

THIS IS A CAPITAL CASE - NO EXECUTION DATE SET

No. _____

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

XAVIER BROWN, *Petitioner*,

v.

STATE OF MISSISSIPPI, *Respondent*

**ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME
COURT OF MISSISSIPPI**

Krissy C. Nobile

S. Beth Windham

Tameika L. Bennett

Counsel of Record

MISSISSIPPI OFFICE OF CAPITAL POST-
CONVICTION COUNSEL

239 N. Lamar Street, Suite 404

Jackson, MS 39201

tbennett@pcc.state.ms.us

(601) 359-5733

Counsel for Petitioner Xavier Brown

CAPITAL CASE QUESTIONS PRESENTED

The Confrontation Clause protects a defendant’s right of cross-examination by limiting the prosecution’s ability to introduce statements made by people not in the courtroom. *Crawford v. Washington*, 541 U.S. 36 (2004). At Petitioner Xavier Brown’s capital trial, the State called three witnesses who relayed testimonial statements concerning forensics from absent, unidentified witnesses whom Brown never had the opportunity to confront. Since *Crawford*, which was handed down while Brown’s case was still on direct appeal, this Court has clarified *Crawford*’s premise and applied it to forensic scientific testimony. See *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009); *Bullcoming v. New Mexico*, 564 U.S. 647 (2011); *Smith v. Arizona*, 602 U.S. 779 (2024). Brown was never afforded the benefit of *Crawford* or its application in *Melendez-Diaz*, *Bullcoming*, and *Smith*, even though state law permitted him to seek post-conviction relief pursuant to those intervening decisions.

The questions presented are:

1. Whether the Mississippi Supreme Court’s application of the Confrontation Clause concerning how forensic scientific testimony must be treated contravenes this Court’s precedent and the Sixth and Fourteenth Amendments?
2. Whether the Mississippi Supreme Court’s decision to avoid reaching the merits of the confrontation issue conflicts with *Cruz v. Arizona*, 598 U.S. 17 (2023) and disregards the supremacy of federal law by denying Brown the benefit of this Court’s application of *Crawford* to forensic scientific testimony?

PARTIES TO THE PROCEEDINGS BELOW.

Petitioner is Xavier Brown.

Respondent is State of Mississippi.

RELATED PROCEEDINGS

State v. Xavier Brown, No. 99K-909P (Circuit Court of Lamar County) (June 19, 2002, convicted) (June 20, 2002, sentenced)

Xavier Brown v. State, 890 So. 2d 901 (Miss. 2004) (conviction and sentence affirmed on direct appeal) Rehearing denied on November 4, 2004. This Court denied a petition for a writ of certiorari, 544 U.S. 981 (2005).

Xavier Brown v. State, 948 So. 2d 405 (Miss. 2006), Mississippi Supreme Court, denial of post-conviction relief. Rehearing denied February 22, 2007.

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ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

The Petitioner Xavier Brown respectfully petitions for a writ of certiorari to the Supreme Court of Mississippi.

OPINION BELOW

The Mississippi Supreme Court’s opinion is reported at *Brown v. State*, 433 So. 3d 611 (Miss. 2026), and the court’s order denying rehearing on June 4, 2026 is reprinted in the Appendix to the Petition. Pet. App. 1a.

JURISDICTION

The Supreme Court of Mississippi entered the judgment denying post-conviction relief on January 29, 2026. The Supreme Court denied the motion for rehearing and issued the mandate on June 4, 2026. This Court’s jurisdiction is invoked under 28 U.S.C. § 1257(a) on the ground that the State of Mississippi has denied a right or privilege claimed under the Constitution of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the Constitution of the United States provides that: “In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him....”

The Fourteenth Amendment, U.S. Const. amend. XIV, § 1. provides in relevant part: “No State shall ... deprive any person of life, liberty or property, without due process of law.”

INTRODUCTION

At Petitioner Brown’s capital trial, the trial court admitted testimonial hearsay statements concerning key forensic evidence in violation of the Confrontation Clause. This resulted in the jury being misled about a key suspect, and it ultimately led to the conviction of an innocent man. Petitioner Brown did not kill Felicia Newell, and he certainly did not enter, and could not have entered, a murder-for-hire scheme to murder her. Indeed, according to disinterested witnesses, Brown did not meet the physical description of the shooter. Nor did Brown participate in the phone call to the victim that mentions a “contract”; Brown was in prison serving a sentence on an unrelated charge at the time.¹

Despite this, two categories of forensic scientific testimony were admitted at trial and were central to the prosecution’s theory of the case. First, the trial court admitted testimony about the cause of death of the original main suspect, Anthony Sims, who was the victim’s ex-husband. The State advanced a theory that Sims committed suicide because he could not pay the hitman he purportedly hired. To establish suicide as Sims’ cause of death, the testimony of Dr. Steven Hayne was critical. And Hayne was the only person who testified to Sims’ cause of death. But Hayne did not base his opinion on his own testing or observations. Rather, Hayne based his opinion on a piece of paper generated by a separate testing laboratory.

