

No. 25-7373

In the Supreme Court of the United States

ATTICUS HEMLOCK,

PETITIONER,

v.

UNITED STATES OF AMERICA,

RESPONDENT.

*ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FOURTEENTH CIRCUIT*

BRIEF FOR RESPONDENT

QUESTIONS PRESENTED

The questions presented are:

1. Whether agents effect a warrantless entry under the Fourth Amendment when they arrest a suspect outside his home after he voluntarily obliges to the agents' request for him to step outside.
2. Whether officers may reasonably rely on a co-occupant's consent to search a residence to open a closed container in a common area when ownership of the container is ambiguous.
3. Whether, despite Rule 608(b)'s explicit ban, Rule 806 of the Federal Rules of Evidence expands the Rules to permit extrinsic evidence of specific instances of conduct when a hearsay declarant is unavailable to testify.

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STATEMENT OF THE CASE

I. Statement of the Facts

Respondent, the United States (the “Government”), obtained a conviction against Petitioner-Defendant Atticus Hemlock (“Petitioner”) for attempted kidnapping of a United States government officer in violation of 18 U.S.C. § 1201(a)(5) and 18 U.S.C. § 1201(d). R. 51.

Petitioner is an aggrieved Boerum Village resident who sought to kidnap Jodie Wildrose (“Wildrose”) as she aimed to create “innovative public gardens to promote rural economic development” in Petitioner’s own town. R. 4–5, 15. The Petitioner first met Wildrose when he was a sophomore at Court Street College (“CSC”) enrolled in then-Professor Wildrose’s geology class. R. 5. Petitioner felt slighted by Wildrose when she noted in class that he misclassified a rock. *Id.* Years later, when Petitioner learned that Wildrose would be coming back to Boerum Village in her role as a government official, he devised a sinister plan to kidnap her. *Id.* Petitioner planned on working with his former CSC classmate, Iris Copperhead (“Copperhead”), to carry out the attack. *Id.*

In April 2023, Copperhead failed her senior capstone at CSC because she used artificial intelligence to research and/or write her final assignment. R. 9. Due to her failing grade in the capstone, Copperhead was unable to graduate from CSC. R. 9–10. Later, in January 2024, the Boerum Village Mayor’s Office denied an employment application that Copperhead submitted because she did not possess the requisite college degree. R. 10.

After fifteen years of teaching at CSC, Wildrose joined the United States Department of Tourism (the “Department”) as the Under Secretary for Rural Development in December 2023. R. 3–4. On February 20, 2024, the Department announced the launch of the “Grow Your Own Way” program, which encouraged landowners “to sell underutilized farmland to the Department, which

[would] plant large-scale garden attractions on the land.” R. 3. In a subsequent press release, the Department advertised a visit by Wildrose to Boerum Village to promote the “Grow Your Own Way” initiative from April 8, 2024, to April 12, 2024. R. 4. The press release noted that Wildrose would begin her visit with an information session at the Boerum Village High School Gymnasium. *Id.*

After Petitioner learned about his former professor’s upcoming visit to Boerum Village, he immediately started planning a violent scheme to kidnap Wildrose. R. 8. In fact, on March 28, 2024, and March 29, 2024, Petitioner went to a local café with Copperhead for a combined eight hours to “excited[ly]” and “obnoxious[ly]” plan the devious kidnapping mission. R. 7–8. The next day, Petitioner went with Copperhead to a superstore called Every-Mart where they purchased “a pack of zip ties, two ski masks, a six-inch folding knife, black trash bags, and bear spray” with cash. R. 6. Concerned by what they saw, café barista Elvis Hoag (“Hoag”) and Every-Mart manager Tina Caplow (“Caplow”) called the police. R. 6–7.

On April 1, 2024, Petitioner laid out his plan to kidnap Wildrose in a disturbing diary entry. R. 5. In this entry, Petitioner explained that he was “pissed [] off” because Wildrose “snickered at [him]” in his sophomore geology class. *Id.* After a conspiracy and expletive-filled tirade about the Department’s “inane [sic] press release”, Petitioner described his plan to kidnap Wildrose. *Id.* Petitioner wrote that he and Copperhead had “staked out the high school parking lot” and on April 8, they would “grab Jodie as soon as she gets there.” *Id.* Petitioner wrote that they would “knock [Wildrose] out with that chloroform I’ve been saving up in the cabin and make sure she can’t run away or warn anyone.” *Id.* Petitioner also described threatening Wildrose’s family and dog, and holding her hostage “until she guarantees us that she and the POS Department will LEAVE OUR TOWN AND NEVER COME BACK.” *Id.*

On April 2, 2024, FBI Special Agents Hugo Herman (“Agent Herman”) and Ava Simonson (“Agent Simonson”) interviewed Hoag and Caplow about the strange behavior they witnessed from Petitioner. R. 6–8. The FBI oversaw the investigation of Petitioner because they were concerned that he was planning to kidnap a federal official—Wildrose. R. 20. After speaking with Hoag and Caplow, the agents decided to go to Petitioner’s cabin “to talk to him as part of [their] investigation.” *Id.* Petitioner had rented the cabin along with his girlfriend, Fiona Reiser (“Reiser”), since May 2023. R. 28.

