

=====

**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

-----◆-----

RESPONDENT'S BRIEF IN OPPOSITION

-----◆-----

PATRICK J. GRIFFIN
Chief State's Attorney

ROBERT J. SCHEINBLUM*
Senior Assistant State's Attorney
Office of the Chief State's Attorney
Appellate Bureau
300 Corporate Place
Rocky Hill, CT 06067
Tel. (860) 258-5807

*Counsel For Respondent

=====

QUESTION PRESENTED

Whether this Court should review the petitioner's claim that the Due Process Clause of the Fourteenth Amendment prohibits a conviction based solely on an uncorroborated, prior inconsistent statement when the Connecticut Supreme Court never reached the issue, but instead, held that the petitioner's conviction was *not* based solely on a prior inconsistent statement.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES	iii
OPINION BELOW.....	1
JURISDICTION.....	1
INTRODUCTION	1
STATEMENT OF THE CASE.....	3
REASONS FOR DENYING CERTIORARI	9
A. The Petition Does Not Raise A Substantial Federal Question.....	9
B. The Question Presented Is Moot.	10
C. There Is No Circuit Split.....	11
CONCLUSION.....	13

TABLE OF AUTHORITIES

	Page
 Cases	
<i>Arizona Christian School Tuition Organization v. Winn</i> , 563 U.S. 125 (2011)	10
<i>Bailey v. Anderson</i> , 326 U.S. 203 (1945)	9
<i>Flast v. Cohen</i> , 392 U.S. 83 (1968)	10
<i>In re Yasiel R.</i> , 120 A.3d 1188 (Conn. 2015)	7
<i>McCray v. New York</i> , 461 U.S. 961 (1983)	12
<i>St. Pierre v. United States</i> , 319 U.S. 41 (1943)	10
<i>State v. Franqui</i> , 354 A.3d 201 (Conn. 2026)	1, 2, 6, 7, 10
<i>State v. Golding</i> , 567 A.2d 823 (Conn. 1989)	7
<i>State v. Newsome</i> , 682 A.2d 972 (Conn. 1996)	6-8
<i>State v. Whelan</i> , 513 A.2d 86 (Conn. 1986)	5-8
<i>Street v. New York</i> , 394 U.S. 576 (1969)	9
<i>Ticey v. Peters</i> , 8 F.3d 498 (7th Cir. 1993)	11, 12
<i>United States v. Orrico</i> , 599 F.2d 113 (6th Cir. 1979)	11, 12
 Constitutional Provisions	
Fourteenth Amendment to the United States Constitution	6
U.S. Const., Art. III	10
 United States Code	
28 U.S.C. § 1257	1, 2, 9, 10

Connecticut General Statutes

Conn. Gen. Stat. § 53a-8.....	5
Conn. Gen. Stat. § 53a-48.....	5
Conn. Gen. Stat. § 53a-54a.....	5
Conn. Gen. Stat. § 53a-59.....	5

Code of Evidence

Conn. Code Evid. § 8-5.....	6
-----------------------------	---

Miscellaneous

S. Shapiro, K. Geller, T. Bishop, E. Hartnett, & D. Himmelfarb, Supreme Court Practice (10th ed. 2013)	12
---	----

OPINION BELOW

The decision of the Connecticut Supreme Court is reported at *State v. Franqui*, 354 A.3d 201 (Conn. 2026). It is included in the petitioner’s appendix (“Pet. App.”) at 3-25.

JURISDICTION

The Connecticut Supreme Court entered its judgment on April 21, 2026. On July 18, 2026, the petitioner filed his petition for a writ of certiorari. On September 30, 2026, this Court requested a response. The petitioner invokes this Court’s jurisdiction under 28 U.S.C. § 1257 (a).

INTRODUCTION

The petitioner contends that federal and state courts “are intractably divided over whether due process imposes a corroboration requirement on the use of prior inconsistent statements to sustain criminal convictions.” Petition (“Pet.”) at 16. In support of his petition, the petitioner identifies two bodies of conflicting authority: (1) federal and state jurisdictions, including the Sixth Circuit, holding “that due process forbids a conviction resting solely on a recanted, uncorroborated statement”; and (2) other federal and state jurisdictions, including the Seventh Circuit, holding that “no corroboration is constitutionally required” to support a conviction based on the prior inconsistent statement of a single eyewitness. *Id.* at 16-21. According to the petitioner, the issue presented is of “national significance,” and this case constitutes an “ideal vehicle for resolving the question.” *Id.* at 22, 27.

