No. _____

In the Supreme Court of the United States

United States of America

v.

Kevin Coles

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Kevin Coles was convicted of homicide, drug, and gun charges at trial. He was arrested on an unrelated administrative warrant that was used as a subterfuge to further the criminal investigation in this case. Then, at trial, the Government read seven paragraphs of a police report to the jury over defense objections. Last, Coles was convicted of serious bodily injury related to two drug overdoses where the victims survived and had no lasting injuries.

This case is important for review because it concerns the extent to which the Government can utilize administrative warrants in a criminal investigation, whether the Government can read police reports to the jury at trial, and how "bodily injury" should be construed for purposes of the controlled substances statutes.

These are important questions to limit government overreach, preserve the safeguards of trial, and to clarify the law with respect to drug overdoses which, sadly, the courts must frequently navigate.

The questions presented are:

1. Whether evidence should have been suppressed because the Government improperly used an administrative warrant as a subterfuge to further a criminal investigation?

2. Whether the Government should have been precluded from reading a witness' interview verbatim to the jury over the Defendant's objection?

3. Whether judgment of acquittal should have been entered for the "serious bodily injury" components of Counts 14 and 18 where the victims did not sustain serious bodily injury?

LIST OF ALL PARTIES TO THE PROCEEDING

Kevin Coles is listed in the caption and is the only party whose judgment is sought to be reviewed. The following proceedings are directly related to this petition:

- *United States v. Kevin Coles et al.*, United States District Court for the Middle District of Pennsylvania, Case No. 1:16-cr-212; judgment entered March 16, 2023;

- *United States v. Kevin Coles*, United States Court of Appeals for the Third Circuit, Case No. 17-3039; judgment entered January 3, 2018;

- *United States v. Kevin Coles*, United States Court of Appeals for the Third Circuit, Case No. 23-1530; judgment entered April 7, 2025.

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II. CONCISE STATEMENT OF THE BASIS OF JURISDICTION

This is an appeal from a decision in the United States Court of Appeals for the Third Circuit. This Court has jurisdiction pursuant to 28 U.S.C. § 1254. The Third Circuit's judgment was entered on April 7, 2025.

III. CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THE CASE

A. The Fourth Amendment to the United States Constitution

> 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.

B. *Federal Rule of Evidence 613(b): Extrinsic Evidence of a Prior Inconsistent Statement*

> Unless the court orders otherwise, extrinsic evidence of a witness's prior inconsistent statement may not be admitted until after the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it. This subdivision (b) does not apply to an opposing party's statement under Rule 801(d)(2).

Fed. R. Evid. 613(b).

C. 21 U.S.C. § 841(a)

This statute is lengthy. The complete statute is contained in the appendix.

The relevant portion of this statute is:

> (a) [I]t shall be unlawful for any person knowingly or intentionally . . . distribute . . . controlled substance . . . . (b) any person who violates subsection (a) of this section shall be sentenced as follows: (B) In the case of a violation of subsection (a) of this section involving-(i) 100 grams or more of a mixture or substance containing a detectable amount of heroin . . . . such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or **serious bodily injury** results from the use of such substance shall be not less than 20 years or more than life . . . .

21 U.S.C. § 841(a) (emphasis added).

D. 21 U.S.C. § 802(25)

> The term "serious bodily injury" means bodily injury which involves--
>
> (A) a substantial risk of death;
>
> (B) protracted and obvious disfigurement; or
>
> (C) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

21 U.S.C. § 802(25).

B. CONCISE STATEMENT OF THE CASE

Kevin Coles was a drug dealer in and around Hagerstown, Maryland and Chambersburg, Pennsylvania. Wendy Chaney was a drug user and dealer in the same geographic area. She was in a romantic relationship with Coles. Ms. Chaney was charged in a Maryland state case. She began cooperating with law enforcement. It was widely known in the Hagerstown and Chambersburg drug communities that Ms. Chaney was a government informant.

Mr. Jackson owned a barn in a somewhat rural portion of Chambersburg. Drug users would show up at the barn to do drugs. Ms. Chaney would sometimes go to Mr. Jackson's barn. On June 25, 2016, Ms. Chaney, Mr. Jackson, and Mr. Cole were at the barn. Members of a Baltimore gang called the Black Guerilla Family ("BGF") showed up at the barn, including Christopher Johnson. The BGF members zip tied Mr. Jackson, Ms. Chaney, and Mr. Cole and shot them.

Law enforcement investigated and quickly zeroed-in on Kevin Coles. Among other things, Ms. Chaney had made statements to others that she was afraid that Coles would hurt her. Ultimately, law enforcement surmised that Kevin Coles hired the BGF to kill Ms. Chaney because she was an informant.

Law enforcement relied on a pre-existing parole warrant to arrest Coles. On July 9, 2015, Coles was declared delinquent in his parole compliance by the New York Department of Corrections and Community Services Bureau. On July 30, 2015, an executive warrant ("NY parole warrant" or "Administrative Warrant"), was approved by a Senior Parole Officer of the New York State Division of Parole ordering that Coles "be retaken and placed in detention to await the action of the Division of Parole or court of competent jurisdiction."[1] The Administrative Warrant had remained

[1] Throughout the District Court proceedings, the NY parole warrant is repeatedly referred to as a "bench warrant," raising the implication it had been issued by an independent and neutral judicial officer. (*See, e.g.,* M.D. Pa. Doc. 135 at 2, 4; M.D. Pa. Doc. 94 at 7; 8/17/17 Hr'g Tr. 42:14–16, 43:11–15 R; 7/18/17 Hr'g Gov't Ex. 2 at 6). This nomenclature is inaccurate. The NY parole warrant was issued by an executive officer, not a judge or magistrate, who determined there was "reasonable cause to believe" Coles, had violated the conditions of his parole. *See* Warrant #696746 for

dormant from the time of its issuance until it was utilized by law enforcement officers in Pennsylvania and Maryland to arrest and detain Coles in connection with the triple murder.

