

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Ruben Matadamas-Serrano,

Petitioner,

v.

State of Nevada

Respondent.

On Petition for Writ of Certiorari
to the Nevada Supreme Court

Petition for Writ of Certiorari

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QUESTIONS PRESENTED

1. When a defendant raises a challenge during jury selection, under *Batson v. Kentucky*, 476 U.S. 79 (1986), is the trial court required to apply *Batson's* three-step analysis sequentially?
2. Is the admission of a substitute medical examiner's expert opinion, based in part on an autopsy report prepared by a non-testifying medical examiner, contrary to this Court's decision in *Smith v. Arizona*, 602 U.S. 779 (2024)?

LIST OF PARTIES

Petitioner, Ruben Matadamas-Serrano, was the defendant in the Eighth Judicial District Court and the appellant in the Nevada Supreme Court.

Respondent, State of Nevada, was the plaintiff in the Eighth Judicial District Court and appellee in the Nevada Supreme Court.

LIST OF RELATED PROCEEDINGS

State v. Matadamas-Serrano, Eighth Judicial District Court, No. C-20-348870-1 (March 27, 2024).

Matadamas-Serrano v. State, Nevada Supreme Court, No. 88527 (March 5, 2026).

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**IN THE
SUPREME COURT OF THE UNITED STATES**

PETITION FOR WRIT OF CERTIORARI

Petitioner, Ruben Matadamas-Serrano, respectfully requests that a writ of certiorari issue to review the judgment of the Nevada Supreme Court.

OPINIONS BELOW

The opinion by the Nevada Supreme Court, the highest state court to review the merits of Matadamas-Serrano’s conviction, appears at Appendix A to the petition and is reported at *Matadamas-Serrano v. State*, 584 P.3d 793 (Nev. March 5, 2026). App. A.¹ The judgment of conviction, entered by the Eighth Judicial District Court, Clark County, Nevada, appears at Appendix B and is unpublished but is available at *State v. Matadamas-Serrano*, Case No. C-20-348870-1, 2024 Nev. Dist. LEXIS 432 (Eighth Jud. Dist. Ct. March 27, 2024). App. B. The Nevada Supreme Court order denying Mr. Matadamas-Serrano’s petition for rehearing appears at Appendix C and is unreported. App. C.

JURISDICTION

The Nevada Supreme Court issued its opinion affirming the conviction, on direct appeal, on March 5, 2026. App. A. The Nevada Supreme Court issued its

¹All documents included in the Appendix filed with this Petition will be cited as “App.” with the corresponding letter and relevant page number, where appropriate. Citations to the record below are primarily to the trial transcript, contained in Appellant’s Appendix filed on direct appeal, and will be cited as “R.” with the relevant page number. Cites to Appellant’s Opening Brief filed below are cited as “R. AOB” with the relevant page number of that document.

order denying rehearing on April 8, 2026. App. C. This Court has jurisdiction under 28 U.S.C. § 1257(a), as this petition for a writ of certiorari is filed within ninety days of the Nevada Supreme Court's judgment.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

United States Constitution, Amendment XIV, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This petition raises two important issues under well-established federal law. The first arises under this Court's long-standing authority governing the three-step analysis provided by *Batson v. Kentucky*, ensuring that parties do not improperly strike potential jurors for a discriminatory purpose. 476 U.S. 79 (1986). The second arises under this Court's authority governing the Sixth Amendment's Confrontation

Clause, and recent holding, in *Smith v. Arizona*, that the testimonial hearsay standard applies when a testifying expert relies on a non-testifying expert's out-of-court statements in forming the basis of the testifying expert's opinion. 602 U.S. 779, 803 (2024).

This case presents the opportunity for this Court to reaffirm that *Batson's* three-step process must be applied, particularly that it is improper for a trial court to require a challenging party to meet the third step of *Batson* during step one of the inquiry. It likewise presents the opportunity for this Court to reaffirm that the Confrontation Clause applies even when an expert relies on both testimonial hearsay and non-hearsay in forming their opinions.

