No. _____

In the
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2019

Cesar Rosario Lopez-Ramos,
Petitioner,

v.

State of Minnesota,
Respondent.

On Petition for a Writ of Certiorari to the
Supreme Court of the State of Minnesota

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Sixth Amendment's Confrontation Clause permits the prosecution to introduce testimonial statements in the form of an unidentified foreign language interpreter's English translation of a defendant's statement given in Spanish during a police interrogation, where the interpreter did not testify and the defendant did not have a prior opportunity to cross-examine the interpreter.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI

Petitioner Cesar Rosario Lopez-Ramos petitions for a writ of certiorari to review the judgment of the Minnesota Supreme Court.

OPINION BELOW

The opinion of the Minnesota Supreme Court, the highest state court to review the merits, is reported at *State v. Lopez-Ramos*, 929 N.W.2d 414 (Minn. 2019), and attached as Appendix A. The published opinion of the Minnesota Court of Appeals is reported at *State v. Lopez-Ramos*, 913 N.W.2d 695 (Minn. App. 2018), and attached as Appendix B. The trial court's order from the bench is attached as Appendix C.

JURISDICTION

The Minnesota Supreme Court issued its decision on June 12, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS

The Sixth Amendment of the United States Constitution provides in relevant part:

"In all criminal prosecutions, the accused shall enjoy the right … to be confronted with the witnesses against him …"

STATEMENT OF THE CASE

In April 2016, child protection officials and police in Worthington, Minnesota began an investigation into suspected sexual abuse of a 12-year-old female. The victim identified Petitioner as the suspect. [App. A1].

Police contacted Petitioner, who agreed to provide a statement. A police officer transported Petitioner to the law enforcement center and brought him into an interview room. [App. A1]. Petitioner's native language is Mam, an indigenous language spoken in Guatemala; Petitioner's second language is Spanish. [App. A10].

After reading Petitioner his *Miranda* rights and starting the recording system, the officer called the AT&T LanguageLine, a foreign language translation service, and requested a Spanish interpreter. [App. A1, A10]. When the interpreter, who was never identified by either name or location, was on the line, the officer put the call on speakerphone to conduct Petitioner's interrogation. [App. A1-A2]. The officer asked a question in English, the interpreter translated the question from English to Spanish, Petitioner responded in Spanish, and the interpreter translated his response from Spanish to English. [App. A1- A2]. During the interrogation, Petitioner made a statement admitting to sexual intercourse with the victim. [App. A2]. Petitioner was arrested at the end of the interrogation and charged with one count of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(a).

The case proceeded to a jury trial. Because the State was not going to call the interpreter to testify, Petitioner objected that the admission of his translated statement would violate the Sixth Amendment's Confrontation Clause. [App. A2; App. C2]. The

trial court overruled Petitioner's objection, concluding that the interpreter was acting as a language conduit and Petitioner was the declarant of the statements and, therefore, the admission of the translated statements did not violate the Confrontation Clause. [App. C3-C7].

During trial, the officer testified that Petitioner admitted during the interrogation to having sexual intercourse with the victim. [App. A2]. The officer further testified that Petitioner responded directly to the translated questions and did not seek clarification. [App. A2]. The officer acknowledged that he did not speak Spanish, did not understand the questions that the interpreter asked Petitioner, and understood only a few of the Spanish responses. The video recording of the interview was admitted into evidence and played for the jury. [App. A2].

Petitioner, who testified with the assistance of a Spanish-language court interpreter, denied having any sexual contact with the victim. [App. A2]. He testified that he was intoxicated during the police interview, did not understand the questions he was asked, and did not recall that an interpreter was used. [App. A2].

The jury found Petitioner guilty. [App. A2]. Petitioner appealed, arguing that the admission of the interpreter's translated statement violated his constitutional right to confront witnesses against him because the interpreter's translation was testimonial and Petitioner had no prior opportunity to cross-examine the interpreter. [App. B1]. The Minnesota Court of Appeals affirmed, ruling that upon a Confrontation Clause objection to admission of a translated statement, trial courts must determine the preliminary fact question of whether the interpreter's translation can fairly be attributable to the defendant

or whether the interpreter is an independent declarant. [App. B1, B8]. Applying a multi-factor test to that question, the court of appeals concluded that the district court did not clearly err in finding that because the interpreter acted as a mere language conduit and Petitioner was the declarant, no Confrontation Clause violation existed. [App. B9-B9].