Second, the trial court admitted scientific testing conducted on firearms or firearm projectiles. The forensic scientific testimony related to firearms and spent shell casings was filtered through the unqualified testimony of two local law enforcement officers—neither of whom had any basis of knowledge about how those conclusions were formed. To prosecute Brown successfully, the

¹ The jury did not hear that Brown was in prison at the time of the voice message. Brown separately has asserted an ineffective assistance of counsel claim.

government needed to exclude Sims as being present at the time of the shooting. It was thus imperative for the prosecution to establish there was no forensic connection between the crime scene and Sims. Without the testimony from the two local officers, there was no forensic evidence to exclude Sims as the shooter.

Under current precedent from this Court, both categories of forensic scientific testimony admitted at Brown’s trial would be subject to successful Confrontation Clause objections today. Even so, when Brown filed a successive state court petition, as allowed by state law, to gain the benefit of those decisions, the Mississippi Supreme Court summarily refused to consider the open-and-shut Confrontation Clause errors that rendered Brown’s conviction invalid. Indeed, the state court attempted to evade federal law by refusing to apply the trio of cases (*Melendez-Diaz*, *Bullcoming*, and *Smith*) applying *Crawford*’s premise to forensic scientific testimony—even though state law authorizes the court to consider a successive petition based on an intervening decision of this Court. Miss. Code Ann. § 99-39-27(9).

The state court here held that cases like *Smith* do not qualify as intervening law because the cases are simply “pronouncements of the continued adherence to *Crawford*.” Pet. App. 7a. Yet a few months before Brown’s case, the same state court held that *Smith* does not qualify as intervening law because *Smith* “[does] not apply retroactively”² — an assertion that rests on the unstated and unreasoned assumption that *Smith* announced a new rule of constitutional law under the retroactivity framework of *Teague v. Lane*, 489 U.S. 288 (1989). Thus, in Brown’s case, the lower court wrongly dodged federal law by labeling *Smith* as “old law,” but in an earlier case, the same court

² *Galloway v. State*, No. 2025-DR-00129-SCT, Sept. 11, 2025 Order p. 4 (Mississippi Supreme Court).

evaded federal law by labeling *Smith* as “new law” that doesn’t apply “retroactively” under *Teague*. Either way, the lower state court is wrong—cases like *Smith* apply on collateral review.

This also is not the first (or second) time the Mississippi Supreme Court has attempted to disregard Confrontation Clause precedent that it does not like. Indeed, the Mississippi Attorney General’s Office recently conceded that the Mississippi Supreme Court’s application of the Confrontation Clause was contrary to *Smith*. See *Jeffrey Busby v. State*, U.S. Supreme Court No. 25-6885. In *Busby*, the Mississippi Supreme Court doubled down on its pre-*Smith* precedent, blessing exactly what *Smith* forbids. In June 2026, this Court vacated the Mississippi Supreme Court’s judgment and remanded the case for further proceedings based on the State’s confession of error. In addition, last year, this Court also reversed the Mississippi Supreme 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 court “attempted to avoid [constitutional] constraints.” *Id.*

As in *Pitts* and *Busby*, the judgment in Brown’s case conflicts with this Court’s application of the Confrontation Clause. There is no way to explain away the Mississippi Supreme Court’s refusal to follow and apply this Court’s recent Confrontation Clause decisions.

STATEMENT OF THE CASE

A. Factual Background

Xavier Brown was convicted of capital murder following a jury trial that began on June 17, 2002, in the Circuit Court of Lamar County, Mississippi. Brown has steadfastly maintained his innocence since he was arrested. According to the State’s theory at trial, Brown was hired by Anthony Sims, aka Tariq Bey, to kill Sims’ ex-wife, Felicia Newell. However, unbiased,

disinterested witnesses gave a description of the shooter that did not match Brown. Two witnesses, James Bigler and Gemma Anderson, described the shooter as “medium build” or weighing around 185 pounds.³ Brown weighed 260 pounds at the time of his arrest.⁴ Brown also did not participate in the phone call to the victim that mentions a purported “contract.” Indeed, records from the Mississippi Department of Corrections show that Brown could not have participated in a telephone conversation describing a murder-for-hire scheme because he was still serving a sentence of a completely unrelated charge. Pet. App. 18a, 227a.

Violations of the Confrontation Clause contributed to Brown’s wrongful conviction and death sentence. At trial, three witnesses—including two law enforcement agents—testified to forensic scientific opinions in violation of the Confrontation Clause. Central to the State’s case was its theory of a contracted killing between Brown and Anthony Sims, the victim’s ex-husband and the initial chief suspect. Tr. 322. Sims had a turbulent relationship with the victim and had chased her with a gun several months earlier. Tr. 598. At the time of the crime, Sims was scheduled for trial on possession of a weapon charge, and the victim was a key witness. Tr. 565. Sims was found dead in a hotel room two days after the murder. Tr. 322; 393.

