

24-7054

No. _____

IN THE

SUPREMRE COURT OF THE UNITED STATES

OSCAR MARTINEZ-HERNANDEZ,

PETITIONER,

v.

UNITED STATES OF AMERICA,

RESPONDENT.

ORIGINAL

FILED

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SUPREME COURT, U.S.

ON PETITION FOR A WRIT OF CERTIORARI

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

OSCAR MARTINEZ-HERNANDEZ,
REG. NO. 09486-069
PROCEEDING PRO-SE
USP FLORENCE ADMAX
U.S. PENITENTIARY
PO BOX 8500
FLORENCE, CO 81226

DATED: April 11, 2025

QUESTION(S) PRESENTED

- I. WHETHER THE ADMISSION OF UNCORROBORATED HEARSAY UNDER FEDERAL RULE OF EVIDENCE 801(D)(2)(E), WITHOUT INDEPENDENT PROOF OF A CONSPIRACY OR EXTRINSIC CORROBORATION OF THE DECLARANT'S AND DEFENDANT'S PARTICIPATION, VIOLATED MARTINEZ-HERNANDEZ'S RIGHTS UNDER THE SIXTH AMENDMENT'S CONFRONTATION CLAUSE, AND WHETHER THE FIRST CIRCUIT'S DEPARTURE FROM OTHER CIRCUITS IN PERMITTING SUCH EVIDENCE DEEPENS AN EXISTING SPLIT WARRANTING THIS COURT'S REVIEW.
- II. WHETHER THE FIRST CIRCUIT'S FAILURE TO APPLY *NAPUE V. ILLINOIS* AND ITS USE OF HARMLESS ERROR REVIEW TO EXCUSE THE GOVERNMENT'S KNOWING USE OF FALSE TESTIMONY VIOLATED DUE PROCESS, CONFLICTED WITH DECISIONS OF THIS COURT, AND DEEPENED A CIRCUIT SPLIT WARRANTING SUPREME COURT INTERVENTION.
- III. WHETHER THE DISTRICT COURT'S ISSUANCE OF A FALSE SPOILATION INSTRUCTION REGARDING MATERIAL EXONERATORY EVIDENCE, COMBINED WITH ITS DECISION TO WITHHOLD THE EVIDENCE FROM THE JURY AND DEFER REVIEW TO POST-TRIAL RULE 33 PROCEEDINGS, VIOLATED MARTINEZ-HERNANDEZ'S SIXTH AMENDMENT RIGHT TO TRIAL BY JURY AND FIFTH AMENDMENT RIGHT TO DUE PROCESS, AND WHETHER THIS JUDICIAL PARTICIPATION IN *BRADY* AND *NAPUE* VIOLATIONS PRESENTS A RECURRING CONSTITUTIONAL QUESTION OF NATIONAL IMPORTANCE REQUIRING THIS COURT'S RESOLUTION.
- IV. WHETHER THE GOVERNMENT'S FAILURE TO PROVE THAT INTERSTATE COMMERCE WAS USED "IN FURTHERANCE" OF THE ALLEGED

MURDER-FOR-HIRE SCHEME UNDER 18 U.S.C. § 1958(A) RENDERS MARTINEZ-HERNANDEZ'S CONVICTION UNCONSTITUTIONAL, AND WHETHER THE FIRST CIRCUIT'S DECISION CONFLICTS WITH THIS COURT'S COMMERCE CLAUSE JURISPRUDENCE AND UNDERMINES THE JURISDICTIONAL SAFEGUARDS REQUIRED BY THE FIFTH AND SIXTH AMENDMENTS.

- V. WHETHER THE GOVERNMENT'S FAILURE TO PROSECUTE THE INDIVIDUAL IT IDENTIFIED AS THE PRIMARY ARCHITECT OF THE MURDER-FOR-HIRE SCHEME, WHILE TARGETING PETITIONER BASED ON UNCORROBORATED HEARSAY, AND AMIDST EVIDENCE OF PROSECUTORIAL CONFLICT OF INTEREST, CONSTITUTES A DUE PROCESS VIOLATION ROOTED IN ARBITRARY AND ABUSIVE CHARGING DISCRETION, WARRANTING THIS COURT'S REVIEW UNDER ITS GOVERNMENT MISCONDUCT PRECEDENTS.

LIST OF PARTIES

Oscar Martinez-Hernandez,
Reg. No. 09486-069
Proceeding Pro-Se
USP Florence ADMAX
U.S. Penitentiary
PO BOX 8500
Florence, CO 81226

Solicitor General
Counsel of Record
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution

Fifth Amendment

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Sixth Amendment

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

Federal Statutes

18 U.S.C. § 1958 – Use of Interstate Commerce Facilities in the Commission of Murder-for-Hire

"(a) Whoever travels in or causes another (including the intended victim) to travel in interstate or foreign commerce, or uses or causes another (including the intended victim) to use the mail or any facility of interstate or foreign commerce, with intent that a murder be committed in violation of the laws of any State or the United States as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value, or who conspires to do so, shall be fined under this title or imprisoned for not more than ten years, or both; and

if personal injury results, shall be imprisoned for not more than twenty years, or both; and if death results, shall be punished by death or life imprisonment, or shall be fined not more than \$250,000, or both."

Federal Rules of Criminal Procedure

Rule 5(f) – Reminder of Prosecutorial Obligation

"(1) In General. In all criminal proceedings, on the first scheduled court date when both prosecutor and defense counsel are present, the judge shall issue an oral and written order to prosecution and defense counsel that confirms the disclosure obligation of the prosecutor under *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny, and the possible consequences of violating such order under applicable law.

(2) Formation of Order. Each judicial council in which a district court is located shall promulgate a model order for the purpose of paragraph (1) that the court may use as it determines is appropriate."

Rule 16(c) – Continuing Duty to Disclose

"A party who discovers additional evidence or material before or during trial must promptly disclose its existence to the other party or the court if:

- (1) the evidence or material is subject to discovery or inspection under this rule; and
- (2) the other party previously requested, or the court ordered, its production."

Rule 29 – Motion for a Judgment of Acquittal

"(a) Before Submission to the Jury. After the government closes its evidence or after the close of all the evidence, the court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction. The court may on its own consider whether the evidence is insufficient to sustain a conviction. If the court denies a motion for a judgment of acquittal at the close of the

government's evidence, the defendant may offer evidence without having reserved the right to do so.

(b) Reserving Decision. The court may reserve decision on the motion, proceed with the trial (where the jury has been discharged without returning a verdict), and decide the motion either before or after the jury returns a verdict."

Rule 33 – New Trial

"(a) Defendant's Motion. Upon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires. If the case was tried without a jury, the court may take additional testimony and enter a new judgment.

(b) Newly Discovered Evidence. A motion for a new trial based on newly discovered evidence must be filed within 3 years after the verdict or finding of guilty. If an appeal is pending, the court may not grant a new trial until the appellate court remands the case."

Federal Rules of Evidence

Rule 801(d)(2)(E) – Statements That Are Not Hearsay

"A statement is not hearsay if:

(2) An Opposing Party's Statement. The statement is offered against an opposing party and:

(E) was made by the party's coconspirator during and in furtherance of the conspiracy."

This fully expanded section includes all constitutional provisions, statutes, and rules relevant to this case as written in their official form.

