

No. 21-

IN THE
Supreme Court of the United States

EDISON BURGOS MONTES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT*

APPENDIX

1a
PET. APP. A
United States Court of Appeals
For the First Circuit

No. 20-1638

EDISON BURGOS-MONTES,

Petitioner - Appellant,

v.

UNITED STATES,

Respondent - Appellee.

Before

Howard, Chief Judge,
Lynch, Thompson, Kayatta
Barron and Gelpí*, Circuit Judges.

ORDER OF COURT

Entered: December 6, 2021

Pursuant to First Circuit Internal Operating Procedure X(C), the petition for rehearing en banc has also been treated as a petition for rehearing before the original panel. The petition for rehearing having been denied by the panel of judges who decided the case and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and petition for rehearing en banc be denied.

By the Court:

Maria R. Hamilton, Clerk

cc:

Alejandra Ysabel Bird Lopez, Eric A. Vos, Liza Lorraine Rosado-Rodriguez, Edison Burgos-Montes, Laura I. Soto-Santiago, Franco L. Perez-Redondo, Mariana E. Bauza Almonte

* Judge Gelpí is recused and did not participate in the determination of this matter.

2a
PET. APP. B
United States Court of Appeals
For the First Circuit

No. 20-1638

EDISON BURGOS-MONTES,

Petitioner - Appellant,

v.

UNITED STATES,

Respondent - Appellee.

Before

Howard, Chief Judge,
Lynch and Barron, Circuit Judges.

JUDGMENT

Entered: August 19, 2021

Petitioner Edison Burgos-Montes seeks a certificate of appealability ("COA") in relation to the district court's denial of his motion pursuant to 28 U.S.C. §2255 and of his motion for reconsideration. After careful consideration of the papers and relevant portions of the record, we conclude that petitioner has failed to demonstrate that the district court's procedural handling of the §2255 motion was debatable or wrong; petitioner, therefore, is not entitled to a COA. See Slack v. McDaniel, 529 U.S. 473, 484 (2000) (COA standard); see also 28 U.S.C. § 2253(c) (statutory COA standard: "A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right").

In particular, we conclude that petitioner has not demonstrated that reasonable jurists might disagree with the district court's dismissal of his long-pending, fully briefed habeas motion without ordering an evidentiary hearing. It was neither debatable nor wrong for the district court to adopt the government's argument that the admissible documents submitted with the §2255 motion did not, on their own and in light of the other evidence adduced at trial, "demonstrate that . . . with the benefit of an evidentiary hearing, [petitioner could] develop a factual record that would entitle him to habeas relief" with respect to his ineffective assistance claim(s). Schriro v. Landrigan, 550 U.S. 465, 475 (2007); David v. United States, 134 F.3d 470, 477 (1st Cir. 1998); see also Strickland v. Washington, 466 U.S. 668, 688, 694 (1984) (a petitioner pursuing a claim of ineffective assistance

must demonstrate both that counsel's "representation fell below an objective standard of reasonableness" (the performance prong) and that there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different" (the prejudice prong)).

We further conclude that there was nothing wrong or debatable in the district court's denial of the motion for reconsideration, through which petitioner did not identify any specific error in the district court's reasoning, nor did he identify any new or ignored evidence that might call into question the district court's original conclusions. The application for a certificate of appealability is denied, and the appeal is terminated.

By the Court:

Maria R. Hamilton, Clerk

cc:

Alejandra Ysabel Bird Lopez

Eric A. Vos

Liza Lorraine Rosado-Rodriguez

Edison Burgos-Montes

Laura I. Soto-Santiago

Franco L. Perez-Redondo

Mariana E. Bauza Almonte

PET. APP. C
United States District Court
District of Puerto Rico (San Juan)
CIVIL DOCKET FOR CASE #: 3:16-cv-03175-JAG

APPEAL,CASECLOSED

Burgos-Montes v. USA
Assigned to: Judge Jay A. Garcia-Gregory
Related Case: 3:06-cr-00009-JAG-1
Case in other court: 20-01638
Cause: 28:2255 Motion to Vacate / Correct Illegal Sentenc

Date Filed: 12/14/2016
Date Terminated: 03/31/2020
Jury Demand: None
Nature of Suit: 510 Prisoner: Vacate
Sentence
Jurisdiction: U.S. Government Defendant

Date Filed	#	Docket Text
09/05/2020	44	ORDER denying Plaintiff's <u>29</u> Motion to Reconsider. While the Federal Rules of Civil Procedure do not provide for 'motions to reconsider', motions that seek to change an order or judgment issued by a Court, like Petitioner's <u>29</u> motion, are considered as a motion under Fed.R.Civ.P. 59(e). <i>Villanueva-Mendez v. Nieves Vazquez</i> , 360 F. Supp. 2d 320, 323 (D.P.R. 2005). Motions under Rule 59(e) must either clearly establish a manifest error of law or must present newly discovered evidence. <i>Jorge Rivera Surillo & Co. v. Falconer Glass Indus., Inc.</i> , 37 F.3d 25, 29 (1st Cir. 1994)(citations omitted). Upon review of Petitioner's <u>29</u> motion, the USA's Response, Docket No. <u>40</u> , and Petitioner's Response to the USA's Response, Docket No. <u>43</u> , the Court finds no reason to depart from its previous rulings: (i) denying Petitioner's <u>1</u> Motion to Vacate, Set Aside or Correct Sentence under 28 U.S.C. § 2255, Docket No. 27; and (ii) entering Judgment dismissing Petitioner's case, Docket No. <u>28</u> . Signed by Judge Jay A. Garcia-Gregory on 9/5/2020. (ERC) (Entered: 09/05/2020)

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PET. APP. D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

EDISON BURGOS-MONTES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

CIVIL NO. 16-3175 (JAG)
(Related to Cr. No. 06-009 (JAG))

JUDGMENT

Pursuant to this Court's Order, Docket No. 27, Judgment is hereby entered DISMISSING WITH PREJUDICE Petitioner's action. The case is now closed for statistical purposes.

IT IS SO ORDERED.

In San Juan, Puerto Rico this Tuesday, March 31, 2020.

s/ Jay A. Garcia-Gregory
JAY A. GARCIA-GREGORY
U.S. DISTRICT JUDGE

6a
PET. APP. E
United States District Court
District of Puerto Rico (San Juan)
CIVIL DOCKET FOR CASE #: 3:16-cv-03175-JAG

CASECLOSED

Burgos-Montes v. USA
Assigned to: Judge Jay A. Garcia-Gregory
Related Case: 3:06-cr-00009-JAG-1
Case in other court: 20-01638
Cause: 28:2255 Motion to Vacate / Correct Illegal Sentenc

Date Filed: 12/14/2016
Date Terminated: 03/31/2020
Jury Demand: None
Nature of Suit: 510 Prisoner: Vacate
Sentence
Jurisdiction: U.S. Government Defendant

