

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

**JOSE PADILLA-GALARZA, a/k/a Joey**

**Petitioner**

**Vs.**

**UNITED STATES OF AMERICA**

**Respondent**

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

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## QUESTIONS PRESENTED

1. Whether the denial of a Certificate of Appealability (COA) by the First Circuit conflicts with Slack v. McDaniel, 529 U.S. 473 (2000), where petitioner made a substantial showing of constitutional violations involving ineffective assistance of appellate counsel, prosecutorial misconduct, and denial of an evidentiary hearing.
2. Whether appellate counsel's misstatement of material facts, failure to challenge government perjury and Brady violations, and omission of meritorious claims constitutes constitutionally ineffective assistance under Strickland v. Washington, 466 U.S. 668 (1984).
3. Whether the government's knowing use of false testimony and late disclosure of impeachment evidence violated Napue v. Illinois, 360 U.S. 264 (1959), and Brady v. Maryland, 373 U.S. 83 (1963), denying the petitioner a fair trial.
4. Whether the district court's failure to conduct an evidentiary hearing despite substantial factual disputes and documented inconsistencies in evidence handling contravenes Townsend v. Sain, 372 U.S. 293 (1963) and violates petitioner's due process rights.

**PARTIES TO THE PROCEEDING**

**Petitioner:** Jose Padilla-Galarza

**Respondent:** United States of America

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**PETITION FOR A WRIT OF CERTIORARI  
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**TO THE HONORABLE COURT:**

The Petitioner, **Jose Padilla Galarza**, represented by Court appointed counsel, respectfully prays and requests that a Writ of Certiorari issue to review the Judgment and Opinion of the United States Court of Appeals for the First Circuit entered against him in this case.

**OPINIONS BELOW**

The decision of the United States Court of Appeals for the First Circuit denying a Certificate of Appealability was issued on 10/15/2024. (App. 372). The decision is unpublished.

The District Court's denial of petitioner's § 2255 motion is unreported and appears at Docket 43 in Civil Case No. 19-1415 (DRD). (App. 358-370).

## **JURISDICTION**

The First Circuit denied rehearing *en banc* on 01/21/2025. (App. 414). This petition is timely under **Rule 13.1** of the Rules of the Supreme Court, which permits filing within 90 days of denial of rehearing. Jurisdiction is conferred under **28 U.S.C. § 1254(1)**.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

- 1- U.S. Const. amend. V (Due Process)
- 2- U.S. Const. amend. VI (Right to Counsel)
- 3- 28 U.S.C. § 2253(c) (Certificate of Appealability Standard)
- 4- 28 U.S.C. § 2255
- 5- Rules 35 and 40, Fed. R. App. P.

## **STATEMENT OF THE CASE**

### **A. Background and Conviction**

Petitioner **Jose Padilla-Galarza** was charged by federal indictment in the District of Puerto Rico with two offenses: (1) possession of ammunition by a prohibited person, in violation of **18 U.S.C. § 922(g)(1)**; and (2) possession of marijuana with intent to distribute, in violation of **21 U.S.C. §§ 841(a)(1) and 841(b)(1)(D)**. (App. 1-2). The charges stemmed from the execution of a search warrant at a residence previously owned by Petitioner's late father, which he had inherited.

The search occurred on **January 9, 2015**, and agents claimed to have discovered ammunition (App. 53-54,.114,.118,136), and two foil-wrapped packages of suspected marijuana concealed in a pair of pants hidden inside a closet. (App. 115, 113,.167-168). The residence was

described by agents as disorganized and filled with clutter (App. 124-125). There was only one bedroom, which appeared relatively orderly. (App. 124).

Petitioner was tried by jury in August 2015. **He represented himself pro se**, with stand-by counsel. The jury found him guilty on both counts. The District Court sentenced him to 46 months consecutively to unrelated federal convictions, Cr. 15-079<sup>1</sup> and Cr. 15-633<sup>2</sup>. (App. 77).

Petitioner appealed. On direct appeal, a new court appointed appellate counsel, Lenore Glaser, was selected. She filed a Brief. (App. 46-70). The First Circuit affirmed his conviction in U.S. v. Padilla-Galarza, 886 F.3d 1 (1st Cir. 2018- App. 88-105). The Court appointed counsel filed a rehearing petition (App. 82-87), which was denied. No petition for certiorari was filed.

### **B. Motion to Vacate Under 28 U.S.C. § 2255**

On April 30, 2019, Petitioner Jose Padilla-Galarza filed a timely motion to vacate, set aside, or correct his sentence pursuant to **28 U.S.C. § 2255**, asserting multiple constitutional violations arising from his criminal trial, appeal, and the conduct of government officials. The motion was filed in the United States District Court for the District of Puerto Rico and was supported by a detailed memorandum of law and exhibits, including evidence logs, transcripts, government discovery letters, and declarations under penalty of perjury. (App. 44-209).

Petitioner's motion was predicated on three interrelated constitutional grounds:

#### **1. Ineffective Assistance of Appellate Counsel in Violation of the Sixth Amendment**

The core of Petitioner's claim was that his Court appointed **appellate counsel** rendered constitutionally ineffective assistance under the standard set forth in Strickland v. Washington, 466 U.S. 668 (1984). Petitioner alleged that counsel's performance was deficient in multiple, material respects that prejudiced his appeal:

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<sup>1</sup> Said conviction is pending 2255 resolution.

<sup>2</sup> Presently on appeal before the First Circuit, No. 22-1950

- 1) **Misstatement of the record:** Counsel incorrectly represented to the First Circuit that the ammunition and marijuana were discovered in the same bedroom that Petitioner allegedly occupied, described as more organized. (App. 53-54, 68). This assertion was factually incorrect. The contraband and ammunition were recovered in other, separate rooms—referred to in trial evidence as “Room K”—which was disorganized, cluttered, lacked lighting or a bed (App. 323), and one bullet in Room M, on the floor of a safe that did not contain any real firearms and was totally disorganized. (App. 116-119). This error directly influenced the First Circuit’s affirmance of his conviction, which relied on this incorrect narrative to support constructive possession. (App. 94).
- 2) **Failure to raise trial court errors:** Counsel omitted meritorious arguments on appeal, including the trial Court’s refusal to grant Petitioner’s multiple, well-supported requests for a continuance (App.143-147, 152-158, 318-320, 340-342, 26-27, 393-402), despite the Government’s late disclosure of critical discovery and the lack of time to retain a defense expert to test the marijuana for its age and purity. (App. 324, 209, 319-320, 146-148, 377-379).
- 3) **Failure to raise Puerto Rico Law:** Counsel disregarded and failed to cite Puerto Rican firearms statutes that were in effect during Petitioner’s father’s lifetime, which permitted lawful possession of mixed-caliber ammunition. (App. 21-22, 25-26, 320-321) This legal context was critical to rebutting the Government’s argument that mismatched bullets implied Petitioner’s unlawful possession, rather than lawful inheritance.
- 4) **Failure to challenge the Government’s perjured testimony and Brady violations:** Appellate counsel did not address the fact that FBI Agent Michael Tews falsely testified

that he discovered the marijuana. (App. 167-171, 324-329, 378-385). In fact, the Government's own evidence logs and chain of custody documents—prepared by Tews—identified another agent, Hector Cintron Negron, as the person who located the marijuana, corroborated by Agent Jeremy Asencio as a witness. (App.169-173, 175).

