No. _____

IN THE SUPREME COURT OF THE UNITED STATES

_____

LOUIS AGE, III,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent

_____

ON PETITION FOR A WRIT OF CERTIORARI
FROM THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

_____

PETITION FOR A WRIT OF CERTIORARI

_____

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QUESTIONS PRESENTED FOR REVIEW

I. Did the Fifth Circuit erroneously apply federal law in finding that the evidence at trial was sufficient to establish the crimes beyond a reasonable doubt, when the evidence failed to prove Petitioner was a part of the conspiracy alleged in this case.

II. Did the Fifth Circuit erroneously apply federal law in finding that Petitioner's rights to due process and confrontation under the Fifth and Sixth Amendments were not violated when the district court allowed Michael Crawford to testify as to things he heard in jail, essentially functioning as a government agent.

III. Did the Fifth Circuit erroneously apply federal law in finding that Petitioner's rights to due process and a fair trial under the Fifth and Sixth Amendments were not violated when the district court denied his motion to sever Defendants.

IV. Did the Fifth Circuit erroneously apply federal law and ignore a possible circuit split in finding no error in the district court allowing the government to introduce extrinsic evidence before the jury in violation of Rule 404(b), violating Louis Age, III's due process rights, and requiring a new trial.

V. Petitioner adopts the arguments of co-Petitioners to the extent they do not conflict.

PARTIES TO THE PROCEEDINGS IN THE COURT WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Louis Age, III	Petitioner
United States of America	Respondent
Louis Age, Jr.	Co-Petitioner below, and believed to be filing a separate Petition for writ of Certiorari from the same appeal decision.
Ronald Wilson	Co-Petitioner below, and believed to be filing a separate Petition for writ of Certiorari from the same appeal decision.
Stanton Guillory	Co-Petitioner below, and believed to be filing a separate Petition for writ of Certiorari from the same appeal decision.

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The opinion of the United States Fifth Circuit Court of Appeals is reported at 136 F.4th 193 (5th Cir. 2025) (April 25, 2025) and reprinted in the Appendix to the Petition ("App.") at 1a-85a. Rehearing was denied in *United States of America versus Louis Age, Jr.; Stanton Guillory; Louis Age, III; Ronald Wilson, Jr.,* No. 22-30656, Rec.Doc.327 (5th Cir. 5/30/2025)(not published), and reprinted in the Appendix to the Petition ("App.") at 86a-87a.

STATEMENT OF JURISDICTION

Petitioner seeks review of a decision rendered by the United States Court of Appeals for the Fifth Circuit in a published opinion on April 25, 2025 and in a denial of rehearing on May 30, 2025, in which the Court of Appeals affirmed the convictions and sentences of Mr. Age, III. This Court has supervisory jurisdiction pursuant to 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Due Process Clause provides: "No person shall . . . be deprived of life, liberty, or property, without due process of law." U.S. Const. Amend. V.

The Sixth Amendment guarantees the right to "be confronted with the witnesses against him." U.S. Const. Amend. VI.

STATEMENT OF THE CASE

On August 17, 2017, a superseding Indictment[1] was filed in the Eastern District of Louisiana, charging Louis Age, Jr., Louis "Big Lou" Age, III, Ronald "Tank" Wilson, Jr., Kendrick Johnson, and Stanton "Nan Nan" Guillory with several violations of Murder for Hire, Witness Tampering, and Retaliation charges, all essentially stemming from the July 27, 2012 murder of federal witness Milton Womack. One count also related to retaliation against Ayanna Age for testifying against her father in an unrelated case.

Count 1 charged all Defendants with conspiring to commit murder for hire, in violation of 18 U.S.C. §1958. Count 2 charged all Defendants with using a facility of interstate commerce (a cell phone) to commit murder for hire, in violation of 18 U.S.C. §§1958 and 2. Count 3 charged all Defendants with conspiring to murder Womack to prevent him from testifying in the Medicare fraud case, in violation of 18 U.S.C. §§1512(a)(3)(A) and 1512(k). Count 4 charged all Defendants with killing Womack to prevent him from testifying in the Medicare fraud case, in violation of 18 U.S.C. §§1512(a)(1)(A), 1512(a)(3)(A), and 2. Count 5 charged Age, Jr. and Age, III with killing Womack to prevent him from communicating with law enforcement about his knowledge of the Medicare fraud scheme, in violation of 18 U.S.C. §§1512(a)(1)(C), 1512(a)(3)(A), and 2. Count 6 charged all Defendants with conspiring to murder Womack in retaliation for his cooperation with law

[1] 5th Cir. 22-30656 Record on Appeal pages 18392-19408, hereinafter "ROA.___". Kendrick Johnson eventually pleaded guilty to a superseding bill of information, and received a sentence of eight years' imprisonment, consisting of five years as to Count 1 and three years as to Count 2, to be served consecutively. EDLA 16-32 Rec.Doc. 629, 631. Only Guillory was charged in the original indictment.

enforcement, in violation of 18 U.S.C. §§1513(a)(2)(A) and 1513(f). Count 7 charged all Defendants with killing Womack in retaliation for his cooperation with law enforcement, in violation of 18 U.S.C. §§1513(a)(1)(B), 1513(a)(2)(A), and 2. Count 8 charged Johnson, Age, Jr., and Age, III with conspiring to use intimidation, threats, and corrupt persuasion to influence, delay, or prevent testimony in the Medicare fraud case and hindering, delaying, and preventing further communication with law enforcement relating to the commission or possible commission of a federal offense (healthcare fraud), all in violation of 18 U.S.C. §1512(k). Count 9 charged Johnson, Age, Jr., and Age, III with conspiring to retaliate against a witness for aiding law enforcement in the Medicare fraud case, in violation of 18 U.S.C. §1513(f). Count 10 charged Johnson with making false statements to the grand jury regarding Womack's murder, in violation of 18 U.S.C. §1623. And in Count 11, Age, III was charged with making false statements to FBI agents in violation of 18 U.S.C. §1001. In November of 2018, the government noted it would not be seeking the death penalty in this case.[2]

Given the complexity of the case, several pretrial motions of note were filed. One was a government 404(b) notice indicating its intent to offer several pieces of evidence it considered intrinsic to the case, or extrinsic but not overly prejudicial, which was litigated fairly heavily.[3] A motion in limine to admit Womack statements through forfeiture by wrongdoing also was filed by the government.[4] A general motion to sever defendants was filed, and Mr. Age, III also filed a *Motion to Sever*

[2] ROA.18598.
[3] ROA.19186-19211.
[4] ROA.19400-19423.

his case from that of Age, Jr.'s, arguing that statements his father made about him would cause a confrontation clause violation.[5] The district court later denied that motion, subject to some restrictions, and also made significant findings on the 404(b) issue, allowing most proposed acts in.[6]

The Defense also filed a motion relative to the discovery of a corrupt jailhouse cooperation ring operating out of Nelson Coleman Correctional Center (NCCC), and asked the court for various methods of relief, including help soliciting the public for information[7], which the government opposed[8]. The court denied that request, as well as denying a Defense motion for additional information about jailhouse cooperators, finding no *Brady* issues.[9]

The Defense then filed a *Motion To Exclude Testimony Of Informant M.C. Due To Confrontation Clause Violation*[10], seeking to keep Michael Crawford's testimony out about admissions Wilson made to him while they were incarcerated together at NCCC. This motion also asked the court to reconsider its 404b ruling as the disclosure of new discovery demonstrated that Guillory was not hired for the hit because of his street reputation, but simply because he was the only person who take it, thus his other bad acts were not relevant[11].

