

(ORDER LIST: 586 U.S.)

MONDAY, NOVEMBER 19, 2018

ORDERS IN PENDING CASES

18M63 LOFTON, LaSHAWN N. V. SP PLUS CORP., ET AL.

The motion to direct the Clerk to file a petition for a writ of certiorari out of time is denied.

18M64 ZUKERMAN, MORRIS E. V. UNITED STATES

The motion for leave to file a petition for a writ of certiorari with the supplemental appendix under seal is granted.

18M65 CARTER, DIANNE M. V. UNITED STATES

The motion to direct the Clerk to file a petition for a writ of certiorari out of time is denied.

18M66 TYSON, LAWTON F. V. TEXAS

The motion for leave to proceed as a veteran is denied.

17-646 GAMBLE, TERANCE M. V. UNITED STATES

The motion of Texas, et al. for leave to participate in oral argument as *amici curiae* and for enlargement of time for oral argument is granted, and the time is allotted as follows: 40 minutes for the petitioner, 30 minutes for the respondent, and 10 minutes for Texas, et al.

17-8151 BUCKLEW, RUSSELL V. PRECYTHE, DIR., MO DOC, ET AL.

The motion of petitioner for appointment of counsel is granted, and Cheryl A. Pilate, Esq., of Kansas City, Missouri, is appointed to serve as counsel for the petitioner in this case.

17-9041 CIOTTA, STEVEN V. HOLLAND, WARDEN

18-5002 GRAY, JOHN V. DAVIS, DIR., TX DCJ

18-5017 SELDEN, GLENN L. V. KOVACHEVICH, JUDGE, USDC, ET AL.

18-5631 JACOB, STEVEN M. V. FRAKES, DIR., NE DOC

The motions of petitioners for reconsideration of orders denying leave to proceed *in forma pauperis* are denied.

18-6071 NAYSHTUT, SERGE V. COMERCIALIZADORA TRAVEL, ET AL.

18-6384 LANTERI, MICHAEL A. V. CONNECTICUT

The motions of petitioners for leave to proceed *in forma pauperis* are denied. Petitioners are allowed until December 10, 2018, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

#### **CERTIORARI DENIED**

17-8988 BOOK, ANTHONY F. V. UNITED STATES

17-9223 HINTON, DONALD L. V. WALKER, RECREATION SUPERVISOR

18-78 RAMIREZ-BARAJAS, J. C. V. WHITAKER, ACTING ATT'Y GEN.

18-150 PLUMMER, PHIL, ET AL. V. HOPPER, DAVID M.

18-204 PORTFOLIO RECOVERY ASSOCIATES V. POUNDS, IRIS, ET AL.

18-212 BANK OF AMERICA, N.A. V. LUSNAK, DONALD M.

18-300 DELANO FARMS CO., ET AL. V. CALIFORNIA TABLE GRAPE COMM'N

18-326 GOLDBERG, BERNICE V. NIMOITYN, PHILIP, ET AL.

18-330 GREENE, DOUGLAS W. V. FROST BROWN TODD, LLC, ET AL.

18-336 JONES, THADDEUS, ET AL. V. MARKIEWICZ-QUALKINBUSH, MICHELLE

18-338 SOCCOLICH, LEONARDO, ET UX. V. WILMINGTON SAVINGS FUND SOCIETY

18-344 SHAO, LINDA V. McMANIS FAULKER, LLP

18-354 WEISS, STANLEY V. NEW JERSEY

18-358 ROE, RICHARD V. UNITED STATES, ET AL.

