

No. _____

**In The
Supreme Court of the United States**

STEVEN TODD ROSEBORO,
Petitioner,

v.

UNITED STATES,
Respondent.

*On Petition for a Writ of Certiorari to the United
States Court of Appeals for the Eleventh Circuit*

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Duren v. Missouri*, this Court described three showings a criminal defendant must make to establish a prima facie violation of the Sixth Amendment's fair cross-section requirement: "(1) that the group alleged to be excluded is a 'distinctive' group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process." 439 U.S. 357, 364 (1979).

In the opinion below, the Eleventh Circuit determined that the *only* relevant consideration for *Duren's* second prong was whether Mr. Roseboro could show that the absolute disparity between the percentage of black people among the population eligible for jury service and the percentage of black people in the qualified jury pool was more than ten percent.

The question presented is: does the 10% absolute disparity rule serve as the sole metric for examining the second prong of *Duren* in the context of a fair cross-section argument?

Or as an increasing number of Circuit Courts of Appeals have determined, should rigid adherence to the 10% absolute disparity rule be jettisoned in favor of a multi-modal analysis which considers absolute disparity in conjunction with comparative disparity and standard deviation theory?

LIST OF PARTIES

The Petitioner in this Court is Steven Todd Roseboro and the Respondent is the United States. In the Eleventh Circuit, the Appellant was Steven Todd Roseboro and the Appellee was the United States.

Because Petitioner is not a corporation, Supreme Court Rule 29.6 does not require a corporate disclosure statement.

RELATED CASES

- *United States v. Steven Todd Roseboro*, No. 23-cr-182, U.S. District Court for the Middle District of Alabama. Judgment entered on October 3, 2024.
- *United States v. Steven Todd Roseboro*, Appeal No. 24-13264, U.S. Court of Appeals for the Eleventh Circuit. Opinion issued and judgment entered on May 5, 2026. Rehearing en banc denied on July 8, 2026.

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PETITION FOR A WRIT OF CERTIORARI

Mr. Steven Todd Roseboro respectfully requests that this Court grant a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The Eleventh Circuit's decision is unpublished. *United States v. Roseboro*, 2026 WL 1217956 (11th Cir. 2026) (unpublished). The opinion is included in Petitioner's Appendix. Pet. App. 1a.

The Eleventh Circuit's order denying Mr. Roseboro's petition for rehearing en banc is unreported, but reproduced in the Petitioner's Appendix. Pet. App. 1b.

The district court's order denying Mr. Roseboro's original and renewed motions challenging the jury selection process is unpublished. *United States v. Roseboro*, 2024 WL 4371014 (M.D. Ala. 2024) (unpublished). The opinion is included in Petitioner's Appendix. Pet. App. 1c.

The report and recommendation of the magistrate judge, which recommended that Mr. Roseboro's renewed jury selection motion be denied, is unreported. *United States v. Roseboro*, 2024 WL 4720597 (M.D. Ala. 2024) (unpublished), *adopted as by* 2024 WL 4371014. The recommendation is reproduced in the Petitioner's Appendix. Pet. App. 1d.

JURISDICTION

The Eleventh Circuit’s opinion was issued on May 5, 2026. Mr. Roseboro timely filed a petition for rehearing en banc. The Eleventh Circuit denied the petition on July 8, 2026, rendering Mr. Roseboro’s Petition for Writ of Certiorari due in this Court on October 6, 2026. The Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL PROVISIONS

The Fifth Amendment to the U.S. Constitution provides that no person shall be “deprived of life, liberty, or property, without due process of law.” U.S. CONST., amend. V.

The Sixth Amendment to the U.S. Constitution provides that, in all criminal prosecutions, the accused shall enjoy the right “to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed[.]” U.S. CONST., amend. VI.

RELEVANT STATUTORY PROVISIONS

The Jury Selection and Service Act (“JSSA”) of 1968, 28 U.S.C. § 1861, et seq., provides that “all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes.” 28 U.S.C. § 1861.

