

No. 24-985

IN THE
Supreme Court of the United States
STATE OF OHIO,
Petitioner,
v.
GARRY SMITH,
Respondent.

On Petition for a Writ of Certiorari to the
Supreme Court of Ohio

**BRIEF OF JOYFUL HEART FOUNDATION
AND AEQUITAS AS *AMICI CURIAE*
SUPPORTING PETITIONER**

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INTEREST OF THE *AMICI CURIAE*¹

AEquitas provides training and other resources to prosecutors, law enforcement, advocates, and allied professionals who respond to crimes of domestic and sexual violence, human trafficking, stalking, and related offenses. Its staff is composed primarily of former prosecutors with expertise in these areas, and its work incorporates best practices and up-to-date research in law, social science, medicine, forensic science, police science, and related fields.

Joyful Heart Foundation is a national organization working to transform society’s response to, and end, domestic violence and sexual assault. Founded in 2004 by Mariska Hargitay, Joyful Heart Foundation carries out its mission through an integrated program of education and advocacy, from developing innovative approaches to treat trauma to advancing policies and legislation to improve access to justice for survivors. Ensuring that courts can consider all relevant evidence of domestic and sexual violence—whether in the form of physical evidence like rape kits or victim statements about the crime—is a top priority of the organization’s advocacy work.

Amici submit this brief to ensure that the Court’s Confrontation Clause analysis is informed by well-founded research on domestic violence and the individual and societal impact of these crimes. This brief further illustrates the many ways abusers can coerce their

¹ No counsel for a party authored any part of this brief, and no person other than *amici curiae*, its members, or its counsel made a monetary contribution intended to fund its preparation or submission. *Amici curiae* timely provided notice of intent to file this brief to all parties.

victims to recant or not participate in prosecutions and describes how evidence-based prosecution prevents abusers from acting with impunity and protects victims from sometimes lethal risks.

SUMMARY OF ARGUMENT

Intimate partner violence—one form of domestic violence—is a national epidemic of astounding proportions, affecting an estimated 41% of women and 26% of men.² Unlike other forms of violent crime, the hallmark of this type of violence is the ongoing cycle of physical, sexual, and psychological abuse used to coerce intimate partners to act against their will or best interests and prevent them from escaping the abuser’s control. The persistent threat of harm is an ever-present danger to victims; it does not abate simply because one physical attack has ended. Many victims cohabit with their abusers, and many suffer retaliation if and when they seek help. Thus, a temporary pause in abuse when police arrive does not mean that the victim is safe or that the threat of immediate, further violence has passed.

The Ohio Supreme Court did not engage with these

² *About Intimate Partner Violence*, U.S. Ctrs. for Disease Control & Prevention (May 16, 2024), <https://www.cdc.gov/intimate-partner-violence/about/index.html>; *see also* Ashley S. D’Inverno et al., *The Impact of Intimate Partner Violence: a 2015 NISVS Research-in-Brief*, Nat’l Ctr. for Injury Prevention & Control, 3 (2019), https://stacks.cdc.gov/view/cdc/137398/cdc_137398_DS1.pdf; Jennifer L. Truman & Rachel E. Morgan, *Nonfatal Domestic Violence, 2003-2012*, Bureau of Just. Stat., 1 (2014), <https://bjs.ojp.gov/content/pub/pdf/ndv0312.pdf>. “Domestic violence includes victimizations committed by intimate partners . . . , immediate family members . . . , and other relatives.” Truman, *supra*, at 1.

realities when holding that the “primary purpose” of B.B.’s³ recorded statements to law enforcement was not to address an “ongoing emergency” but to “establish or prove past events potentially relevant to later criminal prosecution.”⁴ And in failing to consider the persistent danger that overshadows victims of domestic violence, the court’s ongoing emergency analysis lacked the context necessary to understand the primary purpose of B.B.’s statements to police, which was not to create a record for trial but to establish whether her abuser posed an ongoing, immediate danger to B.B. or to the public more generally. Left undisturbed, the Ohio Supreme Court’s decision will hamper efforts to bring perpetrators to justice: It will deter prosecutors from pursuing domestic violence cases, compound victims’ trauma, and ultimately undermine public safety.

For these reasons, the Court should grant the petition.

ARGUMENT

I. The Ohio Supreme Court’s “Ongoing Emergency” Analysis Is Divorced from the Realities of Domestic Violence.

Domestic violence is not an isolated incident of physical aggression; it is a persistent pattern of physical, sexual, and psychological abuse to instill fear and coerce intimate partners to act against their own will

³ Consistent with Petitioner’s convention, this brief refers to the victim by her initials, B.B.

