No. _____

In the
Supreme Court of the United States

BENJAMIN RAMIREZ RUIZ,

Petitioner,

v.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Was a statement made to a child protective services investigator testimonial for the purposes of the Sixth Amendment Confrontation Clause as established in *Crawford v. Washington,* 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2003) , at least when the statement was made in the presence of, and recorded by, a police officer and there was no ongoing emergency?

LIST OF ALL PARTIES

Petitioner

BENJAMIN RAMIREZ RUIZ.

Respondent

PEOPLE OF THE STATE OF CALIFORNIA.

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CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THE CASE BY COURTS OR ADMINISTRATIVE AGENCIES.

People v. Ramirez Ruiz, 56 Cal. App. 5th 809 (2020). The order denying review was unpublished and is included in the Appendix.

BASIS FOR JURISDICTION IN THE SUPREME COURT.

1. Date of entry of order sought to be reviewed: October 27, 2020 (Court of Appeals opinion) February 10, 2021 (order denying review.)

2. Date of any order respecting rehearing: not applicable.

3. Statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari the judgment or order in question: 28 U.S.C. section 2101(d).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

1. United States Constitution.

Sixth Amendment: In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him."

Fourteenth Amendment. . . . No State shall . . . deprive any person of . . . liberty . . . without due process of law. . . .

2. Federal statutes and rules.

28 U.S.C. section 2101(d): The time for appeal or application for a writ of certiorari to review the judgment of a State court in a criminal case shall be as prescribed by rules of the Supreme Court.

Supreme Court Rule 13. Review on Certiorari: .

1. Unless otherwise provided by law . . . . a petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review.

5. For good cause, a Justice may extend the time to file a petition for a writ of certiorari for a period not exceeding 60 days.

3. State statutes.

California Penal Code section 261(a)(2): (a) Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator . . . . (2) Where it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.

California Penal Code section 288: . . . a person who willfully and lewdly commits any lewd or lascivious act . . . upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony . . .

California Penal Code section 288.5(a): Any person who . . . resides in the same home with the minor child . . . , who over a period of time, not less than three months in duration, engages in three or more acts of substantial sexual conduct with a child under the age of 14 years at the time of the commission of . . . three or more acts of lewd or lascivious conduct, as defined in Section 288, with a child under the age of 14 years at the time of the commission of the offense is guilty of the offense of continuous sexual abuse of a child.

California Penal Code section 288.7(b): . . . Any person 18 years of age or older who engages in oral copulation . . . with a child who is 10 years of age or younger is guilty of a felony . . .

STATEMENT OF THE CASE.

1. Specification of Stage in the Proceedings in Which the Federal Questions Sought to Be Reviewed Were Raised, the Manner of Raising Them, and the Way in Which They Were Passed On.

A California jury convicted petitioner Benjamin Ramirez-Ruiz of one count of California Penal Code section 261(a)(2), one count of California Penal Code section 288.5(a), and one count of California Penal Code section 288.7(b). Petitioner was sentenced to a total of 44 years to life. (CT. vol. 2, pp. 398. 400.)

On appeal, the Court of Appeals set aside petitioner's section 288.7(b) conviction and upheld the other two convictions in a written opinion, *People v. Ramirez Ruiz*, 56 Cal. App. 5th 809 (2020). The Court of Appeals remanded the appeal with instructions to prepare an amended abstract of judgment. *Ramirez-Ruiz*, 56 Cal.App.5th at 834.

On February 10, 2021, the California Supreme Court summarily denied his petition for review by order. (S265914.)

2. Statement of Facts.

a. Brenda's recorded interview.

The charges involved a minor, Brenda Doe, born January 21, 2005, who was eleven at the time of the interview. Brenda Doe declined to testify at trial. (RT. vol. 3, p. 86, 87, 95.)

The court allowed a child protective services investigator, Donnelly, to testify about a field interview that Donnelly had conducted with Brenda on September 19, 2016. The court also admitted a recording made of the interview by a police officer, Piper.

Donnelly testified that she and Piper had come to petitioner's home on September 19, 2016 with a Spanish interpreter, second CPS worker and police sergeant to investigate a report or alleged molestation made by Brenda's mother. Piper recorded the interviews of both the mother (in Spanish), and Brenda (in English.)

