Team T31

IN THE
SUPREME COURT OF THE UNITED STATES

Case No. 25-7373

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, 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 an occupant'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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CONSTITUTIONAL PROVISIONS

The test of the following constitutional provisions is provided below:

The Fourth Amendment States:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV.

The Sixth Amendment States:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. Const. amend. VI.

STATEMENT OF THE CASE

Petitioner Atticus Hemlock was arrested by Agents Herman and Simonson on April 2, 2024, following several reports of suspicious activity made to the Boerum Village Police Department (hereinafter "BVPD") and their own encounter with the Petitioner at his home. R. at 6-8, 12-13, 52-53. Petitioner was indicted on April 3, 2024, for Attempted Kidnapping of a United States Government Officer under 18 U.S.C. § 1201(a)(5); 18 U.S.C. § 1201(d). R. at 1-2. On August 12, 2024, Petitioner was convicted by a jury. Petitioner was subsequently sentenced to a ten-year prison term entered on October 17, 2024. R. at 51. The conviction was affirmed by the Fourteenth Circuit Court of Appeals on April 14, 2025. R. at 51.

Agents Herman and Simonson Visit to Petitioners Home

On February 20, 2024, the United States Department of Tourism (hereinafter "USDT") announced the "Grow Your Own Way" Program. R. at 3. Jodie Wildrose joined the USDT as Under Secretary for Rural Development in December of 2023 and was spearheading the "Grow Your Own Way" Program. On March 29th and 30th, BVPD received reports regarding suspicious purchases and conversations which led the agents to identifying Atticus Hemlock and Iris Copperhead as potentially planning to kidnap Jodie Wildrose. R. at 3-6.

After conducting witness interviews regarding the suspicious activity, Agents Herman and Simonson visited Petitioner's home. R. at 11. The agents knocked on the door three-times, and Petitioner appeared in the doorway where Herman greeted him by asking "How are you Today." *Id*. Simonson informed Petitioner that they were Special Agents with the Federal Bureau of Investigations and wanted to speak with him because they believed he could assist them in their investigation. *Id.* Simonson kindly asked the Petitioner to come outside to chat and answer some questions. *Id*. At this point, Herman noticed bottles on the Petitioner's counter and asked him what

they were. *Id.* Petitioner responded stating that they were bottles of chloroform and told the agents to "not worry about those" and then moved to block it from their view *Id*. Herman and Simonson reiterated that it was very important that he come outside and answer some questions and attempted to calm the Petitioner down. *Id*. Unprompted, the Petitioner asked the agents if this had to do with "Jodie" and at this point the agents went back to their car to discuss their observations and interaction with the Petitioner. *Id.* at 11-12. The agents determined that they had sufficient information to establish probable cause, specifically, they believed the presence of chloroform in Petitioner's home, his movements to block it from their view, the unprompted question about Jodie, and his extremely suspicious demeanor established probable cause to arrest. R. at 12.

The agents reapproached the home and assertively asked the Petitioner to come outside, to which he complied. *Id.* Once Petitioner exited the home, the agents arrested him informing him that he was being arrested for attempting to kidnap a federal official. *Id*. Herman conducted a search incident to an arrest on Petitioner and secured a notebook that was located in his back pocket. *Id*. Herman removed the notebook from Petitioner's pocket and observed that it was open to a specific page. Id. 12, 24. Herman examined the page and its contents, identifying it as a diary entry detailing the Petitioner's frustration with the "Grow Your Own Way" Program, his hatred for Jodie Wildrose, and his plan to kidnap her. *Id*. After securing the suspect and the notebook, Herman called Agent Kiernan Ristroph to come to the home and wait for Petitioner's girlfriend to arrive and ask permission to search for the home. *Id*.

Container Search

Agent Ristroph remained at Petitioner's residence to attempt to obtain consent to search the cabin for evidence from Petitioner's girlfriend, Fiona Reiser. R. at 13. Once Reiser arrived at the residence, Ristroph knocked on the door, identifying himself, and informed her that Petitioner

had been arrested and that he was conducting an investigation. *Id*. Ristroph asked Reiser if he could enter the home to search, and she consented. *Id*. Ristroph noticed a set of stairs when he entered the home and asked Reiser what was up there. *Id*. Reiser responded stating that Petitioner used it as storage and office space. Ristroph then confined the search to the first floor and noticed a box on one of the bottom steps of the staircase *Id*. Ristroph approached the box and opened the flaps identifying incriminating evidence to be used against Petitioner. *Id*.

Excluded Evidence at Trial

At trial, Theodore Kolber testified that he heard Iris Copperhead scream the following statement: "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. at 43. Copperhead had passed away before trial and was unable to testify. R. at 43-44. The Petitioner's counsel objected to the statement, but the court overruled the objection under Fed.R. Evid. 803(2) as an excited utterance due to the declarant not being available. R. at 43-44. Petitioner subsequently tried to impeach Copperhead by attempting to introduce extrinsic evidence from Copperhead's past that could have demonstrated a character for untruthfulness, including a letter from Court Street College stating that Copperhead had failed her final project for using AI, and a job application where she had lied about completing college. R. at 9-10. During cross-examination, the Government objected to Petitioner's attempt to introduce the extrinsic evidence. R. at 9, 46-47. Petitioner also sought to call Svetlana Ressler, who reviews job applications for the Mayor's Office, to establish that Copperhead had lied on her job application; the Government objected to this testimony as well. R. at 48-49. The Court sustained both objections agreeing that the Petitioner was not allowed to introduce the extrinsic evidence to rebut hearsay testimony. R. at 50.

SUMMARY OF ARGUMENT

With respect to the Petitioner's arrest, the District Court and the Fourteenth Circuit Court of appeals properly held that the arrest complied with the Fourth Amendment and did not contravene the rule articulated by the United States Supreme Court in *Payton v. New York*, 445 U.S. 573 (1980). In *Payton*, this Court held that an arrest made outside of the home does not violate the Fourth Amendment. 445 U.S. 573, 576. Here, Petitioner, was arrested when he exited the home, thus *Payton* was not violated. See *Ortiz v. City of New York*, 773, Fed. Appx. 54, 56 (2d Cir. 2019); *United States v. Carrion*, 809 F.2d 1120, 1128 (5th Cir. 1987); *Gaddis v. Demattei*, 30 F.4th 625, 633 (7th Cir. 2022); *United States v. Berkowitz*, 927 F.2d 1376, 1385; *Knight v. Jacobson*, 300 F.3d 1272, 1277 (11th Cir. 2002).