To advance a theory that Sims committed suicide because he could not contractually pay for the alleged hit, the State argued Sims intentionally overdosed on Restoril. Tr. 464. The State called pathologist Dr. Steven Hayne to testify regarding an autopsy performed on Sims. Tr. 461-66. While Hayne performed the autopsy, he did not perform laboratory testing or prepare the

³ See Exhibit 1 (statement of Susan Petrush); Exhibit 2 (statement of Gemma Anderson) to Petitioner Brown’s Successor Petition for Post-Conviction Relief, No. 2017-DR-01373-SCT (Sept. 17, 2024) (Mississippi Supreme Court).

⁴ Exhibit 3 (Custody Report) to Petitioner Brown’s Successor Petition for Post-Conviction Relief, No. 2017-DR-01373-SCT (Sept. 17, 2024) (Mississippi Supreme Court).

toxicology report. Tr. 465. Even so, he testified that Sims died from a drug overdose due to a prescription drug, Restoril, based solely on a report he received from the National Medical Services Laboratory. Tr. 463-65.

Additionally, two law enforcement officers, Danny Rigel and Mark Berry, testified about the crime lab's testing of two shell casings of the same caliber recovered from the crime scene and from Anthony Sims' vehicle. Tr. 378-82; 571. Rigel testified that he sent the crime scene shell casing to the crime lab, but the crime lab did not identify which gun fired the shell casing. Tr. 378; 380. Berry testified that the shell casing recovered from a vehicle owned by Anthony Sims was also sent to the lab. Tr. 571. Berry was specifically asked by the prosecutor whether the two shell casings were fired from the same gun and responded "[i]n a report from the [state] crime laboratory dated September 23, 1999, (sic) says that the cartridge cases in exhibits 1 and 2 bear no significant similarities in class or individual characteristics with those produced by the gun." Tr. 607. There is no evidence that Rigel or Berry (two local law enforcement officers) participated in the testing of those items.

Today, this testimony would have been the subject of successful Confrontation Clause challenges. *See Smith v. Arizona*, 602 U.S. 779 (2024). Brown's trial, however, occurred before *Crawford* and its progeny. And while his direct appeal counsel claimed that his confrontation rights were violated, briefing was closed before *Crawford v. Washington* was handed down. Even though *Crawford* thus applied to Brown, the Mississippi Supreme Court did not address *Crawford* or the Confrontation Clause on direct appeal. *See generally Brown v. State*, 890 So. 2d 901 (Miss. 2004). Additionally, *Melendez-Diaz*, *Bullcoming*, and *Smith* were decided after Brown's trial, direct

appeal, and initial post-conviction proceedings. Brown raised and relied on those cases the first opportunity he could, which was in a successive post-conviction petition.

B. State Successive Proceedings

On September 17, 2024, Brown filed a petition for post-conviction relief to establish innocence and constitutional violations. Brown contended that, since his direct appeal and initial post-conviction proceeding, the opinions of *Melendez-Diaz*, *Bullcoming*, and *Smith* changed how forensic scientific testimony must be treated under the Confrontation Clause. *See Post-Conviction Petition* pp. 119-128⁵; *Pet. App.* 134a-143a. Brown submitted that these cases constituted intervening opinions that would have changed the outcome of his trial, as the cases barred the introduction of the only forensic evidence that excluded Sims as the shooter. *Id.* p. 134; *see, e.g.*, Miss. Code Ann. § 99-39-5(2) (describing “intervening decision[s]” as those “which would have actually adversely affected the outcome of his conviction or sentence”); Miss. Code Ann. § 99-39-23(6) (same); Miss. Code Ann. § 99-39-27(9) (same).

Despite its previous holdings on Mississippi’s intervening law exception, the Mississippi Supreme Court denied Brown’s petition and determined that *Melendez-Diaz*, *Bullcoming*, and *Smith* do not satisfy Mississippi’s intervening law exception. The Mississippi Supreme Court reasoned that the cases could not be “intervening decisions” because they were “pronouncements of the continued adherence to *Crawford*.” *Pet. App.* 7a. The Mississippi Supreme Court flouted the supremacy of federal law when it arbitrarily and inconsistently applied the statutory provision authorizing it to address intervening decisions from this Court.

⁵ This citation refers to Brown’s second petition for post-conviction relief filed in the Mississippi Supreme Court on September 17, 2024.

C. Legal Background

The Confrontation Clause of the United States Constitution, provides the accused with “the right ... to be confronted with the witnesses against him.” U.S. Const. amend. VI. In *Crawford v. Washington*, 541 U.S. 36 (2004), after “reviewing the Clause’s historical underpinnings” this Court held that the Confrontation Clause “guarantees a defendant’s right to confront those who bear testimony against him.” *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 309 (2009) (internal citations and quotation marks omitted). Since then, this Court has applied the Confrontation Clause to forensic scientific testimony. *See Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009); *Bullcoming v. New Mexico*, 564 U.S. 647 (2011); *Williams v. Illinois*, 567 U.S. 50 (2012); *Smith v. Arizona*, 602 U.S. 779 (2024).

