School District v.</i> <i>Rodriguez</i> , 411 U.S. 1 (1973).....	27
<i>Sparf v. United States</i> , 156 U.S. 51 (1895).....	48
<i>State v. Starling</i> , 15 Rich. 120 (S.C. Ct. of Errors 1867).....	20
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984).....	45
<i>Taylor v. Louisiana</i> , 419 U.S. 522 (1975).....	26, 42
<i>Thompson v. Utah</i> , 170 U.S. 343 (1898).....	21, 23
<i>United States v. Rahimi</i> , 602 U.S. 680 (2024).....	8, 22
<i>United States v. Williams</i> , 28 F. Cas. 646 (C.C.D.D.C. 1804).....	47
<i>Vidal v. Elster</i> , 602 U.S. 286 (2024).....	22
<i>Weeks v. United States</i> , 232 U.S. 383 (1914).....	46

<i>Williams v. Florida</i> , 399 U.S. 78 (1970).....	passim
<i>Wilson v. United States</i> , 162 U.S. 613 (1896).....	48
<i>Woodson v. North Carolina</i> , 428 U.S. 280 (1976).....	47

Consitutions

Fla. Const. art. I, § 22	4
Fla. Const. art. X (1875).....	20
Ga. Const. art. V, § 4 (1868).....	19
Ga. Const. art. XL (1777).....	15
Iowa Const. art. I, § 9 (1857).....	19
La. Const. art. 7 (1879)	20
La. Const. art. I, § 17(A).....	40
Mich. Const. art. VI, § 28 (1850).....	19
Mo. Const. art. 2, § 28 (1875).....	20
Neb. Const. art. I, § 5 (1866–67)	19
S.C. Const. art. IX, § 7 (1865)	19
Tex. Const. art. V, § 13.....	41
Tex. Const. art. V, § 17 (1876)	20
U.S. Const. amend. VI.....	passim
U.S. Const. amend. VII	38
U.S. Const. art. I, § 3, cl. 1	7
U.S. Const. art. I, § 3, cl. 6	8
U.S. Const. art. II, § 1, cl. 2.....	8
U.S. Const. art. III, § 1.....	8
U.S. Const. art. III, § 2, cl. 3	7
U.S. Const. art. V	8
Va. Const. § 8 (1776)	15
W. Va. Const. art. VIII, § 10	41

Statutes

Alaska Stat. § 22.15.150.....	40
Ariz. Rev. Stat. § 21-102	40
Colo. Rev. Stat. § 18-1-406	41
Conn. Gen. Stat. § 54-82	40
Fla. Stat. § 460.411(1)(b).....	3
Fla. Stat. § 913.10	4, 40
Ga. Code § 15-12-125.....	40
Idaho Code § 19-1902	40
Ind. Code § 35-37-1-1	40
Kan. Stat. § 22-3404.....	40
Ky. Rev. Stat. § 29A.280	40
La. Code Crim. P. art. 779	40
Laws of Fla., ch. 1947, sec. 4 (1873)	51
Mass. Gen. Laws ch. 218, § 26A	40
Mich. Comp. Laws § 774.49	41
Mont. Code § 46-17-201.....	41
N.Y. Crim. Proc. Law § 360.10.....	41
Neb. Rev. Stat. § 25-2705.....	41
Okla. Stat. tit. 22, § 601	41
Or. Rev. Stat. §§ 54.010, 136.210, 221.354.....	41
Tex. Code Crim. Proc. art. 33.01.....	41
Utah Code. § 78B-1-104	40
Va. Code § 19.2-262.....	41
Wash. Rev. Code § 10.04.050	41
1 W. & M., ch. 2, § 9, in 3 Eng. Stat. at Large 440...	25

Rules

Colo. R. Crim. P. 23.....	40
Fed. R. Crim. P. 23(b)(3)	37
Fed. R. Civ. P. 48(a).....	5, 38
Mich. Ct. R. 6.620.....	41
Minn. Gen. R. Prac. 802.....	41

Miss. R. Crim. P. 18.1	41
N.M.R.A. 6-605	41
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Idaho R. Crim. P. 23	40
Wash. CrRLJ 6.1.1	41
Wyo. R. Crim. P. 23	41

Other Authorities

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<i>The Acts and Resolutions Adopted by the Legislature of Florida at Its First Session (1868)</i> (1868)	51
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1 <i>The Colonial Laws of New York from the Year 1664 to the Revolution</i> (James B. Lyon 1896)	13
2 <i>The Records of the Constitutional Convention of 1787</i> (Max Farrand ed. 1911)	17, 23
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V <i>The Statutes at Large, from the Thirty-Second Year of K. Hen. VIII. to the Seventh Year of K. Edw. VI. Inclusive</i> (Danby Pickering ed., 1763)	12
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INTRODUCTION

Six Floridians unanimously convicted Petitioner Hamed Kian of numerous felony offenses. That judgment complied with the Constitution. In *Williams v. Florida*, this Court held, 7-1, that the Sixth Amendment permits Florida's use of six-person juries. 399 U.S. 78, 102–03 (1970).

Williams began with constitutional text and history. After reviewing the same evidence Petitioner presents here, the Court found that any rule making “12” an essential feature of the jury right “would require considerably more evidence than we have been able to discover in the history and language of the Constitution.” *Id.* Then, concluding that neither text nor history supported a 12-person requirement, the Court examined the jury right's “purposes.” It held that six-person juries afford defendants the full protection of the jury: “the interposition between the accused and his accuser of the commonsense judgment of a group of laymen.” *Id.* at 100.

Williams has aged well. To be sure, history shows that the default common-law jury size was 12 in 1791. But it equally reflects that jury size varied over the centuries in England and America. Indeed, the very sources Petitioner touts acknowledged that jury size was legislatively modifiable. And 12 jurors are plainly unnecessary to satisfy a jury's core function: “to prevent oppression by the Government” by “safeguard[ing] against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge.” *Id.* Six-person juries fulfill that constitutional guarantee just as effectively as 12-person juries.

In any event, *stare decisis* forecloses Petitioner’s arguments. *Williams*, a near-unanimous decision, differs starkly from *Apodaca*, the fractured and confused case this Court overruled in *Ramos*. Massive reliance interests rest on *Williams*’ shoulders. More than half of the states use smaller juries for at least some non-petty offenses. So overruling *Williams* would imperil many thousands of criminal convictions nationwide—dramatically more than those implicated by *Ramos*. Overruling *Williams* would almost certainly require overruling *Colegrove*, where this Court blessed smaller-than-12 civil juries. And overturning *Williams* solely because it reached a *different* originalist answer than the Court might prefer today would declare open season on this Court’s criminal jurisprudence. If *Williams* falls, no principled rationale could sustain the exclusionary rule, *Miranda*, and modern Eighth Amendment jurisprudence.

The Court should affirm.

STATEMENT OF THE CASE

A. Legal background

Responding to concerns that the jury system was consuming one third of its budget, Florida amended its Constitution in 1875 to permit the legislature to reduce the size of juries. The measure received overwhelming support from Florida’s Reconstruction legislature, including numerous black legislators. In 1877, the legislature set the jury size for all non-capital crimes at six. *Infra* II.C.2.

Williams resolved a constitutional challenge to Florida’s 6-person juries. In a nearly unanimous decision, the Court held that Florida’s six-person juries

did not violate the Sixth Amendment, as incorporated by the Fourteenth Amendment. 399 U.S. at 103.

B. Factual and procedural background

Petitioner was a Florida-licensed chiropractor. During his practice, Petitioner touched a female patient's genitals and labia multiple times against her will, placed his face near her genitals, and attempted to kiss her on the lips afterwards. State's Mot. to Take Judicial Notice, 4 n.1., *State of Florida v. Hamed Kian*, 2022-CF-002973AMB (Fla. Cir. Ct.). After that patient filed an administrative complaint, Florida's Board of Chiropractic Medicine permanently prohibited Petitioner from treating female patients without a licensed and Board-approved female chaperone and monitor. *Id.*

Petitioner ignored this prohibition. He treated a female patient alone four times. *Id.* at 7–10. Without his patient's consent, Petitioner touched or rubbed her genital area for at least 15 minutes. *Id.* at 9. He later came to the patient's apartment with massage oil and asked her to remove her pants. *Id.* at 10. When the patient expressed reluctance, Petitioner told her, “[o]h now we are being modest, I have seen you naked.” *Id.* Learning this, Florida's Surgeon General immediately suspended Petitioner's license, finding his practice to be “an immediate, serious danger to the health, safety, or welfare of the public.” *Id.* at 15.

Petitioner nevertheless resumed practicing months later. In response, prosecutors charged him with five counts of practicing chiropractic medicine with a suspended license, a third-degree felony. Fla. Stat. § 460.411(1)(b); Pet. App. 3.

Petitioner’s non-capital charges entitled him to a six-person jury. *See* Fla. Const. art. I, § 22 (“The right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, not fewer than six, shall be fixed by law.”); Fla. Stat. § 913.10 (“Twelve persons shall constitute a jury to try all capital cases, and six persons shall constitute a jury to try all other criminal cases.”). That jury unanimously convicted Petitioner of all five counts. He was sentenced to 366 days in prison, followed by 10 years’ probation. Pet. App. 3.

Petitioner appealed to Florida’s Fourth District Court of Appeal, arguing that a six-person jury violated his constitutional rights under the Sixth and Fourteenth Amendments. The Fourth District affirmed without a written opinion. Pet. App. 2. This Court granted certiorari.

SUMMARY OF ARGUMENT

Williams was correct. The Sixth Amendment does not require that juries always consist of twelve members. Its text makes no mention of 12. And the historical evidence isn’t as simple as Petitioner suggests. Jury size has varied significantly over the centuries. Even where the default size was 12, it was always subject to legislative modification. And the jury’s core purpose—interposing a body of laymen between the state and individual—doesn’t turn on a 12-juror composition. Nor is jury size the only common-law incident that’s experienced substantial modification. Indeed, constitutionalizing all incidents of the 1791 common-law jury would make juries unrecognizable. Only middle-class property owners could serve as jurors, and voir dire would be eliminated. Judges could

coach jurors to desired results and starve them into unanimity. Juries could decide for themselves what the law was. Plea bargains would be history.