On March 28, 2022, a motion hearing was held on the government's Motion in limine to admit Womack's statements pursuant to forfeiture by wrongdoing.

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[5] ROA. 19983-19887.
[6] ROA.20061-20073, 20104-20136.
[7] ROA.20785-20790.
[8] ROA.20837-20846.
[9] ROA.20866-20867.
[10] ROA.20868-20914.
[11] ROA.20915-20929.

Another motion hearing was held March 30-31, 2022, where the court took up motions to suppress the testimony of informant Michael Crawford due to a *Massiah* violation, a motion to exclude the testimony of informant Michael Crawford due to a Confrontation Clause violation, and a motion to exclude the hearsay testimony of informant Michael Crawford as inadmissible hearsay. The court thereafter granted the government's motion to allow in Womack's testimony through forfeiture by wrongdoing[12]; and denied the Defense motion to compel disclosures of Michael Crawford's jail calls.[13]

Jury trial began April 4, 2022 and continued through April 27, 2022.[14] The government called 25 total witnesses, with the Defense calling 13 total witnesses.[15] The issue as to severance was reurged by some of the Defendants during trial, as well as several motions for mistrial were made for various reasons. The Defense again moved to bar Michael Crawford's testimony, this time as their witness Richard Green was not being transported by the Bureau of Prisons as a necessary confrontation witness.[16]

Following the close of the Defense case, all counsel argued motions for acquittal, with counsel for Age, III arguing specifically as to Counts 8 and 9 only.[17]

Jury deliberations took place over 3 days. The jury thereafter returned the following verdicts relative to Mr. Age, III: guilty as to Counts 1-8, not guilty on

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[12] ROA.21130-21141.
[13] ROA.21144-21146.
[14] ROA.21155, 21160, 21165-21166, 21168-21170, 21173-21176, 21209-21216, 21241-21243, 21281-21282.
[15] ROA.21275-21278.
[16] ROA.21183-21189.
[17] ROA.21242.

Count 9, and guilty on Count 11.[18] No motion for new trial was filed on Mr. Age, III's behalf.

Sentencing was held October 13, 2022.[19] Finding an offense level of 43 and a criminal history category level of I, the district court sentenced Petitioner to life imprisonment on Counts 1, 2, 3, 4, 5, 6, and 7, 240 months as to Count 8, and 60 months on Count 11, with all terms to be served concurrently, along with terms of supervision should Petitioner ever be released, a special assessment of $900, with restitution and forfeiture to be taken up at a later date.[20]

Appeal was filed to the United States Fifth Circuit Court of Appeals, and oral argument was heard October 7, 2024. On April 25, 2025, that court affirmed Mr. Age, III's convictions and sentences. *United States v. Age*, 136 F.4th 193 (5th Cir. 2025). A petition for en banc rehearing was filed timely and ultimately denied May 30, 2025. No. 22-30656, Rec.Doc.327. This *Petition for Writ of Certiorari* follows.

REASONS FOR GRANTING THE PETITION

I. The Fifth Circuit erroneously applied federal law in finding that the evidence at trial was sufficient to establish the crimes beyond a reasonable doubt.

The evidence adduced at trial failed to prove Petitioner was a part of the conspiracy alleged in this case. The majority of the witnesses called at trial had nothing to do with Mr. Age, III, and the only substantive witnesses the government introduced were felons with a laundry list of arrests and convictions, who openly testified they were simply seeking sentencing reductions or benefits.

[18] ROA.21283-21292.
[19] ROA.21340, 21538-21550.
[20] ROA.21544-21546.

II. The Fifth Circuit erroneously applied federal law in finding that Petitioner's rights to due process and confrontation under the Fifth and Sixth Amendments were not violated when the district court allowed Michael Crawford to testify as to things he heard in jail, essentially functioning as a government agent.

Michael Crawford functioned as government agent in this case, as shown by the timeline of events, as well as the testimony adduced, and it was error to allow him to testify.

III. The Fifth Circuit erroneously applied federal law in finding that Petitioner's rights to due process and a fair trial under the Fifth and Sixth Amendments were violated when the district court abused its discretion and denied his motion to sever Defendants.

Petitioner moved to have his case severed from the other Defendants, and from his father specifically. The spillover from Guillory's 404b other bad acts that were admitted, as well as the criminal background and activities of Louis Age, Jr., prejudiced Mr. Age, III to such an extent that precautionary motions and jury instructions could not provide adequate protection. As such, it was error to deny the request to sever.

IV. The Fifth Circuit erroneously applied federal law finding no abuse in the government introducing extrinsic evidence before the jury in violation of Rule 404(b), violating Louis Age, III's due process rights, and requiring a new trial.

Here, the government was permitted to present irrelevant and highly

prejudicial extrinsic evidence to the jury, in an effort to paint all Defendants as gangsters and dangerous criminals. Mr. Age, III was unduly prejudiced by the other bad acts admitted at trial against himself and his co-Defendants, and is entitled to relief.

V. Petitioner adopts the arguments of co-Petitioners to the extent they do not conflict.

I. The Fifth Circuit erroneously applied federal law in finding that the evidence at trial was sufficient to establish the crimes beyond a reasonable doubt.

The Fifth Circuit's denial of Mr. Age, III's argument relative to sufficiency was lacking in evidence such that it violated his right to due process, a principle established in *Jackson v. Virginia*, 443 U.S. 307 (1979). The due process clause protects a defendant in a criminal case against conviction except upon proof beyond a reasonable doubt of every element of the crime with which he is charged. *In Re Winship*, 397 U.S. 358 (1970); U.S. Const. Amend. V.

The government's theory of this case was that these Defendants conspired together to kill Milton Womack to prevent him from testifying at Louis Age, Jr.'s Medicare fraud case in Baton Rouge, from disclosing other alleged bad acts, and to retaliate against Ayanna Age for testifying against her father in that same trial. They painted Age, Jr. as the mastermind behind the conspiracy, with Age, III and Ronald Wilson acting as facilitators to set up the hit. Stanton Guillory, a member of Young Mafia Fellas (YMF) was the alleged trigger man.

However, the government was permitted to present highly prejudicial and irrelevant evidence[21] in order to paint the Defendants as bad actors, and the actual testimony and evidence introduced to show that these Defendants were acting together in a concerted conspiracy is suspect at best. The only substantive witnesses that testified at trial were admitted killers and liars who were hoping to walk away from their cases with reduced sentences or no jail sentences at all.