On or about June 30, 2016, police obtained an NCIC report indicating Coles was sought on an administrative warrant for alleged violations of his parole. (7/18/18 Hr'g Tr. 10:20–12:19; *see* 7/18/17 Hr'g Gov't Ex. 1).[2] From at least that time, law enforcement officers were intent on arresting Coles based on the Administrative Warrant. They made no attempt to secure an arrest warrant from a magistrate or judge predicated on finding of probable cause related to the triple homicide.

After obtaining the NCIC report, law enforcement officers pursuing Coles took no action to investigate the underlying Administrative Warrant further, much less advance his extradition New York. (8/17/17 Hr'g Tr. 11:17–20; R. 0158). Indeed, as their subsequent actions make clear, their sole purpose was to use the Administrative Warrant as a pretext to take Coles into custody in the absence of probable cause. In

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Retaking and Detaining a Paroled or Conditionally Released Person or a Person Released to Post-Release Supervision and/or Strict and Intensive Supervision and Treatment as to Kevin Coles, sworn on July 30, 2015.

[2] Portions of the record indicate the NCIC printout submitted as Government's Exhibit 1 during the July 18, 2017 hearing shows "Coles was wanted for second degree arson." (M.D. Pa. Doc. 134 at 2). For instance, during the suppression hearing on July 18, 2017, Det. Jesse Duffy testified that "Coles was wanted out of the state of New York for an arson case." (7/18/17 Hr'g Tr. at 7:1-2, R. 0081). These assertions are not accurate as the NCIC printout makes clear the offense for which Coles was sought was a "PAROLE VIOLATION"—a non-criminal administrative charge, not a criminal offense. (7/18/17 Hr'g Gov't Ex. 1). This is corroborated by the NY parole warrant itself. *See* NY Parole Warrant at 2–3.

that vein, police arrested, searched, and questioned Coles based solely on the pretext of the NY parole warrant. (8/17/17 Hr'g Tr. 12:15–25; R. 0159).

On July 7, 2016, police tracked Coles to a Days Inn in Hagerstown, Maryland, and made coordinated preparations to arrest and detain him. Upon observing Coles exiting the hotel and enter a silver Chevrolet Equinox, police swooped in, removed Coles from the vehicle, brought him to the ground, and placed him under arrest. (Doc. 135 at 3; 7/18/17 Hr'g Tr. 7:16–18, 8:1–9, 8:14–9:2, 9:22–10:1). During the arrest and subsequent searches, police seized numerous personal items including, but not limited to, cell phones—one of which that had fell to the ground outside the vehicle—and a bag of personal items. (Doc. 135 at 3; 7/18/17 Hr'g Tr. 7:16–17, 9:3–16). Police conducted additional searches of the vehicle and its occupants.

Following his arrest and the search of his person, police promptly took Coles to the Hagerstown Police Department and began to question him. During this interrogation police asked Coles questions about ongoing criminal activity, including his use of controlled substances, his suspected criminal associations, his knowledge of the triple homicide, and the possibility that he might be charged with those offenses. (Doc. 87-1 at 1–2). During the interrogation police officers observed, photographed, and questioned Coles about apparent scratches on his wrist and arm. (*Id.* at 2). Throughout this interrogation, Coles repeatedly invoked his constitutional rights, which law enforcement ignored as they continued the interrogation. (*Id.* at 1–2; Doc. 135 at 5). Throughout the questioning, police made no effort to gather

information about the NY parole warrant and took no action to facilitate Coles' extradition to New York, the purported reason for his arrest.

Based on their actions and omissions preceding Coles' arrest and interrogations—particularly their repeated violations of his constitutional rights and failure to take any action to advance his extradition—it is apparent that police used the NY parole warrant solely as an instrument of criminal law enforcement to circumvent the Constitution, rather than as a bona fide preliminary step in an administrative proceeding.

Coles was charged with drug, firearm, and murder charges. There were 10 codefendants: Devin Dickerson, Torey White, Christopher Johnson, Jerell Adgebesan, Kenyatta Corbett, Michael Buck, Nicholas Preddy, Johnnie Jenkins-Armstrong, Terrance Lawson, and Tyrone Armstrong. The theory of prosecution as to Coles was that Coles orchestrated the triple homicide to kill Wendy Chaney, and that the BGF members who would perform the homicide – primarily Defendant Chrisopher Johnson – would be paid from cash, drugs, and firearms recovered from Jackson's Barn.

Coles was charged with 11 counts related to the homicides:

Count 1: Conspiracy to commit Hobbs Act robbery, 18 U.S.C. § 1951;

Count 2: Hobbs Act robbery, 18 U.S.C. § 1951 (re: Phillip Jackson);

Count 3: Use of a firearm in furtherance of a crime of violence, 18 U.S.C. §§ 924(c), 924(j) (re: Philip Jackson);

Count 4: Use of a firearm in furtherance of a crime of violence, 18 U.S.C. §§ 924(c), 924(j) (re: Brandon Cole);

Count 5: Use of a firearm in furtherance of a crime of violence, 18 U.S.C. §§ 924(c), 924(j) (re: Wendy Chaney);

Count 6: Conspiracy to commit Hobbs Act robbery and kill a witness, 18 U.S.C. §§ 924(c), (o), and (j) (re: Wendy Chaney);

Count 7: Conspiracy to cause another to travel interstate to commit murder for hire, 18 U.S.C. § 1958;

Count 8: Killing a witness, 18 U.S.C. § 1512(a)(1)(C) (re: Wendy Chaney);

Count 9: Killing a witness, 18 U.S.C. § 1512(a)(1)(C) (re: Phillip Jackson);

Count 10: Killing a witness, 18 U.S.C. § 1512(a)(1)(C) (re: Brandon Cole);

Count 11: Conspiracy to kill a witness, Killing a witness, 18 U.S.C. § 1512(k) (re: Phillip Jackson, Brandon Cole, and Wendy Chaney).

