

Team: RT27

No. 25-7373

**IN THE
SUPREME COURT OF THE UNITED STATES**

ATTICUS HEMLOCK,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

BRIEF FOR RESPONDENT

Team RT27
Counsel for Respondent

QUESTIONS PRESENTED

1. 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.
2. Whether the Fourth Amendment is violated when law enforcement conducts a warrantless search of a closed container located in a shared residence after obtaining a co-occupant's consent to search the residence, without specifically inquiring into ownership of the container.
3. 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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OPINION BELOW

The judgment of the United States Court of Appeals for the Fourteenth Circuit, *Atticus Hemlock v. United States* No. 24-1833, was decided on April 14, 2025, and may be found in the Record. Record at 51-61. The District Court’s oral rulings on the motions to suppress are reproduced in the Record. R. at 18-39. The District Court’s oral rulings on the admission of extrinsic evidence are reproduced in the Record. R. at 40-50.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The relevant constitutional provisions appear below. Additionally, this case involves Federal Rules of Evidence Rule 608(b) and Rule 806.

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.

STATEMENT OF THE CASE

I. Factual Background

This matter involves the criminal conviction of Mr. Atticus Hemlock (“Hemlock” or “Petitioner”) under 18 U.S.C. § 1201(a)(5) and (d) for his attempt to kidnap a government official—the Under Secretary for Rural Development with the Department of Tourism, Jodie Wildrose (“Under Secretary” or “Wildrose”). R. at 1. Hemlock and his co-conspirator, Iris Copperhead, each held personal grudges against Wildrose. R. at 5, 8. Wildrose was Hemlock’s former college professor and once derided him in class. R. at 5. Hemlock hoped the kidnapping would be revenge for his college experience and accused Wildrose of introducing an invasive species into Boerum Village as part of a convoluted real estate scheme. R. at 4-5.

The evidence against Hemlock was staggering: a retail store clerk spotted the co-conspirators buying tools traditionally associated with kidnapping, a barista saw the co-conspirators openly discussing and planning the kidnapping using laid out maps and documents, and a local man overheard Copperhead discussing the kidnapping. R. at 6-8, 20, 41-44. On April 15, around 4:00 p.m., two special agents, Hugo Herman and Ava Simonson (the “Agents”), interviewed Hemlock in light of this evidence. R. at 11. They contacted Hemlock at the home he shared with his then-girlfriend, Fiona Reiser. *Id.* The Agents knocked on Hemlock’s front door and spoke to him through the screen. R. at 24-25, 29-30. The Agents could see bottles of chloroform when Hemlock opened the door. R. at 11, 22. When asked about the bottles, Hemlock mentioned Wildrose; this information conferred probable cause to arrest him. R. at 11-12, 22. The Agents requested Hemlock exit the home; he did so and was arrested. R. at 12. Throughout the Agents’ interaction with Hemlock, the Agents’ department standard duty belt, contained guns that remained holstered. R. at 25-26.

After the arrest, Ms. Reiser returned home and consented to a search by Agent Ristroph (“Ristroph”). R. at 13. Ms. Reiser told Ristroph that the second floor was used for storage and office space, so it was excluded from the search area. *Id.* Ristroph spotted an unmarked cardboard box on the bottom step of the stairs leading to the second level. *Id.* Upon opening the box, Ristroph discovered ski masks, knives, zip ties, chloroform, and other kidnapping tools. *Id.*

Co-conspirator Copperhead observed Hemlock getting arrested. R. 43. This caused her to flee in a panic. *Id.* After Copperhead stopped running, she said, “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!” These comments were overheard by Mr. Theodore Kolber, who was nearby. *Id.* However, Ms. Copperhead passed away before trial due to medical complications. R. at 43-44.

II. Procedural History

A. District Court Pretrial Decision

Law enforcement arrested Atticus Hemlock on April 2, 2024. R. at 12. After his arrest, a grand jury indicted Hemlock for attempted kidnapping of a United States' government officer in violation of 18 U.S.C §1201(a)(5) and 18 U.S.C. §1201(d). R. at 1. Prior to trial, Hemlock moved to suppress two key pieces of evidence. R. at 19, 31. First, Hemlock sought to suppress the notebook seized from his person, after his arrest. R. at 19. Second, Hemlock moved to suppress the chloroform, zip ties, knives, rope, gloves, duct tape, and ski masks found in a cardboard box located on the bottom step in Hemlock's cabin. R. at 31, 14.

At the Motion to Suppress hearing, the District Court admitted both pieces of evidence. R. at 31, 38-39. In admitting the notebook, the District Court emphasized this Court's precedent in *Payton v. New York*, prohibiting warrantless arrests inside the home. R. at 31. Here, the District Court determined Hemlock's arrest did not violate *Payton* because the Agents did not enter Hemlock's home. *Id.* Furthermore, the District Court noted the importance of coerciveness in this analysis but deemed the Agents' behavior non-coercive. *Id.*

The District Court also upheld Agent Ristroph's search of the cardboard box located on the bottom step. R. at 38. The District Court reasoned that even though the box's ownership was ambiguous, Agent Ristroph conducted a reasonable search that did not violate the Constitution. R. at 39. Thus, the District Court wholly denied Petition's Motion. R. at 31, 38.

B. District Court Trial Decision

During the trial, the Government objected to the Defense's extrinsic evidence. R. at 47. The Defense attempted to present extrinsic evidence to impeach Ms. Copperhead's character for truthfulness. R. at 47-48. Specifically, the Defense sought to impeach Ms. Copperhead's character with proof of her academic integrity policy violation, and a fraudulent job application. *Id.* In

sustaining the Government’s objection, the District Court reaffirmed Rule 608(b) of the Federal Rules of Evidence’s blanket prohibition on extrinsic evidence. R. at 50.

C. Circuit Court Decision

Hemlock appealed the District Court’s decisions on the Motion to Suppress and the evidentiary objection, to the Court of Appeals for the Fourteenth Circuit. R. at 51. The Fourteenth Circuit upheld all the trial court’s decisions. R. at 51-52. First, the Court, echoing the District Court’s reasoning, refused to recognize constructive entry and upheld the firm rule in *Payton v. New York*. R. at 55. Second, the Fourteenth Circuit concluded that Reiser’s apparent authority to consent to a search extended to the box. R. at 57. The Court reasoned that the box’s ambiguity did not defeat Reiser’s apparent authority or Ristroph’s reasonable determination regarding the extension of that apparent authority. R. at 56. Finally, the Fourteenth Circuit concluded that Rule 806 does not expand the scope of Rule 608(b). R. at 57-58.

