

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

Case No.: 025-7373

ATTICUS HEMLOCK,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

BRIEF FOR THE PETITIONER, THE UNITED STATES OF AMERICA

Attorneys for the Petitioner

QUESTIONS PRESENTED

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

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

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

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OPINIONS BELOW

The transcripts of the hearings on the constitutional issues before the United States District Court for the Northern District of Boerum appear on the record at pages 18–39 and for the hearsay issue at pages 40–50. The opinion of the United States Court of Appeals for the Fourteenth Circuit appears in the record at pages 51–61.

CONSTITUTIONAL PROVISIONS

The text of the following constitutional provisions is provided below:

The Fourth Amendment states:

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

U.S. Const. amend. IV.

STATEMENT OF THE FACTS

I. The Investigation and Warrantless Arrival at Hemlock's Home

On March 29, 2024, Elvis Hoag contacted the Boerum Village Police Department to report a conversation he overheard in a coffee shop between Petitioner Atticus Hemlock and Iris Copperhead. (R. at 7.) Hoag claimed the pair was discussing a woman referred to only as "Jodie" and a potential confrontation in a parking lot. (R. at 7.) Hoag admitted that the conversation merely gave him a "gut feeling" that something was wrong. (R. at 8.) At the time, Jodie Wildrose, the Secretary for Rural Development, had recently announced a controversial land initiative. (R. at 4.)

The following day, Tina Caplow reported that two individuals purchased various hardware supplies, including plastic ties and bags, using cash. (R. at 6.) By March 30, Federal Bureau of Investigation Special Agents Herman and Simonson had received these detailed reports regarding the alleged plot and suspicious purchases. (R. at 6–8.) Acting on this limited

information, the agents proceeded to Hemlock's residence to conduct an investigation. (R. at 11.) They did not seek a warrant prior to this encounter. (R. at 23.)

II. The Coercive "Constructive Entry" and Arrest

Upon arriving at Hemlock's home, Agents Herman and Simonson did not merely knock and talk; they initiated a confrontation. The agents were heavily armed, carrying guns, tasers, batons, and handcuffs. (R. at 25.) When Hemlock opened the door, he remained entirely inside his home. (R. at 11.) He explicitly questioned the agents about their presence, asking, "What's going on?" and "Does this have to do with Jodie?" (R. at 11-12.) The agents refused to answer his questions or explain their purpose. (R. at 12.) Instead, they issued commands, instructing Hemlock to "come outside." (R. at 12.)

Hemlock expressly refused to leave his sanctuary, telling the agents, "No way. Leave me alone!" (R. at 11.) Ignoring this invocation of his rights, the agents escalated the encounter. Agent Herman shouted, "Sir! Come outside! ... Now!" while Agent Simonson yelled, "Get outside right now!" (R. at 12.) During this exchange, both agents deliberately placed their hands on their holsters, a gesture Agent Herman admitted was "intimidating" and signaled they had access to lethal force. (R. at 26.)

Faced with this overwhelming show of authority and the implicit threat of violence, Hemlock capitulated, stating, "Okay, okay," and stepped onto the porch. (R. at 12.) The agents immediately seized him, forced him to the ground, and arrested him for attempted kidnapping of a federal official. (R. at 12, 23.) During the arrest, Agent Herman confiscated a spiral-bound notebook from Hemlock's person. (R. at 12.) Following the arrest, Agent Herman transported Hemlock for processing, while Agent Ristroph remained behind to target Hemlock's girlfriend for consent to search. (R. at 13.)

III. The Warrantless Search Based on Invalid Third-Party Consent

Approximately 20 minutes after Hemlock's removal, his girlfriend, Fiona Reiser, arrived at the residence. (R. at 13.) Agent Ristroph asked Reiser for permission to "look around" as part of an investigation, to which she agreed. (R. at 13.) However, her authority over the premises was visibly limited. When Agent Ristroph inquired about the second floor, Reiser explicitly stated that Hemlock used it for his own storage and office space. (R. at 13.) She further asserted that she did not sleep on the second floor but rather slept on the first floor. (R. at 15.)

Despite these clear indicators that Reiser lacked common authority over the upstairs area, Agent Ristroph pressed forward. When asked what Hemlock kept upstairs, Reiser admitted she "did not know" because she "did not ever go up there." (R. at 15.) Ignoring this admission of a lack of access, Agent Ristroph walked straight to the stairs where a closed cardboard box was sitting. (R. at 16.) Without obtaining a warrant or asking further clarifying questions to resolve the obvious ambiguity of Reiser's authority, Agent Ristroph opened the closed box, seized the items inside, and left. (R. at 16.)

IV. The Admission of Hearsay Testimony from Theodore Kobler

On April 2, 2024, Theodore Kobler was walking in Joralemon State Park when he stumbled upon Iris Copperhead. (R. at 41.) Prior to this chance encounter, Kobler did not know Copperhead, her reputation, or her credibility. (R. at 46.) He observed that Copperhead appeared out of breath and was crying. (R. at 42.) As Kobler began to ask if she was well, Copperhead screamed, "I can't believe I saw him get arrested. It's all his fault. It was all Atticus' idea—NOT MINE! I can't run a business from prison!" (R. at 43.)

Copperhead was subsequently detained but passed away in jail the night of her arrest from an aortic rupture. (R. at 46.) At trial, the Government sought to introduce Kobler's

testimony regarding Copperhead's statement. (R. at 46.) Over defense objection, the district court admitted the statement for its truth under the excited utterance exception to the hearsay rule, despite the lack of context or corroboration. (R. at 46.)

STATEMENT OF THE CASE

On April 3, 2024, a grand jury in the United States District Court for the Northern District of Boerum indicted Petitioner Atticus Hemlock ("Petitioner") on one count of attempted kidnapping of an officer of the United States government in violation of 18 U.S.C. §§ 1201(a)(5) and 1201(d). (R. at 1-2.) Petitioner subsequently filed two pretrial motions to suppress evidence. (R. at 53.) First, Petitioner moved to suppress a notebook seized from his person during his arrest, arguing that the arrest violated the Fourth Amendment because law enforcement officers constructively entered his home without a warrant. (R. at 19.) Second, Petitioner moved to suppress evidence found inside a closed cardboard box in his home, arguing that the third-party consent provided by his co-occupant was invalid regarding the closed container. (R. at 31-32.)

The District Court held a hearing on the motions on July 29, 2024. (R. at 18.) The court denied the first motion, holding that the officers did not violate *Payton v. New York* because they did not physically cross the threshold of the home. (R. at 31.) The court also denied the second motion, holding that the officers reasonably believed the co-occupant possessed apparent authority to consent to the search of the box. (R. at 38-39.)