I. Factual Background

On November 27, 2019, Maribel Garibay, the decedent, was legally married to Abel Aguilar, but their marriage was one of convenience, for immigration purposes. Thus, Garibay was living in a home with a roommate while Aguilar lived in the home's casita. Additionally, Garibay and the petitioner, Ruben Matadamas-Serrano, who share two children together, were attempting to rekindle their relationship. R. 11, 618–20, 622, 649, 651, 652, 657–58.

On the night of November 27th, Matadamas-Serrano went to see Garibay at her home, and he appeared intoxicated. He left and returned later. Garibay and Aguilar were in the casita watching television when Aguilar discovered Matadamas-Serrano outside, in the home's courtyard area. Upon discovering

Matadamas-Serrano in the courtyard, Aguilar testified that he could tell immediately that Matadamas-Serrano was intoxicated, he attacked Matadamas-Serrano, beating him unconscious, and that Garibay tried to come between him and Matadamas-Serrano. R. 12-14, 57–59, 67, 94.

Aguilar testified that, after leaving Matadamas-Serrano outside, unconscious, he went back into the casita to wash the blood off his hands. When he left the bathroom, he testified that he saw Matadamas-Serrano in the casita, running at him. Aguilar attempted to shut himself in the bathroom and struggled with Matadamas-Serrano before being able to shut and lock the door. Aguilar and Garibay both called 911, and the evidence indicates that Matadamas-Serrano then stabbed Garibay multiple times next to the bathroom door. R. 14-19. Matadamas-Serrano was apprehended nearby shortly thereafter and was transported to the hospital where he was treated for injuries. Garibay was transported to the hospital and later succumbed to her injuries while in hospice care. R. 25–26, 1511.

II. Trial Court Proceedings

On January 9, 2020, the State of Nevada charged Matadamas-Serrano by way of Criminal Complaint with one count of Murder with use of a Deadly Weapon. The State later filed an Amended Criminal Complaint, adding a count of Burglary while in Possession of a Deadly Weapon. After a preliminary hearing, the case was bound over, and the State filed an Information on June 25, 2020. R. 158–63.

Before trial, the defense filed a motion in limine seeking to preclude the State from offering testimony from Dr. Stacey Simons, a medical examiner with the Clark County Coroner's Office. The defense argued that Dr. Simons' opinion was based on the autopsy report prepared by a different, non-testifying medical examiner. Thus, because Dr. Simons did not perform the autopsy and she was not present for the autopsy, her opinion constituted impermissible testimonial hearsay and should be excluded. The trial court held that Dr. Simons could testify to her opinion formed based on the autopsy photographs. App. A 14; App. D 30.

The matter proceeded to trial and during jury selection, after the State used five of its eight peremptory strikes to remove minority jurors, the defense raised a challenge pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986). The defense argued there was a pattern of strikes against minorities. Additionally, the defense argued that Matadamas-Serrano's immigration status and Latino heritage would be referenced during trial, along with the victim's, making this case sensitive to racial bias. App. F 37–41.

The trial court found that the defense raised sufficient facts to show a prima facie case and, after making this finding, the State asked to make a record. The State argued that the jury panel was diverse and, when adding different minority groups together, those jurors were no longer a minority. The court then questioned the defense how the third step of a *Batson* challenge (incorrectly calling it the second component), that the State purposefully used the strikes to dismiss minority jurors, could be established. The court never addressed the second step required by

Batson, that the State articulate a non-discriminatory reason for the strikes. The court then reversed its position, finding that the defense did not meet the first step because there were minorities remaining on the jury. The trial court ultimately denied the *Batson* challenge, purportedly based on step one, concluding it would not proceed to the second step. App. F 41–53.