Here comes now, Petitioner **Oscar Martinez-Hernandez**, (hereinafter “Martinez-Hernandez” or “Petitioner”) Sui Juris in Propria Persona,¹ and on behalf of himself, very respectfully submits this request for petition of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 170-226) is a published available at United States v. Martínez-Hernández, 118 F.4th 72, 80 (1st Cir. 2024). The First Circuit's judgment was entered on 9/24/2024. (Pet. App. 227) The denial for Panel Rehearing and Rehearing en Banc was entered on 11/20/2024. (Pet. App. 228)

JURISDICTION

The First Circuit's judgment was entered on 9/24/2024. (Pet. App. 208) The denial for Panel Rehearing and Rehearing en Banc was entered on 11/20/2024. (Pet. App. 209) Under Rules 13.1, 13.3, and 30.1 of the Rules of this Court, the current deadline for the filing of a petition for a writ of certiorari was due **February 18, 2025**.² However, on **March 13, 2025**, the Office of the Clerk return the Petition back for correction to be filed within 60 days, thus, May 12, 2025. This Court will have jurisdiction over any timely filed petition pursuant to 28 U.S.C. § 1254(1) This petition is timely filed. See Rule 13. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

¹ Petitioner's Writ for Certiorari, like most prisoner complaints filed in this Court, was not prepared by counsel. It is settled law that the allegations of such a complaint, “however inartfully pleaded” are held “to less stringent standards than formal pleadings drafted by lawyers....” *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594, 595, 30 L.Ed.2d 652 (1972).

² This petition is being filed under the mailbox rule, as established in *Houston v. Lack*, 487 U.S. 266, 270-71, 108 S. Ct. 2379, 101 L. Ed. 2d 245 (1988).

STATEMENT OF THE CASE

This case arises from the conviction of Petitioner, Oscar J. Martinez-Hernandez, who was found guilty of multiple counts stemming from the February 26, 2013, murder of Lieutenant Osvaldo Albarati, a correctional officer employed at the Metropolitan Detention Center (MDC) in Guaynabo, Puerto Rico. Petitioner was charged in a multi-count federal indictment with conspiracy to commit murder of a federal officer (18 U.S.C. § 1117), murder-for-hire (18 U.S.C. § 1958), and related firearm offenses under 18 U.S.C. § 924. At trial, Petitioner was portrayed as a primary orchestrator of a retaliatory murder conspiracy allegedly triggered by a contraband shakedown in his cell. He was convicted following a jury trial and sentenced to life imprisonment. (Pet. App. 17-21)

A. The Government's Theory of the Case

The prosecution's central theory was that Petitioner, while incarcerated at MDC Guaynabo, collaborated with fellow inmate Ángel Ramos-Cruz ("Api") to plan the murder of Lieutenant Albarati in retaliation for persistent contraband searches. According to government witnesses—primarily cooperating inmates with substantial incentive agreements—Petitioner allegedly became enraged following a February 26, 2013, cell shakedown and agreed to fund the killing, coordinating with Ramos-Cruz, who then arranged the hit through outside associates. (Pet. App. 26-28)

To support this theory, the government presented no physical, forensic, electronic, or financial evidence tying Petitioner to any act of planning, communication, or payment. Instead, the government relied heavily on hearsay

testimony from incentivized inmate informants, whose credibility was never independently corroborated.

B. The Role of Jose “Cheo” Silva and the Government’s Charging Discretion

Multiple witnesses identified **Jose “Cheo” Silva**—a known gang leader with an established history of violent crimes—as the individual who planned, financed, and directed the murder. Witnesses testified that Silva recruited the shooters, secured the getaway vehicle, and guaranteed payment. Despite this, Silva was **never indicted or called as a witness**, and the government offered no explanation for its decision not to prosecute the person its own evidence showed to be the mastermind.

In contrast, Petitioner, who had no documented communication or association with Silva, was prosecuted and convicted based on generalized statements from inmate informants, none of whom produced corroborating evidence. (Pet. App. 151-207)

C. Suppression of the Shakedown Logbook and Presentation of False Testimony

A critical aspect of the government’s motive theory was the allegation that a shakedown of Petitioner’s cell on February 26, 2013, provided the impetus for the murder. However, Petitioner had requested access to the Unit 2-B Shakedown Logbook—a contemporaneous record of prison searches—years before trial. The government represented that the logbook was “missing.” Then, on the tenth day of trial, after the government had presented all its witnesses and just prior to closing arguments, the prosecution disclosed that the logbook had been “found.”

The logbook disproved the government's central claim: there was no cell shakedown on February 26, 2013 involving Petitioner. This document invalidated the testimony of multiple witnesses, including two correctional officers and several informants, who claimed a search occurred and that it triggered the murder plot.

D. Misleading Spoliation Instruction and Post-Trial Rule 33 Review

Rather than admit the exculpatory logbook into evidence, the trial court—without allowing Petitioner the opportunity to review or use the logbook—issued a **false spoliation instruction** suggesting the logbook was “missing” and possibly of limited significance. The court instructed the jury that the absence of the logbook could not be used to infer anything prejudicial to the government.

Following conviction, the court permitted defense counsel to review the logbook for the first time and then denied a Rule 33 motion for new trial, concluding that the logbook would not have changed the outcome. The First Circuit affirmed, applying **harmless error review**, and declined to address the *Napue v. Illinois* claim concerning the government's knowing use of false testimony.

E. Procedural History

- 1) Petitioner was indicted in January 2015 in the District of Puerto Rico. (Pet. App. 17-21)
- 2) He was tried alone in September 2018 and convicted on all counts.³ (Pet. App. 25)

³ Notably, the government never offered Petitioner a plea deal at any stage of the proceedings. However, after Petitioner proceeded to trial and the constitutional and evidentiary failures in the investigation began to surface—raising potential implications for the government's broader theory of prosecution—the government abruptly shifted strategy. It offered favorable plea agreements to the remaining co-defendants, including individuals awaiting trial for direct participation in the murder. Several of these individuals, including the admitted shooters of Lt. Albarati, received sentences ranging from 10 to 17 years' imprisonment, even without providing cooperation in the case. In contrast,

- 3) In 2019, he was sentenced to **life imprisonment**. (Pet. App. 25-26)
- 4) A timely appeal to the First Circuit followed, raising, *inter alia*, Brady, Napue, and evidentiary challenges. (Pet. App. 25-26, and Appellate Brief 1-148)
- 5) The First Circuit affirmed the conviction on September 24, 2024, finding no reversible error and dismissing the Brady violation as non-material. (Pet. App. Opinion 170-226, Judgment 227)
- 6) A petition for panel and en banc rehearing was denied on November 20, 2024. (Pet. App. Panel and Rehearing En Banc 149-169, Denial 228)
- 7) This petition follows.

REASONS FOR GRANTING THE PETITION

- I. **WHETHER THE ADMISSION OF UNCORROBORATED HEARSAY UNDER FEDERAL RULE OF EVIDENCE 801(D)(2)(E), WITHOUT INDEPENDENT PROOF OF A CONSPIRACY OR EXTRINSIC CORROBORATION OF THE DECLARANT'S AND DEFENDANT'S PARTICIPATION, VIOLATED MARTINEZ-HERNANDEZ'S RIGHTS UNDER THE SIXTH AMENDMENT'S CONFRONTATION CLAUSE, AND WHETHER THE FIRST CIRCUIT'S DEPARTURE FROM OTHER CIRCUITS IN PERMITTING SUCH EVIDENCE DEEPENS AN EXISTING SPLIT WARRANTING THIS COURT'S REVIEW.**
 - A. **This Case Presents a Constitutional Violation of the Confrontation Clause and Due Process**

Petitioner's conviction was fundamentally flawed due to the admission of multiple uncorroborated hearsay statements under Federal Rule of Evidence 801(d)(2)(E). (Pet. App. 34) These statements were introduced by the government

Petitioner—against whom the government produced no direct evidence—was sentenced to life imprisonment under profoundly flawed circumstances.

under the co-conspirator exception, but without meeting the foundational requirements established in *United States v. Petrozziello*, 548 F.2d 20 (1st Cir. 1977), and without providing any independent, non-hearsay evidence proving the existence of a conspiracy involving Petitioner. (Pet. App. 90-95)

Under Rule 801(d)(2)(E), for a co-conspirator's statement to be admissible, the government must demonstrate, by a preponderance of the evidence:

1. That a conspiracy existed at the time the statement was made;
2. That the declarant and the defendant were both members of the conspiracy; and
3. That the statement was made in furtherance of the conspiracy.