18-361 ALLEYNE, LAEL J. V. PENNSYLVANIA

18-362 BROWN, DARRELL W. V. VIRGINIA

18-363 URIBE-SANCHEZ, RUBEN D. V. WHITAKER, ACTING ATT'Y GEN.  
18-367 JACOBI, MARY E. V. NY TAX APPEALS TRIBUNAL, ET AL.  
18-382 RAB, RAJI V. SUPERIOR COURT OF CA, ET AL.  
18-401 HOBSON, FAYE R. V. MATTIS, SEC. OF DEFENSE  
18-405 DASTMALCHIAN, SHABNAM V. DEPT. OF JUSTICE, ET AL.  
18-413 BOSCH, DAVID R. V. AZ DEPT. OF REVENUE  
18-441 ACCORD HEALTHCARE, INC., ET AL. V. UCB, INC., ET AL.  
18-463 MORELLO, BERNARD V. TEXAS  
18-468 SSL SERVICES, LLC V. CISCO SYSTEMS, INC.  
18-492 SOUZA, DAVID V. CALIFORNIA  
18-522 ISHEE, MICHAEL V. MISSISSIPPI  
18-524 GATHINGS, ERIC D. V. UNITED STATES  
18-532 SIXTY-01 ASSOCIATION V. GOUDELOCK, PENNY D.  
18-5252 EARP, RICKY L. V. DAVIS, WARDEN  
18-5289 BARBEE, STEPHEN D. V. DAVIS, DIR., TX DCJ  
18-5321 ORTIZ-URESTI, SALVADOR V. UNITED STATES  
18-5401 POIRIER, MELISSA J. V. MA DOC  
18-5597 MILLER, DAVID E. V. MAYS, WARDEN  
18-5948 MURPHY, PATRICK H. V. DAVIS, DIR., TX DCJ  
18-5985 SPARKS, JEFFERY D. V. PREMO, SUPT., OR  
18-5988 ALLAH, MASTER B. V. WILSON, BRIAN, ET AL.  
18-6002 LIBRACE, DAVID V. WRIGHT, DEBORAH H., ET AL.  
18-6004 JONES, MATTHEW V. SUPERIOR COURT OF CT, ET AL.  
18-6019 QUINTERO, JOHN R. V. NEVADA  
18-6021 BURNEY, PATRICIA V. ALDRIDGE, WARDEN  
18-6022 UDEIGWE, THEOPHILUS K. V. TEXAS TECH UNIVERSITY, ET AL.  
18-6026 BOOTH, JAMES R. V. JONES, SEC., FL DOC, ET AL.  
18-6027 BEAULIEU, HAYDEN V. ARIZONA

18-6029 AQUILINA, DEBRA A. V. DAVIS, ADM'R, EDNA MAHAN, ET AL.  
18-6032 D. L. V. WISCONSIN  
18-6038 VILLAVICENCIO, CARLOS D. V. JONES, SEC., FL DOC  
18-6043 MANNING, PATRICK W. V. OKLAHOMA  
18-6045 BECKHAM, COREY L. V. MILLER, WARDEN  
18-6047 SEED, LEO L. V. JONES, SEC., FL DOC  
18-6052 KHOSHMOOD, MOHSEN V. CATHOLIC CHARITY, ET AL.  
18-6053 KISSNER, DONALD L. V. MICHIGAN  
18-6055 TRIPLETT, WILLIE V. VANNOY, WARDEN  
18-6059 CARTER, CEDRIC V. OHIO  
18-6082 LEE, JEFFREY E. V. CHEATHAM, WARDEN  
18-6154 EASLEY, DONALD L. V. OREGON  
18-6200 UZOECHI, EMMANUEL CH. V. WILSON, DAVID, ET AL.  
18-6253 WESLING, DANIEL R. V. PENNSYLVANIA  
18-6254 TYLER, LOU V. OCWEN LOAN SERVICING, ET AL.  
18-6259 TYLER, LOU V. OCWEN LOAN SERVICING, ET AL.  
18-6275 LUPIAN-BARAJAS, RICARDO V. JONES, SEC., FL DOC, ET AL.  
18-6291 COOK, STEVEN H. V. JONES, SEC., FL DOC, ET AL.  
18-6327 HUMPHREY, ROLANDO V. UNITED STATES  
18-6335 JENKINS, GEORGE V. UNITED STATES  
18-6339 WILLAN, MICHAEL T. V. PETITIONER  
18-6341 LIEBA, JOHN W. V. UNITED STATES  
18-6342 LOPEZ-VAAL, JAIME R. V. UNITED STATES  
18-6343 LLERENAS, ROBERTO V. UNITED STATES  
18-6346 DUBARRY, MARK A. V. UNITED STATES  
18-6347 BRAKE, ADAM V. UNITED STATES  
18-6349 PALOMINO, DANIEL I. V. UNITED STATES  
18-6350 BRAND, ZAVIEN V. UNITED STATES