Date Filed	#	Docket Text
03/31/2020	27	ORDER denying Plaintiff's <u>1</u> Motion to Vacate, Set Aside or Correct Sentence under 28 U.S.C. § 2255, including Petitioners request for an evidentiary hearing and a new trial, for the reasons stated in the Governments <u>14</u> Opposition thereto. The Court further ORDERS that no certificate of appealability should be issued in the event that Petitioner files a notice of appeal because there is no substantial showing of a denial of a constitutional right under 28 U.S.C. § 2253(c)(2). Signed by Judge Jay A. Garcia-Gregory on 4/13/2020. (ERC) Modified on 4/14/2020 to edit docket title as per Chambers request. (mg). (Entered: 04/13/2020)

PET. APP. F

CASECLOSED

**United States District Court
District of Puerto Rico (San Juan)
CIVIL DOCKET FOR CASE #: 3:16-cv-03175-JAG**

Burgos-Montes v. USA
Assigned to: Judge Jay A. Garcia-Gregory
Related Case: 3:06-cr-00009-JAG-1
Case in other court: 20-01638
Cause: 28:2255 Motion to Vacate / Correct Illegal Sentenc

Date Filed: 12/14/2016
Date Terminated: 03/31/2020
Jury Demand: None
Nature of Suit: 510 Prisoner: Vacate
Sentence
Jurisdiction: U.S. Government Defendant

Date Filed	#	Docket Text
12/14/2016	<u>1</u>	MOTION to Vacate, Set Aside or Correct Sentence (2255) (Criminal Number 06-009 (01)(JAG)) filed by Edison Burgos-Montes, pro se. Responses due by 1/4/2017. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Attachments: # <u>1</u> Envelope)(su) (Entered: 12/21/2016)
12/14/2016	<u>2</u>	MOTION to Appoint Counsel filed by Edison Burgos-Montes, pro se. Responses due by 12/28/2016. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (su) (Entered: 12/21/2016)
12/30/2016	<u>3</u>	NOTICE of Filing Exhibits by Edison Burgos-Montes re <u>1</u> MOTION to Vacate, Set Aside or Correct Sentence (2255) (Criminal Number 06-009 (01)(JAG)), Pro-se. (Attachments: # <u>1</u> Envelope) (ov) (Entered: 01/04/2017)
01/06/2017	<u>4</u>	ORDER re <u>1</u> MOTION to Vacate, Set Aside or Correct Sentence (2255). The Government shall Respond by 2/3/2017. Signed by Judge Jay A. Garcia-Gregory on 1/6/2017. (AP) (Entered: 01/06/2017)
02/02/2017	<u>5</u>	MOTION for Extension of Time to File Response/Reply filed by Mariana E. Bauza on behalf of USA Responses due by 2/16/2017. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Bauza, Mariana) (Entered: 02/02/2017)
02/28/2017	<u>6</u>	ORDER granting <u>5</u> Motion for Extension of Time to File Response/Reply Responses due by 3/14/2017. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. Signed by Judge Jay A. Garcia-Gregory on 2/28/2017. (lir) Edison Burgos (su). (s/c to Edison Burgos) (su). (Entered: 02/28/2017)
04/18/2017	<u>7</u>	ORDER TO SHOW CAUSE as to why the government has failed to comply with this Court's Order at DE 6. Show Cause Response due by 4/25/2017. Signed by Judge Jay A. Garcia-Gregory on 4/18/2017.(ALP) (Entered: 04/18/2017)
04/18/2017	<u>8</u>	Motion In Compliance as to 7 Order to Show Cause, MOTION for extension of time until 30 days from the receipt of the transcript to respond to Petitioner's motion filed by Mariana E. Bauza on behalf of USA Responses due by 5/2/2017. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Related document(s) 7) (Bauza, Mariana) (Entered: 04/18/2017)
04/25/2017	<u>9</u>	ORDER noted <u>8</u> Motion In Compliance; granting <u>8</u> Motion for extension of time. The Government shall inform the Court of the status of the sentencing hearing transcripts. Status Report on the transcripts due by 5/25/2017. This deadline is not auto generated. Signed by Judge Jay A. Garcia-Gregory on 4/25/2017. (ALP) (Entered: 04/25/2017)
05/10/2017	<u>10</u>	INFORMATIVE Motion regarding filing of the transcripts filed by Mariana E. Bauza on behalf of USA Responses due by 5/24/2017. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Bauza, Mariana) (Entered: 05/10/2017)
05/30/2017	<u>11</u>	ORDER noted <u>10</u> INFORMATIVE motion. The request for an extension of time is GRANTED. Response due by 6/9/2017. Signed by Judge Jay A. Garcia-Gregory on 5/30/2017. (ALP) (Entered: 05/30/2017)

05/30/2017	<u>12</u>	MOTION Submitting Certified Translation of Exhibit filed by Edison Burgos–Montes, pro–se. Responses due by 6/13/2017. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Envelope)(cm) (Entered: 06/02/2017)
06/09/2017	<u>13</u>	MOTION for Extension of Time until Julio 10, 2017 to File Response/Reply filed by Mariana E. Bauza on behalf of USA Responses due by 6/23/2017. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Bauza, Mariana) (Entered: 06/09/2017)
06/21/2017	<u>14</u>	RESPONSE in Opposition to Motion filed by USA Re: <u>1</u> MOTION to Vacate, Set Aside or Correct Sentence (2255) (Criminal Number 06–009 (01)(JAG)) filed by Edison Burgos–Montes filed by USA. (Bauza, Mariana) (Entered: 06/21/2017)
07/17/2017	<u>15</u>	MOTION for Extension of Time for 30 days to File Reply to Motion to Vacate filed by Edison Burgos–Montes, pro se. Responses due by 7/31/2017. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (su) (Additional attachment(s) added on 7/20/2017: # <u>1</u> Envelope) (su). (Entered: 07/20/2017)
08/24/2017	16	ORDER noted <u>12</u> Motion submitting certified translation of exhibit. Signed by Judge Jay A. Garcia–Gregory on 8/24/2017. (lir) (Entered: 08/24/2017)
08/24/2017	17	ORDER granting <u>13</u> Motion for Extension of Time to File Response/Reply Responses due by 9/7/2017. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. Signed by Judge Jay A. Garcia–Gregory on 8/24/2017. (lir) (Entered: 08/24/2017)
08/24/2017	18	ORDER granting <u>15</u> Motion for Extension of Time to File Response/Reply Responses due by 9/7/2017. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. Signed by Judge Jay A. Garcia–Gregory on 8/24/2017. (lir) (Entered: 08/24/2017)
09/04/2017	19	***ORDER VACATING AND SETTING ASIDE AS PER D.E. 26 ORDER***ORDER REFERRING MOTIONS to a Magistrate Judge. Petitioner's <u>1</u> MOTION to Vacate, Set Aside or Correct Sentence (2255) is referred for a Report and Recommendation. Petitioner's <u>2</u> MOTION to Appoint Counsel is hereby referred for disposition. Signed by Judge Jay A. Garcia–Gregory on 9/4/2017. (AP) Modified on 4/14/2020 (mg). (Entered: 09/04/2017)
09/05/2017	20	MEMORANDUM OF THE CLERK: Pursuant to the Order Referring Motion entered by Judge Jay A. Garcia–Gregory on 09/04/2017 (Docket No. 19), the following motions have been randomly referred to Magistrate Judge Marcos E. Lopez: <u>1</u> MOTION to Vacate, Set Aside or Correct Sentence (2255) for Report and Recommendation; and, the <u>2</u> MOTION to Appoint Counsel for disposition. Signed by Clerk on 09/05/2017.(gr) (Entered: 09/05/2017)
09/11/2017	<u>21</u>	REPLY to Response to Motion filed by Edison Burgos–Montes, pro se Re: <u>1</u> MOTION to Vacate, Set Aside or Correct Sentence (2255) (Criminal Number 06–009 (01)(JAG)) filed by Edison Burgos–Montes filed by Edison Burgos–Montes. (Attachments: # <u>1</u> Envelope)(su) (Entered: 09/14/2017)
09/14/2017	22	ORDER: GRANTING <u>2</u> Motion to Appoint Counsel. The Federal Public Defender is appointed for Petitioner. Signed by Judge Jay A. Garcia–Gregory on 9/14/2017. (ALP) (Entered: 09/14/2017)
09/15/2017	<u>23</u>	NOTICE of Appearance by Laura I. Soto–Santiago on behalf of Edison Burgos–Montes (Soto–Santiago, Laura) (Entered: 09/15/2017)
02/12/2018	<u>24</u>	NOTICE of Appearance by Liza L. Rosado–Rodriguez on behalf of Edison Burgos–Montes (Rosado–Rodriguez, Liza) (Entered: 02/12/2018)
11/29/2018	<u>25</u>	NOTICE of Appearance by Alejandra Ysabel Bird–Lopez on behalf of Edison Burgos–Montes (Bird–Lopez, Alejandra) (Entered: 11/29/2018)
03/31/2020	26	ORDER VACATING AND SETTING ASIDE 19 ORDER REFERRING MOTION to a Magistrate Judge. The Clerk of Court shall take notice. Signed by Judge Jay A. Garcia–Gregory on 4/13/2020. (ERC) (Entered: 04/13/2020)