Furthermore, the Doctrine of Constructive Entry does not apply in this case. The Doctrine states that if an officer coerces a suspect out of his home, the officer essentially accomplishes the same thing as an actual entry which in turn violates the Fourth Amendment and the holding of *Payton*. See *United States v. Morgan*, 743 F.2d 1158, 1166 (6th Cir. 1984); *United States v. Al-Azzawy*, 784 F.2d 890, 893 (9th Cir. 1985); *United States v. Reeves*, 524 F.3d 1161, 1168–69 (10th Cir. 2008). Here, the Agents' conduct did not amount to coercion, unlike the circumstances identified by the Sixth, Ninth, and Tenth Circuits, where factors such as the presence of numerous officers, the display of weapons, and the use of threats supported findings of coercion and corresponding *Payton* violations.

Concerning the consent of the search of the closed container located in Petitioner's cabin, the District Court and the Fourteenth Circuit correctly held that the search was reasonable and did not violate the Fourth Amendment. A third-party is said to have common authority to consent to a search of a shared residence when the government can demonstrate that the third-party has "mutual use of the property," and "joint access or control for most purposes." *Illinois v. Rodriguez*, 497

U.S. 177, 181 (1990) (citing *United States v. Matlock,*415 U.S. 164, 171 (1974)). Here, Petitioner's girlfriend and co-tenant had common authority over the cabin to make the search valid.

While containers may generally be searched without further consent during a lawful search, the lower courts are split on whether the government must take additional steps to verify the ownership of a container before searching. *United States v. Melgar*, 227 F.3d 1038, 1041 (7th Cir. 2000) (citing *Florida v. Jimeno*, 500 U.S. 248, 251 (1991)). The Fourteenth Circuit correctly sided with the Seventh and Second Circuits, finding that law enforcement may rely on a co-occupant's consent to search a container in a common area, and that the government is under no obligation to clarify ownership of a container if there are no facts that form an objective basis that the container might not belong to the consenting party. *United States v. Snype,* 441 F.3d 119, 136 (2nd Cir. 2006) and *United States v. Melgar*, 227 F.3d 1038, 1041 (7th Cir. 2000). Here, Ristroph did not have positive knowledge that the box belonged to Petitioner, and so his search was reasonable.

Lastly, regarding the exclusion of extrinsic evidence at trial, the District Court and the Fourteenth Circuit Court of Appeals properly found that Fed.R. Evid. 806 does not allow for extrinsic evidence to be permitted when it violates Rule 608(b). Though Rule 806 allows for the credibility of a witness to be attacked, it does not carve out an exception to get around Fed.R. Evid. 608(b), or any other Federal Rule of Evidence. Importantly, the Third Circuit has stated that he mere fact that a case's facts do not neatly fit within the contours of an established rule does not permit a court to reshape that rule to accommodate the circumstances. *United States v. Saada*, 212 F.3d 210, 221 (3d Cir. 2000); *United States v. Finley*, 934 F.2d 837, 839 (7th Cir. 1991). If the court were to depart from this rule, it would create an imbalance by allowing parties to use Rule 806 to circumvent other rules of evidence, including but not limited to Rule 608(b), whenever they lack an alternative means of introducing such evidence.

ARGUMENT

I. THIS COURT SHOULD AFFIRM THE DISTRICT COURT'S RULING BECAUSE AGENTS HERMAN AND SIMONSON DID NOT VIOLATE *PAYTON* WHEN THEY ARRESTED THE PETITIONER OUTSIDE OF HIS HOME.

It is undisputed in this case that Agents Herman and Simonson had probable cause to arrest Petitioner. Petitioner's primary contention is that the conduct of Agents Herman and Simonson violated the rule established by the United States Supreme Court in *Payton v. New York*, which prohibits officers from conducting a felony arrest inside a suspect's home absent exigent circumstances, a warrant, or consent. 445 U.S. 573 (1980).

a. THIS COURT SHOULD ADOPT THE APPROACH OF THE SECOND, FIFTH, SEVENTH, AND ELEVENTH CIRCUITS, WHICH INTERPRET PAYTON ACCORDING TO ITS PLAIN MEANING, HOLDING THAT PAYTON IS ONLY VIOLATED WHEN AN ARREST IS MADE INSIDE THE HOME ABSENT EXIGENT CIRCUMSTANCE, A WARRANT, OR CONSENT.

The Fourth Amendment provides in relevant part that the "right of the people to be secured in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated" U.S. Const. amend. IV. It is well settled that officers may execute a warrantless arrest in a public place when supported by probable cause. *United States v. Watson*, 423 U.S. 411, 416 (1976); *United States v. Santana*, 427 U.S. 38, 42 (1976); *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001). Regarding arrests inside the home, the United States Supreme Court has made clear that, absent exigent circumstances, a warrant, or consent, officers may not conduct a felony arrest within a suspect's residence." *Payton v. New York*, 445 U.S. 573, 576 (1980); see also *United States v. Berkowitz*, 927 F.2d 1376, 1385 (7th Cir. 1991) (citing *Minnesota v. Olson*, 495 U.S. 91, 95 (1990)); *Welsh v. Wisconsin*, 466 U.S. 740, 749 (1984). To violate *Payton,* there must be an actual physical intrusion into the home. See *United States v. Berkowitz*, 927 F.2d 1376, 1385. (holding that *Payton* draws a clear line at the entrance of a person's home); *Bashir v. Rockdale*

County, 445 F.3d 1323, 1327-28 (11th Cir. 2006). *United States v. Parr*, 716 F.2d 796, 814 (11th Cir. 1983).

The Second, Fifth, Seventh, and Eleventh Circuits have concluded that an officer violates the rule of *Payton* only when the arrest or search occurs inside the home, absent exigent circumstances, a warrant, or consent. See *United States v. Carrion*, 809 F.2d 1120, 1128 (5th Cir. 1987) (holding that an arrest made in the doorway of a suspects hotel room does not violate *Payton*); *Gaddis v. Demattei*, 30 F.4th 625, 633 (7th Cir. 2022) (holding that an arrest made on the front porch of a suspects home did not violate *Payton*); *United States v. Berkowitz*, 927 F.2d 1376, 1385; *Knight v. Jacobson*, 300 F.3d 1272, 1277 (11th Cir. 2002) (holding that an arrest made outside a suspect's hotel room did not violate *Payton*); *Ortiz v. City of New York*, 773, Fed. Appx. 54, 56 (2d Cir. 2019) (holding that a suspect who was arrested in a common hallway outside his home did not trigger *Payton's* protections); *McClish v. Nugent*, 483 F.3d 1231, 1242 (11th Cir. 2007) (holding that an officer violated the "firm line" established by *Payton* when the officer pulled the suspect from his doorway to arrest him).

Importantly, the Seventh Circuit has noted that "*Payton* prohibits only a warrantless entry into the home, not a policeman's use of his voice to convey a message of arrest from outside the home." *United States v. Berkowitz*, 927 F.2d 1376, 1386 (7th Cir. 1991); see also *McKinney v. Geroge*, 726 F.2d 1183, 1188 (7th Cir. 1984). Similarly, the Eleventh Circuit has stated that *Payton* keeps officers' bodies outside the home, not their voices. *Knight v. Jacobson*, 300 F.3d 1272, 1277 (11th Cir. 2002) (holding that *Payton* does not prevent officers from telling a suspect to exit the home in order to complete an arrest).

