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High Court Declines to Revisit or Modify Melendez-Diaz

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On June 25, 2009, the United States Supreme Court issued its decision in *Melendez-Diaz v. Massachusetts,* holding that forensic laboratory reports are testimonial and thus subject to the new *Crawford* Confrontation Clause rule. The case, which was decided by a 5-to-4 vote, was a blow to prosecutors, who were hoping that the Court would limit the impact of *Crawford* with regard to forensic reports. Four days later, however, the Court granted certiorari in *Briscoe v. Virginia* (No. 07-11191), which presented the following question: If a state allows a prosecutor to introduce a certificate of a forensic laboratory analysis, without presenting the testimony of the analyst who prepared the certificate, does the state avoid violating the Confrontation Clause by providing that the accused has a right to call the analyst as his or her own witness? Justice Souter had voted with the majority in *Melendez-Diaz.* Given his retirement, prosecutors were hoping that a new Justice might shift the balance in *Briscoe.* That, however, did not come to pass. Even with a former prosecutor replacing Justice Souter, the Court declined to revisit or modify *Melendez-Diaz* in *Briscoe.* The Court's two-sentence per curiam decision vacated and remanded for "further proceedings not inconsistent with the opinion in *Melendez-Diaz."* Thus, *Melendez-Diaz* remains intact.

Editor's note: Briscoe was just decided yesterday. The opinion, such as it is, is here. *Prior posts about Melendez-Diaz and its impact in North Carolina are* here, here, here, here, *and* here.