In the instant case, of the 38 witnesses called by the government and other defendants at trial, approximately 17 focused on the healthcare fraud case, which had already been litigated in the Middle District of Louisiana, or on other matters related to his co-Defendants and were not directly relevant to Mr. Age, III. They were presented to muddy the waters and draw him into a conspiracy where the only evidence was testimony from unbelievable flip witnesses seeking sentencing reductions for their own cases. Mr. Age, III's trial counsel made a Rule 29 Motion following the presentation of the government and Defense case relative to Counts 8 and 9.

As to the remaining counts, Defendant acknowledges the record does not reflect that a Rule 29 motion was argued or filed, and thus are reviewed for plain error. An appellate court has discretion to remedy the error—discretion which ought to be exercised only if the error "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." *Puckett v. United States*, 556 U.S. 129, 135 (2009) (*quoting United States v. Olano*, 507 U.S. 725, 732–733 (1993)). Thus, "[u]nder plain error review, we will reverse only where there was (1) an error, (2)

[21] See 404b issue below.

that was clear and obvious, (3) that affected the defendant's substantial rights, and (4) that, if not corrected, would seriously affect the fairness, integrity, or public reputation of the judicial proceedings." *United States v. Reagan*, 725 F.3d 471, 483 (5th Cir. 2013). In this context, "plain" is synonymous with "clear" or "obvious." *United States v. Olano*, 507 U.S. 725, 734 (1993).

The entirety of the government's case, then, revolved around a conspiracy that allegedly was masterminded and controlled by Louis Age, Jr. In order to prove a conspiracy, the government must show: "(1) an agreement by two or more persons to achieve the unlawful purpose ...; (2) the defendant's knowing and voluntary participation in the agreement; and (3) an overt act committed by any one of the conspirators in furtherance of the conspiratorial object." *United States v. Blackthorne*, 378 F.3d 449, 453 (5th Cir. 2004). However, "it is not enough that the defendant merely associated with those participating in a conspiracy, nor is it enough that the evidence places the defendant in a climate of activity that reeks of something foul." *United States v. Velgar-Vivero*, 8 F.3d 236, 241 (5th Cir. 1993). *See also United States v. Martinez–Moncivais*, 14 F.3d 1030, 1034 (5th Cir. 1994) noting that "mere presence at the crime scene or close association with conspirators, *standing alone,* will not support an inference of participation in the conspiracy." Emphasis in original, citations omitted.

Not only must there be proof beyond a reasonable doubt that a conspiracy existed, the government also must show that Petitioner knew of it and voluntarily

became a part of it. *United States v. Navar*, 611 F.2d 1156, 1159 (5th Cir. 1980). However, conspiracy to commit a particular substantive offense cannot exist without at least that degree of criminal intent necessary for the substantive offense itself. *Ingram v. United States*, 360 U.S. 672, 678 (1959). Evidence that a defendant "more likely than not" knowingly joined a conspiracy is insufficient for the government to prove its case beyond a reasonable doubt.

Petitioner acknowledges that under *Pinkerton v. United States*, 328 U.S. 640 (1946), "[a] party to a conspiracy may be held responsible for a substantive offense committed by a coconspirator in furtherance of a conspiracy, even if that party does not participate in or have any knowledge of the substantive offense." However, the government failed to prove that Age, III was part of any conspiracy in this case. First, Mr. Age, III's mere presence and association was due to his family connections. Second, the government did not show that Age, III acted of his own accord or under his own volition. As the court instructed the jury, a "'conspiracy' is an agreement between two or more persons to join together to accomplish some unlawful purpose. It is a kind of "partnership in crime" in which each member of the conspiracy becomes the agent of every other member.'"[22] This was no partnership in crime, this was a dictatorship run by Louis Age, Jr.

Moreover, the government witnesses themselves committed multiple murders, shootings, violent crimes, and firearms infractions, only some of which were charged. As learned at trial, Damonisha "Whompy" Jones, Dajona "Tutu" Jones, and Jade "J Money" LNU[23] participated in a carjacking, but were not

[22] ROA.24727.

arrested or charged for their roles.[24] Raheem Jackson was responsible for shooting someone when he was a juvenile. Although it was portrayed as an accident, he was adjudicated responsible for negligent homicide.[25] He also was aware of a gang shooting that Guillory participated in, and only got out of the car before the shooting because he did not have his own gun.[26] Jackson helped Guillory steal a Glock firearm from someone, taking it by force and pointing another firearm at the victim.[27] He also brought a firearm to a school in order to catch someone he was 'beefing' with, although he tried to play it off as a reactionary precaution. However, he had to admit that he laid in wait before learning that person had left school earlier.[28] He received a 10-year sentence. Brian Marigny admitted to carrying guns that were taken from people or from breaking into vehicles.[29] He also was present right before a gang shooting that Guillory participated in, and only got out of the car before the shooting because he did not have his own gun either.[30] He received a 10-year sentence.

Charles Lewis had priors as a juvenile for attempted second degree murder where he shot someone in the back of the head twice, as well as firearms charges in 2014.[31] He also admitted that he would steal guns or break into cars to get them.[32]

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[23] At some points during trial, witnesses were referred to by nicknames or street names, and so sometimes last names are unknown, hence the abbreviation "LNU".

[24] ROA.5396 (Guillory gave instructions to park the car by the graveyard so it would not be on parking lot cameras), 5794 (girls were not scared when car was stolen).

[25] ROA.5286.

[26] ROA.5322-5324.

[27] ROA.5348.

[28] ROA.5351, 5550-5553.

[29] ROA.5661.

[30] ROA.5670-5674.

[31] ROA.5842-5844, 6067.

Lewis gave a Smith & Wesson to Guillory that was used in a notorious New Orleans shooting (Briana Allen/Shawanna Pierce 110ers shooting), and then traded it because he knew it had been used in the shooting.[33] Lewis was also present and participatory in the Jonathan Lewis shooting and in the theft of the Glock firearm, and then in securing the Glock after Guillory was arrested in August of 2012.[34] He was also arrested in August of 2012 for shooting at 2 people, but denied that any of his charges were violent.[35] He received a 10-year sentence.

Ayanna Age put a hit out on her first husband, Ron Alverez, on whom she had a $1,000,000 life insurance policy. The hitman called off the hit because there were other people at the house when he showed up to kill her husband.[36] She also was aware of, and benefitted from, alleged family arson, yet she was never charged for any of those crimes.

The government witnesses also were testifying in hopes of benefits and leniency. Michael Hunter, the former doctor who worked with Age, Jr. claimed that he was here testifying on his own volition since his 2-year probation sentence was terminated early[37], but also admitted he was in the process of attempting to get his medical license back.[38] Jackson admitted on the stand that he had already testified in the Briana Allen/Shawanna Pierce 110ers trial, and that even though he received a 10-year sentence for his role in the death of Milton Womack, he was hoping for a

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[32] ROA.5855-5856.
[33] ROA.5858-5860, 5870.
[34] ROA.5874-5886, 5942.
[35] ROA.6026.
[36] ROA.6167-6171.
[37] Mr. Hunter was facing 10-15 years initially. ROA.4484.
[38] ROA.4520-4522.

further reduction.[39] Marigny agreed that he was testifying pursuant to his plea agreement and a capped sentence. He was sentenced to 10 years and was hoping to get that reduced even further.[40] In fact, he had already testified in the Briana Allen/Shawanna Pierce 110ers trial as well.[41] Lewis noted that his federal and state time were not running concurrent, and the government was supposed to look into that.[42] He also stated that he had testified in two state trials relative to the murder of Jonathan "Kruger" Lewis against Sam "Lil" Newman, and again for the murders of Briana Allen and Shawanna Pierce, as well as at a federal grand jury in 2016.