Williams was right, but even if not, *stare decisis* should save it. The well-worn *stare decisis* factors all favor *Williams*' retention. *First*, *Williams*' reversal would force states to re-try thousands of cases on direct appeal, further straining already-rangy budgets. So too with the federal government in cases where 11 jurors return verdicts. Victims will relive trauma when called to re-testify. Sadly, prosecutors facing reopened convictions will clear the onrush by simply dismissing charges or offering sweetheart plea deals. Federal civil six-person juries won't escape either—Federal Civil Rule 48(a) was predicated on *Williams*' reasoning.

Second, *Williams* was well reasoned and originalist, even if the Court would reach a different result today. *Third*, *Williams* and *Ballew v. Georgia*, 435 U.S. 223 (1978), create a workable doctrine: Juries must have at least six jurors, a brightline rule upon which at least 27 states have relied. *Fourth*, *Williams* is consistent with other cases, including *Ramos*. Non-unanimity alters how a jury functions; a jury size of six does not. *Fifth*, no empirical data clearly demonstrates that six-person juries disadvantage defendants or are inferior to 12-person juries.

And if *Williams* must fall as insufficiently originalist, so must *Strickland*, *Gideon*, *Zerbst*, *Weeks*, *Mapp*, *Miranda*, and the lion's share of this Court's Eighth Amendment jurisprudence, which made no originalist pretensions at all. Finally, Florida's six-person juries

have no racially discriminatory origins, unlike the non-unanimity rule this Court forbade in *Ramos*.

ARGUMENT

I. *Williams* correctly held that the Sixth Amendment does not compel the use of 12-person juries.

In *Williams v. Florida*, this Court held that the Sixth Amendment does not mandate the use of 12-person juries. 399 U.S. at 102–03. Even setting aside *stare decisis*, Petitioner fails to show that *Williams* erred. The Sixth Amendment derives its meaning from text and history. See *Ramos v. Louisiana*, 590 U.S. 83, 89–93 (2020). Its text, however, nowhere says that juries must consist of 12 members. It doesn’t speak to jury size at all. To prevail, Petitioner must therefore show that the Founding public would have understood any jury with fewer than 12 members to be no jury at all—that the number 12 was an implicit and essential ingredient in the term “trial by . . . jury.” He cannot.

A. The Sixth Amendment does not speak to jury size.

“Constitutional analysis must begin with the language of the instrument, which offers a fixed standard for ascertaining what our founding document means.” *Dobbs v. Whole Women’s Health Org.*, 597 U.S. 215, 235 (2022) (cleaned up). When the Constitution’s text “makes no express reference” to a particular right, the claimant “must show that the right is somehow implicit in the constitutional text.” *Id.*

The right to trial by jury in criminal cases appears twice in the Constitution. First, Article III states that “[t]he trial of all crimes, except in cases of impeachment, shall be by jury.” U.S. Const. art. III, § 2, cl. 3. “[S]uch trial,” Article III specifies, “shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.” *Id.*

Second, the Sixth Amendment provides that “[i]n 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[.]” U.S. Const. amend. VI.

Petitioner declares it “unmistakable” that “the phrase ‘trial by an impartial jury’ referred to a 12-person jury at the time the Sixth Amendment was enacted.” Pet. Br. 18–19. Incorrect.

Starting at the beginning, the Sixth Amendment’s text doesn’t dictate jury size. It certainly could have. The Framers carefully specified some features they believed indispensable: Juries shall be “impartial,” and “of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law[.]” U.S. Const. amend. VI.

Notably absent is any requirement that a jury consist of 12 jurors. Yet the Framers hardly shied away from numerical specificity elsewhere in the Constitution. They provided for “two Senators” from each state, elected to terms of “six Years,” U.S. Const. art.

I, § 3, cl. 1, authorized amendment of the Constitution when proposed by “two-third[s]” of Congress and ratified by “three-fourths” of the states, *id.* art. V, required that impeachment convictions be obtained by vote of “two thirds” of the Senate, *id.* art. I, § 3, cl. 6, limited the President to terms of “4 Years,” *id.* art. II, § 1, cl. 2, and vested the judicial power in “one supreme court.” *Id.* art. III, § 1. When numbers mattered, the Framers wrote them down.

If, as Petitioner suggests, the Founding generation believed “jury” meant only a 12-person jury, the Framers could have easily specified it. They didn’t. See *Williams*, 399 U.S. at 96–97 (“[W]here Congress wanted to leave no doubt that it was incorporating existing common-law features of the jury system, it knew how to use express language to that effect.”).

Because the Sixth Amendment’s text doesn’t dictate jury size, legislatures may determine it unless Petitioner can show that “trial by an impartial jury,” in its historical context, was necessarily understood to convey a right to 12 jurors. To be sure, constitutional language may bear extra-textual implications, but this requires strong evidence. See *United States v. Rahimi*, 602 U.S. 680, 715 (2024) (Kavanaugh, J., concurring) (“As a general matter, the text of the Constitution says what it means and means what it says.”). In *Ramos*, this Court explained that the term “trial by an impartial jury” “surely meant *something*,” and consulted the “common law,” “state practices in the founding era,” and contemporaneous “opinions and treatises” to discern what that “*something*” was. 590

U.S. at 89–90. It concluded that the evidence for constitutionalizing unanimous jury verdicts was “unmistakable.” *Id.* at 90.

Petitioner hasn’t made that showing here.

B. 12-person juries were not so essential to the 18th century notion of a “jury” as to be impliedly codified in the Sixth Amendment.

No one disputes that the default jury size at common law was 12. That, however, isn’t the question. As *Williams* recognized, the correct inquiry asks “whether the constitutional guarantee of a trial by ‘jury’ *necessarily requires* trial by exactly 12 persons.” 399 U.S. at 86 (emphasis added). The answer to that question is no.

First, jury size has fluctuated over time and was always understood to be legislatively modifiable. Several prominent Framers took that view. Second, *Williams* correctly determined that the jury right’s essential elements were those central to the right’s purpose—the interposition of a deliberative body of one’s peers to decide guilt or innocence. Juries of 12 aren’t essential to the achievement of that objective. Third, the idea that every feature of the 1791 common-law jury was constitutionalized is unserious; this Court would never reinstate well-established common-law practices like starving juries until they rendered verdicts or barring defendants from waiving the right to jury trials.

1. Historically, jury size varied and was subject to legislative modification.

Jury size varied over the centuries, and history illustrates that, unlike juror unanimity, it was not understood to be an essential element of trial by jury and thus was subject to legislative modification.

Early developments. The jury’s predecessors lacked any solicitude for 12 members. The first bodies that looked like juries—inquests in Scandinavia and the Carolingian Empire—gathered information for fiscal and administrative purposes. John Baker, *An Introduction to English Legal History* 79 (5th ed. 2019). They varied widely in size. Frankish inquests could consist of “66, 41, 20, 17, 13, 11, 8, 7, 53, 15, and a great variety of other numbers.” *Williams*, 399 U.S. at 87 n.19 (quoting James B. Thayer, *The Jury and Its Development*, 5 Harv. L. Rev. 295 (1892)). And Norman inquests “show all sorts of numbers—4, 5, 6, 12, 13—18, 21, 27, 30, and so on.” *Id.* (same).

Early juries consisted of less than 12 as well. Juries were initially used as adjudicative bodies around 1220. Baker, *supra*, at 80. The first treatise on English law, *Glanvill*, refers to a jury of eight to determine the defense of infancy in land disputes. *The treatise on the laws and customs of the realm of England commonly called Glanvill* 159–160 (G. D. G. Hall trans., 1965). Such land disputes birthed the common law itself. W.L. Warren, *Henry II*, 337–341 (1973).¹ Cases recorded in Bracton’s Note Book between 1217 and

¹ As to jury size, no historical evidence suggests that criminal and civil juries should be treated differently. *Infra* note 9.

1219 refer to juries of 9, 36, and 40. Thayer, *supra*, at 295.

Around the 14th century, 12 became the default size of the English common-law petit jury—at least in most types of trials. *Williams*, 399 U.S. at 87 n.19 (citing Austin Scott, *Fundamentals of Procedure in Actions at Law* 75–76 (1922)). Yet that number appears to have been arbitrary—not some deliberate decision tied to the jury’s function. Patrick Devlin, *Trial by Jury* 8 (1956). Many have guessed at 12’s significance. Edward Coke speculated that English law “delighteth herselfe in the number of 12” because there are “12 judges of ancient time for tryall of matters of law in the Exchequer Chamber.” 1 Edward Coke, *The First Part of the Institutes of the Laws of England* 155.a. 155.b. (Charles Butler ed., 18th ed. 1823). “[I]n ancient time,” Coke added, there were “twelve Counselors of State,” and “the number of twelve is much respected in holy writ, as 12 apostles, 12 stones, 12 tribes, &c.” *Id.* Blackstone surmised that it may have come from Greece’s 12 pagan deities, or from Norway via the Norman Conquest. 3 William Blackstone, *Commentaries on the Laws of England* 365 n.i. (1768). These interesting theories make one thing clear: The number 12 was more “historical accident” than fixed principle. *Williams*, 399 U.S. at 89.