18-6351 BAKER, RAYMOND V. UNITED STATES  
18-6352 ABERANT, JOSEPH K. V. UNITED STATES  
18-6355 SCOTT, CHRISTIAN D. V. UNITED STATES  
18-6358 HILTON, ALJ V. UNITED STATES  
18-6359 GOMEZ-SAAVEDRA, URIEL V. UNITED STATES  
18-6360 FAURISMA, JOCELYN V. UNITED STATES  
18-6361 JONES, BOB L. V. UNITED STATES  
18-6363 BERNHARDT, CALVIN V. UNITED STATES  
18-6366 BARBOSA, JOHN A. V. UNITED STATES  
18-6370 HARPER, CHARLES V. UNITED STATES  
18-6371 HENDERSON, TYRELL V. UNITED STATES  
18-6372 SMALL, MICHAEL V. LINDAMOOD, WARDEN  
18-6373 SEMIEN, ERWIN E. V. UNITED STATES  
18-6379 NAKHLEH, RAMESS V. UNITED STATES  
18-6389 LOMAX, ANTHONY V. UNITED STATES  
18-6391 HAWKS, MATTHEW V. V. UNITED STATES  
18-6436 CINTRON, JORGE V. FERGUSON, SUPT., PHOENIX, ET AL.  
18-6444 WHITNEY, JAMES E. V. KELLEY, DIR., AR DOC, ET AL.

The petitions for writs of certiorari are denied.

18-380 VANNOY, WARDEN V. FLOYD, JOHN D.

The motion of respondent for leave to proceed *in forma pauperis* is granted. The petition for a writ of certiorari is denied.

18-5925 LOREN, DEAN V. NEW YORK, NY, ET AL.

The petition for a writ of certiorari is denied. The Chief Justice took no part in the consideration or decision of this petition.

18-6387 BOWENS, SPENCER V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Sotomayor, with whom Justice Ginsburg joins, dissenting from the denial of certiorari: I dissent for the reasons set out in *Brown v. United States*, 586 U. S. \_\_\_\_ (2018) (Sotomayor, J., dissenting).

**HABEAS CORPUS DENIED**

18-6448 IN RE MICHAEL QUATTROCCHI

18-6470 IN RE GARY MALONE

18-6486 IN RE STEVE G. HERNANDEZ

18-6514 IN RE MELVIN T. BELL

The petitions for writs of habeas corpus are denied.

**REHEARINGS DENIED**

17-1537 MORRISON, PATRICIA V. QUEST DIAGNOSTICS INC., ET AL.

17-1571 MARRANCA, MICHAEL V. LOYTSKER, VALERY

17-1601 BARONE, NICOLE V. WELLS FARGO BANK, N.A.

17-1608 HOLKESVIG, RANDY V. NORTH DAKOTA

17-1612 HINDS, TERRY L. V. UNITED STATES

17-1621 ANDERSON, RODNEY Y. V. DAVIS, DIR., TX DCJ

17-1626 ASSADIAN, HAMID R. V. PARSI, REZA, ET AL.

17-1647 IN RE KEITH HENDERSON, ET AL.

17-1651 BATES, LAURENCE A., ET UX. V. PENTWATER, MI

17-1690 COONEY, JOSEPH V. BARRY SCHOOL OF LAW

17-7988 MATHURIN, JAMES V. UNITED STATES

17-8846 RAMEY, CORTRELL A. V. UNITED STATES

17-8937 FERGUSON-CASSIDY, CASH J. V. LOS ANGELES, CA, ET AL.

17-9078 ARLOTTA, JAMES P. V. BANK OF AMERICA, N.A., ET AL.

