Team 4R

IN THE
SUPREME COURT OF THE UNITED STATES

No. 25 – 7373

ATTICUS HEMLOCK,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

BRIEF FOR RESPONDENT, THE UNITED STATES OF AMERICA

Attorneys for the Respondent

QUESTIONS PRESENTED

I. Whether, under *Payton v. New York*, the Fourth Amendment is violated when law enforcement officers, who remain outside, command a suspect inside the home to step outside and arrest the suspect outside the home without a warrant.

II. Whether the Fourth Amendment is violated when law enforcement conducts a warrantless search of a closed container located in a shared residence after obtaining a cooccupant's consent to search the residence, without specifically inquiring into ownership of the container.

III. Whether, under Rule 806 of the Federal Rules of Evidence, extrinsic evidence of specific instances of conduct of a hearsay declarant may be admitted to impeach the declarant's character for truthfulness when the declarant is unavailable to testify at trial.

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The judgment of the United States Court of Appeals for the Fourteenth Circuit, *Atticus Hemlock v. United States of America*, No. 25-7373, was entered April 14, 2025, and may be found in the Record. (R. 51–61).

STATUTORY AND CONSTITUTIONAL PROVISIONS

This case is an appeal from a verdict under 18 U.S.C. §§ 1201(a) and 1201(d). This appeal concerns alleged violations of the Defendant's Fourth Amendment privilege against unreasonable search and seizure. U.S. Const. amend. IV. Additionally, this case involves the Federal Rules of Evidence, Rules 806 and 608(b).

STATEMENT OF THE FACTS

I. Hemlock and Copperhead's Public Discussion of Kidnapping a Federal Official

On March 29, 2024, the Boerum Village Police Department received a report that two individuals—eventually identified as Atticus Hemlock and Iris Copperhead—were publicly discussing plans to kidnap a federal government official. (R. 52.) Elvis Hoag, a barista who called in the report, explained that over the course of March 28 and 29, Hemlock and Ms. Copperhead spent several hours each morning occupying a large table at the back of the coffee shop where he worked. (R. 7.) The pair would spread papers, notebooks, binders, and posters across the table, including what appeared to be "some sort of timeline, with dates [and] times of day," and a poster of "what looked like a map of a parking lot and a school building." (*Id.*)

While working nearby, Mr. Hoag overheard Hemlock repeatedly refer to a woman named "Jodie," whom Hemlock identified as Jodie Wildrose, a federal government official. (R. 7–8.) Mr. Hoag reported that Hemlock described grabbing her "as soon as she pulled into the parking lot," "throw[ing] her in a van," and "hiding Jodie away." (*Id.*) Hoag also overheard Ms. Copperhead remark that a parking lot would be "a good place to get Jodie rather than the busy

airport." (R. 8.) Mr. Hoag described Hemlock's demeanor as "excited, agitated, and obnoxious," noting that he laughed loudly and pounded his fists on the table while speaking. (*Id*.)

Based on his observations, Mr. Hoag was able to identify both individuals at the time he contacted police through their social media accounts. (R. 7.) Although Mr. Hoag occasionally encountered patrons engaged in strange conversations, he explained that this exchange stood out as "much more than just your average crazy talk," leading him to believe that a serious crime was being planned and to contact the police. (R. 7–8.)

II. Hemlock's Suspicious Purchases; Subsequent Tips to Law Enforcement

The following day, on March 30, 2024, Boerum Village police received a second report from Tina Caplow, the manager of a local superstore. (R. 6.) Ms. Caplow reported that earlier that day she had observed a man and a woman purchase "pack of zip ties, two ski masks, a six-inch folding knife, black trash bags, and bear spray," paying in cash. (*Id.*) Ms. Caplow explained that although she did not overhear any conversation between the individuals, the combination of items, the use of cash, and "their demeanor made her suspicious of criminal activity." (*Id.*) She contacted police approximately an hour after the purchase to report her concerns. (*Id*.)

Because the March 29 report involved threats directed at a federal government official and the March 30 report appeared to describe related preparatory conduct, Boerum Village police referred both reports to the Federal Bureau of Investigation ("FBI"). (R. 6–8.)

III. Jodie Wildrose's Scheduled Visit to Boerum Village

Prior to these events, in February 2024, the United States Department of Tourism announced the launch of the "Grow Your Own Way" program, a federal initiative to be led by Jodie Wildrose, the Department's Under Secretary for Rural Development, and the target of Hemlock and Copperhead's kidnapping plot. (R. 3–4.) Ms. Wildrose had assumed her position in December 2023 after a fifteen-year academic career teaching geology at Court Street College

in Boerum. (*Id.*) Although she resided in Washington, D.C. with her wife, three children, and basset hound, her official duties were scheduled to bring her back to Boerum Village in connection with the program's events. (*Id.*)

The program was designed to promote economic development in rural communities by acquiring underutilized farmland and converting it into large-scale public garden attractions, generating tourism and new revenue opportunities for participating landowners. (R. 3.) As part of the program's initial rollout, the Department scheduled a multi-day kickoff event in Boerum Village from April 8 through April 12, 2024. (R. 4.) Ms. Wildrose was designated to lead the Department's delegation for the visit and was scheduled to appear at Boerum Village High School on April 8, 2024, in her official capacity. (*Id.*)

IV. The FBI's Investigation and Hemlock's Arrest

Following two independent reports suggesting that a federal official faced a credible threat, FBI Special Agents Hugo Herman and Ava Simonson began investigating the matter. (R. 6–8.) After speaking with both Mr. Hoag and Ms. Caplow on the morning of April 2, 2024, the agents proceeded to Hemlock's residence "with the intention of getting answers to some questions," and the understanding that they would only arrest Hemlock if the circumstances were "obvious that he was taking steps towards carrying out these alleged plans." (R. 20–21.)

That afternoon, at approximately 4:00 p.m., Agents Herman and Simonson drove an unmarked vehicle to Hemlock's residence, a small cabin he rented with his girlfriend, Fiona Reiser, on a farmer's property outside Boerum Village. (R. 13, 20–21.) The cabin was located in a densely wooded area approximately three-quarters of a mile from the farmer's residence and several hundred feet from a public walking path in neighboring Joralemon State Park. (R. 13.)

When the agents arrived, Simonson walked up the front steps, knocked on the doorframe, and then returned to the ground "three or four feet from the bottom stair." (R. 21.) The agents

noted that the main door to the house was open, but the screen door remained closed. (*Id.*) When Hemlock came to the door, the agents asked Hemlock how he was, and if he would step outside to "chat" with them. (R. 11, 21.) Hemlock declined, stating that he was "pretty busy," and that he did not think he would "be any use" to them. (*Id*.)

The agents continued speaking with Hemlock through the screen door from the bottom of the staircase. (R. 21.) From where he stood outside, Agent Herman observed two bottles labeled "chloroform" on the kitchen counter behind Hemlock. (R. 22.) When Agent Herman asked about the bottles, Hemlock "dismissed" him, responded, "don't worry about those," and then "moved to block [Agent Herman's] view" of the bottles on the counter. (*Id.*)

Moments later, without any prompting from the agents, Hemlock asked whether their visit had to do with "Jodie," stating that he did not want to talk about "that b**ch." (*Id.*)

The agents briefly returned to their vehicle to confer and concluded that probable cause existed to arrest Hemlock, finding the chloroform and Hemlock's movements to block it, as well as the spontaneous mention of "Jodie" to be "extremely suspicious." (*Id.*) They radioed Special Agent Kiernan Ristroph to come to the scene for backup. (R. 23.)

