

No. ____

IN THE
SUPREME COURT OF THE UNITED STATES

NATHAN BROOKS MANUELITO,
Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether statements made, in part, to provide evidence for a criminal prosecution can satisfy the hearsay exception in Federal Rule of Evidence 803(4) for statements made for medical treatment, or whether such a dual-purpose analysis conflicts with the rationale of Rule 803(4) and this Court's caselaw on ensuring the reliability of admitted evidence?

PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page.

RELATED PROCEEDINGS

- *United States v. Manuelito*, No. 18-cr-08252-SPL, U.S. District Court for the District of Arizona. Judgment entered June 29, 2022.
- *United States v. Manuelito*, No. 22-10170, U.S. Court of Appeals for the Ninth Circuit. Judgment entered June 14, 2024.

TABLE OF CONTENTS

Question Presented	1
Table of Authorities.....	iii
Opinion Below.....	1
Jurisdiction	1
Statutory Provisions	1
Statement of the Case	2
I. At trial, the district court admitted statements under the hearsay exception for statements made for medical diagnosis or treatment.....	2
II. The Ninth Circuit affirmed Petitioner's conviction.	3
Reasons for Granting the Petition	4
Conclusion	10

TABLE OF AUTHORITIES

Cases

<i>Crawford v. Washington</i> , 541 U.S. 36 (2004)	7
<i>Davis v. Washington</i> , 547 U.S. 813 (2006)	8, 9
<i>Idaho v. Wright</i> , 497 U.S. 805 (1990).....	6
<i>Melendez-Diaz v. Massachusetts</i> , 557 U.S. 305 (2009).....	7
<i>Michigan v. Bryant</i> , 562 U.S. 344 (2011).....	7, 8
<i>Smith v. Arizona</i> , 144 S. Ct. 1785 (2024).....	7
<i>United States v. Kootswatowa</i> , 893 F.3d 1127 (9th Cir. 2018).....	6, 7
<i>White v. Illinois</i> , 502 U.S. 346 (1992)	5, 7

Statutes

18 U.S.C. § 113.....	1
28 U.S.C. § 1254(1)	1
28 U.S.C. § 1291.....	1

Rules

Fed. R. Evid. 803	<i>passim</i>
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PETITION FOR A WRIT OF CERTIORARI

Petitioner Nathan Manuelito respectfully prays for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINION BELOW

The unpublished opinion of the United States court of appeals appears at Appendix-1.

JURISDICTION

Petitioner was convicted of three counts of assault, under 18 U.S.C. § § 1153 and 113(a)(6), (7), (8), in the United States District Court for the District of Arizona. The United States Court of Appeals for the Ninth Circuit reviewed his conviction under 28 U.S.C. § 1291, and denied a petition for rehearing on June 14, 2024. This Court has jurisdiction to review the judgment under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS

Federal Rule of Evidence 803 provides:

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

(4) Statement Made for Medical Diagnosis or Treatment. A statement that:

- (A) is made for—and is reasonably pertinent to—medical diagnosis or treatment; and
- (B) describes medical history; past or present symptoms or sensations; their inception; or their general cause.

STATEMENT OF THE CASE

I. At trial, the district court admitted statements under the hearsay exception for statements made for medical diagnosis or treatment.

At Petitioner's trial for assaulting his ex-girlfriend, the prosecution introduced statements the ex-girlfriend had made during a hospital visit days after the assault. The ex-girlfriend didn't immediately go to the emergency room to seek treatment for any injuries. Instead, days after she was assaulted, an FBI agent asked her to go to the emergency room "for documentation" of her injuries. The ex-girlfriend complied, and at the emergency room a forensic nurse documented her injuries. The forensic nurse, who was trained to document injuries so that "in the future, like in a trial," a jury would be able to tell what "the injuries look[ed] like ... that day," measured the ex-girlfriend's bruises and photographed them. She gave copies to the ex-girlfriend, specifically noting that the copies were for the prosecutor in Petitioner's pending criminal case. At the end of the hospital visit, which also included diagnostic exams like a CT scan, Petitioner was diagnosed with a fracture of the bones in her eye socket, and advised to take ibuprofen.

An issue at trial was whether Petitioner, or someone else, was the assailant. Petitioner brought out, during the ex-girlfriend's testimony, that she had not been completely truthful in her account of the assault. He also pointed out that there were other ways she could have sustained her bruises, including during a fight the ex-girlfriend admitted she had been involved in the same day she alleged Petitioner assaulted her. To bolster the ex-girlfriend's credibility, the prosecution introduced the testimony of the nurse and doctor who had interviewed her at the hospital, as well as medical records. The medical professionals

recounted the ex-girlfriend's statement at the hospital that Petitioner was her assailant; the medical records contained the same out-of-court statement.

When Petitioner sought to exclude these statements as inadmissible hearsay, the prosecution countered that they were admissible under Federal Rule of Evidence 803(4), which excludes from the hearsay definition any statements made for the purpose of seeking medical diagnosis or treatment. The district court acknowledged that the ex-girlfriend would not have gone to the emergency room without the FBI telling her to, but it nevertheless overruled Petitioner's objection and admitted the statements under Rule 803(4).