Hemlock now appeals the Fourteenth Circuit’s decision, and this Court granted writ of certiorari, to address the three questions presented on December 2, 2025. R. at 62.

SUMMARY OF THE ARGUMENT

I. The Intent Underlying the Fourth Amendment, Clarity of the *Payton* Holding, and Policy Necessitate a Ruling in the Government’s Favor.

The Fourth Amendment protects against unreasonable seizures conducted inside one’s home. Common-law tradition has long upheld the constitutionality of warrantless arrests supported by probable cause conducted in public spaces. In *Payton v. New York*, the Court drew a clear line at the entrance to one’s house; as long as officers never physically cross that threshold, their conduct is reasonable to effectuate an arrest. *Payton* provides law enforcement officers with clear guidance for interpreting constitutional rights regarding seizures. It is undisputed that the Agents never physically entered Petitioner’s home to conduct the arrest.

Despite the Agents remaining outside, Petitioner attempts to convince this Court that the Agents constructively entered his home by asking him to step outside. Because Petitioner voluntarily stepped outside and because the Agent's actions did not constitute coercion, their conduct does not amount to a constructive entry.

A ruling against the Government imposes an unclear burden on law enforcement officials, where the opportunity to lawfully seize a suspect can arise at any moment. Petitioner's rule only serves to discourage prudent law enforcement action by forcing officers to conduct inefficient balancing tests in the heat of every moment. Further, the very fact that circuits have not applied constructive entry consistently should be reason enough for this Court to reject this muddled doctrine.

II. The Fourth Amendment's Requirement of Reasonability, Policy, and Petitioner's Lack of Exclusivity over the Box, Require a Ruling in the Government's Favor.

The Fourth Amendment only mandates that officers conduct reasonable searches. The Amendment contains no requirement that officers specifically inquire into the ownership of an ambiguous container. Under the Consent Doctrine, the Fourth Amendment permits the search of closed, and even ambiguous, containers when it is reasonable for law enforcement to believe the consenting party's authority extended to the container. Generally, consent to search premises includes consent to search all the containers within that premises, absent positive information indicating otherwise. It was entirely reasonable for Agent Ristroph to believe that Reiser had authority to consent to the search and that her authority extended to the box located on the stairs. Reiser had apparent authority to consent, as she was a co-occupant of the cabin she shared with Petitioner. Her authority extended to the box because the box contained no information indicating other ownership.

A ruling against the Government imposes a heightened burden on law enforcement contrary to the Fourth Amendment. Petitioner's rule will result in inefficiency by forcing law enforcement to inventory every container they wish to search. And any claim that the stairs were Petitioner's personal area cannot stand because Reiser indicated that she either used or had access to the stairs.

III. Congressional Intent and Policy Demand Applying Rules 608(b) and 806 as Written to Prohibit Using Extrinsic Evidence Against an Absent Hearsay Declarant.

Rule 806 provides that a hearsay declarant may be attacked "by any evidence that would be admissible for those purposes if the declarant had testified as a witness." And 608(b) prohibits using extrinsic evidence of a witness's specific conduct to attack a witness's character for truthfulness. Petitioner argues that these Rules leave room for the use of such extrinsic evidence when the hearsay declarant is absent. But that interpretation is invalid under the plain texts of these rules, the Advisory Committee Notes to Rule 806, and statutory interpretation. Additionally, lower courts hearing this issue have generally agreed that Petitioner's interpretation is impermissible.

Petitioner is left with only policy arguments regarding fairness. But Congress determines policy, not Petitioner. And Congress has determined that excluding extrinsic evidence in this situation is the perfect balance of probative value, fairness, risk of prejudice, and judicial economy. Petitioner has no basis for seeking to undermine Congress's will.

ARGUMENT

I. Law Enforcement Officers Did Not Violate Petitioner's Fourth Amendment Rights Because They Never Physically Entered His Home to Conduct the Arrest.

The Government did not arrest the Defendant in his home, nor did they constructively enter his home to conduct the arrest. The Fourth Amendment provides: "[t]he 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.” U.S. Const. Amend. IV. The Fourth Amendment requires the warrantless arrest of a person to be reasonable. *Payton v. New York*, 445 U.S. 573, 585 (1980). The Amendment draws a clear distinction between warrantless seizures in an open area and warrantless seizures on private premises. Warrantless arrests in public places are valid as long as they are supported by probable cause. *United States v. Watson*, 423 U.S. 411, 423 (1975).

Under *Payton v. New York*, “the Fourth Amendment has drawn a firm line at the entrance to the house.” 445 U.S. at 589. Here, the Agents never physically crossed the “firm line” drawn at Petitioner’s front door. Therefore, the Court must affirm the constitutionality of his arrest and conclude that the notebook was properly admitted at trial.

a. *Payton* Affirms the Rule That Arrests Supported by Probable Cause Conducted Outside the Home are Reasonable and do not Violate the Fourth Amendment.

Warrantless arrests conducted outside the home, supported by probable cause, are valid pursuant to the Fourth Amendment. This is a well-settled common-law rule that upholds the framer’s intent to protect individuals from unreasonable seizures and be secure in their homes. *See United States v. Watson*, 423 U.S. 411, 418 (1976) (“ancient common-law rule that a peace officer was permitted to arrest without a warrant... [as long as] there was reasonable ground for making the arrest.”); *see also Virginia v. Moore*, 533 U.S. 164, 171 (2008) (“When an officer has probable cause...[t]he arrest is constitutionally reasonable.”). The Fourth Amendment protects against “invasions on the part of the government and its employees of the sanctity of a man’s home and the privacies of life.” *Payton v. New York*, 445 U.S. 573, 585 (1980).

