

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

CHARLIE HOLLEY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Federal Rule of Evidence 801(c) defines hearsay as a statement offered to “prove the truth of the matter asserted.” In *Smith v. Arizona*, 602 U.S. 779 (2024), this Court held that when an out-of-court statement supports the prosecution’s case only if it is true, it is offered for its truth. Eight courts of appeals ask whether an out-of-court accusation linking the defendant to the crime was needed to explain police conduct before accepting that it was offered only for that purpose. The Eleventh Circuit asks only whether the government stated an investigative purpose and whether Federal Rule of Evidence 403 is satisfied.

The question presented is: Whether, under Rule 801(c), a court may admit an out-of-court accusation linking the defendant to the crime as offered only to explain police conduct, without determining whether the accusation was needed to explain that conduct.

PARTIES TO THE PROCEEDING

Pursuant to Sup. Ct. R. 14.1(b)(i), Petitioner submits that there are no parties to the proceeding other than those named in the caption of the case.

Petitioner Holley was the defendant in the district court and appellant below.

Respondent United States of America was the plaintiff in the district court and appellee below.

RELATED PROCEEDINGS

This petition arises from the decision of the United States Court of Appeals for the Eleventh Circuit in *United States v. Charlie Holley*, No. 24-11843 (11th Cir.). The Eleventh Circuit’s judgment was entered February 3, 2026, and rehearing was denied on June 2, 2026.

This petition is related to the following proceedings in the United States District Court for the Southern District of Florida: *United States v. Charlie Holley*, No. 21-cr-20373-RAR (S.D. Fla.) (judgment entered May 29, 2024).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Charlie Holley respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida, is published at 166 F.4th 139 (11th Cir. 2026) and is reproduced at Pet. App. 1a. The order denying rehearing is unreported and is reproduced at Pet. App. 16a.

JURISDICTIONAL STATEMENT

The court of appeals entered its judgment on February 3, 2026. Pet. App. 1a. On June 2, 2026, the court of appeals denied a timely petition for panel rehearing and rehearing en banc. Pet. App. 16a. On August 24, 2026, Justice Thomas granted Application No. 26A240 and extended the time to file this petition to and including September 30, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND OTHER PROVISIONS INVOLVED

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

Federal Rule of Evidence 801(c) provides: “‘Hearsay’ means a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement.”

INTRODUCTION

Police responding to a shooting recorded bystanders telling them who had done it. One woman pointed at Charlie Holley's townhouse and said the person "who did it" lived there. Trial Tr. 133:87, 94–95; Gov't Ex. 15-D. A man who said he was Holley's brother gave officers Holley's name and said he was alone inside with an assault rifle. Trial Tr. 133:111; Gov't Ex. 50-A. The government played the recordings to the jury and said they were offered only to explain what the officers did next. Trial Tr. 133:6; 136:6–8. The Eleventh Circuit accepted that account. Accordingly, the court of appeals held that the statements were not hearsay and that the Confrontation Clause was therefore not implicated. Pet. App. 9a–10a.

Eight other courts of appeals would have excluded those accusations. Those courts ask whether an accusation linking the defendant to the crime was needed to explain what the officers did, and five of them also ask whether the defendant disputed the investigation at all. Months after *Crawford v. Washington*, 541 U.S. 36 (2004), the Seventh Circuit warned that under the investigative rationale every accusation made to police, "including all corroborating details," would come in to show why police investigated the accused. *United States v. Silva*, 380 F.3d 1018, 1020 (7th Cir. 2004). The First Circuit called that rationale "impossibly overbroad." *United States v. Maher*, 454 F.3d 13, 22 (1st Cir. 2006).

