

No. 26-_____

IN THE
Supreme Court of the United States

MICHAEL JAMES JACKSON,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of Florida

PETITION FOR A WRIT OF CERTIORARI

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CAPITAL CASE

QUESTION PRESENTED

Under a Florida law enacted in 2023, a judge may impose the death penalty only if the jury first “determine[s] that the defendant should be sentenced to death.” Fla. Stat. § 921.141(2)(c).

The question presented is whether the Sixth or Eighth Amendment requires that jury determination to be unanimous, or whether it suffices—as provided in the statute—for only eight of the twelve jurors to vote for death.

PARTIES TO THE PROCEEDINGS

The petitioner is Michael James Jackson. He was the defendant below.

The respondent is the State of Florida. It was the plaintiff below.

RELATED PROCEEDINGS

Jackson v. State, 18 So. 3d 1016 (Fla. 2009)

State v. Jackson, No. 162005CF010263, 2012 WL 10716486 (Fla. 4th Cir. Ct. 2012)

Jackson v. State, 127 So. 3d 447 (Fla. 2013)

State v. Jackson, No. 16-2005-CF-010263-CXXX (Fla. 4th Cir. Ct. 2020)

State v. Jackson, 306 So. 3d 936 (Fla. 2020)

State v. Jackson, No. 16-2005-CF-010263-CXXX (Fla. 4th Cir. Ct. 2023)

Jackson v. State, No. SC2023-1298 (Fla. Dec. 18, 2025)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Michael James Jackson respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Florida.

OPINIONS BELOW

The opinion of the Florida Supreme Court (Pet. App. 1a-55a) is reported at 430 So. 3d 64 (Fla. 2025). The trial court's relevant order is unpublished.

JURISDICTION

The judgment of the Supreme Court of Florida was entered on December 18, 2025. Pet. App. 1a. A timely petition for rehearing was denied on April 7, 2026. Pet. App. 56a. On May 5, 2026, Justice Thomas extended the time within which to file a petition for a writ of certiorari to and including August 5, 2026. *See* No. 25A1211. This Court has jurisdiction under 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Sixth Amendment provides in relevant part: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury.”

The Eighth Amendment provides: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

The statute at issue, Fla. Stat. § 921.141, is reproduced in relevant part at Pet. App. 57a-61a.

INTRODUCTION

As in almost all of the 27 states that have the death penalty, a judge in Florida may impose that punishment only if the jury first determines that at least one aggravating factor exists and that death is the appropriate sentence. But while the jury must unanimously find an aggravating factor, it suffices under a 2023 Florida statute for eight of the twelve members of the jury to vote for death. Alabama has a similar regime, providing since 2017 that ten out of twelve jurors is enough. The result is that about one-third of new death sentences imposed in this country are now based on nonunanimous verdicts.

For several reasons, this Court should use this case to resolve the constitutionality of that outlier practice. To start, state high courts are split: While the supreme courts of Florida and Alabama have held that the U.S. Constitution permits imposing death sentences based on nonunanimous jury determinations, precedent from two other state supreme courts holds the practice violates the Sixth or Eighth Amendments.

The Florida Supreme Court's decision also bucks history and tradition. For the first 200 years of our Republic, a court could not impose a death sentence unless every juror asked agreed that punishment was appropriate. At the Founding, juries were asked implicitly to make that determination, by voting to convict defendants of offenses they knew carried mandatory death sentences. In later years, juries were asked to make that sentencing decision explicitly. But in both scenarios, if any juror determined that a death sentence was morally inappropriate in that particular case, a court could not impose one.

Furthermore, the Florida Supreme Court's decision is at odds with multiple lines of this Court's precedent. First, it contravenes the Sixth Amendment requirement that jury verdicts must be unanimous. In *Andres v. United States*, 333 U.S. 740 (1948), this Court explained in a case involving the federal death penalty that when a jury is asked to determine "whether the punishment of death should be imposed," the "Sixth Amendment . . . requirement of unanimity" applies. *Id.* at 748-49. Now that the Sixth Amendment's unanimity requirement applies to the states, *see Ramos v. Louisiana*, 590 U.S. 83, 93 (2020), the same requirement should govern in Florida.

Second, Florida's nonunanimity rule thwarts the *Apprendi* doctrine, as it applies in capital cases. In order to protect the jury's historical role as "circuitbreaker in the State's machinery of justice," *Blakely v. Washington*, 542 U.S. 296, 306 (2004), that doctrine requires juries, not judges, to find the existence of "an aggravating circumstance necessary for imposition of the death penalty." *Ring v. Arizona*, 536 U.S. 584, 609 (2002); *see also Hurst v. Florida*, 577 U.S. 92, 98-99 (2016); *Apprendi v. New Jersey*, 530 U.S. 466 (2000). Florida's regime splits the factual component of whether an aggravating circumstance exists from the essentially moral question whether the death penalty is justified. There is nothing wrong with that. But insofar as Florida *also* allows a nonunanimous vote to suffice as to the latter, it enables an end-run around *Ring* and *Hurst*.

Third, Florida's nonunanimity rule permits cruel and unusual punishment under this Court's cases interpreting the Eighth Amendment. "[A] jury that must choose between life imprisonment and capital

punishment can do little more—and must do nothing less—than express the conscience of the community on the ultimate question of life and death.” *Witherspoon v. Illinois*, 391 U.S. 510, 519 (1968); *see also Ring*, 536 U.S. at 615-16 (Breyer, J., concurring in the judgment). The only way a jury can effectively do that—and thereby minimize the risk of an unwarranted imposition of the death penalty—is to deliberate under a unanimity requirement.

The bottom line is this: States may not have to ask juries expressly to determine whether the defendant should be sentenced to death. But if they do, the Sixth and Eighth Amendments require that determination to be unanimous. Otherwise, juries are impeded from performing their core function of ensuring that death sentences represent the moral judgment of a cross-section of the community.

Finally, the time to resolve the question presented is now. Petitioner is one of the first two individuals whose sentences under Florida’s new nonunanimity rule have reached the brink of becoming final. (The other person is Michael H. Hunt, who is filing a petition for certiorari today as well.) This Court should resolve the serious constitutional question here before additional cases stack up and the State claims a reliance interest in those sentences. What’s more, this case is an ideal vehicle. It arises from an 8-4 verdict in favor of death (the bare number of jurors required under Florida’s new law), and the Sixth and Eighth Amendment issues are squarely teed up. This Court should grant certiorari and reverse.

