

IN THE
Supreme Court of the United States

HAMED KIAN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON WRIT OF CERTIORARI TO THE
FLORIDA DISTRICT COURT OF APPEAL, FOURTH DISTRICT

**BRIEF OF *AMICUS CURIAE* B.R. IN SUPPORT
OF RESPONDENT**

HEIDI NESTEL
UTAH CRIME VICTIMS
LEGAL CLINIC
404 East 4500 South,
Suite B24
Murray, UT 84107
heidi@ucvlc.org

PAUL G. CASSELL
Counsel of Record
UTAH VICTIMS PROJECT
S.J. QUINNEY COLLEGE OF LAW
AT THE UNIVERSITY OF UTAH*
383 South University Street
Salt Lake City, UT 84112
(801) 585-5202
pgcassell.law@gmail.com

(*institutional address for
identification purposes,
not to imply institutional
endorsement)

Counsel for Amicus Curiae

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RECORD CITATION GLOSSARY

The state-court record involving the prosecution of crimes against *amicus* B.R. is available in the Utah Court of Appeals. *Utah v. Trevino*, Case No. 20240654-CA. The appeal is from guilty verdicts in *Utah v. Trevino*, 201907429 (3d Dis. Utah 2025). *Amicus* B.R. cites the testimony and other information in the record by the short form “R” for court of appeals record.

INTEREST OF *AMICUS CURIAE*¹

Amicus B.R. is the victim of multiple child sexual abuse crimes committed against her in Utah.² An eight-person jury considered and rendered guilty verdicts on those charges. Those verdicts are currently on direct appeal to the Utah Court of Appeals. B.R. has an interest in this Court upholding the constitutionality of convictions rendered by eight-person juries, including the convictions in her case.

STATEMENT

For 130 years, Utah has relied on eight-person juries to decide non-capital criminal cases. More than fifty years ago, this Court squarely held that Utah's approach complied with the Constitution. *See Williams v. Florida*, 399 U.S. 78 (1970).

In deciding whether to overturn precedent, this Court has looked to “reliance on the decision” in question as an important factor to weigh in the balance. *See, e.g., Ramos v. Louisiana*, 590 U.S. 83, 106 (2020). Here, the Court should give heavy weight to the reliance interests of crime victims like B.R., who have come forward to testify before eight-person juries. Overturning *Williams* would

1. Pursuant to Sup. Ct. R. 37.6, *amicus* affirms that this brief was not authored in whole or in part by any party or counsel for any party and that no person or entity other than *amicus* or her counsel made a monetary contribution to its preparation or submission.

2. As a juvenile victim of a sexual assault crime, B.R. proceeds pseudonymously here through her initials.

potentially imperil duly obtained convictions rendered by juries with fewer than twelve members in Utah and elsewhere—including the convictions rendered in B.R.’s case. The Court should decline the invitation to unsettle such long-settled law.

FACTUAL BACKGROUND REGARDING B.R.

The conviction in B.R.’s case—currently on appeal to the Utah Court of Appeals—serves to illustrate how she and thousands of other crime victims in Utah and elsewhere have relied on this Court’s previous decisions allowing states to use juries with fewer than twelve persons.

Twenty-nine-year-old Rudolfo Trevino found thirteen-year-old B.R. via Facebook in late 2017. After previous failed attempts at getting B.R. alone in his vehicle, in February 2018, he raped her. R1002. At his request, she had met him in his truck. *Id.* They talked briefly and he tried to kiss her. *Id.* When she refused, he placed himself on top of her, removed her pants, and forced his penis into her vagina. *Id.*

Ignoring B.R.’s physical resistance and her screams of “no,” “it hurts,” and “stop,” Trevino told her to “shut the fuck up, to just moan.” R1002-03. He withdrew in time to ejaculate on her stomach. R1003. She was revolted and confused, not knowing what semen was. *Id.* Laughing at her naïveté, Trevino threw a roll of paper towels at her and told her to clean it up. *Id.* Afterward, Trevino sent her a text message making what happened clear, “Well, yeah, I just took your virginity.” R1641.

After the first rape, B.R. was “confused” and “lost and stopped caring” about life. R1008. She attempted suicide. But throughout 2018 and into 2019, Trevino regularly pressured her into oral sex, intercourse, and other sexual acts in his house and car. R1009, 1086, 1098-99.

If B.R. refused to come over or participate, Trevino “would get really mad,” “say he would hurt me,” or “threaten my family.” He would hit her, hold guns to his own head or point guns at B.R. R1007-08.

Trevino controlled B.R. when they were not together, physically restricting her access to her phone, visiting her junior high school, and demanding she send him in-class photos of herself to prove her whereabouts. He took pictures and videos of him and B.R. during intercourse and other sexual acts. If she hesitated, he would threaten to send B.R.’s previous nudes to other people. “[S]cared to be in trouble with cops,” B.R. kept their interactions hidden. R1009, 1012.

By May 2019, B.R. was attending her junior high school dance, when she received messages from Trevino, demanding she leave the dance with him because he thought she was “with another guy.” After Trevino picked up B.R., officers stopped the vehicle. Trevino ordered B.R. to run, which resulted in B.R. being tased while Trevino assaulted the officers and was arrested. R1012-13.

From jail, Trevino sent messages to B.R., threatening suicide if she did not get his charges dismissed. When B.R. met with a forensic interviewer a few months later, her interview was “short, and [she] was very reluctant... to say anything to anybody.”

In April 2020, the trial court entered a permanent criminal stalking injunction, ordering Trevino to stay 1,000 feet away from B.R.'s home and work and to not "threaten," "harass," "communicate, contact or follow" B.R. R70.

But just weeks later, on May 18, Trevino again began sending B.R. threatening text messages. A day later, Trevino broke into B.R.'s bedroom where she was asleep and demanded that she "go with him" or he would "hurt her." R1026-27, 1032, 1120-22.

On June 22, as B.R. stood waiting at a bus stop, Trevino and an accomplice swerved to a stop in their van, threw the sliding door open, and chased B.R. on foot. R1078-80, 1124, 1291. With the help of passersby, B.R. escaped into a nearby business. R1079, 1285, 1292.

