

No. 21-1411

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IN THE  
**Supreme Court of the United States**

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JAMES MILTON DAILEY,

*Petitioner,*

*v.*

FLORIDA,

*Respondent.*

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE SUPREME COURT OF FLORIDA

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**MOTION FOR LEAVE TO FILE BRIEF FOR  
AMICI CURIAE AND BRIEF OF AMICI CURIAE  
EXONEREES CLEMENTE JAVIER AGUIRRE-  
JARQUIN, ROBERT EARL DUBOISE, HERMAN  
LENARD LINDSEY, JOAQUÍN JOSÉ MARTÍNEZ  
PÉREZ, JOHN ROBERT MELENDEZ-COLON, SETH  
PENALVER, AND RALPH DANIEL WRIGHT, JR.,  
WRONGLY CONVICTED PERSONS,  
IN SUPPORT OF PETITIONER**

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Pursuant to Supreme Court Rule 37.2(b), Clemente Javier Aguirre-Jarquín, Robert Earl DuBoise, Herman Lenard Lindsey, Joaquín José Martínez Pérez, John Robert Melendez-Colon, Seth Penalver, and Ralph Daniel Wright, Jr. (collectively, “Exonerees”) respectfully move for leave to file a brief as *Amici Curiae* in support of Petitioner James Milton Dailey. The parties received timely notice of the intent to file this *amicus* brief. Petitioner consented to the filing, respondent withheld consent.

Florida reinstated the death penalty in 1972. Since that time, 30 people who have been sentenced to death in Florida have been exonerated. See <https://deathpenaltyinfo.org/policy-issues/innocence-database?state=Florida>. That number is—by far—the most in the United States and accounts for nearly one-in-six death row exonerations nationwide. See <https://deathpenaltyinfo.org/policy-issues/innocence>. Further, more than half of those exonerated in Florida were convicted and sentenced to death based at least in part on false testimony or other false or misleading evidence. See <https://deathpenaltyinfo.org/policy-issues/innocence-database?state=Florida>. Seven of the exonerees from Florida submit this *amicus* brief.

Most importantly, “the evidence of Mr. Dailey’s actual innocence is not only credible; it is overwhelming.” Br. for *Amici* Catholic Bishops at 7, No. 19-7309, *Dailey v. Florida* (U.S. Jan. 17, 2020). Although that issue was not raised as part of the questions presented in Mr. Dailey’s petition for *certiorari*, it stands as a significant reason in and of itself to hear from seven people—*amici*—who faced a death sentence in Florida and were later exonerated. Second, Exonerees’ brief posits that the State’s reliance on

false testimony—especially the knowing and intentional reliance on such testimony—should never be permitted to serve as the basis for a conviction and sentence of death, especially when there is evidence of actual innocence, as there is here. Exonerees respectfully submit that their brief will be of assistance to the Court in its consideration of Mr. Dailey’s petition, and respectfully request that leave to file be granted.

Respectfully submitted,

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**TABLE OF CONTENTS**

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORTIES .....	iii
THE INTEREST OF <i>AMICI CURIAE</i> .....	1
SUMMARY OF ARGUMENT.....	1
ARGUMENT.....	2
I. Florida’s Capital-Punishment Regime Frequently Gets It Wrong .....	2
A. <i>Amici</i> ’s Cases.....	4
1. Clemente Javier Aguirre- Jarquin – False Testimony.....	4
2. Robert Earl DuBoise – False Testimony .....	5
3. Herman Lenard Lindsey – Insufficient Evidence.....	5
4. Joaquín José Martínez Pérez – Improper Statements by Police at Trial.....	6
5. John Robert Melendez-Colon – No Physical Evidence; Exculpatory Evidence Withheld.....	6

*Table of Contents*

	<i>Page</i>
6. Seth Penalver – Improper Evidence .....	6
7. Ralph Daniel Wright, Jr. – Insufficient Evidence.....	7
B. Other Florida Exonerees .....	8
1. Wilbert Lee – False Testimony .....	8
2. Freddie Pitts – False Testimony .....	8
3. Delbert Tibbs – False Testimony.....	8
4. Anthony Brown – False Testimony ....	8
5. Joseph Green Brown – False Testimony .....	9
6. Willie Brown – False Testimony .....	9
7. Larry Troy – False Testimony.....	9
8. Rudolph Holton – False Testimony ....	9
II. In Light of Florida’s History of Wrongfully Obtaining Convictions in Capital Cases Through the Use of False Testimony and Unreliable Evidence, and the Details of Mr. Dailey’s Case, This Court Should Grant Mr. Dailey’s Petition .....	10
CONCLUSION .....	11