STATEMENT OF THE CASE

A. Legal background

1. Florida enacted its first modern death penalty statute in 1972. Under that statute, a jury that found a defendant guilty of a capital offense was asked (as relevant here) whether it believed any aggravating circumstances were present and, if so, whether the defendant should be sentenced to death. Fla. Stat. § 921.141(2) (1972). Those determinations, however, were merely “advisory.” *Id.* It was the judge, not the jury, that actually had to make those findings to impose a death sentence. *Id.* § 921.141(3).

During the 1970s and 1980s, this Court rejected various Sixth and Eighth Amendment challenges to that scheme. Most notably, this Court held in *Spaziano v. Florida*, 468 U.S. 447 (1984), that “there is no constitutional imperative” that a jury determine whether aggravating circumstances exist or “whether the death penalty should be imposed.” *Id.* at 465; *see also Hildwin v. Florida*, 490 U.S. 638, 640-41 (1989) (per curiam) (reaffirming *Spaziano*’s holding that the Sixth Amendment did not require juries to find aggravating factors).

2. At the turn of the twenty-first century, this Court began restoring the right to jury trial to its traditional meaning. As part of that endeavor, the Court adopted the *Apprendi* doctrine, holding that any fact (other than a prior conviction) necessary to the defendant’s punishment must be proved to the jury. *See Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000). And applying that doctrine, the Court held in *Ring v. Arizona*, 536 U.S. 584 (2002), that the Sixth Amendment requires the jury, not the judge, “to find

an aggravating circumstance necessary for imposition of the death penalty.” *Id.* at 609. Justice Breyer concurred in the judgment, reasoning that, notwithstanding *Spaziano*, “the Eighth Amendment requires that a jury, not a judge, make the decision to sentence a defendant to death.” *Id.* at 614.

3. In *Hurst v. Florida*, 577 U.S. 92 (2016), the Court applied the *Apprendi* doctrine to Florida law. Overruling *Spaziano*’s Sixth Amendment holding in relevant part, the Court explained that Florida’s scheme violated the right to jury trial because it “allow[ed] a sentencing judge to find an aggravating circumstance, independent of a jury’s factfinding, that is necessary for the imposition of the death penalty.” *Id.* at 102. As in *Ring*, Justice Breyer concurred in the judgment on Eighth Amendment grounds. *See id.* at 103.

4. On remand in *Hurst*, the Florida Supreme Court held that the Sixth and Eighth Amendments required the invalidation of the State’s capital punishment scheme more generally. *Hurst v. State*, 202 So. 3d 40 (Fla. 2016) (“*Hurst II*”), *cert. denied*, 581 U.S. 1000 (2017). In particular, the court held that juries had to find not just aggravating factors but also that the defendant should be sentenced to death. *Hurst II*, 202 So. 3d at 57. The court also held that, under the Sixth and Eighth Amendments, such a determination had to be unanimous. *See id.* at 59.

In response, the Florida Legislature amended the State’s capital punishment regime. *See* ch. 2017-1, § 1, Laws of Fla. Under the amended system, a defendant could be sentenced to death only if the jury unanimously found (i) at least one aggravating factor; and (ii) that the defendant should be sentenced to

death. Fla. Stat. §§ 921.141(2)(b)2, (2)(c) (2017). If the jury did not unanimously vote that the defendant should be sentenced to death, the maximum sentence the judge could impose was life imprisonment. *Id.* § 921.141(3)(a)1.

5. Just three years later, after a shift in membership, a divided Florida Supreme Court backtracked from its decision in *Hurst II*. Reviewing a death sentence imposed under Florida’s pre-*Hurst* regime, the majority held that the Sixth Amendment does not require a jury in a capital case to do anything more than unanimously find the existence of an aggravating factor. *State v. Poole*, 297 So. 3d 487, 503 (Fla. 2020). And if the right to jury trial does not apply to a finding, the court reasoned, there is no right to unanimity either. *Id.* at 504. The court also overruled its holding in *Hurst II* that “the Eighth Amendment requires a unanimous jury recommendation of death.” *Id.* at 504. The court asserted that *Spaziano* foreclosed that result. *Id.*

Justice Labarga dissented, arguing that the court had gotten it right in *Hurst II*. He added that “it defies reason to require unanimous juries for the conviction of a capital offense but then to reduce the jury’s collective obligation when determining whether the defendant’s life should be taken as punishment.” *Id.* at 514.

6. In 2023, following a divided jury verdict in a high-profile capital prosecution dictating a life sentence, the Florida Legislature enacted the new scheme at issue here. *See* ch. 2023-23, § 1, Laws of Fla. That scheme eliminates the need for the jury to be unanimous in determining whether the defendant should be sentenced to death. Supporters of this

change explained that it is designed to prevent “a small handful of jurors [from] derail[ing] the true administration of justice” by declining to vote for death sentences. *Hearing on HB 555 Before the H. Crim. Just. Subcomm.*, 2023 Leg., Reg. Sess. 16 (Fla. 2023) (statement of Rep. Berny Jacques, Member, H. Crim. Just. Subcomm.).

All told, Florida’s amended scheme now requires the jury at the penalty phase of a capital case to make two determinations before a court may sentence the defendant to death: (i) that “at least one aggravating factor” exists; and (ii) that, in light of those factors and any mitigating factors found to exist, “the defendant should be sentenced to death.” Fla. Stat. § 921.141(2)(b). The first determination “must be unanimous.” *Id.* But as to the second, it suffices if eight of the twelve jurors agree. *Id.* § 921.141(2)(c). If “fewer than eight” jurors vote for death, then the judge “shall impose” “a sentence of life imprisonment without the possibility of parole.” *Id.* §§ 921.141(2)(c), (3)(a)1.

