No. 25-

IN THE

Supreme Court of the United States

JEFFREY DALE BUSBY,

Petitioner,

v.

STATE OF MISSISSIPPI,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Sixth Amendment's Confrontation Clause allows a State to introduce forensic laboratory testing through a technical reviewer who neither performed nor observed the testing first-hand, and whose testimony depends on the truth of an absent analyst's statements.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner is Jeffrey Dale Busby.

Respondent is the State of Mississippi.

There are no corporate parties involved in this case.

RULE 14.1(b)(iii) STATEMENT

This case arises from the following proceedings in the Clarke County Circuit Court and the Supreme Court of Mississippi:

State of Mississippi v. *Jeffrey Dale Busby*, No. 12Cl1:22-cr-00058-rb (Clarke Cnty. Cir. Ct., Jan. 8, 2024) (entering judgment of conviction after jury trial)

Busby v. *State*, 422 So. 3d 974 (Miss. 2025)

There are no other proceedings directly related to this case.

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PETITION FOR A WRIT OF CERTIORARI

Jeffrey Dale Busby respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Mississippi.

OPINIONS AND ORDERS BELOW

The Supreme Court of Mississippi's opinion is reported at 422 So. 3d 974 and reproduced at App. 1a–23a.

STATEMENT OF JURISDICTION

The Supreme Court of Mississippi entered judgment on November 13, 2025. On January 30, 2026, Justice Alito extended the time to file this petition to February 25, 2026. This Court has jurisdiction under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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

INTRODUCTION

Two years ago, this Court made clear in *Smith* v. *Arizona* that an expert witness may not relay an absent forensic analyst's statements if those statements must be true to support the expert's opinion. 602 U.S. 779, 803 (2024). Because the testifying expert in *Smith* "had no personal knowledge about [the] testing of the seized items," the absent analyst's testimonial statements were admitted for their truth, in violation of the

Confrontation Clause. *Id.* at 796–98. In short, the testifying expert's scientific opinion was inseparable from the absent analyst's work.

Multiple lower courts have correctly recognized that *Smith* forecloses a practice they previously approved: Admitting forensic test results into evidence through the testimony of a "technical reviewer" or supervisor who reviewed the lab analyst's work product but lacks first-hand knowledge of the actual testing. Because the reviewer or supervisor is ultimately relying on the absent analyst's statements for their truth, this practice violates the Confrontation Clause.

Below, however, the Mississippi Supreme Court doubled down on its pre-*Smith* precedent, blessing exactly what *Smith* forbids. To try to show that petitioner Jeffrey Busby sold methamphetamine, the State had the substance at issue tested in a drug-analysis lab. Camille Roy was the technician who conducted the analysis from start to finish. But she never testified. Instead, the State called Charlotte Cothern, a "technical reviewer" who merely looked over Roy's work packet and data. Cothern did not conduct or observe any of the drug analysis herself. Cothern testified that, in her supposedly independent opinion, the substance was methamphetamine and, over Mr. Busby's objection, the State introduced Roy's lab report. Based on this analysis by a witness who never testified, Mr. Busby was sentenced to 40 years in prison.

On appeal, the state did not claim that this testimony complied with the Confrontation Clause. Yet a bare majority of the Mississippi Supreme Court held *sua sponte* that it did. The court allowed a technical reviewer's testimony regarding forensic evidence to be admitted for its truth even when the supervisor merely co-signs and reviews the report without participating

in or observing the drug analysis. In so doing, the majority narrowed *Smith* to a vanishing point, claiming that this Court's decision has nothing to say about "the testimony of an analyst who reviewed the report for accuracy and signed it as a technical reviewer." App. 11a. Four justices disagreed: Because "Cothern never saw the substance at issue and therefore had no personal knowledge of many of the facts introduced via her testimony," they urged, her testimony violated *Smith*. *Id.* at 13a.

The Maine, Massachusetts, Georgia, and Washington Supreme Courts, as well as the Fourth Circuit, likewise reject this practice. These other courts are correct: The rule adopted below plainly violates *Smith*.

