

No. 25-6623

In the Supreme Court of the United States

HAMED KIAN, PETITIONER

v.

STATE OF FLORIDA

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

**BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING RESPONDENT**

D. JOHN SAUER
*Solicitor General
Counsel of Record*
A. TYSEN DUVA
Assistant Attorney General
ERIC J. FEIGIN
Deputy Solicitor General
ZOE A. JACOBY
*Assistant to the
Solicitor General*
PAUL T. CRANE
Attorney
*Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217*

QUESTION PRESENTED

Whether the Court should overturn its holding in *Williams v. Florida*, 399 U.S. 78 (1970), and reinterpret the Sixth Amendment's Jury Trial Clause to invariably require a jury with exactly 12 members.

TABLE OF CONTENTS

	Page
Interest of the United States.....	1
Introduction.....	1
Statement	3
Summary of argument	6
Argument.....	8
I. This Court should reaffirm that the Sixth Amendment does not require a jury of exactly 12	9
A. This Court has correctly recognized that the guarantee of “trial by an impartial jury” does not immutably fix the number of jurors at exactly 12.....	9
1. The Sixth Amendment does not constitutionalize every feature of Founding Era common-law jury-trial practice	10
2. The Sixth Amendment does not require a jury of exactly 12 jurors	12
B. No sound reason exists to overturn <i>Williams</i>	17
1. Nothing in <i>Williams</i> ’s reasoning justifies overruling it.....	18
2. <i>Williams</i> is consistent with related decisions and subsequent legal developments	19
3. Overruling <i>Williams</i> would disrupt significant reliance interests	21
4. <i>Williams</i> is workable and has not caused real-world harm that would warrant its overruling	23
C. Petitioner’s arguments lack merit.....	24
II. At a minimum, this Court should confirm that fewer than 12 jurors may return a verdict in emergency circumstances.....	29
Conclusion	33

IV

TABLE OF AUTHORITIES

Cases:	Page
<i>Allen v. State</i> , 51 Ga. 264 (1874).....	26
<i>Apodaca v. Oregon</i> , 406 U.S. 404 (1972).....	7, 24
<i>Baldwin v. New York</i> , 399 U.S. 66 (1970)	3, 15, 28
<i>Ballew v. Georgia</i> , 435 U.S. 223 (1978)	20, 21, 23
<i>Batson v. Kentucky</i> , 476 U.S. 79 (1986)	21, 28
<i>Blanton v. City of North Las Vegas</i> , 489 U.S. 538 (1989).....	3, 28
<i>Burch v. Louisiana</i> , 441 U.S. 130 (1979)	17, 20, 24
<i>Callan v. Wilson</i> , 120 U.S. 540 (1888)	15
<i>Cancemi v. People</i> , 18 N.Y. 128 (1858).....	26
<i>Colgrove v. Battin</i> , 413 U.S. 149 (1973).....	21
<i>Dietz v. Bouldin</i> , 579 U.S. 40 (2016)	12, 32
<i>Dobbs v. Jackson Women’s Health Org.</i> , 597 U.S. 215 (2022).....	18
<i>Duncan v. Louisiana</i> , 391 U.S. 145 (1968)	3, 15
<i>Edwards v. Vannoy</i> , 593 U.S. 255 (2021)	22
<i>Emerick v. Harris</i> , 1 Binn. 416 (Pa. 1808).....	26
<i>Erlinger v. United States</i> , 602 U.S. 821 (2024).....	22
<i>Galloway v. United States</i> , 319 U.S. 372 (1943)	20
<i>Gamble v. United States</i> , 587 U.S. 678 (2019)	18
<i>Glasser v. United States</i> , 315 U.S. 60 (1942)	20
<i>Henderson v. United States</i> , 568 U.S. 266 (2013)	23
<i>Hilton, v. South Carolina Pub. Rys. Comm’n</i> , 502 U.S. 197 (1991).....	21, 22
<i>Hinton v. United States</i> , 979 A.2d 663 (D.C. 2009)	30
<i>Janus v. AFSCME Council 31</i> , 585 U.S. 878 (2018)....	18, 21
<i>Knick v. Township of Scott</i> , 588 U.S. 180 (2019).....	20
<i>Ludwig v. Massachusetts</i> , 427 U.S. 618 (1976).....	21

Cases—Continued:	Page
<i>Moore v. Harper</i> , 600 U.S. 1 (2023)	27
<i>Oregon v. Ice</i> , 555 U.S. 160 (2009)	10
<i>Patton v. United States</i> , 281 U.S. 276 (1930)	20, 30, 32
<i>Ramos v. Louisiana</i> , 590 U.S. 83 (2020)	7, 10, 17, 19, 22-25
<i>State v. Demouchet</i> , 3 So. 565 (La. 1888)	16
<i>Smith v. United States</i> , 599 U.S. 236 (2023)	10, 11
<i>Sparf v. United States</i> , 156 U.S. 51 (1895)	12
<i>Stilson v. United States</i> , 250 U.S. 583 (1919)	12
<i>Sullivan v. Louisiana</i> , 508 U.S. 275 (1993)	10
<i>Taylor v. Louisiana</i> , 419 U.S. 522 (1975)	11
<i>United States v. Chorney</i> , 63 F.3d 78 (1st Cir. 1995)	31
<i>United States v. Gaudin</i> , 515 U.S. 506 (1995)	10, 21
<i>United States v. Levenite</i> , 277 F.3d 454 (4th Cir.), cert. denied, 535 U.S. 1005 (2002)	31
<i>United States v. Wilson</i> , 894 F.2d 1245 (11th Cir.), cert. denied, 497 U.S. 1029 (1990)	32
<i>United States v. Wood</i> , 299 U.S. 123 (1936) ...	6, 10, 12, 15, 20
<i>Williams v. Florida</i> , 399 U.S. 78 (1970) ...	1-4, 6, 8-10, 12, 14, 15, 17, 19, 20, 25
<i>Whitehurst v. Davis</i> , 3 N.C. (2 Hayw.) 113 (1800)	26
<i>Zylstra v. City of Charleston</i> , 1 S.C.L. (1 Bay) 382 (1794)	26
Constitutions, statutes, and rules:	
U.S. Const.:	
Art. I:	
§ 2	13
§ 3	13
Art. III, § 2, Cl. 3 (Venue Clause)	11

VI

Constitutions, statutes, and rules—Continued:	Page
Amend. VI (Jury Trial Clause) 1-14, 17, 24, 26, 29, 32	
Amend. VII	13
La. Const. Art. I, § 17(A)	16
La. Const. Art. VII (1879), <i>reprinted in 3 The</i> <i>Federal and State Constitutions</i> (Francis Newton	
Thorpe ed., 1909)	16
Mich. Const. (1850), <i>reprinted in 4 The Federal and</i> <i>State Constitutions</i> (Francis Newton Thorpe ed.,	
1909):	
Art. IV, § 46.....	15
Art. VI, § 28.....	15
Tex. Const. Art. V, § 17 (1876), <i>reprinted in 4 The</i> <i>Federal and State Constitutions</i> (Francis Newton	
Thorpe ed., 1909)	16
N.C. Decl. of Rights Art. XIV (1776), <i>reprinted in 5</i> <i>The Federal and State Constitutions</i> (Francis	
Newton Thorpe ed., 1909).....	26
Utah Const. Art. I, § 10 (1895), <i>reprinted in 6 The</i> <i>Federal and State Constitutions</i> (Francis Newton	
Thorpe ed., 1909)	16
Va. Decl. of Rights § 8 (1776), <i>reprinted in 7 The</i> <i>Federal and State Constitutions</i> (Francis Newton	
Thorpe ed., 1909)	14
Act of June 29, 1932, ch. 309, 47 Stat. 380-381	31
15 U.S.C. 1302(a)(10)	17
Alaska Stat. Ann. § 22.15.150	17
Ariz. Rev. Stat. Ann. § 21-102(B).....	16
Colo. Rev. Stat. § 18-1-406(1)	17
Conn. Gen. Stat. Ann. § 54-82(c)	16
1877 Fla. Laws, ch. 3010, § 6	16