B. Factual and procedural background

1. In 2005, Petitioner Michael James Jackson and three other individuals set out to abduct and rob a married couple named James and Carol Sumner. Pet. App. 3a. Mr. Jackson’s coconspirators entered the Sumners’ home, “bound them with duct tape,” and placed them in the trunk of a vehicle. *Id.* Meanwhile, Mr. Jackson went inside the home and stole the couple’s ATM cards. The group later drove the Sumners to the woods and “buried [them] alive.” *Id.*

2. The State charged Mr. Jackson with two counts of first-degree murder, as well as other crimes, and sought the death penalty. Pet. App. 4a. The jury found

Mr. Jackson guilty of all charges. *Id.* Following the sentencing phase—conducted under Florida’s death penalty scheme in effect between 1972 and 2016—the jury issued an advisory verdict of 8-4 in favor of death. *Id.* The judge then found that several aggravating circumstances existed and sentenced Mr. Jackson to death for each murder. *Id.* The Florida Supreme Court affirmed. *Id.*

3. After this Court held in *Hurst* that Florida’s capital sentencing regime violated the Sixth Amendment, a Florida court held that the decision entitled Mr. Jackson to a new sentencing proceeding. Pet. App. 5a.

Mr. Jackson’s resentencing was originally set to occur while Florida law required unanimity across the board. But because of a series of delays outside his control (including the COVID pandemic and a tropical storm), Mr. Jackson’s resentencing was ultimately scheduled for mid-2023—right after Florida dispensed with its unanimity requirement. Pet. App. 5a.

Before his resentencing hearing, Mr. Jackson objected that Florida’s new nonunanimity rule violated the Sixth and Eighth Amendments. Pet. App. 6a. The trial court, however, “denied Jackson’s motions.” Pet. App. 6a.

At the ensuing sentencing proceeding, Mr. Jackson admitted his guilt and “accept[ed] responsibility” for his crimes. Pet. App. 8a. He asked the jury to spare his life on the ground that he had experienced a brutal childhood and had made dramatic changes since his crime—including “f[inding] God and devoting his life to religious study, earning many certificates for discipleship.” *Id.*

After deliberating for just over two hours, the jury returned its verdict. It unanimously found several aggravating factors. But it did not reach unanimity on its “verdict as to death penalty.” Tr. 1835, 1837 (May 24, 2023). Instead, like the original jury, it voted for death by just 8-4—the bare minimum number of votes under the 2023 statute that enable a court to impose a capital sentence. Pet. App. 7a.

While the court was considering whether to impose such a sentence, members of the victims’ family informed the court that they had “forgiven” Mr. Jackson. Tr. 1846 (May 24, 2023). The judge nonetheless sentenced him to death. Pet. App. 9a.

4. Deciding Mr. Jackson’s case in conjunction with *Hunt v. State*, 428 So. 3d 43 (Fla. 2025), *pet. for cert. filed* (No. 26-___), the Florida Supreme Court affirmed. It first held, adhering to its decision in *Poole*, that Florida’s nonunanimity rule comports with the Sixth Amendment. Pet. App. 14a. The court acknowledged that, after *Poole* was decided, this Court held “in *Ramos v. Louisiana*, 590 U.S. 83 (2020), . . . that the constitutional right to a jury requires a unanimous verdict.” *Hunt* Pet. App. 19a.¹ But the Florida Supreme Court asserted that “*Ramos* does not apply to a jury’s recommendation of death in a capital case because a jury’s recommendation of death is not equivalent to a verdict.” *Id.* 19a. The court also

¹ As noted above, Mr. Hunt is filing a petition for certiorari on the same day Mr. Jackson is filing this petition. Because the Florida Supreme Court decided the two cases together and this Court will presumably consider them in tandem, this petition cites directly to the petition appendix in *Hunt* instead of the reported version of the decision.

rejected Mr. Jackson's Eighth Amendment claim. Pet. App. 14a.

Justice Labarga concurred only in the result. He explained that the "concerns [he] expressed in [his] dissent in *Poole* remain." Pet. App. 53a. He also lamented that "the 8-4 threshold renders Florida *the* absolute outlier among states that impose the death penalty." *Id.* 52a.

REASONS FOR GRANTING THE WRIT

In light of enactments in Florida in 2023 and Alabama in 2017, about one of every three death sentences in this country are now imposed based on nonunanimous jury verdicts. This Court should take this opportunity to resolve the constitutionality of that practice. Most states that have the death penalty ask jurors to determine whether the defendant should be sentenced to death. Yet state courts of last resort are divided over whether the Sixth or Eighth Amendment requires that determination to be unanimous. What's more, the Florida Supreme Court's decision upholding the State's new nonunanimity rule contravenes history and tradition, as well as multiple lines of this Court's precedent. Finally, this case is an excellent vehicle for resolving this important issue.

I. State courts of last resort are divided over whether judges may impose the death penalty based on nonunanimous jury determinations.

1. Two state courts of last resort have held that where the jury is asked to determine whether a death sentence is appropriate, the U.S. Constitution requires that determination to be unanimous.

Start with the Delaware Supreme Court’s decision in *Rauf v. State*, 145 A.3d 430 (Del. 2016). Delaware’s then-existing death penalty regime required not just a finding of at least one aggravating factor but also that “the aggravating factors found to exist outweigh the mitigating circumstances.” *Id.* at 434. In a per curiam summary of the court’s decision, the Delaware Supreme Court first ruled that the Sixth Amendment required the jury to make both of these findings. *Id.* at 433-34. It then held as a matter of federal constitutional law that the jury had to make both findings “unanimously.” *Id.*

A majority of the court filed a concurrence elaborating its holdings in detail. *Rauf*, 145 A.3d at 479-80 (Strine, C.J., joined by Holland and Seitz, JJ., concurring).² The weighing determination at issue was tantamount to determining “whether a defendant should live or die.” *Id.* at 437. And under the Sixth Amendment’s “unanimity requirement,” such a jury determination must be made unanimously to “mak[e] sure that jurors deliberate and take each other’s vote seriously, and that all jurors have equal voice in making this most critical of decisions.” *Id.* at 480.

The Delaware Supreme Court also found support for its decision in *Hurst v. Florida*, 577 U.S. 92 (2016). *See Rauf*, 145 A.3d at 480. The majority acknowledged that *Hurst* “can be read more than one way.” *Id.* at 465 n.215. But, taking broader Sixth Amendment principles into account, the majority concluded that *Hurst* precludes states from “draw[ing] fine lines between the role of the jury as a fact-finder” and its

² Unless otherwise noted, subsequent citations to *Rauf* are to this explanatory opinion.

role in determining “[w]hether the defendant should live or die,” and then dispensing with unanimity as to the latter. *Id.* at 473; *see also id.* at 480.