(Third Superseding Indictment at p. 1-24.) Coles was also charged with 5 counts related to his drug activity:

Count 14: Conspiracy to distribute 100 grams or more of heroin, 28 grams or more of crack, and cocaine, 21 U.S.C. §§ 841, 846;

Count 15: Possession with intent to distribute heroin, cocaine, and crack, 21 U.S.C. § 841;

Count 16: Possession with intent to distribute heroin, cocaine, and crack, 21 U.S.C. § 841;

Count 18: Distribution of heroin, 21 U.S.C. § 841; and

Count 19: Possession of a firearm in furtherance of drug trafficking, 18 U.S.C. § 924(c).

(Third Superseding Ind. p. 28-36.) In Counts 14 and 18, there was also the allegation that drug users sustained serious bodily injury.

Coles pled not guilty. He proceeded to trial on April 11, 2022.

At trial the Government offered Yolanda Diaz as a witness. It became apparent, almost immediately, that Ms. Diaz disputed the statement that she purportedly gave to Det. Kierzkowski. Rather than ask Ms. Diaz open-ended questions about the facts, the Government read Det. Kierzkowski's report word-for-word, pausing occasionally to ask Ms. Diaz if she agreed with Det. Kierzkowski's statements. Coles objected at trial and argues on appeal that the Government improperly called Ms. Diaz solely to read Det. Kierzkowski's report to the jury.

Coles was also charged with conspiring to distribute and distributing controlled substances that resulted in serious bodily injury, in violation of 18 U.S.C. § 846 and 18 U.S.C. § 841(a)(1) and (b)(1)(C) (Counts 14 and 18). The first drug transaction involved Harrell Hazleton. Jessica Ita testified that she was involved in drug trafficking and pled guilty to federal drug trafficking in an unrelated case. (4/18/22 Transcr. at p. 119:1–8). Ms. Ita testified that one day she was with Harrell Hazleton. Mr. Hazleton and Ms. Ita got into a vehicle with Coles and Dickerson. Mr. Hazleton purchased heroin from one of them, but Ms. Ita could not remember which one. (4/18/22 Transcr. at p. 176:22–177:4). Then Mr. Hazleton and Ms. Ita exited the vehicle and went to a motel. (4/18/22 Transcr. at p. 191:14–17). Ms. Ita took a shower. When she got out, she observed that Mr. Hazleton appeared to have overdosed. (4/18/22 Transcr. at p. 129:16–130:12). Ms. Ita gave Mr. Hazleton Narcan, but he remained unresponsive. (4/18/22 Transcr. at p. 130:14–18). Eventually, paramedics arrived and took Mr. Hazleton to a hospital. He survived.

Ms. Ita did not observe Mr. Hazleton ingest heroin that day, but she did see him smoke crack. Ms. Ita thought Mr. Hazleton ingested heroin while she was in the shower, but she could not say whether it was the heroin that Mr. Hazleton got from either Coles or Dickerson. (4/18/22 Transcr. at p. 180:4–181:20).

The second alleged overdose involved Krista Rockwell. Krysta Rockwell, Tiffany Jardina, and Lakin Wolfe testified that in the days leading up to Coles' arrest they were traveling with Coles and Dickerson in southern Pennsylvania and Maryland.

Specifically, Lakin Wolfe was driving a vehicle and Coles and Dickerson were inside. They picked up Tiffany Jardina and Krystal Rockwell. (4/19/22 Transcr. at p. 123:12–17). Ms. Wolfe had heroin with her that she got from Dickerson. (4/19/22 Transcr. at p. 123:2–17). At some point they were pulled over for a traffic violation. Coles gave Rockwell heroin to hide from the police, and then Coles ran off. Coles did not give Rockwell the heroin for her to have/use it. (4/19/22 Transcr. at p. 217:8–15).

After they were released from the traffic stop, Dickerson, Jardina, Rockwell, and Wolfe went to a motel. Dickerson gave them heroin and left. (4/19/22 Transcr. at p. 130:4–9). Rockwell purportedly overdosed, and Wolf and Jardina called Dickerson. Dickerson administered Narcan to Rockwell. (4/19/22 Transcr. at p. 132:10–13). Ms. Rockwell revived.

Dr. Lawrence Guzzardi, a toxicologist called by the defense, testified that Ms. Rockwell would have survived even if they had not been administered Narcan.

(4/27/02 Transcr. at p. 24: 6-16.) He also testified that Ms. Rockwell did not have a substantial risk of death without medical intervention. (4/27/22 Transcr. at p. 27: 25 – 28: 22.) Dr. Guzzardi also opined that Mr. Hazleton would have survived without Narcan (4/27/22 Transr. at p. 30: 10-17), and that Mr. Hazleton did not have a substantial risk of death without medical intervention. (4/27/22 Transcr. at p. 31: 5 – 25.) The Government called Dr. Gary Ross, who reached the opposite conclusions and opined that Hazleton and Rockwell faced a substantial risk of death.