In *Melendez-Diaz*, for example, this Court found that a laboratory analyst’s affidavit fell within the “core class of testimonial statements,” and the analysts were “witnesses for purposes of the Sixth Amendment” and thus Melendez- Diaz had the right to cross-examine the analyst who produced the affidavit and the opinions it contained. *Melendez-Diaz*, 557 U.S. at 311. Two years later, this Court held that prosecution ran afoul of the Confrontation Clause where it “introduce[d] a forensic laboratory report containing a testimonial certification” by using the “in-court testimony of an analyst who did not sign the certification or personally perform or observe the test.” *Bullcoming*, 564 U.S. at 657.

Most recently, in *Smith v. Arizona*, this Court explained that “[i]f an expert for the prosecution conveys an out-of-court statement in support of his opinion, and the statement supports that opinion only if true, then the statement has been offered for the truth of what it asserts.” *Smith*, 602 U.S. at 795. In such a case, to satisfy the Sixth Amendment, the analyst who

prepares a report must testify at a criminal trial. *Smith* expressly abandoned the earlier treatment of this same type of evidence. In a 4-1-4 opinion, the Court had allowed opinions of non-testifying analysts to be conveyed to juries when they were the basis for the independent opinion of a testifying expert. *Williams v. Illinois*, 567 U.S. 50 (2012). The *Williams* Court had “sown confusion” among lower courts, and its plurality opinion was overruled. *Smith*, 602 U.S. at 789 (citation omitted).

Someone who does not participate in testing may indeed have relevant and useful information for the prosecution. But admitting out-of-court statements of testing analysts through such a witness prevents a defendant from cross-examining the testing analyst about “what she did and how she did it and whether her results should be trusted.” *Id.* at 799. Under that scenario, a defendant has no opportunity to reveal lies, deviation from appropriate testing protocols, or lack of qualifications of the testing analyst. *Id.*

Smith nicely summarizes the current state of law regarding the introduction of forensic scientific evidence:

A State may not introduce the testimonial out-of-court statements of a forensic analyst at trial, unless she is unavailable and the defendant has had a prior chance to cross-examine her. *See Crawford* []; *Melendez-Diaz* []. Neither may the State introduce those statements through a surrogate analyst who did not participate in their creation. *See Bullcoming* []. And nothing changes if the surrogate ... presents the out-of-court statements as the basis for his expert opinion. Those statements, as we have explained, come into evidence for their truth—because only if true can they provide a reason to credit the substitute expert. So a defendant has the right to cross-examine the person who made them.

Id. at 802-03 (internal citations shortened). None of this was understood to be the law as applied by Mississippi courts at the time of Brown’s trial.

REASONS FOR GRANTING THE WRIT

The Mississippi Supreme Court's decision is inconsistent with the application of *Crawford*'s premise to forensic scientific testimony as explained in *Melendez-Diaz*, *Bullcoming*, and *Smith*. This Court's review is necessary to ensure enforcement of this Court's decisions. Brown's jury heard testimonial forensic conclusions from absent analysts through witnesses who neither performed nor observed the underlying testing. This evidence was used by the prosecution to improperly rule out the original suspect as a suspect. This Court's review is manifestly warranted to guarantee that Brown was tried in a matter consistent with the Sixth Amendment before Mississippi may execute him.

I. The Mississippi Supreme Court's Erroneous Admission of Forensic Testimony in Violation of the Confrontation Clause Resulted in a Wrongful Conviction.

Brown has always maintained his innocence, and he presented strong evidence of innocence in his successive post-conviction petition. Pet. App. 10a-160a. Despite Brown's evidence of innocence, two categories of forensic scientific testimony were improperly admitted at trial and were central to the prosecution's theory of the case. That admission of evidence conflicts with this Court's decisions applying the Confrontation Clause to forensic scientific testimony.

The Sixth Amendment protects the right of the accused to be "be confronted with the witnesses against him." U.S. Const. amend. VI. In *Crawford v. Washington*, this Court determined where "testimonial" evidence was at issue the "Sixth Amendment demands what the common law required: unavailability and a prior opportunity for cross-examination." *Crawford*, 541 U.S. at 68. The Supreme Court applied those principles to the introduction of laboratory analysis reports and related testimony in a line of cases beginning with *Melendez-Diaz* and more recently in *Smith*. This Court has been unequivocal: the Confrontation Clause "applies in full to forensic evidence."

Smith, 602 U.S. at 783. Thus “a prosecutor cannot introduce an absent laboratory analyst’s testimonial out-of-court statements to prove the results of forensic testing.” *Id.* But that is exactly what happened in Brown’s case.

1. Like the affidavits in *Melendez-Diaz*, the officers at Brown’s trial offered testimonial hearsay statements from crime lab reports that were “functionally identical to live, in-court testimony, doing precisely what a witness does on direct examination.” *Melendez-Diaz*, 557 U.S. at 310-11 (internal citations and quotations marks omitted). Both Rigel and Berry testified about testing that occurred at the crime lab on key pieces of evidence used to exclude Sims as the shooter. And Berry went so far as read conclusions from a crime lab report. Tr. 607 (“In a report from the crime laboratory dated September 23, 1999, (sic) says that the cartridge cases in exhibits 1 and 2 bear no significant similarities in class or individual characteristics with those produced by the gun.”). These statements are testimonial. The crime lab reports were created “under circumstances which would lead an objective witness reasonably to believe that the statement[s] would be available for use at a later trial,” *Smith*, 602 U.S. at 784-85 (citing *Melendez-Diaz*). Indeed, they provided “testimony” that the shot gun shells were not fired from Sims’ gun which was key forensic evidence that excluded Sims as a shooter. Lest there be any doubt, Mississippi has recognized that the ballistic reports from the same crime lab are testimonial and violate the Confrontation Clause when admitted into evidence without the analysts who did the testing. *See Connors v. State*, 92 So. 3d 676, 684-685 (Miss. 2012) (finding Confrontation Clause violation where court admitted crime lab report from testing on whether shell casings found at the murder scene were fired from a shotgun found at the scene); *Burdette v. State*, 110 So.3d 296, 304-305 (Miss. 2017).