VII

Statutes and rules—Continued:	Page
Fla. Stat.:	
§ 120.60(6).....	4
§ 460.411(1).....	5
§ 460.411(1)(b).....	5
§ 775.082(3)(e)	5
§ 913.10	16, 22
Ga. Code § 15-12-125	17
Ind. Code Ann. § 35-37-1-1(b).....	16
Kan. Stat. Ann. § 22-3404(2)	17
Ky. Rev. Stat. Ann. § 29A.280(1).....	17
Mass. Gen. Laws Ann. ch. 218, § 26A	16
Mich. Comp. Laws § 600.8355	17
Mich. Comp. Laws (1857), <i>reprinted in 2 The</i> <i>Compiled Laws of the State of Michigan</i> (Thomas	
M. Cooley 1857):	
§ 118.3924	15
§ 181.5762	16
Miss. Code Ann. § 11-9-143.....	17
Mont. Code Ann. § 46-17-201(1).....	17
Neb. Rev. Stat. § 25-2705(2)	17
N.M. Stat. Ann. § 35-8-3(A)	17
N.Y. Crim. Proc. Law § 360.10(A)	17
Okla. Stat. Ann., tit., 22, § 601	17
Or. Rev. Stat. Ann. § 136.210(2)	17
Tex. Code Crim. Proc. art. 33.01(b)	17
Utah Code Ann.:	
§ 78B-1-104(1)(b)	16
§ 78B-1-104(1)(c).....	16
Va. Code Ann. § 19.2-262(B)	17
Wash. Rev. Code Ann. § 2.36.010(13)	17
W. Va. Code § 50-5-8(d).....	17

VIII

Rules—Continued:	Page
Fed. R. Civ. P. 48(a)	21
Fed. R. Crim. P.:	
Rule 23(b)(1)	4, 29, 31
Rule 23(b)(2)	4
Rule 23(b)(3)	2, 4, 6, 8, 29
Rule 23(b)(3) advisory committee’s note (1983 Amendment)	31
Rule 24(c)(3)	
Idaho Crim. R. 23(c)	17
Minn. Gen. R. Prac. 802(f)	17
Wyo. R. Crim. P. 23	17
Miscellaneous:	
3 <i>The ABA Standards for Criminal Justice</i> (2d ed. 1986 Supp.)	31
Albert W. Alschuler & Andrew G. Deiss, <i>A Brief</i> <i>History of the Criminal Jury in the United States</i> , 61 U. Chi. L. Rev. 867 (1994)	11
John Ash, <i>The New and Complete Dictionary of the</i> <i>English Language</i> (1775)	12
Sir John Baker, <i>An Introduction to English Legal</i> <i>History</i> (5th ed. 2019)	30
William Blackstone, <i>Commentaries on the Laws of</i> <i>England</i> :	
Vol. 3 (1768)	13, 30
Vol. 4 (1769)	10, 12
Census Office, Dep’t of the Interior, <i>Statistics of the</i> <i>Population of the United States at the Tenth</i> <i>Census</i> (June 1, 1880)	29
1 Edward Coke, <i>First Part of the Institutes of the</i> <i>Laws of England</i> (1812 ed.)	14
1 Giles Duncomb, <i>Trials per Pais</i> (1766)	14

IX

Miscellaneous—Continued:	Page
H. Richmond Fisher, <i>The Seventh Amendment and the Common Law: No Magic in Numbers</i> , 56 F.R.D. 507 (1973)	14
Fla. Office of the State Cts. Admin., <i>Florida's Trial Courts: Statistical Reference Guide FY 2024-25</i> (Dec. 2025), https://perma.cc/9HV2-WM9A	22
Steven S. Gensler et al., <i>Better by the Dozen: Bringing Back the Twelve-Person Civil Jury</i> , 104 Judicature 47 (2020)	21
H.R. Rep. No. 957, 72d Cong., 1st Sess. (1932)	30, 31
2 Matthew Hale, <i>Historia Placitorum Coronae</i> (1736).....	12
Matthew P. Harrington, <i>The Law-Finding Function of the American Jury</i> , 1999 Wis. L. Rev. 377	12
Giles Jacob, <i>A New Law Dictionary</i> (9th ed. 1772).....	13, 25
1 Samuel Johnson, <i>Dictionary of the English Language</i> (4th ed. 1773).....	25
Nancy J. King, <i>Juror Delinquency in Criminal Trials in America, 1796-1996</i> , 94 Mich. L. Rev. 2673 (1996)	30, 31
John H. Langbein, <i>The English Criminal Trial Jury on the Eve of the French Revolution, in The Trial Jury in England, France, Germany 1700-1900</i> (Antonio Padoa Schioppa ed., 1987).....	11, 30
Wayne D. Moore, <i>Written and Unwritten Constitutional Law in the Early Founding Period: The Early New Jersey Cases</i> , 7 Const. Comment. 341 (1990)	26
2 James Wilson, <i>Collected Works of James Wilson</i> (Kermit L. Hall & Mark David Hall eds., 2007) ..	13, 15, 27

In the Supreme Court of the United States

No. 25-6623

HAMED KIAN, PETITIONER

v.

STATE OF FLORIDA

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

**BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING RESPONDENT**

INTEREST OF THE UNITED STATES

This case presents the question whether the Court should overturn its decision in *Williams v. Florida*, 399 U.S. 78 (1970), and hold that the Sixth Amendment right to trial “by an impartial jury,” U.S. Const. Amend. VI, requires a jury of exactly 12 people. Although federal criminal juries generally consist of 12 people, federal courts may permit a jury of 11 to return a verdict if there is good cause to excuse a juror after deliberations have begun. Fed. R. Crim. P. 23(b)(1) and (3). The United States accordingly has an interest in the resolution of this case.

INTRODUCTION

As this Court has repeatedly recognized, the Sixth Amendment right to “trial, by an impartial jury” does not constitutionalize every feature of the jury trial as it

existed in the Founding Era. Instead, the Amendment constitutionalizes only those practices that were so definitional to the very concept of a “jury” as to be incorporated into the Amendment’s textual guarantee. And as this Court correctly held more than 50 years ago in *Williams v. Florida*, 399 U.S. 78 (1970), the historical practice of trying criminal cases before exactly 12 jurors—not 11 or 13—is not one of those features.

Although Founding Era crimes were tried before 12-person juries, the public meaning of the Amendment’s text does not require a body of 12. And the common-law preference for 12 jurors was merely a historical accident, of uncertain origin, that did not advance the role of the jury. In that respect, it is much more like the historical features of the jury that were not preserved in the Sixth Amendment—like the requirement that jurors be all men—than it is like the historical features of the jury that *were* constitutionalized—like the requirement that criminal juries be unanimous.

Since the mid-19th century, States have allowed for juries of fewer than 12 members in trials of serious crimes. And the Court’s 7-1 decision affirming such authority is a backbone of trial practice. A majority of States now use smaller juries to try at least some offenses to which the Sixth Amendment right attaches. Overturning *Williams* would call into question hundreds, if not thousands, of posttrial convictions pending on direct review across the country. Petitioner offers no sound basis to reverse course on the law and cause such disruption.

At a minimum, this Court should not call into question a court’s ability to accept a verdict from fewer than 12 jurors in emergency circumstances. Federal Rule of Criminal Procedure 23(b)(3) permits a court to take a

verdict from 11 jurors if one is dismissed for good cause during deliberations. That remedy is a solution to problems that arise during long, complex trials and deliberations, which would have been anomalous at the time of the Founding. The Sixth Amendment would therefore not speak to that remedy, and contains nothing that prohibits it.

STATEMENT

1. The Sixth Amendment to the Federal Constitution provides that “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed.” U.S. Const. Amend. VI. The Jury Trial Clause applies to the States through the Fourteenth Amendment. *Duncan v. Louisiana*, 391 U.S. 145, 156 (1968). And this Court has held that the jury-trial guarantee extends to all defendants accused of “serious crimes.” *Id.* at 161. An offense qualifies as “serious,” and thus triggers the Sixth Amendment jury right, “where imprisonment for more than six months is authorized.” *Baldwin v. New York*, 399 U.S. 66, 69 (1970) (plurality opinion); see *Blanton v. City of North Las Vegas*, 489 U.S. 538, 542 (1989).

