Team 28P – Original

No. 25-7373

IN THE

SUPREME COURT OF THE UNITED STATES

ATTICUS HEMLOCK

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FOURTEENTH CIRCUIT

BRIEF FOR PETITIONER

Counsel for Petitioner

QUESTIONS PRESENTED

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

II. Whether, under the Fourth Amendment, officers are permitted to rely on third-party consent to search a closed container located at the access point to an area not regularly used by the consenter, where the consenter disclaimed knowledge of the container, and officers asked no clarifying questions.

III. Whether, under Rule 806 of the Federal Rules of Evidence, when the government introduces an unavailable declarant's out-of-court statements for their truth, defendants are entitled to impeach the declarant with extrinsic evidence bearing on character for truthfulness.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CONSTITUTIONAL AND STATUATORY PROVSIONS:

OTHER AUTHORITES:

OPINION BELOW

The judgment of the United States Court of Appeals for the Fourteenth Circuit, Atticus Hemlock v. United States of America, No. 24-1833, was entered April 15, 2025, and may be found in the Record. (R. 51-61).

CONSTITUTIONAL PROVISIONS

The text of the relevant constitutional provisions appear below.

The Fourth Amendment to the United States Constitution provides:

> 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 to the United States Constitution provides:

> 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 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 defense.

U.S. Const. amend VI.

STATEMENT OF THE CASE

I. Statement of Facts

On April 2, 2024, two FBI agents approached Mr. Hemlock's cabin located in a densely wooded area. (R. 11, 20). The main door was open, but the screen door was closed, so the officers could see into the home. (R. 21). The officers knocked loudly on the doorframe several

times. (R. 11). Each officer wore a large tool belt with a gun, taser, flashlight, and a baton. (R. 25). Once Mr. Hemlock stood in the doorway, behind the screen door, officers declared they were FBI agents conducting an investigation. (R. 11). The officers firmly stated they had to speak with him and asked Mr. Hemlock to come outside. (R. 11). Mr. Hemlock declined to come outside and stated his discomfort speaking with the officers. (R. 11). Officers repeatedly asked Mr. Hemlock to come outside with increasing volume and aggressive language while refusing to answer Mr. Hemlock's questions. (R. 11). Mr. Hemlock continued to state his discomfort and asked the officers to leave. (R. 11). Seeing Mr. Hemlock's distress, the officers said they would "come back another time." (R. 11). Mr. Hemlock reiterated his refusal to cooperate. (R. 11).

The officers went back to their car, still in view of the cabin, and formulated a plan to arrest Mr. Hemlock outside his home. (R. 12 ("We'll get him to come outside and then we'll arrest him")). The officers at no time discussed getting a warrant. (R. 11-12). The officers, with an intent to arrest Mr. Hemlock, reapproached the house and ordered Mr. Hemlock outside. (R. 12, 26). Mr. Hemlock could clearly see the officers with their hands on their holsters and in response to their commands, opened the door and left his home. (R. 12, 26). Once Mr. Hemlock stepped past the last stair at the bottom of his porch, the officers handcuffed him. (R. 12, 26).

After Mr. Hemlock was arrested, another FBI agent, Officer Ristroph, lingered near the cabin to wait for Mr. Hemlock's girlfriend, Ms. Reiser. (R. 13). Approximately twenty minutes later, Ms. Reiser arrived at the cabin. (R. 13). After she entered, Officer Ristroph knocked, declared himself as an FBI agent, and informed her that Mr. Hemlock had been arrested. (R. 13). Ms. Reiser asked why Mr. Hemlock had been arrested and what Officer Ristroph was looking for. (R. 16) Officer Ristroph vaguely responded that he was there for an investigation. (R. 16).

Officer Ristroph then asked if he could "take a look around the residence," and Ms. Reiser allowed him inside. (R. 13, 16).

Officer Ristroph began his search in the kitchen, then moved briefly through the living room. (R. 13, 16). He saw a set of stairs leading to a second-floor loft and asked Ms. Reiser what was upstairs. (R. 13, 16). In Officer Ristroph's investigation report, he stated Ms. Reiser claimed she and Mr. Hemlock used the loft area as an office and storage space. (R.13). However, in Ms. Reiser's statement under oath she explained Officer Ristroph asked if they slept up there and Ms. Reiser said no. (R.15). Ms. Reiser then stated, "I told him the stairs led to the loft, which Atticus used as storage and an office space. He asked me what Atticus kept up there, and I said that I did not know because I did not really ever go up there." (R.15).

After hearing this, Officer Ristroph did not enter the loft and stated that he confined his search to the first floor. (R. 13). As Officer Ristroph continued through the living room area toward the stairway, he noticed an old cardboard box sitting on one of the bottom steps of the staircase. (R. 13). The box was closed, unlabeled, and bore no identifying information on its exterior. (R. 13, 14). The stairs on which the box sat led only to the loft. (R. 17). Without asking Ms. Reiser any questions about the box or its ownership, Officer Ristroph opened the closed flaps. (R. 13, 16). Inside, he found rope, ski masks, gloves, zip ties, a folding knife, duct tape, and bottles of chloroform. (R. 13-14). Ms. Reiser denied having seen the contents of the box before and later stated that she believed Mr. Hemlock had left the box on the stairs to bring it up to the loft. (R. 13, 16). She said the items appeared to be things Mr. Hemlock and his friend, Iris Copperhead, used on outdoor excursions. (R. 13, 16). Officer Ristroph removed the box and its contents from the cabin as evidence. (R. 13, 16). In denying the motion to suppress, the district

court emphasized that ownership of the cardboard box was "ambiguous" at the time of the search. (R. 39).

That same afternoon, Theodore Kolber went on a typical walk in Joralemon State Park at around 4:00 PM. (R. 41). Around 10 minutes into the walk, a woman later identified as Ms. Copperhead, came "bursting out of the woods onto the path." (R. 42). She was crying while "white as a ghost," and had cuts from branches and thorns. (R. 42). Mr. Kolber had a brief description of her general appearance, although he had never met her before, and their interaction was under 30 seconds. (R. 43). Mr. Kolber stated the woman yelled "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. 43). Ms. Copperhead passed away that night from an aortic rupture and is therefore an unavailable witness. (R. 46). The next morning, Mr. Kolber called the police after seeing Ms. Copperhead's mugshot in the local paper. (R. 44-45). The judge allowed Ms. Copperhead's statement into evidence as an excited utterance. (R. 43). Petitioner, for purposes of impeaching a declarant for trustworthiness, wishes to introduce Ms. Copperhead's clear violation of academic policies at Court Street College, and the subsequent falsified job application for a position at the Boerum Village Mayor's Office. (R. 9-10).

II. Procedural History

Prior to trial, Mr. Hemlock filed a motion to suppress (1) a notebook, the fruit of an illegal arrest, and (2) the contents of a sealed carboard box, searched without apparent authority. (R. 19, 31-32, 38-39). The trial court denied both motions. (R. 38-39). Additionally, Mr. Hemlock moved to impeach Ms. Copperhead for truthfulness via extrinsic evidence. (R. 47). The trial court sustained the Government's objection. (R. 50).