STATEMENT OF THE CASE

On June 7, 2023, a federal grand jury returned an indictment against Mr. Roseboro, charging him with: (1) possession of a firearm and ammunition by a convicted felon, in violation of 18 U.S.C. § 922(g)(1) (Count One); and (2) commission of an offense while on release and under supervision pursuant to the district court's order in case no. 21-cr-494, in violation of 18 U.S.C. § 3147 (Count Two). (Doc. 1). Factually, the indictment alleged that, on April 16, 2023, Mr. Roseboro possessed a Springfield Armory XD-9, 9mm pistol. (*Id.* at 1).

Mr. Roseboro's case was set for trial on August 21, 2023. (Doc. 17 at 1). On August 17, 2023, the parties received notice of the availability of juror questionnaires for the upcoming trial. Of the 135 jurors in the pool, 78 juror questionnaires were received. Of these 78 potential jurors, 68 were Caucasian (87.2%), 8 were African American (10.2%), 1 was Hispanic (1.3%), and 1 was Native American (1.3%). There was not a single African American male (0%).

Mr. Roseboro brought the issue to the district court's attention on August 20, 2023, by filing a motion objecting to the composition of the venire and to the method of selecting members of the venire pursuant to: the Due Process and Equal Protection Clauses of the Fifth Amendment to the Constitution; the Sixth Amendment's guarantee of a jury drawn from a "fair-cross-section" of the community; and the Jury Selection and Service Act ("JSSA") of 1968, 28 U.S.C. § 1861, et seq. (Doc. 49). Mr. Roseboro pointed out that the JSSA provided a virtually unqualified right of access to inspect jury

lists in aid of a fair cross-section claim, and he requested that the Court allow him the opportunity to conduct discovery, access jury selection records and materials in the clerk's office, and, if necessary, have an evidentiary hearing regarding the clerk's procedures. (*Id.* at 1, 3-4).

The district court took up Mr. Roseboro's motion prior to trial. Mr. Roseboro reiterated that, based on the available information contained in the juror questionnaires, there appeared to be a notable disparity between the percentage of African Americans in his jury pool and the percentage of African Americans in the community. (Doc. 118 at 3-7). The district court denied Mr. Roseboro's request for a stay or continuance, and elected to defer ruling on Mr. Roseboro's motion and his request for access to jury selection materials until after the trial. (*Id.* at 9); (doc. 50).

The district court proceeded with jury selection. Thirteen additional juror questionnaires were received on the morning of trial, bringing the total number to 91. Of these 91 potential jurors, 78 were Caucasian (86%), 11 were African American (12%), 1 was Hispanic (1%), and 1 was Native American (1%). There was only one African American male (1%). Anticipating the need for appellate review at a later juncture, Mr. Roseboro asked that the juror questionnaires be added to the record as a court exhibit. (Docs. 57-4 to 57-115).

Mr. Roseboro proceeded to trial. The jury deliberated for several hours, and notified the court that they were unable to reach a verdict. (Doc. 116 at 131). The court instructed them to continue deliberating. Ultimately, the jury

returned a verdict of guilty on both counts. (*Id.* at 133, 141).

Following trial, Mr. Roseboro filed a renewed, supplemented motion challenging the jury selection process, supporting each of his arguments with statistical data. (Doc. 82). Specifically, Mr. Roseboro argued that the jury selection process violated the fair cross-section requirement of the Sixth Amendment and the JSSA, because the qualified jury wheel used to summon trial jurors in his case significantly underrepresented black or African American people. (*Id.* at 4-11). Mr. Roseboro pointed out that this underrepresentation was not the product of random chance, but the district's creation of the wheel based on incomplete voter registration records and inadequate follow-up procedures when sending out juror qualification questionnaires. (Doc. 82 at 11-17). Mr. Roseboro also noted that the jury selection process violated the plain text and meaning of 28 U.S.C. § 1863 and § 1869(c) of the JSSA by excluding inactive voters and relying on a methodologically flawed AO-12 form to ensure compliance with the JSSA. (*Id.* at 17-19).