At 4:08 PM on April 2, 2024, Agents Herman and Simonson arrived dressed in plain clothes at Petitioner’s cabin “with the intention of getting answers to some questions.” R. 21, 29. The agents agreed that they “would arrest [Ppetitioner] only if it became obvious [during the interview] that he was taking steps towards carrying out these alleged [kidnapping] plans.” R. 21. When Agents Herman and Simonson arrived at Petitioner’s cabin, “the main door was open, but . . . the screen door was closed, so [they] could kind of see into the home.” *Id.* Agent Simonson walked up the stairs leading to the cabin’s front door and knocked on the doorframe. *Id.* Then, she came back down the stairs and waited for Petitioner to answer the door while she and Agent Herman stood “three or four feet from the bottom stair.” *Id.*

After the agents asked Petitioner to come outside so they could talk to him about their investigation, he told the agents that he was “pretty busy” and asked what was going on. R. 11. While speaking with Petitioner through his doorway, Agent Herman “noticed two bottles on a counter labelled ‘Chloroform.’” R. 22. Panicked, Petitioner used his body to block the agents’ view of the chloroform and refused to tell Agent Herman why the bottles were in his house. R. 11. When the agents asked Petitioner to come outside again, he asked whether their visit “ha[d] to do with Jodie [Wildrose.]” *Id.* Agents Herman and Simonson then returned to their car to decide how

to proceed with the investigation. R. 22. The agents determined that “the presence of chloroform, [Petitioner’s] movement to block it from [their] view, and his unprompted question about Jodie to be extremely suspicious” such that they now had “probable cause to arrest [Petitioner].” *Id.*

After calling Special Agent Kiernan Ristroph (“Agent Ristroph”) for backup, Agents Herman and Simonson returned to Petitioner’s door and asked him to come outside again because of the importance of their investigation. R. 12. Petitioner then chose to walk out of his cabin, and once he stepped onto the ground outside his home, Agent Simonson arrested him. R. 12, 23. While Simonson was executing the arrest, Herman found a spiral notebook in Petitioner’s baggy cargo pants that was already open to pages detailing Petitioner’s kidnapping scheme. R. 12, 23–24. Agents Herman and Simonson never stepped foot past Petitioner’s doorway; in fact, the only physical contact that either agent made with the cabin was by Agent Simonson when she briefly stepped onto the stairs to knock on the front doorframe. R. 21, 24, 55.

Agent Ristroph arrived on the scene around 4:30 PM and waited for about twenty minutes for Petitioner’s girlfriend, Reiser, to get back home. R. 13. Once Reiser arrived back to the cabin around 5:00 PM, Ristroph knocked on the front door, identified himself as an FBI agent, and asked whether he could enter and look around the cabin as part of an investigation. *Id.* Once he obtained consent from Reiser, Ristroph searched the cabin. *Id.* After Reiser informed Agent Ristroph that the second floor was used by Petitioner for storage and office space, Ristroph decided to limit his search to the first floor. *Id.*

Ristroph then noticed a cardboard box at the bottom steps of the staircase leading to the second floor. *Id.* Ristroph opened the box, which contained no identifying information, and discovered “1 50-foot long length of rope, 2 black ski masks, 1 pair of green gloves, 48 black zip ties, 1 folding knife with 6-inch blade, 1 roll of duct tape, and 2 bottles of chloroform.” R. 13–14.

Under penalty of perjury, Reiser later swore that she “believe[d] [Petitioner] left the box [on the stairs] to bring upstairs later.” R. 15–16. Reiser also swore in a Declaration that she had resided in the cabin with Petitioner since the couple rented the house in May 2023. R. 15, 28.

At the same time that Agents Herman and Simonson arrested Petitioner, Copperhead witnessed the arrest while on her way to Petitioner’s home for dinner. R. 53. During this same timeframe, elementary school teacher Theodore Kolber (“Kolber”) was walking in the park near Petitioner’s cabin when he saw “a woman . . . burst[] out of the woods onto the path right in front of [him].” R. 42. Out of breath and shaking, the woman “screamed ‘I can’t believe I saw him get arrested. It’s all his fault. It was all Atticus’ idea--NOT MINE! I can’t run a business from prison!’” R. 42–43.

The next morning, April 3, 2024, Kolber saw Copperhead’s mugshot in the newspaper and “immediately recognized her” as the woman he had seen at the park the previous night. R. 45. Kolber also learned from the news article that Copperhead died from an aortic rupture while in jail on the night that she and Petitioner were arrested for the kidnapping plot. R. 45–46. After Kolber realized that the person he saw in the park was the same woman charged for the kidnapping plot, he called the FBI to alert them to what he saw. R. 45.

II. Procedural History

On April 3, 2024, a Grand Jury returned an indictment against Petitioner for Attempted Kidnapping of an Officer of the United States Government in violation of 18 U.S.C. § 1201(a)(5) and 18 U.S.C. §1201(d) in connection with his attempted kidnapping of Wildrose. R. 1–2. The indictment alleged that Petitioner’s actions “constituted a substantial step in furtherance of the commission of the offense of kidnapping.” R. 2. The Petitioner was indicted in the United States District Court for the Northern District of Boerum. R. 1–2.

At a pre-trial hearing on July 29, 2024, the District Court denied Petitioner’s motion to suppress the notebook seized incident to his arrest. R. 31. The District Court also denied Petitioner’s motion to suppress the evidence found in his cabin, “in particular the cardboard box and the items found therein[.]” R. 39. During trial, on August 6, 2024, the District Court admitted Copperhead’s panicked statement on the night of Petitioner’s arrest “as hearsay under the excited utterance exception in Rule 803(2).” R. 43–44, 54; Fed. R. Evid. 803(2). Petitioner then attempted to introduce extrinsic evidence of Copperhead’s failure to graduate, and submission of an untruthful employment application through witnesses from CSC and the Mayor’s Office. R. 47–50.