Mr. Hemlock was ultimately convicted of attempted kidnapping of an officer of the United States government on account of the officer's official duties and filed a timely appeal. (R. 51). The Fourteenth Circuit later affirmed each of the trial court's conclusions, holding: (I) the warrantless arrest did not violate the Fourth Amendment, (II) evidence from a closed container was properly searched, and (III) extrinsic evidence is not admissible to impeach an unavailable declarant's out-of-court statement. (R. 51-52). On December 2, 2025, this Court granted Mr. Hemlock's petition for a writ of certiorari. (R. 62).

SUMMARY OF THE ARGUMENT

The Fourth Amendment guarantees citizens the right to be secure in their homes from unreasonable seizure. Because the Fourteenth Circuit erred by limiting *Payton* violations to physical entry of the home, this Court should reverse their decision and adopt the constructive entry doctrine which aligns with Fourth Amendment principles. In this case, the officers engaged in coercive tactics to lure Mr. Hemlock away from the protections afforded to him inside his home. But this case is not just about the rights of Mr. Hemlock—this is about the rights of all citizens in the United States. Upholding the Fourteenth Circuit's decision would allow law enforcement officers to coerce individuals outside their homes for an unconstitutional arrest so long as the officers do not cross the physical threshold of the front door. Accordingly, the judgement should be reversed.

The Fourth Amendment does not permit officers to search a closed container inside a shared residence unless, at the moment of the search, they possess an objectively reasonable basis to believe the consenting occupant exercised joint access or control over the specific item searched. The Fourteenth Circuit erred by treating uncertainty about ownership as sufficient to establish apparent authority and allowing officers to resolve doubt through intrusion rather than

inquiry. Even assuming some authority to enter shared areas, a general consent to search does not automatically extend to closed containers where the surrounding circumstances would not reasonably be understood to permit that intrusion. By collapsing apparent authority and scope of consent into a rule that treats ambiguity as authorization, the Fourteenth Circuit relieved the Government of its burden to justify a warrantless search. Because the search cannot be sustained under either apparent authority or the scope of consent, the judgment should be reversed.

The Fourteenth Circuit erred by excluding extrinsic impeachment evidence after admitting Ms. Copperhead's out-of-court statements for their truth. Federal Rule of Evidence 806 permits attacks on credibility using any evidence that would be admissible if the declarant had testified. Rule 806 operates independently of Rule 608(b) where the declarant is unavailable, as importing Rule 608(b)'s extrinsic-evidence bar would insulate hearsay declarants from meaningful credibility challenges and defeat the Rule's purpose. The excluded evidence—Ms. Copperhead's academic misconduct and falsified job application—directly reflects dishonesty, is highly probative of the reliability of her accusations, and poses minimal risk of unfair prejudice under Rule 403. Because the Government's case relied heavily on Ms. Copperhead's hearsay accusations, the exclusion deprived the jury of essential information for assessing credibility, which is required under the Sixth Amendment. Therefore, the judgment should be reversed.

This court should reverse the Fourteenth Circuit's decision and accordingly hold (I) the Fourth Amendment is violated when law enforcement officers constructively enter the home, (II) the narrow approach to apparent-authority where law enforcement must ask questions when faced with ambiguity regarding the ownership of a closed and unmarked container to amount to reasonable law enforcement work (III) extrinsic evidence is admissible to impeach an unavailable declarant's out of court statement.

ARGUMENT

I. Officers violated Mr. Hemlock's Fourth Amendment right to privacy by constructively entering his home.

This Court should reverse the Fourteenth Circuit because they erred in limiting the interpretation of *Payton v. New York* to physical entry of the home. (R. 54-55). Accordingly, this Court should hold constructive entry violates the Fourth Amendment. (R. 54-55). While the standard of review for factual findings is clearly erroneous, the standard of review for the application of constitutional standards is *de novo* to ensure uniformity and clarity in legal principles. *Ornelas v. United States*, 517 U.S. 690, 697 (1996); *United States v. Watson*, 273 F.3d 599, 602 (5th Cir. 2001).

The Fourth Amendment provides "[t]he right of the people to be secure in their . . . houses. . . from . . . unreasonable. . . .seizures." U.S. Const. amend. IV. This Court has previously held the "the Fourth Amendment protects people, not places." *Katz v. United States*, 389 U.S. 347, 351 (1967). "The Fourth Amendment protects *the individual's* privacy in a variety of settings," including one's home. *Payton v. New York*, 445 U.S. 573, 589 (1980) (emphasis added). "At the very core [of the Fourth Amendment] stands the right of man to retreat into his own home and there be free from unreasonable governmental intrusion." *Silverman v. United States*, 365 U.S. 505, 511 (1961).

"An arrest requires *either* physical force," such as handcuffing, or "*submission* to the assertion of authority." *California v. Hodari D*., 499 U.S. 621, 626 (1991) (emphasis in original). Submission to an assertion of authority occurs, only if under the circumstances, "a reasonable person would have believed that he was not free to leave." *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). The factors indicating when a person is "seized" include "the threatening presence of several officers, the display of a weapon by an officer, . . . or the use of language or

tone of voice indicating that compliance with the officer's request might be compelled." *Id.* "Entry . . . demanded under color of office" is granted "in submission to authority rather than as an understanding and intentional waiver of a constitutional right." *Johnson v. United States*, 333 U.S. 10, 13 (1948).

"Absent exigent circumstances [the home's] threshold may not be reasonably crossed without a warrant." *Payton*, 445 U.S. at 590. Constructive entry occurs when law enforcement, "while not entering the house, deploy overbearing tactics that essentially force the individual out of the home." *United States v. Thomas*, 430 F.3d 274, 277 (6th Cir. 2005). Coercive officer conduct is "such a show of authority that [the] [d]efendant reasonably believed he had no choice but to comply." *United States v. Morgan*, 743 F.2d 1158, 1166-67 (6th Cir. 1984). "[T]he location of the arrested person, and not the arresting agents, . . . determines whether an arrest occurs within a home." *United States v. Johnson*, 626 F.2d 753, 757 (9th Cir. 1980). "Opening the door to one's home is not voluntary if ordered to do so under color of authority." *United States v. Reeve*s, 524 F.3d 1161, 1167 (10th Cir. 2008). Because the Fourteenth Circuit erred in limiting *Payton* to physical entry of the home, this Court should reverse their decision and hold that constructive entry violates the Fourth Amendment. *Payton,* 445 U.S. at 590.

A. Constructive entry by officers violates Fourth Amendment principles that protect individuals in their home.

The constructive entry doctrine protects individual liberties and safeguards individuals' Fourth Amendment rights. *People v. Gillam*, 734 N.W.2d 585, 595-96 (Mich. 2007) (Kelly, J., dissenting). The doctrine recognizes that officers may not use coercive tactics and abuse of authority to violate the sanctity of someone's home to arrest them without a warrant. *See e.g. Reeves*, 524 F.3d at 1167; *Morgan*, 743 F.2d at 1166-67 (6th Cir. 1984); *Gillam*, 734 N.W.2d at

595-96 (Mich. 2007) (Kelly, J., dissenting) This Court in *Payton* noted the "overriding respect for the sanctity of the home that has been embedded in our traditions since the origins of the Republic." *Payton*, 445 U.S. at 601. Further, this Court "has 'refused to lock the Fourth Amendment into instances of actual physical trespass.'" *United States v. Allen*, 813 F.3d at 81 (2d Cir. 2016) (citing *United States v. United States District Court for E. Dist. of Mich.*, 407 U.S. 297, 313 (1972)). The *Payton* decision "emphasized the violation of the physical line that marks the home's boundary to bring that action within the scope of Fourth Amendment violations," but the Court did not suggest this line "marks the limit of Fourth Amendment protections." *See Payton*, 445 U.S. at 590; Steven Dow, *Step Outside, Please: Warrantless Doorway Arrests and the Problem of Constructive Entry*, 45 New Eng. L. Rev. 7, 19 (2010).