Petitioner then sought and was granted review by the state's highest court, the Minnesota Supreme Court. In a 4-3 decision, the Minnesota Supreme Court affirmed. [App. A1]. The majority ruled that because the interpreter, unlike a forensic laboratory analyst, merely converted Petitioner's statement from one language to another, Petitioner was the declarant of the statements and the Confrontation Clause was therefore not implicated. [App. A4, A6]. Three justices dissented, believing instead that *Crawford v. Washington*, 541 U.S. 36 (2004), *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009) and *Bullcoming v. New Mexico*, 564 U.S. 647 (2011), required the conclusion that the interpreter was the declarant, the translated statement was testimonial and, because Petitioner was not given an opportunity to cross-examine the interpreter, his Confrontation Clause rights were violated. [App. A6-A9].

Petitioner now seeks a writ of certiorari from this Court.

REASONS FOR GRANTING THE PETITION

The Writ Should Issue Because There Is A Split Of Authority Among Federal Circuit Courts And State Courts, This Case Presents An Important Undecided Federal Constitutional Issue That Should Be Decided By This Court, This Case Is An Ideal Vehicle To Resolve The Question, And The Minnesota Supreme Court's Wrongly-Decided Opinion Is In Conflict With Prior Decisions Of This Court.

The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him[.]" U.S. Const. amend. VI. This Court held in *Crawford* that the prosecution may not introduce testimonial hearsay against a criminal defendant unless the declarant is unavailable and the defendant had a prior opportunity for cross-examination. *Crawford*, 541 U.S. at 54. Courts around the country are divided over whether the Confrontation Clause, as interpreted by *Crawford* and its progeny, allows the government to introduce a translated statement when the foreign-language interpreter who did the translation does not testify and the defendant had no opportunity to cross-examine the interpreter. This important question of federal constitutional law significantly impacts the administration of criminal justice, and this Court should use this case to resolve the deepening disagreement. The decision of the Minnesota Supreme Court conflicts with this Court's prior decisions; because the Confrontation Clause does not allow blanket exceptions for interpreters any more than it allows blanket exceptions for laboratory analysts, the opinion below cannot stand.

I. Courts around the country are divided on the Confrontation Clause's application to a foreign-language interpreter's translation.

There is a profound and deepening disagreement among the lower courts, federal and state alike, on the question of whether, and under what circumstances, the Confrontation Clause applies to an interpreter's translation of a defendant's foreign-language statement. The Ninth Circuit, in a pre-*Crawford* case, adopted a multi-factor test for determining whether a translator may be considered the defendant's language conduit or agent, such that the translator's statements may be imputed to the defendant for Confrontation Clause purposes. *United States v. Nazemian*, 948 F.2d 522 (9th Cir. 1991). Applying those factors, the *Nazemian* court concluded that a DEA agent's testimony relating foreign-language statements the defendant made, even though the agent could not understand the statements directly and only heard them as translated by a non-testifying interpreter, did not offend the Confrontation Clause because the interpreter was a mere language conduit and the translated statements could fairly be attributed to the defendant. *Id.* at 527-28. *Nazemian*'s case-by-case approach is followed by a majority of jurisdictions.[1]

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[1] Federal courts that have followed the reasoning of *Nazemian* include: *United States v. Orm Hieng*, 679 F.3d 1131, 1139 (9th Cir. 2012) (plain-error review of court's decision to allow officer testimony about defendant's statements to non-testifying language interpreter in post-arrest interview); *United States v. Budha*, 495 F. App'x 452, 454 (5th Cir. 2012) (holding that non-testifying interpreters may be viewed as language conduits whose translations of defendant's statements do not implicate confrontation rights); *United States v. Vidacak*, 553 F.3d 344, 352 (4th Cir. 2009) (applying *Nazemian* factors to determine that interpreter was only language conduit and officer's testimony was not double hearsay). State courts following *Nazemian* include: *Correa v. Superior Court*, 40 P.3d 739 (Cal. 2002) (holding that police testimony about translated statements did not violate due process or Confrontation Clause); *People v. Gutierrez*, 916 P.2d 598 (Col.

