No. ________

In the Supreme Court of the United States

EDWIN FRANQUI,

Petitioner,

v.

STATE OF CONNECTICUT,

Respondent.

On Petition For Writ of Certiorari to The Connecticut Supreme Court

PETITION FOR WRIT OF CERTIORARI

CAMERON L. ATKINSON
COUNSEL OF RECORD
AUDREY J. ATKINSON
SERGIO HRUSZKO
ATKINSON LAW, LLC
P.O. Box 340
Harwinton, CT 06791
(203) 677-0782
catkinson@atkinsonlawfirm.com

Counsel for Petitioner

July 18, 2026

QUESTION PRESENTED

Minutes after watching her boyfriend murdered beside her, a 16-year-old witness frantically named two brothers, by street name, as having been in the car from which the shots were fired. She did not say who was the shooter and who had been driving. Hours later, in a written statement, she filled in that detail – naming Edwin Franqui as the driver. But, when she took the witness stand years later, she would not confirm that identification, testifying under oath that she did not know who had been driving and refusing every invitation to "remember" otherwise: "No. I know what I seen." The only evidence that put Franqui behind the wheel was her written statement – read aloud to the jury not by her, but by a uniformed detective, days after she had already left the witness stand for good. On that statement, and her initial, role-less identification at the scene, a jury convicted Franqui of conspiracy to commit murder, accessory to murder, and accessory to assault in the first degree, and the trial court sentenced him to 50 years in prison. The Connecticut Supreme Court affirmed Franqui's conviction, reasoning that because the witness's statement identified only two people in the car, and the jury could credit a separate, similarly recanted statement attributing the shooting to Franqui's identically-named older brother, the jury could conclude – by process of elimination – that Franqui "must have" been driving. The question presented is:

Whether the Due Process Clause of the Fourteenth Amendment requires independent, reliable corroboration before a recanted, out-of-court identification may serve as the primary evidentiary basis for a criminal conviction.

PARTIES TO THE PROCEEDING

The petitioner is Edwin Franqui. He was the defendant in the Connecticut Superior Court and the defendant-appellant before the Connecticut Supreme Court.

The respondent is the State of Connecticut. The State of Connecticut was the prosecuting authority in the Connecticut Superior Court and the appellee before the Connecticut Supreme Court.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

PETITION FOR WRIT OF CERTIORARI

The only evidence keeping Edwin Franqui in prison for next 50 years is out-of-court statements – repudiated by their declarants at trial – that placed him in the car from which a murder was committed. The prosecution never required either declarant to defend those statements before the jury: one was read into the record by a detective after the prosecution's star witness had already left the stand for good, and the other was disclaimed outright, under oath, as fabricated. Franqui was left to disprove what the prosecution never had to prove. This petition asks whether the Fourteenth Amendment's Due Process Clause permits a state to convict on that basis — identification statements the declarants themselves disclaimed under oath, where the link connecting Franqui to the car was supplied not by any witness, but by a "must have been him" inference the reviewing court constructed for itself.

The Connecticut Supreme Court answered yes, joining one side of a deep and longstanding split among sixteen state courts of last resort, four intermediate state appellate courts, and two federal courts of appeals on a question that this Court has recognized, but never resolved, for over fifty years. *California v. Green*, 399 U.S. 149, 170 n.19 (1970). This petition asks the Court to resolve that split, and, in doing so, to correct a decision that allows a conviction to rest on guesswork instead of proof beyond a reasonable doubt.

OPINIONS BELOW

The Connecticut Supreme Court's decision is reported at *State v. Edwin Franqui*, 354 Conn. 400, 354 A.3d 201 (Apr. 21, 2026), and it is reproduced at App.1-

25. The Superior Court's judgment file contains its formal verdict, and it is reproduced at App.26-27.

JURISDICTION

The Connecticut Superior Court for the Judicial District of Hartford (Hon. Michael Gustafson) entered a judgment of conviction against Franqui on May 22, 2024. App.27. The Connecticut Supreme Court affirmed Franqui's conviction on April 21, 2026. App.1-25. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment XIV, § 1

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. Factual Background

Petitioner Edwin Franqui and his older brother — who is also named Edwin Franqui and goes by the street name "Cama"[1] — were involved in an altercation with Junny Lara-Velazquez on Wolcott Street in Hartford, Connecticut in the early morning hours of July 6, 2020. App.5. Dayzani Ortiz, the witness whose identifications would later anchor prosecution's case, was present during this

[1] Because petitioner and his brother share the same name, this petition refers to petitioner by his own street name, "ATM" when it is necessary to distinguish between them.

altercation. App.31, ¶¶22-23. The altercation escalated into threats from Lara-Velazquez that he would shoot at the Franqui brothers, and ultimately drive-by shooting committed by Lara-Velazquez or someone associated with him. App.5-6. According to a statement that the brothers' sibling, Johanny Franqui, later gave to police — and disclaimed in its entirety at trial, — Cama remarked, during a meeting with petitioner and Johanny the following morning, that if Lara-Velazquez "wanted to be a man" and shoot at them, Cama "was going to shoot back." App.128, ¶¶5-18. Petitioner left that meeting with Cama approximately one hour before the shooting that gave rise to this case. App.6. The prosecution did not contend, and the record does not establish, that this meeting or Cama's remark identified petitioner as the driver of the Infiniti during the shooting that followed. App.6.

Lara-Velazquez was then driving his Honda Accord westbound on Capitol Avenue in Hartford. App.6. His girlfriend, sixteen-year-old Dayzani Ortiz, sat in the front passenger seat; her friend, Delymar Rios, sat in the back. App.6. A tan Infiniti — which Ortiz recognized as belonging to petitioner and Cama, because Lara-Velazquez had sold it to them about a week earlier — pulled alongside the Honda. App.6. A passenger in the Infiniti's front seat opened fire, fatally wounding Lara-Velazquez and wounding Rios. App.6. The Honda crashed into a building after Lara-Velazquez was shot. App.6.

Hartford police responded to the crash within minutes, and Ortiz told the responding police officers that the petitioner and Cama had committed the shooting.

App.7. She did not say, at that time, which brother had been driving the Infiniti and which had fired the shots. App.7.

Several hours later, after being treated at the hospital, Ortiz gave a written statement to Hartford Police Detective Jeffrey Placzek. App.7. In it, she identified Cama as the shooter and, for the first time, identified Petitioner as the driver of the Infiniti. App.7.