On the third day of trial, the State called Dr. Simons to testify. Dr. Simons testified that she did not work for the office in 2019, when Garibay’s autopsy occurred, but that she reviewed the autopsy report from the pathologist who performed the autopsy, photographs, medical records, and the coroner’s investigator’s report in forming her opinion. The defense renewed its objection to Dr. Simons’ testimony, which was previously raised in the pre-trial motion in limine, arguing that her reliance on the autopsy report to form her expert opinion constituted testimonial hearsay and should be precluded. The court noted the objection but allowed Dr. Simons to testify as to her opinion based on the autopsy photographs. App. E 36.

During her testimony, Dr. Simons testified that she used the autopsy report from the medical examiner who performed the autopsy in forming her opinion and referred to that report to refresh her memory. She also specifically testified as to what the non-testifying examiner did in this case. For example, Dr. Simons testified to the internal damage caused by the stabbing and that the non-testifying medical examiner “did actually measure it,” referring to the stab wound on Garibay’s torso, in explaining how its size affected her analysis. Similarly, Dr.

Simons specifically asked the trial court if she could refer to the autopsy report to refresh her recollection. She stated, “Your Honor, will it be okay if I look at the report for things like numbers” The State also reminded Dr. Simons that she could refresh her recollection with the report, when testifying about Garibay’s height and weight, and how that affected the severity of Garibay’s injuries. R. 825, 827, 831.

At trial, Matadamas-Serrano’s sole defense focused on *mens rea*, arguing that he did not have, and could not have formed, the specific intent required for a first-degree murder conviction. R. 1213–25. In its closing argument, the State relied on Dr. Simons’ testimony to demonstrate Matadamas-Serrano had the specific intent required to convict him of first-degree murder. In particular, the State asked, “Did defendant have the intent to kill [Garibay]? Look at the stab wounds.” It then reminded the jury of Dr. Simons’ testimony, told the jury to think about Dr. Simons’ testimony, and asked, “So did he intend to kill her? Undoubtedly.” R. 1199–1200.

On February 15, 2024, the jury returned a verdict of guilty on both counts. On March 26, 2024, the court sentenced Mr. Matadamas-Serrano to twenty-six years to life. App. B 24–25.

III. Appellate Court Proceedings

Matadamas-Serrano appealed his conviction to the Nevada Supreme Court. On appeal, he argued that the trial court erred in misapplying the three-step *Batson* analysis by finding a *prima facie* case under step one, then asking the

defense to meet step three, while neglecting to apply the second step. R. AOB 21–26. He likewise argued that, even if the court considered the substantive analysis under step one, the trial court erred in concluding that no prima facie showing was made. R. AOB 27–33.

Matadamas-Serrano also argued on appeal that the trial court erred in allowing Dr. Simons to testify to her expert opinion, which was based in part on an autopsy report prepared by a non-testifying expert, contrary to the Sixth Amendment’s Confrontation Clause. In particular, Matadamas-Serrano argued that the expert opinion was testimonial in nature pursuant to *Crawford v. Washington*, 541 U.S. 36, 51–52 (2004), and *Davis v. Washington*, 547 U.S. 813, 826 (2006). R. AOB 38. He further argued that the statements were hearsay, pursuant to *Smith v. Arizona*, 602 U.S. 779 (2024), because Dr. Simons’ “independent” opinion was only reliable if the jury likewise believed the underlying statements in the autopsy report, upon which Dr. Simons relied in forming her opinion. R. AOB 34–39. Matadamas-Serrano also argued that the State could not demonstrate this error was harmless beyond a reasonable doubt. R. AOB 56.

The Nevada Supreme Court affirmed the conviction on March 5, 2026, concluding that the district court correctly denied Matadamas-Serrano’s *Batson* challenge at the first step, because he “largely” based his challenge on the number of peremptory strikes used against minorities, without addressing Matadamas-Serrano’s argument that the trial court incorrectly asked the defense to meet step three, without addressing step two of the *Batson* analysis. App. A 7–10.

