

In the  
Supreme Court of the United States

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JOSHUA JAMES DUGGAR,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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

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REPLY BRIEF OF PETITIONER

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## REPLY BRIEF OF PETITIONER

In urging this Court to deny Mr. Duggar’s Petition, the United States constructs a strawman to obscure the clear circuit split on a constitutional issue and attempts to knock it down. But in doing so, the United States fails to acknowledge—let alone grapple with—the Ninth Circuit case that unambiguously establishes a circuit split on whether a defendant has a constitutional right to present alternative perpetrator evidence even if such evidence is speculative.

On that question, the Ninth Circuit’s holding in *United States v. Stever*—that “the district court is not free to dismiss logically relevant evidence [that someone else committed the crime] as speculative”—directly conflicts with the First, Second, Fourth, Fifth, Eighth, and Tenth Circuits. *Compare United States v. Stever*, 603 F.3d 747, 754 (9th Cir. 2010) with *DiBenedetto v. Hall*, 272 F.3d 1 (1st Cir. 2001); *Wade v. Mantello*, 333 F.3d 51 (2d Cir. 2003); *United States v. Lighty*, 616 F.3d 321 (4th Cir. 2010); *Caldwell v. Davis*, 757 F. App’x 336 (5th Cir. 2018); *United States v. Duggar*, 76 F.4th 788 (8th Cir. 2023); *United States v. McVeigh*, 153 F.3d 1166 (10th Cir. 1998).

To be clear, *Stever* addresses a constitutional right, not an evidentiary rule. *See Stever*, 603 F.3d at 755 n.3 (“ . . . Stever does not frame his challenge in terms of the Federal Rules of Evidence; he maintains that the exclusion was so broad, and the discovery error so critical, that his Sixth Amendment rights were violated by preclusion of a defense that should have been permitted.”). But the United States fails to acknowledge the existence of *Stever*—and further

attempts to blur the picture by reframing the question presented as whether “the district court’s *prospective guidance* regarding *the admissibility of certain testimony* that a third party was responsible for the charged crime violated petitioner’s constitutional right to present a complete defense.” Brief in Opposition (“BIO”) at I (emphasis added). But that is *not* the question presented by Mr. Duggar’s Petition; it is simply the United States’ strawman argument. The district court’s relevant ruling was in no way “prospective”; rather, the district court expressly ruled that “the Court is not going to allow speculative testimony that [Caleb Williams] was the alternative perpetrator.” Pet.App.153a.

Straying far from the issue before this Court, the United States focuses solely on the district court’s decision to preclude Mr. Duggar from impeaching Mr. Williams with a prior sex offense conviction. But that evidentiary ruling—though essential to the United States’ position—is tangential to the question presented. In both the district court and the Eighth Circuit, Mr. Duggar argued he has the constitutional right to present evidence of an alternative perpetrator, even if the evidence is speculative. But in its Opposition, the United States focuses only on the district court’s evidentiary ruling excluding impeachment by prior conviction. Instead of taking that bait, this Court should grant Mr. Duggar’s Petition and resolve the circuit split as to whether a criminal defendant has a constitutional right to present alternative perpetrator evidence even if the district court characterizes such evidence as speculative.

In light of *Stever* and the factual record, this case is the perfect vehicle to resolve a clear, established

circuit split that affects core constitutional rights. One side of the split exhibits a fundamental distrust of juries. But as Justice Black recognized, “[T]he Constitution itself long ago made the decision that juries are to be trusted.” *Jackson v. Denno*, 378 U.S. 368, 405 (1964) (Black, J., dissenting). Indeed, if a defense theory really is too speculative, the prosecution should be able to convince the jury to reject it.

As it stands, a defendant charged in the nine states and Guam that encompass the Ninth Circuit has a constitutional right to present relevant evidence that someone else may have committed the crime charged even if a district court characterizes that evidence as speculative. But unless this Court intervenes, Mr. Duggar and every other defendant charged in six federal circuits do not have that same constitutional right.