The agents then returned to the doorway and again instructed Hemlock to come outside. (*Id.*) Eventually, Hemlock stepped out of the cabin and descended the stairs to the ground, where he was placed under arrest. (*Id.*) Agent Simonson advised Hemlock of his rights. (*Id.*)

Incident to the arrest, Agent Herman conducted a search of Hemlock's person and recovered a spiral-bound notebook from the pocket of Hemlock's pants. (*Id.*) The notebook was open to an April 1, 2024, diary entry in which Hemlock described detailed plans to kidnap Jodie Wildrose. (R. 5, 23–24.) In the entry, Hemlock expressed hostility toward Ms. Wildrose, writing that he "wanted to hurt her, bad," and described plans to retaliate against her role in the federal

program. (R. 5.) Hemlock also described Ms. Copperhead as his "best friend and partner" in carrying out the plan, writing that they had already "staked out the high school parking lot" and planned that "[o]n April 8 we will grab Jodie as soon as she gets there." (*Id.*) Hemlock described using chloroform to incapacitate Ms. Wildrose, restraining her so she could not escape or warn anyone, transporting her in a van, and threatening her family to force her to abandon the Department's program and "LEAVE OUR TOWN AND NEVER COME BACK." (*Id.*)

V. Search of Hemlock's Residence and Recovery of Physical Evidence

As the agents prepared to transport Hemlock from the scene, FBI Special Agent Kiernan Ristroph arrived at Hemlock's residence to assist with the investigation. (R. 13, 23.) After Agents Herman and Simonson departed with Hemlock, Fiona Reiser returned to the cabin. (R. 13.) Agent Ristroph approached Ms. Reiser, identified himself as an FBI agent, informed her of the arrest, and explained that he was conducting an investigation. (*Id.*) Agent Ristroph testified that he "asked Reiser if [he] could take a look around the residence as part of that investigation," and that "Reiser allowed [him] to enter the residence to begin the search." (R. 13, 15.)

After entering the 750 square foot residence, Agent Ristroph conducted a search of the first floor living areas. (R. 13–14.) During the search, Agent Ristroph observed a staircase leading to an upstairs loft and asked Ms. Reiser if she and Hemlock slept there. (*Id.*) Ms. Reiser pointed towards their bedroom on the main floor and explained that both she and Hemlock used the upstairs area for storage but she "did not really ever go up there." (R. 15.) Agent Ristroph testified that "[b]ecause of this comment, [he] confined the search to the first floor." (R. 14.)

While examining the area near the staircase, Agent Ristroph observed an old cardboard box positioned on one of the bottom steps. (*Id.*) The box had "no identifying information on the outside, and the top flaps were closed." (*Id.*) Prior to Agent Ristroph opening it, Ms. Reiser made no indication of who the box belonged to. (*See id.*) When Agent Ristroph opened the box, he

discovered "one 50-feet long length of rope, two black ski masks, one pair of green gloves, forty-eight black zip ties, one folding knife with 6-inch blade, one roll of duct tape, and two bottles of chloroform." (*Id.*) Agent Ristroph seized the box and its contents as evidence. (*Id.*)

VI. Copperhead's Excited Utterance and Arrest

Iris Copperhead was en route to Hemlock and Ms. Reiser's cabin for dinner when Hemlock's arrest occurred. (R. 53.) Also around the same time, Boerum Village resident and elementary school teacher Theodore Kolber was walking along a trail in nearby Joralemon State Park when he observed a woman—who he later identified as Ms. Copperhead— "burst[] from the woods" near Hemlock's residence onto the path. (R. 15.) Mr. Kolber testified to the following regarding his brief encounter with Ms. Copperhead:

> Well she was out of breath, her face was white as a ghost, and she had tears streaming down her face. Also, she was all cut up from the branches in the woods and thorns. She was frenzied too. Even when she stopped on the path she could not stand still; she was shaking. (R. 42.)

When Mr. Kolber asked if she was okay, Ms. Copperhead shouted, "I can't believe I saw him get arrested. It's all his fault. It was all Atticus [Hemlock]'s idea—NOT MINE! I can't run a business from prison!" before running away. (R. 43.) Officers arrested Ms. Copperhead that evening—but she died, unexpectedly, that same night from an acute aortic rupture. (R. 15.)

The morning of April 3, 2024, Mr. Kolber contacted law enforcement after recognizing Ms. Copperhead's photograph in a newspaper report describing her arrest in connection with a kidnapping plot involving Hemlock. (R. 45.) Mr. Kolber explained that after seeing Ms. Copperhead's mugshot and reading that authorities had established a tipline for information related to the plot, he contacted investigators and reported his encounter in the park. (*Id.*)

STATEMENT OF THE CASE

Hemlock was formally indicted by a grand jury on April 3, 2024, which charged him with the attempted kidnapping of an officer or employee of the United States on account of the

officer's official duties, in violation of 18 U.S.C. §§ 1201(a)(5) and 1201(d). (R. 1–2.) Subsequently, Hemlock moved for the District Court of the Northern District of Boerum to suppress two pieces of evidence: (1) his notebook, which was seized incident to his arrest; and (2) materials found in a box during the search of his residence. (R. 41, 31.) Hemlock also moved to introduce extrinsic evidence for the purposes of impeaching the hearsay declarant Ms. Copperhead. (R. 50.) The District Court denied all motions. (R. 41.) On August 12, 2024, Hemlock was convicted, and on October 17, 2024, he was sentenced to ten years in prison. (R. 51.) Following the conviction, Hemlock appealed all the district court's rulings to the United States Court of Appeals for the Fourteenth Circuit. (*Id.*) The Fourteenth Circuit affirmed the district court's rulings on all issues, with Circuit Judge Kim dissenting. (R. 58.) This Court granted writ of certiorari on December 2, 2025. (R. 62.)

SUMMARY OF THE ARGUMENT

First, agents' actions in arresting Hemlock did not violate *Payton v. New York* nor the Fourth Amendment. *Payton*'s warrant rule is triggered only by arrests *inside* the home, and many circuit courts agree that once a suspect steps outside, those heightened protections fall away. This Court should therefore resist the invitation to adopt the constructive entry doctrine—a theory with no clear definition of coercion, wildly inconsistent application, and a talent for blurring *Payton*'s otherwise bright line. And even if this Court were inclined to entertain that doctrine, Hemlock still loses: the officers used no force, no threats, and no overwhelming show of authority to bring him outside.

Second, Agent Ristroph acted within the bounds of the Fourth Amendment when he conducted his search pursuant to his reasonable belief in Ms. Reiser's apparent authority. Voluntary consent from an individual with proper authority is valid, and apparent authority is sufficient with reasonable belief. Under this Court's precedent, an officer need go no further to

confirm a reasonable belief, even in the face of ambiguity; requiring more would place an "impossible burden" on police. Even if this Court were to abandon that principle and impose a higher duty on law enforcement, Hemlock's outcome would remain unchanged. There was no ambiguity here: the box sat alone, unlabeled, in the living room; Agent Ristroph had no actual knowledge of its ownership; and Ms. Reiser did nothing to limit the scope of her authority.

Third, Federal Rule of Evidence 806 further forecloses Hemlock's evidentiary challenge as it does not permit the admission of extrinsic evidence of a hearsay declarant's prior misconduct to impeach character for truthfulness. Rule 806 directs courts to apply the ordinary Rules exactly as if the declarant is "in effect a witness." The opposing party may attack that declarant's credibility, but only within the same limits supplied by Rule 608(b), which categorically bars extrinsic evidence of specific instances of misconduct. Allowing the declarant's unavailability to expand impeachment beyond what the Rules permit creates an "end-run" around 608(b), exposes absent declarants to broader attacks than testifying witnesses, invites collateral "mini-trials," and risks unfair prejudice and jury confusion.

