No. 26-6049

IN THE
SUPREME COURT OF THE UNITED STATES

DONALD KIRK MCDONALD, JR.,
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. Petitioner Donald Kirk McDonald, Jr. was tried for trafficking in methamphetamines in the amount of more than fourteen grams but less than twenty-eight grams and possessing twenty grams or less of cannabis. R. 26. 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). Once selected, petitioner's counsel accepted the jury as empaneled. Tr. 88.

The evidence at trial revealed that McDonald's vehicle was stopped for a traffic violation. T. 106. When the deputy approached the vehicle, there was smoke emanating from an open window. T. 107.

McDonald informed the officer that he had just been smoking marijuana before the stop. *Id*. The car was searched. T. 111.

A bag of marijuana was located on the floorboard next to McDonald. T. 112. To McDonald's left, the deputy recovered a bag containing a syringe and a clear plastic bag of crystal methamphetamine. T. 114.

Next to McDonald, the deputy found a sunglass case bearing McDonald's initials and "established, 1981, which is the year McDonald was born." *Id*. Inside the case, the deputy recovered a "meth pipe" and baggies consistent with methamphetamine. T. 116. Inside the monogramed sunglass case, was also McDonald's debit card. T127.

All the drugs and paraphernalia were admitted into evidence. T. 114-19. More baggies of methamphetamine were found inside an "ammo box," and admitted into evidence. T. 121-22. There was also additional cannabis. T. 123. All the contraband was within McDonald's reach. T. 128.

McDonald voluntarily spoke with the deputy and explained that "when he first got pulled over he was smoking marijuana and that he got nervous so he put the marijuana pipe in the ammo box, which is in the box seat directly behind him." T. 129.

The entire interaction between McDonald and the deputy was captured on body worn camera footage

and admitted into evidence. T. 135-36. A forensic chemist testified that the combined weight of the methamphetamine was over fourteen grams. T. 158.

Presented with this evidence, the jury returned unanimous guilty verdicts. *See* R. 129; Tr. 197.

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. 1a. McDonald then petitioned this Court for a writ of certiorari.

ARGUMENT

The Court should hold this petition pending disposition of *Kian*.

McDonald 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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