This is not the first time a divided Mississippi Supreme Court has tried to duck Confrontation Clause precedent that it doesn't like. Just three months ago, this Court summarily reversed the same court for wrongfully applying a state statute that denied the defendant's "Sixth Amendment right to meet his accusers face to face." *Pitts* v. *Mississippi*, 146 S. Ct. 413, 416 (2025) (per curiam). There, as here, the state high court "attempted to avoid [constitutional] constraints by distinguishing" this Court's precedents in unpersuasive ways. *Id.* The same result is warranted here. This Court should grant the petition and either summarily reverse the decision below and remand for further proceedings or set this case for argument.

STATEMENT OF THE CASE

A. Factual Background

1. A confidential informant conducted a controlled buy from Mr. Busby, returning with a cigarette package containing suspected methamphetamine. App. 2a.

He was then indicted for the sale of a controlled substance. *Id.* at 2a–3a.

At trial, the State introduced images and video footage from a hidden camera that captured the controlled buy. App. 3a. The informant and supervising police officers testified that the cigarette pack appeared to contain methamphetamine. *Id.*

The State also called Charlotte Cothern, a forensic drug analysis specialist at the Mississippi Forensics Laboratory. App. 3a. Cothern testified that her coworker, Camille Roy, had all direct contact with the substance at issue: Roy opened the evidence bag, inspected the substance, decided which tests to run, and performed those tests. *Id.* Cothern never saw the substance, nor did she run any tests herself. *Id.* at 13a–14a. Cothern merely reviewed Roy's work packet, which included Roy's recitation of the weight and physical description of the substance, the tests performed, and details from the instrumentation. *Id.* at 3a. After reviewing this information, Cothern cosigned the forensic report. *Id.*

On this basis, Cothern testified that the substance recovered from the cigarette pack was 2.84 grams of methamphetamine. App. 3a. Over Mr. Busby's objection, the State used Cothern's testimony to introduce the lab report that included Roy's conclusions. *Id.* at 3a–4a.

Mr. Busby was convicted and sentenced to the maximum sentence—40 years in prison. App. 4a.

2. Mr. Busby appealed to the Mississippi Supreme Court, arguing that Cothern's testimony and the report's admission violated his constitutional right to confront the witnesses against him. App. 4a. In response, the State did not dispute the merits, arguing instead that the error was harmless. *Id.* at 20a.

The state high court nevertheless held that no Confrontation Clause violation occurred. The five-justice majority relied on the court own's pre-*Smith* precedent to hold *sua sponte* that Cothern's identification of the substance and introduction of the lab report was permissible. App. 4a–5a. The majority asserted that technical reviewers have "personal knowledge and involvement in the testing process and report creation." *Id.* at 5a. The majority interpreted *Smith* narrowly, claiming it was meant only to rectify the wrongful justification set forth in *People* v. *Williams*, 939 N.E.2d 268, 278 (Ill. 2010), that witnesses who are independent experts "are only conveying facts from forensics reports to support their expert opinion and not to convey their truth," thus not implicating the Confrontation Clause. App. 9a–10a. The court said that both *Smith* and *Bullcoming* v. *New Mexico*, 564 U.S. 647 (2011), left open the question of "when . . . a testifying analyst becomes sufficiently involved in the process to give her *own* testimony based on the report she co-signed." App. 11a.

Concurring only in the judgment, Justice Coleman (joined by three other justices) countered that Cothern lacked the requisite personal knowledge to satisfy the Confrontation Clause. App. 13a. Indeed, "Cothern testified that she never even saw the methamphetamine [and] had no involvement in preparing the report but only reviewed it once complete." *Id.* Due to her lack of personal knowledge, Justice Coleman noted, "the only way in which [Cothern] could testify regarding [the facts admitted into evidence through her testimony] was to learn them from the one person identified in the record who did have personal knowledge of them, the absent testing analyst, Roy." *Id.* at 14a. He concluded Cothern's testimony violated the Confrontation Clause. *Id.* at 19a, 21a.