TABLE OF CITED AUTHORITIES

	<i>Page</i>
<b>Cases</b>	
<i>Aguirre-Jarquin v. Florida</i> , 202 So.3d 785 (2016).....	4
<i>Brown v. Wainwright</i> , 785 F.2d 1457 (11th Cir. 1986).....	9
<i>DuBoise v. Florida</i> , 520 So. 2d 260 (1988) .....	5
<i>Florida v. Wright</i> , 2017 WL 4419165 (Fla. Cir. Ct. July 17, 2017) .....	7
<i>Furman v. Georgia</i> , 408 U.S. 238 (1972).....	2
<i>Lindsey v. Florida</i> , 14 So.3d 211 (2009).....	5
<i>Martínez v. Florida</i> , 761 S.2d 1074 (2000).....	6
<i>Penalver v. Florida</i> , 926 So.2d 1118 (2006).....	7
<i>Proffitt v. Florida</i> , 422 U.S. 242 (1976).....	2

*Cited Authorities*

	<i>Page</i>
<i>Tibbs v. Florida,</i> 337 So.2d 788 (1976).....	8
<i>Wright v. Florida,</i> 221 So.3d 512 (2017).....	7

## THE INTEREST OF *AMICI CURIAE*<sup>1</sup>

*Amici* are persons wrongly convicted and sentenced to death in the State of Florida who now stand exonerated. Their interest in this case is simple: their personal, first-hand knowledge that the State’s use of unreliable evidence at trial—including false testimony—has repeatedly resulted in unconstitutional convictions and the unfair imposition of the death penalty. In particular, *amici* Mr. Aguirre-Jarquin and Mr. DuBoise were exonerated because the State presented false testimony at the trials of both men to convict them and sentence them to death.

The issues in Mr. Dailey’s case are even more troubling—if that is even possible in a capital case—as the previous briefing before this Court makes clear. First, “the evidence of Mr. Dailey’s actual innocence is not only credible; it is overwhelming.” Br. for *Amici* Catholic Bishops at 7, No. 19-7309, *Dailey v. Florida* (U.S. Jan. 17, 2020). Second, it has been established that the State knowingly used perjured testimony to obtain Mr. Dailey’s conviction and death sentence. Pet. for *cert.* at 1-2.

## SUMMARY OF ARGUMENT

Since the death penalty was reinstated in 1972, Florida leads the nation—by far—in the number of

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1. *Amici curiae* affirm that no counsel for a party authored this brief in whole or in part. No person or party, other than *amici* or their counsel, made a monetary contribution for the preparation or submission of this brief. The parties received timely notice of the intent to file this *amicus* brief. Petitioner consented to the filing, respondent withheld consent. *Amici* have filed the attached motion for leave.



people convicted and sentenced to death who were later exonerated. More than half of those who have been exonerated in Florida received their death sentence based at least in part on false testimony or other false or misleading evidence. *Amici* seek to avoid having Mr. Dailey—an innocent man whose conviction and sentence were tainted by the intentional use of perjured testimony by the State—unjustly put to death.

## ARGUMENT

### I. Florida’s Capital-Punishment Regime Frequently Gets It Wrong

This Court struck down the death penalty in 1972. *Furman v. Georgia*, 408 U.S. 238 (1972). In response, Florida (among other states) passed a new capital punishment statute in 1972, which was deemed to “pass[] constitutional muster.” *Proffitt v. Florida*, 422 U.S. 242, 259 (1976).

Since it enacted its post-*Furman* statute, Florida has executed 99 people, the fourth most in the United States. See <https://deathpenaltyinfo.org/executions/executions-overview/number-of-executions-by-state-and-region-since-1976>. In that same time frame, 30 people who have been sentenced to death in Florida have been exonerated. See <https://deathpenaltyinfo.org/policy-issues/innocence-database?state=Florida>. That number is—by far—the most in the United States and accounts for nearly one-in-six death row exonerations nationwide. See <https://deathpenaltyinfo.org/policy-issues/innocence>.