Approximately nine days later, Johanny Franqui gave his own written statement to Detective Placzek, in which he related that Cama had told him “he had to do it,” which Johanny understood to mean that Cama had shot Lara-Velazquez. App.129, ¶¶1-11.

More than three years later, at petitioner’s trial, Ortiz’s testimony grew so contentious that the trial court (Judge Gustafson) at one point removed the jury from the courtroom to restore order. App.34-46. As Judge Gustafason worked to restore order, Ortiz vowed on the record to tell everything she knew with a vengeance. App.45, ¶¶ 8-9 (“I’m about to let the whole tea spill right now”). After testimony resumed, Ortiz readily identified Cama in the courtroom as the shooter, but testified that she could not identify who had been driving the Infiniti. App.8, 68, ¶¶1-17. She testified that both the driver and shooter had long hair, but stated repeatedly that she did not know whether petitioner had been driving because she could not see who was driving. App.8, 68, 78-79, 83. When the prosecutor offered to let her review her prior written statement to refresh her memory, Ortiz refused: “No. I know what I seen.” App.68, ¶ 17.

The trial court excused Ortiz as a witness once her testimony concluded. App.95-96. Several days later, the prosecution recalled Detective Jeffrey Placzek to the stand and had him read Ortiz's written statement to the jury in its entirety. App.121-123. Ortiz was never recalled to the stand to affirm, explain, or be cross-examined about the statement after it was read into evidence.

Johanny also testified at petitioner's trial. He testified that his written statement was fabricated, that he had been under the influence of fentanyl when he gave it, and that he had since attempted, unsuccessfully, to formally recant it. App.101-114. The statement was nonetheless admitted as a prior inconsistent statement under *State v. Whelan*, 200 Conn. 743 (1986), and Conn. Code Evid. § 8-5(1). App.124-129.

On January 24, 2024, the jury found petitioner guilty of conspiracy to commit murder, accessory to murder, and accessory to assault in the first degree. App.27.

B. Procedural Background

On May 22, 2024, the Connecticut Superior Court for the judicial district of Hartford (Hon. Michael Gustafson) entered a final judgment of conviction against Franqui after a jury trial. App.27. The judgment of conviction against Franqui entered on the following counts:

1. Conspiracy to Commit Murder, in violation of Conn. Gen. Stat. § 53a-48, as supplemented by Conn. Gen. Stat. § 53a-54a(a).
2. Accessory to Murder, in violation of Conn. Gen. Stat. § 53a-8, as supplemented by Conn. Gen. Stat. § 53a-54a(a).

3. Accessory to Assault in the First Degree, in violated of Conn. Gen. Stat. § 53a-8, as supplemented by Conn. Gen. Stat. § 53a-59a(5).

See App.27.

Judge Gustafson sentenced Franqui to a total effective sentence of 50 years' incarceration on May 22, 2024. App.27.

Franqui filed a timely direct appeal to the Connecticut Supreme Court. App.7. He challenged (1) the sufficiency of the evidence to support his convictions, (2) whether the Fourteenth Amendment's due process clause permits a conviction to be based on a witness's uncorroborated, prior out-of-court statements, (3) whether due process required abrogation of Connecticut's rule allowing prior inconsistent statements to be admitted for their truth, and (4) whether the excited utterance exception to the rule against hearsay should be abrogated.

The Connecticut Supreme Court rejected all of these arguments. App.1-25. Franqui now seeks this Court's review.

REASONS FOR GRANTING THE PETITION

This petition presents a question that this Court and the drafters of the Federal Rules of Evidence identified as open and pressing more than fifty years ago. The Court has never answered it, and lower courts remain intractably divided on the proper answer. Part I shows that this division is genuine, longstanding, and will not resolve itself through further percolation. Part II shows that the question has been considered of national importance since revisions to the Federal Rules of Evidence thrust it into the national spotlight, that it recurs constantly in the most consequential categories of criminal prosecutions, and that the decision below illustrates precisely what is at stake in leaving it unresolved. Part III shows that this case is an ideal vehicle for resolving the question: the case's facts are undisputed, the Connecticut Supreme Court squarely decided the federal question presented, and no procedural obstacle stands between this Court and the merits. Lastly, Part IV explains, briefly, why the decision below is wrong.

I. State Appellate Courts and Federal Courts Are Intractably Divided Over Whether Due Process Imposes A Corroboration Requirement On The Use Of Prior Inconsistent Statements To Sustain Criminal Convictions.

For more than four decades, courts across the country have split — repeatedly, self-consciously, and without resolution — over whether a criminal conviction may rest on a witness's prior out-of-court statement that the witness has recanted under oath, where that statement is the only evidence of an essential fact. Lower courts on both sides of the divide have catalogued this split at length, *see, e.g.*, *Com. v. Brown*, 52 A.3d 1139, 1160-68 (Pa. 2012); *United States v. Bahe*, 40 F.Supp.2d 1302, 1306–11 (D.N.M. 1998), and have disagreed even about which position commands the majority of jurisdictions. This Court has never resolved the question, though it expressly identified the issue as "not insubstantial" over fifty years ago. *California v. Green*, 399 U.S. 149, 170 n.19 (1970).

A. A substantial body of federal and state authority holds that due process forbids a conviction resting solely on a recanted, uncorroborated statement.

The seminal decision is *United States v. Orrico*, 599 F.2d 113 (6th Cir. 1979), in which the Sixth Circuit reversed a conviction resting entirely on witnesses' grand jury testimony that they could no longer recall at trial. The court held that out-of-court statements, even where minimally admissible, cannot supply "a substantial factual basis as to each element of the crime" sufficient to prove guilt beyond a reasonable doubt when they are "the only source of support for the central allegations of the charge." *Orrico*, 599 F.2d at 118. The Sixth Circuit further observed that "it is unlikely that a reasonable juror could be convinced beyond a reasonable doubt by such evidence alone" in all but the most unusual case. *Id.*