Additionally, the court below concluded that *Smith v. Arizona* only precludes substitute expert testimony that “is merely a conduit for another analyst’s testimonial statements,” and that a substitute expert’s testimony is admissible if it “is meaningfully independent and not based on testimonial hearsay . . . even where the expert may have reviewed another expert’s report in preparation for trial.” Accordingly, assuming without deciding that Dr. Simons’ expert opinion was testimonial, the court held that Dr. Simons’ testimony did not violate the Confrontation Clause because she relied in part on autopsy photographs in forming her independent opinion. The court also held that even if Dr. Simons’ testimony was testimonial hearsay, its improper admission was harmless error because Dr. Simons only testified that Garibay’s wounds caused her death, which was not disputed. App. A 15. Matadamas-Serrano petitioned the court for rehearing. His petition was denied on April 6, 2026. App C.

REASONS FOR GRANTING THE PETITION

This Court should grant this petition for writ of certiorari because the Supreme Court of Nevada “decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.” S. Ct. R. 10(c). The decision below contradicts this Court’s well-established authority as held in *Batson v. Kentucky* and *Smith v. Arizona*, and the court’s misapplication of these important constitutional rules are likely to be repeated in other criminal jury trials throughout Nevada. Accordingly, summary reversal is appropriate here, where the

decision below is “obviously wrong and squarely foreclosed” by this Court’s precedent. *Shoop v. Cassano*, 142 S. Ct. 2051, 2057 (2022).

I. The decision below, requiring the defense to demonstrate step three of *Batson* without addressing step two, is contrary to well-established federal law that courts must not conflate the *Batson* steps.

A. The law governing *Batson* challenges is well-established federal law.

Using preemptory challenges to strike jurors based on race is a violation of the Equal Protection Clause of the Fourteenth Amendment. *Batson v. Kentucky*, 476 U.S. 79 (1986). In *Batson*, this Court established a three-step process for determining whether a juror was improperly struck based on race. *Id.* at 96–97. First, the party challenging the strike must make a prima facie showing of racial discrimination. *Id.* at 96. Second, the burden of production shifts to the striking party to articulate a race-neutral explanation for the strike. *Id.* at 97. Third, the burden then shifts back to the challenging party to demonstrate that the race-neutral explanation offered is merely a pretext for purposeful discrimination. *Id.* This Court has repeatedly upheld the validity of the three-step *Batson* process. *See, e.g., Pitchford v. Cain*, 146 S. Ct. 1345, 1349 (2026); *Snyder v. Louisiana*, 552 U.S. 472, 476–77 (2008); *Miller-El v. Cockrell*, 537 U.S. 322, 338–39 (2003).

In applying the three-step process, this Court has emphasized the importance of the second step in the analysis. *See Flowers v. Mississippi*, 588 U.S. 284, 298 (2019) (“Under *Batson*, once a prima facie case of discrimination has been shown by a defendant, the State *must* provide race-neutral reasons for its peremptory

strikes.” (emphasis added)); *Miller-El*, 537 U.S. at 338–39 (“[T]he critical question in determining whether a prisoner has proved purposeful discrimination at step three is the persuasiveness of the prosecutor’s justification for his preemptory strike.”). Moreover, the trial court should make a specific finding on the record as to whether or not the proffered reason is pretextual. *Snyder*, 552 U.S. at 479.

In *Paulino v. Castro*, the Ninth Circuit likewise emphasized the importance of the second step, holding that “it does not matter that the prosecutor might have had good reasons to strike the prospective jurors. What matters is the *real* reason they were stricken. The trial court did not pause to require an actual explanation from the prosecutor” 371 F.3d 1083, 1090 (9th Cir. 2004) (holding the trial court erred in finding no prima facie showing based on the State striking five of six potential Black jurors).