The jury convicted Petitioner of the assault charges, and he was sentenced to 96 months in custody.

II. The Ninth Circuit affirmed Petitioner's conviction.

Petitioner challenged the admission of the out-of-court statements, arguing that they didn't satisfy Rule 803(4). The government countered that "statements made during medical treatment obtained for the dual purpose of treating injuries and collecting evidence" qualify for the hearsay exception under Rule 803(4). In other words, it didn't matter that the statements were made, at least in part, to preserve and collect evidence against Petitioner. As long as they were also made to treat injuries, they could satisfy the hearsay exception in Rule 803(4).

The Ninth Circuit affirmed Petitioner's conviction in an unpublished memorandum decision. See App-1. It held that "even assuming the district court abused its discretion by admitting S.A.'s medical record statements, any error was harmless." See App-3. It then pointed to the fact that the ex-girlfriend testified to the "same version of events included in

the medical record statements,” that the government introduced evidence like a bodycam video to help corroborate the ex-girlfriend’s testimony, and that the government didn’t explicitly argue that the statements at the hospital bolstered her credibility.

The Ninth Circuit denied a petition for rehearing.

REASONS FOR GRANTING THE PETITION

A dual-purpose analysis for whether an out-of-court statement was made for medical diagnosis or treatment, and is therefore admissible as a hearsay exception, undermines the rationale for Rule 803(4) and conflicts with this Court’s caselaw.

Before the Ninth Circuit, Petitioner argued that the declarant’s statements at the hospital were inadmissible under Federal Rule of Evidence 803(4) because they weren’t made for medical diagnosis or treatment. The declarant had waited until days after the assault to visit the hospital, and she did so only after the FBI told her to get a doctor’s report to document her injuries. What’s more, the medical staff at the hospital recognized that the declarant’s visit was an evidence-gathering procedure. A forensic nurse photographed and measured the declarant’s injuries so that “in the future, like in a trial,” preserved evidence of her injuries could be submitted to the jury. And a doctor provided the declarant with copies of her injury documentation, specifically noting that it was for the prosecutor to use at Petitioner’s upcoming court hearing.

Despite these facts, the government argued to the Ninth Circuit that the declarant’s statements were admissible because “statements made during medical treatment”—when that treatment was “obtained for the dual purpose of treating

injuries and collecting evidence”—satisfied Rule 803(4)’s exception for statements “made for” “medical diagnosis or treatment.” *See* Fed. R. Evid. 803(4). Petitioner countered that a “dual-purpose” analysis was incorrect, given the rationale for the Rule 803(4) hearsay exception. But the Ninth Circuit embraced the government’s argument, affirming Petitioner’s conviction. *See App-8.*

The dual-purpose analysis both undermines the rationale underlying the 803(4) hearsay exception and conflicts with this Court’s caselaw.

First, the dual-purpose analysis embraced by the Ninth Circuit—in the government’s words, whether “statements made during medical treatment obtained for the dual purpose of treating injuries and collecting evidence still qualify under Rule 803(4)”—conflicts with the very rationale underlying Rule 803(4). The Rule explains that statements are not excludable hearsay when they are “made for—and [] reasonably pertinent to—medical diagnosis or treatment.” Fed. R. Evid. 803(4)(A). As this Court explained, “the evidentiary rationale for permitting hearsay testimony regarding . . . statements made in the course of receiving medical care is that such out-of-court declarations are made in contexts that provide substantial guarantees of their trustworthiness.” *See White v. Illinois*, 502 U.S. 346, 355-56 (1992). This is because “where the declarant knows that a false statement may cause misdiagnosis or mistreatment,” the statement “carries special guarantees of credibility” that likely cannot be replicated, even during courtroom testimony. *See id.* at 356.

It is precisely because the declarant’s purpose is to obtain medical care, and not to provide evidence, that the out-of-court statement is reliable. The declarant has

a “selfish interest in obtaining appropriate medical care” and this is what makes the statement “inherently trustworthy” and admissible without cross-examination. *See United States v. Kootswatowa*, 893 F.3d 1127, 1132 (9th Cir. 2018) (citing *Idaho v. Wright*, 497 U.S. 805, 820-21 (1990)). Without this selfish interest in obtaining appropriate medical care, there is no justification for treating these statements as inherently reliable and an exception to the hearsay bar.

Yet the Ninth Circuit’s affirmance in Petitioner’s case, where the government proffered that the declarant’s statements were admissible because they were made for the “dual purpose” of “collecting evidence” and “treating injuries,” conflicts with and undermines the rationale of Rule 803(4). A declarant who makes a statement to provide evidence lacks the motivation to be trustworthy in order to obtain appropriate medical care. Instead, rather than guaranteeing trustworthiness, a statement made as part of an evidence gathering procedure smacks of a motive to lie in order to inculpate a particular defendant. Allowing a dual-purpose analysis, where statements are admissible even if they were made in part to provide evidence, completely turns the rationale for the Rule 803(4) hearsay exception on its head. It raises the real risk that unreliable—even fabricated—hearsay statements will be admitted against a defendant in a criminal trial, without any backstop of cross-examination.