In Brenda's interview, Donnelly, toward the end of her interview, elicited incriminating statements from Brenda about petitioner's alleged molestation of her as follows:

> Donnelly: "Okay. Um, then, one question, um, important so I guess, um, has anyone ever touched you in a way that made you feel uncomfortable?"
>
> Brenda: "Yes."
>
> Donnelly: "Can you tell me a little bit more about that?"
>
> Brenda: "My dad."
>
> Donnelly: ". . . . Do you wanna tell me when the last time was?"
>
> Brenda: "On Friday."
>
> Donnelly: "All right. Um, can you tell me where?"
>
> Brenda: " . . . . In my private part."
>
> Donnelly: " . . . Okay. You're doing a good job okay? We're gonna make sure you're safe okay? . . . Is there anything else?"
>
> Male Voice (apparently Piper): " . . . You're doing a really great job."
>
> Donnelly: " . . . what did he touch you with there?
>
> Brenda: " . . . "His private part."
>
> Donnelly: " . . . . when was the first time it happened?"

> Brenda: "Like, three months ago, and then I didn't wanna tell my mom, and then when that happened I told him, I'm gonna tell my mom and he said if you tell her I'm gonna hit you."

(CT vol. 1, pp. 305-306.)

Donnelly then said, apparently to Piper, "I think we have enough." (CT. vol. 1, pp 301, 306.)

b. Defense motion to exclude Brenda's interview.

Petitioner moved to exclude Brenda's statements during the recorded interview and Donnelly's testimony about Brenda's statements on the grounds that Brenda's statements were testimonial hearsay under *Crawford v. Washington*. (CT. vol. 1, p. 220-223.) The trial court found that Brenda's statements were not testimonial hearsay. (RT. vol. 4, p. 193.)

c. Trial testimony.

i. Donnelly.

Donnelly testified that on September 20th 2016, she had gone to Brenda's home along with another child protective services worker, Ms. Danielle, Officer Piper, an unnamed police sergeant, and a Spanish interpreter to check on Brenda's safety after having received a report that Brenda had been a victim of sexual abuse. (RT. vol. 4, p. 203, 205.) Petitioner was present when Donnelly arrived. The sergeant remained with petitioner in the living room. (RT. vol. 4, p. 203, 213.) Donnelly, Piper, Danielle, and the Spanish interpreter took Brenda into a bedroom and interviewed her. (RT. vol. 4, p. 205.) During the initial portion of the interview, Piper asked no questions but tape recorded the interview. (RT. vol. 4, p. 207.) Donnelly claimed not to know that Piper was recording the interview. (RT. vol. 4, p. 207.) Donnelly identified the recording and it was played for the jury. (RT. vol. 4, p. 208-210.)

ii. Piper.

Piper began recording the moment they entered the apartment. (RT. vol. 4, p. 223.) He said he recorded the entire visit "in case something came of it because welfare checks sometimes turn into something else." Piper agreed that if a court case was to come of the visit, he had the recording for that. (RT. vol. 4, p. 224.) Piper didn't tell Donnelly that he was recording the visit through oversight. (RT. vol. 4, p. 224.)

iii. Detective Lopez.

Lopez had interrogated petitioner. In the recorded interrogation, petitioner said that if he had touched Brenda's breasts, it was unintentional, while playing, or when he picked Brenda up. (Exhibit 8b, p. 9, 11), and that Brenda might have touched his penis a couple of times. (Exhibit 8b, p. 17.) Petitioner said he may have tried to penetrate Brenda when playing (Exhibit 8b, p. 28), but then insisted that he never penetrated Brenda. (Exhibit 8b, p. 29.) He admitted that

he touched Brenda's private part but didn't take off her underwear or put his finger inside Brenda's vagina. (Exhibit 8b, p. 31.) He said that Brenda had grabbed his penis. (Exhibit 8b, p. 32-33.) Petitioner admitted that Brenda put his penis inside her mouth, but he didn't remember whether he put his penis in Brenda's mouth. (Exhibit 8b, p. 39.) Petitioner alternatively admitted and denied having sexual relations with Brenda. Exhibit 8b, p. 41-43.)

iv. Petitioner.