ARGUMENT

Standard of Review

Fourth Amendment determinations made by circuit courts are reviewed *de novo*. *Ornelas v. United States*, 517 U.S. 690, 691 (1996). Questions on the interpretation of the Federal Rules of Evidence are also reviewed *de novo*. *See Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 587 (1993).

I. Agents did not violate *Payton v. New York* or the Fourth Amendment when they remained outside the home, directed Hemlock to step outside, and arrested him beyond the threshold of his residence without a warrant.

The Fourth Amendment protects "[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.

Whether a seizure is reasonable depends on a balance between the degree of intrusion on individual privacy and the legitimate interests of law enforcement. *See Terry v. Ohio*, 392 U.S. 1, 20–21 (1968). Consistent with that balance, an officer without a warrant may approach a residence and knock, because doing so is "no more than any private citizen might do." *Kentucky v. King*, 563 U.S. 452, 469 (2011).

Seizures are particularly suspect when they occur within the home, where the "zone of privacy" is most clearly defined. *See Payton v. New York*, 445 U.S. 573, 589 (1980). Accordingly, absent exigent circumstances, officers must obtain a warrant before arresting a suspect inside the home. *Id.* at 590.

Nevertheless, some courts have recognized a so-called "constructive entry" doctrine, under which a warrantless arrest outside the home may violate *Payton* if police use force or coercion to compel the suspect to exit. *See, e.g., Fisher v. City of San Jose*, 475 F.3d 1049, 1065–66 (9th Cir. 2007); *United States v. Saari*, 272 F.3d 804, 808 (6th Cir. 2001); *United States v. Maez*, 872 F.2d 1444, 1451 (10th Cir. 1989).

Here, agents did not violate the Fourth Amendment or *Payton*. Hemlock was arrested outside his home—beyond the firm line drawn by *Payton*—and the arrest was not the product of coercion. (*See* R. 20–21.) This Court should decline to adopt the constructive entry interpretation, which would open the door to confusing and unworkable precedent. Yet, even if this Court were to adopt a constructive entry interpretation of *Payton*, no Fourth Amendment violation occurred because officers neither forced nor coerced Hemlock to exit his residence.

A. Hemlock's arrest occurred beyond the threshold of his home and therefore does not implicate *Payton v. New York*.

Physical intrusion into the home is the "chief evil" against which the Fourth Amendment is directed. *Payton*, 445 U.S. at 585. This Court has repeatedly emphasized that the Fourth

Amendment applies with its greatest force in the home. *See, e.g.*, *Florida v. Jardines*, 569 U.S. 1, 6 (2013) ("[W]hen it comes to the Fourth Amendment, the home is first among equals."); *Georgia v. Randolph*, 547 U.S. 103, 115 (2006) ("[I]t is beyond dispute that the home is entitled to special protection as the center of the private lives of our people.").

In *Payton v. New York*, this Court settled that when an individual is in their home, they cannot be arrested without a warrant. *See* 445 U.S. at 590. The case consolidated two cases involving warrantless home entries by New York police. *Id.* at 576–79. In the first, officers knocked on the defendant's door and after receiving no response, forcibly entered into the defendant's apartment and seized a weapon in plain view. *Id.* at 576–77. In the second, officers entered the defendant's home without a warrant after a child answered the door. *Id.* at 578. Officers saw the defendant inside and promptly arrested him and conducted a search that uncovered narcotics. *Id.* Emphasizing that warrantless searches and seizures inside the home are presumptively unreasonable, this Court found both searches as unconstitutional and reaffirmed that the sanctity of the home lies at the core of Fourth Amendment protection. *Id.* at 590.

However, once a defendant "crosses the threshold" and is physically outside the home, many circuit courts hold that *Payton* is no longer implicated. *See e.g.*, *United States v. Gori*, 230 F.3d 44, 51–52 (2d Cir. 2000); *Knight v. Jacobson*, 300 F.3d 1272, 1277 (11th Cir. 2002); *Gaddis v. DeMattei*, 30 F.4th 625, 633 (7th Cir. 2022) (reading *Payton* to mean "its literal holding that non-exigent warrantless arrests inside the home violate the Fourth Amendment"); *United States v. Carrion*, 809 F.2d 1120, 1128 (5th Cir. 1987).

This interpretation is grounded in *Payton* itself, which repeatedly emphasizes the significance of the home's "unambiguous physical dimensions" and the "firm line at the entrance to the house." 445 U.S. at 589–90.

For example, in *Knight v. Jacobson*, the Eleventh Circuit opposed the Sixth and Tenth Circuits' adoption of constructive entry, instead holding that *Payton* creates a bright-line rule. 300 F.3d at 1277. In *Knight*, the court drew the line for a *Payton* violation at the door, holding that an officer's body must cross the threshold of the house to violate the Fourth Amendment. *Id*. Responding to a neighbor's complaint, an officer knocked on the defendant's door at 2:00 AM without a warrant to arrest him. *Id.* at 1274. When the defendant answered the door, he and the officer had a brief conversation during which the officer commanded the defendant to exit his home. *Id.* at 1277. He complied with the show of authority and was placed under arrest. *Id*.

At trial, the defendant contended that a *Payton* violation occurred when he was arrested. *Id.* The court confirmed the trial court's denial of this claim, concluding that the police did not violate *Payton* when the police used a show of authority to invade the sanctity of the home without a warrant by commanding the suspect out of his home. *Id.* The Eleventh Circuit held that since the officer did not physically cross the threshold of the home, the defendant's Fourth Amendment rights were not violated, and the warrantless arrest was constitutional. *Id.*

Here, the Fourteenth Circuit correctly concluded that Hemlock was arrested outside his home. (R. 55.) Special Agents Herman and Simonson never crossed the *Payton* threshold. (R. 21.) Throughout the encounter and arrest, they remained entirely outside the cabin—standing "three to four feet" from the door—and never stepped into the doorway or interior. (*Id.*) After knocking, the agents deliberately stepped back to maintain that distance, ensuring that no physical intrusion to the home occurred. (*Id.*) Unlike the cases in *Payton*, the officers never forced their way into Hemlock's home. Their behavior is exactly in line with the officers in *Knight*—who knocked on the door and commanded the defendant to step outside—and were found to not have violated *Payton* or the Fourth Amendment.

Critically, when Hemlock was arrested several feet beyond the physical boundary of his home, he was not within the Fourth Amendment "zone of privacy" protected by *Payton*. That fact alone resolves the *Payton* inquiry. Where there was no entry—no step over the threshold, no physical intrusion in the "firm line drawn at the entrance to the house"—*Payton* is not implicated, and the arrest is constitutionally sound.

B. The constructive entry doctrine is unsound and invites inconsistent application and administrative difficulties; accordingly, this Court should decline to adopt it.

Few circuit courts have extended *Payton* beyond its literal holding through the constructive entry doctrine, under which a warrantless arrest outside the home may nevertheless violate the Fourth Amendment if police employ forceful or overbearing tactics that effectively compel the occupant to exit the residence. *See, e.g.*, *Fisher*, 475 F.3d at 1065–66; *Saari*, 272 F.3d at 808; *Maez*, 872 F.2d at 1451.

