

No. 11-1407

IN THE
Supreme Court of the United States

RICKY LEE ALLSHOUSE, JR.,
Petitioner,

v.

PENNSYLVANIA,
Respondent.

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

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

The Commonwealth agrees with petitioner and the National Association of Criminal Defense Lawyers – as well as with the states and prosecutorial organizations that have previously filed amicus briefs concerning whether statements to child protective services workers investigating suspicions of past abuse are testimonial – that “[t]his area of law is in disarray and cries out for this Court’s guidance and attention.” BIO 25; *see also* Pet. 12. The Commonwealth further agrees that “this case provides an appropriate vehicle” to address the issue and to provide the “much-needed guidance” in this area. BIO 16, 25. The only real question, therefore, seems to be whether now is the right time for this Court to undertake that task.

The answer, for two reasons, is yes. First, the question presented is not something that arises only occasionally; it arises on a daily basis in courts across the United States. Lawyers, trial courts, and investigative agencies thus need to know straightaway whether the Confrontation Clause applies to interviews conducted by child protective services workers. People have been operating under a cloud of uncertainty for too long already.

Second, the consequences of the Commonwealth’s position on the merits – embraced by the Pennsylvania Supreme Court and others – are stark and treacherous. Pennsylvania and most other states have set up systems in which child protective services workers investigate and report allegations of abuse to police and prosecutors, for law enforcement’s use in lieu of interviewing any child witnesses themselves. *See* Pet. 16-18, 28-29. Thus, in the states where such

investigative interviews fall beyond the reach of *Crawford*, states are able to prosecute an entire category of cases by way of *ex parte* examinations of alleged victims and eyewitnesses – the very evil against which all of the Members of this Court agree the Confrontation Clause is designed to protect. *See Crawford*, 541 U.S. at 50; *Melendez-Diaz v. Massachusetts*, 129 S. Ct. 2527, 2548, 2552 (2009) (Kennedy, J., dissenting) (Clause is designed to “alleviate the danger of” conducting trials based on “one-sided interrogations by adversarial government officials who might distort a witness’s testimony” about “events observed in the past”); NACDL Br. 16-19. Such a state of affairs requires this Court’s intervention.

CONCLUSION

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

Respectfully submitted,

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