The majority in *Rauf* also concluded that imposing a death sentence based on a nonunanimous jury determination violates the Eighth Amendment. It explained that “executing a defendant without the prior unanimous vote of a jury is so out of keeping with our history as to render the resulting punishment cruel and unusual.” 145 A.3d at 437; *see also id.* at 465-66 (reiterating that unanimity is required by “related provisions of the Constitution, including the Eighth Amendment”).

The Connecticut Supreme Court has likewise held that a death sentence based on a nonunanimous jury determination violates the Eighth Amendment. *State v. Daniels*, 542 A.2d 306, 315 (Conn. 1988). There, the jury determination triggering the death penalty was that no mitigating circumstances existed. *Id.* at 312. Although that was not an explicit determination that the defendant should be sentenced to death, the court’s reasoning applies with full force here: “‘The heightened reliability demanded by the Eighth Amendment in the determination whether the death penalty is appropriate’ convinces us that jury unanimity is an especially important safeguard at a capital sentencing hearing.” *Id.* at 315 (citation omitted).

2. The Florida Supreme Court initially agreed with the Delaware and Connecticut Supreme Courts’ understanding of the Sixth and Eighth Amendments, holding that a jury’s determination that a death sentence should be imposed must be unanimous. *Hurst v. State*, 202 So. 3d 40, 57-59 (Fla. 2016) (“*Hurst*

II”). The Florida Supreme Court took this Court’s decision in *Hurst*, as well as more general Sixth Amendment precedent, to compel this conclusion. *Id.* The Florida Supreme Court also reasoned that the Eighth Amendment’s demand that death sentences “express[] the values of the community” necessitates that “a jury must unanimously recommend death in order to make death possible.” *Id.* at 60.

The Florida Supreme Court, however, now holds exactly the opposite. After a shift in membership, it declared in *State v. Poole*, 297 So. 3d 487 (Fla. 2020), that neither the Sixth nor Eighth Amendment requires a jury’s determination that the defendant should be sentenced to death to be unanimous. *Id.* at 504. Applying that decision here, the Florida Supreme Court upheld the State’s new scheme allowing a court to impose a death sentence so long as eight of the twelve jurors determine that is the appropriate punishment. Pet. App. 12a-14a; *see also Hunt* Pet. App. 18a-21a (same).

The Alabama Supreme Court has upheld that State’s parallel system. In Alabama, as in Florida, a judge may impose the death penalty only if the jury explicitly determines that an aggravating factor exists and that death is the appropriate sentence. But it is sufficient if only ten of the twelve jurors so vote. *See* Ala. Code § 13A-5-46(f). In *Ex parte Bohannon*, 222 So. 3d 525 (Ala. 2016), the defendant claimed that this nonunanimity rule violates the Sixth and Eighth Amendments. Br. of Petitioner-Appellant at 19, *Bohannon*, *supra*. The Alabama Supreme Court rejected the Sixth Amendment aspect of this claim and ignored its Eighth Amendment dimension entirely. *Bohannon*, 222 So. 3d at 532.

3. This conflict will not go away on its own. Delaware and Connecticut have now forsaken capital punishment—in Delaware’s case, right after the ruling described above—so no further percolation can occur in those States. Florida and Alabama, by contrast, show no signs of turning away from the death penalty or of abandoning their nonunanimity regimes.

II. The question presented is vitally important.

The question presented here is critically important. This Court long ago held that the Seventh Amendment requires jury verdicts in civil cases it covers to be unanimous. *Am. Publ’g Co. v. Fisher*, 166 U.S. 464, 468 (1897). And this Court recently made clear that the Sixth Amendment, as incorporated against the states through the Fourteenth Amendment, requires a unanimous verdict to convict someone of a crime and thereby to subject him to a prison sentence. *Ramos v. Louisiana*, 590 U.S. 83, 93 (2020). For three reasons, the Court should likewise resolve whether the Constitution requires unanimity to impose the most serious punishment of all: death.

1. The constitutional rights at stake are foundational pillars of criminal procedure. The right to trial by jury has, since the Founding, been understood as “the heart and lungs’ of liberty.” *Erlinger v. United States*, 602 U.S. 821, 829 (2024) (quoting Letter from Clarendon to W. Pym (Jan. 27, 1766), *in* 1 Papers of John Adams 169 (R. Taylor ed. 1977)). A “vital” component of that right is the requirement that jury verdicts be unanimous. *Ramos*, 590 U.S. at 90-93. Without unanimity, there is no way “to ensure that real and full deliberation occurs in the jury room.” *McKoy v. North Carolina*, 494 U.S. 433, 452 (1990) (Kennedy, J., concurring in the judgment).

The right to jury unanimity is especially critical where “jurors [are] confronted with the truly awesome responsibility of decreeing death for a fellow human.” *McGautha v. California*, 402 U.S. 183, 208 (1971). Not only does that setting accentuate the Sixth Amendment stakes, but it also brings the Eighth Amendment’s protection against “cruel and unusual punishments” to the fore. U.S. Const. amend. VIII. That protection guards against the “erroneous imposition of [a] death sentence,” *Mills v. Maryland*, 486 U.S. 367, 375 (1988) (citation omitted), and a divided vote rings obvious alarm bells.

2. Florida’s nonunanimity rule, which allows defendants such as Mr. Jackson to be sentenced to death over the objection of *one-third* of the jurors, also raises serious questions about the public perception of justice. Death sentences should reflect the “conscience of the community.” *Witherspoon v. Illinois*, 391 U.S. 510, 519 (1968). When the State condemns a person to die under a regime in which a majority of jurors need not even engage with minority views, people may question whether the sentence truly reflects the community’s considered judgment.

On top of that, a perception of “racial bias . . . can undermine confidence in and respect for the criminal justice system.” *Ramos*, 590 U.S. at 127 (Kavanaugh, J., concurring in part). And, as Justice Kavanaugh has observed, “non-unanimous juries can silence the voices and negate the votes of black jurors.” *Id.* This not only undercuts public confidence in death sentences but “can make a difference *in practice*, especially in cases involving black defendants, victims, or jurors.” *Id.* (emphasis added). The same can be true, of course, with regard to other racial or religious minorities.

