

No. 25-7483

IN THE
SUPREME COURT OF THE UNITED STATES

MIGEL DAVIS,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

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

RESPONSE TO PETITION

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QUESTION PRESENTED

More than half a century ago, this Court held that Florida’s use of six-person juries satisfies the Sixth Amendment. *Williams v. Florida*, 399 U.S. 78, 86 (1970). After examining the history and purpose of the right to trial by jury, the Court concluded that the framers enshrined no 12-juror requirement in the Constitution, even though most founding-era juries consisted of 12 persons. Relying on *Williams*, Florida and five other states continue to use fewer than 12 jurors in at least some criminal trials. In Florida, where all noncapital crimes are tried before six-member juries, roughly 5,000 criminal convictions are currently pending on direct appeal.

As in *Kian v. Florida*, No. 25-6623, 2026 WL 1718018 (June 15, 2026) (cert. granted), the question presented is whether the Court should overrule *Williams* and hold that the Sixth Amendment requires the use of 12-person juries in serious criminal cases.

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STATEMENT OF THE CASE

1. In 1877, Florida began using six-person juries to try noncapital criminal defendants. *See* Act of February 17, 1877, ch. 3010, § 6, 1877 Fla. Laws 54. That same year, the Florida Supreme Court held that the use of six-person juries neither “destroy[ed] [n]or infring[ed] the right of trial by jury.” *Gibson v. State*, 16 Fla. 291, 300 (1877). Ninety years later, this Court opened another avenue to challenge the validity of Florida’s six-person juries, holding that states are bound by the jury-trial guarantee in the Sixth Amendment to the federal Constitution. *See Duncan v. Louisiana*, 391 U.S. 145, 149 (1968). But just two years after that, this Court concluded that six-person juries satisfy that guarantee. *Williams v. Florida*, 399 U.S. 78, 86 (1970). For nearly as long as states have had a Sixth Amendment duty to provide criminal jury trials, this Court’s message to the people of Florida has been clear: the jury structure that they have settled on for a century and a half fulfills that duty. Unsurprisingly then, Florida has continued its longstanding practice of using six-person juries in trials of noncapital offenses. *See* Fla. Stat. § 913.10.

2. The petitioner was tried for four counts of lewd or lascivious battery on a child 12 years or older but less than 16. R. 90; Tr. 318. The trial court empaneled a six-person jury as dictated by Florida law. *See* Fla. Stat. § 913.10; *State v. Hogan*, 451 So. 2d 844, 845 (Fla. 1984). Prior to jury selection petitioner filed a motion requesting a 12-person jury and objecting to a six-person jury. R. 81. At the start of jury selection petitioner’s co-counsel (Lopez) stated that the defense

was withdrawing the motion. Tr. 14. Although petitioner's other co-counsel (Weisler) indicated that their supervisor said to still file the motion, Lopez again said that they were withdrawing it. Tr. 14. The trial court commented that petitioner was not getting a 12-person jury as the Florida Supreme Court had ruled on the issue. Tr. 14. Jury selection ensued and petitioner's counsel questioned the venire panel extensively and participated in jury selection, exercising cause and peremptory challenges to various prospective jurors the petitioner deemed undesirable. Tr. 41-294. Once selected, petitioner's counsel accepted the jury as empaneled subject to any objections. Tr. 289. The trial court specifically asked the petitioner personally if he accepted the jury as selected and the petitioner answered affirmatively. Tr. 290-91.

The evidence at trial revealed that as the 13-year-old victim walked home from middle school wearing her backpack the 27-year-old petitioner pulled up alongside her and asked for her number, which she refused. Tr. 341-48, 496. The second time this happened the victim gave the petitioner her Instagram account number. Tr. 350. Thereafter, the petitioner and the victim exchanged several Instagram messages, which became sexual in nature. Tr. 350-58. The Instagram records, including audio recordings, were admitted into evidence. Tr. 362. Eventually, the petitioner picked-up the victim near her school and they engaged in sexual activity in his car in a secluded location. Tr. 373-80. Afterward, the petitioner dropped the victim at her school. Tr. 381. The petitioner picked-up the victim a second time and they engaged in sexual activity in his car at the same location. Tr. 390-91.

Other evidence showed that the petitioner's daughter attended the same school as the victim. Tr. 494.

Presented with this evidence, the jury returned unanimous guilty verdicts on all four counts and also found penetration on all four counts. *See* R. 120-23; Tr. 631-32.

3. The petitioner appealed his convictions to Florida's Fourth District Court of Appeal, arguing that the Sixth Amendment entitled him to be tried by a 12-person jury because this Court abrogated *Williams* in *Ramos v. Louisiana*, 590 U.S. 83 (2020), which held that the Sixth Amendment requires unanimous verdicts in state court as in federal court, overruling *Apodaca v. Oregon*, 406 U.S. 404 (1972). The Fourth District affirmed in a per curiam, summary decision. Pet. App. 2. The petitioner then petitioned this Court for a writ of certiorari.

THE COURT SHOULD HOLD THIS PETITION PENDING DISPOSITION OF *KIAN*

The petitioner contends that the Court should review the Fourth District's summary decision and use it as a vehicle to overrule *Williams v. Florida*, 399 U.S. 78 (1970), which held that the Sixth Amendment permits six-person juries in criminal cases. On June 15, 2026, this Court granted review in *Kian v. Florida*, No. 25-6623, which presents the identical legal issue. Consequently, the Court should hold the petition in abeyance pending its resolution of this same issue in *Kian* and then dispose of it accordingly.

CONCLUSION

The petition for a writ of certiorari should be held in abeyance pending this Court's resolution of *Kian*.

Respectfully submitted,

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