Other courts, particularly post-*Crawford*, have taken a different approach. In direct contrast to the Ninth Circuit, the Eleventh Circuit has rejected the language conduit theory as the proper analysis to determine the Confrontation Clause's application to interpreters because "given the nature of language interpretation, the statements of the language interpreter and [the defendant] are not one and the same." *United States v. Charles*, 722 F.3d 1319, 1324 (11th Cir. 2013).[2] The Eleventh Circuit also rejected a reliability analysis of the interpreter's statements because *Crawford* specifically rejected reliability as inadequate protection against Confrontation Clause violations. *Id.* at 1327-28. In *Charles*, after finding that the statements of the interpreter as to what the defendant said during a police interrogation were testimonial, the court reasoned, "for purposes of the Confrontation Clause, there are two sets of testimonial statements that

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App. 1995) (adopting Nazemian and affirming trial court that non-testifying informant was mere language conduit for communication between officer and drug dealer); *Hernandez v. State*, 662 S.E.2d 325 (Ga. Ct. App. 2008) (affirming trial court ruling that admitting audiotape of in-custody interview with non-testifying translator did not violate confrontation rights under state language conduit rule and *Nazemian*); *People v. Jackson*, 808 N.W.2d 541 (Mich. Ct. App. 2011) (ruling that admission of statements by non-testifying nurse who reported victim's physical responses to police questions was not inadmissible hearsay under "language conduit" rule); *State v. Patino*, 502 N.W.2d 601 (Wis. Ct. App. 1993) (finding no Confrontation Clause violation of admission of officer's testimony of interpreter's English translation of defendant's statement under language conduit theory); *State v. Rivera-Carrillo*, 2002 WL 371950 (Ohio Ct. App 2002) (finding interpreter was language conduit between defendant and detectives and no error in admitting evidence of interpreter's English translations of defendant's statements during interrogation).

[2] In addition, *United States v. Curbelo*, 726 F.3d 1260 (11th Cir. 2013) found that an interpreter's implicit assertion that transcripts of a wiretapped conversation were accurate qualified as a testimonial hearsay statement under the Confrontation Clause, but the transcripts were admissible without the interpreter's testimony because a co-conspirator who spoke Spanish and English and was present when the statements were made testified to their accuracy and was available for cross-examination.

were made out-of-court by two different declarants. Charles is the declarant of her out-of-court Creole language statements and the language interpreter is the declarant of her out-of-court English language statements." *Id.* at 1324. Accordingly, the defendant "has a Sixth Amendment right to confront the interpreter, who is the declarant of the out-of-court testimonial statements that the government sought to admit through the testimony of the [] officer." *Id.* at 1323.[3]

Taylor v. State, 130 A.3d 509 (Md. Ct. Spec. App. 2016), is another example. *Taylor* concerned the constitutional right of a deaf criminal defendant to confront the sign-language interpreter who interpreted his statements during a police interrogation, where the interpreter did not testify at trial. 130 A.3d at 322. The Maryland court concluded that the statements at issue were testimonial because they were made as part of an investigation into past conduct that was possibly criminal, interpreters were not categorically exempt from cross-examination, and, following the *Charles* approach, the defendant's Sixth Amendment right to confront the interpreter was violated. *Id.* at 540. Maryland's disagreement with the Ninth Circuit was pointed. *Id.* at 368-69 ("we can safely conclude that no court could adopt *Nazemian*'s constitutional test without abandoning or substantially undercutting *Crawford*, *Melendez–Diaz*, and *Bullcoming*. In

[3] Unlike Petitioner's case, the court's review in *Charles* was for plain error based on a lack of trial objection, and the court determined the error was not plain because there "is no binding circuit precedent (prior to our decision here) or Supreme Court precedent clearly articulating that the declarant of statements testified to by the CBP office is the language interpreter." *Id.* at 1331.

our view, the Eleventh Circuit's analysis from 2013, and not the Ninth Circuit's reasoning from the pre-*Crawford* era, illustrates the correct application of current law.").