Petitioner testified that he had never deliberately tried to touch Brenda's breasts or vagina. (RT. vol. 6, p. 504.) What he said in the taped interrogation about engaging in sexual activities with Brenda was false. (RT. vol. 6, p. 504-505.) He had never seen Brenda's vagina. (RT. vol. 6, p. 505.) Petitioner admitted to some sexual activities in his interrogation because Detective Lopez asked him if he wanted Brenda to go through the embarrassment of being questioned in court about such activities. (RT. vol. 6, p. 506.)

ARGUMENT

1. The Court of Appeal's decision went far beyond, and even contradicted, this Court's *Crawford* decisions on testimonial hearsay.

In *Crawford v. Washington,* 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2003) the United States Supreme Court held that the admission of "testimonial hearsay" against a criminal defendant violates the Sixth Amendment right to confront and cross-examine witnesses unless the defendant had a prior opportunity to cross-examine the witness.

Crawford involved a station-house interview of a witness by the police. The Supreme Court found the witness' statements testimonial because they were "made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial." *Crawford v. Washington*, 124 S. Ct. at p. 1364.

While *Crawford* didn't set the limits of "testimonial hearsay", it held that, at a minimum, "testimonial hearsay" would include former testimony and police interrogations. *Crawford v. Washington*, 541 U.S. at 68. This holding implied that any witness statements to a police officer is usually testimonial.

In *Davis v. Washington,* 547 U.S. 813, 126 S. Ct. 2266, 165 L. Ed. 2d 224 (2006), the Supreme Court created an "ongoing emergency" exception to *Crawford*. *Davis* held statements made to a 911 dispatcher describing an ongoing domestic assault were not testimonial. However, *Davis* also held that statements elicited in informal in-the-field interviews by police were "testimonial hearsay." Thus, held *Davis*, once the victim's boyfriend had driven away from her home, statements elicited by the 911 dispatcher from her were similar to those obtained in a station-house interrogation and therefore testimonial. *Davis v. Washington*, 547 U.S. at 827-828.

Davis' companion case, *Hammon v. Indiana*, involved a field interview at the victim's home about a domestic assault that had already occurred. The facts in *Hammon* were similar to this case. One officer kept Mr. Hammon in one room, and the other officer took Mrs. Hammon into another room, interviewed her, and had her "her fill out and sign a battery affidavit." *Davis v. Washington,* 547 U.S. at 820. This court found Mrs. Hammon's statements "not much different from the statements we found to be testimonial in *Crawford." Davis v. Washington,* 547 U.S. at 849. The "interrogation was part of an investigation into possibly criminal past conduct—as, indeed, the testifying officer expressly acknowledged." *Id.* The Supreme Court went on to state:

> "Both declarants were actively separated from the defendant — officers forcibly prevented [the victim's husband] from participating in the interrogation. Both statements deliberately recounted, in response to police questioning, how potentially criminal past events began and progressed. And both took place some time after the events described were over. Such statements under official interrogation are an obvious substitute for live testimony, because they do precisely what a witness does on direct examination; they are inherently testimonial."

Davis v. Washington, 547 U.S. at 830.

Brenda's statement was taken under similar circumstances. Two officers responded, one kept petitioner in the living room while the other took Brenda into another room. The differences were that non-officers were present along with the officers — an interpreter and two child protective service workers — and one of the CPS workers interviewed Brenda instead of one of the officers. Even so, the officer who was present at Brenda's interview admitted that he recorded the entire visit "in case something came of it because welfare checks sometimes turn into something else", and that, if a court case was to come of the visit, he had the recording for that. (RT. vol. 4, p. 224.)

In *Michigan v. Bryant,* 562 U.S. 344, 131 S. Ct. 1143, 179 L. Ed. 2d 93 (2010), the Supreme Court slightly expanded the "ongoing emergency" exception to include shooting cases in which it was immediately necessary for the police to locate a suspect with a gun who had already fatally shot someone and was thus a danger to public safety. However, the Supreme Court reaffirmed *Davis* and *Hammon*, at least in cases where no gun was involved, explaining that such domestic violence cases "often have a narrower zone of potential victims than cases involving threats to public safety . . . . *Davis* and *Hammon* did not present medical emergencies, despite some injuries to the victims." *Michigan v. Bryant*, 562 S. Ct. at 364.