Coles was convicted of the above counts on April 28, 2022. He was sentenced on March 5, 2023 to Life on Counts 7-11, 14 and 18; 240 months on Counts 1, 2, and 6; 238 months on Count 15; 120 months on Counts 3-5; and 60 months on Count 19. Coles appealed to the Third Circuit Court of Appeals on March 22, 2023. The Third Circuit denied Coles' appeal on April 7, 2025.

C. CONCISE ARGUMENT

Coles petitions for certiorari to seek review of three issues: (A) the use of a state court administrative warrant as a subterfuge to further a criminal investigation; (B) whether the Government should be permitted to read to the jury, verbatim, 7 paragraphs of a police report summarizing a witnesses purported statement; and (C) whether a drug overdose is sufficient to constitute "serious bodily injury" under 21 U.S.C. § 841 even though the user fully recovers.

These are important questions. First, administrative warrants do not offer the same Fourth Amendment safeguards as judicially-issued warrants; the Government should be prohibited from using them to advance an unrelated criminal investigation. Second, there is a severe risk to the fairness of trial if the Government is permitted to read to the jury what a law enforcement officer says a witness said as opposed to asking the witness what happened in a situation. Last, drug overdoses are an unfortunate common occurrence. Federal courts need guidance of when an overdose should be considered "serious bodily injury."

A. The Government improperly used a state court administrative warrant as a subterfuge.

The Government improperly used the Administrative Warrant to gather evidence for its investigation of the criminal case against Coles. This is an appeal from a denial of a motion to suppress. On appeal, this Court reviews the District Court's factual findings for clear error, and this Court exercises *de novo* review over the application of law to those findings of fact. *United States v. Goldstein*, 914 F.3d 200, 203 n.15 (3d Cir. 2019) (internal citation omitted).

The Fourth Amendment protects against unreasonable searches and seizures. U.S. Const. amend. IV. The hallmark of a reasonable search or seizure is the existence of probable cause and the issuance of a warrant by a detached and neutral magistrate. *Illinois v. Gates*, 462 U.S. 213, 240 (1983). The Supreme Court has long stressed that the preliminary stages of criminal prosecutions must be pursued in strict obedience

to both the Constitution and the laws of the United States, including the Fourth Amendment's warrant requirement. *Abel v. United States,* 362 U.S. 217, 226 (1960).

Although searches and seizures are most often part of criminal investigations, they can arise in other contexts. Searches and arrests for administrative purposes are nonetheless protected by the Fourth Amendment. *Michigan v. Tyler,* 436 U.S. 499, 505–06 (1978). "As with any search … the scope and execution of an administrative [warrant] must be reasonable in order to be constitutional." *Bruce v. Beary*, 498 F.3d 1232, 1244 (11th Cir. 2007).

Although reasonableness under the Fourth Amendment is ordinarily an objective inquiry, *see Ashcroft v. al-Kidd*, 563 U.S. 731, 736–37 (2011), where investigations arise in the context of administrative proceedings, "'actual motivations' do matter." *Id.* (quoting *United States v. Knights*, 534 U.S. 112, 122 (2001)). For instance, in *City of Indianapolis v. Edmond*, 531 U.S. 32, 44–48 (2000), the Court determined the City of Indianapolis' suspicion-less vehicle checkpoint program was unreasonable under the Fourth Amendment because it focused on seizing unlawful drugs rather than to detecting illegal border crossings or drunk drivers. "Because the primary purpose of the [] checkpoint program [wa]s ultimately indistinguishable from the general interest of crime control," the checkpoint search "violate[d] the Fourth Amendment." *Id.* at 48. Similarly, in *Michigan v. Clifford*, 464 U.S. 287, 294 (1984) (plurality opinion), the Court addressed the Fourth Amendment implication when fire inspectors enter a private residence and held administrative

warrants only suffice if the purpose of the search is to determine the cause and origin of the fire. Where, however, the "primary object of the search is to gather evidence of criminal activity," the Fourth Amendment requires a warrant supported by probable cause. *Id.*

Because administrative intrusions into an individual's privacy are less invasive than their criminal counterparts, the Fourth Amendment permits searches and seizures based on less than probable cause. *See Marshall v. Barlow's Inc.,* 436 U.S. 307, 320 (1978) ("Probable cause in the criminal law sense is not required" to undertake administrative search aimed at uncovering civil violations of OSHA); *see also Zurcher v. Stanford Daily*, 436 U.S. 547, 554-56 (1978) (administrative inspections). Even so, "[a] limited administrative search cannot serve unrelated law enforcement purposes." *United States v. $124,570 U.S. Currency*, 873 F.2d 1240, 1247 (9th Cir. 1989). However, "once a search is conducted for a criminal investigatory purpose, it can no longer be justified under an administrative search rationale." *Id.* at 1246 n.5. Put differently, when the primary purpose shifts from administrative compliance to gathering evidence for a criminal prosecution, the government must secure a judicial warrant based on probable cause. *Clifford*, 464 U.S. at 294; *Tyler,* 436 U.S. at 508, 512; *Abel*, 362 U.S. at 230.

Despite the lower expectation of privacy, therefore, parole investigations and detentions nonetheless receive Fourth Amendment protection. *Abel*, 362 U.S. at 226, 230; *United States v. Lewis*, 71 F.3d 358, 361 (10th Cir. 1995); *Donovan v. Enter.*

Foundry, Inc., 751 F.2d 30, 35 (1st Cir. 1991); *see, e.g., People v. ex rel. Piccarillo v. New York State Bd. Of Parole*, 397 N.E.2d 354, 357 (N.Y. Ct. App. 1979) ("beyond dispute [that] … parolee['s] … right to be free from unreasonable searches and seizures … remains inviolate."). As such, evidence obtained pursuant to an unreasonable "administrative" intrusion is subject to suppression. *Abel*, 362 U.S. at 226, 230; *United States v. Grey*, 959 F.3d 1166, 1183 (9th Cir. 2020); *United States v. Pacheco-Alvarez*, 227 F. Supp. 3d 863, 894-94 (S.D. Ohio 2016); *Piccarillo*, 397 N.E.2d at 358.