Trial commenced on August 6, 2024. (R. at 40.) During trial, the Government introduced hearsay statements made by an alleged co-conspirator, Iris Copperhead, under the "excited utterance" exception to the hearsay rule. (R. at 43.) Petitioner sought to impeach Copperhead's credibility pursuant to Federal Rule of Evidence 806 by introducing extrinsic evidence of her prior academic dishonesty and falsified employment application. (R. at 47-49.) The District

Court sustained the Government's objection to this evidence, ruling that Federal Rule of Evidence 608(b) prohibits the use of extrinsic evidence to attack a declarant's character for truthfulness. (R. at 50.)

On August 12, 2024, the jury found Petitioner guilty of attempted kidnapping. (R. at 51.) On October 17, 2024, the District Court sentenced Petitioner to ten years in prison. (R. at 51.) Petitioner appealed to the United States Court of Appeals for the Fourteenth Circuit, challenging the District Court's rulings on the suppression motions and the exclusion of the impeachment evidence. (R. at 51-52.)

On April 14, 2025, a divided panel of the Fourteenth Circuit affirmed Petitioner's conviction. (R. at 51.) The majority held that: (1) the warrantless arrest did not violate the Fourth Amendment because the officers remained outside the home; (2) the search of the closed box was reasonable based on apparent authority; and (3) Rule 806 does not permit the use of extrinsic evidence barred by Rule 608(b). (R. at 51–52.) Judge Kim dissented on all three issues, arguing that the officers' coercive conduct constituted a constructive entry, the co-occupant lacked authority to consent to the box search, and Rule 806 permits extrinsic impeachment of unavailable declarants. (R. at 58.)

On December 2, 2025, the Supreme Court of the United States granted Petitioner's writ of certiorari on all three issues. (R. at 62.)

SUMMARY OF ARGUMENT

The Fourth Amendment's protection of the home is rendered meaningless if law enforcement can circumvent the warrant requirement through coercion. Under *Payton v. New York*, police are prohibited from crossing the threshold of a home to effect an arrest without a warrant. In this case, FBI agents violated this core constitutional protection by utilizing a "constructive entry"—surrounding Petitioner Hemlock's home, visibly touching their weapons,

and issuing escalating commands that left him no choice but to submit to their authority. By forcing Hemlock to exit his sanctuary through an overwhelming show of force and calculated deception, the agents achieved the functional equivalent of a physical entry. To prevent the "firm line" at the entrance of the home from becoming a mere formality, this Court should adopt the constructive entry doctrine and hold that the agents' warrantless seizure of Hemlock was unconstitutional.

The warrantless search of the closed container violated the Fourth Amendment because the officers could not reasonably rely on third-party consent after being told facts that negated the consenter's authority. Under *Illinois v. Rodriguez*, police reliance on apparent authority must be objectively reasonable. In this case, the co-occupant explicitly informed the agents that the second-floor loft was Petitioner's exclusive office and that she did not access that space. This affirmative disclaimer created, at minimum, a fatal ambiguity regarding her authority over the staircase leading to the loft and the closed box resting upon it. Faced with this uncertainty, the agents had a mandatory "duty to inquire" to clarify the scope of her access before proceeding. Instead, they willfully ignored these red flags and opened a private, closed container without a warrant. Because the agents prioritized expediency over the constitutional requirement of voluntary and authorized consent, the search was objectively unreasonable, and the evidence must be suppressed.

The Fourteenth Circuit erred in excluding extrinsic evidence of the hearsay declarant's habitual fraud, effectively immunizing a critical government witness from scrutiny. While Federal Rule of Evidence 608(b) generally prohibits using documents to prove specific instances of conduct, this prohibition is premised on the availability of cross-examination to test truthfulness. However, Federal Rule of Evidence 806 mandates that a hearsay declarant's

credibility may be attacked "as if" they had testified. When death or absence renders cross-examination impossible, strict application of Rule 608(b) destroys the right to impeach entirely. As the Second and D.C. Circuits have recognized, the procedural preference for "inquiry" must yield to the substantive necessity of extrinsic evidence when it is the only means available to challenge a declarant's reliability. By shielding the declarant's history of calculated deception from the jury, the court below elevated form over fairness and allowed an unverified accusation to pass as unimpeachable truth.

ARGUMENT

I. THE OFFICERS VIOLATED THE FOURTH AMENDMENT BECAUSE COERCING A SUSPECT TO EXIT THE HOME CONSTITUTES A "CONSTRUCTIVE ENTRY" THAT REQUIRES A WARRANT UNDER *PAYTON*.

The Fourth Amendment protects individuals from unreasonable searches and seizures, with the "physical entry of the home [being] the chief evil against which the wording of the Fourth Amendment is directed." U.S. Const. amend. IV; *Welsh v. Wisconsin*, 466 U.S. 740, 748 (1984) (quoting *United States v. U.S. Dist. Ct.*, 407 U.S. 297, 313 (1972)). Because the home receives this highest level of protection, the Supreme Court has consistently held that law enforcement officers must obtain a warrant to arrest a suspect inside their dwelling, absent exigent circumstances. *Payton v. New York*, 445 U.S. 573, 576 (1980). In *Payton*, the Court emphasized that the Fourth Amendment draws a "firm line at the entrance to the house," which "may not reasonably be crossed without a warrant." *Id.* at 590.

This bright-line rule reflects the Framers' intent to safeguard the home as a zone of privacy, free from unwarranted governmental intrusion. *See id.*; *see also Johnson v. United States*, 333 U.S. 10, 13–14 (1948). As the Supreme Court recognized in *Boyd v. United States*, the Fourth Amendment protects against all forms of governmental intrusion into the sanctity of

the home, including those that may be characterized as "indirect" invasions. 116 U.S. 616, 630 (1886). Similarly, in *Silverman v. United States*, the Court held that the right to retreat into one's home and "be free from unreasonable governmental intrusion" is at the very core of the Fourth Amendment. 365 U.S. 505, 511 (1961).

