No.

IN THE SUPREME COURT OF THE UNITED STATES

TYAIWAN OUSLEY, PETITIONER,

v.

STATE OF FLORIDA, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FOURTH DISTRICT COURT OF APPEAL OF FLORIDA

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether *Williams v. Florida*, 399 U. S. 78 (1970), should be overturned and the right to a twelve-person jury restored. Because the Court has granted certiorari in a case that raises the same question presented here, see *Kian v. Florida*, No. 25-6623, 2026 WL 1718018 (U.S. June 15, 2026), the Court should hold this case in abeyance until it issues its decision in *Kian*.

PARTIES TO THE PROCEEDING

The parties to the proceeding before the Court are as follows:

Tyaiwan Ousley, Petitioner.

State of Florida, Respondent.

RELATED PROCEEDINGS

Fifteenth Judicial Circuit of Florida:

State v. Ousley 50-2024-CF-005280-AXXX-MB (Fla. 15th Cir. Ct. Aug. 1, 2025).

Fourth District Court of Appeal of Florida:

Ousley v. State, No. 4D2025-2288, 2026 WL 1674408 (Fla. 4th DCA June 10, 2026).

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STATE OF FLORIDA, RESPONDENT.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner (Judane Antjuan Barber) respectfully petitions for a writ of certiorari to review the judgment in this case of Florida's Fourth District Court of Appeal.

OPINION BELOW

The decision of Florida's Fourth District Court of Appeal has not yet been published in the Southern Reporter. It is reported as *Ousley v. State*, No. 4D2025-2288, 2026 WL 1674408 (Fla. 4th DCA June 10, 2026). A copy is provided in the appendix. See 2a.

JURISDICTION

The Court has jurisdiction to review final judgments or decrees "rendered by the highest court of a state in which a decision could be had." 28 U. S. C. § 1257(a). Florida's Fourth District Court of Appeal affirmed Petitioner's conviction and sentence on June 10, 2026. 2a. Subsequently, the Fourth District denied Petitioner's Motion For Rehearing, Written Opinion, and To Certify A Question Of Great Public Importance on July 30, 2026. 3a. Although the Florida Supreme Court is the highest state court in Florida, the Florida Supreme Court has held that it does not have jurisdiction to review a *per curiam* affirmance that cites a case that is not currently pending before it. See *Mallet v. State*, 280 So. 3d 1091, 1092 (Fla. 2019) (holding that the Florida Supreme Court is "a court of limited jurisdiction"). In this case, the Fourth District's *per curiam* affirmance cited *B.W.B. v. State*, 374 So. 3d 40 (Fla. 4th DCA 2023). At the time Petitioner could seek review at the Florida Supreme Court, *B.W.B.* was no longer pending at the Florida Supreme Court. Because *B.W.B.* was no longer pending at the Florida Supreme Court, Petitioner could not seek higher review there. Thus, the Fourth District was the highest state court in Florida where Petitioner could seek a decision.

The Court has jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Sixth Amendment

The Sixth Amendment provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Section 913.10, Florida Statutes

> Twelve persons shall constitute a jury to try all capital cases, and six persons shall constitute a jury to try all other criminal cases.

STATEMENT OF THE CASE

Respondent (the State) charged Petitioner (Tyaiwan Ousley) with one count of sending a written threat to kill or to do great bodily harm. The six-person jury found Petitioner guilty as charged.

Subsequently, the trial court adjudicated Petitioner guilty and sentenced him to 96 months in the Florida Department of Corrections, with credit for 408 days.

On appeal, Florida's Fourth District Court of Appeal affirmed Petitioner's conviction and sentence. 2a. Subsequently, this Court denied Petitioner's Motion For Rehearing, Written Opinion, & To Certify A Question Of Great Public Importance.