3. This Court's review is also warranted because the two outlier states that allow death sentences based on nonunanimous jury determinations (Florida and Alabama) are two of the most active death penalty states in the Nation. Well over half of the capital sentencing phases that took place across the country last year occurred in Florida and Alabama. Death Penalty Information Center, *The Death Penalty in 2025: New Death Sentences*, <https://perma.cc/6N9W-NU32>. And of the 23 death sentences imposed last year in the United States, roughly one-third rested on nonunanimous verdicts from these two States. *Id.*

Perhaps even more striking, our review of court records indicates that a substantial majority of new death sentences in Florida since the 2023 statute's enactment (12 out of 16) have rested on nonunanimous jury verdicts. And statistics suggest that individuals resentenced under Florida's new nonunanimity rule are *twice as likely* to receive a death sentence as under the State's previous unanimity regime. Death Penalty Information Center, *Marking a Decade Since Hurst v. Florida*, <https://perma.cc/B2YY-93RH>.

III. The Florida Supreme Court's decision is incorrect.

This Court's review is all the more necessary because the Florida Supreme Court erred in upholding the State's nonunanimity rule. History and tradition, as well as this Court's precedent, dictate that this new statute violates the Sixth and Eighth Amendments.

A. Sixth Amendment

1. The Sixth Amendment's right to jury trial guarantees the right as it was understood at "common

law,” adopted at the time of the Founding, and woven over subsequent years into the fabric of criminal procedure in this country. *Ramos v. Louisiana*, 590 U.S. 83, 89-93 (2020). Reviewing that history and tradition makes clear that at all relevant times, a death sentence was impermissible unless juries asked to determine whether death was the appropriate sentence agreed unanimously that it was.

a. Begin with the common law. Up through the eighteenth century, England punished dozens of distinct felonies with mandatory sentences of death. *See, e.g.*, 4 William Blackstone, Commentaries on the Laws of England *18 (1769). “Although the range of capital offenses in the American Colonies was quite limited in comparison . . . the Colonies at the time of the Revolution imposed death sentences on all persons convicted of any of a considerable number of crimes, typically including at a minimum, murder, treason, piracy, arson, rape, robbery, burglary, and sodomy.” *Woodson v. North Carolina*, 428 U.S. 280, 289 (1976) (plurality opinion).

The Founding-era reality that many felony convictions carried mandatory death sentences led to the “not infrequent refusal of juries to convict [guilty defendants] rather than subject them to automatic death sentences.” *Woodson*, 428 U.S. at 290 (plurality opinion). That is, in cases where jurors felt that death was not deserved, they would acquit or limit their verdicts to lesser convictions—a practice, when done in the teeth of evidence, that William Blackstone praised as “pious perjury.” *Apprendi v. New Jersey*, 530 U.S. 466, 479 n.5 (2000) (quoting 4 Blackstone, Commentaries *238–39). For example, it was a common practice for juries to specify when convicting

a defendant of theft that the stolen goods were worth only 39 shillings because 40 was the cutoff for capital punishment. Juries employed this “transparent fiction” simply to spare the defendant the death penalty. *See* John H. Langbein, *Shaping the Eighteenth-Century Criminal Trial*, 50 U. Chi. L. Rev. 1, 22, 52–54 (1983) (cited in *Jones v. United States*, 526 U.S. 227, 245 n.7 (1999)).

Put another way, because juries knew the death penalty would automatically result from a conviction in capital felony trials, their guilt determinations depended not only on factual findings, but also on each juror’s moral judgment as to whether the defendant’s “background, reputation, attitude toward authority, or the nature of the offense itself” meant the defendant “deserved to die.” Thomas A. Green, *Verdict According to Conscience* 313 (1985); *see id.* at 280-81; *see also* John Hawles, *The Englishman’s Right* 19 (London, A. Shuckburgh 1764) (jurors rendered verdicts in capital cases according not just to the facts but also their “conscience[s]”). Accordingly, “[i]n eighteenth-century England and colonial America, many capital trials were essentially sentencing hearings, where the issue of guilt went largely uncontested and the real question [put to the jury] was whether the defendant should die for his crime.” John G. Douglass, *Confronting Death: Sixth Amendment Rights at Capital Sentencing*, 105 Colum. L. Rev. 1967, 1974 (2005).

Furthermore, the common law required these jury verdicts to be unanimous. *See Ramos*, 590 U.S. at 90. Consequently, “a defendant would suffer the ultimate punishment only if twelve members of the community deliberated together and unanimously concluded that should be so.” *Rauf*, 145 A.3d at 436. As Blackstone

observed, this requirement—that capital trials be decided by the “unanimous suffrage of twelve of [the defendant’s] equals and neighbors”—was essential to protect the “liberties” guaranteed by jury trial. 4 Blackstone, Commentaries *343.

b. “Over time, jury discretion was more candidly introduced” in capital cases, *Rauf*, 145 A.3d at 439, as many states expressly gave juries in every case “the right of deciding whether [the defendant] shall be punished by death,” *Winston v. United States*, 172 U.S. 303, 312 (1899). This trend continued through most of the twentieth century until “the overall picture was remarkably consistent: Defendants received death sentences only when the jury determined they should. And that determination had to be unanimous.” *Rauf*, 145 A.3d at 440. Thus, for 200 years after the Founding, the “overwhelming trend” was that “a defendant was not sentenced to death without the support of a unanimous jury of the defendant’s peers determining that was appropriate.” *Id.* at 466-67.

Of course, in the wake of this Court’s suspension and reinstatement of the death penalty in the 1970s, some states (including Florida, Alabama, Delaware, and Connecticut) enacted statutes deviating from this traditional model. Those scattered laws, however, are far too recent to qualify as a constitutionally relevant tradition. *See Erlinger v. United States*, 602 U.S. 821, 845-46 (2024). In any event, most states that have retained the death penalty have continued all the while to forbid the imposition of a death sentence unless the jury unanimously approves it. *See Poole*, 297 So. 3d at 513 (Labarga, J., dissenting). So has federal law. *See* 18 U.S.C. § 3593(e); *Andres v. United States*, 333 U.S. 740, 749 (1948).