But, the trial court held that Rules 608(b) and 806 of the Federal Rules of Evidence (“Rule 608(b)” and “Rule 806”, respectively) barred Petitioner from introducing this extrinsic evidence. R. 50; Fed. R. Evid. 608(b); Fed. R. Evid. 806. In its ruling from the bench, the District Court held that “[s]uch extrinsic evidence would include the Court Street College letter, the job application, and any testimony related to these documents or the underlying incidents.” R. 50. After a jury trial, Petitioner was found guilty of attempted kidnapping of a federal officer and sentenced to ten years in prison. R. 54.

Petitioner appealed the judgment of conviction to the United Court of Appeals for the Fourteenth Circuit. R. 51. On April 14, 2025, the circuit court upheld the conviction and affirmed the district court’s rulings on all three issues. *Id.* The Fourteenth Circuit held that (1) the notebook seized incident to the arrest was properly admitted, (2) the evidence found in the box located in Petitioner’s cabin was properly admitted, and (3) the extrinsic evidence aimed at impeaching Copperhead’s credibility as a hearsay declarant was properly excluded under Rules 608(b) and

806. R. 51–52; Fed. R. Evid. 608(b); Fed. R. Evid. 806. Petitioner filed a petition for writ of certiorari, which this Court granted on December 2, 2025. R. 62.

SUMMARY OF THE ARGUMENT

This Court should affirm the Fourteenth Circuit’s decision and hold that Petitioner’s Fourth Amendment rights were not violated when he was arrested or when a container in his cabin was searched. The Court should also hold that extrinsic evidence of Copperhead’s academic violation and untruthful employment application was properly excluded at trial. Agents Herman and Simonson arrested Petitioner outside his home after simply asking him to come outside. Agent Ristroph had no reason to doubt that Petitioner’s girlfriend’s consent to search extended to the closed container where evidence of Petitioner’s attempted kidnapping was found. Furthermore, the Federal Rules of Evidence (the “Rules”) clearly prohibit the introduction of extrinsic evidence aimed at impeaching Copperhead’s credibility as a hearsay declarant.

First, Petitioner’s arrest outside of his cabin does not constitute a Fourth Amendment violation because the agents did not enter his home. This Court stated that the Fourth Amendment is violated when officers physically pass the threshold and enter one’s home. Here, the agents never entered Petitioner’s home; instead, he was arrested outside his cabin. The agents also did not coerce him out of his home. They stood outside and merely asked him to come out and talk to them; a request to which Petitioner acquiesced. Since Petitioner’s Fourth Amendment rights were not violated, the notebook seized from him during the arrest was admissible at trial.

Second, Agent Ristroph was allowed to search the box found in Petitioner’s cabin because the agent had consent from an individual with apparent authority. When the agent was given consent from Petitioner’s girlfriend, Reiser, to search the cabin, that consent extended to the box found on the staircase. When a closed container is found during a search, officers are permitted to

search it so long as they have a reasonable belief that the container belongs to the authorizer. Factors that contribute to a reasonable belief include the container being found in a common area and the container lacking identifying marks that connect it to another individual, like a name or a bag tag. Since the box in Petitioner's cabin was found in a common area and lacked identifying marks, Agent Ristroph had no reason to question if Reiser's consent extended to the box.

Third, Petitioner may not introduce extrinsic evidence to impeach Copperhead's credibility as a hearsay declarant. Rule 608(b) explicitly bars the admission of extrinsic evidence of specific instances of prior conduct to attack the credibility of a witness. Additionally, Rule 806's command that hearsay declarants be treated as witnesses for the purpose of impeachment does not change Rule 608(b)'s prohibition on the type of extrinsic evidence that Petitioner seeks to introduce about Copperhead. Furthermore, Rule 806's silence on the admissibility of extrinsic evidence indicates that Rule 608(b)'s unambiguous ban remains in full effect. Finally, contrary to Petitioner's assertion, introducing extrinsic evidence of specific instances of conduct is not the only avenue available to undermine Copperhead's credibility.

Therefore, this Court should affirm the Fourteenth Circuit's holding that Petitioner's Fourth Amendment rights were not violated, and that extrinsic evidence of Copperhead's prior conduct was properly excluded by the District Court.

ARGUMENT

I. The Fourteenth Circuit Correctly Found That Petitioner's Arrest Did Not Violate the Fourth Amendment, and his Notebook is Therefore Admissible

Petitioner's arrest outside of his home does not violate the Fourth Amendment. The Fourth Amendment enshrines "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend IV. However, this Court

held in *Carroll v. United States* that “if the search and seizure without a warrant are made upon probable cause . . . the search and seizure are valid.” *Carroll v. United States*, 267 U.S. 132, 149 (1925). Therefore, an officer can make an arrest so long as there is probable cause for them to believe the person committed a felony. *United States v. Watson*, 423 U.S. 411, 416 (1976) (stating that FBI agents have been expressly authorized by statute for many years to make felony arrests on probable cause but without a warrant).

But this Court has pointed out that a different standard applies when a defendant is within the privacy of their own home. In *Payton v. United States*, this Court held that arrests made within the suspect’s home must be accompanied by a warrant. *Payton v. United States*, 445 U.S. 573, 585 (1980). However, this does not mean that arrests outside the home must have a warrant. “[T]he Fourth Amendment has drawn a *firm line* at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.” *Id.* at 590 (emphasis added).

