

In the Supreme Court of the United States

SEAN PAUL BAKER, *PETITIONER*,

v.

UNITED STATES OF AMERICA, *RESPONDENT*.

*On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Tenth Circuit*

PETITION FOR A WRIT OF CERTIORARI

MAUREEN SCOTT FRANCO
Federal Public Defender
CARL R. HENNIES
Assistant Federal Public Defender
Counsel of Record

OFFICE OF THE FEDERAL
PUBLIC DEFENDER
WESTERN DISTRICT OF TEXAS
300 Convent Street, Suite 2300
San Antonio, Texas 78205
Carl_Hennies@fd.org
(210) 472-6700

Counsel for Petitioner

QUESTION PRESENTED

Whether the confrontation compelled by the Confrontation Clause is restricted to only cross-examination demonstrating a witness's bias or motive to lie.

RELATED PROCEEDINGS

United States District Court for the Eastern District of Oklahoma:

United States v. Sean Paul Baker,
No. 6:22-cr-34 (Feb. 23, 2024)

United States Court of Appeals for the Tenth Circuit:

United States v. Sean Paul Baker,
No. 24-7017 (Oct. 27, 2025)

TABLE OF CONTENTS

Question presented.....	i
Related proceedings.....	ii
Table of authorities.....	iv
Introduction.....	1
Opinion below	3
Jurisdiction.....	3
Constitutional provisions involved	4
Statement	4
A. Legal background.....	4
B. Proceedings below.....	5
Reasons for granting the petition.....	10
I. The courts of appeals are divided over the scope of the Confrontation Clause.	10
II. The decision below is wrong.	12
III. This is a critically important question.	16
IV. This case is an ideal vehicle.	17
Conclusion	18
Appendix	
Court of appeals opinion (Oct. 27, 2025)	1a

TABLE OF AUTHORITIES

Cases

<i>Boggs v. Collins</i> , 226 F.3d 728 (6th Cir. 2000)	11
<i>California v. Green</i> , 399 U.S. 149 (1970)	17
<i>Cotto v. Herbert</i> , 331 F.3d 217 (2d Cir. 2003)	12
<i>Crawford v. Washington</i> , 541 U.S. 36 (2004)	4, 14, 17
<i>Davis v. Alaska</i> , 415 U.S. 308 (1974)	1, 2, 4, 5, 12, 13, 15–17
<i>Delaware v. Van Arsdall</i> , 475 U.S. 673 (1986)	5, 13, 18
<i>Lilly v. Virginia</i> , 527 U.S. 116 (1999)	4
<i>Michigan v. Lucas</i> , 500 U.S. 145 (1991)	13, 14
<i>Olden v. Kentucky</i> , 488 U.S. 227 (1988)	5
<i>Rock v. Arkansas</i> , 483 U.S. 44 (1987)	14
<i>United States v. A.S.</i> , 939 F.3d 1063 (10th Cir. 2019).....	9, 10
<i>United States v. Abel</i> , 469 U.S. 45 (1984)	13, 14
<i>United States v. Hill</i> , 322 F.3d 301 (4th Cir. 2003)	11
<i>United States v. Roldan-Zapata</i> , 916 F.2d 795 (2d Cir. 1990)	12

<i>United States v. Tansley</i> , 986 F.2d 880 (5th Cir. 1993)	11
<i>United States v. Vega Molina</i> , 407 F.3d 511 (1st Cir. 2005)	11
<i>White v. Coplan</i> , 399 F.3d 18 (1st Cir. 2005)	11
Constitutional Provisions	
U.S. Const. amend. VI	4
Statutes	
28 U.S.C. § 1254(1)	3
Other Authorities	
5 John H. Wigmore, EVIDENCE § 1367 (3d ed. 1940)	17
Rosanna Cavallaro, <i>Rape Shield Evidence and the Hierarchy of Impeachment</i> , 56 AM. CRIM. L. REV. 295 (2019)	13

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Sean Paul Baker respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit.