Simply put, Florida's record in capital cases is abysmal. Florida's ratio of executions to exonerations in this period is an astonishing 3.3 to 1 (*i.e.*, 99/30). In contrast, Texas, which leads the United States with 574 executions, has had 16 death row exonerations, a ratio of nearly 36 to 1. *See* <https://deathpenaltyinfo.org/policy-issues/innocence-database?state=Texas>. Further, of the states accounting for approximately 80% of the executions in the United States, only North Carolina is close to Florida's ratio of executions to exonerations.<sup>2</sup>

Further, more than half of those 30 people exonerated in Florida were convicted and sentenced to death based at least in part on the State's reliance on false testimony or other false or misleading evidence. *See* <https://deathpenaltyinfo.org/policy-issues/innocence-database?state=Florida>. A summary of *amici's* cases and a selected number of other exonerees whose death sentences were obtained through false testimony are presented below.

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2. Texas (574), Oklahoma (116), Virginia (113), Florida (99), Missouri (92), Georgia (76), Alabama (69), Ohio (56), and North Carolina (43) account for 1,238 of the 1,546 executions in the United States, with North Carolina's ratio of executions to exonerations being approximately 3.6 (*i.e.*, 43 executions to 12 exonerations). *See* <https://deathpenaltyinfo.org/executions/executions-overview/number-of-executions-by-state-and-region-since-1976>; <https://deathpenaltyinfo.org/policy-issues/innocence> .

## A. *Amici's* Cases

### 1. Clemente Javier Aguirre-Jarquin – False Testimony

Mr. Aguirre-Jarquin, a Honduran national, was convicted and sentenced to death in Seminole County, Florida in 2006 for the murder of two neighbors: a woman and her elderly mother. During trial, the prosecution's chief witness was the mentally ill daughter and granddaughter of the victims, respectively, who testified against Mr. Aguirre-Jarquin but later admitted to others that she was the killer. Mr. Aguirre-Jarquin's conviction was unanimously overturned by the Supreme Court of Florida in 2016. *Aguirre-Jarquin v. Florida*, 202 So.3d 785 (2016). The charges were dismissed in 2018 when the prosecutors announced in the middle of jury selection that they were not going to proceed with the retrial; importantly, DNA evidence examined after trial helped prove that the daughter and granddaughter of the victims had lied at trial. *See* <https://deathpenaltyinfo.org/policy-issues/innocence/description-of-innocence-cases> (entry 164); R. Stutzman, "Court overturns death sentence, conviction in double homicide," Orlando Sentinel, October 27, 2016 (<https://www.orlandosentinel.com/news/breaking-news/os-clemente-aguirre-conviction-death-sentence-overturned-20161027-story.html>); "Unanimous Florida Supreme Court Reverses Conviction of Man on Death Row Based on New DNA Evidence Pointing to Alternate Suspect," Innocence Project, October 27, 2016 (<https://innocenceproject.org/florida-high-court-reverses-death-row-conviction/>); "Innocent Man Who Spent Over a Decade on Florida's Death Row Is Exonerated," Innocence Project, November 5, 2018 (<https://innocenceproject.org/clemente-aguirre-exonerated/>).

## 2. Robert Earl DuBoise – False Testimony

Mr. DuBoise was convicted and sentenced to death in Hillsborough County, Florida in 1983 for rape and murder of a 19-year-old woman. In 1988, his death sentence was overturned by the Supreme Court of Florida. *DuBoise v. Florida*, 520 So. 2d 260 (1988). The State secured his conviction based on unreliable bite-mark evidence and false testimony from a prison informant. He was freed from prison on August 27, 2020, and the charges against him were formally dropped on September 14, 2020, after DNA evidence demonstrated conclusively that he was not the killer. See <https://deathpenaltyinfo.org/policy-issues/innocence/description-of-innocence-cases> (entry 172); “Former Florida Death-Row Prisoner Robert DuBoise Freed after DNA Proves His Innocence,” <https://deathpenaltyinfo.org/news/former-florida-death-row-prisoner-robert-duboise-freed-after-dna-proves-his-innocence>.

## 3. Herman Lenard Lindsey – Insufficient Evidence

Mr. Lindsey was convicted and sentenced to death in 2006 in Broward County, Florida for the murder of a clerk at a pawn shop that took place in 1994. The Supreme Court of Florida unanimously rendered a judgment of acquittal for Mr. Lindsay in 2009 based on insufficient evidence. *Lindsey v. Florida*, 14 So.3d 211 (2009). See <https://deathpenaltyinfo.org/policy-issues/innocence/description-of-innocence-cases> (entry 134).