In *Williams v. Florida*, 399 U.S. 78 (1970), this Court considered “whether the constitutional guarantee of a trial by ‘jury’ necessarily requires trial by exactly 12 persons, rather than some lesser number”—six, in Florida’s case. *Id.* at 86. The Court observed that at that time, five States “provide[d] for juries of less than 12 in felony cases” and nearly ten more States “provide[d] for less than 12-man juries in trials of certain offenses carrying maximum penalties of one year’s imprisonment.” *Id.* at 98 n.45. And after examining historical understandings and other considerations, the Court held that

“the 12-man panel is not a necessary ingredient of ‘trial by jury’” within the meaning of the Sixth Amendment. *Id.* at 86; see *id.* at 103.

Today, seven States provide for juries with fewer than 12 members in felony cases, and at least 20 additional States provide for juries of fewer than 12 for misdemeanors that qualify as “serious” offenses triggering the Sixth Amendment jury-trial right. See pp. 16-17, *infra*. Florida remains one of the former States, providing by statute that while “[t]welve persons shall constitute a jury to try all capital cases,” “six persons shall constitute a jury to try all other criminal cases.” Fla. Stat. § 913.10.

In federal court, a criminal jury generally “consists of 12 persons” unless the parties stipulate otherwise. Fed. R. Crim. P. 23(b)(1) and (2). Federal Rule of Criminal Procedure 23(b)(3) provides, however, that “[a]fter the jury has retired to deliberate, the court may permit a jury of 11 persons to return a verdict, even without a stipulation by the parties, if the court finds good cause to excuse a juror.”

2. Petitioner was a licensed chiropractic doctor who practiced chiropractic medicine in Jupiter, Florida. Trial Tr. 177, 240. Under Florida law, the state Department of Health is authorized to issue an emergency order suspending a practitioner’s license if it “finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension.” Fla. Stat. § 120.60(6). On October 28, 2021, petitioner was personally served with such an emergency order. See Trial Tr. 127-130; Confidential ROA 119-131 (detailing basis for emergency suspension).

In December 2021, while his license was suspended, petitioner practiced chiropractic medicine on three different patients on a total of five separate occasions. See Trial Tr. 165, 181, 188, 193, 200-201. Petitioner's unauthorized practice of chiropractic medicine came to the attention of state authorities after one of petitioner's female patients filed a police report stating that petitioner had kissed her on the lips without her consent during one of the unlawful sessions. See *id.* at 122, 208. The State of Florida subsequently filed an information charging petitioner with five counts of practicing chiropractic medicine with a suspended license, in violation of Fla. Stat. § 460.411(1)(b). See Trial Tr. 14-15. That offense is a third-degree felony under Florida law, Fla. Stat. § 460.411(1), with a maximum penalty of five years of imprisonment. *Id.* § 775.082(3)(e).

Pursuant to Fla. Stat. § 913.10, the case proceeded to trial before a six-person jury. During the two-day trial, the State called several witnesses, including the three patients treated in December 2021. Trial Tr. 179, 192, 198. Petitioner also testified in his own defense. *Id.* at 238. After hearing all the evidence, the jury found petitioner guilty of all five counts. *Id.* at 313-314; see Judgment 1. The trial court sentenced petitioner to 366 days of imprisonment (with credit for 292 days served), to be followed by ten years of probation. Sent. as to Counts 1, 2, and 5; Sent. as to Count 3, at 3; Sent. as to Count 4, at 3.

Petitioner appealed his conviction on two theories: that insufficient evidence was presented at trial, and that Florida's use of a six-person jury violates the Sixth Amendment. Pet. Dist. Ct. Br. 10-22. Petitioner acknowledged that he did not raise the jury-size issue

before the trial court, but he argued that facial challenges to Florida statutes could not be forfeited on appeal. See *id.* at 16-17. The Florida Fourth District Court of Appeal summarily affirmed in a per curiam order. Pet. App. 2.

SUMMARY OF ARGUMENT

More than half of the States hold trials for at least some serious crimes before juries with fewer than 12 members. As this Court recognized more than half a century ago in *Williams v. Florida*, 399 U.S. 78 (1970), that widespread practice is constitutional. Petitioner provides no sound basis for the extensive disruption that overruling *Williams* would cause. And he does not even attempt to challenge the independent constitutionality of Federal Rule of Criminal Procedure 23(b)(3), which permits a verdict from an 11-person jury when one juror is dismissed for good cause during deliberations.

I. As this Court has long recognized, the Sixth Amendment did not constitutionalize all “the particular forms and procedure” of jury practice “used at common law” during the Founding Era. *United States v. Wood*, 299 U.S. 123, 143 (1936). The 12-member jury, whose historical origins are uncertain, was not among the practices enshrined in the Amendment’s text.

The word “jury” itself did not mean a 12-member body, and was used during the Founding Era to describe factfinding bodies of different sizes. Also, unlike the requirement of a unanimous verdict, the historical practice of using 12 jurors—not 11 or 13—was never understood to advance the purposes of the jury. And, for over 175 years, States have been experimenting with jury size, confirming that 12 jurors is not an essential ingredient of a trial by jury.

Every traditional stare decisis factor strongly favors retaining *Williams*. The Court in that case extensively analyzed constitutional text, history, and prior precedent. It reached the correct result and, at a minimum, cannot be characterized as “egregiously wrong.” *Williams* also accords with longstanding precedent holding that the Constitution did not freeze in place every Founding Era jury practice. And the Court has continued to rely on *Williams* in later cases, including to hold that 12-person juries are not required in federal civil trials.

The reliance interests in retaining *Williams* are substantial. At least 27 States use smaller juries to try at least some serious offenses to which the Sixth Amendment jury-trial right attaches. Overruling *Williams* would thus require a majority of States to reexamine their laws and would call into question the validity of all cases in those States that are currently pending on direct review after such a jury trial. *Williams* is not causing any real-world harm that justifies such upheaval.

Petitioner’s counterarguments lack merit. He argues that this Court need not even analyze the stare decisis factors because the logic of *Williams* was eroded by *Ramos v. Louisiana*, 590 U.S. 83, 89 (2020), which abrogated *Apodaca v. Oregon*, 406 U.S. 404 (1972), to hold that criminal juries must be unanimous. But *Ramos*’s critiques of *Apodaca* do not apply to *Williams*, and unanimity and jury size do not rise and fall together. Moreover, petitioner’s historical evidence establishes, at most, that criminal juries historically had 12 people—not that the 12-person jury was so embedded in the very concept of a “jury” as to be incorporated

in the Sixth Amendment. And petitioner fails to confront, let alone refute, the strength of the reliance interests at issue here.

II. At all events, the emergency procedures authorized by Rule 23(b)(3) would be constitutional even independent of *Williams*. Although the common-law remedy for juror dismissal was typically retrial before a jury of 12, remedies like the completion of deliberations by the remaining 11 members of a jury have evolved as trials have become longer and more complex. And they are of a piece with other deliberation-related practices on which the Sixth Amendment is silent.

ARGUMENT

As the Court held more than five decades ago in *Williams v. Florida*, 399 U.S. 78 (1970), a size of precisely 12 members is one of many “incidental” (indeed, “accidental”) common-law features that is not enshrined in the Sixth Amendment’s Jury Trial Clause. *Id.* at 91; see *id.* at 103. Petitioner provides no sound justification for overturning that longstanding precedent—along with the jury procedures of a majority of the States—by holding now that the 12-member feature has, in fact, “been immutably codified into our Constitution,” *id.* at 90. Much less does he provide a reason why Federal Rule of Criminal Procedure 23(b)(3), which permits a jury that begins deliberations with 12 members to finish with 11 if a juror is excused for good cause, would be invalid. See Pet. Br. 13 n.4. This Court should affirm, or, at a minimum, issue a decision that does not call Rule 23(b)(3) into question.