See also *Bourjaily v. United States*, 483 U.S. 171, 175 (1987) (confirming that trial courts must make factual determinations supporting each prong of this test). Critically, *Bourjaily* emphasized that while hearsay can be considered in this determination, "*there must be some independent evidence to support the existence of the conspiracy.*"

Here, the government failed to satisfy any of these requirements:

- 1) It offered **no independent, extrinsic evidence** that Petitioner was involved in a conspiracy; (Pet. App. 89-95)
- 2) The alleged declarants—jailhouse informants and co-defendants—offered **unreliable, uncorroborated statements**;
- 3) And these statements were **not made in furtherance of a conspiracy**, but rather as post-hoc narrative accounts or speculative conversations.

B. The Testimony of Government Witnesses Was Inherently Unreliable and Motivated by Self-Interest

The government's case relied heavily on testimony from inmate informants, including **Christopher Rodriguez, Luis Rosario-Santiago, and Jorge Asencio-Viera**, all of whom testified to overhearing statements allegedly made by **Ángel "Api" Ramos-Cruz** about Petitioner's supposed role in the conspiracy to murder Lt. Osvaldo Albarati.

However, the factual record shows:

- 1) These informants were themselves **facing criminal charges or had been convicted**, and had **clear incentives** to provide testimony favorable to the government in exchange for leniency.
- 2) Their accounts **differed materially in content and timing**.
- 3) Their statements were **not contemporaneous with the alleged conspiracy**, nor made to advance its objectives.

For example, **Rodriguez** testified about private conversations between **Ramos-Cruz** and **Martinez-Hernandez** in prison, but offered no documentary support, and his testimony was inconsistent with other witnesses. **Rosario** claimed to have overheard statements implicating Petitioner but admitted that these were **not direct communications** involving Petitioner. These statements were classic hearsay-within-hearsay and had no physical, electronic, or financial corroboration. (Pet. App. 94-95)

As this Court warned in *Lilly v. Virginia*, 527 U.S. 116, 131 (1999), such statements from accomplices implicating defendants are inherently unreliable and "presumptively suspect." The Sixth Amendment's Confrontation Clause prohibits the

use of these testimonial hearsay statements *unless the defendant has had an opportunity to cross-examine the declarant, which did not occur in this case.*

C. The First Circuit’s Decision Deepens a Circuit Split Over the Admissibility of Co-Conspirator Statements

There is a clear and entrenched **circuit split** on how Rule 801(d)(2)(E) should be applied:

The **Second Circuit** in *United States v. Gigante*, 166 F.3d 75 (2d Cir. 1999) and the **Ninth Circuit** in *United States v. Perez*, 989 F.2d 1574 (9th Cir. 1993) require *independent, non-hearsay evidence* of the conspiracy and the defendant's involvement before co-conspirator statements may be admitted. The **Fifth Circuit**, in *United States v. Gonzalez*, 700 F.3d 901 (5th Cir. 2012), similarly held that hearsay evidence alone is insufficient to establish a conspiracy under Rule 801(d)(2)(E).

In contrast, the **First Circuit** has permitted the use of co-conspirator statements with far less scrutiny, often relying on the same hearsay to bootstrap itself into admissibility—precisely what occurred here. This conflict in authority undermines uniform application of evidentiary safeguards in federal criminal trials. The Supreme Court should grant certiorari to ensure that admission of co-conspirator statements is subject to consistent and constitutionally sound limitations across circuits.

D. Admission of the Statements Also Violated Petitioner’s Rights Under the Confrontation Clause

Beyond Rule 801 violations, the admission of these statements violated Petitioner’s Sixth Amendment right to confront witnesses against him. These

statements were plainly **testimonial**, and none of the declarants (Ramos-Cruz in particular) testified at trial or were subject to cross-examination.

Under *Crawford v. Washington*, 541 U.S. 36 (2004), and *Davis v. Washington*, 547 U.S. 813 (2006), such statements are inadmissible unless:

- 1) the declarant is unavailable; and
- 2) the defendant had a prior opportunity to cross-examine the witness.

Here, neither condition was met. The government's reliance on these testimonial hearsay statements without giving Petitioner the opportunity to challenge them before the jury is a *structural constitutional violation* that demands reversal.

E. The Government Failed to Meet Its Burden Under *Jackson v. Virginia*

The only evidence linking Petitioner to the conspiracy was uncorroborated hearsay. As such, there was *no rational basis* upon which the jury could find guilt beyond a reasonable doubt. In *Jackson v. Virginia*, 443 U.S. 307 (1979), this Court held that "a conviction cannot stand unless a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Without admissible, credible evidence, the jury's verdict cannot stand. (Pet. App. 38-89)

The government failed to present:

- 1) Any **recorded conversations**,
- 2) Any **written communications**,
- 3) Any **financial records**,
- 4) Or any **direct or circumstantial evidence** showing that Petitioner was a knowing participant in the conspiracy.

All that remains is **speculative hearsay** from incentivized informants.

F. Certiorari is Warranted to Prevent a Dangerous Precedent

The First Circuit's ruling *opens the door to convictions based on inherently unreliable and untested hearsay*, particularly from informants with every incentive to fabricate or embellish.

This invites future constitutional violations and undermines the integrity of criminal proceedings. If left uncorrected, it establishes precedent that:

- 1) A co-conspirator's out-of-court statement may be admitted without proof of an actual conspiracy;
- 2) Courts may admit testimonial hearsay without cross-examination;
- 3) And convictions may stand on the bare word of self-interested inmates.

II. WHETHER THE FIRST CIRCUIT'S FAILURE TO APPLY NAPUE V. ILLINOIS AND ITS USE OF HARMLESS ERROR REVIEW TO EXCUSE THE GOVERNMENT'S KNOWING USE OF FALSE TESTIMONY VIOLATED DUE PROCESS, CONFLICTED WITH DECISIONS OF THIS COURT, AND DEEPENED A CIRCUIT SPLIT WARRANTING SUPREME COURT INTERVENTION.

A. The First Circuit Ignored *Napue* and Applied the Wrong Legal Standard, Creating a Circuit Conflict Warranting Supreme Court Review

Despite a record demonstrating the government's knowing use of materially false testimony—central to its motive theory—the First Circuit completely failed to address the Petitioner's claim under *Napue v. Illinois*, 360 U.S. 264 (1959). (Pet. App. 164). Instead, the court erroneously confined its analysis to a harmless error framework derived from *Brady v. Maryland*, 373 U.S. 83 (1963), and concluded that

no relief was warranted because “the logbook’s content did not undermine the overwhelming evidence of guilt”. This misapplication of the law represents a critical constitutional error. The *Napue* line of cases establishes a distinct standard from *Brady*. Under *Napue*, when the prosecution knowingly uses or fails to correct false testimony on a material issue, *reversal is required if there is “any reasonable likelihood” the falsehood could have affected the judgment of the jury*. See *Napue*, 360 U.S. at 271; *United States v. Agurs*, 427 U.S. 97, 103–104 (1976).

The First Circuit, however:

- 1) *Never cited Napue or Giglio in its analysis* of the post-trial motion;
- 2) *Applied the wrong standard of review*, focusing solely on whether the suppressed logbook was material under *Brady*, not whether the knowingly false testimony was *reasonably likely to have affected the verdict*, as *Napue* requires;
- 3) *Assessed the suppression in isolation*, instead of conducting the *cumulative effect* review mandated by *Kyles v. Whitley*, 514 U.S. 419 (1995).