The doctrine, however, lacks a coherent definition of "coercion" and has been widely criticized as inconsistent, unpredictable, and difficult to administer. *See* Steven B. Dow, *Muddling Through the Problem of Constructive Entry: Comments on* United States v. Allen, 79 U. PITT. L. REV. 243, 258 (2017). Courts have described the doctrine as "conceptually muddled" and "beset with practical problems," emphasizing that it provides little meaningful guidance to law enforcement officers in the field. *United States v. Allen*, 813 F.3d 76, 88 (2d Cir. 2016).

This Court has repeatedly expressed a "general preference to provide clear guidance to law enforcement through categorical rules." *Riley v. California*, 573 U.S. 373, 401 (2014). Yet courts applying the constructive entry doctrine reach inconsistent results, often relying on fact-intensive balancing with no clear hierarchy of factors. *See* Dow, *supra*, at 258.

Even courts within the same circuit have struggled to articulate when police conduct crosses the line from a lawful request into unconstitutional coercion. *Contrast Saari*, 272 F.3d at

806–07, *with United States v. Grayer*, 232 F.3d 815, 819–20 (6th Cir. 2000). For example, in *United States v. Saari*, four officers approached the defendant's apartment with weapons drawn, knocked forcefully, and ordered the defendant to step outside with his hands raised. 272 F.3d at 806–07. The court rejected the government's claim of voluntariness, concluding that the defendant responded to "coercive authority" rather than free choice. *Id.* at 809.

Yet, by contrast, in *United States v. Grayer*, the same court held that no constructive entry occurred when four officers and a police dog approached a residence, knocked on the door, and asked the defendant to step outside to speak with them. 232 F.3d at 819–20. The court emphasized that when an occupant "willingly and voluntarily" acquiesces to "non-coercive police requests to leave the protection of the house," *Payton* is not implicated. *Id.* at 821.

This Court should decline to adopt the constructive entry doctrine altogether. These cases expose the doctrine's central flaw: it offers no administrable rule and no predictable boundary for either courts or law enforcement. Officers are left to guess—often in rapidly evolving circumstances—whether their conduct will later be deemed "overbearing" by a reviewing court, while citizens receive uneven protections that vary not only by circuit, but by panel.

Here, in a conscious attempt to adhere to the Fourth Amendment's physical boundary, Agents Herman and Simonson remained "three to four feet" away from the residence. (R. 21.) This restraint reflects officers attempting in good faith to comply with a clear objective rule. Under a constructive entry regime, however, even such measured conduct risks constitutional challenges, effectively discouraging lawful arrests and leaving officers and citizens alike with no guidance as to where the Fourth Amendment's protections begin and end.

This paradox also runs directly counter to this Court's stated preference "to provide clear guidance to law enforcement through categorical rules." Rather than reinforcing *Payton*'s "firm

line at the entrance to the house," constructive entry replaces that bright-line rule with a malleable, after-the-fact inquiry that undermines uniformity and predictability.

Adopting the constructive entry doctrine would entrench confusion, create uncertainty for law enforcement, and erode the clear, physically grounded boundary that *Payton* deliberately established. The Fourth Amendment's protection of the home is at its strongest when tethered to objective, readily identifiable lines—not when diluted by subjective assessments of tone, posture, or perceived authority.

C. In the alternative, even under a constructive entry theory, no Fourth Amendment violation occurred because the agents did not coerce Hemlock to exit his home.

What little consensus exists among courts recognizing constructive entry is confined to extreme cases involving overwhelming shows of force. *See* Dow, *supra*, at 258. In *United States v. Morgan*, for example, nine armed officers surrounded the defendant's home, blocked the driveway, trained spotlights on the house, and used a bullhorn to summon the defendant outside. 743 F.2d 1158, 1161–62 (6th Cir. 1984). The court concluded that such conduct left the defendant with no reasonable choice but to comply, rendering the arrest effectively coercive. *Id.*

Generally, there is no coercion where consent is freely and voluntarily given, a determination made by examining the totality of the circumstances. *Schneckloth v. Bustamonte*, 412 U.S. 218, 248 (1973). The Sixth Circuit has further held that consent initially withheld may later be valid where independent reasons or changed circumstances explain the shift in position—such as a voluntary reconsideration by the consenting party. *See United States v. Buckingham*, 433 F.3d 508, 514 (6th Cir. 2006).

Here, even if this Court were inclined to adopt the constructive entry doctrine, Hemlock cannot prevail. The record simply does not meet the high threshold for an overwhelming show of force. (*See* R. 11.) Unlike in *Morgan*, the agents did not surround the cabin, draw their weapons,

or have a grand display of authority. (R. 11–12.) They simply approached the residence and asked Hemlock to "come outside" to "chat," and he voluntarily complied. (R. 11.)

Although Hemlock initially refused, his own words tell a different story moments later. (R. 11–12.) By bringing up "Jodie," Hemlock revealed his connection to the situation, giving him ample reason to reconsider and cooperate. (*Id*.) It is entirely plausible that Hemlock recognized his arrest was all but inevitable and decided to accept that reality—explaining the changed circumstances underlying his consent and confirming that it was freely and voluntarily given, not the product of coercion.

Because officers neither crossed the threshold of Hemlock's home nor coerced him into exiting, no Fourth Amendment violation occurred. Hemlock's arrest was lawful, and the notebook seized incident to that arrest was properly admitted at trial.

II. The Fourth Amendment was not violated when law enforcement conducted a warrantless search of a closed container located in a shared residence after obtaining a co-occupant's consent to search the residence, without specifically inquiring into ownership of the container.

Generally, a search without a warrant is presumptively unreasonable and invalid, but there are long established exceptions to the warrant requirement. *Flippo v. West Virginia*, 528 U.S. 11, 13 (1999) (per curiam); *Coolidge v. New Hampshire*, 403 U.S. 443, 477–78 (1971); *Stoner v. California*, 376 U.S. 483, 486 (1964). A search conducted pursuant to the defendant's voluntary consent is one such exception. *Schneckloth*, 412 U.S. at 24. But this is far from the only exception—consent can come from other proper authorities, including: third parties with "common" authority, *United States v. Matlock*, 415 U.S. 164, 171 (1974), and third parties that merely show an "apparent authority." *Illinois v. Rodriguez*, 497 U.S. 177, 186 (1990). In evaluating the validity of consent, the inquiry is not "whether the right to be free of searches has been *waived*, but whether the right to be free of *unreasonable* searches has been violated."

Matlock, 415 U.S. at 187. Thus, once voluntary consent is established, the Fourth Amendment inquiry turns on whether officers reasonably relied on that consent under the circumstances. *Id.*

A. A warrantless search is valid when law enforcement reasonably relies on a third party's apparent authority.

A third party can consent to a search of another's effects when they possess "apparent authority" over the premises or effects. *Rodriguez*, 497 U.S. at 186. Apparent authority is a question of reasonable judgement. *Matlock*, 415 U.S. at 186. As this Court previously held in *Matlock*: "Whether 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; and all the Fourth Amendment requires is that they answer it reasonably." *Id.*

Importantly, the Fourth Amendment recognizes that searches based on mistakes of fact can be reasonable. *Heien v. North Carolina*, 574 U.S. 54, 61 (2014). This Court has repeatedly affirmed that "to be reasonable is not to be perfect," and so the Fourth Amendment gives government officials "'fair leeway for enforcing the law in the community's protection.'" *Id.* at 60–61 (quoting *Brinegar v. United States*, 338 U.S. 160, 176 (1949)). Because law enforcement often faces ambiguous situations, "room must be allowed for some mistake on their part." *Brinegar*, 338 U.S. at 176. Even if the individual who consents to the search lacks such authority, it is enough for a law enforcement officer to reasonably believe she has "apparent authority." *See Rodriguez*, 497 U.S. at 185 ("[W]e have not held that the Fourth Amendment requires factual accuracy."). When an individual's authority is ambiguous, some courts have required further inquiry from law enforcement. *United States v. Whitfield*, 939 F.2d 1071, 1075 (D.C. Cir. 1991); *United States v. Taylor*, 600 F.3d 678, 685 (6th Cir. 2010).