Crawford, Davis, Hammon, and *Bryant* all involved statements taken by police officers or, in *Davis*' case, the police dispatcher. *Ohio v. Clark,* 576 U.S. 237, 135 S.Ct. 2173, 192 L.Ed.2d 306 (2013) concerned a statement taken by a non-officer. The Supreme Court considered the very young age of the child interviewed and the extreme informality of the interview in determining that statements made by a child were non-testimonial.

A preschool teacher had noticed bruises on a 3 year old child and asked who had made the

marks. The child responded, "Dee". Asked if "Dee" was big or little, the child responded: "Dee is big." The 3 year old child was found incompetent to testify at trial based on his age, but the identifying statements from the teacher were admitted at defendant's trial. The Supreme Court found that the primary purpose of questioning the child was to identify who made the bruises, so that the school could determine whether it was safe to release the child to his guardian at the end of the school day, not to obtain evidence for prosecution. *Ohio v. Clark*, 576 U.S. at 246. The Court, however, went on to find that at the time of the Sixth Amendment's adoption, courts often tolerated hearsay of a child who was "not competent to testify because she was too young to appreciate the significance of her oath," and when they excluded such testimony, "they appeared to do so because the child should have been ruled competent to testify, not because the statements were otherwise inadmissible." *Ohio v. Clark*, 576 S.Ct. at 248.

In deciding that Brenda's statements were non-testimonial, the California Court of Appeal relied on *Ohio v. Clark*, *People v. Ramirez Ruiz*, 56 Cal. App. 5th at 824, despite the considerable differences in the facts of both cases – Brenda was 11 at the time of the interview, not 3, and the interview was like a *Hammon* field interview with CPS workers added, not at all like the casual conversation between the pre-school teacher and the 3 year old in *Clark*. Brenda was hardly incompetent to testify, as the trial court went through about ten pages of reporter's transcript in trying to convince her to do so. (RT. vol. 3, p. 83-93.)

The California Court of Appeal qualified its opinion slightly, stating:

> "We are troubled by the fact that Deputy Piper recorded Donnelly's interview of Minor and we do not condone such conduct on the part of law enforcement officials accompanying child welfare workers on a welfare check. Recording an interview tends to indicate the interview has a testimonial purpose and, in many circumstances, will result in exclusion of the recorded statements. If the social worker had understood in advance that the deputy planned to record the interview or even had she been aware he was recording while she was interviewing the Minor, the outcome might be different. If the circumstances otherwise indicate an implicit agreement between child welfare workers and law enforcement officials to conduct an interview for dual purposes, admission of such an interview would implicate a defendant's Sixth Amendment rights."

People v. Ramirez Ruiz, 56 Cal. App. 5th at 826-827.

Thus, the Court of Appeal's decision turned on the CPS worker Donnelly's primary purpose in conducting Brenda's interview, and Donnelly's subjective lack of awareness that the officer, Piper, was recording the interview. The Court of Appeal placed no significance on the officer's admission that his purpose in recording the interview was to preserve Brenda's statement for a criminal trial "in case something came of it." (RT. vol. 4, p. 224.)

People v. Ramirez Ruiz not only went well beyond anything the Supreme Court had decided since *Crawford,* but contradicted key provisions of the "primary purpose doctrine." In *Davis*, the Supreme Court held that the "primary purpose" of significance was the purpose of the

interrogation itself, not the interrogator's subjective purpose in conducting it, and was to be determined by the objective circumstances surrounding the interrogation, not the interrogator's subjective intent in conducting the interview. *Davis v. Washington*, 547 U.S. at 822, 828.

In *Bryant*, the Court required consideration of "all of the relevant circumstances" *Michigan v. Bryant*, 562 U.S. at 369, but insisted that the inquiry remained objective, stating that "taking into account a victim's injuries does not transform this objective inquiry into a subjective one." *Id.*