English common law. The 12-person jury wasn’t inevitable at common law, either. In 1631, in *Tredymock v. Perryman*, famed lawyer Sir Henry Rolle argued that the use of six jurors in a Cornwall debt judgment was not erroneous as “*secundum confetudinem ibidem a tempore, &c*” (custom since time immemorial). 3 George Croke, *Reports of Sir George Croke*

259–60 (Thomas Leach ed., 4th ed. 1793). Rolle thought that “the trial then by the custom may be by six,” and cited the “multitude of records in twenty several courts in Cornwall where trials may be by six, by customs there used.” *Id.*

The King’s Bench disagreed, holding that “such a custom is void, and against the common law.” *Id.* But the court acknowledged an important principle: Parliament could alter jury size. *Id.* The King’s Bench observed that Wales had trials by six through an act of Parliament. *Id.*² The question for Cornwall, therefore, was whether six-person juries “had been so provided for by parliament.” *Id.*

For particular areas of law, moreover, 12-person juries only became the rule after the 18th century. For “[i]nquests of [o]ffice”—used to adjudicate the “Writ of Waste”—“less than Twelve may serve.” 1 Giles Duncomb, *Trials per Pais* 93 (8th ed. 1766); see also 3 Blackstone, *supra*, at 258 (explaining that this inquest “is done by a jury of no determinate number; being either twelve, or less, or more”). So too with “Writs to inquire of Damages,” where the “just number of Twelve is not requisite, for they may be over or under.” Duncomb, *supra*, at 93 (citing *Abbot v. Holt*, Trin. 1651 B.R.). Likewise, “Writs of Inquiry” courts would award damages “assessed by a less Number” than 12. *Id.*

² See also *V The Statutes at Large, from the Thirty-Second Year of K. Hen. VIII. to the Seventh Year of K. Edw. VI. Inclusive* 179 (Danby Pickering ed., 1763) (permitting Welsh trials to be resolved by “verdict of six men”); *Aike & Eamon v. Hunkin*, 1 Sid. 233, 82 Eng. Rep. 1077 (1664) (custom of trial of by jury of six void except in Wales, as confirmed by act of Parliament).

Contrary to Petitioner's suggestion, Blackstone himself declined to set 12 in stone. Petitioner highlights the portions of Blackstone's *Commentaries* that discuss the "unanimous suffrage of twelve." 4 William Blackstone, *Commentaries on the Laws of England* 343 (1769); Pet. Br. 6, 19, 23. But elsewhere Blackstone treated the number as less material. In his chapter "Of the Trial by Jury," he emphasized that juries must be "*a competent number* of sensible and upright jurymen, chosen by lot from among those of the middle rank." 3 Blackstone, *supra*, at 380 (emphasis added). What mattered was that juries had enough members to be "competent." Parliament could decide that number.

Blackstone penned his *Commentaries* to explain the common law so that Parliament could better modify it. David Lieberman, *The Province of Legislation Determined* 56 (1989). In his mind, statutes were made to fix "defects" "in the common law." 1 Blackstone, *Commentaries on the Laws of England* 86 (1765). Indeed, Blackstone believed that Parliament could dispense with jury trials altogether and replace them with summary proceedings, at least in non-capital cases. 3 Blackstone, *supra*, at 277–78.

Thus, even at common law the number 12 was not considered absolute and could therefore be adjusted by legislation.

Colonial era. Early American practice embraced smaller juries. The Duke's Laws, enacted in 1665 in Hempstead, New York, made juries of six or seven the default: "No Jury shall exceed the number of Seaven nor be under Six unless in Special Causes upon Life and Death, The Justices shall thinke fitt to Appoint

twelve.” 1 *The Colonial Laws of New York from the Year 1664 to the Revolution* 42 (James B. Lyon 1896).

The Duke’s Laws spread from Hempstead to other English colonies. Morton Pennypacker, *The Duke’s Laws: Their Antecedents, Implications and Importance* 28 (1944). In 1669, Kingston’s magistrate was instructed “to Govern by English Lawes”—i.e., the Duke’s Laws. *Id.* at 39. The Duke’s Laws were established in New York City in 1674, in Delaware by 1678, and in Pennsylvania by 1676. *Id.* at 39–40, 52.

They should receive special weight when analyzing English and colonial practice. They pivoted the colonies “toward the supremacy of English practice.” 2 Herbert Levi Osgood, *The American Colonies in the Seventeenth Century* 125 (1904). And they transitioned the colonies to English law “with greater care and more conscious intent than would appear in the history of most of the other colonies.” *Id.* at 124. They were “compiled from the codes of the New England colonies, with probably some additions from English sources.” *Id.* at 121; see Pennypacker, *supra*, at 28.

Not only were the Duke’s Laws emblematic of wider English law and custom, their jury-size provision reflects actual colonial practice. Early settlers of East Hampton, for example, used seven-person juries in criminal prosecutions and significant civil actions. David Gardiner, *Chronicles of the Town of Easthampton, County of Suffolk, New York* 20 (1871).

Petitioner’s theory that the Duke’s Laws comprise merely “informal” procedures used in Pennsylvania, Pet. Br. 7–8 n.3, misleads. Reinsch may have described the Duke’s Laws’ procedures as “informal,”

Paul Samuel Reinsch, *English Common Law in Early American Colonies*, in 1 *Select Essays in Anglo-American Legal History* 367, 398 (1907), but Pennsylvania’s courts operated under them until 1683. *Id.*

Founding era. At the Founding, evidence suggests that jury size was unfixed. Of the 13 state constitutions existing in 1791, only two specified that juries should consist of 12 members. *See* Va. Const. § 8 (1776); Ga. Const. art. XL (1777). Those states’ apparent need to specify the number 12 implies that, absent textual specificity, smaller juries were contemplated. The remaining 11 state constitutions said nothing of jury size, which strongly suggests that most states didn’t intend to constitutionalize any particular number.³

Numerous Framers expressed ambivalence about jury size. James Wilson, whom Petitioner calls “the second most important framer,” Pet. Br. 21, said that “[w]hen I speak of juries, I feel no peculiar predilection for the number twelve.” 2 James Wilson, *Collected Works of James Wilson* 954 (Kermit L. Hall and Mark David Hall eds., 2007). When Wilson said “jury,” he “mean[t] a convenient number of citizens, selected and impartial, who . . . try the truth of facts, on which depend the property, the liberty, the reputation, and the lives of their fellow citizens.” *Id.*

In remarks addressing the right to civil juries, Wilson argued that legislatures may set the contours of

³ Some state courts interpreted their state constitutional jury guarantees to implicitly require 12-person juries. *See* Pet. Br. 20–21. But others never did, and their legislatures could fix jury size as they saw fit.

the right: “By the constitution of the different States, it will be found that no particular mode of trial by jury could be discovered that would suit them all.” 3 *The Records of the Constitutional Convention of 1787* 164 (Max Farrand ed. 1911) (“Farrand’s Records”) (James Wilson in the Pennsylvania Convention, Dec. 7, 1787). He preferred instead that “the power of making regulations with respect to the mode of trial[] may certainly be placed in the legislature.” *Id.* at 163. “Time, reflection, and experience,” Wilson declared, “will be necessary to suggest and mature the proper regulations on this subject.” *Id.* at 164.⁴

Wilson’s focus on the core of the jury right—and hesitation to constitutionalize every common-law detail of that right—typified the Framers’ attitudes. At

⁴ Petitioner recasts Wilson as his champion. Pet. Br. 21. The quote he cites, however, supports only *Ramos*’s conclusion that juries must be unanimous. Wilson argued that “[t]o the conviction of a crime, the undoubting and the unanimous sentiment of the twelve jurors is of indispensable necessity.” 2 James Wilson, *The Works of the Honourable James Wilson* 350 (Bird Wilson, ed., 1804). Read alongside his other remarks (“a convenient number of citizens”), it appears that he assumed the default 12-person jury while emphasizing a jury’s “undoubting” and “unanimous” decisions. *Id.*

Petitioner also interprets Wilson’s statement denying any “predilection for the number twelve” to mean “that a petit jury could conceivably be *larger* than twelve—not smaller.” Pet. Br. 21 n.7. That’s most unlikely. Wilson was talking about petit juries: In his words, the “convenient number of citizens” were empaneled to decide the “truth” in cases concerning “property” and “liberty.” 2 James Wilson, *Collected Works of James Wilson*, *supra*, at 954. Though colonial and Founding era history provides examples of petit juries smaller than 12, it yields no evidence of *larger* petit juries.

the Constitutional Convention, many Framers ardently believed that the specifics should be sorted by Congress. Speaking of civil juries, George Mason proposed guaranteeing the right only in its broad strokes. He reasoned that “[a] general principle laid down on this and some other points would be sufficient.” 2 Farrand’s Records 587 (Madison’s Notes, Sept. 12, 1787). Nathaniel Gorham likewise responded to requests for greater specificity by noting that “[t]he constitution of Juries is different in different States.” *Id.* at 628. “The constitution of Juries” apparently refers to jury size.

Other Framers agreed. George Washington, writing to Lafayette, explained why Article III, Section 2, Clause 3 contained so few particulars: “[I]t was only the difficulty of establishing a mode which should not interfere with the fixed modes of any of the States, that induced the Convention to leave it, as a matter of future adjustment.” 3 Farrand’s Records 298 (Washington to Lafayette, Apr. 28, 1788). James Madison, responding at the Virginia Convention to criticisms that Article III contained no “vicinage” requirement, similarly declared that “[t]here are deviations of [the right to jury] in England: yet greater deviations have happened here since we established our independence.” 3 Farrand’s Records 332 (James Madison in the Virginia Convention, June 20, 1788). Those deviations were sometimes “necessary,” he thought, and so “[i]t must be therefore left to the discretion of the legislature to modify [the right] according to circumstances.” *Id.*; *see also id.* at 352 (R.D. Spaight in the

North Carolina Convention, July 30, 1788) (explaining that at the Convention “[t]here were a variety of objections to any one mode”).⁵

Of course, Article III, Section 2, Clause 3 wasn’t the Constitution’s final word on the jury trial right. The Sixth and Seventh Amendments arrived soon thereafter. But like Article III, the Sixth Amendment remains silent as to most jury trial procedures. The amendment added only that juries must be “impartial” and drawn from “the State and district wherein the crime shall have been committed.” U.S. Const. amend. VI. The Sixth Amendment accordingly shares Article III’s barebones approach.

So did Founding-era dictionaries. Samuel Johnson defined a “jury” as “[a] company of men sworn to deliver truth upon such evidence as shall be delivered.” Samuel Johnson, *A Dictionary of the English Language* (10th ed. 1792). Several others took the same approach: “[a] set of men sworn to enquire into any matter and declare the truth according to evidence,” 1 John Ash, *The New and Complete Dictionary of the English Language* (1775); “[a] set of men sworn to deliver truth on such evidence as shall be given before them,” William Perry, *The Royal Standard English Dictionary* (1788); and “persons sworn to deliver truth on such evidence as shall be given before them.” Noah

⁵ True, some Framers thought that 12 was the right number. See Br. of Constitutional Accountability Center 9–10 (discussing statements of Edmund Randolph and William Pierce); Br. of Prof. Su 15 (statement of Patrick Henry). But the question is not whether 12 was a popular number, or even the usual number. It is whether the Founding generation would have believed that smaller juries were constitutionally insufficient. That numerous Framers felt no “predilection” for 12 proves they did not.