Ayanna Age pled guilty in 2012 to several counts in the MDLA healthcare fraud case, and at the time of trial 10 years later had not yet been sentenced. She testified against her family in 2012, and then again in the instant trial. (Notably, Ayanna was sentenced on September 16, 2022 to time served on all three counts, with a term of 2 years supervised release. She was also ordered to pay $17,100,000 in restitution, jointly with Louis Age, Jr. and Verna Age, to be paid at the rate of $300 per month.[43])

Michael Crawford testified as to his long history of cooperating and attempts to get reductions, and was disappointed in his prior reductions. In fact, he told his lawyer he thought Ronald Wilson might be his Rule 35.[44]

The government witnesses were also able to tailor their stories. Jackson

[39] ROA.5287-5291.
[40] ROA.5743-5744.
[41] ROA.5803.
[42] ROA.5845.
[43] MDLA 11-105 Rec.Doc. 645.
[44] ROA.6557, 6586-6589, 6598.

admitted on the stand that he and Brian Marigny were housed in Florida Parish Detention Center for 2 years together, yet claimed they never discussed this case.[45] Marigny confirmed they were housed together. Marigny also testified that he, Lewis, and Jackson were housed together in St. Tammany Parish.[46]

Most egregiously, the government witnesses admitted to lying. When confronted with conflicting testimony, Raheem Jackson claimed his memory was not good, but everything he was saying then and now (the conflicting information) was all correct.[47] Marigny admitted that he was first arrested in April of 2013, and he told law enforcement he knew nothing about any of these events.[48] He also admitted that he lied in the 110ers trial about being part of YMF, essentially perjuring himself on the stand.[49] Lewis also lied to law enforcement when they first came to talk to him about this case and related events.[50] Ayanna admitted to lying to law enforcement initially about the several arsons, insurance fraud, and murder.[51] She admitted she had not been entirely truthful with the government[52], and in fact admitted she lied *after* her proffer was signed with the government.[53]

The United States Fifth Circuit, however, violated Mr. Age, III's due process rights when it based its affirmation of convictions on these incredible and unbelievable witnesses. Specially it found no error in the government's presentation

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[45] ROA.5568-5569.
[46] ROA.5790.
[47] ROA.5481.
[48] ROA.5740-5741.
[49] ROA.5804.
[50] ROA.6047.
[51] ROA.6226, 6234, 6336.
[52] ROA.6312, 6320.
[53] ROA.6363-6364.

of its case, nor in any district court rulings.

> In sum, viewed in the light most favorable to the verdict, the trial evidence was adequate to prove beyond a reasonable doubt that Age III knowingly and voluntarily entered into a conspiracy to achieve the unlawful purpose of murdering Womack. Multiple witnesses testified to that effect, and the Prosecution provided circumstantial evidence to corroborate their testimony. There was no error.

United States v. Age, 22-30656, pg. 7a-8a, attached to Appendix herein as 1a-85a, hereinafter "*Age*, pg. __a." That Court considered each count individually, and found no error as to Counts 1 and 2[54], sufficient evidence from direct testimony and no plain error as to Counts 3-5[55], sufficient evidence from conversations on the other counts and no plain error as to Counts 6 and 7[56], sufficient evidence from other testimony on the Ayanna Age portion of Count 8 and no plain error on the Womack portion of Count 8[57], no plain error on Count 11 due to sufficient testimony given at trial[58], and found that the witnesses at trial were not incredible.[59]

Insufficient evidence aside, Petitioner would also note that in Counts 3, 8, and 11, the jurors were instructed as to multiple theories of guilt, and were further instructed that they must all agree on the particular finding of guilt. [60] However, as the verdict form was silent as to which of these special findings the jury agreed upon, this Court cannot uphold the conviction on this count. The Fifth Circuit also discounted this argument, finding no merit to Mr. Age, III's issue with the generalized verdict form, noting it had upheld similar instructions and forms

[54] *Age*, pg. 8a.
[55] *Age*, pg. 9a, 11a.
[56] *Age*, pg. 13a.
[57] *Age*, pg. 15a.
[58] *Age*, pg. 16a.
[59] *Age*, pg. 18a.
[60] ROA.24733 and 7565-7566, 24739 and 7575, 21290-21292 and 7578.

previously.[61] Considering the argument set forth above and that no credible eyewitnesses testified against Mr. Age, III in this matter (despite the Court's opinion otherwise), there is no way a factfinder could reasonably find him guilty of these Counts. Due process protects an accused against a conviction where the prosecution failed to prove beyond a reasonable doubt every element of the crimes. "Irrational decisions to convict will be overturned", and the fact finder's discretion will be impinged to the "extent necessary to guarantee the fundamental protection of due process." *Jackson v. Virginia*, 443 U.S. 307 (1979). In the instant case, the evidence does not support the jury's findings of guilty, and the government failed to prove the conspiracy involving Age, III, and failed to prove under which theory the jury convicted on Counts 3, 8, and 11 of the indictment.

The majority of the government's witnesses had hearty criminal histories, and were clearly seeking to reduce their potential sentences, which worked for all of them. These witnesses admitted to lying to law enforcement, and in Ayanna's case, even *after* she signed a proffer with all the attendant consequences. In fact, the district court had to instruct the jury on witness credibility[62], witnesses with prior convictions[63], impeachment by evidence of untruthful character[64], impeachment by prior inconsistencies[65], accomplice/informer immunity[66], and accomplice/co-defendant plea agreement[67].

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[61] The Court found this on all three counts. *Age*, pg. 11a, 16a, 17a.
[62] ROA.24718-24719, 7547-7548.
[63] ROA.24719, 7549.
[64] ROA.24720, 7549.
[65] ROA.24719, 7548-7549.
[66] ROA.24720-24721, 7550.
[67] ROA.24721, 7550-7551.

It is well settled that the burden of proof rests with the government, and a defendant is not required to prove his innocence. The only proof thus offered by the government to support the charges was the wholly unreliable testimony of their flip witnesses. A court must not hesitate to overturn a jury verdict when it is necessary to "guard against dilution of the principle that guilt is to be established by probative evidence and beyond a reasonable doubt". *Estelle v. Williams*, 425 U.S. 501, 503 (1976). The government presented no reasonable evidence to prove all elements of the crimes beyond a reasonable doubt, and Petitioner moves for relief. Even considering the prongs of plain error review, Mr. Age, III is entitled to relief. He has shown clear errors that affected his substantial rights, which, if not corrected, have seriously affected the fairness, integrity, or public reputation of the judicial proceedings, and respectfully suggests the Fifth Circuit misapplied federal law in upholding his convictions. For these errors, Mr. Age, III requests relief.