Four state courts of last resort have followed *Orrico*'s reasoning extensively. The Florida Supreme Court has twice held that "a prior inconsistent statement standing alone is insufficient as a matter of law to prove guilt beyond a reasonable doubt," explaining that "the risk of convicting an innocent accused is simply too great when the conviction is based entirely on prior inconsistent statements." *State v. Green*, 667 So. 2d 756, 760–61 (Fla. 1995) (quoting *State v. Moore*, 485 So. 2d 1279, 1281 (Fla. 1986)) (cleaned up); *see also Lowe v. State*, 668 So. 2d 274, 275 (Fla. Dist. Ct. App. 1996). The Montana Supreme Court reached the same conclusion in a line of cases beginning with *State v. White Water*, 634 P.2d 636 (Mont. 1981), and continuing through *State v. Giant*, 37 P.3d 49, 57-58 (Mont. 2001) and *City of Helena v. Strobel*, 390 P.3d 921, 923–25 (Mont. 2017), holding that a prior inconsistent statement, although admissible "as substantive evidence," is "insufficient, standing alone, to prove a necessary element of a criminal offense." *Strobel*, 390 P.3d at 923. The Montana Supreme Court has continued to apply this rule in recent years, holding that a recanted prior inconsistent statement cannot be corroborated by other prior inconsistent statements from the same declarant, and that genuine corroboration must bear on the same contested element as the statement itself. *State v. French*, 425 Mont. 173, 181–86 (2025). The Utah Supreme Court has adopted a similar rule. *See State v. Ramsey*, 782 P.2d 480, 483–84. (Utah 1989). The Massachusetts Supreme Judicial Court has indicated in dicta that it would reach the same result. *Com. v. Daye*, 469 N.E.2d 483, 495 (Mass. 1984), *overruled on other grounds in Com. v. Le*, 828 N.E.2d 501, 503 (Mass. 2005). It has since applied *Daye*'s dicta precisely as envisioned. *See, e.g.*, *Com. v. Clements*, 763 N.E.2d 55, 57–58 (Mass. 2002) (clarifying that, of the three requirements for substantive admissibility of prior inconsistent statements first announced in *Daye*, only two govern admissibility; the corroborating-evidence requirement is a separate matter of sufficiency).

Two intermediate state appellate courts have adopted the same rule. *See Brower v. State*, 728 P.2d 645, 648 (Alaska Ct. App. 1986); *State v. Sexton*, 115 Wis.2d 697 (Wis. Ct. App. 1983).

A second group of jurisdictions has declined to adopt a categorical rule but has nonetheless held that a recanted out-of-court statement may support a conviction only upon a showing of independent indicia of reliability beyond bare admissibility — a standard that operates, in practice, as a meaningful corroboration requirement. The New Jersey Supreme Court has articulated a fifteen-factor reliability test that a trial court should apply before such a statement may serve as the sole evidentiary basis for conviction. *State v. Mancine*, 590 A.2d 1107, 1115 (N.J. 1991). The Vermont Supreme Court has adopted similar reliability requirements, each reversing convictions where the requisite indicia of reliability were absent notwithstanding the statement's bare admissibility. *State v. Robar*, 601 A.2d 1376, 138–81 (Vt. 1991). The Delaware Supreme Court requires a special cautionary jury instruction whenever a conviction rests solely on a recanted prior statement. *Acosta v. State*, 417 A.2d 373 (Del. 1980).

B. An equally substantial body of authority holds that no corroboration is constitutionally required.

The Seventh Circuit disagreed with the Sixth Circuit and these courts in the habeas context. *Ticey v. Peters*, 8 F.3d 498, 500–04 (7th Cir. 1993), held that a police officer's testimony paraphrasing a recanting witness's prior identification was sufficient to sustain a conviction notwithstanding the witness's recantation at trial. In doing so, *Ticey* acknowledged that the Seventh Circuit had previously required corroboration for prior inconsistent statements, but applied the requirement loosely rather than as a sufficiency threshold. 8 F.3d at 503; *see also Vogel v. Percy*, 691 F.2d 843 (7th Cir. 1982).

Other state appellate courts of last resort have also taken the opposite view from their sister states, holding that a properly admitted prior inconsistent statement may serve as the basis for a conviction without any independent corroboration, so long as the declarant testifies and is subject to cross-examination at trial. *See State v. Porter*, 439 S.W.3d 208, 211-213 (Mo. 2014) (abrogating *State v. Pierce*, 906 S.W.2d 729 (Mo. App. W.D. 1995));[2] *Com. v. Brown*, 52 A.3d 1139, 1160-68 (Pa. 2012)

[2] *Pierce* expressly grounded its corroboration rule in this Court's decision in *Jackson v. Virginia*, 443 U.S. 307 (1979). *Pierce*, 906 S.W.2d at 735. It held that "a conviction

(canvassing authority on both sides of the split before joining the no-corroboration side); *State v. Clark*, 926 P.2d 194, 199–200 (Hawaii 1996); *People v. Cuevas*, 906 P.2d 1290 (Cal. 1995) (overruling *People v. Gould*, 354 P.2d 865 (Cal. 1960)'s previous requirement of corroboration); *Nance v. State*, 629 A.2d 633 (Md. 1993) (holding the constitutional sufficiency standard is satisfied by the cumulative effect of multiple witnesses' recanted statements, without requiring extrinsic collaboration); *Fernandez v. State*, 805 S.W.2d 451, 456 (Tex. Crim. App. 1991) (reversing an intermediate appellate court that announced a per se insufficiency rule, holding that the lower court erred when it "reweighed the comparative probative value of unobjected to hearsay and the declarant's in-court testimony." *Gibbons v. State*, 286 S.E.2d 717, 720–22 (Ga. 1982); *State v. Igoe*, 206 N.W.2d 291, 293–98 (N.D. 1973) (holding recanted grand jury testimony sufficient to sustain conviction on one count, though reversing on other grounds as to a separate count).

Two state intermediate appellate courts have joined these courts in absence of guidance from their state courts of last resort. *See People v. Chavies*, 593 N.W.2d 655, 660–62 (Mich. App. 1999); *People v. Morrow*, 708 N.E.2d 430, 436 (Ill. App. 1999).

The Connecticut Supreme Court joined these courts in *State v. Newsome*, 682 A.2d 972 (Conn. 1996), declined to revisit it in *State v. Hinton*, 336 A.3d 62 (Conn. 2025), and reaffirmed it in the decision below. App.1-25.

---

based solely on a prior statement, though admissible via statute, falls short of due process protection." *Id.* at 735.

C. The split will not resolve itself, is deeply entrenched, and has percolated extensively.

This division is not a recent or transient disagreement, and it has not been narrowing. It traces to 1979, when the Sixth Circuit decided *Orrico*, just nine years after this Court's decision in *Green*, and it remains fully alive today, as the Montana Supreme Court's 2025 decision in *French* demonstrates. Courts on each side of the divide have engaged directly and repeatedly with the reasoning of courts on the other side, rather than developing in isolation. The Pennsylvania Supreme Court's lengthy survey in *Brown* expressly weighed and rejected the reasoning of *Orrico*, *Moore*, and *Giant* before joining the opposing camp, while New Jersey's fifteen-factor reliability test in *Mancine* was in turn adopted as an intermediate path by Vermont.