The trial evidence and testimony established that Petitioner's arrest occurred outside of his home. Agent Herman's body-camera transcript proves that Agents Herman and Simonson arrested

Petitioner once he exited the home. R. at 12. Agent Herman further testified that he placed Petitioner under arrest after Petitioner exited his residence. R. at 22–23. Petitioner's counsel likewise acknowledged at trial that the arrest occurred outside the home. R. at 28. The Second, Fifth, Seventh, and Eleventh Circuits have made clear that arrests of this nature fall outside *Payton's* scope because a violation only occurs when there is a physical entry into the home. Additionally, the Agents' request that the Petitioner exit his home to speak with them is also permissible under *Payton*. *See United States v. Berkowitz*, 927 F.2d 1376, 1386; *Knight v. Jacobson*, 300 F.3d 1272.

Therefore, this Court should adopt the reasoning of the District Court and the Fourteenth Circuit, consistent with the approaches of the Second, Fifth, Seventh, and Eleventh Circuits, and hold that Agents Herman and Simonson did not violate *Payton* because they never physically crossed the protected threshold of the entrance to the home to arrest Petitioner.

b. THE DOCTRINE OF CONSTRUCTIVE ENTRY DOES NOT APPLY TO THE PRESENT CASE.

The Sixth, Ninth, and Tenth Circuits have recognized that officers may violate *Payton* by engaging in behavior that coerces a suspect out of his home. *United States v. Allen*, 813 F.3d 76, 81 (2d Cir. 2016); *United States v. Morgan*, 743 F.2d 1158, 1166 (6th Cir. 1984); *United States v. Reeves*, 524 F.3d 1161, 1168–69 (10th Cir. 2008); *United States v. Maez*, 872 F.2d 1444, 1451 (10th Cir.); *United States v. Al-Azzawy*, 784 F.2d 890, 893 (9th Cir. 1985); *United States v. Saari*, 272 F.3d 804, 807–08 (6th Cir. 2001); *United States v. Flowers*, 336 F.3d 1222, 1226 (10th Cir. 2003). The rationale established by these Circuits is that the coercive nature of the officer's actions creates the same effect as an actual physical entry and therefore triggers *Payton's* protections. *See United States v. Morgan*, 743 F.2d 1158, 1166 (6th Cir. 1984).

As noted by the Second Circuit, the Sixth, Ninth, and Tenth Circuits "rely on the legal fiction of constructive or coercive entry, a doctrine under which certain types of police conduct will be deemed an entry." *United States v. Allen*, 813 F.3d 76, 81 (2d Cir. 2016); *United States v. Morgan*, 743 F.2d 1158, 1166 (6th Cir. 1984); *United States v. Reeves*, 524 F.3d 1161, 1168–69 (10th Cir. 2008); *United States v. Maez*, 872 F.2d 1444, 1451 (10th Dist.); *United States v. Morgan*, 743 F.2d 1158, 1166 (6th Cir. 1984); *United States v. Al-Azzawy*, 784 F.2d 890, 893 (9th Cir. 1985). Under the Doctrine of Constructive Entry, when officers engage in actions to coerce a suspect outside the home, they effectively accomplish the same thing as an actual entry into the home. *United States v. Allen*, 813 F.3d 76, 81 (2d Cir. 2016) (citing *Morgan*, 743 F.2d 1158, 1166).

The Sixth Circuit in *Morgan* concluded the officers' actions were so coercive that they amounted to an actual entry for several reasons. 743 F.2d 1158, 1166. In *Morgan*, nine officers surrounded the home, flooding the home with spotlights. *Id*. at 1166. The suspect was summoned outside through a bullhorn and then arrested by the officers. *Id*. The court in *Morgan* concluded that this coercive activity that occurred outside the house violated *Payton*. *Id*. Specifically, the court stated that Morgan effectively was under arrest as soon as the police surround his home, and the force shown by the police was such that a reasonable person would not have believed that they were free to leave. *Id*.

In *United States v. Saari*, the officers positioned themselves in front of the only exit from the suspect's apartment with guns and knocked forcefully on the door. 272 F.3d 804, 808 (6th Cir. 2001). The Court in *Saari* ultimately concluded that, because a reasonable person would not have believed they were free to leave, the suspect was effectively coerced into exiting the home, thereby violating the Fourth Amendment and *Payton's* holding. 272 F.3d 804, 808 (6th Cir. 2001).

In *Al-Azzawy*, officers surrounded the suspect's trailer with their guns drawn ordering him to exit the home. 784 F.2d 890, 891. The Ninth Circuit concluded that *Payton* was violated because, after officers initially approached with their guns drawn, a reasonable person in the suspect's position would not have felt free to leave or ask the officers to depart. *Id*. at 983. As a result, the suspect was effectively under arrest. *Id*.

In *Reeves*, the Tenth Circuit held that "the officers' conduct outside of Reeves's motel room would not have led a reasonable person to believe he was not free to ignore the officers." 524 F.3d 1161, 1168-69. Specifically, the court stated that the officers' actions of pounding on the door and window while yelling loudly for twenty minutes at 2:30 AM amounted to an entry in violation of the rule established by *Payton*. *Reeves*, 524 F.3d 1161, 116–69.

In *Maez*, ten officers, including a SWAT team, planned the arrest over the course of at least three hours; they did not obtain a warrant; they surrounded the suspect's trailer with rifles pointed and asked the suspect to come out over a loudspeaker. 872 F.2d 1444, 1446-50. Specifically, the Tenth Circuit stated that the government's intrusion, without consent and without a warrant, was in the form of extreme coercion which in turn violated *Payton*. *Id*. at 51.

In *United States v. Hernandez-Penaloza*, a team of eight deputies surrounded the suspect's residence, each deputy had a gun and wore a mask, knocked on the door loudly announcing themselves and ordered the suspect out of the home. 899 F. Supp. 2d 1269, 1273-74 (Fla M.D. Ct. 2012). The court ultimately held that when officers coerce a suspect who is still inside the home to step outside, the ensuing arrest is treated as having occurred within the home, as if the officers themselves had crossed the threshold. *Id*. at 1285.

Petitioner relies on the Doctrine of Constructive Entry to state that Agents Herman and Simonson violated *Payton*. However, the facts of this case differ significantly from the facts of those cases in which courts have found the Doctrine of Constructive Entry to apply.