II. Petitioner's Rights to Due Process and Confrontation under the Fifth and Sixth Amendments Were Violated When the District Court Allowed Michael Crawford to Testify as to Things He Heard in Jail, Essentially Functioning as a Government Agent

In the instant case, inmate Michael Crawford was permitted to testify, over objection and after a *Massiah* hearing, about conversations he allegedly had with Ronald Wilson while Wilson was incarcerated in Nelson Coleman Correctional Center (NCCC). According to Crawford, Wilson initially denied anything to do with a murder for hire, but eventually confessed his role in the murder, as well as relayed specifics about the actions of Louis Age, III and other Defendants.

On March 13, 2022, Louis Age, Jr. filed a *Motion to Suppress Testimony of Informant M.C. Due To Massiah Violation*[68]. On March 15, 2022, Age, Jr., Age, III, and Guillory filed a complementary *Motion to Exclude Testimony of Informant M.C. Due to Confrontation Clause Violation*[69], arguing that any statements should be "regarded as testimonial and subject to the protection of the Confrontation Clause."[70] Moreover, that motion disclosed that Michael Crawford, who was being housed at NCCC, had already been acting as a government informant "under a plea agreement in which he was seeking a sentencing reduction contingent upon delivering substantial assistance."[71] Even worse, it was later learned that there was a jailhouse informant ring where inmates paid for information from other inmates in order to appear as if they learned it firsthand to gain sentencing benefits.[72]

Considering the timeline, however, it is apparent that Crawford was working as a government agent. The government disclosures stated that Wilson made these alleged admissions to Crawford while both were housed at NCCC around July of 2019. Another inmate (J. Rucker) provided Crawford's name to Special Agent Williams in September of 2019, and the government claimed that Crawford's sister called an AUSA to advise he wanted to be seen on January 6, 2020. The first reported Crawford debrief with the government on the Wilson conversations occurred on January 14, 2020.[73]

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[68] ROA.17378-17421.
[69] ROA.20868-20914.
[70] ROA.20868.
[71] ROA.20870.
[72] ROA.20872-20874.
[73] ROA.20876.

Specifically, the following dates as to Crawford are also important:

Pre 2018: Crawford is a target in a uncharged drug trafficking investigation in Houma, Louisiana.

January 20-30, 2018: Crawford engages in three audio and video recorded sales of heroin to an undercover informant.

February 22, 2018: Crawford is indicted on three counts of distribution of heroin under 21 U.S.C. §841, each count carrying up to twenty years. He has a lengthy criminal history involving violence, guns, and flight, and would be considered a career offender for sentencing purposes. He is never prosecuted for the Houma methamphetamine distribution.

May 17, 2018: Crawford pleads guilty pursuant to a plea agreement, which included an under-seal attachment. Sentencing is continued.

2018 generally: Crawford continues as a jailhouse informant at NCCC, including on the cases of unrelated defendants.

July, 2019: Crawford begins to spend time with Wilson and later claims to have had several inculpatory conversations with Wilson where he admitted not only his own guilt, but provided information on his codefendants, including Age, III.

November, 2019: The government files Crawford's 5K1.1 motion, asking for a downward departure and for the court to impose a sentence lower than the bottom range provided by the sentencing guidelines. Sentencing benefits are contingent, however, on Crawford's providing information that is significant and useful, "based

on what he learned in prison."

December 4, 2019: Crawford is sentenced to 105 months on each of three counts, all to run concurrently. Despite now having been sentenced, Crawford is not moved to a Bureau of Prisons facility, but continues to be housed at NCCC, so he could continue to act as a jailhouse informant for the government.

January 14, 2020: Crawford meets with SA William Williams and the government to provide an extensive debrief on his alleged conversations with Wilson. Over the next few months, Crawford continues to meet with the government in person, as well as has at least three calls with SA Williams.

On March 30 and March 31, 2022, a hearing was held on three separate but intertwined motions: to exclude the testimony of informant Michael Crawford due to (1) a *Massiah* violation, (2) a Confrontation Clause violation, and (3) as inadmissible hearsay. During that hearing, the government called Michael Crawford, who testified that in his first federal case in 2005, he received a 90-month sentence that was amended to 78 months due to cooperation.[74] Following his indictment in the Houma distribution case, Crawford again cooperated for a significant reduction. At several points during his direct examination, Crawford claimed he was never instructed to seek information about other inmates, and in fact was instructed not to ask questions of Ronald Wilson.[75]

When asked about his debrief with the government concerning Ronald Wilson, he claimed that he was not asked to get specific information, but

[74] ROA.3818.
[75] ROA.3830, 3851,3868.

miraculously Wilson later gave him all the information to the questions he was unable to answer for the government at the first debrief.[76] Crawford also claimed that Wilson would simply brag about and/or volunteer all of this information, and that he never had to ask any questions.[77] He also clarified that everyone was aware Gregory Stewart, who was on their tier, was a notorious cooperator[78], but claimed he never bought information on Ronald Wilson's case from Stewart or inmate Tyron Scott.[79] During this hearing, Special Agent Williams claimed that he was very clear that Crawford was not to ask questions or elicit information from Wilson.[80]

The Fifth Amendment provides that "[n]o person ... shall be compelled in any criminal case to be a witness against himself." U. S. Const. amend. V. *Miranda v. Arizona*, 384 U.S. 436 (1966) further established that "the Fifth and Fourteenth Amendments' prohibition against compelled self-incrimination required that custodial interrogation be preceded by advice to the putative defendant that he has the right to remain silent and also the right to the presence of an attorney". *Edwards v. Arizona*, 451 U.S. 477, 481–82, (1981). If an accused indicates that he wishes to remain silent or requests an attorney, interrogation must cease, and any statement obtained thereafter may not be admitted against him at his trial. *Fare v. Michael C.*, 442 U.S. 707, 709 (1979) (citing *Miranda*, 384 U.S. at 444–45). Those rights "were not themselves rights protected by the Constitution but were instead measures to insure that the right against compulsory self-incrimination was

[76] ROA.3901.
[77] ROA.3904.
[78] ROA.3944.
[79] ROA.3951.
[80] ROA.4059-4062.

protected." *Davis v. United States*, 512 U.S. 452, 457 (1994) (citation and quotation marks omitted). These also were imposed "to counteract the 'inherently compelling pressures' of custodial interrogation." *McNeil v. Wisconsin*, 501 U.S. 171, 176 (1991).

This has been expanded to include those confessions that are obtained under what may be considered other than traditional interrogation circumstances. In *Massiah v. United States*, this Court held that a defendant may not have "used against him at his trial evidence of his own incriminating words, which federal agents had deliberately elicited from him after he had been indicted and in the absence of his counsel." 377 U.S. 201, 206 (1964).[81] There are three elements to determine whether a *Massiah* violation has occurred: (1) the Sixth Amendment right to counsel has attached; (2) the individual seeking information from the defendant is a government agent acting without the defendant's counsel's being present; and (3) that agent 'deliberately elicit[s]' incriminating statements from the defendant." *Henderson v. Quarterman*, 460 F.3d 654, 664 (5th Cir.2006) (alteration in original) (*quoting Massiah*, 377 U.S. at 206). Importantly, *Massiah* is invoked not only when an informant acts pursuant to specific instructions from the government, but also when he has "otherwise submitted to the State's control." *Creel v. Johnson*, 162 F.3d 385, 394 (5th Cir. 1998).