Parole, along with the warrants, investigation, and hearing which attend its revocation, "is in the nature of an administrative proceeding at which it is determined whether a parolee has transgressed the conditions of … parole." *Piccarillo*, 397 N.E.2d at 356. As such, parolees may be detained under administrative warrants issued by executive officers, and are not entitled to counsel, preliminary hearings, or the right to challenge a warrant issued on less than probable cause. *People ex rel. Calloway v. Skinner*, 41 A.D.2d 106, 108–09, 341 N.Y.S.2d 775, 777 (N.Y. App. Div'n, 4th Dep't 1973); *see* 9 NYCRR § 8004.2(c) ("[A] warrant for retaking and temporary detention may issue when there is reasonable cause to believe that the releasee … has violated one or more of the conditions of [his] release"); Administrative Warrant (referring to "reasonable cause" as a basis for issuance of parole warrant).

In *Abel v. United States*, the Court first addressed the applicability of the Fourth Amendment in administrative proceedings when considering a claim the

government improperly used an immigration warrant to search for evidence of a crime. The defendant claimed the government used an administrative warrant to place him in custody in order to pressure him to admit guilt and consent to the government searching his belongings for evidence of a crime. In response to the defendant's contention that the evidence should have been suppressed, the Court recognized that the deliberate use administrative warrants is improper and violates the Constitution.

> Were [a] claim [of bad faith] justified by the record, it would indeed reveal a serious misconduct by law-enforcing officers. *The deliberate use by the government of an administrative warrant for the purpose of gathering evidence in a criminal case must meet stern resistance by the courts.* The preliminary stages of a criminal prosecution must be pursued in strict obedience to the safeguards and restrictions of the Constitution and laws of the United States.

Abel, 362 U.S. at 226 (emphasis added).

Although the Court affirmed Abel's conviction—because the lower court made crucial fact-findings against defendant—it nonetheless recognized that where "the decision to proceed administratively . . . was influenced by, and was carried out for, a purpose of amassing evidence in the prosecution for crime," sanctioning the government would be appropriate. *Id.* at 230. In fact, the Court explicitly contemplated applying the exclusionary rule to evidence obtained through the improper use of administrative warrants. *Id.* at 226, 230, 240. The Court stated:

> We emphasize again that our view of the matter would be totally different had the evidence established, or were the courts below not justified in not finding, that the administrative warrant was here employed as an instrument of criminal law enforcement to circumvent the latter's legal restrictions, rather than as a bona fide preliminary step in a deportation proceeding. The test is whether the decision to proceed administratively … was influenced by, and was carried out for, a purpose of amassing evidence in the prosecution for crime.

Id. at 230. Under *Abel*, using administrative warrants as "an instrument of criminal law enforcement to circumvent" the legal restrictions imposed on a criminal prosecution, violates the Fourth Amendment. *Id.; see Tyler,* 436 U.S. at 512.

Consistent with *Abel*, lower courts have not hesitated to suppress evidence where administrative warrants are used as a subterfuge to further criminal investigations. For instance, in *United States v. Grey*, 959 F.3d 1166 (9th Cir. 2020), the court considered whether the execution of an administrative warrant, authorizing the inspection of a private residence for city code violations, violated the Fourth Amendment when police used the warrant to search for evidence of criminal activity. Because the police officers' "primary purpose was to gather evidence in support of an ongoing criminal investigation, the conduct violated the Fourth Amendment," requiring suppression. *Grey*, 959 F.3d at 1183.

In this case, the police suspected Coles' involvement in the triple homicide on June 25, 2016, and began seeking evidence against him almost immediately. Lacking probable cause, however, in late June 2016, police determined Coles was wanted on Administrative Warrant and, thereafter, began tracking him through his cell phone. Police neither sought nor obtained an arrest warrant and, upon locating Coles on July 7, 2017, immediately arrested, searched, and questioned him. Critically, their

purpose was to gather evidence for a criminal prosecution, not to extradite him to New York.

Because "the decision to proceed administratively … was carried out for [] purpose of amassing evidence in the prosecution of crime," "rather than as a bona fide preliminary step in a [parole] proceeding," Coles' arrest and detention violated the Fourth Amendment, *Abel*, 362 U.S. at 230, requiring all the fruits collected therefrom to be suppressed. *Id*. at 226, 230; *Hayes v. Florida*, 470 U.S. 811, 815 (1985); *Wong Sun v. United States*, 371 U.S. 471, 484–85 (1963); *United States v. Butts*, 704 F.2d 701, 705 (3d Cir. 1983).

Pursuant to *Abel v. United States*, 362 U.S. 217 (1960), reviewing courts assess the constitutionality of using administrative warrants to advance a criminal investigation according to whether the "primary purpose" was to investigate and detect crime or to enforce administrative compliance, *Abel*, 362 U.S. at 226; *see Grey,* 959 F.3d at 1183; *United States v. Clifford,* 464 U.S. at 294; *$124,570 U.S. Currency*, 873 F.2d at 1246 n.5, 1247; *Russo*, 517 F. Supp. at 86; *Lawson*, 502 F. Supp. at 165, not whether the consequential administrative action occurred at the behest of the law enforcement agents. Where, as here, the primary subjective intention of law enforcement is to gather evidence to be used in a criminal prosecution, *see Ashcroft v. al-Kidd*, 563 U.S. at 736–37, the constitution requires them to secure a warrant supported by probable cause. *Clifford*, 464 U.S. at 294; *see Abel*, 362 U.S. at 230 (using

administrative warrants to circumvent legal restrictions imposed on criminal prosecutions violates the Fourth Amendment).