This oversight warrants certiorari under Supreme Court Rule 10(c), as the First Circuit’s decision conflicts with controlling decisions of this Court and with decisions of other United States courts of appeals on the same important federal question.

1. The First Circuit’s Opinion Overlooked Napue and Misapplied Harmless Error Review

The record shows that multiple prosecution witnesses testified that a shakedown of Petitioner’s cell occurred on February 26, 2013—the day of the murder—and that the incident triggered Petitioner’s alleged retaliatory motive.

These witnesses included:

- 1) Lt. José Rosa and Lt. José Rodríguez (BOP officials);
- 2) Inmates Christopher Rodriguez and Luis Rosario-Santiago.

Their testimony was *explicit, material, and false*. The *Unit 2-B Shakedown Logbook*, finally disclosed after the close of evidence, *proved no such search occurred on that day*. Despite this, the prosecution failed to correct the record and instead amplified the falsehood during closing arguments. (Pet. App. 104-107)

In denying Petitioner's Rule 33 motion for new trial, the First Circuit dismissed the significance of this false testimony, stating that the logbook would not have changed the outcome due to the "overwhelming evidence of guilt". This is the hallmark of harmless error review, which is inappropriate under *Napue*.

As this Court stated in *Giglio v. United States*, 405 U.S. 150, 154 (1972):

"When the 'reliability of a given witness may well be determinative of guilt or innocence,' nondisclosure of evidence affecting credibility falls within [Napue's] general rule."

Here, the government's entire motive theory hinged on the credibility of the witnesses who falsely claimed a retaliatory shakedown. The First Circuit's refusal to acknowledge this issue—and its failure to apply *Napue's* standard—deprived Petitioner of a fair post-conviction review.

B. Circuit Courts Are Deeply Divided on the Remedy for *Napue* Violations, Requiring This Court's Intervention

While this Court has clearly established in *Napue v. Illinois*, 360 U.S. 264 (1959), and its progeny that a conviction must be set aside where there is "any reasonable likelihood" that false testimony could have affected the verdict, federal

courts of appeals are now **deeply divided on what standard applies when such violations occur**, particularly when government misconduct is clear and the false testimony is material.

This conflict in authority is ripe for resolution under Supreme Court Rule 10(c), which provides that certiorari is warranted where a United States court of appeals “has decided an important federal question in a way that conflicts with relevant decisions of this Court or of another United States court of appeals.”

1. The First and Fifth Circuits Subordinate *Napue* to Harmless Error Review

a. The First Circuit Misapplied the Law and Ignored *Napue* Entirely

In the present case, the First Circuit *did not cite Napue at all*, even though the factual record clearly demonstrated that *multiple government witnesses gave false testimony*—testimony the government never corrected and instead reinforced during closing arguments. (Pet. App. 222-225)

Instead of applying *Napue's* reasonable likelihood standard, the court analyzed the late-disclosed Unit 2-B Shakedown Logbook exclusively under *Brady v. Maryland*, 373 U.S. 83 (1963), holding that any violation was harmless because of “overwhelming evidence of guilt”. (Pet. App. 205-219) That approach is contrary to *Napue*, which explicitly forbids reliance on harmless error where false testimony is knowingly used.

This is not an isolated incident in the First Circuit. In other cases such as *United States v. Casas*, 425 F.3d 23 (1st Cir. 2005), and *United States v. Luciano-Mosquera*, 63 F. App'x 1 (1st Cir. 2003), the court has similarly applied harmless error analysis

even when false testimony was plausibly material. Thus, the First Circuit treats Napue violations as functionally equivalent to Brady claims—a practice this Court has never endorsed.

b. The Fifth Circuit Applies a Similar Harmless Error Framework

In United States v. Haese, 162 F.3d 359, 365 (5th Cir. 1998), the court acknowledged Napue, but still concluded that false testimony regarding a witness's credibility did not merit reversal because “the totality of the evidence” supported conviction. Relying in United States v. Bagley, 473 U.S. 667 (1985)(Evidence is material under Brady if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Applying the Bagley-style Brady standard to Napue claims, thus blurring the distinct due process concerns addressed by Napue.

2. The Second, Seventh, and Ninth Circuits Require Reversal When Material False Testimony Is Shown

In contrast, the **Second, Seventh, and Ninth Circuits** faithfully apply Napue's mandate that any reasonable likelihood of impact on the verdict requires reversal—and treat such violations as structural or near-structural errors.

a. Second Circuit: False Testimony by Key Witnesses Requires a New Trial

In United States v. Wallach, 935 F.2d 445 (2d Cir. 1991), the Second Circuit reversed a conviction where a government witness's credibility was undermined by his false testimony—despite strong circumstantial evidence of guilt. The court held:

“The government’s failure to correct false testimony, even where not solicited, mandates reversal if there is any reasonable

likelihood that the testimony affected the judgment of the jury.” *Wallach*, 935 F.2d at 456.

b. Seventh Circuit: Napue Violations Mandate Reversal Without Harmless Error Analysis

In *United States v. Freeman*, 650 F.3d 673 (7th Cir. 2011), the court emphasized:

“A conviction obtained by the knowing use of false evidence must be set aside if there is any reasonable likelihood that the falsehood affected the verdict.” *Id.* at 678.

The court explicitly rejected harmless error analysis and focused on the *potential* effect of the falsehood on the jury—not whether the government’s remaining case was strong.

c. Ninth Circuit: Napue Violations Are Presumptively Prejudicial

In *United States v. LaPage*, 231 F.3d 488 (9th Cir. 2000) (en banc), the Ninth Circuit reversed a conviction where the government failed to correct false testimony about a witness’s prior fraudulent conduct. The court held:

“Reversal is virtually automatic once it is established that the government knowingly permitted the introduction of false testimony.” *Id.* at 492.

The Ninth Circuit treats such violations as fundamentally compromising the fairness of the trial—whether or not the false testimony was the sole evidence of guilt.

3. This Conflict Creates Constitutional Inequality and Demands Resolution

A criminal defendant’s constitutional rights should not depend on the geographic happenstance of where they are prosecuted. Yet today, in the Fifth and First Circuits, a federal conviction may stand even where the prosecution knowingly relied on false testimony, so long as the court subjectively finds the remaining

evidence “overwhelming.” Meanwhile, in the Second, Seventh, and Ninth Circuits, any reasonable likelihood that the falsehood affected the verdict requires reversal—preserving the principle that truth and fairness are non-negotiable in a criminal trial.

This doctrinal disarray undermines nationwide uniformity in constitutional criminal procedure and calls for this Court to reaffirm that:

- 1) Napue is not subject to harmless error analysis;
- 2) The correct standard is “any reasonable likelihood” that the falsehood could have influenced the jury;
- 3) When the government knowingly uses or permits false testimony to stand, the conviction must be set aside.

The current circuit conflict over Napue undermines the most fundamental tenet of due process: that criminal convictions may not be obtained through deliberate or uncorrected falsehoods. The First Circuit’s complete disregard for Napue and its reliance on harmless error review contradicts both this Court’s precedent and the approach of multiple sister circuits.

This Court must grant certiorari to resolve this division, affirm that Napue violations are not subject to harmless error, and establish a uniform national standard ensuring that truth, not expedience, controls the outcome of a criminal trial.

