

No. 26-_____

IN THE
Supreme Court of the United States

RICHARD JAMES RUVIDO,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Due Process Clause permits a State to convict a defendant of the crime of refusing to submit to a breath test without requiring the jury to determine that the defendant voluntarily refused, where the defendant presented evidence that a physical condition prevented immediate compliance and requested an instruction distinguishing physical inability from voluntary refusal.
2. Whether the Sixth and Fourteenth Amendments permit a State to exclude qualified defense-expert testimony concerning material deviations from standardized field-sobriety-test protocols while permitting the State's officer to characterize the same exercises as evidence supporting impairment and probable cause.

PARTIES TO THE PROCEEDING

Petitioner Richard James Ruvido was the defendant in the County Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, and the appellant in the District Court of Appeal of Florida, Fourth District.

Respondent State of Florida was the plaintiff below and the appellee in the District Court of Appeal.

CORPORATE DISCLOSURE STATEMENT

Petitioner is a natural person. No corporate disclosure statement is required under Supreme Court Rule 29.6.

RELATED PROCEEDINGS

State v. Richard James Ruvido, No. 50-2023-CT-022024-AXXX-NB, County Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida (jury verdict on refusal charge entered March 5, 2025; judgment and sentence thereafter entered in the same proceeding).

Ruvido v. State, No. 4D2025-1691, District Court of Appeal of Florida, Fourth District (per curiam affirmance; order denying motion for written opinion entered July 8, 2026).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Richard James Ruvido respectfully petitions for a writ of certiorari to review the judgment of the District Court of Appeal of Florida, Fourth District.

OPINIONS BELOW

The District Court of Appeal of Florida, Fourth District, affirmed petitioner's conviction per curiam without a written opinion in *Ruvido v. State*, No. 4D2025-1691. The disposition is reproduced at Pet. App. 3a. The Fourth District's July 8, 2026 order denying petitioner's motion for a written opinion is reproduced at Pet. App. 1a.

JURISDICTION

The Fourth District entered the judgment sought to be reviewed and later denied petitioner's timely post-decision motion for a written opinion on July 8, 2026. Pet. App. 1a. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment provides, in relevant part, that “[i]n all criminal prosecutions, the accused shall enjoy the right ... to have compulsory process for obtaining witnesses in his favor.” The Fourteenth Amendment provides that no State shall “deprive any person of life, liberty, or property, without due process of law.”

Florida Statutes § 316.1939(1) makes it a criminal offense, under specified circumstances, for a person whose driving privilege was previously suspended for refusal to submit to testing to again “refuse[] to submit to a chemical or physical test of his or her breath, urine, or blood.”

STATEMENT OF THE CASE

A. The prosecution for criminal refusal

Petitioner was charged in Palm Beach County with driving under the influence and with refusal to submit to a chemical or physical test arising from events on December 10, 2023. The counts were severed. A jury tried the refusal charge first and returned a guilty verdict on March 5, 2025. In a later trial on the DUI charge, petitioner was acquitted. R. 207, 220; TT. 803.

The refusal prosecution required the State to prove, among other matters, that petitioner was lawfully arrested for DUI, that the required implied-consent warnings were given, and that, after being so informed, petitioner refused a requested breath test. Fla. Stat. § 316.1939(1); Fla. Std. Jury Instr. (Crim.) 28.13.

B. The event the State treated as the criminal refusal

Petitioner was transported to the Breath Alcohol Testing facility after roadside sobriety exercises. During the observation period, he urgently told Officer Cameron Carver that he needed to use the bathroom. Carver initially asked him to wait.

Petitioner again stated that he could not hold it, and Carver allowed him to use an open toilet in a holding cell. TT. 455–58, 466–67, 519–20.