⁴ *State v. Smith*, 2024-Ohio-5745, 2024 Ohio LEXIS 2784, at ¶ 53 (Dec. 10, 2024), reproduced at Pet. App. 1a-35a.

or best interests.⁵ The Ohio Supreme Court, however, did not acknowledge these hallmarks of domestic violence when conducting its “ongoing emergency” analysis under the Sixth Amendment. Instead, the court effectively cabined the “emergency” to the moments of violent physical aggression that precipitated B.B.’s contact with police and medical personnel, determining that B.B. was no longer in danger “because she was safe with Officer Soucek and the EMTs in the ambulance.”⁶ This restricted view overlooks that an emergency stemming from domestic violence does not necessarily end when one physical attack ceases—and it certainly may extend beyond the temporary departure of the abuser and the arrival of first responders.

Because incidents of domestic violence are part of a pattern of recurring abuse,⁷ perpetrators pose a persistent threat to their victims, unlike, for example, those who commit single-incident assaults. Many perpetrators of domestic violence cohabit with their victims,⁸ thereby depriving many victims of refuge after an attack.⁹ Victims thus may find themselves in danger

⁵ See *About Domestic Violence*, Joyful Heart Found., <https://www.joyfulheartfoundation.org/learn/domestic-violence/about-domestic-violence> (last visited May 8, 2025).

⁶ Pet. App. 20a.

⁷ Andrew R. Klein, *Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges* (“*Practical Implications*”), Nat’l Inst. of Just., 18 (2009), <https://www.ojp.gov/pdffiles1/nij/225722.pdf>.

⁸ See Klein, *Practical Implications*, *supra* note 7, at 56. Cohabitation occurred here. Pet. App. 6a.

⁹ One-third of victims in a study opposed the abuser’s prosecution because they relied on the abuser for housing. See Klein, *Practical Implications*, *supra* note 7, at 39.

again in the immediate aftermath of an attack.¹⁰ Compounding that risk is that an attempt to find distance and safety after an attack may place victims at further risk. One study found that 12% of petitions for protective orders described incidents of retaliation against the victim for having called the police for help.¹¹ Other research shows that victims are generally in the most danger when they attempt to leave their abusers¹²—and, too often, that is when abuse turns fatal.¹³ For these reasons, a victim of domestic violence may still be in need of ongoing help or protection from the abuser even if the abuser has left the scene of the attack and first responders have arrived. Unlike a single incident of random assault, the risk that a domestic abuser will return and resume violence is high, which

¹⁰ Most abusers who reoffend do so quickly. Klein, *Practical Implications*, *supra* note 7, at 21. Over time, the violence in violent relationships tends to escalate. *Lethality Assessments and Extremely Dangerous Behavior*, The Advocs. for Hum. Rts. (2019), https://www.stopvaw.org/lethal_and_extremely_dangerous_behavior. The record below supports these conclusions: The violence against B.B. was becoming increasingly severe, and an officer responding to another incident involving B.B. and her abuser feared B.B. would be “in danger” if her abuser returned. *State v. Smith*, 209 N.E.3d 883, 896 (Ohio Ct. App. 2023), *aff’d in part, rev’d in part*, 2024-Ohio-5745, reproduced at Pet. App. 55a-128a.

¹¹ Klein, *Practical Implications*, *supra* note 7, at 57.

¹² Lauren Pelley, *Leaving Relationship Is ‘Most Dangerous Time’ for Domestic Violence Victims, Experts Say*, CBC News (Dec. 8, 2016), <https://www.cbc.ca/news/canada/toronto/domestic-violence-victims-1.3885381>. One study found that 48% of petitions for protective orders described separation violence. Klein, *Practical Implications*, *supra* note 7, at 57.

¹³ See Patricia Tjaden & Nancy Thoennes, *Extent, Nature, and Consequences of Intimate Partner Violence (“Consequences”)*, Nat'l Inst. of Just., 37 (2000), <https://stacks.cdc.gov/view/cdc/21858>.

extends the period of the emergency in domestic violence cases.

