

No. 25-6623

In the Supreme Court of the United States

HAMED KIAN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

*On Writ of Certiorari to the
Fourth District Court of Appeal of Florida*

**BRIEF OF *AMICUS CURIAE*
UTAH ASSOCIATION OF COUNTIES
IN SUPPORT OF RESPONDENT**

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QUESTION PRESENTED

Whether the Court should overrule *Williams v. Florida*, 399 U.S. 78 (1970), and hold that the Sixth and Fourteenth Amendments require the use of 12-person juries.

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INTEREST OF *AMICUS CURIAE*

The Utah Association of Counties is a statewide, non-profit organization composed of the 29 counties of Utah that aims to strengthen county government and improve the well-being of Utah's citizens.¹

Amicus has a direct and substantial interest in the question presented. Its members comprise counties in one of the seven States that employ juries of fewer than 12 in felony cases. For over half a century, Utah has relied on this Court's sound decision in *Williams v. Florida*, 399 U.S. 78 (1970), to organize its criminal justice system. Utah has built courtrooms, jury boxes, and jury deliberation rooms to accommodate juries of eight. *Amicus's* member counties have convicted thousands of murderers, rapists, child abusers, and other violent criminals with eight-member juries. Should the Court take the extraordinary step of overruling *Williams*, those counties would need to spend millions of dollars on years of construction and retrials, making difficult decisions about which convicted criminals to allow to plead out or let off scot-free. Those counties would also have to persuade thousands of victims and witnesses to once again relive the worst day of their lives.

¹ Under Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person other than *amicus curiae* or its counsel made a monetary contribution to its preparation or submission.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Utah’s justice system is already strained. Just last month, the presiding judge of Utah’s Third Judicial District—its most populous—alerted the bar to “the unprecedented challenges that threaten to substantially alter local practice and delay justice.” Mow, *The State of the Third District*, 39 Utah B.J. (Sep/Oct 2026) at 13, <https://perma.cc/8DK9-KYSZ>. The Third District “is under extraordinary strain due to high caseloads, a severe shortage of personnel and physical space, new legislative mandates, and an imminent surge in case filings from the closure of local justice courts.” *Id.* Judge Mow reported a 10% annual increase in jury trials, to 219; that “each judge, commissioner, and judicial assistant” is working “114% of a ‘standard’ caseload”; that judges are working “nights and weekends to keep up” but that it is “not sustainable”; and that the likely consequences will be “[s]cheduling many months in the future,” “[d]elays in ... proposed judgments, orders, and other filings,” “fewer hearings,” “time limits on civil and domestic hearings and trials,” and “[s]tacking and bumping of civil and domestic trials.” *Id.* at 13-14.

Overruling *Williams* would exacerbate those challenges and inflict catastrophic damage on Utah’s justice system. It could require overturning hundreds of convictions currently on direct appeal, overwhelming State resources and endangering public safety. As of October 2026, 251 criminal appeals pending in Utah courts involved convictions from juries of fewer than 12, including:

- **58 homicides** averaging 5 days of trial each, including 13 aggravated murders (25-to-life or life without parole), 32 murders (15-to-life), 4 attempted murders, 3 manslaughters, 1 negligent homicide, 2 child abuse homicides, and 3 automobile homicides;
- **43 sexual assaults** averaging 3.2 days of trial each, including 19 rapes, 10 object rapes, 6 forcible sex abuses, 4 aggravated sexual assaults, and 4 forcible sodomies;
- **71 sexual assaults against children** averaging nearly 3 days of trial each, including 14 child rapes, 41 aggravated child sex abuses, 3 child sex abuses, 7 child sodomies, 1 attempted child sodomy, 3 aggravated sex assaults of a child, and 2 sexual exploitations of a minor;
- **9 aggravated kidnappings, 1 aggravated human smuggling, and 2 unlawful detentions** averaging nearly 3 days of trial each;
- **1 child kidnapping and 2 instances of child human trafficking** averaging 3.7 days of trial each; and
- **15 aggravated assaults** averaging nearly 2 days of trial each.²

If these convictions are reversed because this Court overrules *Williams*, the State must decide which of these heinous crimes it can afford to retry—and which it must allow to plead out or be dismissed

² Utah Attorney General's Office, *Pending Appeals from Felony Jury Trials*, <https://perma.cc/Q4ZD-VEE3>.

entirely. Forty-seven of those convictions involved offenses that occurred ten or more years ago; the oldest is an aggravated child sex abuse case from 1991. For those cases where witnesses are still available, victims and witnesses—including many children—will suffer through months of pretrial litigation before a second crucible of trial to reconvict criminals already convicted by a unanimous jury of their peers. Some dangerous criminals could be released into the community pending retrial. The following represents just a small sample of criminals currently appealing their jury convictions:

- Jerrod Baum, who was found guilty of kidnapping two teenagers, murdering them with a knife in front of his girlfriend, and dropping their bodies down an abandoned mine shaft;
- Charles Tracy Camara, who was found guilty of raping, sodomizing, and sexually abusing a 13-year-old girl he groomed through an after-school soccer club;
- Fernando Flores, who was found guilty of aggravated kidnapping, aggravated assault, and domestic violence in the presence of a child after holding his girlfriend for three days, smashing her face into a counter, and burning her with boiling water while her children were in the next room;
- Ross Wesley Lebaron, who was found guilty of five counts of rape after he forced his oldest daughter to marry him, raped her almost weekly for twenty years, and caused her to bear seven of his children; and

- Miguel Angel Leon Gomez, who was found guilty of raping and sodomizing his coworker in a dairy farm shed on Halloween.

In short, reversing *Williams* would wreak untold havoc on Utah's already overburdened justice system. And it would upend the lives of countless victims and their families who believed they had finally received a measure of justice and could move forward with their lives.