REASONS FOR GRANTING THE PETITION

I. *WILLIAMS* IS WRONG.

In *Williams v. Florida*, 399 U. S. 78 (1970), the Court held that a criminal defendant charged with a felony is not entitled to a twelve-person jury. That holding went against the plain-and-ordinary meaning of the Sixth Amendment. The Court must have understood as much, as it relied instead on the functionalist approach to constitutional interpretation. In subsequent cases, the Court has called that approach to constitutional interpretation into question.

Williams was wrong when it was decided, and it is wrong now. The Court's holding in *Williams* should be overturned.

a. *Williams* marked a departure from well-established precedent.

When the Framers adopted the words and phrases in the Constitution, they intended that those words and phrases should be understood "in their normal and ordinary[,] as distinguished from technical[,] meaning." *United States v. Sprague*, 282 U. S. 716, 731 (1931); see *New York State Rifle & Pistol Assn. v. Bruen*, 597 U. S. 1, 34 (2022) ("Constitutional rights are enshrined with the scope they were understood to have when the people adopted them." (quoting *District of Columbia v. Heller*, 554 U. S. 570, 634–35 (2008))). So to

properly interpret the Sixth Amendment right to a trial by jury, the Court must look at the understanding of that right when the Framers adopted the Sixth Amendment.

"For almost all of this Nation's history[,] and centuries before that, the right to [a] trial by jury for serious criminal offenses meant the right to a trial before [twelve] members of the community." *Khorrami v. Arizona*, 143 S. Ct. 22, 27 (2022) (Gorsuch, J., dissenting from the denial of certiorari). In fact, William Blackstone wrote that the right to a twelve-person jury is an ancient right that goes all the way back to the feudal system of trial. 3 William Blackstone, *Commentaries on the Laws of England* 349 (1769) ("a tribunal composed of twelve good men and true"). According to Blackstone, being tried by a twelve-person jury "is the most transcendent privilege which any subject can be enjoy or wish for, that he cannot be affected in his property, his liberty or his person, but by the unanimous consent of twelve of his neighbours and equals." *Id.*, at 379.

So at the time the Framers drafted, voted on, and adopted the Sixth Amendment to the United States Constitution, the ordinary meaning of "trial by jury" would have been that a criminal defendant

charged with a felony was entitled to a trial by a twelve-person jury.[1] *Thompson v. Utah*, 170 U. S. 343, 349–50 (1898); *Khorrami v. Arizona*, 143 S. Ct. 22, 27 (2022) (GORSUCH, J., dissenting from the denial of certiorari); *accord Gibson v. State*, 16 Fla. 291, 300 (1877) (holding that historically, the right to a jury trial meant "a jury, according to the common law, to be composed of twelve persons"); Robert H. Miller, *Comment, Six of One Is Not a Dozen of the Other: A Reexamination of* Williams v. Florida *and the Size of State Criminal Juries*, 146 U. Pa. L. Rev. 621, 633 (1998) (discussing twelve-member juries in ancient Greek and Roman trials (myth and real)).

Because that understanding had been accepted at the time the Framers adopted the Sixth Amendment, the Court reasoned that "[i]t

[1] Later, the Framers of the Fourteenth Amendment applied the jury-trial right (and the right to a twelve-person jury in a felony trial) to the states through the Fourteenth Amendment's Due Process Clause. See *Duncan v. Louisiana*, 391 U. S. 145, 149 (1968) ("Because we believe that trial by jury in criminal cases is fundamental to the American scheme of justice, we hold that the Fourteenth Amendment guarantees a right of jury trial in all criminal cases which—were they to be tried in a federal court—would come within the Sixth Amendment's guarantee.").

