No. _____

IN THE
Supreme Court of the United States

ALSTON CAMPBELL, JR.,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. There is a split among the courts of appeals and several states on the following question: Whether a trial court violates a defendant's rights under the Confrontation Clause by prohibiting cross-examination of accomplice witnesses about the sentencing benefits they hope to receive in exchange for their cooperation with the government.

2. There is a split among the courts of appeals and several states on the following question: Whether appellate courts should review violations of the Confrontation Clause de novo or for abuse of discretion.

RELATED PROCEEDINGS

United States District Court (N.D. Iowa):

United States v. Alston Campbell, Jr., 17-CR-2045 (N.D. Iowa) (January 3, 2019)

United States v. Alston Campbell, Sr., 17-CR-2045 (N.D. Iowa) (March 8, 2019)

United States v. William Campbell, 17-CR-2045 (N.D. Iowa) (April 11, 2019)

United States v. Willie Carter, 17-CR-2045 (N.D. Iowa) (March 8, 2019)

United States v. Alexander Martin, 17-CR-2045 (N.D. Iowa) (October 17, 2018)

United States v. Naiqondis Spates, 17-CR-2043 (N.D. Iowa) (May 23, 2018)

United States v. Samuel Landfair, 17-CR-2047 (N.D. Iowa) (May 31, 2018)

United States v. John Phillips, 17-CR-2045 (N.D. Iowa) (October 17, 2018)

United States Court of Appeals (8th Cir.):

United States v. Alston Campbell, Jr., 19-1127 (8th Cir.) (January 21, 2021)

United States v. Alston Campbell, Sr., 19-1491 (8th Cir.) (January 21, 2021)

United States v. William Campbell, 19-1867 (8th Cir.) (January 21, 2021)

United States v. Willie Carter, 19-1523
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PETITION FOR A WRIT OF CERTIORARI

Petitioner Alston Campbell, Jr., respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit, App. 1, is reported at 986 F.3d 782. The decision of the United States District Court for the Northern District of Iowa was issued from the bench. It is reprinted at App. 45-58.

JURISDICTION

The judgment of the United States Court of Appeals for the Eighth Circuit was entered on January 21, 2021. On March 19, 2020, this Court entered a standing order that extends the time to file this petition for a writ of certiorari to June 21, 2021. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL PROVISION

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

INTRODUCTION

Cross-examination is the "greatest legal engine ever invented for the discovery of truth." *California v. Green*, 399 U.S. 149, 158 (1970). And the right to cross-examine adverse witnesses sits at the core of the Confrontation Clause. Historically, courts fiercely protected this right with accomplice witnesses in particular because of the benefits accomplices hope to gain by their testimony. *See Commonwealth v. Bosworth*, 39 Mass. 397, 400 (1839). Indeed, at common law, the need for skilled cross-examination of accomplices was a "precipitating factor" in the decision "to permit felony defendants to have the assistance of counsel." John H. Langbein, *The Origins of Adversary Criminal Trial* 292 (2003) ("*Origins*").

Perhaps because defendants long enjoyed "[t]he utmost latitude of cross-examination" with accomplices, *People v. Williams*, 18 Cal. 187, 191 (1861), this Court has not directly addressed the scope of the Confrontation Clause in this area. This case provides an ideal vehicle to resolve the deep conflict among the courts of appeals and the states on this issue. Some courts, like the one below, permit severe restrictions on cross-examination, only allowing the jury to learn that an accomplice received some unspecified benefit for cooperating. Others preserve the historical scope of the Confrontation Clause by allowing full inquiry into the specific benefits at stake for the accomplice.

Petitioner was convicted of drug offenses based on the testimony of four alleged accomplices. They had all pled guilty to offenses that carried decades-long mandatory minimums, but none had been sentenced. As noted in their plea bargains, the only way for them

to escape these mandatory minimums was to give testimony that the prosecutor—in her "sole discretion"—found "significan[t] and useful[]." App. 148.

Yet the district court would not let petitioner cross-examine these witnesses on the magnitude of their incentive to testify favorably for the government. All petitioner could do was ask whether the alleged accomplices faced "substantial" sentences. App. 55. The court of appeals affirmed this restriction, holding that the Sixth Amendment allows a court to limit cross-examination to "generalized phraseology" alone. App. 12. As a result, petitioner enjoyed far less protection under the Confrontation Clause than he would have had across the street in Iowa state court. *See State v. Donelson*, 302 N.W.2d 125, 131 (Iowa 1981) ("[T]he defendant must be allowed to inquire about the terms of the bargain so that the jury may better understand the possible motivations of the accomplice as he sits on the stand.").

This issue is particularly important because (in federal cases alone) prosecutors reward accomplices for their assistance in more than 10,000 cases *each year*. U.S. Sentencing Comm'n, *The Use of Federal Rule of Criminal Procedure 35(b)* 8 (2016) ("*Use of 35(b)*"). And in such cases, the accused's ability to expose bias "may well be determinative of guilt or innocence." *Napue v. Illinois*, 360 U.S. 264, 269 (1959).

This Court should grant the writ and restore the original meaning of the Confrontation Clause, which the Framers understood as protecting an accused's right to subject accomplices to "a minute examination of circumstances" through cross-

examination. William D. Evans, *On the Law of Evidence* 232 (1806) ("Evans").

STATEMENT OF THE CASE

A jury convicted petitioner Alston Campbell, Jr., of two drug offenses based on the testimony of several alleged accomplices. This petition addresses whether the trial court erred by prohibiting cross-examination of these accomplices about the specific benefits they hoped to receive by testifying. The Eighth Circuit held that restricting cross-examination to "generalized phraseology" satisfied the Confrontation Clause. App. 12.

I. Legal background

The Sixth Amendment guarantees an accused the right "to be confronted with the witnesses against him." U.S. Const. amend. VI. "The main and essential purpose of confrontation is to secure . . . the opportunity of cross-examination." *Davis v. Alaska*, 415 U.S. 308, 315-16 (1974). And "one of the primary purposes of cross-examination" is to "demonstrate that [a] witness is biased." *Pennsylvania v. Ritchie*, 480 U.S. 39, 62 (1987) (Blackmun, J., concurring in part and concurring in the judgment).