No constitutional basis exists to upend Utah's criminal justice system this way. *Williams* was correctly decided. The Sixth Amendment expressly guarantees just two jury features: that the jury will be "impartial" and that the jurors will be drawn from "the State and district wherein the crime shall have been committed." U.S. Const. amend. VI. *Williams* surveyed the "history and language of the Constitution," and "the reasoning of [the Court's] past decisions," and concluded that not "every feature of the jury as it existed at common law ... was necessarily included in the Constitution wherever that document referred to a 'jury.'" 399 U.S. at 91, 103. The Court then held that while the number of jurors should be "large enough to promote group deliberation, free from outside attempts at intimidation, and to provide a fair possibility for obtaining a representative cross-section of the community," a 12-person requirement was not indispensable to "the essential feature of a jury." *Id.* at 100. Americans receive their constitutional due when six or more laymen "interpos[e] [themselves] between the accused and ... accuser" and provide "the community participation and shared responsibility

that results from [their] determination of guilt or innocence.” *Id.*

That analysis comports with the Court’s originalist approach in interpreting other constitutional provisions. Petitioner’s historical evidence—much of it the same *Williams* found lacking—does not undermine the Court’s conclusion that the Constitution permits six-member juries.

Even if *Williams* were wrongly decided, the Court should affirm it as a matter of *stare decisis*. *Williams* is not “egregiously wrong.” *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 268 (2022). The “‘quality’ of [its] reasoning” is high. *Trump v. Slaughter*, 146 S.Ct. 2283, 2302 (2026). It is “consisten[t]” with the Court’s other cases. *Id.* Its rule is “workab[le].” *Id.* And the reliance interests at stake are enormous. Finally, because the question presented turns on a historical query, “something more than ‘ambiguous historical evidence’ is required before [the Court] will ‘flatly overrule’” this “‘major decision[.]’” *Gamble v. United States*, 587 U.S. 678, 691 (2019). A party seeking such a change bears a “particular burden under *stare decisis*” to “sett[le] the historical question with enough force.” *See id.* at 699-700. Petitioner has not “come close” to meeting it. *Id.*

ARGUMENT

I. *Williams* was correctly decided.

A. *Williams* surveyed the historical record to determine the Sixth Amendment's original public meaning.

The Sixth Amendment provides: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.” U.S. Const. amend. VI. Its plain text thus guarantees just two jury features: that the jury will be “impartial” and that jurors will be drawn from “the State and district wherein the crime shall have been committed.” *Id.* So when the Framers codified the jury right, they omitted not only the traditional vicinage requirement but also—unlike many State constitutions and statutes—other traditional common-law jury characteristics such as number and property requirements. *See* Resp.Br.15, 25-27.

Petitioner and several *amici* echo Justice Harlan’s accusation that *Williams* “gave no weight to the historical record.” *See, e.g.,* Pet.Br.2. But that reading of *Williams* is untenable. As several members of the Court have already recognized, *Williams* “engag[ed] in a detailed discussion of the original meaning of the Sixth Amendment jury-trial right.” *Ramos v. Louisiana*, 590 U.S. 83, 152 (2020) (Alito, J., dissenting).

Williams began by referencing the extensive historical analysis the Court conducted just two years

earlier in *Duncan v. Louisiana*, 391 U.S. 145 (1968), which incorporated the criminal jury right against the States. 399 U.S. at 86-87. But concluding that that history “afford[ed] little insight into the considerations that gradually led the size of th[e] body to be generally fixed at 12,” *Williams* analyzed still more sources. *Id.* at 87.

In doing so, it consulted Lord Coke, James Thayer, and other scholars from the nineteenth and twentieth centuries that discussed the ancient right. After a lengthy, careful analysis, *see id.* at 87-90 & nn.19-25, the Court concluded there was no satisfactory answer for where the number 12 had come from, and that this “particular feature of the jury system appears to have been a historical accident, unrelated to the great purposes which gave rise to the jury in the first place,” *id.* at 89-90.

Next, the Court reviewed its previous opinions, which had “assumed” this historical accident had been “immutably codified into our Constitution.” *Id.* at 90. It found very little analysis in those opinions. Instead, they largely quoted passages noting that “at common law the jury did indeed consist of 12.” *Id.* at 91. Again, the Court carefully consulted academic sources and documented its conclusions in a series of lengthy footnotes. *See id.* at 90-92 & nn.26-31.

The Court then sought to discern “the intent of the Framers” to determine whether “if a given feature existed in a jury at common law in 1789, then it was necessarily preserved in the Constitution.” *Id.* at 92. The Court consulted the Constitution’s original jury guarantee in Article III, the records of the

Constitutional Convention, Blackstone, James Madison’s personal correspondence, and the Sixth Amendment’s legislative history. *Id.* at 92-96 & nn.32-41.

Only then did the Court observe “[t]hree significant features” in “the background of the Constitution’s jury trial provisions”: (1) “even though the vicinage requirement was as much a feature of the common-law jury as was the 12-man requirement, the mere reference to ‘trial by jury’ in Article III was not interpreted to include that feature”; (2) “[p]rovisions that would have explicitly tied the ‘jury’ concept to the ‘accustomed requisites’ of the time were eliminated”; and (3) “contemporary legislative and constitutional provisions indicate that where 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.” *Id.* at 96-97 & nn.42-44. On the last point, the Court compared the language of the Sixth Amendment to the language of the Seventh Amendment, as well as that of the Judiciary Act and other early legislation. *Id.*

After “examining that history,” the Court concluded “the Sixth Amendment did not incorporate every feature of the common-law right.” *Ramos*, 590 U.S. at 152 (Alito, J., dissenting). *Ramos* did not dispute this fundamental holding, *id.*, and *Williams* has been repeatedly reaffirmed since 1970, *infra* at 26.

