

No. _____

In the
Supreme Court of the United States

RICKIE ISAIAH GIBSON, JR.,

Petitioner,

v.

STATE OF ARIZONA,

Respondent.

On Petition for a Writ of Certiorari to the
Arizona Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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Question Presented

Whether a trial court violates the Confrontation Clause by restricting cross-examination of the State's principal witness to the sanitized fact that he faced pending felony charges while prohibiting inquiry into the firearm-related nature of those charges, where those facts explained the witness's motive to deny receiving and concealing the firearm at the center of the defendant's self-defense claim.

Parties to the Proceeding

Petitioner is Rickie Isaiah Gibson, Jr. He was the defendant in state trial court and the appellant in the state appellate courts.

Respondent is the State of Arizona.

Related Proceedings

Arizona Supreme Court:

State of Arizona v. Rickie Isaiah Gibson, Jr., No. CR-26-0035-PR (May 06, 2026)
(denying review)

Arizona Court of Appeals:

State of Arizona v. Rickie Isaiah Gibson, Jr., No. 2 CA-CR-25-0012 (Jan. 16, 2026)
(affirming conviction and sentence)

Arizona Superior Court, Pinal County:

State of Arizona v. Rickie Isaiah Gibson, Jr., No. S1100CR202300906 (Nov. 12, 2024) (Trial minute entry sanitizing witness's pending charges for cross-examination); (Jan. 10, 2025) (Judgment and Sentence).

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Petition for Writ of Certiorari

Petitioner, Rickie Gibson, Jr., petitions this Court for a writ of certiorari to review the judgment of the Arizona Court of Appeals affirming the conviction and the sentence in his case.

Decision Below

The Arizona Court of Appeals memorandum decision is unpublished. It is available at 2026 WL 125829 and reproduced at App-A.

Jurisdiction

The Arizona Court of Appeals, Division Two, issued its decision affirming Petitioner's conviction and sentence on January 16, 2026. A copy of that opinion is attached as Appendix A. Petitioner did not file a motion for rehearing in the Arizona Court of Appeals.

Petitioner timely filed a petition for review in the Arizona Supreme Court, which entered an order denying review on May 6, 2026. A copy of the order denying review is attached as Appendix C. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a), which authorizes review of final judgments rendered by the highest court of a State in which a decision could be had, where a right is claimed under the Constitution of the United States.

Under Supreme Court Rule 13.1, a petition for a writ of certiorari to review a judgment is timely when filed within 90 days after entry of the order denying discretionary review by the state court of last resort. This petition is filed within that 90-day window.

Relevant Constitutional Provisions

U.S. Const. amend. VI

The Sixth Amendment to the United States Constitution provides in relevant part:

In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.

U.S. Const. amend. XIV

The Fourteenth Amendment to the United States Constitution provides, in relevant part: No State shall . . . 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.

Introduction

The Sixth Amendment guarantees a criminal defendant the right to expose a prosecution witness's motive to fabricate. Courts are divided over whether that guarantee is satisfied by sanitizing the nature of a witness's pending criminal charges even if the charges provide a motive to fabricate testimony.

Petitioner claimed he acted in self-defense after the victim, a retired law enforcement officer, confronted him with a baseball bat and a handgun. The State disputed that claim because police never recovered a gun. The State's principal witness denied ever receiving or disposing of the missing firearm. Before trial, however, that witness was facing eighteen pending federal felony charges for making false statements in connection with straw purchases of firearms. Petitioner sought to cross-examine the witness about the firearm-related nature of those charges to expose his motive to deny possessing another gun while awaiting federal prosecution. The trial court permitted only the sanitized fact that the witness faced pending felony charges and prohibited any inquiry into what those charges were.

The State then argued in closing that the witness "had nothing to gain" from his testimony. The Arizona Court of Appeals held that the firearm-related nature of the witness's pending charges was only "marginally relevant" because the jury already knew he faced felony charges. In doing so, Arizona joined those courts holding that the Confrontation Clause is satisfied by disclosure of pending charges alone, while other courts hold that jurors must hear the facts explaining a witness's motive to fabricate. The Court should grant the petition to resolve this conflict.