The Minnesota Supreme Court's decision in this case widens the conflict over whether, or in what circumstances, the Confrontation Clause applies to foreign-language interpreters. While acknowledging the *Nazemian* factors in a footnote, the Minnesota Supreme Court did not adopt that approach as the rule in Minnesota, appearing instead to craft a bright-line rule that "the use of an interpreter to translate a statement from one language to another does not implicate the Confrontation Clause. The Confrontation Clause is not implicated because the act of processing the statement from one language to another does not transform the interpreter into a witness against the defendant." *Lopez-Ramos*, 929 N.W.2d at 420.

The majority and dissenting opinions issued by the Minnesota Supreme Court diverged sharply on the applicability of this Court's post-*Crawford* cases to statements made by a foreign-language interpreter, mirroring the disagreement that exists nationally as courts struggle with the continuing viability of the *Nazemian* approach. *See United States v. Orm Hieng*, 679 F.3d 1131, 1140 (9th Cir. 2012) ("Even if there is some tension, our approach to interpreted statements is not clearly inconsistent with the *Crawford* line of cases. Without a further pronouncement from the Court, we conclude that *Nazemian* remains binding in this circuit."); *Com. v. AdonSoto*, 58 N.E.305, 313 (Mass. 2016) ("Federal courts, in the absence of guidance from the United States Supreme Court post-*Crawford*, have grappled with the issue of a defendant's right to confrontation of an interpreter, reaching different outcomes."); *Jackson v. Hoffner*, 2017 WL 1279232 at *9

(E.D. Mich. 2017) ("The *Nazemian* decision pre-dated *Crawford*. There is disagreement among the Circuits about *Nazemian*'s validity following *Crawford*."). *See generally* Kimberly J. Winbush, Annotation, *Application of Confrontation Clause Rule to Interpreter's Translations or Other Statements – Post-Crawford Cases*, 26 A.L.R. 7th Art. 1, § 2 (2017).

This Court is the final arbiter of federal constitutional issues. *Arizona v. Evans*, 514 U.S. 1, 9 (1995). The split of authority and confusion in the law is a compelling reason for review, this Court's analysis and decision is needed to guide lower courts, police departments, prosecutors, and criminal defense practitioners.

II. The Confrontation Clause's application to a foreign-language interpreter's translated statement is an important issue with broad implications to the criminal justice system, and this case is an ideal vehicle to consider the constitutional question.

It is critically important for this Court to decide the question of whether the Sixth Amendment permits the government to introduce a translation of a criminal defendant's statement given during a police interrogation when the foreign language interpreter who translated the statement does not testify and the defendant had no prior opportunity to cross-examine the interpreter. It is an issue of first impression for this Court, and one of constitutional magnitude, implicating a criminal defendant's fundamental federal constitutional right to confront witnesses against him and application of this Court's decisions in *Crawford* and its progeny.

Further, there is a pressing need for this Court's involvement. Statements and confessions by defendants obtained during police interrogations play a central role in a

large number of criminal trials. Reflecting broader national demographic changes, there are enormous numbers of users of the court systems at both state and federal levels who have limited English-language proficiency. "In the last twenty-five years, the number of LEP [Limited English Proficiency] individuals in the United States has nearly doubled to over 25 million. These demographic shifts are happening all across America. Thus, while immigrants and the next generation learn English, data from the U.S. Census Bureau reveals the widespread need for language services. In 2013, one out of every three counties was home to 1,000 or more LEP residents, and in one out of every five counties, at least 5% of residents identified as LEP." U.S. Department of Justice Civil Rights Division, Federal Coordination and Compliance Section, *Language Access in State Courts* at p. 2, Sept. 2016.[4] *See also* National Center for State Courts, *A National Call to Action: Access to Justice for Limited English Proficient Litigants, Creating Solutions to Language Barriers in State Court*, at p. iv, July 2013. ("In our state courts today, the extent of the need for language interpretation services is staggering. Between 1990 and 2010, the number of LEP individuals in the United States grew by 80%, which represents 25.2 million people or 9% of the total U.S. population.").[5] It is not a stretch to recognize that these demographic data will result in an increasing number of police interrogations

[4] Available at https://www.justice.gov/crt/file/892036/download (last visited September 6, 2019).