INTRODUCTION

The Confrontation Clause of the Sixth Amendment guarantees defendants an opportunity “to expose to the jury the facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of [a] witness.” *Davis v. Alaska*, 415 U.S. 308, 318 (1974). But the court of appeals below applied an exceedingly narrow interpretation of

the Confrontation Clause, holding that only cross-examination demonstrating a witness's potential bias or motive to lie is constitutionally compelled. Commentators have criticized this hierarchy of impeachment that places bias and motive above other evidence that bears on the accuracy and truth of a witness's testimony. There is no basis—either in history or in common sense—for such a distinction.

This case proves the point. With no physical evidence of sexual assault, this case came down to “he said, she said”: an alleged victim's allegations and Baker's adamant denial. The government repeatedly argued to the jury that it was implausible that the alleged victim, a 12-year-old, could make up detailed sexual stories. But when Baker tried to introduce evidence that directly contradicted this argument—videos that she publicly posted on YouTube narrating imaginary stories about sex involving fictional characters—the district court excluded them under Federal Rule of Evidence 412 and held that cross-examination about the videos was not compelled by the Confrontation Clause. So although “[i]t would be difficult to conceive of a situation more clearly illustrating the need for cross-examination,” *see Davis*, 415 U.S. at 314, the jury was deprived of crucial information relevant to the alleged victim's credibility. And the Tenth Circuit affirmed on the basis that while

the alleged victim's *motive* to fabricate her testimony would be subject to constitutionally compelled cross-examination, her *ability* to fabricate her testimony is not.

The courts of appeals are divided over the scope of the Confrontation Clause. Several circuits join the Tenth Circuit in imposing a hierarchy of impeachment that places bias and motive on unique footing above all other potential impeachment evidence—no matter how strong or relevant to a witness's credibility. By contrast, other circuits recognize that the Confrontation Clause calls for a more nuanced, case-by-case analysis. This Court should grant certiorari to resolve the circuit split on this important constitutional issue and to correct the Tenth Circuit's fundamental misunderstanding of the Confrontation Clause.

OPINION BELOW

The Tenth Circuit's opinion is reported at 157 F.4th 1215 and is reproduced at App. 1a–23a.

JURISDICTION

The Tenth Circuit entered its judgment on October 27, 2025. On January 2, 2026, Justice Gorsuch extended the time to petition for a writ of certiorari to February 24, 2026. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment provides: “In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him”

STATEMENT

A. Legal background.

1. The Sixth Amendment guarantees a defendant the right “to be confronted with the witnesses against him.” U.S. Const. amend. VI. “Confrontation means more than being allowed to confront the witness physically.” *Davis*, 415 U.S. at 315. “The central concern of the Confrontation Clause is to ensure the reliability of the evidence against a criminal defendant by subjecting it to rigorous testing in the context of an adversary proceeding before the trier of fact.” *Lilly v. Virginia*, 527 U.S. 116, 123–24 (1999). “Cross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested.” *Davis*, 415 U.S. at 316. So while the confrontation right does not demand that “evidence be reliable,” it does require that “reliability be assessed in a particular manner: by testing in the crucible of cross-examination.” *Crawford v. Washington*, 541 U.S. 36, 61 (2004).

2. The Confrontation Clause guarantees the right to “conduct reasonable cross-examination.” *Olden v. Kentucky*, 488 U.S. 227,

231 (1988). So a trial court can impose “reasonable limits” on cross-examination “based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness’ safety, or interrogation that is repetitive or only marginally relevant.” *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986). But where a court “cut[s] off all questioning” about an inquiry that is relevant to a witness’s credibility, the prohibition violates the Confrontation Clause. *Id.* So the Confrontation Clause allows a defendant “to expose to the jury the facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witness.” *Davis*, 415 U.S. at 318.