Statement of the Case

Mr. Gibson, Jr. was walking down an isolated dirt road in the Arizona desert when M.M., a retired law enforcement officer who had a reputation for always carrying a gun (RT 11/13/24 a.m. ep. 27-29), confronted him about a stolen bicycle. RT 11/20/24 ep. 38-40. M.M. got out of his truck with a pistol clenched in his left hand and baseball bat in his right hand. M.M. was mad that Mr. Gibson, Jr. had betrayed his trust and stolen a motorized bicycle from him. *Id.*

Rather than call the police, M.M. was out for vigilante justice. M.M. set the gun down in his truck and struck Mr. Gibson, Jr. with the baseball bat. *Id.*

Mr. Gibson, Jr. feared that M.M. would shoot him with the gun next. So Mr. Gibson, Jr. took the baseball bat from M.M. and defended himself with it, blacking out in the process. *Id.* at 41-44.

Moments later, stressed and distraught, Mr. Gibson, Jr. got into M.M.'s truck and drove off. But, because it was impossible to see M.M. on the ground from inside the tall truck Mr. Gibson, Jr., accidentally ran over M.M. *Id.*

Mr. Gibson, Jr. went to the home of his friend, C.G. Mr. Gibson, Jr. gave his friend M.M.'s gun. C.G. took the gun and hid it. He then helped Mr. Gibson, Jr. change into different clothes and planned an escape. But police apprehended both of them as they snuck out a window of C.G.'s mobile home. *Id.* at 44-48

The State of Arizona charged Mr. Gibson, Jr. with first-degree murder. C.G. was the State's star witness. App-G. Mr. Gibson, Jr. asserted justification defenses of self-defense and the use of force in crime prevention.

Much of the trial centered on whether M.M. threatened Mr. Gibson, Jr. with a gun. The State's theory was that Mr. Gibson, Jr. could not have been justified in using deadly force because the day that M.M. confronted Mr. Gibson, Jr. was an outlier because on that day M.M. did not carry his gun. (RT 11/13/24 a.m. ep. 36-37, 69, 98-99; RT 11/13/24 p.m. 74, 76; RT 11/19/24 ep. 180, 187, 198, 199, 203.) Even though the retired law enforcement officer always carried a gun with him everywhere he went, the State's theory was that M.M. did not take a gun with him when he confronted Mr. Gibson, Jr. about the stolen bicycle because police never recovered a gun. *Id.*

But police conducted an incomplete search of C.G.'s home because law enforcement did not want to bother C.G.'s ill mother. RT11/19/24 ep. 187.

And prior to trial, the State of Arizona filed a motion in limine seeking to prevent Mr. Gibson, Jr. from cross-examining C.G. about his pending federal gun charges. App-E. The State argued that the pending federal gun charges were irrelevant and prejudicial. The State also argued that pending federal charges were not subject to impeachment because they were not convictions under Rule 609 of the Arizona Rules of Evidence. *Id.*; App-D at App-021.

Mr. Gibson Jr. countered that the specific gun-related nature of the federal charges were not only relevant but necessarily admissible under the Confrontation Clause of the Sixth Amendment. App-F at App-036. C.G.'s pending federal charges involved 18 counts of making false statements as a strawman buyer of firearms. App-F at App-035. If C.G. admitted that he took, hid, and disposed of a gun connected to

an alleged murder but unrelated to guns he fraudulently purchased in his pending federal case, Mr. Gibson, Jr. argued C.G.'s punishment could be greater in his federal case. Thus, C.G. had a motive to deny taking and disposing of a gun connected to a crime in this case. *Id.*

In granting the State's motion to preclude the gun-related nature of the pending charges, the trial court pivoted from the State's impeachment argument under Rule 609 of the Arizona Rules of Evidence to another impeachment rule, Rule 608 of the Arizona Rules of Evidence, and ruled that "collateral matters" are inadmissible. App-D at App-027.

Mr. Gibson, Jr. countered that the nature of the fraudulent gun charges were admissible to "show that there is a distinct motive to lie here." C.G. had a motive to "avoid getting into trouble because of all of these gun charges that he's got," so he had a motive to deny taking and disposing of a different gun in this case. App-D at App-028.