17-9210 BUTTERCASE, JOSEPH J. V. NEBRASKA

17-9311 JOHNSON, CHARLETTE D. V. UNITED STATES  
17-9331 CHASSON, AMOS V. SESSIONS, ATT'Y GEN.  
17-9352 VIOLA, ANTHONY L. V. BENNETT, MARK S.  
17-9423 WOODS, JIMMY D. V. ARIZONA  
17-9428 JOHNSON, GREGORY D. V. DAVIS, DIR., TX DCJ  
17-9444 STEPHENS, MARC A., ET AL. V. ENGLEWOOD, NJ, ET AL.  
17-9476 ELGHANNAM, ALI V. EDUCATIONAL TESTING SERVICE  
17-9504 RAY, LANCEY D. V. McCOLLUM, WARDEN  
17-9567 BROWN, ALICE V. DEL NORTE COUNTY, CA, ET AL.  
18-9 WASHINGTON, LISA V. AZAR, SEC. OF H&HS  
18-49 PLUMB, GEORGIA, ET AL. V. U.S. BANK, ET AL.  
18-92 PERRY, DAVID V. V. KRIEGMAN, BRUCE  
18-95 WENTZELL, KYRT M., ET AL. V. BP AMERICA, INC., ET AL.  
18-104 TUERK, ROBERT P. V. DISCIPLINARY BOARD  
18-139 FREEMAN, THOMAS E. V. NC DEPT. OF H&HS  
18-143 BART, SANDRA L. V. UNITED STATES  
18-186 SILVA-RAMIREZ, SAMUEL D. V. HOSPITAL ESPANOL, ET AL.  
18-5009 DRUMMOND, WADE A. V. SESSIONS, ATT'Y GEN.  
18-5094 SHERRY, JERRY W. V. DAVIS, DIR., TX DCJ  
18-5099 WILLIAMS, LENNIE V. LOS ANGELES COUNTY DPSS, ET AL.  
18-5178 BALTIMORE, KIMBERLY V. BUCK, FRANK S.  
18-5197 DIXIT, AKASH V. DIXIT, TANYA S.  
18-5235 THOMAS, ANTRONE A. V. CHANDRAN, DAVID  
18-5309 McLAIN, MAURICE V. UNITED STATES  
18-5316 VAUGHAN, SUSAN W. V. VAUGHAN, JENNIFER, ET AL.  
18-5327 MAKDESSI, ADIB E. V. FIELDS, LIEUTENANT, ET AL.  
18-5665 CABRERA, ORESTES V. UNITED STATES

18-5799

IN RE ROBERT N. SMITHBACK

The petitions for rehearing are denied.



GORSUCH, J., dissenting

**SUPREME COURT OF THE UNITED STATES**

VANESSA STUART *v.* ALABAMA

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF  
CRIMINAL APPEALS OF ALABAMA

No. 17–1676. Decided November 19, 2018

The petition for a writ of certiorari is denied.

JUSTICE GORSUCH, with whom JUSTICE SOTOMAYOR joins, dissenting from the denial of certiorari.

More and more, forensic evidence plays a decisive role in criminal trials today. But it is hardly “immune from the risk of manipulation.” *Melendez-Diaz v. Massachusetts*, 557 U. S. 305, 318 (2009). A forensic analyst “may feel pressure—or have an incentive—to alter the evidence in a manner favorable to the prosecution.” *Ibid.* Even the most well-meaning analyst may lack essential training, contaminate a sample, or err during the testing process. See *ibid.*; see also *Bullcoming v. New Mexico*, 564 U. S. 647, 654, n. 1 (2011) (documenting laboratory problems). To guard against such mischief and mistake and the risk of false convictions they invite, our criminal justice system depends on adversarial testing and cross-examination. Because cross-examination may be “the greatest legal engine ever invented for the discovery of truth,” *California v. Green*, 399 U. S. 149, 158 (1970) (internal quotation marks omitted), the Constitution promises every person accused of a crime the right to confront his accusers. Amdt. 6.

That promise was broken here. To prove Vanessa Stuart was driving under the influence, the State of Alabama introduced in evidence the results of a blood-alcohol test conducted hours after her arrest. But the State refused to bring to the stand the analyst who performed the test. Instead, the State called a *different* analyst. Using the

GORSUCH, J., dissenting

results of the test after her arrest and the rate at which alcohol is metabolized, this analyst sought to estimate for the jury Ms. Stuart’s blood-alcohol level hours earlier when she was driving. Through these steps, the State effectively denied Ms. Stuart the chance to confront the witness who supplied a foundational piece of evidence in her conviction. The engine of cross-examination was left unengaged, and the Sixth Amendment was violated.

