

No. 26-5354

IN THE
SUPREME COURT OF THE UNITED STATES

NELSON OMAR TORRES,
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 sexual battery—great force (Count 1); false imprisonment with a weapon (Count 2); aggravated battery—deadly weapon (Count 3); aggravated assault—deadly weapon (Count 4); and tampering with a witness, victim, or informant (Count 5) R. 41–42; Tr. 10. 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 did not file any objection to the jury size.

The evidence at trial revealed that during a traumatic night in September , 2021, the petitioner battered and assaulted his then-wife, L.T. Although L.T. had filed for divorce the year before, the two adults remained living together for the sake of their child. Tr. 302. After the child went to bed, the two adults got into an argument, during which the petitioner threatened to kill L.T. if she tried to take his children away from him. Tr. 306-10. During a brief lull in the argument, L.T. went into the kitchen for water. Tr. 310-11. The petitioner followed her, grabbed a knife and threatened L.T. again. Tr. 311. The petitioner ordered L.T. back into the living, after which he took her phone and made her log into her email so he could read the correspondence between L.T. and her attorney. Tr. 312–13. While reading the emails, the petitioner hit L.T. with the blunt end of the knife and punched her. Tr. 313. The petitioner ultimately concluded he had to kill her, so he ordered her into the bathtub. Tr. 314, 320. The petitioner lunged at L.T. while she was in the bathtub, but ultimately could not go through with the murder. Tr. 321-22. The petitioner forced L.T. into the master bedroom where he then forced her to perform oral sex on him while still threatening her with the knife. Tr. 322–23. The traumatic events lasted from around 9:30 p.m. to midnight. Tr. 327. The next morning, L.T. called 911 and then drove to the Sheriff's office. Tr. 334–35, 337.

Presented with this evidence, the jury returned a verdict of guilty of the lesser included offense of battery (Count 1); not guilty of false imprisonment with a weapon (Count 2); guilty of the lesser included offense of battery (Count 3); and guilty of the lesser in-

cluded offense of assault (Count 4); and guilty of tampering with a victim as charged in Count 5. R. 635–38; Tr. 743–44. The trial court adjudicated the petitioner guilty and sentenced him to time served on Counts 1, 3 and 4, and 60 months on Count 5 with credit for time served. R. 697–707, 825, 837.

3. The petitioner appealed his convictions to Florida’s Fourth District Court of Appeal, arguing in part 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). Pet. App. at 3-4. The Fourth District issued a per curiam affirmance. Pet. App. at 2. The petitioner then petitioned this Court for a writ of certiorari.

RESPONSE

The petitioner contends that the Court should review the Fourth District’s 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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September 3, 2026