Webster, *A Compendious Dictionary of the English Language* (1806). Webster’s dictionary alone invoked the number 12, and even that works against Petitioner. Webster thought a petit jury “consist[ed] *usually* of 12 men,” 2 Noah Webster, *An American Dictionary of the English Language* (1828) (emphasis added), implying that variances occurred.

If early Americans thought that a smaller jury was “no [jury] at all,” Pet. Br. 1, dictionaries surely would have reflected that consensus.⁶ Petitioner’s supposition is less “unmistakable” than he thinks. Pet. Br. 16.

Reconstruction. Finally, at the Fourteenth Amendment’s adoption, the “jury” wasn’t uniformly understood to require 12. Though the right to a jury was a “fundamental aspect[] of the common law,” “there were disagreements about what exactly these customary rights entailed.” William Baude, Jud Campbell & Stephen E. Sachs, *General Law and the Fourteenth Amendment*, 76 *Stan. Law Review* 1185, 1198–99 (2024). Crucially, that included “how many people had to be on a petit jury.” *Id.*

State practice illustrates the point. Before the Fourteenth Amendment, at least five states had state constitutional provisions authorizing the legislature to adjust jury sizes. *See* Mich. Const. art. VI, § 28 (1850); Iowa Const. art. I, § 9 (1857); Neb. Const. art. I, § 5 (1866–67); S.C. Const. art. IX, § 7 (1865); Ga.

⁶ It is less surprising that jury unanimity was thought to be an essential feature of the right to “trial by an impartial jury,” despite not being discussed in those dictionaries. How a jury *functioned*, including unanimity, differs from what the jury *was*. Dictionary definitions focused on the latter.

Const. art. V, § 4 (1868). Two were Reconstruction state constitutions enacted under federal supervision. Post-ratification, the pattern persisted. Within a few years, at least four more states passed state constitutions varying the size of juries. *See* Fla. Const. art. X (1875); Mo. Const. art. 2, § 28 (1875); Tex. Const. art. V, § 17 (1876); La. Const. art. 7 (1879).

Of course, not every jurisdiction agreed. Petitioner points to several state supreme courts that interpreted their state constitutions to require 12-person juries. Pet. Br. 20–21. Yet other states took no issue with smaller juries. *See, e.g., Williams*, 399 U.S. at 98 n.45 (“In at least one instance involving conviction by eight jurors, [a court] . . . refused to declare the 12-man requirement an essential feature of that institution, immune from change by the legislature.” (citing *State v. Starling*, 15 Rich. 120, 134 (S.C. Ct. of Errors 1867))).

So even if many jurisdictions believed 12 *the* essential number, others didn’t, and the Reconstruction generation didn’t understand 12 to be an unalterable feature of the jury right. This may have influenced treatise authors who wrote that juries were “generally”—but not always—composed of 12 members. *See, e.g.,* Seymour D. Thompson & Edwin G. Merriam, *A Treatise on the Organization, Custody and Conduct of Juries: Including Grand Juries* 10–11 (1882); *see also* Joel Tiffany, *A Treatise on Government and Constitutional Law* 367 (1867) (“[A] trial by jury is understood to mean—generally—a trial by a jury of twelve men[.]”); 2 Story & Cooley, *Commentaries on the Constitution of the United States* § 1779, at p.541 n.2 (4th ed. 1873) (“Trial by jury is generally understood to

mean . . . a trial by a jury of twelve men[.]”). Even following the Fourteenth Amendment’s ratification, treatise authors observed that state legislatures could “fi[x] the number of the jury at less than twelve” with state “constitutional authorization.” Thompson & Merriam, *supra*, at 10.

Petitioner invokes several of this Court’s decisions mentioning the number 12, Pet. Br. 22–23, but those cases don’t alter the equation. As *Williams* noted, those cases’ discussions of the number 12 “often” appeared “in dictum.” 399 U.S. at 92; *see, e.g., Thompson v. Utah*, 170 U.S. 343, 349–50 (1898) (ex post facto); *Capital Tractor Co. v. Hof*, 174 U.S. 1, 13 (1899) (trials before D.C. Justices of the Peace); *Maxwell v. Dow*, 176 U.S. 581, 586 (1900) (whether the Fourteenth Amendment incorporates the Fifth and Sixth Amendment); *Rasmussen v. United States*, 197 U.S. 516, 527 (1905) (whether the Sixth Amendment applies to the territory of Alaska); *Patton v. United States*, 281 U.S. 276, 288 (1930) (whether a defendant could waive a jury of 12). And those cases “rel[ied]—where there was any discussion of the issue at all—solely on the fact that the common-law jury consisted of 12.” *Williams*, 399 U.S. at 92. They never attempted to “divine precisely what the word ‘jury’ imported to the Framers, the First Congress, or the States in 1789.” *Id.* at 98.

In sum, history shows that 12-person juries were usual but not universal; opinions diverged on whether a 12-person jury was essential; jury size varied over the years, across locations, and in different circumstances; and the Framers left the specifics of jury composition to Congress and state legislatures.

2. 12-person juries are unnecessary to achieve the purposes of the right to trial by jury.

Williams examined much of the history described above. But finding no conclusive historical evidence that the number 12 was indispensable, *Williams* asked whether Florida’s use of six-person juries undermined the “purposes of the jury trial.” 399 U.S. at 99–100; *see also id.* at 99 (“Nothing in this history suggests, then, that we 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.”). Purpose undoubtedly matters in constitutional interpretation. “[I]nterpretation,” after all, “always depends on context” and “context always includes evident purpose.” Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 63 (2012).

Williams recognized, in other words, that history isn’t dispositive for its own sake; history aids the Court in deriving constitutional “principles.” *Rahimi*, 602 U.S. at 692; *Vidal v. Elster*, 602 U.S. 286, 324 (2024) (Barrett, J., concurring) (“[T]radition is not an end in itself,” and “rendering tradition dispositive” allows courts to “proceed based on pedigree rather than principle”). And *Williams* located that principle by examining what a jury does—its “purpose,” its “function,” its *telos*: “the interposition between the accused and his accuser of the commonsense judgment of a group of laymen,” who through “community participation and shared responsibility” render a “determination of guilt or innocence.” 399 U.S. at 100. Those are

the very features Blackstone, key Framers like James Wilson, and this Court have flagged as the jury’s *raison d’être*. By concluding that six-person juries fulfill the essential jury “function,” *Williams* did not err. *Id.* at 99.

Blackstone, for instance, described “trial by jury” as a “strong . . . barrier” “between the liberties of the people, and the prerogative of the crown.” 4 Blackstone, *supra*, at 343. Through the jury system, English law “preserv[ed] in the hands of the people that share which they ought to have in the administration of public justice.” 3 Blackstone, *supra*, at 380.

James Wilson agreed. For him, the jury ensured that a criminal defendant “shall not suffer, unless the selected body who act for his country say unanimously and without hesitation—he deserves to suffer.” 2 James Wilson, *Collected Works of James Wilson*, *supra* at 986. Juries “effectively barred” “the oppression of government.” 3 Farrand’s Records 101 (Address to a Meeting of the Citizens of Philadelphia on October 6, 1787). Elbridge Gerry “urged the necessity of Juries to guard ag[ain]st[] corrupt Judges.” 2 Farrand’s Records 587 (Madison’s Notes, Sept. 12. 1787).

In *Duncan*, this Court concluded much the same—the Sixth Amendment exemplified our Nation’s “deep commitment” “against arbitrary law enforcement.” *Duncan v. Louisiana*, 391 U.S. 145, 156 (1968). Trial by jury “reflect[s] a fundamental decision about the exercise of official power—a reluctance to entrust plenary powers over the life and liberty of the citizen to . . . judges.” *Id.* Juries “interpose[] barriers . . . against the approaches of arbitrary power.” *Id.* at 154 (quoting *Thompson*, 170 U.S. at 350)).

Williams therefore correctly found that the Sixth Amendment did not prescribe the number 12. Six-person juries interpose a neutral group of laypeople between the defendant and criminal punishment just like their larger counterparts. To reach that conclusion, one need not resort to empirical studies—though those studies help to confirm *Williams*’ conclusion. See 399 U.S. at 101–02 (studies showed “no discernable difference” in results reached by differently-sized juries); *infra* at II.B.5. Logic does the work: “The performance of this role is not a function of the particular number of the body that makes up the jury.” *Id.* at 100. Far more important are the requirements of juror “unanimity,” *id.*, and placing the burden on the prosecution to prove guilt “beyond a reasonable doubt.” See *In re Winship*, 397 U.S. 358, 368 (1970). Because the government must convince six laypeople of the defendant’s guilt, there is no reasonable “[f]ear of unchecked power.” *Duncan*, 391 U.S. at 156.

When text and history are inconclusive, the Court must define the contours of a constitutional right by assessing its purposes. *Williams* correctly concluded that six-person juries satisfy the historic purpose and function of the jury.

3. No one thinks that the Sixth Amendment codified every common-law incident of the jury.

Petitioner’s approach also lacks any limiting principle. If the Sixth Amendment constitutionalizes the 12-person jury—a usual (though non-universal) requisite of a common-law jury trial in 1791—then why doesn’t it constitutionalize every other accustomed requisite of a common-law jury? Perhaps concluding

that silence is the better part of advocacy, Petitioner doesn't address this thorny question. But the Court must grapple with the question; otherwise, it would be subscribing to a selective, ad hoc brand of originalism. Constitutionalizing jury size would inevitably sweep in many other "accustomed requisites" of the common-law jury—requisites that, for good reasons, have been modified or dropped altogether.

Property qualifications. The composition of the common-law jury was purposefully unrepresentative of the general population. Beginning in the 13th century, Parliament imposed property qualifications for jurors. John H. Langbein, Renée Lettow Lerner & Bruce P. Smith, *History of the Common Law* 532 (2009); see John Fortescue, *De Laudibus Legum Angliae* 82 (Francis Gregor trans., 1775) ("every one of the Jury shall have Lands, or Revenues, for the term of his life, of the yearly Value of at least Forty Shillings."). This persisted until the 18th century. Langbein, *supra*, at 532.

