

No. 26-5768

IN THE
SUPREME COURT OF THE UNITED STATES

HENRY XAVIER WILSON,
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

JAMES UTHMEIER
*Attorney General of
Florida*

OFFICE OF THE
ATTORNEY GENERAL
STATE OF FLORIDA
1515 N. Flagler Drive,
Suite 900
West Palm Beach, FL
33401
Phone: (561) 837-5016
CrimAppWPB@
myfloridalegal.com

CELIA A. TERENCE
*Chief Assistant Attorney
General
Counsel of Record*
LUKE R. NAPODANO
*Senior Assistant Attorney
General*

Counsel for Respondent

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.

TABLE OF CONTENTS

QUESTION PRESENTED.....	i
TABLE OF AUTHORITIES.....	iii
STATEMENT OF THE CASE	1
THE COURT SHOULD HOLD THIS PETITION PENDING DISPOSITION OF <i>KIAN</i>	3
THIS COURT SHOULD HOLD THE PETITION IN ABEYANCE PENDING THIS COURT’S RESOLUTION IN <i>KIAN V. FLORIDA</i> , CASE No. 25-6623.....	3
CONCLUSION	4

TABLE OF AUTHORITIES

Cases

<i>Apodaca v. Oregon</i> , 406 U.S. 404 (1972)	3
<i>Duncan v. Louisiana</i> , 391 U.S. 145 (1968)	1
<i>Gibson v. State</i> , 16 Fla. 291 (1877)	1
<i>Guzman v. State</i> , 350 So. 3d 72 (Fla. Dist. Ct. App. 2022)	3
<i>Kian v. Florida</i> , 25-6623, 2026 WL 1718018 (June 15, 2026)	i, 3
<i>Ramos v. Louisiana</i> , 590 U.S. 83 (2020)	2
<i>State v. Hogan</i> , 451 So. 2d 844 (Fla. 1984)	1
<i>Williams v. Florida</i> , 399 U.S. 78 (1970)	i, 1, 2, 3

Statutes

Act of February 17, 1877, ch. 3010, § 6, 1877 Fla. Laws 54	1
Fla. Stat. § 913.10	1

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 aggravated assault with a firearm, burglary of a conveyance while armed, and resisting an officer without violence. Pet. Appx. 2a. 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 the petitioner did not file any objection to the jury size.

The evidence at trial revealed that the petitioner was advised by an agent at his apartment complex

that his vehicles were not in compliance with the complex's parking rules. Pet. Appx. 3a. Violation stickers were placed on the petitioner's vehicles warning they would be towed by a certain date unless the vehicles were brought into compliance. Signs were posted around the complex notifying residents that the parking area was a tow-away zone and a certain company was used to tow vehicles. An operator from that towing company arrived on the appointed date. He verified that the petitioner's vehicle was one designated to be towed and lifted the vehicle with his tow truck. The petitioner ran out of his apartment with a gun in his hand. Pet. Appx. 3a. The petitioner demanded the tow truck driver put the vehicle down, pointed the gun at the tow truck driver, and threatened to kill him. A neighbor intervened to get the petitioner's attention so the tow truck driver could flee. The petitioner went into the tow truck and took the keys out of the ignition. When law enforcement arrived, the petitioner initially refused to comply with their commands. Pet. Appx. 4a.

Presented with this evidence, the jury returned a verdict of guilty as charged in the information. Pet. Appx. 5a. The trial court adjudicated the petitioner guilty and sentenced him to sixty months in prison with a three-year mandatory minimum. R. 298-304.

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 unan-

imous verdicts in state court as in federal court, overruling *Apodaca v. Oregon*, 406 U.S. 404 (1972). Pet. App. 14a-23a. The Fourth District issued an opinion affirming as to this issue, relying on its previous holding in *Guzman v. State*, 350 So. 3d 72 (Fla. Dist. Ct. App. 2022). Pet. App. 11a. The petitioner sought discretionary review before the Florida Supreme Court, which was denied. Pet. App. 12a. 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 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,

JAMES UTHMEIER
*Attorney General of
Florida*

OFFICE OF THE
ATTORNEY GENERAL
STATE OF FLORIDA
1515 N. Flagler Drive,
Suite 900
West Palm Beach, FL
33401
Phone: (561) 837-5016
CrimAppWPB@
myfloridalegal.com

CELIA A. TERENCE
*Chief Assistant Attorney
General
Counsel of Record*
LUKE R. NAPODANO
*Senior Assistant Attorney
General*

Counsel for Respondent

October 27, 2026