There is also nothing in the record that suggests these officers were qualified or involved in the testing. In a case where the evidence against Brown was flimsy at best, cross-examination of witnesses with actual knowledge of how the testing was performed was critical. *See Melendez-Diaz*, 557 U.S. at 318 (recognizing lab tests are “not uniquely immune from the risk of manipulation”).

2. Dr. Hayne’s testimony fails no better. Hayne conducted an autopsy on Anthony Sims. Tr. 462. During the course of that autopsy, he drew fluids and submitted them to the state crime lab, which forwarded them to the National Medical Services Laboratory. Tr. 463. This was in aid of a toxicological analysis, from which the cause of death was determined. Tr. 463. Hayne testified that he received a report from both the National Medical Services Laboratory and the state crime laboratory. Tr. 463-464. Hayne determined that Sims succumbed to a drug overdose due to a prescription drug, Restoril. Tr. 464. In fact, he noted a specific measurement of 4,500 nanograms per milliliter. Tr. 464. The Mississippi Crime Laboratory report revealed Benzodiazepine, Restoril, and Serax in Sims’ blood as well as Valium in his urine. Tr. 465.

Dr. Hayne’s surrogate testimony “could not convey what [the certifying analyst] knew or observed about the particular test and testing process he employed.” *Bullcoming*, 564 U.S. at 661. This hearsay testimony also altered Brown’s trial. It was the only forensic testimony that appeared to absolve the key suspect of the murder, leaving open the possibility that Brown might somehow be involved. The State advanced a theory that Sims committed suicide because he could not pay the hitman he had hired. The State advanced this theory despite the facts that he had \$368.82 amount in a bank account and \$1,1138.03 in his wallet at the time of his death. Tr. 398-399; Tr. 403. To establish suicide as Sims’ cause of death, the testimony of Steven Hayne was critical. He

was the only person who testified to Sims' cause of death. But instead of basing it on his own testing or observations, he based it on a piece of paper from the crime lab.

3. The introduction of unconstitutional forensic testimony was prejudicial. Because the State relied extensively on forensic testimony (introduced unconstitutionally through Rigel, Berry, and Hayne) both "[i]n its case in chief and its closing argument," it cannot "conclusively show that the tainted evidence did not contribute" to Brown's conviction such that the Confrontation Clause error could be harmless beyond a reasonable doubt. *United States v. Jackson*, 636 F.3d 687, 697 (5th Cir. 2011) (citation omitted); *Chapman v. California*, 386 U.S. 18, 24 (1967).

The forensic testimony was damning. It provided the pieces that the State needed to present a full picture. Unconstitutional testimony from Rigel and Berry provided forensic evidence to exclude Sims as the shooter. Unconstitutional testimony from Hayne about Sims' cause of death being an apparent suicide caused by an overdose prejudiced Brown and provided the inconclusive inference that Sims harmed himself to avoid paying a hitman. Removal of this testimony would hinder the state's ability to support a finding beyond a reasonable doubt that money or offers of money were involved in the death of Newell.

Sims was an obvious initial suspect. Sims' motives were easily apparent; he was an enraged ex-spouse. Tr. 364. And the victim was scheduled to be a witness in a criminal prosecution against him within days of her death. Tr. 565-566; Tr. 598. Sims also was in the area at the time of the crime. Although he was a resident of Laurel, Mississippi, he was in Hattiesburg within a few hours of Felicia's death. Tr. 399-400; Tr. 403. He was the first and most likely suspect, but he could not be prosecuted because he was dead.

There was also no connection between Brown and Anthony Sims. Tr. 484-485. So, to prosecute Brown successfully they needed to exclude Sims as being present at the time of the shooting. However, the shell casing found at the scene, and the shell casing found in Sims' vehicle were the same caliber. It was thus imperative for the prosecution to establish there was no forensic connection between the crime scene and Anthony Sims. This is where the testimony of Rigel and Berry came in.

The constitutional violations here are anything but harmless. And this is not the first time that this Court addressed Mississippi's unconstitutional application of the Confrontation Clause. This 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." *Pitts v. Mississippi*, 607 U.S. 1, 6; 146 S. Ct. 413, 417 (2025); *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.

II. There Is No Justification for Mississippi's Refusal to Vindicate Brown's Confrontation Clause Rights.

A. There is no basis to deny the application of *Crawford*'s progeny of cases, most recently *Smith*, to Brown's claims for relief.