III. WHETHER THE DISTRICT COURT’S ISSUANCE OF A FALSE SPOILATION INSTRUCTION REGARDING MATERIAL EXONERATORY EVIDENCE, COMBINED WITH ITS DECISION TO WITHHOLD THE EVIDENCE FROM THE JURY AND DEFER REVIEW TO POST-TRIAL RULE 33 PROCEEDINGS, VIOLATED MARTINEZ-HERNANDEZ’S SIXTH AMENDMENT RIGHT TO TRIAL BY JURY AND FIFTH AMENDMENT RIGHT TO DUE PROCESS, AND WHETHER THIS JUDICIAL PARTICIPATION IN BRADY AND NAPUE VIOLATIONS PRESENTS A RECURRING CONSTITUTIONAL QUESTION OF NATIONAL

**IMPORTANCE REQUIRING THIS COURT'S
INTERVENTION AND RESOLUTION.**

A. The Trial Court's False Spoliation Instruction and Post-Trial Review Violated the Right to a Jury Trial and Raises an Issue of National Constitutional Importance

This case presents a rare and urgent issue of constitutional magnitude: a federal trial court knowingly issued a false instruction to the jury, mischaracterizing critical exculpatory evidence as "missing," and withheld that evidence—the Unit 2-B Shakedown Logbook—until after a guilty verdict was rendered. The court then directed defense counsel to seek post-verdict relief under Rule 33, effectively shifting the constitutional burden of proof to the defendant and circumventing the jury's exclusive role as the finder of fact. (Pet. App. 121)

This conduct implicates not only the right to a fair trial under the Fifth and Sixth Amendments, but also a broader threat to the structural integrity of the American judicial system. When courts, not just prosecutors, become active participants in Brady and Napue violations, the legitimacy of the judiciary itself is compromised. This issue demands the attention of this Court, not merely to resolve a disputed conviction, but to reaffirm the foundational principle that judges must safeguard, not erode, constitutional protections in criminal trials.

B. The District Court Misled the Jury by Issuing a False Spoliation Instruction Regarding Material Exculpatory Evidence

At trial, the prosecution falsely claimed that the Unit 2-B Shakedown Logbook—a key contemporaneous record disproving the government's sole theory of motive—was missing. For three years, the defense requested the logbook, and for three years, the government denied its existence. It was finally "discovered" in a Bureau of Prisons

office during trial, on the tenth day, after closing arguments had commenced. (Pet. App. 125-128)

Instead of disclosing the document to the defense or jury, the trial judge:

- 1) Conducted an ex parte review of the logbook; (Pet. App. 126)
- 2) Refused to reopen the evidentiary record; (Pet. App. 126-127)
- 3) Issued a false spoliation instruction, telling the jury the logbook could not be located; (Pet. App. 125)
- 4) Suggested that the jury could infer its content, but implied that it had no probative value; (Pet. App. 126-127)
- 5) Instructed the defense to pursue the matter in a post-trial Rule 33 motion. (Pet. App. 127-128)

This was not a routine evidentiary error—it was an intentional misrepresentation of material facts to the jury. At the time the instruction was given, the court had the logbook in its possession. It chose to mislead the jury by declaring it “missing.” That instruction allowed the government’s false narrative of motive to stand uncorrected, shielding perjured testimony and suppressing the truth.

C. This Conduct Violated the Jury Trial Right Under the Sixth Amendment and Due Process Under the Fifth Amendment

The Sixth Amendment guarantees that “in all criminal prosecutions, the accused shall enjoy the right to a... trial by an impartial jury.” This guarantee includes the right of the jury to evaluate all material evidence bearing on guilt or innocence. In *In re Winship*, 397 U.S. 358 (1970), this Court held that every element of a criminal offense must be proved beyond a reasonable doubt to the jury—not to a

judge in post-verdict proceedings. In *Sullivan v. Louisiana*, 508 U.S. 275, 277 (1993), the Court further stated:

"A jury verdict of guilty beyond a reasonable doubt is constitutionally required. There is no verdict when that right has been denied."

By withholding the logbook from the jury and misleading them as to its status and significance, the trial court violated these principles. The court interfered with the jury's core function by denying it access to material evidence that went directly to the credibility of government witnesses and the plausibility of the prosecution's entire case theory.

The court's instruction constituted a constructive denial of the jury trial right, warranting automatic reversal, not harmless error review. See *Sullivan*, 508 U.S. at 281.

D. The Suppression of the Logbook Violated *Brady*, While the False Instruction Violated *Napue*

Under *Brady v. Maryland*, 373 U.S. 83 (1963), the prosecution has an affirmative obligation to disclose material exculpatory or impeachment evidence in its possession. See Federal Rule of Criminal Procedure 16(c) imposes a continuing duty on the prosecution to disclose newly discovered exculpatory evidence. See also Rule 5(f) of the Fed.R.Crim.P (Requires judges to remind prosecutors of their Brady obligations at a defendant's initial appearance)

The Unit 2-B Logbook satisfied both categories:

- 1) It directly contradicted four government witnesses' claim that a retaliatory shakedown occurred on February 26, 2013;

- 2) It impeached the core motive theory of the government;
- 3) It exonerated the petitioner by removing the only alleged link between him and the murder.

Under *Napue v. Illinois*, 360 U.S. 264 (1959), the government is forbidden from knowingly allowing false testimony to stand uncorrected. The prosecution allowed government officers and inmate informants to testify to an event—an alleged shakedown—that never occurred. The government knew this was false once the logbook surfaced but did not correct the record.

Instead, the trial court joined in concealing the truth, issuing a false instruction and refusing to admit the document into evidence.

This compounded *Brady* and *Napue* violations, made worse by the court's active participation. This distinguishes this case from other prosecutorial misconduct cases and elevates it to a structural constitutional crisis.

E. Rule 33 Post-Trial Review Cannot Cure a Pre-Verdict Constitutional Violation

The trial court's deferral of the review and admission of critical exculpatory evidence—the Unit 2-B Shakedown Logbook—to a Rule 33 post-trial motion constituted a serious violation of constitutional trial guarantees that cannot be cured through post-verdict judicial discretion.

The Constitution guarantees that a criminal trial be fundamentally fair, and that a jury—not a judge—decide guilt based on the entire body of admissible evidence, including material favorable to the accused. Once the verdict is rendered without the jury having access to critical exculpatory evidence, the damage is structural and

irreparable. Rule 33 is a safety valve for unusual circumstances—not a vehicle to retroactively validate constitutional violations.

1. The Factual Context: A Deliberate Strategic Deferral of Exculpatory Evidence

During trial, the defense repeatedly sought the Unit 2-B Shakedown Logbook—an official record whose absence or content would confirm whether a search occurred on the day of the murder, which the government claimed triggered the motive for the killing. The prosecution asserted for years that the logbook was "missing," only to suddenly "locate" it during closing arguments.

Rather than admit the logbook into evidence, or at a minimum declare a mistrial or recess to allow review and rebuttal, the district court:

- 1) Conducted an **ex parte review** of the document;
- 2) Instructed the jury that the logbook could not be found (despite having it in court);
- 3) Declined to allow defense counsel to reopen the record or present the logbook to the jury;
- 4) Directed the defense to instead pursue relief via a **Rule 33 motion for new trial** after the jury's verdict.

This strategy obscured exculpatory evidence from the jury and transferred the constitutionally required trial fact-finding function to a post-trial judicial review, which applies a much more deferential standard.