Contrary to the petitioner's assertion, this case is a poor vehicle for resolving the question presented. First, the petition does not properly raise a substantial federal question because the Connecticut Supreme Court never decided the issue presented by the petitioner. Hence, were this Court to grant certiorari and hold that due process prohibits a conviction based solely on an uncorroborated, prior inconsistent statement, it would be addressing the question for the first time. The Connecticut Supreme Court's failure to first pass on the question presented deprives this Court of jurisdiction under 28 U.S.C. § 1257 (a).

Second, the question presented is moot because the Connecticut Supreme Court held that the petitioner's conviction was *not* based solely on the eyewitness's prior inconsistent statement identifying the petitioner as one of the shooting culprits, as there was ample other evidence corroborating her statement.¹ See *Franqui*, 354 A.3d at 211-12; Pet. App. at 14-15. Consequently, were this Court to grant certiorari and hold that due process prohibits a conviction based solely on an uncorroborated, prior inconsistent statement, its decision would be of no benefit to the petitioner and would constitute an advisory opinion.

Third, there is no genuine circuit split on the question presented. Indeed, to the respondent's knowledge, no federal court has held that due process prohibits a conviction based solely on an uncorroborated prior inconsistent statement. Alternatively, assuming, arguendo, that the Sixth and Seventh Circuits are in conflict

¹ Because the Connecticut Supreme Court's decision is correct under any interpretation of the Due Process Clause, certiorari is likewise unwarranted.

over the question presented, a conflict between two circuits does not qualify as a matter of national significance warranting Supreme Court review.

Accordingly, this Court should deny the petition for certiorari.

STATEMENT OF THE CASE

1. Shortly after midnight on July 6, 2020, the petitioner, Edwin Franqui, and his older brother, who is also named Edwin Franqui (“elder Franqui”), engaged in a violent altercation with the victim, Junny Lara-Velazquez, at a gathering on Wolcott Street in Hartford. Pet. App. at 5. Thereafter, the victim left the gathering and exchanged mutual threatening phone calls with the Franqui brothers. *Id.* The victim eventually returned with a confederate, who opened fire on the Franqui brothers’ group. *Id.* at 5-6. A bullet struck the girlfriend of another Franqui brother, Johanny Franqui, in the neck. *Id.* at 6. After the victim and the shooter drove away, the victim’s housemate called the victim, claiming that the petitioner and the elder Franqui had entered their house and threatened to kill the victim. *Id.*

Later that morning, all three Franqui brothers met on Wolcott Street. *Id.* During the meeting, the elder Franqui vowed to kill the victim. *Id.* The petitioner left this meeting together with the elder Franqui. *Id.*

Approximately one hour later, the victim was driving his Honda Accord westbound on Capitol Avenue in the direction of Prospect Avenue. *Id.* The victim’s girlfriend, Dayzani Ortiz, was in the front passenger seat, and Ortiz’s friend, Delymar Rios, was in the back seat. *Id.* As they were driving, Ortiz noticed a tan Infiniti traveling two cars behind them. *Id.* She recognized the car as belonging to the

petitioner and the elder Franqui because, about one week earlier, the victim had sold it to them after tinting the windshield in a distinctive manner familiar to Ortiz. *Id.* Ortiz observed the Infiniti swerving in traffic. *Id.* As the victim pulled over to allow the car between the Honda and the Infiniti to pass, the Infiniti entered the eastbound lane and pulled alongside the Honda. *Id.*

The elder Franqui, who was sitting in the passenger seat of the Infiniti, opened fire on the Honda. *Id.* The victim and his passengers ducked to avoid gunfire. *Id.* After Rios, who was in the back seat, exclaimed that she had been shot, the victim sat up, and the elder Franqui fatally shot him in the head. *Id.* Although Ortiz grabbed the steering wheel to take control of the Honda, the victim's foot remained stuck on the gas pedal, the Honda crossed Prospect Avenue into West Hartford and ultimately crashed into a restaurant. *Id.*

At the scene of the crash, Ortiz spoke with police and positively identified the perpetrators as the petitioner and the elder Franqui. *Id.* at 7. After being treated in the hospital later that day, Ortiz signed a written statement in which she identified the petitioner as the driver of the Infiniti and the elder Franqui as the passenger who fired the shots that killed the victim and injured Rios. *Id.*

Johanny Franqui, the third Franqui brother, learned from a Facebook post later that day that the victim's Honda had crashed into a building and that the victim had been shot and killed. *Id.* The next day, the elder Franqui admitted to Johanny Franqui that he had killed the victim. *Id.*