I. THIS COURT SHOULD REAFFIRM THAT THE SIXTH AMENDMENT DOES NOT REQUIRE A JURY OF EXACTLY 12

The Sixth Amendment provides, in relevant part, that defendants accused of serious crimes 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. In *Williams*, this Court held that “the constitutional guarantee of a trial by ‘jury’” does not require “trial by exactly 12 persons.” 399 U.S. at 86. That understanding—which is supported by constitutional text, history, and state practice—is correct. *Williams* has also engendered extensive reliance interests in the States. Especially in light of those reliance interests, petitioner cannot justify overturning *Williams*.

A. This Court Has Correctly Recognized That The Guarantee Of “Trial By An Impartial Jury” Does Not Immutably Fix The Number Of Jurors At Exactly 12

The Sixth Amendment does not constitutionalize every feature of the jury trial from common law or the Founding—otherwise, myriad aspects of modern jury practice would be unconstitutional. Instead, the Amendment incorporates only those features of the historical jury trial that are embedded in the very meaning of a “trial, by an impartial jury,” U.S. Const. Amend. VI. The practice of having juries with 12 members, which lacks any practical historical justification, is one of the many historical features that does not meet that standard.

1. The Sixth Amendment does not constitutionalize every feature of Founding Era common-law jury-trial practice

The Sixth Amendment guarantees a right to “trial, by an impartial jury” in the district where the crime occurred, but it “says nothing else about what a ‘trial by an impartial jury’ entails.” *Ramos v. Louisiana*, 590 U.S. 83, 89 (2020). In constructing the right, this Court has looked first to “the historical role of the jury at common law.” *Oregon v. Ice*, 555 U.S. 160, 170 (2009). In doing so, it has found that certain aspects of common-law practice are so inherent to its role that they are implicitly incorporated into the concept of trial by “jury.” Among those are “the right to have the jury, rather than the judge, reach the requisite finding of ‘guilty,’” *Sullivan v. Louisiana*, 508 U.S. 275, 277 (1993); see *United States v. Gaudin*, 515 U.S. 506, 510 (1995); and, under this Court’s recent decision in *Ramos*, the “right to a unanimous verdict,” 590 U.S. at 100. At the same time, the Court has made clear that the Sixth Amendment did not constitutionalize all “the particular forms and procedure used at common law.” *United States v. Wood*, 299 U.S. 123, 143 (1936).

Just because “a given feature existed in a jury at common law in 1789,” that does not mean that “it was necessarily preserved in the Constitution.” *Williams*, 399 U.S. at 92-93. Instead, the Framers themselves understood and expected that a reference to trial by jury would not constitutionalize every contemporaneous jury practice. For example, “the common-law ‘vicinage’ right * * * presumptively entitled defendants to a jury of the ‘neighbourhood’ where the crime was allegedly committed.” *Smith v. United States*, 599 U.S. 236, 246 (2023) (quoting 4 William Blackstone, *Commentaries on*

the Laws of England 344 (1769)). But although that right was “highly prized by the founding generation,” *id.* at 248, it was not inherent in the guarantee of “Trial * * * by Jury” in Article III’s Venue Clause, U.S. Const. Art. III, § 2, Cl. 3. See *Smith*, 599 U.S. at 248. Nor, by the same logic, would it be inherent in the Sixth Amendment right to “trial, by an impartial jury,” U.S. Const. Amend. VI. Instead, the Framers explicitly added a vicinage requirement through a separate clause. See *Smith*, 599 U.S. at 248.

Consistent with the understood limitations on the Constitution’s use of the word “jury,” this Court has identified many other features of the common-law jury trial that are not inherently incorporated into the Constitution’s guarantee of trial “by jury” or “by an impartial jury.” At common law, juries exclusively consisted of property-owning men. See John H. Langbein, *The English Criminal Trial Jury on the Eve of the French Revolution*, in *The Trial Jury in England, France, Germany 1700-1900*, at 24-25 (Antonio Padoa Schioppa ed., 1987). Those rules also prevailed in the States during the Founding Era. See Albert W. Alschuler & Andrew G. Deiss, *A Brief History of the Criminal Jury in the United States*, 61 U. Chi. L. Rev. 867 (1994). But this Court has long recognized that “[t]he Sixth Amendment does not preclude legislation making women qualified to serve as jurors in criminal prosecutions, although that was not permitted at common law.” *Wood*, 299 U.S. at 145. Indeed, the Court ultimately interpreted the Sixth Amendment to *require* that women be eligible for the jury pool. *Taylor v. Louisiana*, 419 U.S. 522, 536 (1975).

Similarly, although common-law juries were “kept together without meat, drink, fire, or candle, till they

are agreed,” 2 Matthew Hale, *Historia Placitorum Coronae* 297 (1736), “[c]ourts are no longer required to impose these requirements on juries,” *Dietz v. Bouldin*, 579 U.S. 40, 52 (2016). In addition, while Founding Era juries decided questions of both fact and law, see Matthew P. Harrington, *The Law-Finding Function of the American Jury*, 1999 Wis. L. Rev. 377, 423-425, this Court has long restricted criminal juries from deciding pure legal questions, see *Sparf v. United States*, 156 U.S. 51, 102 (1895). Nor are all jury-selection procedures enshrined: although peremptory challenges were an important feature of Founding Era jury trials, 4 Blackstone 346, the Court has held that the Constitution does not “require[] the Congress to grant peremptory challenges to defendants in criminal cases,” *Stilson v. United States*, 250 U.S. 583, 586 (1919). And there are additional examples as well. See *Wood*, 299 U.S. at 143 (collecting other examples).

2. *The Sixth Amendment does not require a jury of exactly 12 jurors*

As this Court recognized in *Williams*, although common-law criminal juries “consisted of 12,” 399 U.S. at 91, that historical feature is one of the many that was not ossified in the Sixth Amendment, see *id.* at 103. Constitutional text, structure, and history; the origins and nature of the 12-person requirement; and historical state practice all make that clear.

a. The original public meaning of the word “jury” was not limited to 12-person bodies. Although criminal cases were tried by 12-person juries at common law, the word “jury” itself more broadly referred to a group “sworn to enquire into any matter and declare the truth according to evidence.” John Ash, *The New and Complete Dictionary of the English Language* 535 (1775);

see Giles Jacob, *A New Law Dictionary* (9th ed. 1772) (Jacob Dictionary) (explaining that “Jury * * * [s]ignifies a certain”—unspecified—“number of men sworn to inquire of, and try the matter of fact, and declare the truth upon such evidence as shall be delivered them”) (emphasis omitted).

Accordingly, Founding Era readers would have had no trouble understanding a group of a different size as constituting a “jury.” For example, in a lecture extolling “the trial by jury,” James Wilson said, “[w]hen I speak of juries, I feel no peculiar predilection for the number twelve,” observing that the “grand jury consists of more, and its number is not precisely fixed.”² James Wilson, *Collected Works of James Wilson* 954 (Kermit L. Hall & Mark David Hall eds., 2007). Blackstone similarly described a type of inquest as “done by a jury of no determinate number; being either twelve, or less, or more.”³ Blackstone 258 (1768).

Notwithstanding that indeterminacy, the Sixth Amendment simply refers to a “jury,” without specifying its size. That drafting choice contrasts with the specificity of other provisions, like the “twenty dollar[]” threshold for the civil jury-trial right, U.S. Const. Amend. VII; the designation of “two Senators from each State,” Art. I, § 3; and the careful rules for determining the number of Representatives, Art. I, § 2. It also contrasts with the Sixth Amendment’s own specificity on other aspects of the jury: both its “impartial[ity]” and its genesis in “the State and district wherein the crime shall have been committed.” Amend. VI. And the Amendment’s silence as to jury size is especially telling because the Framers, when founding their new nation, were on notice of trial juries of other sizes.

