No. 26-5913

IN THE
SUPREME COURT OF THE UNITED STATES

CARLOS FERNANDEZ,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
FLORIDA DISTRICT COURT OF APPEAL,
SECOND 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 one count each of Vehicular Homicide, contrary to section 782.071(1)(a); Reckless Driving with Serious Bodily Injury, contrary to section 316.192(3)(c)(2); Racing on a Highway, contrary to section 316.191(2)(a); and Operating a Motorcycle without Endorsement, contrary to section 322.03(4). Pet. Appx. B, 5a.

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 petitioner was participating in a social media coordinated "car meet" when he drove a motorcycle at an accelerated speed and crashed into the victim. The gathering took place in the hour before midnight, in a dark area with low visibility and crowded with car enthusiasts and over fifty cars. Heedless of these conditions, petitioner recklessly operated the motorcycle approximately 30 m.p.h. to 58 m.p.h. over the posted speed limit. While participating in the speed exhibition, petitioner struck E.M. causing the victim's death on impact from blunt force trauma.

Presented with this evidence, the jury returned a verdict of guilty as charged in the information. Pet. Appx. B, 6a. The trial court adjudicated the petitioner guilty and sentenced him to 7 years' imprisonment followed by 8 years of probation as to Count 1 and a consecutive five years of probation as to Count 2. Pet. Appx. B, 6a.

3. The petitioner appealed his convictions to Florida's Second District Court of Appeal, arguing the historic basis for a twelve-person jury and that a six-person jury constituted fundamental and structural errors. Pet. App. B, 8a. The Second District issued a per curiam affirmance of the judgment and sentence. Pet. App. A, 3a. 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 Second 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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