**I. THE DISTRICT COURT EXCLUDED EVIDENCE OF AN ALTERNATIVE PERPETRATOR BECAUSE IT WAS SPECULATIVE, NOT BECAUSE IT PRESENTED A RISK OF CONFUSION.**

In its Opposition, the United States attempts to reframe the core issue—focusing on the district court’s exclusion of impeachment by prior conviction and largely ignoring the district court’s express ruling that it would “not allow Caleb Williams to be associated with so-called alternative perpetrator evidence.” *See* BIO at 16 (quoting Pet.App.151a). But this is plainly inconsistent with the record.

At trial, Mr. Duggar attempted to call Caleb Williams to testify. Pet.App.143a–155a. The defense proffered that it sought to adduce testimony from Mr. Williams that he:

- previously worked at Wholesale Motorcars in various capacities;
- was listed on a March 27, 2019 sales contract as the salesperson at Wholesale Motorcars;
- had familiarity with the HP computer and certain software on it;
- had involvement with non-business-related eBay sales and utilized the HP computer to print shipping labels;
- sent a text message to Mr. Duggar on May 7, 2019: “[s]hould be able to help you a couple days this week [happy face] watch the lot”;
- spent the night one mile away from Wholesale Motorcars on May 9, 2019;
- took a photo of Mr. Duggar using a MacBook laptop in the Wholesale Motorcars office; and
- concealed all metadata on documents he provided to the Government in support of his denial that he was on the lot.

Pet.App.145a–149a.

Despite this proffer, the district court concluded that if Mr. Williams was called to testify, only if he “establish[ed] that he was present or that he had remoted in,” would Mr. Duggar then be able to “take this one step further and . . . ask these other questions[.]” Pet.App.153a. The district court ruled that if “he wasn’t present on the lot” and “assuming he testifies that he’s never remoted in, that’s as far as you are going to get and the Court would find in that instance under 403 that the 609 conviction that you have discussed should not be allowed, because at that



point, the primary purpose or objective of calling the witness will have failed, *and the Court is not going to allow speculative testimony that he was the alternative perpetrator.*” Pet.App.153a (emphasis added).

In other words, the district court made three rulings: (1) that Mr. Duggar was limited to asking Mr. Williams whether he was present on the car lot on certain dates and whether he had ever remoted into the office computer; (2) that assuming Mr. Williams did not confess to being present on the car lot or remoting into the computer, Mr. Williams could not be impeached with his prior conviction pursuant to Rule 403; and (3) that the district court would allow no speculative testimony that Mr. Williams was the alternative perpetrator if he denied being present or remotely accessing the computer.

In that instance, the district court ruled Mr. Duggar could not ask any other questions of Mr. Williams such as whether he had concealed metadata on documents he provided to investigators or even whether he committed the crimes charged. Instead, Mr. Duggar was limited to hoping Mr. Williams confessed to the crime.

In this case, Mr. Duggar is not asking this Court to decide whether the district court was correct in excluding impeachment evidence. Indeed, it was the United States, not Mr. Duggar, that raised the issue of Mr. Williams’ prior conviction at trial, asserting that “the only obvious reason why the defense is wanting to call [Mr. Williams] is because he’s a sex offender.” Pet.App.149a. But the district court excluded alternative perpetrator evidence *carte blanche* based on its conclusion the evidence was speculative, and for no other reason. That runs afoul of the Constitution’s

guarantee of the right to a trial by jury and the right to present a complete defense at that trial.

When this Court addresses the real issues before this Court as opposed to the district court's decision to preclude impeachment by prior conviction, the United States' position collapses like a house of cards. This is because the district court's decision to exclude this impeachment evidence is its *only* decision premised on a danger of "confusion" which may properly be excluded under Rule 403. The decision to exclude alternative perpetrator evidence rests solely on the trial court's finding that the evidence was speculative. And it is *that* ruling that implicates Mr. Duggar's constitutional rights and further divides the courts of appeal.

## II. THE COURTS OF APPEALS ARE DIVIDED CONCERNING THE ADMISSIBILITY OF ALTERNATIVE PERPETRATOR EVIDENCE THE DISTRICT COURT CHARACTERIZES AS SPECULATIVE.