There is no basis to deny application of recent explication of the Confrontation Clause to Brown's claims for relief. This Court has repeatedly held that under the Supremacy Clause, all

courts—state and federal—must give settled rules of federal constitutional law full effect in collateral proceedings if the state court is authorized to address those federal claims. The Confrontation Clause guarantees set forth in *Crawford*, as clarified and reaffirmed in *Melendez-Diaz*, *Bullcoming*, and, most recently, *Smith* applied with full force to Brown’s successor post-conviction petition. The applicability of this Court’s recent Confrontation Clause cases to Brown’s post-conviction claim is firmly established by this Court’s decision in *Yates v. Aiken*, 484 U.S. 211 (1988).

In *Yates*, the State contended that it had no obligation to enforce the due process rule set forth in *Francis v. Franklin*, 471 U.S. 307 (1985), in a state post-conviction proceeding brought by a criminal defendant whose conviction was final before *Francis* was decided. Because *Francis* “did not announce a new rule” but merely clarified the application of this Court’s earlier decision in *Sandstrom v. Montana*, 442 U.S. 510 (1979), this Court unanimously held that the State had “a duty to grant the relief that federal law requires.” *Yates*, 484 U.S. at 218; accord *Danforth v. Minnesota*, 552 U.S. 264, 288 (2008); *Montgomery v. Louisiana*, 577 U.S. 190, 204-05 (2016).

This case is no different. Mississippi thus could not refuse to apply *Melendez-Diaz*, *Bullcoming*, and *Smith*’s application of *Crawford* in Petitioner Brown’s post-conviction proceedings absent an adequate and independent state procedural ground for refusing to do so. No such ground exists.

B. The Mississippi Supreme Court’s refusal to give effect to this Court’s binding due process precedents cannot be justified on the basis of any adequate and independent state ground.

The Mississippi Supreme Court’s refusal to give effect to this Court’s binding Confrontation Clause precedents cannot be justified on the basis of any adequate and independent state ground.

1. A state court’s refusal to adjudicate a federal claim does not bar this Court’s review of that claim unless the state court ruling “rests on a state law ground that is independent of the federal question and adequate to support the judgment.” *Lee v. Kemna*, 534 U.S. 362, 375 (2002) (quoting *Coleman v. Thompson*, 501 U.S. 722, 729 (1991)). “[W]hether a state procedural ruling is adequate is,” of course, “a question of federal law.” *Beard v. Kindler*, 558 U.S. 53, 60 (2009). At a minimum, a state procedural rule must be “‘firmly established and regularly followed,” *Lee*, 534 U.S. at 376 (citation omitted), before it can be invoked to cut off this Court’s consideration of a federal claim.

As this Court reaffirmed in *Cruz*, even a “generally sound rule” may be applied in a way that “renders the state ground inadequate to stop consideration of a federal question” if it amounts to “an unforeseeable and unsupported state-court decision on a question of state procedure.” 598 U.S. at 26 (quoting *Lee*, 534 U.S. at 376). Even more fundamentally, state procedural bars will not prevent federal review if they “operate to discriminate against claims of federal rights.” *Walker v. Martin*, 562 U.S. 307, 321 (2011).

2. The procedural bars invoked by the Mississippi Supreme Court to deny Brown relief fall short. Mississippi Code Section 99-39-27(9) expressly exempts claims from the statutory bars if they are based on, among others, intervening decisions of the U.S. or Mississippi Supreme

Court that “would have actually adversely affected” the petitioner’s conviction or sentence.⁶ In multiple prior cases, the Mississippi Supreme Court has held that the intervening-law exception applies—and that the waiver, successive, and statute of limitations bars therefore do not apply—in situations indistinguishable from *Brown*. And even if the Mississippi Supreme Court’s novel interpretations of its state procedural rules were sound in theory, they represent unforeseeable and unexplained departures from how those rules have historically been applied. Indeed, this case can only be understood as impermissible discrimination against *Brown*’s assertion of his federal constitutional rights.

The Mississippi Supreme Court has repeatedly allowed successor habeas petitions to proceed—and granted relief—in situations indistinguishable from the present case. The decision in *Gilliard v. State*, 614 So. 2d 370 (Miss. 1992) is illustrative. There, the court held that a habeas petitioner had “successfully hurdled the successive writ bar” because intervening decisions of this Court had clarified that the court’s prior rejection of *Gilliard*’s challenge to his death sentence rested on an erroneous understanding of this Court’s Eighth Amendment precedents. *Id.* at 375. Specifically, the Mississippi Supreme Court held that *Gilliard* could relitigate a previously rejected challenge to the constitutionality of the “especially heinous, atrocious or cruel” aggravating factor jury instruction given in his capital sentencing because this Court’s intervening decisions in *Maynard v. Cartwright*, 486 U.S. 356 (1988) and *Clemons v. Mississippi*, 494 U.S. 738 (1990) established that the instruction was unconstitutionally vague unless accompanied by an appropriate limiting instruction. *Gillard*, 614 So. 2d 373-74.