The constructive entry doctrine extends the protections of *Payton* to situations where law enforcement officers use coercive tactics to compel a suspect to exit their home. Recognized by courts such as the Sixth, Ninth, Tenth, and Eleventh Circuits, this doctrine treats an arrest as occurring "inside" the home if police conduct forces the suspect to leave, even if the officers remain physically outside. *United States v. Morgan*, 743 F.2d 1158, 1166 (6th Cir. 1984); *United States v. Johnson*, 626 F.2d 753, 757 (9th Cir. 1980); *United States v. Maez*, 872 F.2d 1444, 1451 (10th Cir. 1989); *United States v. Edmondson*, 791 F.2d 1512, 1515 (11th Cir. 1986). This approach ensures that law enforcement cannot exploit the physical threshold of the doorway to circumvent the warrant requirement. *Breitbard v. Mitchell*, 390 F. Supp. 2d 237, 248 (E.D.N.Y. 2005). By treating coercive removal as legally equivalent to physical entry, the doctrine preserves the Fourth Amendment's core purpose: safeguarding the sanctity of the home from unreasonable governmental intrusion.

A. The Fourteenth Circuit's Rejection Of The Constructive Entry Doctrine Undermines Payton By Permitting Police To Circumvent The Warrant Requirement Through Coercion.

The constructive entry doctrine ensures that law enforcement cannot circumvent the warrant requirement by remaining physically outside the home while using coercive tactics to achieve the same result as a warrantless in-home arrest. *See Morgan*, 743 F.2d at 1166. This doctrine aligns with the principles of *Payton* by preserving the sanctity of the home and preventing law enforcement from exploiting loopholes in the Fourth Amendment's protections. (R. at 58–59.) Without this doctrine, the "firm line" at the entrance of the house becomes a tool

for manipulation rather than a shield for privacy. See *United States v. McCraw*, 920 F.2d 224, 229 (4th Cir. 1990) (holding that officers cannot do indirectly what Payton prohibits them from doing directly).

1. A "physical-only" interpretation renders the warrant requirement meaningless.

Other circuits have successfully applied this doctrine to prevent such overreach. For example, in *United States v. Morgan*, the Sixth Circuit held that coercive actions by law enforcement, such as surrounding a home and flooding it with spotlights while commanding the suspect to exit, constitute a constructive entry. 743 F.2d at 1161. Similarly, the Tenth Circuit found that ordering a suspect to open their door under color of authority is inherently coercive and violates the Fourth Amendment. *United States v. Reeves*, 524 F.3d 1161, 1167–68 (10th Cir. 2008). These courts recognize that the "firm line" at the entrance of the home is rendered meaningless if officers can simply force a suspect across it without a warrant. See *id.*

In contrast, the Fourteenth Circuit and other courts rejecting the doctrine focus narrowly on the physical location of the officers. (R. at 55.) They argue that as long as officers do not breach the threshold, the Fourth Amendment is unviolated. (R. at 55.) However, this narrow interpretation fails to address the reality that coercive conduct can infringe upon privacy just as effectively as physical entry. By limiting analysis to physical presence, these courts disregard the broader purpose of the Fourth Amendment: to prevent overreach by state actors and preserve the sanctity of the home. See *Payton*, 445 U.S. at 589. As the Fourth Circuit noted in *McCraw*, constructive entry prevents officers from achieving indirectly what they are constitutionally prohibited from doing directly. 920 F.2d at 229.

2. Fourth Amendment protections must adapt to modern forms of psychological coercion.

The government may argue that coercion is only actionable if it involves physical intrusion, but this view ignores the reality that modern applications of authority often rely on psychological and non-physical pressures. The essence of the Fourth Amendment is not limited to addressing physical trespass but encompasses protecting individuals from actions that effectively achieve the same unconstitutional result. *See Kyllo v. United States*, 533 U.S. 27, 34 (2001) (warning that permitting modern police tactics to erode the "degree of privacy" guaranteed by the Fourth Amendment would be unconstitutional); *Katz v. United States*, 389 U.S. 347, 353 (1967) (holding that the Fourth Amendment's reach "cannot turn upon the presence or absence of a physical intrusion"). As law enforcement tactics evolve, constitutional protections must adapt to ensure that "psychological" entry does not become a lawful substitute for a warrant. *See Kyllo*, 533 U.S. at 34 (stating that the Fourth Amendment must preserve the home's privacy against "advancing technology").

The policy implications of rejecting this doctrine are significant. Adopting the constructive entry doctrine acts as a necessary deterrent, encouraging law enforcement to seek warrants rather than relying on "tactical circumventions" of the Constitution. *See Morgan*, 743 F.2d 1158, 1166 (6th Cir. 1984). It ensures that judicial oversight remains a check against abuse of power. As the dissenting opinion in the court below correctly recognized, constitutional protections are defined not by physical boundaries, but by whether an individual's right to make voluntary decisions is preserved. (R. at 59.) The dissent correctly noted that creating an environment of implicit coercion forces individuals to surrender their rights without proper judicial intervention. (R. at 59.)

B. The Agents Effectuated A Constructive Entry Because Their Conduct Compelled The Suspect To Submit To Authority While Still Inside The Home

The FBI agents' conduct in this case constituted a constructive entry because, under the totality of the circumstances, they effectively forced Hemlock to leave his sanctuary. The agents arrived at Hemlock's home without a warrant (R. at 22.) and engaged in a series of coercive actions that created an atmosphere of intimidation, leaving Hemlock with no reasonable choice but to comply. (R. at 11-12, 25-26.)

1. The agents utilized an overwhelming show of force and escalating commands to compel submission.

First, the agents utilized a "show of force" that transformed a consensual encounter into a command to submit. Special Agents Herman and Simonson were armed with "standard tools" including guns, tasers, and batons. (R. at 25.) During the encounter, both agents deliberately placed their hands on their holsters. (R. at 26.) Agent Herman admitted on cross-examination that this is a "pretty obvious movement" where an individual can see that the agents "have access to and are touching [their] guns." (R. at 26.) Herman further conceded that seeing two officers place their hands on their guns is "a pretty intimidating thing to see." (R. at 26.) This gesture communicates a threat of lethal force, signaling to the occupant that non-compliance is not an option. When agents escalate an encounter by engaging with their weapons, they are no longer requesting voluntary cooperation; they are coercing submission.

Second, the verbal commands issued by the agents were imperative and escalating. Initially, the agents requested Hemlock to "come outside." (R. at 11.) When Hemlock exercised his right to refuse, stating "No way. Leave me alone!", the agents did not respect his decision to remain in his home. (R. at 11.) Instead, they escalated their language, shifting from requests to orders. Agent Herman shouted, "Sir! Come outside! ... Now!" (R. at 12.) Agent Simonson reinforced this command, yelling, "Get outside right now!" (R. at 12.) The use of the phrase

"right now" combined with the raised volume and the hands on their holsters indicates that compliance was mandatory. A reasonable person in Hemlock's position—facing armed federal agents shouting orders and touching their weapons—would believe they were not free to remain inside or terminate the encounter. *See United States v. Edmondson*, 791 F.2d 1512, 1515 (11th Cir. 1986) (holding that a suspect did not voluntarily consent to exit his home when he opened the door in response to agents shouting commands); *United States v. Mendenhall*, 446 U.S. 544, 554 (1980) (holding that a person is seized if, in view of all circumstances, a reasonable person would have believed that he was not free to leave).