The years of abuse had finally pushed B.R. past her breaking point. Now 15, B.R. realized she was just "a kid," and asked herself, "How am I going to get in trouble?" Feeling "overwhelmed," she told her mother she "needed to talk to [the police] because things are getting out of control."

After a missing person report raised police suspicions, Trevino was ordered to the probation office. R1358. On Trevino's phone was a video of Trevino and B.R. having sex. When asked to identify his sex partner, Trevino claimed not to know who it was. In a search incident to arrest for violation of probation, staff confiscated a microSD card from Trevino's wallet. The SD card contained over 600 images of B.R., including 39 nude images. R1329, 1345-46.

Although B.R. thought Trevino was in jail, she still feared for her safety and traded rooms with her mother. Thus, it was her mother sleeping in that bedroom the night of June 26 when she awoke to the sound of the window screen being removed. Her mother saw Trevino, dressed all in black, looking in through the window. R1397-1404, 1451-52.

On June 28, B.R. met with the police to report the abuse. Trevino was then arrested—an arrest that took a SWAT team, chemical munitions, and a K9 unit to drag Trevino out. R1397–1404.

Trevino was charged with rape of a child, stalking, attempted burglary, two counts of rape, two counts of forcible sexual abuse, and ten counts of sexual exploitation of a minor.

Following Utah’s 130-year-old procedure (enshrined in the State’s Constitution), the judge empaneled an eight-member jury. Trevino did not argue that number was unfair or unconstitutional. At Trevino’s three-day jury trial, the State presented evidence of the events outlined above through the testimony of more than fifteen witnesses and more than two hundred exhibits.

For the prosecution to pursue the case, B.R. had to give detailed and graphic testimony about many of the images found on Trevino’s phone, including in-depth explanations of each of the ten images depicting her being abused while a minor by Trevino. She was also forced to describe specific sexual acts Trevino subjected her to in the images, which constituted child sex abuse materials (CSAM). R1089–97.

Ultimately, the jury found Trevino guilty on sixteen out of seventeen charges. The trial court sentenced Trevino to an aggregate term of 37 years to life and recommended that the parole board not consider parole, noting that while it “rarely” had “occasion to say this ... incapacitation is the object.” R452-56, 1665–69.

Trevino timely appealed, and his appeal is pending before the Utah Court of Appeals. In a victim impact statement submitted to that court, B.R. explained that merely learning of the appeal “sent me into a panic attack.” She described severe anxiety, nightmares, and post-traumatic stress disorder, and explained that because she had testified against Trevino, she lives in fear that he “would want to retaliate against me.” His incarceration, she wrote, “gives me a sense of security that I can try to live my life.” Victim Impact Statement of B.R., *Utah v. Trevino*, 20240654-CA (Utah Ct. App. May 11, 2026).

SUMMARY OF THE ARGUMENT

This Court should not overturn *Williams*. Crime victims have relied on the constitutionality of their state jury trial procedures in making decisions about entering the criminal justice system. This Court should give these strong and reasonable reliance interests heavy weight in its *stare decisis* analysis and decline to overrule *Williams*.

Moreover, neither Petitioner nor his *amici* can point to specific problems stemming from using fewer-than-twelve-person juries. For example, the available data indicate that there is no higher risk of convicting factually innocent defendants when using smaller juries compared to using twelve-person juries. The absence

of empirically proven real-world harms strongly favors retaining *Williams*.

Finally, if this Court nonetheless decides to overturn *Williams*, it should recognize that a criminal trial by fewer than twelve jurors can be harmless error in cases (such as B.R.’s) where the evidence of a defendant’s guilt is overwhelming. Where no reasonable juror could have a different assessment of the evidence, a retrial would be a pointless exercise—and one that would be very traumatizing to crime victims.

ARGUMENT

I. The Court Should Not Overrule *Williams* Because Crime Victims Have Strong Reliance Interests at Stake.

This Court has explained that *stare decisis* is the “foundation . . . of the rule of law.” *Kisor v. Wilkie*, 588 U.S. 558, 586 (2019) (quoting *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 798 (2014)). Therefore, this Court should apply *stare decisis* principles dependably from case-to-case. Consistent application of *stare decisis* “permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals, and thereby contributes to the integrity of our constitutional system of government, both in appearance and in fact.” *Vasquez v. Hillery*, 474 U.S. 254, 265–66 (1986); accord *Ramos v. Louisiana*, 590 U.S. 83, 121 (2020) (Kavanaugh, J., concurring) (noting the need “to apply *stare decisis* principles in a neutral and consistent manner”).

This Court typically does not overrule its precedents—even a decision interpreting the Constitution—without a “special justification.” *Ramos*, 590 U.S. at 120 (Kavanaugh, J., concurring) (quoting *Allen v. Cooper*, 589 U.S. 248, 259 (2020)). In determining whether a sufficient justification exists, the Court has traditionally examined whether the prior decision was “egregiously wrong,” whether overruling it would “unduly upset reliance interests,” and whether the prior decision “has caused significant negative jurisprudential or real-world consequences.” *Id.* at 121–22.

Williams v. Florida, 399 U.S. 78 (1970), was correctly decided, as Florida and its supporting *amici* (including Utah) have persuasively explained. But even if one were to assume *Williams* was somehow egregiously wrong, the remaining *stare decisis* factors strongly support upholding the decision. Specifically, among other reasons, crime victims have relied upon *Williams* and no empirical evidence suggests that *Williams* has caused an increase in wrongful convictions.

A. Crime Victims Have Reasonably Relied on the Constitutionality of Their States’ Jury-Trial Systems.

Just as *stare decisis* is the foundation for the rule of law, *see Kisor*, 588 U.S. at 586, reliance is the cornerstone in that foundation. The justification for *stare decisis* is ultimately premised on the need for stability and predictability—*i.e.*, the ability of individuals and institutions to rely upon this Court’s precedents. *See, e.g., Payne v. Tennessee*, 501 U.S. 808, 827 (1991); *see also* Amy Coney Barrett, *Precedent and Jurisprudential Disagreement*, 91 Tex. L. Rev. 1711, 1730 (2013) (“while

[*stare decisis*] serves many goals, the protection of reliance interests is paramount.” (footnote omitted)). Therefore, “[i]n some cases, reliance provides a strong reason for adhering to established law.” *Janus v. State, County, & Mun. Emps.*, 585 U.S. 878, 926 (2018).