The trial court sanitized C.G.'s pending federal charges and authorized Mr. Gibson, Jr., to cross-examine C.G. about the mere existence of pending charges. But the trial court prevented Mr. Gibson, Jr. from confronting C.G. about "what those charges are." App-D at App-028. And Mr. Gibson, Jr. was prohibited from establishing that C.G. "like[d] buying guns for other people, so here [he was] taking a gun from" Mr. Gibson, Jr. *Id.*

The State's case featured C.G.'s testimony. C.G.'s testimony differed from what he originally told police on the day of the murder when police arrested him in the act of helping Mr. Gibson, Jr. App-G at App-057.

In his first statements to police, C.G. never mentioned that Mr. Gibson, Jr. was angry or that he feared him. *Id.*

But at trial, C.G. told the jury that Mr. Gibson, Jr. was angry and that he only helped Mr. Gibson, Jr. conceal his clothes and attempt to hide from police because he was afraid of Mr. Gibson, Jr. The prosecutor bolstered C.G.'s testimony by asking C.G. "If there had been a gun involved, just like the other things that were involved, would you have told police about it?" App-G at App-67.

C.G. confirmed, "Yes." App-G at App-67.

"If there had been a gun involved, is that something you would have remembered?" the prosecutor asked. App-G at App-67.

"Yes," C.G. responded. App-G at App-67.

"During the event, after the defendant came into your window, were you scared of the defendant? Were you scared of Rickie?" the prosecutor asked. App-G at App-68.

"Yes," C.G. confirmed. App-G at App-068.

But during cross-examination, the trial court sustained the State's objection when Mr. Gibson, Jr. asked C.G. whether he was concerned about going to prison over his pending charges. App-G at App-061.

The rest of the State’s case featured testimony that, although M.M. usually had a gun with him everywhere he went, it was possible he did not take it with him the day he confronted Mr. Gibson, Jr. about the stolen bicycle. (RT 11/13/24 a.m. ep. 36-37, 69, 98-99; RT 11/13/24 p.m. 74, 76; RT 11/19/24 ep. 180, 187, 198, 199, 203.)

And in closing arguments, the prosecutor repeatedly emphasized that the State’s theory of the case aligned with C.G.’s testimony. The prosecutor highlighted the sanitized charges and urged the jury to find C.G. credible because C.G. “said he was not trying to help his pending charges. He was getting nothing from this. So why would he come in here and say” that Mr. Gibson, Jr. had told him that killing M.M. was inevitable? (RT 11/20/24 ep. 218-219.)

The prosecutor argued that C.G. did “not have a reason to do that. It doesn’t help him.” C.G. “has to do it on the stand while looking at his friend, Rickie Gibson. But he has nothing to gain from doing that.” (RT 11/20/24 ep. 218-219.) The prosecutor argued that it made no sense for the gun to be missing, too. (RT 11/20/24 ep. 222.)

Rather than convict Mr. Gibson, Jr. of first-degree murder, the jury returned a verdict on the lesser-included charge of adequate provocation manslaughter. App-A at App-005.

Mr. Gibson, Jr. appealed, arguing that the trial court’s limitation of Mr. Gibson, Jr.’s cross-examination of C.G. violated the Confrontation Clause of the Sixth Amendment. Division Two of the Arizona Court of Appeals affirmed, reasoning that “while C.G.’s criminal charges were relevant to whether he had a motive to testify for

the state in order to secure a more favorable resolution, the specific nature of those charges was not. At most, the nature of the charges was marginally relevant for impeachment purposes, and the trial court was within its discretion to preclude such evidence.” App-A at App-008.

Mr. Gibson, Jr. sought review from the Arizona Supreme Court. But the Arizona Supreme Court declined review. App-C.

Reasons for Granting the Petition

This Court should grant certiorari for four reasons. First, the decision below reflects a conflict among federal and state courts over whether the Confrontation Clause permits trial courts to limit cross-examination of key witnesses by sanitizing evidence to reveal only the existence of a witness's generic unnamed pending criminal charges while concealing the specific facts that give rise to the witness's motive to fabricate. Second, the decision conflicts with this Court's decisions in *Davis v. Alaska*, 415 U.S. 308 (1974), and *Delaware v. Van Arsdall*, 475 U.S. 673 (1986), both of which recognize that the Confrontation Clause protects a defendant's right to expose the facts from which jurors may assess a witness's bias and credibility. Third, this case presents an ideal vehicle to resolve that recurring constitutional question because the issue was squarely preserved and decided below, and the limitation on cross-examination concerned the State's principal witness on the central disputed issue at trial. Finally, the conflict reflects a deeper uncertainty about the original meaning of the Confrontation Clause and the respective roles of judge and jury in assessing credibility.