must" have been "that the word 'jury'" in the Sixth Amendment referred to a twelve-person jury. *Thompson*, 170 U. S., at 350. For the most part, the Court's precedents adhered to the Sixth Amendment's plain and ordinary meaning, holding in several cases that the Sixth Amendment guaranteed a criminal defendant charged with a felony a twelve-person jury. In 1900, the Court explained that "there [could] be no doubt" that the Sixth Amendment's jury-trial clause protected "a jury composed, as at common law, of twelve jurors." *Maxwell v. Dow*, 176 U. S. 581, 586 (1900). Thirty years later, the Court reiterated that "the phrase 'trial by jury'" in the Constitution incorporated the "essential elements" of juries that "were recognized in this country and England," including the requirement that they "consist of twelve men." *Patton v. United States*, 281 U. S. 276, 288 (1930). And as recently as 1968, the Court remarked that "by the time our Constitution was written, [trial by jury] in criminal cases had been in existence for several centuries and carried impressive credentials traced by many to Magna Carta," such as the necessary inclusion of twelve members. *Duncan v. Louisiana*, 391 U. S. 145, 151–52 (1968).

Nevertheless, the *Williams* Court held that a criminal defendant charged with a felony is not entitled to a twelve-person jury. By doing

so, the Court ignored a centuries-old tradition—one that the Framers were very familiar with.

That departure from well-established precedent was wrong then, and it is wrong now. The Court should grant certiorari, overturn *Williams*, and restore the Sixth Amendment right to a twelve-person jury.

b. *Williams* relied on the functionalist approach, which the Court has since backed away from.

Even more troubling than the fact that the Court went against a well-established historical tradition in *Williams*, was the fact that the Court did not rely on the plain-and-ordinary meaning of the Sixth Amendment to make that decision. Instead, the Court relied on the functionalist approach.

Under that approach, the common understanding of juries at the time the Constitution was adopted no longer matters. Instead, the relevant question now is whether the "function" served by a jury is furthered by a jury of twelve people. According to the Court in *Williams*, although it recognized that the Framers "may well" have had "the usual expectation" when drafting the Sixth Amendment that jury trials would have twelve-person juries, 399 U. S., at 98–99, such

"purely historical considerations" were not dispositive, *id.*, at 99. Rather, the Court concluded that the "essential feature" of a jury is it leaves justice to the "commonsense judgment of a group of laymen" and thus allows "guilt or innocence" to be determined via "community participation and [with] shared responsibility." *Id.*, at 100–01. That function could be served just as effectively with a six-person jury. *Id.*, at 101–102 & n.48.

Since *Williams*, not only has the theory undergirding the functionalist approach been heavily criticized, see *Burch v. Louisiana*, 441 U. S. 130, 137 (1979) (acknowledging that *Williams* and its progeny "departed from the strictly historical requirements of jury trial"), the functionalist approach itself has been revealed to not be a workable approach to constitutional interpretation. In *Ballew v. Georgia*, 435 U. S. 223 (1978), for example, the Court—in holding that the core "function" of the Sixth Amendment was disturbed by a five-person jury, *id.*, at 245—admit[ted]" that it "d[id] not pretend to discern a clear line between six members and five," *id.*, at 239; see also *id.*, at 245–46 (POWELL, J.) (agreeing that five-member juries are unconstitutional, while acknowledging that "the line between five- and six-member juries is difficult to justify").

Although *Ballew* did not overturn *Williams*, it revealed issues with the functionalist approach. The *Ballew* Court noted that recent research has shown that (1) "smaller juries are less likely to foster effective group deliberation," *id.*, at 233; (2) smaller juries may be less accurate and cause "increasing inconsistency" in verdict results, *id.*, at 234; (3) the chance for hung juries decreases with smaller juries, disproportionally harming the defendant, *id.*, at 236; and (4) decreasing jury sizes "foretell[] problems . . . for the representation of minority groups in the community," undermining a jury's likelihood of being "truly representative of the community," *id.*, at 236–37.

Indeed, the Court later acknowledged the impracticability of the functionalist approach in *Ramos v. Louisiana*, 590 U. S. 83 (2020). There, the Court held that the Sixth Amendment's "trial by an impartial jury" requirement encompasses what the term "meant at the time of the Sixth Amendment's adoption." *Id.*, at 90. Crucially, the Court noted that its job is not to "distinguish between [1] the historic features of common law jury trials that [it thinks] serve 'important enough functions to migrate silently into the Sixth Amendment and [2] those that don't.'" *Id.*, at 98.