Because the Government does not dispute that the "actual motivation" and "primary purpose" – in fact, the only purpose – of law enforcement was to arrest Coles and "gather evidence of criminal activity," his arrest and detention violated the Fourth Amendment and all evidence obtained therefrom should have been suppressed.

The Third Circuit Court of Appeals affirmed the District Court because a Maryland officer, not a Pennsylvania officer, arrested Coles on the NY administrative warrant. (Third Cir. Opinion at p. 10.) The Third Circuit further reasoned that the specific Maryland law enforcement officer who arrested Coles on the NY administrative warrant testified that he "did so only to effectuate the administrative warrant and Coles' extradition to New York" and that the "subjective motives of the Pennsylvania police do not taint the effectuation of the administrative warrant by the Maryland officers . . . ." (Third Cir. Opinion at p. 10-11.) But *Abel* did not look to the arresting officer's statement regarding his purpose. *Abel* requires that the court decipher the "true purpose" of the arresting officer and evaluate whether the arresting agency was "employed as an instrument of criminal law enforcement to circumvent the latter's legal restrictions, rather than as a bona fide preliminary step in" an administrative proceeding. *Abel*, 362 U.S. at 225, 230.

To conduct this evaluation the *Abel* court looked to how the immigration agency and FBI acted in performance of their functions. *Id.* Specifically, the *Abel* court noted that after arrest on the immigration warrant the defendant was immediately transported from New York to an immigration detention facility in Texas, and the FBI's search of the hotel room where defendant was arrested only occurred after he abandoned the hotel room. *Id.* at 225–26. The FBI also did not participate in the initial search of the room by immigration officials. *Id.*

Here, no officials from New York participated Coles' arrest. And unlike *Abel*, who was immediately taken to an immigration detention facility in Texas, Coles was not taken to New York for a revocation proceeding. Even today, 9 years later, Coles has never been taken to New York for parole revocation proceedings. This case is precisely the "serious misconduct" contemplated by *Abel*, where the administrative warrant was "employed as an instrument of criminal law enforcement to circumvent" the probable cause requirement rather than "a bona fide preliminary step" in a parole revocation. *See id.* at 230.

All evidence derived from Coles' arrest, as well as the subsequent search of the vehicle, should have been suppressed because the administrative warrant was employed improperly.

B. The Government read a report of a witness' statement to the jury over Coles' objection.

Prior unsworn statements of a witness are clearly inadmissible hearsay because they are out-of-court statements made by the declarant, and if the attorney hopes to get the substance of those statements before the jury, then the statement is being presented for the truth of the matter asserted. *See* Fed. R. Evid. 801(c) (defining hearsay). Under Rule 613(b), extrinsic evidence of a prior inconsistent statement is sometimes admissible to impeach a witness's testimony. See *United States v. Mitchell*, 113 F.3d 1528, 1532 (10th Cir. 1997), *abrogated on other grounds by United States v. Shipp*, 589 F.3d 1084, 1090 n.3 (10th Cir. 2009). "The rule applies 'when two statements, one made at trial and one made previously, are irreconcilably at odds.'" *United States v. Askew*, 201 F. App'x 858, 859–60 (3d Cir. 2006) (internal citation omitted).

However, the use of prior, unsworn statements under the guise of impeachment can amount to an impermissible back door to get otherwise inadmissible hearsay in front of the jury. Judge Posner summarized the rule well: "it would be an abuse of the rule, in a criminal case, for the prosecution to call a witness that it knew *would not give it useful evidence*, just so it could introduce hearsay evidence against the defendant in the hope that the jury would miss the subtle distinction between impeachment and substantive evidence—or, if it didn't miss it,

would ignore it. *United States v. Webster*, 734 F.2d 1191, 1192 (7th Cir. 1984) (emphasis added).

On April 20, 2022, the prosecution called Yolanda Diaz, daughter of Llesenia Woodard (another government witness) and once-girlfriend of Kevin Coles' codefendant Devin Dickerson.[3] Ms. Diaz was interviewed by Agent Kierzkowski and Corporal Decker in 2018 about the triple homicide and Coles' and Dickerson's drug activity. (App. 125). The prosecutor's examination of Ms. Diaz consisted entirely of re-reading Ms. Diaz's statement to Agent Keirzkowski to the jury, over Coles' objection. While Ms. Diaz agreed that the interview with Agent Kierzkowski occurred, she denied that she said what was contained in Agent Kierzkowski's report of the interview. Nevertheless, the prosecutor proceeded—over repeated defense objections—to read Agent Kierzkowski's report to the jury under the guise of impeaching the Government's own witness. The end result was that the Government read 7 paragraphs of Det. Kierzkowski's report to the jury, despite Diaz's repeated denial that she made the statements.

Specifically, after the prosecutor asked Ms. Diaz whether she had a lawyer present with her at the interview, instead of asking her specific questions about the time leading up to the murders or her personal knowledge, he asked to review the report of her interview with law enforcement line by line with her. Coles' lawyer objected. The District Court overruled the objection. (App. 127).

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[3] Ms. Diaz's testimony is in the attached Appendix.