B. Proceedings below.

1. In June 2022, when she was about 12 years old, D.P. overdosed on antidepressants and anxiety medication. C.A. R3.139. Because she was nonresponsive, her mother and Baker—her mother’s husband at the time—drove her to the hospital. *Id.* at 242. D.P. described her time in the hospital as a “hallucination.” *Id.* at 115. In the midst of this hallucination, D.P. told a doctor that Baker had been touching her. *Id.* at 246. She does not remember making this allegation. *Id.* at 115. Based on D.P.’s allegations, Baker was charged with two counts of

aggravated sexual abuse in Indian Country and one count of sexual abuse of a minor in Indian country. C.A. R1.16–17.

2. Before trial, Baker told the government that he intended to introduce four YouTube videos that D.P. created. C.A. R1.184. In these videos, D.P. narrated stories involving “fantasy characters and their fictional sexual conduct.” *Id.* at 190. The first three videos are a series. In the first video, D.P. narrates two characters meeting and the girl telling the boy that she likes him. Baker Ex. 1. In the next video, the same characters express their love, kiss, and fall asleep together. Baker Ex. 2. And in the final episode, the girl is waiting for the boy when he comes home drunk. Baker Ex. 3. They put on a movie, the boy pulls the girl onto his lap, and he says, “if you move you will wake it up.” *Id.* The girl moves anyway, and the boy starts moaning. *Id.* Then the boy says, “you asked for it,” pins the girl to the couch, and starts kissing her. *Id.* After having sex, D.P. recounts, they both wake up naked the next morning. *Id.* The fourth video is not related to the first three. In this video, D.P. depicts an imaginary text-message conversation between students. Baker Ex. 4. A girl has a crush on a boy, invites him to her room, and they kiss after he shuts the door. *Id.* According to the video, they “made out and had a really good night.” *Id.* The girl says the

boy was “really nois[y],” but she did not care because that meant he “like[d] it” and she made him “happy in bed.” *Id.*

The government moved to exclude the videos under Federal Rule of Evidence 412. C.A. R1.182–91. The district court granted the government’s motion. The court first held that the videos “fall squarely within the confines of Rule 412” because they “are sexual in nature.” *Id.* at 200. Next, the court determined that excluding the videos would not violate Baker’s Confrontation Clause rights because they were not relevant to D.P.’s bias or motive to lie. *Id.*

At trial, the government’s case hinged on D.P.’s testimony because there was no physical evidence. During her testimony, the district court reiterated its earlier determination that Baker could not ask D.P. about the videos or other sexual content she viewed online. *See* C.A. R3.145–46, 153. In its closing argument, the government focused on D.P.’s credibility. The government repeatedly argued that it was implausible that she could have “manufactured,” “crafted,” “concocted,” “invented,” or “made up” her story about sexual abuse. *See id.* at 449 (government discrediting the idea that D.P. was “in the hospital manufacturing fake sex stories”); *id.* at 497 (“what defense is asking you to do is believe that a 12-year-old girl that had just attempted suicide was able to craft a story to set this defendant up”); *id.* at 498 (“It is not reasonable to

think that [D.P.] ... was able to concoct a complicated disclosure.”); *id.* (“If she was going to invent a story, wouldn’t she make it a little less complicated than that?”); *id.* at 500 (“defense is asking you to believe that D.P. made all of this up”). The jury found Baker guilty on all three counts. C.A. R1.325–26.

Baker moved for a new trial because the district court excluded the videos. C.A. R1.575–80. Baker argued that the videos fell outside Rule 412 and that excluding the evidence violated the Confrontation Clause. *Id.* at 576–77. The district court denied the motion, reaffirming its earlier holding that the “videos were offered as evidence of D.P.’s sexual predisposition and were properly excluded.” R1.656.