The victim is not the only person threatened in the period of prolonged danger during and following a specific incident of physical violence. Police officers are at particular risk when responding to reports of domestic violence,¹⁴ as are family members, friends, and even strangers, who together make up 20% of homicide victims stemming from domestic violence incidents.¹⁵ Similarly, the connection between domestic violence and mass gun violence is well documented,¹⁶ and research suggests that domestic disputes are a contributing factor in about 20% of mass shootings.¹⁷ Thus,

¹⁴ Emma Tucker, *Domestic Incidents Are Highly Dangerous for Police Officers, Experts Say*, CNN (Jan. 22, 2022), <https://www.cnn.com/2022/01/22/us/domestic-incidents-police-officers-danger/index.html>.

¹⁵ See Sharon G. Smith et al., *Intimate Partner Homicide and Corollary Victims in 16 States: National Violent Death Reporting System, 2003-2009*, 104 Am. J. Public Health 461, 463-64 (2014).

¹⁶ See, e.g., James Silver et al., *A Study of the Pre-Attack Behaviors of Active Shooters in the United States Between 2000 and 2013*, FBI, 12 (2018), <https://www.fbi.gov/file-repository/pre-attack-behaviors-of-active-shooters-in-us-2000-2013.pdf/view>; Kerry Breen, “*Mass Killers Practice at Home*”: How Domestic Violence and Mass Shootings are Linked, CBS News (June 17, 2023), <https://www.cbsnews.com/news/mass-shootings-domestic-violence-abuse-connection-research/> (“Taken together, around 68% of mass shooters either killed their family and intimate partners, or they have a history of domestic violence.”).

¹⁷ William J. Krouse & Daniel J. Richardson, R44126, *Mass Murder with Firearms: Incidents and Victims, 1999-2013*, Cong. Rsch. Serv., 17 (2015); see also Daniel W. Webster et al., *Evidence Concerning the Regulation of Firearms Design, Sale, and Carrying on Fatal Mass Shootings in the United States*, 19 Criminology & Pub-

even after the abuser has left the scene of the attack, law enforcement may try to elicit a wide variety of statements from the victim to better understand the abuser's risk profile while the period of emergency is still ongoing.

Not only did the Ohio Supreme Court err by failing to consider these realities when evaluating whether there was an "ongoing emergency" when the police arrived and questioned B.B., but the court drew conclusions exactly *opposite* to what the research teaches about domestic violence. To start, the court determined that the questioning officer "did not believe that he was responding to an ongoing emergency" because the officer's second question—after "what had happened"—was to ask if B.B. lived with her assailant.¹⁸ From the Ohio Supreme Court's perspective, that question "had no bearing, *at least in this case*, on whether there was an ongoing emergency."¹⁹ But, as discussed, pp. 4-5, *supra*, many victims live with their abusers and, therefore, cannot escape the danger of immediate future harm even after one attack has ended. Thus, a case like this one presents *precisely* the circumstances in which the officer's question related to determining whether the emergency was ongoing.

The Ohio Supreme Court's misunderstanding of the persistent danger victims of domestic violence face pervades its decision. It concluded that B.B. was "safe" simply because she was "separated" from her abuser and in the care of first responders, and that B.B. "did

lic Policy 171, 187 (2020) ("Twenty-eight percent of the shootings in this study had some connection to domestic violence.").

¹⁸ Pet. App. 19a.

¹⁹ Pet. App. 20a (emphasis added).

not treat the situation as an ongoing emergency” in part because her abuser had “dr[iven] away.”²⁰ But it is well established in the domestic violence context that “suspects who flee the scene before police arrive are significantly more likely . . . to reabuse than those arrested at the scene.”²¹ And a temporary pause in physical violence does not mean that a victim is “safe.” The court further discounted B.B.’s perception of danger because she first sought help from family and medical personnel instead of “actively calling for help.”²² In doing so, the court ignored the complex dynamics underlying a domestic victim’s decision to seek help from police, including that reaching out for help may increase the likelihood of follow-on violence a victim may suffer. *See* p. 5, *supra*.

In addition to underestimating the ongoing threat B.B. faced, the Ohio Supreme Court also discounted the threat posed to responding police and the public more generally. As discussed, p. 6, *supra*, there is a documented correlation between domestic violence and future—sometimes imminent—threats to the general public. But the Ohio Supreme Court dismissed police questioning about B.B.’s abuser’s whereabouts, perhaps because the court had begun from the proposition that “domestic-violence cases ‘often have a narrower zone of potential victims than cases involving threats to public safety.’”²³ That assumption does not reflect what the research shows and what *amici*, in their pro-

²⁰ Pet. App. 20a-23a.