To be fair, the problem appears to be largely of our creation. This Court’s most recent foray in this field, *Williams v. Illinois*, 567 U. S. 50 (2012), yielded no majority and its various opinions have sown confusion in courts across the country. See, e.g., *State v. Dotson*, 450 S. W. 3d 1, 68 (Tenn. 2014) (“The Supreme Court’s fractured decision in *Williams* provides little guidance and is of uncertain precedential value”); *State v. Michaels*, 219 N. J. 1, 31, 95 A. 3d 648, 666 (N. J. 2014) (“We find *Williams*’s force, as precedent, at best unclear”); *United States v. Turner*, 709 F. 3d 1187, 1189 (CA7 2013); *United States v. James*, 712 F. 3d 79, 95 (CA2 2013).

This case supplies another example of that confusion. Though the opinion of the Alabama court is terse, the State defends it by arguing that, “[u]nder the rule of the *Williams* plurality,” the prosecution was free to introduce the forensic report in this case without calling the analyst who prepared it. Brief in Opposition 6. This is so, the State says, because it didn’t offer the report for the truth of what it said about Ms. Stuart’s blood-alcohol level at the time of the test, only to provide the State’s testifying expert a basis for estimating Ms. Stuart’s blood-alcohol level when she was driving.

But while *Williams* yielded no majority opinion, at least five Justices rejected this logic—and for good reason. After all, why would any prosecutor bother to offer in evidence the nontestifying analyst’s report in this case except to prove the truth of its assertions about the level of

GORSUCH, J., dissenting

alcohol in Ms. Stuart’s blood at the time of the test? The whole point of the exercise was to establish—*because of the report’s truth*—a basis for the jury to credit the testifying expert’s estimation of Ms. Stuart’s blood-alcohol level hours earlier. As the four dissenting Justices in *Williams* explained, “when a witness . . . repeats an out-of-court statement as the basis for a conclusion, . . . the statement’s utility is then dependent on its truth.” 567 U. S., at 126 (opinion of KAGAN, J.). With this JUSTICE THOMAS fully agreed, observing that “[t]here is no meaningful distinction between disclosing an out-of-court statement so that the factfinder may evaluate the [testifying] expert’s opinion and disclosing that statement for its truth.” *Id.*, at 106 (opinion concurring in judgment).

Faced with this difficulty, the State offers an alternative defense of its judgment in this case. Even if it did offer the forensic report for the truth of its assertion about Ms. Stuart’s blood-alcohol level at the time of her arrest, the State contends that the Sixth Amendment right to confrontation failed to attach because the report wasn’t “testimonial.” Brief in Opposition 9.

But piecing together the fractured decision in *Williams* reveals this argument to be mistaken too—and this time in the view of *eight* Justices. The four-Justice *Williams* plurality took the view that a forensic report qualifies as testimonial only when it is “prepared for the primary purpose of accusing a targeted individual” who is “in custody [or] under suspicion.” 567 U. S., at 84. Meanwhile, four dissenting Justices took the broader view that even a report devised purely for investigatory purposes without a target in mind can qualify as testimonial when it is “made under circumstances which would lead an objective witness reasonably to believe that [it] would be available for use at a later trial.” *Id.*, at 121 (KAGAN, J., dissenting) (internal quotation marks omitted). But however you slice it, a routine postarrest forensic report like

GORSUCH, J., dissenting

the one here must qualify as testimonial. For even under the plurality's more demanding test, there's no question that Ms. Stuart *was* in custody when the government conducted its forensic test or that the report *was* prepared for the primary purpose of securing her conviction.

Respectfully, I believe we owe lower courts struggling to abide our holdings more clarity than we have afforded them in this area. *Williams* imposes on courts with crowded dockets the job of trying to distill holdings on two separate and important issues from four competing opinions. The errors here may be manifest, but they are understandable and they affect courts across the country in cases that regularly recur. I would grant review.