#### **4. Joaquín José Martínez Pérez – Improper Statements by Police at Trial**

Mr. Martínez, a Spanish national, was convicted and sentenced to death in 1997 for a murder committed in 1995. Mr. Martínez's conviction was overturned by the Supreme Court of Florida due to improper statements by a police detective at trial. *Martínez v. Florida*, 761 So.2d 1074 (2000). He was acquitted in a second trial in 2001. See <https://deathpenaltyinfo.org/policy-issues/innocence/description-of-innocence-cases> (entry 94).

#### **5. John Robert Melendez-Colon – No Physical Evidence; Exculpatory Evidence Withheld**

Mr. Melendez-Colon was convicted and sentenced to death in 1984 for murdering a man in Auburndale, Florida. In 1986, the Supreme Court of Florida upheld the conviction and the death sentence despite the fact that there was no physical evidence connecting Mr. Melendez-Colon to the crime. After spending nearly 18 years on Florida's death row, a Florida Circuit Court judge overturned Mr. Melendez-Colon's conviction because prosecutors withheld material, exculpatory evidence at the original trial. The prosecutors dropped the charges against Mr. Melendez-Colon in 2002. See <https://deathpenaltyinfo.org/policy-issues/innocence/description-of-innocence-cases> (entry 97); <https://www.witnesstoinnocence.org/single-post/juan-melendez>.

#### **6. Seth Penalver – Improper Evidence**

Mr. Penalver was convicted and sentenced to death in 1999 in Broward County, Florida for murder

and armed robbery. In 2006, the Supreme Court of Florida overturned Mr. Penalver's conviction because the prosecution introduced improper evidence at trial, including hearsay testimony and irrelevant and prejudicial testimony. *Penalver v. Florida*, 926 So.2d 1118 (2006). Mr. Penalver was acquitted in a retrial in 2012. See <https://deathpenaltyinfo.org/policy-issues/innocence/description-of-innocence-cases> (entry 143); R. Olmeda, "Jury finds Penalver not guilty in Casey's Nickelodeon triple murder case," Sun Sentinel (Florida), December 21, 2012 (<https://www.sun-sentinel.com/news/fl-xpm-2012-12-21-fl-penalver-verdict-watch-20121221-story.html>).

### **7. Ralph Daniel Wright, Jr. – Insufficient Evidence**

Mr. Wright was convicted and sentenced to death in 2014 in Pinellas County, Florida for the murders of his ex-girlfriend and their son. In 2017, the Supreme Court of Florida unanimously vacated Mr. Wright's conviction because the circumstantial evidence presented to the jury was insufficient to convict. *Wright v. Florida*, 221 So.3d 512 (2017). See also <https://deathpenaltyinfo.org/policy-issues/innocence/description-of-innocence-cases> (entry 160); C. Osowski, "Florida Supreme Court reverses murder conviction of former MacDill Airman Ralph Wright," WFLA, May 11, 2017 (<https://www.wfla.com/news/florida-supreme-court-reverses-murder-conviction-of-former-macdill-airman-ralph-wright/>). Mr. Wright subsequently received a judgment of acquittal from the lower court on remand. *Florida v. Wright*, 2017 WL 4419165 (Fla. Cir. Ct. July 17, 2017).

## **B. Other Florida Exonerees**

- 1. Wilbert Lee – False Testimony**
- 2. Freddie Pitts – False Testimony**

Mr. Lee and Mr. Pitts were convicted of murder and sentenced to death in 1963. After they were convicted, “another man confessed to the crime, the eyewitness recanted her accusations, and the state Attorney General admitted that the state had unlawfully suppressed evidence.” <https://deathpenaltyinfo.org/policy-issues/innocence/description-of-innocence-cases> (entry 3/4). Both men were later pardoned by Florida Governor Reubin Askew. *See id.*

- 3. Delbert Tibbs – False Testimony**

Mr. Tibbs was convicted and sentenced to death in 1974 for rape and murder. His conviction was overturned by the Supreme Court of Florida based, among other things, on the unreliability of the testimony of one of the victims. *See Tibbs v. Florida*, 337 So.2d 788 (1976). The State dismissed the charges against Mr. Tibbs in 1977. *See* <https://deathpenaltyinfo.org/policy-issues/innocence/description-of-innocence-cases> (entry 11).

