No. 24-1159

In the Supreme Court of the United States

JEFFREY CLYDE PITTS,

Petitioner,

v.

MISSISSIPPI,

Respondent.

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

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

Mississippi has a statute providing that "[i]n any proceeding in which a child testifies, a child shall have" the right "[t]o permit the use of a properly constructed screen that would permit the judge and jury in the courtroom or hearing room to see the child but would obscure the child's view of the defendant or the public or both." Miss. Code § 99-43-101(2)(g). The statute makes the screen one of several listed "rights to be enforced by the court on its own motion or upon motion or notice of an attorney in the proceeding." *Id.* § 99-43-101(2). The statute does not require the trial court to make any finding that the screen is necessary to protect the child from trauma.

This statute is contrary to the Confrontation Clause, which requires face-to-face confrontation between the defendant and a child witness against him, unless the trial court makes an individualized, case-specific finding that a screen (or a similar device to block face-to-face confrontation) is necessary to prevent trauma to the child that would be caused by seeing the defendant while testifying. *Coy v. Iowa*, 487 U.S. 1012, 1020 (1988) ("The screen at issue was specifically designed to enable the complaining witnesses to avoid viewing appellant as they gave their testimony, and the record indicates that it was successful in this objective. It is difficult to imagine a more obvious or damaging violation of the defendant's right to a face-to-face encounter.") (citation omitted); *Maryland v. Craig*, 497 U.S. 836, 855 (1990) ("The requisite finding of necessity must of course be a case-specific one: The trial court must hear evidence and determine whether use of the one-way closed circuit television procedure is necessary

to protect the welfare of the particular child witness who seeks to testify.").

The courts below chose to comply with the statute rather than the Confrontation Clause. The trial court acknowledged that "I'm looking at a statute that appears to be mandatory." Pet. App. 7a. The Mississippi Supreme Court agreed that "[t]he plain words of Mississippi Code Section 99-43-101(2)(g) (Rev. 2020) unambiguously do not require a trial judge to make a specific finding of emotional trauma before allowing the application of a screen." *Id.* at 12a. The state supreme court attempted to distinguish *Coy* and *Craig*, *id.* at 20a-26a, but its reasoning was so unconvincing that Mississippi does not even try to defend it.

Because of the decision below, the law in Mississippi now requires the trial court to place a screen between the defendant and a witness younger than 18 in every case in which the prosecutor requests one, without any case-specific finding that the screen is necessary. This is not a "narrow, fact-bound" error (BIO 11-12). It is a rule of law that flouts this Court's precedents.

Mississippi contends that the trial court *did* make the required case-specific finding (BIO 12-14, 18-20), and that a case-specific finding is not required in any event (BIO 14-17). Neither of these claims is correct.

I. The trial court failed to make the case-specific finding required by the Confrontation Clause.

The trial court did not make the case-specific finding that the Confrontation Clause requires. When the prosecutor requested the screen, defense counsel

pointed out that the prosecutor had not provided any reason to think that AGC would suffer trauma from being able to see Mr. Pitts, and that the screen would only prevent the jury from seeing how much AGC loved him:

> The only … thing that a shield would do in this particular case is to shield the child so that she won't make any kind of … gestures or any kind of signs that she still loves her father, that she's not afraid of her father…. So I would … say … that it's not necessary in this case. It's not warranted in this case…. Why does the State want to keep the father from seeing the child? There's been no … offer … by the State why this is necessary. There's been no proof of why it is necessary. The only thing that the State wants to do is to try to keep this child from … exhibiting any kind of affection for Mr. Pitts in the presence of this jury ….

Pet. App. 6a.

The prosecutor responded, not by presenting any evidence that the screen was necessary, but by arguing that the screen would not violate the Confrontation Clause: "[T]he defendant's confrontation right is not violated.... He will be able to hear the witness. He will be in the same room as the witness.... [H]is attorney has the right to confront that witness, to cross-examine her." *Id.* The prosecutor then offered a single sentence of argument in favor of the screen: "At the request of her guardian, she believes that it will be difficult for [AGC] to testify while her father is staring at her." *Id.*

The prosecutor concluded by insisting that she did not have to provide any reason for the screen because the statute requires a screen upon request:

> The statute states that she shall have that right and I'm not required to put on any proof that she be scared of the defendant. That would only be in the case where we'd asked for a deposition of the testimony of the victim rather than live testimony and we certainly don't want that. We do, in fact, want [AGC] to testify live and we would ask again, pursuant to her rights which is found ... in that section under the Mississippi Crime Victim's Bill of Rights that she shall be given that right if it's requested.

Id. at 6a-7a.

The prosecutor thus did not even try to prove that a screen was necessary to prevent AGC from suffering trauma as a result of testifying while being able to see Mr. Pitts.

The trial court granted the prosecutor's request for the screen, without making any findings that the screen was necessary to protect AGC from trauma:

> I'm confronted with a couple of things. Number (1) I'm looking at a statute that appears to be mandatory .... I've heard the cases that you all have cited.... [W]e're not going to stop the trial at this point, I guess, to be able to provide for some type of video so that the defendant could see—
>
> ....
>
> No, I think I am going to do that. I am going to grant your motion only if we can provide—I'm doing it hesitantly because I'm concerned about

> the constitutionality of the statute. But I'm only going to grant your motion if we can arrange for there to be a zoom so that the defendant can observe the witness as the witness is testifying. We've gone through that in the courtroom before.... there will be no need for the sound to be on .... Because the courtroom sound system, [you all will] be able to hear there.

Id. at 7a.