03/31/2020	27	ORDER denying Plaintiff's <u>1</u> Motion to Vacate, Set Aside or Correct Sentence under 28 U.S.C. § 2255, including Petitioners request for an evidentiary hearing and a new trial, for the reasons stated in the Governments <u>14</u> Opposition thereto. The Court further ORDERS that no certificate of appealability should be issued in the event that Petitioner files a notice of appeal because there is no substantial showing of a denial of a constitutional right under 28 U.S.C. § 2253(c)(2). Signed by Judge Jay A. Garcia-Gregory on 4/13/2020. (ERC) Modified on 4/14/2020 to edit docket title as per Chambers request. (mg). (Entered: 04/13/2020)
03/31/2020	<u>28</u>	JUDGMENT dismissing <i>with prejudice</i> Plaintiff's case. Signed by Judge Jay A. Garcia-Gregory on 4/14/2020.(ERC) (Main Document 28 replaced on 4/15/2020) (mg). (Entered: 04/14/2020)
04/14/2020	<u>29</u>	MOTION requesting Order <i>Reconsidering Order denying § 2255 Motion and for Other Relief</i> filed by Alejandra Ysabel Bird-Lopez on behalf of Edison Burgos-Montes Responses due by 4/28/2020. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Bird-Lopez, Alejandra) (Entered: 04/14/2020)
06/12/2020	<u>30</u>	NOTICE OF APPEAL as to 26 Order, <u>28</u> Judgment, 27 Order on Motion to Vacate,, by Edison Burgos-Montes. NOTICE TO COUNSEL: Counsel should register for a First Circuit CM/ECF Appellate Filer Account at http://pacer.psc.uscourts.gov/cmecf/. Counsel should also review the First Circuit requirements for electronic filing by visiting the CM/ECF Information section at http://www.ca1.uscourts.gov/cmecf (Bird-Lopez, Alejandra) (Entered: 06/12/2020)
06/24/2020	<u>31</u>	Certified and Transmitted Record on Appeal to US Court of Appeals re <u>30</u> Notice of Appeal, [Docket Entries 26, 27, 28 & 30] (xi) (Entered: 06/24/2020)
06/30/2020	32	USCA Case Number 20-1638 for <u>30</u> Notice of Appeal, filed by Edison Burgos-Montes. (xi) (Entered: 06/30/2020)
07/08/2020	<u>33</u>	Certified Copy of Order from USCCA as to <u>30</u> Notice of Appeal, filed by Edison Burgos-Montes; Appellant is directed to file a status report by August 7, 2020 and at thirty day intervals thereafter, informing this court of any action taken by the district court on the post-judgment motion. Once the district court rules on the pending motion, it is directed to forward its decision to this court forthwith. (xi) (Main Document 33 replaced on 7/8/2020) (xi). (Entered: 07/08/2020)
07/10/2020	34	ORDER holding in abeyance Petitioner's <u>29</u> Motion requesting Order pending USA's Response. USA's Response to Motion due by 7/27/2020. Signed by Judge Jay A. Garcia-Gregory on 7/10/2020. (ERC) Modified on 7/10/2020 to edit docket text as per Chambers request. (mg). (Entered: 07/10/2020)
07/31/2020	35	ORDER TO SHOW CAUSE as to why USA has not responded to Petitioner's <u>29</u> Motion pursuant to this Court's order at Docket No. 34. Show Cause Response and Response to Motion in Compliance due by 8/3/2020. Signed by Judge Jay A. Garcia-Gregory on 7/31/2020. (ERC) (Entered: 07/31/2020)
08/03/2020	<u>36</u>	RESPONSE TO ORDER TO SHOW CAUSE <i>and request for extension of time</i> filed by USA Re: 35 Order to Show Cause, filed by USA. (Bauza, Mariana) (Entered: 08/03/2020)
08/03/2020	<u>37</u>	MOTION Submitting Certified English Translation re: <u>3</u> Notice (Other) filed by Edison Burgos-Montes filed by Alejandra Ysabel Bird-Lopez on behalf of Edison Burgos-Montes Responses due by 8/17/2020. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Attachments: # <u>1</u> Exhibit)(Related document(s) <u>3</u>) (Bird-Lopez, Alejandra) (Entered: 08/03/2020)
08/03/2020	38	ORDER noted <u>36</u> RESPONSE to Order to Show Cause; granting <u>36</u> <i>Request for extension of time.</i> USA's Response to Petitioner's <u>29</u> Motion is now due 08/07/2020. Signed by Judge Jay A. Garcia-Gregory on 8/3/2020. (ERC) (Entered: 08/03/2020)
08/03/2020	39	ORDER noted <u>37</u> MOTION Submitting Certified English Translation re: <u>3</u> Notice. Signed by Judge Jay A. Garcia-Gregory on 8/3/2020. (ERC) (Entered: 08/03/2020)