Petitioner argued that these cumulative failures rendered appellate counsel's performance objectively unreasonable and undermined the reliability of the direct appeal, in violation of the Sixth Amendment. (App. 345-354, 382-386).

## **2. Government Misconduct and Due Process Violations Under the Fifth Amendment**

The § 2255 motion also alleged prosecutorial misconduct and violations of due process under Brady v. Maryland, 373 U.S. 83 (1963), Napue v. Illinois, 360 U.S. 264 (1959), and Mooney v. Holohan, 294 U.S. 103 (1935). Specifically, Petitioner asserted that:

- 1) The Government knowingly presented **false and misleading testimony** from FBI Agent Tews, who falsely claimed during trial that he personally discovered the marijuana hidden in a closet. However, the **evidence recovery logs and chain of custody documents** contradicted this claim and showed that Agent Hector Cintron Negron discovered the drugs, and that Tews did not participate in the seizure.
- 2) The **crime scene was altered**, as documented evidence (including photographs and logs) showed that certain items—such as Petitioner's identification cards and mail—were moved or staged in specific locations after the initial entry photographs had been taken, falsely linking him to rooms where contraband was found. (App. 329-334, 350-351, 399-402).
- 3) The **Government failed to timely disclose Brady material**, including impeachment evidence and hundreds of pages of discovery, until **six days before trial**, when Petitioner was held in administrative lockdown. This late disclosure included chain of custody

records and other key documents that would have supported a defense of third-party culpability or fabrication.

- 4) The **chain of custody records** were internally inconsistent, and the labeling of evidence showed items being added out of sequential order, particularly a single bullet allegedly found in a safe. Petitioner alleged that the bullet had been **relocated from one room to another** to bolster the Government's theory of possession.

The Government did not call Agents Cintron or Asencio—both of whom were identified as the true discoverers of the marijuana—as witnesses at trial, leaving Agent Tews's perjured testimony unchallenged. These facts, Petitioner argued, warranted relief under Napue and Brady, and demonstrated a systemic violation of his right to a fair trial.

### **3. Denial of a Fair Trial and Evidentiary Hearing**

Petitioner argued that the **trial Court's refusal to grant a continuance** in the face of critical late-disclosed evidence and his inability to secure a forensic expert to challenge the Government's drug valuation deprived him of a meaningful opportunity to defend himself. The Government's theory relied heavily on the testimony of a task force officer who opined, without laboratory verification, that the marijuana packages had a street value of \$9,000.00. Yet the actual **net weight and purity** of the substances were never measured, and **no expert testimony** was presented to substantiate the quality of the alleged marijuana.

Despite the clear need to resolve disputes of fact concerning **who discovered the evidence**, the **location of items**, and the **timing and sequence of their recovery**, the District Court denied **the § 2255 motion without an evidentiary hearing**. Petitioner filed a motion requesting such a hearing under **28 U.S.C. § 2255(b)** and Blackledge v. Allison, 431 U.S. 63 (1977), arguing that

the record did not conclusively refute his claims. The Court nonetheless ruled that no hearing was necessary, summarily rejecting the factual disputes as immaterial. (App. 354-356, 380, 386).

#### **4. District Court's Decision**

On **September 6, 2022**, the District Court issued an opinion and order **denying the § 2255 motion in its entirety**. The Court found that appellate counsel's performance, while imperfect, did not fall below constitutional standards. It declined to engage with the merits of the perjury or Brady claims, concluding they were procedurally defaulted, despite Petitioner's assertion that the material had been unavailable on direct appeal.

The Court also denied Petitioner's motion for an **evidentiary hearing**, erroneously concluding that the factual allegations were either conclusory or insufficiently material, despite the documentary support in the record. A **Certificate of Appealability was denied** in the same order.

#### **C. Request for Certificate of Appealability and First Circuit Proceedings**

Following the District Court's denial of the § 2255 motion on **September 6, 2022**, and its refusal to issue a Certificate of Appealability ("COA"), Petitioner filed a **timely notice of appeal** on **November 1, 2022**, as required by **28 U.S.C. § 2253** and **Federal Rule of Appellate Procedure 4(a)(1)(B)**.

Petitioner then filed a formal **motion for a Certificate of Appealability in the First Circuit Court of Appeals**. In that motion, he argued that the District Court's resolution of his constitutional claims was **debatable among jurists of reason**, and that the denial of an evidentiary hearing foreclosed development of a factual record critical to assessing his claims. He requested that a COA issue on three interrelated constitutional grounds:

1. **Ineffective assistance of appellate counsel** under Strickland v. Washington, 466 U.S. 668 (1984);
2. **Government misconduct**, including the knowing use of false testimony and untimely Brady disclosures;
3. **The District Court's refusal to conduct an evidentiary hearing** in light of material factual disputes.

Petitioner invoked the standard set forth in Slack v. McDaniel, 529 U.S. 473, 484 (2000), which holds that a COA must issue if reasonable jurists could debate whether the petition states a valid claim of the denial of a constitutional right. He also cited Miller-El v. Cockrell, 537 U.S. 322, 336–38 (2003), in support of his contention that the COA inquiry does not require a merits determination but rather a threshold showing that the constitutional claims deserve further review.

### **1. Grounds Raised in COA Motion**

Petitioner's COA motion reiterated the principal constitutional claims raised in the District Court:

- 1) That **appellate counsel materially misstated the trial record**, leading the First Circuit on direct appeal to rely on incorrect factual assertions regarding the location of key contraband. This misstatement was not challenged by the Government and was adopted by the panel in affirming his conviction. (App. 321-322, 94).
- 2) That **FBI Agent Michael Tews committed perjury**, by falsely testifying at trial that he discovered the marijuana hidden in a closet. Petitioner submitted authenticated evidence logs and chain of custody records, prepared by Tews himself, identifying a different agent—Hector Cintron Negron—as the one who discovered the contraband. The

Government did not correct the record and failed to call Cintron or the witnessing agent, Jeremy Asencio, at trial.