The Second, Third, Fifth, Sixth, Seventh, and Eighth Circuits have each set aside convictions after the rationale was used to put an accusation before the jury. *United States v. Reyes*, 18 F.3d 65, 70–71 (2d Cir. 1994); *United States v. Sallins*, 993

F.2d 344, 346–47 (3d Cir. 1993); *United States v. Kizzee*, 877 F.3d 650, 663 (5th Cir. 2017); *United States v. Cromer*, 389 F.3d 662, 679 (6th Cir. 2004); *Jones v. Basinger*, 635 F.3d 1030, 1051–52 (7th Cir. 2011); *United States v. Holmes*, 620 F.3d 836, 842 (8th Cir. 2010). The First and Tenth Circuits ask the same question of need. *Maher*, 454 F.3d at 22–23; *United States v. Hinson*, 585 F.3d 1328, 1336 (10th Cir. 2009). Since *Smith v. Arizona*, 602 U.S. 779 (2024), the Eighth Circuit has applied that rule to vacate a conviction after an anonymous tip that named the defendant was admitted to explain the officers’ conduct. *United States v. Simpson*, 176 F.4th 1100, 1103–06 (8th Cir. 2026).

The Eleventh Circuit asks neither whether the accusation was needed nor whether the investigation was disputed. The court of appeals rejected the Fifth Circuit’s rule that an accusation specifically linking the defendant to the crime is inadmissible hearsay even when offered to explain law enforcement’s actions. *United States v. Hamann*, 33 F.4th 759, 769–70 (5th Cir. 2022). The court called *Hamann* “neither binding nor analogous.” Pet. App. 10a. It distinguished *Hamann* because three of the four recordings “do not implicate Holley by name at all.” Pet. App. 9a. Neither the Fifth nor the Sixth Circuit draws that line: a nickname or physical description tied to the charged conduct is enough when the surrounding evidence leaves no doubt whom it means. *Hamann*, 33 F.4th at 768; *Cromer*, 389 F.3d at 676–78.

The decision below also cannot be squared with *Smith*. When a government witness conveys an absent witness’s statements in support of the prosecution, and

the statements provide that support only if true, they are offered for their truth. 602 U.S. at 795. The government’s own proffer meets that test. The prosecutor told the district court the recordings showed how officers “developed information that it was the defendant in the house.” Trial Tr. 133:6. That explanation holds only if the accusations were true. An officer who surrounds a house because a bystander says the shooter lives there acts on the bystander’s assertion. Take away the truth of that statement and nothing is left to explain.

Most local police officers now work in departments that use body-worn cameras, which record the first minutes of a response. Whether the accusations those cameras capture are offered for their truth should not depend on the circuit. The question was preserved and decided in a published opinion, and the judgment below rests on the answer. The petition should be granted.

STATEMENT OF THE CASE

A. Factual Background

On June 21, 2021, a rifle shot fired from the second floor of a townhouse in Florida City, Florida, struck a United States Postal Service vehicle driven by mail carrier Charlotte Wicker. Pet. App. 5a–6a. Charlie Holley had lived in the townhouse for more than a decade. Pet. App. 5a.

Officers arrived within minutes. The first officer, Manuel Neyra, believed he was responding to an active shooter and was directed to tape off a perimeter. Trial Tr. 133:87, 89–90. Sergeant Safiuddin Mohammed, the second supervisor on scene, testified that he did not view the situation as an active shooter; because the subject

was inside his residence, he treated it as a barricaded armed subject. Trial Tr. 133:109. Sergeant Mohammed's team held its positions around the townhouse for about two hours. Trial Tr. 133:116–17. The officers wore body cameras. Four recordings of their conversations with people in the neighborhood are at issue.

In Exhibit 15-D, an unidentified woman points to Holley's townhouse, tells an officer that is "where the lady got injured," says the person "who did it" lives there, and confirms that the person is known as "White Boy." Trial Tr. 133:87, 94–95. In Exhibit 50-A, a man who identified himself as Holley's brother tells Sergeant Mohammed Holley's name, that there is an assault rifle in Holley's townhouse, and that Holley is alone. Trial Tr. 133:111. In Exhibit 15-C, Officer Neyra asks a man whether he knows the person in the townhouse. The man asks his mother on the phone for "White Boy's real name," and reports that she says only, "White Boy." Trial Tr. 134:92–93. In Exhibit 15-E, an unidentified man describes "White Boy" to Officer Neyra as a tall, light-skinned man with light eyes who rented in the area. Trial Tr. 134:94. None of the four speakers was identified by the police, and none testified. Pet. App. 6a.