In *Payton*, the foundational case governing warrantless arrests in home, officers violated a defendant’s Fourth Amendment right by entering his apartment to arrest him. *Id.* at 590. There,

the Court upheld the longstanding bright-line rule, “the Fourth Amendment [draws] a firm line at the entrance to the house.” *Id.* “The physical entry of the home is the ‘chief evil’ against which the language of the Fourth Amendment is directed.” *Id.* at 585. (quoting *United States v. United States District Court*, 407 U.S. 297, 313 (1972)). Circuit courts have rightly followed this firm line. So long as an officer’s body remains outside when conducting a warrantless arrest, their actions do not violate a defendant’s Fourth Amendment protections. In *Gaddis v. Demattei*, because officers arrested the defendant after he stepped outside the threshold of his home, the arrest was constitutional. 30 F.4th 625, 631 (7th Cir. 2022); see *Knight v. Jacobson*, 300 F.3d 1272, 1277 (11th Cir. 2002) (Nothing in *Payton* prevents officers from asking a suspect to step outside their home to conduct a warrantless arrest); *United States v. Berkowitz*, 927 F.2d 1376, 1386 (7th Cir. 1991) (warrantless arrests are valid if they are conducted after a suspect responds to officer’s requests to step outside).

The Agents conducted a lawful warrantless arrest when Petitioner stepped outside in response to their requests. It is uncontested that the Agents remained physically outside Petitioner’s home at all moments leading up to the arrest. R. at 28. Therefore, the Agent’s actions clearly fall outside the kind of privacy invasion established in *Payton*. The *Payton* boundary is clear; since both parties agree the Agents’ bodies never crossed the line into Petitioner’s home, the trial court rightfully admitted the notebook.

b. Constructive Entry Does Not Apply to the Agent’s Actions Because There was No Coercion and Petitioner Voluntarily Consented to Their Requests.

Petitioner is going to argue that constructive entry applies, but only a handful of circuits recognize this inconsistent doctrine. Law enforcement, who never physically enter a suspect’s home to effectuate an arrest, “constructively enters” a suspect’s home if they coerce the suspect outside their home to effectuate an arrest. See *United States v. Morgan*, 743 F.2d 1158, 1166 (6th

Cir. 1984) (When officers' conduct coerces a suspect outside the home, although there is no direct physical entry, they "accomplish the same thing and achieve the same effect as an actual entry.").

i. The Court Cannot Adopt Constructive Entry Because it is an Inconsistent Doctrine that will Only Confuse Law Enforcement.

The *Payton* line is clear, unlike constructive entry. The doctrine of Constructive entry is "beset with practical problems." *United States v. Allen*, 813 F.3d 76, 88 (2nd Cir. 2016). First, it replaces a bright-line rule with judicial fact-finding. Second, it requires officers to be experts of the law. Finally, it would discourage officers from conducting lawful arrests out of concern that they will be overturned and justice will go unserved.

The doctrine requires courts to consider whether a non-exhaustive list of factors constitute circumstances sufficient to warrant protections under *Payton*. *Id.* Such a rule "not only requires courts to employ metaphysical subtleties to resolve Fourth Amendment challenges, but also contravenes the general preference to provide clear guidance to law enforcement." *Id.* (internal quotations omitted). A bright-line rule provides law enforcement with clear guidance and is safer for courts to interpret. And *Payton* already provides a bright-line rule.

Adopting constructive entry would require law enforcement to make impossible speculative decisions leading up to an arrest. *See Atwater v. City of Lago Vista*, 532 U.S. 318 (2001). Because arrests are often conducted in the heat of the moment, implementing a clear and simple standard protects law enforcement actions from second-guessing by courts. *Id.* at 347. When assessing reasonableness, courts recognize the need to provide the government with readily applicable rules. *Id.* The facts of an arrest may vary, but Fourth Amendment protections "are not so variable and cannot be made to turn upon such trivialities." *Virginia v. Moore*, 533 U.S. 164, 172 (2008). Law enforcement officers cannot be expected know what conduct is permissible when

the same circuit cannot even agree on what amounts to a constructive entry. *United States v. Saari*, 272 F.3d 804, 806-07, 810 (6th Cir. 2001) (four officers surrounding defendant's house amounted to a constructive entry), with *United States v. Thomas*, 430 F.3d 274, 280 (6th Cir. 2005) (five officers surrounding defendant's home did not amount to constructive entry).

Petitioner seeks to adopt a rule that only serves to confuse the courts and law enforcement. At best, circuit courts will be forced to conduct extremely fact-dependent inquiries; at worst, this will create a systemic disincentive to arrest in situations even when supported by probable cause; contrary to the foundation of the Fourth Amendment.

ii. Even if this Court Applies Constructive Entry, Officers Did Not Coerce Petitioner.

Even if the Court applies the constructive entry doctrine, the warrantless arrest of Petitioner is still valid because the Agent's did not coerce him out of his home, he voluntarily complied with the Agent's requests.

Constructive entry occurs when police "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 police conduct is "such a show of authority that the defendant reasonably believes they have no choice but to comply." *United States v. Saari*, 272 F.3d 804, 809 (6th Cir. 2001). Whether someone's choice to respond to police authority is voluntary or the product of coercion, is "determined by the totality of all the circumstances." *United States v. Mendenhall*, 446 U.S. 544, 557 (1980). This is necessarily an objective evaluation of whether a reasonable person, under all the circumstances, would conclude he was under arrest. *United States v. Von Marschner*, No. 86-5334, 1988 U.S. App. LEXIS 22120, at *7 (9th Cir. June 16, 1988).

Drawn or displayed weapons, language or tone of voice threatening consequences for non-compliance, and a large number or threatening presence of officers in plain sight are all hallmarks

of constructive entry. *See Saari*, 272 F.3d at 808-09; *See also Mendenhall*, 446 U.S. at 554. Importantly, the “[*Payton* boundary] keeps an officer’s body outside the threshold, not his voice.” *Knight v. Jacobson*, 300 F.3d 1272, 1277 (11th Cir. 2002).

Where agents bear plain clothes, never display their weapons, and make requests to follow them, an individual cannot claim they were seized simply because agents made such requests. *Mendenhall*, 446 U.S. at 554-55.