3. Baker appealed, and the Tenth Circuit affirmed. App. 1a–23a. The court acknowledged “that given the absence of physical evidence, the outcome of the Government’s case against [Baker] rested on the veracity of D.P.’s sexual abuse allegations.” *Id.* at 4a. The court also acknowledged that Baker offered the videos to “provid[e] the jury a reason to believe D.P. may have fabricated her allegations of sexual abuse against him.” *Id.* at 18a. Still, the court affirmed the exclusion of the videos.

The court first held that the videos were barred by Rule 412(a) because they “reveal D.P.’s inclination or propensity over a period

of time to engage in sexual fantasy through storytelling.” App. 10a–11a. The court reasoned that “whether the video’s constitute evidence of D.P.’s ‘other sexual behavior’ or her ‘sexual predisposition’—or both—within the meaning of Rule 412(a) is an academic inquiry we need not resolve because most assuredly the videos at the very least constitute evidence of one or the other.” *Id.* at 11a.

Next, the court held that neither the right to present a complete defense under the Fifth Amendment nor the Sixth Amendment’s Confrontation Clause required admission of the videos. App. 16a–23a. The court explained that “the class of cases in which evidence otherwise barred by the rape shield [rule] has been deemed to be *constitutionally compelled* is restricted to those which demonstrate a theory of witness bias or motive to lie.” *Id.* at 16a–17a (quoting *United States v. A.S.*, 939 F.3d 1063, 1073 (10th Cir. 2019)). Recognizing that “some commentators have argued a lack of justification for a legal canon that provides constitutional status only to a theory of impeachment demonstrating a witness’s bias or motive to lie,” the court still considered itself bound by circuit precedent. *Id.* at 19a. So although it acknowledged that Baker offered the videos to “provid[e] the jury a reason to believe D.P. may have fabricated her allegations of sexual abuse against him,” it held

that this was a “general” attack on her credibility that was not compelled by the Confrontation Clause. *Id.* at 18a–19a.

REASONS FOR GRANTING THE PETITION

I. The courts of appeals are divided over the scope of the Confrontation Clause.

The courts of appeals are divided over what types of cross-examination are compelled by the Confrontation Clause. Several courts read the Confrontation Clause—and this Court’s precedent—exceedingly narrowly to protect only cross-examination about a witness’s bias or motive to lie. Other courts, by contrast, recognize that the Confrontation Clause calls for a balancing test and requires cross-examination that is sufficient to establish a reasonably complete picture of a witness’s credibility—regardless of the precise theory of impeachment.

1. Below, the Tenth Circuit held that the class of cases in which cross-examination is “*constitutionally compelled*” is restricted to those which demonstrate a theory of witness bias or motive.” App. 16–17 (quoting *A.S.*, 939 F.3d at 1073). The Sixth Circuit has reached the same conclusion, noting the “precise distinctions drawn in Confrontation Clause jurisprudence” and holding that “the Sixth Amendment *only* compels cross-examination if that examination aims to reveal the motive, bias or prejudice of a witness/accuser.”

Boggs v. Collins, 226 F.3d 728, 739–40 (6th Cir. 2000) (emphasis added). So too has the Fourth Circuit, which has held that “to prove that the exclusion of the evidence was unconstitutional, the defendant *must* show that his evidence went directly to the issue of bias of the witness, or motive of the witness to fabricate.” *United States v. Hill*, 322 F.3d 301, 304 (4th Cir. 2003) (emphasis added). And the Fifth Circuit has also held that the “relevant inquiry is whether the jury had sufficient information to appraise the bias and motives of the witness.” *United States v. Tansley*, 986 F.2d 880, 886 (5th Cir. 1993).