Justice Coleman also disagreed with the majority's reading of *Smith*. App. 15a. In his view, *Smith* reaffirms that the Confrontation Clause applies in full force to forensic reports and "mak[es] clear that [a] testifying expert must have personal knowledge of testimonial facts that come into evidence in support of the witness's opinion." *Id.* at 15a, 18a–19a (citing *Smith*, 602 U.S. at 779). Cothern could, like the witness in *Smith*, testify to facts she had personal knowledge of, such as the "methods used to analyze the substance at issue and . . . that the methods adhered to the correct scientific principles." *Id.* at 15a. But regardless of the "testifying expert's high level of familiarity with the tests used by the lab technician who actually ran the tests," *Smith* "bars the admission of an expert's testimony that is based on an absent analyst's report to prove the truth of the matter asserted." *Id.* at 18a–19a.

Despite Cothern's title as a technical reviewer, she (just like the testifying witness in *Smith*) had no part in the actual testing and merely restated an absent analyst's "observations, testing, and knowledge." App. 15a. Justice Coleman determined that Cothern's testimony, in which "she relayed Roy's factual knowledge of the methamphetamine to the jury, [is] violative of Supreme Court precedent." *Id.* at 19a. Justice Coleman nevertheless concurred in the result because he believed this error was harmless. *Id.* at 22a–23a; but see *infra* § III.

REASONS FOR GRANTING THE PETITION

The ruling below defies this Court's holding in *Smith*, placing it at odds with every other jurisdiction that has addressed this issue. Summary reversal is appropriate here—"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) (per curiam). At a minimum, this Court should grant review to resolve the split that the decision below created and clarify *Smith*'s application to the common scenario of technical-reviewer testimony.

I. The decision below flies in the face of *Smith*.

Allowing a technical reviewer to relay an absent analyst's testimonial statements flatly violates *Smith*. Indeed, Mississippi tellingly *did not argue* below that what happened here comports with *Smith*. See App. 20a. The state's reticence is understandable: The decision below allows exactly what *Smith* forbids.

Relying on its own ossified precedent predating this Court's decisions in *Crawford*, *Melendez-Diaz*, *Bullcoming*, and *Smith*, the Mississippi Supreme Court affirmed admitting the results of Roy's forensic lab report through the testimony of Cothern, a technical reviewer. App. 4a–6a. The court claimed Cothern was "actively involved" in producing the report, had "intimate knowledge" of the tests, and thus could form "her own conclusion" about the substance tested. *Id.* at 5a, 11a. And the court deemed *Smith* distinguishable because it did not consider this precise scenario.

But *Smith* held that an expert witness cannot present a forensic analyst's testimonial out-of-court statements by asserting that those statements form the basis for the expert's opinion. 602 U.S. at 803. Because the forensic analyst's statements could support the expert's opinion only if true, the defendant had the right to cross-examine the analyst's statements. *Id.* In other words, the testifying witness needs personal knowledge of the testimonial facts admitted through his testimony. *Id.* at 796, 799. Allowing a surrogate analyst to testify by forming an "independent opinion"

would "end run" the Confrontation Clause's protections. *Id.* at 799.

That is exactly what the decision below allows. Cothern did not conduct the forensic testing, nor did she observe those tests. App. 14a. She "had no involvement in preparing the [forensic] report but only reviewed it once complete." *Id.* at 13a–14a. Indeed, Cothern "had no personal knowledge of the vast majority of the facts that were admitted into evidence through her testimony, including":

1. That the substance was subjected to two different types of testing, a secondary amine test and a gas chromatograph mass spectrometer;
2. That the secondary amine test resulted in a blue color that indicated methamphetamine;
3. That the testing analyst, Roy, received the methamphetamine, cut it open, and made observations regarding its appearance; and
4. The weight, color, and other physical characteristics of the methamphetamine.

Id. at 14a.

Cothern's lack of personal knowledge should have barred the admission of her testimony identifying the substance and the drug analysis. Just like in *Smith*, Cothern's testimony makes clear that "what [s]he knew [about the testing of the seized items] came only from reviewing [the absent analyst's] records." 602 U.S. at 796. Merely signing a report does not rectify this defect—the underlying facts are still testimonial out-of-court statements that a criminal defendant has the right to cross examine.

To be sure, Cothern could testify about matters she did have personal knowledge of, such as "how the lab

typically functioned," "forensic guidelines and techniques," or "hypothetical questions" related to the absent analyst's work, without violating the Confrontation Clause. *Id.* at 799–801. But that is not what occurred here. The Mississippi Supreme Court's holding allows a technical reviewer to go much further, effectively becoming the absent analyst's "mouthpiece." *Id.* at 800. The holding below makes this Court's decisions in *Melendez-Diaz*, *Bullcoming*, and *Smith* a "dead letter, and allow[s] for easy evasion of the Confrontation Clause." *Id.* at 798.