B. Procedural History

The government charged Holley with attempted murder, 18 U.S.C. § 1114(3); assaulting, resisting, or impeding a federal employee, 18 U.S.C. § 111(a)(1) and (b); brandishing and discharging a firearm in furtherance of a crime of violence, 18 U.S.C. § 924(c)(1)(A)(ii) and (iii); and possession of a firearm and ammunition by a convicted felon, 18 U.S.C. § 922(g). The district court had jurisdiction under 18 U.S.C. § 3231.

Holley objected to the aforementioned recordings as hearsay, unfairly prejudicial under Rule 403, and violative of the Confrontation Clause. Pet. App. 7a. The government responded that the recordings were offered not for their truth but to explain the investigation. Of Exhibit 50-A the government proffered that “gathering this information affected how they conducted their investigation, how they perimeterized, where they perimeterized,” and “how they developed information that it was the defendant in the house who was subsequently arrested inside of the house.” Trial Tr. 133:6. It described the purpose as “building our investigation out.” Trial Tr. 136:8.

The district court admitted all four recordings as offered to explain the officers’ response to an ongoing emergency, not for their truth. Pet. App. 7a. The court found, in the alternative, that the statements were nontestimonial. Pet. App. 7a. The court also instructed the jury not to “consider any statements made by anyone in those videos as truth of what is being alleged in this case,” and told jurors the statements went to “the state of mind of the officers.” Pet. App. 7a.

At trial, Wicker and Sheila Moss, a relative of Holley’s next-door neighbors, each testified that Holley pointed a scoped rifle at them and that each heard a shot. Pet. App. 5a–6a. A firearms examiner testified that a bullet fragment recovered outside and a casing recovered inside the townhouse bore markings consistent with Holley’s rifle. Pet. App. 6a. The jury acquitted Holley of attempted murder and convicted him on the remaining three counts. Pet. App. 7a. The district court sentenced him to 192 months’ imprisonment. Pet. App. 8a.

The Eleventh Circuit affirmed in a published opinion. Pet. App. 14a. The court of appeals held that the recordings were offered “solely to explain the nature and course of the law enforcement officers’ investigation,” and noted that the government never argued at trial that the bystanders’ statements were true. Pet. App. 9a. Circuit precedent, the court explained, permits out-of-court statements offered to “help explain the course of a complex investigation,” subject to Rule 403. Pet. App. 9a (quoting *United States v. Pendergrass*, 995 F.3d 858, 878 (11th Cir. 2021)). Because the recordings came in for that purpose, “Holley’s Confrontation Clause challenges to Exhibits 15-C, 15-D, 15-E, and 50-A necessarily fail too.” Pet. App. 10a. The court cited *Smith* for the proposition that the Clause “bars only the introduction of hearsay.” Pet. App. 11a.

The court addressed the Fifth Circuit’s contrary rule. The court described *Hamann* as holding that statements specifically linking a defendant to the crime are inherently offered for their truth, regardless of their relevance to an officer’s investigative choices, and called it “neither binding nor analogous.” Pet. App. 10a. It added that Eleventh Circuit law “does not categorically bar” admission of an accusation that names the defendant. Pet. App. 10a. The court observed that Exhibits 15-C, 15-D, and 15-E “do not implicate Holley by name at all,” and that only Exhibit 50-A named him. Pet. App. 9a. Like the district court, the court of appeals held, in the alternative, that the statements were nontestimonial because they were made to help police meet an ongoing emergency. Pet. App. 11a (citing *Davis v. Washington*, 547 U.S. 813, 822 (2006), and *Michigan v. Bryant*, 562 U.S. 344, 366 (2011)).

The government argued harmlessness below. The court declined to reach that issue. Pet. App. 13a.