Previous Fourth Amendment cases emphasize the "right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Silverman*, 365 U.S. at 505; *Katz*, 389 U.S. at 347 (1967); *Payton*, 445 U.S. at 590; *Florida v. Jardines*, 569 U.S. 1, 1 (2013). The value of the home is not only the physical space but the protection and refuge it provides to the occupant. Dow, *supra* note 122*,* at 19. In accordance with this Court's assertion in *Katz*, "the Fourth Amendment protects people, not places," this court should adopt the doctrine of constructive entry as it recognizes an individual's privacy rights within their own home extends beyond physical entry. 389 U.S. 347, 351 (1967).

Although there is a circuit spilt regarding the application of the constructive entry doctrine, a majority of the circuits that have addressed the issue hold that constructive entry violates the Fourth Amendment. *Morgan*, 743 F.2d at 1166-67; *Johnson*, 626 F.2d at 757; *Reeve*s, 524 F.3d 1161, 1167; (R. 27). Under the narrow interpretation of *Payton* —which limits Fourth Amendment violations to only physical entry —law enforcement is able to evade the

warrant requirement by coercing occupants to leave their homes and enter public spaces to be arrested without a warrant. Dow, *supra* note 131, at 19. "A contrary rule [to constructive entry] would undermine the constitutional precepts emphasized in *Payton*." *Morgan*, 743 F.2d at 1166-67.

Central to Fourth Amendment cases is the balance between the public's right to effective law enforcement and an individual's privacy rights. *Payton*, 445 U.S. 573; *Terry v. Ohio*, 392 U.S. 1 (1968); *Mendenhall*, 446 U.S. 544, 554 (1980); *Florida v. Bostick*, 501 U.S. 429 (1991). When discussing the home, the balance shifts away from effective law enforcement and toward individual occupants as there is no place "the zone of privacy" is "more clearly defined than. . . the individual's home." *Payton*, *445* U.S. at 589. "Absent exigent circumstances . . . the occupant's interest in the sanctity of his home. . . outweighs the governmental interests." *Payton*, 445 U.S. at 603 (Blackmun, J. concurring). In applying the narrow test, circuits focus on the position of the arresting officer, not the individual being arrested. *See Knight v. Jacobson*, 300 F.3d 1272, 1277 (11th Cir. 2002). This analysis misinterprets Fourth Amendment protections by allowing officers to lure individuals from the protection of their home so long as officers do not physically cross the home's threshold. An analysis honoring Fourth Amendment protections makes the location of the arrested person, not the agents, the focal point of analysis, "[o]therwise, arresting officers could avoid illegal 'entry' into the home simply by remaining outside the doorway and controlling the movements of the suspect[] within." *Johnson*, 626 F.2d at 757.

B. By coercing Mr. Hemlock outside, the officers constructively entered his home.

Here, constructive entry occurred. Two officers came to Mr. Hemlock's home wearing large officer belts: each with a gun, taser, flashlight, and baton. (R. 11-12). The officers loudly

knocked on his doorframe several times, immediately declared themselves as FBI agents, showed their badges, and refused to answer Mr. Hemlock's questions. (R. 11-12). Mr. Hemlock repeatedly refused to cooperate with the officers and asked they leave. (R. 11-12). The officers continued to linger within view of the door of Mr. Hemlock's home and formulate a plan for his arrest. (R. 12, 26). The officers returned to the front of the house with the intent to arrest Mr. Hemlock by luring him away from his home. (R. 12, 26). Mr. Hemlock only came outside after seeing the officers with their hands on their holsters and hearing them demand his presence several times with loud, commanding voices and increasingly aggressive language. (R. 12, 26).

The conduct by the officers constitutes coercion because the "show of authority" by the officers led Mr. Hemlock to "reasonably believe[] he had no choice but to comply." *Mendenhall*, 446 U.S. at 554. The factors indicating when a person is "seized" include "the threatening presence of several officers, the display of a weapon by an officer, . . . or the use of language or tone of voice indicating that compliance with the officer's request might be compelled." *Id*. Here, two officers outnumbered Mr. Hemlock and visibly had their hands on the holsters that contained their weapons. (R. 11-12). The officers continually yelled for Mr. Hemlock to come outside after ignoring his request for them to leave him alone. (R. 11-12). Under the totality of the circumstances, no reasonable person would have felt free to ignore the officers' requests — especially after prior attempts failed. (R. 11-12). Only after multiple demands by the officers did Mr. Hemlock open his door and exit his home. (R. 12). Because Mr. Hemlock submitted to this "show of authority" while he was inside his home, the officers constructively entered the home in violation of his Fourth Amendment rights.

"Opening the door to one's home is not voluntary if ordered to do so under color of authority." *Reeves*, 524 F.3d at 1167. The Tenth Circuit has consistently held that officers do not

need to physically enter the home for *Payton* to apply as "it is the location of the arrested person, not the arresting agents, that determines whether an arrest occurs within the home." *United States v. Maez*, 872 F.2d 1444, 1451 (10th Cir. 1989). In *Reeves*, the defendant was staying at a motel when officers knocked on the door and windows with their flashlights while identifying themselves as police officers. *Reeves*, 524 F.3d at 1167. After twenty minutes of banging and yelling, the defendant came to the motel room door and stepped out of the room where he was taken into custody. *Id.* The Tenth Circuit upheld the rule that "*Payton* is violated where there is such a show of force that a defendant comes out of a home under coercion and submits to being taken in custody." *Id*. at 1167. The court further noted "that if an individual's decision to open the door to home to the police is not made voluntarily, the individual is seized inside his home." *Reeves*, 524 F.3d at 1168 (citing *United States v. Flowers*, 336 F.3d 1222, 1226 n. 2 (10th Cir. 2003). The court held that a reasonable person would not have felt free to ignore the officers' command to open the door. *Id.* When the defendant answered his door, it was in response to a show of authority by the officers and he was seized inside his home. *Reeves* 524 F.3d at 1169.

In the case at hand, Mr. Hemlock only opened the door after the officers reapproached his home and commanded he come outside with increasingly aggressive language. (R. 11-12). This alongside Mr. Hemlock's initial refusal to comply with the officer's requests and his own request the officers leave him alone show that a reasonable person under these circumstances would not have felt free to ignore the officers' commands. (R. 11-12). Mr. Hemlock opening the door was not voluntary because he was reacting to a "show of force" amounting to officer coercion; he was acting on an order under color of authority. *Reeves*, 524 F.3d at 1451. Because officers outside the home coerced Mr. Hemlock while he was inside his home, they constructively entered.