2. Rule 33 Is Procedural Relief—Not a Constitutional Substitute

Rule 33 of the Federal Rules of Criminal Procedure provides:

“Upon the defendant’s motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires.” (*Fed. R. Crim. P. 33(a)*)

However, Rule 33 is not a substitute for due process during trial. It provides discretionary relief for newly discovered evidence or prejudicial trial error, not a cure-all for constitutional violations that occurred during the presentation of the government’s case. The “interest of justice” cannot justify allowing a conviction to stand when the trial process itself was flawed due to deliberate suppression of material evidence and misrepresentation to the jury. In *United States v. Agurs*, 427 U.S. 97, 103–104 (1976), the Court recognized that post-verdict proceedings cannot repair violations that distorted the trial’s truth-finding process:

“The mere possibility that an item of undisclosed information might have helped the defense... does not establish ‘materiality’ in the constitutional sense.” But once materiality is shown, “the constitutional error cannot be cured by anything short of a new trial.”

Similarly, in *Kyles v. Whitley*, 514 U.S. 419, 439 (1995), the Court warned that courts must examine the impact on the trial as a whole, not whether a judge in hindsight believes the error was harmless:

“A showing of materiality does not require demonstration by a preponderance that disclosure... would have resulted in the defendant’s acquittal. The question is whether in its absence he received a fair trial.”

That did not happen here.

3. The Post-Verdict Standard Is Constitutionally Inadequate

By pushing evaluation of the logbook to a post-trial Rule 33 motion, the court imposed on the defendant a far more burdensome standard of review:

- 1) The government was relieved of its burden to prove guilt **beyond a reasonable doubt**;
- 2) Instead, the defendant had to show that the suppressed evidence would likely have **changed the verdict**, under an **abuse of discretion** standard for review.

This inversion of the burden of proof violates the core holding of *In re Winship*, 397 U.S. 358 (1970), which held that:

“The Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime.”

That principle is meaningless if a judge can shift exculpatory evidence out of the trial and into post-trial review.

4. Only the Jury May Determine Guilt—Judicial Substitution Is Constitutionally Invalid

In *Sullivan v. Louisiana*, 508 U.S. 275 (1993), this Court reiterated that any “structural defect” that affects the framework of the trial—including the denial of a proper jury determination—necessitates automatic reversal:

“A jury verdict of guilty beyond a reasonable doubt is constitutionally required. There is no verdict when that right has been denied.”

The court’s action here denied the jury access to direct, dispositive evidence contradicting the government’s sole motive theory. The judge’s post-trial review of that evidence could not constitutionally substitute for the jury’s fact-finding responsibility. The result was not a trial by jury—it was a verdict rendered under false pretenses, and ratified in chambers.

5. Supreme Court Precedent Forbids Judicial Fact-Finding That Usurps the Jury’s Role

In *Crane v. Kentucky*, 476 U.S. 683 (1986), the Court held:

“Whether rooted directly in the Due Process Clause... or in the Compulsory Process or Confrontation Clauses..., the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense.”

The principle is even more fundamental when material evidence is kept from the jury altogether, petitioner was not just deprived of the opportunity to present a defense—*the court affirmatively prevented him from doing so, and lied to the jury* about the evidence's existence.

6. The Issue Is Nationally Significant and Warrants Supreme Court Review

The constitutional damage inflicted by deferring trial-phase Brady and Napue violations to post-verdict Rule 33 motions cannot be overstated:

- 1) It opens the door to procedural gamesmanship by both prosecutors and courts;
- 2) It incentivizes suppression of exculpatory evidence, knowing that the defense will face a higher burden post-trial;
- 3) It invites trial courts to preserve structurally defective verdicts through post hoc rationalizations, eviscerating the protections of Winship, Brady, and Napue.

The structural nature of the error in this case renders post-verdict evaluation insufficient. As this Court explained in *Arizona v. Fulminante*, 499 U.S. 279 (1991), certain trial errors affect the “entire framework” of the trial and *therefore are not amenable to harmless error review*. This is such a case.

F. The Judiciary’s Participation in *Brady* and *Napue* Violations Is a Matter of National Constitutional Importance

This case raises a constitutional issue beyond prosecutorial misconduct: it presents a rare instance of a federal district court *actively participating in the concealment of exculpatory evidence* and reinforcing known falsehoods before a jury—violating both *Brady v. Maryland*, 373 U.S. 83 (1963), and *Napue v. Illinois*, 360 U.S. 264 (1959). (Pet. App. 126, “*The missing book instruction in fact may have been more favorable than actually presenting the book*”), however, the *shakedown logbook*, would have disproved the government’s case.) (Pet. App. 130-134)

Unlike ordinary *Brady* violations where prosecutors suppress material evidence unilaterally, here the judiciary assumed a *proactive role in facilitating the deception*. This elevates the case into a structural constitutional breakdown, implicating the judiciary’s essential role as guardian of due process.

This Court must intervene to reaffirm that judges may not, whether passively or actively, enable constitutional violations—and that the separation of powers demands that the bench remain independent from prosecutorial overreach.

1. Judges Are Constitutionally Obligated to Protect Due Process and Fair Trial Rights

The Constitution does not grant trial judges discretion to overlook or participate in constitutional violations. Their duty arises from both the Fifth Amendment’s Due Process Clause and Article III, which establishes the judiciary as an independent constitutional actor.

As this Court stated in *Taylor v. Kentucky*, 436 U.S. 478 (1978), “The requirement of a fair trial in a fair tribunal is a basic requirement of due process.” In *United States v. Agurs*, 427 U.S. 97 (1976), the Court affirmed that judges must

protect the integrity of the adversarial process—especially by correcting prosecutorial misconduct that deprives the jury of material facts.

Further, in *Mooney v. Holohan*, 294 U.S. 103 (1935), the Court held that a conviction obtained through perjured testimony violates the Fourteenth Amendment—even when the judge is not the originator of the falsehood. When a judge fails to correct known falsehoods, or worse, reinforces them, the judiciary itself becomes constitutionally complicit.

2. The District Court's Actions Mark an Extraordinary Instance of Judicial Misconduct

Here, the trial court:

1. **Issued a false jury instruction** that the Shakedown Logbook was "missing"—despite having reviewed it;
2. **Refused to admit or disclose the logbook to the jury**, even though it directly contradicted the government's case;
3. **Redirected fact-finding** to a Rule 33 post-trial motion, stripping the jury of its constitutional role;
4. **Allowed the government to double down on falsehoods in closing**, while denying the defense the means to impeach those claims.

This conduct violates not only *Brady* and *Napue*, but also *Kyles v. Whitley*, 514 U.S. 419 (1995), which held that courts must ensure the defense has access to exculpatory evidence in time for meaningful use at trial.

What makes this case unique is not the existence of suppressed evidence, *but the court's affirmative role in concealing it*. That transforms the error from a legal failure to a *structural constitutional violation*.

3. Judicial Complicity in Violating the Constitution Undermines the Rule of Law

When judges reinforce prosecutorial misconduct, they erode the public's trust in judicial impartiality and violate the constitutional balance of power.

In *Arizona v. Fulminante*, 499 U.S. 279 (1991), this Court held that some constitutional violations are structural—requiring automatic reversal. Such errors include the absence of an impartial tribunal or the usurpation of the jury's role.

In *Crane v. Kentucky*, 476 U.S. 683, 690 (1986), the Court wrote:

"The opportunity to present a complete defense is fundamental to a fair trial."

Here, the court *affirmatively blocked* the jury from seeing critical exculpatory evidence.

Further, this Court's decisions in *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009), and *Tumey v. Ohio*, 273 U.S. 510 (1927), make clear that even **the appearance of judicial bias violates due process**. In this case, the judge did more than appear partial—he protected a false government narrative and silenced exculpatory truth.

4. This Case Reflects a Growing Threat to Judicial Integrity

This is not an isolated error. It reflects a systemic danger:

1. If judges are permitted to issue false instructions, deny juries access to material evidence, and redirect scrutiny away from prosecutors, the judiciary becomes an *extension of the executive*, not a constitutional counterweight.
2. Judicial legitimacy depends on its adherence to constitutional safeguards—not the convenience of prosecutors.
3. In regions like Puerto Rico, where prosecutorial misconduct has been persistent, the failure of the judiciary to act as a constitutional check *invites further abuse*.