[5] Available at https://www.ncsc.org/services-and-experts/areas-of-expertise/language-access/~/media/files/pdf/services%20and%20experts/areas%20of%20expertise/language%20access/call-to-action.ashx (last visited September 6, 2019).

of individuals with limited proficiency in English and, consequently, use of foreign-language interpreters to bear witness about what was said during the interrogation.

The division in courts' approaches highlights substantial and weighty concerns that require resolution from this Court, both as to the nature of language interpretation and the viability of the language-conduit theory in the Sixth Amendment framework. The Minnesota Supreme Court took a pinched view of the role of a foreign language interpreter in the constitutional analysis, asserting that the interpreter merely "convert[s] a statement from one language to another" without providing content; the interpreter "simply makes the language-conversion process more efficient and effective." *Lopez-Ramos*, 929 N.W.2d at 420. One does not need to look far to see the weight of authority disagreeing with this assertion. *Lopez-Ramos*, 929 N.W.2d at 425, 426 (Hudson, J, dissenting) (noting that the majority's language-conduit theory sidesteps *Crawford*'s mandate and that "interpreters, like laboratory analysts, often add content and nuance. And also like analysts, interpreters make mistakes."). As one federal court observed more than sixty years ago:

> This Court has tried many cases in which the services of interpreters have been employed and is fully cognizant of the fact that sometimes it is very difficult to interpret and translate questions and answers from English to a foreign language and from the foreign language into English and still retain the niceties of expression, nuances, and intent and meaning of the statements. Even interpreters themselves disagree as to what meaning is intended from the statement made by witnesses. Recently it was this Court's experience that two interpreters at the same trial failed to agree on what a witness said. It is difficult under any circumstances to obtain testimony through interpreters, as language suffers by translation and often the true expression and meaning is lost.

Frausto v. Brownell, 140 F.Supp. 600, 666 (S.D. Cal. 1956). *See also* National Association of Judiciary Interpreters and Translators, *Frequently Asked Questions-Court and Legal Interpreting and Translating* ("Some judges and attorneys have a mistaken belief that an interpreter renders court proceedings word for word, but this is impossible since there is not a one-to-one correspondence between words or concepts in different languages. For example, sometimes one word in English requires more than one word in another language to get the same idea across, and vice versa. Rather than word for word, then, interpreters render meaning by reproducing the full content of the ideas being expressed. Interpreters do not interpret words; they interpret concepts.").[6]

Disagreement over whether the "language conduit" approach is consistent with *Crawford*'s mandate persists in the lower courts. *E.g., Charles*, 722 F.3d at 1327 (noting that the view of an interpreter as a language conduit "was premised on the court's assessment of the interpreter's reliability and trustworthiness, principles supporting the admissibility of the interpreter's statements under Rules 801(d)(2)(C) or (D), but having no bearing on the Confrontation Clause."). Answers to questions about the nature of foreign language translation and the role of the language-conduit theory have divided lower courts and are critical to resolution of the constitutional issue, and must be addressed by this Court.

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[6] http://najit.org/resources/the-profession/ (last visited Aug. 24, 2019).

Finally, this case is an ideal vehicle for resolving this question. Petitioner unambiguously objected at trial to the introduction of the interpreter's translation on Confrontation Clause grounds, and the trial court directly ruled on the objection. The Confrontation Clause question was raised on direct review, and squarely addressed on the merits by both Minnesota's intermediate and high court. There can be no serious question that, if the interpreter is the declarant, then the statement was testimonial and that it played a central role in securing Petitioner's conviction. *Lopez-Ramos*, 929 N.W.2d at 427-429 (Hudson, J, dissenting) (finding that the interpreter's statement to police alleging a confession by Petitioner was testimonial and "[o]bviously, the district court's decision to admit the statement was not harmless beyond a reasonable doubt."); *Charles*, 722 F.3d at 1329 ("[T]he interpreter's statements are testimonial as they were specifically obtained for use in a criminal investigation and the fact that the interpreter may be competent does not exempt the interpreter from cross-examination."). The Court should use this case to resolve this pressing constitutional question.