2. The agents exceeded the scope of a consensual encounter and trespassed on the curtilage.

The agents' conduct exceeded the scope of a consensual "knock and talk," transforming their presence into a trespass. While officers have an implied license to approach a home, that license is limited to the conduct of a "customary visitor" and is revoked when the occupant refuses to speak. *See Florida v. Jardines*, 569 U.S. 1, 9 (2013); *Kentucky v. King*, 563 U.S. 452, 469-70 (2011). Here, Hemlock explicitly revoked that license, stating, "Leave me alone!" (R. at 11.) Rather than respecting this revocation, the agents walked to their vehicle and immediately returned to the curtilage, signaling that they would not depart. (R. at 12.) This deliberate refusal to leave made it clear that the encounter was no longer voluntary. By ignoring his express command to depart and instead issuing commands from the curtilage of his home, the agents violated the physical boundaries of the property, rendering their subsequent actions unconstitutional. *See Jardines*, 569 U.S. at 9-10 (holding that officers who exceed the "background social norms" of a visitor are no more than trespassers violating the Fourth Amendment).

Third, the agents engaged in deception and refused to explain the nature of their presence, which increased the psychological pressure on Hemlock. When Hemlock asked, "What's going on?" and "Does this have to do with Jodie?", the agents refused to answer, merely telling him to "calm down." (R. at 11-12.) Hemlock explicitly told the agents, "You guys freak me out." (R. at 11.) By withholding information while simultaneously demanding he exit the safety of his home, the agents manipulated the situation to induce fear and confusion. *See United States v. Johnson*, 626 F.2d 753, 757 (9th Cir. 1980) (finding that police misrepresentation combined with a show of force negates consent). This unconstitutional manipulation creates a coercive environment where the suspect is psychologically forced to surrender the protection of the home. *See United States v. Morgan*, 743 F.2d 1158, 1166 (6th Cir. 1984) (holding that 'coercive police conduct' outside the home constitutes a constructive entry); *United States v. Maez*, 872 F.2d 1444, 1451 (10th Cir. 1989) (ruling that exiting a home in response to police commands is a submission to authority, not a voluntary waiver of *Payton* rights).

Furthermore, the coercive nature of the encounter was amplified by Agent Herman's apparent fabrication of evidence to force a confrontation. Herman claimed he observed chloroform bottles on the counter behind Hemlock. (R. at 11, 22.) However, Agent Ristroph discovered these specific bottles inside a closed cardboard box only an hour later. (R. at 13.) Given the physical impossibility of seeing inside a closed container from the threshold, Herman's claim appears to be a calculated falsehood designed to manufacture an excuse to escalate the encounter. This specific type of police misrepresentation constitutes bad faith and contributes significantly to the "coercive environment" that psychologically forced Hemlock out. *See Johnson*, 626 F.2d at 757 (holding that police misrepresentation/deception contributes to a finding of constructive entry).

3. *The agents deliberately circumvented the warrant requirement and seized the suspect inside the home.*

Fourth, the agents' intent was clearly to circumvent the warrant requirement. Agent Herman admitted that after seeing the chloroform and hearing Hemlock mention "Jodie," they determined there was probable cause to arrest. (R. at 22.) However, instead of obtaining a warrant or securing the perimeter, they decided to "try to get him to come outside where we would arrest him." (R. at 23.) This was a calculated tactic to lure Hemlock out of the constitutional protection of his home to effectuate a warrantless arrest. As the court in *United States v. McCraw* noted, officers cannot do indirectly what *Payton* prohibits them from doing directly. 920 F.2d 224, 229 (4th Cir. 1990). The agents here used the "firm line" of the doorway not as a limit on their authority, but as a trap for the unwary suspect.

Finally, the seizure legally occurred while Hemlock was still inside. A seizure requires a show of authority and submission. *See California v. Hodari D.*, 499 U.S. 621, 626 (1991). The moment Hemlock capitulated to the agents' shouting of "Get outside right now!" by responding "Okay, okay," he had submitted to their authority. (R. at 12.) Since this submission occurred before he crossed the threshold, the arrest was effectuated inside the home, directly violating *Payton*.

The principles of *Payton* are directly implicated here. Although the agents remained physically outside, their conduct undermined the Fourth Amendment's protections just as effectively as a physical kick to the door. Their actions were not merely requests for voluntary compliance; they were commands backed by the visible display of force. Under the constructive entry doctrine, this conduct is equivalent to a warrantless in-home arrest. *See United States v. Morgan*, 743 F.2d 1158, 1166 (6th Cir. 1984). By treating the agents' coercive removal of

Hemlock as a valid arrest, the lower court allowed the government to exploit a loophole that leaves the home's sanctity protected in name only.

The Supreme Court should adopt the constructive entry doctrine and hold that the FBI agents' conduct in this case violated the Fourth Amendment. By compelling Hemlock to exit his home through coercive tactics—including visible threats of force, shouting commands, and calculated deception—the agents effectively conducted a warrantless in-home arrest, contrary to the principles established in *Payton*, 445 U.S. 573. Adopting the constructive entry doctrine would ensure that the Fourth Amendment's protections remain robust and that the sanctity of the home is preserved against both physical and psychological intrusion. The Court should reverse the Fourteenth Circuit's decision and hold that the arrest violated the Fourth Amendment.

II. OFFICERS VIOLATED THE FOURTH AMENDMENT BECAUSE THE CO-OCCUPANT LACKED AUTHORITY TO CONSENT TO THE SEARCH OF THE CLOSED CONTAINER, AND THE OFFICERS FAILED TO RESOLVE THE AMBIGUITY REGARDING ITS OWNERSHIP

The Fourth Amendment was violated because the facts known to officers at the time of the search affirmatively negated joint access or control, creating ambiguity that triggered a duty to inquire. Instead of verifying whether the third-party consenter exercised mutual use or control over the stairway and container, officers proceeded purposefully disregarding Reiser's statements.