- 3) That the **Government disclosed over 700 pages of discovery**, including Brady and impeachment material, **only six days before trial**, when Petitioner had limited or no access to legal materials. Despite multiple pro se and standby counsel motions requesting a continuance to review this material and retain a chemist to challenge the drug evidence, the trial Court denied all such requests.
- 4) That the **District Court refused to hold an evidentiary hearing** to resolve multiple disputed issues of material fact, including perjury, fabricated evidence, and deficiencies in the Government's forensic case.

Petitioner argued that **each of these claims independently** satisfied the standard for issuing a COA and, taken cumulatively, revealed a trial and appellate process marred by constitutional error.

## **2. First Circuit Denial of Certificate of Appealability**

On 10/15/2024, the First Circuit **denied Petitioner's application for a Certificate of Appealability** in a brief, **summary order without opinion**. The Court did not acknowledge the constitutional magnitude of the issues raised, nor did it distinguish or respond to the cited authority from Slack and Miller-El. The COA was denied *in toto*, without oral argument or briefing on the merits. (App. 372-373).

## **3. Petition for Rehearing and Rehearing En Banc**

On **November 25, 2024**, Petitioner filed a timely and comprehensive **Petition for Panel Rehearing and Rehearing En Banc** under **Federal Rules of Appellate Procedure 35 and 40**.

In that petition, he challenged the First Circuit's failure to apply the correct legal standard governing COA issuance.

He argued that the panel improperly **adjudicated the merits of his claims at the COA stage**, contrary to the Supreme Court's clear instruction in Miller-El that a COA determination is a "**threshold inquiry**" that does not call for full merits review. Petitioner emphasized that his claims were not only debatable, but also involved **substantial constitutional issues of national importance**, including:

- 1) The integrity of appellate fact-finding based on a materially false record;
- 2) The systemic misuse of false testimony by law enforcement;
- 3) The erosion of procedural due process protections through the denial of evidentiary development;
- 4) The improper use of prosecutorial advantage via untimely discovery and Brady suppression.

The petition cited direct conflicts with Supreme Court precedent and identified questions of **exceptional importance** warranting *en banc* review. Petitioner also noted that the panel's silence on the misstatements in the appellate record—statements which the First Circuit had explicitly relied upon in affirming his conviction—constituted a **structural error in the appellate process**, raising grave concerns about fairness and due process. (App. 374-403).

Despite these arguments, the **First Circuit summarily denied the rehearing petition**, both panel and *en banc*, without comment. (App. 414).

#### **4. Exhaustion of Remedies and Current Posture**

With the denial of rehearing *en banc*, Petitioner exhausted his avenues for appellate relief in the First Circuit. The constitutional claims presented in his § 2255 motion—each supported by

documentary evidence and longstanding Supreme Court precedent—were denied without substantive review. The procedural bar was raised not through adjudication, but through refusal to grant a COA and refusal to recognize that the claims were, at minimum, “**debatable among jurists of reason.**”

This Petition now seeks review by this Court to resolve a clear misapplication of the COA standard under Slack, Miller-El, and Barefoot v. Estelle, 463 U.S. 880 (1983), and to remedy the systemic constitutional violations that remain unredressed due to procedural foreclosure.

## **ARGUMENT**

### **REASONS FOR GRANTING THE WRIT**

This case presents a compelling opportunity for the Court to reaffirm and clarify fundamental principles of appellate review, constitutional due process, and the integrity of criminal adjudication under the Antiterrorism and Effective Death Penalty Act (AEDPA). The questions raised implicate core constitutional protections that, if left unreviewed, risk systemic erosion of the rights guaranteed under the Fifth and Sixth Amendments.

The petition should be granted for the following reasons:

**I. The First Circuit’s Denial of a Certificate of Appealability Conflicts with Slack v. McDaniel and Miller-El v. Cockrell, and Raises an Issue of Exceptional National Importance**

The First Circuit’s summary denial of a Certificate of Appealability (“COA”) in this case is directly at odds with this Court’s decisions in Slack v. McDaniel, 529 U.S. 473 (2000), and Miller-El v. Cockrell, 537 U.S. 322 (2003). These precedents make clear that the threshold for issuing a COA is modest, requiring only a showing that a petitioner’s constitutional claims are “debatable among jurists of reason.” The decision below disregarded that standard, applying instead what amounted to a de facto merits adjudication without any explanation or engagement

with the claims presented. This deviation from established precedent not only harmed the Petitioner but also reflects a broader trend in the lower courts that threatens to gut the statutory purpose of **28 U.S.C. § 2253(c)** and deny federal habeas petitioners meaningful access to appellate review.

#### **A. The Governing Standard: Slack and Miller-El**

Under Slack v. McDaniel, a COA may issue only if the applicant makes “a substantial showing of the denial of a constitutional right.” 529 U.S. at 483 (citing 28 U.S.C. § 2253(c)(2)). When, as here, a District Court denies a habeas petition on the merits, a COA should issue if “reasonable jurists would find the District Court’s assessment of the constitutional claims debatable or wrong.” *Id.* at 484.

This threshold standard does not require that the petitioner demonstrate that his claims will succeed on appeal. Instead, the COA requirement was designed to “filter out the obviously unmeritorious appeals, but to allow the passage of those that present debatable questions.” *Id.* at 481 (internal quotations omitted).

Miller-El v. Cockrell further clarified that the COA determination “is not coextensive with a merits analysis” and that courts must not conflate the two. 537 U.S. at 336–37. In reversing the Fifth Circuit’s denial of COA, this Court admonished that “*a full consideration of the factual or legal bases adduced in support of the claims*” is **not required** at the COA stage. *Id.* at 336.

Instead, a habeas petitioner satisfies the COA standard by demonstrating “*something more than the absence of frivolity or the existence of mere good faith on his or her part.*” *Id.* at 338 (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)). In other words, where a petitioner presents constitutional claims supported by evidence and legal argument that would **warrant further review by fair-minded jurists**, the appellate court must allow the case to proceed.

## **B. The First Circuit Misapplied—or Ignored—This Standard**

In denying Petitioner’s motion for a COA, the First Circuit issued a **summary, unexplained order**, providing no engagement with the factual or legal grounds raised. The constitutional claims included ineffective assistance of appellate counsel, the Government’s knowing use of false testimony, and Brady violations—all supported by documentary exhibits, trial records, and legal analysis. These were not novel or undeveloped arguments; they were thoroughly briefed in the District Court and reasserted with supporting authority in the COA application.