Carver’s own testimony fixed the alleged refusal at the moment petitioner remained on the toilet. According to Carver, when petitioner’s turn for the breath test arrived, petitioner said that he “can’t get up” and could not go into the testing room. Carver gave him several additional minutes, concluded that petitioner was stalling, read the implied-consent warning while petitioner was still on the toilet, and told petitioner that “him refusing to get up and go in there to do this breath test ... will be counted as a refusal.” TT. 466–67, 682–83.

Petitioner testified that he wanted to take the breath test, had not been drinking, and had no reason to refuse it, but he needed to use the bathroom and was physically unable to comply during the brief period Carver allowed. TT. 609, 641, 644. The factual dispute therefore was not merely whether petitioner uttered the word “no.” It was whether what the officer labeled a refusal was a voluntary decision not to comply or instead an inability to comply at that moment.

**C. Petitioner requested an instruction
allowing the jury to decide that
distinction**

Petitioner repeatedly requested special jury instructions on the meaning of refusal. He proposed that the State be required to prove that he “willfully refused” and that “[a] refusal is not willful if a person

is physically unable to comply due to a physical condition or other circumstances beyond their control.” R. 183–84; TT. 571–83.

Petitioner also proposed a stand-alone instruction stating that refusal “must be a voluntary and willful act,” that a person cannot be guilty if physically incapable of providing a breath sample at the time requested, and that the jury could consider whether a physical condition or involuntary circumstance prevented compliance. R. 185.

After petitioner testified, the defense renewed the request. Counsel emphasized that petitioner had now supplied evidence that he could not get up, intended to take the test, and was only waiting for his stomach condition to subside. TT. 713–16. The prosecutor opposed the instruction precisely because, in the State’s view, it would “heighten the State’s burden.” The prosecutor argued that the element required only proof that petitioner, after being informed, “refused to submit,” and that willfulness should be left to argument rather than made part of the law governing the jury. TT. 723–25.

The trial court rejected the requested instructions. It stated that the proposed language did not appear to be an accurate statement of law because the court found no authority requiring consideration of “a physical condition or involuntary circumstance.” TT. 727–29. At the earlier charge conference, the court had stated the issue even more directly: the State did not have to prove the absence of “a physical condition, illness or involuntary circumstance”; it only had to

prove that petitioner “was informed and refused.” TT. 581–82.

The standard instruction was therefore given without any instruction distinguishing voluntary refusal from physical inability. The jury convicted petitioner.

D. The defense expert was excluded

The State also relied on Officer Carver’s interpretation of petitioner’s roadside sobriety exercises to establish impairment and probable cause for the DUI arrest—a statutory predicate to the refusal offense. Carver testified about the purpose of the exercises, what they were designed to show, and why petitioner’s performance supported his impairment conclusion. TT. 438–46.

Petitioner sought to call Anthony Palacios, an experienced NHTSA standardized-field-sobriety-test instructor, to explain the proper standardized administration of the exercises and material deviations by Carver. The State had deposed Palacios before trial. The State nevertheless made an oral motion during trial to exclude him. TT. 327–39, 554–69.

The trial court acknowledged that there was little guidance concerning expert analysis of the field-sobriety exercises, but concluded that the exercises were non-scientific observations within common juror experience and that, because this was a refusal prosecution, the expert testimony was more attenuated from the probable-cause issue. The court

granted the State's belated motion to exclude. TT. 559–69.

A proffer preserved the substance of the excluded testimony. Palacios had fourteen years of law-enforcement experience, including ten years focused on DUI and traffic enforcement; he had served as a Drug Recognition Expert staff instructor at the Georgia Police Academy and as an NHTSA SFST instructor; and he had consulted in more than 2,600 cases and testified in more than 200. He would have testified that Carver's exercises were administered on an uneven and wet surface, departed from NHTSA standards, and were rendered less reliable because the administration itself made the tasks more difficult even for an unimpaired person. TT. 780–84, 799–827.

