

ALITO, J., concurring

**SUPREME COURT OF THE UNITED STATES**

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No. 07–6053

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DWAYNE GILES, PETITIONER *v.* CALIFORNIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT  
OF CALIFORNIA

[June 25, 2008]

JUSTICE ALITO, concurring.

I join the Court’s opinion, but I write separately to make clear that, like JUSTICE THOMAS, I am not convinced that the out-of-court statement at issue here fell within the Confrontation Clause in the first place. The dissent’s displeasure with the result in this case is understandable, but I suggest that the real problem concerns the scope of the confrontation right. The Confrontation Clause does not apply to out-of-court statements unless it can be said that they are the equivalent of statements made at trial by “witnesses.” U. S. Const., Amdt. 6. It is not at all clear that Ms. Avie’s statement falls within that category. But the question whether Ms. Avie’s statement falls within the scope of the Clause is not before us, and assuming for the sake of argument that the statement falls within the Clause, I agree with the Court’s analysis of the doctrine of forfeiture by wrongdoing.