When the defendant opens the door to officers, but officers do not actually enter the home to make the arrest, constructive entry occurs if the individual is placed under arrest while inside the home. *United States v. Quatempts*, 411 F.3d 1046-49 (9th Cir. 2005). In *Quatempts*, four officers went to the defendant's trailer and one officer knocked on the door and said "[defendant's name], police officer. I need to talk to you." *Id.* The defendant responded by reaching over his bed and opening the door. *Id.* The officer told the defendant he was under arrest from outside the trailer. *Id.* Once the defendant stepped out, he was placed in handcuffs. *Id.* at 1047- 48. The court held that the police required a warrant for the arrest. *Id.* They emphasized the utmost privacy accorded to someone while inside their home and that "it is the location of the arrested person, not the arresting agents that determines whether an arrest occurs within a home." *Id.* at 1048 (quoting *United States v. Johnson*, 626 F.2d 753, 757 (9th Cir. 1980)).

In the case at hand, Mr. Hemlock remained inside his home behind the screen door when the officers initially spoke to him. (R. 11). It was not until the officers reapproached and commanded Mr. Hemlock come outside that he opened the door. (R. 12). The action of opening the door, done under color of authority, occurred while Mr. Hemlock was still inside his home. (R. 12). Because Mr. Hemlock submitted to the authority of the officers while inside, the arrest occurred with the home.

There is no showing a reasonable person would not feel free to end the encounter where the officers were not asked to leave, and the defendant lacked evidence showing he was not free to go about his business inside the home. *Gaddis v. DeMattei*, 30 F.4th 625, 632 (7th Cir. 2022). In *Gaddis*, three officers approached the defendant's front door and spoke with him through the screen door for 10 to 15 minutes. *Id.* at 628. The officers left for a short period and returned to

the defendant's porch and told him through the screen door he was arrested. *Id.* The defendant initially refused to come out but stepped outside once the officers told him he would be charged with resisting arrest. *Id.* The court declined to find constructive entry, relying on the rule that "the Fourth Amendment is not implicated when officers approach a doorway, knock, wait for an answer, and engage in conversation until asked to leave." *Id.* at 631 (citing *Jardines*, 569 U.S. at 8). In *Gaddis*, the court emphasized their holding that the interaction was consensual relied on the fact the defendant "never asked [the officers] to leave and presented no evidence that he was not free to close the door on them and go about his business." *Id.* at 632.

In the case at hand, the officer's actions would indicate to any reasonable person they were not free to go about their business. Mr. Hemlock clearly stated several times he did not want to speak with the officers or come outside and asked they leave him alone. (R. 11-12). The officers reapproached with increasingly aggressive language and demanded Mr. Hemlock come outside, which would indicate to any reasonable person they were not free to go about their business inside the home. (R. 12, 26). Because the officers refused to recognize Mr. Hemlock's right to request they leave him alone in his home, no reasonable person would believe he was free to ignore their demands.

Officer conduct does not rise to the level of constructive entry when there is no indication of drawn weapons, raised voices, or coercive demands on the part of law enforcement *Thomas*, 430 F.3d at 278. In *Thomas*, five officers drove to the defendant's home. *Id.* at 276. Two officers knocked on the back door. *Id*. When the defendant answered, the officers told him investigators wanted to talk to him and asked he come out of the residence; he complied. *Id.* The court held that the difference between a "permissible consensual encounter and an impermissible constructive entry ... turns on the show of force exhibited by" law enforcement *Id.* at 277. In

Thomas, the fact that there was no testimony indicating "drawn weapons, raised voices, or coercive demands" on the part of law enforcement only a "simple knock and request," led the court to the conclusion that there was no basis to find a reasonable person under these circumstances would believe he was under arrest or otherwise compelled to leave the house. *Id.* at 278.

Here, the facts indicate the officers' actions rose to an impermissible constructive entry because of their raised voices, refusal to leave, hands on their holsters and commands for Mr. Hemlock to come outside. (R. 11-12). In his testimony, one of the arresting officers admitted seeing two officers with their hands on their holsters would be intimidating. (R. 26). The officer noted his intent to lure Mr. Hemlock outside the protection of his home in order to have the authority to arrest him. (R. 26). After reapproaching Mr. Hemlock's home with their hands on their holsters, the officers ordered him outside with increasingly loud voices and aggressive language. (R. 12). Mr. Hemlock, having already asked the officers to leave and refusing to cooperate with their investigation, could clearly see their hands on their weapons and hear their yelling. (R. 12, 26). The actions by the officers amount to impermissible constructive entry because of the "show of force" by the officers would indicate to a reasonable person he was not free to leave. *Thomas*, 430 F.3d at 274.

"Absent exigent circumstances [the home's] threshold may not be reasonably crossed without a warrant." *Payton,* 445 U.S. at 590. Here, no exigent circumstances exist. (R. 1-62). Therefore, officers armed with enough information to "confirm [their suspicions]" are required to present the information to a detached magistrate to make a warrant determination before entering the home. (R. 12). This requirement upholds an individual's privacy rights in their home and ensures law enforcement complies with the legally required procedure. *McDonald v. United*

States, 335 U.S. 451, 455-56 (1948). Without the warrant restraint, Fourth Amendment protections would be void. *Johnson*, 33 U.S. at 14. Because the officers violated Mr. Hemlock's right to privacy in his home by constructively entering, the Fourteenth Circuit's finding that the arrest did not violate the Fourth Amendment should be reversed.

II. The Government's warrantless search of a closed container inside a shared residence, without a reasonable basis to believe the consenting occupant had authority or the scope of her consent included the container, violated the Fourth Amendment.

This Court should reverse the Fourteenth Circuit because it erred in its decision by failing to apply this Court's third-party consent and apparent authority doctrine properly to find a Fourth Amendment violation. This Court reviews *de novo* whether a warrantless search is reasonable under the Fourth Amendment, while accepting the lower court's findings of historical fact unless they are clearly erroneous. *Ornelas,* 517 U.S. at 697-99. Although factual findings and credibility determinations are entitled to deference, the ultimate constitutional determination of reasonableness is subject to this Court's independent judgment. *Id*. at 697-99.

The Fourth Amendment protects "the right of the people to be secure in their. . . effects, against unreasonable searches and seizures." U.S. Const. amend. IV. Warrantless searches are per se unreasonable unless they fall within a "specifically established and well-delineated exception." *Katz*, 389 U.S. at 354. One such exception this Court has found is when "[t]he authority which justifies the third-party consent rests on mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched." *United States v. Matlock*, 415 U.S. 164, 171 n.7 (1974). "As with other factual determinations bearing upon search and seizure, determination of consent to enter must be

judged against an objective standard: would the facts available to the officer at the moment warrant a man of reasonable caution in the belief that the consenting party had authority over the premises?" *Illinois v. Rodriguez*, 497 U.S. 177, 188 (1990). "Even when the invitation is accompanied by an explicit assertion that the person lives there, the surrounding circumstances could conceivably be such that a reasonable person would doubt its truth and not act upon it without further inquiry." *Id.* "If not, then warrantless entry without further inquiry is unlawful unless authority actually exists." *Id* at 188-89. Even where apparent authority exists, the scope of a consent search is measured by looking at "what… the typical reasonable person [has] understood by the exchange between the officer and the suspect[.]" *Florida v. Jimeno*, 500 U.S. 248, 251 (1991). The courts of appeals are divided on whether uncertainty regarding ownership or control of a closed container may itself support apparent authority, with some circuits holding that ambiguity triggers a duty to inquire before searching. *See United States v. Peyton*, 745 F.3d 546, 554–56 (D.C. Cir. 2014); *United States v. Waller*, 426 F.3d 838, 846-47 (6th Cir. 2005), Others have upheld searches where officers possessed no contemporaneous facts indicating exclusive ownership and relied on general consent alone. *See United States v. Melgar*, 227 F.3d 1038, 1041-42 (7th Cir. 2000); *United States v. Snype*, 441 F.3d 119, 136-37 (2d Cir. 2006).

