IN THE SUPREME COURT OF THE UNITED STATES

No. 22-899

JASON SMITH, PETITIONER

v.

STATE OF ARIZONA

ON WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF ARIZONA, DIVISION ONE

MOTION OF THE UNITED STATES FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE AND FOR DIVIDED ARGUMENT

Pursuant to Rule 28 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case as an amicus curiae supporting neither party and requests that the United States be allowed ten minutes of argument time. Petitioner and respondent have each consented to this motion and have each agreed to cede five minutes of argument time to the United States.

This case concerns whether the Sixth Amendment's Confrontation Clause permits the prosecution in a criminal trial to present forensic testimony that relies on data produced through laboratory procedures performed by a nontestifying person. The

United States has a significant interest in the Court's resolution of that question. Federal prosecutors often present scientific opinion evidence through experts in criminal prosecutions. In accordance with Rules 702, 703, and 705 of the Federal Rules of Evidence, those experts may rely on facts and data produced by nontestifying persons. Such opinion evidence can be a significant part of federal prosecutions in cases involving rape, murder, and other serious crimes.

The United States has filed an amicus brief in support of neither party. The brief takes the position that experts may rely on data generated by others in accordance with the procedures set out by the Federal Rules of Evidence without running afoul of the Confrontation Clause. When those procedures are followed, an expert need not introduce the data underlying his opinion at all; to the extent such data is disclosed to the jury, the data is offered to explain how the expert reached his opinion, not for the truth of the matter asserted. The state courts in this case, however, may not have done enough to protect petitioner's Confrontation Clause rights; in particular, the jury may been confused about the substance of the expert's testimony, and the trial court did not provide a not-for-the-truth instruction. The brief accordingly suggests that the Court can and should vacate on those grounds without calling into question the standard evidentiary procedures governing expert testimony employed in federal and many state courts.

The United States has previously presented oral argument as an amicus curiae in many of this Court's Confrontation Clause cases. See, e.g., Williams v. Illinois, 567 U.S. 50 (2012); Melendez-Diaz v. Massachusetts, 557 U.S. 305 (2009); Michigan v. Bryant, 562 U.S. 344 (2011); Davis v. Washington, 547 U.S. 813 (2006); Crawford v. Washington, 541 U.S. 36 (2004). The United States' participation in oral argument in this case accordingly may be of material assistance to the Court.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

NOVEMBER 2023