Victims like B.R. have an interest in the stability of the criminal-justice system, and specifically in avoiding retrials based on shifting constitutional rules. B.R.’s case well illustrates this interest.

B.R. was sexually abused for years before she finally made the difficult decision to report Trevino’s sexual assaults. And once Trevino had been arrested, B.R. made the still more difficult decision to testify at his trial. In doing so, she recounted the lengthy history of his sexual abuse and Trevino’s efforts at manipulation. She even was required to review her own child sexual abuse materials (CSAM), identifying her nipples and vagina. And she was cross-examined at length.

Empirical research supports that victims—and specifically victims of violent crimes—suffer severe trauma not just from the criminal act itself, but also from recounting the act before others in pursuit of justice. *E.g.*, Uli Orth, *Secondary Victimization of Crime Victims by Criminal Proceedings*, 15 Social J. Rsch. 313, 316, 321 (2002) (compiling studies); Rebecca Campbell, *The Psychological Impact of Rape Victims’ Experiences with the Legal, Medical, and Mental Health Systems*, 63 Am. Psych. 702, 703–05 (2008) (same). Indeed, some victims—particularly victims of sexual assault—choose *not* to report crimes in part because they do not wish to endure the traumas associated with the criminal justice

system. *E.g.*, Rachael Goodman-Williams et al., *Reasons for Not Reporting Among Sexual Assault Survivors Who Seek Medical Forensic Exams: A Qualitative Analysis*, 39 J. Interpersonal Violence 1905, 1907, 1913–14 (2024); Negar Katirai, *Retraumatized in Court*, 62 Ariz. L. Rev. 82, 96-98 (2025). Victims like B.R. understand that they will be asked to recount their traumatic experiences but nonetheless do so to achieve justice and closure. But victims do not come forward to go through an essentially meaningless exercise—an exercise that Petitioner claims leads to “no verdict at all.” Pet. Br. at 19 (citation omitted).

This Court has cautioned that “in the administration of criminal justice, courts may not ignore the concerns of victims.” *Morris v. Slappy*, 461 U.S. 1, 14 (1983). Of course, in the normal course of a criminal case, “inconvenience and embarrassment to witnesses cannot justify failing to enforce constitutional rights of an accused.” *Id.* But the different question presented here is whether the Court should overrule longstanding precedent and chart a new course that directly harms victims.

In making its decision, this Court should consider the interests of victims such as B.R. in avoiding retrials. B.R.’s experience in the initial trial was extremely traumatizing; but Trevino’s conviction has resulted in a modicum of closure and allowed B.R. to move on. If this Court overturns *Williams*, the potential resulting retrial could require B.R. to go through that ordeal once again—further prolonging what is already a nightmare lasting more than eight years. Retrials naturally exacerbate the harms to victims, particularly because they involve extreme delay in reaching a final decision and achieving a modicum of closure for the victim. *See* Diane M. Daane,

Victim Response to Sexual Assault, in *SEXUAL ASSAULT: THE VICTIMS, THE PERPETRATORS, AND THE CRIMINAL JUSTICE SYSTEM* 93, 111 (Frances Reddington & Betsy Wright Kreisel eds., 3d ed. 2017) (“It is common for a rape victim to have setbacks when she experiences another trauma, and especially when she again becomes involved in the criminal justice proceeding of her rape case.”). Cf. Vestina Virsilaitė, *The Impact of Court Delays on Sexual Assault and Rape Survivors’ Psychological Well-Being and Perceptions of Justice*, J. Crime & Just. Dissertations 10–12, 18 (2025) (“[D]espite the judicial system’s aim to provide justice, prolonged delays and adversarial procedures contribute to further suffering, deterring survivors from seeking or continuing legal action altogether”).

To be sure, when B.R. made the decisions to report her abuse and later to testify about it, she did not have full understanding of all the details of this Court’s Sixth Amendment jurisprudence. But she could reasonably expect that the system she chose to enter was one that courts had reviewed and validated. For 130 years, Utah has used eight-person juries in non-capital felony cases. See Utah Const., Art. I. § 10 (1896). In Utah, it is simply untrue that when “ordinary citizens picture a jury deciding someone’s fate, they picture twelve.” Br. of 38 Current and Former Prosecutors at 16. Indeed, the constitutionality of this eight-juror system, as applied to crimes committed after statehood, has never been questioned by this Court or the Utah Supreme Court.³ And for the last 56 years,

3. In *Thompson v. Utah*, this Court held that Utah violated the *Ex Post Facto* Clause by using an eight-person jury to try a defendant for an act committed while Utah was a territory subject to territorial laws, which specifically required twelve-person juries. See 170 U.S. 343, 345, 355 (1898), *overruled by Collins v.*

Utah has operated its jury system under the explicit blessing of this Court. *See Williams*, 399 U.S. at 86; *see also Johnson v. Turner*, 429 F.2d 1152, 1154 (10th Cir. 1970) (holding that *Williams* dictates that Utah’s eight-person jury system is constitutional).

Against this backdrop, B.R. relied on the constitutionality of eight-person juries. To put things plainly, if B.R. had been told at the outset that her painful and traumatizing trip through the criminal justice system would end up producing “no verdict at all,” she would never have gone through it.⁴ And if *Williams* is overruled, she—and many others like her—may yet decide not to testify at a retrial.

Youngblood, 497 U.S. 37, 47, 51–52 (1990); *see also* 2 Comp. Laws of Utah § 3065 (1888), *repealed by*, Utah Const. Art. I, § 10 (1896) (“A trial jury in a district court consists of twelve.”). While the Court explained in dicta its interpretation of the Sixth Amendment, *see Thompson*, 170 U.S. at 349, that decision is best understood as expressing no opinion on the constitutionality of states using fewer-than-twelve-person juries. Indeed, Utah courts uniformly understood *Thompson* this way. *See, e.g., State v. Hart*, 57 P. 415, 416 (Utah 1899); *State v. Rock*, 57 P. 532, 532 (Utah 1899); *State v. Bates*, 61 P. 905, 906 (Utah 1900). The use of eight-person juries to try non-capital felonies has continued in Utah undisturbed for the 128 years since *Thompson*.

