

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

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

Ramos resolves this case. It sets the stakes: The Sixth Amendment’s “promise of a jury trial” is “fundamental to the American scheme of justice.” *Ramos v. Louisiana*, 590 U.S. 83, 89, 93 (2020). It sets the test: The scope of that right is controlled by “what the term ‘trial by an impartial jury’ meant at the time of the Sixth Amendment’s adoption.” *Id.* at 90. And it determines the outcome: “[C]ommon law, state practices in the founding era [and] opinions and treatises written soon afterward,” *id.*, establish that the Sixth Amendment guarantees the right to a 12-person jury.

Florida cannot seriously dispute that “a mountain of evidence suggests that, both at the time of the Amendment’s adoption and for most of our Nation’s history, the right to a trial by jury for serious criminal offenses *meant* a trial before 12 members of the community[.]” *Khorrami v. Arizona*, 143 S.Ct. 22, 23 (2022) (Gorsuch, J., dissenting from denial of certiorari). To the contrary, Florida repeatedly acknowledges “history shows that the default common-law jury size was 12 in 1791.” Fla.Br.1; *see also* Fla.Br.9, 11.

To escape the historical record and *Ramos*, Florida relies on constitutional tests announced in two other cases—*Dobbs* and *Williams* itself. Fla.Br.6-9. According to Florida, these decisions mean that the Constitution’s failure to use the number “12” requires Mr. Kian to prove a particular number of jurors was “so essential ... as to be impliedly codified[.]” Fla.Br.9. But *Ramos* expressly rejects “distinguish[ing] between the historic features of common law jury trials that (we think) serve ‘important enough’ functions to migrate silently into the Sixth Amendment and those that don’t.” 590 U.S. at 98.

Regardless, *Dobbs* focused on the rule for whether an unenumerated right should be read into the Due Process Clause—not interpreting the *scope* of the Sixth Amendment. And *Williams*, for its part, expressly disavowed reliance on “purely historical considerations” in favor of a functionalist approach. *Williams v. Florida*, 399 U.S. 78, 89, 99 (1970).

Unable to prevail on the history or the law, Florida falls back on threats, asserting that enforcing the original public meaning of the Sixth Amendment will be the end of *Miranda* warnings, court-appointed criminal defense attorneys, and “[m]odern Eighth Amendment jurisprudence” itself. Fla.Br.2, 45-49, 51. But if that Rubicon were real, *Ramos* crossed it—the dissenting Justices suggested that decisions like *Miranda*, *Gideon*, and *Furman* were “all now up for grabs[.]” *Ramos*, 590 U.S. at 153 (Alito, J., dissenting). Thankfully, Florida is wrong. *Apodaca* and *Williams* are uniquely and closely linked. Pet.Br.26-28. As *Ramos*’s detractors observed seven years ago, the Court could not have ruled in favor of Mr. Ramos without implicitly “overturn[ing] *Williams*.” *Ramos* Louisiana Br.19, No. 18-5924; *see also Ramos* Oregon Br.27 (“[O]ne could mount a challenge to *Williams* by taking much of the briefing in [*Ramos*] and substituting ... ‘the rule of 12’ for unanimity.”); *Ramos*, 590 U.S. at 158 (Alito, J., dissenting) (“[r]epudiating the reasoning of *Apodaca* will almost certainly prompt calls to overrule *Williams*”).

Nor will recognizing the right to a 12-person jury force a change in criminal procedure outside of Florida and the other six States that permit small juries to hear felonies that could result in a significant term of imprisonment. *Cf.* Fla.Br.2. Mr. Kian was convicted of five felony counts of practicing chiropractic medicine with a

suspended license and faced decades in prison. Pet.Br.14.¹ The only question this Court need address is whether the Sixth and Fourteenth Amendments protect his right to a 12-person jury in light of being charged with those serious felonies. This Court accordingly need not resolve, for example, whether certain misdemeanors require 12 jurors, Fla.Br.36, or the constitutionality of Federal Rule of Criminal Procedure 23(b)(3), U.S.Br.29-32. Such questions should be answered, if at all, on another day. *See, e.g., Fuld v. Palestine Liberation Org.*, 606 U.S. 1, 18-19 (2025) (reserving judgment on “the Fifth Amendment’s outer limits” because “the cases before us do not require doing so”).

To be sure, applying *Ramos*’s reasoning to the 12-person jury requirement will require some cases currently on direct appeal to be retried. Adopting “new rules of criminal procedure usually” does, with such decisions “often affecting significant numbers of pending cases across the whole country.” *Ramos*, 590 U.S. at 108. But the seven States’ “competing interests” cannot outweigh “the reliance the American people place in their constitutionally protected liberties[.]” *Id.* at 111 (plurality op.).