- 4. Anthony Brown – False Testimony**

Mr. Brown was convicted of murder and sentenced to death in 1983. The only evidence against Mr. Brown was testimony by a co-defendant, who had received a life sentence for the crime. At retrial, the co-defendant admitted that he had lied during the first trial, and Mr. Brown was acquitted. *See* <https://deathpenaltyinfo.org/>

[policy-issues/innocence/description-of-innocence-cases](https://deathpenaltyinfo.org/policy-issues/innocence/description-of-innocence-cases) (entry 24).

#### **5. Joseph Green Brown – False Testimony**

Mr. Brown was convicted of murder and sentenced to death in 1984. The State dropped the charges against Mr. Brown after the U.S. Court of Appeals for the 11th Circuit ruled that the prosecution had knowingly allowed material false testimony to be introduced at trial. *See Brown v. Wainwright*, 785 F.2d 1457 (11th Cir. 1986); <https://deathpenaltyinfo.org/policy-issues/innocence/description-of-innocence-cases> (entry 27).

#### **6. Willie Brown – False Testimony**

#### **7. Larry Troy – False Testimony**

Mr. Brown and Mr. Troy were convicted and sentenced to death in 1983 for stabbing a fellow prisoner. The State dropped the charges before retrial because the main witness admitted that he perjured himself at the first trial. *See* <https://deathpenaltyinfo.org/policy-issues/innocence/description-of-innocence-cases> (entry 35/36).

#### **8. Rudolph Holton – False Testimony**

Mr. Holton was convicted of rape and murder and sentenced to death in 1986 . His conviction was overturned because the trial testimony of one of the State's witnesses was contradicted by DNA testing and because the State withheld exculpatory evidence. *See* <https://deathpenaltyinfo.org/policy-issues/innocence/description-of-innocence-cases> (entry 105).



## **II. In Light of Florida’s History of Wrongfully Obtaining Convictions in Capital Cases Through the Use of False Testimony and Unreliable Evidence, and the Details of Mr. Dailey’s Case, This Court Should Grant Mr. Dailey’s Petition**

As with *amici* Mr. Aguirre-Jarquin and Mr. DuBoise and as with the other exonerees discussed in Section I.B., *supra*, Mr. Dailey was convicted in large part based on the State’s reliance on perjured testimony. But unlike many of these other cases—where prosecutors either dropped charges or convictions were later reversed *after* discovering that false testimony had been used to convict—the State is proceeding here despite the fact that they knew about prison-informant Paul Skalnik’s extensive criminal history *before* he testified at Mr. Dailey’s trial and offered him an undisclosed plea deal in exchange for that testimony. *See* Br. for *Amici* Catholic Bishops at 5-6, No. 19-7309, *Dailey v. Florida* (U.S. Jan. 17, 2020); Rather than correct or disavow Mr. Skalnik’s gross understatement of his criminal record, the prosecution not only let him lie on the witness stand but vouched for his alleged position in the prison “hierarchy” in closing. Based on their experiences with Florida’s capital-punishment system, *amici* have first-hand knowledge that such actions by the prosecution are material in a capital case.

In addition, separate from the important questions presented in Mr. Dailey’s petition, there appears to be overwhelming evidence of actual innocence. This exculpatory evidence is addressed in detail in briefing filed by other *amici* and includes an affidavit corroborated by prior-consistent statements from the actual murderer, Jack Percy, that Mr. Dailey was not involved in the

murder at issue, plus testimony that the other two jail-house informants had collaborated and fabricated their statements against Mr. Dailey in an effort to obtain reduced sentences. *See* Br. for *Amici* Catholic Bishops at 5-7, No. 19-7309, *Dailey v. Florida* (U.S. Jan. 17, 2020); Br. for *Amici* Prosecutors at 17, No. 19-7309, *Dailey v. Florida* (U.S. Jan. 17, 2020).

*Amici* seek to avoid having another innocent man unjustly put to death in the State of Florida, where executions have out-numbered death-row exonerations by only a 3.3:1 ratio since the death penalty was reinstated.

### CONCLUSION

For the foregoing reasons, *amici* respectfully urge this Court to grant Mr. Dailey's petition for writ of *certiorari*.

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