In each of those cases, there were typically a large number of officers present at the residence surrounding the home. *See Morgan*, 743 F.2d 1158, 1166; *Al-Azzawy*, 784 F.2d 890, 89; *Maez*, 872 F.2d 1444, 1446–50; *Hernandez-Penaloza*, 899 F. Supp. 2d 1269, 1273-74; *Saari,* 272 F.3d 804, 808. The officers acted aggressively towards the suspect, flooding the home with spotlights, using loud bullhorns to communicate with the suspect, brandishing weapons, arriving in the early hours of the morning, sitting outside the home for prolonged periods of time, surrounding the home, and threatening the suspect. *See Morgan*, 743 F.2d 1158, 1166, *Reeves*, 524 F.3d 1161, 1168–69; *Maez*, 872 F.2d 1444, 1446-50; *Hernandez-Penaloza*, 899 F. Supp. 2d 1269, 1273–74. Moreover, the analysis in these Circuits hinged on the fact that such conduct caused the suspects to feel as though they were not free to leave or to direct the officers to depart, effectively placing them under arrest the moment the officers initiated their coercive actions. *Id*.

This was not the case in the arrest of the Petitioner. Here, the Agents did not use intimidation tactics to make Petitioner feel as though he was not free to leave or that he could not request for the Agents to retreat. Only two Agents were present at the residence, and they did not utilize an intimidating tool such as bullhorns or spotlights to get the Petitioner's attention and effectively coheres him out of the home. The Agents were dressed in street clothes, and their physical characteristics were far from intimidating; both Agents were under six feet tall and weighed well under 200 pounds. Conversely, the Petitioner himself was over six feet tall, weighing over 200 pounds. R. at 29. Agent Herman testified that they arrived at Petitioner's residence in the late afternoon and were not present for a prolonged period of time prior to speaking with Petitioner.

R. at 21. Agent Simonon walked up the front steps, knocked on the door frame three times, and then came back down to stand with Agent Herman on the ground outside the home three or four feet from the bottom stair. *Id*. As noted in the body camera transcript, the Agents addressed Petitioner calmly:

> [16:08 ET] [Three loud thumping sounds]
>
> Special Agent Hugo Herman: Hello there. How ae you today?
>
> Atticus Hemlock" Uhhh. Hello. I'm fine. Can I help you?
>
> Special Agent Ava Simonson: Yes. We're Special Agents with the Federal Bureau of Investigation and we're conducting an investigation. We think you might have some information that would be useful for us. Can you come outside? We have some questions for you would like to chat.
>
> Hemlock: Umm. Can I not? I am pretty busy today. My girlfriend is about to get back and then we're having a friend over for dinner. I don't really know how I'd be any use to you. Plus you guys freak out. So I don't think so.
>
> Simonson: We need to get as much information as possible for our investigation. Please come outside for us.
>
> Hemlock: Yeah. I don't know. I'm feeling pretty uneasy about talking with you. What's going on?

R. at 10.

After this initial exchange with the Petitioner, the Agents stepped away, returned to their vehicles, and discussed what they had observed before concluding that they had sufficient information to establish probable cause. R. at 21-22. [1] The Agents then reapproached the residence, called for the Petitioner to come outside, and the Petitioner voluntarily complied, at which point they arrested him. R. at 22–23. Although the Agents wore duty belts and rested their hands on their

[1] Agents Herman and Simonson believed the presence of chloroform in the Petitioner's home, his movements to block it from their view, the unprompted question about Jodie, and his extremely suspicious demeanor established probable cause to arrest. R. at 2, 21-22.

holsters, Agent Herman testified that neither Agent ever drew a weapon. R. at 26. Furthermore, at no point did the Agents threaten the Petitioner or indicate that he would face any adverse consequences if he did not comply. See R. 11–12. Finally, Petitioner's argument that the home's location contributes to any coercive effect is immaterial, as no case law supports treating the location of the home itself as a factor in a *Payton* violation.

Ultimately, Agents Herman and Simonson did exactly what *Payton* required: they did not arrest the Petitioner by physically intruding into his home, and even if this Court is willing to recognize a claim of Constructive Entry, the Agents conduct here was in no way coercive.

c. THIS COURT SHOULD REFRAIN FROM ADOPTING THE CONSTRUCTIVE ENTRY DOCTRINE, FOR THIS BROAD INTERPRETATION OF *PAYTON* ELICITS SEVERAL POLICY CONCERNS.

As noted by the Second Circuit, the Constructive Entry Doctrine is "conceptually muddled," for it prevents a clear rule with a clear rationale from being established. *United States v. Allen*, 813 F.3d 76, (2d Cir. 2016). This Doctrine adds layers of uncertainty which places a burden on both law enforcement officers and the courts to determine whether factors such as the events preceding or accompanying the ordering of the suspect out of the home, the number and location of the officers, the nature and content of the words used during the interaction with the suspect, and whether guns are holstered or brandished, trigger *Payton's* protections. *United States v. Allen*, 813 F.3d 76, 88 (2d Cir. 2016); see also *United States v. Saari*, 272 F.3d 804, 808 (6th Cir. 2001); *United States v. Gori*, 230 F.3d 44, 54 (2d Cir. 2000).

If the Court were to adopt the rational of the Sixth, Ninth, and Tenth Circuits, it would inject significant confusion into Fourth Amendment jurisprudence and impose substantial burdens on both courts and law enforcement officers. The Constructive Entry Doctrine is exceedingly difficult to administer in practice because it requires officers in the field to second-guess routine

aspects of their conduct. Matters as subtle as the tone of their voice, the number of officers present, their proximity to the doorway, or even how they position their hands while speaking with a suspect will have to be judged. These are not objective, bright-line considerations; they are inherently subjective and susceptible to after the-fact interpretation, making consistent application nearly impossible.

Expanding *Payton* to encompass such indeterminate factors will invite a wave of litigation, as nearly every defendant arrested outside the home could plausibly claim that some aspect of the officers' demeanor or presence amounted to "coercion." This would transform routine arrests into fertile grounds for constitutional challenges, burdening trial courts with fact-intensive hearings, and undermining the clarity that *Payton's* physical entry rule was designed to provide. In short, adopting the Constructive-Entry Doctrine would replace a clear, administrable rule with an unpredictable standard that complicates police work, invites endless litigation, and undermines the stability of the Fourth Amendment.

II. THE DISTRICT COURT PROPERLY ADMITTED INTO EVIDENCE THE CONTENTS OF A BOX FOUND DURING A CONSENT SEARCH BECAUSE LAW ENFORCEMENT REASONABLY BELIEVED THAT THE CO-OCCUPANT OF THE CABIN POSSESSED APPARENT AUTHORITY TO CONSENT TO THE SEARCH OF THE CONTAINER.

a. THE GOVERNMENT LAWFULLY SEARCHED THE CABIN PURSUANT TO VOLUNTARY CONSENT PROVIDED BY A THIRD-PARTY WITH COMMON AUTHORITY OVER THE CABIN.

While the Fourth Amendment protects against warrantless searches, it is a long-held exception that voluntary consent to a search may be given by a third-party who possesses common authority over the premises or effects to be searched. *Illinois v. Rodriguez*, 497 U.S. 177, 186 (1990). The common authority requirement is met when the government can demonstrate that the third-party consenting to the search has "mutual use of the property," and "joint access or control

for most purposes." *Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990), (citing *United States v. Matlock,*415 U.S. 164, 171 (1974)).