¹ Florida’s gratuitous assertions of sexual misconduct (Fla.Br.i, 3, 51) were not the basis for Mr. Kian’s convictions or even properly before the jury, *see* Trial Tr. 191 (Oct. 30, 2023) (court instructing prosecution not to “get into” such allegations, as Mr. Kian “is not charged with any kind of Battery, SV, anything like that”).

ARGUMENT

I. THE CONSTITUTION GUARANTEED MR. KIAN A 12-PERSON JURY

A. Florida Relies On The Wrong Historical Test

As explained, *Ramos* requires courts to determine the “meaning” of “trial by an impartial jury” by considering the public understanding of the term at the time of the Sixth Amendment’s adoption. Pet.Br.16-17. That inquiry requires consulting “the common law, state practices in the founding era, [and] opinions and treatises written soon afterward.” Pet.Br.17. *Ramos* thus rejects the *Williams* approach of “distinguish[ing] between the historic features of common law jury trials that (we think) serve ‘important enough’ functions to migrate silently into the Sixth Amendment and those that don’t.” 590 U.S. at 98.

Florida’s view of how to interpret the Sixth Amendment cannot be reconciled with *Ramos*’s.

Florida first places weight on the fact that “the Constitution’s text ‘makes no express reference’ to a particular right” to 12-person juries. Fla.Br.6 (quoting *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 235 (2022)). Even setting aside that *Dobbs* focused on the scope of the Fourteenth Amendment’s Due Process Clause, the Sixth Amendment makes no reference to unanimity either. But as *Ramos* explained, the Constitution does expressly protect the right to a jury trial. 590 U.S. at 89. That right must be given meaning. And the way to do so is to consider what “the right to a jury trial *meant*” to the public “at the time of the [Sixth] Amendment’s adoption.” *Id.* at 98. Florida’s approach would leave a “right mentioned twice in the Constitution ... an empty promise.” *Id.*

Florida next asserts that the Court must consider what the Framers “*believed* indispensable” to—or “*meant* to incorporate” in—the right to a jury trial. *E.g.*, Fla.Br.7, 18 n.5, 38 (emphases added). This is just another restatement of the *Apodaca* test, which sought in the first instance to divine “the intent of the Framers.” *Apodaca v. Oregon*, 406 U.S. 404, 410 (1972) (citing *Williams* as the origin for this test). In overruling *Apodaca*, *Ramos* rejected this line of thinking. The original public meaning of “the language Congress retained and the States ratified” provides the bounds of the Sixth Amendment, regardless of “why” that language was chosen. 590 U.S. at 98.

Florida then appears to suggest that Mr. Kian must prove every American trial from the Founding to Reconstruction used a 12-person jury. Fla.Br.9-21. Much of Florida’s supposed evidence of variations in criminal jury size is wrong. *See infra* pp.7-12. Regardless, *Ramos* did not hold the original public meaning of the jury trial right to Florida’s standard. Instead, the Court recognized that a degree of historical “variation[] did not matter much.” *Ramos*, 590 U.S. at 90. And *Ramos* observed that “a few of the Colonies,” including the Carolinas, “had relaxed ... the unanimity requirement” and “permitted conviction by majority vote.” *Id.* at 91 n.15; *see also Ramos* Louisiana Br.16-17 (arguing “Founding-era practice contradicts the notion that the Framers expected the words ‘trial by jury’ ... to automatically trigger a unanimity requirement”). At best, Florida can identify the same kinds of pre-founding variations, or abridgements of the jury trial right that occurred nearly a century after ratification of the Sixth Amendment. Fla.Br.10-21; *infra* pp.7-12.

Finally, Florida asserts that because the common-law 12-person requirement could be modified by Parliament, the right incorporated within the Sixth Amendment must permit legislatures to reduce jury size. Fla.Br.9-10, 13. This argument confuses a general limitation on common-law rules with a specific limitation on the 12-person jury right. In England, “the omnipotence of parliament over the common law was absolute, even against common right and reason.” *Hurtado v. California*, 110 U.S. 516, 531 (1884). “In this country,” however, “written constitutions were deemed essential to protect the rights and liberties of the people against the encroachments of power delegated to their governments[.]” *Id.* The jury trial is one of those rights and liberties and cannot be “freely abridged by statute.” *Ramos*, 590 U.S. at 89. Were it otherwise, the Seventh Amendment—which has a scope set by “common law” principles—could be negated by Congress. That cannot be right.

B. Florida Cannot Prevail Under The Correct Historical Test

As explained, the historical evidence is what matters, and it is unequivocal. Pet.Br.5-11, 16-23. Florida itself agrees “the default jury size at common law was 12,” Fla.Br.9; 12 has been “the default” since around the fourteenth century, Fla.Br.11; and a number of founding-era state courts read their jury guarantees “to implicitly require 12-person juries,” Fla.Br.15 n.3. Under *Ramos*, that means the Sixth Amendment required Mr. Kian to be tried before 12 jurors. Florida identifies nothing undermining that conclusion.