⁶ See also Miss. Code Ann. § 99-39-5(2) (describing “intervening decision[s]” as those “which would have actually adversely affected the outcome of his conviction or sentence”); Miss. Code Ann. § 99-39-23(6) (same).

The *Gilliard* court could hardly have been clearer that “the *Maynard/Clemons* cases would, as a matter of state law, be intervening decisions which would except the application of the successive writ bar.” *Id.* at 375 (emphasis added). The *Gilliard* court was equally clear that *Maynard* and *Clemons* did not create a new rule of constitutional law, but merely clarified the Eighth Amendment requirements that applied at the time of *Gilliard*’s sentencing proceeding. *Id.* at 374 (“The U.S. Supreme Court’s recent decision in *Stringer v. Black*, 503 U.S. 222 (1992), held that *Maynard* did not break new ground ... but was controlled by *Godfrey v. Georgia*, 446 U.S. 420 (1980).” (quotations omitted)). Indeed, the Mississippi Supreme Court acknowledged in another case that if the intervening-law exception only authorized claims based on new rules of constitutional law (rather than clarifications of the kind at issue here), it would never apply because new rules of constitutional law cannot be a basis for postconviction relief as a matter of both Mississippi and federal law. *See Irving v. State*, 618 So. 2d 58, 61 (Miss. 1992) (rejecting the Catch-22 character of this interpretation of the intervening law exception); *Cruz*, 598 U.S. at 28-29.

Gilliard is thus on all fours with the present case. This Court’s rulings in *Maynard* and *Clemons* clarified that the Mississippi Supreme Court had misapplied this Court’s earlier decision in *Godfrey*, just as this Court’s decisions in *Melendez-Diaz*, *Bullcoming*, and *Smith* clarified that the Mississippi Supreme Court had misapplied this Court’s decision in *Crawford*. And, just as in this case, *Maynard* and *Clemons* did not establish new rules of law—but merely clarified the law that applied at the time of the defendant’s trial. In *Gilliard*, the Mississippi Supreme Court held that the statutory authorization for a successor postconviction petition applied. Since then, the Mississippi Supreme Court itself has recognized that it has “consistently treated *Clemons* claims as exceptions to the procedural bar rule, under the intervening decision proviso of the statute.”

King v. State, 656 So. 2d 1168, 1173 (Miss. 1995) (citing *Irving*, 618 So. 2d 58; *Gillard*, 614 So. 2d 370; *Pinkney v. State*, 602 So. 2d 1177 (Miss. 1992); *Jones v. State*, 602 So. 2d 1170 (Miss. 1992); *Shell v. State*, 595 So. 2d 1323 (Miss. 1992); *Clemons v. State*, 593 So. 2d 1004 (Miss. 1992)); *see generally Nixon v. State*, 641 So. 2d 751, 755 n.7 (Miss. 1994) (explaining when successor petitions may proceed).

The Mississippi Supreme Court’s interpretation of the intervening-law exception in the present case flatly contradicts its earlier controlling interpretations of that exception. Here the court held that Brown’s successor petition could not proceed because *Melendez-Diaz*, *Bullcoming*, and *Smith* are only “pronouncements of the continued adherence to *Crawford*.” Pet. App. 7a. In a similar case, though, the Mississippi Supreme Court held that *Smith* “[does] not apply retroactively” — an assertion that rests on the unstated and unreasoned assumption that *Smith* announced a new rule of constitutional law under the retroactivity framework of *Teague v. Lane*, 489 U.S. 288 (1989).⁷ So, on one hand, the lower court refused to apply *Smith* because it is “old law” (i.e., “pronouncements” of *Crawford*), but on the other hand, the Court also refuses to apply *Smith* because it is new and thus doesn’t apply “retroactively.” Either way, Mississippi gets it wrong.⁸

Mississippi’s treatment of *Smith* not only discards the supremacy of federal law, *Chaidez v. United States*, 568 U.S. 342, 347 (2013) (“[W]hen we apply a settled rule [] a person [may] avail herself of the decision on collateral review”), but it also runs headlong into how the Mississippi Supreme Court has historically treated intervening law. In *Gilliard* and *Irving*, the Mississippi

⁷ *Galloway v. State*, No. 2025-DR-00129-SCT, Sept. 11, 2025 Order p. 4 (Mississippi Supreme Court).

⁸ Mississippi’s state statute allows for “intervening decisions” and says nothing about “new law.” *See* Miss. Code Ann. § 99-39-5(2) (describing “intervening decision[s]” as those “which would have actually adversely affected the outcome of his conviction or sentence”); Miss. Code Ann. § 99-39-23(6) and § 99-39-27(9) (same). In addition, under Mississippi law, the state court is proscribed from adding to substantive law enacted by the legislature. *See Howell v. State*, 358 So. 3d 613 (Miss. 2023).

Supreme Court held that it was because *Maynard* and *Clemons* did not announce a new rule that brought the cases within the state intervening-law exception. That the state court has now held the opposite as it pertains to *Melendez-Dias*, *Bullcoming*, and *Smith* makes the decision below the antithesis of a firmly established and regularly followed procedural rule. Indeed, in the decision below, the Mississippi Supreme Court did not even acknowledge the contrary rulings in *Gilliard* and *Irving*, much less offer any justification for the about-face. Thus, the bar invoked in this case is the polar opposite of a firmly established and consistently applied state procedural rule.