I. Courts are divided over whether the Confrontation Clause permits a trial court to conceal the nature of a witness's pending charges when the information bears on motive or bias.

"[E]xposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination." *Davis v. Alaska*, 415 U.S. 308, 316-17 (1974). Although trial courts retain latitude to impose reasonable limits on cross-examination, that discretion does not extend to restrictions that prevent jurors from receiving information that could give them a "significantly different impression" of the witness's

credibility. *Delaware v. Van Arsdall*, 475 U.S. 673, 680 (1986). Together, those decisions require more than cross-examination in the abstract: the defendant must be permitted to present the factual basis from which the jury can evaluate the asserted motive to testify falsely.

Yet lower courts have reached different conclusions about what that principle requires when a prosecution witness faces pending criminal charges.

One line of authority holds that once a defendant establishes a proper line of inquiry into a witness's bias, the Confrontation Clause requires the jury to receive sufficient information to meaningfully evaluate that bias. Those courts reject limitations that reduce bias impeachment to the abstract disclosure that a witness has "pending charges" while concealing the facts that explain why those charges create a particular incentive to testify favorably for the prosecution.

The decision below adopts the opposite approach. Although the Arizona Court of Appeals acknowledged that C.G.'s pending federal charges were relevant to his motive to testify, it nevertheless held that the jury needed to know only that C.G. faced unspecified felony charges and not that those charges involved fraudulent firearm purchases directly related to Petitioner's defense. App-A at App-008. That holding reflects an existing conflict among federal and state courts concerning the minimum protection guaranteed by the Confrontation Clause.

A. Some courts hold that the Confrontation Clause requires jurors to receive the facts necessary to meaningfully evaluate a witness's motive to fabricate.

Consistent with *Davis* and *Van Arsdall*, federal and state courts have held that the Confrontation Clause is not satisfied merely because a defendant is permitted to establish that a witness has pending criminal charges. Rather, once a defendant

demonstrates a proper basis for bias impeachment, the jury must receive sufficient information to understand why those charges create a motive to testify favorably for the prosecution. These courts recognize that exposure of a witness' motivation in testifying requires disclosure of the facts from which jurors may evaluate the strength and significance of the witness's incentive to fabricate, not simply the abstract existence of pending charges.

The Sixth Circuit recently reaffirmed that principle in *United States v. Taylor*, 127 F.4th 1008 (6th Cir. 2025). There, the government's principal witness faced a pending state felon-in-possession charge, had previously been convicted of a felony drug offense, twice asked federal agents what "benefits" he could receive for cooperating, and state prosecutors were considering dismissing both the pending firearm charge and revocation proceedings because of his cooperation in the federal prosecution. The district court nevertheless limited cross-examination to whether the witness had a felony conviction and whether federal officials had expressly promised him anything in exchange for his testimony. *Id.* at 1012. In doing so, the district court relied on the premise that Rule 609 of the Federal Rules of Evidence only permits impeachment for convictions, not pending charges. *Id.* The State made the same argument below here. App-G.

The Sixth Circuit reversed. It explained that the Confrontation Clause inquiry is not whether the defendant was permitted to impeach the witness generally, but whether the jury received "enough information ... to assess the defense theory of bias or improper motive." *Taylor*, 127 F.4th at 1014. Because the jury learned only that

the witness had a felony conviction and denied receiving promises from federal prosecutors, it lacked the "vital information necessary to assess [the witness's] bias or motive for testifying." *Id.* at 1016. The excluded evidence would have revealed the penalties the witness faced, the benefits he sought, the benefits prosecutors were considering providing, and the relationship between those benefits and his testimony. Without that context, the jury could not meaningfully evaluate why the witness might testify favorably for the government. *Id.* at 1017.