A "prototypical form of bias" arises when a witness expects to receive a benefit in exchange for testifying. *Delaware v. Van Arsdall*, 475 U.S. 673, 680 (1986). So this Court has repeatedly recognized Confrontation Clause violations when trial courts prevent an accused from exposing through cross-examination the full extent of a witness's incentive to testify favorably for the prosecution.

In *Alford v. United States*, 282 U.S. 687, 690 (1931), the trial court did not allow defense counsel to question an adverse witness about his present incarceration. This Court reversed Alford's conviction because, had this information been revealed, the jury might have discounted the testimony as "given under promise or expectation of immunity, or under the coercive effect of his detention." *Id.* at 693.

This Court reached the same conclusion in *Davis*. There, the accused was prohibited from cross-examining a witness about his status as a juvenile probationer. That status was relevant to show that the witness "might have been subject to undue pressure from the police and made his identifications [of defendant] under fear of possible probation revocation." 415 U.S. at 311.

Finally, in *Van Arsdall*, the government agreed to dismiss a witness's unrelated criminal charge if he agreed to speak with prosecutors about the subject murder. 475 U.S. at 676. This Court held that prohibiting cross-examination about this agreement violated the Confrontation Clause. *Id.* at 679.

This Court has not directly addressed whether the Confrontation Clause entitles an accused to cross-examine accomplices about the *magnitude* of the sentencing benefit they have received (or expect to receive) for testifying. Lower courts are openly split on this question. *See United States v. Lanham*, 617 F.3d 873, 884 (6th Cir. 2010) (noting split).

Many states and federal circuits recognize an accused's right to question an accomplice "about his subjective understanding of the benefit of his plea bargain, including what sentence he faced and what

was offered in the plea agreement." *State v. Jackson*, 243 N.J. 52, 70 (2020); *accord United States v. Schoneberg*, 396 F.3d 1036, 1042 (9th Cir. 2005). But other courts have found no Confrontation Clause violation even when a defendant is prohibited from "ask[ing] any quantitative questions whatsoever about the benefits . . . witnesses expected to receive for their cooperation." *United States v. Cropp*, 127 F.3d 354, 359 (4th Cir. 1997); *accord State v. Sharp*, 289 Kan. 72, 99-100 (2009).

Lower courts are also openly split on the standard of review for claimed violations of the Confrontation Clause. *See United States v. John*, 849 F.3d 912, 917-18 (10th Cir. 2017) (noting split). Some circuits "review de novo all Confrontation Clause challenges to restrictions on cross-examination." *Id.* at 917. Others "review for abuse of discretion." *United States v. Ramos-Cruz*, 667 F.3d 487, 500 (4th Cir. 2012). The same split exists among the states. *Compare State v. Orn*, 197 Wn.2d 343, 350 (2021) (de novo), *with Patrick v. State*, 104 So. 3d 1046, 1057 (Fla. 2012) (abuse of discretion).

II. Factual and procedural history

Petitioner went to trial with three co-defendants on various drug charges.[1]

At trial, the prosecution relied on the testimony of four accomplices. Each accomplice had a plea bargain with the government. App. 131, 160, 190, 207. And each testified to participating in the charged conspiracy with petitioner and his co-defendants. By

[1] The Eighth Circuit's decision calls petitioner "Junior" to distinguish between his family member co-defendants.

petitioner's trial, the accomplices had all pled guilty, but none had been sentenced. App. 88.

Each accomplice faced a maximum sentence of life in prison without the possibility of parole. Each also faced a mandatory minimum of a decade or more. Two faced a mandatory minimum of ten years, App. 161, 191, and one of twenty years, App. 132. The fourth accomplice had faced a mandatory minimum of twenty years, but in exchange for his plea the government agreed to withdraw its notice of prior felony drug convictions, reducing his mandatory minimum to ten years. App. 208.

In their plea bargains, each accomplice acknowledged his mandatory minimum sentence. *See* App. 132. They also acknowledged that the sentencing court could not go below the mandatory minimum without a substantial-assistance motion by the prosecutor. *See* App. 147 (citing 18 U.S.C. § 3553(e)). None of the plea bargains required the prosecutor to make such a motion. That decision was "in the sole discretion of the United States Attorney's Office" and would depend on, among other factors, "the significance and usefulness of any assistance rendered by [the accomplice]." App. 147-48.

Just before trial, the government objected to defense counsel cross-examining the accomplices on the content of their plea bargains. App. 48. The trial court ruled that the agreements themselves were inadmissible, but explained that defense counsel could "ask a cooperating witness all the questions you want" about his agreement. App. 52. The court also clarified that it was "fair game to talk about the sentence they're facing." *Id*.

The government objected to this ruling and asked the court to bar cross-examination on the sentences the accomplices faced. App. 53-54. Reversing its earlier ruling, the trial court agreed and told defense counsel they could only ask the accomplices "whether they're facing a substantial amount of time" or "facing a mandatory minimum." App. 54-55. The trial court barred inquiry "into the exact amount of time that they're facing," App. 55, out of concern that the jury might infer the sentences faced by some defendants, App. 84. *See also* App. 62 ("[Y]ou can say mandatory minimum, but not any specifics.").

The police neither observed petitioner selling drugs nor found drugs on him. So at trial, the government relied mainly on the accomplices' testimony that they had bought drugs from petitioner in the past. The jury convicted petitioner of conspiracy to distribute cocaine and possession with intent to distribute cocaine, App. 24, and the district court sentenced him to over twenty-one years in prison, App. 116-17.

On appeal, petitioner argued that the trial court's limitations on cross-examination violated the Confrontation Clause. App. 35.[2] In reviewing this claim, the Eighth Circuit "appl[ied] an abuse of discretion standard." App. 9. And while recognizing "the sanctity of a defendant's ability to expose witness bias," the court found no abuse of discretion. App. 10.

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[2] In rejecting petitioner's Confrontation Clause claim, the court of appeals relied on its discussion of the same claim raised by one of petitioner's co-defendants. App. 35.

The Eighth Circuit noted that trial judges "retain wide latitude" to restrict cross-examination "based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." App. 10. But the court never identified which (if any) of these concerns was implicated here.