In *Sanchez v. Roden*, the First Circuit addressed an issue almost identical to this case. 753 F.3d 279 (1st Cir. 2014). The defense raised a *Batson* challenge, arguing that the prosecution used its strikes specifically to target young, African American men, and the trial court found that a prima facie case was made. *Id.* at 286–87. The prosecutor then pushed back, asking if the trial court was finding a pattern of discrimination, and the court again noted there was a prima facie showing under step one, but then asked the defense how it could demonstrate purposeful discrimination under step three, without requiring step two to be met. *Id.* at 287. The defense reiterated its basis for the prima facie showing under step one, the prosecutor contended that it was not required to provide any explanation

until the defense had established a pattern of discrimination, and the trial court ultimately reversed its ruling and held there was no prima facie showing. *Id.* at 287–88. In concluding that the trial court unreasonably applied *Batson*’s first prong, the First Circuit held that the trial court applied *Batson*’s first step “in such a way as to permit increased racial discrimination.” *Id.* at 299, 300. The court went on to explain that at the first step, “our concern is whether such an inference may be drawn in the first instance, not whether the inference, once drawn, may be rebutted,” before concluding that a prima facie case was shown and the prosecutor should have been required to offer a race-neutral reason at step two. *Id.* at 306, 307.

B. The decision below is wrong.

In this case, the trial court found a prima facie showing that there was racial discrimination when the State used five of its eight preemptory strikes against minority venire members. App. F 41. Indeed, the trial court specifically stated, “So I find that the defense has raised sufficient facts to show a prima facie case” *Id.* But, just like in *Sanchez*, after the State pushed back and challenged the prima facie finding, rather than moving on to step two of the *Batson* analysis, the trial court moved to step three of *Batson* and asked the defense “how do you establish the second component, that they are using it purposefully?” *Id.* at 44; *Sanchez*, 753 F.3d at 287–88. This properly is the third, rather than second, step of the *Batson* analysis. When the trial court relieved the prosecution of their burden to offer a

race-neutral reason, it simultaneously precluded Matadamas-Serrano's ability to demonstrate that the State's reasons were pretextual. Skipping step two effectively required Matadamas-Serrano to rebut the State's purported race-neutral reason that was never articulated.

The Nevada Supreme Court noted that Matadamas-Serrano did not provide any authority that prevented the State from challenging the court's finding of a *prima facie* case, but this misses the point. The issue is not whether the State is permitted to argue against the *prima facie* showing at step one, but whether the trial court can skip step two before asking the defense to demonstrate step three. Well-established federal law holds that it cannot.

The purpose of the first step of *Batson* is not to prove the strikes were racially motivated, it is only to demonstrate that "discrimination *may have* occurred." *Johnson v. California*, 545 U.S. 162, 169–70, 173 (2005) (emphasis added). This Court "did not intend the first step to be so onerous that a defendant would have to persuade the judge--on the basis of all the facts, some of which are impossible for the defendant to know with certainty--that the challenge was more likely than not the product of purposeful discrimination." *Id.* at 170.

Here, the trial court required precisely that—after finding a *prima facie* case was made, it then asked the defense to prove that the strikes were the product of purposeful discrimination. Even if the trial court did not make a *prima facie* finding, as the court below suggests, such that the court only considered step one and was not required to move to step two, the court improperly required the defense

to prove purposeful discrimination (step three) when considering whether a prima facie case, under step one, was made. In upholding the trial court’s ruling, the Nevada Supreme Court abandoned clearly established federal law governing *Batson* challenges. *See Johnson*, 545 U.S. at 170. And Nevada courts cannot avoid a proper *Batson* analysis by “effectively clos[ing their] eyes” and “simply deciding that the defendant has not made out a prima facie case.” *United States v. Clemmons*, 892 F.2d 1153, 1156 (3rd Cir. 1989).

C. This case is an ideal vehicle to address this important issue.

A defendant has a right to be tried by a jury selected by non-discriminatory means. *Batson*, 476 U.S. at 85–86. If even one of the five strikes against minority jurors was racially based, Matadamas-Serrano’s rights under the Equal Protection Clause were violated. U.S. Const. Amend. XIV; *Snyder*, 552 U.S. at 478. While the State may have had valid reasons for its preemptory strikes, none were provided to the trial court, and Matadamas-Serrano had the right to examine those reasons when required to demonstrate purposeful discrimination. The trial court and the Nevada Supreme Court denied him that right, contrary to clearly established federal law.