For example, although 12-person juries were typically used in English and American criminal trials, it was the “Custom” “in Wales” to “try by six Jurors.” 1 Giles Duncomb, *Trials per Pais* 96 (1766). And under British rule in the Colonies before the Revolution, smaller juries had also been imposed occasionally, at least in civil cases. See H. Richmond Fisher, *The Seventh Amendment and the Common Law: No Magic in Numbers*, 56 F.R.D. 507, 529 (1973); Resp. Br. 13-15. If the Framers or the First Congress wanted to prevent such practices from taking root in American criminal trials, they could have expressly specified a jury of 12—as, for example, some colonial charters and the Virginia Declaration of Rights had done. See, e.g., Va. Decl. of Rights § 8 (1776), *reprinted in* 7 *The Federal and State Constitutions* 3813 (Francis Newton Thorpe ed., 1909) (Thorpe). Instead, the Sixth Amendment notably omitted any mention of a 12-juror requirement.

b. Nothing in the history or nature of common-law practice compels the conclusion that a “jury” must inherently be sized at exactly at 12. The origins of 12-person juries are unclear, with commentators frequently justifying the practice simply on the ground that “the number of twelve is much respected in holy writ, as 12 apostles, 12 stones, 12 tribes, etc.” 1 Edward Coke, *First Part of the Institutes of the Laws of England*, § 234, at *155a (1812 ed.); see Duncomb 92; see also Pet. Br. 5-6. Whatever the true origins, the specific number 12 has no obvious purpose, see *Williams*, 399 U.S. at 88, which distinguishes it from other features of historical jury practice that this Court has deemed to be embedded in the guarantee of a “trial by jury.”

Jury unanimity, for example, was understood at the Founding to further the jury trial’s purpose of checking

prosecutorial power, by ensuring that the guilty verdict represents “the judgment of the whole society” rather than only a subset sympathetic to the government. 2 Wilson 961; see *Duncan v. Louisiana*, 391 U.S. 145, 156 (1968); *Williams*, 399 U.S. at 100 n.46. The unanimity requirement thus “relate[s] to” the “substance,” *Wood*, 299 U.S. at 143, of the jury-trial right. By contrast, the historical preference for exactly 12 jurors—not 11 or 13—was merely a matter “of form,” *ibid.*, the justification for which is at best unclear. That type of happenstance formality is unlikely to be genuinely definitional to the very nature of a “trial by an impartial jury.” See *ibid.*

c. State practice beginning in the 19th century confirms the nonuniversality of understanding a right to trial by “jury” as a guarantee of a 12-member body. Whether by constitution or by statute, a majority of States have through the years allowed trials by juries smaller than 12 for various serious offenses to which the Sixth Amendment’s jury-trial right attaches—*i.e.*, felonies and/or misdemeanors for which “imprisonment for more than six months is authorized,” *Baldwin v. New York*, 399 U.S. 66, 69 (1970) (plurality opinion); see *Callan v. Wilson*, 127 U.S. 540, 549 (1888) (noting that the class includes some misdemeanors).

Michigan’s 1850 constitution, for example, provided that “[i]n every criminal prosecution the accused shall have the right to a speedy and public trial by an impartial jury, which may consist of less than twelve men in all courts not of record” if so authorized by the legislature. Mich. Const. Art. IV, § 46; Art. VI, § 28 (1850), *reprinted in* 4 Thorpe 1949, 1956. The referenced courts had jurisdiction over some serious misdemeanor offenses, see Mich. Comp. Laws §§ 118.3924, 181.5762

(1857), and Michigan’s specification of juries smaller than 12 existed alongside its textual requirement of “trial by an impartial jury.” A subsequent constitutional amendment by Louisiana, while worded so as to treat a 12-member “jury” as the default, adopted a similar practice of allowing the legislature to authorize trial “by a jury” of “less than twelve,” for certain serious crimes. La. Const. Art. 7 (1879), *reprinted in* 3 Thorpe 1472.

Accordingly, the second half of the 19th century saw several States expressly prescribe juries of fewer than 12 for a number of serious offenses. For example, pursuant to the constitutional provision discussed above, an 1880 Louisiana statute provided for smaller juries for certain serious offenses. See *State v. Demouchet*, 3 So. 565 (La. 1888) (discussing Act 35 of 1880). Florida and Utah both provided for smaller juries for noncapital felonies. See 1877 Fla. Laws, ch. 3010, § 6; Utah Const. Art. I, § 10 (1895), *reprinted in* 6 Thorpe 3703. And Texas provided for juries of fewer than 12 in the courts with jurisdiction over misdemeanor offenses. See Tex. Const. Art. V, § 17 (1876), *reprinted in* 6 Thorpe 3640. Texas’s provision, like Michigan’s, was not worded in a manner that treated the word “jury” as inherently a body of 12. See Tex. Const. Art. V, § 17 (1876) (“A jury in the county court shall consist of six men.”); see also Resp. Br. 19-20 (citing additional 19th-century provisions).

Today, a majority of the States authorize trial for at least some serious crimes in front of juries of fewer than 12. Seven States use smaller juries for at least some felonies. See Ariz. Rev. Stat. Ann. § 21-102(B); Conn. Gen. Stat. Ann. § 54-82(c); Fla. Stat. § 913.10; Ind. Code Ann. § 35-37-1-1(b); La. Const. Art. I, § 17(A); Mass. Gen. Laws Ann. ch. 218, § 26A; Utah Code Ann. § 78B-1-104(1)(b) and (c). At least 20 additional States use

smaller juries to try misdemeanors—including misdemeanors that are serious rather than petty offenses. See, *e.g.*, Alaska Stat. Ann. § 22.15.150; N.Y. Crim. Proc. Law § 360.10(A); Tex. Code Crim. Proc. art. 33.01; Va. Code Ann. § 19.2-262(B); Wash. Rev. Code Ann. § 2.36.010(13).^{*} And Congress has authorized criminal trials in tribal courts by juries of “not less than six persons.” 15 U.S.C. 1302(a)(10).

That tradition of experimentation distinguishes the historical size of 12 from other features of the jury trial that are constitutionalized in the Sixth Amendment. For example, only a handful of States have ever permitted nonunanimous juries in serious criminal cases—a strong indicator that unanimity is embedded in the very concept of a “trial by jury.” See *Burch v. Louisiana*, 441 U.S. 130, 138 & n.12 (1979); *Ramos*, 590 U.S. at 88. By contrast, States have recognized for more than 175 years that they can provide their citizens with a trial by “jury” without requiring a jury of exactly 12. That understanding accords with the core original meaning of the Sixth Amendment’s text.

B. No Sound Reason Exists To Overturn *Williams*

More than half a century ago, this Court in *Williams* upheld the very same Florida six-person jury rule that petitioner now challenges. See 399 U.S. at 80 n.3. Petitioner, however, would have the Court cast aside that longstanding precedent, and the more than 175 years of

^{*} See also Colo. Rev. Stat. § 18-1-406(1); Ga. Code § 15-12-125; Idaho Crim. R. 23(c); Kan. Stat. Ann. § 22-3404(2); Ky. Rev. Stat. Ann. § 29A.280(1); Mich. Comp. Laws § 600.8355; Minn. Gen. R. Prac. 802(f); Miss. Code Ann. § 11-9-143; Mont. Code Ann. § 46-17-201(1); Neb. Rev. Stat. § 25-2705(2); N.M. Stat. Ann. § 35-8-3(A); Okla. Stat. Ann., tit. 22, § 601; Or. Rev. Stat. Ann. § 136.210(2); W. Va. Code § 50-5-8(d); Wyo. R. Crim. P. 23.

state practice that it has sustained, in favor of a rigid definition of “jury” as invariantly comprising exactly 12 people. That request is unsound. Although “*stare decisis* is ‘not an inexorable command,’” *Janus v. AFSCME Council 31*, 585 U.S. 878, 917 (2018) (citation omitted), “even in constitutional cases, a departure from precedent ‘demands special justification,’” *Gamble v. United States*, 587 U.S. 678, 691 (2019) (citation omitted). There is no such justification here. Indeed, factors that the Court has looked to in deciding whether to overrule other precedent—the nature of any error, consistency with related decisions and subsequent legal developments, reliance interests, and the decision’s workability and real-world consequences, see *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215, 268 (2022), all counsel against overruling *Williams*.