B. The federal circuits are divided on whether law enforcement have a duty to inquire further in the face of ambiguous authority.

Circuit courts have taken two distinct approaches in addressing whether an officer may rely on reasonable belief of apparent authority without further inquiry in the face of ambiguous circumstances. *Compare United States v. Melgar*, 227 F.3d 1038, 1041–42 (7th Cir. 2000) *with Whitfield*, 939 F.2d at 1075.

The Sixth and the D.C. Circuits follow a duty to inquire approach, otherwise known as the ambiguity approach, maintaining that the Fourth Amendment is violated if the officer, "faced with an ambiguous situation, nevertheless proceeds without making further inquiry." *Whitfield*, 939 F.2d at 1075; *see Taylor*, 600 F.3d at 685. The Seventh and the Second Circuits hold that an officer does not need to take additional steps to clarify ambiguous authority unless something is "obviously" not under the control of the third party. *See United States v. Snype*, 441 F.3d 119, 136 (2d Cir. 2006); *Melgar*, 227 F.3d at 1041–42.

a. This Court's precedent requires adoption of the no duty to inquire (obviousness) standard.

The Fourth Amendment's "touchstone is reasonableness." *United States v. Knights*, 534 U.S. 112, 112 (2001). That inquiry requires weighing the government's substantial interest in effective law enforcement against the intrusion on individual rights. *Terry*, 392 U.S. at 22–25. Because the "fundamental objective that alone validates all unconsented government search," is the seizure of criminals or evidence, the Fourth Amendment affords latitude to officers in assessing the facts they confront in the field. *Rodriguez*, 497 U.S. at 184. Accordingly, reasonableness does not require "factual accuracy." *Id.* at 185.

The no duty to inquire rule follows directly from this principle. This Court in *Rodriguez* expressly rejected any requirement that officers take affirmative steps to confirm actual authority once apparent authority exists. *Id.* at 186; *Randolph*, 547 U.S. at 122 (stating that requiring

additional steps by officers would be "unjustifiably impractical"). This Court reached that decision in part by revisiting the reasoning behind *California v. Stoner*, 376 U.S. 483 (1990), which held that police had improperly entered the defendant's hotel room based on the consent of a hotel clerk. *Rodriguez*, 497 U.S. at 187 (citing *Stoner*, 376 U.S. at 488).

In confronting what at first might look like a contradictory ruling, this Court clarified that, in fact, both cases followed the same underlying reasoning that persists throughout the Fourth Amendment—the inquiry of reasonableness. *Id.* at 188. As *Rodriguez* explains, *Stoner* involved not a reasonable mistake, but an erroneous reliance on consent where "there is nothing in the record to indicate that *the police had any basis whatsoever to believe* that the night clerk had been authorized by the petitioner to permit the police to search the petitioner's room." *Id.* (quoting *Stoner*, 376 U.S. at 498 (emphasis added)). There is a common misconception that this Court was expressing skepticism about apparent authority consent searches in *Stoner*. *See e.g.*, Norman Hobbie Jr., Comment, *Fourth Amendment Consent Searches and the Duty of Further Inquiry*, 54 CREIGHTON L. REV. 227, 234 (2021). But that is a misreading of the case; instead, *Stoner* condemns unreasonable reliance on apparent authority—*not* apparent authority itself—and therefore reinforces the essentiality of reasonableness. *Rodriguez*, 497 U.S. at 187–88.

Georgia v. Randolph further confirms this understanding. 547 U.S. at 103. This Court reiterated that the constant element in assessing Fourth Amendment reasonableness in consent cases is the great significance given to "widely shared social expectations," not formal property rules or investigative obligations. *Id.* at 111. For example, as the Court held in *Randolph*, when a woman who answers the door has a baby at her hip, "she shows that she belongs there," and "that fact alone is enough" to tell law enforcement that she occupies that space. *Id.* From there, law enforcement—per social norms—can reasonably infer that she has common authority. *Id.*

Taken together, *Rodriguez*, *Stoner*, and *Randolph* establish a consistent rule: officers may rely on apparent authority supported by the facts known at the time, and the Fourth Amendment imposes no duty to inquire further absent circumstances that are obviously unreasonable. The no duty to inquire standard is a steadfast application of this Court's precedent.

b. Under the no duty to inquire approach, Agent Ristroph properly relied on his reasonable belief of Ms. Reiser's apparent authority because she is a co-tenant of the cabin and ownership of the box was not "obvious."

When considering what is reasonable in a "reasonable belief" analysis, this Court has pointed to "widely shared social expectations" as a guiding principle. *Randolph*, 547 U.S. at 111. In doing so, this Court has recognized that police officers are people and therefore share many of the same insights as the general public when making split-second judgements about an individual's authority. Thus, when an officer reasonably believes that an individual possesses the requisite authority—absent any obvious indication that such belief is unreasonable—the officer is entitled to rely on that belief. *Id.*; *Melgar*, 227 F.3d at 1041–42; *Snype*, 441 F.3d at 136–37.

In *Snype*, the defendant argued that evidence obtained under an apparent authority search should have been suppressed. 441 F.3d at 136. The defendant was forcefully arrested while hiding in another person's apartment following his involvement in a robbery and shoot-out with police. *Id.* at 125–27. The apartment belonged to the girlfriend of one of the defendant's friends, and she voluntarily consented to a search of the premises. *Id.* at 135.

The Second Circuit explained that, as the lessor and resident, the girlfriend unquestionably had the authority to consent to the search of the "entire premises." *Id.* at 136. The court held that "her open-ended consent would permit the search and seizure of any items found in the apartment with the exception of those 'obviously' belonging to another person." *Id.*

In determining that the defendant's ownership of the seized items was not "obvious," the court relied on several indicia: officers did not observe the defendant in possession of the items;

the items had no markings to indicate their owner; and the item was found in a room filled with personal belongings—such as children's toys—that clearly did not belong to the defendant. *Id.*

On the other hand, when the personal effects at issue clearly do not belong to the third party, it is unreasonable for officers to assume their apparent authority over the effects. *See Taylor*, 600 F.3d at 685. In *Taylor*, the incriminating item at stake was a closed shoebox with a label indicating that it was for a pair of Nike brand Air Jordan men's basketball shoes, size ten-and-a-half. *Id.* at 680. The police found the shoebox under a pile of the defendant's clothing in the closet of the bedroom he was staying in. *Id.* at 681. Although the resident consented to the search of her apartment, the Sixth Circuit held that police could not have reasonably believed she had authority over the shoebox when it was so obviously not her own. *Id.* at 682 ("Here, the appearance of the shoebox itself and the items in the room where the shoebox was found indicated that the box did not belong to [the woman].").

Here, Ms. Reiser was a co-tenant of the cabin, and—like with the girlfriend in *Snype*—it was reasonable for Agent Ristroph to believe she could consent to a search of the "entire premises," excluding only property "obviously" belonging to Hemlock. (R. 28.) In the district court hearing, the defense attempted to dissect her pointing toward the bedroom, in response to Agent Ristroph's inquiry about where she slept, claiming that restricted her authority. (R. 33.)