The division runs deep enough that courts cannot even agree on which position commands the majority of jurisdictions: a federal district court surveying the field in 1998 concluded that all but one state required corroboration, while the Pennsylvania Supreme Court's 2012 survey found a substantial body of authority, including its own considered judgment, on the opposing side. *Compare Bahe*, 40 F.Supp.2d at 1311, *with Brown*, 52 A.3d at 1166–68.

To summarize, on one hand, four state courts of last resort and one federal courts of appeals have adopted a per se corroboration requirement pursuant to due process. Two intermediate state appeals courts have joined them. In the middle, three state courts of last resort have taken steps pursuant to due process to mitigate the harms caused by uncorroborated prior inconsistent statements. On the other hand, nine state courts of last resort and one federal court of appeals have held that due process does not require corroboration. They are joined by two state intermediate appellate courts.

A disagreement that has produced this much sustained, direct engagement among state appellate courts and the federal courts of appeals — without convergence, and without even consensus as to which view prevails — is not a disagreement that further percolation will resolve. Only this Court can supply the uniform federal constitutional answer that the question requires.

II. The Question Presented Is Of Recurring National Importance Because Changes In Federal Evidentiary Law Set Off A Nationwide Trend That Was Never Tested Under The Due Process Clause.

A. The federal evidentiary regime that produces this question operates in the great majority of American jurisdictions.

The corroboration question is not a local curiosity confined to Connecticut. Since this Court's decision in *California v. Green*, 399 U.S. 149 (1970) found no Confrontation Clause problem with the substantive use of prior inconsistent statements, the great majority of American jurisdictions have abandoned the common-law "orthodox rule" — under which a witness's prior statement could be used only to impeach, never as proof of guilt — in favor of regimes that permit prior inconsistent statements to be admitted for their truth. The federal system did so through Fed. R. Evid. 801(d)(1)(A). Connecticut did so through *State v. Whelan*, 513 A.2d 86 (Conn. 1986). And, as Part I of this petition demonstrates, courts in twenty-two states, together with two federal courts of appeals, have confronted the precise sufficiency question this petition presents — a body of authority substantial enough to establish that this is a recurring feature of modern evidence law, not an aberration.

That uniformity in admissibility law is what makes the sufficiency question recurring rather than idiosyncratic. Wherever this evidentiary regime exists, the same scenario will arise: the prosecution's case depends on a statement the jury never sees its source make. And, as occurred in this case, when the jury does not see the declarant defend her own statement, it has no basis to weigh that statement against the very doubt the declarant herself raised by recanting it. This is not a question that affects a handful of unusual cases; it is built into the structure of modern evidence law itself — a problem courts have compounded by conflating admissibility with sufficiency, and that, left uncorrected, quietly shifts the burden of disproving the prosecution's evidence onto the defendant.

B. The drafters of the Federal Rules of Evidence foresaw this exact danger, and warned that the courts would need to enforce a due process sufficiency floor.

Many of the drafters of the Federal Rules of Evidence anticipated the likelihood that courts would blur the lines between admissibility and sufficiency. *See* Stanley A. Goldman, *Guilty by Intuition: The Insufficiency of Prior Inconsistent Statements to Convict*, 65 N.C. L. Rev. 1, 16 & nn.57-58 (1986). They properly identified that there was a distinction between admissibility and sufficiency, and they urged courts to direct acquittals when evidence of guilty rested on prior inconsistent statements. *Id*. Their sage warnings went unheeded, and the question presented by Franqui has endured for more than 50 years.

Green itself is the clearest demonstration of how long this question has gone unanswered. The case arose when a juvenile witness, Melvin Porter, gave police a detailed account implicating the defendant as the dealer in a drug sale and repeated that account, under oath and subject to cross-examination, at a preliminary hearing. *Green*, 399 U.S. at 151. At trial, Porter claimed he could not remember the events, professing that he was under the influence at the time of the events. *Id.* at 151-52. The prosecution introduced Porter's prior statements for their truth, and this Court held that doing so did not violate the Confrontation Clause, reasoning that a witness's presence at trial and his availability for cross-examination about his prior statement — whatever the witness now claims to recall — adequately protects the defendant's confrontation interest. *Id.* at 152-53, 156–58.

But the Court went no further than that. In footnote 19, the Court expressly reserved the distinct question presented here: whether a conviction resting almost entirely on a witness's recanted prior statement satisfies the separate constitutional requirement that guilt be proved beyond a reasonable doubt. *Id.* at 170 & n.19. In fact, it encouraged the California Supreme Court to revisit "the sufficiency of the evidence to sustain conviction." *Id.* at 170. The Court explained that the sufficiency issue was "not insubstantial" because "[c]onviction here rests almost entirely on the evidence in Porter's two prior statements which were themselves inconsistent in some respect. *Id.* at 170 n.19. Justice Harlan went further in his concurrence, framing the unresolved question in explicit constitutional terms and observing that due process "does not permit a conviction based on no evidence, … or on evidence so unreliable and untrustworthy that it may be said that the accused had been tried by a kangaroo court." *Id.* at 186 n.20 (Harlan, J., concurring) (citations omitted). Fifty-five years later, this Court still has not answered the question it identified as open in *Green*. In the interim, the courts canvassed in Part I have been forced to answer it themselves, producing the deep and unresolved division this petition asks the Court to resolve.

C. The constitutional infirmity the question presented poses recurs daily in three predictable categories of cases, and forces unjust outcomes long before trial and appeal.

The danger this petition identifies is not a theoretical one confined to unusual fact patterns. It arises with particular and predictable frequency in three categories of cases that make up a substantial share of state criminal dockets: domestic violence prosecutions, sexual assault prosecutions, and eyewitness identification cases.