1. Nothing in Williams’s reasoning justifies overruling it

The Court in *Williams* devoted extensive attention to the “history of the development of trial by jury in criminal cases,” 399 U.S. at 86-87; to “[t]his Court’s earlier decisions,” *id.* at 90; and to “the relevant constitutional history,” *id.* at 92. In reviewing the common-law history, the Court acknowledged that “sometime in the 14th century the size of the jury at common law came to be fixed generally at 12.” *Id.* at 89. But it found “that particular feature of the jury system appears to have been a historical accident, unrelated to the great purposes which gave rise to the jury in the first place.” *Id.* at 89-90. And it ultimately rejected the proposition that “this accidental feature of the jury has been immutably codified into our Constitution,” *id.* at 90; see *id.* at 103.

Although petitioner criticizes the reasoning of *Williams*, see Br. 29-34, he fails to refute its central pillars.

First, it is indisputable that not “every feature of the jury as it existed at common law—whether incidental or essential to that institution—was necessarily included in the Constitution wherever that document referred to a ‘jury.’” *Williams*, 399 U.S. at 91. As discussed above, see pp. 11-12, *supra*, interpreting “jury” to refer solely to juries as they were at common law would mean that every jury would consist of property-owning men locked away without heat or sustenance. Not even petitioner takes that extreme position. Second, petitioner cannot explain why the exact size of 12—not a person more or a person less—is an “essential” feature, rather than an “incidental” or “accidental” one, *Williams*, 399 U.S. at 90-91. See Pet. Br. 5-11. He offers no meaningful basis for its existence and no evident reason, other than historical practice itself, why the Framers would have considered 12 superior to 11, 13, or other reasonable products of legislative judgment.

For the better part of two centuries, States have deemed it possible to have a trial by a “jury” that does not consist of exactly 12 jurors. See pp. 15-16, *supra*. At a bare minimum, it was not “grievously or egregiously wrong,” *Ramos*, 590 U.S. at 121 (Kavanaugh, J., concurring in part), for this Court in *Williams* to take the same view. And “[a] garden-variety error or disagreement does not suffice to overrule.” *Id.* at 121-122 (Kavanaugh, J., concurring in part).

2. *Williams is consistent with related decisions and subsequent legal developments*

Williams is also not the sort of outlier decision that can easily be discarded without unduly disrupting other precedent. Well before *Williams*, a long line of precedent recognized that the Constitution did not freeze in place every aspect of the Founding Era jury. See, e.g.,

Wood, 299 U.S. at 143; *Patton v. United States*, 281 U.S. 276, 306 (1930) (rejecting common-law jury-trial rule that “was justified by conditions which no longer exist”); *Glasser v. United States*, 315 U.S. 60, 85 (1942). The Court had long taken the same approach to the Seventh Amendment civil jury-trial right. See *Galloway v. United States*, 319 U.S. 372, 390-392 (1943). *Williams* simply applied that same approach to the size of the jury. See 399 U.S. 90-103.

In doing so, the Court did not just “ignore[],” *Knick v. Township of Scott*, 588 U.S. 180, 203 (2019), prior decisions that could be seen to have addressed the same issue, as outlier decisions sometimes do. The Court instead explained that while “earlier decisions” had “assumed”—“often in dictum”—that 12-member juries were “immutably codified into our Constitution,” those decisions rested on the flawed supposition “that every feature of the jury as it existed at common law” was “necessarily included in the Constitution.” *Williams*, 399 U.S. at 90-92. “Noticeably absent” from those earlier decisions was an actual analysis of whether an immutable size of 12 is an “essential” feature inherent in a trial by “‘jury,’” *id.* at 91—an analysis that *Williams* then conducted, see *id.* at 91-103. *Williams*’s reasonable first-in-time application of that analytical framework does not make it an outlier.

Indeed, this Court has never retreated from *Williams*’s holding—instead, it has reiterated and built upon it. For example, while “at least five Members of the Court” in *Ballew v. Georgia*, 435 U.S. 223 (1978), believed that a jury smaller than six is not permissible for serious crimes, *Burch*, 441 U.S. at 133, 137, the lead opinion by Justice Blackmun expressly stated that “we adhere to, and reaffirm our holding in *Williams*,”

Ballew, 435 U.S. at 239. The Court also affirmatively *relied* on *Williams* to conclude that the Seventh Amendment right to “trial by jury” in civil cases also does not require a 12-person jury. *Colgrove v. Battin*, 413 U.S. 149, 157 (1973). And the Court likewise relied on *Williams* to uphold Massachusetts’s “two-tier system” of jury trials, under which a criminal defendant was first tried before a judge and then, if found guilty, tried before a jury. See *Ludwig v. Massachusetts*, 427 U.S. 618, 620-621, 625 (1976); see also *Gaudin*, 515 U.S. at 510 n.2 (citing *Williams*); *Batson v. Kentucky*, 476 U.S. 79, 85 n.6 (1986) (same).

3. Overruling *Williams* would disrupt significant reliance interests

Williams’s position in the jurisprudential framework makes this a case in which “reliance provides a strong reason for adhering to established law,” *Janus*, 585 U.S. at 926. Overruling *Williams* could “throw into doubt” other “previous decisions from this Court,” *Hilton v. South Carolina Pub. Rys. Comm’n*, 502 U.S. 197, 203 (1991), like the holding that civil juries need not have 12 members. That holding informs the current Federal Rules, which provide that federal civil jury trials must “begin with at least 6 and no more than 12 members,” Fed. R. Civ. P. 48(a), and the predominant practice of in fact having civil juries smaller than 12. See Steven S. Gensler et al., *Better by the Dozen: Bringing Back the Twelve-Person Civil Jury*, 104 *Judicature* 47, 49-50 (2020).

But even if limited solely to the size of juries in trials of serious criminal offenses, an about-face on *Williams* would have a highly disruptive effect. As discussed above, at least 27 States currently use juries of fewer than 12 for serious crimes: seven States use such juries

for felonies, and at least another 20 use them for at least some misdemeanors to which the Sixth Amendment jury-trial right attaches. See pp. 16-17 & n.*, *supra*. Overruling *Williams* would thus “require an extensive legislative response” in the States, *Hilton*, 502 U.S. at 203, which “possess substantial reliance interests in their existing [criminal-procedure] schemes,” *Erlinger v. United States*, 602 U.S. 821, 870 (2024) (Kavanaugh, J., dissenting).

That, however, would be the least of the States’ problems. The more overwhelming one is that overturning *Williams* would also cast doubt on hundreds if not thousands of nonfinal convictions in cases tried before smaller juries. Although a new procedural rule would not disturb final convictions, it would “apply to cases pending in trial courts and on direct review.” *Edwards v. Vannoy*, 593 U.S. 255, 276 (2021). Under Florida law, only capital cases require 12-person juries. See Fla. Stat. § 913.10. Accordingly, Florida explains that many of its thousands of cases currently pending on direct review are from six-person jury trials. Resp. Br. 32; cf. Fla. Office of the State Cts. Admin., *Florida’s Trial Courts: Statistical Reference Guide FY 2024-25* 3-20 (Dec. 2025), <https://perma.cc/9HV2-WM9A> (1413 convictions following jury trial in Florida circuit courts, which handle felonies, during a single year). Across the other States that use smaller juries, there may be hundreds, if not thousands, more cases pending on direct appeal that were tried before juries smaller than 12.

The number of convictions at stake is much larger than in *Ramos*, which only affected the practices in two States (Louisiana and Oregon), and only in the subset of their nonfinal convictions where the jury was not unanimous. See 590 U.S. at 108. Reversing course here

is therefore likely to cause “wildly more[] disruption,” *id.* at 109, than the Court predicted there. Depending on state forfeiture and prejudice rules, convictions from trials with smaller juries may be subject to retrial before a 12-person jury even if the defendant did not press the issue below. Cf. *Henderson v. United States*, 568 U.S. 266, 268 (2013) (holding that error is “plain” for purposes of federal law so long as it is “plain” by “the time of appellate review”). Retrying even a significant subset of those cases could burden both state prosecutors and the state courts with a massive amount of duplicative work. And as witnesses’ memories fade and evidence dissipates, there is a real risk that some, perhaps many, cases would not be able to be retried, leading to an unjustified windfall for offenders convicted of serious crimes.