The defense's suggestion that Ms. Reiser's authority extended no further than her sleeping area is certainly an unorthodox construction of co-tenancy. (*Id*.) Apparent authority turns on reasonable belief informed by "widely shared social expectations," not on undisclosed private arrangements.

Additionally, the defense makes a great deal of the fact that the unmarked cardboard box was located on the stairs to a loft which Ms. Reiser identified as storing Hemlock's items. (R.

15–16.) But the stairs are not the loft itself. It would be incredibly unreasonable for Agent Ristroph to assume that as soon as an item touches the stairs, it falls under the defendant's exclusive control. Not to mention, the entire cabin is a mere 750 square feet—including the loft, which comprises almost half of the overall floor plan. (R. 17.) If Ms. Reiser was not allowed to place possessions on the stairs, she would be short of space indeed.

And just like the officers in *Snype*, Agent Ristroph had no visual indication that the box was not under Ms. Reiser's control—Hemlock was never seen with the box, nor was the box labeled. (*See* R. 13.) And unlike the men's shoebox covered in the defendant's own clothes in *Taylor*, the plain box stood alone at the bottom of the stairs, surrounded only by the living room that Hemlock and Ms. Reiser shared. (R. 13, 15, 17.)

c. The ambiguity approach would "impose an impossible burden on the police."

The Fourth Amendment asks whether law enforcement's belief of a third party's authority was reasonable at the time, not whether they have inquired into all other possibilities. U.S. Const. amend. IV. Enforcing a duty to inquire would impose an "impossible burden on the police." *Melgar*, 227 F.3d 1042. As the Seventh Circuit in *Melgar* explained: "It would mean that they could *never* search closed containers within a dwelling (including hotel rooms) without asking the person whose consent is being given *ex ante* about every item they might encounter." *Id.* This would greatly impede the ability for an officer to carry out routine investigations—every novel item they came across would require scrutiny.

This standard also starkly contrasts this Court's holding in *United States v. Ross*, which explained that consent "generally extends to the entire area in which the object of the search may be found and is not limited by the possibility that separate acts of entry." 456 U.S. 798, 821 (1982). By way of policy, this Court explained "nice distinctions between closets, drawers, and containers, in the case of a home, or between glove compartments, upholstered seats, trunks, and

wrapped packages, in the case of a vehicle, must give way to the interest in the prompt and efficient completion of the task at hand." *Id.*

A duty to investigate standard also misses the *Randolph* ruling entirely. As previously discussed, this Court has ruled that reasonableness must adhere to "widely shared social expectations." *Randolph*, 547 U.S. at 111. Requiring further investigation would force officers to go beyond that reasonableness baseline to verify each individual item or circumstance, regardless of social convention. Such a standard is unworkable. It would replace an objective, socially grounded standard with an onerous audit which would undermine law enforcement efficiency.

C. In the alternative, even if law enforcement had an affirmative duty to clarify ambiguous authority, no such ambiguity existed here.

Some courts have extended *Rodriguez* to conclude that further inquiry is required when a third party's authority is ambiguous. *See Whitfield*, 939 F.2d at 1075; *Taylor*, 600 F.3d at 685. In assessing any ambiguity regarding a co-inhabitant's "mutual use or control" over a container, a court may consider the following factors: (a) the appearance of the container and other items near where it was found; (b) the officer's belief of ownership prior to opening it; and (c) any manifestation of an expectation of privacy regarding the container. *See Taylor*, 600 F.3d 678.

A careful evaluation of all three factors indicates that there was no ambiguity surrounding Ms. Reiser's authority and therefore, officers were justified in their reasonable belief.

a. The container was unmarked and isolated from Hemlock's possessions.

When a container is free of markings or other indicia of ownership, it is reasonable for an officer to infer that the consenting third party has apparent authority over the item. *See Melgar*, 227 F.3d at 1040; *Snype*, 441 F.3d at 136; *Taylor*, 600 F.3d at 682. However, a container found

amongst the defendant's possessions is indicia of ownership that requires further investigation. *Taylor*, 600 F.3d at 682; *United States v. Fultz*, 146 F.3d 1102 (9th Cir. 1998).

In *United States v. Fultz*, officers received consent from the co-tenant of the defendant to search their house. 146 F.3d at 1104. The co-tenant directed the officers to the garage, where only the defendant's belongings were stored. *Id.* The Ninth Circuit held that because the only items in the area were the defendant's, and none of the co-tenant's personal belongings were mixed in, it was unreasonable for the officers to rely on the co-tenant's authority. *Id.* at 1106.

Here, the cardboard box was unlabeled and isolated from the defendant's other possessions, unlike in *Fultz*, where officers knew the box was part of a stack identified as the defendant's; moreover, Ms. Reiser never informed Agent Ristroph of the box's ownership. (*See* R. 13, 16.) Even if Hemlock used the loft exclusively, it would still be unreasonable to extrapolate that the stairs must only hold Hemlock's possessions.

b. Law enforcement reasonably believed Ms. Reiser had apparent authority over the container prior to opening it.

Reasonable belief ends where actual knowledge begins; when an officer knows a container belongs to the defendant, they cannot rely on the apparent authority of someone else. *Taylor*, 600 F.3d at 684. In *Taylor*, officers attempted to validate their search by claiming they reasonably believed the apparent authority of a third party who lived at the apartment the defendant was arrested at. *Id.* at 681. But it was revealed that the officers actually "believed that the shoebox *was* [the defendant's] before they opened it." *Id.* Because of this fact—and those aforementioned—the court refused to recognize the apparent authority exception. *Id.*

Here, nothing indicates Agent Ristroph thought the box belonged to Hemlock. Where the officers in *Taylor* believed the men's shoebox belonged to the defendant before they opened it,

the only thing Agent Ristroph had to go by was that there was an unlabeled box in the main living area. (R. 13.) And Ms. Reiser never suggested otherwise. (*See* R. 13, 16.)

c. Hemlock did not manifest an expectation of privacy regarding the container.

The authority of a co-tenant is generally understood to extend to common areas or shared spaces. *Randolph*, 574 U.S. at 106; *see generally Rodriguez*, 497 U.S. at 177; *Matlock*, 415 U.S. at 164. When an item is stored in a shared area, the defendant typically cannot claim a reasonable expectation of privacy from other co-tenants. *United States v. Sanchez*, 608 F.3d 685, 687 (10th Cir. 2010); *United States v. Shaw*, 269 F. Supp. 2d 90, 92 (E.D.N.Y. 2003) (holding that the defendant did not have a reasonable expectation of privacy when his illegal handgun was found in the laundry room of the house he shared with his mother and grandfather).

In *Sanchez*, officers found 100 kilograms of marijuana in the defendant's garage after his fifteen-year-old daughter consented to their search. 608 F.3d at 687. In determining that the search was valid, the 10th Circuit concluded that the daughter "as a general matter, had access to the entire house," "was in charge" when the officers visited, and "had no restrictions on her behavior in the home at all." *Id.* at 689. Because of this unrestricted access, the defendant did not have a reasonable expectation of privacy. *See id.* at 696 (Lucero, J., concurring).

However, a co-tenant's apparent authority fails when the co-tenant must take extreme measures, like breaking locks, to access the space or has been expressly forbidden from entering it. *Moore v. Andreno*, 505 F.3d 203, 206, 211–13 (2d Cir. 2007) (finding that it was unreasonable for officers to believe a third party had apparent authority where she had to break into the defendant's study to grant access—particularly because a study is "commonly thought to be a private place").