REASONS FOR GRANTING THE WRIT

I. The Eleventh Circuit, unlike eight other circuits, admits an out-of-court accusation linking the defendant to the crime without asking whether the statement was needed to explain police conduct.

Every circuit agrees on a starting point. An out-of-court statement offered only to show its effect on a listener, or to explain an officer's actions, is not hearsay and does not implicate the Confrontation Clause. The courts of appeals divide over what a court must find before it accepts that purpose for a statement inculcating the defendant.

The threshold question is the same under the hearsay rule and under the Clause. Rule 801(c) asks whether a statement is offered "to prove the truth of the matter asserted," and the Clause likewise does not reach statements used for purposes other than establishing their truth. *See Smith*, 602 U.S. at 795. The decisions on both sides of the conflict reflect that shared predicate: some rest on the hearsay rule and some on the Clause, but each asks whether the accusation was offered for its truth. That is why the Clause-based decisions bear directly on the Rule 801(c) question here.

A. The Eleventh Circuit accepts the government's stated purpose subject only to Rule 403.

As applied in the published decision below, the Eleventh Circuit requires only a stated non-hearsay purpose and a Rule 403 finding. According to the court, an accusation linking the defendant to the crime may be admitted to explain the investigation so long as unfair prejudice does not substantially outweigh probative

value. Pet. App. 9a (citing *Pendergrass*, 995 F.3d at 878); *see also United States v. Kent*, 93 F.4th 1213, 1220 (11th Cir. 2024); *United States v. Elysee*, 993 F.3d 1309, 1338–39 (11th Cir. 2021); *United States v. Jiminez*, 564 F.3d 1280, 1288 (11th Cir. 2009). Once that finding is made, the statement is not hearsay, and the Clause does not apply. Pet. App. 10a. The court below applied that rule to all four recordings and relied on the limiting instruction as part of the analysis. Pet. App. 10a. The court did not consider whether Holley disputed the course of the investigation at trial, which he did not. Nor did the court ask whether a less prejudicial account would have sufficed.

B. Eight circuits ask whether the accusation was needed to explain the officers’ conduct.

The First, Second, Third, Fifth, Sixth, Seventh, Eighth, and Tenth Circuits reject that approach. They do not accept the announced purpose at face value when the statement accuses the defendant. They ask whether the accusation was needed to explain the officers’ conduct, and a limiting instruction does not substitute for that inquiry.

Five of those circuits—the Second, Fifth, Sixth, Seventh, and Eighth—also ask whether the course of the investigation was disputed at trial. If it was not, the claimed non-hearsay purpose has no work to do, and the statement can be relevant only for its truth. *See Reyes*, 18 F.3d at 70; *Kizzee*, 877 F.3d at 659; *Cromer*, 389 F.3d at 677; *Silva*, 380 F.3d at 1020; *Holmes*, 620 F.3d at 841. All eight ask whether the officers’ conduct could have been explained without the accusation—for example, by

testimony that the officer acted on information received. The circuits are discussed in turn below.

Eighth Circuit. Since *Smith*, the Eighth Circuit has vacated a conviction where the defendant had not challenged the officers' conduct and that conduct could have been explained without an anonymous tip naming him. If the tip had been offered only to explain the stop, the court reasoned, "it would make no difference" whom it named. *Simpson*, 176 F.4th at 1104. That decision applied settled circuit law. The Eighth Circuit admits such evidence "only when the propriety of the investigation is at issue in the trial." *Holmes*, 620 F.3d at 841 (citing *United States v. Malik*, 345 F.3d 999, 1001–02 (8th Cir. 2003)).

The Eighth Circuit reversed the firearm conviction in *Holmes* where a general answer would have addressed the defense's cross-examination "without the need to go into the damning details" of the informant's account. *Id.* at 842. And it has held that a statement offered to explain a listener's conduct was offered for its truth "despite the supposed limited purpose," because "a general explanation" would have served "without unfair prejudice." *United States v. Lasley*, 917 F.3d 661, 665 (8th Cir. 2019).