While the Fourth Amendment generally prohibits warrantless searches of a person's home, there are limited exceptions where a warrantless search can be conducted if there is voluntary consent. *Schneekloth v. Bustamonte*, 412 U.S. 218, 248 (1973). Consent can be obtained from (1) the individual whose property is searched, or (2) a third party with either actual common authority, or apparent authority. *See Illinois v. Rodriguez*, 497 U.S. 177, 181–89

(1990). Because the record does not support a finding of actual common authority, the Court need not consider that theory here. Apparent authority exists only where officers reasonably believe, based on the facts known at the time of the search, that the consenter had joint access or control over the specific area or item searched. *See Rodriguez*, 497 U.S. at 186–89. The Fourth Amendment does not require officers to be correct, but it does require them to be reasonable, and reasonableness is judged objectively based on the information available to officers at the time they acted. *Id.* at 185–86.

When third-party consent is obtained, reasonableness exists where the facts known at the time show that the consenter and defendant jointly occupied the area searched, shared access to it, and had mutual use of the space. *See United States v. Matlock*, 415 U.S. 164, 171 (1974). Although the circuits agree that apparent authority comes from objective reasonableness, the circuits are divided on whether officers may continue to rely on third-party consent after learning facts that suggest lack of joint access or control.

A. The Search Was Unlawful Because the Co-occupant Lacked Common Authority Over the Container, and Her Statements Affirmatively Negated Joint Access To the Location Where It Was Found

The government cannot establish apparent authority when an officer proceeds on assumptions that contradict known facts at the time of the search. *See Rodriguez*, 497 U.S. at 188-89. When an officer relies on the apparent consent of a third-party, the third-party must have “mutual use and joint access” or “control for most purposes” of the space, such that the other occupant has assumed the risk that a co-inhabitant might authorize its inspection. *See Matlock*, 415 U.S. 164. However, when officers are affirmatively told facts that negate or question the consenter’s joint access, apparent authority becomes ambiguous, and officers have a duty to inquire further or obtain a warrant in order to conduct a lawful search. *See United States v.*

Whitfield, 939 F.2d 1071, 1074–75 (D.C. Cir. 1991); *United States v. Cos*, 498 F.3d 1115, 1128–29 (10th Cir. 2007); *United States v. Kimoana*, 383 F.3d 1215, 1222–23 (10th Cir. 2004).

Apparent authority cannot rest on assumptions that contradict known facts, nor can it survive the consentor’s identification of a space as another occupant’s exclusive use. *See Moore v. Andreno*, 505 F.3d 203, 209-13 (2d Cir. 2007).

By contrast, apparent authority may exist only where officers conduct an inquiry and obtain concrete indications of shared control, such as evidence of mutual use, stored personal belongings, or unlimited access. *See United States v. Meada*, 408 F.3d 14, 21–23 (1st Cir. 2005). When the item being searched is a closed container, an additional level of care must be taken as closed containers independently signal a continued expectation of privacy. *See United States v. Basinski*, 226 F.3d 829, 834–35 (7th Cir. 2000); *United States v. Salinas-Cano*, 959 F.2d 861, 864–65 (10th Cir. 1992); *United States v. Moran*, 214 F.3d 950, 954–55 (8th Cir. 2000). Taken together, these cases establish that where officers are told facts negating joint access, particularly in relation to a closed container located in or leading to an exclusive private space, reliance on third-party consent is objectively unreasonable under the Fourth Amendment.

Third-party consent is valid only where the consentor has “mutual use” of, or “joint access or control for most purposes” over, the specific area searched, such that it is reasonable to conclude a co-inhabitant may permit inspection and that others have assumed the risk of such consent. *See Matlock*, 415 U.S. at 171. In *Matlock*, police officers obtained consent from a woman who lived in the same house as the defendant and shared a bedroom and closet with him. *Id.* at 167. The court held this was sufficient to allow officers to search the shared bedroom under her consent because she provided specific details of joint use. *Id.* at 176. Specifically, the woman informed officers that “she and respondent occupied the east bedroom together,” that they

"shared the one dresser in the room," and that "she and respondent had slept together regularly in the room." *Id.* These facts established shared authority over the precise area searched. *Matlock* thus illustrates that to survive Fourth Amendment scrutiny, third-party consent requires a clear, affirmative indication of joint access and mutual use, not mere cohabitation.

Applied here, the standard is not met. The officers lacked any reasonable basis to believe Reiser had joint access or control over the area searched. Before the search occurred, Reiser affirmatively told officers that the loft was Defendant's private space and that she did not access it. (R. at 13.) She also confirmed that the staircase led exclusively to the loft space, to which she does not have access. *Id.* Those statements placed both the loft and the stairway leading exclusively to it outside the category of jointly used areas as required by *Matlock*. The agent's own report confirms that he understood these limitations. Ristroph stated that, after Reiser explained the loft's use, he "confined the search to the first floor," demonstrating his recognition that the loft and its access point were beyond the scope of shared authority. *Id.* Despite that understanding, Ristroph approached the staircase, the sole means of access to the loft, and searched a closed box that was resting on the bottom steps. (R. at 16.) According to Reiser, the box had been placed there to be brought upstairs later, reinforcing that the box was associated with Defendant's private loft space rather than any common area. *Id.*

B. The Officer's Reliance on The Co- Occupant's Consent Was Objectively Unreasonable Because the Ambiguity of the Container's Ownership Triggered a Mandatory Duty to Inquire

The Fourteenth Circuit erred by adopting a rule that "ambiguity alone cannot defeat apparent authority", and that officers have "no affirmative obligation" to clarify ownership. (R. at 56.) This holding dangerously lowers the bar for warrantless searches by shifting the burden of proof from the government to the citizen and effectively presuming that a warrantless search is

reasonable unless proven otherwise. This presumption violates the core tenet of the Fourth Amendment that warrantless searches are per se unreasonable and that the government bears the heavy burden of strictly proving a valid exception.

1. The Officer Failed to Verify Authority

When officers are affirmatively told facts that make consent ambiguous, reliance on third-party consent becomes objectively unreasonable and triggers a duty to inquire further or obtain a warrant. See *United States v. Whitfield*, 939 F.2d 1071, 1074–75 (D.C. Cir. 1991); *Cos*, 498 F.3d at 1128. Where an officer is presented with ambiguous facts related to authority, he or she has a duty “to investigate further before relying on the consent.” See *United States v. Kimoana*, 383 F.3d 1215, 1222 (10th Cir. 2004). Thus, the government cannot meet its burden of demonstrating a third party's apparent authority “if agents, faced with an ambiguous situation, nevertheless proceed without making further inquiry.” *Id.* It is undisputed that Reiser voluntarily consented to a search of the cabin. Voluntariness alone, however, is not sufficient. Under *Illinois v. Rodriguez* and *United States v. Matlock*, third-party consent is valid only if officers reasonably believe the consenter had joint access or control over the area or item searched. See *Rodriguez*, 497 U.S. at 186–89; *Matlock*, 415 U.S. at 171.