08/07/2020	<u>40</u>	RESPONSE in Opposition to Motion filed by USA Re: <u>29</u> MOTION requesting Order <i>Reconsidering Order denying § 2255 Motion and for Other Relief</i> filed by Edison Burgos–Montes filed by USA. (Bauza, Mariana) (Entered: 08/07/2020)
08/07/2020	<u>41</u>	INFORMATIVE Motion regarding Intent to Respond to Government's Filing filed by Alejandra Ysabel Bird–Lopez on behalf of Edison Burgos–Montes Responses due by 8/21/2020. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Bird–Lopez, Alejandra) (Entered: 08/07/2020)
08/10/2020	42	ORDER noted <u>41</u> INFORMATIVE motion. Signed by Judge Jay A. Garcia–Gregory on 8/10/2020. (ERC) (Entered: 08/10/2020)
08/10/2020	<u>43</u>	RESPONSE to Motion <i>Government Filing at Docket No. 40.</i> filed by Edison Burgos–Montes Re: <u>29</u> MOTION requesting Order <i>Reconsidering Order denying § 2255 Motion and for Other Relief</i> filed by Edison Burgos–Montes, <u>41</u> INFORMATIVE Motion regarding Intent to Respond to Government's Filing filed by Edison Burgos–Montes filed by Edison Burgos–Montes. (Bird–Lopez, Alejandra) (Entered: 08/10/2020)
09/05/2020	44	ORDER denying Plaintiff's <u>29</u> Motion to Reconsider. While the Federal Rules of Civil Procedure do not provide for 'motions to reconsider', motions that seek to change an order or judgment issued by a Court, like Petitioner's <u>29</u> motion, are considered as a motion under Fed.R.Civ.P. 59(e). <i>Villanueva–Mendez v. Nieves Vazquez</i> , 360 F. Supp. 2d 320, 323 (D.P.R. 2005). Motions under Rule 59(e) must either clearly establish a manifest error of law or must present newly discovered evidence. <i>Jorge Rivera Surillo & Co. v. Falconer Glass Indus., Inc.</i> , 37 F.3d 25, 29 (1st Cir. 1994)(citations omitted). Upon review of Petitioner's <u>29</u> motion, the USA's Response, Docket No. <u>40</u> , and Petitioner's Response to the USA's Response, Docket No. <u>43</u> , the Court finds no reason to depart from its previous rulings: (i) denying Petitioner's <u>1</u> Motion to Vacate, Set Aside or Correct Sentence under 28 U.S.C. § 2255, Docket No. 27; and (ii) entering Judgment dismissing Petitioner's case, Docket No. <u>28</u> . Signed by Judge Jay A. Garcia–Gregory on 9/5/2020. (ERC) (Entered: 09/05/2020)
09/14/2020	<u>45</u>	Amended NOTICE OF APPEAL as to 26 Order, <u>28</u> Judgment, 44 Order on Motion requesting Order, 27 Order on Motion to Vacate, by Edison Burgos–Montes NOTICE TO COUNSEL: Counsel should register for a First Circuit CM/ECF Appellate Filer Account at http://pacer.psc.uscourts.gov/cmecf/. Counsel should also review the First Circuit requirements for electronic filing by visiting the CM/ECF Information section at http://www.ca1.uscourts.gov/efiling.htm (Bird–Lopez, Alejandra) (Entered: 09/14/2020)
09/30/2020	<u>46</u>	Certified and Transmitted Record on Appeal to US Court of Appeals re <u>45</u> Amended Notice of Appeal, [Docket Entries 26, 27, 28, 44 & 45] (mcm) (Entered: 09/30/2020)
01/21/2021	47	Appeal Remark re <u>45</u> Amended Notice of Appeal; Docketed as a supplemental record/amended NOA in 20–1638. (mcm) (Entered: 01/21/2021)
08/20/2021	<u>48</u>	USCA JUDGMENT as to <u>30</u> Notice of Appeal, filed by Edison Burgos–Montes, <u>45</u> Amended Notice of Appeal, filed by Edison Burgos–Montes; The application for a certificate of appealability is DENIED, and the appeal is TERMINATED. (mcm) (Entered: 08/20/2021)
12/14/2021	<u>49</u>	MANDATE of USCA as to <u>30</u> Notice of Appeal, filed by Edison Burgos–Montes, <u>45</u> Amended Notice of Appeal, filed by Edison Burgos–Montes; DENIED/TERMINATED. RE: <u>48</u> USCA JUDGMENT (mcm) (Entered: 12/14/2021)

PET. APP. G
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

EDISON BURGOS-MONTES
Petitioner

CIVIL NO. 16-3175 (JAG)
(Related to Cr. No. 06-009 (JAG))

v.

UNITED STATES OF AMERICA
Respondent

INTRODUCTION

On December 7, 2016, Edison Burgos-Montes timely filed a motion pursuant to 28 U.S.C. §2255, claiming that his life sentence on Count Three is excessive and that counsel was ineffective in failing to adequately investigate and present a defense. (Cv. ECF No. 1).¹ He requests that his sentence on Count Three be vacated and, alternatively, that the Court hold an evidentiary hearing and a new trial. (Cv. ECF No. 1 at 12). The government submits that Burgos-Montes's claims lack merit. Therefore, his motion should be denied without the need for an evidentiary hearing.

BACKGROUND

I. Factual Background

From on or around January 1998 up until December 2005, Burgos-Montes was the leader of a cocaine trafficking organization in Yauco, Puerto Rico responsible for smuggling and distributing multi-hundred kilograms quantities of cocaine by sea from the Dominican Republic into Puerto Rico. *See, e.g., United States v. Burgos-Montes*, 786 F.3d 92, 99 (2015). Beginning in October 2004, Madelyn Semidey-Morales, who was having an extramarital relationship with Burgos-Montes, began providing information to the DEA regarding Burgos-Montes's drug

1. Citations to the record will be Crim. for Criminal Case Number 06-009 (JAG) and Civ. for Civil No. 16-3175 (JAG).

trafficking organization. (T.T. 6/27/2012 at 25).

DEA Special Agents personally debriefed Semidey-Morales several times regarding information she obtained from personal participation and observation and from conversations with, or overheard between, Burgos-Montes and others within the organization. (T.T. 6/27/2012 at 25-30; T.T. 7/2/2012 at 92).

In June 2005, Burgos-Montes confronted Semidey-Morales's brother-in-law regarding a rumor that the brother-in-law had been saying that Semidey-Morales was a government informant and was providing them with information about Burgos-Montes's drug ventures. (T.T. 7/5/2012 at 61-66). Burgos-Montes further threatened Semidey-Morales, telling her that he would bury her with a digger and Semidey-Morales told the DEA Special Agents that if she were killed, they should look for her underground "because it was Edison." (T.T. 6/28/2012 at 41-43).

On July 6, 2005, Semidey-Morales's parents reported her missing to the Puerto Rico Police Department ("PRPD") and to the DEA. The PRPD soon began an investigation into her disappearance. Since being reported as missing, no family member has heard from Semidey-Morales, nor has the DEA been able to establish contact with her. (T.T. 6/28/2012, at 82).