In the instant case, it is abundantly clear that Crawford submitted to the government's control. Crawford had been sentenced in December of 2019, and

[81] This right to counsel under *Massiah* is offense-specific; it cannot not be violated until Sixth Amendment protections attach. Thus, they would attach at arraignment or indictment for a particular offense.

claimed to jurors at trial that he was fine with the 105-month sentence, calling it a "blessing."[82] However, the defense was able to play a jail call where he admitted he was upset with that sentence.[83] Crawford also thought he should have received a bigger benefit for all of the information he provided to the government, and asked his attorney to request a larger departure.[84] More importantly, Crawford was told by his attorney that the government said it could file a Rule 35 "if anything else pops up."[85] Crawford was clear that he would have preferred a 5K1.1 motion, as a Rule 35 would be hard to get since he was *by himself* in the facility.[86] He was also clear that he believed this had to be done within a year to get back in front of his sentencing judge.[87] Thus, by January 6, 2020, Crawford was miraculously back with information about Wilson that was supposedly freely admitted to Crawford.[88]

As noted above, there are three elements to consider when reviewing *Massiah* violation has occurred. Has the Sixth Amendment right to counsel attached? In the instant case, the answer is yes. Mr. Age, III and Wilson had been arrested and arraigned, and trial preparations were well under way. Is the individual seeking information from the defendant is a government agent acting without the defendant's counsel's being present? Crawford was in jail questioning Wilson about his case and co-Defendants, and no defense counsel was ever present. Did that

[82] ROA.6568.
[83] ROA.6584.
[84] ROA.6585, 6589.
[85] ROA.6586.
[86] ROA.6588.
[87] ROA.6588.
[88] ROA.6598.

agent 'deliberately elicit' incriminating statements from the defendant? That answer is a resounding yes. *See Henderson v. Quarterman*, 460 F.3d 654, *supra*.

When the district court allowed Crawford to testify to not only the statements that Ronald Wilson made, but also the statements he made about Age, III, Petitioner's due process rights were violated, and the Fifth Circuit misapplied federal law in denying this claim. It declined to address any circuit split, however, finding its lack of own jurisprudence to rebut those other cases, and found no affirmative enticement by the government. *See, e.g., United States v. York*, 933 F.2d 1343, 1356-57 (7th Cir. 1991) and *United States v. Sampol*, 636 F.2d 621, 638 (D.C. Cir. 1980). While the Court agreed that the right to counsel had already attached, it found Crawford was not acting as a government agent, that his statements were nontestimonial, and that any hearsay objections came too late. It found no error, plain or otherwise.[89] Respectfully, Mr. Age, III argues this analysis is flawed.

The testimony and evidence presented against Petitioner at trial was circumstantial at best. Moreover, his denial of a severance resulted in him having to defend against not only the government, but also his co-defendant(s). These additional, inculpatory statements allegedly directly from the mouth of a co-defendant were not harmless in the least, and included several damaging points that related to Mr. Age, III. Specifically, Crawford put Petitioner squarely in the middle of the murder for hire, and testified that "Big Lou" called Wilson and asked

[89] *Age*, pg. 43a, 45a, 46a, 46a, 52a, and 55a.

to meet with him in order to "whap the old man"[90], that he gave details and paid for the murder for hire.[91]

Petitioner acknowledges that "the Sixth Amendment is not violated whenever—by luck or happenstance—the State obtains incriminating statements from the accused after the right to counsel has attached." *Maine v. Moulton*, 474 U.S. 159, 176 (1985). In Mr. Age, III's matter, however, Michael Crawford had clearly submitted to the control of the government, admitting that "it's hard to have a conversation and not ask questions or back and forth."[92]

This Court considered the issue of an inmate informant in *United States v. Henry*, 447 U.S. 264 (1980). In that case, it determined that Henry's right to counsel was violated when the state used a paid informant's testimony about inculpatory statements made by the defendant while he was jailed awaiting trial. The Court looked at three elements: (1) the informant was paid a contingent fee for information; (2) the defendant was unaware that his confidant was an informant; and (3) the defendant's incarceration imposed psychological pressures that rendered him "particularly susceptible to the ploys of undercover Government agents." *Id.*, at 274. It returned to this issue in *Kuhlmann v. Wilson*, finding there that because the informant was instructed to listen only to Wilson's comments and not to ask any questions, he held the constitutionally permissible role of a mere "listening post." 477 U.S. 436, 456, n. 19 (1986). The Court distinguished *Kuhlmann* from prior cases like *Henry*, noting that a defendant "must demonstrate that the police and their

[90] ROA.6534.
[91] ROA.6537-6542.
[92] ROA.3996.

informant took some action, beyond merely listening, that was designed deliberately to elicit incriminating remarks." 477 U.S. at 459.

In this case, Crawford was not a mere listening post. He was kept at NCCC instead of being sent to a Bureau of Prisons facility, asked to be placed closer to Wilson, and sought information specifically in the hopes of receiving a benefit. He met with the government and then was sent back into a situation with Wilson *after* the government had asked questions to which Crawford did not know the answer, and came back shortly thereafter with answers to those questions. Mr. Age, III does not discount the utility of confessions in the judicial system—"far from being prohibited by the Constitution, admissions of guilt by wrongdoers, if not coerced, are inherently desirable". *United States v. Washington*, 431 U.S. 181, 187 (1977). However, when those confessions are obtained in violation of an accused's Fifth and Sixth Amendment rights, those confessions cannot be admitted at trial.

"[C]oercion can be mental as well as physical, and ... the blood of the accused is not the only hallmark of an unconstitutional inquisition." *Blackburn v. Alabama*, 361 U.S. 199, 206 (1960). Using coerced confessions, whether true or false, is forbidden. *Rogers v. Richmond*, 365 U.S. 354, 540–541 (1961); *Spano v. New York*, 360 U.S. 315, 320–321 (1959). Here, while law enforcement was not physically present for the interrogations, they sent in an informant who Wilson believed to be an innocent acquaintance rather than a government actor and listening post.

The government had conversations with Crawford about missing information,

and he went back to NCCC and returned with that information. Mr. Age, III has demonstrated that the government and their informant "took some action, beyond merely listening, that was designed deliberately to illicit implicit remarks." *Kuhlmann*, 477 U.S. at 459. There was clearly an effort to stimulate conversation about this murder for hire, and Crawford came back with the answers he needed.

Defense counsel objected to the use of Crawford's testimony on several grounds, and the lower courts erred in allowing this prejudicial testimony in. Petitioner was represented by counsel, so his Sixth Amendment right had attached. Crawford was clearly acting as a government agent seeking information, and he 'deliberately elicit[ed]' incriminating statements from Wilson. For this error, Petitioner Louis Age, III requests relief.