The state court's interpretation also discriminates against federal rights by confronting post-conviction petitioners with a Catch-22: to qualify as an intervening change in the law under the Mississippi Supreme Court's approach in the present case, a decision of this Court would have to establish a new rule of constitutional law within the meaning of *Teague v. Lane*. But under established Mississippi law, such new rules are not given retroactive effect in state postconviction proceedings. *Manning v. State*, 929 So. 2d 885, 900 (Miss. 2006). So in cases like this one—where a decision of this Court clarifies that the Mississippi Supreme Court has misapplied one of this Court's prior controlling precedents—the state courts will never grant a petitioner the benefit of the rule under the analysis adopted by the Mississippi Supreme Court below—an approach that cannot be squared with the Supremacy Clause. *See generally Yates*, 484 U.S. at 216-18. The Mississippi Supreme Court's decision in this case thus creates precisely the kind of prejudicial Catch-22 that troubled this Court in *Cruz*. *See* 598 U.S. at 28-29.

For identical reasons, the Mississippi Supreme Court's alternative waiver ruling is not an adequate and independent state procedural ground precluding this Court's review. It is axiomatic that a federal constitutional claim cannot be barred on waiver grounds if the petitioner could not

have asserted the claim previously due to the state court's misapplication of federal law. This is glaringly apparent in this case. In fact, the State has recently conceded in this Court that the Mississippi Supreme Court has continued to misapply Confrontation Clause cases, including after the decision in *Smith*. See *Jeffrey Busby v. State*, U.S. Supreme Court No. 25-6885.

The Mississippi Supreme Court's ruling that Brown's successor habeas petition is untimely also cannot constitute an adequate and independent state ground because it, too, is wholly derivative of that court's failure consistently to apply its "intervening law" provision. The statute of limitations cited by the court, Miss. Code Ann. § 99-39-5(2), is by its terms inapplicable to petitions raising claims based on intervening changes in the law. Indeed, the Mississippi Supreme Court has considered a successive petition based on an intervening decision that was filed eight years after the decision in question. *Bell v. Mississippi*, 66 So. 3d 90, 93 (Miss. 2011). As the court explained at that time, "[n]oticeably absent from [successive application] statute is a time limitation in which to file a second or successive application if such application meets one of the statutory exceptions." *Id.*

Barring a petitioner the benefit of *Melendez-Diaz*, *Bullcoming*, and *Smith* on collateral review is also not independent of federal law. The Mississippi Supreme Court's determination that *Smith*'s federal constitutional holding does not apply "retroactively" necessarily "depend[s] on a federal holding" and is, at minimum, "intertwined with questions of federal law." *Glossip v. Oklahoma*, 604 U.S. 226, 242 (2025). Whether a U.S. Supreme Court decision interpreting the Constitution announces a "new rule" of federal constitutional law is a federal question governed by *Teague* and its progeny. The answer to that question depends entirely on interpreting the federal law "principle[s] that governed" this Court's prior decisions to determine whether the result was

“dictated by precedent” of this Court. *Teague*, 489 U.S. at 301, 307; *Chaidez*, 568 U.S. at 347-348. For many reasons, then, this Court has jurisdiction.

III. This Court’s Intervention is Manifestly Warranted.

Review is necessary to ensure that state courts faithfully apply this Court’s decisions—not only their precise holdings, but their reasoning. The Mississippi Supreme Court’s decision in this case violates the supremacy of federal law in two fundamental respects. First, the court has continued its pattern of refusing to enforce the Confrontation Clause guarantees that *Crawford* established and *Melendez-Diaz*, *Bullcoming*, and *Smith* reaffirmed—entrenching an intolerable continuing risk of constitutionally unreliable outcomes, especially in death penalty cases. Second, the lower court chose to judicially rewrite its statutory intervening-law exception to the bar on successive habeas petitions to deny Brown the benefit of intervening decisions by this Court—effectively thumbing its nose at this Court’s affirmation of *Crawford* in recent cases.

In both of these respects, the present case is indistinguishable from *Cruz v. Arizona*. Here, as in *Cruz*, the state supreme court has consistently refused to apply substantive constitutional requirements that have been clearly articulated by this Court. And here, as in *Cruz*, the state supreme court refused to respect the supremacy of federal law by departing from its established procedural rules governing what qualifies as an intervening change in the law sufficient to justify a successor habeas petition. This Court recognized the importance of vindicating the supremacy of federal law in *Cruz*, and it should do the same in this case. Review is warranted.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

Krissy C. Nobile

S. Beth Windham

Tameika L. Bennett

Counsel of Record

MISSISSIPPI OFFICE OF CAPITAL POST-
CONVICTION COUNSEL

239 N. Lamar Street, Suite 404

Jackson, MS 39201

tbennett@pcc.state.ms.us

(601) 359-5733

Counsel for Petitioner Xavier Brown

Dated: October 2, 2026.