II. Procedural Background

In 2006, a Grand Jury returned a three-count Indictment against Burgos-Montes. (Cr. ECF No. 11). A Superseding Indictment followed, charging Burgos-Montes with: 1) knowingly and intentionally conspiring to possess with intent to distribute controlled substances, in violation of 21 U.S.C. §§841 and 846 (Count One); 2) importing controlled substances into Puerto Rico, in violation of 21 U.S.C. §§952(a) and 963 (Count Two); 3) having killed with malice aforethought, knowingly, intentionally, unlawfully and with premeditation Madelyn Semidey-Morales to prevent her from testifying in an official proceeding, to prevent her from further communicating to law enforcement information pertaining to the commission or possible commission of crimes related to the importation and conspiracy to possess with intent to distribute cocaine (Count Three);

and 4) killing Semidey-Morales in retaliation against her for communicating with law enforcement (Count Four). (Cr. ECF No. 64).

After a lengthy jury trial, on August 29, 2012, the jury rendered verdicts and special verdict forms finding Burgos-Montes guilty as to all four counts of the Superseding Indictment. (Cr. ECF No. 785, 787). At the October 2, 2013 sentencing hearing, Burgos-Montes was sentenced to concurrent life terms of imprisonment as to all counts. (Cr. ECF No. 928).

Burgos-Montes appealed challenging his conviction on many grounds. *United States v. Burgos-Montes*, 786 F.3d 92 (2015). The First Circuit rejected all of his claims of error and affirmed his conviction. *Id.* The Supreme Court denied certiorari. *Burgos-Montes v. United States*, 2015 U.S. LEXIS 7721 (U.S., Dec. 7, 2015). Subsequently, Burgos-Montes timely filed the instant motion by depositing it on the prison's mailing system on December 7, 2016. (Cv. ECF No. 1 at 12).

DISCUSSION

I. Burgos-Montes's life sentence on Count Three does not exceed the statutory maximum.

As a preliminary matter, Burgos-Montes's challenge to his sentence on Count Three is procedurally defaulted. "A significant bar on habeas corpus relief [under 28 U.S.C. § 2255] is imposed when a prisoner did not raise claims at trial or on direct review. In such cases, a court may hear those claims for the first time on habeas corpus review only if the petitioner has 'cause' for having procedurally defaulted his claims, and if the petitioner suffered 'actual prejudice' from the errors of which he complains." *Owens v. United States*, 483 F.3d 48, 56 (1st Cir. 2007) (citing *United States v. Frady*, 456 U.S. 152, 168 (1982)).

"One way to meet the cause requirement is to show constitutionally ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)." *Wilder v. United States*, 806 F.3d 653, 658 (1st Cir. 2015). To prevail on such a claim, a defendant

bears the burden of proving both (1) “that counsel’s performance was constitutionally deficient, meaning that counsel made errors so serious that ‘counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment,’” and (2) “that the deficient performance prejudiced the defense.” *United States v. LaPlante*, 714 F.3d 641, 648 (1st Cir. 2013) (quoting *Strickland*, 466 U.S. at 687); *see also Wilder*, 806 F.3d at 658.

“Attorney error short of ineffective assistance of counsel does not constitute cause for a procedural default” *Murray v. Carrier*, 477 U.S. 478, 492 (1986). To the contrary, “[c]ause requires a showing of some external impediment preventing counsel from constructing or raising the claim.” *McCleskey v. Zant*, 499 U.S. 467, 497 (1991) (alteration and ellipsis omitted). “For cause to exist, the external impediment, whether it be government interference or the reasonable unavailability of the factual basis for the claim, must have prevented petitioner from raising the claim.” *Id.*

Burgos-Montes does in fact attempt to excuse his default by blaming appellate counsel. (Cv. ECF No. 1 at 4). However, even if he could excuse his default, Burgos-Montes cannot meet either of *Strickland*’s prongs.

Count Three charged Burgos-Montes with the murder of Madelin Semidey-Morales, as defined in 18 U.S.C. § 1111, with the specific intent to prevent her attendance or testimony in an official proceeding, and/or to prevent her from communicating to law enforcement relating to the commission of a federal offense, to wit, drug trafficking conspiracies, in violation of 18 U.S.C. § 1512(a)(1)(A) and (C). (Cr. ECF No. 64 at 4-5). The punishment for the charged offense is death or imprisonment for life if the defendant is found guilty of murder in the first degree and a maximum of life if the defendant is found guilty of murder in the second degree. 18 U.S.C. § 1512(a)(3)(A), § 1111(b).

After trial, relevant to Count Three, the jury found Burgos-Montes guilty of first degree murder. (Cr. ECF No. 787). Having made this finding, the jury did not have to consider whether he

was guilty of the lesser-included offense of murder in the second degree. (*Id.*). At no time was Burgos-Montes charged or found guilty of manslaughter. Therefore, the two sentencing options were death or life imprisonment. Because the jury was unable to reach a unanimous verdict of death in the penalty phase, Burgos-Montes's sentence was statutorily dictated as life. *See, e.g.*, SHT at 12.

During sentencing, the Court correctly stated that Burgos-Montes's Count Three charge was for first degree murder, that is, "killing with premeditation a federal witness." (SHT at 7). The Court's written judgment, however, incorrectly named the nature of the offense charged in Count Three as: "Tamper with witness, victim, informant (manslaughter)." Nevertheless, contrary to Burgos-Montes's argument, this mistake in the judgment does not result in a reduction of Burgos-Montes' maximum sentence to that of the 15 year maximum for voluntary manslaughter. Not only is this clerical error inconsequential, to the extent what was written conflicts with the Court's oral pronouncements at sentencing, the latter govern. Because a defendant has the right to be present at his sentencing hearing, "where a district court's oral expression of its sentencing rationale varies materially from its subsequent written expression of that rationale, appellate courts have tended to honor the former at the expense of the latter." *United States v. Vega-Ortiz*, 425 F.3d 20, 22 (1st Cir. 2005) (quoting *United States v. Cali*, 87 F.3d 571, 579 (1st Cir. 1996)). *See also United States v. Melendez-Santana*, 353 F.3d 93 (1st Cir. 2003) (vacating drug treatment condition that was included in the written judgment and not in oral pronouncement for that reason alone and collecting circuit cases reaching same conclusion when faced with conflicting oral and written sentence pronouncements). Regardless, Burgos-Montes's conviction on Count Four for killing Semidey-Morales in retaliation against her for communicating with law enforcement also called for a statutory term of imprisonment of life, thereby eliminating any prejudice from his life sentence on Count Three.

II. Counsel was not ineffective for allegedly failing to investigate and present to the jury testimony suggesting that Semiday-Morales was still alive.

Burgos-Montes next alleges that counsel was ineffective for failing to conduct an adequate investigation into witnesses that saw Semiday-Morales after her disappearance. (Cv. ECF No. 1 at 5). Burgos-Montes names two witnesses and includes their respective statements, Jeremias Santiago-Caraballo, who testified at Burgos-Montes's detention hearing (Cv. ECF No. 3 at 10-10), and Mario López (Cv. ECF No. 2 at 6-8). López's statement, however, is in Spanish and no translation has been submitted. As such, his statement is not before the Court. 48 U.S.C. § 864 ("All pleadings and proceedings in the United States District Court for the District of Puerto Rico shall be conducted in the English language."). Burgos-Montes argues that these statements together with the fact that to date no death certificate has been issued for Semiday-Morales show that trial counsel were ineffective.