B. *Williams* has withstood the test of time.

Petitioner asserts that the phrase *trial by an impartial jury* “unmistakabl[y]” “referred to a 12-

person jury at the time the Sixth Amendment was enacted.” Pet.Br.18-19. And one *amicus* claims “historical materials unknown or unavailable to the [Williams] Court” make it “plain” the Framers “used a settled legal term that meant twelve.” Su.Br.2-3.

Those contentions are overstated. **First**, substantial evidence—including evidence cited by Petitioner—confirms that the Founders understood *jury* to refer to panels of fewer than 12. **Second**, Petitioner’s case law does not establish *jury* required 12. **Third**, evidence from the Carolinas does not contradict *Williams*. And **fourth**, the fact that a 12-member body may have formed part of the usual jury does not mean that the Framers constitutionalized that number.

1. *Jury* did not invariably mean “12 men.” Just three years after *Williams*, the Court cited additional scholarship to conclude that “[a]lthough *Williams* proceeded on the premise that the common-law jury was composed of 12 members, juries of less than 12 were common in this country throughout colonial times.” *Colgrove v. Battin*, 413 U.S. 149, 158 n.12 (1973) (citing Fisher, *The Seventh Amendment and the Common Law: No Magic in Numbers*, 56 F.R.D. 507, 529-32 (1973)). For example, between 1665 and 1699, New York law provided that “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 Lyon, *The Colonial Laws of New York from the Year 1664 to the Revolution* 6, 42 (1896). Pennsylvania was governed by the same law until 1682. *See* Fisher, *supra*, at 529. In 1769, citizens of North Carolina petitioned, albeit unsuccessfully, for

juries of six. *Id.* at 530. And there are other examples. *Id.* at 529-32; Resp.Br.13-15. Famously, the civil jury right varied so much across the States that the Framers initially opted not to guarantee the right at all. *See* The Federalist No. 83 (Alexander Hamilton).

This diversity of practice explains why some of Petitioner’s own sources equivocate. *See* Pet.Br.8-9 (Samuel Spencer: “[C]ases which affect ... lives and property, are to be decided, *in a great measure*, by the consent of twelve honest disinterested men”) (emphasis added); *id.* at 10 (Justice Joseph Story: “trial by jury is *generally* understood to mean ... a trial by a jury of twelve men”) (emphasis altered); *id.* (Joel Tiffany: “a trial by jury is understood to mean—*generally*—a trial by a jury of twelve men”) (emphasis added). Indeed, Samuel Spencer was not arguing that the Constitution preserved a 12-juror requirement but describing how a country could avoid being “enslaved.” 4 *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 154 (J. Elliot ed., 2d ed. 1836) (“*Elliot’s*”). Far from acknowledging *jury* had a settled legal meaning, Spencer argued it was “highly improper that any clause which regards the security of the trial by jury should be any way doubtful,” and objected that the Constitution was not “sufficiently explicit” to preserve vicinage. *Id.*

The Colonies’ varied practices also explain why, by Petitioner’s count, five States at ratification had laws or constitutional provisions “expressly referencing 12-member juries.” Pet.Br.7. If *jury* had been universally understood to mean a body of 12, those States would not have needed to so clarify. But

because the States had experimented with different jury sizes, any State that prized the common number had to expressly guarantee it. *See also id.* at 6 (“Twelve-member juries were fixtures in at least *most* of the American colonies at the time of the founding.”) (emphasis added).

2. Early case law likewise fails to establish that *impartial jury* necessarily codified 12-member panels. Petitioner and his *amici* place much stock in the 1780 New Jersey decision of *Holmes v. Walton*. *See* Pet.Br.7 n.2; Su.Br.19-20; ACLU.Br.10; USCCB.Br.16. But no opinion accompanying the judgment in that case has ever been found. Scott, *Holmes vs. Walton: The New Jersey Precedent*, 4 Am. Hist. Rev. 456, 459 (1899). And while it seems clear the court held a jury of six was not “constitutional,” *State v. Parkhurst*, 9 N.J.L. 427, 444 (1802), the basis for this holding is not clear at all. One scholar, after canvassing counsel’s various jury-related arguments, argued that “[t]he assumption that the [1776 New Jersey Constitution’s] phrase ‘trial by jury’ ... meant exactly twelve jurors *must* find its warrant farther back.” Scott, *supra*, at 457-59 (emphasis added). *See also id.* at 459 (identifying express 12-man requirements in other fundamental-law documents like the West Jersey Concessions and Agreements of 1676 and the East Jersey Rights and Privileges of 1699). Because the court’s rationale is unknown, the more important—and only concrete—takeaway from this episode is that the Founding Era New Jersey legislature *repeatedly* passed laws permitting six-man juries: in February 1775, October 1778, and December 1779. *Id.* at 456-57, 461-62. The first allowed a party in an action involving forty shillings to six pounds to “demand a

Jury,” whereupon “six good and lawful Men of the County, being Freeholders” should be sworn, hear the evidence, and “be kept together in some convenient private Place ... till they all agree upon a Verdict.” *Acts of the General Assembly of the Province of New-Jersey, from the Surrender of the Government to Queen Anne, on the 17th Day of April, in the Year of our Lord 1702, to the 14th Day of January 1776* 469-70 (S. Allinson ed. 1776). The last two were aimed at preventing “illicit trade with the British”—a crime “tantamount to treason”—and yet the second “passed both houses without a dissenting vote.” Scott, *supra*, at 461.