III. Petitioner's Rights to Due Process and a Fair Trial under the Fifth and Sixth Amendments Were Violated When the District Court Abused its Discretion and Denied his Motion to Sever Defendants

In this Assignment of Error, Mr. Age, III contends that the district court erred in denying his request to sever his trial from his co-defendants. The Fifth Circuit compounded that error when it held that there was no abuse of discretion in the denial of the severance.[93] Petitioner acknowledges that there is a presumption favoring joint trials "stem[ming] from the belief that '[d]efendants who are indicted together should generally be tried together, particularly in conspiracy cases,' because joint trials 'promote efficiency' and protect against the 'inequity of inconsistent verdicts.'" *United States v. Ledezma-Cepeda*, 894 F.3d 686, 690 (5th Cir. 2018)(second alteration in original) (footnote omitted). However, if a defendant

[93] *Age*, pg. 67a-68a.

can demonstrate prejudice resulting from that joint trial, relief is warranted, and Mr. Age, III argues he has done so.

On November 1, 2021, all Defendants filed a *Joint Omnibus Motion to Sever*[94], raising several bases for severing all defendants at trial. The main reasons given for severing all defendants were Kendrick Johnson's declining health[95], and prejudicial spillover for all defendants considering the varying facts and other bad acts being alleged by the government. On November 15, 2021, Louis Age, III filed an additional *Motion to Sever the Trial of Louis Age, III, from the Trial of Louis Age, Jr.*[96], arguing that to allow a statement Louis Age, Jr. made that he paid his son to arrange Womack's murder would "violate Age, III's Sixth Amendment right to be confronted with the witnesses against him because Louis Age, Jr. has the right to not testify at the joint trial of this matter."[97]

The court denied all motions on December 16, 2021.[98] Additionally, it denied Mr. Age, III"s separate motion relative to his father's statement, noting that it would require the statement be redacted to remove Age, III's name, and it would issue limiting instructions accordingly.[99] At the beginning of the fourth day of trial, and based on the prejudicial evidence that had already been elicited, all defendants reurged their motions to sever, which were again denied.[100]

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[94] ROA.19877-19907.
[95] Kendrick Johnson was initially included in this motion, but ended up pleading.
[96] ROA.19983-19987.
[97] ROA.19985.
[98] ROA.20061-20073, specifically 20071.
[99] ROA.20072-20073.
[100] ROA.4982-4983.

To warrant a severance, a defendant must show that: "(1) the joint trial prejudiced him to such an extent that the district court could not provide adequate protection; and (2) the prejudice outweighed the government's interest in economy of judicial administration." *United States v. Peterson*, 244 F.3d 385, 393 (5th Cir. 2001) (citations and internal quotation marks omitted). A defendant also must show that the district court's instructions to the jury did not adequately protect him or her from any prejudice resulting from the joint trial. *United States v. Posada–Rios*, 158 F.3d 832, 863 (5th Cir. 1998).

Petitioner again acknowledges that jurisprudence does not take a liberal attitude toward severance. However, "a district court *should* grant a severance under Rule 14 only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence." *Zafiro v. United States*, 506 U.S. 534, 539 (1993), emphasis added. Here, there was a serious risk and the joint trial certainly resulted in prejudicial "juror confusion".

First, both Age, III and his father had the same name, and it was clear that witnesses often used nicknames for both interchangeably, which, in a case where almost everyone had a street name or nickname, was certainly confusing.

Second, the jury received a staggering amount of testimony and evidence relative to the SLHHC fraud case, which did not involve or charge Louis Age, III. It seems clear that the jury (1) assumed that Mr. Age, III was involved in that fraud,

even though he was not charged, much less convicted, of healthcare fraud; and (2) assumed that Mr. Age, III had somehow evaded responsibility for those charges and then weighed that fact heavily against him in determining his guilt or innocence with respect to the other charges against him.

Third, the jury also heard substantial testimony concerning Stanton Guillory and his other, unrelated, violent acts. These included his role in an armed carjacking, an armed robbery of a firearm, an attempted murder of Darrius LNU, the actual murders of Briana Allen and Shawanna Pierce, the attempted rape of Damonisha Jones, the unauthorized use of a motor vehicle and criminal damage to property of a vehicle belonging to Morissa Perkins, and the attempted murder(s) of what the government termed rival gang members.

Finally, except for Count 9 for Mr. Age, III, all Defendants were convicted of every single charge listed, which suggests that the jury could not parse the counts between the Defendants and the evidence presented, and simply opted to convict. Arguably, Age, III's not guilty verdict on that count only highlights the jury's confusion, as it was the only count solely involving Ayanna.

As this case progressed, it became readily apparent that the sheer scope of the irrelevant and prejudicial evidence presented could not be disentwined from the case against Mr. Age, III. Petitioner has thus presented "specific and compelling prejudice", isolating those events occurring in the course of the trial that have prejudiced him and demonstrating that substantial prejudice. In addition to

showing substantial prejudice, Mr. Age, III has also shown that the district court's instructions to the jury did not adequately protect him from any prejudice resulting from the joint trial. As such, he respectfully asks this Court for relief.

IV. The district court erred in allowing the government to introduce extrinsic evidence before the jury in violation of Rule 404(b), violating Louis Age, III's due process rights, and requiring a new trial.

As previously addressed, the government's theory of this case was that the co-Defendants here conspired to murder Womack in retaliation for his past cooperation in the Medicare fraud case and to prevent him from testifying at trial in that matter, and that the Defendants then attempted to retaliate against Ayanna for her subsequent cooperation. However, the government did not simply present testimony relative to these charges. They also introduced evidence of Age, III's alleged connections to gangs, and the other bad acts of co-Defendants, especially Stanton Guillory and allegations of multiple violent gang crimes and high-profile murders that included the death of a child.

But, also as previously addressed, the government's case relied heavily on the healthcare fraud case from the Middle District (which did not involve Age, III), and other bad acts not directly relevant to the charges at hand and not pertinent to a material fact that the government needed to prove. Specifically, and of most concern, was testimony from Raheem Jackson, Brian Marigny, and Charles Lewis, who testified to a host of alleged criminal behavior by Stanton Guillory (and to which Age, III, as well as other co-Defendants, were tarnished by association), as well as to Age III's alleged involvement in insurance fraud, staged accidents, and a

an automobile "chop shop" that processed stolen cars.

As such, under Fed. R. Evid. 404(b), Petitioner submits none of these other bad acts were necessary to complete the narrative of the government's accusations against Age, III (or the other members of the alleged conspiracy). Moreover, the evidence was not intrinsic. This extrinsic information, then, was introduced for its extraordinary prejudicial effect, in violation of Age, III's due process rights, and its impermissible introduction requires a new trial.