Importantly, the decision below is a published opinion, such that it will be controlling authority for trial courts in Nevada during future jury trials. Moreover, Nevada trial courts have a history of ignoring this Court’s three-step *Batson* analysis. *See McCarty v. State*, 371 P.3d 1002, 1010 (Nev. 2016) (Douglas, J.,

concurring) (where the trial court ignored step three of *Batson*’s three-step analysis, noting that the Nevada Supreme Court “continue[s] to see that analysis not being followed,” despite it being firmly rooted in jurisprudence). Accordingly, this case presents an ideal vehicle to reassert this Court’s *Batson* holding and ensure that Nevada courts properly apply *Batson* in future trials.

II. The decision below, allowing a substitute medical examiner to testify based on a non-testifying examiner’s autopsy report, conflicts with well-established federal law precluding reliance on hearsay to form the basis of an expert opinion, as held in *Smith v. Arizona*, 602 U.S. 779 (2024).

A. The holding in *Smith v. Arizona* is well-established federal law.

Smith v. Arizona specifically rejected the view that the Confrontation Clause does not apply when a substitute expert testifies “to the substance of a non-testifying expert’s analysis, if such evidence forms the basis of the testifying expert’s opinion.” 602 U.S. at 792. Thus, under *Smith*, a substitute expert may not introduce testimonial statements from a non-testifying expert, who did not participate in their creation, even if the statements are used as the basis for the testifying expert’s opinion. *Id.* at 802–03. Moreover, this Court noted that when considering whether a substitute expert’s statements are testimonial, the court must first determine which hearsay statements are at issue. *Id.* at 801–02. And this decision came after a long line of authority on the Sixth Amendment’s Confrontation Clause. *See Bullcoming v. New Mexico*, 564 U.S. 647, 652 (2011); *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 307 (2009); *Crawford v. Washington*, 541 U.S. 36, 53–54 (2004).

While *Smith*'s holding is clear, that its holding constitutes well-established precedent is further demonstrated by other courts' holdings on this issue post-*Smith*. See *United States v. Seward*, 135 F.4th 161, 168 (4th Cir. 2025) (holding a testifying DNA expert's conclusions based on reviewing a non-testifying analyst's conclusions, without testing the samples herself, violated the Confrontation Clause); *Swims v. State*, 428 So. 3d 389, 398–99 (Miss. Ct. App. 2025), *cert. denied*, 427 So. 3d 409 (Miss. 2026) (holding a substitute medical examiner's testimony violated the Confrontation Clause where it was based on an autopsy report prepared by a non-testifying expert, but testimony based on autopsy photographs was permissible); *Commonwealth v. Gordon*, 266 N.E.3d 369, 374 (Mass. 2025) (holding a testifying expert's opinion based on a non-testifying expert's notes, when the testifying expert performed the technical review but did not participate in nor observe the testing performed, violated the Confrontation Clause); *State v. Thomas*, 334 A.3d 686, 702–03 (Me. 2025) (holding a testifying expert's reliance on notes, test results, and a sample profile generated by a non-testifying expert's work violated the Confrontation Clause); *State v. Miller*, No. A24-0205, 2025 WL 583178, at *3–4 (Minn. Ct. App. Feb. 24, 2025), *review denied* (Minn. May 28, 2025) (holding a medical examiner's testimony, based on toxicology testing and a report that the expert did not observe or prepare, violated the Confrontation Clause); *State v. Hall-Haught*, 569 P.3d 315, 321–23 (Wash. 2025) (holding a testifying expert who did not perform or observe the testing, but reviewed the report in forming an independent opinion, violated the Confrontation Clause).