Nonetheless, the First Circuit treated the COA request as if it required a showing of **likely success on the merits**, rather than **debatability among jurists of reason**. This silent merits adjudication—without acknowledging Slack or Miller-El—amounted to an improper gatekeeping function that effectively barred Petitioner from further appellate review based not on the appropriate threshold standard, but on an unspoken, higher merits threshold.

This approach was particularly inappropriate given the *prima facie* merit and debatable nature of Petitioner’s claims:

- 1) **Appellate counsel’s misstatement of the trial record—relied upon by the First Circuit on direct appeal**—raises a serious question of prejudice and attorney competence under Strickland.
- 2) **The use of perjured testimony by a government agent**, contradicted by chain-of-custody logs authored by the same agent, presents a clear Napue violation.
- 3) **The refusal to grant a continuance** in the face of late Brady disclosures deprived Petitioner of a fair opportunity to examine critical evidence and call an expert witness—an

issue this Court has found central to a fair trial in Ungar v. Sarafite, 376 U.S. 575 (1964), and Powell v. Alabama, 287 U.S. 45 (1932).

Each of these claims is not only **debatable among jurists of reason** but has been the subject of **reversal in similar factual circumstances**. The First Circuit's failure to recognize their legal weight renders its denial of COA both substantively flawed and procedurally unjust.

### **C. Lower Courts Are Inconsistently Applying the COA Standard**

The First Circuit's decision also contributes to an emerging split in the courts of appeals regarding the application of the COA threshold. While some circuits apply the standard faithfully—as a “gateway” test that merely requires debatable claims—others have improperly shifted toward **merits-based dismissals at the COA stage**, often without written explanation. This creates the risk that **access to appellate habeas review depends not on the merit of a claim, but on geography and judicial inclination.**

For example, the Ninth Circuit in Jennings v. Woodford, 290 F.3d 1006 (9th Cir. 2002), issued a COA in a case involving claims of ineffective assistance of counsel and trial error, despite the District Court's denial on the merits. The Court emphasized that “*the petitioner need not show that he will prevail*,” only that jurists of reason could disagree. *Id.* at 1010.

By contrast, as in the present case, other circuits—including the First—frequently issue one-line COA denials without any record-based analysis. This inconsistency defeats the uniform application of federal law and renders § 2253(c)'s protection arbitrary.

### **D. The Issue Is Recurring and Has Profound Implications for the Administration of Justice**

The standard for issuing a COA is foundational to the operation of federal habeas review. If appellate courts are permitted to **apply the wrong standard or deny COAs without explanation**, prisoners with **substantial constitutional claims may be permanently denied the**

**opportunity for appellate redress**—even when their convictions were tainted by demonstrable errors.

This Court has repeatedly recognized that habeas corpus plays a critical role in safeguarding constitutional rights and correcting fundamental miscarriages of justice. See Boumediene v. Bush, 553 U.S. 723, 779 (2008); Engle v. Isaac, 456 U.S. 107, 126 (1982). The erosion of the COA standard through inconsistent and unexplained denials poses a serious threat to that function.

Moreover, denial of a COA forecloses any opportunity to develop the legal or factual record further on appeal. This is especially troubling in cases such as this, where **documentary evidence directly contradicts the trial record**, and where the **Government's conduct raises serious concerns about truth, fairness, and due process**.

#### **E. This Case Presents a Clean Vehicle to Reaffirm the Proper Standard**

This case presents an ideal vehicle for resolving this recurring issue. The Petitioner's claims were clearly presented below. The district court ruled on the merits of all constitutional claims. The record includes all necessary factual and documentary support to demonstrate the **debatability of the constitutional issues raised**. The First Circuit failed to apply the correct standard, failed to address the substance of the claims, and failed to explain its reasoning.

Reversing the COA denial in this case would not only restore fairness to Petitioner's individual case but would also send a clear message to lower courts that **the COA standard remains an important safeguard—not a formality or procedural technicality to be casually ignored**.

The denial of a COA in this case was not merely erroneous; it was **structurally incompatible with this Court's habeas precedent**. Review is necessary to correct the error,

resolve inconsistencies in the application of § 2253(c), and protect the constitutional function of habeas corpus as a check on error, injustice, and governmental overreach.

## **II. Appellate Counsel’s Performance was Constitutionally Deficient and Prejudiced Petitioner’s Direct Appeal, Warranting Review Under Strickland v. Washington**

This case presents a stark example of **constitutionally ineffective assistance of appellate counsel** that not only prejudiced Petitioner’s direct appeal but also undermined the fundamental reliability of the adversarial process. The failure of counsel to competently review the trial record, to accurately present the facts on appeal, and to raise clearly meritorious claims constitutes a violation of the **Sixth Amendment**, as established in Strickland v. Washington, 466 U.S. 668 (1984), and its progeny.

### **A. Governing Legal Framework: *Strickland* and its Application to Appellate Advocacy**

Under Strickland, a claim of ineffective assistance of counsel requires a two-part showing:

1. **Deficient performance:** Counsel’s representation must fall “below an objective standard of reasonableness” under prevailing professional norms. Strickland, 466 U.S. at 688.
2. **Prejudice:** There must be a reasonable probability that, but for counsel’s unprofessional errors, the outcome would have been different. *Id.* at 694.

This Court has held that the right to effective assistance applies not only to trial counsel but also to **counsel on direct appeal**, where the quality of representation often determines whether meritorious constitutional claims are heard. Evitts v. Lucey, 469 U.S. 387, 396–97 (1985); Smith v. Robbins, 528 U.S. 259, 285 (2000).

Appellate counsel is not required to raise every non-frivolous issue, but must exercise professional judgment and present those claims that offer the best opportunity for relief. See Jones v. Barnes, 463 U.S. 745, 751–53 (1983). However, when counsel fails to raise **clearly meritorious**

issues, or **materially misstates the record**, such omissions can rise to the level of constitutional deficiency. See Mapes v. Coyle, 171 F.3d 408, 427–28 (6th Cir. 1999) (“[T]here can be no strategic reason for an appellate attorney to make a fundamental misrepresentation of the facts.”).