The Government proceeded to go line by line through the interview, quoting the hearsay and then asking Ms. Diaz to answer "Did you tell them that?" and "Was that true?" (*See, e.g.* App. 128.) The Government went on to recite every line of the report, and she denied saying, and denied the truthfulness of, the following statements:

- "'Diaz admitted that she would allow Dickerson and Kevin Coles to store quantities of narcotics at her residence.'" (App. 128).
- "'Diaz stated that the drugs were kept high up in a kitchen cupboard so that the kids couldn't get into it.'" (App. 128).
- "'Diaz stated that Dickerson and Coles also had a safe in her residence that she believed contained money and guns.'" (App. 129).
- "'Dickerson and Coles had two different pistols which you described as being black in color.'" (App. 130).
- "'Diaz further stated that she believed that Coles and Dickerson shared the weapons between them.'" (App. 131).
- "'Diaz further stated that Dickerson and Coles were in possession of a military style weapon they kept in the closet.'" (App. 132).

At this point, the Government acknowledged the inconsistencies between Diaz's prior unsworn statement and her trial testimony: "I'm trying to make sure, because we're at least seven sentences into the second paragraph of this report, and apparently you didn't say any of this stuff." (App. 132:17–19). Clearly, at that point—if not long before—the prosecution had succeeded in sufficiently impeaching the witness. But, nevertheless, he continued:

- "'Diaz stated that Coles and Dickerson sold drugs with Budda, Merk, and Ra.'" (App. 132:20–21).

Coles renewed his objection to the line of questioning, *see* App. 133:12–15, but the District Court overruled the objection. (App. 133:14-15). The questioning continued, and when the prosecution reached paragraph four of the report, the subject of Wendy Chaney's murder arose. (App. 136-37).

Coles objected again. The District Court overruled the objection. (App. 140). The most prejudicial testimony came immediately after that objection:

- "'Diaz stated that she overheard conversations between Coles and Dickerson about her,' meaning Wendy, 'messing up the money and that they wanted to get rid of her.'" (App. 143).

- "'Diaz explained that she thought Dickerson and Coles probably played a role in the killing due to the fact she had just overheard them talking of 'getting rid' of Wendy.'" (App. 144).

- "'Furthermore, Diaz admitted to lying to the police about an alibi for Dickerson and Coles on the night of the murders. Diaz admitted that she was going along with what her mother told the police, in essence creating an alibi for Coles and Dickerson. Diaz stated that neither Coles nor Dickerson were at her residence the night of the triple murders, as she had indicated to the police.'" (App. 144).

- "'Diaz stated that the night before they,' meaning Coles and Dickerson, 'got arrested, Coles shown [*sic*] up at her apartment banging on the door. Diaz stated Coles was covered in sweat and that his clothes were dirty and ripped up. Diaz stated that she allowed Coles into the kitchen, at which time after he showered and discarded his clothing'" (App. 144).

The prosecutor continued to recite details about Coles and Dickerson having been arrested at a hotel and taken into custody in Washington County, and Dickerson coming to retrieve an AR-15 while out on bond. (App. 150).

The District Court gave a limiting instruction after Ms. Diaz finished testifying. The District Court read the jury an instruction, indicating, *inter alia*, that the jury could not "use those prior statements as proof of the truth of what Ms. Diaz said in the earlier statements." The statements "were brought to your attention only to help you decide whether to believe Ms. Diaz's testimony here at trial."

The Third Circuit affirmed the District Court on appeal. This decision, however, conflicts with the decisions from the Fourth and Sixth Circuits on this issue. Further, the Third Circuit's decision in this case involves a significant and reversible error of law, an important federal question, and is departure from established legal practices to the extent it conflicts with the other courts of appeals and prior practice involving impeachment by out-of-court statements. As the Fourth Circuit explained, "[t]he overwhelming weight of authority is . . . that impeachment by prior inconsistent statement may not be permitted where employed as a mere subterfuge to get before the jury evidence not otherwise admissible." *United States v. Morlang*, 531 F. 2d 183, 190 (4th Cir. 1975).

In *United States v. Shoupe*, 548 F.2d 636 (6th Cir. 1975), between an interview with law enforcement and trial, a witness disavowed his earlier statement to law enforcement. The court allowed the prosecutor to read—across more than seventeen questions—the entire contents of that statement. *Shoupe*, 548 F.2d at 641. The court recognized that limited use of the prior statement would be appropriate to refresh the witness's recollection or to impeach him, but based on the fact that the entire out-of-

court statement consisting of hearsay was read before the jury, the court reversed defendant's conviction and remanded. *Id.* at 644. It reasoned that there was no authority "sanctioning the recitation in the presence of the jury of extended unsworn remarks, attributed to a Government witness, which were allegedly recorded in an unverified document and which inculpate the defendant." *Id.* at 641. The court emphasized that "[l]imited reference to [the statement] may have been proper, however, for the purpose of either refreshing [witness's] present recollection of the details of the [event] or of impeaching the credibility of his professed failure to recollect those details…" *Id.*

Even the Third Circuit in a different case explained that "[i]t is well established…that witnesses may not be called for the purposes of circumventing the hearsay rule by means of Rule 607." *United States v. Sebetich*, 776 F.2d 412, 429 (3d Cir. 1985); *see also United States v. Zackson*, 12 F.3d 1178, 1184 (2d Cir. 1993) ("While the law generally gives prosecutors broad latitude when questioning hostile and recalcitrant witnesses, that latitude is not unbounded … impeachment by prior inconsistent statement may not be permitted where employed as a mere subterfuge to get before the jury evidence not otherwise admissible."); *United States v. Morlang*, 531 F.2d 183, 190 (4th Cir. 1975) ("To permit the government…to supply testimony which was a naked conclusion as to [defendant's] guilt in the name of impeachment would be tantamount to permitting the use of hearsay.").