Accordingly, the Fourteenth Circuit erred by upholding a search based on ambiguity rather than an objectively reasonable belief in apparent authority, and by treating the search as falling within the scope of the consent given. (R. 56-57).

A. <u>This Court should reject the Fourteenth Circuit's permissive apparent authority rule because it conflicts with this court's third-party consent jurisprudence and improperly treats ambiguity as a substitute for authority.</u>

The Fourteenth Circuit erred in deploying a permissive apparent-authority approach which subsequently allowed Officer Ristroph to search the closed box on the basis of ambiguity

and proximity to a shared space. (R. 12). This Court should favor a narrow approach to apparent authority rather than the permissive test utilized by the Fourteenth Circuit. (R. 56). The Fourth Amendment does not exist to permit warrantless searches merely because officers lack positive knowledge that an item certainly belongs to someone else. *Rodriguez*, 497 U.S. at 188-89; *Matlock*, 415 U.S. at 171 n.7; *Bumper v. North Carolina*, 391 U.S. 543, 548-49 (1968). Instead, it requires a narrow, object-specific inquiry placing the burden on the Government to show that, before the search occurred, officers possessed an objectively reasonable belief—based on contemporaneous facts—that the consenting party exercised joint access or mutual use over the specific effects searched. *Id*.

Matlock permits third-party consent only where the Government proves shared, mutual use of the specific premises or effects searched. *Matlock*, 415 U.S. 164, 171 n.7 (1974)**.** In *Matlock*, officers arrested the defendant outside a shared residence. *Id*. at 167. The officers obtained consent from a co-occupant who affirmatively identified a particular bedroom as jointly used by herself and the defendant. *Id*. The search was limited to that bedroom. *Id*. The evidence was discovered inside a container located within the jointly occupied space. *Id.* This Court held the search valid because the Government sustained its burden of proving common authority over the area and effects searched. *Id*. at 173. This Court further emphasized that consenter's authority "is not to be implied from the mere property interest a third party has," but instead "rests. . . on mutual use of the property by persons generally having joint access or control for most purposes." *Id.* at 171 n.7. This reasoning rested on assumption of risk: by exposing the searched space and effects to shared use, the defendant assumed the risk that a co-occupant might permit inspection. *Id.* at 171. However, a rule permitting officers to validate a warrantless search

whenever ownership is uncertain would invert the Government's burden and erode the Fourth Amendment's warrant preference. *Id*. at 178-81 (Douglas, J., dissenting).

Matlock establishes what authority requires; *Rodriguez* addresses the narrower question of when officers may reasonably, but mistakenly, believe authority exists. *See Matlock*, 415 U.S at 171; *Rodriguez*, 497 U.S. at 179. In *Rodriguez*, this Court addressed the distinct question left open in *Matlock*: whether a warrantless search may be upheld where officers rely not on common authority, but on a reasonable mistake about a third party's perceived authority. 497 U.S. at 179. There, officers were admitted into an apartment by a woman who referred to the residence as "our" apartment, possessed a key, claimed to keep personal belongings inside, and accompanied officers to unlock the door. *Id*. at 179-80. Although she ultimately lacked actual authority over the defendant's space, the Court held that a search may be valid if, at the moment of entry, the facts known to officers would "warrant a man of reasonable caution in the belief" that the consenting party exercised joint access or mutual use. *Id*. at 188-89. This Court emphasized that apparent authority does not arise from uncertainty itself. *Id*. If the facts available to officers do not support such a belief, "warrantless entry without further inquiry is unlawful unless authority actually exists." *Id*. at 188.

This case, when measured against the *Matlock–Rodriguez* apparent authority framework, illustrates that apparent authority must rest on affirmative, object-specific indicia of mutual use rather than on ambiguity resolved through search. *See Matlock*, 415 U.S at 171; *Rodriguez*, 497 U.S. at 179. Before opening the closed and unmarked cardboard box, Officer Ristroph was told that the loft was used by Mr. Hemlock for storage and as an office. (R. 13, 15). Further, Ms. Reiser never used the loft and could not identify what items were kept in that space "because "[she] did not really ever go up there." (R. 13, 15). In her sworn declaration, Ms. Reiser stated

that the loft was an area "Atticus used as storage and an office space." (R. 15). Those facts are the kind that the narrow apparent-authority test treats as constitutionally significant because they speak directly to whether mutual use and joint access exist. *See Matlock*, 415 U.S. at 171 n.7. Officer Ristroph's own conduct reflected that understanding: after learning of the loft's exclusive use, he confined the search to the first floor, implicitly recognizing the limits of Ms. Reiser's authority. (R. 13).

The recognized limitation that apparent authority is an objective belief and must rest on object-specific indicia is consistent with principles that predate this Court's modern third-party consent cases. *Stoner v. California,* 376 U.S. 483, 489-90 (1964) (the Court rejected the idea that lawful access for limited purposes carries with it the authority to surrender another's Fourth Amendment rights and underscored that authority to admit officers into a space is not interchangeable with authority over specific effects). "Expanding apparent authority beyond affirmative, object-specific indicia risks transforming third-party consent from a narrow assumption-of-risk doctrine into a proxy waiver regime that steadily erodes Fourth Amendment protection." *See* Wayne R. LaFave, *Search and Seizure* § 8.3(g), at 167-69 (6th ed. 2020). A narrow apparent authority rule fits comfortably with this Court's precedent by respecting the difference between permission to enter and authority over another person's effects. *See Matlock*, 415 U.S. at 171 n.7; *Stoner***,** 376 U.S. at 489-90. This keeps third-party consent tied to shared use rather than uncertainty. *Id*.

B. <u>The warrantless search by Officer Ristroph of the closed cardboard box at the access point of an exclusive space was unreasonable under the apparent authority and scope of consent frameworks.</u>

Because third-party consent operates as a limited exception to the warrant requirement, this Court has confined such searches by two related limitations: authority and scope. *See*

Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973); *Matlock*, at 171 n.7; *Jimeno*, at 251. First, officers may rely on third-party consent only where, at the moment of the search, they possess an objectively reasonable belief, grounded in affirmative facts, that the consenting party exercised joint access or mutual use over the specific premises or effects searched. *Matlock*, 415 U.S. at 171 n.7; *Rodriguez*, 497 U.S. at 188-89. Where the facts known to officers render such authority uncertain, they may not proceed without further inquiry. *Rodriguez*, 497 U.S. at 188. Second, even where apparent authority exists, consent must remain within the scope reasonably understood from the exchange between the officer and the consenter, assessed under an objective standard. *Jimeno*, 500 U.S. at 251. This Court should hold that (i) Officer Ristroph lacked an objectively reasonable belief over Ms. Reiser's apparent authority, and his uncertainty cannot equate to authority, and (ii) even if apparent authority is found to exist, Officer Ristroph exceeded the scope of Ms. Reiser's consent.

i. Officer Ristroph lacked an objectively reasonable basis to believe Ms. Reiser had apparent authority over the cardboard box.