4. One of Petitioner’s *amici* raises concerns that crime victim reporting will decline if the existing regime is left in place. Br. of 38 Current and Former Prosecutors at 3–4. No evidence supports that claim and, to the contrary, overturning numerous otherwise-valid sexual assault convictions seems far more likely to reduce victim reporting, since victims would associate the justice system with a meaningless, traumatic exercise in futility. *Cf.* U.S. Dept. of Justice, Bureau Just. Stat., *Criminal Victimization*, 2024 tbl. 4 (2025) (reporting of sexual assault victimization fell from 46.0% in 2023 to 23.6% in 2024).

See Morris, 461 U.S. at 14 (cautioning that unwarranted reversals “would hardly encourage victims to report violations to the proper authorities” particularly “when the crime is one calling for public testimony about a humiliating and degrading experience”). This Court should weigh these interests of crime victims in considering whether to overrule *Williams*.

B. Crime Victims’ Reliance Interests Are Significant.

In the *stare decisis* analysis, reliance interests can be given varying weight. For example, *stare decisis* is at its “acme in cases involving property and contract rights, where reliance interests are involved; the opposite is true in cases . . . involving procedural and evidentiary rules.” *Payne*, 501 U.S. at 828 (citations omitted); *but see Ramos*, 590 U.S. at 113 (Sotomayor, J., concurring) (“[T]he force of *stare decisis* is at its nadir in cases concerning criminal procedure rules that implicate fundamental constitutional protections.” (citation modified) (quoting *Alleyne v. United States*, 570 U.S. 99, 116 n.5 (2013))). But it is not true that *all* cases involving procedural rules fail to generate strong reliance interests. Indeed, “the force of *stare decisis* is reduced” only when procedural rules “do not govern primary conduct and do not implicate the reliance interests of private parties.” *Alleyne*, 570 U.S. at 119. As explained above, procedural rules, and particularly the act of altering procedural rules, implicate the primary conduct of crime victims—notably victims of sexual assault—who must make life-changing decisions based on the likelihood that reporting crimes and testifying at trial will improve their lives.

It would be a mistake to read this Court’s *stare decisis* cases as foreclosing any reliance on procedural rules. Instead, in several earlier cases, the facts simply did not present legitimate reliance interests.

For example, in *Payne*, the Court observed that criminal defendants could not have relied on the rule that “the Eighth Amendment bars the admission of victim impact evidence during the penalty phase of a capital trial.” 501 U.S. at 811, 828. This conclusion is obvious. It is common sense that the evidence available at trial and sentencing generally does not factor into capital defendants’ decision-making. And even if it did, the Court would not want to encourage murderers’ advance planning in such a manner.

Similarly, in *Alleyne*, this Court overruled precedent and applied *Apprendi*’s jury-factfinding requirement to federal mandatory-minimum sentencing enhancements. *See* 570 U.S. at 116–18. Crime victims do not have an interest in a defendant receiving a particular sentence—they do not enter the criminal justice system in reliance on a particular punishment outcome. Nor could they, with the complexities of state and federal sentencing systems making such outcomes all but impossible to predict in advance. Moreover, crime victims sometimes disagree with the prosecutor’s efforts to maximize punishment. *See* Paul G. Cassell, *On the Importance of Listening to Crime Victims ... Merciful and Otherwise*, 102 Tex. L. Rev. 1381, 1382, 1402–07 (2024). Moreover, the overruling of precedent in *Alleyne* resulted in only new sentencing hearings; it did not require retrials. Therefore, the mandatory-minimum procedures at issue in *Alleyne* did not implicate anyone’s significant reliance interests.

By contrast, here crime victims such as B.R. have relied on the constitutionality and stability of the criminal-justice system when making decisions to report crimes and testify at trials. Unlike other procedural-error cases (such as *Payne* and *Alleyne*), overruling *Williams* would possibly necessitate retrials in thousands of cases in numerous states,⁵ thereby directly implicating the interests of thousands of crime victims.

To be sure, in *Ramos*, this Court suggested that *Apodaca v. Oregon*, 406 U.S. 404 (1972), engendered only insignificant reliance interests. *See* 590 U.S. at 107 (“No one, it seems, has signed a contract, entered a marriage, purchased a home, or opened a business based on the expectation that, should a crime occur, at least the accused may be sent away on a 10-to-2 verdict.”). But *Ramos* involved a procedure (accepting a non-unanimous verdict) that was implicated in only some cases, and therefore, did not threaten the stability of the *entire* criminal justice system in Louisiana and Oregon. Moreover, no one specifically presented the reliance interests of crime victims to the Court; thus, *Ramos* seemingly considered only the reliance interests of the states *qua* states. *See* 590 U.S. at 108–09; *see also id.* at 109–11 (plurality).

A plurality in *Ramos* likewise suggested that Louisiana’s and Oregon’s interests in avoiding retrial of “a slice of their prior criminal cases” did not outweigh “the reliance interests of the American people” in preserving

5. Unless of course the Court acts preemptively to limit the real-world impact of its decision by, for example, limiting retrials to those cases where any jury-size error was truly prejudicial. *See infra* Part II (urging the Court to do exactly that).

“our constitutionally promised liberties.” *Id.* at 110–11 (plurality). But if this were the end of the analysis, then in all constitutional cases, the Court could simply consider only the first *stare decisis* factor (whether the prior decision was correctly decided) and then dispense with the rest. An exclusive focus on the defendant’s assertion of “constitutionally protected liberties” is plainly not this Court’s practice—nor should it be.

A final distinction between *Apodaca* and *Williams* is worth emphasizing. Louisiana’s and Oregon’s reliance on *Apodaca* always rested “on shaky ground,” given the fractured holding, *id.* at 95 (plurality), and its conflict with “two lines” of precedent, *id.* at 125 (Kavanaugh, J., concurring); *see also id.* at 112 (Sotomayor, J., concurring (“*Apodaca* is a universe of one.”)). Here *Williams* stands on a much firmer foundation. It would be a seismic shift for this Court to now tell numerous states—and victims in these states—that their reliance on the constitutionality of their long-standing jury systems was misplaced.