Instead, the Eighth Circuit's analysis turned on "the fact that while [each] cooperating witness *hoped* for a reduction in his sentence, the government had not yet granted him leniency in exchange for his cooperation." App. 10-11.[3] As a result, "the degree of leniency—and, more significantly, the consideration granted to the witness for his cooperation—was unascertainable at the time of cross-examination." App. 11.

The court held that "where a cooperating witness simply hopes that his cooperation will manifest into some undefined degree of leniency, a district court does not abuse its discretion by limiting cross-examination to generalized phraseology like 'significant sentence.'" App. 11-12.

[3] This was inaccurate for one accomplice, whose plea agreement required the government to withdraw its notice of prior felony drug convictions. App. 208. That action alone reduced the mandatory minimum sentence from twenty years to ten. *See* 21 U.S.C. § 841(b)(1)(A) (2017).

REASONS FOR GRANTING THE WRIT

I. Federal and state courts are deeply divided over the questions presented.

"There is a circuit split on the issue of whether defendants should be prohibited from asking cooperating witnesses . . . details about their sentences and sentencing agreements with the government to expose the witnesses' bias." *Lanham*, 617 F.3d at 884. The same split exists among the states. In many jurisdictions, a defendant can question accomplices about the specific benefits they have received (or hope to receive) for their testimony. But many other jurisdictions do not recognize this right. Courts are also divided on the standard of appellate review for this issue.

A. Many jurisdictions recognize an accused's right to cross-examine accomplices about specific sentencing benefits.

The Fifth and Ninth Circuits both protect an accused's right to expose the magnitude of sentencing benefits at stake for an accomplice cooperating with the government.

The Fifth Circuit recognizes that "[c]ounsel should be allowed great latitude in cross examining a witness regarding his motivation or incentive to falsify testimony, and this is especially so when cross examining an accomplice." *United States v. Landerman*, 109 F.3d 1053, 1063 (5th Cir. 1997). On that basis, the court has found Confrontation Clause violations when a trial court prohibits questioning on an accomplice's possible sentences. *United States v.*

Cooks, 52 F.3d 101, 104 & n.13 (5th Cir. 1995). In *Cooks*, the trial court only allowed cross-examination into the accomplice's general motivation to avoid punishment, but the Fifth Circuit held that "[t]he jury should have been informed of all of the pertinent facts surrounding this motivation." *Id.* at 104; *see also Landerman*, 109 F.3d at 1063 (Confrontation Clause violated when a jury was not informed that an accomplice's "pending charge carried the potential of a life sentence").

In the Ninth Circuit, "[w]here a plea agreement allows for some benefit or detriment to flow to a witness as a result of his testimony, the defendant must be permitted to cross examine the witness sufficiently to make clear to the jury what benefit or detriment will flow, and what will trigger the benefit or detriment." *Schoneberg*, 396 F.3d at 1042. In *United States v. Larson*, the court found a Confrontation Clause violation when defense counsel was prohibited from exposing the mandatory minimum an accomplice faced absent cooperation. 495 F.3d 1094, 1106-07 (9th Cir. 2007) (en banc). This information was "highly relevant to the witness' credibility" because "the witness knows *with certainty* that he will receive [the mandatory minimum] unless he satisfies the government." *Id.* at 1106.

Many states likewise recognize an accused's Sixth Amendment right to expose the specific benefits an accomplice receives for testifying. The New Jersey Supreme Court interprets the Confrontation Clause to guarantee "unfettered examination" of an accomplice's plea bargain, including "what sentence he faced and what was offered in the plea agreement." *Jackson*, 243 N.J. at 59, 70. So "on a routine basis" in

that state, "a cooperating witness's maximum sentencing exposure is explored through cross-examination." *Id.* at 71. Iowa has adopted the same rule. *See Donelson*, 302 N.W.2d at 131.

The Indiana Supreme Court recognizes that a jury should "know the *quantity* of benefit to accusing witnesses." *Jarrett v. State*, 498 N.E.2d 967, 968 (Ind. 1986) (emphasis added). This is because it is "quite relevant" whether the accomplice is "avoiding imprisonment of ten days, ten weeks, or ten years." *Id.*

The Georgia Supreme Court likewise holds that a trial court violates the Confrontation Clause when it does not permit inquiry into "the witness's belief concerning the amount of prison time he is avoiding by testifying against the defendant." *State v. Vogleson*, 275 Ga. 637, 640 (2002). This principle applies to both maximum and minimum sentences because, in the latter case, "the opportunity for earlier release from prison, even if not guaranteed, is an important consideration for a witness facing time behind bars." *Manley v. State*, 287 Ga. 338, 342 (2010).

The South Carolina Supreme Court found a Confrontation Clause violation when a trial court prohibited defense counsel from eliciting that two accomplices "avoided [a] mandatory minimum twenty-five years' imprisonment by pleading guilty to lesser offenses." *State v. Gracely*, 399 S.C. 363, 374 (2012); *accord State v. Brown*, 303 S.C. 169, 171 (1991). It has also confirmed that euphemistic phrases—e.g., "a long sentence"—do not cure this error. *State v. Mizzell*, 349 S.C. 326, 334-35 (2002).

Many other states hold that cross-examination by euphemism does not satisfy the Sixth Amendment.

See, e.g., *People v. Mumford*, 183 Mich. App. 149, 154 (1990) (defense counsel entitled to cross-examine accomplice "on all of the details of the plea bargain, including the sentencing consideration [he] received in return for his testimony."); *People v. Bonilla*, 41 Cal. 4th 313, 337 (2007) ("[W]hen an accomplice testifies for the prosecution, full disclosure of any agreement affecting the witness is required to ensure that the jury has a complete picture of the factors affecting the witness's credibility."); *Jackson v. State*, 37 So. 3d 370, 373 (Fla. App. 2010) (violation for prohibiting cross-examination into length of an accomplice's mandatory minimum sentence).

B. Many other jurisdictions do not.

Other jurisdictions deny that an accused has a constitutional right to cross-examine accomplices about the magnitude of benefits received from the government. In *Cropp*, for example, the Fourth Circuit affirmed a conviction when defense counsel "were not permitted to ask any quantitative questions whatsoever about the benefits . . . witnesses expected to receive for their cooperation." 127 F.3d at 359.