1. Pre-Founding Sources

Many of Florida's supposed examples do not involve criminal juries at all. Florida opens with Norman and Frankish proceedings that "show all sorts of numbers." Fla.Br.10. But by Florida's own description, these bodies "gathered information for fiscal and administrative purposes," *id.*—*i.e.*, they were not criminal trials. Other examples are similarly inapposite. Florida admits that Glanvill's "jury of eight" was convened "to determine the defense of infancy in land disputes," *id.*, not to try crimes. And Duncomb's observation that "less than Twelve may serve" in "Inquests of Office," on "Writs to inquire of Damages," and for "'Writs of Inquiry' courts [that] would award damages" again did not involve criminal proceedings. Fla.Br.12; 3 Blackstone, *Commentaries on the Laws of England* 258 (1768). When he addressed criminal juries immediately before the passage Florida quotes, he stated the rule clearly: "the Law is so precise in this Number of Twelve, that if the Trial be by more or less, it is a Mistrial." 1 Duncomb, *Trials per Pais* 92-93 (8th ed. 1766).²

Florida's other purported examples of smaller juries during this early period are also unavailing. For example, Florida wrongly suggests (Fla.Br.13) that Blackstone equivocated on the size of a criminal jury, despite his express statement that no one could be convicted of a serious crime except by "the unanimous [s]uffrage of twelve of his equals and neighbours." 4 Blackstone, at 343. Florida's assertion (Fla.Br.13) that "elsewhere

² The "juries of 9, 36, and 40" Thayer attributes to *Bracton's Note Book* also say little about legal requirements for juries in the 13th century, as those numbers were at least "partly" attributable to litigants' "consent." Thayer, *The Jury and Its Development*, 5 Harv. L. Rev. 295, 295 (1892).

Blackstone treated the number as less material,” when he mentioned only “a competent number of sensible and upright jurymen,” omits the rest of the passage. Blackstone states in the same breath that disputed facts “must be examined and decided by *twelve* indifferent men.” 3 Blackstone, at 380 (emphasis added); *see also id.* at 379 (“unanimous consent of *twelve*”) (emphasis added). Florida also invokes *Tredymmock v. Perryman* to suggest juries of fewer than 12 were permissible at common law, but later admits it is relying on an unsuccessful “argu[ment]” not accepted by the court. *Compare Fla.Br.11-12 with Tredymmock v. Perryman*, 3 Croke, *Reports* (7 Car. I) 259-260 (Thomas Leach 4th ed. 1793) (conviction by six-person jury “void, and against the common law”).

Finally, Florida suggests the “Duke’s Laws of 1665”—which it states were briefly adopted by a few New York cities and two early colonies—deserve “special weight.” Fla.Br.14. But *Ramos* dismissed similar colony-level experiments as not reflective of original public meaning, given that “by the time of the Sixth Amendment’s adoption, unanimity had again become the accepted rule.” 590 U.S. at 91 n.15. The same is true of the Duke’s Laws. Even by Florida’s account, for example, the newly founded colony of Pennsylvania operated under the Duke’s Laws only “until 1683,” Fla.Br.15, and the very source *Williams* (and Florida’s own brief in opposition) relied on in discussing Pennsylvania practice described such proceedings as “informal,” Pet.Br.7 n.3. Pennsylvania’s laws subsequently guaranteed trials “by twelve men, and, as near as may be, peers, or equals.” *Emerick v. Harris*, 1 Binn. 416, 426 (Pa. 1808) (Brackenridge, J., op.); *see also* Prof.Su.Br.3-7.

2. Founding-Era Sources

Florida’s founding-era evidence begins with the observation that “[o]f the 13 state constitutions existing in 1791, only two specified that juries should consist of 12 members,” while the other 11 “said nothing of jury size.” Fla.Br.15. Again, *Ramos* rejected this same type of argument with respect to unanimity. Not all founding-era constitutions “explicitly required unanimity”—others “preserved the right to a jury trial in more general terms.” 590 U.S. at 90-91. But the Court recognized “the variations did not matter much; consistent with the common law, state courts appeared to regard unanimity as an essential feature of the jury trial.” *Id.*

The same logic applies here. Pet.Br.19-20. Even beyond the numerous States with laws or constitutions expressly requiring 12 members, others guaranteed “trial by jury” in the common-law sense, and the state courts that construed that term held that it meant 12. *See* Pet.Br.7, 9. Tellingly, Florida identifies no founding-era court that held otherwise. Fla.Br.15 n.3.