In sum, while crime victims in the states implicated here have not structured their private legal relationships (*i.e.*, formed a contract, purchased property, or entered a marriage) based on *Williams*, they have structured their public affairs on the basic understanding that a given state’s criminal-justice system is constitutional. Because of *Williams*, crime victims such as B.R. have “legitimate expectations,” *id.* at 122 (Kavanaugh, J., concurring), that the jury verdicts reached in their cases were valid. These “legitimate expectations” by victims “who have reasonably relied on . . . precedent,” *id.*, should be weighed heavily in the *stare decisis* balance.

C. *Williams* Has Not Caused Harm, and in Particular Has Not Increased the Likelihood of Wrongful Convictions.

A prior decision’s “real-world effects on the citizenry” are a key factor in determining whether to overturn the precedent. *Ramos*, 590 U.S. at 122 (Kavanaugh, J., concurring). Florida and its supporting *amici* have clearly explained why *Williams* has not produced any significant real-world harm. This fact distinguishes this case from *Ramos*. By definition, the non-unanimous jury rule was triggered only in criminal cases where convictions were most debatable—i.e., where at least one presumably reasonable juror disagreed with a guilty verdict. Here, *Williams*’ holding allowing fewer than twelve jurors applies to a broad swath of cases where there is no reason to doubt the outcome—such as B.R.’s case.

Petitioner and a few of his supporting *amici*, however, attempt to conjure the specter of innocent defendants being uniquely at risk when tried by smaller juries. But whether overturning *Williams* would specifically reduce the number of innocent defendants convicted is an empirical question, requiring consideration of competing possibilities. For example, Petitioner and his *amici* suggest that adding additional jurors could help detect issues relating to the prosecution’s proof that would have gone undiscovered by fewer jurors. But on the other hand, it might be the case that adding several additional jurors would lead to “free-riding” behavior, where jurors pay less attention because they think that the multiple other jurors are doing the work—increasing the risk of wrongful conviction. See Kaushik Mukhopadhyaya, *Jury Size and the Free Rider Problem*, 19 J.L. Econ. & Org. 24,

40 (2003). Evidence also suggests that larger juries create “informational cascades,” where a single juror who might have been ready to vote to acquit on a smaller jury gives in to more jurors with a contrary view on a larger jury. *See* Barbara Luppi & Francesco Parisi, *Jury Size and the Hung-Jury Paradox*, 42 J. Legal Stud. 399, 408–09 (2013).

Without carefully weighing the competing concerns, a few of Petitioner’s *amici* suggest that this Court should essentially assume that juries smaller than twelve jurors produce more wrongful convictions. *See, e.g.*, Innocence Project Br. at 7–9. But theoretical speculation about group dynamics cannot be the correct metric for whether *Williams* creates appreciable risks of erroneous convictions. *Cf. Free v. Peters*, 12 F.3d 700, 705–06 (7th Cir. 1994) (en banc) (rejecting mock jury research because there is little reason to think it can “offer insight into the ability of a real jury, which has spent days or weeks becoming familiar with the case”). Which way the balance tips—or if it tips at all—is an empirical question that must be decided by looking at real-world jury decisions.

Amicus Innocence Project cites nine allegedly “innocent” individuals convicted by juries in the seven states allowing juries with fewer than twelve individuals. *See* Innocence Project Br. at 2 (citing cases from the National Registry of Exonerations). But there are two problems with the Innocence Project’s list: First, even assuming these nine persons are all “innocent,”⁶ the

6. One can debate whether the individuals listed are truly “innocent,” as the Innocence Project proclaims, Innocence Project Br. at 2, or are instead individuals whom the prosecution only

Innocence Project’s examples are dated. The Project cites only two cases from the twenty-first century—with the last one from 2007. This paucity of recent cases may be because “we should expect the wrongful conviction rate in this country to have exhibited a decisive downward trend over the last several decades,” as new and improved technologies assist law enforcement in prosecuting only the guilty. *See Cassell, supra*, at 838–44.

Second, the Innocence Project’s list seems designed to create the impression that jury size was the cause of the allegedly wrongful convictions. But for purposes of this case, the relevant question is not whether “[i]nnocent people have repeatedly been convicted by non-twelve-person juries.” Innocence Project Br. at 9. Over the last several decades, the seven states using smaller juries have undoubtedly prosecuted hundreds of thousands of felony criminal cases. Even if the risk of an innocent person being wrongfully convicted is extremely low, *see Cassell, Overstating America’s Wrongful Conviction Rate, supra*, 60 Ariz. L. Rev. at 852 (concluding that the risk appears

failed to prove guilt beyond a reasonable doubt. The Project’s list comes from the National Registry of Exonerations, which broadly counts as an “exonerated” person many people who have had their conviction set aside for reasons other than proven “innocence.” *See Paul G. Cassell, Overstating America’s Wrongful Conviction Rate? Reassessing the Conventional Wisdom About the Prevalence of Wrongful Convictions*, 60 Ariz. L. Rev. 815, 828 n.66 (2018). For example, while one of the Project’s listed “innocent” persons (Richard Paey) was ultimately pardoned, the pardon appears principally to have been an act of clemency responding to an extraordinarily severe sentence—not an innocence determination. *See Paey v. State*, 943 So. 2d 919, 920–24 (Fla. Dist. Ct. App. 2006).

to be lower than that of being struck by lightning), some isolated instances of wrongful convictions are essentially inevitable in a vast sea of criminal prosecutions. Therefore, the key issue is a *comparative* one: whether the risk of wrongful convictions is higher in states using juries with fewer than twelve jurors than in the other states.

In *Ramos*, the Innocence Project filed an *amicus* brief presenting such comparative data. The Project explained that Louisiana had the nation's second-highest Registry exoneration rate and attributed that high rate to the State's non-unanimous-jury rule. *See* Br. of Innocence Project et al. as *Amici* in Support of Petitioner, at 30–31, *Ramos v. Louisiana*, 590 U.S. 83 (2020) (No. 18-5924). But now, a few years later, the Innocence Project never attempts to compare the Registry exoneration rate in Florida and six other states using smaller juries for felony trials with the exoneration rate in those states using twelve-person juries.

Perhaps the reason that the Innocence Project fails to make a comparison is that, inconveniently for its argument, the relevant comparison shows a *lower* exoneration rate in the states using fewer than twelve jurors in felony cases.⁷ Using the Innocence Project's

7. To permit verification and replication of the data presented here, an appendix to this brief recounts the exact figures and sources used. *See infra*, Appendix.