In its Opposition, the United States asserts that "Petitioner misunderstands the Ninth Circuit's precedent" and that there is no circuit split on the question presented. BIO at 10 and 14. But it is the United States that mischaracterizes the current state of the law by completely ignoring the Ninth Circuit's decision in *Stever*, a decision cited in Mr. Duggar's Petition. Indeed, when reading the United States' brief, it is easy to lose sight of the fact that the *Stever* decision exists—because the United States not only fails to distinguish it but fails to acknowledge it at all.

In *Stever*, the defendant was convicted of crimes related to cultivating marijuana. *Id.* at 750. The Ninth Circuit explained, "Stever sought to defend on the

ground that the marijuana growing operation found on an isolated corner of his mother's 400-acre property was the work of one of the Mexican drug trafficking organizations (DTOs) that had recently infiltrated Oregon." *Id.* The court explained, "He was prevented from doing so by two district court rulings, the first denying him discovery related to the operations of DTOs and the second declaring that defense off-limits." *Id.*

In arguing that Stever was not entitled to the discovery he sought and that the district court had not erred in precluding Stever from adducing evidence that the offenses charged had actually been committed by a DTO, the Government argued "that the evidence would invite the jury to engage in impermissible speculation about Mexican DTOs and their 'correlat[ion] with the Stever property grow.'" *Id.* at 754.

The Ninth Circuit, however, held:

But the district court is not free to dismiss logically relevant evidence as speculative: "[I]f the evidence [that someone else committed the crime] is in truth calculated to cause the jury to doubt, the court should not attempt to decide for the jury that this doubt is purely speculative and fantastic but should afford the accused every opportunity to create that doubt."

*Id.* (quoting *United States v. Vallejo*, 237 F.3d 1008, 1023 (9th Cir. 2001); John Henry Wigmore, EVIDENCE IN TRIALS AT COMMON LAW § 139 (1983)) (alterations in original).

On appeal, Stever argued the discovery ruling and the exclusion of all evidence about DTOs violated his

Sixth Amendment right to present a defense. *Id.* at 755. The Ninth Circuit explained:

Whether grounded in the Sixth Amendment’s guarantee of compulsory process or in the more general Fifth Amendment guarantee of due process, “the Constitution guarantees criminal defendants ‘a meaningful opportunity to present a complete defense.’” *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006) (quoting *Crane v. Kentucky*, 476 U.S. 683, 690 (1986)). This right includes, “at a minimum, . . . the right to put before a jury evidence that might influence the determination of guilt.” *Pennsylvania v. Ritchie*, 480 U.S. 39, 56 (1987); accord *Washington v. Texas*, 388 U.S. 14, 19 (1967) (“The right to offer the testimony of witnesses . . . is in plain terms the right to present a defense, the right to present the defendant’s version of the facts. . . . [The accused] has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law.”).

*Id.* Indeed, the Ninth Circuit expressly noted:

In other circumstances, the erroneous exclusion of relevant evidence is a simple evidentiary matter, reviewed for abuse of discretion. See *United States v. Lynch*, 437 F.3d 902, 913 (9th Cir.2006); *United States v. Crosby*, 75 F.3d 1343, 1346–47 (9th Cir.1996). But Stever does not frame his challenge in terms of the Federal Rules of Evidence; he maintains that the exclusion was so broad, and the discovery error so critical, that his Sixth Amendment

rights were violated by preclusion of a defense that should have been permitted.

*Id.* at n.3.

Precisely as in *Stever*, the question presented in this case boils down to whether preclusion of an alternative perpetrator defense on the grounds that it is speculative violates the Constitution. The Ninth Circuit concluded, “*Stever* was not only prevented from putting on evidence important to his defense, he was prevented from making his defense at all. *We must conclude that Stever’s Sixth Amendment rights were violated.*” *Id.* at 757 (internal citation omitted) (emphasis added).

This decision brings the Ninth Circuit squarely into conflict with the six circuits that have addressed whether exclusion of alternative perpetrator evidence on the grounds it is speculative constitutes a constitutional error.

