

IN THE SUPREME COURT OF THE UNITED STATES

No. 18-6135

JAMES K. KAHLER, PETITIONER

v.

KANSAS
(CAPITAL CASE)

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF KANSAS

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

Pursuant to Rules 28.4 and 28.7 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 amicus curiae supporting respondent and requests that the United States be allowed ten minutes of argument time. On August 9, 2019, the United States filed a brief as amicus curiae supporting respondent. Respondent has agreed to an allocation of ten minutes of its argument time to the United States and therefore consents to this motion.

This case involves whether the Constitution permits States to treat mental illness as an excuse for criminal conduct only when it creates reasonable doubt as to the defendant's criminal mens rea, or instead mandates an insanity test that focuses on whether the defendant appreciated the wrongfulness of his conduct. The resolution of that question affects federal interests. The federal insanity standard has varied over time, and the United States has an interest in Congress's authority to prescribe the contours of criminal liability.

The United States has previously participated in oral argument as amicus curiae on the issue of the constitutionality of a State's approach to considering mental illness in the context of criminal liability. Clark v. Arizona, 548 U.S. 735 (2006). The government's participation in oral argument in this case will provide the Court with the federal perspective on the question presented, and division of argument will therefore materially assist the Court in its consideration of the case.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

AUGUST 2019