Clark reaffirmed *Davis'* definition of the "primary purpose" doctrine as concerning the interrogation, to be determined by objective circumstances. *Ohio v. Clark*, 576 U.S. at 244, noted that *Davis* had found that where "that purpose is not to create a record for trial", the interrogation would not result in testimonial hearsay, and that *Bryant* had simply "noted that 'there may be *other* circumstances, aside from ongoing emergencies, when a statement is not procured with a primary purpose of creating an out-of-court substitute for trial testimony.'" also required consideration of "all of the relevant circumstances." *Ohio v. Clark*, 576 U.S. at 245, quoting *Michigan v. Bryant*, 562 U.S. at 369. The "primary purpose" of the conversation was still to be determined "in light of all the circumstances, viewed objectively." *Ohio v. Clark*, 576 U.S. at 245. And, although the Court held that non-testimonial primary purposes were not limited to "ongoing emergencies", it found that the 3 year old statements to the teacher "occurred in the context of an ongoing emergency involving suspected child abuse . . . . because the teachers needed to know whether it was safe to release L. P. to his guardian at the end of the day" and were thus "similar to the 911 call in *Davis*." *Ohio v. Clark*, 576 U.S. at 246.

While *Clark* did hold that " . . . courts must evaluate challenged statements in context, and part of that context is the *questioner's* identity," *Ohio v. Clark*, 576 U.S. at 249, the only people present at the 3 year old's interview were non-law enforcement teachers. *Clark* immediately went on to hold that "statements made to someone who is not principally charged with uncovering and prosecuting criminal behavior are significantly less likely to be testimonial than statements given to law enforcement officers." *Id.* While the CPS worker Donnelly asked the questions, Brenda's statements were not only made to Donnelly, but to the police officer, Piper, as well. Piper was not hiding outside the bedroom window, surreptitiously witnessing and recording Brenda's interview.

2. Numerous courts outside of California have held that CPS worker interviews generally result in testimonial hearsay.

Numerous courts outside of California have regularly held that interviews by child protective service investigators and similar personnel typically result in testimonial hearsay, even if no police officer is present at the interview. These courts have reasoned that child protective services typically works closely with law enforcement, or simply held that the CPS worker's turning the results of the interview over to law enforcement objectively showed that the interview's objective purpose was to elicit testimony.

See, e.g., *State v. Snowden*, 385 Md. 64, 867 A.2d 314, 326 (Md. 2005) (children were interviewed for express purpose of developing testimony in child sexual abuse case), *State v. Justus,* 205 S.W.3d 872, 880 (Mo. 2006), *Flores v. State,* 121 Nev. 706, 120 P.3d 1170, 1179 (Nev. 2005) (CPS investigators were "either police operatives" or "tasked with reporting instances of child abuse for prosecution"), *Hernandez v State,* 946 So. 2d 1270 (Fla. App. 2007), *People v. T.T. (In re T.T.)*, 384 Ill. App. 3d 147, 151, 161, 892 N.E.2d 1163 (Ill App. 2008) (statements to Department of Children and Family Services worker were testimonial where investigator was following up a report of child sex abuse, even though interview was conducted informally in the investigator's car.)

Videotaping or recording such interviews typically shows a "primary purpose" in preserving the child's statements for later use in primary prosecution. See *State v. Pitt,* 212 Ore. App. 523, 525, 526, 159 P.3d 329 (Ore. App. 2007), *Rangel v. State,* 199 S.W.3d 523, 534-535 (Tex App 2006) (same, and also worker told child that she was asking the questions "to make sure that 'it' did not happen again"), *Anderson v. State,* 833 N.E.2d 119, 121, 125-126 (Ind. App. 2005) (worker interviews child first by herself, then with officer present, then by herself at officer's request, all three interviews produced testimonial hearsay because worker reported the results of first interview to police and the second and third interviews were coordinated with and directed by the police.)