The Colorado Supreme Court reached the same conclusion in *Kinney v. People*, 187 P.3d 548 (Colo. 2008). There, the trial court prohibited cross-examination concerning a prosecution witness's pending criminal trespass charge because there was no evidence the prosecution had promised favorable treatment in exchange for the witness's testimony. *Id.* at 559. Rejecting that limitation, the Colorado Supreme Court held that pending criminal charges are constitutionally relevant whenever they may give rise to a hope or expectation of leniency. The Confrontation Clause protects a defendant's right to expose "the facts from which jurors . . . could appropriately draw inferences related to the reliability of the witness," and a defendant need not prove an actual agreement with the State before presenting that theory of bias to the jury. *Id.* at 559.

Other courts likewise recognize that bias impeachment loses much of its constitutional value when stripped of the circumstances that give it meaning. The Oregon Court of Appeals, for example, has held that evidence demonstrating a witness's incentive to curry favor with the state is constitutionally protected because

the jury, not the trial judge, must determine the significance of that motive. *State v. Shelly*, 157 P.3d 235, 236 (Or. App. 2007). Once a defendant establishes a sufficient factual basis for bias, the jury is entitled to hear the evidence from which it may evaluate the witness's credibility for itself. *Id.*

Taylor, Kinney, and similar decisions therefore require jurors to hear the facts explaining why pending charges create a motive to testify favorably. But the decision below reaches the opposite conclusion. The Confrontation Clause protects the jury's ability to evaluate *why* a witness may be biased—not merely *whether* the witness has a criminal case pending. Generalized impeachment that reveals only the existence of pending charges while concealing the facts that explain the witness's incentive to testify favorably deprives jurors of the information necessary to perform their constitutional role as judges of credibility.

That is precisely what occurred here. Petitioner was permitted to establish only that C.G. had pending federal felony charges. App-A at App-008. He was prohibited from revealing that those charges alleged repeated straw purchases of firearms for prohibited possessors—the very facts that explained why C.G. had a uniquely compelling reason to deny receiving or disposing of another firearm. App-D at App-021-028. Under *Taylor, Kinney*, and similar decisions, that sanitized cross-examination deprived the jury of the information necessary to make an informed assessment of C.G.'s credibility. Even cases that reached the opposite conclusion support Petitioner's claim here.

B. Other courts hold that the Confrontation Clause is satisfied so long as jurors learn that a witness has pending charges, even if the nature of the charges explains the witness's motive to fabricate.

Other courts have adopted the opposite constitutional rule. Rather than requiring jurors to hear the facts necessary to evaluate the strength of a witness's incentive to testify favorably, these courts hold that the Sixth Amendment is satisfied so long as the jury receives generalized evidence that the witness has pending criminal charges or hopes to obtain favorable treatment. Under this approach, the specific nature of the charges—and the facts that explain why they create a motive to fabricate—may be excluded as only “marginally relevant” without violating the Confrontation Clause.

The Fifth Circuit recently embraced that approach in *United States v. Stuart*, 132 F.4th 892 (5th Cir. 2025). There, the defendant sought to cross-examine the government's principal eyewitness concerning the specific felony charges then pending against him—aggravated assault and attempted kidnapping—to demonstrate the witness's incentive to curry favor with the prosecution. *Id.* at 902. The district court prohibited inquiry into the nature of those charges, while permitting the defense to establish that the witness was incarcerated on felony charges and to ask whether he had received, or hoped to receive, favorable treatment from the government. *Id.* (Unlike *Stuart*, the trial court in this case foreclosed any inquiry into C.G.’s motive to avoid “prison.” App-G at App-061.)

The Fifth Circuit affirmed. But in doing so, it did not adopt the government’s argument, adopted by the trial court below, that impeachment with pending charges

was improper because such impeachment violates Rule 608(b) of the Federal Rules of Evidence. *Id.* at 903. (Similarly, here the trial court applied Arizona's analog to Rule 608(b) below, and the Arizona Court of Appeals ignored it in affirming. App- D at App-027 ; App-A at App-007.)

The court therefore held that exclusion of the nature of the charges did not violate the Confrontation Clause because the defendant failed to show that a reasonable jury would have received a "significantly different impression" of the witness's credibility had the questioning been permitted. In the Fifth Circuit's view, generalized disclosure that the witness faced felony charges adequately allowed the jury to assess bias, even though it was denied the facts explaining the witness's particular incentive to testify favorably. *Stuart*, 132 F.4th at 903.