4. *Williams is workable and has not caused real-world harm that would warrant its overruling*

The status quo under *Williams* is eminently workable, and petitioner does not suggest otherwise. After *Ballew*, the rules of the road are clear: juries in cases involving serious criminal offenses must have at least six jurors, but they need not have exactly 12. *Ballew*, 435 U.S. at 239 (opinion of Blackmun, J.). And petitioner cannot show that *Williams* has led to any harmful “real-world consequences,” *Ramos*, 590 U.S. at 122 (Kavanaugh, J., concurring in part), that would justify setting it aside.

In *Ramos*, it was self-evident that a rule permitting nonunanimous juries led to guilty verdicts that would have been hung juries in other States, thus leading to the convictions “of some defendants who might not be convicted under the proper constitutional rule.” *Ramos*, 590 U.S. at 126 (Kavanaugh, J., concurring in

part). Petitioner argues (Br. 35) that smaller juries likewise will produce guilty verdicts more often, but that is far from clear. While larger juries might increase the chances of a holdout juror, they also might make it easier for a dissenting voice to be drowned out. Compare Pet. Br. 30-34, with Resp. Br. 43 (collecting competing studies). Such uncertainty is not sufficient to justify the disruption of overruling *Williams*.

C. Petitioner’s Arguments Lack Merit

1. Petitioner errs in asserting that this Court’s decision in *Ramos* already “effectively overruled *Williams*,” Pet. Br. 24 (capitalization omitted), such that stare decisis should not even apply. *Ramos* held that criminal juries must be unanimous, abrogating *Apodaca v. Oregon*, 406 U.S. 404 (1972)—not *Williams*. See *Ramos*, 590 U.S. at 93. The mere fact that the plurality opinion in the fractured *Apadaca* decision had relied on *Williams*, see Pet. Br. 26-27, does not mean that *Apodaca* and *Williams* must rise and fall together. See *Burch*, 441 U.S. at 139 (permitting six-person jury but requiring unanimity). The Court in *Ramos* “d[id] not claim that the Sixth Amendment incorporated every feature of common-law practice,” 590 U.S. at 154 (Alito, J., dissenting), and the jury’s size and unanimity are not the same thing.

Nor are the principal flaws that *Ramos* identified in the *Apodaca* plurality opinion present in *Williams*. A key reason why several Justices in the *Ramos* majority refused to retain *Apodaca*—*Apodaca*’s unusual fracture, in which even the five Justices who agreed with the result were opposed on the rationale, *Ramos*, 590 U.S. at 102 (opinion of Gorsuch, J.)—has no analogue in the 7-1 decision in *Williams*. In addition, the *Apodaca* plurality “spent almost no time grappling” with history

or precedent and relied instead on “an incomplete functionalist analysis of its own creation for which it spared one paragraph.” *Id.* at 106 (majority opinion). *Williams*, however, explored both history and precedent at length, and considered the “function” of the historical 12-member practice only after its lengthy historical and textual analysis. 399 U.S. at 99; see *id.* at 91-101.

2. Petitioner also fails to show that *Williams* was “grievously or egregiously wrong,” *Ramos*, 590 U.S. at 121 (Kavanaugh, J., concurring in part). Much of petitioner’s historical evidence (Br. 5-11, 18) shows only that Founding Era criminal juries had 12 people, not that a 12-person requirement is embedded in the original meaning of the Amendment’s text. The mere fact of common-law practice no more illuminates the constitutional question here than it does the constitutional question of whether the Sixth Amendment restricts juries to property-owning men—a requirement that petitioner presumably does not seek to enshrine.

Petitioner’s reliance (Br. 7) on dictionaries is similarly question-begging. Both dictionaries he cites actually defined “jury” more broadly to cover bodies of different sizes, and both mention the 12-person petit jury only when *describing* contemporary jury-trial practice in England. See Jacob Dictionary (defining a “jury” as “a certain number of men, sworn to inquire of and try the matter of fact”); 1 Samuel Johnson, *Dictionary of the English Language* 1151 (4th ed. 1773) (defining a jury as “a company of men, as twenty-four or twelve, sworn to deliver a truth upon * * * evidence”). Moreover, if those definitions were controlling, a jury could consist only of “men.”

Petitioner asserts that in the first decades after the Amendment’s ratification, “state courts uniformly held

that the term ‘trial by jury’ in their own constitutions required 12 jurors.” Pet. Br. 9; see *id.* at 19-20. But none of his examples from that early period supports that assertion. Two of the cited cases were interpreting distinctive language in state constitutions that expressly froze in place prior jury-trial practices. See, e.g., *Emerick v. Harris*, 1 Binn. 416, 428 (Pa. 1808) (interpreting a provision requiring that “trial by jury *shall be as heretofore*”) (emphasis added); *Whitehurst v. Davis*, 3 N.C. (2 Hayw.) 113, 113 (1800) (per curiam) (addressing a provision that expressly adopted “*the ancient mode* of trial by jury” (N.C. Decl. of Rights Art. XIV (1776), *reprinted in* 5 Thorpe 2788)) (emphasis added). Another discussed the 12-juror requirement only in dictum. See *Zylstra v. City of Charleston*, 1 S.C.L. (1 Bay) 382, 389 (1794). And *Holmes v. Walton* (N.J. 1780), mentioned in a footnote (see Pet. Br. 7 n.2), has no surviving written decision, making it impossible to know whether the court was actually “interpreting” the phrase “trial by jury” in its state constitution or simply relying on “extrinsic norms.” Wayne D. Moore, *Written and Unwritten Constitutional Law in the Early Founding Period*, 7 Const. Comment. 341, 354 (1990).

Petitioner’s reliance (Br. 9, 20-21) on state-court decisions from later in the 19th century is similarly misplaced. As a threshold matter, some of those decisions interpreted provisions with language different from the Sixth Amendment’s. See, e.g., *Cancemi v. People*, 18 N.Y. 128, 135 (1858) (interpreting provision that trial by jury “shall remain inviolate forever”). And some state courts reached conclusions contrary to petitioner’s position here. See, e.g., *Allen v. State*, 51 Ga. 264 (1874) (“The right to trial by jury is one thing, the number of persons who shall compose the jury is another.”). As

discussed above, see pp. 15-16, *supra*, the late 19th century was actually a time of growing state experimentation with juries of fewer than 12 members—not a time of universal devotion to a historical form of unknown origin and little perceived practical value.

Petitioner’s citations of 19th-century treatises do not show otherwise. Petitioner cites James Wilson’s comment that “the undoubting and the unanimous sentiment of the twelve jurors is of indispensable necessity.” 2 Wilson 985. But read in context, Wilson was describing *unanimity*, not 12 jurors, as “indispensable.” *Ibid.* On the actual subject of jury size, as petitioner acknowledges, Wilson remarked that he felt “no peculiar predilection for the number twelve.” Br. 21 n.7 (citation omitted). Petitioner suggests (*ibid.*) that Wilson was simply opining “that a petit jury could conceivably be *larger* than twelve—not smaller.” But that is still inconsistent with petitioner’s own theory that a jury must have *exactly* 12 members. See, e.g., Pet. Br. 11. Petitioner also cites (*id.* at 21) the views of late-19th century treatise writers that the Constitution requires a jury of 12. But those comments are not dispositive, as they reflect the views of commentators who were “not * * * members of the Founding generation.” *Moore v. Harper*, 600 U.S. 1, 34 (2023) (citation, ellipsis, and internal quotation marks omitted).

3. Petitioner also fails to show that any other traditional stare decisis factor favors overruling *Williams*. He downplays the relevant reliance interests, asserting (Pet. Br. 37) that “the vast majority of states” require a 12-member jury “in felony cases involving significant terms of imprisonment.” But if a 12-juror requirement is incorporated in the text of the Sixth Amendment as petitioner contends, then 12 jurors will be required in

all trials to which the Sixth Amendment right attaches, which include not only felony trials but trials of misdemeanor offenses that carry potential sentences of more than six months. See *Baldwin*, 399 U.S. at 68 (plurality opinion); *Blanton v. City of North Las Vegas*, 489 U.S. 538, 542 (1989). And a majority of States use smaller juries in at least some of those cases. See pp. 15-16, *supra*.