In each category, the same dynamic recurs: a witness gives a statement to police in the immediate aftermath of a crime, then testifies differently at trial, months or years removed from the event. Recantation is endemic in domestic violence and sexual assault prosecutions in particular. *See, e.g., State v. Borelli*, 629 A.2d 1105 (Conn. 1993); *State v. MacArthur*, 644 A.2d 68 (N.H. 1994); *State v. Marcy*, 680 A.2d 76 (1996); *Webb v. State*, 426 So. 2d 1033 (Fla. Dist. Ct. App. 1983). It recurs with particular force in eyewitness identification cases, exactly as it did here. A witness who has just watched a shooting unfold has not had the opportunity that calm reflection provides to separate what she actually perceived from what she assumed, feared, or pieced together in the panic of a sudden and shocking moment. Acute violence is a notoriously poor condition for accurate perception; the passage of time, and the gravity of testifying under oath, are often what first allow a witness to disentangle the two.

That perceptual confusion is not a credibility quirk for a jury to shrug off; it is exactly why a recantation cannot be treated as a simple choice between two equally available stories. It is evidence impeached by the same witness's own later, sworn account — and the law's reason for treating it as substantively admissible at all is also the reason it cannot be constitutionally trusted on its own. *See* Stanley A. Goldman, *Guilty by Intuition: The Insufficiency of Prior Inconsistent Statements to Convict*, 65 N.C. L. Rev. 1, 19 (1986) (explaining that prior inconsistent statements gain substantive admissibility not because of any independent guarantee of reliability, but because the witness's own subsequent, inconsistent testimony has already cast doubt on the statement's truth). Self-impeaching evidence of this kind is precisely what reasonable doubt is made of.

Due process does not ask the jury to guess correctly which version a witness gave is the true one; it requires the prosecution to overcome the doubt that the witness's own contradiction has already created. Independent corroboration is how the prosecution meets that constitutional burden. Without it, the doubt the recantation raised remains exactly where the witness left it — unanswered — regardless of which account a jury ultimately credits.

Domestic violence, sexual assault, and eyewitness identification cases are precisely the cases in which prosecutors are most often forced to rely on a recanted statement as the centerpiece of their proof, and precisely the cases in which the unresolved state of the law identified in Part I has the most immediate practical consequence. Defendants, prosecutors, and defense counsel in every one of the jurisdictions surveyed in Part I must make charging, evidentiary, and plea-bargaining decisions today, in cases working their way through trial courts right now, without knowing whether a conviction resting on a recanted statement will ultimately be sustained — a problem this Court's resolution of the question presented would resolve for every one of them. The uncertainty is not merely an appellate abstraction; it operates at the moment a victim recants before trial or while on the stand, when a prosecutor must decide whether to proceed, and at the moment a defendant must decide whether to accept a plea rather than risk a conviction on evidence whose constitutional sufficiency remains genuinely unsettled.

III. This Case Is An Ideal Vehicle For Resolving The Question.

A. The relevant facts are undisputed.

This petition does not ask the Court to resolve any factual dispute, weigh competing accounts of what happened below, or supplement the record in any way. Every fact material to the question presented is established by the opinion of the Connecticut Supreme Court itself, by the parties' own characterizations of the record, or by undisputed portions of the trial transcript — and none of it is contested by the prosecution.

It is undisputed that Ortiz gave a written statement identifying Franqui as the driver of the Infiniti, and that she disclaimed that identification under oath at trial, testifying that she did not know who had been driving. App.8. It is undisputed that her statement was not read to the jury until after she had already been excused as a witness, and that she was never recalled to the stand to address its contents. It is undisputed that Johanny Franqui's statement attributing the shooting to Franqui's brother was, by his own sworn testimony, disclaimed in its entirety. And it is undisputed that the Connecticut Supreme Court's affirmance rested on the inference that Franqui "must have" been driving, an inference the court itself articulated and that does not appear, in those terms or any other, in either underlying statement. App.14, 23.

None of these facts requires this Court to resolve any factual dispute or develop the record further. Each fact recited above and relied upon throughout this petition exists in the record compiled below — whether stated in the Connecticut Supreme Court's own opinion or in the undisputed trial transcript — and none of it has been contested by Connecticut. The question presented is entirely legal: whether due process permits a conviction to rest on the inference the Connecticut Supreme Court drew from this undisputed record. That is precisely the kind of question this Court resolves on certiorari without need for further factual development, and it distinguishes this petition from cases in which a vehicle problem arises because the constitutional question is entangled with an unresolved factual dispute. There is no such entanglement here. The existing record, including the opinion below, App.1-25, supplies every fact this Court would need to decide the question presented.

B. The Connecticut Supreme Court squarely reached and decided the federal question.

This Court's jurisdiction to resolve the question presented does not depend on any contested characterization of what occurred below. The question presented is one of sufficiency — whether due process permits a conviction to rest on the inference the Connecticut Supreme Court drew from Ortiz's disclaimed identification. That claim was preserved, reached, and decided on its merits at every level of the proceedings below, and no other characterization of the record survives scrutiny.

Franqui's claim was preserved: At the close of the prosecution's case, before closing arguments, Franqui's trial counsel moved for a judgment of acquittal on precisely the ground this petition presents: that no witness had identified Franqui as the driver of the Infiniti, and that Ortiz — the prosecution's only identification witness — had repeatedly testified that she did not see who was driving. App.145, ¶¶ 4-9. The trial court denied the motion on the merits, expressly addressing whether the jury could credit Ortiz's written statement over her trial testimony. App.145-146. The Connecticut Supreme Court's opinion confirms that it reviewed Franqui's sufficiency claim independently of his separate, unpreserved constitutional challenges to *Whelan* itself: "Claims of evidentiary insufficiency in criminal cases are always addressed independently of claims of evidentiary error." App.24 (quoting *State v. Chemlen*, 165 Conn. App. 791, 818 (2016)) (cleaned up). There is accordingly no preservation question to resolve as to the claim this petition presents.

Independent of that preservation, sufficiency claims are not subject to ordinary forfeiture: A claim that a conviction rests on constitutionally inadequate proof occupies a distinct status in due process doctrine. Because *Jackson* *v. Virginia* frames the inquiry as whether due process itself was satisfied, 443 U.S. at 313–14, courts have long treated such claims as surviving the forfeiture rules that govern ordinary trial error — a defendant may always argue that his conviction rests on legally insufficient evidence, because affirming a conviction known to rest on inadequate proof would itself work the constitutional violation, regardless of what was preserved below.[3] Connecticut's own law also makes this explicit in its own preservation doctrine: "any defendant found guilty on the basis of insufficient evidence has been deprived of a constitutional right, and would therefore necessarily meet the four prongs of [*State v.*] *Golding*[, 567 A.2d 823 (Conn. 1989)]." *State v. Revels*, 99 A.3d 1130, 1140 (2014) (cleaned up). A sufficiency claim, in other words, supplies its own predicate for review; it cannot fail for want of preservation, because the conviction itself is the constitutional violation the claim asserts.