In *Whitfield*, federal agents obtained consent from the Defendant’s mother and searched under apparent authority after she stated that she had “free access” to the entire house. 939 F.2d at 1073. Agents searched Whitfield’s bedroom and closet and found incriminating evidence. *Id.* However, the court held “if the circumstances make it unclear whether the property about to be searched is subject to mutual use by the person giving consent, then warrantless entry is unlawful without further inquiry.” *Id.* at 1074. In other words, the court emphasized that access alone is not enough because a person may have the ability to enter a room without having mutual use or

joint control over it. *Id.* at 1074–75. In *Whitfield*, the court held the Defendant's bedroom was not a common area, and nothing the agents asked established shared use. Because the agents failed to clarify whether the mother exercised joint control over the bedroom specifically, reliance on her consent was objectively unreasonable. *Id.* at 1075.

Here, similarly, an affirmative disclaimer of access is present and should have triggered a duty to inquire. Reiser's statements clearly negated joint access or control. Proceeding without further inquiry in the face of those statements was objectively unreasonable. As *Whitfield* explains, the Government bears the burden of establishing authority, and that burden cannot be met where agents, confronted with uncertainty about mutual use, proceed without asking clarifying questions. *See United States v. Whitfield*, 939 F.2d 1071, 1074–75 (D.C. Cir. 1991).

Likewise, *Cos* makes clear that apparent authority collapses when officers ignore facts suggesting limited access or control. *See Cos*, 498 F.3d at 1128. In *Cos*, the Tenth Circuit held that officers could not reasonably rely on third-party consent after learning facts that called the consenter's authority into doubt. *Id.* at 1128. There, officers ignored ambiguous facts—such as the consenter's unclear relationship to the apartment, lack of a key, the absence of personal belongings, and limited temporary access that demanded further inquiry before reliance on consent. *Id.* at 1128. Apparent authority cannot be based on assumptions that contradict information officers already possess. The same is true here. The officers ignored ambiguous facts that Reiser, such as the fact that the Defendant exclusively used the loft and the box standing on the stairway was intended to be moved into that private space.

The Second Circuit follows the same understanding, where officers are told that a particular area within a shared residence is reserved for another occupant's exclusive use, apparent authority is no longer reliable. *See Moore v. Andreno*, 505 F.3d 203, 209 (2d Cir. 2007).

In *Moore*, the court held that officers could not rely on a co-occupant's consent to search a space expressly identified as another's private area. *Id.* at 211 Apparent authority turns not on ownership of the home, but on whether officers reasonably believe the consenter has joint access to the specific space searched. *Id.* at 209. Once officers are told that a space is private, reliance on third-party consent becomes unreasonable. *Id.* at 212.

By contrast, reasonable reliance on apparent authority can be seen in *United States v. Meada*, where the First Circuit upheld third-party consent only after officers conducted specific inquiry establishing joint access and mutual use. *See United States v. Meada*, 408 F.3d 14, 21 (1st Cir. 2005). There, officers learned that the Defendant's girlfriend kept personal belongings in the apartment, stored possessions there, and could enter the premises even when the defendant was absent. *Id.* at 22. Those affirmative facts, not mere cohabitation, supported a reasonable belief of joint access. *Meada* thus demonstrates that apparent authority requires concrete information demonstrating shared control and this is obtained through inquiry, not assumptions from relationship status alone.

Here, officers conducted no comparable inquiry and were instead affirmatively told facts negating joint access, making reliance on consent unreasonable. Specifically, the officer asked whether Reiser lived in the apartment, what was on the second floor, and whether Reiser slept in the loft. That was the entirety of the inquiry. The inquiry should have continued after Reiser stated she did not use the loft. Instead, without asking any questions about access, ownership, or control of the loft, the stairs, or the cardboard box, Special Agent Ristroph opened the closed container.

Because Reiser identified the space as reserved for Hemlock's exclusive use, it is clear the Defendant did not assume the risk that Reiser, his co-occupant, could authorize its search.

Under these circumstances, Reiser did not have apparent authority because she did not have joint access, mutual use, or control for most purposes of the loft, the staircase leading to it, or the box that was obtained. Therefore, reliance on third-party consent was objectively unreasonable, and the Fourth Amendment mandated officers to inquire further or obtain a warrant before proceeding.

2. The "Duty to Inquire" Must Apply to Ambiguous Containers.

Even where officers receive general consent to search a residence, Fourth Amendment doctrine draws a critical distinction between shared spaces and closed containers. Closed containers occupy a distinct place in Fourth Amendment doctrine because they signal a continued expectation of privacy, even within shared spaces. *United States v. Basinski*, 226 F.3d 829, 834 (7th Cir. 2000). Authority to search a residence does not automatically confer authority to open closed containers found within it, particularly where officers are told facts suggesting exclusive ownership or limited access. *See United States v. Salinas-Cano*, 959 F.2d 861, 864 (10th Cir. 1992); *United States v. Moran*, 214 F.3d 950, 954 (8th Cir. 2000).

Courts repeatedly suppress evidence where officers open closed containers despite such notice. In *Basinski*, the Seventh Circuit held that a third party's disclaimer of lack of access to a closed briefcase defeated apparent authority. *United States v. Basinski*, 226 F.3d 834-835 (7th Cir. 2000). The court acknowledged it is less reasonable for a police officer to believe that a third party has full access to a defendant's purse or a briefcase than, say, an open crate". *Id.* at 834. In *Salinas-Cano*, the Tenth Circuit held general consent to search a residence did not extend to a closed suitcase known to belong to another. *United States v. Salinas-Cano*, 959 F.2d 866 (10th Cir. 1992). And in *Moran*, the First Circuit held that "silence or general consent cannot expand authority where facts known to officers suggest exclusive ownership." 214 F.3d at 954-55. In

other words, a consentor's identification of closed bags belonging to someone else required officers to inquire further or obtain a warrant, silence does not equate to authority.

Here, the evidence we seek to suppress is a closed box located on the stairs leading exclusively to Defendant's private loft, an area Reiser expressly identified as belonging to Defendant and admitted to not accessing. Under *Basinski*, *Salinas-Cano*, and *Moran*, officers lacked a reasonable basis to believe Reiser had authority to consent to opening the container. Having been told facts negating joint access, the officers were required to inquire further or seek a warrant. Their failure to do so renders the search unconstitutional.