Fifth Circuit. The Fifth Circuit applies the rule most strictly. Officers "cannot refer to the substance of statements made by a nontestifying witness when they inculcate the defendant." *Kizzee*, 877 F.3d at 657. Background statements supply context "where a defendant challenges the adequacy of an investigation," but absent such a challenge "there is a questionable need" for them. *Id.* at 659. The court held

that the officer “could have merely explained” that he obtained a warrant after the declarant’s arrest and that the accusation was therefore offered for its truth, and it vacated the drug and § 924(c) convictions. *Id.* at 660, 663.

The Fifth Circuit has since held that “even if the government is correct that evidence is relevant to explain its investigative choices,” the evidence is offered for its truth if it “specifically links a defendant to the crime.” *Hamann*, 33 F.4th at 770 (quoting *United States v. Jones*, 930 F.3d 366, 377 (5th Cir. 2019)). The government “must advance a specific reason why it needs to provide inculpatory ‘context’ for its investigation.” *Id.* That is the rule the court below declined to follow. Pet. App. 10a.

Sixth Circuit. The Sixth Circuit called the claimed link between an informant’s accusation and police conduct “a sham,” because nothing about the focus of the investigation was in dispute. *Cromer*, 389 F.3d at 677. The court held that an officer’s testimony that she “had information” about a residence did not violate the Clause, but that the additional accusations did. *Id.* at 676–78.

Seventh Circuit. The Seventh Circuit recognized that a tip may be relevant where a jury “would not otherwise understand why an investigation targeted a particular defendant,” or to rebut a charge that officers were “officious intermeddlers.” *Silva*, 380 F.3d at 1020. Because no such issue was raised and nothing else made the testimony relevant, the court held it was hearsay under Rule 801(c). *Id.* at 1019–20. The jury in *Silva* had been told the statements were “not being offered for the truth of the matter,” which the court found “surprising, for the evidence directly inculpated Silva.” *Id.* at 1019.

In *Basinger*, the prosecution insisted that it offered an informant's statement only to show how the investigation began, then worked to persuade the jury that the informant was credible. 635 F.3d at 1042–43. The court observed that the informant's credibility mattered only if the statement was being used for its truth, *id.* at 1043, and held on habeas review that admitting the substance of the accusation, where “information received” would have sufficed, was an unreasonable application of *Crawford*. *Id.* at 1046–47, 1051–52. The court adopted the Third Circuit's rule that a trial court should not “accept without scrutiny” the offering party's stated purpose. *Id.* at 1046 (quoting *Sallins*, 993 F.2d at 346).

Third Circuit. The Third Circuit holds that courts “cannot accept without scrutiny an offering party's representation that an out-of-court statement is being introduced for a material non-hearsay purpose” and must “assess independently whether the ostensible non-hearsay purpose is valid.” *Sallins*, 993 F.2d at 346. Because the government “simply could have elicited testimony that the officers were responding to a radio call or information received,” a radio call describing the suspect was hearsay: “[t]he absence of a tenable non-hearsay purpose . . . establishes that the evidence could have been offered only for its truth value.” *Id.* at 346–47. The court reversed. *Id.* at 349.

First Circuit. The First Circuit recognizes that an officer may say he acted “upon information received.” *Maher*, 454 F.3d at 23 (quoting 2 *McCormick on Evidence* § 249, at 103 (Kenneth S. Broun et al. eds., 5th ed. 1999)). Where that would have sufficed, the court concluded, testimony relaying an informant's accusation that

the defendant was a drug dealer was “primarily given exactly for the truth” and “should not have been admitted given the adequate alternative approach.” *Id.* The court nonetheless affirmed, because the defendant had not objected and could not show plain error, noting the trial court’s sua sponte limiting instruction. *Id.* at 21, 23.