The First Circuit agreed in *United States v. Luciano-Mosquera*, 63 F.3d 1142, 1153 (1st Cir. 1995). There, prosecutors dropped an accomplice's firearms charge in exchange for his cooperation. *Id.* After eliciting this fact, however, defense counsel could not ask any questions about the thirty-five-year mandatory minimum the accomplice avoided as a result. *Id.* The First Circuit concluded that the Confrontation Clause only guarantees inquiry into the general topic of whether an accomplice "received a benefit for his testimony." *Id.* Nothing beyond that was required. *Id.*

Other jurisdictions approve limitations that only allow references to sentencing benefits in euphemistic terms. The two accomplices in *United States v. Trent*, 863 F.3d 699, 704 (7th Cir. 2017), *cert. denied*, 138 S. Ct. 2025 (2018), avoided twenty-year mandatory minimums by testifying. And the Seventh Circuit upheld a restriction that only allowed defense counsel to ask whether the accomplices had originally faced "substantial" mandatory minimums. *Id.* at 706.

The Eighth Circuit approved a similar limitation in *United States v. Walley*, 567 F.3d 354, 360 (8th Cir. 2009). There, defense counsel could only characterize an accomplice's five-year mandatory minimum as "significant." *Id.* The court acknowledged the "malleability" of this term and that the jury was just as likely to think "significant" meant two, five, ten, or even twenty years. *Id.* But the court found no constitutional violation because, in its view, it was "not self-evident that a witness facing a longer mandatory minimum has a greater desire to please the government." *Id.*

In *United States v. Wright*, 866 F.3d 899, 907 (8th Cir. 2017), the Eighth Circuit expressly disagreed with the Ninth and held that a trial court did not violate the Confrontation Clause by only allowing defense counsel to characterize an accomplice's mandatory life sentence as "decades" in prison. *Id.* at 908.

Many states allow similar restrictions on accomplice cross-examination. In *Sharp*, the government originally charged an accomplice with kidnapping and felony murder, but he later pled guilty to involuntary manslaughter in exchange for his cooperation. 289 Kan. at 96. The Kansas Supreme

Court found no constitutional violation from the trial court's exclusion of all questions on sentence length. *Id.* at 99-100. In its view, it was sufficient under the Confrontation Clause for the jury to learn that the accomplice "would receive some sort of lesser sentence" based on his cooperation. *Id.*

It was the same in *State v. Jolley*, 656 N.W.2d 305, 310 (S.D. 2003), where the state dropped an accomplice's murder charge in exchange for her testimony. The accused could not question the accomplice about the life sentence she avoided, but the court held it was enough for the jury to learn that she "received a lesser sentence through her cooperation." *Id.*

In justifying similar restrictions, Ohio courts acknowledge that "a plea bargain may provide a motive to misrepresent," but reason that "the specific extent of the benefit . . . is not relevant." *State v. Gresham*, 2003-Ohio-744, ¶ 9 (Ct. App.). Rather, an accomplice's "agree[ment] to plead guilty to lesser charges and to testify against [an accused] is sufficient to demonstrate the witness' potential motive to misrepresent the facts." *Id.* "A comparison of the potential penalties under the plea agreement versus the original charges," therefore, is irrelevant. *Id.*

C. Lower courts are also divided on the correct standard of review.

There is also an acknowledged circuit split on the standard of appellate review. *John*, 849 F.3d at 917-18. The Tenth Circuit "review[s] de novo all Confrontation Clause challenges to restrictions on cross-examination." *Id.* The Fifth Circuit does the

same. *See United States v. Richardson*, 781 F.3d 237, 243 (5th Cir. 2015).

By contrast, the Eighth Circuit "review[s] a district court's limitations on cross-examination . . . [for] an abuse of discretion" and "will reverse only if a clear abuse of discretion occurred." App. 9. The same standard applies in the Second, Third, Fourth, Sixth, and D.C. Circuits. *See United States v. Ulbricht*, 858 F.3d 71, 118 (2d Cir. 2017); *United States v. Mussare*, 405 F.3d 161, 169 (3d Cir. 2005); *United States v. Kiza*, 855 F.3d 596, 603-04 (4th Cir. 2017); *United States v. Ford*, 761 F.3d 641, 651 (6th Cir. 2014); *United States v. Vega*, 826 F.3d 514, 542 (D.C. Cir. 2016).

Other circuits apply a two-tier standard of review. The Ninth Circuit reviews a trial court's exclusion of an entire "area of inquiry" de novo, but applies abuse of discretion to "limitation[s] on the scope of questioning within a given area." *Larson*, 495 F.3d at 1101. In the First Circuit, once an accused "establish[es] a reasonably complete picture of the witness' veracity, bias, and motivation," the court reviews "particular limitations" on cross-examination for abuse of discretion. *United States v. Jiménez-Bencevi*, 788 F.3d 7, 21 (1st Cir. 2015); *accord United States v. Garcia*, 13 F.3d 1464, 1468 (11th Cir. 1994).

The Seventh Circuit's standard of review depends on whether the trial court's limitation "directly implicates the core values of the Confrontation Clause." *Trent*, 863 F.3d at 704. If so, review is de novo. *Id.* Otherwise, review is only for abuse of discretion. *Id.*

State courts are equally divided on the standard of review. Many review Confrontation

Clause violations de novo. *See, e.g.*, *Orn*, 197 Wn.2d at 350; *State v. Rainsong*, 807 N.W.2d 283, 286 (Iowa 2011); *State v. Davis*, 298 Conn. 1, 11 (2010); *People v. Hill*, 282 Mich. App. 538, 540 (2009). Others review for abuse of discretion. *See, e.g.*, *Jackson*, 243 N.J. at 64; *People v. Linton*, 56 Cal. 4th 1146, 1188 (2013); *State v. Tran*, 712 N.W.2d 540, 550 (Minn. 2006).

II. The questions presented are extremely important.

The scope of the Sixth Amendment right to cross-examine accomplices is often litigated and critical to a jury's evaluation of accomplice testimony.

"The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence." *Napue*, 360 U.S. at 269. That credibility determination is key in accomplice cases because prosecutors "[d]epend[] on accomplice testimony . . . in just those cases where the extrinsic evidence is not sufficient . . . to convict." George C. Harris, *Testimony for Sale: The Law and Ethics of Snitches and Experts*, 28 Pepp. L. Rev. 1, 53 (2000).