The Sixth Circuit upheld the arrest of a defendant who was asked to step outside his home then arrested. *United States v. Grayer*, 232 Fed. Appx. 446, 450 (6th Cir. 2007). Despite the presence of four officers, a K-9 unit, and three police cars, their conduct did not amount to constructive entry. *Id.* The defendant only saw the two officers who approached his front door, neither of whom raised their voices, drew their weapons, or employed coercive demands; they simply asked defendant to step outside. *Id.* As result, a reasonable person would not conclude they were coerced to step outside. *See also Von Marschner*, 1988 U.S. App. LEXIS 22120, at *8 (no constructive entry from the *seven* officers who approached defendant’s front door because they did not “surround [defendant’s] residence or confront him with weapons drawn, nor did they order him to emerge from his home.”) (emphasis added); *United States v. Al-Azzawy*, 784 F.2d 890, 893 (9th Cir. 1985) (constructive entry when several officers completely surround a defendant’s home, point their weapons at defendant, and use a bullhorn to threaten the defendant to come outside to effectuate an arrest); *Morgan*, 743 F.2d at 1165 (constructive entry when *ten* officers surround defendant’s home at night, aim their car’s lights into the windows, strategically block the driveway, and use a bullhorn to scream at the defendant to step outside his house to effectuate an arrest) (emphasis added).

The actions of the Agents are highly distinct from the officer's actions in *Morgan* and *All-Azzawy*. Only two agents arrived at Petitioner's home. R. at 20. They did not surround his house, nor did they strategically position their single police car to blast its headlights at Petitioner or block his driveway. *See generally, Id.* Petitioner could clearly see both agents through his screen door standing on his porch at four o'clock in the afternoon on a sunny day. R. at 11, 21, 29. Further, the Agent's guns remained holstered at all points during the interaction, even when the Agent's suspected Petitioner might become violent. *Compare R. at 26 with Al-Azzawy, 784 F.2d at 893 and Morgan, 743 F.2d at 1165.* At no point did they threaten force with their guns or point them at Petitioner. R. at 26. There was no use of a bullhorn to scream at Petitioner to step outside; the Agents simply knocked on his door, they exchanged pleasantries, then they asked him if he would come outside to answer some questions they had for him. R. at 11.

The Agent's actions were even more distinct from the officers in *Grayer*, where the court still found their actions did not amount to a constructive entry. Here, the Agents did not arrive at Petitioner's residence with other officers, a K-9 unit, or several other police cars. Only two agents arrived in a single vehicle. R. at 29. Likewise, just as the court in *Mendenhall* determined, Petitioner cannot claim the Agents' requests to step outside amounted to a coercive threat simply by nature of them making the requests. Even if Petitioner claims the Agent's tone of voice was firm, they are under no constitutional obligation to be "cheery." R. at 55.

At all times Petitioner acted voluntarily. He came to the front door and opened it when the agents knocked. R. at 21. Unprompted, and after agent Herman noticed two bottles of Chloroform on his counter, *Hemlock mentioned* Wildrose and asked if their visit involved her. R. at 22. Despite expressing his frustration with the agent's request for him to step outside, and despite agents

offering to leave and return at a later time, Petitioner still chose to respond to agent Herman's louder request to step outside. R. at 11-12.

If a reasonable person in this situation can claim that the Agent's actions were coercive, then anytime agents ask a suspect to exit their home they will violate the Fourth Amendment. Therefore, this Court should affirm the lower court's decision to admit the notebook seized incident to Petitioner's lawful arrest.

II. The Lower Court Correctly Reasoned that the Fourth Amendment does not Impose a Duty Upon Law Enforcement to Specifically Investigate into the Ownership of an Ambiguous Container.

This Court should affirm the Fourteenth Circuit's decision and uphold Agent Ristroph's search of the box located on the cabin's stairs for two main reasons. First, the Fourth Amendment does not require law enforcement to inquire into the ownership of a container within a shared residence when it is reasonable for the officer to conclude that the consenting party's authority extends to the container. Second, a ruling for Petitioner inflicts an unmanageable burden upon law enforcement officers and contradicts the Fourth Amendment's preference for clear lines. Finally, any claim that Reiser's authority excluded the stairs because they were a personal area of the Petitioner, is flawed because Reiser indicated her control and/or her access to those areas when speaking to Ristroph, making the extension of her authority to those areas reasonable.

a. The Government did not Violate Petitioner's Fourth Amendment Rights by Searching the Box, Because Agent Ristroph Acted Reasonably.

The Fourth Amendment only requires law enforcement to act reasonably during a search, such reasonability does not require law enforcement to specifically inquire into the ownership of a container during the search. *See generally Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990).

Here, Agent Ristroph acted reasonably when he searched the box inside Petitioner's cabin because the information given to Agent Ristroph made it reasonable for him to conclude that Ms.

Reiser's authority to consent extended to the box. Furthermore, neither the box nor Ms. Reiser presented Agent Ristroph with any information that would lead him to believe that the box exclusively belonged to Petitioner.

1. A Co-Occupant's Apparent Authority Extends to Containers within a Shared Residence, Absent a Showing of Positive Information Indicating Ownership.

Law enforcement is permitted to search containers when they have consent from someone with sufficient authority and it is objectively reasonable for law enforcement to believe that the authority extends to that container.

An exception to the blanket prohibition on warrantless searches is voluntary consent; warrantless searches are not unreasonable when law enforcement obtains voluntary consent to search from someone with adequate authority over the premises. *Davis v. United States*, 328 U.S. 582, 593-94 (1946); *See generally Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990). Individuals with adequate authority over specific premises or effects include: the owner of the property, those who possess common authority, and third parties with apparent authority. *Schneckloth v. Bustamonte*, 412 U.S. 218, 248 (1973); *United States v. Matlock*, 415 U.S. 164, 171 (1974); *See Rodriguez*, 497 U.S. at 186.

Apparent authority exists where someone who is not an owner or an occupant of the property, gives law enforcement a reasonable impression that they are indeed an owner or occupant. *See id.* Reasonability is an objective standard asking "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? *Rodriguez*, 497 U.S. at 188. Put differently, this inquiry assesses the facts given to law enforcement at the time of consent and asks whether that information would lead a reasonable person to believe that the consenting party controls the areas

or items requiring search. *See id.* The Fourth Amendment does not require law enforcement's factual determinations "always be correct," but that "they always be reasonable." *Id.* at 185.

"Generally, 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. Meglar*, 227 F.3d 1038, 1041 (7th Cir. 2000). Accordingly, apparent authority extends to containers within the home when it is objectively reasonable to believe that the container is under the consenting party's control. *See generally id.* It is reasonable to believe that a container is under a consenting party's control when there is no information indicating the container is "obviously and exclusively" another's. *United States v. Snype*, 441 F.3d 119, 137 (2nd Cir. 2006). Even when ownership of a container is ambiguous, it is reasonable to believe that the consenting party's authority extends to that container when the officer is not presented information to the contrary. *Id.* at 136; *Meglar*, 227 F.3d at 1041. Thus, the Fourth Amendment does not require additional inquiry into ownership of a container when that container is within the scope of consent and information of demonstrating "that the container is not under the authorizer's control." *United States v. Taylor*, 600 F. 3d 678, 685 (6th Cir. 2010).