Petitioner(s) argued that the Fifth Circuit should reconsider its jurisprudence on intrinsic evidence, and join other circuits such as the D.C. Circuit, Third Circuit, and the Seventh Circuit in "abandoning or restricting" the definition of "intrinsic evidence". However, the Fifth Circuit noted that because "we find that this Court's jurisprudence on intrinsic and extrinsic evidence is clear in deciding the outcome here," it would "decline to consider this argument."[101] *See, e.g., United States v. Bowie*, 232 F.3d 923, 928 (D.C. Cir. 2000); *United States v. Gorman*, 613 F.3d 711, 718 (7th Cir. 2010); *United States v. Green*, 617 F.3d 233, 248 (3d Cir. 2010). Petitioner would urge that this Court take up the issue to settle any circuit split. The Fifth Circuit further found that any error was harmless, and that this was all in fact intrinsic evidence, including the unrelated information about the insurance and chop shop schemes.[102]

Specifically, Rule 404(b) prohibits evidence of other acts to prove a defendant's bad character, and conformity therewith. What the rule permits a trial

[101] *Age*, pg. 19a.
[102] *Age*, pg. 21a, 22a, 23a, 25a.

court to do is allow for the introduction of other-acts evidence when it is able to prove a material element of the crime currently charged "such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident ...." *See* Fed.R.Evid. 404*; see also Huddleston v. United States*, 485 U.S. 681, 686 (1988).

There is, accordingly, no question that propensity would be an "improper basis" for the introduction of 404(b) evidence. *Old Chief v. United States*, 519 U.S. 172, 182 (1997). However, even when propensity is not the basis for the government's attempt to introduce other bad act evidence, when the government attempts to introduce evidence under 404(b), the trial court must follow a two-step test incorporating Federal Rules of Evidence articles 401 and 403: The extrinsic evidence (1) must actually be relevant to the material element that the government has to prove, and (2) must have probative value that is not substantially outweighed by its prejudicial effect on the jury, risk of confusion of issues for the jury, or misleading the jury. *See United States v. Beechum,* 582 F.2d 898, 911 (5th Cir. 1978) (en banc).

Rule 404(b) also only applies to extrinsic evidence and does not prohibit intrinsic evidence. Only extrinsic evidence is inadmissible under Rule 404(b). Intrinsic evidence is evidence of acts other than conduct related to the offense is intrinsic when the evidence of the other act and the evidence of the crime charged are inextricably intertwined or both acts are part of a single criminal episode or the

other acts were necessary preliminaries to the crime charged. *United States v. Freeman,* 434 F.3d 369, 374 (5th Cir. 2005) (internal quotations omitted), and is "admissible to complete the story of the crime by proving the immediate context of events in time and place." Thus, if evidence is part of the "immediate context of the events in time and place," 404(b) analysis does not apply, and such evidence is admissible, subject to the prejudicial versus probative balancing test of F.R.E. 403. However, if evidence that the government seeks to introduce is not "inextricably intertwined" with evidence of the offenses charged, then that evidence would be extrinsic, and subject to 404(b). *United States v. Aleman*, 592 F.2d 881, 885 (5th Cir. 1979).

The district court, accepting the government's representations, agreed that the challenged evidence was necessary "to complete the story."[103] The Fifth Circuit further agreed, finding no merit to Mr. Age, III's arguments. However, the issue here, of course, is that the allegations of staged car accidents were not in furtherance of, nor did they have anything to do with, the instant conspiracy charges against Age, III. Nor, despite the court's contention to the contrary, were the allegations necessary to complete the story of the crime by proving the "immediate context of events in time and place."

But, of course, the evidence adduced at trial also refuted the court's reasoning. Because, as shown through the testimony of Raheem Jackson, Brian Marigny, and Charles Lewis, no "special relationship" to a gang was needed to allegedly hire Guillory to kill Womack. Instead, they all testified that word of the

[103] ROA.20104-2136.

hit was spread through the Iberville projects where "[i]t wasn't directed necessarily to anyone in particular."[104] This evidence, then, had nothing to do with establishing "how the conspiracy came about and how the defendant became a member."[105] And as such could not be considered intrinsic.

And the fact remains that evidence that Age, III supposedly staged traffic accidents, and perpetuated fraud relative to those traffic accidents, was not necessary to establish how Guillory was eventually, allegedly, hired. Jackson, Marigny, and Lewis, would all have been able to testify that Age, III spread word through the projects without referencing other criminal activity. They could all have testified that they learned of the offer and passed. And they all could have testified to their personal knowledge that Guillory took the offer, again, without referencing any alleged other bad acts by Age, III.

Rather, this other bad evidence was introduced, under the guise of "intrinsic" evidence, for the purpose of trying to independently establish that Age, III was a person of bad moral character who acted in conformity therewith, in direct violation of F.R.E. 404. And as such, the prejudicial effect of this evidence far outweighed its evidentiary value.

As a result, the government was able to declare that Guillory was "a violent street gang member of YMF,"[106] indeed "the most violent of the gang members."[107] The government was able to adduce that Guillory constantly "beefed" with rival

[104] ROA.5446.
[105] ROA.20124.
[106] ROA.4386.
[107] ROA.4396.

gangs; that he {and other gang members) carried firearms "every day"; that he got the firearms by "breaking in cars" or when he would "take them from somebody"; and that he frequently went out "looking for people" to shoot.[108] Additionally, prosecutors were able to adduce testimony regarding Guillory's alleged role in the May 29, 2012 murders of Allen and Pierce, and he had no remorse for these actions.[109] And the government even presented testimony relative to Guillory's alleged involvement in the June 2012 murder of a rival gang member.[110]

As it relates to allegations of unrelated criminal activity by Guillory before Womack's murder, the evidence did not serve the purpose for which it was offered and admitted by the district court as Jackson, Marigny, and Lewis again all testified instead that Guillory was not selected because of his past criminal acts, but rather because he was the only person who volunteered.[111] And in closing, the government admitted that Guillory's co-defendants did not "handpick" Guillory.[112] Instead, the government stated that this other bad act evidence was admitted against Guillory, and by extension, Age, III, because it established that Guillory was "wilding out in the streets" and evidenced a "mentality" that made Guillory the kind of person "that's willing to kill a federal witness."[113] In other words, the government admitted that it introduced this evidence to prove that Guillory was a bad person who acted in conformity therewith, in direct violation of F.R.E. 404.

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[108] ROA.5304-5309.
[109] ROA.5318-5324, 5334.
[110] ROA.5879-5883.
[111] ROA.5375.
[112] ROA.7410.
[113] ROA.7410-7411.

And this evidence *absolutely* affected the jury's verdict in this case. This Court need look no further than the government's own closing arguments to see what the prosecution wanted the jury to do in this case - "remove people like [defendants] from the streets because they're killers"[114] like Guillory, who "kill[ed] five-year-old Briana Allen and Shawanna Pierce."[115] And that is exactly what the jury in this case did. The lower courts erred in allowing this evidence to be admitted, and Louis Age, III's due process rights were violated as a result.

V. Petitioner adopts by reference the arguments raised by his co-Petitioners.

To the extent these arguments do not conflict with Mr. Age, III's, he would respectfully adopt the arguments of his co-Petitioners, believed to be filing petitions separately but stemming from the same direct appeal.

CONCLUSION

For the foregoing reasons, this Honorable Court should grant the writ of certiorari and vacate the judgment of the lower Courts.

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[114] ROA.7529.
[115] ROA.7530.

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

_____

LOUIS AGE, III,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent

_____

ON PETITION FOR A WRIT OF CERTIORARI
FROM THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

_____

APPENDIX

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