As "the principal means by which the believability of a witness and the truth of his testimony are tested," *Davis*, 415 U.S. at 316, "cross-examination is an essential and fundamental requirement for the kind of fair trial which is this country's constitutional goal," *Pointer v. Texas*, 380 U.S. 400, 403-05 (1965). Yet in many jurisdictions—including in the court below—defendants cannot expose the magnitude of an accomplice's incentive to testify favorably for the government. So it is vital for

this Court to clarify the scope of the Confrontation Clause's protections in this area.

While the treatment of accomplice testimony has always been critical for defendants, changes in the criminal justice system over the past thirty-five years have elevated the gravity and recurrence of this issue. And as legislative changes have expanded government reliance on accomplices, many jurisdictions have eroded an accused's longstanding right to attack this form of evidence.

Two statutory changes in the mid-1980s transformed the administration of federal criminal law. The Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207 (1986), enacted "many additional mandatory minimum penalties and an increase in the length of existing penalties—particularly for drug offenses and violent crimes." U.S. Sentencing Comm'n, *Mandatory Minimum Penalties in the Federal Criminal Justice System* 23 (2011). The same law made it so that judges could only impose sentences below these mandatory minimums "[u]pon motion of the Government." Pub. L. No. 99-570, § 1007.

The combined effect of these changes was to expose defendants to longer and mandatory sentences, while giving prosecutors the exclusive ability to authorize lower punishments. This restructuring aimed to "induce[] . . . cooperation" by defendants, and it worked. U.S. Sentencing Comm'n, *Mandatory Minimum Penalties in the Federal Criminal Justice System* 14 (1991). The new framework "led to a ten-fold increase in cooperation from indicted individuals." G. Adam Schweickert, III, Note, *Third-Party Cooperation: A Welcome Addition to*

Substantial Assistance Departure Jurisprudence, 30 Conn. L. Rev. 1445, 1449 (1998). And that increase has been especially pronounced in drug cases. *See* Michael A. Simons, *Departing Ways: Uniformity, Disparity and Cooperation in Federal Drug Sentences*, 47 Vill. L. Rev. 921, 938 n.89 (2002). Federal prosecutors alone now authorize reduced sentences in exchange for accomplice cooperation in more than 10,000 cases *each year*. *Use of 35(b)* 8.

The Sixth Amendment captures the Framers' fundamental beliefs "about the relationship of the individual to the state." Robert P. Mosteller, *Remaking Confrontation Clause and Hearsay Doctrine Under the Challenge of Child Sexual Abuse Prosecutions*, 1993 U. Ill. L. Rev. 691, 754 (1993). And it reflects their "desire to restrain the power of the state." *Id.* But when a trial court prevents an accused from exposing accomplice bias, all three branches of government have, in effect, combined to undo this restraint. The legislative branch prescribes long mandatory minimums, the executive branch uses these as leverage to secure cooperation, and the judicial branch alleviates the risks of relying on accomplice testimony by limiting the accused's ability to expose bias. *Cf. Apprendi v. New Jersey*, 530 U.S. 466, 498 (2000) (Scalia, J., concurring) ("Judges, it is sometimes necessary to remind ourselves, are part of the State . . . .").

This insulation of government witnesses flouts the Sixth Amendment guarantee of "the rights necessary to a full defense." *Faretta v. California*, 422 U.S. 806, 818 (1975).

III. This case is an ideal vehicle for resolving the split.

This direct appeal presents an excellent vehicle to resolve the questions presented. The district court's ruling set a clear boundary, limiting cross-examination to the specific term "substantial." So this case cleanly presents whether the Confrontation Clause permits that restriction.

The first question presented is also important to the outcome at trial: if the district court had not restricted petitioner's cross-examination of the alleged accomplices, there is a substantial likelihood of a different trial result. Accomplice testimony was critical to the government's case, not only to prove the conspiracy's existence, but also to prove the quantity of drugs trafficked. Each accomplice testified about the total drug quantity received from petitioner or his co-defendants during the conspiracy. *See, e.g.*, App. 74, 101, 110-11.

The court below acknowledged how important accomplice testimony was to the government's case. Indeed, it relied on this testimony to reject petitioner's sufficiency-of-the-evidence claim and noted that "[a]ccomplice testimony need not be corroborated to support a conviction." App. 33 (quoting *United States v. Ramos*, 852 F.3d 747, 753 (8th Cir. 2017)). By the same token, if the jury had discounted the testimony of these accomplices after hearing the extent of their motive to testify against petitioner, it may well have reached a different verdict.

IV. The decision below is wrong.

Certiorari is also warranted here because the Eighth Circuit's decision violates this Court's precedent and the original meaning of the Sixth Amendment.

A. The trial court's limitations on cross-examination violated this Court's precedent.

A defendant "states a violation of the Confrontation Clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness." *Van Arsdall*, 475 U.S. at 680. There is nothing more "prototypical" than that an accomplice "may be influenced by an expectation of total or partial exemption from punishment, as a reward for . . . testimony." *State v. Kent*, 4 N.D. 577, 599 (1895). And because "[t]he temptation to commit perjury . . . must be proportioned" to the punishment an accomplice faces, a jury cannot meaningfully assess credibility unless it knows the magnitude of an accomplice's potential sentence. 7 John H. Wigmore, *Evidence* § 2057 (Chadbourn rev. 1983).

The Eighth Circuit did not apply (or even cite) this Court's standard. Its decision rested on "the fact that while the cooperating witness[es] *hoped* for a reduction in [their] sentence[s], the government had not yet granted [them] leniency in exchange for [their] cooperation." App. 11. Leaning on this fact, the court held that "where a cooperating witness simply hopes that his cooperation will manifest into some undefined degree of leniency, a district court does not abuse its

discretion by limiting cross-examination to generalized phraseology like 'significant sentence.'" App. 11-12.

This distinction between hoped-for benefits and those already received finds no support in this Court's precedent. Several cases have involved witnesses whose bias stemmed from anticipated leniency, *see, e.g.*, *Alford*, 282 U.S. at 693, but that fact has never played a part in this Court's analysis.