United States v. Snype, the Second Circuit upheld an apartment owner's apparent authority to consent to the search of a knap sack and a red plastic bag belonging to Snype, after he was arrested in the owner's apartment. 441 F.3d at 127 (2nd Cir. 2006). There, the Second Circuit reasoned that the officers conducting the search "had no objectively reasonable basis for concluding" that the apartment owner did not have authority over or an interest in the two bags because she was a resident of the apartment. *Id.* at 136. Furthermore, the Second Circuit noted that Snype needed to provide "credible evidence demonstrating that these items were obviously and exclusively his" to overcome the officer's determination of valid consent. *Id.* However, Snype

failed to present such evidence. For example, the officers never saw Snype carrying the bags and the bags lacked any distinct markings that would obviously show Snype's ownership. *Id.*

In *United States v. Rodriguez*, a co-occupant's consent was limited to exclude another's containers. *See generally* 888 F.3d 519 (7th Cir. 1989). There, the Seventh Circuit found that a wife's consent did extend to a room within the home but did not extend to her husband's briefcase within that room. *Id.* The Seventh Circuit remanded the case for additional fact-finding because the wife's consent was limited by "Mike" being on the outside of the briefcase. *Id.* at 524. This difference there is that the briefcase clearly belonged to someone other than the consenting party.

Therefore, someone's apparent authority may extend to the search of containers within that home, even when ownership of the containers is unclear, so long as it is reasonable for law enforcement to conclude that the authority extends to a given container. *See Meglar*, 227 F.3d at 1041. The only way to overcome this consent is to provide positive, credible information that the container belongs to someone else. *See Snype*, 441 F.3d at 136.

It was reasonable for Ristroph to think that Reiser's authority extended to the box located on the cabin's stairs because Ristroph was not presented with any information to the contrary. R. at 13. Like the bags at issue in *Snype*, the box had no identifying information on it. *Id.* Petitioner's name was not on the box; there were no marking on the box to even suggest that the box was Petitioner's property. *Id.* It was objectively reasonable for Ristroph to conclude that Reiser could consent to the search of the box because there was no information indicating that the container "obviously and exclusively" belonged to the Petitioner. *Snype*, 441 F.3d at 136. To Ristroph the box was just a plain box that could have belonged to Reiser. Ristroph's understanding of the situation was reasonable because the Petitioner took no action to indicate that the box was exclusively his property. Thus, no further inquiry into the ownership of the box was required.

Ristroph's reliance on Reiser's apparent authority extending to the stairs of the cabin and the box on the stairs of the cabin was reasonable because Ristroph was never given positive information indicating that the stairs were within the Petitioner's exclusive control or that the box was "obviously and exclusively" the Petitioner's property. *Id.*

b. Requiring Law Enforcement to Inquire into the Ownerships of Ambiguous Containers Will Create an Unworkable Standard, Contrary to Fourth Amendment Jurisprudence.

This Court should not rule for Petitioner because doing so will plague law enforcement with an unworkable, inefficient standard that is contrary to existing Fourth Amendment law.

Petitioner's rule imposes an unmanageable standard on law enforcement officers. Under Petitioner's argument, law enforcement officers would be forced to specifically clarify the ownership of every container within the home after obtaining consent to search. Law enforcement "could *never* search closed containers within a dwelling (including hotel rooms) without asking the person whose consent is being given *ex ante* about every item they might encounter." *See United States v. Meglar*, 227 F.3d 1038, 1042 (7th Cir. 2000).

Under Petitioner's rule, law enforcement must essentially inventory every container they encounter during a search and confirm ownership. If applied here, law enforcement would have lost valuable time ascertaining the ownership of the box, in lieu of finding evidence to prevent a planned kidnapping of a government official. In this situation, time was of the essence because one co-conspirator was still on the run, meaning it was imperative to gather evidence quickly and locate the other conspirator. But Petitioner's rule would detract from this goal and force law enforcement to waste valuable time on unnecessary questions, leaving Wildrose vulnerable. Therefore, implementing Petitioner's duty would completely detract from law enforcement's goals of protecting society and plague law enforcement with extra burdens that the Fourth Amendment does not require. This process is also subject to many variables. What if co-occupants do not know

what is in a box? What if the co-occupants mistake a box of joint property, for a box with individual property? These variables further waste valuable time and impede law enforcement from preventing heinous crimes. Overall, Petitioner's rule not only restricts law enforcement's ability to search but makes consent searches woefully inefficient, outweighing any benefit of ownership certainty.

Furthermore, imposing Petitioner's duty upon law enforcement directly contradicts Fourth Amendment precedent. The Supreme Court has specifically denounced engaging in drawing on "metaphysical subtleties" within Fourth Amendment jurisprudence. *Frazier v. Cupp*, 294 U.S. 731, 740 (1969). Petitioner's proposed rule would require law enforcement to ascertain "the ownership or possession or custody of every article or space on the premises searched," meaning, "the metaphysical subtleties would be endless." *United States v. Robinson*, 479 F.2d 300, 303 (7th Cir. 1973). Therefore, adopting Petitioner's rule requires this Court to insert an inapplicable standard that contradicts longstanding Fourth Amendment jurisprudence.

Overall, this Court should not rule in favor of Petitioner on this issue for two key reasons. First, Petitioner's rule imposes an unreasonable burden on law enforcement, leading to inefficiency. Second, the burden contradicts the existing understanding of the Fourth Amendment and the Amendment's regulations.

c. Petitioner's Claim that the Stairs were Soley Petitioner's Area are Unfounded because Reiser Either Used or had Access to the Stairs.

Any Claim that Reiser's Authority did not extend to the stairs because it was a personal area of the Petitioner, is flawed. Based on her statements, Reiser implied that she previously used or accessed the stairs and the loft. Therefore, it was entirely reasonable for Ristroph to conclude that Reiser's authority extended to those areas.