On August 13, 2024, a magistrate judge issued a report and recommendation, recommending that Mr. Roseboro's original and renewed jury selection motions be denied. (Doc. 89). In reaching this conclusion, the magistrate judge determined that: (1) Mr. Roseboro failed to establish a fair cross-section violation under the Sixth Amendment and the JSSA; and (2) even if the Middle District's jury selection process violated the JSSA in other

technical respects, any such violations were not “substantial” enough to warrant relief. (*Id.* at 4-17).

Mr. Roseboro filed objections, reiterating his earlier arguments related to his fair cross-section claim and the JSSA, and challenging each of the magistrate judge’s legal conclusions with respect to those issues. (Doc. 90 at 4-16).

The district court overruled Mr. Roseboro’s objections, adopted the recommendation of the magistrate judge, and denied Mr. Roseboro’s original and renewed motions challenging the jury selection process. (Doc. 97). Ultimately, the district court sentenced Mr. Roseboro to 70 months’ imprisonment as to Count 1, and 6 months’ imprisonment as to Count 2, to be served consecutively. (Doc. 100 at 2).

Mr. Roseboro appealed. (Docs. 100, 102). In his briefing the Eleventh Circuit, Mr. Roseboro argued, *inter alia*, that the jury selection process violated the fair cross-section requirement of the Sixth Amendment and the JSSA, because: (1) black people are a distinctive group in the community; (2) the jury selection process resulted in the unfair underrepresentation of black people; and (3) the underrepresentation of black individuals was the result of systematic problems with the jury selection process. In making this argument, Mr. Roseboro acknowledged the Eleventh Circuit’s adverse precedent—holding that “if the absolute disparity between [the percentage of the distinctive group in the population and the percentage of the group in the jury pool] is 10 percent

or less, the second element [of *Duren*] is not met”—but argued that the time had come to abandon the 10% absolute disparity rule. (*Id.* at 31-34) (quoting *United States v. Carmichael*, 560 F.3d 1270, 1280 (11th Cir. 2009)).

The Eleventh Circuit rejected Mr. Roseboro’s jury selection arguments and affirmed his conviction. *United States v. Roseboro*, 2026 WL 1217956, *1-3, 7 (11th Cir. 2026) (unpublished). Specifically, the panel concluded that Mr. Roseboro’s fair cross-section challenge failed under both the Sixth Amendment and the JSSA because he could not satisfy the second prong of the *Duren*¹ test.

Id. at *2. The court explained:

Roseboro did not meet his burden of showing a lack of fair and reasonable representation in his challenge to the composition of the jury venire because he did not show that the absolute disparity between the percentage of black people among the population eligible for jury service and the percentage of black people in the qualified jury pool was more than 10%. *Duren*, 439 U.S. at 364; *Grisham*, 63 F.3d at 1078–79. Instead, Roseboro’s expert calculated an absolute disparity of 4.68% for the Middle District and 4.32% for the Southern Division. And because Roseboro’s claim failed at *Duren*’s second prong, we need not reach the third prong. *Carmichael*, 560 F.3d at 1278. Further, to the extent he argues the 10% absolute disparity rule should be overturned on policy grounds, we are bound by our prior panel precedent. *Gillis*, 938 F.3d at 1198; see *Smith*, 236 F.3d at 1303. Thus, Roseboro’s Sixth Amendment challenge to the composition of the jury venire fails.

Id.

Mr. Roseboro filed a petition for rehearing en banc, which the Eleventh Circuit denied on July 8, 2026.

¹ *Duren v. Missouri*, 439 U.S. 357 (1978).

This petition for a writ of certiorari follows.

REASONS FOR GRANTING THE WRIT

I. The Eleventh Circuit's decision rejecting Mr. Roseboro's fair cross-section argument based on its 10% absolute disparity rule misapprehends a crucial aspect of this Court's precedent in *Duren v. Missouri*, 439 U.S. 357 (1978) and *Berghuis v. Smith*, 559 U.S. 314 (2010).