2. Other courts of appeals, however, have rejected such a bright-line rule. For example, the First Circuit has held that the Confrontation Clause “calls for a balancing of interests depending on the circumstances of the case.” *White v. Coplan*, 399 F.3d 18, 24 (1st Cir. 2005). Recognizing that the “strength of impeachment evidence falls along a continuum,” *id.*, the court concluded that the Confrontation Clause “includes the right to conduct such cross-examination as is reasonably necessary to delineate and present the defendant’s theory of defense,” *United States v. Vega Molina*, 407 F.3d 511, 522 (1st Cir. 2005). The Second Circuit has also held that proper impeachment is not limited to bias or motive. “*In addition to demonstrating bias*, the defendant is entitled to use cross-

examination to impeach the witness's recollection, ability to observe, and general credibility." *Cotto v. Herbert*, 331 F.3d 217, 249 (2d Cir. 2003) (emphasis added). Under that court's analysis, a jury must have "facts sufficient to make a discriminating appraisal of the particular witness's credibility." *United States v. Roldan-Zapata*, 916 F.2d 795, 806 (2d Cir. 1990) (cleaned up).

II. The decision below is wrong.

The Tenth Circuit's conclusion that "the class of cases in which evidence otherwise barred by the rape shield [rule] has been deemed to be *constitutionally compelled* is restricted to those which demonstrate a theory of witness bias or motive to lie," App. 16a–17a, is wrong.

1. The Tenth Circuit said that its holding "follows" from this Court's decision in *Davis*. App. 17a. Not so. Although *Davis* distinguished between a "general attack" on credibility and a "more particular attack" on credibility "directed toward revealing possible biases, prejudices, or ulterior motives of the witness as they may relate directly to issues or personalities in the case at hand," 415 U.S. at 316, the Court never drew a bright line between bias and motive on one hand and other credibility evidence on the other. In fact, the Court held that "defense counsel should have been permitted to expose to the jury the facts from which jurors, as the

sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witness.” *Id.* at 318. Facts relating to the reliability of a witness can encompass far more than just bias or motive. And whether “[a] reasonable jury might have received a significantly different impression of [the witness’s] credibility,” *Van Arsdall*, 475 U.S. at 680, does not turn on a particular theory of impeachment.

Indeed, one commentator has held that this kind of “hierarchy of impeachment”—placing bias and motive above other theories of impeachment—“defies both logic and common sense.” Rosanna Cavallaro, *Rape Shield Evidence and the Hierarchy of Impeachment*, 56 AM. CRIM. L. REV. 295, 296 (2019). After all, other forms of impeachment “might, in individual cases, ‘bear on the accuracy and truth of a witness’ testimony,’ and might in those instances be far more likely than bias evidence to be determinative of a jury’s assessment of a witness or a defense.” *Id.* at 297 (quoting *United States v. Abel*, 469 U.S. 45, 52 (1984)) (cleaned up).

The Tenth Circuit’s bright-line rule is also inconsistent with this Court’s precedent. This Court has held that the “right to present relevant testimony ... ‘may, in appropriate cases, bow to accommodate other legitimate interests in the criminal trial process.’” *Michigan v. Lucas*, 500 U.S. 145, 149 (1991) (quoting *Rock*

v. Arkansas, 483 U.S. 44, 55 (1987)). The question then becomes whether restrictions on a defendant’s right to confront witnesses is “arbitrary or disproportionate to the purposes they are designed to serve.” *Id.* at 151 (quoting *Rock*, 483 U.S. at 56). That inquiry requires a case-by-case analysis—weighing the probative value of the particular evidence and the opposing state interest—not per se rules. *See id.* But here the Tenth Circuit eschewed that kind of balancing test, ignoring the high probative value of the videos to impeach D.P.’s credibility and the low state interest in protecting her privacy under Rule 412 since she publicly posted the videos on YouTube. The Tenth Circuit’s categorical approach cannot be squared with this Court’s precedent.

And even if *Davis* did draw a distinction between bias and motive on one hand and other impeachment evidence on the other, it did not articulate any historical basis for that distinction. And this Court has since made clear that courts must look to the “historical background of the [Confrontation] Clause to understand its meaning.” *Crawford*, 541 U.S. at 43. And this Court has explained that the jury has “historically been entitled to assess *all* evidence which might bear on the accuracy and truth of a witness’ testimony”—not just evidence relevant to specific theories of impeachment. *Abel*, 469 U.S. at 52 (emphasis added).