2. The state charged the petitioner with: conspiracy to commit murder, pursuant to Conn. Gen. Stat. §§ 53a-54a (a) and 53a-48; accessory to murder, pursuant to Conn. Gen. Stat. §§ 53a-54a (a) and 53a-8; and accessory to first-degree assault with a firearm, pursuant to Conn. Gen. Stat. §§ 53a-59 (a) (5) and 53a-8. Pet. App. at 7. The trial court joined the petitioner's case with the elder Franqui's case for trial. *Id.*

At trial, Ortiz identified the elder Franqui as the shooter sitting in the passenger seat of the Infiniti, but she did not identify the driver by name. *Id.* at 8. She testified that the driver and the petitioner both had long hair, but she could not say whether the petitioner was the driver. *Id.* The prosecution then sought to introduce Ortiz's written statement from the day of the shooting, which identified the petitioner as the driver and the elder Franqui as the passenger and the shooter. *Id.* Because Ortiz signed her written statement, had personal knowledge of the facts, testified at trial, and was subject to cross-examination, the trial court admitted her prior inconsistent statement as substantive evidence pursuant to *State v. Whelan*, 513 A.2d 86, 92 (Conn. 1986) ("*Whelan* statement").² Pet. App. at 8; *see also* Conn.

² In *Whelan*, the Connecticut Supreme Court "concluded that the prevailing reasons for refusing to allow any prior inconsistent statement to be used as substantive evidence are no longer valid ... and that an exception to the hearsay rule was appropriate where the statements are made under conditions deemed to render them equal in reliability and trustworthiness to those made under the sanction of an oath and the test of cross-examination.... In this regard, however, the [court] declined to follow the modern view favoring substantive admissibility for all prior inconsistent statements where the [declarant] is in court and subject to cross-examination, concluding that certain additional criteria of admissibility were appropriate to ensure the reliability of such statements for substantive use.... Noting the many hazards associated with the reporting and use of prior oral statements ... [the court] adopted a rule allowing the substantive use of prior written inconsistent statements, signed by the declarant, who has personal knowledge of the facts stated, when the declarant testifies at trial and

(continued...)

Code Evid. § 8-5 (1) (incorporating *Whelan* rule). Defense counsel raised no objection, evidentiary or otherwise, at trial. Pet. App. at 8.

The jury ultimately found the petitioner guilty on all counts. Pet. App. at 7. The trial court, *Gustafson, J.*, imposed a total effective sentence of fifty years of imprisonment. *Id.*

3. The petitioner appealed to the Connecticut Supreme Court, which unanimously affirmed his convictions. Pet. App. at 5. For the first time on appeal, the petitioner claimed that his conviction violated the Due Process Clause of the Fourteenth Amendment because it was based solely on an uncorroborated *Whelan* statement, namely, Ortiz's identification of him as the driver of the Infiniti.³ *Id.* at 13. In support of his claim, the petitioner asked the court to overrule *State v. Newsome*, 682 A.2d 972 (Conn. 1996), which allows an uncorroborated *Whelan* statement to comprise the sole evidentiary basis for a conviction under certain circumstances.⁴ Pet.

is subject to cross-examination." *Franqui*, 354 A.3d at 209-10 (citations and internal quotation marks omitted).

³ The petitioner also claimed, for the first time on appeal, that admitting prior inconsistent statements for their substantive use violates the Due Process Clause of the Fourteenth Amendment. Pet. App. at 7-8. The Connecticut Supreme Court rejected the petitioner's claim, declining to overrule well-established precedent allowing for the substantive use of prior inconsistent statements provided that the declarant is available for cross-examination and the jury has an opportunity to observe her as she repudiates or varies her former statement. *Id.* at 10-13.

⁴ In *Newsome*, the Connecticut Supreme Court considered "whether a prior inconsistent statement admitted for its substantive value pursuant to *Whelan* that constitutes the *sole* evidence identifying the accused is sufficient to support a conviction.... The court reject[ed] the defendant's [argument] ... that a prior inconsistent statement that provides the sole evidence of identification is, as a matter of law, insufficient to sustain a conviction.... The court instead held that the sufficiency of a prior inconsistent statement to support a conviction depends on its reliability, which is tested by examination of the statement itself and by the totality of the other evidence in the record, including the explanation of the witness who purportedly made the statement." *Franqui*, 354 A.3d at 211 (citations and internal quotation marks omitted; emphasis in original).