Florida’s reliance on individual Framers is no more persuasive. For example, Florida leans heavily on James Wilson’s remarks regarding “*civil* juries” but ultimately concedes Wilson’s statements about *criminal* juries “assumed the default 12-person jury.” Fla.Br.15-16 & n.4 (emphasis added); *see* Prof.Su.Br.16-18. And to the extent Florida relies on Wilson’s personal “predilection” about jury size, Fla.Br.15, such subjective considerations are constitutionally irrelevant, *see supra* p.5.

Other Framers Florida cites were not discussing criminal jury size or the Sixth Amendment at all. Mason and Gorham were, as Florida acknowledges, “[s]peaking of civil juries” in debating whether the Constitution

should include a civil jury clause. Fla.Br.17 (citing 2 *Records of the Federal Convention of 1787*, pp.587, 628 (Max Farrand ed., 1911) (“*Farrand’s Records*”). Florida itself observes (Fla.Br.17) that Washington’s letter to Lafayette concerned Article III, 3 *Farrand’s Records* pp.288-298 (letter dated Apr. 28, 1788), and the “future adjustment” to the Constitution that Washington references was ultimately made by ratifying the Bill of Rights. Madison’s remark at the Virginia convention again said nothing of jury size and appears to have focused on the “vicinage” requirement later adapted by the Sixth Amendment. *Id.* pp.331-332 (remarks of June 20, 1788). The Framers who did address the permissible number of jurors said 12. Pet.Br.8; *see* Constitutional.Ctr.Br.9-10; Prof.Su.Br.14-16; USCCB.Br.17-18. Again, Florida identifies zero examples of Framers actually stating fewer than 12 jurors sufficed. *Cf.* Fla.Br.18 n.5.

Florida’s founding-era dictionaries follow the same pattern. Fla.Br.18-19. Florida largely discusses dictionaries that do not address jury size at all. It does not identify a single example of a dictionary stating that fewer than 12 persons could constitute a jury. And it omits several that defined a jury as including 12 members. *See* Prof.Su.Br.11-12; USCCB.Br.9-11. In fact, criminal juries were so associated with the number twelve that “twelve men” (or similar variations) were frequently used as a synonym for jury in 17th-19th century “books, poems, devotionals, and trial pamphlets.” USCCB.Br.11-12.

3. Early American Sources

Florida largely ignores American practice between the founding and antebellum periods. *See* Fla.Br.19-20. For good reason: until at least the 1850s, scholars and

state courts consistently described the right to a trial by jury as requiring 12 people. Pet.Br.19-21.

Florida instead skips ahead to the Civil War era, arguing that five state constitutions enacted between 1850 and 1868—and four more adopted in former slave States immediately after Reconstruction ended—permitted juries of fewer than 12 for certain trials. Fla.Br.19-20. These examples cannot unwind the relevant historical record—*i.e.*, “what the term ‘trial by an impartial jury’ meant at the time of the *Sixth Amendment’s* adoption.” *Ramos*, 590 U.S. at 90 (emphasis added). Regardless, Florida severely overstates its evidence.

Consider Florida’s very first citation: Michigan. Fla.Br.19. Article VI, §28 of Michigan’s 1850 constitution states: “In 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*.” *People v. Antkoviak*, 619 N.W.2d 18, 31 (Mich. Ct. App. 2000) (emphasis added). Florida never addresses the “not of record” proviso, which referred to courts that “adjudicated relatively minor offenses like misdemeanors.” *Id.* at 36. Michigan’s 1850 constitution therefore confirms Mr. Kian’s position—felonies at least required 12 jurors.

Florida’s other examples have similar faults. Florida cites Georgia’s 1868 constitution, eliding its earlier admission that Georgia’s 1777 constitution expressly required 12 jurors. Fla.Br.15, 19-20. Prior to 1868, moreover, Georgia courts had consistently held that criminal juries must consist of 12 people. *See, e.g., Boon v. State*, 1 Ga. 618, 619 (1846) (noting constitution required a verdict by “twelve men”). And even after the 1868 constitution, Georgia courts questioned whether juries smaller than 12 were permitted “in cases of felony.”

Allen v. State, 51 Ga. 264, 266 (1874) (1868 constitution permitted smaller juries for “trials for misdemeanors in the county courts and other inferior tribunals established by law”). Iowa’s 1857 constitution similarly restricted smaller juries to a subset of courts, and its supreme court has recognized the provision Florida cites was “an express variance from what were then thought to be the ... essentials of a jury trial.” *Pitcher v. Lakes Amusement Co.*, 236 N.W.2d 333, 337 (Iowa 1975). Iowa thus again confirms 12-person juries were considered “essential[.]” *Id.*

Finally, Florida’s reference (Fla.Br.19) to South Carolina’s 1865 constitution undermines its later assertion (Fla.Br.50-51) that small juries were implemented for race-neutral reasons. The provision Florida cites allowed smaller juries “wherein the accused is a person of color.” S.C. Const. art.III, §1 (1865); 1866 S.C. Sess. Laws 493, §3.³ This post-Civil War rule followed a tradition of permitting smaller panels to try enslaved people. Juror Project Br.19. For white defendants, “the words ‘trial by jury’ in the South Carolina Constitution meant ‘trial by twelve good and lawful men of the vicinage,’ and trial by fewer than twelve was ‘not a trial by jury, in any sense in which the words have ever been legally used.’” *Id.* (quoting *State v. Simons*, 29 S.C.L. (2 Speers) 761, 768 (S.C. Ct. Err. 1844)).