In turn, the jury that convicted Mr. Busby necessarily relied not on Cothern's opinion, but on Roy's statements—even though Roy never testified. "If Roy had lied or been mistaken about her observations, testing, and conclusions, then Cothern's opinions would have counted for nothing." App. 20a–21a (cleaned up). Yet, without the ability to confront Roy at trial, Mr. Busby had no way to challenge the truth, accuracy, or completeness of the crucial testimony offered against him. Before Mr. Busby was sent to prison for 40 years, the jury should have had the chance to examine Roy's "physical presence, oath, cross-examination, and … demeanor." *Maryland* v. *Craig*, 497 U.S. 836, 846 (1990).

This case is thus an unfortunate sequel to *Pitts*. *Pitts* involved a state statute requiring, in every case, a mandatory physical screen between a child witness and the defendant in a child-abuse case. 146 S. Ct. at 415. That statute violated this Court's clear Confrontation Clause precedent, which holds that a trial court cannot use such a screen without hearing evidence and making "a case-specific finding of the requisite necessity." *Id.* (cleaned up). But a divided Mississippi high court applied the statute anyway, having "sought to distinguish" this Court's precedents "on various

grounds." *Id.* at 416. This Court summarily reversed, requiring the state courts to respect the Sixth Amendment's commands. The Court did so without addressing whether the error might have been harmless, leaving that issue for remand. See *id.* at 417. It should do the same here.

II. The decision below conflicts with five other courts' post-*Smith* rulings.

The Mississippi Supreme Court's rule conflicts with five other courts' decisions on the level of personal knowledge required for a technical reviewer's testimony to satisfy the Confrontation Clause. The high courts of Maine, Massachusetts, Georgia, and Washington, plus the Fourth Circuit, hold that the person who handles, observes, and tests forensic evidence—the analyst with personal knowledge of those testimonial facts—must be subject to cross-examination to satisfy the Confrontation Clause.

Maine. In *State* v. *Thomas*, 334 A.3d 686, 702–03 (Me. 2025), a chemist analyzed substances seized from the defendant, determined their weight, and concluded the substances were fentanyl before moving out of state prior to trial. *Id.* The State then sought to offer a technical reviewer's testimony, which was subject to cross-examination, as to the weight of the two substances and his "independent opinion" that they contained fentanyl. *Id.* at 701. At trial, the technical reviewer based his testimony on the data that was collected by the absent chemist. *Id.*

The Maine Supreme Judicial Court found that the trial court's reliance on the absent chemist's "file notes, test results, and sample profile, all generated by and based on [the absent chemist's] actions, carries the same problem identified by the Supreme Court in *Smith*." *Id.* at 703. The court held that the testimony

of the chemist at trial relied on the truth of out-of-court statements which were testimonial, thus violating the defendant's Confrontation Clause right post-*Smith*. *Id.*; *see also State* v. *Gleason*, 339 A.3d 774 (Me. 2025) (same).

Massachusetts. In *Commonwealth* v. *Gordon*, 266 N.E.3d 369, 373 (Mass. 2025), the analyst who conducted a drug-identification test on a substance seized from the defendant was no longer employed by the State at trial. A supervisor who did not perform or observe the testing reviewed the tests and identified the substances, and the State introduced the test results through the supervisor's testimony. *Id.* at 375–76.

The Massachusetts Supreme Judicial Court concluded from the Court's reasoning in *Smith* that the supervising analyst's opinion was dependent on the absent analyst's out of court testimonial statements, thus making it "'independent' in name only." *Id.* at 392–93. The court held that the supervisor's testimony based on the absent analyst's test results violated the Confrontation Clause post-*Smith*. *Id.*

Georgia. In *Watkins* v. *State*, 912 S.E.2d 574, 585 (2025), an analyst prepared a forensic report of substances seized from the defendant and certified that the substance was cocaine. The analyst ended employment with the State before the defendant's trial, so the State called a reviewing analyst to testify to the factual assertions in the absent analyst's report and to "state his own conclusion" about the report. *Id.* at 586. The reviewing analyst neither performed nor observed the testing and never handled or witnessed the substance at issue. *Id.*

The Georgia Supreme Court reversed the defendant's drug conviction, holding that the analyst's trial

testimony relaying "the factual assertions in [the absent analyst's] report violated the Confrontation Clause under the United States Supreme Court's decision in *Smith*, and therefore the trial court clearly and obviously erred in admitting it." *Id.* at 587.