“The American concept of the jury trial contemplates a jury drawn from a fair cross section of the community.” *Taylor v. Louisiana*, 419 U.S. 522, 527 (1975). This concept is so fundamental—so inherent in basic concepts of a democratic society and a representative government—that it is given both constitutional protection in the Sixth Amendment, as well as statutory safeguard by JSSA. *Id.* at 527; *Duren v. Missouri*, 439 U.S. 357, 359-60 (1979); 28 U.S.C. § 1861, *et seq.* Thus, as this Court has repeatedly held, “[t]he Sixth Amendment secures to criminal defendants the right to be tried by an impartial jury drawn from sources reflecting a fair cross-section of the community.” *Berghuis v. Smith*, 559 U.S. 314, 319 (2010); *see also Taylor*, 419 U.S. at 527 (noting that the jury must be “a body truly representative of the community”). The JSSA is equally unequivocal: “all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes.” 28 U.S.C. § 1861.

In *Duren v. Missouri*, this Court described three showings a criminal defendant must make to establish a *prima facie* violation of the Sixth Amendment’s fair cross-section requirement. *Duren*, 439 U.S. at 364.

Specifically, the defendant must show: “(1) that the group alleged to be excluded is a ‘distinctive’ group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process.” *Duren*, 439 U.S. at 364; *see also United States v. Carmichael*, 560 F.3d 1270, 1280 (11th Cir. 2009) (applying the three-part *Duren* test). Once the defendant makes this showing, it becomes the government’s burden to justify the underrepresentation “by showing attainment of a fair cross section to be incompatible with a significant [government] interest.” *Duren*, 439 U.S. at 368.

The JSSA also provides a remedy for its violation: in a criminal case, a defendant may move to dismiss the indictment and stay further proceedings against him, if there has been a “substantial failure to comply” with the provisions of the JSSA in selecting the grand jury which indicted him or the petit jury to try his case. *See* 28 U.S.C. § 1867(a), (d). A JSSA violation is considered “substantial” when it frustrates one of the three principles underlying the Act: (1) random selection of juror names; (2) from a fair cross-section of the community; and (3) use of objective criteria for determination of disqualifications, excuses, exemptions, and exclusions. *Carmichael*, 560 F.3d at 1277. Thus, for practical purposes, the fair cross-section principle in the JSSA is “identical to that required by the Sixth Amendment.” *Id.* at 1278

(citing *United States Rodriguez*, 776 F.2d 1509, 1510 n.1 (11th Cir. 1985)).

As noted previously, the Eleventh Circuit determined in the opinion below Mr. Roseboro's fair cross-section challenge failed under both the Sixth Amendment and the JSSA because he could not show that the absolute disparity between the percentage of black people among the population eligible for jury service and the percentage of black people in the qualified jury pool was more than 10%. *Roseboro*, 2026 WL 1217956 at *2. Specifically, applying *Carmichael*, 560 F.3d at 1280, the only relevant consideration for *Duren*'s second prong was whether the absolute disparity was ten percent or less, and "Roseboro's expert calculated an absolute disparity of 4.68% for the Middle District and 4.32% for the Southern Division." *Id.*

To be sure, the second prong of the *Duren* test requires Mr. Roseboro to demonstrate that the representation of black people "in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community." *Duren*, 439 U.S. at 364. In this context, the relevant comparison is "between the percentage of African Americans in the population eligible for jury service and the percentage of African Americans in the pool." *Carmichael*, 560 F.3d at 1280. Making this showing requires proof, typically statistical data, that the jury pool does not adequately represent the distinctive group in relation to the number of such persons in the community. *United States v. Nelson*, 137 F.3d 1094, 1101 (9th Cir. 1998).