This was the entirety of the trial court's consideration of the screen. The court granted the prosecutor's request because the court found that the statute made a screen mandatory, not because the court determined that AGC would experience trauma if she testified while being able to see Mr. Pitts.

If the trial court had followed the Confrontation Clause rather than the statute, the court could not have made the required finding of trauma. At a hearing conducted the previous day, AGC's mother admitted that AGC loved Mr. Pitts, and that AGC was sad that she would not be able to talk with him in the courtroom:

> Q. And I think earlier ... you said that [A.G.C.], even on the night she made these disclosures to you, she had said that she loved her daddy, right?
>
> A. Yes.
>
> Q. And, in fact, I mean [A.G.C.] continues to tell you that –
>
> A. Yes.
>
> Q. — she loves her daddy?
>
> A. Yes. She is very adamant that she loves her dad, that she misses her dad, that she wants to

> see her dad. She was very distraught over the fact that she would have to come to court and testify with her daddy in the courtroom and not be able to talk to him.

Id. at 34a-35a. AGC testified at trial that "she loved and missed Pitts and that she would want to hold him and hug him if she could see him." *Id.* at 97a. AGC would have been happy, not traumatized, to see Mr. Pitts. Her happiness would have been evident to the jury, and it would have played an important part in the jury's consideration of whether Mr. Pitts was guilty of the charged offense.

Mississippi thus errs in contending that the trial court made the case-specific finding that the Confrontation Clause requires.

II. The decision below flouts *Coy v. Iowa* and *Maryland v. Craig*.

Mississippi also errs in claiming (BIO 14-17) that despite the screen, the Confrontation Clause was satisfied.

Mississippi lists the aspects of AGC's testimony that were consistent with the Confrontation Clause: she testified "under oath in real time" (*id.* at 15); she was cross-examined (*id*); she was present in the courtroom (*id.*); and Mr. Pitts could watch her on a video monitor (*id.* at 15-16). But the most literal requirement of the Confrontation Clause is missing from this list. Mr. Pitts could not confront his accuser, because the two could not see each other face to face.

In *Coy*, the Court held that "the Confrontation Clause guarantees the defendant a face-to-face meeting with witnesses appearing before the trier of fact."

487 U.S. at 1016. The Court observed that "[t]he State can hardly gainsay the profound effect upon a witness of standing in the presence of the person the witness accuses, since that is the very phenomenon it relies upon to establish the potential 'trauma' that allegedly justified the extraordinary procedure in the present case." *Id.* at 1020. The Court recognized "[t]hat face-to-face presence may, unfortunately, upset the truthful rape victim or abused child; but by the same token it may confound and undo the false accuser, or reveal the child coached by a malevolent adult. It is a truism that constitutional protections have costs." *Id.*

In *Craig*, the Court acknowledged that "a State's interest in the physical and psychological well-being of child abuse victims may be sufficiently important to outweigh, at least in some cases, a defendant's right to face his or her accusers in court." 497 U.S. at 853. But the Court made clear that this weighing must be done on an individualized, witness-by-witness basis. "The requisite finding of necessity must of course be a case-specific one," the Court explained. *Id.* at 855. "The trial court must hear evidence and determine whether use of the one-way closed circuit television procedure is necessary to protect the welfare of the particular child witness who seeks to testify." *Id.*

Mississippi ignores the holdings of *Coy* and *Craig*. Instead, Mississippi quotes (BIO 16) snippets from the two decisions stating that the Confrontation Clause does not require face-to-face confrontation in every case. But these snippets do not answer the question in this case, which is about the procedure the Confrontation Clause requires before making an

exception to face-to-face confrontation. *Coy* and *Craig* clearly do *not* permit a state to install a screen whenever the prosecutor requests one, without any determination that the screen is necessary to prevent trauma to the child witness.

III. Summary reversal is appropriate.

As we showed in our certiorari petition, Pet. 22-26, every other jurisdiction follows *Coy* and *Craig*. No state has a statute like Mississippi's. No state supreme court or federal court of appeals has reached a decision in accordance with the Mississippi Supreme Court's decision below. Mississippi is the only state in which trial courts may block face-to-face confrontation between the defendant and a witness without any finding that it is necessary to do so.

Because Mississippi does not ask the Court to overrule *Coy* and *Craig*, the only question in this case is whether the decision below is consistent with *Coy* and *Craig*. It clearly is not. Mississippi now has a rule that is directly contrary to the rule the Court established in the two cases.

Summary reversal is therefore appropriate. We do not make this request lightly. "A summary reversal is a rare disposition, usually reserved by this Court for situations in which the law is settled and stable, the facts are not in dispute, and the decision below is clearly in error." *Schweiker v. Hansen*, 450 U.S. 785, 791 (1981) (Marshall, J., dissenting); *see also Andrew v. White*, 145 S. Ct. 75, 93 (2025) (Thomas, J., dissenting) (same). This is such a case. The law is settled and stable. Lower courts have been following *Coy* and *Craig* for decades. For just as long, Congress and state legislatures have been drafting stat-

utes that incorporate the standard of *Coy* and *Craig*. *See* Pet. 24-25. The facts of this case are not in dispute. And the decision below is clearly in error.

Left uncorrected, the error will affect an enormous number of cases in Mississippi. The state statute governs every criminal case and every juvenile proceeding in the state in which a witness is younger than 18. In all these cases, defendants will be denied the right to face-to-face confrontation whenever the prosecutor requests a screen.

CONCLUSION

The Court should summarily reverse. In the alternative, the petition for a writ of certiorari should be granted and the case set for argument.

Respectfully submitted,

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