E. Appellate proceedings

Petitioner presented the denial of the special instructions and the exclusion of Palacios as grounds for reversal in the Fourth District. That court affirmed without a written opinion. Petitioner sought a written opinion; the Fourth District denied that motion on July 8, 2026. Pet. App. 1a.

REASONS FOR GRANTING THE WRIT

This petition does not rest on an asserted conflict that the existing authorities cannot fairly establish. It instead presents the kind of important federal question contemplated by Rule 10(c): whether due process permits criminal liability for “refusal” when the jury is not required to distinguish a voluntary decision not to comply from a physical inability to

comply. This Court has repeatedly emphasized the traditional relationship between criminal punishment and culpable conduct, but it has not settled the constitutional boundary in the recurring context of criminal test-refusal statutes.

The question is squarely presented here. The officer treated petitioner's failure to rise from a toilet as the criminal refusal while petitioner said he could not get up. The defense requested an instruction allowing the jury to decide whether that failure was voluntary. The State opposed the instruction because it would increase the State's burden, and the trial court expressly held that physical inability or involuntary circumstances need not be negated. The jury then convicted under an instruction containing no voluntariness requirement.

The separate exclusion of petitioner's SFST expert compounds the problem. The State was permitted to use Carver's training-based characterization of standardized exercises as support for impairment and probable cause, while the defense was barred from presenting a highly experienced instructor to explain material deviations from the standards the officer was trained to follow.

I. The Court should decide whether criminal “refusal” may include involuntary inability to comply.

The act criminalized by § 316.1939 is not intoxication, dangerous driving, possession of a dangerous instrumentality, or the existence of a prohibited status. It is a refusal—an alleged decision

not to perform an affirmative act demanded by the State. The ordinary distinction between refusal and inability therefore goes to the heart of the conduct the legislature chose to criminalize.

That distinction matters most where criminal punishment follows from nonperformance. A person who chooses not to comply has refused. A person who is physically unable to comply has failed to perform, but the constitutional question is whether that involuntary failure may be conclusively treated as a criminal refusal without allowing the jury to decide voluntariness.

The record crystallizes the problem. Officer Carver testified that petitioner said he could not get up from the toilet when his turn for testing arrived. Carver nevertheless told him that “refusing to get up” would be counted as the refusal. TT. 466–67. Petitioner testified that he wanted to test and intended to do so. TT. 609, 641, 644. The requested instruction would have allowed the jury to decide which account amounted to a voluntary refusal. The court instead instructed the jury on “refusal” without supplying the legal distinction the defense asked it to decide.

The State’s own argument confirms that the issue was one of the governing burden of proof, not simply evidentiary weight. The prosecutor argued that a willfulness instruction would improperly “heighten” the State’s burden. TT. 716, 723–25. The trial court likewise stated that the State need not prove the absence of physical condition, illness, or involuntary circumstance. TT. 581–82. Thus the judgment below necessarily permits conviction even if the failure to

comply was involuntary, so long as the jury concluded that the event met the undefined label “refused.”

That is the federal question this Court should settle. A State remains free to impose administrative consequences for failure to complete testing and to enact carefully defined regulatory offenses. But when a State chooses to impose criminal punishment for refusal itself, due process should require a jury determination that the defendant actually made the choice the criminal term “refusal” denotes.

II. The decision below implicates this Court’s settled presumption against faultless criminal punishment.

This Court’s decisions have long treated mens rea as a basic feature of Anglo-American criminal law. *Morissette v. United States*, 342 U.S. 246 (1952), traced the traditional requirement that wrongful intent accompany a wrongful act. *Staples v. United States*, 511 U.S. 600 (1994), again emphasized the strong presumption against interpreting serious criminal prohibitions to dispense with a culpable mental state absent a clear legislative choice.

Those cases are principally rules of statutory construction, and petitioner does not contend that *Staples* alone constitutionalizes a single mens-rea formula for every state offense. The point is narrower. The cases identify the tradition against which the due-process question arises and explain why the Court should be reluctant to permit imprisonment for an alleged “refusal” when the jury is barred from

determining whether the nonperformance was voluntary at all.