Washington. In *State* v. *Hall-Haught*, 569 P.3d 315, 318 (Wash. 2025), a technician performed all toxicology testing used against the defendant at trial. A supervisor did not perform or observe the testing but reviewed and signed off on the lab toxicology report, and the State admitted the toxicology report through the supervisor. *Id.*

The Washington Supreme Court departed from precedent, finding that its prior case law, which "allowed the supervisor's expert opinion to rely on the nontestifying forensic analyst's factual statements as the basis for their opinion," was "unconstitutional under *Smith*." *Id.* at 323. The court held the supervisor's testimony admitting the lab toxicology report was based on testimonial hearsay and violated the Confrontation Clause post-*Smith*. *Id.*

Fourth Circuit. In *United States* v. *Seward*, 135 F.4th 161, 168 (4th Cir. 2025), a non-testifying analyst tested DNA samples taken from a crime scene. The State then introduced the DNA sample through the testimony of a DNA expert who reviewed the analyst's conclusions and provided those conclusions at trial without having tested the samples herself. *Id.*

The Fourth Circuit held that "*Smith* makes clear that the government may not 'eva[de]' the Confrontation Clause by offering testimony that is based on a non-testifying analyst's work 'as long as [the testifying expert] bases an independent opinion on that material.'" *Id.* at 168–69. Any approach otherwise would

make "*Smith* and several other post-*Crawford* decisions 'a dead letter, and allow for easy evasion of the Confrontation Clause.'" *Id.* The court held that "this testimony was offered for the truth of the matter asserted and so implicates the Confrontation Clause." *Id.*

These cases show that, post-*Smith*, courts consistently reject the use of surrogate witnesses—whether technical reviewers, supervisors, or experts—to bootstrap an absent analyst's testimonial statements. The work of the absent analyst and the testifying witness are inseverable. The latter's ultimate, scientific conclusion relies entirely on the former: The testifying witness "could opine that the tested substances were [controlled substances] only because he accepted the truth of what [the absent analyst] had reported about her work in the lab." See *Smith*, 602 U.S. at 798. In contrast, the Mississippi Supreme Court has created a lopsided split by reaffirming its prior case-law, which allows technical reviewers to sidestep the Confrontation Clause.

III. This case is an ideal vehicle to decide this important issue.

The question presented was squarely passed upon below. It was also—contrary to the four-justice concurrence below—dispositive. Despite rejecting the majority's Sixth Amendment holding, those justices concurred in the result because they believed the constitutional error was harmless. See App. 22a. That should not deter this Court from granting the petition.

This Court often rejects a lower court's erroneous legal rule regardless of whether the error might be deemed harmless. *Pitts* is a prime example: The Court summarily reversed the Mississippi Supreme Court on the Confrontation Clause issue and remanded the case

for further proceedings, including on harmless error: "[O]n remand the State remains free to argue, and the Mississippi Supreme Court remains free to consider, whether the error in this case warrants a new trial under the harmless-error standard." 146 S. Ct. at 417; see also *Fields* v. *Colorado*, 145 S. Ct. 1136 (2025) (mem.) (issuing a GVR despite the state's harmless-error argument); *McFadden* v. *United States*, 576 U.S. 186, 197 (2015) (remanding for the lower court to consider harmlessness "in the first instance"); *Hedgpeth* v. *Pulido*, 555 U.S. 57, 62 (2008) (per curiam) (same); *California* v. *Roy*, 519 U.S. 2, 6 (1996) (per curiam) (same). The same course is appropriate here.

CONCLUSION

The Court should grant the petition and either (i) reverse the decision below and remand for further proceedings or (ii) set the case for argument.

Respectfully submitted,

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