In *Rodriguez*, this Court found that the government did not meet its burden in establishing that the third-party who gave consent to the search, Fischer, had common authority over Rodriguez's apartment. In that case, Fischer had previously lived with Rodriguez but moved out several months before the search of Rodriguez's apartment occurred. Additionally, Fischer was not on the lease and did not pay rent. Therefore, the Court held that Fischer did not have common authority to consent to the search. However, *Rodriguez* also establishes the apparent authority doctrine. Importantly, the Court notes that while Fisher did not actually have common authority over the apartment, an officer's reasonable belief that the individual had common authority would validate the search. 497 U.S. 177, 181. To assess whether apparent authority exits, courts "look for indicia of actual authority," and decide on the facts available to them at the time of the search. *United States v. Saadeh,* 61 F.3d 510, 517 (7th Cir. 1995).

Unlike *Rodriguez*, here, Reiser had common authority over the apartment, and could therefore properly consent to a search of the cabin. She has resided in the cabin since May of 2023 when she and Petitioner moved in together. R. at 15. Reiser explained that she and Petitioner share a bedroom on the first floor of the cabin, and therefore she has "mutual use of the property" and the "joint access or control for most purposes," that is required to have apparent authority. 497 U.S. 177, 181. Therefore, Reiser has common authority over the cabin and could consent to a search of the cabin.

Additionally, as announced in *Rodriguez*, a consent search is valid if the officer reasonably believed that the party had apparent authority to consent to the search. Here, Ristroph could, and did, reasonably believe that Reiser had common authority over the cabin. Ristroph knew that

Reiser was Petitioner's girlfriend and knew that she lived in the cabin with him. R. at 12. Moreover, Reiser opened the door and let Ristroph inside. *Id*. Based on these facts, Ristroph reasonably determined that Rieser had apparent authority over the cabin, and thus, applying *Rodriguez*, the search was reasonable under the Fourth Amendment.

Moreover, Reiser's consent to the search was voluntary. Voluntariness is a question of fact which is to be determined based on the totality of the circumstances. *Schneckloth v. Bustamonte*, 412 U.S. 218, 249 (1973). Here, there are no facts in the record that illustrate that the consent Reiser gave was made under duress or coerced by law enforcement. In fact, Reiser states that she let Ristroph inside the cabin to conduct his search. R. at 15. Therefore, absent any coercion, or threats of force, it is clear that Reiser voluntarily consented to the search by allowing Ristroph into her cabin.

b. THE GOVERNMENT LAWFULLY SEARCHED THE BOX BECAUSE IT WAS REASONABLE TO ASSUME THAT REISER HAD APPARENT AUTHORITY OVER THE BOX.

The probable cause and warrant requirements of the Fourth Amendment are not applicable where a party consents to a search, *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973), where a third party with common control over the searched premises consents, *Florida v. Jimeno*, 500 U.S. 248 (1991), or where an individual with apparent authority to consent does so, *Illinois v. Rodriguez*, 497 U.S. 177 (1990). Generally, consent to search a space includes containers within the space. *Florida v. Jimeno*, 500 U.S. 248, 251 (1991).

A circuit split exists on the issue of whether law enforcement officers must clarify the ownership of a container during a consent search based on apparent authority. The Second and Seventh Circuits have ruled that law enforcement does not need to inquire into the ownership of every container, while the Sixth and D.C. Circuits have adopted a more burdensome approach that

requires law enforcement to inquire into the ownership of any ambiguous container before searching. *See, United States v. Snype,* 441 F.3d 119, 136 (2d Cir. 2006); *United States v. Melgar*, 227 F.3d 1038, 1041 (7th Cir. 2000); *United States v. Peyton*, 745 F.3d 546 (D.C. Cir. 2014); *United States v. Taylor*, 600 F.3d 678 (6th Cir. 2010).

Here, the Fourteenth Circuit properly adopted the standard from the Second and Seventh Circuits, which allows law enforcement officers to proceed in a search of containers when they reasonably believe that the third-party consenting to the search has apparent authority over the container. This standard follows the touchstone that governs much of Fourth Amendment jurisprudence: reasonableness.

i. CONTAINERS LOCATED WITHIN THE BOUNDS OF A LAWFUL SEARCH MAY BE SEARCHED WITHOUT FURTHER INQUIRY OR AUTHORIZATION.

In general, "consent to search a space includes consent to search containers within that space where a reasonable officer would construe the consent to extend to the container." *United States v. Melgar*, 227 F.3d 1038, 1041 (7th Cir. 2000) (citing *Florida v. Jimeno*, 500 U.S. 248, 251 (1991)). This Court has held that "a lawful search of fixed premises generally extends to the entire areas in which the object of the search may be found and is not limited by the possibility that separate acts of entry or opening may be required to complete the search." *United States v. Ross, 456* U.S. 798, 820-21 (1982)[2]. However, providing consent, alone, "does not determine the scope of that consent." *United States v. Lemmons*, 282 F.3d 920,924 (7th Cir. 2002). The consenter is free to limit the scope of the consent and may exclude particular containers to be searched. *Florida v.*

[2] While *Ross* deals with a search of containers within an automobile, which generally experience a lesser expectation of privacy than a home, the Court clarified that "[w]hen a legitimate search is under way, and when its purpose and its limits have been precisely defined, 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." *456* U.S. 798, 820-21 (1982).

Jimeno, 500 U.S. 248, 252 (1991). The scope of consent is judged by an objective reasonableness standard. *Id*. If one's consent would "reasonably be understood to extend to a particular container, the Fourth Amendment provides no grounds for requiring a more explicit authorization." *Id*.

Here, Reiser consented to the search of the cabin, including the common areas within the cabin. R. at 36. Reiser indicated to Ristroph that Petitioner used the second-floor loft for storage, and Ristroph accordingly limited his search to the first floor of the cabin. *Id*. Reiser did not limit the scope of her consent to exclude the stairs or the loft; she merely instructed Ristroph that Petitioner used the loft for storage. *Id*. The box was found on the bottom of the stairs, which were situated in the living room, undoubtably a common area of the cabin. *Id*. Reiser did not instruct Ristroph on the ownership of the box or provide any information that would have given Ristroph the impression that the box was Petitioner's. *Id*. More, the box was situated in plain view in a common area of the cabin. At no point in his search did Ristroph enter into a space that he knew to be controlled solely by the Petitioner. Based on these facts, Ristroph reasonably believed that Reiser had apparent authority over the box and was able to lawfully search the box.

ii. THE DISTRICT COURT PROPERLY ADOPTED THE STANDARD FROM THE SEVENTH AND SECOND CIRCUITS, WHICH ALLOWS THE GOVERNMENT TO CONDUCT CONTAINER SEARCHES PURSUANT TO A CO-OCCUPANT'S CONSENT.