A third party can establish apparent authority even over traditionally private spaces when their relationship with the defendant is sufficiently close. *United States v. Howard*, 806 Fed.

Appx. 383, 388 (6th Cir. 2020). In *Howard*, police officers asked the sister of the leaseholder (the third party) to consent to a search of her house. *Id.* at 385. Although the sister was not on the lease, and did not regularly access the defendant's bedroom, the officers were found reasonable in their belief of her apparent authority by the court. *Id.* at 386.

In an unpublished decision, the Sixth Circuit held that there is "clear precedent that family relationships and unlocked doors often indicate actual authority." *Id.* at 388. All rooms in the residence, even what seems to be a private bedroom, "absent special circumstances, can be said to be areas of usage common to all members of the family." *Id.* at 387 (quoting *United States v. Clutter*, 914 F.2d 775, 777 (6th Cir. 1990)).

Here, Hemlock can claim no expectation of privacy over a carboard box, left on the bottom of the stairs in the living room of a 750-square-foot home, from his girlfriend who he lives with. It is a hard case to make that the living room, and the stairs attached is not a common area—especially considering how scarce common space is in a cabin of this size, where half the space is taken up by a loft. (R. 17.) Much like daughter in *Sanchez*, Ms. Reiser had unlimited access to apartment, with no restrictions on her behavior. (R. 13, 15.) And unlike the third party in *Moore*, Ms. Reiser did not have to break into a space where she was expressly forbidden—because, to the Government's knowledge, no spaces were forbidden to Ms. Reiser—and no locks or barriers separated Ms. Reiser and Agent Ristroph from the box. (R. 13, 17.)

Defense points to Ms. Reiser's statement that she "did not really ever go up there" as indication that she had no control over both the loft *and* the stairs. (R. 15.) But this misses the nuance of Ms. Reiser's speech—"not really ever" is not the same as never. And even if Ms. Reiser does not "really ever" enter the loft, that has no bearing on her use of the stairs or how likely she would be to use them as a convenient place to store items in the living room. (*Id*.)

Further, the fact that Ms. Reiser doesn't frequently use a space does not mean she could not have authority over it. Like the sister in *Howard*, a romantic partner carries a familial weight, and with that, a diminished sense of privacy, strengthened here by the fact that Ms. Reiser is on the lease. (R. 28.) The space here is not a private bedroom or study, like in *Howard* and *Moore*, instead it is the bottom step of a staircase attached to the shared living room. (R. 13.)

D. Ms. Reiser did not expressly limit the scope of consent.

If it has been established that the third party has apparent authority to consent, that consent extends to the entire space—including any closed containers found therein. *Melgar*, 227 F.3d at 1041; *Florida v. Jimeno*, 500 U.S. 248, 251 (1991); *Ross*, 456 U.S. at 822 (holding consent applies equally to all containers, "as indeed we believe it must"); *see also Wyoming v. Houghton*, 526 U.S. 295, 301 (1999) (explaining when a search is carried out with an expectation of finding contraband, it is reasonable to search closed containers within that same space).

Where an officer makes a "general" request and does not expressly seek permission to open containers, any consent obtained is treated as general in scope. *See Melgar*, 227 F.3d at 1039, 1041–42 ("the scope of [] consent encompassed their right to look into this container."). The reasoning for this, as described by the *Melgar* court is that "[a] contrary rule would impose an impossible burden on police." *Id.* at 1042.

But the scope of consent is limited when the third party informs officers before the search that the area or property belongs to the defendant. *United States v. Moran*, 944 F.3d 1, 8 (1st Cir. 2019). In *Moran*, officers carried out a search pursuant to consent received from the defendant's sister. *Id.* When asked about closed trash bags officers wished to search, the sister stated that they "belonged to someone else." *Id.* The First Circuit held that this limited the scope of consent. *Id.*

Here, Ms. Reiser did not limit the scope of her consent to exclude the cardboard box. Like in *Melgar*, Ms. Reiser's consent was in response to a "general" request to "take a look

around the residence as part of [the] investigation." (R. 13.) There was no limitation on this search by either Agent Ristroph or Ms. Reiser. The defense contests this and claims that Ms. Reiser *did* limit her scope of control, and therefore her ability to consent, when she responded to Agent Ristroph's question about where she and the defendant slept. (R. 33.) It makes a mountain out of a molehill to claim that when Ms. Reiser pointed towards her bedroom on the first floor "her answer provided [Ristroph] with important information regarding an area of the cabin under which she had some control." (*Id*.)

Novel concerns would arise if it were the case that Ms. Reiser only had control over her bedroom. But even the lower court had a hard time swallowing the defendant's pill, and when pressed, the defendant admitted that Ms. Reiser was "not giving orders" to Agent Ristroph as to where he could go. (*Id.*)

As the Fourteenth Circuit properly held, it was reasonable for Agent Ristroph to believe Ms. Reiser had apparent authority to consent to the search of the cardboard box and the district court correctly permitted evidence of the box and its contents to be admitted at trial. (R. 57.)

III. Federal Rule of Evidence 806 does not permit admission of extrinsic evidence of a hearsay declarant's prior misconduct to impeach character for truthfulness.

Federal Rule of Evidence 806 does not authorize courts to admit impeachment evidence that would otherwise be barred by the Federal Rules of Evidence ("FRE"). It establishes a limited and conditional principle: when hearsay is admitted, the declarant's credibility may be challenged only to the extent it could have been if the declarant testified at trial. That conditional structure is evident in the Rule's plain text, the Advisory Committee Notes, established case law, and the Rules' intentionally selective authorization of extrinsic impeachment.

Properly understood, the interaction between Rules 806 and 608(b) forecloses the admission of extrinsic evidence of specific instances of conduct offered to attack a hearsay

declarant's character for truthfulness. Rule 806 answers whose credibility may be attacked; Rule 608(b) governs how that attack may proceed. Reading Rule 806 to permit extrinsic evidence would expand impeachment beyond what the Rules allow for testifying witnesses, undermine Rule 608(b)'s express limitation, and disrupt the balance the Rules strike between probative value, fairness, and efficient trial administration.

A. Rule 806 treats hearsay declarants as witnesses for impeachment purposes.

Rule 806 provides that when a hearsay statement is admitted, "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. The Rule's operative language—"if the declarant had testified as a witness"—is decisive. *Id.* Rather than creating a separate or expanded set of impeachment rules for hearsay declarants, Rule 806 conditions admissibility on the same standards that would have governed had the declarant appeared and testified at trial. The Rule thus directs courts to apply the ordinary impeachment framework of the FRE to hearsay declarants, without alteration.

The Advisory Committee Notes confirm this textual command. Fed. R. Evid. 806 advisory committee's note. They explain that a hearsay declarant "is in effect a witness," and that Rule 806 permits attacks on credibility comparable to those permitted against witnesses who testify. *Id.* Treating the declarant as a witness, however, does not authorize broader impeachment methods than the Rules otherwise allow. To the contrary, the text and commentary make clear that Rule 806 rests on equivalence: hearsay declarants are subject to the same impeachment rules, and the same limitations that apply to testifying witnesses.

Applied here, Rule 806 requires that Ms. Copperhead be treated as the relevant "witness" for impeachment purposes. Although Mr. Kolber was the in-court witness who recounted the hearsay statements, Rule 806 directs the Court to assess the credibility of the declarant whose

statements were admitted, not the intermediary who relayed them. (R. 42.) Thus, once Ms. Copperhead's statements were introduced, her credibility became subject to attack only to the extent it could have been attacked had she testified at trial.