App. at 13. Specifically, he argued that the court should reconsider *Newsome*'s refusal to adopt a corroboration requirement when the state seeks to procure a conviction based solely on a prior inconsistent statement regarding identification. *Id.* The respondent countered that *Newsome*'s holding was inapplicable because ample evidence corroborated Ortiz's prior inconsistent statement and supported the jury's verdict. *Id.* The respondent also argued that *Newsome* should not be overruled. *Id.*

In disposing of the petitioner's unpreserved claim, the Connecticut Supreme Court assumed that the record was adequate for appellate review and that his claim was of constitutional magnitude alleging a due process violation.⁵ Pet. App. at 14. Nevertheless, the court concluded that the petitioner's due process claim failed because his conviction was "not based solely on Ortiz[s] *Whelan* statement, as he contends, rendering inapplicable the holding of *Newsome* that he now challenges as unconstitutional." *Id.* Rather, as the court noted, the respondent introduced ample evidence corroborating Ortiz's *Whelan* statement identifying the petitioner as the driver of the Infiniti. *Id.* First, Ortiz's excited utterance to police at the crash scene provided an immediate eyewitness identification of the petitioner and the elder Franqui as the shooting culprits. *Id.* Given that the elder Franqui admitted to

⁵ Connecticut's appellate courts apply a four-prong test for determining the reviewability and merits of unpreserved claims. As prescribed by *State v. Golding*, 567 A.2d 823, 827 (Conn. 1989), as modified by *In re Yasiel R.*, 120 A.3d 1188 (Conn. 2015), "a defendant can prevail on a claim of constitutional error not preserved at trial only if *all* of the following conditions are met: (1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation ... exists and ... deprived the defendant of a fair trial; and (4) if subject to harmless error analysis, the state has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt." *Franqui*, 354 A.3d at 208 (emphasis in original; internal quotation marks omitted).

Johanny Franqui that he shot and killed the victim, the jury could have made a reasonable and logical inference that the only other person identified in the Infiniti—the petitioner—must have been the driver. *Id.* Second, Johanny Franqui’s *Whelan* statement established that he met with the petitioner and the elder Franqui the morning before the shooting, during which they discussed both the events of the previous night and the elder Franqui’s intention to kill the victim. *Id.* The petitioner and the elder Franqui then left the meeting together approximately one hour before the shooting. *Id.* at 14-15. Third, Ortiz’s statement was corroborated by evidence of the petitioner’s motive to participate in the victim’s murder, including their rapidly escalating violent feud and evidence that the petitioner had the opportunity and means to drive the Infiniti that he owned or co-owned with the elder Franqui. *Id.* at 15.

In sum, the Connecticut Supreme Court rejected the petitioner’s due process claim because “[t]he constitutional violation that the [petitioner] claims to have occurred in the trial court—that an uncorroborated *Whelan* statement constituted the sole evidence of his guilt—simply does not exist in this case.”⁶ Pet. App. at 15.

⁶ The Connecticut Supreme Court also concluded that because Ortiz’s *Whelan* statement was corroborated and was not the sole evidence of the petitioner’s guilt, *Newsome* did not require a heightened assessment of the reliability of the statement or of the credibility of Ortiz’s trial testimony. Pet. App. at 15.

REASONS FOR DENYING CERTIORARI

A. The Petition Does Not Raise A Substantial Federal Question.

This Court should deny the petition because the Connecticut Supreme Court did not decide the issue presented by the petitioner, and therefore, the petition does not raise a substantial federal question. In accordance with 28 U.S.C. § 1257 (a), it is essential to this Court's jurisdiction that a substantial federal question has been raised in the state court proceedings. *Street v. New York*, 394 U.S. 576, 581-82 (1969) (if issue not presented to highest state court such that it necessarily was decided when affirming conviction, Supreme Court has no power to consider it). Thus, to properly invoke this Court's jurisdiction, the petitioner's question must have been presented to the Connecticut Supreme Court in such a manner that it necessarily was decided by the court when it affirmed the petitioner's convictions. *Id.* "If the question was not so presented, then [this Court has] no power to consider it." *Id.* at 582; *see also Bailey v. Anderson*, 326 U.S. 203, 206-07 (1945) (same).

Here, the question presented by the petitioner presupposes that the conviction was based solely on a prior inconsistent statement identifying the perpetrator of a crime. As previously demonstrated, however, the Connecticut Supreme Court held that the petitioner's conviction was *not* based solely on Ortiz's prior inconsistent statement identifying the petitioner as one of the shooting culprits. Rather, there was ample other evidence corroborating her statement. Consequently, were this Court to grant certiorari and hold that due process prohibits a conviction based solely on an uncorroborated, prior inconsistent statement, it would be addressing the question for

the first time. The Connecticut Supreme Court's failure to first pass on the question presented deprives this Court of jurisdiction under § 1257 (a).