A. Under the Constructive Entry Doctrine, Coercion is Required in Order for a Court to Find a *Payton* Violation

Lower courts are split on the constitutionality of an arrest of someone who is inside their home and then comes out due to the officer’s actions, especially where the suspect was coerced by officers into exiting their home. Some courts treat an arrest made after coercion as a “constructive entry” which therefore violates *Payton*. See, e.g., *United States v. Reeves*, 524 F.3d 1161, 1171 (10th Cir. 2008) (Tymkovich, J., concurring) (emphasizing that “[c]onstructive entry is deemed to have occurred where police, although they do not cross the threshold and physically enter a home as required by *Payton*, use excessive coercion to force someone from the home.”) (citing *United States v. Maez*, 872 F.2d 1444 (10th Cir. 1989). Here though, Agents Herman and Simonson did not enter Petitioner’s home and did not coerce him to leave his home. R. 11-12. Instead, the agents

arrested him on the ground outside his cabin. *Id.* Therefore, Petitioner's arrest fits squarely within the constitutional parameters set out by this Court in *Payton*.

i. *Petitioner's Arrest Falls Within the Firm Constitutional Line Drawn by Payton at the Entrance of the House*

The defendant was arrested outside his home, and the officers did not enter his home at any point before or after the arrest. The language of *Payton* is clear: the Fourth Amendment has drawn a firm line at the entrance to the house. *See Payton*, 445 U.S. at 573. *Payton* thus establishes an unambiguous threshold for when a warrant is needed: when officers enter the home. Here, Agents Herman and Simonson knocked on the front door and waited for Petitioner to come out and speak with them. R. 30. Not only did they not enter Petitioner's home, they even waited at the bottom of the stairs that led to the front door, approximately three to four feet from the home. R. 21. The agents kept their distance from the home, so the claim that they entered the cabin is not grounded in the facts of this case.

There have been multiple cases from circuit courts that found no entry by police officers, with facts that differ in severity from this one. For example, in *Knight v. Jacobson*, an officer walked up to the suspect's front door and arrested him on the spot once he left the home. *Knight v. Jacobson*, 300 F.3d 1272, 1277 (11th Cir. 2002). The Eleventh Circuit found that the interaction did not violate *Payton* because the arrest was outside of the home. *Id.* at 1277–78. Additionally, in *United States v. Berkowitz*, officers arrested a suspect while she was still standing in her doorway, and the court held that *Payton* was not violated because the officers did not physically enter the home. *United States v. Berkowitz*, 927 F.2d 1376, 1386 (7th Cir. 1991). If officers standing right outside the doorway of a home does not constitute an entry, then agents standing three to four feet away from the bottom of the stairs to Petitioner's home is certainly not an entry.

B. Agents Herman and Simonson Did Not Coerce Petitioner into Exiting His Home When They Simply Asked Him to Come Outside and Speak with Them

Not only did the agents never enter Petitioner's home, but they also did not coerce him out of it. Agents Herman and Simonson arrived at Petitioner's cabin at around 4 PM and knocked on his front door. R. 11, 29. When Petitioner came to the door, the agents calmly asked about his day and requested that he step outside so they could talk. R. 11. It is important to note that when the agents first asked Petitioner to step outside, they had no intention of arresting him. R. 20–21. They simply planned to discuss their investigation and learn more about what was going on. *Id.* After noticing the chloroform bottles, the agents returned to the car to regroup, then returned and again asked Petitioner to step out of his house. R. 22–23. Finally, at that point, Petitioner stepped out of his house and walked down to the officers, who then arrested him. R. 23. No guns were drawn; no SWAT teams arrived. Rather, two agents who were smaller than the Petitioner requested that he exit his house, and he obliged. R. 29.

Many of the cases in which circuit courts found coercion to justify “constructive entry” involved different facts from the ones in this case. In *United States v. Morgan*, for example, at least ten officers surrounded the suspect's home, flooded it with spotlights, and used a bullhorn to force the suspect outside. *United States v. Morgan*, 743 F.2d 1158, 1161 (6th Cir. 1984). There, the court found that the officers' actions constituted constructive entry based on “the coercive police behavior taking place outside of the house.” *Id.* at 1166 (citing *Johnson v. United States*, 333 U.S. 10, 13 (1948)).

Additionally, in *United States v. Saari*, the Sixth Circuit held that four officers who stood outside of the suspect's home with guns drawn constructively entered the home. *United States v. Saari*, 272 F.3d 804, 806–07, 812 (6th Cir. 2001). Constructive entry was also found in *United States v. Maez*, when at least ten officers, including SWAT team members, surrounded a mobile

home with their weapons and ordered the suspect to exit the home over loudspeakers. 872 F.2d 1444, 1446–47, 1451 (10th Cir. 1989). It is understandable why the defendants in these cases felt they had no other choice but to leave the home.

Furthermore, the dissenting opinion below refers to a case in which a court found that there was constructive entry based on the coercive nature of the officers' actions. In that case, the Tenth Circuit found that officers were coercive when they showed up to the defendant's motel room at 2:30 in the morning, called the room multiple times, flashed bright flashlights into his window, and banged on his door while yelling for an entire twenty minutes. *United States v. Reeves*, 524 F.3d 1161, 1164, 1169 (10th Cir. 2008).

However, the facts of this case are very different from the cases discussed above. Here, only two agents were present, not four to ten. R. 11–12. The agents also did not have their weapons drawn and did not use a speaker or device to amplify their voices. *Id.* There was no yelling, no banging on the door, no phone calls, just two agents standing outside having a conversation with Petitioner. R. 29. Additionally, the agents arrived at 4 PM, and if, as the Tenth Circuit mentioned in *Reeves*, “time . . . must be taken into consideration when analyzing the coerciveness of an encounter[,]” then the fact that Agents Herman and Simonson showed up in the afternoon sunlight should be an important factor against a claim of coercion. *Reeves*, 524 F.3d at 1169. Based on the totality of the circumstances, it would be unreasonable for Petitioner to believe that he had no choice but to exit his cabin. He conversed with the agents for a period of time before exiting the home. R. 29. If he truly felt that he had no other choice but to come out of his cabin, he likely would have exited immediately instead of waiting in his house for an extended period.