The Supreme Court of Georgia likewise concluded that generalized disclosure of pending charges satisfies the Sixth Amendment. In *Watkins v. State*, 581 S.E.2d 23 (Ga. 2003), the trial court prohibited the defendant from asking a prosecution witness about the nature of her pending criminal charges but permitted the defense to establish that she had been indicted, that charges remained pending, and to ask whether her testimony was related to those charges. The Georgia Supreme Court held that these limited inquiries afforded the jury sufficient information to evaluate possible bias and therefore did not impermissibly restrict cross-examination. Emphasizing that the Confrontation Clause guarantees only an opportunity for effective cross-examination—not cross-examination "to whatever extent, the defense

might wish"—the court concluded that concealing the specific nature of the witness's charges did not violate the Sixth Amendment. *Id.* at 582.

But unlike this case, the criminal defendant in *Watkins* did not argue that the specific nature of the pending charges undermined the accuser's credibility on an issue of key importance to the trial. *Id.*

The Texas Court of Criminal Appeals has likewise adopted an approach that permits trial courts to withhold constitutionally significant bias evidence. In *Irby v. State*, 327 S.W.3d 138, 145 (Tex. Crim. App. 2010), the court rejected the proposition that a witness's pending charges or probationary status alone establish constitutionally protected bias. Instead, it held that a defendant must demonstrate a "causal connection or logical relationship" between the witness's vulnerable relationship with the State and the witness's testimony before the Constitution requires admission of such evidence. *Irby* reasoned that a witness's pending charges or probationary status do not "hover cloud-like in the air, ready to rain down as impeachment evidence upon any and all such witnesses." *Id.* at 148.

Although *Irby* purported to apply *Davis v. Alaska*, 415 U.S. 308 (1974), its application of that standard prompted a dissent to conclude that the Texas Court of Criminal Appeals "cast a dark shadow on the constitutional right of confrontation by requiring a defendant" to establish a stronger "logical relationship" of bias other than the fact that the witness was on probation and the probationary grant was supervised by the same prosecution authority that was prosecuting the defendant. *Id.* at 155 (Holcomb, J., dissenting). In practice, *Irby* illustrates the minority approach: trial

courts elevate the bar of relevance while miscasting crucial bias evidence as “marginally relevant” in concluding that jurors need not hear the facts giving rise to a witness's incentive to testify favorably for the State.

The Arizona Court of Appeals reached the same result. Like *Irby*, *Stuart*, and *Watkins*, the Arizona Court of Appeals concluded that informing the jury only that C.G. faced pending federal felony charges sufficiently exposed his potential bias while permitting the exclusion of the facts that explained why those charges created a powerful motive to curry favor with the government. App-A at App-008.

The jury never learned that C.G. was awaiting trial on eighteen federal straw-purchase firearm charges involving prohibited possessors—the very circumstances that made Petitioner's testimony that he entrusted C.G. with the victim's firearm especially threatening to C.G.'s own interests. By holding that generalized disclosure of pending charges satisfied the Sixth Amendment while allowing the exclusion of the facts necessary to understand the witness's incentive to fabricate, the decision below aligns with the minority approach and directly conflicts with courts holding that the Confrontation Clause requires jurors to receive the facts necessary to assess the witness's bias.

II. This Case is an Ideal Vehicle.

This case presents the question whether the Sixth Amendment permits a court to sanitize bias impeachment by allowing a jury to learn only that a witness has pending criminal charges while concealing the facts that explain the witness's motive to testify favorably.

The Arizona Court of Appeals expressly acknowledged that C.G.'s pending federal charges were relevant because they provided a motive to testify for the State in hopes of obtaining favorable treatment. App-A at App-008. Yet it concluded that the firearm-related nature of those charges was merely "marginally relevant" and therefore could be excluded without violating the Confrontation Clause. App-A at App-008.

In reaching that conclusion, the court relied on Arizona precedent stating that "[d]istinctions between reasonable limitations on the scope of cross-examination and unnecessary restrictions on the right to confront witnesses are ... difficult to draw and must be considered on a case-by-case basis." App-A at App-007.

But this Court has already drawn that line.

Davis v. Alaska, 415 U.S. 308 (1974), did not hold that defendants must receive merely some opportunity to explore bias. It held that the Constitution requires jurors to receive the information necessary to evaluate a witness's possible motive to testify falsely. Any "embarrassment" that ensues from cross-examining a witness on grounds of bias must yield to the right of a criminal defendant "to seek out the truth in the process of defending himself." *Davis*, 415 U.S. at 320. Likewise, *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986), explained that trial courts retain discretion to impose reasonable limits on cross-examination only so long as those limits do not prevent the jury from receiving a significantly different impression of the witness's credibility.