The public-welfare cases do not resolve that question. *United States v. Balint*, 258 U.S. 250 (1922), and related decisions recognize that legislatures may impose strict liability in limited regulatory settings. But petitioner’s conviction was not merely an administrative license sanction. Florida made the second refusal a crime. And the disputed element—refusal—is itself a word describing human choice, not merely an objective condition such as the presence of a regulated substance.

Florida’s own cases reflect the same concern with imposing criminal punishment without culpability. *Chicone v. State*, 684 So. 2d 736 (Fla. 1996), applied the presumption of guilty knowledge to a criminal possession statute. *State v. Giorgetti*, 868 So. 2d 512 (Fla. 2004), addressed the due-process problem created when severe criminal consequences attach to passive conduct without a meaningful scienter requirement. Those cases do not themselves establish a federal conflict; they illustrate the constitutional concern this case brings into focus.

The question is therefore not whether this Court should announce that every refusal offense requires the word “willfully.” It is whether a State may make an involuntary inability to comply legally indistinguishable from a criminal refusal. The requested instruction used “willful” and “voluntary” language, but the narrower federal principle fairly included in the question presented is that criminal

refusal requires a voluntary refusal rather than mere physical nonperformance.

III. The problem is recurring and the federal question remains unsettled.

Implied-consent and test-refusal regimes exist throughout the States. They routinely require courts and juries to distinguish a deliberate refusal from a failed, incomplete, delayed, or physically impossible test. The precise statutory formulations vary, which is one reason a conventional conflict formulation would overstate the present authorities. But that variation makes a federal constitutional floor more, not less, important.

Minnesota's recent decision in *State v. Schmeichel*, No. A23-1905 (Minn. Feb. 4, 2026), illustrates the recurring nature of the issue. There, the Minnesota Supreme Court held that a trial court need not separately define "refuse" as "actual unwillingness" so long as the jury is instructed that the State must prove that the defendant refused. The court reasoned that "refuse" is an understandable term and emphasized that whether a defendant "refused" remains a fact question for the jury under the circumstances of the case.

Schmeichel did not decide the federal constitutional question presented here, and petitioner does not claim it creates a Rule 10(b) conflict. Its significance is practical. It shows a state supreme court confronting the same operative concept and preserving the jury's role in deciding whether refusal actually occurred. Minnesota's current pattern

instruction likewise describes refusal in terms of an indication of actual unwillingness assessed from the driver's words and actions under the totality of the circumstances.

Florida's handling of petitioner's case presents the harder constitutional edge. Petitioner did not merely ask for a dictionary definition. He offered evidence of an acute physical circumstance, requested an instruction that inability is not voluntary refusal, and obtained an express ruling that the State need not negate physical or involuntary circumstances. The jury was therefore never told that inability and refusal are legally distinct.

The issue will recur whenever a motorist suffers a medical episode, cannot produce sufficient breath volume, is physically restrained, experiences an acute respiratory limitation, or encounters another circumstance that prevents immediate testing. Leaving the constitutional question unresolved invites criminal liability to turn on the label chosen by an officer rather than the voluntary character of the defendant's conduct.

IV. Ruvido's case is a clean vehicle for resolving the question.

The first question is preserved at every critical stage. The defense requested written special instructions before the close of trial, renewed them after petitioner supplied additional testimony, identified the mens-rea and voluntariness principles supporting the request, and obtained an express adverse ruling. TT. 571–83, 713–29; R. 183–87.

The factual predicate is equally clean. This is not a case in which the defendant simply changed his mind after verbally refusing. The officer testified that petitioner said he could not get up from the toilet. The officer chose to treat that nonperformance as the refusal. Petitioner testified that he wanted to take the test. The contested distinction was therefore presented by both sides' evidence.