"The decision whether to call a particular witness is almost always strategic, requiring a balancing of the benefits and risks of the anticipated testimony." *Lema v. United States*, 987 F.2d 48, 54 (1st Cir. 1993). For example, "[t]he witness might not testify as anticipated, or the witness' demeanor or character may impress the jury unfavorably and taint the jury's perceptions of the accused; or the testimony, though sympathetic, may prompt jurors to draw inferences unfavorable to the accused." *Id.* (citations omitted). For that reason, "tactical decisions, whether wise or unwise, successful or unsuccessful, cannot ordinarily form the basis of a claim of ineffective assistance." *United States v. Oliveras*, 717 F.2d 1, 3 (1st Cir. 1983) (citing *United States v. Bosch*, 584 F.2d 1113 (1st Cir. 1978)). See *Strickland*, 466 U.S. at 690-91 ("strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation"). "Only where a defense decision is completely unreasonable, not merely wrong, so that it bears no relationship to

a possible defense strategy, is further review into counsel's competence required." *Oliveras*, 717 F.2d at 3 (citations omitted).

There is no reason to believe that defense counsel's reasoning for not calling the proffered witnesses was anything other than a tactical decision. Semiday-Morales disappeared on July 4, 2005, after telling her handler that she had returned to Burgos-Montes's home and was last seen getting into Burgos-Montes's car that night. *Burgos-Montes*, 786 F.3d at 99. Semiday-Morales's parents reported her as missing on July 6, 2005. (ECF No. 922 at 7). Neither the DEA nor Semiday-Morales's family members, including her children, had any contact with her since reporting her missing. (*Id.*).

The jury heard evidence that Burgos-Montes tried several times to confirm whether or not Semiday-Morales was an informant, that he concluded that she was, and that he had threatened to kill her and "make her disappear from the face of the earth" if he ever found out that she was cooperating. *Burgos-Montes*, 786 F.3d at 112. The jury also heard evidence of Burgos-Montes's drug trafficking activities and Semiday-Morales's knowledge of those activities. *Id.* Moreover, the jury also received evidence that traces of Semiday-Morales's blood was found in Burgos-Montes's car, the same car that Burgos-Montes had an employee clean during a rainstorm two days after Semiday-Morales disappeared. *Id.* at 100.

Counsel's trial strategy included making the government meet its burden of proving guilt, while simultaneously calling a series of witnesses to discredit the government's evidence and provide alternate theories for Semiday-Morales's death. Counsel's evidence and argument challenged whether Burgos-Montes's had the requisite intent to be found guilty and, alternatively, presented other likely suspects. *Burgos-Montes*, 786 F.3d at 112. Reasonably competent trial counsel could have determined that the best prospect for acquittal lay in discrediting the government's witnesses, rather than presenting additional testimony that would have had dubious and potentially negative impact. It is evident from Burgos-Montes's submission that Santiago-

Caraballo's testimony that he saw Semiday-Morales three days after her disappearance would have had questionable significance. At the detention hearing, the government was able to impeach his motive, his recollection, and the timing of his report. (Cv. ECF No. 3 at 15-17). Contrary to Burgos-Montes's claim, because his testimony was offered at the detention hearing stage, he did not testify that he saw Semiday-Morales after Burgos-Montes was convicted. Therefore, to the extent it is reviewable, counsel's trial strategy was not unreasonable and did not violate Burgos-Montes's right to effective representation.

Lastly, Burgos-Montes's allegations regarding the lack of a death certificate misses the mark. A death certificate was not required for the jury to find Burgos-Montes guilty of murdering Semiday-Morales. The jury received ample evidence from which to reach this conclusion, including the fact that her DNA was found in the blood recovered from Burgos-Montes's car.

III. Burgos-Montes has failed to show that he is entitled to an evidentiary hearing and appointment of counsel.

In the event his request for vacating his conviction and sentence on Count Three is denied, Burgos-Montes requests an evidentiary hearing and appointment of counsel. (Cv. ECF No. 1 at 12). However, a petitioner is not entitled to an evidentiary hearing as a matter of right. *David v. United States*, 134 F.3d 470, 477 (1st Cir. 1998). A hearing is not required if (1) the motion is inadequate on its face, or (2) the movant's allegations, even if true, do not entitle him to relief, or (3) the movant's allegations need not be accepted as true because they state conclusions instead of facts, contradict the record, or are "inherently incredible." *Id.* Because Burgos-Montes's motion is inadequate on its face and because his conclusory allegations are contradicted by the record, a hearing need not be held. Moreover, while Burgos-Montes has failed to establish the need for a hearing in this case, because the Court presided over his case, it "is at liberty to employ the knowledge gleaned during previous proceedings and make findings based thereon without convening an additional hearing." *DeColgero v. United States*, 802 F.3d 155, 167 (1st Cir. 2015)

(quoting *United States v. McGill*, 11 F.3d 223, 225 (1st Cir. 1993)). Accordingly, the Court should summarily deny Burgos-Montes's petition without an evidentiary hearing.

While a petitioner is entitled to appointment of counsel if an evidentiary hearing is required,² Burgos-Montes has failed to establish the need for an evidentiary hearing. "[T]here is no right to counsel in collateral proceedings." *Martinez v. Ryan*, 132 S. Ct. 1309, 1326 (2012); see *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987) (holding that prisoners have no constitutional right to counsel in mounting collateral attacks on convictions; right to appointed counsel extends to first appeal of right and no further); *Ellis v. United States*, 313 F.3d 636, 652 (1st Cir. 2002) (holding that a convicted criminal has no constitutional right to counsel on motion to vacate sentence). Thus, he has failed to establish a right to appointment of counsel and his request should also be denied. See *Bucci v. United States*, 662 F.3d 18, 34 (1st Cir.2011).

CONCLUSION

A review of the record as a whole conclusively shows that Burgos-Montes sentence was statutorily mandated and that he received meaningful assistance by a competent counsel throughout his criminal proceeding. Therefore, his motion should be denied without evidentiary hearing and the case dismissed with prejudice.

2. Rule 8(c) of the Rules Governing Section 2255 Proceedings.

WHEREFORE, in view of the foregoing, the United States respectfully requests that Burgos-Montes's motion be denied and the case dismissed with prejudice.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, June 21, 2017.

ROSA EMILIA RODRÍGUEZ-VÉLEZ
United States Attorney

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was uploaded today, June 21, 2017, into the Court's website using the CM/ECF system and a copy served upon the person listed below by depositing in the United States Post Service in an envelope with correct postage for delivery.