B. The decision below is wrong.

The Nevada Supreme Court held that, a substitute expert's testimony is only inadmissible when "the expert is merely a conduit for another's analyst's testimonial statements, or if the expert both relies on *and conveys* those absent analyst's testimonial statements in support of their opinion." App. A 12–13 (emphasis added). But, Nevada held, it is not a Confrontation Clause violation if a testifying "expert's opinion is meaningfully independent and not based on testimonial hearsay . . . even where the expert may have reviewed another expert's report in preparation for trial." *Id.* at 13. In reaching this conclusion, the court cited its prior cases, all of which pre-date *Smith*, holding that testifying experts are permitted to testify to their "independent" opinions as long as they do not "effectively introduce testimonial hearsay into evidence, such as by quoting the autopsy report." *Id.* at 11, 13 (citing *Flowers v. State*, 456 P.3d 1037, 1045 (Nev. 2020); *Jeremias v. State*, 412 P.3d 43, 51 (Nev. 2018); *Vega v. State*, 236 P.3d 632, 638 (Nev. 2010)).

Just like the Arizona rule in *Smith*, Nevada held a substitute expert can testify to her "independent opinion," even when "the proffered opinion merely replicates, rather than somehow builds on, the testing analyst's conclusions." 602 U.S. at 798–99. Essentially, under Nevada's holding, so long as the testifying expert states she formed an "independent" opinion and does not simply read the non-testifying expert's statements into the record, there is no Confrontation Clause

issue. *Smith* specifically rejected that rule. *Id.* at 799, 802–03. And to the extent Nevada’s prior cases are irreconcilable with *Smith*, *Smith* controls. *Lockhart v. Fretwell*, 506 U.S. 364, 376 (1993) (Thomas, J., concurring).

Moreover, while the Nevada Supreme Court correctly acknowledged *Smith* addresses the admissibility of the *basis* of the expert’s testimony, it contradicted *Smith* when it ignored precisely that basis. *Smith* explained that courts must determine which statements are at issue when determining whether the opinion is based on testimonial hearsay. 602 U.S. at 801–02. But the decision below ultimately held there was no Confrontation Clause violation in this case because Dr. Simons testified she relied on autopsy photographs in forming her opinion, ignoring that Dr. Simons testified she also relied on the autopsy report. Thus, under the decision below, there is no Confrontation Clause violation when a medical examiner relies on autopsy photographs, regardless of whether the expert also relied on the autopsy report in forming her opinion. This is contrary to *Smith*. *Id.*; *see also Swims*, 428 So. 3d at 398–99 (holding a substitute medical examiner’s testimony violated the Confrontation Clause where it was based on an autopsy report prepared by a non-testifying expert, but testimony based on autopsy photographs was permissible).

The Nevada Supreme Court’s decision also erroneously concluded that even if Dr. Simons’ testimony constituted improper testimonial hearsay, its admission was harmless. App. A 15. This holding likewise contradicts this Court’s clearly established authority. When considering whether a constitutional error is

harmless, “[t]he question is whether there is a reasonable possibility that the evidence complained of might have contributed to the conviction.” *Fahy v. Connecticut*, 373 U.S. 85, 86–87 (1963); *see also Gutierrez v. McGinnis*, 389 F.3d 300, 304 (2d Cir. 2004) (“When a state court holds that a particular federal constitutional error at trial is harmless, that holding is an adjudication of a federal claim . . .”).

Here, the court below incorrectly concluded that Dr. Simons’ testimony was only offered to prove that the stab wounds Garibay suffered ultimately caused her death, which was uncontested. App. A 15. To the contrary, the State used Dr. Simons’ improperly admitted testimony to argue that Matadamas-Serrano had the specific intent required for first-degree murder. Again, the State specifically argued to the jury: “Did defendant have the intent to kill [Garibay]? Look at the stab wounds.” Then, after reminding the jury of Dr. Simons’ testimony regarding the severity of Garibay’s injuries and telling the jury to think about Dr. Simons’ testimony, it argued, “So did he intend to kill her? Undoubtedly.” R. 1199-1200.