The Second and Seventh Circuits have adopted a standard for consent searches of containers that follows traditional Fourth Amendment jurisprudence and focuses on reasonableness. Under this standard, law enforcement may rely on a co-occupant's consent to search a container in a common area, and the government is under no obligation to clarify ownership of a container if there are no facts that form an objective basis that the container might not belong to the consenting party. *See, e.g., United States v. Snype,* 441 F.3d 119, 136 (2d Cir. 2006) and *United States v. Melgar*, 227 F.3d 1038, 1041 (7th Cir. 2000).

In *Melgar*, the Seventh Circuit determined that a co-defendant who had rented a hotel room had apparent authority to consent to the search of articles in the room that were not clearly the possession of someone else. 227 F.3d 1038, 1041. Thus, the court found that a search of a purse that did not belong to the consenting party was permissible because there were no facts that demonstrated that the purse did not belong to the consenting party. In *Snype,* the Second Circuit concluded that a third party's consent will validate a search of places or items in which another has a privacy interest if "two conditions are satisfied: the third party had (1) access to the area searched, and (2) either (a) common authority over the area; or (b) a substantial interest in the area; or (c) permission to gain access to the area." 441 F.3d 119, 136. The Second Circuit held that a resident of an apartment who has access and authority to "consent to a search of the premises permits the search and seizure of any items found in the apartment with the exception of those 'obviously' belonging to another person." *Id*.

Here, following the Second and Seventh Circuits lead, the Fourteenth Circuit found that because Ristroph did not have any positive knowledge that the box belonged to Petitioner, the search of the container was reasonable. The box was located in an area in which Ristroph reasonably concluded Reiser had apparent authority over. While Reiser did provide Ristroph with notice that she rarely goes up into the loft, and that Petitioner stores his personal items in the loft, it is reasonable to assume that due to the location of the stairs in a common area (the living room), and the box being on the second to last step near the floor, that the box was located in the common area of the cabin. R. at 57. Furthermore, it is reasonable to assume that even if Reiser did not have common authority over the stairs and the loft, that as a co-tenant and the girlfriend of Petitioner, that she would at least have "permission to gain access of the area." *Snype* at 136. Additionally, the box was not labeled with anything that would indicate that it was owned by Petitioner, nor was

it found in an area that was under the sole control of Petitioner. R. at 57. Therefore, nothing about the box indicated that it "obviously belonged" to Petitioner. *Snype* at 136. Consequently, Ristroph did not have an "objective basis" to believe that the box belonged to Petitioner, and the search was reasonable. *Id.*

c. THE STANDARD ADOPTED BY THE SIXTH AND D.C. CIRCUITS IS ANTITHETICAL TO THE COURT'S FOURTH AMENDMENT PRECEDENT.

The analysis courts must utilize to determine if a Fourth Amendment violation has occurred is to determine whether such actions were reasonable. *Rodriguez* at 186 ("[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; and all the Fourth Amendment requires is that they answer it reasonably.").

The Sixth Circuit and the D.C. Circuit have deviated from the basic "reasonableness" analysis and instead imposed a higher burden on law enforcement when it comes to consent searches by individuals with apparent authority over closed containers. In *United States v. Peyton*, the D.C. Circuit held that law enforcement acted unreasonably by searching a shoe box that was located in the living room when they knew that the defendant's bed was in the living room and were told that he kept his personal items in the living room. 745 F.3d 546. In that case, the court found that the consenting party had apparent authority over the shared space (the living room) but did not have apparent authority over the shoebox found in the living room. The court held that officers should have inquired further to determine if the consenting party had authority before searching the shoebox. In *United States v. Taylor*, the Sixth Circuit held that a tenant lacked authority to consent to the search of a shoebox which was in a room that did not belong to the tenant, the officers believed that the box belonged to the defendant, and not the consenting tenant,

and the defendant took steps to manifest his expectations of privacy over the shoebox, such as covering it with clothes and storing it in a closed closet. 600 F.3d 678 (6th Cir. 2010).

However, the standard adopted by the Sixth and D.C. Circuits defies the logic that this Court has utilized in other Fourth Amendment container search cases. In *Wyoming v. Houghton*, this Court rejected a requirement for officers to have positive knowledge that a passenger's container contains evidence of a crime to search it. Following traditional Fourth Amendment jurisprudence, and utilizing the traditional reasonableness analysis, the Court made clear that obtaining permission via a search warrant or consent of each container to be searched would prevent law enforcement officers from obtaining evidence of a crime, especially in cases where the law enforcement need weighs heavier than "a personal-privacy interest that is ordinarily weak." *Wyoming v. Houghton* 526 U.S. 295, 306 (1999).

Following this logic, the Seventh and Second Circuits concluded that adopting a rule that would require law enforcement to inquire about the ownership of every container to be searched within a dwelling would be "an impossible burden on the police". 227 F.3d 1038, 1041. In *Rodriguez*, this Court held that when it comes to the question of "facts bearing upon the authority to consent to a search," namely the apparent authority issue, "all the Fourth Amendment requires is that [law enforcement] answer it reasonably." at 186. Therefore, the decision by the Fourteenth Circuit to adopt the standard utilized by the Seventh and Second Circuits is proper, as it is aligned with this Court's precedent.

d. EVEN IF THE COURT WERE TO ADOPT THE STRICTER STANDARD APPLIED BY THE SIXTH AND D.C. CIRCUITS, THE EVIDENCE WOULD BE ADMISSIBLE.

In *Taylor*, the Sixth Circuit considered several factors to determine that the ownership of a shoebox left in a closet was ambiguous and that the consenting party did not have apparent authority over it. 600 F.3d 678, 685. The factors the court considered were: 1) the type of container

and whether it "historically command[ed] a high degree of privacy,", 2) whether the container's owner took any precautions to protect his privacy, 3) whether the consenting party initiated the police involvement, and 4) whether the consenting party disclaimed ownership of the container. *Id*. (citing *United States v. Salinas-Cano*, 959 F.2d 861, 864 (10th Cir. 1992)).

Here, these factors would weigh in favor of the government. First, a cardboard box is not a type of container that historically demands a high degree of privacy. 600 F.3d 678, 685 (citing *United States v. Block*, 590 F.2d 535, 541 (4th Cir. 1978)). Second, Petitioner did not take any precautions to protect his privacy. The box was not sealed shut with tape, nor did it have any identifying information on it that would indicate that it was private. R. at 15. More, the box was located in plain view, visible from a common space in the cabin. *Id*. Therefore, it cannot be said that Petitioner took any steps to protect his privacy interest in the box. Third, while Resier did not initiate the search by the police, she allowed them to enter into the cabin and did not give any limiting instructions for the search other than that the loft is primarily used by the Petitioner. And fourth, Reiser did not disclaim ownership of the box. Here, with at least three out of four factors weighing in favor of the government, it can be said that even under the Sixth Circuit's burdensome standard, that law enforcement acted reasonably in searching the box.