Apparent authority extends so far as it is reasonable for officers to believe it extends. “Where a third party appears to have authority over the entire premises, the police may rely on that person’s consent to search throughout the entire house, so long as the consent appeared to extend so far.” *United States v. Almeida-Perez*, 549 F.3d 1162, 1172 (8th Cir. 2008). This blanket rule does not hold true if someone has “clearly manifested an expectation of exclusivity” over a space within the home. *United States v. Clutter*, 914 F.2d 775, 778 (6th Cir. 1990). One can manifest this expectation of exclusivity by taking precautions “to ensure that his possessions will be subject to a consent search only due to his *own* consent.” *Georgia v. Randolph*, 547 U.S. 103, 135 (2006) (Roberts, C.J., dissenting). For example, a co-occupant’s authority would not extend to items with a lock, areas with sign indicating it is off-limits, or objects in part of the house “appropriated for the exclusive use of one occupant.” See generally *United States v. Block*, 590 F.2d 535 (4th Cir. 1978); See *United States v. Richards*, 741 F.3d 843, 851 (7th Cir. 2014); *Almeida-Perez*, 549 F.3d at 1172. However, when a co-occupant can access a guarded area, nothing can override their apparent authority. See generally *United States v. Mojica*, 863 F.3d 727 (7th Cir. 2017).

1. *Reiser’s Statements to Ristroph Demonstrated that she Used the Stairs and the Loft.*

For example, in *United States v. Mojica*, the Seventh Circuit upheld a wife’s apparent authority to consent to the search of a garage, even though the garage was locked and the wife did not possess a key. 863 F.3d at 727. The Seventh Circuit reasoned that the wife not having a key or regularly visiting the garage did not overcome her apparent authority. *Id.* at 732. Rather, the court focused on the fact that the wife had access to the garage and reasoned that “[o]ne can have access to a building or a room but choose not to enter regularly.” *Id.* The husband had taken no further precautions other than locking the garage and being the only one with a key. *Id.* at 730. The court ruled that the garage was not under the husband’s exclusive control, making the officer’s reliance

on the wife's apparent authority reasonable. *Id.* at 732. Therefore, for an area to be within someone's exclusive control they must take precautions to limit another's access to the area and enforce those precautions. *See generally Mojica*, 863 F.3d 727.

It was objectively reasonable for Ristroph to conclude that Reiser's apparent authority extended to the stairs and the box located on the stairs because neither were within the exclusive control of the Petitioner. The stairs were not a personal area of the Petitioner, but rather a common area that was within the scope of Reiser's consent. First, it was known that Reiser lived at the cabin with the Petitioner, meaning she had control and authority over the space of the cabin itself. R. at 11, 15. After consenting to the search, Reiser indicated that she and the Petitioner shared the cabin and slept in a bedroom on the first floor. R. at 15. According to the 302 Report, she also informed Ristroph that she and the Petitioner used the loft area for storage. R. at 13. Based upon this information, it was reasonable for Ristroph to conclude that Reiser had authority over the stairs. R. at 15.

2. *Even if it was not reasonable to conclude that Reiser regularly used the stairs, it was reasonable to conclude that she had access to the stairs.*

Reiser's statements indicated that she had access to the loft and therefore the stairs, creating an independent, objectively reasonable basis for believing that she had authority over those areas. In Reiser's affidavit she claims that she "did not really ever go up" to the loft. *Id.* However, this statement indicates that even if Reiser did not regularly go up to the loft, she did have access to it. Like the wife in *Mojica*, Reiser's affidavit indicates access to the loft, making it not within the exclusive control of the Petitioner. Accordingly, Reiser communicated to Ristroph that she had access to the loft and the stairs, making it objectively reasonable to believe that she had authority over those areas.

Furthermore, Ristroph encountered no further evidence that could have demonstrated that the Petitioner “clearly manifested an expectation of exclusivity” in the stairs. The stairs were not shielded from view or blocked off from others entering the cabin, and there was no attempt to lock or secure the stairs from others in the cabin. R. at 17, 36-37. Rather, the stairs were readily viewable from the living room, a common area of the cabin. R. at 17. The combination of no precautions to exclude access from others, along with the viewability of the stairs from a common area made it objectively reasonable for Ristroph to believe that these areas were not under Petitioner’s exclusive control and that Reiser’s apparent authority extended to the stairs of the cabin.

Overall, Reiser’s statements to Ristroph indicating either that she, along with the Petitioner used or accessed the loft via the stairs. This provides an objectively reasonable basis for Ristroph to conclude that the stairs were not Petitioner’s personal, exclusive space. Additionally, the utter lack of privacy precautions taken to shield the stairs and loft from others, reinforces the reasonableness of Ristroph’s conclusion that Reiser’s apparent authority extended to the stairs, permitting him to search the box.

This Court should affirm the Fourteenth Circuit’s decision and affirm Ristroph’s search of the box located on the stairs for three key reasons. First, the Fourth Amendment simply requires law enforcement officers to make reasonable decisions regarding the extent of a consentor’s apparent authority, which does not require a specific inquiry into the ownership of an ambiguous container. Second, a ruling in favor of Petitioner will result in law enforcement bearing an unreasonable burden during consent searches, leading to police inefficiency. Finally, Petitioner’s claim that Reiser’s authority did not extend to the stairs or the box on the stairs is flawed because Reiser used or had access to these areas, showcasing that they were not within Petitioner’s exclusive control.

III. The Lower Courts Correctly Concluded Rule 608(b) Prohibits Extrinsic Evidence of Specific Conduct to Attack an Absent Declarant's Character for Truthfulness.

This appeal captures Petitioner's attempt to avoid the plain text of Federal Rules of Evidence 806 and 608(b). Petitioner's main argument is fairness—he wants to confront an absent hearsay declarant beyond what the rules authorize. But this request is mistaken in two ways. First, Congress has already resolved this issue. 806 and 608(b), read plainly, forbid the use of extrinsic evidence in the way Petitioner seeks. This is clear: (1) in the plain language of 806 and 608(b) that Congress has adopted; (2) in the Advisory Committee Notes explaining these rules; and (3) in Congress's decision not to address absent declarants in the rules.

Second, Petitioner is mistaken regarding policy. He alleges that he was denied a fair cross-examination. But he ignores the numerous other means of confronting a hearsay declarant—authorized by rules Congress determined to be fair. And Petitioner's interpretation would lead to countless, unnecessary, mini-trials and would only serve to confuse the jury—which is prone to be overly deferential to extrinsic evidence. Accordingly, this Court should affirm.

a. The Plain Language of 806 and 608(b) Prohibits Extrinsic Evidence Here.