Nor is Petitioner correct that “[i]n the decades after the Sixth Amendment was ratified, state courts uniformly held that the term ‘trial by jury’ in their own constitutions required 12 jurors.” Pet.Br.9; *see also id.* at 19-21. To start, the defendant in *Zylstra v. Corporation of City of Charleston* received no jury at all. 1 S.C.L. 382, 376 (Ct. Com. Pl. 1794). Same for the defendant in *Emerick v. Harris*, 1 Binn. 416, 416-17 (Pa. 1808). Regardless, neither court interpreted *trial by jury* to require 12 jurors. In *Zylstra*, a single justice opined that:

[W]hen the rights of the citizens are to be determined on by 12 men ... indiscriminately drawn from every class of their fellow citizens, there will be a better chance generally, that the poor will receive an equal measure of justice with the rich, and that the decision of facts will be according to the truth of them.

1 S.C.L. at 389 (op. of Waties, J.).

And in *Emerick*, one justice stated only that William Penn’s charter of liberties (declaring in part that “all trials shall be by twelve men”) was “the same, in substance,” to jury provisions in the long-superseded 1776 Pennsylvania Constitution. 1 Binn. at 426 (op. of Brackenridge, J.). Far from finding the 1790 Pennsylvania Constitution imposed a 12-man requirement, Justice Brackenridge joined the court in upholding the constitutionality of a law that enlarged the jurisdiction of jury-less justices of the peace. *Id.* at 428.

As for *Whitehurst v. Davis*, the court interpreted a provision guaranteeing the “*ancient mode* of trial by jury” to prohibit a verdict by 13 jurors. 3 N.C. 113, 113 (1800) (emphasis added). And unlike this Court’s unchallenged determination that the Sixth Amendment did not codify every aspect of the common-law jury, the North Carolina court reached its decision only by concluding that “any innovation amounting in the least degree to a departure from the ancient mode” was impermissible. *Id.* Notably, North Carolina had statutes stipulating twelve. *See, e.g.*, Acts of the North Carolina General Assembly, 1779, 24 Colonial & St. Recs. N.C. 269 (“a jury of twelve freeholders”).

Petitioner’s 1848 cases are similarly unavailing. Pet.Br.9. *Larillian v. Lane & Co.* discussed the “constitution of the country,” found it permitted no deviation from the common-law jury, and determined it was precisely the text’s silence that mandated a specific number of jurors. 8 Ark. 372, 374-75 (1848).

And *Larillian* did not hold that a verdict of eleven was no verdict at all: “If the jury really did not consist of twelve men, and the defendant ... did not intend to waive his constitutional rights, he should have reserved the point ..., and then it would have been entitled to ... consideration.” *Id.* at 375. *Rouse v. State* interpreted not *impartial jury*, but a provision guaranteeing that “trial by jury, as heretofore used in this State, shall remain inviolate.” 4 Ga. 136, 145 (1848) (cleaned up). Georgia’s first constitution had stipulated “the first twelve” names “drawn out” “shall be the special jury to try the cause.” Ga. Const. of 1777, art. 40. And any comment on twelve jurors was dicta: the question presented was whether a grand juror—allegedly not a “peer” of the accused—could serve as a petit juror in a criminal trial. *Rouse*, 4 Ga. at 137, 147-48.

The cases Petitioner cites to show state courts continued to affirm “the need for 12” throughout the nineteenth century, Pet.Br.9, likewise shed little light on the Sixth Amendment’s original public meaning. An “equally divided” Alabama court opined, without referring to any constitutional or statutory provision, that “[t]he term *jury* is well understood to be twelve men” and acknowledged parties could consent to less. *Foote v. Lawrence*, 1 Stew. 483, 483-84 (Ala. 1828). An Ohio court interpreted two jury provisions of the 1851 state constitution to invalidate a six-man criminal jury, over a dissent and despite a separate constitutional provision expressly requiring “a jury of twelve men” in eminent domain cases. *Work v. State*, 2 Ohio St. 296, 301-02, 307-08 (1853). It assumed incorrectly that the language of the jury trial right had “ages of uninterrupted use” and that “[u]ntil

passage of th[e] law, no person had ever been convicted of crime by less ... and no law ha[d] ever attempted to authorize it.” *Id.* at 302, 305. It also declined to extend that holding to civil cases. *Id.* at 307. In a capital case, a New York court held that the defendant could not consent to a jury of eleven, in light of the common law; a constitutional provision declaring that “trial by jury, in all cases in which it has heretofore been used, shall remain inviolate forever”; and a specific statutory provision providing “that the twelve first jurors who shall appear on being called, and be approved as indifferent, shall constitute the jury.” *Cancemi v. People*, 18 N.Y. 128, 135, 138 (1858). A Missouri court invalidated a six-man jury verdict while acknowledging a party might not always “afterwards avail himself of [such] error” and could always consent to six jurors. *Vaughn v. Scade*, 30 Mo. 600, 603-04 (1860). That court also held, without explanation, that “[o]f course the non-essentials of th[e] institution, such as concern the qualification of jurors, the mode of summoning them, and many other such matters, were left to the regulation of law.” *Id.* at 604. And it clarified that a “jury in a justice’s court” could use “any number of men that is deemed expedient.” *Id.* at 604-05. Finally, in an advisory opinion “regret[fully]” given without “the usual aid from the investigations of interested parties and their learned counsel,” a New Hampshire court erroneously assumed that “jury” and “trial by jury” were “always” used “in a single sense” before the adoption of the constitution, and that “[a]t that date, ... no such thing as a jury of less than twelve men ... had ever been known, or ever been the subject of discussion in

any country of the common law.” *Opinion of Justices*, 41 N.H. 550, 550-52 (1860).

3. Professor Su’s Carolina evidence fares no better. She asserts that “[t]he Carolinas’ constitutions presupposed that a jury had twelve.” Su.Br.7. But as she immediately points out, the 1669 Fundamental Constitutions of Carolina “expressly codified the right to a jury of twelve.” *Id.* And still, *Zylstra* did not interpret South Carolina’s later constitution to require 12 jurors. *Supra*, at 13.