### **III. THE QUESTION PRESENTED IS IMPORTANT AND THIS CASE PRESENTS THE PERFECT VEHICLE TO RESOLVE THE CIRCUIT SPLIT.**

This circuit split affects core constitutional rights: the right to a trial by jury, the right to present a complete defense at that trial, the right to compel witnesses and have the jury consider the testimony of those witnesses, and the right to have a jury, not a judge, make factual determinations relevant to a finding of guilt. One side of the circuit split reflects a fundamental distrust of juries. But “the Constitution itself long ago made the decision that juries are to be trusted.” *Jackson*, 378 U.S. at 405 (Black, J., dissenting). The principle that juries are the finders of fact in criminal cases cannot be squared with the notion that

a criminal defendant may not introduce evidence that someone else may have committed the crime charged unless he convinces a trial judge the evidence is not speculative.

Worse, the Eighth Circuit's holding in this case shifts the burden of proof to the defendant. But a defendant has no burden of proof. To present evidence that someone else may have committed the crime charged, a defendant should not have to meet an amorphous threshold to satisfy the district court that this evidence is not speculative. That requirement—which currently applies in some parts of the country but not in others—flies in the face of the American justice system. Tellingly, the United States also fails to address this burden-shifting issue in its Opposition.

This case provides the perfect opportunity to resolve the circuit split and to reject the burden-shifting curtailment of defendants' constitutional rights in several circuits. In this case, the district court expressly prevented Mr. Duggar from presenting *any* evidence that Mr. Williams was the true perpetrator of the alleged crime on the basis that the evidence Mr. Duggar proffered was too speculative. *See* Pet.App.153a. Mr. Duggar has consistently challenged that ruling on constitutional grounds in both the district court and the Eighth Circuit. Thus, the question presented flows directly from the district court's ruling.

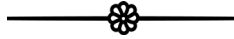
In its Opposition, the United States addresses the district court's misapplication of *Holmes v. South Carolina*, 547 U.S. 319 (2006)—an issue that is not directly relevant to the question presented in Mr. Duggar's Petition. But to be clear, the district court's misreading and misapplication of *Holmes* was not, as the United States represents, an "isolated" error. *See*

BIO at 13. The district court weighed Mr. Duggar’s proffered testimony regarding Mr. Williams against the strength of the Government’s case—the exact analysis rejected as unconstitutional by *Holmes*—twice, once during an on-the-record in-chambers conference and again at a sidebar during trial the next day. *See* Pet.App.121a and 151a. Subsequent rulings by the district court and the Eighth Circuit, as well as the United States’ Opposition, have consistently ignored the fact that the district court did not simply misread *Holmes* on one occasion; the district court *repeatedly* engaged in the very analysis rejected by *Holmes*.

Finally, the district court’s error was not harmless beyond a reasonable doubt. Mr. Duggar proffered significant evidence establishing Mr. Williams had the capability and opportunity to commit the alleged crime and concealed information he provided to the Government. Pet.App.145a–149a. This included evidence that he literally used the desktop computer at issue in this case for both car lot and personal purposes, that he offered to “watch the lot” during the relevant time period, and that he hid all metadata on documents he provided to the Government in support of his denial that he was on the car lot. *See id.*

This Court’s precedent that “the Constitution guarantees criminal defendants ‘a meaningful opportunity to present a complete defense,’” *Holmes*, 547 U.S. at 324 (quoting *Crane v. Kentucky*, 476 U.S. 683, 690 (1986)), and that this includes “the right to present the defendant’s version of the facts as well as the prosecution’s to the jury so it may decide where the truth lies[.]” *Washington v. Texas*, 388 U.S. 14, 19 (1967), should not ring hollow. By granting Mr. Duggar’s Petition, this Court can decisively hold that

a criminal defendant has a constitutional right to present evidence to a jury that someone else may have committed the crime charged, even if the district court determines that evidence is speculative. In this case, the evidence Mr. Duggar sought to introduce would have been sufficient to create reasonable doubt in the minds of the jurors. But more importantly, whether this evidence was compelling or speculative was a decision for the jury to make, not the district court.



## CONCLUSION

For the foregoing reasons and those stated in the Petition, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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