The same reasoning applies to the right to a twelve-person jury at trial. When the Founders enshrined the jury-trial right in the Sixth Amendment, they did not attach a rider stating that future judges could adapt it based on latter-day social science views.

Williams itself identified the "function" of the Sixth Amendment as leaving justice to the "commonsense judgment of a group of laymen" and thus allowing "guilt or innocence" to be determined via "community participation and [with] shared responsibility." 399 U. S., at 100–01. That function is thwarted by reducing the number of jurors to six.

For example, smaller juries are less representative of the community, and they are less consistent than larger juries. See, *e.g.,* Shamena Anwar, et al., *The Impact of Jury Race In Criminal Trials*, 127 Q.J. Of Econ. 1017, 1049 (2012) (finding that "increasing the number of jurors on the seated jury would substantially reduce the variability of the trial outcomes, increase black representation in the jury pool and on seated juries, and make trial outcomes more equal for white and black defendants"); Diamond et al., *Achieving Diversity on the Jury: Jury Size and the Peremptory Challenge*, 6 J. of Empirical Legal Stud. 425, 427 (Sept. 2009) (stating that "reducing jury size

inevitably has a drastic effect on the representation of minority group members on the jury"); Higginbotham et al., *Better by the Dozen: Bringing Back the Twelve-Person Civil Jury*, 104 Judicature 47, 52 (Summer 2020) ("Larger juries are also more inclusive and more representative of the community. . . . In reality, cutting the size of the jury dramatically increases the chance of excluding minorities.").

Other important considerations also weigh in favor of the twelve-person jury. Twelve-person juries deliberate longer, recall evidence better, and rely less on irrelevant factors during deliberation. See Smith & Saks, *The Case for Overturning* Williams v. Florida *and the Six-Person Jury*, 60 Fla. L. Rev. 441, 465 (2008).

Minority views are also more likely to be thoroughly expressed in a larger jury, as "having a large minority helps make the minority subgroup more influential," and, unsurprisingly, "the chance of minority members having allies is greater on a twelve-person jury." *Id.*, at 466. Finally, larger juries deliver more predictable results. In the civil context, for example, "[s]ix-person juries are four times more likely to return extremely high or low damage awards compared to the average." Higginbotham et al., *supra*, at 52.

Blackstone wrote:

> [A] competent number of sensible and upright jurymen, chosen by lot from among those of the middle rank, will be found the best investigators of truth, and the surest guardians of public justice. For the most powerful individual in the state will be cautious of committing any flagrant invasion of another's right, when he knows that the fact of his oppression must be examined and decided by twelve indifferent men . . . .

Blackstone, *supra*, at 380. The Court should grant certiorari, overturn *Williams*, end the functionalist approach, and hold that the Sixth Amendment entitles a criminal defendant charged with a felony to a twelve-person jury.

c. *Williams* is bad precedent and should be overturned by the Court.

Petitioner cannot seek relief on this issue from the trial court, as the decisions of Florida's appellate courts on this issue, which have uniformly refused to hold that a defendant charged with a felony is constitutionally entitled to a twelve-person jury, see, *e.g.*, *Brown v. State*, 359 So. 3d 408, 410 n.1 (Fla. 1st DCA 2023), are binding on Florida's trial courts. See *Pardo v. State*, 596 So. 2d 665, 666 (Fla. 1992) ("[I]n the absence of interdistrict conflict, district court decisions bind all Florida trial courts.").

Furthermore, Petitioner cannot seek relief on this issue from Florida's appellate courts, because Florida's district courts of appeal

have "no authority to overrule . . . precedent from the United States Supreme Court that endorsed the use of a jury with only six members as constitutional." See *Guzman v. State*, 350 So. 3d 72, 73 (Fla. 4th DCA 2022) (quoting *Gonzalez v. State*, 982 So. 2d 77, 78 (Fla. 2d DCA 2008)).