## **B. Counsel’s Misstatement of Material Trial Facts Prejudiced Petitioner’s Appeal**

In Petitioner’s direct appeal, appointed counsel misstated critical facts about the location of the contraband that formed the basis of the Government’s constructive possession theory. Specifically, appellate counsel wrote in her brief that **the marijuana and ammunition were found in the same bedroom that Petitioner occasionally used**, which was “organized and clean.” This was incorrect.

The actual record—including trial testimony and photographic evidence—shows that the marijuana and ammunition were recovered in **a different room**, identified as “Room K,” which was cluttered, windowless, unlit, and disorganized. This room lacked any evidence that Petitioner used or frequented it. In contrast, the room Petitioner occasionally used (“Room I”) contained no contraband whatsoever.

The misstatement was not trivial. The First Circuit **explicitly relied** on appellate counsel’s factual assertion in affirming the conviction, stating that:

*“The Government’s evidence sufficed to show that the bedroom in which the ammunition and marijuana were found was in a more organized and clean condition than the rest of the house, from which a jury could have reasonably inferred that Padilla slept in that bedroom when he stayed overnight...”* (United States v. Padilla-Galarza, 886 F.3d 1, 6 (1st Cir. 2018)).

This conclusion was not merely an inference; it was **factually incorrect**, and it tainted the First Circuit’s analysis of the sufficiency of the evidence. The reliance on a materially false factual representation prejudiced Petitioner’s appeal and directly affected the outcome. As the Court noted

in Strickland, “[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.”

466 U.S. at 691. Here, the **error did affect the judgment**.

Appellate Courts have long recognized that **constructive possession**—the sole theory upon which Petitioner was convicted—must be supported by more than proximity; it requires evidence of **knowledge, dominion, or control**. *See United States v. Perez*, 280 F.3d 318, 337 (3d Cir. 2002); *United States v. Jenkins*, 90 F.3d 814, 817 (3d Cir. 1996). The misrepresentation of where the evidence was found effectively bridged the gap in the government’s proof and allowed the appellate court to infer possession that otherwise could not be sustained.

### **C. Counsel Failed to Raise Meritorious Issues on Appeal, Reflecting a Dereliction of Duty**

In addition to affirmatively misrepresenting the record, appellate counsel **failed to raise or adequately develop multiple meritorious constitutional claims** that were preserved in the record and that reasonable counsel would have recognized as strong appellate issues. These include:

#### **1. Denial of a Continuance**

Appellate counsel failed to argue that the trial court **abused its discretion in denying multiple motions for continuance**, despite:

- 1) The **late disclosure of 749 pages of discovery**, including Brady and impeachment material, six days before trial;
- 2) Petitioner’s lack of access to legal materials due to a lockdown at MDC Guaynabo;
- 3) His expressed need to retain a **forensic expert** to rebut the Government’s assertions concerning the marijuana’s quality, weight, and street value.

Courts have consistently recognized that denying a continuance in the face of late discovery disclosures and preparation constraints can constitute a due process violation. See Ungar v. Sarafite, 376 U.S. 575, 589 (1964); United States v. Agosto-Vega, 617 F.3d 541 (1st Cir. 2010). The issue was preserved in the record, yet appellate counsel presented it without substance, omitting the factual basis that would have established prejudice.

## **2. Failure to Raise Brady and Napue Violations**

Appellate counsel also failed to raise the **Government's use of perjured testimony** by Agent Tews, who falsely testified that he discovered the marijuana, despite official documentation to the contrary. Counsel similarly failed to challenge the government's **untimely disclosure of Brady material**, which Petitioner could not meaningfully use due to the proximity of trial, MDC lockdown and lack of expert assistance.

These are not minor errors; they represent **violations of Petitioner's core Fifth Amendment rights**, and they go to the integrity of the trial itself. The Government's silence in the face of a known falsehood violates not only Napue but also this Court's repeated warnings that “[a] lie is a lie, no matter what its subject.” Napue, 360 U.S. at 269.

The failure to raise these issues reflects a breach of counsel's duty to “*frame the appeal to maximize the likelihood of success.*” See Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986).

## **D. Prejudice Is Manifest in the Appellate Court's Reliance on the Misstated Record and the Denial of Meaningful Review**

**The prejudice** from appellate counsel's deficient performance is not speculative—it is borne out by the appellate Court's own opinion. The Court's adoption of the erroneous factual premise regarding the location of the contraband was central to its affirmance. But for that misstatement, and but for counsel's omissions, a reasonable appellate court would have

granted the certificate of appealability and decided the case on its merits, which could have reversed the conviction or remanded for a new trial.

The Strickland prejudice standard is met where “*there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.*” 466 U.S. at 694. Here, that probability is not only reasonable; it is demonstrable.

This Court has found prejudice where counsel’s performance deprived the defendant of “*a complete review of his trial.*” Smith v. Robbins, 528 U.S. at 285. Petitioner was deprived of such a review.

#### **E. The Lower Courts’ Failure to Meaningfully Assess the Strickland Claim Reflects a Dangerous Trend of Summary Habeas Dismissals Without Record Development**

The District Court rejected the ineffective assistance claim **without an evidentiary hearing**, and the First Circuit declined to issue a COA without addressing the constitutional magnitude of counsel’s errors. This reflects an increasingly common—and constitutionally troubling—trend of **summary dismissal of colorable Sixth Amendment claims**.

As this Court stated in Kimmelman v. Morrison, 477 U.S. 365, 379 (1986), ineffective assistance claims “*implicate both the criminal trial and the appellate process,*” and courts must not treat them as formalities. **Where appellate counsel’s performance distorts the record and omits fundamental arguments, the resulting process is neither adversarial nor just.**

This case provides the Court with a necessary opportunity to reaffirm the minimum professional standards for appellate counsel under Strickland and to ensure that constitutional claims are not foreclosed by misrepresentations or omissions. In light of the First Circuit’s reliance on erroneous facts and the failure to address meritorious constitutional arguments, certiorari is warranted to correct a grave constitutional wrong and prevent recurrence in future cases.

### **III. The Government’s Use of Perjured Testimony and Late Brady Disclosures Violated Petitioner’s Fifth Amendment Right to Due Process—and the Court Should Establish a Uniform National Remedy for Napue Violations**

#### **A. Introduction: The Fifth Amendment Bars Convictions Based on False Testimony**

This Court has long held that a conviction obtained through the knowing use of false testimony violates the **Due Process Clause of the Fifth Amendment**. In Napue v. Illinois, 360 U.S. 264 (1959), the Court unequivocally stated:

“*A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows is false and to elicit the truth.*” *Id.* at 269–70.