The Fourteenth Circuit erred in deciding Officer Ristroph reasonably believed Ms. Reiser exercised apparent authority over the box. (R. 56-57). In assessing apparent authority over a closed container, courts examine whether officers possessed (1) affirmative, pre-search facts supporting a reasonable belief of mutual use—including the appearance of the container and its surroundings— "(2) the officer's belief regarding ownership before opening it, (3) and any manifestations of an expectation of privacy." *See United States v. Taylor*, 600 F.3d 678, 680 (6th Cir. 2010); (R. 59). Where information known to officers suggests that a container may fall outside the consenter's mutual use, officers must inquire further before searching. *Id.* Whether the facts presented at the time of the search would "warrant a man of reasonable caution" to

believe the third party has common authority over the property depends upon all of the surrounding circumstances. *Waller*, 426 F.3d at 846 ((quoting *Rodriguez*, 497 U.S. at 188).

This framework is illustrated by *Peyton*, which applied an objective reasonableness inquiry to apparent authority over a closed container. 745 F.3d at 554-56. There, officers searched a closed shoebox after being told the surrounding area was where the defendant kept his personal belongings. *Id*. The court held that, although the living room was generally shared, this information placed officers on notice that the shoebox might fall outside the consenter's common authority. *Id*. at 556. The court reasoned that those pre-search facts undermined any reasonable belief of mutual use, indicated individual ownership, and manifested an expectation of privacy in the container itself. *Id.* at 555-56. This triggered a duty to inquire before searching. *Id.* Because officers proceeded without seeking clarification, the court concluded that their reliance on apparent authority was objectively unreasonable. *Id*. at 556.

The same defect is present here. Before opening the cardboard box, Officer Ristroph was told by Ms. Reiser that the stairs led to a loft Mr. Hemlock used for storage and as an office. (R. 13,15). Ms. Reiser explicitly said she did not sleep there, did not regularly go up there, and did not know what Mr. Hemlock kept in that space. (R. 13, 15). Those statements defeated any objectively reasonable inference of mutual use and affirmatively tied effects associated with the stairway to a space identified as Mr. Hemlock's alone. *Peyton*, 745 F.3d at 554-56. Officer Ristroph's own conduct confirms that understanding. After receiving this information, he confined his search to the first floor, implicitly recognizing that Ms. Reiser's consent did not extend to areas or effects functionally associated with the loft. (R. 13); *Waller*, 426 F.3d at 845 (consent to one area does not automatically extend to connected but distinct spaces).

The Fourteenth Circuit erred by transforming *Melgar* into a rule that permits officers to infer authority from uncertainty rather than from facts known at the time of the search. 227 F.3d 1038, 1041; (R. 56-57). In *Melgar*, officers searched a closed purse after obtaining general consent from the room's renter because, at the time of the search, they possessed no contemporaneous information suggesting the purse fell outside the renter's control. *Melgar*, 227 F.3d. at 1041-42. The purse was discovered in a hotel room after all occupants had been removed, bore no identifying characteristics, and was unaccompanied by any statements or contextual facts tying it to the exclusive use of another occupant. *Id.* The Seventh Circuit emphasized that officers were operating in the absence of contrary information: they had neither received disclaimers of access nor learned facts linking the container to another person's private space. *Id.* at 1042. That absence of contrary information made reliance on consent reasonable. *Id.*

The Second Circuit's decision in *Snype*, applied the same limited principle. *See* 441 F.3d 119 There, the court upheld the search of closed containers only because officers possessed no contemporaneous facts indicating exclusive ownership or limited access. *Id.* at 136-37. The resident gave unrestricted consent, described the defendant as a transient overnight guest, and offered no statements or conduct suggesting that the knapsack or plastic bag fell outside her joint access or control. *Id.* Under those circumstances, this Court concluded that the defendant failed to show "credible evidence" of obvious and exclusive ownership. *Id.* at 136 (citing *United States v. Zapata-Tamallo*, 833 F.2d 25, 27 (2d Cir. 1987) (per curiam)). Like *Melgar*, *Snype* presupposed silence, non-affirmative narrowing signals, and does not authorize officers to disregard pre-search facts pointing away from shared authority.

This case presents the opposite posture from both *Melgar* and *Snype*. Before opening the cardboard box, Officer Ristroph was told that only Mr. Hemlock used the loft for storage and as

an office, that Ms. Reiser did not regularly access that space, and that she did not know what items were kept there. (R. 13, 15-16). Those statements supplied precisely the type of pre-search information absent in *Melgar* and *Snype*, facts indicating that items associated with the loft fell outside the consenter's mutual use or control. *See Melgar*, 227 F.3d at 1041-42; *Snype*, 441 F.3d at 136-37. Officer Ristroph treated those limits as legally meaningful by declining to search the loft itself. (R. 13). Having recognized those constraints, he could not then rely on uncertainty to justify opening a closed container positioned at the sole access point to the loft. Unlike *Melgar* and *Snype*, this was not a case of silence or ignorance, but of known facts pointing away from shared authority. By treating ambiguity as sufficient to establish apparent authority even in the face of contrary information, the Fourteenth Circuit converted those narrow, fact-bound decisions into a permissive rule that relieves officers of their duty to inquire when authority is uncertain. *See Melgar*, 227 F.3d at 1041-42; *Snype*, 441 F.3d at 136-37; (R. 56). Proceeding under these circumstances was objectively unreasonable and cannot be justified on apparent-authority grounds. *See Whitfield*, 939 F.2d at 1075; *United States v. Lemmons*, 282 F.3d 920, 924 (7th Cir. 2002).

ii. Even assuming apparent authority, the search independently violated the Fourth Amendment by exceeding the scope of the consent given.