Professor Su also claims an 1844 decision “unequivocal[ly]” held that “[t]he words ‘trial by jury’ in the South Carolina Constitution” meant twelve jurors. Su.Br.8-10. But this decision came more than 50 years after the ratification of the Sixth Amendment. More to the point, that was not the court’s holding:

It is next necessary to test ... what is meant “by the judgment of his peers” and “the trial by jury, as heretofore used in this State, shall be forever inviolably preserved.” The “*judgment of his peers*” means in general *the great unalienable common law mode of trial by twelve good and lawful men of the vicinage*, in the presence of the accused, and by the oath of a witness. And the words “*the trial by jury, as heretofore used in this State, shall be forever inviolably preserved,*” mean that in all cases where it had not been previously abandoned, *it should be continued to every freeman*, and of course to every woman and child....

State v. Simons, 29 S.C.L. 761, 768 (Ct. Err. 1844) (emphasis added).

In sum, a state court (1) found 12 jurors were “in general” required by the phrase “judgment of his peers,” (2) by a state constitution that specifically “inviolably preserved” a jury right “as heretofore used in th[e] State,” (3) where a previous founding document expressly guaranteed 12. None of that reveals anything about the original public meaning of *impartial jury* in the Sixth Amendment. Even the pronouncement that the slave panel was “not a trial by jury, in any sense in which the words have ever been legally used,” fails to confirm the court’s decision turned on number, as the challenged “forum” also included two magistrates. *Id.* And the “essential feature of a jury obviously lies in the interposition between the accused and his accuser of the commonsense judgment of a group of laymen.” *Williams*, 399 U.S. at 100. *See also* 1 *Elliot’s* 504 (Richard Henry Lee quoting Blackstone’s warning that “[i]f t[he administration of justice] be entirely intrusted to the magistracy ... these decisions ... will have frequently an involuntary bias towards those of their own rank and dignity”). All this confirms only that “when it comes to interpreting the Constitution, not all history is created equal.” *NYSRPA v. Bruen*, 597 U.S. 1, 34 (2022).

4. To be sure, the usual meaning of *jury* at the time of the Founding may have contemplated twelve jurors. Or more accurately—twelve white, male, property-owning neighbors. *See* Resp.Br.25-27. But the fact that some in the Founding generation may have had a particular iteration of a jury in mind does

not prove that the Sixth Amendment’s text constitutionalized that top-of-mind sense.

For example, it would have been “unthinkable,” *Khorrami v. Arizona*, 143 S.Ct. 22, 25 (2022) (Gorsuch, J., dissenting from denial of certiorari), at the time of the Founding to have a pauper sit on a jury. *See* Resp.Br.25-27. It may have been just as unthinkable to have a jury composed entirely of individuals who knew nothing of the accused or the offense. In the Virginia Ratifying Convention, Patrick Henry argued that by “ancient common law, the trial of all facts is decided by a jury of impartial men from the immediate vicinage” and that allowing jurors to be pulled from the state at large was “extremely dangerous to liberty” because “a person accused may be carried from one extremity of the state to another, and be tried, not by an impartial jury of the vicinage, *acquainted with his character and the circumstances of the fact*, but by a jury unacquainted with both, and who may be biased against him.” 3 *Elliot’s* 446-47 (emphasis added). Blackstone’s oft-quoted line similarly contemplated more than unanimity from a random group of twelve: “[T]he truth of every accusation ... should ... be confirmed by the unanimous suffrage of twelve *of his equals and neighbours*.” 4 W. Blackstone, *Commentaries on the Laws of England* 343 (1769) (emphasis added).

The Founding generation valued certain jury features—such as vicinage—at least as much as it valued a certain number of jurors. *See Williams*, 399 U.S. at 96. Indeed, the lack of specificity regarding *this* timeless common-law jury feature, not a specific number of jurors, caused Patrick Henry to exclaim:

Is not this sufficient to alarm men? How different is this from the immemorial practice of your British ancestors, and your own! I need not tell you that, by the common law, a number of hundredors were required on a jury, and that afterwards it was sufficient if the jurors came from the same county. With less than this the people of England have never been satisfied.

3 *Elliot's* 447. “That paper,” Henry concluded derisively, “ought to have declared the common law in force.” *Id.* For his part, Richard Henry Lee viewed the loss of the vicinage requirement and the possibility of being tried in a “distant court”—not the possibility of fewer jurors—as the “weaken[ing]” of the “great security of human rights,” “the trial by jury.” 1 *Elliot's* 504.

And yet no one contends that requirements such as vicinage and freeholding were constitutionalized in the simple phrase (notably stripped down by the Senate) of “an impartial jury of the State and district wherein the crime shall have been committed.” U.S. Const. amend. VI. In short, nothing since *Williams*—including *Ramos*—has even hinted that the Court was wrong when it concluded “the Sixth Amendment did not incorporate every feature of the common-law right.” *Ramos*, 590 U.S. at 152 (Alito, J., dissenting).

C. *Williams* followed the same principled approach as this Court's decisions interpreting other constitutional provisions.

The Court has repeatedly declined to define the scope of constitutional rights at the bounds of how the Founders might have originally expected them to apply. *See, e.g., Chatrpie v. United States*, 146 S.Ct. 2193, 2222 (2026) (Gorsuch, J., concurring in the judgment) (“As with other laws, the terms found in the Fourth Amendment carry their original public meaning and can bear more applications than its drafters might have expected or intended.”). That’s why “the First Amendment protects speech over the internet today no less than it did speech delivered in the town square in 1791,” *id.*, and why “the Second Amendment is not limited only to those arms that were in existence at the founding,” *United States v. Rahimi*, 602 U.S. 680, 691 (2024).