2. Drawing on the foregoing history, two strands of this Court’s Sixth Amendment precedent make clear that where state law conditions the imposition of the death penalty on a jury determination that the defendant should be sentenced to death, that determination must be unanimous.

a. First, the “right to trial by jury include[s] a right to a unanimous verdict.” *Ramos*, 590 U.S. at 100 (emphasis removed). And this requirement applies with full force when a jury is asked to determine whether a death sentence should be imposed. “[A] jury that must choose between life imprisonment and capital punishment can do little more—and must do nothing less—than express the conscience of the community on the ultimate question of life and death.” *Witherspoon v. Illinois*, 391 U.S. 510, 519 (1968). Unanimity is essential to that “deliberative process by requiring the minority view to be examined and, if possible, accepted or rejected by the entire jury.” *United States v. Lopez*, 581 F.2d 1338, 1341 (9th Cir. 1978) (Kennedy, J.). “‘The very object of the jury system,’ after all, ‘is to secure unanimity by a comparison of views, and by arguments among the jurors themselves.’” *Blueford v. Arkansas*, 566 U.S. 599, 608 (2012) (quoting *Allen v. United States*, 164 U.S. 492, 501 (1896)). Nowhere is that more important than when our law’s ultimate sanction is at stake.

This Court, in fact, has already put all of this together to effectively resolve the question presented here. In *Andres v. United States*, 333 U.S. 740 (1948), this Court considered whether a federal statute setting procedures for capital prosecutions required a jury’s determination that “the punishment of death should be imposed” to be unanimous. *Id.* at 749. The

Court acknowledged that “the statute containe[d] no language specifically requiring unanimity” on that score. *Id.* at 748-49. But the Court held that unanimity was still necessary because the Sixth Amendment’s “requirement of unanimity extends to all issues—character or degree of the crime, guilt and punishment—which are left to the jury.” *Id.* at 748. Pursuant to that requirement, “one juror can prevent a verdict which requires the death penalty, although there is unanimity in finding the accused guilty” of a capital offense. *Id.* at 746. No other rule, the Court emphasized, would be consonant with “the history of the Anglo-American jury system.” *Id.* at 749.

To be sure, this constitutional analysis did not bind the states until recently. In *Apodaca v. Oregon*, 406 U.S. 404 (1972), the Court declined to incorporate the Sixth Amendment’s unanimity requirement against the states. But in *Ramos*, this Court overruled *Apodaca*, applying that unanimity requirement to the states. *Ramos*, 590 U.S. at 105, 111. The constitutional analysis in *Andres* thus now governs state laws as well. *See id.* at 133-34 (Thomas, J., concurring in the judgment) (explaining that *Andres*’ Sixth Amendment holding is “entitled to *stare decisis* effect”).

The Florida Supreme Court brushed aside this unanimity jurisprudence, asserting that “[t]he holding in *Ramos* does not apply to a jury’s recommendation of death in a capital case because a jury’s recommendation is not equivalent to a verdict.” *Hunt* Pet. App. 19a. That is a puzzling assertion. The jury’s determination here was made on a form entitled “jury *verdict* as to death penalty.” Tr. 1835, 1837 (May 24, 2023) (emphasis added); *see also* Pet. App. 27a (noting

that the judge here “us[ed] the term[] ‘verdict’” to describe this determination).

At any rate, when dealing with the right to jury trial, “[l]abels do not afford an acceptable answer.” *Apprendi*, 530 U.S. at 494 (citation omitted); accord *Blakely v. Washington*, 542 U.S. 296, 306 (2004). It thus does not matter that Florida law sometimes also refers to a jury’s determination that the defendant should be sentenced to death as a “recommendation.” Fla. Stat. § 921.141(2); see Pet. App. 27a. The 2023 statute makes clear that “[i]f fewer than eight jurors determine that the defendant should be sentenced to death,” the judge cannot impose that sentence. Fla. Stat. §§ 921.141(2)(c), (3)(a)1. The jury determination at issue here thus is legally necessary to impose the death penalty. That makes it a “verdict” in any sense that matters. See *Andres*, 333 U.S. at 748-49.

b. Florida’s nonunanimity rule also thwarts the *Apprendi* doctrine as applied in capital cases.

The *Apprendi* doctrine requires the jury to find any fact (other than a prior conviction) necessary for the imposition of the defendant’s sentence. See *Apprendi*, 530 U.S. at 490. As applied to modern capital sentencing regimes, that means the Sixth Amendment requires a jury “to find an[y] aggravating circumstance necessary for imposition of the death penalty.” *Ring v. Arizona*, 536 U.S. 584, 609 (2002).

As with the Sixth Amendment’s unanimity requirement, the Court has grounded the *Apprendi* doctrine in the history of the right to jury trial. The doctrine, the Court has explained, protects a jury’s traditional ability to engage in “pious perjury,” *Jones*, 526 U.S. at 245-48 (quoting 4 Blackstone,

Commentaries *238)—or as this Court has otherwise put it, to act as a “circuitbreaker in the State’s machinery of justice.” *Blakely*, 542 U.S. at 306. In other words, the *Apprendi* doctrine conditions exposure to capital punishment—no matter what the jury believes regarding the facts—on the jury’s moral judgment that the defendant should indeed be sentenced to death.

Bearing that principle in mind, the Sixth Amendment allows states in capital sentencing proceedings to require juries to find nothing more than an aggravating factor. Under such a system, one or more jurors can preclude a death sentence by refusing on moral grounds to find such a factor—even in the teeth of the evidence. *See supra* at 18-19. Jurors’ moral perspectives hold just as much sway under state systems that require juries unanimously to determine both that an aggravating factor exists and that the defendant should be sentenced to death. In those systems too, a single juror can preclude a death sentence by voting that the defendant should not be put to death.

Not so in Florida. Its regime splits the factual inquiry of whether an aggravating factor exists from the ultimately moral question of whether the death penalty is appropriate. So far, so good. But Florida also allows a nonunanimous vote to suffice as to the latter. Fla. Stat. § 921.141(2). Florida’s system thus directs a juror who thinks the prosecution has proved an aggravating factor, but who still does not believe the death penalty should be imposed in the case, (i) to find that the aggravating factor exists and (ii) to vote against sentencing the defendant to death. But the

system then denies traditional effect to the latter vote (indeed, up to four such votes).