This principle is not merely a judicial aspiration—it is a constitutional imperative. The Government’s knowing use of false testimony is “*inconsistent with the rudimentary demands of justice.*” Mooney v. Holohan, 294 U.S. 103, 112 (1935). A conviction secured under such circumstances cannot stand.

In this case, the Government violated this core tenet by allowing its lead agent, **FBI Special Agent Michael Tews**, to present **false, material testimony** concerning the most critical fact in the case: **who discovered the drugs that served as the foundation of the prosecution’s theory of constructive possession**. That testimony was directly contradicted by the Government’s own documentary evidence—prepared and signed by Tews—and was never corrected. This Napue violation, compounded by untimely Brady disclosures and the denial of continuances, requires **not only reversal** but also the announcement of a clear, **uniform national rule** mandating such a remedy when Napue violations are proven.

#### **B. Factual Development: Agent Tews’s False Testimony and Government Non-Correction**

At trial, Agent Tews unequivocally testified under oath that **he discovered the marijuana** in a bedroom closet, concealed within the leg of a pair of pants. His description was vivid, suggesting first-hand interaction with the evidence and affirmatively tying the seizure to his own investigative conduct. His testimony served two functions: (1) to provide a direct link between Petitioner and the contraband, and (2) to bolster the overall credibility of the Government's case.

But the **documentary evidence prepared by the Government itself**—including the **Evidence Recovery Log, Chain of Custody Form, and Evidence Tag Summary**—**contradicted Tews's testimony**. These records, signed by Agent Tews, clearly state that the marijuana was located by **Agent Hector Cintron Negron** and witnessed by **Agent Jeremy Asencio**. These agents were **never called to testify** at trial, and the contradiction was **never disclosed to the jury** or corrected by the prosecution.

Moreover, Tews gave **completely inconsistent testimony** in another case, United States v. Padilla-Galarza, Cr. No. 15-079 (DRD), where he described the execution of the same search warrant but **never claimed to have personally discovered any contraband**. Instead, he testified that the evidence response team conducted the search, while he merely conducted the walkthrough and review.

This contradiction is **material** under Napue, which requires no showing of bad faith, only that the Government **knowingly presented or failed to correct false testimony** on a material point. Giglio v. United States, 405 U.S. 150 (1972); United States v. Agurs, 427 U.S. 97 (1976).

### **C. Legal Standards: Napue, Materiality, and Prejudice**

Under Napue, a petitioner need not prove that the Government solicited the false testimony—only that it failed to correct it upon learning of its falsity. The standard of materiality

is lenient: reversal is required if “*there is any reasonable likelihood that the false testimony could have affected the judgment of the jury.*” Napue, 360 U.S. at 271 (emphasis added).

This Court reaffirmed the importance of this rule in Giglio, Agurs, and Banks v. Dretke, 540 U.S. 668 (2004), all of which stress that **the integrity of the trial process itself is compromised** when the Government allows the jury to be misled. There is no “harmless error” exception to Napue—once material falsehood is proven, reversal must follow.

In this case, Agent Tews’s false claim to have discovered the drugs formed the **evidentiary cornerstone** of the Government’s constructive possession theory. His testimony was unchallenged at trial because the prosecution failed to disclose documents contradicting him until six days before trial, and because Petitioner was denied a continuance to investigate the claim or retain experts.

The First Circuit never addressed this constitutional violation. The District Court dismissed it as procedurally defaulted. Neither court ever considered the impact of the Government’s failure to correct Tews’s perjury, or the fact that no rational juror could weigh the conflicting evidence without hearing from the actual agents involved. Under Napue, Giglio, and Mooney, this case demands not only relief but doctrinal clarity.

#### **D. The Brady Compounding Factor: Suppression of Impeachment Material**

The Government’s misconduct extended beyond the perjury itself. The defense did not receive the **chain of custody forms and evidence logs** until **August 19, 2015, just six days before trial**, despite having requested them far earlier. The late disclosure deprived Petitioner—who was in administrative lockdown—of the ability to cross-examine Agent Tews or to locate and call Agents Cintron and Asencio.

As this Court held in Brady, suppression of favorable material, whether **exculpatory or impeaching**, violates due process where the material is **reasonably probable** to affect the verdict.

The cumulative impact of the Napue violation and the Brady suppression renders the trial fundamentally unfair and prejudicial.

#### **E. National Importance: The Need for a Uniform Remedy When the Government Uses Perjured Testimony**

There is currently **no uniform national rule** requiring automatic reversal when a federal court finds that a criminal conviction was procured by **material perjured testimony knowingly used or left uncorrected by the Government**.

Instead, courts across the country apply Napue inconsistently:

- 1) Some circuits treat the violation as structural, requiring **automatic reversal** upon proof of material perjury.
- 2) Others apply **harmless error review** or weigh the impact on a case-by-case basis—despite Napue's plain language rejecting such an approach.
- 3) Some courts reject Napue claims **procedurally**—as occurred here—even where documentary proof of perjury is newly discovered.

This divergence has created **substantial uncertainty and inequity in federal habeas litigation**. The integrity of criminal verdicts depends on the fairness of the trial and the truthfulness of evidence presented to the jury. When the Government knowingly allows perjury to stand, the damage is not just to the defendant, but to **public confidence in the rule of law**.

#### **F. This Court Should Declare the National Rule: When Material Perjury by Government Witnesses is Proven, Reversal Must Be Mandatory as a Matter of Constitutional Law**

This Court should take the opportunity presented by this case to declare a clear **national remedy** for proven Napue violations:

*“When a criminal conviction is obtained through the knowing use of materially false testimony, or where the government fails to correct such testimony once it becomes known, the*

*conviction shall be deemed unconstitutional and must be vacated as a matter of due process. No showing of harmless error shall apply.”*

This rule would:

- 1) Restore uniformity to the application of *Napue*;
- 2) Respect the central role of **truth-seeking in adversarial adjudication**;
- 3) Eliminate procedural evasions that allow egregious constitutional violations to go unremedied;
- 4) Send a clear message to prosecutors, investigators, and courts that **truth in testimony is not negotiable**.

No constitutional right is more essential than the right to a fair trial. A system that tolerates perjury—particularly when advanced or endorsed by the Government—invites injustice, undermines legitimate prosecutions, and invites public distrust. A firm, national rule of **automatic vacatur** upon a proven Napue violation is the only adequate safeguard.

#### **G. This Case Presents an Ideal Vehicle for Announcement of Such a Rule**

The record in this case provides an ideal vehicle for this Court to articulate and enforce a national standard. Petitioner has presented:

- 1) **Uncontested documentary evidence** proving the perjury;
- 2) **Undisputed late Brady disclosures**;
- 3) A procedural record that excluded fact-finding and ignored constitutional claims;
- 4) A summary COA denial that foreclosed appellate review of foundational errors.