This matter involves the interplay between rules 806 and 608(b). Rule 806 allows a party against whom a hearsay statement is introduced to attack the declarant's credibility in the same manner as if they were a witness. It provides:

“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. The court may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. 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.”

Rule 608(b) explains how a witness's credibility may be attacked:

(b) Specific Instances of Conduct. 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. . .

Plainly, 806 does not discuss extrinsic evidence *in any way*. But 608(b) expressly prohibits it. And 806 does not alter the applicability of 608(b). This language is unambiguous and cannot support Petitioner. “[F]or where, as here, the statute's language is plain, the sole function of the courts is to enforce it according to its terms.” *United States v. Ron Pair Enters.*, 489 U.S. 235, 241 (1989). Given the plain language, this Court need not look further. *See id.*; *see also Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). But several other clues confirm that this plain meaning captures Congressional intent.

First, the Advisory Committee Notes to Rule 806 provide that “[t]he declarant of a hearsay statement which is admitted in evidence is in effect a witness. His credibility should in fairness be subject to impeachment and support as though he had in fact testified.” Fed. R. Evid. 806 Advisory Committee's Notes. They then cite 608 and 609, which provide acceptable means of confronting such a hearsay declarant. *Id.* Effectively, the drafters of these rules are communicating that 608(b) applies when confronting a hearsay declarant under 806. Had Congress wanted a different interpretation, the Rules or Committee Notes would be different. But they are not. *See United States v. Vonn*, 535 U.S. 55, 64, n.6 (2002) (“[T]he Advisory Committee Notes provide a reliable source of insight into the meaning of a rule.”).

Second, the Rules of Evidence clearly communicate when exceptions apply in other rules. For example, Rule 613(b) expressly authorizes extrinsic evidence to prove prior inconsistent statements. But, while Congress was aware of 608(b)'s prohibition on extrinsic evidence and was willing to grant exceptions under other rules like 613, they did not provide an exception in 806.

See United States v. Saada, 212 F.3d 210, 221 (3d Cir. 2000) (“The fact that Rule 806 does not provide a comparable allowance for the unavailability of a hearsay declarant in the context of Rule 608(b)'s ban on extrinsic evidence indicates that the latter's ban on extrinsic evidence applies with equal force in the context of hearsay declarants.”). “Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” *Bates v. United States*, 522 U.S. 23, 29-30 (1997). In this context, omitting any exception in 806 to the ban on extrinsic evidence could only be deliberate. *See id.*

Notably, the Fourteenth Circuit’s dissent argued that 608(b) is inapplicable here because this Rule only bars extrinsic evidence of a “*witness’s* character for truthfulness.” R. at 61 (emphasis added). Because Copperhead is a declarant, not a witness, the dissent argued that 608(b) is inapplicable. *Id.* Petitioner is likely to argue the same. But this interpretation suffers from two flaws.

First, this interpretation ignores the plain text of 806, which specifies that a hearsay declarant’s credibility may be attacked “by any evidence that would be admissible for those purposes if the declarant had testified as a witness.” The Rules treat the declarant like a witness. Fed. R. Evid. 806. Since 608(b) plainly applies to witnesses, it applies to hearsay declarants treated as witnesses under 806. *See Saada*, 212 F.3d 210, 221-22; *United States v. White*, 116 F.3d 903, 920 (D.C. Cir. 1997).

Second, if the Circuit dissent’s interpretation were applied, the Rules of Evidence would place no limits on confronting hearsay declarants in this context. The Federal Rules provide a comprehensive list of what evidence can and cannot be used against witnesses, and when. *See, e.g.*, Fed. R. Evid. 608; 609; 611 (explaining the nuances of examining witnesses, types of evidence

that can be used to confront witnesses, etc.). But the Rules do not have separate provisions for confronting a hearsay declarant. *See generally* Fed. R. Evid. Instead, 806 treats declarants as witnesses and applies those rules. Fed. R. Evid. 806 (“[A]s if on cross examination.”).

If 608 did not apply to hearsay declarants, 806 would be inoperable, and *none* of the Rules regarding confronting witnesses (i.e. 609, 611, etc.) would need to apply to hearsay declarants. The Rules would not provide *any* limits on confronting hearsay declarants. That result would be absurd and clearly contrary to the careful balance between probative value and fairness that Congress has poured into the Federal Rules of Evidence.

A plain reading of 608 and 806 shows a fatal flaw to Petitioner’s arguments. And this interpretation is bolstered by the Advisory Committee Notes, statutory interpretation principles, and the absurd result if the Fourteenth Circuit dissent were to be applied.

b. Other Courts Deciding this Issue Have Typically Come to the Same Conclusion as the Lower Courts Here.

This is a matter of first impression for this Court. However, a handful of lower courts have considered the issue. Most have agreed with the lower courts here and determined that 608(b) prohibits using extrinsic evidence against an absent hearsay declarant.

The Third Circuit reached this conclusion *United States v. Saada*. 212 F.3d 210, 213 (3d Cir. 2000). It determined that the trial court erred in letting in extrinsic evidence under similar circumstances. *Id.* at 222. It was convinced by several arguments: the plain meaning of 806 and 608(b), the several other available methods of impeaching a hearsay declarant, rules of statutory interpretation, and avoiding mini trials on extrinsic evidence issues. *Id.* at 220-22. The *Saada* Court fully recognized that this ruling would mean that “where the declarant is unavailable to testify, the ban prevents using evidence of prior misconduct as a form of impeachment, unless the witness testifying to the hearsay has knowledge of the declarant's misconduct.” *Id.* at 222. Nevertheless,

the Court concluded that the plain language of these rules, as well as the policy rationales underlying 608(b)'s ban on extrinsic evidence, could not be ignored. *Id.*

The D.C. Circuit Court of Appeals reached the same conclusion in *United States v. White*, 116 F.3d 903, 920 (1997). There, the D.C. Circuit Court was convinced by the plain reading argument and did not need to proceed further. *See id.* And several district courts have also followed this pattern. *See, e.g., Armstrong v. Bair*, No. CIV-03-0255-C, 2007 U.S. Dist. LEXIS 13375, at *10 (W.D. Okla. Feb. 23, 2007) (the court was “not persuaded that the circumstances warrant departure from the clear directive of” 608(b)); *United States v. Little*, No. CR 08-0244 SBA, 2012 U.S. Dist. LEXIS 90812, at *11 (N.D. Cal. June 18, 2012) (embracing *Saada* and *White*); *United States v. Shayota*, No. 15-CR-00264-LHK, 2016 U.S. Dist. LEXIS 145065, at *20 (N.D. Cal. Oct. 19, 2016); *United States v. Andrade*, No. 20-cr-00249-RS-1, 2025 U.S. Dist. LEXIS 37908, at *14 (N.D. Cal. Mar. 3, 2025).