And even assuming the pendency of a reward could make a constitutional difference, the court below "had it precisely backwards." *United States v. Nickle*, 816 F.3d 1230, 1236 (9th Cir. 2016). "[T]he fact that the government had not yet made a [substantial assistance] motion . . . would give the witnesses the greatest incentive to tailor their testimony to please the prosecution." *Id.*; *see also, e.g.*, *Mizzell*, 349 S.C. at 333 ("The lack of a negotiated plea, if anything, creates a situation where the witness is more likely to engage in biased testimony . . . ."); *Boone v. Paderick*, 541 F.2d 447, 451 (4th Cir. 1976) (same).

The uncertainty of an accomplice's reward is also irrelevant because the purpose of cross-examination is not to prove the exact benefit an accomplice will receive. Its purpose is to expose "an existing motive in the mind of the witness to give testimony against [the accused], regardless of truth." *Allen v. State*, 10 Ohio St. 287, 306 (1859). To appreciate the strength of that motive, petitioner's jury needed to know the mandatory minimums the alleged accomplices faced if they failed to please the prosecutor with their testimony.

B. The rule below is inconsistent with the original meaning of the Confrontation Clause.

"[T]he Constitution's guarantees cannot mean less today than they did the day they were adopted." *United States v. Haymond*, 139 S. Ct. 2369, 2376 (2019). And evidence of the Confrontation Clause's original meaning confirms that it protects an accused's right to cross-examine accomplices on the specific benefits they hope to receive.

The Sixth Amendment followed a "most remarkable change" in English criminal procedure. 1 James F. Stephen, *A History of the Criminal Law of England* 424 (1883). In the 1730s, "the old rule which deprived prisoners of the assistance of counsel in trials for felony was gradually relaxed." *Id.* At that time, English judges began to allow defense counsel "for the primary purpose of probing prosecution testimony on cross-examination." Langbein, *Origins* 148.

What emerged in England and America was a regime of almost unfettered cross-examination. As a rule, therefore, defense counsel had the right to probe adverse witnesses "by a minute examination of circumstances." Evans 232. It was this "crucible of meaningful adversarial testing" that the Framers enshrined in the Sixth Amendment. *United States v. Cronic*, 466 U.S. 648, 656 (1984). Limitations like those imposed by the trial court had no place in this scheme.

1. The emergence of defense counsel in felony trials

"Whereas much of our trial procedure has medieval antecedents, prosecution and defense counsel cannot be called regular until the second half of the eighteenth century." John H. Langbein, *The Criminal Trial Before the Lawyers*, 45 U. Chi. L. Rev. 263, 263 (1978) ("*Lawyers*"). At common law, felony defendants "were prohibited . . . from engaging lawyers to act for them in court." J. M. Beattie, *Scales of Justice: Defense Counsel and the English Criminal Trial in the Eighteenth and Nineteenth Centuries*, 9 Law & Hist. Rev. 221, 221 (1991) ("Beattie").

But beginning in the 1730s, "judges permitted counsel to assist the defendant in examining and cross-examining witnesses." Langbein, *Origins* 171. Historians generally agree that two "innovations in prosecutorial practice" led to this change. *Id.* at 110. These were the crown witness system and the reward system.

Under the crown witness system, "[a] magistrate . . . would grant immunity from prosecution for a culprit who agreed to testify against his former confederates in crime." *Id.* at 158. The reward system, by contrast, paid up to £40 "to persons who would apprehend and convict offenders who committed serious property crimes." *Id.* at 148. These two systems "operated in close association" with one another. *Id.* at 160. An enterprising accomplice could secure immunity and a reward by accusing a former associate. *Id.*

It was no secret that crown witnesses "testified under a material incentive to commit perjury." *Id.* at

161. As noted by a contemporary judge, "when a man is fixed, and knows that his own guilt is detected, he purchases impunity by falsely accusing others." *Id.* Similar motives marred reward cases. A thief-taker "had no intrinsic interest in whether his £40 bounty came from convicting the guilty or the innocent." John H. Langbein, *The Prosecutorial Origins of Defence Counsel in the Eighteenth Century: The Appearance of Solicitors*, 58 Camb. L. J. 314, 363 (1999) ("*Solicitors*").

These two systems caused scandal in the early eighteenth century. In several high-profile cases, thief-takers were caught lying at trial and were themselves tried for perjury. Langbein, *Origins* 152-58. In one burglary prosecution, a crown witness admitted at trial to falsely accusing the defendants, his purported accomplices. *Id.* at 162. When questioned by the judge, the witness explained that the prosecutor (a thief-taker) had threatened to charge him with the burglary unless he accused others to fetch a larger award for the thief-taker. *Id.*

When "judges began to allow felony defendants to have the assistance of counsel to probe prosecution evidence at trial," they did so "with an acute awareness that both the reward system and the crown witness system harbored potent incentives for false witnessing." *Id.* at 165.

2. Cross-examination in eighteenth-century England

Even after being allowed in felony cases, defense counsel's role was limited to "examining and cross-examining witnesses." *Id.* at 171. They still could not "comment on the evidence" or "narrate the

accused's version of events." *Id.* So not surprisingly, defense counsel "focused their attention on cross-examination." Stephan Landsman, *Rise of the Contentious Spirit: Adversary Procedure in Eighteenth Century England*, 75 Cornell L. Rev. 497, 535 (1990) ("Landsman"). This tool "offered the broadest latitude for the development of persuasive proof with a minimum of restrictions." *Id.* And cross-examination of crown witnesses, in particular, "became a central sphere of the activity of defence counsel." Langbein, *Solicitors* 364.

The uncorroborated nature of accomplice or thief-taker testimony often made it impossible to expose contradictions through cross-examination. Instead, historical records show that defense counsel used cross-examination to focus on a witness's incentive to testify against the accused. Langbein, *Origins* 292-93.

In most crown witness cases, the accomplice had confessed to a capital crime, so his incentive was obvious. In those situations, cross-examination was commonly used to remind the jury that a crown witness would say anything "to save his own life." John Armstrong, Old Bailey Session Papers (Jan. 1755) at 75 ("OBSP").

When the punishment was less severe, defense counsel used cross-examination to draw out the exact sentence a crown witness hoped to avoid by testifying. In one grand larceny prosecution, for example, cross-examination revealed that a crown witness faced a seven-year sentence in a penal colony:

> Q: They talked of sending you to Botany for seven years; did not they?