This is not a case about speculative claims or minor inconsistencies. It is a case about **proven perjury**, and about the Government’s failure to correct it—even when the record was in its own hands.

The Fifth Amendment demands more. This Court should say so.

#### **IV. The District Court’s Denial of an Evidentiary Hearing Conflicts with Townsend v. Sain and § 2255(b)**

The District Court’s decision to deny an evidentiary hearing, despite the existence of **multiple material factual disputes**, contravenes this Court’s holdings in Townsend v. Sain, 372 U.S. 293 (1963), and the plain text of **28 U.S.C. § 2255(b)**.

Petitioner presented detailed factual allegations—supported by documents, chain of custody logs, photographic exhibits, and sworn declarations—showing:

- 1) **Agent perjury regarding discovery of key evidence;**
- 2) **Fabrication or planting of evidence**, as evidenced by misnumbered and sequentially misplaced items;
- 3) **Improper forensic analysis**, based on drug quantity and purity never tested;
- 4) **Late Brady disclosures**, and their impact on the ability to investigate, challenge, or rebut the Government’s forensic and testimonial case.

Under Blackledge v. Allison, 431 U.S. 63 (1977), a district court may not summarily dismiss a habeas petition where the record does not conclusively show that the prisoner is entitled to no relief. Yet that is precisely what occurred here.

An evidentiary hearing is particularly vital where, as here, **credibility determinations are required**, and where the petitioner has made a “*colorable claim*” of constitutional error supported by documentation. See Machibroda v. United States, 368 U.S. 487, 494–95 (1962). The District Court’s refusal to conduct a hearing leaves unresolved questions that strike at the heart of the adversarial process and procedural fairness.

#### **V. This Case Presents Recurring and Systemic Issues in Habeas Practice That Warrant Clarification by This Court**

The issues presented in this case are not isolated or unique to Petitioner Jose Padilla-Galarza. Rather, they reflect **recurring and systemic problems in modern federal habeas corpus practice** under 28 U.S.C. § 2255 that have led to the **gradual erosion of constitutional oversight and federal review**. This case thus offers an ideal vehicle for the Court to **reassert the foundational principles of due process, fairness, and truth-seeking** in the post-conviction context, and to **clarify the threshold standards and procedural protections** applicable in federal collateral review proceedings.

#### **A. The Inconsistent and Restrictive Application of Slack and Miller-El by Lower Courts**

As this Court held in Slack v. McDaniel, 529 U.S. 473 (2000), and reaffirmed in Miller-El v. Cockrell, 537 U.S. 322 (2003), the standard for issuance of a Certificate of Appealability (COA) is not stringent. A COA must issue if “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” Slack, 529 U.S. at 484.

Miller-El emphasized that the COA inquiry is a “**threshold**” determination, not a merits decision, and must avoid resolving factual disputes or weighing the strength of claims:

“*We do not require petitioner to prove, before the issuance of a COA, that some jurists would grant the petition for habeas corpus.*” 537 U.S. at 338.

Yet many lower courts—such as the First Circuit in this case—have **conflated the COA standard with the underlying merits inquiry**, applying a de facto pre-merits adjudication test. This judicial drift effectively **raises the bar for habeas review**, contrary to congressional intent and this Court’s precedent.

This case exemplifies that problem. Petitioner supported his claims with authenticated evidence logs, trial transcripts, and legal authority, raising serious issues under Strickland, Brady,

and Napue. Rather than determine whether reasonable jurists could debate the resolution of those claims, the First Circuit denied a COA **without opinion**, shutting the door to appellate scrutiny. Such an approach undermines the function of the COA as a **gateway, not a gatekeeper**, and chills the full development of constitutional claims, even where the record raises substantial doubt about the reliability of the proceedings.

This Court's guidance is urgently needed to **reaffirm the proper COA standard**, resolve diverging interpretations across circuits, and prevent summary denials from foreclosing meaningful habeas review of colorable constitutional claims.

## **B. Summary Denials of Evidentiary Hearings Undermine § 2255(b) and Doctrinal Consistency**

Section 2255(b) mandates that a federal prisoner is entitled to an **evidentiary hearing** “[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief.” Similarly, in Townsend v. Sain, 372 U.S. 293 (1963), this Court held that **material factual disputes must be resolved through evidentiary development** and credibility determinations—especially when based on sworn statements, documentary exhibits, or inconsistencies in official records.

Nonetheless, **district courts routinely deny evidentiary hearings**, citing AEDPA's finality goals or elevating procedural efficiency above substantive justice. In this case, the District Court summarily denied a hearing even though Petitioner presented:

- 1) Documentary proof that Agent Tews falsely testified about discovering the marijuana;
- 2) Evidence logs showing evidence mislabeling, chronological discrepancies, and apparent staging;
- 3) Sworn declarations supporting claims of access denial and withheld discovery;
- 4) A clear record of late Brady disclosures made within six days of trial.

Rather than engage with these factual assertions, the district court dismissed them without discussion, leaving Petitioner unable to prove the truth of his claims. The refusal to hold a hearing not only contravenes § 2255(b) but also deprives defendants of due process where the trial record is incomplete or contested. This practice is especially troubling when **the evidence supporting the petition is not part of the direct appellate record**, as in Bracy v. Gramley, 520 U.S. 899 (1997), which held that habeas petitioners may rely on facts outside the trial record when alleging constitutional violations.

This Court's intervention is warranted to clarify that § 2255(b) is not discretionary and to reinforce the principle that **where constitutional rights are at stake, courts must err on the side of factual development rather than procedural dismissal.**

### **C. Procedural Default and Harmless Error Doctrines Are Increasingly Used to Avoid Adjudication of Meritorious Constitutional Claims**

Another systemic problem highlighted by this case is the **overuse and misapplication of procedural default and harmless error doctrines** to avoid reaching the merits of constitutional claims—even when those claims involve perjury, fabricated evidence, or ineffective assistance of counsel.

In this case, the District Court held that Petitioner's Napue and Brady claims were **procedurally defaulted** because they had not been raised on direct appeal. But this misapplies well-established exceptions to procedural default, including:

- 1) **Cause and prejudice**, where ineffective assistance of appellate counsel (as here) prevents timely assertion of the claim;
- 2) **Fundamental miscarriage of justice**, where the underlying error seriously affects the fairness or integrity of the trial process;

3) United States v. Frady, 456 U.S. 152, 167–68 (1982) and Murray v. Carrier, 477 U.S. 478, 488 (1986) permit habeas review where cause exists, and the petitioner was prejudiced by the error.