The agents also did not intend to arrest Petitioner when they asked him to step outside. In the aforementioned cases, the officers knocked on the door and coerced the defendant to come out

because they planned to make an arrest. *See, e.g., Reeves*, 524 F.3d at 1169. Here, the officers simply wanted to ask Petitioner questions, and they knew they did not have enough evidence prior to questioning him to make an arrest. R. 20–21.

C. Petitioner’s Notebook Was Properly Admitted into Evidence Under the Search Incident to Arrest Doctrine

Since the agents did not enter Petitioner’s home and he was not coerced out of it, his Fourth Amendment rights were not violated. It follows that because Petitioner’s Fourth Amendment rights were respected, the notebook seized incident to that arrest was properly admitted at trial. This conclusion is grounded in the search incident to arrest common-law principle that was solidified by this court in *Chimel v. California*. 395 U.S. 752 (1969). In that case, this Court held that “it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee’s person in order to prevent its concealment or destruction.” *Id.* at 763. Here, Agents Herman and Simonson acted in accordance with this principle when they seized Petitioner’s open notebook to “voucher[]” it as part of their investigation. R. 12.

II. Petitioner’s Girlfriend’s Apparent Authority to Consent to the Agent’s Search of the Cabin Extended to the Box Containing Evidence of Petitioner’s Kidnapping Scheme

Agent Ristroph’s search of the box containing evidence of Petitioner’s planned kidnapping in no way violated the Fourth Amendment. As discussed earlier, the Fourth Amendment protects people from warrantless searches and seizures. U.S. Const. amend. IV. However, there are circumstances under which a person’s home may be searched without a warrant. These circumstances include consent from (1) the individual whose property is searched, (2) a third party who possesses common authority over the premises or effects, or (3) a third party who possesses “apparent authority” over the premises or effects. *See Schneckloth v. Bustamonte*, 412 U.S. 218, 248 (1973); *see also United States v. Matlock*, 415 U.S. 164, 171 (1974); *see also Illinois v.*

Rodriguez, 497 U.S. 177, 186 (1990). In the situations outlined above, officers need not obtain a warrant to perform a search. However, it is the government’s burden to prove that one of the exceptions applies to the facts of the case.

Additionally, the authority that an individual has over the property is judged by an objective standard. *See Rodriguez*, 497 U.S. at 188. It is whether the officers, at the time, reasonably believed the individual had the authority to consent to the search. As this court held in *Rodriguez*, “[w]hether the basis for such authority exists is the sort of recurring factual question to which law enforcement officials must be expected to apply their judgment.” *Id.* at 186. And when it comes to the officers’ judgment, the standard “is not that they always be correct, but that they always be reasonable.” *Id.* at 185.

A. Petitioner’s Girlfriend Had Apparent Authority Over the Box Found on the Bottom of the Stairs Near the Shared Living Room in Petitioner’s Cabin

Here, the issue is not whether Reiser had the apparent authority to allow the officers to search the cabin, but whether she had apparent authority over the box that Agent Ristroph searched. R. 36. “[O]nce police have received consent to search the premises from a person with apparent authority, they may rely on that authority to search closed containers without further inquiry, unless they encounter an item which they ‘have reliable information . . . is *not* under the authorizer’s control.’” *Wisconsin v. Wantland*, 355 Wis. 2d 135, 157 (2014) (quoting *United States v. Melgar*, 227 F.3d 1038, 1041 (7th Cir. 2000) (emphasis in original)).

Courts have found that reliable information that an effect belongs to someone besides the consentor includes markings that prove the container belongs to a specific person, and finding the container in an area that is exclusively used by an individual who is not the consentor. *United States v. Rodriguez*, 888 F.2d 519, 524–25 (7th Cir. 1989) (finding a wife’s apparent authority did not extend to a closed brief case that had her husband’s name written on the outside based on the

available evidence); *United States v. Fultz*, 146 F.3d 1102, 1106 (9th Cir. 1998) (finding that a garage owner did not have apparent authority over an area that she gave the defendant exclusive use of).

Thus, if the container is found in a common area and has no markings or identifiers, the consenters' authority extends to the container and the search is proper. Here, it was reasonable for the officers to believe that Reiser's consent extended to the container. The box was in a common, shared space in the cabin where both Reiser and Petitioner live. R. 36. There were also no markings or identifiers that would have led the officers to believe Petitioner had obvious and exclusive control over the box. R. 37. Additionally, Reiser never told the officers that the box did not belong to her or that it belonged solely to Petitioner. R. 38.

To rebut an officer's reasonable belief, the burden the defendant must take on is "not easily satisfied." *United States v. Snype*, 441 F.3d 119, 136 (2d Cir. 2006). The defendant is "obliged to adduce credible evidence demonstrating that these items were obviously and exclusively his." *Id.*

i. *It was Reasonable for Agent Ristroph to Believe that Petitioner's Girlfriend Possessed Apparent Authority that Extended to the Box*

The officers here had no duty to clarify the ownership of the box because it was reasonable for them to believe that the scope of Reiser's consent included the box. Following Petitioner's arrest, Agent Ristroph arrived at the cabin and asked Reiser if he could come in to search, to which she agreed. R. 12, 15. While the officer searched the cabin, Reiser informed him that the second floor was a space Petitioner used and that she "did not really ever go up there." R. 15. Based on this information, Agent Ristroph limited his search to the first floor of the home. R. 36. Within this common area, Agent Ristroph located the box and found that it had no identifying marks. R. 37. As held by both the Second and Seventh Circuits, these factors lead to a reasonable belief that the

box fell within the scope of consent given by Reiser. *See Snype*, 441 F.3d 119 (2d Cir. 2006); *see also Melgar*, 227 F.3d 1038 (7th Cir. 2000).

