

No. 25–7202

IN THE SUPREME COURT OF THE UNITED STATES

KURT N. HAUSCH, PETITIONER,

v.

STATE OF FLORIDA, RESPONDENT.

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE FOURTH DISTRICT COURT OF APPEAL OF FLORIDA*

**MOTION FOR LEAVE TO FILE OUT-OF-TIME PETITION FOR
REHEARING**

DANIEL EISINGER
Public Defender

Gary Lee Caldwell
*Assistant Public Defender
Counsel of Record*

Office of the Public Defender
Fifteenth Judicial Circuit of Florida
421 Third Street
West Palm Beach, FL 33401
(561) 355–7600

gcaldwel@pd15.org
lmattocks@pd15.org
appeals@pd15.org

1. Petitioner respectfully moves for leave to file the annexed petition for rehearing of this Court’s order denying his petition for a writ of certiorari, entered on May 18, 2026. *See* Sup. Ct. R. 44.2.

2. Petitioner’s time to file a petition for rehearing under Rule 44.2 expired on Friday, June 12, 2026. Petitioner did not file within that period because the grounds for rehearing did not then exist. On Monday, June 15, 2026 — one day after the rehearing deadline had passed — this Court granted certiorari in *Kian v. Florida*, No. 25-6623, to decide the same question presented here: whether *Williams v. Florida*, 399 U.S. 78 (1970), should be overruled.

3. This intervening development warrants leave to file out of time. Petitioner was convicted in Florida state court by a six-member jury, and sentenced to sixty months in prison. In his petition for certiorari, Petitioner asked this Court to overrule *Williams* and hold that the Sixth Amendment requires a twelve-member jury in felony cases. *Kian* presents the same question.

4. The grant of certiorari in *Kian* is an “intervening circumstance[] of a substantial or controlling effect.” Sup. Ct. R. 44.2. This Court has a practice of granting rehearing of orders denying certiorari when it subsequently grants certiorari on a

“related issue in another case.” Stephen M. Shapiro et al., *Supreme Court Practice*, Ch. 15.6.(b) (11th ed. 2019) (ebook). Had *Kian* been granted while the petition for certiorari here was pending, the ordinary course would have been to hold this case pending *Kian* and then dispose of it consistently with the Court’s decision there. *Id.* at Ch.6.31.(e). Leave to file the annexed rehearing petition would permit the Court to do now what it ordinarily does when related petitions present the same question: preserve its ability to resolve like cases alike.

5. This Court has the inherent authority to consider an untimely petition for rehearing where the interests of justice so require. *See United States v. Ohio Power Co.*, 353 U.S. 98, 99 (1957) (per curiam); *Gondeck v. Pan American World Airways, Inc.*, 382 U.S. 25 (1965). That authority is appropriately exercised here. Petitioner could not have anticipated, during the 25-day rehearing period, that the Court would grant *Kian* later in the same Term on day after the rehearing period had expired.

6. The equities also favor granting this motion. Petitioner’s case comes to the Court on direct review from a final state court criminal judgment. And if *Kian* results in a new rule of criminal

procedure, Petitioner's ability to obtain relief through collateral review may be substantially complicated by finality doctrines. Allowing the annexed petition to be filed would avoid that complication and would ensure that Petitioner — who will otherwise spend the rest of his life in prison, convicted by a constitutionally-infirm jury—is not denied the benefit of a decision in Kian solely because of the happenstance of the Court's docket timing.

7. For these reasons, Petitioner respectfully requests that the Court grant this motion for leave to file the annexed out-of-time petition for rehearing.

Respectfully submitted,

DANIEL EISINGER

Public Defender

GARY LEE CALDWELL

Assistant Public Defender

Counsel of Record

Office of the Public Defender
Fifteenth Judicial Circuit of Florida
421 Third Street
West Palm Beach, FL 33401
(561) 355-7600
gcaldwel@pd15.org
lmattocks@pd15.org
appeals@pd15.org