The trial court's conduct here exceeds the facts of *United States v. Bundy*, 968 F.3d 1019 (9th Cir. 2020), where the government's suppression of exculpatory evidence resulted in dismissal with prejudice. In Martinez-Hernandez's case, the judge didn't just fail to act—he actively concealed the evidence himself.

If such conduct becomes normalized, there will be no effective safeguard against wrongful convictions. The judiciary will no longer function as a check on abuse, but as its silent accomplice.

This Court should grant certiorari to preserve the judiciary's constitutional role as an independent guarantor of due process, and to declare—without hesitation or compromise—that judicial complicity in constitutional violations is intolerable in a free republic.

5. Certiorari Should Be Granted to Declare That Judicial Complicity in Brady and Napue Violations Requires Reversal

No prior decision of this Court has directly addressed the question of what happens when a trial judge—not just a prosecutor—joins in suppressing material evidence or misleading the jury on a matter of constitutional magnitude. This case provides the Court with an opportunity to:

- 1) Articulate a **bright-line rule** that **judicial facilitation of Brady or Napue violations constitutes a structural error requiring reversal**;
- 2) Reaffirm the **exclusive role of the jury** under *Sullivan* and *Winship*;
- 3) Establish that **false judicial instructions about exculpatory evidence violate due process per se**.

This issue has never been more urgent. In an era where concerns about prosecutorial abuse and judicial overreach are growing, this Court's intervention is essential to reestablish the constitutional line that judges must never cross.

This Court should grant the petition for a writ of certiorari to resolve this issue of national importance and reaffirm that federal courts cannot participate in, facilitate, or excuse Brady and Napue violations without violating the Constitution. The Court should vacate the conviction and remand for a new trial where the jury, not the judge, decides guilt based on all the facts.

G. This Court Must Reaffirm That Jury Trial Rights and Brady Obligations Are Trial-Based, Not Post-Trial

This Court has long recognized that constitutional trial rights are adjudicated at trial—not in hindsight. In *Kyles v. Whitley*, 514 U.S. 419, 437 (1995), the Court emphasized that Brady violations must be assessed for their impact on the trial's fairness, not post-trial review procedures. Similarly, in *Arizona v. Fulminante*, 499 U.S. 279 (1991), this Court held that structural constitutional errors—like denial of counsel or a biased judge—require automatic reversal, because they compromise the entire adjudicatory framework. The situation here is analogous: a trial was conducted on false facts, under a false instruction, excluding known exculpatory evidence. No post-trial process can redeem that verdict.

For all the foregoing reasons, the petition for writ of certiorari should be granted. The judgment below should be vacated, and the case remanded for a new trial, where all relevant exculpatory evidence is presented to a jury under constitutional safeguards—not post-verdict judicial review.

IV. WHETHER THE GOVERNMENT'S FAILURE TO PROVE THAT INTERSTATE COMMERCE WAS USED "IN FURTHERANCE" OF THE ALLEGED MURDER-FOR-HIRE SCHEME UNDER 18 U.S.C. § 1958(A) RENDERS MARTINEZ-HERNANDEZ'S CONVICTION UNCONSTITUTIONAL, AND WHETHER THE FIRST CIRCUIT'S DECISION CONFLICTS WITH THIS COURT'S COMMERCE CLAUSE JURISPRUDENCE AND UNDERMINES THE JURISDICTIONAL SAFEGUARDS REQUIRED BY THE FIFTH AND SIXTH AMENDMENTS.

Petitioner's conviction under 18 U.S.C. § 1958(a) exceeds Congress's authority under the Commerce Clause because the government failed to establish any meaningful or constitutionally sufficient connection between the alleged murder-for-hire scheme and interstate commerce.

The only asserted nexus was a speculative inference: that a Toyota Yaris allegedly used in the murder must have crossed state lines at some point, since "no automobiles are manufactured in Puerto Rico." This assumption fails to satisfy the statutory or constitutional requirements of § 1958 and cannot lawfully sustain federal jurisdiction over an otherwise local offense. (Pet. App. 76-78)

A. Section 1958(a) Requires Use of Interstate Commerce "In Furtherance" of a Murder-for-Hire Scheme

Section 1958(a) criminalizes the use of the mail or any facility of interstate or foreign commerce with the intent that a murder be committed in exchange for pecuniary value. The statute requires that the use of interstate commerce be integral to planning or executing the crime—not incidental or speculative. The legislative history confirms that § 1958 was designed to reach interstate murder-for-hire operations, such as those involving out-of-state communication, payments, or travel.

Congress never intended it to cover purely local crimes absent an actual interstate element.

B. The Government Offered No Evidence That Interstate Commerce Was Used to Further the Crime

In this case, the government failed to prove that any facility of interstate commerce was **used in furtherance** of the alleged murder-for-hire plot, as required by 18 U.S.C. § 1958(a). Specifically, the prosecution did not establish that:

1. The Toyota Yaris allegedly used in the crime was in fact acquired or used to facilitate the murder-for-hire scheme; (Pet. App. 76-78)
2. Any communications, transportation, payments, or planning involved the mail, telephones, the internet, or any other facility of interstate commerce;
3. Any act critical to executing the offense was tied to an interstate channel.

Instead, the government relied on a **presumption**: that since **Toyota Yaris vehicles are not manufactured in Puerto Rico**, the presence of such a car implies that it once crossed state or national lines. From this, it claimed that the jurisdictional element of § 1958 was satisfied. But such reasoning eviscerates the requirement that the use of interstate commerce be purposeful, substantial, and tied to the criminal objective. Under this interpretation, federal jurisdiction could be invoked in virtually any local crime—not because interstate commerce was actually used in the commission of the offense, but merely because a product used during the crime was once transported across state lines.

To follow this logic to its conclusion: a hired killer who uses a **baseball bat manufactured in New York** to commit a murder-for-hire in Puerto Rico would

trigger federal jurisdiction under § 1958—not because the bat was purchased or transported as part of a plan involving interstate commerce, but simply because **the bat happened to be made out of state.** Such a reading transforms § 1958 from a statute targeting interstate criminal enterprises into a federal product-origin prohibition—where jurisdiction hinges not on the use of the channels of commerce, but on the manufacturing origin of incidental objects. This is not what Congress intended, and it is not what the Constitution allows.

The purpose of § 1958 is to criminalize **murder-for-hire schemes that actively exploit the infrastructure of interstate commerce**, not to serve as a federal catch-all for any violent crime that happens to involve a consumer good made out of state.

Allowing the government to satisfy federal jurisdiction based solely on the generic commercial history of a product—without any proof that the product was used *in furtherance* of the criminal agreement—**renders the statute limitless and unconstitutional.**

C. The First Circuit's Ruling Conflicts with This Court's Commerce Clause Precedents

The First Circuit's decision contradicts binding precedent. In United States v. Lopez, 514 U.S. 549 (1995), this Court invalidated the Gun-Free School Zones Act, finding mere firearm possession near a school too remote from interstate commerce. In United States v. Morrison, 529 U.S. 598 (2000), the Court struck down a civil remedy under the Violence Against Women Act because it sought to regulate **noneconomic violent conduct** lacking a substantial connection to commerce. In

Jones v. United States, 529 U.S. 848 (2000), the Court refused to apply a federal arson statute to private property unless its destruction actively affected interstate commerce.

Taken together, these decisions affirm that the use of a product that once traveled in commerce is insufficient, without more, to support federal jurisdiction over purely local criminal acts. The First Circuit's expansive view of § 1958 deviates from this settled doctrine.