Rule 806 therefore answers a threshold question—whose credibility may be challenged when hearsay is admitted—but it does not redefine how that challenge may proceed. Once Rule 806 directs courts to treat the declarant as a witness for impeachment purposes, the admissibility of particular impeachment evidence is governed by the same provisions that would have applied had the declarant taken the stand.

B. Rule 608(b) governs impeachment of any witness's character for truthfulness.

Rule 608(b) sets the method by which a witness's character for truthfulness may be impeached. Fed. R. Evid. 608(b). It provides that, except for criminal convictions governed by 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." *Id.* Although the court may, in its discretion, permit inquiry into such conduct on cross-examination, the Rule draws a clear line between questioning a witness and proving misconduct through extrinsic evidence.

By its terms, Rule 608(b) applies to impeachment of "a witness" without distinction. *Id.* The Rule does not vary based on the witness's role or availability, and it contains no exception for hearsay declarants. Where impeachment targets character for truthfulness, Rule 608(b) supplies a uniform limitation on the manner of proof.

Here, the evidence Hemlock sought to introduce falls squarely within Rule 608(b)'s prohibition. The letter from Court Street College documenting Ms. Copperhead's academic integrity violation and testimony concerning her allegedly falsified job application are specific instances of past conduct offered solely to show that she had a character for untruthfulness. (R.

9–10.) With this, defense sought to prove the truth of those alleged acts through documents and third-party testimony—precisely the type of extrinsic evidence Rule 608(b) excludes.

C. Treating hearsay declarants as witnesses necessarily triggers Rule 608(b)'s prohibition on extrinsic evidence.

The Fourteenth Circuit properly held that "Rule 806 must be considered in relation to Rule 608(b)." (R. 57.) That interaction is supported directly by *United States v. Saada*, where the Third Circuit stated that Rule 806 "does not modify Rule 608(b)'s ban on the use of extrinsic evidence to prove specific instances of conduct," even when the hearsay declarant is unavailable to testify at trial. 212 F.3d 210, 221–22 (3d Cir. 2000). The Third Circuit emphasized that Rule 608(b)'s prohibition is categorical when impeachment is directed at character for truthfulness, and that nothing in Rule 806 "suggests an intent to override other evidentiary limitations imposed by the [FRE]." *Id.* at 222. Because Rule 806 permits impeachment only by evidence that would have been admissible had the declarant testified, the restriction on extrinsic evidence applies in the same manner to hearsay declarants. Fed. R. Evid. 806.

The analysis in *Saada* turns on the Rules' conditional structure, not on the declarant's absence. *See* 212 F.3d at 221–22. As the Third Circuit explained, Rule 806 places the declarant "in the same position as a testifying witness for impeachment purposes," after which Rule 608(b) governs the admissibility of character-based impeachment evidence. *Id.* at 221. Under that framework, a party may inquire into specific instances of misconduct bearing on truthfulness, but "may not prove such conduct through extrinsic evidence." *Id.* The declarant's unavailability does not alter that limitation, because Rule 608(b) "draws no distinction between testifying and non-testifying witnesses." *Id.* at 222.

This understanding of the Rules' operation is consistent with other decisions applying Rule 608(b)'s extrinsic-evidence bar once a hearsay declarant is treated as a witness for

impeachment purposes. *See also United States v. White*, 116 F.3d 903, 920–22 (D.C. Cir. 1997) (permitting inquiry into a hearsay declarant's prior conduct bearing on credibility while barring "reference to any extrinsic proof" of such conduct).

Here, the Fourteenth Circuit correctly excluded the defense's proposed impeachment evidence. (R. 58.) Because the defense sought to introduce the academic integrity letter and job application materials solely to establish specific instances of past dishonesty, Rule 608(b) barred their admission as extrinsic evidence. (*Id.*) That result would have been the same had Ms. Copperhead testified in person, and Rule 806 does not alter it. The district court therefore applied the FRE exactly as written, and the Fourteenth Circuit properly affirmed that ruling.

D. Allowing extrinsic evidence under Rule 806 would improperly circumvent Rule 608(b).

Allowing extrinsic evidence of specific instances of conduct under Rule 806 would distort the structure of the FRE by permitting parties to evade Rule 608(b)'s express limitation. Rule 608(b) bars extrinsic evidence when impeachment targets character for truthfulness, and that prohibition turns on the nature of the impeachment, not on whether the witness is available to testify. Fed. R. Evid. 608(b). Permitting extrinsic evidence whenever a declarant's statements are admitted through hearsay would therefore allow Rule 806 to function as an "end-run around Rule 608(b), simply because [the declarant] is absent." *United States v. Andrade*, No. 20-CR-00249, 2025 WL 670456, at *5 (N.D. Cal. Mar. 3, 2025).

United States v. Friedman illustrates the error that results when perceived fairness concerns are allowed to override the text and structure of the FRE. 854 F.2d 535, 569–70 (2d Cir. 1988). Rather than identifying language in Rule 806 that authorizes the admission of extrinsic evidence barred by Rule 608(b), *Friedman* treats the declarant's unavailability and the absence of cross-examination as sufficient justification for expanding the permissible means of

impeachment. *Id.* That approach departs from Rule 806's conditional framework, which ties admissibility to what would have been permitted had the declarant testified, and it effectively creates an unwritten exception to Rule 608(b)'s categorical prohibition on extrinsic evidence.

Nor do fairness considerations compel that result. Rule 608(b) deliberately restricts the use of extrinsic evidence even when a witness testifies and is subject to cross-examination. Fed. R. Evid. 608(b). That limitation reflects an effort to block collateral disputes over alleged misconduct which would risk unfair prejudice, confusion of the issues, and undue delay.[1] Allowing extrinsic evidence against hearsay declarants would invert that judgment by exposing absent witnesses to broader character attacks than live witnesses, while denying the opposing party the protections that accompany in-court testimony, including the witness's ability to explain or deny the alleged misconduct.

The structure of the Rules reinforces this conclusion. When the FRE permit extrinsic evidence for impeachment, they do so expressly. *See* Fed. R. Evid. 613. Rule 613[2], for example, specifically authorizes extrinsic evidence to prove prior inconsistent statements under defined conditions. *Id.* Rule 806 contains no comparable authorization for extrinsic evidence of prior misconduct. *See* Fed. R. Evid. 806. That silence—particularly when contrasted with Rule 613's express language—underscores that the omission was deliberate. The Rules reflect a calibrated balance between probative value and the risk of unfair prejudice or confusion, and there is no basis for reading Rule 806 as upsetting that equilibrium.

[1] Fed. R. Evid. 806 advisory committee's note ("Consequently safeguards are erected in the form of specific requirements…probative value [must] not be outweighed by danger of unfair prejudice, confusion of issues, or misleading the jury…").

[2] "[E]xtrinsic evidence of a witness's prior inconsistent statement may not be admitted until after the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it."

Here, as the Fourteenth Circuit properly reasoned, allowing extrinsic evidence here would invite "mini-trials on collateral issues" that would arise if litigants could dispute such broad evidence involving individuals never present in the courtroom. (R. 58.) That consequence would redirect the jury's attention away from the charged conduct and impose substantial costs on the orderly administration of trials. Because the district court enforced the evidentiary limits set by Rules 806 and 608(b), and the Fourteenth Circuit correctly declined to dilute those limits, the judgment should be affirmed.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully Submitted,
/s/ Team 4R
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