The Fourteenth Circuit erred by upholding the warrantless search of the closed cardboard box, notwithstanding Ms. Reiser's express limitations on consent. (R. 13, 15-16, 56, 59-60). The act of providing consent alone does not define the scope of a consent search. *Lemmons*, 282 F.3d at 924-25. Instead, the permissible scope of a consent search is determined by objective reasonableness, defined as what a reasonable officer would have understood the consent to encompass based on the consenter's words, conduct, and the surrounding circumstances. *Jimeno*, 500 U.S. 248, 251 (1991). Although consent need not be accompanied by explicit limitations, a

consenter may restrict the scope of consent through statements or conduct that reasonably signal exclusion of certain areas or items. *Id.* at 252; *Lemmons*, 282 F.3d at 924-25. Whether a search remained within those boundaries must be evaluated from the totality of the circumstances known to the officer at the time of the search. *United States v. Long*, 425 F.3d 482, 486 (7th Cir. 2005). Importantly, consent to search shared premises does not automatically authorize the opening of closed containers where the circumstances would not reasonably be understood to extend that far. *Jimeno*, 500 U.S. at 252; *Lemmons*, 282 F.3d at 924. Where a consenter's statements or conduct indicate limited access, lack of knowledge, or non-use of a particular area, officers may not reasonably construe general consent as extending to closed containers associated with that excluded space. *Id.*

In *Jimeno*, officers stopped the defendant for a traffic infraction, expressly told him they believed he was transporting narcotics, and obtained general consent to search the car for drugs. 500 U.S. 248, 249-50 (1991). During that search, an officer opened a folded paper bag on the car's floorboard and discovered cocaine. *Id*. at 250. This Court upheld the search because the scope of consent is measured by objective reasonableness. *Id.* at 251-52. The officer had clearly identified the object of the search as narcotics, the paper bag was a natural container for that object, and the defendant placed no express or implicit limitations on consent. *Id*. This Court nevertheless cautioned that consent does not invariably extend to all containers and explained that it would be unreasonable to infer consent to containers where the surrounding circumstances would not support that understanding. *Id*. at 252.

Justice Marshall's dissent in *Jimeno* underscores the narrow application of that holding. 500 U.S. 248, 253–55 (Marshall, J., dissenting). He emphasized that an individual's expectation of privacy in a closed container is distinct from, and greater than, any expectation of privacy in

the surrounding space. *Id.* Justice Marshall further explained that from the consenting individual's standpoint, permission to search does not necessarily communicate permission to rummage through personal containers, particularly where privacy interests remain intact. *Id*.

Measured against the *Jimeno* framework, the search here exceeded the scope of consent. Officer Ristroph never identified any specific objective of the search beyond a vague investigation, leaving the scope of consent undefined from the outset. (R. 13–15). Ms. Reiser then affirmatively limited consent by stating that the loft was exclusively used by Mr. Hemlock for storage and as an office. (R. 13, 15-16). Ms. Reiser stated that she did not regularly go up there, and that she did not know what he kept in that space. (R. 13, 15-16). Officer Ristroph treated those statements as limiting by deciding not to search the loft at all. (R. 13). Despite those limitations, Officer Ristroph opened a closed cardboard box positioned on the stairs leading to the loft, without seeking clarification or additional consent. (R, 15-16). After Officer Ristroph opened the box, Ms. Reiser stated her belief that Mr. Hemlock left the container on the stairs to bring up to the loft. (R.16). Based on the circumstances, a reasonable officer could not understand Ms. Reiser's consent as extending to that closed container.

C. The Fourteenth Circuit's permissive apparent authority rule undermines reasonable law enforcement work and erodes Fourth Amendment protections.

The Fourth Amendment was adopted to restrain discretionary intrusions at the moment they occur, not to validate warrantless searches through post hoc justification. *Johnson,* 333 U.S. at 13-14. From its earliest articulation, this Court has warned that constitutional protections are most often lost through "silent approaches and slight deviations from legal modes of procedure" that gradually erode the right itself. *Boyd v. United States*, 116 U.S. 616, 635 (1886). A rule that permits officers to treat ambiguity as authorization invites precisely the kind of incremental erosion *Boyd* condemned. *Id*.

The third-party consent doctrine is not a freestanding exception to the Fourth Amendment, but a context-specific application of its reasonableness requirement. *See* A. S. Burke, *Consent Searches and Fourth Amendment Reasonableness*, 67 Fla. L. Rev. 509, 512-18 (2015). When authority over specific effects is uncertain, proceeding without clarification departs from that foundational principle and converts reasonableness into a function of guesswork rather than judgment. *Id.*

III. Extrinsic evidence relating to Ms. Copperhead's truthfulness is admissible pursuant to Federal Rule of Evidence 806 because an unavailable declarant's out-of-court statement triggers the right to extrinsic impeachment.

This Court should reverse the Fourteenth Circuit because they erred by failing to admit Ms. Copperhead's academic violation report and falsified job application into evidence. (R. 9, 10, 51-52). The decision by the Fourteenth Circuit strips Mr. Hemlock of the protections available to him under Federal Rule of Evidence 806 and the Confrontation Clause of the Sixth Amendment of the United States Constitution. U.S. Const. amend XI.; Fed. R. of Evid. 806; (R. 61). The plain language of Federal Rule of Evidence 806 states that when a hearsay statement has been admitted into evidence, "the declarant's credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness." Fed. R. Evid. 806. Because the admission of an out-of-court statement for its truth places the declarant's credibility squarely at issue, Rule 806 treats the declarant "as a witness" for impeachment purposes. *See United States v. Friedman*, 854 F.2d 535, 570 (2d Cir. 1988). Under that framework, the impeachment evidence at issue here should have been admitted.

A. Federal Rule of Evidence 806 permits impeachment of an unavailable declarant through extrinsic evidence.

Under Rule 806, a party may impeach a declarant using traditional methods of credibility attack, including evidence bearing on character for truthfulness, bias, motive, or prior dishonesty. *See Friedman*, 854 F.2d at 570; *United States v. Uvino*, 590 F. Supp. 2d 372, 378 (E.D.N.Y. 2008) (recognizing that Rule 806 permits impeachment "by any means available to impeach an in-court witness"); *United States v. Stewart*, 907 F.3d 677, 685 (2d Cir. 2018) (noting that once hearsay is admitted, "the declarant's credibility is fair game"). Because it is undisputed that the declarant is unavailable for cross-examination under Rule 804, Rule 806 then provides an alternative mechanism for exposing unreliability. Fed. R. of Evid. 806; *Friedman*, 854 F.2d at 570; (R. 46). Without that safeguard, Mr. Hemlock and the jury would otherwise be forced to accept Ms. Copperhead's credibility at face value simply because she is unavailable to testify in court. (R. 49).

Although Federal Rule of Evidence 608(b) generally restricts the use of extrinsic evidence to prove specific instances of conduct when a witness testifies, courts have recognized that Rule 806 operates independently of Rule 608(b) where extrinsic impeachment is necessary to assess the credibility of an unavailable declarant. Fed. R. Evid. 608; *See* Fed. R. Evid. 806; *Friedman*, 854 F.2d at 570 (allowing extrinsic impeachment of a hearsay declarant); *United States v. Abel*, 469 U.S. 45, 51-52 (1984) (recognizing impeachment evidence as a traditional means of assessing credibility). Courts have cautioned that importing Rule 608(b)'s extrinsic-evidence bar wholly into Rule 806 would risk insulating hearsay declarants from meaningful credibility challenges. *See Friedman*, 854 F.2d at 570.

The Government is heavily relying on the out-of-court statements of Ms. Copperhead, who incriminated Mr. Hemlock while she was running out of the woods. (R. 43). Ms.

Copperhead unfortunately passed away due to an aortic rupture, but this does not mean Mr. Hemlock now has no available mechanisms to impeach Ms. Copperhead for truthfulness. (R. 46). Instead, Mr. Hemlock being able to introduce Ms. Copperhead's tendency for dishonesty not only in her academic pursuits, but to her possible future employers, is crucial to be able to defend himself from these incriminating statements. (R. 49, 61).