²¹ Klein, *Practical Implications*, *supra* note 7, at 12.

²² Pet. App. 21a.

²³ Pet. App. 15a (quoting *Michigan v. Bryant*, 562 U.S. 344, 363 (2011)).

fessional experience, know to be true—that domestic violence is not a “private” matter but may be a precursor to attacks targeting first responders and the general public. By failing to appreciate the magnitude and duration of the danger posed by abusers, the Ohio Supreme Court undermines the safety of victims, police, and the public.

For these reasons, the Court should grant the petition to clarify the proper scope of an ongoing emergency in a Confrontation Clause analysis, both for the victim and the public at large. With respect to victims, the analysis in a domestic violence case necessarily must account for the well-documented dynamics of domestic violence and how those “circumstances” bear on the “primary purpose” of the police questioning and victim’s statements.²⁴ And with respect to the public at large, the Court should take the opportunity to correct the misconception at the heart of this and other Confrontation Clause cases that domestic violence is a quintessentially “private” dispute that involves a “narrower zone of potential victims.”²⁵ Courts should not presume that domestic violence cases do not present a broader threat to public safety,²⁶ but should instead undertake the same case-by-case analysis used in all Confrontation Clause cases.

²⁴ *Bryant*, 562 U.S. at 370.

²⁵ *Id.* at 363, 365.

²⁶ See p. 6, *supra* (describing how domestic violence often harms people other than the primary target).

II. The Ohio Supreme Court’s Limited Understanding of an Ongoing Emergency Will Harm Efforts To Protect Victims and the Broader Public.

The Ohio Supreme Court’s cramped understanding of what constitutes an ongoing emergency will ultimately increase the pressure on victims to testify at trial, thereby perpetuating the trauma they suffer and harming efforts to protect victims and the broader public. By excluding statements made by a domestic violence victim during an ongoing emergency, the court throws out a proper source of evidence in cases where *by the abuser’s design* victim testimony at trial is exceptionally difficult—or impossible—to secure.

A. Abusers Often Coerce Their Victims into Not Testifying at Trial.

Victims of domestic violence are often unavailable to testify at trial for reasons integrally related to the abusive relationship. As the Supreme Court recognized in *Giles v. California*, “[a]cts of domestic violence often are intended to dissuade a victim from resorting to outside help, and include conduct designed to prevent testimony to police officers or cooperation in criminal prosecutions.”²⁷ Perpetrators abuse their victims to maintain power and control over the relationship, and they use physical, sexual, and psychological abuse, among other tactics, to instill fear and coerce their victims to act against their self-interest.²⁸ These dynamics of control and intimidation do not end simply because police have been called or the state prosecutes;

²⁷ 554 U.S. 353, 377 (2008).

²⁸ *About Domestic Violence*, *supra* note 5.

rather, abusers frequently continue to coerce and control their victims after the precipitating criminal act and even while the state is prosecuting the crime, including by coercing or influencing their victims not to testify against them.

The effect in court of an abuser's ongoing coercive influence over his victim is well documented. One study found that 25% of victims who opposed prosecution did so because their abusers threatened them.²⁹ Another study found that nearly half of abusers attempted to "talk" their victims out of testifying, and a third of those perpetrators stalked their victims before trial.³⁰ Other research found that almost a quarter of perpetrators re-abused their victims before trial.³¹ And not all witness intimidation is overt: Abusers often resort to "softer" manipulation tactics to procure the victim's unavailability at trial or otherwise frustrate justice (such as by convincing the victim to recant). A 2011 analysis of jail calls between abusers and their victims found that a victim's recantation was most often spurred by the abuser appealing for sympathy, minimizing the abuse, or blaming the prosecutor for the couple's separation.³² These are just some of the

²⁹ Klein, *Practical Implications*, *supra* note 7, at 39.

³⁰ *Id.* at 40. Research correlates victim nonparticipation in the prosecution of his or her abuser with the victim's cohabitation with and financial dependence on the abuser. Amy E. Bonomi & David Martin, *Recantation and Domestic Violence: The Untold Story* ("Recantation"), PDF at 22 (2023).

³¹ *Id.*; see also Deborah Epstein & Lisa A. Goodman, *Discounting Women: Doubting Domestic Violence Survivors' Credibility and Dismissing Their Experiences*, 167 U. Pa. L. Rev. 399, 439 (2019).