³ Florida cites S.C. Const. art.IX, §7 (1865). That provision states “the General Assembly shall have power to determine the number of persons who shall constitute the jury in the Inferior and District Courts.” S.C. Const. art.III, §1, in turn, states that “[t]he General Assembly shall, as soon as possible, establish for each District in the State an Inferior Court or Courts, to be styled ‘The District Court,’ that “shall have jurisdiction” over civil and criminal cases involving “a person of color.”

**C. Requiring 12 Jurors Does Not Mean Other
Historical Features Of The Jury Must Be
Applied Today**

Florida is wrong (Fla.Br.24-31) that if the Sixth Amendment requires 12 jurors, it must constitutionalize every other “accustomed requisite” of the 1791 jury. *See* Pet.Br.28, 35-36. *Ramos* rejected this same “parade of horrors.” 590 U.S. at 100 n.47; *id.* at 154 & n.26 (Alito, J., dissenting) (listing the exclusion of women, nonrandom selection of jurors, and trial judge commentary on the facts as “aspects of late 18th-century jury practice” encompassed by the majority’s rule). Florida, moreover, does not show that the other practices it highlights have the same historical pedigree as unanimity or the 12-person requirement. Fla.Br.24-31. Juror qualifications, for example, “varied considerably at common law[.]” *Ramos*, 590 U.S. at 100 n.47.

Florida also ignores that the Sixth Amendment must be interpreted consistently with other constitutional guarantees. Many of the features Florida speculates were historically common would run headlong into such provisions, especially when harmful to jurors and defendants. For example, limiting juries “to middle-class propertied men,” Fla.Br.26 (emphasis omitted), would violate “further constitutional amendments that prohibit invidious discrimination.” *Ramos*, 590 U.S. at 100 n.47. A verdict from a jury deprived of food and water runs afoul of a defendant’s right to an “uncoerced verdict.” *Lowenfield v. Phelps*, 484 U.S. 231, 241 (1988). And limited voir dire may contravene a defendant’s due process right to have jurors questioned on potential bias. *See, e.g., Ham v. South Carolina*, 409 U.S. 524, 527 (1973). In any event, none of these questions are presented by this case, which involves an aspect of jury

practice closely linked to—and grounded in the same history as—the right in *Ramos*. See *supra* pp.2, 4-5.

II. FLORIDA REWRITES *WILLIAMS* BUT CANNOT SAVE IT

Because *Ramos* abrogated *Williams*, this Court need not perform a full-fledged *stare decisis* analysis. Regardless, *stare decisis* poses no barrier to protecting Mr. Kian’s right to a 12-person jury.

A. Florida Misstates The *Stare Decisis* Standard

Florida (Fla.Br.33) starts with the wrong law by relying on *Kimble v. Marvel Entertainment*, 576 U.S. 446 (2015). That was a civil case where “*stare decisis* carrie[d] enhanced force” because the Court was tasked with “interpret[ing] a statute.” *Id.* at 456. For “a constitutional case” like *Williams*, “critics of [the Court’s] ruling” cannot “take their objections across the street” where “Congress can correct any mistake it sees.” *Id.* Unless the Court fixes its errant decision in *Williams*, defendants like Mr. Kian have no recourse.

Kimble’s observation that *stare decisis* is at its “acme” in cases involving “property and contract rights” is likewise inapposite. Fla.Br.36 (quoting 576 U.S. at 457). A constitutional right cannot be reduced to room sizes or contracts for court services. Fla.Br.36-37. This case instead involves a fundamental criminal procedure protection, where “*stare decisis* is at its nadir.” *Alleyne v. United States*, 570 U.S. 99, 116 n.5 (2013). Florida’s own authority draws this distinction between “property” rights and “procedural ... rules.” *Payne v. Tennessee*, 501 U.S. 808, 828 (1991), cited in Fla.Br.33. And it could not be otherwise—constitutional protections will almost always require more process, which in turn requires space and resources to provide that process.

Nor would preserving *Williams* “promote[] the evenhanded, predictable, and consistent” development of the law. Fla.Br.33. “[S]tare decisis does not prevent [this Court] from overruling a previous decision where there has been a significant change in, or subsequent development of, our constitutional law.” *Agostini v. Felton*, 521 U.S. 203, 235-236 (1997). *Ramos* was that kind of significant change; it fundamentally disagreed with *Williams* by requiring “trial by an impartial jury” to be defined by reference to its “original public meaning,” not its “function.” *Ramos*, 590 U.S. at 89, 91-92, 94.