D. Other Circuits Have Properly Required a Substantive Interstate Nexus

Multiple appellate courts have declined to uphold § 1958 jurisdiction where the interstate element is speculative or unrelated to the crime's execution. In United States v. Weathers, 169 F.3d 336 (6th Cir. 1999), the court held that the use of a personal vehicle, without more, was insufficient. In United States v. Delpit, 94 F.3d 1134 (8th Cir. 1996), the court emphasized that interstate commerce must be part of the murder plan itself. In United States v. Ransfer, 749 F.3d 914 (9th Cir. 2014), the court required that the facility be used intentionally and in furtherance of the agreement.

These rulings demand a direct, purposeful link to interstate commerce. The First Circuit's acceptance of a generic vehicle origin as a jurisdictional hook undermines that standard and deepens a growing circuit split.

E. The Government Failed to Prove Jurisdiction Beyond a Reasonable Doubt.

Under In re Winship, 397 U.S. 358 (1970), every element of a federal offense—including jurisdiction—must be proven beyond a reasonable doubt.

Here, the government:

1. Did not seize or trace the vehicle allegedly used;
2. Produced no records or forensic evidence tying the vehicle to the crime;
3. Offered no expert or documentary proof that any facility of interstate commerce was used.

Instead, the jury was asked to speculate. That is unconstitutional. Jurisdiction cannot rest on assumption—particularly when the statute's reach touches the outer limits of federal authority.

F. This Court Must Reinforce Constitutional Limits on Federal Criminal Power

Allowing this conviction to stand on the mere presumption of interstate movement would grant Congress plenary power to federalize all violent crimes, contrary to this Court's precedents.

If uncorrected, the First Circuit's reasoning would mean:

1. Any offense involving a car, phone, or clothing made elsewhere could be prosecuted federally;
2. The jurisdictional element of § 1958 would become meaningless;
3. The Commerce Clause would effectively know no limits.

This Court has long resisted such overreach. Lopez, Morrison, and Jones stand for the proposition that federal criminal statutes must be narrowly confined to congressionally intended and constitutionally authorized purposes.

This case is a compelling vehicle to reaffirm those principles.

The government's jurisdictional theory is **unprecedented, unsupported, and unconstitutional**. Certiorari is warranted to correct this legal overreach and to preserve the boundary between state and federal criminal authority.

V. WHETHER THE GOVERNMENT'S FAILURE TO PROSECUTE THE INDIVIDUAL IT IDENTIFIED AS THE PRIMARY ARCHITECT OF THE MURDER-FOR-HIRE SCHEME, WHILE TARGETING PETITIONER BASED ON UNCORROBORATED HEARSAY, AND AMIDST EVIDENCE OF PROSECUTORIAL CONFLICT OF INTEREST, CONSTITUTES A DUE PROCESS VIOLATION ROOTED IN ARBITRARY AND ABUSIVE CHARGING DISCRETION, WARRANTING THIS COURT'S REVIEW UNDER ITS GOVERNMENT MISCONDUCT PRECEDENTS.

A. A Pattern of Misconduct and the Failure to Charge the Mastermind

The prosecution of Oscar J. Martinez-Hernandez was shaped by serious government misconduct, including the suppression of exculpatory evidence, the presentation of perjured testimony, and the failure to indict the individual the government's own witnesses identified as the central planner and financier of the murder-for-hire: **Jose “Cheo” Silva**.

Numerous cooperating witnesses testified that Silva orchestrated the murder, selected the shooters, and provided partial payment. Yet Silva was never indicted, never produced, and never examined. The prosecution instead focused on Petitioner—**who had no forensic, financial, or digital ties to the crime**—based solely on incentivized, uncorroborated hearsay.

B. A Conflict of Interest Undermined the Integrity of the Prosecution

Compounding this injustice was the involvement of AUSA Maria Dominguez, who led the indictment despite being the subject of a formal complaint and pending litigation by Petitioner in a prior matter. She personally oversaw the grand jury, signed the indictment, and resigned shortly after filing charges, raising clear concerns of vindictive or retaliatory prosecution. A motion to dismiss based on this conflict was denied without inquiry. Under United States v. Armstrong, 517 U.S. 456 (1996), prosecution influenced by personal animus or discriminatory motives violates due process and equal protection. The unexplained decision to ignore Silva while targeting Petitioner under these circumstances warrants this Court's attention.

C. The Prosecution Lacked a Rational Evidentiary Foundation

Petitioner and Silva had no documented relationship. Petitioner was housed in Venezuela for over a decade before the indictment and had no known communications, financial dealings, or coordination with any aspect of the conspiracy. Yet the government presented *no explanation for failing to charge Silva, relying instead on Silva's secondhand statements made to a none co-conspirator to implicate Petitioner.* (Pet. App. 28) This type of arbitrary enforcement of the law, where the more culpable party is untouched, violates the foundational fairness required by the Fifth Amendment. See Oyler v. Boles, 368 U.S. 448 (1962); Medina v. California, 505 U.S. 437, 445–46 (1992).

D: A Crisis in Puerto Rico's Federal Judiciary and the Urgent Need for This Court's Intervention

withholding Brady material regarding confidential informants, prompting post-trial litigation and judicial rebuke.

Finally, in United States v. Nejad, 487 F. Supp. 3d 206 (S.D.N.Y. 2020), the government's admission of false statements and discovery failures led to outright dismissal, offering a clear parallel to the constitutional breaches presented here.

F. A Turning Point for Judicial Integrity

What makes Martinez-Hernandez's case distinct—and especially dangerous—is not only the pattern of prosecutorial misconduct, but the judiciary's active role in concealing it. This Court has long held that judges are constitutionally bound to safeguard due process. When courts join the executive in violating those duties, the balance of constitutional power collapses.

"The accumulation of all powers, legislative, executive, and judiciary, in the same hands ... may justly be pronounced the very definition of tyranny."—*James Madison*, Federalist No. 47

This Court must act to restore the wall between judicial independence and prosecutorial expediency. It must send a clear and decisive message: the judiciary is not a political weapon of the executive. It is a guardian of the Constitution.

If this case is allowed to stand, the cancer of impunity will metastasize even further—affecting not only the wrongfully accused, but the legitimacy of the courts themselves.

CONCLUSION

The record in this case is complete. The facts are undisputed. See Statement of Facts (Pet. App. 26-31). And Record. (Pet. App. 40-89). The legal issues are preserved and clearly presented. This case presents a profound breakdown of constitutional

protections—where the government suppressed exculpatory evidence, relied on false testimony, prosecuted the wrong individual based on hearsay, and the courts failed to intervene. What is now at stake is not only the integrity of one conviction, but the integrity of the judicial branch itself. This Court must act to restore faith in due process, reaffirm the jury's role in finding truth, and declare that courts exist to protect constitutional rights—not to shield government misconduct.

The petition for a writ of certiorari should be granted.

Respectfully submitted, In Florence, Colorado, on this the 11th day of April 2025.

Oscar Martinez-Hernandez
Reg. No. 09486-069
Proceeding Pro-Se
USP Florence ADMAX
U.S. Penitentiary
PO BOX 8500
Florence, CO 81226

No. _____

IN THE

SUPREMRE COURT OF THE UNITED STATES

OSCAR MARTINEZ-HERNANDEZ,

PETITIONER,

v.

UNITED STATES OF AMERICA,

RESPONDENT.

WRIT OF CERTIORARI

APPENDIX BRIEF

OSCAR MARTINEZ-HERNANDEZ,
REG. NO. 09486-069
PROCEEDING PRO-SE
USP FLORENCE ADMAX
U.S. PENITENTIARY
PO BOX 8500
FLORENCE, CO 81226

DATED: APRIL 11, 2025