Just as the Court has recognized that the Constitution protects activities and technologies that did not exist at the time of the Founding, it has recognized that the Constitution does not trap all features of eighteenth-century law “in amber.” *Id.* at 691. The Second Amendment, for example, “permits more than just those regulations identical to ones that could be found in 1791.” *Id.*; *see also id.* (“Holding otherwise would be as mistaken as applying the protections of the right only to muskets and sabers.”). The Court has gone so far as to recognize that “the regulatory challenges posed by firearms today are not always the same as those earlier generations faced,” and held that the Government need not point to a

“historical twin” or “precise historical precursor” to justify a firearm regulation. *United States v. Hemani*, 608 U.S. 772, 780 (2026) (cleaned up). Instead, “the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition.” *Id.* In other words, even if a criminal procedure practice “is of recent origin, this fact hardly renders it unconstitutional.” *Payne v. Tennessee*, 501 U.S. 808, 821 (1991).

After surveying the history, *Williams* asked whether Florida’s six-member jury violated “the essential feature of a jury”—“the interposition between the accused and his accuser of the commonsense judgment of a group of laymen” of a large enough number “to promote group deliberation, free from outside attempts at intimidation, and to provide a fair possibility for obtaining a representative cross-section of the community.” 399 U.S. at 100. That’s consistent with this Court’s originalist text-and-history approach in other areas of the law.

It bears repeating that the Sixth Amendment says nothing about a requisite number of jurors. It guarantees “an impartial jury.” U.S. Const. amend. VI. And again, other requirements such as vicinage were “as much a feature of the common-law jury as ... the 12-man requirement” but not considered to be captured by “trial by jury.” *Williams*, 399 U.S. at 96. So—then as now—concluding that something was a “common-law characteristi[c] of [a] jury,” *id.* at 99, doesn’t suffice to answer the question presented.

Despite Petitioner’s best efforts to make it appear otherwise, Pet.Br.25-27, *Williams* is not the Sixth Amendment equivalent of *Trop v. Dulles*, which held the Eighth Amendment “draw[s] its meaning from the evolving standards of decency that mark the progress of a maturing society” and spawned a jurisprudence of fifty-state surveys. 356 U.S. 86, 101 (1958) (op. of Warren, C.J.). *Williams* took it as a given that the Sixth Amendment codified and preserved a defined right. *Williams* just recognized, after a careful and thorough historical survey, that the Sixth Amendment did not codify every aspect of the common-law jury. No one disputes that point. And nothing since *Williams* has shown that the Sixth Amendment incorporated a specific number of jurors, any more than it incorporated vicinage or property requirements.

II. The Court should affirm *Williams* as a matter of *stare decisis*.

As a longstanding precedent, *Williams* is entitled to *stare decisis* respect and should be affirmed on that basis alone. “*Stare decisis* ‘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.’” *Gamble*, 587 U.S. at 691. “Accordingly, an argument that [the Court] got something wrong—even a good argument to that effect—cannot by itself justify scrapping settled precedent.” *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 455 (2015). “[I]t is not alone sufficient that [the Court] would decide a case differently now than [it] did then.” *Id.* “[E]ven in constitutional cases, a departure from

precedent ‘demands special justification.’” *Gamble*, 587 U.S. at 691. *Accord Ramos*, 590 U.S. at 120 (Kavanaugh, J., concurring in part). That’s because “to ‘overrule an important precedent is serious business.’” *Id.*; *see also Dobbs*, 597 U.S. at 266-67; *Kimble*, 576 U.S. at 455.

When deciding whether to overrule a precedent, this Court first considers whether the precedent is not just wrong, but “egregiously wrong.” *Dobbs*, 597 U.S. at 268 (quoting *Ramos*, 590 U.S. at 121 (Kavanaugh, J., concurring in part)). *See also Ramos*, 590 U.S. at 135 (Thomas, J., concurring in the judgment) (challenged precedent must be “demonstrably erroneous”). If the question presented turns on a historical question, “something more than ‘ambiguous historical evidence’ is required before [the Court] will ‘flatly overrule a number of major decisions.’” *Gamble*, 587 U.S. at 691. A petitioner seeking such a change bears a “particular burden under *stare decisis*” to “settl[e] the historical question with enough force.” *Id.* at 700.

Even if the Court is satisfied that a past precedent is egregiously wrong, the Court considers a number of other factors, including the “quality of the decision’s reasoning, its consistency with [the Court’s] other cases, the workability of its rule, and the interests of those who have relied on it.” *Slaughter*, 146 S.Ct. at 2302 (cleaned up). Here, every factor favors preserving *Williams*.

A. *Williams* is entitled to respect as a matter of *stare decisis*.

By any measure, the Court should conduct a *stare decisis* analysis before overruling a 56-year-old precedent. But Petitioner highlights just how decisively that analysis cuts against him by urging the Court to “not engage in the traditional *stare decisis* inquiry at all” because *Ramos* “effectively overruled *Williams*.” Pet.Br.15.

That argument lacks merit. The *Ramos* majority cited *Williams* exactly once—in a footnote—to note a quotation from *Apodaca v. Oregon*, 406 U.S. 404 (1972), itself quoted *Williams*. See *Ramos*, 590 U.S. at 99 n.41. An opinion that so assiduously avoided discussing *Williams* cannot have overruled it. To be sure, three Justices in *Ramos* embraced an argument similar to Petitioner’s: that *Apodaca* did not “suppl[y] a governing precedent.” *Id.* at 101 (op. of Gorsuch, J.). But six other Justices rejected that position. *Id.* at 125 n.6 (Kavanaugh, J., concurring in part) (“[S]ix Justices treat the result in *Apodaca* as precedent for purposes of *stare decisis* analysis.”).

Regardless, *Williams* shares none of *Apodaca*’s unique infirmities. *Williams* has never been an unknowable constitutional outlier. See *Ramos*, 590 U.S. at 93 (majority op.) (“Ultimately, the [*Apodaca*] Court could do no more than issue a badly fractured set of opinions.”); *id.* at 95-96 & n.36 (plurality op.) (Court had been “studiously ambiguous, even inconsistent, about what *Apodaca* might mean” and issued “reiterations” “suggest[ing] different things at different times”).