B. *Williams* Rejected The Original Public Meaning Of “Trial By An Impartial Jury”

Florida next reimagines *Williams* as an originalist decision that “carefully examin[ed] text and history,” as well as “the ‘common law’ practice of empaneling 12 jurors.” Fla.Br.i, 34. In reality, *Williams*’s limited historical analysis indicated “the jury at common law was composed of precisely 12.” 399 U.S. at 102. It acknowledged that “the usual expectation” at the Founding “may well” have been “that the jury would consist of 12.” *Id.* at 98. Despite reaching these historical conclusions, the Court stated that it could “not pretend to be able to divine precisely what the word ‘jury’ imported to the Framers, the First Congress, or the States in 1789,” *id.*, unless there was evidence “of an explicit decision to equate the constitutional and common-law characteristics of the jury,” *id.* at 98-99.

Ramos rejected that mode of analysis. It did not require proof of an explicit decision to codify each common-law feature; the Court recognized that the phrase “trial by an impartial jury” “carried with it *some* meaning about the content and requirements of a jury trial,” and then asked what that meaning was based on

contemporaneous historical sources. 590 U.S. at 89-90. The type of history *Williams* ultimately treated as beside the point, *Ramos* correctly held to be dispositive. And *Williams*'s actual holding, Florida must concede, relied on "the function that the particular feature performs and its relation to the purposes of the jury trial." 399 U.S. at 99-100.

Florida's assertion (Fla.Br.2) that *Williams* "differs starkly" from *Apodaca* is groundless. For example, while Florida repeatedly implies (Fla.Br.2, 32, 49) that *Apodaca* lacked precedential value, only a sliver of the *Ramos* Court treated it as anything less than binding precedent. 590 U.S. at 144-146 (Alito, J., dissenting).

More to the point, *Apodaca* described *Williams* as having "consider[ed] a related issue" and followed the earlier decision step by step. 406 U.S. at 406; see Pet.Br.26. As in *Williams*, the Court conceded the history: "Like the requirement that juries consist of 12 men, the requirement of unanimity arose during the Middle Ages[] and had become an accepted feature of the common-law jury by the 18th century." *Apodaca*, 406 U.S. at 407-408. Like *Williams*, it relied on supposed ambiguity about the Framers' "intent" to reject that history and "focus upon the function served by the jury in contemporary society." *Id.* at 410. And like *Williams*, it concluded that the common-law requirement at issue was unnecessary to serve that function. *Id.* at 410-411. Florida's defense of *Williams*—that it reviewed the history before turning to function, Fla.Br.34—describes *Apodaca* equally well. *Apodaca* employed the "same

fundamental mode of analysis as that in *Williams*[.]” *Ramos*, 590 U.S. at 157 (Alito, J., dissenting).⁴

C. *Williams’s* Functionalist Reasoning Is Wrong Even On Its Own Terms

Florida’s claim (Fla.Br.22-24, 41-44) that a six-member jury can serve the same function as a 12-member jury has already been effectively rejected by this Court. See *Ballew v. Georgia*, 435 U.S. 223, 232-233 (1978). Six-person juries are less representative, less consistent, and more likely to rule against a criminal defendant. Pet.Br.30-34.

Florida faults Mr. Kian for not citing studies showing six-person verdicts are “less reliable or accurate.” Fla.Br.43. But *Ballew* did precisely that, explaining that “post-*Williams* studies ... raise significant doubts about the consistency and reliability of the decisions of smaller juries,” including because they show a decline in jury size “leads to inaccurate fact-finding” and makes it more difficult “to obtain an accurate result.” 435 U.S. at 232-233, 235.

Florida’s studies (Fla.Br.43) do not rebut *Ballew’s* conclusions. One article did not analyze six-person juries at all, and instead considered whether breaking a 12-member jury into four-person discussion groups would promote more effective deliberation. Waller et al., *Twelve (Not So) Angry Men*, 14 Grp. Processes & Intergrp. Rels. 835, 839 (2011). The others either studied

⁴ Florida also contends that “changes in ‘interpretive methodology’ do not render all precedents employing the old methodology bad law.” Fla.Br.34. But *Williams* applied the wrong interpretive method to the same constitutional term in the same amendment at issue in *Ramos*. The Court should not permit that term to retain “a split personality.” *United States v. Davis*, 588 U.S. 445, 456 (2019).