A: I was afraid so.

Q: So you are swearing now to get yourself out of the scrape?

A: Yes.

John Langford, OBSP (Jan. 1788) at 183.

In reward cases, defense counsel likewise used cross-examination to explore the precise amount at stake. They would ask whether it was "not every day that one gets forty pounds for hanging a man," James Wingrove, OBSP (May 1784) at 820, or simply, "What is the price of the blood of these men, if they are convicted?" George Norris, OBSP (Jan. 1785) at 272.

From these trial records, "[t]he broad scope accorded the right to cross-examine is readily apparent." Landsman 541. And this breadth is especially apparent for a witness's bias. *Id.* In one counterfeiting case, a mint employee bristled when defense counsel asked if he expected to receive a share of the reward. John Morgan, OBSP (Jan. 1782) at 147. The court promptly instructed the witness that the question was proper and required an answer: "Whatever the operation of the question may be, is for the judgment of the jury; the question is certainly a proper one; whether there is a reward, and do you expect a part of it." *Id.* a 147-48. The reason for this latitude was simple: "[T]he jury have a right to know the circumstance in which a witness stands." *Id.* at 148.

A witness's obligation to answer any question on cross-examination even extended to those of doubtful relevance. As one judge explained to a

witness about such a question: "The Relation is very small, but if they insist on their Question, you must answer it." James Annesley, OBSP (July 1742) at 25.

Several leading treatises from the early nineteenth century confirm that "vigorous cross-examination was an integral part of courtroom procedure." Landsman 600.

William Evans's 1806 treatise observed that accomplice testimony "very properly occasions a great degree of caution." Evans 260. To counterbalance this "want of veracity," defense counsel were allowed to perform "a minute examination of circumstances" through cross-examination. *Id.* at 232. In the same vein, Thomas Peake observed that, on cross-examination, defense counsel "may put what questions he pleases." Thomas Peake, *A Compendium of the Law of Evidence* 141 (2d ed. 1804).

Samuel Phillipps's treatise likewise warned that accomplice testimony "ought to be received by a jury with considerable caution and distrust." Samuel M. Phillipps, *Treatise on the Law of Evidence* 29 (2d ed. 1815). This was because, "in the hope of lessening their own infamy," accomplices would "often be tempted to throw as much guilt as possible upon the prisoner." *Id.* An accomplice's bias, therefore, had to be "strictly examined and sifted." *Id.* at 42. And defense counsel had "a great latitude . . . in the mode of putting questions." *Id.* at 210.

These treatises also reflect a judge's limited role in controlling cross-examination. They generally let defense counsel "go as far as they pleased." Evans 269. The rule was that "[w]hatever [could] elicit the

actual dispositions of the witness . . . [was] not only justifiable but meritorious." *Id.* at 268.

In fact, the only disputed issue on the scope of cross-examination seems to have been "how far a counsel may . . . inquire into matters *foreign to the cause*, for the purpose of affecting the character and credit of the witness." Thomas Peake, *A Compendium of the Law of Evidence* 189 (2d Am. ed. 1806). There was "a very considerable difference of opinion" on this question, but the majority view was that these questions were "admissible and proper . . . [and] clearly supported by the course of practice which ha[d] actually prevailed." Evans 261. This debate over matters "foreign to the cause" confirms the lack of *any* restrictions on questions directly concerning a witness's bias.

In sum, the emergence of defense counsel in felony cases led to "a new conception of the legal process, one in which the cross-examination of witnesses by *skilled counsel* was of such importance that the process was rendered suspect without it." Landsman 599. As courts and commentators recognized then, this necessarily meant that defense counsel "had to be allowed great latitude to ensure effective examination." *Id.* at 599-600.

3. Confrontation in America

American criminal procedure was, if anything, even "more protective of the accused." Randolph N. Jonakait, *The Origins of the Confrontation Clause: An Alternative History*, 27 Rutgers L. Rev. 77, 96 (1995) ("Jonakait"). Many colonies, for example, formally permitted defense counsel in ordinary criminal cases a century or more before England. *See Faretta*, 422

U.S. at 827. As a result, "America moved more rapidly than England to an adversary system with defense cross-examination at its core." Jonakait 81.

This particular emphasis on defense advocacy arose, in part, from the unique prominence of public prosecutors in colonial America. Unlike in England, American criminal trials "w[ere] not seen as a relatively equal contest between an alleged victim and accused." *Id.* at 103. Instead, they were seen "as a lopsided battle not only with a prosecutor, but with the government in general." *Id.* This imbalance meant that "procedural protections for the accused needed to grow." *Id.*

"[D]efense cross-examination was at the heart of the new trial system" that emerged in America. *Id.* at 115. During the Revolutionary period, eight states adopted bills of rights, and every one included a confrontation clause. Murl A. Larkin, *The Right of Confrontation: What Next?*, 1 Tex. Tech L. Rev. 67, 75 (1969). The Framers understood confrontation as securing an accused's right to "challenge the information against him, and defense cross-examination had become the chief procedure for challenging such evidence." Jonakait 114-15.

The ratification debates reflect cross-examination's central role in the American justice system. The Anti-Federalist Brutus argued: "It is of great importance in the distribution of justice that witnesses should be examined face to face, that the parties should have the fairest opportunity of cross examining them in order to bring out the whole truth." Brutus XIV in 1 Bernard Schwartz, *The Bill of Rights: A Documentary History* 435 (1971). And Federal Farmer declared that "[n]othing can be more essential

than the cross examining [of] witnesses." Letter from Federal Farmer (Oct. 12, 1787), in *id.* at 473.

As these sources show, the Framers understood that "the accused had to be guaranteed the tools necessary to make an adversarial presentation to the jury," including "tools to challenge the evidence against him." Jonakait 114. The Sixth Amendment accomplished this purpose by "constitutionaliz[ing] the right in an adversary criminal trial to make a defense as we know it," or, more specifically, as the Framers knew it. *Faretta*, 422 U.S. at 818.