Thus, admitting Dr. Simons’ improper testimony and precluding Matadamas-Serrano from confronting the expert who prepared the autopsy report, went to the heart of the defense in this case—whether Matadamas-Serrano had the specific intent required to commit first-degree murder. This error was compounded by the trial court’s failure to allow expert testimony regarding Matadamas-Serrano’s inability to form specific intent, which the Nevada Supreme Court agreed was erroneous. App. A 20. Thus, there was a reasonable possibility that Dr. Simons’

improperly admitted testimony could have contributed to the verdict and the Nevada Supreme Court's failure to consider this standard violated this Court's clearly established authority. *See Fahy*, 373 U.S. at 86–87.

C. This case is an ideal vehicle to address this important issue.

This Court's intervention is necessary to again assert a basic tenet of the Confrontation Clause: that a criminal defendant has the right to confront those who make testimonial statements against him. *Crawford*, 541 U.S. at 68–69. This Court's intervention will likewise ensure states recognize they cannot avoid the Confrontation Clause by labeling a substitute witness's testimony as an "independent" opinion and correctly apply this Court's precedent. *Smith*, 602 U.S. at 803.

This Court's jurisprudence around the Confrontation Clause is clear; this Court has repeatedly held that criminal defendants have a right to confront experts who prepare forensic reports. The court below incorrectly concluded that *Smith* only applies when testimony directly conveys the absent expert's testimonial statements. App A 12. Based on this interpretation, the court incorrectly held that Dr. Simons' testimony did not violate the Confrontation Clause because she formed an independent opinion based on the autopsy photographs, without acknowledging or considering the portions of Dr. Simons' testimony that specifically relied on the autopsy report.

This holding directly contradicts *Smith*'s holding that the Confrontation Clause cannot be avoided simply by labeling the substitute expert's testimony as an "independent opinion." 602 U.S. at 803. It also contradicts *Smith*'s holding that when considering whether a testifying expert's opinions constitute testimonial hearsay, the court must consider each statement at issue, rather than summarily conclude there is no Confrontation Clause violation so long as the opinion is based in part on non-testimonial hearsay. *Id.* at 801–02.

This issue is likely to repeat in most criminal trials in Nevada, where substitute experts are often called to testify, but particularly in murder trials, where medical examiners are almost always called to testify. While it may seem unlikely that substitute experts will be called to testify often, this issue frequently arises in Nevada. *See, e.g., Dawson v. State*, No. 85773, 2024 WL 4865776 at *3 n.2 (Nev. Nov. 21, 2024) (declining to address appellant's argument regarding a substitute DNA analyst); *Perkins v. State*, No. 87313, 2024 WL 4799033 at *2–3 (Nev. Nov. 14, 2024) (allowing a substitute sexual assault nurse examiner to testify); *Davis v. State*, No. 83806, 2023 WL 3051608 at *3 (Nev. April 21, 2023) (affirming a substitute medical examiner testifying to an "independent" opinion at trial); *Lindesmith v. State*, No. 85640-COA, 2023 WL 4056340 at *1 (June 16, 2023) (affirming a substitute forensic analyst testifying at trial regarding drug-test results); Appellant's Opening Brief at 29, *Land v. State*, No. 90816 (Nev. filed Dec. 17, 2025) (challenging admission of a substitute medical examiner's testimony under *Smith v. Arizona*); *State v. Taylor*, No. C-24-385573-1 (Eighth Jud. Dist. Ct.

Jan. 14, 2026), *appeal docketed*, No. 92155 (Nev. Feb. 23, 2026) (where the trial court allowed a substitute sexual assault nurse examiner to testify); *State v. Boxler*, No. C-24-387878-1 (Eighth Jud. Dist. Ct. June 26, 2025) (where the trial court granted a pre-trial request to allow a substitute sexual assault nurse examiner to testify).

Thus, granting this petition would ensure Nevada's future compliance with this Court's clearly established authority and prevent future Confrontation Clause violations.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

Dated this 6th day of July, 2026.

Respectfully submitted,

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