Edison Burgos-Montes
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Big Sandy USP
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/s/ Mariana E. Bauzá-Almonte
Assistant United States Attorney
Chief, Appellate Division

21a
PET. APP. H

Sworn Testimony
Submitted with § 2255 Motion

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA	* CASE NO. CR06-009 (CVR) (DRD)
	*
Plaintiff	*
	*
vs.	*
	*
	*
EDISON BURGOS-MONTES	*
	*
Defendant	*
	*
	* January 12, 2006
	* Hato Rey, Puerto Rico

ARRAIGNMENT AND DETENTION HEARING

HELD BEFORE MAGISTRATE JUDGE CAMILLE L. VELEZ-RIVE
UNITED STATES MAGISTRATE JUDGE
FEDERAL BUILDING, HATO REY, PUERTO RICO

APPEARANCES:

For the Plaintiff:	AUSA Julie B. Mosley
For Defendant:	FPD Joseph Laws AFPD Lorenzo Palomares
Court Interpreter:	Hilda Gutierrez
Court Reporter:	FTR
Courtroom Deputy:	Yelitza Rivera-Buonomo

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1 are here in court, we need to take them to our witness room.
2 (Whereupon, Defense Counsel calls their names and witnesses
3 are taken to witness room.)

4 Could I have the name, again, Counsel, of the
5 witness?

6 AFPD PALOMARES: Jeremias Santiago.

7 THE MAGISTRATE: Let's take the oath.

8 (Whereupon, the Mr. Jeremias Santiago is sworn in and
9 testifies, through an official court interpreter as follows.)

10 DIRECT EXAMINATION

11 BY AFPD PALOMARES:

12 Q. Can you please tell the Court your name?

13 A. Jeremias Santiago-Caraballo.

14 Q. By whom are you employed, sir?

15 A. By the Burgos Heavy Equipment Company.

16 Q. How long have you worked there, sir?

17 A. For one year and three months.

18 Q. Do you know the defendant, Edison Burgos, in this case?

19 A. Yes, sir.

20 Q. What kind of work does Mr. Edison Burgos do?

21 A. Remodeling of buildings and paving roads and parkings.

22 Q. What do you do for the company, sir?

23 A. I'm a mechanic and I'm also a driver of trucks.

24 Q. During your employment at Burgos Heavy Equipment did you
25 come to know and meet an individual, a female, named

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1 Madeline Semidey-Morales?

2 INTERPRETER: Madeline?

3 THE MAGISTRATE: Semidey.

4 MR. PALOMARES: Semidey-Morales.

5 (Whereupon, testimony of the witness continues.)

6 A. Yes, sir.

7 Q. Can you please tell the Court who is Madeline Semidey-
8 Morales?

9 A. I met Madeline Semidey-Morales because she was the female
10 companion, or friend, of Mr. Burgos.

11 Q. When was the last time you met Madeline Semidey-Morales?

12 A. I saw her on the 6th of July.

13 Q. Under what circumstances?

14 A. That day she arrived at her home and she was picking up
15 her things, her belongings.

16 Q. What else?

17 A. That day she was there and she was angry because Mr.
18 Edison Burgos would not allow her to bring her three
19 daughters into the home.

20 Q. How was she dressed?

21 A. She was wearing a sweatshirt, blue, and a blue sweatshirt
22 and a white shirt -- blouse.

23 Q. What else did she do, in front of you?

24 A. She broke a cellular phone that she was carrying in her
25 hand.

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1 Q. How did she do that?

2 A. She smashed it against the cement, right there, in Mr.
3 Burgos' house.

4 Q. So this was on July the 6th; correct?

5 A. Yes.

6 Q. After July the 6th did you have any other communication or
7 did you have an occasion to speak with Madeline Semidey-
8 Morales?

9 A. She called me on the 7th, that is, the following day,
10 around 9:00 a.m.

11 Q. What did she say, if anything?

12 A. She asked what had been Edison's reaction.

13 Q. Now, did you have an occasion to see her, again, after
14 July 6?

15 A. I saw her on the 7th of July at 4:00 p.m..

16 Q. How was she dressed?

17 THE MAGISTRATE: Mr. Palomares, I'm not sure where
18 you are going in your line of questioning, but I'm wondering
19 how--

20 AFPD PALOMARES: Your Honor, there's an allegation
21 out there--

22 THE MAGISTRATE: Excuse me, sir. How is this
23 relevant to bail?

24 AFPD PALOMARES: It's relevant to the weight of the
25 evidence. The complaint in this action, of the Indictment in

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1 this action, under paragraph number nine--

2 THE MAGISTRATE: Uh-huh (positive response).

3 AFPD PALOMARES: --states that Mr. Burgos killed
4 Madeline Semidey-Morales.

5 THE MAGISTRATE: He's not being charged for that.

6 AFPD PALOMARES: But it's an overt act, it's an overt
7 act that is made and it goes to the weight of the evidence,
8 one of those G factors that I have to overcome the presumption
9 and we're here to propose, and submit to the Court that this
10 case is built on speculation and conjectures and this witness
11 proffers evidence, to this Court, that the allegations
12 contained in this complaint, or Indictment, may be predicated
13 on conjectures, suppositions and outright misinformation.

14 THE MAGISTRATE: As to the alleged killing or as to
15 the drug trafficking charge?

16 AFPD PALOMARES: As to the alleged -- I'm getting to
17 the drug trafficking subsequently, Your Honor.

18 THE MAGISTRATE: Okay.

19 AFPD PALOMARES: But, at least with respect to the
20 missing witness there is now evidence, to this Court, that
21 she, obviously, wasn't killed on July 4th and that she is alive
22 and kicking as to July the 9th or 7th.

23 (Whereupon, Direct Examination continues.)

24 BY AFPD PALOMARES:

25 Q. Now, during this process, sir, did any of the federal

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1 agents or state officers ever come to speak with you
2 regarding this matter?

3 A. No.

4 Q. Have you ever seen Edison Burgos traffic drugs, or take
5 drugs, in any manner whatsoever, sir?

6 A. No.

7 AFPD PALOMARES: Your witness.

8 CROSS-EXAMINATION

9 BY AUSA MOSLEY:

10 Q. You say that you -- I'm sorry, my name is Julie Mosley,
11 Mr. Santiago. I represent the Government, here.

12 You say that you work of Mr. Burgos-Monte, correct?

13 A. Yes.

14 Q. So your livelihood and your income, your welfare, in
15 fact, is relying on him?

16 A. Yes.

17 Q. So if his business doesn't keep operating then you're out
18 of a job?

19 A. No.

20 Q. Would you have the job that you have now?

21 A. If I don't have it with him, I'll have it at home doing
22 mechanic work.

23 Q. You said that you spoke with, and saw, Madeline Semidey-
24 Morales on July the 6th?

25 A. Yes.

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1 Q. Were you here, in the Island, over the new year?

2 A. Yes.

3 Q. Did you see in the papers and on the news all about how
4 Mr. Burgos-Montes was arrested for the murder of Madaline
5 Semidey-Morales?

6 A. Yes.

7 Q. And you rushed, right away, to tell federal authorities
8 that they were wrong, didn't you?

9 A. No.

10 Q. Did you call anybody to let them know that they had the
11 wrong man?

12 A. No, I did not.

13 Q. Now, seven months later, you're going to tell us that you
14 remember the exact date that you last saw Madeline
15 Morales?