Instead, *Williams* issued a clear holding in an opinion endorsed by a five-Justice majority of the Court. Just one Justice believed the Constitution requires the States to provide 12-member juries. See 399 U.S. at 116-17 (Marshall, J., dissenting in part).

And the Court has repeatedly applied, reaffirmed, and reasoned from *Williams*. See, e.g., *United States v. Gaudin*, 515 U.S. 506, 510 n.2 (1995); *Collins v. Youngblood*, 497 U.S. 37, 53 n.4 (1990); *Holland v. Illinois*, 493 U.S. 474, 478 (1990); *Batson v. Kentucky*, 476 U.S. 79, 85 n.6 (1986); *Crist v. Bretz*, 437 U.S. 28, 37 (1978); *Ludwig v. Massachusetts*, 427 U.S. 618, 625 (1976); *Taylor v. Louisiana*, 419 U.S. 522, 526-28 (1975); *Colgrove*, 413 U.S. at 151-52. *Colgrove* even extended *Williams* to hold that the Seventh Amendment likewise does not require twelve jurors. 413 U.S. at 151-60.

B. *Williams* is not egregiously wrong or demonstrably erroneous.

Williams was correctly decided. No one today believes the Sixth Amendment codified every feature of the common-law jury, and the Court correctly concluded that it did not codify a specific number of jurors.

But even if *Williams* ultimately reached the wrong conclusion with respect to jury size, nothing in the historical record suggests its decision was “egregiously wrong.” *Dobbs*, 597 U.S. at 268. That may be why only one Justice believed *Williams* was wrongly decided at the time, and why only one other Justice has expressly called for it to be reconsidered

since. Even now, 56 years later, Petitioner relies largely on the same historical evidence that *Williams* found lacking. And none of it “come[s] close to settling the historical question with enough force to meet [Petitioner’s] particular burden under *stare decisis*.” *Gamble*, 587 U.S. at 699-700.

Overruling *Williams* simply because the Court now has a slightly different view of the Constitutional Convention, or the Senate’s deletion of specific protections from James Madison’s original bill, would break significant new ground. See *Kimble*, 576 U.S. at 455 (“Respecting *stare decisis* means sticking to some wrong decisions.... Indeed, *stare decisis* has consequence only to the extent it sustains incorrect decisions.”). *Williams* explicitly acknowledged contrary views on the history and admitted that it “d[id] not pretend to be able to divine precisely what the word ‘jury’ imported to the Framers, the First Congress, or the States in 1789.” 399 U.S. at 96-98. That same humility warrants adhering to the Court’s rule here that “ambiguous historical evidence” is not enough to overturn a “major decision[] of this Court.” *Gamble*, 587 U.S. at 691.

C. The quality of *Williams*’s reasoning is high.

Far from giving “short shrift to original meaning and precedent,” *Khorrami*, 143 S.Ct. at 26 (Gorsuch, J., dissenting from denial of certiorari), *Williams* extensively surveyed the historical record on the jury guarantee. *Supra*, at 7-9. It also accurately described earlier decisions as “assum[ing] an affirmative answer” to the Sixth Amendment question and

“reaffirm[ing]” those pronouncements “often in dictum and usually by relying—where there was any discussion of the issue at all—solely on the fact that the common-law jury consisted of 12.” 399 U.S. at 90-92 (cleaned up). That’s why Justice Harlan largely resorted to accusing the majority of “cavalier disregard” for “pronouncements ... that reflect[ed] [an] understanding,” defending the “significance” of just one such “pronouncement” in a footnote. *Baldwin v. New York*, 399 U.S. 117, 126-27 & n.12 (1970) (Harlan, J., concurring in the result in *Williams*).

Petitioner accuses *Williams* of engaging in an “incomplete functionalist analysis.” Pet.Br.29 (cleaned up). But at no point did *Williams* engage in some “judge-empowering interest-balancing inquiry,” *Bruen*, 597 U.S. at 22 (cleaned up), or hold that the needs of contemporary society could outweigh constitutional guarantees. Instead, it reviewed the history and concluded “there is absolutely no indication in ‘the intent of the Framers’ of an explicit decision to equate the constitutional and common-law characteristics of the jury.” *Williams*, 399 U.S. at 99. Then, rather than hold that the States could do whatever they wanted with respect to the number of jurors, the Court “turn[ed] to other than purely historical considerations to determine which features of the jury system, as it existed in common law, *were* preserved in the Constitution.” *Id.* (emphasis added). The Court ultimately determined that any jury must “interpos[e] between the accused and his accuser ... the commonsense judgment of a group of laymen” and preserve “the community participation and shared responsibility that results from that group’s determination of guilt or innocence.” *Id.* at 100. The

Court then intimated that the Constitution limited how much a State could shrink a jury. *See id.*

Nor does *Ramos*'s basis for overruling *Apodaca* apply to *Williams*. *Ramos* found *Apodaca*'s reasoning was poor in part because it failed to "grappl[e] with ... the racist origins of Louisiana's and Oregon's laws." 590 U.S. at 106. But elsewhere the Court suggested the laws' allegedly racist histories were irrelevant to the analysis. *See id.* at 99 n.44 (stating the Court was merely "acknowledging the racist history of [the] laws" and that "adopting a nonunanimous jury rule even for benign reasons would still violate the Sixth Amendment"). And three Justices denied such allegedly racist history could factor into the *stare decisis* analysis. *Id.* at 141-42, 153 (Alito, J., dissenting).