Lastly, the Connecticut Supreme Court's disposition of the broader constitutional question, even where unpreserved, was itself a resolution of federal law: To the extent the question presented also implicates Franqui's related argument that *Whelan* should be overruled and that due process categorically requires corroboration — an argument Franqui does not need this Court to reach to obtain relief, but which the Connecticut Supreme Court also addressed — that argument's disposition independently satisfies *Michigan v. Long*, 463 U.S. 1032

[3] *See Jackson*, 443 U.S. at 316 ("no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof—defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense.").

(1983). Franqui's due process claim was unpreserved as to that specific argument, and the Connecticut Supreme Court accordingly reviewed it under *Golding*, which permits review of an unpreserved constitutional claim where, among other things, "the alleged constitutional violation clearly exists." 567 A.2d at 827.

That standard is not a neutral state procedural gatekeeping device independent of federal law; it is, by its own terms, a federal merits inquiry. To answer whether a constitutional violation "clearly exists" in this case, a court must decide what the federal constitution requires and whether the case before it satisfies that requirement. The Connecticut Supreme Court did exactly that, holding that *Whelan*'s admissibility safeguards satisfy whatever due process requires for sufficiency purposes. App.12-13; *see also Newsome*, 682 A.2d at 984 (holding that *Whelan*'s criteria for admissibility and cross-examination provide "substantial assurance of reliability" for sufficiency purposes). That is a holding on the substance of federal law — not a ruling that the argument was forfeited, improperly raised, or barred from consideration on state procedural grounds.

Long requires a plain statement from state courts that their holding rests on an independent state ground. *Long*, 463 U.S. at 1042. When a state court decision contains no such statement, *Long* instructs that this Court presumes "that there are no such grounds when it is not clear from the opinion itself that the state court relied upon an adequate and independent state ground and when it fairly appears that the state court rested its decision primarily on federal law." *Id.* at 1042.

No ambiguity exists here: the Connecticut Supreme Court's own language confirms that it reached and rejected Franqui's federal constitutional argument on its merits.

C. The Connecticut Supreme Court's use of its own evidentiary doctrine to answer the federal sufficiency question does not supply an adequate and independent state ground.

The Connecticut Supreme Court's finding of "corroboration" – through its conclusion that *State v. Newsome*, 682 A.2d 972 (Conn. 1996) does not apply because of Ortiz's excited utterance (itself a prior inconsistent statement) – does not supply an adequate and independent state ground that insulates Franqui's conviction from the Court's review. App.13-15.

Newsome confronted a similar challenge to the one Franqui presents here. The *Newsome* defendant claimed that he was convicted solely on the basis of a prior inconsistent statement from an eyewitness. 682 A.2d at 985. The Connecticut Supreme Court disagreed with that claim, but made the question of whether convictions could stand based entirely on a prior inconsistent statement a fact-bound, case-specific inquiry. *Id*. at 985–88.

In Franqui's case, the Connecticut Supreme Court held that *Newsome* did not apply because it concluded that this was not a sole-evidence case. App.13-15. In other words, it concluded that Ortiz's prior inconsistent statement was not the only evidence identifying Franqui as the driver — a predicate finding the court treated as separate from, and antecedent to, its later sufficiency analysis.

That conclusion necessarily answers a federal question, because *Newsome*'s framework has never been anything other than Connecticut's own attempt to address the due process concern this petition raises. There is no parallel, purely state-law body of doctrine defining "corroboration" that exists independently of that concern.

Newsome, its progeny, and the decision below constitute Connecticut's law on the subject, and they all frame the inquiry in the same due process terms Franqui invokes here. A state court cannot answer a federal question and then insulate that answer from this Court's review by relabeling it a state-law finding.

This case's facts make the intertwinement unavoidable. The "corroboration" the Connecticut Supreme Court identified was Ortiz's own excited utterance — an out-of-court and prior inconsistent statement from the same declarant whose later, disclaimed prior inconsistent statement is the conviction's only direct evidence of the disputed fact, and a statement that does not even specify which brother was driving. App.13-15. Whether that kind of self-referential, role-less statement is capable of "corroborating" anything is not a question Connecticut law answers independently of federal due process. It is the same question — what makes corroboration constitutionally sufficient — that this petition asks the Court to resolve. The Connecticut Supreme Court could not have concluded that Ortiz's excited utterance satisfied *Newsome* without implicitly deciding that self-corroboration of this kind satisfies whatever due process requires for sufficiency of the evidence. That implicit constitutional judgment cannot be cordoned off from this Court's review merely because the Connecticut Supreme Court discussed it under the heading of *Newsome* rather than under the heading of the Fourteenth Amendment.

Long governs this situation directly. Where, as here, "the adequacy and independence of any possible state law ground is not clear," this Court presumes that the state court's decision rests on federal law. *Long*, 463 U.S. at 1040–41. The Connecticut Supreme Court's corroboration finding is, at minimum, ambiguous as to whether it rests on a ground independent of the federal question — and on the analysis above, it is not ambiguous at all: the finding *is* a resolution of the federal question, reached through the vocabulary of state evidentiary doctrine. Either way, *Long* forecloses treating it as a barrier to review.

D. *Perry v. New Hampshire* does not foreclose review.

The Connecticut Supreme Court rejected Franqui's due process argument by reasoning that Connecticut's admissibility safeguards for prior inconsistent statements — that the statement be signed, that the declarant have personal knowledge, and that the declarant be available for cross-examination — satisfy whatever due process requires. App.12-13; *see also Newsome*, 238 Conn. at 610 (holding that *Whelan*'s criteria for admissibility and cross-examination provide "substantial assurance of reliability" for sufficiency purposes). That reasoning, and this Court's decision in *Perry v. New Hampshire*, 565 U.S. 228 (2012), might appear to complicate review: *Perry* held that due process requires independent judicial scrutiny of an identification's reliability only where the identification resulted from suggestive police procedure, and that ordinary trial mechanisms — cross-examination, expert testimony, argument, and instructions — are otherwise the Constitution's chosen tool for testing reliability. *Id.* at 232–33, 244–45.

Perry, however, does not counsel against granting Franqui's petition. *Perry*'s trust in the adversarial process rests on a premise that was never realized in this case: that cross-examination will actually test the specific evidence the jury is asked to credit, with the witness who gave the disputed account meaningfully confronted about it, in the jury's presence, while the jury watches. That is what makes "trust the adversarial process" a meaningful answer rather than an empty one.