By the mid-1700s, the property requirement grew more exacting—a juror had to own a freehold worth at least 10 pounds. Douglas Hay, *The Class Composition of the Palladium of Liberty: Trial Jurors in the Eighteenth Century* 305, 312, in *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800* (J.S. Cockburn & Thomas A. Green eds., 1988). This would have excluded up to 75% of adult males. *Id.* at 315. And property qualifications were diligently enforced. *Id.* at 326–29. The Declaration of Rights of 1689, complained that "unqualified Persons have . . . served on Juries in Trials . . . which were not Freeholders." 1 W. & M., ch. 2, § 9, in 3 Eng. Stat. at Large

440. A potential juror’s “principal deficiency,” per Blackstone, was “a defect of estate, sufficient to qualify him to be a juror.” 3 Blackstone, *supra*, at 362.

This tradition crossed the pond. “American colonies and states inherited English-style property requirements,” and only “[g]radually, and in uncoordinated fashion” eliminated those requirements. Langbein, *supra*, at 532–33. When defining “freeholder,” Webster included that “[e]very juryman must be a *freeholder*.” 1 Noah Webster, *An American Dictionary of the English Language* (1828). Texas and New York maintained their property qualifications until the 1960s. Langbein, *supra*, at 532–33.

At common law, therefore, property qualifications featured more prominently than a jury size of 12. But limiting juries to middle-class *propertied men* would exclude both non-propertied citizens and the population’s better half from service, twice-over conflicting with the fair-cross-section requirement. See *Taylor v. Louisiana*, 419 U.S. 522, 527–29 (1975). *Taylor*’s fair-cross-section requirement is a judicial innovation, not a Sixth Amendment element informed by text, history, and common-law tradition. See *Berghuis v. Smith*, 559 U.S. 314, 334 (2010) (Thomas, J., concurring) (the requirement is “difficult to square with the Sixth Amendment’s text and history”). If jury size must match the common-law defaults of 1791, then *Taylor*’s fair-cross-section requirement must go.

Subsequent constitutional amendments may override the universal 1791 assumption that only males

could serve on juries.⁷ But no subsequent constitutional developments override juror property requirements. Wealth, after all, is not a suspect class. See *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 24 (1973).

Limited voir dire. Constitutionalizing every aspect of a 1791 common-law jury would also revolutionize modern voir dire and jury selection. “English practice has never allowed counsel to engage in extensive questioning of potential jurors,” and cause challenges were limited to “property requirements, relationship to a party, [and] prior service on a grand jury.” Langbein, *supra*, at 540. Counsel couldn’t even ask potential jurors if they pre-judged a case, as that would violate the potential juror’s “witness privilege.” *Id.* This Nation inherited those English practices, and only after two highly publicized prosecutions—against James Callender for sedition and Aaron Burr for treason—did American courts *begin* to hold that counsel could inquire into prejudgment. *Id.* at 540–41.

⁷ If the Sixth Amendment requires juries to reflect all aspects of the common-law jury in 1791, it would have excluded women and racial minorities, at least until the 14th Amendment’s ratification. See 3 Blackstone, *supra*, at 362. And the 14th Amendment would not have resolved the issue of excluding women until it was interpreted to apply to discrimination based on sex. Nor did the 19th Amendment resolve it. While jury service tended to track suffrage, for women “it did not automatically follow that the right to vote led to jury service.” Langbein, *supra*, at 536. Only in the 1940s did a majority of states permit women to serve on juries. *Id.* Likewise, Professor Amar’s suggestion that the 24th Amendment’s prohibition on poll taxes resolved the property requirement issue, Br. of Prof. Amar 6, is incorrect—voting requirements are not coterminous with jury service requirements.

Reverting to the common-law jury would eliminate the parties' ability to intelligently exercise for-cause and preemptory strikes. Florida, for example, allows both parties extensive voir dire, and the defense bar jealously guards the State's jury-selection procedures. *See, e.g.,* Br. of Fla. Pub. Defenders' Assoc., *Paul v. State*, No. SC25-0478, at *9–13 (Fla. Aug. 20, 2025). Constitutionalizing every traditional feature of the common-law jury system would unravel those legislatively crafted safeguards.

Juror coercion. Petitioner's approach also portends a revival of juror abuse. At the Founding, juries typically heard many criminal trials per day, sometimes more than a dozen. *See* Renée Lettow Lerner, *The Jury: A Very Short Introduction* 78 (2023) (in 18th century England, an English judge often presided "over more than a dozen felony trials, with verdicts, per day"). The English put a premium on efficiency and took accuracy and fairness when they could get them. To coerce speedy jury verdicts, common-law courts regularly deprived jurors of food and water until they returned a verdict. Lord Coke explained that "a jury . . . ought to be kept together . . . without meat or drinke, fire or candle"—what "some books call an imprisonment." 2 Edward Coke, *The First Part of the Institutes of the Laws of England* 227.b. (Charles Butler ed., 18th ed. 1823). Only after the jury agreed to a verdict could they "eat and drinke." *Id.* Blackstone thought jurors should be deprived of "meat, drink, fire, or candle, unless by permission of the judge, till they are all unanimously agreed." 3 Blackstone, *supra*, at 375.

It was a fineable offense for jurors to “eat or drink at all, . . . without the consent of the court, and before verdict.” *Id.* Verdicts would be “set aside” if a party attempted to bribe the jury with food during deliberations. *Id.* at 375–76. When the jury failed to reach its verdict before the judge, riding circuit, was to relocate, the judge “was not bound to wait for them, but may carry [the jurors] round the circuit from town to town in a cart.” *Id.*

American jurisdictions have jettisoned those mainstays of the common-law tradition. Yet on Petitioner’s reasoning, they may be Sixth Amendment necessities.

Relationship between judge and jury. Today, it’s broadly accepted that courts decide questions of law, while juries decide questions of fact. But “this division of labor is of relatively recent origin.” Matthew P. Harrington, *The Law-Finding Function of the American Jury*, 1999 Wis. L. Rev. 377 (1999). In colonial America, judges typically did not “instruct the jury on the law,” and if they did, they “were quick to advise the jury that they were not bound by the judge’s view of the law,” because the jury was a finder of law as well as fact. *Id.* at 379, 390–91.

The jury’s power to declare law persisted into “the first decade of the Republic.” *Id.* at 379, 401–04. In the 1770s, John Adams wrote that a juror had a “duty” to “find the Verdict according to his own best Understanding, Judgment and Conscience, tho in Direct opposition to the Direction of the Court.” Renée Lettow Lerner, *New Trial for Verdict against Law: Judge-Jury Relations in Early Nineteenth-Century America*, 71 Notre Dame L. Rev. 505, 517 (1999). Jefferson con-

curred, explaining that the jury may “undertake to decide both law and fact.” *Id.* Wilson reiterated the point, explaining that “jurors possess the power of determining legal questions,” and that in the case of “difference of sentiment” between judge and jury, the jury “must decide the law as well as the fact.” 2 James Wilson, *Collected Works of James Wilson*, *supra*, at 1000, 1002. Indeed, in the only recorded jury trial before this Court, Chief Justice Jay instructed the jury that “you have . . . a right . . . to determine the law as well as the fact in controversy.” *Georgia v. Brailsford*, 3 U.S. 1, 4 (1794).

18th century judges, meanwhile, felt free to “comment on the evidence, to make their views known, and even to lean on juries, short of throwing them in prison.” Stephanos Bibas, *Two Cheers, Not Three, For Sixth Amendment Originalism*, 34 Harv. J. of L. & Pub. Policy 45, 47–48 (2010); *see also* Langbein, *supra*, at 431–33, 514. They would “suggest strongly to juries that there was only one way to read the evidence.” Bibas, *supra*, at 47–48.

Even after judges limited the jury’s law-finding function in civil cases, that development lagged in criminal cases. Only in the late 19th century did judges begin instructing juries that they were bound by the law as stated in the charge, preventing counsel from advising the jury of its right to nullify, and limiting counsel’s legal arguments to the jury. Harrington, *supra*, at 379–80, 423–35.

Rule against waiver. Nor could plea bargains survive the return to the common-law jury. As this Court recognized nearly 100 years ago, “under the rule of the common law the accused was not permitted

to waive trial by jury, as generally he was not permitted to waive any right which was intended for his protection.” *Patton*, 281 U.S. at 306. Hewing to the common-law rule would thus invalidate, as a constitutional matter, all plea bargaining. 97% of federal cases and 94% of state cases are resolved by plea bargain, so a return to the common-law rule would invalidate nearly all criminal resolutions in the United States. See Erica Goode, *Stronger Hand for Judges in the ‘Bazaar’ of Plea Deals*, New York Times, March 22, 2012.

* * *

Florida defendants have it pretty good. No one coerces jurors into agreement with threats of starvation. A defendant can waive his right to jury for a favorable plea deal. Juries may deliberate for hours or even days, with food. And defense counsel partake in generous voir dire and jury selection. Those protections exist only because this Court has never insisted on constitutionalizing every feature of a 1791 common-law jury.

For effectively the same reason, *Williams* declined to hold that Florida’s use of six-person juries violated the Sixth Amendment. In doing so, *Williams* didn’t mistake the Constitution’s original meaning. To the contrary, the Court recognized that features like jury size were legislatively alterable; these features would vary over time and location; and—whatever the variations—a Sixth Amendment jury must remain “the interposition between the accused and his accuser of the commonsense judgment of a group of laymen.” 399 U.S. at 100. Then and now, Florida’s six-person juries pass the test.

II. At the very least, *stare decisis* warrants retaining *Williams*.

But right or wrong, *Williams* is a precedent entitled to respect under *stare decisis*. That doctrine ensures stability in the law, a crucial consideration when a precedent has engendered the reliance that *Williams* has. Florida, for example, has roughly 5,200 cases pending on direct appeal, many of which could be affected by a ruling for Petitioner. Not to mention the six other states that use smaller juries in felony cases—or 27 states that use smaller juries in misdemeanor cases.