The admissibility of impeachment evidence under Rule 806 still has vast protections as governed by Rule 403. Fed. R. Evid. 403. Evidence may be excluded only where its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. *Id*. In applying Rule 403, courts distinguish between impeachment evidence that risks emotional or irrational jury reactions and evidence that rationally assists the jury in evaluating credibility. *Friedman*, 854 F.2d at 570; see also *Old Chief v. United States*, 519 U.S. 172, 180 (1997) (describing Rule 403 as a balancing inquiry focused on unfair prejudice). Where impeachment evidence directly bears on truthfulness and does not invite improper emotional responses, exclusion is disfavored. *Friedman*, 854 F.2d at 570.

In *Friedman*, the Second Circuit drew a careful and instructive distinction between impeachment evidence that risks inflaming juror emotions and evidence that rationally assists the jury in evaluating truthfulness. 854 F.2d at 570. The court excluded testimony concerning a declarant's suicide attempt because it carried an obvious risk of emotional prejudice untethered to credibility. *Id*. At the same time, however, the court permitted impeachment evidence showing that the declarant lied about the source of $25,000, recognizing that such evidence bore directly on honesty and assisted the jury in assessing reliability. *Id*. The critical inquiry was not whether the evidence was extrinsic, but whether it invited improper emotional responses or instead facilitated reasoned credibility determinations. *Id*.

That same distinction governs here. Evidence of Ms. Copperhead's academic dishonesty and false statements on a job application is highly probative of character for truthfulness. (R. 9-10.) These acts reflect deliberate deception undertaken for personal advantage, the very conduct that casts doubt on the reliability of her out-of-court accusations. *Id*. When a declarant has previously fabricated credentials or lied in formal settings where honesty is expected, the jury is entitled to consider that history in evaluating whether her statements were truthful or self-serving. *See id*. at 61; *Friedman*, 854 F.2d at 570. Unlike evidence involving violence, substance abuse, or personal trauma, this impeachment evidence carries minimal risk of unfair prejudice. It does not appeal to juror sympathy, outrage, or moral condemnation divorced from credibility. Nor does it threaten to confuse the issues or provoke an emotional response that would distort the factfinding process. Instead, it invites the jury to draw a straightforward inference about honesty, precisely the inference impeachment evidence is meant to support. *Friedman*, 854 F.2d at 570. As *Friedman* makes clear, excluding such evidence would invert Rule 403 by privileging speculative prejudice over concrete probative value and depriving the jury of information essential to its truth-seeking function. *Id*.

B. Limiting Federal Rule of Evidence 806 impeachment undermines the Sixth Amendment's Confrontation Clause.

The Sixth Amendment's Confrontation Clause further informs the application of Rule 806. The Confrontation Clause protects a criminal defendant's right to test the reliability of evidence introduced against him. U.S. Const. amend. VI; *United States v. Hamilton*, 107 F.3d 499, 503 (7th Cir. 1997). Although face-to-face confrontation is the preferred method of ensuring reliability, the Supreme Court has recognized that alternative safeguards may suffice where confrontation is unavailable. *See Maryland v. Craig*, 497 U.S. 836, 845-49 (1990). When hearsay evidence is admitted, impeachment of the declarant serves as a critical substitute for cross-

examination. *Hamilton*, 107 F.3d at 503. Limiting impeachment of hearsay declarants risks undermining the jury's ability to assess credibility and erodes the reliability interests at the heart of the Confrontation Clause. *See id*.; *Friedman*, 854 F.2d at 570.

When hearsay is admitted, that constitutional safeguard is compromised. (R. 49, 61). Rule 806 exists to mitigate that compromise by allowing the opposing party to impeach the declarant as though she testified. Fed. R. Evid. 806. As *Hamilton* explains, confrontation matters —especially during a jury trial—because it exposes weaknesses in perception, memory, and honesty. *Hamilton*, 107 F.3d at 503. When live confrontation is unavailable, impeachment becomes the primary mechanism by which the jury can evaluate whether the declarant is trustworthy. *Id*. Restricting impeachment to intrinsic evidence alone strips Rule 806 of its intended force and leaves the jury with an untested narrative presented as fact. (R. 49, 61).

Rule 403 effectively protects the interests of an unavailable declarant. *United States v. Saada*, 212 F.3d 210, 221-22 (3d Cir. 2000). The Fourteenth Circuit relied on *Saada* to argue for limits on impeachment under Rule 806. (R. 57). In *Saada*, the Third Circuit found the admission of extrinsic evidence for impeachment was a harmless error, because the offered material posed no significant risk of confusion and prejudice. *Id*. This is further evidence that a Rule 403 analysis would protect the integrity of this admission of extrinsic evidence but still allow meaningful cross-examination of out-of-court declarants who made incriminating statements. *Id*. As the *Saada* court takes note —the opposing party is then able to rehabilitate the credibility of an out-of-court witness, which can "provide an explanation for this conduct." *Id*. Further, as both the *Saada* and *Andrade* courts note, this may be the only means of presenting meaningful evidence to cross-examine an unavailable witness. *See id*. at 220; *United States v. Andrade*, No.

20-CR-00249, 2025 WL 670456, at *4 (N.D. Cal. Mar. 3, 2025) (citing *Friedman*, 854 F.2d at 570 n.8 (2d Cir.1988)).

Here, the impeachment evidence goes directly to the declarant's honesty and carries minimal risk of unfair prejudice. (R. 9-10). Evidence of Ms. Copperhead's deliberate falsehoods in academic and employment contexts squarely informs the jury's assessment of whether her out-of-court accusations are reliable. (R. 9, 10, 48, 61). Applying *Saada's* eventual Rule 403 analysis thus correctly supports admission, not exclusion. *Saada*, 212 F.3d at 221-22.

In Mr. Hemlock's case, the government heavily relies on hearsay accusations, while depriving the defense of any meaningful way to expose dishonesty. (R. 50, 61). That outcome is incompatible with both Rule 806's purpose and the Confrontation Clause's foundational role in safeguarding accurate verdicts. *Friedman*, 854 F.2d at 570; *Hamilton*, 107 F.3d at 503. Rule 806, properly applied, permits the admission of extrinsic evidence that directly attacks the credibility of a hearsay declarant. Fed. R. Evid. 806. When such evidence is highly probative of truthfulness and poses little risk of unfair prejudice, exclusion undermines the jury's ability to assess reliability and erodes constitutional protections. *Friedman*, 854 F.2d at 570; *Hamilton*, 107 F.3d at 503.

Accordingly, this Court should hold that Rule 806 entitles defendants to meaningful impeachment of hearsay declarants, including through extrinsic evidence bearing on character for truthfulness, subject only to traditional Rule 403 balancing. Anything less transforms Rule 806 into an empty promise and permits convictions based on untested, unreliable assertions.

CONCLUSION

This Court should reverse the Fourteenth's Circuit's decision because (1) the Fourth Amendment is violated when officers coerce a defendant to step outside his home to make a warrantless arrest, (2) the Fourth Amendment is violated when a container whose ownership is ambiguous at best becomes the fruit of a warrantless search, and (3) under Rule 806 of the Federal Rules of Evidence extrinsic evidence is admissible to impeach an unavailable declarant's character for truthfulness.

Respectfully Submitted,
/s/ Team 28P
Counsel for Petitioner