The issue was outcome-determinative. The jury convicted petitioner of the refusal charge—the very offense governed by the challenged instruction. The later acquittal on DUI underscores that the refusal conviction stands on its own and cannot be dismissed as an academic dispute about a separate offense.

Nor is there a written state appellate opinion that might obscure the basis of decision. The Fourth District affirmed *per curiam* after petitioner presented the preserved instruction issue and later denied a request for written opinion. This Court can review the federal question on the trial record and the rulings actually made.

V. The exclusion of the defense expert independently warrants review.

The Constitution guarantees a criminal defendant a meaningful opportunity to present a complete defense. *Crane v. Kentucky*, 476 U.S. 683 (1986). Although trial courts retain authority to apply ordinary rules of evidence, that discretion cannot be exercised in a manner that arbitrarily or disproportionately prevents the defense from

presenting material evidence. *See Taylor v. Illinois*, 484 U.S. 400 (1988).

Here, Officer Carver did more than narrate what he saw. He explained the purpose of the roadside exercises, described what they were designed to reveal, identified supposed mistakes, and used petitioner's performance to support his professional conclusion that petitioner was impaired. TT. 438–46. That testimony mattered because probable cause for the DUI arrest was an element of the refusal prosecution.

The defense sought to answer that evidence with Palacios, not to tell the jury whether petitioner looked impaired, but to explain the standardized NHTSA administration of the exercises and material departures from those protocols. TT. 332–33, 562–64. The proffer showed that Palacios would have identified an uneven and wet testing surface and other deviations that, in his opinion, made the exercises more difficult even for an unimpaired person. TT. 812–15, 822.

The asymmetry is constitutionally significant. The State's officer was permitted to characterize the standardized exercises through the lens of his training and experience, while the defense expert with extensive instructor credentials was excluded from explaining whether the officer had followed the standards that gave the exercises their claimed value. The Eleventh Circuit has recognized the unfairness of excluding otherwise admissible defense expert opinion on a critical issue while allowing the

adversary's opinion on the same issue. *United States v. Gaskell*, 985 F.2d 1056, 1063 (11th Cir. 1993).

The trial court's stated rationale heightens the concern. It reasoned that because field-sobriety exercises can be observed by lay jurors, expert testimony about standardized administration would not assist them. TT. 559–69. But the point of Palacios's testimony was precisely that the jury could watch the movements without knowing whether Carver had administered the standardized exercises in the manner his training required. Common experience allows a juror to see a person walk; it does not supply the NHTSA protocol or explain the significance of departures from it.

The exclusion therefore deprived petitioner of evidence directed to a statutory predicate of the refusal charge—probable cause—and left the State with the practical advantage of presenting training-based interpretations that the defense was not allowed to meet with comparable expertise.

VI. The two rulings operated together to prevent the jury from deciding the defense actually presented.

The questions presented are distinct, but the record shows why they belong in the same petition. The defense theory was that the State had converted circumstances it characterized as noncompliance into criminal refusal while simultaneously relying on officer interpretations of standardized exercises to establish the predicate DUI probable cause.

On the refusal element, petitioner was allowed to testify about his physical inability but denied an instruction telling the jury that inability is legally different from voluntary refusal. On the probable-cause predicate, petitioner was allowed to cross-examine Carver but denied the expert testimony that would have explained whether the officer's standardized exercises were administered according to the standards invoked by law enforcement training.

The combined result was not merely two discretionary evidentiary or instructional rulings. The State defined the alleged refusal, defined the significance of the roadside exercises supporting probable cause, and successfully opposed both defense mechanisms designed to test those propositions under governing law and expert knowledge.

At minimum, the Court should grant review on the first question and determine the federal constitutional floor governing criminal refusal. The second question provides an additional basis for review and, in the context of this record, demonstrates why the trial cannot be reduced to an ordinary disagreement over the weight of evidence.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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