The constitutional question is not whether evidentiary rules apply to criminal defendants. They do. The question is whether courts can keep from the jury the facts that explain why a witness has a motive to fabricate. *Davis* and *Van Arsdall* answer that question in the negative.

The decision below illustrates why this Court's review is warranted. The Arizona Court of Appeals did not dispute that C.G.'s pending charges were relevant to his credibility. Nor did it dispute that the excluded evidence concerned firearms—the same subject at the heart of Petitioner's claim that the victim possessed a gun and that C.G. later received and disposed of it. Instead, the court characterized those facts as "marginally relevant" because jurors already knew C.G. had pending felony charges. App-A at App-008.

That reasoning collapses the distinction recognized in *Davis*. If generalized disclosure that a witness faces criminal charges always suffices, juries never receive the contextual facts necessary to assess the strength of a witness's incentive to fabricate. *Davis*, 415 U.S. at 315. The constitutional right recognized in *Davis* becomes indistinguishable from ordinary impeachment and turns on a trial judge's assessment of relevance. But even relevance is a low threshold. It should not become a heightened barrier to facts necessary to evaluate an accuser's credibility.

Although the Arizona Court of Appeals alternatively deemed any error harmless, that conclusion rested on the same premise as its constitutional ruling: that the firearm-related nature of the charges added little to the jury's assessment of C.G.'s bias. App.-A at App-008. The court treated the excluded facts as ordinary impeachment rather than evidence explaining C.G.'s motive to deny receiving the firearm. It also failed to account for the prosecution's use of the restriction.

After the jury heard only that C.G. faced unspecified charges, the prosecutor argued that he was “getting nothing from this” and had “nothing to gain.” RT 11/20/24 at 218–19, 222. The harmlessness ruling therefore repeats rather than eliminates the constitutional question presented.

This case presents a clean vehicle. The scope of the contested ruling is undisputed. The trial court prohibited Petitioner from informing the jury that C.G.'s pending federal charges alleged straw purchases of firearms for prohibited possessors while allowing only the sanitized fact that C.G. had pending felony charges. App-B; App-D. The Arizona Court of Appeals held that this limitation satisfied the Sixth Amendment. App-A. The Court should grant the petition to resolve whether the Confrontation Clause protects only generalized evidence of potential bias or guarantees jurors the facts necessary to make a meaningful assessment of a witness's motive to fabricate.

III. This Case Presents an Important Opportunity to Clarify the Original Meaning of the Confrontation Clause.

The disagreement among lower courts reflects a deeper uncertainty concerning the original meaning of the Confrontation Clause. The uncertainty is premised upon two phrases from this Court's precedent.

The first is the assertion that the Sixth Amendment merely guarantees a criminal defendant an “opportunity to cross-examine the witnesses against him.” *Pointer v. Texas*, 380 U.S. 400, 407 (1965). *Pointer* did not purport to limit the right of cross-examination by explaining that longstanding precedent required an “opportunity” for cross-examination. Rather, *Pointer* recognized that the Sixth

Amendment constitutionalized the common-law method of testing credibility through adversarial examination before the jury. *Id.* at 406-07. In doing so, *Pointer* emphasized that cross-examination is one of the "safeguards essential to a fair trial" because it exposes falsehood and brings out the truth. *Pointer* thus concluded that the "opportunity" requires more than *some* "opportunity" for cross-examination; the Sixth Amendment requires a "complete and adequate opportunity to cross-examine." *Id.* at 407.

But later, this Court explained that the opportunity for cross-examination is not unlimited. *Van Arsdall*, 475 U.S. at 678-79. *Van Arsdall* relied on *Pointer* and *Davis* to reiterate that the Sixth Amendment right of confrontation means more than physical confrontation because "the main and essential purpose of confrontation is to secure the opponent the opportunity of cross examination." *Id.* at 679 (quoting *Davis*, 415 U.S. at 316-17). *Van Arsdall* explained despite the constitutional right involved, "trial judges retain wide latitude" to "impose reasonable limits" on cross-examination "based on concerns" "about harassment, prejudice, confusion of the issues, witness' safety," and "marginally relevant" topics. *Id.*

Neither *Pointer* nor *Van Arsdall* should be read to hold that *any* opportunity for cross-examination satisfies the Sixth Amendment. Nor should they be read to suggest that facts material to the jury's assessment of a witness' bias may be precluded as "marginally relevant" and conform with the Sixth Amendment.