The Court is thus Petitioner's last and only hope to overturn *Williams*.

Although *Williams* has been on the books for several decades, that does not preclude it from being subject to criticism. The Court has long held that precedent that is contrary to the plain-and-ordinary meaning of the text of the Constitution must be overturned.

Stare decisis is "the means by which [the Court] ensure[s] that the law will not merely change erratically, but will develop in a principled and intelligible fashion." *Vasquez v. Hillery*, 474 U. S. 254, 265 (1986). "That doctrine permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals, and thereby contributes to the integrity of our constitutional system of government, both in appearance and in fact." *Id.*, at 265–66.

In *Dobbs v. Jackson Women's Health Organization*, 597 U. S. 215 (2022), however, the Court noted that "stare decisis is not an inexorable command" and "is at its weakest when [the Court] interpret[s] the Constitution." *Id.*, at 264. In fact, "when it comes to the interpretation of the Constitution—the 'great charter of our liberties,' which was meant to endure through the long lapse of the ages—[the Court] place[s] a high value on having the matter settled right." *Ibid.* (citations omitted). And "when one of [the Court's] constitutional decisions goes astray, the country is usually stuck with the bad decision unless [the Court] correct[s] [the] mistake." *Ibid.* "Therefore, in appropriate circumstances [the Court] must be willing to reconsider and, if necessary, overrule constitutional decisions." *Ibid.* "All Justices now on this Court agree that it is sometimes appropriate for the Court to overrule erroneous decisions." *Ramos*, 590 U. S., at 116.

Among the factors the Court considers when deciding whether to overrule constitutional decisions are "the antiquity of the precedent, the reliance interests at stake, and of course whether the decision was well reasoned." *Montejo v. Louisiana*, 556 U. S. 778, 792–93 (2009). In addition, the Court also considers whether "experience has pointed up the precedent's shortcomings." *Pearson v. Callahan*, 555

U. S. 223, 233 (2009). Relying on those principles, the Court in *Dobbs* overturned *Roe v. Wade*, 410 U. S. 113 (1973), which had been the law of the land for nearly fifty years.

As has already been stated, *Williams* has proven to be "fundamentally misguided." See *Loper Bright Enterprises v. Raimondo*, 603 U. S. 369, 407 (2024). Primarily, *Williams* does not comport with an originalist interpretation of the Constitution. Up until *Williams* was decided, the Court had long recognized that the text of the Sixth Amendment entitled a criminal defendant charged with a felony a twelve-person jury. *Williams*, for the first time in American jurisprudence, held otherwise.

Even more egregious was the fact that the Court based its decision on a functionalist approach—an approach that *Ramos* has called into question.

Finally, the Court's decision in *Williams* allowed Florida to continue to purposely exclude African Americans from jury service.

The Court should revisit *Williams*. Upon revisiting *Williams*, the Court should overturn it and return to an originalist interpretation of the Sixth Amendment.

II. FLORIDA'S SIX-PERSON JURY LAW CAN BE TRACED TO THE JIM CROW-ERA, AND CONTRIBUTED TO A SYSTEMATIC EFFORT TO EXCLUDE AFRICAN-AMERICANS FROM JURY SERVICE.

In addition to overturning a well-understood right by relying on a mode of constitutional interpretation that produced results counter to the Sixth Amendment's purpose, the Court's decision in *Williams* also allowed Florida to continue to purposely keep African Americans off juries. As such, "Florida does what the Constitution forbids." *Cunningham v. Florida*, 144 S. Ct. 1287, 1287 (2024) (GORSUCH, J., dissenting from the denial of certiorari).

In *Khorrami v. Arizona*, 143 S. Ct. 22 (2022), Justice Gorsuch observed that "[d]uring the Jim Crow[-]era, some States restricted the size of juries and abandoned the demand for a unanimous verdict as part of a deliberate and systematic effort to suppress minority voices in public affairs." *Id.*, at 27 (GORSUCH, J., dissenting from denial of certiorari) (citations omitted). Florida's six-person-jury law arose in that context.