As Florida points out in its merits brief, while seven states use smaller-than-twelve-person juries in felony cases, a total of 27 states use such juries for some of their misdemeanor cases. *See* Florida Br. at 40–41 n.10. This brief's calculations focus exclusively on the seven states using smaller juries for felony cases. Making an adjustment for misdemeanor cases would not significantly

chosen source—the National Registry of Exonerations—since 1989⁸ there have been 3,684 exonerations in state cases.⁹ Because this case involves Florida, it is informative to compare Florida’s per capita exoneration rate¹⁰—with the national average:

Jurisdiction	Exonerations/ 100,000 Persons
Average for all fifty states	1.27
Florida	0.55

Florida’s per capita exoneration rate is plainly well below the national average.¹¹

alter the figures presented here, since registry exonerations only rarely involve misdemeanors. *See* Nat’l Registry of Exonerations, *Explore Exonerations*, <https://exonerationregistry.org/cases> (“Misdemeanor” case characteristic: 122 of 3,863 exonerations since 1989 or 3.2%).

8. DNA evidence became available in 1989, which was the “dawn of a new era” of exonerations. *See* Information, “Exoneration Era,” <https://exonerationregistry.org/cases>. The National Registry conveniently breaks out this modern era (1989 to date) from earlier data. *Id.*

9. As of September 30, 2026, the registry lists 3,863 exonerations since 1989. Some of these are outside the 50 states (e.g., federal court, the District of Columbia, Puerto Rico, and Guam). Backing out these cases from the total leaves 3,684 exonerations since 1989 in the fifty states.

10. Florida had 94 exonerations during this period. Population data for the time period is derived by averaging census population figures for 1990 and 2020. *See* Appendix.

11. It would likely be better to calculate an exoneration rate per violent crime rather than per capita, since jury trials depend on

It is also possible to compare the Registry exoneration rate since 1989 for all seven states that use smaller juries (assuming, generously, that every exoneration case involves a sub-twelve-member jury¹²) with the exoneration rate in the other 43 states.

Jurisdiction	Exonerations/ 100,000 Persons
43 states with 12-person juries	1.34
7 states with sub-12-person juries	0.94

The states with fewer-than-twelve-person juries have a significantly lower exoneration rate.

Drilling into the data a bit more, one very interesting point emerges. Of the seven states, the state with the highest per capita Registry exoneration rate is Louisiana. The Innocence Project has attributed this high exoneration rate to Louisiana's (previously existing) non-unanimous jury rule. *See Ramos v. Louisiana*, Br. of Innocence Project et al. as *Amicus* in Support of Petitioner, *supra*, at 30–31. This attribution suggests that, to avoid the potential confounding effect of non-unanimous juries on

the existence of a crime rather than the existence of a person. But to maintain consistency with the Innocence Project's methodology, we report per capita figures here. Based on a preliminary review, switching to per-violent-crime figures would not significantly change the comparisons discussed in text.

12. In the seven states, twelve-person juries are used for some serious cases, such as capital cases.

wrongful conviction rates, Louisiana should be backed out of the seven states discussed above (and likewise with Oregon, which also used non-unanimous juries, which should be backed out of the 43 states). With those two adjustments, the comparison shows:

Jurisdiction	Exonerations/ 100,000 Persons
42 states with 12-member juries	1.34
6 states with sub-12-member juries	0.83

Note: Louisiana and Oregon excluded because of their use of non-unanimous juries.

Once again, the states with fewer-than-twelve jurors have a significantly lower exoneration rate.

Pointing in the same direction as these figures, a detailed empirical study of jurisdiction-specific conviction rates found a *lower* error rate in Utah (with eight-person juries) than North Carolina (with twelve-person juries). See Paul G. Cassell, *Jurisdiction-Specific Wrongful Conviction Rate Estimates: The North Carolina and Utah Examples*, 60 Ariz. L. Rev. 891, 897–900, 907 (2018) (estimating an actual-innocence rate for North Carolina between 0.023% and 0.090%, with a rate for Utah between 0.017% and 0.066%).

In light of these comparisons, it seems likely that the causes of wrongful conviction lie elsewhere than in the number of jurors who consider the evidence. Indeed, the

National Registry of Exonerations identifies the leading factors as perjury or false accusation, official misconduct, mistaken witness identification, misleading forensic evidence, and the like.¹³ Jury size is not listed as a factor.

Of course, these calculations do not definitely prove that states using fewer than twelve jurors have lower wrongful conviction rates than the other states. Several caveats should accompany such calculations, including possible differences between states in how Registry exonerations are reported. But none of these caveats were discussed in the Innocence Project’s 2019 amicus brief in *Ramos*. Thus, just as the Innocence Project pointed to Louisiana’s high rate of exonerations under the non-unanimity rule at issue in that case, it seems equally fair to highlight the lower rate of exonerations in Florida’s and the six other states using, in felony cases, the sub-twelve-person juror rule at issue in this case. Against that backdrop, there do not appear to be any proven “significant ... real-world consequences” (*Ramos*, 590 U.S. at 122 (Kavanaugh, J., concurring)) that would justify overruling *Williams*.

D. Different Judicial Methodologies Do Not Render Prior Decisions “Egregiously Wrong.”

Petitioner argues that *Williams* was wrongly decided because it conflicts with the original public meaning of the Sixth Amendment. Pet. Br. at 29–30. Not so. Florida demonstrates persuasively that *Williams* was correctly decided under this Court’s current jurisprudence, which

13. See Nat’l Registry of Exonerations, *Understanding the Registry*, <https://exonerationregistry.org/understanding-registry>.

relies on history for principles rather than exact matches. See Florida Br. at 22 (citing *United States v. Rahimi*, 602 U.S. 680, 692 (2024)).

But even assuming that *Williams* was insufficiently originalist or erred in its application of that methodology, that would be no reason to jettison it. Put succinctly, that a prior decision may have “used different interpretive tools” than are now in vogue “is not a reason on its own to discard precedent.” *Ramos*, 590 U.S. at 112 (Sotomayor, J., concurring); see also *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024) (“By overruling *Chevron*, though, the Court does not call into question prior cases that relied on the *Chevron* framework.”). Were it otherwise, the Court would need to constantly revisit earlier decisions that were, arguably, decided with differing approaches. For example, were this Court to overrule *Williams*, to maintain consistency, this Court would presumably also need to overrule *Mapp*, *Miranda*, and a host of other decisions. See Florida Br. at 5, 45–49.