Petitioner does not point to real-world harms that justify the widespread disruption that could ensue if those state practices, and the many convictions under them that are not yet final, were invalidated. He cites (Pet. Br. 30-34) social-science literature suggesting that larger juries make better decisions. But that is not in itself a basis for a particular size of 12, as opposed to, say, 11—or 13. Petitioner also claims (*id.* at 35) that permitting smaller juries “does real harm to public perception of the jury.” But he fails to recognize that a majority of States have approved the use of smaller juries for serious crimes. And while he points out (*id.* at 33) that smaller juries are less likely to “provide a representative cross-section of the community,” this Court has “never held that the Sixth Amendment requires that ‘petit juries actually chosen must mirror the community and reflect the various distinctive groups in the population.’” *Batson*, 476 U.S. at 85 n.6 (citation omitted).

4. Petitioner also suggests (Br. 36) that Florida’s original 1877 six-person jury law was designed to suppress minority participation on juries. But he does not point to any evidence of the Florida legislators’ actual intent in enacting the law—only the law’s post-Reconstruction timing. And the Florida Senate in 1877—a time when the State was sparsely populated—had nondiscriminatory reasons, like an acute concern with cost-saving, to favor smaller juries. See Resp. Br.

49-50; Census Office, Dep't of the Interior, *Statistics of the Population of the United States at the Tenth Census* 5 Tbl. I(d) (June 1, 1880).

In any event, whatever the reason for Florida's original enactment, it reenacted its six-person jury rule in 1968, and its current practice coheres with the majority of the States, which likewise allow juries of fewer than 12 in trials for at least some serious crimes. While petitioner may think that is bad policy, his policy view is not a basis for interpreting the Sixth Amendment to override the judgments of a majority of States.

II. AT A MINIMUM, THIS COURT SHOULD CONFIRM THAT FEWER THAN 12 JURORS MAY RETURN A VERDICT IN EMERGENCY CIRCUMSTANCES

By rule, the default size of a federal criminal jury is “12 persons.” Fed. R. Crim. P. 23(b)(1). But under Federal Rule of Criminal Procedure 23(b)(3), “the court may permit a jury of 11 persons to return a verdict, even without stipulation by the parties, if the court finds good cause to excuse a juror” after “the jury has retired to deliberate.” As petitioner recognizes, Rule 23(b)(3) is meaningfully different from laws like Florida's, which address the default size of a jury, because Rule 23(b)(3) involves the procedures applied “‘when an emergency arises toward the end of the deliberations’ rather than the number of jurors who must be sworn at the outset.” Pet. Br. 13 n.4 (citation omitted). Regardless of whether the Sixth Amendment requires empaneling a jury of 12 at the outset of trial, there is no basis to conclude that the Amendment bars Rule 23(b)(3)'s emergency procedures. Accordingly, even if this Court holds that petitioner's Sixth Amendment rights were violated, it should not adopt a rule that calls the constitutionality of Rule 23(b)(3) into question.

A. As jury-trial practice has evolved, so have the procedures to remedy a juror's unexpected dismissal. At common law, if a juror "disappeared or became incapacitated" during trial, the ordinary common-law remedy was a new trial. *Hinton v. United States*, 979 A.2d 663, 672 (D.C. 2009) (en banc). The 11 remaining jurors would be retained, and the judge would select a twelfth. With the jury reconstituted, the trial began anew. *Ibid.* With only minor differences, the same practice prevailed in early American trials. *Ibid.*; see Nancy J. King, *Juror Delinquency in Criminal Trials in America, 1796-1996*, 94 Mich. L. Rev. 2673, 2726 (1996).

Such retrials would not have been particularly burdensome, given the "astonishing rapidity of trial and verdict," Langbein 27, at the time. Eighteenth-century criminal trials typically lasted less than one hour from start to finish. See Sir John Baker, *An Introduction to English Legal History* 551 & n.66 (5th ed. 2019); King 2681. Jury deliberations, in turn, often lasted only a few minutes. See Langbein 27; King 2710. If the jury retired to a separate room to deliberate, they would be locked together (including overnight) without food, at least in part to encourage a quick decision. King 2678-2679; see 3 Blackstone 375.

As American criminal trials became significantly longer and more complex, mistrials due to juror incapacitation became more frequent and retrials more costly. See King 2709-2712; *Hinton*, 979 A.2d at 675; H.R. Rep. No. 957, 72d Cong., 1st Sess., at 1 (1932) (House Report). New practices developed in the late 19th and early 20th centuries to address those novel burdens. For example, this Court held that parties could stipulate to a verdict by a smaller jury when a juror dropped out. See *Patton*, 281 U.S. at 306-307. States

and Congress also provided for alternate jurors who would hear the evidence alongside the selected jurors and could replace one who became incapacitated. See Act of June 29, 1932, ch. 309, 47 Stat. 380-381; House Report 2. Although the concept of alternate jurors would have been unfamiliar to the Framers, see King 2726, today they are nearly universal.

B. The current federal rules accordingly allow courts, when a juror is dismissed after deliberations have already begun, to replace the dismissed juror with an alternate and “instruct the jury to begin its deliberations anew.” Fed. R. Crim. P. 24(c)(3). But depending on the circumstances, it may “not [be] desirable to allow a juror who is unfamiliar with the prior deliberations to suddenly join the group and participate in the voting without the benefit of earlier group discussion.” 3 *The ABA Standards for Criminal Justice* § 15-2.7, comm. (2d ed. 1980). And inserting an alternate and restarting deliberations can add delays that could cause even more jurors to become unavailable. See, e.g., *United States v. Levenite*, 277 F.3d 454, 465 (4th Cir.), cert. denied, 535 U.S. 1005 (2002).

Rule 23(b)(3) avoids those concerns by permitting the court, in its discretion, to allow the remaining 11 jurors to deliver a verdict in the event that a juror is dismissed for good cause after the start of deliberations. See Fed. R. Crim. P. 23(b)(3) advisory committee’s note (1983 Amendment). Since its adoption in 1983, Rule 23(b)(3) has spared many cases from burdensome restarts when a juror is unexpectedly excused for good cause during deliberations. See, e.g., *Levenite*, 277 F.3d 464 (juror became ill with contagious intestinal flu during deliberations); *United States v. Chorney*, 63 F.3d 78,

81 (1st Cir. 1995) (juror’s son was killed during deliberations); *United States v. Wilson*, 894 F.2d 1245, 1250 (11th Cir.) (pregnant juror became ill and feared a miscarriage), cert. denied, 497 U.S. 1029 (1990).

C. The Sixth Amendment does not prohibit Rule 23(b)(3)’s remedy for the mid-deliberation dismissal of a juror. Even if the common law would have required a retrial before 12 jurors, there is no reason to believe that practice was so definitional to the meaning of a trial by jury as to be embedded in the Sixth Amendment. The Founding Era remedies for juror dismissal were “justified by conditions which no longer exist,” *Patton*, 281 U.S. at 306, and which were starkly different from conditions today.

This Court has already dispensed with common-law deliberation practices that are impractical for modern trials, like the requirement that that jury continuously be sequestered, without even a “lunch break[],” until it reached a verdict. *Dietz*, 579 U.S. at 52. The practice of ending deliberations—and redoing the entire trial—on the loss of even one juror is of a piece. Mandatory retrials were relatively easy when trials typically lasted less than an hour, but they are not a satisfactory solution in a world with longer and more complex trials. If they were immutably enshrined in the Sixth Amendment, then even the ubiquitous modern remedy of substituting in an alternate juror would be impermissible. The trial, no matter how long and complex, would need to begin anew, with the attendant burdens on the witnesses, the court, the government, and the defendant himself. Nothing justifies that result.

CONCLUSION

For the foregoing reasons, the judgment of the Florida Fourth District Court of Appeal should be affirmed.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
A. TYSEN DUVA
Assistant Attorney General
ERIC J. FEIGIN
Deputy Solicitor General
ZOE A. JACOBY
*Assistant to the
Solicitor General*
PAUL T. CRANE
Attorney

OCTOBER 2026