(1) unconstitutional five-member groups, Fay et al., *Group Discussion as Interactive Dialogue or as Serial Monologue*, 11 Psychol. Sci. 481, 481 (2000), or (2) mathematical models, Mukhopadhyaya, *Jury Size and the Free Rider Problem*, 19 J.L. Econ. & Org. 24, 27-43 (2003); Luppi & Parisi, *Jury Size and the Hung-Jury Paradox*, 42 J. Legal Stud. 399, 407-416 (2013); Guerra et al., *Accuracy of Verdicts*, 28 Sup. Ct. Econ. Rev. 221, 225-232 (2020). And the lone study Florida cites to support its claim (Fla.Br.43) that “smaller juries, deciding unanimously, are just as accurate as 12-person juries” relies on an inapposite comparison—large *nonunanimous* juries versus small *unanimous* juries—and expressly assumes no deliberation. Guerra, at 228 n.17, 232.

Florida’s assertions (Fla.Br.41-42) about conviction rates are similarly weak. Florida contends that six-person juries protect criminal defendants because Florida’s 2022-2024 felony conviction rate was lower than Texas’s, California’s, and New York’s. *Id.* But Florida’s amici admit that “[b]ecause units of analysis, trial modes, and selection into trial differ across [such] systems, the cross-state comparisons” are at best “descriptive evidence,” and “do not show causation.” *America.First.Br.10*. That makes sense: In Florida, noncapital felonies can be charged by information—*i.e.*, a decision made solely in the prosecutor’s discretion. Fla. R. Crim. P. 3.140(a)(2), (g). Texas and New York generally require grand jury indictments, Tex. Const. art.I, §10; N.Y. Const. art.I, §6, and California requires preliminary hearings before a magistrate, Cal. Penal Code §859b; Cal. Const. art.I, §14. Given that Florida provides no such process at the outset of a criminal prosecution, it

is little surprise that Florida’s ultimate conviction rate is lower.⁵

Finally, while Florida (Fla.Br.44 n.24) criticizes drawing a distinction between “six rather than 12 jurors” as founded on a “hunch,” its own legislature drew that line—requiring 12-person juries for the cases with the highest stakes (capital cases) and six-person juries for the rest, *see* Fla.Br.4. Other States that permit small juries for felony offenses draw a similar distinction, guaranteeing 12-person juries for at least capital cases. *See, e.g.*, Ariz. Rev. Stat. Ann. §21-102; La. Code Crim. Proc. Ann. art.782; Conn. Gen. Stat. Ann. §54-82(c); Ind. Code Ann. §35-37-1-1(b); Utah Code Ann. §78B-1-104(1)(a).

D. *Williams* Has Caused Negative Consequences

Florida dismisses *Williams*’s negative jurisprudential and real-world consequences without addressing the bulk of Mr. Kian’s arguments. *E.g.*, Fla.Br.40-41. “Perhaps concluding that silence is the better part of advocacy,” Fla.Br.24-25, Florida ignores entirely, for example, that *Ballew* struggled to apply *Williams*’s functionalist approach and admitted the weakness of *Williams*’s empirical claims. *Supra* p.17.

Florida is also demonstrably wrong when it suggests (Fla.Br.50-51) that no States adopted a smaller jury size as a method “of disenfranchising black jurors.”

⁵ Florida’s numbers (Fla.Br.41-42) are also suspect, as they seem in some instances to be comparing other States’ conviction rates for felonies *and* misdemeanors against Florida’s rate of felony convictions. For example, while Florida asserts California’s conviction rate in 2024 was 81%, the source it cites indicates California juries returned convictions in 72% of felony jury trials—less than the rate reported for Florida. Fla.Br.42 n.19.

In fact, “[d]uring the Jim Crow era, some States restricted the size of juries ... as part of a deliberate and systematic effort to suppress minority voices in public affairs.” *Khorrami*, 143 S.Ct. at 27 (Gorsuch, J., dissenting from denial of certiorari). South Carolina expressly targeted Black defendants. *Supra* p.12. And Louisiana constitutionalized smaller juries at a convention meant to “establish the supremacy of the white race,” *Ramos*, 590 U.S. at 87 & n.1; La. Const. art.116 (1898). Louisiana’s prosecutors respond that the State first authorized smaller juries in its 1879 constitution, and the 1898 convention merely “further codified this practice.” Louisiana DA Br.9-11. At best, this moves the racist origin of smaller juries to two years after federal troops withdrew from Louisiana. UVA, Miller Center of Public Affairs, *Rutherford B. Hayes—Key Events*, <https://tinyurl.com/mtx7ee7w>.

Florida itself has a more complex history, but it still indicates racist origins. Pet.Br.11-12. Florida primarily argues the constitutional amendment allowing the State to reduce jury size received support from Black legislators. Fla.Br.50. But all 14 participating Black legislators voted against the statute that actually reduced the size of noncapital juries. 1877 House Journal 187-188; 1877 Senate Journal 208; Brown Jr., *Florida’s Black Public Officials, 1867-1924*, at 145-148 (1998) (listing legislators). And in the same session, the legislature enacted (or reaffirmed) a host of racist measures to reduce Black participation in public life, including a juror qualifications statute and convict-leasing statutes under which Black Floridians were “aggressively arrested and imprisoned under expanded criminal codes” and leased out to “private plantations and factories.” NAACP.Br.29; Pet.Br.12. Florida claims its six-person juries were a cost-saving measure, but the cited messages never

addressed jury size. Fla.Br.50. Instead, one asked to cap juror pay, 1874 Senate Journal 16, and the second called only for unspecified “reform,” 1877 Senate Journal 42-43.