While early American criminal records are sparse, the sources that do exist reveal that American courts aligned with their English counterparts on the broad scope of cross-examination. To start, the leading English treatises discussed above were so popular in America that numerous American editions were promptly published. *See, e.g.*, Thomas Peake, *A Compendium of the Law of Evidence* (2d Am. ed. 1806); Samuel M. Phillipps, *Treatise on the Law of Evidence* (2d Am. ed. 1820). American courts also cited them as authoritative. *See Faugier v. Hallett*, 2 Johns. Cas. 233, 235 (N.Y. Sup. Ct. 1801) (citing Peake); *Sheppard v. Taylor*, 30 U.S. 675, 697 (1831) (citing Evans).

Consistent with these authorities, nineteenth century cases reveal the considerable breadth of cross-examination in America. In *Commonwealth v. Sacket*, 39 Mass. 394, 396 (1839), for example, the Massachusetts Supreme Court ordered a new trial when defense counsel was stopped from asking an adverse witness about the potential reward for his testimony. The court explained that "[o]n cross-examination great latitude is allowed to counsel in

putting questions to test the accuracy or credibility of the witness." *Id.* at 395-96. A trial court's discretion permitted limitations on "matters *irrelevant* to the point in issue." *Id.* at 396 (emphasis added). But because a witness's motivation "was material to the issue under consideration, . . . it was a matter of right for the party to have it answered." *Id.*; *see also Newcomb v. State*, 37 Miss. 383, 403 (1859) ("It is a general rule, that anything legitimately tending to show that a witness is under undue feeling or bias . . . may be shown to the jury . . . .").

The widest breadth of cross-examination applied to accomplices. Courts recognized that accomplices testified "under the influence of the most powerful motive that can shape human conduct." *Kent*, 4 N.D. at 598. The rule, therefore, was to subject accomplices to "[t]he utmost latitude of cross-examination justified by the law." *Williams*, 18 Cal. at 191. This well-established right to "a full and searching cross-examination" of accomplices meant that "no[thing] in the least bearing on the question of credibility . . . should be excluded." *People v. Haynes*, 38 How. Pr. 369, 380 (N.Y. App. Term 1868).

American treatises roughly contemporaneous with ratification of the Fourteenth Amendment confirm the persistence of this principle. *See* James F. Stephen, *A Digest of the Law of Evidence* 185-86 n.1 (May ed. 1877) (noting "a tendency, no doubt, towards great liberality of cross-examination for the purpose of ascertaining who and what the witness is"). Professor Francis Wharton observed that "[g]reat latitude . . . is allowed in the cross-examination of an accomplice, and the most searching questions are permitted in order to test his veracity." Francis

Wharton, *A Treatise on the Law of Evidence in Criminal Issues* 359 (8th ed. 1880) ("Wharton"). And a popular legal encyclopedia noted that "[w]here an accomplice testifies as a witness, a liberal and full cross-examination . . . should be permitted." 1 *The American and English Encyclopedia of Law* 78 (Merrill ed. 1887).

* * *

The historical record shows that before, at, and after the founding, defendants enjoyed broad latitude in the cross-examination of adverse witnesses, particularly accomplices. At most, judges could limit irrelevant questioning. But on the central issue of a witness's incentive to testify, there were no limits. This was the understanding of cross-examination that the Framers enshrined in the Confrontation Clause.

From this perspective, "limiting cross-examination to generalized phraseology," App. 11-12, flouts the original meaning of the Confrontation Clause. In this case, the government never questioned the relevance of petitioner's proposed cross-examination about mandatory minimum sentences. Nor could it have, as "[t]he partiality of a witness . . . is always relevant." *Davis*, 415 U.S. at 316. The trial court's prohibition on relevant cross-examination into bias, therefore, violated the Confrontation Clause.

C. The Eighth Circuit applied the wrong standard of review.

The Eighth Circuit reviewed petitioner's Confrontation Clause claim for an abuse of discretion. App. 9. This was error.

A Confrontation Clause violation occurs when a defendant is "prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias." *Van Arsdall*, 475 U.S. at 680. This is a question of law that merits de novo review. The trial record provides the only facts relevant to this inquiry—i.e., what questions were prohibited. And whether a district court "applied the proper standard to essentially undisputed facts" presents a question of law. *United States v. Parke, Davis & Co.*, 362 U.S. 29, 44 (1960).

De novo review is also "consistent with the position [this Court] ha[s] taken in past cases." *Ornelas v. United States*, 517 U.S. 690, 697 (1996). In defining the Confrontation Clause's scope, this Court has never "expressly deferred to the trial court's determination." *Id.*; *see, e.g.*, *Davis*, 415 U.S. at 319; *Chambers v. Mississippi*, 410 U.S. 284, 297-98 (1973); *Olden v. Kentucky*, 488 U.S. 227, 232 (1988). Instead, this Court has asked—without deference—whether a "court's ruling violated [an accused's] rights secured by the Confrontation Clause." *Van Arsdall*, 475 U.S. at 679.

Even if Confrontation Clause violations were considered mixed questions of law and fact, de novo review would still be appropriate. On such questions, this Court considers several factors to determine which "judicial actor is better positioned" to make the decision. *Miller v. Fenton*, 474 U.S. 104, 114 (1985). These factors include whether the legal rule at issue "acquire[s] content only through application," as well as de novo review's tendency to "unify precedent" and "stabilize the law." *Ornelas*, 517 U.S. at 697-98.

"In the constitutional realm," however, "the calculus changes." *U.S. Bank N.A. v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 967 n.4 (2018). On constitutional questions, "the role of appellate courts 'in marking out the limits of a standard through the process of case-by-case adjudication' favors de novo review even when answering a mixed question primarily involves plunging into a factual record." *Id.*

By any standard, therefore, Confrontation Clause violations should receive de novo review. Cases in this area do not involve "narrow facts that utterly resist generalization." *Pierce v. Underwood*, 487 U.S. 552, 562 (1988). Quite the opposite. The ubiquity of plea bargains and mandatory minimums routinely presents the exact question at issue here. The answer to that question turns on the correct interpretation of the Confrontation Clause, not on factual determinations peculiar to a given case. Finally, the inconsistent treatment of this issue in different jurisdictions confirms that de novo review would help "unify precedent" and clarify the protected scope of cross-examination. *Ornelas*, 517 U.S. at 697-98.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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