In 1875, the Jury Clause of the 1868 version of the Florida Constitution was amended to provide that the number of jurors "for the trial of causes in any court may be fixed by law." See *Florida*

Fertilizer & Mfg. Co. v. Boswell, 34 So. 241, 241 (Fla. 1903). The Florida Legislature enacted chapter 3010, section 6, Laws of Florida (1877) (which contained the jury-of-six provision) on February 17, 1877—less than a month after the last federal troops were withdrawn from Florida. *Gibson v. State*, 16 Fla. 291, 294, 297–98 (1877); see Jerrell H. Shofner, *Reconstruction and Renewal, 1865–1877*, in *The History of Florida* 273 (Michael Gannon, ed., first paperback edition 2018) (stating that "there were [no federal troops] in Florida after 23 January 1877"). The six-person jury thus first saw light at the birth of the Jim Crow-era—as former Confederates regained power in southern states and state prosecutors made a concerted effort to prevent African Americans from serving as jurors.

Harrison Reed, the first governor elected under the 1868 version of the Florida Constitution, wrote to Senator Yulee that the new constitution was constructed to bar blacks from legislative office: "Under our Constitution the Judiciary & State officers will be appointed & the apportionment will prevent a negro legislature." Richard L. Hume, *Membership of the Florida Constitutional Convention of 1868: A Case Study of Republican Factionalism in the Reconstruction South*, 51 Fla. Hist. Q. 1, 15–16 (1972).

On its face, it may appear that the 1868 version of the Florida Constitution extended the jury-service franchise to African American men. But the historical context shows that it was part of the overall resistance to efforts during Reconstruction to protect the rights of African American citizens.

Furthermore, when the Florida Legislature reduced the size of juries in felony trials from twelve to six in 1877, it also re-established the "integrity, fair character, sound judgment and intelligence" test for jury service. See Laws of Fla., ch. 3010 (1877). That discretionary standard was "used to eliminate almost every black citizen from the southern trial venire." Douglas L. Colbert, *Challenging the Challenge: Thirteenth Amendment as a Prohibition against the Racial Use of Peremptory Challenges*, 76 Corn. L. Rev. 1, 89-90 (1990). And it worked. In fact, after the enactment of Florida's six-person jury law, it was so rare for an African American to serve on a jury that it was worthy of a news article when it happened:

- "It is strange that the presence of a negro on the jury should not have attracted sufficient attention to have caused an inquiry into his eligibility as a jury man." *That Federal Jury*, Panama City Pilot, Nov. 27, 1924, at 1.

- "At one point it looked as though the first negro juror in Monroe County was to be selected." *Child Molesting Trial Jury Chosen*, Key West Citizen, Dec. 11, 1952, at 1, 3.
- "A negro juror was picked today to try Felix Combs, a negro roustabout, for raping a Clearwater woman. Selection of Henry Davis of Tarpon Springs marked one of the few times a negro has been selected for jury duty." *Negro Juror*, Sanford Herald, Oct. 4, 1948, at 1.
- "The names of several Negroes were included in the 1950 jury list. Last fall, the county's first Negro juror served when Calvin Smith was named on the venire which heard a cattle rustling case in Circuit Court." *First Two Women are Picked for Possible Jury Duty in County*, Citrus Cnty. Chron., Feb. 16, 1950, at 1.

In *Williams*, the defendant attempted to correct Florida's blatant workaround of the Reconstruction Amendments, but the Court refused to do so. Instead, the Court held that section 913.10 is constitutional. In view of the foregoing, the Court should take the opportunity to grant the petition, hold Florida's six-person jury law unconstitutional, and reverse Petitioner's conviction and sentence.

CONCLUSION

The petition for a writ of certiorari should be granted or held pending the disposition of *Kian v. Florida*, No. 25-6623, 2026 WL 1718018 (U.S. June 15, 2026).

Respectfully submitted,

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