In *Snype*, the Second Circuit found that it was reasonable for the officer to believe a knapsack and a red plastic bag fell within the scope of consent given by the owner of an apartment where the defendant was arrested. *Snype*, 441 F.3d 119, 136 (2d Cir. 2006). There, the apartment where the defendant was arrested was searched with the owner's consent. *Id.* During that search, officers found two bags in the room where defendant was arrested, which was a common area. *Id.* The bags lacked any identifying markings, making their ownership ambiguous. *Id.* Given the bags' location and ambiguity, the court found that they fell within the scope of the apartment owner's consent. *Id.* at 137.

Furthermore, in *Melgar*, an individual who rented the motel room where the defendant was arrested gave the police permission to search the room. *Melgar*, 227 F.3d at 1039. During their search, the police found a purse without any identifiable markings under the mattress. *Id.* at 1040. Since the officers could not have known that the purse did not belong to the person who rented the room, the purse was within the scope of the consent. *Id.* at 1041–42.

And, in *United States v. Leblanc*, the driver of a car gave the police permission to search his vehicle after getting pulled over with his two friends. *United States v. Leblanc*, 43 F. App'x 962, 963 (7th Cir. 2002). After searching the car, police discovered a duffel bag filled with cocaine. *Id.* The friends conceded that the driver had apparent authority to consent to the search of the car. *Id.* However, they also claimed that the driver's consent did not extend to the duffel bags because they belonged exclusively to them and contained only their belongings. *Id.* However, the court held that because the duffel bag was found in the backseat of the car, a common area, and did not

contain any information indicating who owned it, the driver's consent extended to the duffel bag. *Id.* at 963–64.

There is a clear pattern developed by this line of case law that extends to this case. When an item is found in a common area and lacks identifying features, a consenter's apparent authority extends to that item. Without any reliable information indicating that it is not under the consenter's control, the police may search it. Here, the box was found sitting on a staircase right next to the first floor living room, which all parties agree is a common area. R. 15, 36. The box also did not have any identifying markings. R. 37. It did not say "Atticus" or "Hemlock" on the outside, and nothing about a cardboard box leads one to believe that it would be owned by a man and not a woman. Agent Ristroph therefore had no reliable information that would lead him to believe the box did not belong to Reiser, and her apparent authority extended to the box.

B. Petitioner's Girlfriend Gave Agent Ristroph No Reason to Believe That She Did Not Possess Apparent Authority Over the Box Found in the Cabin Because She Never Made Any Overt Statement Disclaiming Ownership of the Box

While Reiser's apparent authority clearly extended to the box, there was one reliable source of information that could have clarified otherwise: her own statement. Had Reiser indicated that the box was not hers or that it specifically belonged to Petitioner, the agents would have lacked authority to search it. However, Reiser never made such a statement.

In *United States v. Fultz*, the owner of a garage consented to its search but informed the officers of the specific area and items that were exclusively the defendant's. *United States v. Fultz*, 146 F.3d 1102, 1106 (9th Cir. 1998). The court noted that "[t]he apparent authority doctrine, however, validates a search only where the search would be valid if the facts believed by the officer were true." *Id.* (citing *United States v. Welch*, 4 F.3d 761, 764 (9th Cir. 1993)). The Ninth Circuit held that since the officers knew for a fact that the items they searched belonged to the defendant and not the consenter, the garage owner's apparent authority did not extend to those items. *Id.*

Here, a statement by Reiser could have limited her apparent authority, but no statement was made. In fact, since she did not state whose box it actually was, it is even more reasonable for the agents to believe that her consent extended to it.

i. *Agent Ristroph Did Not Violate Petitioner’s Fourth Amendment Rights When He Searched the Box Found in Petitioner’s Cabin*

Based on the location of the box, its lack of markings, and silence by Reiser as to its ownership, it was reasonable for Agent Ristroph to believe that Reiser’s apparent authority extended to the box. Therefore, Petitioner’s Fourth Amendment rights were not violated because an individual with apparent authority over the box consented to the search of the cabin. *See* R. 15–16.

III. Petitioner May Not Introduce Extrinsic Evidence of Copperhead’s Prior Conduct Because Rule 806 Does Not Change Rule 608(b)’s Explicit Prohibition on Extrinsic Evidence Even When a Hearsay Declarant is Unavailable to Testify

Both the district and circuit courts below correctly found that the interaction between Rules 608(b) and 806 barred Petitioner from introducing extrinsic evidence of Copperhead’s statement as a hearsay declarant. R. 50–52. The Fourteenth Circuit properly reasoned that while the purpose of Rule 806 is to allow evidence to challenge the hearsay declarant’s credibility, the rule is not “a vehicle for circumventing the explicit limitation of Rule 608(b) merely because the hearsay declarant [is] absent.” R. 57–58 (citing *United States v. Andrade*, No. 20-CR-00249, 2025 WL 670456, at *5 (N.D. Cal. Mar. 3, 2025)). For the reasons discussed below, the Fourteenth Circuit correctly held that extrinsic evidence aimed at impeaching Copperhead was properly excluded at trial. *See id.*

A. Rule 608(b) Explicitly Prohibits Petitioner from Introducing Extrinsic Evidence of Copperhead’s Alleged Prior Conduct to Impeach her Credibility as a Hearsay Declarant