Only the Second Circuit agrees with Petitioner. *See United States v. Friedman*, 854 F.2d 535, 570 (2d Cir. 1988). But this decision offers minimal authority. *Friedman*, decided about ten years before *Saada* or *White*, involved an injured man who died of his wounds. *Id.* at 569. Before his death, he made out-of-court statements indicating that he had been abducted. *Id.* But he also told reporters that his wounds had been self-inflicted. *Id.* At trial, Defendant Friedman attacked the victim's hearsay statements regarding the abduction using extrinsic evidence—a video of the victim saying that his wounds were self-inflicted. *Id.* But the trial court excluded this evidence for lack of probative value. *Id.*

The Second Circuit concluded that the trial judge did not abuse his discretion in excluding this evidence for lack of probative value. *Id.* In dicta, the court stated that 806 acts as an exception to 608(b) because “when the declarant has not testified and there has by definition been no cross-

examination, and resort to extrinsic evidence may be the only means of presenting such evidence to the jury.” *Id.* at 570, n.8. But the Second Circuit did not discuss this further—never mentioning 608(b)’s plain prohibition on extrinsic evidence, legislative intent, or public policy. *See id.* at 569, 570, n.8. In fact, the government did not argue that 608(b) even applied on appeal. *Id.* at 570, n.8; *but see United States v. Uvino*, 590 F. Supp. 2d 372, 375 (E.D.N.Y. 2008) (applying *Friedman* as binding precedent).

This Court should be guided by those who have more recently and fully examined this issue, like *White* and *Saada*. And these courts have been inclined to deny Petitioner’s arguments.

c. Prudent Public Policy Supports Interpreting the Rules as Written.

Petitioner’s chief arguments appeal to policy and fairness. But there are more compelling policy reasons to prohibit extrinsic evidence as 608(b) advises.

1. Interpreting the Rules as Written to Prohibit Extrinsic Evidence Promotes Judicial Economy and Safeguards Against Confusion.

The rules of evidence provide bright-line guidance, which streamlines the evidentiary process. In effect, the Rules prevent costly mini trials on tertiary issues. These principles apply here and provide a strong basis for interpreting 608(b) and 806 as written. Allowing extrinsic evidence here would lead to further disputes over evidence and drag out proceedings.

And mini trials do more than just waste resources; they can lead to bad verdicts by confusing a jury. *See, e.g., United States v. Tsarnaev*, 595 U.S. 302, 324 (2022) (prohibiting a line of character evidence question that would have been confusing and complicated). Debates over this type of extrinsic evidence occur while a witness is on the stand, in front of the jury, as happened here. (R. at 42-44). But jurors are unprepared to understand the nuances of these legal debates. Just hearing about the character evidence offered may taint their perception. *See, e.g., Old Chief v. United States*, 519 U.S. 172, 185 (1997) (noting that prior conviction character evidence “generally

carries an unfair risk of prejudice” and may be “enough to lure a juror into a sequence of bad character reasoning.”). And Juries are predisposed to give too much credence to extrinsic evidence, because it appears official. *See, e.g., Clark v. Arizona*, 548 U.S. 735, 742 (2006) (evidence of mental illness highly likely to confuse jurors).

Petitioner wants to abandon a bright-line rule regarding extrinsic evidence. But this will necessarily involve arguments over extrinsic evidence—dragging out proceedings and confusing jurors. That is an inadvisable solution, especially given the clear Congress’s mandate banning extrinsic evidence.

2. *The Federal Rules of Evidence give Petitioner a Substitute for Cross-Examining the Declarant that Congress has Determined to Be Fair.*

Petitioner argues that, because cross-examination of a deceased declarant is impossible, the only fair outcome is to let in extrinsic evidence. But this is unnuanced and ignores the careful balance between probative value and unfair prejudice that undergirds the Rules of Evidence.

Petitioner will argue that this extrinsic evidence is highly probative and should be admitted as a matter of fairness. Congress disagrees. 806 utilizes a question of category: either the evidence is extrinsic (and not allowed), or it is not. The probative value of the proposed extrinsic evidence has no place in this analysis under 806 and is not mentioned anywhere.

Rest assured, the Rules of Evidence give Petitioner several methods of attacking Copperhead’s credibility. Just not the way they would prefer. Petitioner could still ask other witnesses about Copperhead’s character for truthfulness, confront witnesses with Copperhead’s prior inconsistent statements, admit any criminal convictions pursuant to Rule 609, or offer opinion or reputation evidence. Fed. R. Evid. 608; 609. Congress has determined, and explicitly stated, that these other methods *are sufficiently probative* to attack character for truthfulness.

However frustrating to Petitioner that he can *only* challenge Copperhead’s credibility using a prohibited type of evidence, this is all that the law provides. And the unavailability of one form of impeachment, under a specific set of circumstances, does not justify overriding the plain language of the Rules of Evidence. *See United States v. Finley*, 934 F.2d 837, 839 (7th Cir. 1991). Here, Congress’s plain language under 806 and 608(b) represents their determination of good policy—a balance between probative value, fairness, risk of prejudice, and judicial economy. Petitioner may disagree with that policy, but he has no genuine basis to challenge it. Accordingly, this Court should affirm.

CONCLUSION

This Court should affirm each of the Fourteenth Circuit’s decisions by holding: (1) that Hemlock’s arrest did not violate the Fourth Amendment; (2) the Government’s search of the box located on the stairs did not violate the Fourth Amendment; and (3) Federal Rule of Evidence 608(b) prohibits extrinsic evidence of specific conduct to attack an absent declarant’s character for truthfulness.

Respectfully Submitted,

/s/ **Team RT27**

Counsel for Respondent