

No. 26-5626

IN THE
SUPREME COURT OF THE UNITED STATES

SCOTT JOSEPH TRADER,
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 by a jury for multiple counts of sexual abuse of two minor victims and was convicted and sentenced to life in prison. R. 454–67. On appeal, his judgment and sentence were reversed because the trial court should have severed the charges by victim, and the cause was remanded to the trial court for a new trial. *See Trader v. State*, 386 So. 3d 152 (Fla. Dist. Ct. App. 2024). The instant case for which the petitioner seeks this Court’s review is the first of the severed, new trials. There, the petitioner

was charged with one count of sexual battery on a child under 12 years of age and two counts of lewd or lascivious molestation on a child under 12 years of age. R. 40–41.

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 moved the trial court for a 12-person jury and objected to a six-person jury. R. 800–03, 1141–42. The petitioner argued that he was entitled to a 12-person jury because his criminal conduct was labeled a capital offense, and Florida law prescribed a jury of 12 for capital offenses. R. 802. He also contended that *Williams, supra*, was wrongly decided and that trials of felony offenses require 12-person juries. R. 1143. The trial court ultimately denied the petitioner’s motion, explaining that, “[a]t the time of the alleged crimes, the offense were [sic] not punishable by death.” R. 821.

Jury selection ensued and the petitioner questioned the venire panel and exercised cause and peremptory challenges to multiple prospective jurors he deemed undesirable. Tr. 140–51. Once selected, the petitioner accepted the jury of six as empaneled. Tr. 151.

The evidence at trial revealed that the petitioner had his minor daughter—who was under five years of age at the time—perform a sexual act on him. He also molested her by forcing her to touch his genitalia. The evidence included videos and photographs of the acts, as well as testimony identifying the petitioner in those videos and photos.

Presented with this evidence, the jury returned unanimous guilty verdicts on all three counts. *See* R. 1016–17; Tr. 360–61.

3. The petitioner appealed his convictions to Florida’s Fourth District Court of Appeal, arguing that *Williams* was wrongly decided because the Sixth Amendment entitled him to be tried by a 12-person jury, citing Justice Gorsuch’s dissent from the denial of certiorari review in *Cunningham v. Florida*, 144 S. Ct. 1287 (2024). The Fourth District affirmed in a per curiam, summary decision. Pet. App. 1a. 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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