Second and Tenth Circuits. Two more circuits ask the same question by different doctrinal paths. The Second Circuit applies Rules 401 and 403, but it rejects the premise of the decision below: “the mere identification of a relevant non-hearsay use” of an accusation “is insufficient to justify its admission if the jury is likely to consider the statement for the truth of what was stated with significant resultant prejudice.” *Reyes*, 18 F.3d at 70. A court must ask whether “the needed explanation” can be communicated by “other less prejudicial evidence or by instructions,” and whether the defendant “engaged in a tactic that justifiably opens the door.” *Id.* Where the defendant had not opened the door and the explanation for the agent’s focus “was amply provided” by other evidence, the court reversed, holding the limiting instruction “unlikely to be effective.” *Id.* at 71–72.

The Tenth Circuit admits such statements “only if they provide information that is necessary to explain the government’s subsequent actions.” *Hinson*, 585 F.3d at 1336 (citing *United States v. Cass*, 127 F.3d 1218, 1223–24 (10th Cir. 1997)). Where evidence “bears on the ultimate issue” but is “not necessary to explain the background of a police investigation,” the court reasoned, “the only reasonable conclusion” is that it was offered “as support for the government’s case against the defendant.” *Id.* at 1337. The court adopted the Third Circuit’s reasoning. *Id.* (quoting *Sallins*, 993 F.2d

at 347). Applying that rule, it held that a detective's testimony that she had heard the defendant was the supplier was hearsay because it was "entirely unnecessary to explain the context of the police investigation," though it affirmed on plain-error review. *Id.*

C. The conflict decides this case.

Exhibit 15-D is a bystander pointing at Holley's home, telling police that the person "who did it" lives there, and confirming that he is known as "White Boy." Trial Tr. 133:87, 94–95. The Fifth Circuit has held that such an accusation is offered for its truth when the surrounding evidence leaves no doubt whom the nickname means. *Hamann*, 33 F.4th at 768. The Sixth Circuit reached the same result where an officer relayed an informant's accusation against a person known as "Nut" and the testimony tied that nickname to the defendant. *Cromer*, 389 F.3d at 676–77. Here the declarant pointed at Holley's own townhouse. Gov't Ex. 15-D. Exhibit 15-E is a physical description of the suspect, which Holley matched. Trial Tr. 134:94. *Cromer* held that such a description is offered "for the purpose of establishing the truth of the matter asserted." 389 F.3d at 678. Neither holding depended on how the prosecutor later argued the evidence; where no non-truth use does any work, "the evidence could have been offered only for its truth value." *Sallins*, 993 F.2d at 346–47. Exhibit 50-A gave police Holley's name and the corroborating details that he was alone inside with an assault rifle. Trial Tr. 133:111. That is the accusation, with its corroborating details, that *Silva* and *Maher* hold cannot come in on an investigative rationale. 380 F.3d at 1020; 454 F.3d at 22–23.

The disagreement is over what a court must ask before it accepts the prosecution's account, not over how the Eleventh Circuit answered. Holley was tried in Miami. In eight other circuits, the court would have asked whether the accusations in Exhibits 15-D, 15-E, and 50-A were needed to explain what the officers did and, in five, whether the investigation was even disputed, and it would have excluded those accusations. The Eleventh Circuit asked neither question, and the accusations came in to explain an investigation Holley did not dispute.

II. The decision below cannot be reconciled with *Smith v. Arizona* or with *Tennessee v. Street*.

Smith defines when a statement is offered for its truth, and Rule 801(c) asks the same question. An out-of-court statement is offered for its truth when the evidentiary use the prosecution claims for it depends on its truth. 602 U.S. at 793, 795. The State argued in *Smith* that an absent analyst's findings came in only to explain the basis of a testifying expert's opinion. *Id.* at 795. This Court rejected the argument because the opinion carried weight only if the findings were accurate. *Id.* at 795–96. A statement offered for its truth is hearsay under Rule 801(c), and the same answer governs the Clause whenever the accusation is testimonial. *See* Part IV, *infra*.