Unfortunately, “neither *Duren* nor any other decision of this Court specifies the method or test courts must use to measure the representation of distinctive groups in jury pools.” *Berghuis*, 559 U.S. at 329. As a result, lower courts have utilized a variety of statistical models to evaluate claims of significant underrepresentation. *See id.* at 323; *see also United States v. Rioux*, 97 F.3d 648, 655 (2d Cir. 1996) (noting that “[c]ourts have evolved several statistical approaches to assess compliance with the second prong of the *Duren* test,” and discussing three such models); *United States v. Royal*, 174 F.3d 1, 6 (1st Cir. 1999) (discussing “the various forms of statistical analysis” that courts and commentators have applied to the second prong of the *Duren* test); *Garcia-Dorantes v. Warren*, 801 F.3d 584, 601 (6th Cir. 2015) (noting that “the Supreme Court has not mandated the proper statistical measure to determine whether a minority is underrepresented for purposes of *Duren*’s second prong”).

Three of the most prevailing methods are: (1) absolute disparity; (2) comparative disparity; and (3) standard deviation theory. *Berghuis*, 559 U.S. at 329 (describing absolute disparity, comparative disparity, and standard deviation as three of the methods employed in lower federal court decisions); *see also Ramseur v. Beyer*, 983 F.2d 1215, 1231 (3d Cir. 1992) (comparing “evidence of absolute disparity, comparative disparity, and deviation from expected random selection”); *see also United States v. Hernandez-Estrada*, 749 F.3d 1154, 1160 (9th Cir. 2014) (“Courts have employed a number of analytical

methods when faced with jury panel fair cross-section cases, including the absolute disparity test, the absolute impact test, the comparative disparity test, and standard deviation analysis”).

As Mr. Roseboro argued in the district court, black individuals are significantly underrepresented in the Middle District of Alabama’s qualified jury wheel, regardless of which statistical method is employed. (Doc. 82-1 ¶¶ 27-42) (Declaration of Jeffrey Martin).

By an absolute disparity measure, black individuals were underrepresented by 4.68% for the Middle District of Alabama, and 4.32% for the Southern Division of the Middle District. (Doc. 82 at 8-9). By a comparative disparity measure, there was 14.22% underrepresentation for the Middle District of Alabama, and 20.31% underrepresentation for the Southern Division. (*Id.* at 9-10). In other words, one out of every seven black persons expected to be on the qualified jury wheel for the Middle District of Alabama was missing, and one out of every five black persons expected to be on the qualified jury wheel for the Southern Division was missing. (*Id.*). And finally, standard deviation theory confirmed that the percentage of black persons on the qualified jury wheel for the Middle District of Alabama differed from the percentage of black persons in the jury eligible population by more than 19 standard deviations. (*Id.* at 10-11). For the Southern Division, the percentage of black persons on the qualified jury wheel for the Southern Division of the Middle District of Alabama differs from the percentage of black persons in the

jury eligible population by more than 9 standard deviations. (*Id.*). It was therefore statistically significant and the product of a non-random factor.

Thus, regardless of which statistical method is employed, it is clear that black individuals were significantly underrepresented in the qualified jury wheel.

Nevertheless, it is black letter law in the Eleventh Circuit that “if the absolute disparity between [the percentage of the distinctive group in the population and the percentage of the group in the jury pool] is 10 percent or less, the second element [of *Duren*] is not met.” *Carmichael*, 560 F.3d at 1280 (quotations omitted); *see also United States v. Clarke*, 562 F.3d 1158, 1163 (11th Cir. 2009); *Roseboro*, 2026 WL 1217956 at *2. Mr. Roseboro respectfully submits that it is time for this Court to evaluate the validity of this precedent.

First, and foremost, the 10% absolute disparity test has no basis in science, and “no court has been able to articulate or defend it on any sound statistical basis.” *Hernandez-Estrada*, 749 F.3d at 1162. As this Court has recognized, absolute disparity can be “misleading” when members of the distinctive group compose only a small percentage of those eligible for jury service. *Berghuis*, 559 U.S. at 329. For instance, if a minority group makes up less than 10% of the population, then that group could *never* be underrepresented in the jury pool, even if *all* of its members were excluded from the qualified jury wheel. (Doc. 82-1 ¶ 27); *see also Hernandez-Estrada*, 749 F.3d 1154; *Foster v. Sparks*, 506 F.2d 805, 835 (5th Cir. 1975). Likewise,

as illustrated by the present case, a distinct group such as black individuals in the Southern Division, who make up 28.21% of the jury eligible population could suffer substantial underrepresentation down to 18.21% of the qualified jury wheel and still fall short of the 10% threshold. (Doc. 82-1 ¶ 27).