Williams and *Apodaca* were both decided in the 1970s, but the similarities end there. A majority in *Apodaca* actually disagreed with the plurality’s approval of non-unanimous verdicts. *Ramos*, 590 U.S. at 112–13 (Sotomayor, J., concurring). But Justice Powell, harboring idiosyncratic views on incorporation, supplied the winning vote to the plurality. *Id.* Louisiana in *Ramos* didn’t even “suggest that *Apodaca* supplies a governing precedent.” *Id.* at 101. *Williams* suffers from no such infirmity.

And were the Court to overturn *Williams* on the strength of Petitioner’s historical evidence, it could hardly stop there. Consistency and fairness would demand that the Court turn its gaze to the slew of criminal law and procedure precedents that, unlike *Williams*, flagrantly contravene the Constitution’s original meaning.

A. *Stare decisis* serves critical interests and applies in this case.

Stare decisis cautions against overruling precedent merely because the Court “would decide a case differently now than [it] did then.” *Kimble v. Marvel Entm’t, LLC*, 576 U.S. 446, 455 (2015). It is the “preferred course” because it “promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.” *Payne v. Tennessee*, 501 U.S. 808, 827 (1991); *see also Ramos*, 590 U.S. at 116 (Kavanaugh, J., concurring in part). “[A]ny departure” from *stare decisis* “demands special justification.” *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984).

Several factors guide the *stare decisis* analysis. The Court “has traditionally considered ‘the quality of the decision’s reasoning; its consistency with related decisions; legal developments since the decision; and reliance on the decision.’” *Ramos*, 590 U.S. at 106 (quoting *Franchise Tax Bd. of Cal. v. Hyatt*, 587 U.S. 230, 232 (2019)). Also relevant is whether a precedent’s rule has proved “unworkable.” *Payne*, 501 U.S. at 827.

Petitioner would circumvent that test altogether. *Stare decisis* is inapplicable, he says, because “*Ramos* [e]ffectively [o]verruled *Williams*.” Pet. Br. 24. As Petitioner sees it, *Ramos* “repudiated the reasoning on which’ the Court relied in *Williams*,” robbing *Williams* of “any ongoing ‘vitality.’” Pet. Br. 24, 26. True, *Ramos* instructs courts to view the Sixth Amendment through an originalist lens, *see* Pet. Br. 16–18, but Petitioner is wrong that *Williams* failed to do so.

Quite the opposite. *Williams* began with the Sixth Amendment’s text and history. 399 U.S. at 86–100. Justice White’s opinion examined the “common law” practice of empaneling 12 jurors, but kept in mind the commonsense point that not “every feature of the jury as it existed at law . . . was necessarily included in the Constitution.” *Id.* at 89, 91. To ascertain which features of the common-law jury “the Framers, the First Congress, or the States in 1789” would have understood as enshrined in the Sixth Amendment, the Court examined the amendment’s drafting history and the Framers’ debates at the Constitutional Convention, *see id.* at 92–96—standard originalist fare. And *Williams*, thick with scholarly footnotes, canvassed many of the historical sources Petitioner relies on. *See, e.g.*, 399 U.S. at 87 n.19, 88 n. 22 & 23; Pet. Br. 6, 10, 19.

Only after concluding that “[n]othing in this history” required 12-person juries did the Court “turn[] to other than purely historical considerations.” *Id.* at 99. *Williams* reached a result Petitioner disagrees with. That’s hardly proof that it performed the wrong analysis.

Even if *Williams* failed to conduct the appropriate *Ramos*-style historical inquiry, *Williams* remains good law. Two years ago, this Court explained that changes in “interpretive methodology” do not render all precedents employing the old methodology bad law. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024) (explaining that overturning *Chevron* “d[id] not call into question prior cases that relied on the *Chevron* framework”). So too here.

Williams, accordingly, remains binding. Petitioner can prevail only if he shows that the *stare decisis* factors support overruling it. See *Patterson v. McLean Credit Un.*, 491 U.S. 164, 172 (1989) (“the burden [is] borne by the party advocating the abandonment of an established precedent”). He cannot.

B. All five traditional *stare decisis* factors support preserving *Williams*.

1. The state and federal governments’ reliance on *Williams*.

For over 50 years, state and federal governments have relied on *Williams*. Overruling *Williams* would deal a crippling blow to the law enforcement interests of more than half of the states, who would be required to retry (or dismiss) many, many criminal cases.

A. Take the seven states that use fewer than 12 jurors in felony cases. Florida has 5,200 pending criminal direct appeals. Many of those cases involve felony convictions obtained after a jury trial. Though the State intends to advance procedural arguments (including preservation and harmless-error arguments) in defense of its convictions if this Court reverses, Florida will need to retry a sizable chunk of those cases. But the situation grows far worse when considering the pending felony appeals in the other six states: Arizona, Connecticut, Indiana, Louisiana, Massachusetts, and Utah. Those states would face the retrial of potentially thousands of felony cases.

But don’t forget serious misdemeanor convictions. The Sixth Amendment jury right attaches to all “serious crimes,” including offenses punishable by more than six months in jail. See *Duncan*, 391 U.S. at 159–

62. 27 states use fewer than 12 jurors to try misdemeanors, including those punishable by more than six months. Counting just misdemeanors triggering the jury right, reversing could require retrying some portion of the estimated 13.2 million misdemeanors filed each year nationwide. Megan Stevenson & Sandra Mayson, *The Scale of Misdemeanor Justice*, 98 B.U. L. Rev. 731, 737 (2018).⁸

Truth be told, states won't retry anywhere near that many cases. Existing constraints on state criminal justice systems prevent the allocation of resources necessary to do so. More likely, prosecutors will be forced to offer defendants sweetheart plea deals. Or worse, states will dismiss prosecutions entirely. Thousands of crimes will go unpunished because so many states relied on *Williams*.

Those reliance interests dwarf the ones in *Ramos*. There, it was significant that "prior convictions in only two States" were "potentially affected" by its decision. *Ramos*, 590 U.S. at 108. The affected cases numbered "somewhere in the hundreds." *Id.* Here, the number is far greater.

Crime victims have also relied on *Williams*. Should Petitioner prevail, victims will have to re-testify at countless new trials, forcing them to relive the trauma of the offenses years later.

B. Turn to the states' other reliance interests. *Stare decisis* is at its "acme" in cases involving "property and contract rights," because they involve real-world reliance. *Kimble*, 576 U.S. at 457 ("[P]arties are

⁸ Challenges raised on collateral review would drive these numbers higher.

especially likely to rely on such precedents when ordering their affairs.”). Florida and other states have relied on *Williams* when constructing the courthouses in which juries sit. Most courthouses in Florida were built to house only a single 12-person jury courtroom for capital cases. Because of *Williams*, all other courtrooms fit only six-person petit juries. So in most Florida courtrooms, 12-person juries have nowhere to sit, other than the galley. Overturning *Williams* would cause the State to incur massive new construction costs.

C. The federal system will feel it too. In federal criminal prosecutions, Rule 23 authorizes the trial court to “permit a jury of 11 persons to return a verdict”—without agreement of the parties—“if the court finds good cause to excuse a juror.” Fed. R. Crim. P. 23(b)(3). If Petitioner is correct, those verdicts from 11 jurors “are no verdict at all.” Pet. Br. 1.

Petitioner suggests an exception to his rule for those convictions obtained under Rule 23(b)(3) because they “involve[] ‘the procedures to be applied . . . when an emergency arises toward the end of deliberations’ rather than the number of jurors who must be sworn at the outset.” Pet. Br. 13 n.4. If, however, a jury of 12 is the *only* constitutional jury, the only satisfactory bulwark against oppressive prosecution, then surely history would provide ample evidence of a Rule 23-type “good cause” exception. He presents none.

D. Federal civil juries will look different, too. After *Williams*, “it was clear to everyone that the decision’s rationale would apply equally to civil juries in federal court.” Steven S. Gensler, Patrick Higginbotham &

Lee Rosenthal, *Better by the Dozen: Bringing Back the Twelve-Person Civil Jury*, 104 *Judicature* 46, 49 (2020). Federal courts “changed their local rules to permit six-person juries in civil trials.” *Id.* Citing *Williams*, this Court blessed that transformation in *Colgrove v. Battin*. 413 U.S. 149, 157 (1973). In 1991, the Court amended Federal Rule of Civil Procedure 48(a), which now states that “[a] jury must begin with at least 6 and no more than 12 members[.]” Nearly 90% of federal civil trials seat fewer than 12 jurors. Gensler, *supra*, at 49.

If the Sixth Amendment requires 12-person juries, so does the Seventh Amendment. If anything, the argument is more convincing for the latter. The Seventh Amendment’s text speaks of “preserv[ing]” a preexisting right to trial by jury available “[i]n Suits at common law,” U.S. Const. amend. VII—strong textual evidence that the Framers meant to incorporate the then-prevalent common-law jury features in civil trials.⁹ Should Petitioner prevail, *Colgrove* won’t long survive, and the legitimacy of countless federal civil verdicts rendered by six-person juries will be in doubt.

2. The quality of *Williams*’ reasoning.

What of the quality of *Williams*’ reasoning? This factor does not turn simply on whether the prior precedent was wrongly decided. It instead looks to whether the precedent was “grievously or egregiously

⁹ To this point, one of Petitioner’s *amici* supports her theory that the Sixth Amendment requires 12-person juries by simply recycling sources from her previous scholarship arguing that the Seventh Amendment requires 12-person juries. Compare Br. of Prof. Su 7–25, with Wanling Su & Rahul Goravara, *What is a Jury?*, 103 N.C. L. Rev. 969, 978–1009 (2025).

wrong,” *Ramos*, 590 U.S. at 121 (Kavanaugh, J., concurring in part), or “demonstrably erroneous.” *Gamble v. United States*, 587 U.S. 678, 717–18 (2019) (Thomas, J., concurring). A decision that fits that bill lies “outside the realm of permissible interpretation.” *Id.* at 711.

Petitioner lambasts *Williams*—a nearly unanimous opinion—for spending “relatively little time ‘grappling with the historical meaning of the Sixth Amendment[]’” and as an “outlier in the Court’s jurisprudence.” Pet. Br. 29. On his telling, *Williams* is purely “functionalist,” a decision casting off any pretense at discerning the Constitution’s original meaning. Pet. Br. 29, 31.