In *Peyton*, the D.C. Circuit hinged its analysis on the fact that law enforcement had positive knowledge that the container to be searched was not owned by the consenting party. 745 F.3d 546, 555. There, the consenter told police that the defendant kept his personal items by the bed in the living room. *Id. a*t 554. Officers ignored the comment and searched the box by the bed. *Id.* The court held that the search was improper because officers knew that consenting party did not have authority over the container that they searched. *Id.* (citing *United States v. James*, 353 F.3d 606,

615 (8th Cir. 2003) "it cannot be reasonable to rely on a certain theory of apparent authority, when the police themselves know what the consenting party's actual authority is.")

Here, two important distinctions exist between the facts in *Peyton* and the present case. First, in *Peyton*, officers searched and area that they knew to be under the sole control of the defendant and not the consenting party, and thus a violation occurred. Whereas here, the box was located in a common area of the cabin that was mutually accessible by Reiser. Second, in *Peyton*, officers were told directly by the consenting party that the defendant kept his personal belongings where they conducted their search. Here, Ristroph had no positive knowledge from Reiser that the box belonged to Petitioner. Therefore, in this case, no ambiguity existed as to whether or not Reiser had apparent authority over the box. Even under the stricter *Peyton* standard, the search of Petitioner's box would likely be reasonable due to the lack of ambiguity, and the lack of information that law enforcement had regarding the ownership of the box at the time of the search.

We therefore respectfully request this Court to affirm the decision of the Fourteenth Circuit to deny Petitioner's motion to suppress the evidence found in the box.

III. RULE 806 DOES NOT ALLOW FOR EXTRINSIC EVIDENCE TO BE PRESENTED AT TRIAL WHEN READ IN RELATION TO RULE 608(B).

The Fourteenth Circuit correctly excluded the admission of the extrinsic evidence pursuant to Rule 608(b). Petitioner's main contention is that the court erred in excluding extrinsic evidence of an unavailable hearsay declarant's prior conduct to impeach her character under Rule 806. Rule 806 permits a declarant's credibility to be attacked when a hearsay statement under Rule 801(d)(2)(C), (D), or (E) has been admitted into evidence. Fed. R. Evid. 806. If the evidence is admitted, the party can be called as a witness and examined. Fed. R. Evid. 806. However, this rule does not supersede any of the other rules of evidence. Under Rule 608(b), extrinsic evidence is not

permitted to prove instances of a witness's past conduct to prove the current conduct in question. Fed. R. Evid. 608(b).

a. THE FACT THAT THE DECLARANT WAS UNAVAILABLE DOES NOT PERMIT THE EXTRINSIC EVIDENCE TO BE ADMITTED UNDER RULE 806.

When looking at the Federal Rules of Evidence, this Court must apply the plain meaning of the text unless it creates an absurd result that would materially alter the goal of the rule. *United States v. Bauzó-Santiago*, 867 F.3d 13, 18 (1st Cir. 2017). The Third Circuit carefully analyzed Rule 806 and concluded that its plain language clearly does not permit it to serve as a substitute for evidence prohibited by Rule 608(b). *Saada*, 212 F.3d 210, 222. Rule 806 has a specific purpose; it "[c]ures any problem over the admissibility of a non-testifying declarant's prior inconsistent statement by providing that evidence of the statement 'is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain.'" *Saada*, 212 F.3d 210, 221; *United States v. Wali*, 860 F.2d 588, 591 (3d Cir. 1988).

Rule 806 allows a party to admit evidence to attack a declarant's credibility and subject that person to testify as if they were a witness:

> "When a hearsay statement—or a statement described in Rule 801(d)(2)(C), (D), or (E)—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....If the party against whom the statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if on cross-examination."

Fed. R. Evid. 806.

The issue of permitting extrinsic evidence when a declarant is unavailable to attack creditability has already been answered in *United States v. Saada*, 212 F.3d 210, 221 (3d Cir. 2000). In *Saada*, the Third Circuit determined whether Rule 806 broadened and effectively circumvented the limitations imposed by Rule 608(b). *Id*. at 220. Here, the court rejected the argument that Rule

806 authorized the admission of extrinsic evidence, concluding that the witness' unavailability rendered the argument unpersuasive. *Id.* at 221.

The Third Circuit set out two distinct reasons for refusing to allow extrinsic evidence to impeach an unavailable declarant. First, because the factual scenario of a case makes it impossible to fall within the form of a rule, it does not mean the court will interpret it to fit its factual circumstances as needed. 212 F.3d 210, 221. The *Saada* court found that Rule 608(b) expressly barred Rule 806 for allowing evidence of a declarant past conduct even when the declarant is unavailable. 212 F.3d 210, 221. Second, the fact that one method of impeachment is unavailable does not permit a party to disregard other evidentiary rules simply because the preferred method is ineffective under the existing facts. *Id*. at 221. Ultimately, the mere fact that the circumstance does not align perfectly with the evidentiary framework does not authorize deviation from the established rules. *Saada*, 212 F.3d 210, 222.

Similarly, other circuits have held that Rule 806 is not a tool that allows parties to circumvent other rules of evidence. *United States v. Finley*, 934 F.2d 837, 839 (7th Cir. 1991); *United States v. Shayota*, N.D.Cal. No. 15-CR-00264-LHK, 2016 U.S. Dist. LEXIS 145065, at *20 (Oct. 19 2016) (finding with the Third Circuit that extrinsic evidence is not admissible when the declarant is unavailable under Rule 608(b)); *United States v. White*, 116 F.3d 903, 920 (D.C. Cir. 1997) (finding that Rule 806 does not allow for extrinsic evidence to be admitted even when declarant is unavailable) (citing *United States v. Morrison*, 98 F.3d 619, 628 (D.C. Cir. 1996) (agreeing that Rule 608(b) bars the inquiring into a declarants past conduct in order to prove the current conduct in question.)).

In this case, Petitioner attempted to utilize Rule 806 to impeach the character of Iris Copperhead based on a statement elicited during Theodore Kolber's direct examination.

Specifically, Petitioner sought to demonstrate Copperhead's alleged history of untruthfulness by introducing extrinsic evidence, namely, a copy of a letter from the Academic Integrity board and a job application. R. at 9-10. The Fourteenth Circuit and the District Court correctly held that such use of extrinsic evidence is expressly prohibited under Rule 608(b), as it impermissibly seeks to show that Copperhead's prior conduct proves the conduct at issue in this case.

The court permitted as an Excited Utterance under Rule 803(2), the following statement: "I cannot 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. at 43. This statement was admitted because the declarant, Copperhead, was unavailable, due to having tragically passed away before trial. R. at 46. Nevertheless, Rule 608(b) remains clear in its prohibition against admitting evidence of a witness's past conduct to prove the present conduct at issue. Fed. R. Evid. 608(b).