Here, the Government's sole purpose in calling Ms. Diaz was to get her otherwise inadmissible—and highly prejudicial—prior statements before the jury. The prosecution already had several witnesses to testify about the drug charges, but their case was missing direct ties between Coles and Wendy Chaney's murder, so they used the inadmissible hearsay specifically to have the jury hear that Diaz purportedly told officers that she overheard Coles and Dickerson scheming about Chaney's murder. In other words, Ms. Diaz provided nothing of value to the prosecution's case besides the inadmissible hearsay connecting Coles to needing to get rid of Wendy. This is clearly not a scenario like Judge Posner imagined, where the government had a witness who would testify in both helpful and harmful ways. Ms. Diaz, as far as her testimony at trial goes, was nothing but a harmful witness (except for all of her hearsay) for the prosecution as she refused to corroborate its theory of the case.

Even if Ms. Diaz had offered anything of value at the outset, once it became clear that she had disavowed the entire out-of-court statement, the questioning should have stopped. Even the prosecutor recognized approximately a third of the way through the report that she intended to disavow the statement. As the *Shoupe* court recognized, limited use of the hearsay statement to impeach is certainly permissible. But just like in *Shoupe*, the prosecutor read the *entire* statement before the jury, far from a limited use of the statement's contents for impeachment.

In addition, after Ms. Diaz showed that she was disavowing the entire statement, under Rule 403, any further testimony was clearly "needlessly cumulative" and a "waste of time." By this point, Ms. Diaz had already been sufficiently impeached. Ms. Diaz's testimony was also needlessly cumulative because the prosecutor called Ms. Diaz knowing he would call her mother, Ms. Llesenia Woodard, the next day "expect[ing] her testimony to be diametrically opposed to what her daughter testified to here..."

Alternatively, under Rule 403 even if the prosecutor's use of the statement was not impermissible subterfuge, the unfair prejudice of its complete recitation by the prosecutor substantially outweighed its probative value. Indeed, Ms. Diaz essentially gave *no* testimony, as the limiting instruction permitted her testimony only to be considered for impeachment purposes. If anyone testified, it was the prosecutor reading hearsay—seven paragraphs worth—in front of the jury. How, then, could her testimony have any probative value? The jury could not unhear the inflammatory hearsay that Ms. Diaz allegedly told law enforcement that she overheard Coles and Dickerson scheming about Ms. Chaney's death, in a case where Coles' connection to the triple homicide was already, at best, extremely attenuated.

In sum, the prosecution should not have been permitted to read the entire contents of an unsworn, hearsay-riddled statement in the name of impeaching an unnecessary and cumulative witness. Not only did this soliloquy violate clearly established caselaw across the circuits condemning the use of this proverbial back

door, but it also violates Rule 403's basic prohibitions on both needlessly cumulative evidence and evidence the probative value of which is substantially outweighed by its prejudicial effect. No limiting instruction could cure the prejudicial effect of this hearsay on Mr. Coles.

C. Judgment of acquittal should have been entered on Counts 14 and 18 with respect to serious bodily injury.

Counts 14 and 18 charged Coles with distribution of controlled substances resulting in serious bodily injury. No reasonable jury could have found that Coles distributed substances that resulted in serious bodily injury to Mr. Hazleton or Ms. Ita, or that either suffered serious bodily injury.

Count 18 charged Coles and Dickerson with intentionally distributing heroin to Harrell Hazleton, who in turn suffered serious bodily injury, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C), as well as § 2. (Doc. 499 at p. 35.) The Government did not offer evidence that Mr. Hazleton suffered serious bodily injury. A "'serious bodily injury' means bodily injury which involves ... a substantial risk of death; ... protracted and obvious disfigurement; or ... protracted loss or impairment of the function of a bodily member, organ, or mental faculty." 21 U.S.C. § 802(25). The threshold is that one must suffer a physical, bodily injury. There was no evidence that Mr. Hazleton—who was not called as a witness—suffered a bodily injury. Rather, he purportedly overdosed, received Narcan, and has no lasting injuries. Mr. Hazleton has no "protracted and obvious disfigurement" or "protracted loss or

impairment of the function of a bodily member, organ, or mental faculty." 21 U.S.C. § 802(25). The definition supplied by the District Court—that "an overdose posing a serious risk of death without medical intervention constitutes serious bodily injury," *United States v. Coles*, 2022 WL 17405830 * 12 (M.D. Pa. 2022), waters down the statutory definition because no bodily injury is required. The District Court should have entered judgment of acquittal on Count 18.

For many of the same reasons, judgment of acquittal should have been entered with respect to the serious bodily injury allegations in Count 14. Ms. Rockwell, like Mr. Hazleton, fortunately recovered from the purported overdose. Ms. Rockwell suffers no permanent injury from the overdose. Like Hazleton, she did not suffer a bodily injury. Accordingly, she did not suffer serious bodily injury as defined in 21 U.S.C. § 802(25). Judgment of acquittal should have been entered on Count 14 to the extent it charges serious bodily injury connected with Ms. Rockwell.

The Third Circuit affirmed the District Court because Mr. Hazleton and Ms. Rockwell "nearly died" and "were revived with Narcan." (Third Cir. Opinion at p. 17.) However, this does not meet the threshold of "serious bodily injury" because "serious bodily injury" requires "bodily injury which involves . . . a substantial risk of death . . . ." 21 U.S.C. § 802(25). Therefore, even if Mr. Hazleton and Ms. Rockwell had a substantial risk of death, they did not have the accompanying bodily injury that is required by the statute. Judgment of acquittal should have been entered on Counts 14 and 18.

Accordingly, Mr. Coles respectfully requests that a writ of certiorari be issued so that this Court can examine these important issues.

Respectfully submitted,

Date: July 7, 2025

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CERTIFICATE OF SERVICE

I, Jason Asbell, certify that the foregoing **Petition for Writ of Certiorari** was served upon the following:

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