B. The Question Presented Is Moot.

Likewise, this Court should deny the petition because the question presented is moot. It is well established that this Court sits “to resolve not questions and issues but ‘Cases’ or ‘Controversies.’” *Arizona Christian School Tuition Organization v. Winn*, 563 U.S. 125, 132 (2011); *see* U.S. Const., Art. III, § 1. As a corollary of that bedrock principle, the Court “is without power to decide moot questions or to give advisory opinions which cannot affect the rights of the litigants in the case before it.” *St. Pierre v. United States*, 319 U.S. 41, 42 (1943) (*per curiam*). Deciding a moot question would violate “the oldest and most consistent thread in the federal law of justiciability.” *Flast v. Cohen*, 392 U.S. 83, 96 (1968) (internal quotation marks omitted).

As previously set forth, the Connecticut Supreme Court held that the petitioner's conviction was *not* based solely on Ortiz's prior inconsistent statement identifying the petitioner as one of the shooting culprits, as there was ample other evidence corroborating her statement. *See Franqui*, 354 A.3d at 211-12; Pet. App. at 14-15. Thus, were this Court to grant certiorari and hold that due process prohibits a conviction based solely on an uncorroborated, prior inconsistent statement, its decision would be of no benefit to the petitioner, but instead, would merely constitute an advisory opinion. Accordingly, the question presented is moot.

C. There Is No Circuit Split.

The petitioner contends that the federal circuits are split on whether due process “forbids a conviction resting solely on a recanted, uncorroborated statement.” Pet. at 16. In support of his assertion, the petitioner relies on *United States v. Orrico*, 599 F.2d 113 (6th Cir. 1979), in which the Sixth Circuit reversed a conviction resting entirely on the grand jury testimony of two witnesses, neither of whom could recall their prior testimony at trial. See Pet. at 16-17. Attempting to create the illusion of a circuit split, the petitioner contrasts *Orrico* with *Ticey v. Peters*, 8 F.3d 498 (7th Cir. 1993), in which Seventh Circuit held that a police officer’s testimony about the victim’s prior, out-of-court identification of the defendant was sufficient to support his conviction despite the victim’s recantation at trial. See Pet. at 19. Absent these two decisions, the petitioner points to no other circuits that have addressed the question presented.

Contrary to the petitioner’s assertion, there is no federal circuit split. First, neither the Sixth Circuit nor the Seventh Circuit were ever asked to consider whether due process requires independent corroboration—or merely sufficient indicia of reliability—when a prior inconsistent statement is the sole evidence supporting a criminal conviction. Compare *Orrico*, 599 F.2d at 118-19, with *Ticey*, 8 F.3d at 503-04. Moreover, *Orrico* does not hold that the Due Process Clause categorically requires independent corroboration of the contents of a prior inconsistent statement to sustain

a conviction.⁷ *See Orrico*, 599 F.2d at 118 (noting that “[i]t is *doubtful* ... that in any but the most unusual case, a prior inconsistent statement alone will suffice to support a conviction since it is *unlikely* that a reasonable juror could be convinced beyond a reasonable doubt by such evidence alone” [emphasis added]). Finally, both the Sixth Circuit and the Seventh Circuit recognized that corroboration, where relevant, is one factor among others bearing on the statement’s reliability. *See id.* at 118-19; *Ticey*, 8 F.3d at 503-04.

Alternatively, assuming, arguendo, that the Sixth and Seventh Circuits are in conflict over the question presented, this Court still should deny the petition because a conflict between two circuits does not qualify as a matter of national significance warranting Supreme Court review. *See, e.g., McCray v. New York*, 461 U.S. 961, 963 (1983) (*Stevens, J.*) (denying certiorari where question presented required “further study” in lower courts “before it [would be] addressed by this Court”); *see generally* S. Shapiro, K. Geller, T. Bishop, E. Hartnett, & D. Himmelfarb, *Supreme Court Practice* 247 (10th ed. 2013).

In sum, even if the petitioner could surmount the jurisdictional impediment to certiorari, this Court should deny his petition.

⁷ Likewise, the petitioner does not identify any sibling state court holding that the Due Process Clause categorically prohibits a conviction resting solely upon a recanted, uncorroborated statement. *See Pet.* at 17-19.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully Submitted,

STATE OF CONNECTICUT,
Respondent

PATRICK J. GRIFFIN
Chief State's Attorney

ROBERT J. SCHEINBLUM
Senior Assistant State's Attorney
Counsel of Record
Office of the Chief State's Attorney
Appellate Bureau
300 Corporate Place
Rocky Hill, CT 06067
Tel: (860) 258-5807
Email: Robert.Scheinblum@ct.gov

OCTOBER 2026