This Court has also marked the narrow path by which an accusation may reach a jury for something other than its truth. In *Tennessee v. Street*, 471 U.S. 409 (1985), an accomplice's confession was admitted to rebut the defendant's testimony that he had copied his own confession from it. This Court reasoned that the confession served

the trial's "truth-seeking function" and there were "no alternatives" that would have served as well. *Id.* at 415–17. The jury in *Street* had only to compare two documents, and the comparison worked whether or not the accomplice's confession was true. *Street's* reasoning thus turned on two features: the non-truth use did work the trial required, and no less prejudicial route to the same end was available. The Eleventh Circuit asked about neither. It asked only whether the government had announced a non-hearsay purpose and whether Rule 403 was satisfied. Pet. App. 9a.

The recordings here have the structure *Smith* describes. The government's theory was that the bystanders' statements explain why officers set a perimeter around Holley's townhouse and focused on him. The statements explain those choices only if officers believed them, and they are relevant to the jury only if they were true. The government's own proffer confirms it: Exhibit 50-A was offered to show how officers identified the man in the house, a purpose that depends entirely on the accusation being accurate. Trial Tr. 133:6.

The accusations did not explain what the officers did. Police did not need to know who the shooter was to know where he was. The Tenth Circuit draws the same line: an officer may testify that he received information that drugs were being sold from an address, "but not the identity of the person allegedly selling those drugs." *Hinson*, 585 F.3d at 1336–37 (describing *United States v. Wilson*, 107 F.3d 774, 781 (10th Cir. 1997)). The shot came from the townhouse, officers surrounded it, and the supervising sergeant treated the situation as a barricaded subject. Trial Tr. 133:109, 113. Holley's name, nickname, and description told the officers nothing about where

to set the perimeter. They told the jury who fired the shot. The government argued below that officers needed the shooter's identity for "situational awareness," and that the bystanders "identified the shooter as 'White Boy.'" Gov't C.A. Br. 25–26, 36 (citing Trial Tr. 133:163–64). That argument confirms the point.

The accusations were also unnecessary by the Eleventh Circuit's own measure. Its precedent admits such statements to explain "the course of a complex investigation." *Pendergrass*, 995 F.3d at 878. Surrounding a house for two hours is not complex. The officers could have testified that they spoke with people at the scene and then set a perimeter. Absent a challenge to the investigation, the government may begin by explaining that "a tip prompted" the response. *Hamann*, 33 F.4th at 770 (quoting *United States v. Sharp*, 6 F.4th 573, 582 (5th Cir. 2021)). That is the account the circuits discussed in Part I accept in place of the accusation itself. Nothing the police did required the jury to hear an absent witness say that the man inside was the one who committed the crime. A prosecutor's choice to proffer the evidence as "the history of the investigation" "does not enlarge the scope of relevant evidence." *Reyes*, 18 F.3d at 71.

Neither the Rule 403 balancing nor the limiting instruction answers the question presented. Rule 403 excludes evidence only when its unfair prejudice substantially outweighs its probative value. It assumes the evidence is being used for a permissible purpose and asks how much harm that use does. Whether an accusation is offered for its truth is a prior question, and a favorable balance cannot turn hearsay into something else. Nor can a limiting instruction. An instruction to treat an

accusation as background asks jurors to hear that the defendant committed the crime and then set that aside, and this Court has recognized that some accusations cannot be unheard. *Bruton v. United States*, 391 U.S. 123, 135–36 (1968) (codefendant’s confession); *see also Simpson*, 176 F.4th at 1106 (two limiting instructions could not cure the admission of a tip that went “directly to the one disputed element of the offense”).

The trial court in *Street* also cautioned the jury, and this Court still asked whether the evidence was necessary and whether alternatives existed. 471 U.S. at 415–17. The circuits in Part I.B have found error notwithstanding such instructions. *See* Part I.B, *supra*; *see, e.g., Silva*, 380 F.3d at 1019–20; *Reyes*, 18 F.3d at 71–72. The jury here was told to watch a woman point at Holley’s home and say the person who did it lived there, and then to treat what she said as evidence only of police logistics. The court of appeals presumed the jury did so. Pet. App. 10a. The presumption cannot bear that weight.