Accordingly, the Supreme Court should follow the Fourteenth Circuit's well-reasoned approach, which provides a clear and consistent standard by upholding the plain language of Rule 608(b) and rejecting attempts to use Rule 806 to carve around its explicit ban. Aligning with the Fourteenth Circuit will promote predictability in the application of the law, ensuring fairness and clarity in future cases.

b. PETITIONER IMPROPERLY RELIES ON *UNITED STATES V. FRIEDMAN* SINCE IT FAILS TO INTERPRET RULE 608(B) CORRECTLY.

The Second Circuit improperly interpreted the scope and meaning of Rule 608(b), which states:

> "Except 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. However, the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:(1) the witness; or (2) another witness whose character the witness being cross-examined has testified about."

Fed. R. Evid. 608(b).

Rule 806(b) unequivocally prohibits exceptions and offers no deference to courts, regardless of the particular facts of a case. The Second Circuit improperly reinvents the process for applying Rule 806, deviating from the clear rule adopted in the Federal Rules of Evidence, and instead adopting a case-by-case approach that muddies the rule's application. The Second Circuit skirts the traditional rule by adopting a standard that allows the court to admit evidence "by comparing the circumstances of the past conduct with those surrounding the hearsay statements admitted into evidence." *Friedman*, 854 F.2d 535, 570. (2d Cir. 1988).

Here, the Second Circuit oversteps its authority. The Rules of Evidence are not tools that can be twisted and used in any manner that a party sees fit. Rather, the Rules are clear in that they set up boundaries that must be followed by the courts. These boundaries are found in the text of the rules, not in the court's adoption of abstract tests when a set of facts does not perfectly fit the mold of the rules typically governing. Therefore, this Court should adopt the findings of the Fourteenth Circuit and apply the traditional, plain meaning of Rule 806(b).

Additionally, Rule 609 states that evidence of prior criminal convictions will be admitted if they are related to the truthfulness of the declarant. Fed. R. Evid. 609. Under this rule, if the declarant has been convicted in the past, then those convictions could be admitted as extrinsic evidence to impeach the witness under Rule 613(b). Fed. R. Evid. 613(b). Importantly, this exception only applies to criminal convictions, not general accusations of character for untruthfulness. Here, Petitioner attempts to relate Copperhead's conduct of making false statements on a job application and her use of AI on her school project to criminal conduct. R. at 46-49. However, no court has allowed the narrow criminal conviction exception to apply to evidence generally related to untruthfulness that has not resulted in a criminal conviction. *Finley*, 934 F.2d 837, 839; *Saada*, 212 F.3d 210, 221; *White*, 116 F.3d 903, 920.

c. THE TRIAL COURT ACTED WITHIN ITS DISCRETION AND FOUND EXTRINSIC EVIDENCE INADMISSIBLE BECAUSE IT WAS UNRELATED TO THE CRIME AT ISSUE.

The Confrontation Clause of the Sixth Amendment grants a defendant the right to confront and cross-examine the witnesses brought against them. U.S. Const. amend. VI. The Sixth Amendment allows defendants to cross-examine witnesses, enabling them to present a witness's tone, story, body language, and overall testimony in response to questions posed by their counsel. *United States v. Hamilton*, 107 F.3d 499, 503 (7th Cir. 1997). Though this legal concept is extremely important to the functioning of the legal system, the trier of fact has broad authority over the probative information to be admitted during a trial. *United States v. Friedman*, 854 F.2d 535, 570 (2d Cir. 1988) (citing *United States v. Bari*, 750 F.2d 1169, 1178 (2d Cir. 1984)). If this Court is to adopt the approach by the Second Circuit to allow courts to engage in case-by-case adjudications of admitting evidence as in the present scenario, the evidence at issue was still properly excluded because the trial court utilized its discretion to determine that the probative value of the evidence Petitioner sought to admit was not related to the crime at issue.

In *Friedman*, the Second Circuit found that the trial judge was within his authority not to admit the statements of a false abduction story to show a substantive relationship to the credibility of the furtherance to the overall conspiracy. *Friedman*, 854 F.2d 535, 570. In deciding when the "declarant's past conduct may actually 'cast doubt on the credibility of [his] statements,'" the court must make the determination "by comparing the circumstances of the past conduct with those surrounding the hearsay statements admitted into evidence." *Id*. at 569 (citing *United States v. Serna*, 799 F.2d 842, 850 (2d Cir. 1986)). The statement that was excluded was made by the witness, Manes, which detailed a false story of an abduction in which he blamed the injuries he sustained on another person. *Id*. In turn, Friedman attempted to use this statement as evidence to impeach Manes's character for truthfulness. *Id*. The court found no relation to the past conduct and

the crime, and stated that "[t]here is simply no merit to the suggestion that the incident casts doubt upon the credibility of Manes's conspiratorial declarations." *Id*. The Second Circuit found that "the evidence was properly excluded because it was simply not probative on the issue of the credibility of Manes's conspiratorial statements" in the crime that the court was reviewing. *Id*. at 569.

Here, the trial court judge, like the judge in *Friedman*, appropriately exercised discretion in excluding evidence, determining that the probative value of the evidence was low where there is not a strong relationship between the past conduct and the conduct under examination. R. at 50. Here, Petitioner sought to introduce evidence of Copperhead lying on a job application and utilizing AI on a school project. The court properly excluded the evidence, making the determination that the evidence was not relevant to the crime in question that is, the kidnapping of a federal officer. In fact, the evidence demonstrated a weak attempt to undermine the witness's credibility. The evidence Petitioner tried to admit failed to establish any connection between Copperhead's conduct and the crime in question. The evidence provided no proof of violent or criminal behavior in the declarant's past conduct that would demonstrate relation to the crime. Rather, the evidence Petitioner sought to admit merely indicated that Copperhead did not possess a college degree, contrary to her claim on the job application. R. at 10.

It should not be the position of this Court to engage itself in a lengthy fact-finding analysis to determine the probative value of evidence, or its relation to the crime being tried. That is a job that is best left to the trial court, which is naturally able to have a deeper understanding of the factual background of the matter. Absent clear abuse, the determination of the lower court to exclude the evidence should not be overturned. *United States v. Bari*, 750 F.2d 1169, 1178 (2d Cir. 1984). Moreover, the evidence Petitioner attempted to admit does not correlate to behavior that could reasonably be expected to suggest an intention to kidnap a federal officer. Therefore, the trial

court's decision to exclude this evidence was both justified and necessary to maintain the integrity of a fair trial, and the application of Federal Rules of Evidence.

Therefore, we respectfully ask this court to affirm the Fourteenth Circuit Court of Appeals decision regarding the exclusion of evidence.

CONCLUSION

For the foregoing reasons, we respectfully request that this Court affirm the decision of the Fourteenth Circuit Court of Appeals.