3. In determining that excluding the videos and prohibiting cross-examination about them did not violate Baker's Confrontation Clause rights, the Tenth Circuit relied on rationales that this Court has rejected.

a. The Tenth Circuit noted that Baker "attacked D.P.'s credibility throughout the trial." App. 20a. But that misses the point. Without cross-examining D.P. about the videos, Baker was deprived of any way to show the jury that D.P. was capable of making up detailed stories about sex. In *Davis*, this Court rejected the conclusion that *some* cross-examination was adequate to attack the witness's credibility because counsel was "unable to make a record" on evidence crucial to credibility. 415 U.S. at 318. So too here. None of the other cross-examination Baker engaged in brought to light the fact that D.P. had the ability to make up fantastical stories about sex. "[T]o make any such inquiry effective, defense counsel should have been permitted to expose to the jury the facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witness." *See id.*

b. The Tenth Circuit also noted that discussion of the videos would be "embarrassing and discomforting to D.P." App. 15a. Again, this Court has rejected this argument, explaining that

“[w]hatever temporary embarrassment might result to [a witness] ... is outweighed by petitioner’s right to probe into the influence of possible bias in the testimony of a crucial identification witness.” *Davis*, 415 U.S. at 319. In other words, the government’s “desire that [a witness] fulfill his public duty to testify free from embarrassment and with his reputation unblemished must fall before the right of petitioner to seek out the truth in the process of defending himself.” *Id.* at 320. So too here.

3. In short, Baker was prohibited from rebutting the government’s theory—central to its case and repeated many times in its closing argument to the jury—that the alleged victim was incapable of making up detailed sexual stories by introducing evidence that she *was* capable of just that. “Serious damage to the strength of the [government’s] case would have been a real possibility had [Baker] been allowed to pursue this line of inquiry.” *See Davis*, 415 U.S. at 319. The Tenth Circuit’s decision holding that cross-examination about the videos was not constitutionally compelled simply because they were not being offered solely as evidence of bias or motive was wrong.

III. This is a critically important question.

The scope of the Confrontation Clause is a critically important question. After all, cross-examination is the “greatest legal engine

ever invented for the discovery of truth.” *California v. Green*, 399 U.S. 149, 158 (1970) (5 John H. Wigmore, EVIDENCE § 1367 (3d ed. 1940)). By restricting the cross-examination guaranteed by the Confrontation Clause to evidence of bias or motive, several courts of appeals are unjustifiably limiting the ability of defendants to test a witness’s testimony in the “crucible of cross-examination” and to “expose to the jury the facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witness.” *Crawford*, 541 U.S. at 61 (first quote); *Davis*, 415 U.S. at 318 (second quote).

IV. This case is an ideal vehicle.

This case presents an ideal vehicle for addressing the question presented. There are no jurisdictional problems, factual disputes, or preservation issues. The Tenth Circuit, in a published opinion, cleanly addressed Baker’s argument that the district court violated his constitutional rights by prohibiting him from confronting D.P. with the videos. App. 16a–23a. And it did so despite acknowledging that commentators had criticized its approach as “lack[ing] justification” and “constitutionally unsupportable.” *Id.* at 19a (cleaned up). The non-bias, non-motive cross-examination here was also uniquely crucial, because it went to the heart of the government’s theory in a case that turned solely

on the credibility of the alleged witness. It is likely that a “reasonable jury might have received a significantly different impression of [D.P.’s] credibility” had the district court allowed the cross-examination. *See Van Arsdall*, 475 U.S. at 680.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

MAUREEN SCOTT FRANCO
Federal Public Defender
CARL R. HENNIES
Assistant Federal Public Defender
Counsel of Record
OFFICE OF THE FEDERAL
PUBLIC DEFENDER
WESTERN DISTRICT OF TEXAS

Counsel for Petitioner

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