At any rate, in *Ramos*, the only States still accepting nonunanimous jury verdicts were two that had allegedly originated the practice for racist purposes. That is not the situation here. Whatever the origins of Florida's law may be—and Florida argues persuasively that its six-man jury law was untainted by racism, Resp.Br.49-51—there is no argument that other states that relied on *Williams*, like Arizona, Connecticut, Indiana, Massachusetts, and Utah, adopted smaller juries for reasons related to race. Florida notes the many salutary effects smaller juries may have, Resp.Br.41-44, and one Justice has already recognized that "some States have adopted smaller criminal juries" for non-racist reasons, including cost-savings, *Khorrami*, 143 S.Ct. at 27 (Gorsuch, J., dissenting from denial of certiorari).

D. The rule of *Williams* is workable.

Williams and its progeny—most significantly, *Ballew v. Georgia*, 435 U.S. 223 (1978), and *Burch v. Louisiana*, 441 U.S. 130 (1979)—epitomize a straightforward, bright-line rule: A state may convict a defendant of a nonpetty offense with nothing less than the unanimous verdict of six jurors. This rule “can be understood and applied in a consistent and predictable manner.” *Dobbs*, 597 U.S. at 281. Nothing about *Williams*’s rule is “unwieldy and inappropriate.” *Id.* at 286.

E. *Williams* is consistent with the Court’s other cases and has not had a negative effect on other areas of the law.

Unlike precedents the Court has seen fit to overrule, *Williams* is not “far out of step” with the Court’s cases or been “all but limited to its facts.” *Cf. Slaughter*, 146 S.Ct. at 2302. Nor has it “foster[ed] ... instability in the law.” *Cf. Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 411 (2024). To the contrary, this Court has repeatedly reaffirmed *Williams*’s holding—and even extended it. *Supra*, at 26. And despite Petitioner’s attempts to identify friction between *Williams* and *Ramos*, Pet.Br.24-27, *Williams* has been compatible with *Ramos* since at least 1979, when the Court held that “conviction by a nonunanimous six-member jury in a state criminal trial for a nonpetty offense deprives an accused of his constitutional right to trial by jury.” *Burch*, 441 U.S. at 134.

Nor has *Williams* created difficulties elsewhere. To the extent *Williams* can be blamed for *Apodaca*, *Ramos* corrected that error six years ago. *Williams* has not “led to the distortion of many important but unrelated legal doctrines,” nor required “engineer[ed] exceptions to longstanding background rules.” *Dobbs*, 597 U.S. at 286-87.

But *reversing Williams* would have negative effects on other areas of the law. *See* Resp.Br.37-38, 44-49. Petitioner attempts to minimize the likely aftershocks of overruling *Williams*. *See* Pet.Br.28. But if *Ramos* should be read as having overruled *Williams sub silentio*, *id.* at 24-27, and reliance interests are insufficient to save *Williams*, *id.* at 37-38, a formal overruling of *Williams* will almost certainly require the overruling of additional precedents like *Colgrove*.

F. *Williams* has generated immense reliance interests.

Most significantly, overruling *Williams* would “upend substantial reliance interests.” *Dobbs*, 597 U.S. at 287. For over half a century, many States—including seven today with respect to felonies—have relied on this Court’s reasoned decision that six-member juries satisfy the Constitution. Over 57 million people, or nearly 17% of the U.S. population, live in those States. And those States have built their entire felony criminal justice systems on *Williams*. The reliance interests here are precisely the “prospective economic, regulatory, [and] social disruption” costs that “litigants seeking to preserve precedent usually invoke.” *Ramos*, 590 U.S. at 107.

Utah's justice system is already under stress. *Supra*, at 2. Overruling *Williams* portends potentially devastating consequences for Utah:

1. Lost convictions and public safety. Overruling *Williams* implicates hundreds of serious felony convictions reaching back several decades. *See supra* at 2-5.

2. Infrastructure costs. Overruling *Williams* will also force the State to spend millions of dollars to build and modify courtrooms, jury boxes, and deliberation rooms. *See Mow, supra*, at 15 (even an existing "shell courtroom space" cannot be finished without \$1,350,000). Already, physical space is severely limited. *See id.* (explaining one judge must use a juvenile courtroom without a jury box and a second must use virtual hearings or a juvenile courtroom); *id.* (explaining courts may need to "set more virtual hearings and virtual bench trials to free up courtroom space"). Just two of the twenty-three courtrooms at the Third District Courthouse in Salt Lake City are equipped to seat 12 jurors, along with just one of the eleven courtrooms in Utah County, the State's second most-populous.

The paucity of Petitioner's historical record provides no justification for unleashing such chaos or imposing such costs.

Utah's reliance interests are even weightier because this is not a situation where "Members of this Court have long questioned [*Williams's*] premises." *Cf. Loper Bright*, 603 U.S. at 407. *Ramos* could not have put the States on notice because the Court said not a

word about *Williams*. And history supports the rational conclusion that the Sixth Amendment requires unanimity but not a specific number of jurors. *See, e.g.*, Resp.Br.5, 8-10.

The Court has repeatedly declined to hear challenges to *Williams*, and the first call from the Court to “reconsider” *Williams* came from a single Justice in 2022. *Khorrami*, 143 S.Ct. at 23 (Gorsuch, J., dissenting from denial of certiorari). Since that time, no other Justice has voiced concern with *Williams*. So the States have not “been on notice for years regarding this Court’s misgivings about” *Williams*. *Janus v. AFSCME*, 585 U.S. 878, 927 (2018). Add the lack of any “badly fractured set of opinions,” *Ramos*, 590 U.S. at 93—and the Court’s repeated reaffirmances and even extension of *Williams*—and no State has had reason to believe its practices “stood on shaky ground,” *id.* at 95 (plurality op.). The states’ reliance on *Williams* is thus not only “massive,” but also “entirely reasonable.” *Id.* at 164 (Alito, J., dissenting).

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted,

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