Perhaps he’s reading a different case. In *Williams*, the Court conducted a thorough historical review. Reasoning that history “affords little insight” into why common-law juries were typically set at 12, the Court concluded that it was “a historical accident.” 399 U.S. at 86–90. The Court then analyzed Founding-era sources and the drafting history to conclude that the Sixth Amendment did not constitutionalize all features of the jury as it existed at the Founding. *Id.* at 92–97. Only after finding that “considerably more evidence” would be required to conclude that the Founding generation meant to codify the right to 12-person juries did the Court opine that the “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, 103.

True, *Ramos* placed a different emphasis than *Williams* on how to interpret the First Senate’s deletion

of Madison’s draft language relating to “other accustomed requisites.” *Ramos*, 590 U.S. at 97. *Williams* thought it “more plausible” that the deletion of “accustomed requisites” had some “substantive effect” than the inference that “accustomed requisites” were thought to be already included in the concept of a ‘jury.’” 399 U.S. at 97. Ultimately, *Williams* conceded that the Court was unable to “divine precisely what the word ‘jury’” meant to the First Congress. *Id.* at 98. *Ramos* explained that the drafting history could “easily support” both inferences but also admitted “we have little contemporaneous evidence shedding light on why the Senate acted as it did.” 590 U.S. at 97–98. At most, *Williams*’ conclusion reflects a “garden-variety error or disagreement,” which “does not suffice to overrule” a precedent. *Id.* at 121–22 (Kavanaugh, J., concurring in part).

In other words, *Williams* wasn’t *egregiously* or *demonstrably* wrong.

3. Workability.

Williams is clearly workable. Combined with *Ballew*, *Williams* establishes a brightline rule: A jury must have at least six members in serious criminal cases. 435 U.S. at 245. With no difficulty, 27 states at least partially administer their criminal-justice systems in reliance on that rule.¹⁰

¹⁰ See Ariz. Rev. Stat. § 21-102; Conn. Gen. Stat. § 54-82; Fla. Stat. § 913.10; Ind. Code § 35-37-1-1; La. Const. art. I, § 17(A); Mass. Gen. Laws ch. 218, § 26A; Utah Code. § 78B-1-104; Alaska Stat. § 22.15.150; Colo. R. Crim. P. 23; Colo. Rev. Stat. § 18-1-406; Ga. Code § 15-12-125; Idaho R. Crim. P. 23; Idaho Code § 19-1902; Kan. Stat. § 22-3404; Ky. Rev. Stat. § 29A.280; La. Code

4. Consistency with other cases.

Williams is consistent with *Ramos* and other decisions. Non-unanimity undermines a jury’s purpose and function. A jury size of six does not. *Williams* itself considered unanimity “unlike” jury size. 399 U.S. 101 n.46 (“[U]nanimity . . . may serve an important role in the jury function . . . as a device for insuring that the Government bear the heavier burden of proof.”). *Id.* It’s no surprise, then, that two Justices from the *Williams* majority (Brennan and Douglas) dissented from the result in *Apodaca*. Resolution of one issue does not follow from the other.

5. Post-decision developments.

Williams’ factual underpinnings have stood firm. Petitioner argues that “[n]umerous studies” since *Williams* “have established that a six-person jury is less representative, less consistent, and more likely to rule against a criminal defendant than a jury of 12.” Pet. Br. 30. The evidence says otherwise.

First off, real-world data suggests that six-person jury regimes are *less* likely to rule against criminal defendants. Consider Florida’s 2022-2024 felony conviction rates versus three 12-juror states:

Crim. P. art. 779; Mich. Ct. R. 6.620; Mich. Comp. Laws § 774.49; Mich. Ct. R. 6.620; Minn. Gen. R. Prac. 802; Miss. R. Crim. P. 18.1; Mont. Code § 46-17-201; Neb. Rev. Stat. § 25-2705; N.M.R.A. 6-605; N.M.R.A. 7-605; N.Y. Crim. Proc. Law § 360.10; Okla. Stat. tit. 22, § 601; Or. Rev. Stat. §§ 54.010, 136.210, 221.354; Tex. Const. art. V, § 13; Tex. Code Crim. Proc. art. 33.01; Va. Code § 19.2-262; Wash. Rev. Code § 10.04.050; Wash. CrRLJ 6.1.1; W. Va. Const. art. VIII, § 10; Wyo. R. Crim. P. 23.

<u>State</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>
Florida	74.1% ¹¹	73.8% ¹²	73.3% ¹³
Texas	81% ¹⁴	79% ¹⁵	78% ¹⁶
California	84% ¹⁷	82% ¹⁸	81% ¹⁹
New York	80% ²⁰	77.8% ²¹	82.6% ²²

Petitioner doesn’t meaningfully contest that fact.²³ Much of his social science attacks six-person juries as less likely to be a “representative[] cross-section of the community.” Pet. Br. 31, 33. Even if true, that is irrelevant. The fair-cross-section requirement applies to the jury *pool*, not the petit jury’s composition. *Taylor*, 419 U.S. at 538. So long as the venire draws from the broader community, this Court has rejected any “requirement that petit juries actually chosen must mirror the community and reflect the various distinctive groups in the population.” *Id.*

¹¹ <https://perma.cc/M3BF-ZG73>.

¹² <https://perma.cc/NG8V-6K4J>.

¹³ <https://perma.cc/Z5CU-WAUM>.

¹⁴ <https://perma.cc/8BL3-2JEC>.

¹⁵ <https://perma.cc/68HQ-3ATR>.

¹⁶ <https://perma.cc/PM4M-8ZD7>.

¹⁷ <https://perma.cc/C3H9-Y5HM>.

¹⁸ <https://perma.cc/SM6U-CFWD>.

¹⁹ <https://perma.cc/YL5C-XP6K>.

²⁰ <https://perma.cc/6XNF-7EPE>.

²¹ <https://perma.cc/C3H9-Y5HM>.

²² <https://perma.cc/73QC-45PJ>.

²³ 94% of Florida’s jury dispositions during this period (2022-2024) were non-capital verdicts rendered by six-person juries. *See supra* nn.11–13. If one considers only those six-person jury dispositions, Florida’s conviction rates dip even lower.

As to consistency, Petitioner tellingly doesn't cite a single study showing that six-person jury verdicts are less reliable or accurate. *See* Pet. Br. 30–34. In fact, modern evidence supports *Williams'* conclusions. For instance, smaller juries may be more accurate because of group social dynamics. Jurors face reduced temptation to free ride and shirk by relying on other jurors' attention and deliberation. Kaushik Mukhopadhyaya, *Jury Size and the Free Rider Problem*, 19 J.L. Econ. & Org. 24, 40 (2003); Bridget M. Waller et al., *Twelve (Not So) Angry Men: Managing Conversational Group Size Increases Perceived Contribution by Decision Makers*, 14 Grp. Processes & Intergrp. Rels. 835, 839 (2011). So too for social pressure, which likely increases as the jury enlarges—more jurors to pressure independent-minded jurors. Nicholas Fay, Simon Garrod & Jean Carletta, *Group Discussion as Interactive Dialogue or as Serial Monologue: The Influence of Group Size*, 11 Psych. Sci. 481, 485 (2000). So smaller juries, deciding unanimously, are just as accurate as 12-person juries. *See* Alice Guerra, Barbara Luppi & Francesco Parisi, *Accuracy of Verdicts Under Different Jury Sizes and Voting Rules*, 28 Sup. Ct. Econ. Rev. 221, 232 (2020) (unanimous six-person juries “are alternative ways to maximize the accuracy of verdicts while preserving the functionality of juries”). And empirical studies don't show differences in hung jury rates between 12- and six-person juries. Barbara Luppi & Francesco Parisi, *Jury Size and the Hung-Jury Paradox*, 42 J. Legal Stud. 399, 402–04 (2013).

Nothing in the literature demonstrates that smaller juries disadvantage criminal defendants.²⁴ And Florida's comparative conviction rates suggest they fare better with six-person juries.

Traditional *stare decisis* factors cut against Petitioner and support retaining *Williams*.

C. Overruling *Williams* would cast doubt on numerous other criminal law and procedure precedents.

One final consideration. Should the Court recede from *Williams*, it will be rejecting a decision that considered jury size through the lens of the Sixth Amendment's text, history, and tradition. In other words, this Court will rule that an older originalist decision reached the incorrect conclusion or wasn't originalist enough. But many of this Court's seminal criminal law and procedure precedents turn *exclusively* on non-originalist reasoning. And *stare decisis* doesn't give way only when it benefits criminal defendants. After all, state and federal governments share the same interest in proper constitutional interpretation, and they have a uniquely compelling interest in criminal law enforcement.

²⁴ Petitioner's argument rests on a presuppositional hunch that criminal defendants lose something meaningful when afforded six rather than 12 jurors. Neither social science nor practical experience bear that out. But if his hunch was right that more is necessarily better, his historical argument would foreclose states from experimenting in future with petit juries larger than 12, which—on his empirical reasoning—would favor criminal defendants *even more*.

So if the Court overrules *Williams*, which precedents are next?

1. *Strickland v. Washington* leaps to mind. *See* 466 U.S. 668, 686 (1984) (the Sixth Amendment protects the right to “effective” counsel). As several Justices have remarked, “little available evidence suggests” that *Strickland* was correct “as an original matter.” *Garza v. Idaho*, 586 U.S. 232, 259 (2019) (Thomas, J., dissenting). Rather, “as originally understood,” the Sixth Amendment “meant only that a defendant had a right to employ counsel, or to use volunteered services of counsel.” *Id.* at 258 (quoting *Padilla v. Kentucky*, 559 U.S. 356, 389 (2010) (Scalia, J., dissenting)). It was not until the 20th century that the Court “fashion[ed] a constitutional new-trial remedy for cases in which counsel performed poorly.” *Garza*, 586 U.S. at 261 (Thomas, J., dissenting).