³² Amy E. Bonomi et al., "Meet Me at the Hill Where We Used To Park": *Interpersonal Processes Associated with Victim Recanta-*

many ways abusers maintain control over their victims and “dissuade . . . [them] from resorting to outside help.”³³

The record in this case is marked by the classic signs of the power dynamics in a domestic violence relationship, which provides a likely explanation for why B.B. did not testify at her abuser’s trial. First, B.B. declined to participate in the criminal investigation long before she declined to appear at trial.³⁴ Victims of severe trauma “may be among the least able to cooperate with law enforcement” due to the lasting impact of their traumatic experiences.³⁵ This can include post-traumatic stress disorder (affecting roughly 65% of domestic violence victims),³⁶ traumatic brain injury (occurring among victims about 1.6 million times annually),³⁷ severe anxiety (affecting 75% of victims),³⁸ and substance abuse disorders (occurring among victims at a rate six times greater than for non-victims).³⁹

³³ *Giles*, 554 U.S. at 377.

³⁴ See Pet. App. 71a.

³⁵ Klein, *Practical Implications*, *supra* note 7, at 31.

³⁶ *Id.* at 30; Christa Hillstrom, *The Hidden Epidemic of Brain Injuries From Domestic Violence*, N.Y. Times (Mar. 1, 2022), <https://www.nytimes.com/2022/03/01/magazine/brain-trauma-domestic-violence.html>.

³⁷ Hillstrom, *supra* note 36.

³⁸ Klein, *Practical Implications*, *supra* note 7, at 30.

³⁹ Amy E. Bonomi et al., *Medical and Psychosocial Diagnoses in Women With a History of Intimate Partner Violence*, 169 Archives of Internal Med. 1692 (2009). Many victims self-medicate with drugs, Klein, *Practical Implications*, *supra* note 7, at 30, which is

Thus, a victim's non-appearance at trial is likely the direct consequence of the abuse she or he has suffered at the hands of the defendant.⁴⁰

Abusers may use subtler forms of intimidation to prevent their victims from testifying. As discussed *supra*, p. 11, nearly half of abusers try to convince their victims not to testify, and these efforts range from overt threats to cajoling and "expressions of love and desire."⁴¹ At trial, the defendant testified he continued to speak with B.B. following the incident, and that during those conversations she had promised him "she was not going to present herself at the court to testify"

what B.B. said, Pet. App. 67a, 69a-70a. The court referenced B.B.'s drug use, Pet. App. 21a, as evidence that B.B. did not believe her situation constituted an ongoing emergency but failed to consider that her drug use may have been a symptom of or reaction to the abuse. And when evaluating B.B.'s hesitation to discuss her drug use in front of police, *id.* at 22a, the court overlooked the fact that many victims are arrested or threatened with arrest in the course of reporting abuse, which compounds the trauma they experience and may be unrelated to any testimonial intent when making other statements to police. *See* TK Logan & Rob Valente, *Who Will Help Me? Domestic Violence Survivors Speak Out About Law Enforcement Responses*, Nat'l Domestic Violence Hotline, 8 (2015), <http://www.thehotline.org/wp-content/uploads/sites/3/2015/09/NDVH-2015-Law-Enforcement-Survey-Report.pdf>.

⁴⁰ The fact that many domestic violence victims, by operation of the abuse they suffer, do not participate in the criminal investigation or prosecution of their abusers is an additional circumstance that courts should consider when evaluating the primary purpose of a victim's statements to responding officers. Many victims never intend for (or want) their abuser to be prosecuted, which undermines any intent to make a testimonial statement.

⁴¹ *People v. Reneaux*, 264 Cal. Rptr. 3d 459, 471 (2020) (holding defendant forfeited his right to confrontation by telling his victim to recant, pledging his love, and asking for reassurance).

against him.⁴² Regardless of the type of intimidation employed, an abuser's attempt to preclude victim testimony is an extension of the psychological coercion inherent in a domestic violence relationship.⁴³ And a victim's decision not to participate at trial or in an investigation often reflects the victim's assessment of the best course available to minimize retaliation and further trauma.⁴⁴

⁴² Pet. App. 105a.

⁴³ *Reneaux*, 264 Cal. Rptr. 3d at 471 (recognizing that an abuser may procure his victim's nonparticipation at trial via statements to the victim that are "not explicitly threatening and directive"). *See State v. McKelton*, 70 N.E.3d 508, 546 (Ohio 2016) ("Evidence of domestic violence is 'highly relevant' to analyzing the purpose prong of the forfeiture exception." (quoting *Giles*, 554 U.S. at 377)).