Rule 608(b) provides that “[e]xcept for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness’s conduct in order to attack or

support the witness’s character for truthfulness.” Fed. R. Evid. 608(b). According to Black’s Law Dictionary, extrinsic evidence is “[e]vidence that is calculated to impeach a witness’s credibility, adduced by means other than cross-examination of the witness. The means may include evidence in documents and recordings and the testimony of other witnesses.” *Extrinsic Evidence, Black’s Law Dictionary* (12th ed. 2024). In this case, the extrinsic evidence that Petitioner sought to introduce was Copperhead’s academic violation and untruthful employment application. R. 47–49. Petitioner intended to bring this evidence to trial through testimony by CSC and Mayor’s Office employees. *Id.* This testimony is considered extrinsic evidence because Petitioner sought to introduce it through other witnesses in order to attack “Copperhead’s character for untruthfulness.” R. 48.

The Seventh Circuit shed some light on 608(b)’s application when it held in *United States v. Amaechi* that “a defendant may be cross-examined about instances of untruthfulness, although extrinsic evidence is inadmissible.” *United States v. Amaechi*, 991 F.2d 374, 379 (7th Cir. 1993) (citing *United States v. Howard*, 774 F.2d 838, 845 (7th Cir. 1985)). There, the prosecutor was permitted to cross-examine a defendant about false immigration and tax forms that he submitted but was not allowed to introduce extrinsic evidence that the defendant submitted the false forms. *Id.* The Eighth Circuit has also clarified that Rule 608(b) permits “cross-examination about specific bad acts . . . concern[ing] the witness’s credibility, but forbids the introduction of extrinsic evidence to prove the specific bad act occurred.” *United States v. Goings*, 313 F.3d 423, 427 (8th Cir. 2002) (citing *United States v. Martz*, 964 F.2d 787, 789 (8th Cir. 1992)).

Here, it follows from the case law that under Rule 608(b), Petitioner was not permitted to introduce extrinsic evidence that Copperhead lied about passing a college course through witnesses from CSC and the Mayor’s Office. R. 50. In the same way that the prosecutor was allowed to

question the defendant about his prior frauds in *Amaechi*, Petitioner’s counsel also could have cross-examined Copperhead about alleged instances of untruthfulness if she was available to testify. *Amaechi*, 991 F.2d at 379. However, extrinsic evidence of Copperhead’s prior conduct is explicitly barred by Rule 608(b), and the fact that she is deceased does not change the plain meaning of the rule.

B. Since Rule 806 Does Not Transform Rule 608(b)’s Unambiguous Ban on Extrinsic Evidence, Petitioner May Not Impeach Copperhead’s Statement Through Other Witnesses

Nevertheless, Petitioner seeks to travel around Rule 608(b)’s clear language by claiming that Rule 806 somehow expands the Federal Rules of Evidence (the “Rules”) to permit extrinsic impeachment evidence when a hearsay declarant is unavailable to testify. R. 57. Rule 806 states, in relevant part, “[w]hen a hearsay statement . . . has been admitted in evidence, the declarant’s credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness.” Fed. R. Evid. 806. In *United States v. Saada*, the Third Circuit decided whether extrinsic evidence introduced to impeach a deceased hearsay declarant was properly admitted. *United States v. Saada*, 212 F.3d 210, 220 (3rd Cir. 2000).

There, the hearsay declarant’s statement—which aided the criminal defendant’s case—had been admitted at trial under the excited utterance exception in Rule 803(2). *Id.* at 218; Fed. R. Evid. 803(2). The circuit court found that the government’s introduction of extrinsic evidence of the deceased hearsay declarant’s “disbarment for unethical conduct” was improperly admitted. *Id.* at 219, 222. The Third Circuit held that “Rule 806 does not modify Rule 608(b)’s ban on extrinsic evidence of prior bad acts in the context of hearsay declarants, even when those declarants are unavailable to testify.” *Id.* at 221. Just like the hearsay declarant’s disbarment in *Saada* was barred by the Rules, here too the extrinsic evidence of Copperhead’s prior false statements was properly

excluded because it came into conflict with Rules 608(b) and 806. *Id.* at 222; *see* R. 51–52 (holding that the extrinsic evidence was inadmissible).

The Third Circuit is not the only court that has weighed in on how Rule 806 interacts with Rule 608(b). In fact, in *United States v. White*, the D.C. Circuit held that Rule 806 does not modify Rule 608(b)'s explicit bar on the introduction of extrinsic evidence to impeach a witness. *United States v. White*, 116 F.3d 903, 920 (D.C. Cir. 1997) (per curiam). In *White*, the court held that although Rule 806 allows counsel to attack a hearsay declarant's credibility, counsel may not rely on extrinsic evidence to impeach a deceased hearsay declarant. *Id.* The court reasoned that Rule 608(b) explicitly barred such evidence even when the declarant is unable to testify. *Id.* The court noted that the defense attorney however could seek to impeach the declarant's credibility by questioning the witness about whether *the witness knew* if the declarant "had ever lied on an employment form or violated any court orders[.]" *Id.*

The procedural history of *White* is strikingly similar to the sequence of events that occurred at trial in this case. Here, Petitioner's attorney was permitted to and in fact did question Kolber about whether Kolber had any "reason to doubt the credibility of Ms. Copperhead[.]" R. 46. This line of questioning was the proper avenue through which counsel could attack the deceased hearsay declarant's credibility under Rule 806. However, counsel crossed the line drawn by Rule 608(b) when he attempted to use extrinsic witnesses from CSC and the Mayor's Office to impeach Copperhead's credibility. As reiterated in *Saada* and *White*, the interplay of Rules 806 and 608(b) simply does not allow an attorney to introduce that type of evidence to attack a hearsay declarant's testimony. *Saada*, 212 F.3d at 221; *White*, 116 F.3d at 920.