Under a history-and-tradition approach, the Court would need to overrule not only *Strickland*, but also *Gideon v. Wainwright*, 372 U.S. 335 (1963), and *Johnson v. Zerbst*, 304 U.S. 458 (1938), which held that defendants have the Sixth and Fourteenth Amendment right to court-appointed counsel. Again, the Sixth Amendment was “not [understood] as a guarantee of government-funded counsel.” *Garza*, 586 U.S. at 260 (Thomas, J., dissenting). And if, as Petitioner suggests, a precedent can be cast off simply because it did not adequately apply originalist precepts, then *Gideon* and *Zerbst* should meet the same fate. Unlike *Williams*, those decisions didn’t even “attempt[] to square the expansive rights they recognized with the original meaning of” the Sixth Amendment. *Id.* at 261.

Next, the exclusionary rule would need to go. The Court adopted the exclusionary rule in *Weeks v. United States*, 232 U.S. 383 (1914), and incorporated it against the states in *Mapp v. Ohio*, 367 U.S. 643 (1961). Yet that rule “appears nowhere in the Constitution, postdates the founding by more than a century, and contradicts several longstanding principles of the common law.” *Collins v. Virginia*, 584 U.S. 586, 605 (2018) (Thomas, J., concurring). Not only was there not “a single major statement” from the Founding, antebellum, or Reconstruction periods to support it, but the thought of excluding evidence in a criminal trial was “so implausible” that Founding-era defendants didn’t even request it. Akhil Reed Amar, *Fourth Amendment First Principles*, 107 Harv. L. Rev. 757, 786 (1994).

Modern Eighth Amendment jurisprudence likewise would be a dead man walking. Before the “evolving-standards-of-decency” test, this Court held, consistent with history and tradition, that “[p]unishments are cruel” within the meaning of the Eighth Amendment “when they involve torture or a lingering death.” *In re Kemmler*, 136 U.S. 436, 447 (1890). Only “inhuman and barbarous” punishments would have been considered “cruel” at the Founding. *Id.* And the Cruel and Unusual Punishments Clause doesn’t support a proportionality principle. See *Harmelin v. Michigan*, 501 U.S. 957, 990 (1991) (plurality op.) (“all available evidence of contemporary understanding” shows that the Eighth Amendment operates “without reference to the particular offense”).

Only beginning in the mid-20th century did the Court invent the notion that the meaning of the

Eighth Amendment “evolv[es]” as society evolves, *Graham v. Florida*, 560 U.S. 48, 58 (2010), creating the rules that minors and the mentally ill must be spared from capital punishment, *Roper v. Simmons*, 543 U.S. 551, 578 (2005); *Atkins v. Virginia*, 536 U.S. 304, 321 (2002), and that juvenile non-homicide offenders cannot receive life-without-parole sentences. See *Graham*, 560 U.S. at 82.

Petitioner’s frozen-in-1791 historical argument would require this Court to overrule numerous Eighth Amendment precedents. *Roper*, *Atkins*, and *Graham* would all have to go. So too for *Coker v. Georgia*, holding that the Eighth Amendment forbids capital punishment for the rape of an adult victim. 433 U.S. 584, 592 (1977) (plurality op.). That holding demanded a knowing disregard of history. After all, “[e]very felony at common law [wa]s a capital offence.” *United States v. Williams*, 28 F. Cas. 646, 646 (C.C.D.D.C. 1804). Capital punishment for felonies was “ubiquit[ous]” in the late 18th century and was “the standard penalty for all serious crimes.” *Baze v. Rees*, 553 U.S. 35, 94 (2008) (Thomas, J., concurring in the judgment) (citing Stuart Banner, *The Death Penalty: An American History* 23 (2002)). Early Americans inherited this practice from the English common-law tradition. The English punished rape—“the carnal knowledge of a woman forcibly and against her will”—by hanging. 4 Blackstone, *supra*, at 210, 216.

That means two more cases make the short list: *Woodson v. North Carolina*, 428 U.S. 280, 301 (1976) (plurality op.), and *Lockett v. Ohio*, 438 U.S. 586, 605 (1978) (plurality op.), which outlawed mandatory death sentences. “At the time the Eighth Amendment

was adopted in 1791, the States uniformly followed the common-law practice of making death the exclusive and mandatory sentence for certain specified offenses.” *Woodson*, 428 U.S. at 289; *see also McGautha v. California*, 402 U.S. 183, 198 (1971) (noting the “common-law rule imposing a mandatory death sentence on all convicted murderers”). Premeditated murder was “punished almost universally throughout the world with death,” and an Englishman guilty of that crime—like an early American—would “surely be put to death.” 4 Blackstone, *supra*, at 194.

And of course, there’s *Miranda v. Arizona*. 384 U.S. 436 (1966). *Miranda* is plainly “at odds with American and English legal history.” *Id.* at 531 (White, J., dissenting). “At common law, there was no requirement that a suspect be advised in pre-trial interrogation that he could remain silent or that his statements could be used against him.” Dep’t of Just., *Report to the Attorney General on the Law of Pre-Trial Interrogation* (Feb. 12, 1986), <https://perma.cc/6MXS-BABT>; *see also Wilson v. United States*, 162 U.S. 613, 623–24 (1896). Instead, common-law courts excluded confessions if they were involuntary under all the circumstances. *E.g.*, *Sparf v. United States*, 156 U.S. 51, 54–56 (1895). Receipt of a police warning was proof that the suspect’s confession was voluntary, but was never required. Gerald M. Caplan, *Questioning Miranda*, 38 Vand. L. Rev. 1417, 1423 (1985).

Williams doesn’t resemble these cases from the make-it-up-as-you-go canon. It considered text, history, and tradition. If this Court overturns *Williams*

as *insufficiently* originalist, what principled justification would allow it to leave these anti-originalist cases intact?

2. *Ramos* didn't implicate the same slippery slope. Four Justices didn't even believe "*Apodaca* supplie[d] a governing precedent," rendering *stare decisis* inapt. *Ramos*, 590 U.S. at 101 (plurality op.); *see also id.* at 101–05; *id.* at 133–35 (Thomas, J., concurring) (concluding that pre-*Apodaca* precedents controlled the issue). *Apodaca* was a "badly fractured" 4-1-4 decision, with Justice Powell concurring in the result only because of his "idiosyncratic view" of the incorporation doctrine. *Id.* at 93, 101–02 (plurality op.). While *Apodaca* was a "universe of one," *id.* at 112 (Sotomayor, J., concurring), and "an outlier on the day it was decided," *id.* at 111 (plurality op.), *Williams* is a 7-1 decision with unquestionable precedential value.

And the deciding votes in *Ramos* came from two Justices who—driven by the "racially biased origins" of Louisiana's jury laws—thought that *stare decisis* had to bend. *Id.* at 111–12, 114–15 (Sotomayor, J., concurring); *see also id.* at 115, 126–29 (Kavanaugh, J., concurring) ("[T]he origins and effects of the non-unanimous jury rule strongly support overruling *Apodaca*.").

The history of Florida's six-person juries reveals no such discriminatory origins. The legislative alteration was motivated by cost savings, not racism.²⁵ In 1874,

²⁵ Lowering costs is obviously a race-neutral concern. *See Khorrami v. Arizona*, 143 S. Ct. 22, 27 (2022) (Gorsuch, J., dissenting from the denial of certiorari); *see also* Hans Zeisel, *And Then There Were None: The Diminution of the Federal Jury*, 38 U. Chi. L. Rev. 710, 711 (1971).

Florida’s governor complained to the legislature that “[t]he largest and most unsatisfactory source of expense to the treasury of the State is for jurors and witnesses.” 1874 Senate Journal 16; *accord* 1877 Senate Journal 42–43 (the “expense of jurors and witnesses equals one-third of the whole cost of the State government, excluding that of sessions of the Legislature”). Soon after, the legislature proposed a constitutional amendment allowing it to reduce jury sizes. That proposal received overwhelming, bipartisan support—including from black legislators. It was drafted by a joint committee of eight, which included two black legislators: John Wallace and Frederick Hill. *See* 1874 House Journal 130; Canter Brown Jr., *Florida’s Black Public Officials, 1867-1924* 134–35, 146 (1998). Then, in 1875, Florida’s House of Representatives approved the measure unanimously, with 10 black legislators in support. 1875 House Journal 119. The Senate vote was similarly unanimous. 1875 Senate Journal 159. Four of those senators were black. In 1877, the legislature passed legislation that reduced the size of non-capital juries to six. *See* 1877 House Journal 187–88; 1877 Senate Journal 208.

Petitioner insinuates otherwise. *See* Pet. Br. 36–37. Yet he cites no direct evidence that Florida’s jury size reduction was motivated by a post-Reconstruction conspiracy to keep blacks off juries or deprive racial minorities of their jury trial rights. *See id.*; *cf.* Br. of Fla. Assoc. Crim. Defense Lawyers 4 (“Amicus has not located a letter, journal entry, or floor speech in which a Florida legislator said that reducing the jury size to six was done to preserve white supremacy.”). His best evidence is that *other states* employed *other methods* of disenfranchising black jurors, like allowing non-

unanimous verdicts. But no one would argue that all chiropractors should be prosecuted because one chiropractor, Hamed Kian, preyed sexually on female patients, lost his license, and feloniously kept practicing anyway. His crimes don't impugn the entire profession. And not every post-Reconstruction government action is inherently tarnished with racist motivations.

Petitioner casts further discriminatory aspersions by suggesting that the 1877 law "reinstated an 'integrity, fair character, sound judgment and intelligence' test for jurors." Pet. Br. 12; *see also id.* at 37. But Florida introduced that requirement in 1868, while under federal supervision and occupied by federal troops. *The Acts and Resolutions Adopted by the Legislature of Florida at Its First Session (1868)* 17 (1868). Far from racist, the 1877 legislation added the sensible requirement that potential jurors must not have "formed or expressed an opinion." *The Acts and Resolutions Adopted by the Legislature of Florida at its Ninth Session* 52–53 (1877). Add to all that, Florida in 1873 criminalized discrimination against jurors "by the reason of race, color, or previous condition of servitude." Laws of Fla., ch. 1947, sec. 4 (1873).

* * *

Stare decisis binds together much of this Court's criminal law and procedure jurisprudence. Unlike in *Ramos*, Petitioner identifies no special circumstances that justify overruling a settled precedent like *Williams*, much less anything that would spare *Miranda*, *Strickland*, or *Roper* should *Williams* fall as inadequately originalist.

CONCLUSION

This Court should affirm.

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