That premise failed here – and it failed because of a choice the prosecution made, not any deficiency in Franqui's defense. Because the prosecution bears the burden of proving guilt beyond a reasonable doubt, it bore two correlative burdens here, not one: the burden of confronting Ortiz with her prior inconsistent statement,[4] and the burden of corroborating that statement independently before asking the jury to credit it over her in-court denial. *Whelan*, 513 A.2d at 89 (describing the prosecution's own confrontation of a recanting witness "with each factual assertion contained in the prior statement," in the jury's presence). The prosecution met neither. It did not read Ortiz's statement to her, ask her to explain it, or attempt to establish that it was true while she was still on the stand — it waited until after she had already been excused, and then introduced the statement through a detective instead. And, as Part IV explains, the only "corroboration" the prosecution ultimately

[4] Any suggestion that Franqui bore responsibility for eliciting that confrontation himself would invert the burden of proof entirely; a defendant has no obligation to disprove evidence the prosecution never tested in the first place.

offered was a second, out-of-court, inconsistent statement from Ortiz herself and a statement Johanny Franqui disclaimed outright at trial — neither one an independent check on the very identification the prosecution failed to test in the first place. *See infra* Part IV. Ortiz was cross-examined, but only about her trial testimony that she did not see who was driving. She was never given the opportunity, by the party with the burden to provide one, to address the statement on which her conviction now rests. The Connecticut Supreme Court's error was treating the bare availability of cross-examination as sufficient, without confronting that the cross-examination the jury actually witnessed never tested the statement on which the conviction rested. *Perry*'s premise simply does not reach a case where the adversarial process never tested the statement at issue in the first place.

More fundamentally, *Perry* addresses a different doctrinal question than the one presented here. *Perry* concerned whether due process requires a preliminary judicial screen *before* an identification reaches the jury. *See generally Perry*, 565 U.S. 228. The question presented here arises *after* the evidence has already been admitted: whether the evidence, including the recantation the adversarial process actually produced, is constitutionally sufficient to sustain a conviction under *Jackson v. Virginia*, 443 U.S. 307 (1979), and *In re Winship*, 397 U.S. 358 (1970). *Perry* did not purport to define what counts as sufficient proof of guilt. It only addressed whether certain identification procedures require a screening mechanism that other unreliable evidence does not. Resolving the question presented here would not require revisiting, narrowing, or distinguishing *Perry* on its own terms — the two doctrines address different stages of the proceeding and different constitutional guarantees, and can coexist undisturbed.

IV. The Decision Below Warrants Reversal.

The common law's historical, categorical refusal to let prior inconsistent statements serve as proof of guilt had the practical effect of guaranteeing a sufficiency floor, whatever else motivated the rule. Two features of a prior inconsistent statement made it untrustworthy enough to exclude entirely: the very fact that a witness now says something different from what she said before casts doubt on *both* versions, not just the earlier one — "talking one way on the stand and another way previously is blowing hot and cold," and the inconsistency undermines the reliability of each account equally, Stanley A. Goldman, *Guilty by Intuition: The Insufficiency of Prior Inconsistent Statements to Convict*, 65 N.C. L. Rev. 1, 6 (1986) (cleaned up); and no one could test a declarant's perception, memory, bias, or sincerity at the moment that mattered — when the earlier statement was made — the way live testimony allows a jury to test it in real time. Because the statement was kept from the jury altogether, the jury was never asked to do anything with it. It did not have to weigh one of a witness's own accounts against the other, assign confidence to either, or guess at which version was more likely true. There was nothing to weigh, because there was nothing to hear.

The modern approach – birthed by Fed. R. Evid. 801 and adopted by Connecticut – did not simply relax an evidentiary technicality. It assigned the jury a task the old rule made unnecessary: deciding, often with nothing in the record to guide the choice, whether to credit a witness's own prior account over her sworn, in-court repudiation of it. That task is speculation by design whenever the record offers no objective basis for the choice — the jury is left to intuit which version of the same person is more believable, a question no amount of careful instruction can convert into reasoned fact-finding if nothing beyond the two competing statements themselves bears on the answer. The modern approach's premise was that contemporaneous cross-examination would supply that missing basis, giving the jury something real to evaluate rather than a bare choice between two assertions. Whether that premise holds in any given case is precisely the sufficiency question this petition asks the Court to resolve.

The decision below shows what happens when the premise fails. The prosecution never confronted Ortiz with her own statement. It did not read the statement to her, ask her to explain it, or attempt in any way to establish that it was true. It simply had a detective recite it to the jury after she had already been excused as a witness. Johanny Franqui's statement fares no better, though for a related rather than identical reason. Whatever role the adversarial process played there, it does not rehabilitate the inference at issue: Johanny repudiated his prior statement outright, under oath, testifying that he was under the influence of fentanyl and in withdrawal when he gave it, and that police refused to let him leave the station until he signed something implicating his brothers — having shown no interest, he testified, in the shooting of his own girlfriend that he had come in to report.

Neither statement was tested the way *Green* assumes a statement will be tested, and the jury was left exactly where the old rule never permitted a jury to stand: asked to credit one of a witness's own accounts over the other with nothing beyond the bare fact of disagreement to guide the choice.

This asymmetry is not incidental to the due process problem; it is the mechanism through which the problem operates. Because the prosecution bears the burden of proving guilt beyond a reasonable doubt, the burden of confronting a declarant about a prior statement the prosecution intends to rely on belongs to the prosecution, not to Franqui. Connecticut law itself illustrates as much: in *Whelan*, the prosecution "confront[ed] [the witness] with each factual assertion contained in the prior statement," in the jury's presence, after he claimed memory loss. *Whelan*, 513 A.2d at 89. The prosecution did nothing of the kind here. By waiting until after Ortiz had already been excused to introduce her statement through a different witness, the prosecution avoided the very confrontation Connecticut law contemplated — and the practical effect was to shift the burden onto Franqui to affirmatively disprove the prosecution's key evidence, rather than requiring the prosecution to establish its reliability before the jury that would credit it. *Cf. State v. Sullivan*, 334 A.3d 446, 459 (Conn. 2025) ("A prosecutor improperly shifts the state's burden of proof to a defendant when the prosecutor argues that the defendant has a duty to produce evidence or otherwise bears some burden to prove their innocence or to disprove that an element of a crime can be established."). What remained was not a case the prosecution had proven, but an accusation Franqui was left to disprove —

the Fourteenth Amendment inverted exactly as the common law's absolute shield existed to prevent.