⁴⁴ There are many other reasons why domestic violence victims may be unavailable for trial, including difficulty remembering the details of the trauma and fear of retaliation. One study found that "[a] quarter of victims opposing prosecution reported being specifically threatened by their abusers against prosecution," while "[o]thers expressed fear that their abusers would become more violent." Klein, *Practical Implications*, *supra* note 7, at 39. Many victims report that they are more afraid of testifying than they are of their abuser. *Id.* ("Specifically, victims expressed fear that the prosecutors would not prepare them adequately to testify."). Understandably, they may feel repelled by the prospect of enduring multiple court appearances and repetitive interviews during which they must continually relive their traumatic experience. *See* Nancy Simpson, *Benefits and Drawbacks of No-Drop Policies and Evidence-Based Prosecution*, 26 Rich. Pub. Int. L. Rev. 141, 150-51 (2023).

B. The Decision Undermines Evidence-Based Prosecutions, Which Are Necessary To Thwart Abusers' Efforts To Procure Their Victims' Nonparticipation at Trial.

While misconstruing the scope of an ongoing emergency and improperly excluding nontestimonial statements could impede the prosecution of any crime, doing so is particularly consequential in domestic violence cases, where victims often are unable to appear and testify against their abusers. After all, a domestic violence victim's nonparticipation at trial is the natural culmination of the abuser's pattern of acts "intended to dissuade a victim from resorting to outside help."⁴⁵ And by excluding the victim's nontestimonial statements, the court helps accomplish the abuser's goal of coercing the victim into continued silenced.

Understanding that many victims will never participate in the prosecution of their abuser, the state may pursue an "evidence-based prosecution" similar to the strategies employed in homicide cases, which rely on other evidence to prove guilt, such as law enforcement testimony, physical evidence, statements from the defendant, other witness testimony, and out-of-court *testimonial* victim statements under the well-established doctrine of forfeiture by wrongdoing.⁴⁶ Nontestimonial

⁴⁵ *Giles*, 554 U.S. at 377.

⁴⁶ AEquitas, "Next-Level" Compulsion of Victim Testimony in Crimes of Sexual and Intimate Partner Violence, Strategies Newsletter, 5 (Jan. 2023), <https://aequitasresource.org/wp-content/uploads/2023/01/Next-Level-Compulsion-of-Victim-Testimony.pdf>. This Court (and the Ohio Supreme Court, *see McKelton*, 70 N.E.3d 508) has repeatedly recognized the equitable doctrine of forfeiture by wrongdoing, which provides that a wrongdoer who has ren-

victim statements are a crucial source of evidence in evidence-based domestic violence prosecutions because, as a direct result of the abuse, they often are the only way the victim's voice and the victim's perspective will be heard in court.

By improperly excluding nontestimonial victim statements, the Ohio Supreme Court's decision seriously threatens the effectiveness of evidence-based domestic violence prosecutions. And if left undisturbed, the decision also may push prosecutors to (i) refuse to prosecute domestic violence cases, thus rewarding abusers, or (ii) use the coercive power of the state to compel *victims* to testify, effectively treating them as offenders and causing further trauma. These hard choices will erode trust in law enforcement and undermine efforts to encourage victims of domestic violence to come forward and report domestic violence crimes,⁴⁷ which already are significantly underreported.⁴⁸ The Court should hear this case not only to clarify the scope of an ongoing emergency under the Confrontation Clause but also to affirm the important role evidence-based prosecution plays in domestic violence cases, where the abuser has insulated himself from the

dered a witness unavailable to testify at trial may not invoke his Sixth Amendment confrontation right. *See, e.g., Giles*, 554 U.S. at 353; *Crawford v. Washington*, 541 U.S. 36, 62 (2004).

⁴⁷ Simpson, *supra* note 44, at 151.

⁴⁸ See Alex R. Piquero & Andrew Wheeler, *Toward a Better Estimate of Domestic Violence in America*, Council on Crim. Just. (Oct. 2024), <https://counciloncj.org/toward-a-better-estimate-of-domestic-violence-in-america/>; Tjaden, *Consequences*, *supra* note 13, at 49. And many victims who call the police are dissuaded from calling again, often due to negative interactions with police or because they fear retaliation. Logan, *supra* note 39, at 6.

consequences of his crimes by the design and operation of his abuse.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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