The exclusionary rule this Court created in *Mapp v. Ohio*, 367 U.S. 643 (1961), bears no connection to the Fourth Amendment’s original public meaning. See generally Office of Legal Pol’y, U.S. Dept. of Justice, Report to the Attorney General on the Search and Seizure Exclusionary Rule (1986), reprinted in 22 U. Mich. J.L. Reform 573 (1989). As one scholar has explained, tort law remedies were “clearly the ones presupposed by the Framers of the Fourth Amendment and counterpart state constitutional provisions. . . . Indeed, the idea of exclusion was so implausible that it seems almost never to have been urged by criminal defendants, despite the large incentive that they had to do so, in the vast number of criminal cases

litigated in the century after Independence.” Akhil Reed Amar, *The Constitution and Criminal Procedure: First Principles* 21 (1997). *Mapp* imposed an exclusionary-rule regime on the states—even though most of the states did not generally apply the exclusionary rule when *Mapp* was decided. See Paul G. Cassell, *The Mysterious Creation of Search and Seizure Exclusionary Rules Under State Constitutions: The Utah Example*, 1993 Utah L. Rev. 751, 793–94 n.272. If *Williams*—which at least considered the relevant history—is to be overruled because it is insufficiently originalist, presumably *Mapp* must fall too.

Resting on even more dubious originalist foundations is *Miranda v. Arizona*, 384 U.S. 436 (1966). See generally Office of Legal Pol’y, U.S. Dept. of Justice, Report to the Attorney General on the Law of Pre-trial Interrogation (1986), reprinted in 22 Mich. J.L. Reform 437 (1989). The 5–4 *Miranda* decision imposed a new warnings-and-waiver regime on all fifty states that none had followed before. See, e.g., *Miranda*, 384 U.S. at 531 (White, J., dissenting) (“[T]he Court’s holding today is neither compelled nor even strongly suggested by the language of the Fifth Amendment, is at odds with American and English legal history, and involves a departure from a long line of precedent.”). Nonetheless, in *Dickerson v. United States*, this Court chose to retain the ahistorical *Miranda* rules—even though Congress had passed a statute replacing them—because the Court believed that the warnings “have become part of our national culture.” 530 U.S. 428, 443 (2000). Not only is *Miranda* divorced from any historical connection, but it continues to inflict untold harm on America’s criminal justice system today. See generally Paul G. Cassell & Richard Fowles, *Still Handcuffing the Cops? A Review of Fifty Years of*

Empirical Evidence of Miranda's Harmful Effects on Law Enforcement, 97 B.U. L. Rev. 685 (2017).

To maintain the consistent, evenhanded application of *stare decisis* to cases implicating crime victims' interests, the Court should adhere to *Williams* rather than engage in what might be called "one-way originalism"—adopting a strict historical understanding of the Constitution when it serves the interests of criminal defendants but turning a blind eye to original public meaning when crime victims' interests are implicated.

II. If this Court Overrules *Williams*, It Should Also Hold that Traditional Protections Against Overturning Otherwise Valid Criminal Convictions Remain in Place.

For all the reasons just explained, this Court should reach the same conclusion as *Williams* and allow Utah and other states to continue using fewer-than-twelve-person juries. If the Court nonetheless determines to overrule *Williams*, it should make clear that any newly identified "error" in jury size can be harmless. B.R.'s case illustrates the importance of such clarification.

A constitutional error at trial generally does not require automatic reversal. *Chapman v. California*, 386 U.S. 18, 21–22 (1967). Instead, an error usually requires reversal only if it was likely to have affected the outcome. *Id.* Thus, "most constitutional errors can be harmless." *Neder v. United States*, 527 U.S. 1, 8 (1999). If the defendant had the assistance of counsel in a trial with an impartial adjudicator, "there is a strong presumption" that any errors are subject to harmless-error analysis. *Id.*

The harmless-error analysis in this case is quite different from that in *Ramos*. When a jury verdict is not unanimous, by definition at least one presumed-to-be-reasonable juror concluded that the defendant had not been proven guilty. An error in a criminal case can only be “harmless if without the error *no reasonable juror would have voted to acquit*.” *United States v. Williams*, 698 F.3d 374, 383 (7th Cir. 2012) (emphasis added). Thus, *a fortiori*, where one reasonable juror has voted to acquit, the error of not requiring unanimity is automatically harmful. Indeed, in *Ramos*, perhaps because of this syllogism, no one argued that a jury-unanimity error could be harmless. 590 U.S. at 111.

Here, by contrast, in many cases it can easily be shown that no reasonable juror added to the case would have reached a different result. B.R.’s case is one such example. Eight presumably reasonable jurors unanimously found that the defendant was guilty. And the evidence of guilt was overwhelming, as outlined in the statement of facts above. Trevino even admitted to some of the crimes. Adding jurors #9, #10, #11, and #12—who must be presumed to act reasonably—would have made no difference.

To be sure, this Court has held that certain “structural errors” are not subject to harmless-error review. *See Weaver v. Massachusetts*, 582 U.S. 286, 294 (2017). But the structural-error exception applies only to a “very limited class of cases.” *Neder*, 527 U.S. at 8 (quoting *Johnson v. United States*, 520 U.S. 461, 468 (1997)) (citing denial of counsel, a biased trial judge, racial discrimination in grand-jury selection, denial of the right to self-representation, denial of a public trial, and a defective reasonable-doubt instruction as paradigmatic examples). Indeed, “the defining feature of a structural

error is that it ‘affects the framework within which the trial proceeds,’ rather than being ‘simply an error in the trial process itself.’” *Weaver*, 582 U.S. at 295 (quoting *Arizona v. Fulminante*, 499 U.S. 279, 310 (1991)) (citation modified). Thus, an error is structural if: “the error always results in fundamental unfairness”; “the right at issue is not designed to protect the defendant from erroneous conviction but instead protects some other interest”; or “the effects of the error are simply too hard to measure.” *Id.* at 295–96.