C. Combined with Rule 613's Inclusion of Extrinsic Evidence, Rule 806's Silence on Extrinsic Evidence Indicates that the Advisory Committee and Congress Intended to Leave the Prohibition on Extrinsic Evidence to Prove Specific Conduct Fully Intact

Furthermore, Rule 806's silence on the use of extrinsic evidence to impeach hearsay declarants does not lead to the conclusion that the Rules' Advisory Committee and Congress intended to permit such evidence. On the contrary, the fact that Rule 806 does not explicitly address extrinsic evidence indicates that the Advisory Committee and Congress intended to leave other rules governing impeachment evidence in full effect. *See United States v. Finley*, 934 F.2d 837, 839 (7th Cir. 1991) (holding that "Rule 806 extends the privilege of impeaching the declarant of a hearsay statement but does not obliterate the rules of evidence that govern how impeachment is to proceed.") Here, Rule 806's silence on extrinsic evidence therefore gives way for Rule 608(b)'s explicit ban on such evidence since the latter's unambiguous language remains fully intact.

Additionally, in contrast to Rule 806's silence on extrinsic evidence, other rules, such as Rule 613 explicitly address this issue. *See Fed. R. Evid. 613* (requiring the witness to have an opportunity to explain or deny extrinsic evidence before such evidence of a witness's prior inconsistent statement can be introduced). As this Court has repeatedly held, "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *City of San Francisco v. EPA*, 604 U.S. 334, 344 (2025) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)) (internal quotation marks omitted).

Here, the fact that Rule 613 explicitly discusses extrinsic evidence whereas Rule 806 does not indicates that Congress intentionally omitted any mention of extrinsic evidence in Rule 806. Both Rules are part of the same statutory scheme—that is, the Federal Rules of Evidence. *See generally Fed. R. Evid.* Thus, the exclusion of a particular issue in one section of the statute, when combined with the inclusion of language that addresses that issue in another section of the statute

indicates that Rule 806 does not permit extrinsic impeachment evidence. Therefore, Rule 806 does not permit Petitioner to introduce extrinsic evidence of Copperhead’s failure to graduate college or untruthful employment application. *See* R. 50 (holding same).

D. Introducing Extrinsic Evidence of Specific Instances of Prior Conduct is Not the Only Way that Petitioner Can Challenge Copperhead’s Credibility as a Hearsay Declarant

Lastly, Petitioner’s counsel and the dissenting opinion below rely on the purpose of Rule 806—challenging the declarant’s credibility—as the rationale for the claim that extrinsic evidence must be permitted to impeach a deceased hearsay declarant. *See* R. 49–50, 61. At trial, Petitioner’s counsel asserted that introduction of the extrinsic evidence in this case “is the only way to approximate the effect of cross-examination” of Copperhead. R. 50. Similarly, the Fourteenth Circuit’s dissenting opinion reasoned that extrinsic evidence must be permitted despite Rule 608(b)’s explicit ban when the hearsay declarant is deceased because “there must be an avenue to attack [the declarant’s] credibility as if she were testifying.” R. 61 (relying on *United States v. Friedman*’s assertion that Rule 806 permits extrinsic evidence when that is “the only means of presenting” evidence of a hearsay declarant’s prior conduct to the jury. *United States v. Friedman*, 854 F.2d 535, 570 n.8 (2d Cir. 1988)).

This line of reasoning is fatally flawed for two reasons: first, the fact that Rule 806 is designed to allow a hearsay declarant’s credibility to be challenged does not change the plain text of the Rules. 806 simply allows hearsay declarants to be treated as witnesses for the purpose of impeachment. Fed. R. Evid. 806. But, it does not provide counsel with additional tools beyond what would be available to them if the declarant was a witness. *See White*, 116 F.3d at 920 (holding that Rule 806 allows cross-examination of a declarant as if they were a witness but does not permit extrinsic evidence to impeach the declarant). Since Rule 608(b) explicitly prohibits extrinsic

evidence to impeach a witness, it follows that it also prohibits extrinsic evidence to impeach a hearsay declarant since Rule 806 mandates that the declarant be treated as a witness.

Second, as the Third Circuit correctly held in *Saada*, the hearsay declarant may also be impeached by asking “the witness testifying to the hearsay statement” whether the witness had “knowledge of the declarant’s character for truthfulness or untruthfulness.” *Saada*, 212 F.3d at 221. In this way, the purpose of Rule 806—to allow the credibility of a hearsay declarant to be attacked—is achievable through means other than extrinsic evidence. That is exactly what happened in this case when Petitioner’s counsel questioned Kolber at trial about whether he knew Copperhead to be a truthful person. R. 45–46. Just because Petitioner did not get the damaging character evidence he wanted from Kolber does not mean that he is suddenly permitted to resort to extrinsic evidence to attack Copperhead’s credibility as the hearsay declarant. *See* R. 46 (where Kolber testified that he has “no reason to doubt [Copperhead’s] credibility.”). Therefore, Petitioner was properly barred under Rules 806 and 608(b) from introducing extrinsic evidence of Copperhead’s prior academic violation and false job application.

CONCLUSION

For the foregoing reasons, the Government respectfully requests that this Court affirm the Fourteenth Circuit and uphold Petitioner’s conviction for attempted kidnapping of a United States government officer.