The *Apprendi* doctrine forbids imposing this burden on the jury's core function of bringing its moral judgment to bear on whether an individual should be sentenced to die. A state cannot encourage jurors in a capital case to set aside their moral judgment when deciding whether an aggravating factor exists, and then deny the subsequent expression of that judgment its traditional power.

The Florida Supreme Court has resisted this reasoning, stating that *Apprendi* applies by its terms only to "facts," not "moral judgment[s]." *State v. Poole*, 297 So. 3d 487, 503-04 (Fla. 2020) (citation omitted); *see also* Pet. App. 14a. But that reasoning elides the problem. The determination whether the defendant should be sentenced to death might not itself be subject to the Sixth Amendment's jury-trial requirement. But *Apprendi* undeniably applies to whether an "aggravating circumstance . . . necessary for imposition of the death penalty" exists. *Hurst v. Florida*, 577 U.S. 92, 102 (2016). And Florida's scheme undermines the Sixth Amendment's insistence that a jury unanimously make *that* finding. The scheme does so by cleaving away the moral assessment that would otherwise inhere in that finding and subjecting that assessment to a nonunanimity rule.

3. The Florida Supreme Court also asserted that "[t]he Sixth Amendment, as interpreted in *Spaziano* [*v. Florida*, 468 U.S. 447 (1984)], does not require any jury recommendation of death, much less a unanimous one." Pet. App. 14a (quoting *Poole*, 297 So. 3d at 504). But *Spaziano* does not stand in the way of vindicating the right to a unanimous jury determination here.

To begin, it does not matter under this Court’s unanimity jurisprudence whether the Sixth Amendment *requires* a jury to determine that the defendant should be sentenced to death. Where, as here, that question is in fact put to the jury, the “requirement of unanimity extends” to it. *Andres*, 333 U.S. at 748. *See supra* at 22.

Nor does *Spaziano* cancel out Florida’s *Apprendi* problem. In *Hurst*, this Court “overruled” *Spaziano* “to the extent [it] allow[ed] a sentencing judge to find an aggravating circumstance” that is necessary for imposition of the death penalty.” 577 U.S. at 102. Under that intervening precedent, a state still need not explicitly ask the jury whether death is the appropriate sentence. But if it does—as Florida’s 2023 system does—the Sixth Amendment requires that finding to be unanimous. As explained above, a state cannot split the jury’s factfinding role from its ability to bring moral judgment to bear on whether the defendant should be sentenced to death—and water down the jury’s power to block such a sentence on the latter basis. *See supra* at 24-25.³

³ For the same reasons, the Florida Supreme Court was wrong to rely on *McKinney v. Arizona*, 589 U.S. 139 (2020). *See Hunt* Pet. App. 19a. In *McKinney*, the Court explained that “in a capital sentencing proceeding just as in an ordinary sentencing proceeding, a jury (as opposed to a judge) is not constitutionally required to weigh the aggravating and mitigating circumstances or to make the ultimate sentencing decision within the relevant sentencing range.” *McKinney*, 589 U.S. at 144. Once again, petitioner does not argue that the Sixth Amendment requires states to ask juries to find anything other than the existence of an aggravating fact. But if a state *does* ask the jury to determine whether the defendant should be sentenced to death, that determination must be unanimous.

If anything, the Florida Supreme Court’s renewed allegiance to *Spaziano*—after recognizing that its Sixth Amendment analysis no longer carries force, *see Hurst v. State*, 202 So. 3d 40, 47 n.3 (Fla. 2016) (“*Hurst II*”)—just underscores why granting certiorari here is so critical. *Spaziano* was issued during an era in which “traditional belief in the right of trial by jury [wa]s in perilous decline.” *Ring*, 536 U.S. at 612 (Scalia, J., concurring). Now that this Court has reinvigorated that right and overruled *Spaziano* in relevant part, *Spaziano*’s Sixth Amendment “underpinnings have been eroded.” *Hurst*, 577 U.S. at 102 (citation omitted); *see also id.* (overruling *Hildwin v. Florida*, 490 U.S. 638 (1989) (per curiam)); *Ring*, 536 U.S. at 609 (overruling *Walton v. Arizona*, 497 U.S. 639 (1990)). It would be inappropriate to extend those dubious underpinnings to this new context.

B. Eighth Amendment

In addition to misinterpreting the Sixth Amendment, the Florida Supreme Court also erred in holding that the State’s nonunanimity rule satisfies the Eighth Amendment.

1. The Eighth Amendment prohibits the imposition of “cruel and unusual punishments.” U.S. Const. amend. VIII. To effectuate this guarantee, the Eighth Amendment requires death sentences to reflect “community” mores. *Caldwell v. Mississippi*, 472 U.S. 320, 333 (1985); *see also id.* at 341. It also demands “heightened reliability . . . in the determination whether the death penalty is appropriate.” *Sumner v. Shuman*, 483 U.S. 66, 72 (1987).

Florida’s nonunanimity rule contravenes these principles. At the Founding and for two centuries

thereafter, a judge could not sentence a defendant to death unless the jury unanimously reached the moral judgment that death was the appropriate sentence. *See supra* at 18-20. When one or more jurors concluded that death should not be imposed, that divided expression of the community's conscience operated as a barrier to capital punishment. *Id.*

The same should hold true today. When only two-thirds of the jurors believe that death is warranted in a particular case, that indicates the jury needs to "deliberate thoroughly . . . to assure the reliability of the ultimate verdict," *State v. Daniels*, 542 A.2d 306, 315 (Conn. 1988), not that the jury's work is finished. That is especially so given that prosecutors can already strike all potential jurors who have religious, ethical, or other qualms that would prevent them from imposing a death sentence. *See Witherspoon*, 391 U.S. at 513-18; *Wainwright v. Witt*, 469 U.S. 412, 423-26 (1985). Allowing jurors from the remaining subset of the community to impose a death sentence over the objection of up to one-third of their peers tips the balance too far in favor of death.