The District Court ignored these principles and declined to address whether appellate counsel’s deficiencies constituted cause. It also failed to assess the prejudicial impact of the errors, including the reliance on false testimony and late-disclosed discovery.

This type of **mechanistic application of procedural rules to avoid addressing serious constitutional errors** is becoming more common and undermines the remedial purpose of habeas corpus. As Justice Kennedy warned in Calderon v. Thompson, 523 U.S. 538 (1998), procedural bars must not be used to “*sanction a miscarriage of justice*” or to “thwart the truth-seeking function of the criminal trial.”

The Court should grant certiorari to clarify that where constitutional violations are plausible, documented, and substantial—as they are here—**they should not be barred from consideration on the basis of rigid procedural doctrines** that elevate form over substance.

#### **D. The Erosion of Habeas Corpus Undermines Public Confidence in the Rule of Law**

Beyond doctrinal inconsistencies, this case reflects a broader concern: the **gradual narrowing of federal habeas corpus as a vehicle for vindicating fundamental rights**. Over time, judicial decisions have erected procedural obstacles—such as strict COA standards, limited evidentiary hearings, and default rules—that insulate constitutional violations from review. The cumulative effect is a post-conviction system that values **finality over fairness**, and that permits serious governmental misconduct to go unremedied if the error cannot be precisely timed or formally preserved.

This trend contradicts the historic function of habeas corpus, which this Court has described as “*a bulwark against convictions that violate fundamental fairness.*” Engle v. Isaac, 456 U.S. 107, 126 (1982). The importance of preserving a meaningful collateral remedy is especially critical where, as here:

- 1) The record includes **documented material inconsistencies** between trial testimony and official law enforcement evidence logs;
- 2) **Impeachment and exculpatory evidence** was provided **only days before trial**, compromising defense preparation;
- 3) **Appellate counsel’s misstatements** altered the factual landscape of appellate review;
- 4) The district and appellate courts denied relief **without evidentiary development** or full legal analysis.

This Court’s review is necessary not merely to correct error in this case, but to **restore confidence that federal habeas corpus remains an accessible and reliable mechanism for ensuring constitutional accountability**. By granting certiorari, the Court can reaffirm that procedural shortcuts cannot override substantive rights, especially where liberty and truth are at stake.

#### **E. This Case Presents an Ideal Vehicle to Reaffirm Habeas Principles and Clarify Doctrinal Confusion**

The facts of this case are **cleanly presented**, the legal claims are **preserved and exhausted**, and the record is **documented with court filings, trial transcripts, discovery disclosures, and sworn exhibits**. There are no vehicle problems: the petitioner is in federal custody; the lower courts issued final rulings; and the claims were raised at every appropriate stage.

Moreover, this case presents **multiple constitutional questions—each independently or cumulatively certworthy**—that intersect with recurring issues in habeas law, including:

- 1) The proper application of the COA standard under Slack and Miller-El;
- 2) The due process implications of perjured testimony and fabricated evidence under Napue and Mooney;
- 3) The right to a fair opportunity to present a defense under Brady, Ake, and Ungar;
- 4) The requirements for evidentiary hearings under Townsend and § 2255(b);
- 5) The limits of procedural default doctrine in light of ineffective assistance claims.

This case therefore presents a **comprehensive and timely opportunity** for the Court to restore doctrinal clarity, ensure the proper functioning of § 2255, and reaffirm that **constitutional protections are not extinguished by habeas procedure**.

#### **CONCLUSION AND PRAYER FOR RELIEF**

This case presents a powerful demonstration of the risks posed when constitutional violations are left unaddressed due to procedural truncation of habeas review. Petitioner Jose Padilla-Galarza has raised substantial, well-supported claims that his Sixth and Fifth Amendment rights were violated through:

1. **Ineffective assistance of appellate counsel**, whose factual misstatements materially misled the First Circuit and undermined the sufficiency of evidence analysis;
2. **Prosecutorial misconduct**, including the Government's uncorrected use of **perjured testimony** and **late-disclosed Brady material**, which deprived Petitioner of a fair trial;
3. **The denial of a fair opportunity to present a defense**, when the trial court refused to grant a continuance, despite documented access restrictions and the Government's late disclosures;

4. **The refusal of the District Court to conduct an evidentiary hearing**, notwithstanding material factual disputes supported by evidence logs, trial inconsistencies, and sworn declarations;
5. And the **First Circuit's failure to apply the proper standard under Slack and Miller-El** in denying a Certificate of Appealability.

These are not abstract or technical violations. They go to the core of the criminal justice process: truth-seeking, fairness, and the legitimacy of verdicts. In refusing to issue a COA, the lower court **misapplied/ignored clearly established Supreme Court precedent**, insulating the underlying errors from appellate review and denying Petitioner a meaningful opportunity to be heard.

This Court's review is essential not only to correct the grave constitutional violations at issue, but also to restore clarity and consistency in the application of fundamental habeas doctrines. The Court should take this opportunity to reaffirm that **procedural finality must never override the imperative of substantive justice**, especially where the record raises credible allegations of Government misconduct, ineffective representation, and the denial of due process.

Accordingly, **Petitioner respectfully prays** that this Honorable Court:

1. **Grant the Petition for a Writ of Certiorari;**
2. **Reverse** the decision of the United States Court of Appeals for the First Circuit **denying a Certificate of Appealability;**
3. **Remand** for further proceedings, including the issuance of a COA and full appellate review of Petitioner's constitutional claims;
4. Or, in the alternative, **grant plenary review** and address the merits of the constitutional violations directly.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 10<sup>th</sup> day of April 2025.

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**CERTIFICATE OF SERVICE**

I, **Rafael F. Castro Lang**, Court appointed counsel for the petitioner **Jose Padilla-Galarza, a/k/a “Joey”**, hereby CERTIFY that I deposited copies of the foregoing Petition for a Writ of Certiorari, Motion for Leave to Proceed in Forma Pauperis, and the correspondent Appendix into the United States Mail, with the proper Priority Mail postage affixed, addressed to: Supreme Court of the United States, Clerk’s Office, 1 First Street, NE, Washington, DC 20543; and to the U.S. Solicitor General of the Justice Department in Washington D.C. to 950 Pennsylvania Avenue NW, Washington D.C. 20530, United States.

In San Juan, Puerto Rico, this 10<sup>th</sup> day of April 2025

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