Second, the 10% absolute disparity rule is of dubious precedential origin. The source of the Eleventh Circuit rule is an old 5th Circuit case, *United States v. Maskeny*, 609 F.2d 183, 190 (5th Cir. 1980), which held that a defendant cannot carry his burden of proof in a Sixth Amendment fair cross-section challenge unless he demonstrates an absolute disparity of more than 10%. However, the Court adopted this standard based on its reading of *Swain v. Alabama*, 380 U.S. 202, 208 (1965), which addressed a Fifth and Fourteenth Amendment equal protection claim—not a Sixth Amendment fair cross section argument—and held only that “[w]e cannot say that purposeful discrimination based on race alone is satisfactorily proved by showing that an identifiable group in a community is underrepresented by as much as 10%.” *Swain*, 380 U.S. at 830. Notably however, “[w]hile the equal protection clause of the Fourteenth Amendment prohibits underrepresentation of minorities in juries by reason of intentional discrimination, [t]he Sixth Amendment is stricter because it forbids any substantial underrepresentation of minorities, regardless of . . . motive.” *United States v. Gelb*, 881 F.2d 1155, 1161 (2d Cir. 1989). Effectively, *Maskeny* and its progeny hold that it is impossible to prove a Sixth Amendment fair cross-section claim unless the disparity is large

enough to prove intentional discrimination. However, *Duren* explicitly held that intentional discrimination is *not* a part of Sixth Amendment analysis. *Duren*, 439 U.S. at 368 n.26. And notably, this Court seemingly does not consider absolute disparity to be the sole dispositive measure of a Sixth Amendment fair cross section claim. *See Berghuis*, 559 U.S. at 323.

Accordingly, the Eleventh Circuit’s 10% absolute disparity rule is grounded upon a foundation of misleading mathematics and inapposite precedent. Accordingly, the opinion below incorrectly interpreted and misapplied *Duren* and *Berghuis*, and created a conflict with this Court’s precedent.

II. The decisions of the federal Courts of Appeals are in conflict with one another concerning whether absolute disparity is the sole dispositive measure of the second prong of the *Duren* test.

As noted previously, “neither *Duren* nor any other decision of this Court specifies the method or test courts must use to measure the representation of distinctive groups in jury pools,” resulting in the adoption and utilization of a variety of statistical models. *Berghuis*, 559 U.S. at 329.

The Eleventh Circuit held in *Carmichael*—and the opinion below—that “if the absolute disparity between [the percentage of the distinctive group in the population and the percentage of the group in the jury pool] is 10 percent or less, the second element [of *Duren*] is not met.” *Carmichael*, 560 F.3d at 1280; *see also Royal*, 174 F.3d at 8.

However, for the reasons already discussed, *supra*, an increasing number of the Circuit Courts of Appeals have abandoned the 10% absolute disparity rule in favor of a multi-modal analysis which considers absolute disparity in conjunction with comparative disparity and standard deviation theory. *Hernandez-Estrada*, 749 F.3d at 1164 (“after surveying the case law and alternative methods of analysis, and bearing in mind our own past criticism of our exclusive reliance on the absolute disparity test, we conclude that it is appropriate to abandon the absolute disparity approach”); *see also United States v. Orange*, 447 F.3d 792, 798 (10th Cir. 2006); *Mosley v. Dretke*, 370 F.3d 467, 479 n.5 (5th Cir. 2004); *Ramseur v. Beyer*, 983 F.2d 1215, 1231 (3d Cir. 1992) (en banc).

Mr. Roseboro respectfully submits that this Court’s review is necessary to clarify the second prong of *Duren*, and put an end to the disparate treatment of fair cross-section arguments between circuits.

CONCLUSION

For the above reasons, this Court should grant this petition for writ of *certiorari*.

Respectfully submitted,

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