To be clear, Franqui does not ask the Court to revive the orthodox evidentiary rule or to dictate how states define admissibility. States remain free to decide what evidence may reach a jury. What due process requires is narrower: whatever a state chooses to admit, a conviction must ultimately rest on something more than an speculative choice between a witness's own disclaimed accounts. That floor does not regulate admissibility, and it does not disturb a single state's evidentiary code. It asks only whether what was actually proven, once the recantations are accounted for, amounts to proof at all.

A. "Must have been" the driver is not proof beyond a reasonable doubt — it substitutes inferential guesswork for the proof the Fourteenth Amendment requires.

This case demonstrates the constitutional perils of relieving the prosecution of its Fourteenth Amendment obligation to prove guilt beyond a reasonable doubt through the use of prior inconsistent statements. The prosecution had to prove, beyond a reasonable doubt, that Franqui was in the Infiniti at all — not merely that a witness thought a person resembling him might have been driving it. *See In re Winship*, 397 U.S. 358, 364 (1970) (holding that "the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged"). The prosecution's only attempt to prove that fact was Dayzani Ortiz's prior inconsistent statement, in which she claimed to have looked directly into the Infiniti and saw Franqui "in the driver's seat driving." App.122, ¶¶ 10-11. Ortiz disclaimed that claim at trial where she adamantly professed to know what she saw and testified that she could not see who was driving. App.68, ¶¶ 9-17.

The evidence, however, demonstrated the physical impossibility of her prior inconsistent statement. The trial evidence demonstrated that Velasquez was shot from slightly behind – the fatal bullet wound entered behind his ear, and exited through his forehead. App.138, ¶¶17-19. The passengers, including Ortiz, ducked to avoid being shot. App.6. At best, Ortiz had a fleeting and obstructed view of the vehicle from which the shots were fired because she was ducking. App.6. Regardless of what the jury concluded as to how clear Ortiz's view was, it underscores that the prosecution's proof of Franqui's presence in the Infiniti rested on a single, emphatically recanted account of an observation that the physical evidence cast doubt on.

What the Connecticut Supreme Court actually held was not that the prosecution had proven Franqui was the driver. It was that the jury could arrive at that conclusion by a process of guesswork elimination: because Ortiz's statement placed only two people in the Infiniti, and the jury could credit a separate, similarly recanted statement attributing the shooting to Franqui's brother, the jury could conclude that Franqui "must have" been driving. App.14, 23.

"Must have been" is not the language of proof beyond a reasonable doubt. It is the language of probability – of narrowing a closed set of guesses to the one that remains. That is the vocabulary of a preponderance standard, not the Fourteenth Amendment's "beyond a reasonable doubt" standard.

Neither statement on which this inference rests said that Franqui was driving. Neither said, independent of the very identification Ortiz disclaimed, that he was in the car at all. The "must have been" conclusion exists nowhere in the evidence; it was constructed entirely by combining the unaffirmed residue of two disclaimed statements through a method of subtraction that assumed, without evidentiary support, that no other possibility existed. That is not corroboration. It is a substitute for proof, masquerading in proof's vocabulary.

If this satisfies the Fourteenth Amendment, the reasonable-doubt standard has no meaningful floor in cases like this one. A conviction can rest on an inference stacked from two declarants' disclaimed statements, neither of which independently supports it, so long as a court is willing to call the result "proof" after the fact. That is exactly the scenario *Green*'s footnote anticipated, and exactly the scenario only this Court can foreclose.

B. The "corroboration" the Connecticut Supreme Court found was itself constitutionally insufficient.

Under any colorable definition of the word, corroboration requires something beyond the statement it is supposed to support. What the Connecticut Supreme Court called corroboration here was nothing of the kind: Ortiz's prior inconsistent statement was corroborated, in the court's own reasoning, by Ortiz's own excited utterance — a second statement from the same declarant, given the same day, never independently tested, and silent as to which brother was driving — combined with Johanny

Franqui's statement, which he disclaimed under oath as fabricated. Recanted hearsay does not become corroboration because a second piece of recanted hearsay sits beside it. Two disclaimed statements, neither of which independently establishes the fact in dispute, cannot corroborate each other into proof beyond a reasonable doubt any more than two unsupported guesses can corroborate each other into certainty.

C. If this qualifies as corroboration, due process provides no sufficiency floor where it is needed most.

The result below illustrates why this Court should not leave the question unresolved. A corroboration requirement that can be satisfied by a second piece of equally disclaimed evidence offers little protection in the cases where the risk of jury speculation is highest and practically invited — precisely the cases in which the prosecution's proof of an essential fact rests entirely on a witness who has disclaimed it under oath. This is the scenario *Green* anticipated and never resolved — a conviction resting "almost entirely" on a witness's own inconsistent prior statements, *Green*, 399 U.S. at 170 n.19 — and the scenario in which a meaningful constitutional floor is most necessary and, under the decision below, least available.

CONCLUSION

Edwin Franqui is serving a fifty-year sentence despite Connecticut's star witness testifying in open court that she did not see him driving the car from which her boyfriend was shot. He sits in a Connecticut prison because the prosecution convinced a jury that witness's prior inconsistent statement — read to them by a police officer — was more believable than the testimony of its own star witness.

Nothing outside that star witness's own contradicted word ever resolved which statement was true.

The Connecticut Supreme Court filled that fatal evidentiary void with speculative inferences of its own that have no place in a justice system that respects the rule of law. As it saw the case, Franqui "must have" been driving. "Must have been" may not replace evidentiary "proof of guilt beyond a reasonable doubt."

More than fifty years ago, this Court recognized that a conviction built on so little might not survive scrutiny under the Fourteenth Amendment's Due Process Clause, and it left that question for another day. That day has arrived, and this case presents it in its starkest and cleanest form: undisputed facts, a federal question squarely decided below, and a record that allows this Court to do nothing more than say what due process has always required.

For the foregoing reasons, the Court should grant Franqui's petition for a writ of certiorari.

Respectfully submitted

CAMERON L. ATKINSON
COUNSEL OF RECORD
AUDREY J. ATKINSON
SERGIO HRUSZKO
ATKINSON LAW, LLC
P.O. Box 340
Harwinton, CT 06791
(203) 677-0782
catkinson@atkinsonlawfirm.com

July 18, 2026

APPENDIX