Although the circuits agree that apparent authority turns on an officer's objective reasonableness, they are divided on how officers must respond when facts arise that undermine a third party's claimed access. On one side of the split, courts including the First, Second, Seventh, and Tenth Circuits hold that once officers are affirmatively told facts negating mutual use or joint access, apparent authority disappears and officers have a duty to inquire further or obtain a warrant. See *Whitfield*, 939 F.2d at 1074–75; *Cos*, 498 F.3d at 1128; *Moore*, 505 F.3d at 209–13; *Basinski*, 226 F.3d at 834; *Salinas-Cano*, 959 F.2d at 864–65; *Moran*, 214 F.3d at 954–55.

These courts reject reliance on assumptions or generalized consent when officers are on notice that a space or container is reserved for another occupant's exclusive use. On the other side, third-party consent is upheld where officers affirmatively investigate and uncover concrete indicia of shared control such as stored personal belongings, regular use, or unrestricted access before proceeding. See *Meada*, 408 F.3d at 21–23.

This case aligns with the First, Second, Seventh, and Tenth Circuits since the officers were confronted with uncertainty given they were expressly told that the loft was Defendant's

private space, Reiser did not access it, and that the stairway the box was located on led exclusively to that private area. Because officers lacked a reasonable basis to believe Reiser had apparent authority to consent to the search, the warrantless opening of the box violated the Fourth Amendment. This Court should suppress the box, its contents, and all evidence derived from the unlawful search, because the law should never be: *when in doubt, go ahead and search.*

III. THE FOURTEENTH CIRCUIT ERRED IN EXCLUDING EXTRINSIC IMPEACHMENT EVIDENCE BECAUSE RULE 806 MODIFIES RULE 608(b) TO PRESERVE FUNDAMENTAL FAIRNESS WHEN A HEARSAY DECLARANT IS UNAVAILABLE

The Fourteenth Circuit's ruling creates a dangerous anomaly in the law of evidence: it effectively immunizes a critical government witness from scrutiny solely because she is unavailable to be cross-examined. Federal Rule of Evidence 806 was enacted to prevent this precise injustice by placing hearsay declarants on the same footing as live witnesses for the purpose of impeachment. Fed. R. Evid. 806 Advisory Committee's Note. However, the court below applied Rule 608(b)'s ban on extrinsic evidence so rigidly that it defeated the very purpose of Rule 806. (R. at 50.) While Rule 608(b) generally prohibits the use of documents to prove specific instances of conduct, that prohibition presumes the availability of cross-examination as the primary tool for testing truthfulness. Fed. R. Evid. 608(b); *see United States v. Saada*, 212 F.3d 210, 219–20 (3d Cir. 2000). When death or absence renders cross-examination impossible, the procedural preference for "inquiry" must yield to the substantive right to impeach. *See Carver v. United States*, 164 U.S. 694, 698 (1897) (requiring impeachment flexibility when cross-examination is impossible); *United States v. Friedman*, 854 F.2d 535, 570 (2d Cir. 1988) (noting extrinsic evidence may be the "only means" of presenting impeachment evidence when a declarant is unavailable). By excluding conclusive evidence of the declarant's habitual fraud, the

Fourteenth Circuit allowed the Government to present an "excited utterance" as unimpeachable truth, depriving Petitioner of a fair trial. (R. at 11–12.)

A. Rule 806 Mandates that Impeachment be Permitted "As If" the Declarant Testified, Requiring Extrinsic Evidence When Cross-Examination Is Impossible.

1. The "As If" Standard Requires Extrinsic Evidence When the Declarant is Unavailable.

Federal Rule of Evidence 806 provides that when a hearsay statement is admitted, the declarant's credibility may be attacked "by any evidence that would be admissible for those purposes if the declarant had testified as a witness." Fed. R. Evid. 806. This rule codifies the Supreme Court's long-standing principle in *Carver*, 164 U.S. at 698, which recognized that because hearsay declarations are admitted without the benefit of cross-examination, evidentiary rules must be applied flexibly to prevent injustice. While Rule 608(b) generally prohibits extrinsic evidence to prove specific instances of conduct, that prohibition is premised on the availability of cross-examination as the primary tool for testing truthfulness. Fed. R. Evid. 608(b); *see Saada*, 212 F.3d at 219–20 (3d Cir. 2000). When a declarant is unavailable, Rule 806 must override the procedural limitations of Rule 608(b) to ensure the jury can accurately assess the declarant's reliability. *See Friedman*, 854 F.2d at 570.

The Fourteenth Circuit erred by strictly applying Rule 608(b)'s ban on extrinsic evidence to a situation where the "witness" could not be cross-examined. (R. at 50.) Rule 806 creates a necessary legal fiction: it commands the court to treat the hearsay declarant "as if" they were on the stand testifying. Fed. R. Evid. 806. However, Rule 608(b) relies on a specific procedural mechanism—cross-examination—to test a witness's character for truthfulness. It prohibits extrinsic evidence in favor of intrinsic inquiry because the Rules generally prefer immediate confrontation. *See Saada*, 212 F.3d at 219.

The Second Circuit in *Friedman* correctly defined the scope of this rule, holding that "resort to extrinsic evidence may be the only means of presenting such evidence to the jury." *Friedman*, 854 F.2d at 570. The court emphasized that the determination of admissibility rests on whether the declarant's past conduct actually "cast[s] doubt on the credibility of [his] statements." *Id.* at 570. Crucially, this must be determined "by comparing the circumstances of the past conduct with those surrounding the hearsay statements admitted into evidence." *Id.*

In this case, the District Court failed to perform this mandatory comparison. Instead of assessing whether Copperhead's past conduct cast doubt on her hearsay statement, the court applied a blanket ban under Rule 608(b). (R. at 50.) This was legal error. By following the rigid approach of *Saada*, the court below elevated a procedural preference over the substantive right to impeach, effectively insulating the Government's key witness from scrutiny.

2. The Government Cannot Enforce the Restrictions of Rule 608(b) Without Affording the Rights of Cross-Examination.

Respondent contends that Rule 806 treats the declarant "as a witness" and therefore subjects them to the same restrictions as a live witness. *See Saada*, 212 F.3d at 220. This argument ignores the fundamental trade-off of the Federal Rules of Evidence. Rule 608(b) *permits* inquiry into specific instances of conduct on cross-examination. Fed. R. Evid. 608(b). It bans extrinsic evidence *only because* the Rules prefer the direct confrontation of the witness to test their reaction and demeanor. *See Friedman*, 854 F.2d at 570.