Indeed, that is exactly why Florida enacted its new nonunanimity rule in 2023: to make it easier to procure death sentences. The bill's sponsor explained that the new rule was designed to "hinder the practice of activist jurors." *Tr. of Senate Floor Debate on SB 450*, 2023 Leg., Reg. Sess. 2 (Fla. Mar. 29, 2023) (statement of Sen. Blaise Ingoglia). Supporters likewise argued that removing the State's unanimity requirement was necessary to prevent "a small handful of jurors [from] derail[ing] the true administration of justice" by declining to impose death. *Hearing on HB 555 Before the H. Crim. Just.*

Subcomm., 2023 Leg., Reg. Sess. 16 (Fla. 2023) (statement of Rep. Berny Jacques, Member, H. Crim. Just. Subcomm.). This facilitation of capital punishment “[where] the jury is divided on the proper sentence” contravenes the Eighth Amendment. *Caldwell*, 472 U.S. at 333.

2. The Florida Supreme Court itself recognized a decade ago that the Eighth Amendment prohibited death sentences based on nonunanimous verdicts. In a lengthy opinion, the court held that “juror unanimity in any recommended verdict resulting in a death sentence is required under the Eighth Amendment.” *Hurst II*, 202 So. 3d at 58. Four years later, however, the Florida Supreme Court abandoned that position in a single paragraph. It declared that this Court “rejected that exact argument in *Spaziano*” and that it was “bound” by that decision. *Poole*, 297 So. 3d at 504. This new position, which the Florida Supreme Court reiterated here, Pet. App. 14a, is incorrect.

In *Spaziano*, this Court upheld Florida’s then-extant law allowing judges to impose death sentences regardless of whether juries recommended life imprisonment or death. 468 U.S. 447, 465 (1984). The Court reasoned that the Eighth Amendment does not require states to “give final authority to the jury to make the life-or-death decision.” *Spaziano*, 468 U.S. at 465.

That reasoning does not apply here. Florida has now chosen to condition the imposition of death on the jury’s “determin[ation] that the defendant should be sentenced to death”; absent such a determination, the court must impose a life sentence. Fla. Stat. § 921.141(2)(c), (3)(a)1. If a legislature wishes to wrap

a death sentence in the imprimatur of the community, that determination must be unanimous.

Even if *Spaziano's* Eighth Amendment holding applied here, the better path would still be to follow Justice Breyer's lead in *Ring* and *Hurst* and decline to follow that holding. See *Ring*, 536 U.S. at 614-16 (Breyer, J., concurring in the judgment); *Hurst*, 577 U.S. at 103 (Breyer, J., concurring in the judgment). In no other state in the Nation could the 8-4 vote here have subjected Mr. Jackson to the death penalty. Such a divided expression of the "community's views" cannot afford sufficient assurance that "capital punishment is appropriate in the particular case at hand." *Ring*, 536 U.S. at 616 (Breyer, J., concurring in the judgment).

IV. This Court should resolve this question here and now.

This case is an optimal vehicle for resolving whether states may impose death sentences based on nonunanimous jury determinations that death is the appropriate sentence.

1. When a state rule of criminal law is constitutionally suspect, it is best to review it as soon as possible, lest the state accumulate convictions and sentences and claim an interest in the finality of those verdicts. In *Kennedy v. Louisiana*, 554 U.S. 407 (2008), for instance, this Court reviewed the first death sentence imposed under a new capital sentencing rule adopted by Louisiana and a few other states. In *Ramos*, by contrast, Oregon argued that this Court's "repeated[] den[ial of] certiorari on th[e] issue over the years" led it to believe that its nonunanimity rule was constitutional. Br. of Amicus Curiae State of

Oregon in Supp. of Resp. at 11, *Ramos, supra* (No. 18-5924). Louisiana made similar reliance arguments. *See* Resp. Br. at 10, 47 n.9, *Ramos, supra* (No. 18-5924). Those contentions, in turn, led to significant disputes about the States' interest in the finality of convictions secured with nonunanimous verdicts. *See Ramos*, 590 U.S. at 164 (Alito, J., dissenting) (crediting the States' reliance interest).

To follow the example of *Kennedy* and avoid a situation like *Ramos*, this Court should resolve the question presented now, before death sentences based on nonunanimous verdicts stack up in Florida and Alabama. Both States adopted their nonunanimity regimes within the past decade, so most death sentences the States have procured with nonunanimous verdicts are still on direct review. Indeed, Mr. Jackson and Mr. Hunt are the first individuals whose death sentences have been upheld by the Florida Supreme Court under the State's new regime.⁴ Reviewing their cases would allow this Court to inform defendants and the affected States alike in a timely manner whether their new nonunanimity rules are constitutional. A later decision could be far more disruptive. *See, e.g., Mosley v. State*, 209 So. 3d 1248 (Fla. 2016) (holding that *Hurst II* was retroactive).

⁴ As noted above, the Florida Supreme Court held in 2020 in *Poole* that neither the Sixth nor Eighth Amendment requires a jury determination that death is the appropriate sentence to be unanimous. *See supra* at 7. But at that time, Florida's capital sentencing statute required such unanimity anyway. *Id.* at 6-7. So, there was no forward-looking reason for this Court to grant review. It was not until 2023 that the Florida Legislature rescinded its unanimity requirement and adopted the nonunanimity rule at issue here.

2. This is also the right case for resolving the question presented.⁵

The Court has frequently considered jointly the Sixth and Eighth Amendment implications of state laws regulating jury procedures in capital cases. *See, e.g., Hurst*, 577 U.S. 92; *Ring*, 536 U.S. 584; *Spaziano*, 468 U.S. 447. The Florida Supreme Court squarely addressed both of these constitutional provisions in the decision below. Pet. App. 13a-14a.

This case is also procedurally clean. It is on direct review, so the Court can address the question presented free from legal complications that sometimes arise on collateral review. And unlike many capital cases, this case is not coming to the Court on an expedited emergency application to stop a pending execution. *Cf. Crawford v. Mississippi*, 146 S. Ct. 33, 39 (2025) (Sotomayor, J., dissenting from the denial of application for stay and denial of certiorari). This Court can accordingly decide the weighty issue here with the benefit of full briefing and argument.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

⁵ Mr. Hunt is also raising the same claim Mr. Jackson raises here, as well as an additional claim that the Ex Post Facto Clause prohibits Florida's new nonunanimity rule from applying to defendants whose crimes were committed between 2017 and 2023. If this Court grants certiorari in both cases, Mr. Jackson will brief whether the new legislation violates the Sixth and Eighth Amendments, while Mr. Hunt—unless this Court directs otherwise—will focus on his ex post facto argument.

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