16 AFPD PALOMARES: Your Honor, we object to the seven-
17 month issue because my sister counsel asked him about events
18 that happened now, over the recent new year's, six, seven days
19 ago, and now she's saying seven months later and I am
20 somewhat--

21 THE MAGISTRATE: She's referring to the date alleged
22 in the complaint when she was killed, which was in July.

23 AUSA MOSLEY: In July.

24 AFPD PALOMARES: Okay.

25 AUSA MOSLEY: And the dates that he reported

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1 himself.

2 AFPD PALOMARES: Okay.

3 (Whereupon, Cross-Examination continues.)

4 BY AUSA MOSLEY:

5 Q. Do you want me to repeat the question?

6 A. Yes.

7 Q. So, you're telling us, now, that seven months later,
8 after you say you last saw her you remember exactly the
9 dates and times that you saw Madeline?

10 A. Yes.

11 Q. Are you aware that her parents reported her missing on
12 July the 6th?

13 A. I didn't know that she was missing.

14 AUSA MOSLEY: Nothing further, Your Honor.

15 THE MAGISTRATE: Anything further, Mr. Palomares?

16 AFPD PALOMARES: Not from this witness, Your Honor.

17 Now, the Defense calls--

18 THE MAGISTRATE: Thank-you, you're excused.

19 (Whereupon, the witness leaves the stand.)

20 AFPD PALOMARES: -- Mayor Pedro Jaime Torres-Rivera.

21 (Whereupon, the witness is sent for.)

22 (Whereupon, the witness enters the courtroom.)

23 (Whereupon, the witness is placed under oath and, through an
24 official court interpreter, testifies as follows.)

25 DIRECT EXAMINATION

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UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

EDISON BURGOS MONTES,
Movant,

* Criminal Case No.
3:06-CR-09-CVR

VS.

* Civil Case No.

UNITED STATES OF AMERICA,
Respondent,

* _____

SWORN STATEMENT OF MARIO LOPEZ IN SUPPORT OF
EDISON BURGOS MONTES' MOTION UNDER 28 U.S.C. §2255

I, Mario Lopez declare under the penalty of perjury that the facts I state are true and of personal knowledge.

- 1.) I hereby state that in early January of 2006 I learned through the news of the arrest of Edison Burgos Montes.
- 2.) I had met Mr. Edison Burgos Montes in the year 1998 approximately, when I became interested in buying one of his businesses.
- 3.) I also hereby state that I met Madelyn Semidey Morales and I spent time with her on several occasions between the years 2004 and 2005.
- 4.) I hereby state that in the beginning of January of 2006, I learned from the news that Madelyne Semidey Morales had been missing since July 4, 2005.
- 5.) That when I learned about her disappearance, I thought of the last time I had seen her pass by the *25 de Julio* street in Yauco.
- 6.) Days later, I analyzed and realized that the date when I saw Madelyne pass by the *25 de Julio* street was several days after July 4, 2005.
- 7.) As Edison was charged and imprisoned, I decided to go to his father's house in the *Urb. Costa Sur*, in Yauco, Puerto Rico and make myself available to state what I knew in court.

I went to the house several times and there was nobody. In late January of 2006, on a weekday, in the afternoon hours, I found him home. I called him and he came out to the balcony. I identified myself and explained to him that I had seen Madelyne after the date of July 4, and that I was willing to state this in Court.

Edison's father told me that other people had also seen Madelyne after that date and that someone had already declared it in court; during the proceedings before the trial. He also said that Edison had asked his attorney for a speedy trial and that he would give this information to his son.

8.) Days later, a slim young woman with long black hair went to my workplace in the *25 de Julio* street. She identified herself as Sylvia Vannessa, told me that she had seen Edison in prison, as a close friend. That she was helping Edison with some arrangements and was talking to his attorney. She said that she knew that Edison's case was a fabrication because she was with Edison on the night of July 3 and July 4 of 2005. Sylvia also told me that she kept the Chrysler 300C on July 4 and that on July 5, she went to work in the Chrysler 300 C and spent many hours with Edison in the following days. Also, that she was Edison the night he was arrested in his home in the *Urb. Alturas del Cafetal*. I explained to the young woman with details that I had seen Madelyne after July 4, 2005, when she passed by the *25 de Julio* street and that I was willing to state this in court. She told me that Edison already knew that. The young lady asked me for the information to give it to the attorney. She then said goodbye and left.

9.) On October of 2009, I received a call from a person who identified himself as an investigator who worked for Edison's attorneys and defense. He asked me if I knew Mr. Edison Burgos. I said yes because I had bought from him a business called Diana's Gentlemen's Club in Yauco. He asked me if I knew Madelyne, I told him yes that I have talked to her on several occasions. He asked me if I had seen Madelyne after the date of July 4, 2005. I told him yes, that I had seen her pass by the *25 de Julio* street three or four days after July 4, 2005, at approximately between two or four in the afternoon. The investigator agreed to call me again to arrange for an interview in person but did not call me again and the interview never happened.

10.) I also remember that between January and February of 2005, I met Mr. Edison Burgos on the *25 de Julio* street in Yauco, in front of the office of Dr. Velazco. This happened before Madelyne went missing. At that moment I asked Edison about Madelyne. Edison told me that he loved Madelyne very much, but that Madelyne had gotten herself involved in illegal business commitments, with friends of hers, and that Madelyne was now pressuring and harassing him to talk to those people to help her solve her problem and that Madelyne on many occasions would become aggressive with him because he refused to help her; that he feared Madelyne would fabricate another Law 54 case against him as she had previously. When I asked him in what kind of businesses/commitments Madelyne had gotten into, Edison told me that he would later explain it to me in more detail because he had commitments at that time and was in a hurry. We said goodbye and he left.

11.) After the incident where I met Edison in front of Dr. Velazco, I saw Edison again on more than one occasion, but he was accompanied by Madelyne and he did not explain or touched on the subject of Madelyne, and I did not ask him either.

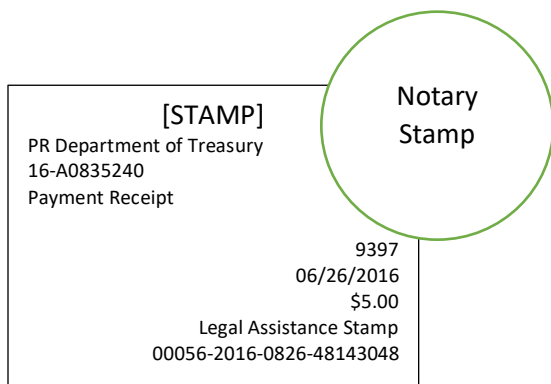
Pursuant to Title 28 U.S.C. §1746, I declare under the penalty of perjury that the foregoing is true and correct. Signed today, [illegible] of [illegible], 2016.

By: [illegible signature]
Mario Lopez

AFF. NUM. 33935:


Sworn and signed before me by MARIO LOPEZ, of legal age, married, businessman and resident of San German, PR, whom I attest to personally know in San German, PR, today, September 13, 2016.

[illegible signature]
PUBLIC NOTARY



Translator's Certificate

I hereby certify that the foregoing is a true and exact, to the best of my abilities,
translation of the Spanish original provided to me.


Ana Angelica López Hernández, Translator (Phase I FCICE)
Administrative Office of the U.S. Courts