None of these three circumstances apply here. First, nothing is “fundamentally unfair” about using fewer than twelve jurors. Utah has been doing so for 130 years and, so far as counsel can determine, there are only a couple of reported appellate cases in which a criminal defendant even questioned the approach. *See State v. Barlow*, 771 P.2d 662, 662 (Utah Ct. App. 1989) (“The *Williams* decision left considerations of jury size to Congress and the states” (internal quotation omitted); *Johnson*, 429 F.2d at 1154 (10th Cir. 1970) (same).

Like Utah, Florida has been using fewer-than-twelve-person juries since the late nineteenth century. And many other states adopted fewer-than-twelve-person juries only after this Court explicitly approved the practice in *Williams*. It would be one thing to question the result in *Williams*; but it would be quite another to suggest that multiple states have treated tens of thousands of criminal defendants with fundamental unfairness by using a procedure this Court specifically approved.

Second, Petitioner himself argues that the common-law rule requiring twelve jurors was designed, at least in part, to protect against erroneous convictions. Pet. Br.

at 3, 34–35. Although B.R. disputes that using fewer than twelve jurors in fact results in appreciable numbers of erroneous convictions, *see supra* Section I.C, such a rule is significantly different in kind than the dignity interests at stake in other rights that fall into this structural error category, such as the right to conduct one’s own defense without an attorney. *See Weaver*, 582 U.S. at 295.

Third, the effect of any error in jury size is not difficult to determine. Lower courts can simply follow the standard harmless-error approach of reviewing the evidence and determining whether *any* reasonable juror could disagree with the verdict the jury rendered. The claim that it would be impossible to make such an assessment founders on the fact that some lower courts have already made such harmless-error determinations. *See, e.g., United States v. Johnson*, 117 F.4th 28, 43–44 (2d Cir. 2024) (finding that the case was “not close” and that “[o]ne additional juror participating in the deliberation would not have affected the outcome on the counts that resulted in conviction”), *en banc denied*, 143 F.4th 184 (2d Cir. 2025).

Automatically reversing all unanimous jury convictions in felony cases currently on direct appeal from multiple states¹⁴ would be a blunderbuss approach that would upset thousands of convictions without regard to the weight of the evidence. This Court has cautioned that “[t]he

14. No plausible argument can be made for extending federal habeas review to jury-size errors, even assuming *Williams* were to be overruled. *See Edwards v. Vannoy*, 593 U.S. 255 (2021) (holding that *Ramos* did not apply retroactively on federal collateral review); *but cf. Watkins v. Ackley*, 523 P.3d 86, 102–03 (Or. 2022) (extending state habeas relief to convictions obtained by non-unanimous juries, following *Ramos*).

reversal of a conviction entails substantial social costs: it forces jurors, witnesses, courts, the prosecution, and the defendants to expend further time, energy, and other resources to repeat a trial that has already once taken place; victims may be asked to relive their disturbing experiences.” *United States v. Mechanik*, 475 U.S. 66, 72 (1986). Indeed, in some cases, the “[p]assage of time, erosion of memory, and dispersion of witnesses may render retrial difficult, even impossible.” *Id.* (citation omitted). Thus, while reversal “may, in theory, entitle the defendant only to retrial, in practice it may reward the accused with complete freedom from prosecution,” and thereby “cost society the right to punish admitted offenders.” *Id.* (citation omitted).

Even if a defendant is ultimately convicted in a second trial, “the intervening delay may compromise society’s interest in the prompt administration of justice, and impede accomplishment of the objectives of deterrence and rehabilitation.” *Id.* (citation omitted). To be sure, these “costs of reversal and retrial are an acceptable and often necessary consequence when an error in the first proceeding has deprived a defendant of a fair determination of the issue of guilt or innocence. But the balance of interest tips decidedly the other way when an error has had no effect on the outcome of the trial.” *Id.*

CONCLUSION

This Court should reaffirm *Williams* and affirm the judgment below.

Respectfully submitted,

HEIDI NESTEL
UTAH CRIME VICTIMS
LEGAL CLINIC
404 East 4500 South,
Suite B24
Murray, UT 84107
heidi@ucvlc.org

PAUL G. CASSELL
Counsel of Record
UTAH VICTIMS PROJECT
S.J. QUINNEY COLLEGE OF LAW
AT THE UNIVERSITY OF UTAH*
383 South University Street
Salt Lake City, UT 84112
(801) 585-5202
pgcassell.law@gmail.com

(*institutional address for
identification purposes,
not to imply institutional
endorsement)

Counsel for Amicus Curiae

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APPENDIX

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**APPENDIX — REGISTRY
EXONERATION CALCULATIONS**

Jurisdiction	Registry Exonera- tions 1989-2026	Average Pop. 1990 & 2020 (millions)	Exonerations Per Capita (per 100K)
U.S. (states)	3,684	289.4	1.27
Florida	94	17.2	0.55
43 states	3,254	243.7	1.34
7 states	430	45.7	0.94
42 states	3,210 ¹	240.2	1.34
6 states	341 ²	41.3	0.83

Data Sources:

“Registry Exonerations 1989-2026” figures taken from The National Registry of Exonerations, <https://exonerationregistry.org/>, last visited September 30, 2026 (summing exonerations for the fifty states only by backing out 179 exonerations from other-than-state jurisdictions) (using exonerations from 1989 to date).

1. Derived by backing out 44 exonerations from Oregon.

2. Derived by backing out 89 exonerations from Louisiana.

Appendix

“Average population – 1990 & 2020” is the average of the 1990 and 2020 state population figures, taken from *Historical Population Change Data (1910-2020)*, U.S. Census Bureau, <https://www.census.gov/data/tables/time-series/dec/popchange-data-text.html>. Note: All population figures are millions rounded to one decimal place. Arithmetic summations and averaging of the groups of states performed using standard artificial intelligence calculators.

The “7 states” are the seven states using fewer-than-twelve-person juries in felony cases, namely, Florida, Arizona, Connecticut, Indiana, Louisiana, Massachusetts, and Utah. The “43 states” are the remainder.

The “6 states” are the same as the 7 states above, excluding Louisiana (which used non-unanimous juries for a significant part of the time frame above). The “42 states” are the same as the 43 states above, excluding Oregon (which used non-unanimous juries for a significant part of the time frame above).

“Exonerations per capita” are the number of exonerations for the state (or, collectively, group of states) divided by the population for the state (or, collectively, group of states), per 100,000 persons.