Additionally, this Court’s Confrontation Clause cases underscore the reliability risks when a declarant’s motivation in making a statement is to provide evidence and not to obtain medical treatment. While the Confrontation Clause and

the hearsay rules are not coextensive, of course, but at bottom they are both about ensuring the reliability of evidence. *See Crawford v. Washington*, 541 U.S. 36, 61 (2004) (the “Clause’s ultimate goal is to ensure reliability of evidence”). Indeed, this Court has recognized that the “hearsay rules and the Confrontation Clause are generally designed to protect similar values” and, in fact, “stem from the same roots.” *See, e.g.*, *White*, 502 U.S. at 353. Both have different ways of ensuring reliability—the Confrontation Clause through the “procedural guarantee” of cross-examination, *see, e.g.*, *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 317 (2009), and the hearsay rules through assessing the inherent reliability of a statement. *See, e.g.*, *White*, 502 U.S. at 355; *Koontswatewa*, 893 F.3d at 1132. But both seek to ensure the admission of reliable evidence, and underlying the reliability analysis in each context is the declarant’s purpose in making the contested statement.

Given this, the Court’s Confrontation Clause cases are instructive here about why a dual-purpose analysis is incorrect for the medical-statements hearsay exception. For the Confrontation Clause, if the declarant makes a statement while “focused on proving past events potentially relevant to later criminal prosecution,” there is a testimonial purpose that requires cross-examination. *See Michigan v. Bryant*, 562 U.S. 344, 360 (2011); *see also Smith v. Arizona*, 144 S. Ct. 1785, 1802 (2024) (if the “primary purpose” has a “focus on court,” the statement is testimonial and confrontation is required). “Implicit” in this reasoning is the idea that “the prospect of fabrication” is diminished for those statements that are made for a purpose other than proving past events potentially relevant to a later criminal

prosecution. *Bryant*, 562 U.S. at 361 (citing *Davis v. Washington*, 547 U.S. 813, 822 (2006)). So, for example, statements made during an ongoing emergency reduce the likelihood of fabrication and increase the reliability of the statement because the declarant’s purpose is to end a threatening situation. *See Bryant*, 562 U.S. at 361-62. In contrast, statements made for the purpose of describing past events relevant to a criminal prosecution are less likely to be reliable and are testimonial, so they require cross-examination. *E.g.*, *Davis*, 547 U.S. at 829-30.

In sum, the Court has recognized in the Confrontation Clause context that the risk of fabrication increases when a declarant is providing evidence and “proving past events potentially relevant to a later criminal prosecution.” *See, e.g., Bryant*, 562 U.S. at 361; *Davis*, 547 U.S. at 829. And this caselaw conflicts with the dual-purpose analysis the government pressed in Petitioner’s case, and which the Ninth Circuit embraced. Anyone going to a hospital to document injuries for “the future, like in a trial,” does not have a motive to be truthful, such that the resulting statement is inherently reliable. Even if preserving evidence and documenting injuries is only *part* of the declarant’s purpose in making a statement, this Court’s cases caution that the statement’s reliability is still in question. In *Bryant*, for example, the Court explained that the “logic justifying the excited utterance exception in hearsay law”—that an excited declarant “presumably cannot form a falsehood”—was similar to the logic behind the Confrontation Clause’s requirement that those intent on providing evidence relevant to a later criminal prosecution can form a falsehood, and their testimony must be subject to cross-examination because it is testimonial. *See 562*

U.S. at 361-62. Similarly, the Court examined a declarant's statements to a police officer and reasoned they were about "what happened," rather than "what is happening;" they were about "how potentially criminal past events began and progressed." *Davis*, 547 U.S. at 829-30. This indicated that the "primary, if not indeed the sole, purpose" of the statement was to help investigate a crime, so the statements were testimonial, and had to be tested with cross-examination at trial. *Id.* at 830.

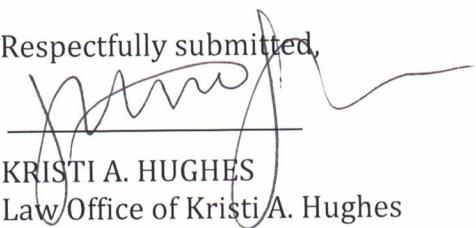
The dual-purpose analysis underlying the admission of the declarant's statements in Petitioner's case conflicts with this caselaw recognizing the reliability risks of statements made to prove potentially criminal past events. Ignoring this conflict, the Ninth Circuit affirmed Petitioner's conviction. The Court should grant the writ to clarify that statements made, even in part, to prove past criminal events are not inherently reliable, and to underscore that only inherently reliable evidence can be admitted under the hearsay exceptions.

CONCLUSION

For the foregoing reasons, the Court should grant the writ to address whether a dual-purpose analysis for the medical-diagnosis hearsay exception undermines the rationale for Rule 803(4) and conflicts with this Court's caselaw.

Date: August 21, 2024

Respectfully submitted,


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