In this case, Respondent seeks to enforce the restriction (no extrinsic evidence) while denying Petitioner the very right (inquiry on cross-examination) that justifies the restriction in the first place. This is not "treating the declarant as a witness"; it is treating the declarant as a protected class of witness who is legally insulated from questioning. As the D.C. Circuit has recognized, Rule 806 grants the absolute right to impeach. *United States v. White*, 116 F.3d 903,

923 (D.C. Cir. 1997). When the declarant's unavailability makes the "inquiry" prong of Rule 608(b) impossible, the "extrinsic evidence" ban must yield to preserve Petitioner's fundamental right to attack the credibility of the evidence against him.

3. Rule 608(b) Applies to the Testifying Witness, Not the Hearsay Declarant.

The majority misread Rule 608(b) by concluding that the rule prohibits the use of extrinsic evidence whenever a party seeks to attack credibility. However, the text of Rule 608(b) is much more specific. It states that "extrinsic evidence is not admissible to prove specific instances of a witness's conduct." Fed. R. Evid. 608(b) (emphasis added). The Rule does not mechanically extend this prohibition to non-testifying hearsay declarants who cannot be questioned.

Here, the defense does not seek to impeach the credibility of the testifying witness, Theodore Kobler. Kobler is merely sharing an out-of-court statement he heard; his credibility is not the issue. Instead, the defense seeks to impeach the credibility of the hearsay declarant, Iris Copperhead. Since Copperhead's statement—"It's all his fault. It was all Atticus' idea—NOT MINE!"—is being admitted for its truth, it is *her* credibility that is at issue.

Rule 806 confirms this distinction. It states that "the declarant's credibility may be attacked... by any evidence that would be admissible for those purposes if the declarant had testified as a witness." Fed. R. Evid. 806. This instruction directs courts to evaluate impeachment through the lens of the declarant's reliability, not the strict procedural hurdles of a live witness. By failing to acknowledge the impossibility of applying Rule 608(b)'s "inquiry-only" limitation to an absent declarant, the court below improperly shielded Copperhead from the consequences of her own fraudulent history.

B. Excluding Evidence of Habitual Fraud Violates the Truth-Seeking Function of the Rules and Is Not Justified by Judicial Efficiency.

1. The 2003 Amendments and Specific Facts Confirm the Evidence Should Be Admitted.

The Fourteenth Circuit's reliance on the strict text of Rule 608(b) ignores the Advisory Committee's clarification of the rule's limited scope. (R. at 50.) The 2003 Amendments to Rule 608(b) substituted the term "credibility" with "character for truthfulness" to ensure the rule was not read over-broadly to bar impeachment on other grounds, such as contradiction or bias. Fed. R. Evid. 608 advisory committee's note to 2003 amendment. The spirit of the Amendment is clear: the rules of evidence should not be interpreted to rigidly exclude probative evidence of unreliability when that evidence is central to the case.

Applying the *Friedman* framework, the Court must "compar[e] the circumstances of the past conduct with those surrounding the hearsay statements." *Friedman*, 854 F.2d at 570. In *Friedman*, the court upheld the admission of evidence regarding a false statement on a license application because it "directly involved the credibility of [the declarant's] out-of-court statements." *Id.*

The same direct connection exists here. The specific instances of conduct Petitioner sought to introduce—Copperhead's falsified job application (R. at 10.) and academic dishonesty involving AI (R. at 9.)—directly involve the credibility of her assertions in official matters. She faked a degree to get a government job and used AI to cheat on a capstone project. These are not remote indiscretions; they are proof of a pattern of calculated deception to secure benefits. More importantly, they demonstrate Copperhead's willingness to fabricate facts to authority figures to manipulate an outcome. This specific history of institutional deceit casts doubt on the integrity of her report to the police, regardless of whether that report was 'excited' or calm. *See Friedman*, 854 F.2d at 570. Just as *Friedman* found that evidence involving credibility must be admitted, this Court should find that evidence of Copperhead's habitual fraud "directly involves" the reliability of her accusation against Petitioner.

2. *Judicial Efficiency Concerns Must Be Addressed via Rule 403, Not a Blanket Ban.*

Finally, the Fourteenth Circuit justified its exclusion on the grounds of "judicial efficiency" and the fear of "mini-trials." (R. at 50.) This reasoning is flawed because it ignores the existence of Rule 403, which acts as the proper gatekeeper for such concerns. Federal Rule of Evidence 403 already provides trial judges with the discretion to exclude evidence if its probative value is substantially outweighed by the danger of confusing the issues or wasting time. Fed. R. Evid. 403. There is no need for a blanket, rigid ban under Rule 608(b) to preserve judicial resources when Rule 403 exists for that exact purpose. *See White*, 116 F.3d at 923 (noting that district courts retain the power to exclude impeachment evidence under Rule 403 if it becomes unduly time-consuming).

In this case, the efficiency argument rings particularly hollow. The extrinsic evidence Petitioner sought to admit consisted of two self-authenticating official documents: a college disciplinary letter and a rejected job application. (R. at 9-10.) Authenticating and admitting these documents would have taken minutes, not days. There was no risk of a "mini-trial" or a parade of witnesses. Yet, the probative value of these documents was immense—they proved the hearsay declarant was a habitual liar who deceived institutions for personal benefit. By using a blanket ban instead of a Rule 403 balancing test, the court below sacrificed Petitioner's right to a fair defense at the altar of a "mini-trial" that never would have happened. Rule 806 demands fairness, and Rule 403 ensures efficiency; Rule 608(b) should not be used to defeat both. *See United States v. Opager*, 589 F.2d 799, 802–03 (5th Cir. 1979).

The Fourteenth Circuit's rigid application of Rule 608(b) effectively immunized a critical government witness from scrutiny solely because she was unavailable to testify. By elevating the procedural preference for cross-examination over the substantive right to impeach, the court

below created a dangerous paradox where hearsay statements receive greater protection than live testimony. Rule 806 was designed to prevent exactly this injustice. It demands that a hearsay declarant be open to impeachment "as if" they were present. When death or absence makes the preferred method of impeachment—cross-examination—impossible, Rule 806 necessitates the admission of extrinsic evidence to restore the balance of fairness. To hold otherwise is to allow the Government to build its case on the unverified accusations of an absent declarant while simultaneously using that absence as a shield against evidence of their deceit.

CONCLUSION

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

Respectfully Submitted,
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