III. The Minnesota Supreme Court's opinion is in conflict with this Court's prior decisions.

The Minnesota Supreme Court's opinion stands in conflict with prior decisions of this Court, and in so doing impermissibly creates an exception to the Confrontation Clause for language interpreters based on a reliability test similar to the one that *Crawford* already rejected.

Crawford repudiated the reliability analysis of *Ohio v. Roberts*, 448 U.S. 56, 66 (1980), which permitted admission of testimonial statements based on a judicial finding

of reliability. *Crawford*, 541 U.S. at 61 ("Where testimonial statements are involved, we do not think the Framers meant to leave the Sixth Amendment's protection to the vagaries of the rules of evidence, much less to amorphous notions of 'reliability.'"). This Court's post-*Crawford* jurisprudence has held firm to the Sixth Amendment's core tenant – that the reliability of evidence "be assessed in a particular manner: by testing in the crucible of cross-examination." *Crawford,* 541 U.S. at 61. In *Melendez-Diaz*, this Court held that the prosecution violates the Confrontation Clause when it introduces forensic laboratory reports into evidence without affording the accused an opportunity to "'be confronted with' the analysts at trial." *Melendez-Diaz*, 557 U.S. at 311. And in *Bullcoming*, this Court held that a defendant had a right to confront the forensic laboratory analyst who prepared and signed a testimonial report certifying the defendant's blood alcohol content, unless the analyst was unavailable and the defendant had a prior opportunity to cross-examine the analyst. *Bullcoming*, 564 U.S. at 652. The surrogate testimony of another analyst who neither observed the testing nor reviewed the analysis, *Bullcoming* clarified, did not satisfy the Confrontation Clause. *Id.* at 660-62.

The Minnesota Supreme Court distinguished *Bullcoming* and *Melendez-Diaz* by finding that language interpreters are more akin to court reporters, machines or to a person using a foreign-language dictionary than to the laboratory analysts. *Lopez-Ramos*, 929 N.W.2d at 421 ("These cases are distinguishable because, unlike a forensic laboratory analyst, a foreign language interpreter simply converts information from one language to another language without adding content.")

The court was incorrect. *Bullcoming* and *Melendez-Diaz* considered - and rejected - establishing categories of witnesses, such as analysts, or witnesses who were non-adversarial, neutral or scientific, exempt from confrontation. Nothing in *Crawford*, *Melendez-Diaz* or *Bullcoming* suggested that interpreters are not the declarants of testimonial statements they make or that interpreters are within a class of witnesses exempt from confrontation. To the contrary, *Melendez-Diaz* noted that the Sixth Amendment "contemplates two classes of witnesses – those against the defendant and those in his favor. ... there is not a third category of witnesses, helpful to the prosecution, but somehow immune from confrontation." 557 U.S. at 313-14. Applying this to Petitioner's case, the interpreter was still a "witness against" petitioner. *Id.* By finding that Petitioner was the declarant of testimonial statements made by the interpreter, the Minnesota Supreme Court improperly carved out a Confrontation Clause exception for interpreters.

Equally troubling, although *Crawford* overruled *Robert*s and its "amorphous notions of reliability," *Crawford*, 541 U.S. at 61, the Minnesota decision returned to a reliability test to determine the admissibility of testimonial statements. *Lopez-Ramos*, 929 N.W.2d at 420 (noting that its conclusion that "generally unbiased and adequately skilled foreign language translator simply serves as a 'language conduit'" and therefore does not implicate the Confrontation Clause was consistent with the *Nazemian* line of cases). This approach is at odds with *Crawford*, which stated, "[w]here testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is the one the Constitution actually prescribes: confrontation." *Crawford,* 541 U.S. at 68-69.

See also Bullcoming, 564 U.S. at 661 (explaining the Court had "settled in *Crawford* that the 'obviou[s] reliab[ility]' of a testimonial statement does not dispense with the Confrontation Clause."). The Sixth Amendment and this Court's cases require the prosecution to make the declarant of testimonial evidence available for cross-examination so the defendant can test the reliability of the evidence through cross-examination. The Minnesota Supreme Court's decision is in direct conflict with this mandate, and must not be allowed to stand.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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