These courts have held that an officer's presence at the CPS worker's interview, even as an observer, typically confirms that the elicited information is testimonial. See, e.g., *T.P. v. State*, 911 So. 2d 1117, 1120, 1123 (Ala 2004) (Department of Human Resources social worker asks all the questions, officer simply takes notes.) This is true even if the victim is unaware of the officer's presence because the officer is behind a one-way mirror or observing the interview remotely on closed circuit television. *People v. Stechly*, 225 Ill. 2d 246, 251-252, 299-300, 870 N.E.2d 333 (Ill. S.Ct. 2007) (interview with police investigator listening behind one-way mirror "leaves no room for doubt" that CPS worker was acting as agent for police), *State v. Blue,* 2006 ND 134, 717 N.W.2d 558, 561, 564 (S.Ct. ND 2006) (police involvement "adds to the testimonial nature of the interview."), *State v. Contreras,* 979 So. 2d 896, 898, 904-904 (Fla. S.Ct. 2008) (police detective was in a different room, electronically connected to the interviewer and able to suggest questions), *State v. Courtney*, 682 N.W.2d 185, 196 (Minn. App 2004), *State v. Bentley,* 739 N.W.2d 296, 297, 299 (IA. S.Ct. 2007) ("observation window", officer's involvement and recording of interview rendered child's statements testimonial), *In the Interest of S.R.,* 2007 PA Super. 79, 920 A.2d 1262, 1264, 1267 (2007) (one way mirror), *People v. Rolandis G. (In re Rolandis G.),* 232 Ill. 2d 13, 19, 32, 902 N.E.2d 600 (2008) (one-way mirror), *State v. Mack,* 337 Ore. 586, 101 P.3d 349, 352 (Or. 2004) (officer's recording interview tended to show that interview was police directed and produced testimonial hearsay.)

Analogous interviews by forensic Sex Assault Nurse Examiners (as opposed to ordinary health care workers who simply provide treatment) have also been typically held to elicit testimonial hearsay. *Medina v. State,* 122 Nev. 346, 355-356, 143 P.3d 471, 476 (2006) (interview's purpose is to "gather evidence for the prosecution for possible use in later prosecutions"), *State v. Cannon*, 254 S.W. 3d 287, 305 (Tenn. 2008) (same), *State v. Romero,* 2007 NMSC 13, 141 N.M. 403, 407, 156 P.3d 694, (N.M. 2007), *Hartsfield v. Commonwealth*, 277 S.W.3d 239, 244-245

(Ky. 2009), *State v. Ortega*, 2008 NMCA 1, 143 N.M. 261, 265-69, 175 P.3d 929 (Ct. App 2007), *cert. denied* 143 N.M. 213, 175 P.3d 307, *State v. Miller*, 42 Kan. App. 2d 12, 28-29, 208 P.3d 774 (2009), *United States v. Gardinier*, 65 M.J. 60, 64-66 (U.S. Armed Forces 2007), see *Dorsey v. Banks,* 749 F. Supp. 2d 715, 749-751 (S.D. Ohio 2010) (on federal habeas, district court held that state's interpretation of *Crawford* that statement to SANE nurse was non-testimonial was probably wrong although denying relief on technical grounds.)

In *People v. Ramirez Ruiz*, the CPS worker conducted Brenda's interview in the company of two law enforcement officers. (RT. vol. 4, p. 203.) One of the officers was present at the interview and recorded Brenda's interview "in case something came of it." (RT. vol. 4, p. 224.) Unlike the various non-California cases which found an investigatory purpose even where officers were monitoring interviews without the child's knowledge, Brenda knew that the officer was present and was giving her statement to the officer as well as the CPS worker. Whatever label the CPS worker placed on the interview, these objective circumstances showed that the primary purpose of the interview was to elicit statements for possible later prosecution. The officer admitted that was the purpose of recording the interview. The CPS worker agreed that she was investigating a previous report of child abuse, further showing the investigatory purpose of the interview. (RT. vol. 4, p. 201, 203.) The California Court of Appeal's decision is thus contrary to many court decisions outside of California as well as inconsistent with the Supreme Court's decisional law on testimonial hearsay.

CONCLUSION.

Ohio v. Clark was not intended to provide a loophole for law enforcement to avoid Sixth Amendment confrontation and this Court's prior *Crawford* cases simply by having social workers or non-police investigators conduct field interviews. Had the police officer below asked Brenda the questions, Brenda's answers would have been testimonial under *Davis* and *Hammon*. The result should not be different just because the officer had a social worker ask the questions, while observing and recording Brenda's interview for a possible later criminal trial.

This Court should grant certiorari. If it does not, it will risk the loss of "the Sixth Amendment right of confrontation so recently rescued from the grave in Crawford v. Washington." *Ohio v. Clark*, 576 U.S. at 252 (Scalia, Ginzburg, JJ, concurring), at least in the kind of domestic violence and child abuse cases where law enforcement could plausibly involve social worker-interviewers.

Dated: Oakland, California, Friday, June 25, 2021.

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