The Framers were well aware that juries were imperfect decisionmakers. Yet they deliberately entrusted factual determinations to juries rather than judges

because juries served as the principal protection against governmental abuse. As this Court has recognized in other Sixth Amendment contexts, the Constitution adopts "not the civil-law ideal of administrative perfection, but the common-law ideal of limited state power accomplished by strict division of authority between judge and jury." *Blakely v. Washington*, 542 U.S. 296, 313 (2004).

The historical development of evidentiary doctrine confirms the point. At the Founding, English practice contained nothing resembling the modern practice of excluding concededly relevant evidence because a judge believed jurors did not need to hear it. See Kenneth S. Klein, *Why Federal Rule of Evidence 403 Is Unconstitutional, and Why That Matters*, 47 U. Rich. L. Rev. 1077, 1084 (2013) (outlining historical development of modern evidentiary rules).

Broad judicial authority to withhold relevant evidence developed only during the nineteenth century, long after ratification, as commentators increasingly justified exclusion on the ground that juries might become confused, distracted, or misuse otherwise relevant evidence. *Id.* at 1084-91 (*discussing* James Bradley Thayer, *A Preliminary Treatise on Evidence at the Common Law* 529 (1898); Mason Ladd, *A Modern Law of Evidence*, 27 Iowa L. Rev. 213 (1942); 1 John Henry Wigmore, *A Treatise on the Anglo-American System of Evidence in Trials at Common Law* §§ 1421, 1422, 1714 (1923)). The common-law confrontation right incorporated into the Sixth Amendment therefore preceded—and did not contemplate—the modern notion that judges may sanitize credibility evidence because they deem it only marginally useful. See generally, *Pointer*, 380 U.S. at 407 (collecting cases).

This Court's decisions are consistent with that original understanding. *Davis* held that the Constitution “always” protects the right to cross-examine a witness on their “motivation in testifying” where “it discredit[s] the witness and “affect[s] the weight of his testimony.” *Davis*, 415 U.S. at 316. *Van Arsdall* reaffirmed that “a criminal 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.

Yet many lower courts now reduce the constitutional inquiry to whether the defendant received some abstract "opportunity" to cross-examine. *See* Booth M. Ripke, *Restricting the Right to Cross-Examine Witnesses for Bias*, 56 Md. L. Rev. 793, 810 (1997) (reviewing split of authority over whether the Confrontation Clause is violated by precluding a criminal defendant from cross-examining a witness about pending criminal charges). Relying upon *Van Arsdall*'s observation that trial courts possess "wide latitude" to impose reasonable limits, those courts uphold restrictions that deprive jurors of the very facts necessary to evaluate a witness's motive to fabricate. In doing so, they effectively transfer from the jury to the judge the responsibility for deciding how much credibility evidence jurors need to hear. *Id.*

This case squarely presents that constitutional question. The Arizona Court of Appeals did not conclude that Petitioner's proposed impeachment was unreliable or outside the traditional scope of cross-examination. App-A at App-008. Rather, it determined that jurors did not need to know that the State's principal witness was

awaiting prosecution on eighteen federal firearm offenses. App-A at App-008. It, like the trial court, substituted its own assessment of what information was necessary to evaluate credibility for the jury's independent judgment. App-A at App-008; App-D.

The Sixth Amendment right to confront one's accusers has "ancient roots" and "[t]his Court has been zealous to protect these rights from erosion." *Pointer*, 380 U.S. at 404 (*quoting Greene v. McElroy*, 360 U.S. 474, 496-97 (1959)). But the decision below reflects ongoing erosion of this ancient root. The Court should grant certiorari to clarify that the original meaning of the Confrontation Clause does not permit judges to sanitize the facts giving rise to a witness's motive to fabricate where the sanitization deprives the jury of facts essential to crediting or discrediting the witness's testimony.

Respectfully submitted,

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