The decision below replaces a rule with a balancing test. The Eleventh Circuit leaves the definition of hearsay to a trial judge’s weighing of probative value, reviewed for abuse of discretion. Rule 801(c) does not permit that exchange.

III. The question recurs frequently, and body-worn cameras have changed what the investigative-course rationale admits.

The investigative-course rationale is among the most common grounds on which prosecutors offer out-of-court statements. The Fifth Circuit alone has vacated at least six convictions on this ground in fifteen years and has described the

government's misuse of the rationale as "a recurring problem." *Hamann*, 33 F.4th at 763 & n.1, 770 (quoting *Sharp*, 6 F.4th at 582). One commentator observes that it is a "common scenario" for law enforcement witnesses to relay out-of-court statements as background for their own actions. Hugh M. Mundy, *Course Correction: A Proposal to Limit the Admissibility and Use of "Course of Investigation" Testimony in Criminal Trials*, 6 UCLA Crim. Just. L. Rev. 135, 136–37 (2022).

Body-worn cameras have changed what that rationale delivers. In 2020, almost 79% of local police officers worked in departments that used body-worn cameras. Sean E. Goodison & Connor Brooks, U.S. Dep't of Just., Bureau of Just. Stat., NCJ 307405, *Local Police Departments, Procedures, Policies, and Technology, 2020 – Statistical Tables* 9 (Nov. 2023). All departments serving 1 million or more residents reported using body-worn cameras in 2020. *Id.* When the rationale developed, courts admitted an officer's summary of what he had been told. Now, as here, the court admits the accusation, in the accuser's own words and voice, recorded at the scene.

The Eleventh Circuit's rule is most permissive where confrontation matters most. Bystanders recorded in the first minutes of a response are often never identified. None of the four declarants here was identified by the police; the only one who gave any identifying information described himself as Holley's brother. Pet. App. 6a; Trial Tr. 133:111. An unidentified accuser cannot be subpoenaed, and the prosecution loses nothing by declining to call him. Under the decision below, a defendant has the least protection where he has the least ability to answer.

IV. This case presents the question cleanly.

The question was raised and decided below, and the judgment rests on the answer. Holley objected on hearsay and Confrontation Clause grounds to all four body-camera recordings. Pet. App. 7a. He did not dispute the course of the investigation at trial. The district court ruled against him. Pet. App. 7a. The court of appeals decided the question in a published opinion and held that his Confrontation Clause challenges “necessarily fail” because the recordings were admitted for a non-hearsay purpose. Pet. App. 10a. The panel framed its review of the not-for-its-truth ruling as one for abuse of discretion, Pet. App. 8a, but whether an accusation is offered for its truth turns on the governing legal standard, and a ruling that applies the wrong standard is an abuse of discretion. *Koon v. United States*, 518 U.S. 81, 100 (1996). Other circuits review the question de novo. *Sallins*, 993 F.2d at 346; *see Kizzee*, 877 F.3d at 656; *Holmes*, 620 F.3d at 840.

The court’s alternative holding that the statements were nontestimonial does not stand in the way. That holding reaches only the Confrontation Clause; a nontestimonial statement remains subject to the rules of evidence. *Davis*, 547 U.S. at 821. The court of appeals rejected the hearsay challenge on the ground that the recordings were not offered for their truth, Pet. App. 9a–10a, and that is the holding on which the circuits divide. Because the Clause asks the same question, *see* Part I, *supra*, the answer here will also govern confrontation claims in the many cases in which an accusation made to police is testimonial. *See Holmes*, 620 F.3d at 841.

The government argued harmlessness below, and the court of appeals declined to reach that issue. Pet. App. 13a. That is the ordinary posture in which this Court resolves the question presented and remands. On remand, the question would be whether the evidentiary error had a substantial influence on the verdict, *Kotteakos v. United States*, 328 U.S. 750, 764–65 (1946), and the government bears the burden of persuasion on that question. *United States v. Olano*, 507 U.S. 725, 734–35 (1993).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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