E. The Asserted Reliance Interests Are Speculative And, Regardless, Outweighed By The Importance Of The Jury Trial Right

Florida mostly relies on the same interest rejected in *Ramos*: the need to retry a discrete number of non-final convictions. But because almost any new rule of criminal procedure will “affect[] significant numbers of pending cases across the whole country,” *Ramos*, 590 U.S. at 108, Florida pads its estimate by sweeping in many cases not at issue here—misdemeanors, federal criminal jury trials, and federal civil jury trials.

First, Florida speculates that “more than half of the states ... would be required to retry (or dismiss) many, many criminal cases.” Fla.Br.35. But it does not dispute that only seven States use small juries in felony cases. And this case concerns Mr. Kian’s *felony* convictions. *Supra* pp.2-3. The Court thus need not resolve anything about misdemeanors or what constitutes a serious crime. Fla.Br.35-36; U.S.Br.16-17. Regardless, Florida’s assertion (Fla.Br.36) that there are millions of misdemeanors filed nationwide each year says nothing about how many of those cases involved “serious” misdemeanors, went to a small jury, ended in a conviction, and remain on direct review.

Second, Florida suggests this Court’s ruling will impact federal verdicts. Fla.Br.37-38. But as the U.S. acknowledges, “federal criminal juries generally consist of 12 people,” and Mr. Kian has not “challenge[d] the independent constitutionality of Federal Rule” 23(b)(3)’s

narrow exception to that principle. U.S.Br.1, 6; *see also* U.S.Br.29 (“Rule 23(b)(3) is meaningfully different from laws like Florida’s”). Tellingly, moreover, neither Florida nor the U.S. identify how many 11-person jury trial convictions are actually pending on direct appeal.

Third, this case says nothing about the scope of the Seventh Amendment. The Seventh Amendment’s reference to “Suits at common law”—which “is not directed to jury characteristics, such as size, but rather defines the kind of cases for which jury trial is preserved,” *Colgrove v. Battin*, 413 U.S. 149, 152 (1973)—could well preclude adopting attributes of the jury in that context. There is also good reason for the Sixth Amendment to be more protective than the Seventh, as it protects “human liberty” rather than “property.” *Stogner v. California*, 539 U.S. 607, 632 (2003). Finally, as Florida’s own examples show, the history of 12-person juries in civil cases is decidedly more mixed than the history in criminal cases. *See supra* pp.7, 9-10.

Fourth, Florida and its amici overstate the practical difficulties of adopting 12-person juries. For example, Florida asserts its courthouses cannot fit six more chairs. Fla.Br.37. But Florida already seats 12-person juries in every capital trial, and its noncapital jury boxes routinely hold more than six jurors because Florida seats alternates. Fla.Crim.Def.Lawyers.Br.24-25 (citing Fla. R. Crim. P. 3.280). Florida’s clerks predict higher jury-management costs associated with larger juries, supposedly leading to longer, more expensive, and more administratively burdensome criminal trials. Fla.Clerks.Br.14-19. But *all* States already empanel 12-person juries in at least some cases involving serious crimes without the consequences Florida and its

amici predict. Utah.Crim.Def.Lawyers.Br.20-21; National.Crim.Def.Lawyers.Br.17.

While Florida claims “[m]any” of the 5,200 pending criminal direct appeals in Florida would be affected, Fla.Br.i, 32, 35, it cites no source for this number—and thus makes it impossible to determine how many of those cases involved felonies or whether the defendant preserved a challenge to jury size. Even the Florida-specific statistics proffered by the U.S. are significantly lower (1,413 jury-trial convictions in 2024-2025) and do not appear to account for the fact that capital offenses would have been heard by 12-person juries. *See* U.S.Br.22.

Florida is left with the same fearmongering about other criminal procedure decisions raised in *Ramos*. Fla.Br.44-49. None of those decisions involves the Sixth Amendment’s right to a jury trial. And unlike *Williams*, Florida has not shown that those cases employ the “same fundamental mode of analysis” as *Apodaca*. *Ramos*, 590 U.S. at 157 (Alito, J., dissenting). This case is thus uniquely tied to the Court’s decision in *Ramos*. This Court need go no further than holding that because *Apodaca* fell, *Williams* must fall as well.

CONCLUSION

The judgment below should be reversed.

Respectfully submitted.

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