SUPREME COURT OF THE UNITED STATES

No. 25-5426

REGINALD BERTRAM JOHNSON,
Petitioner,

v.

RICKY D. DIXON, SECRETARY FLORIDA DEPARTMENT OF CORRECTIONS, et al.,
Respondent.

PETITION FOR REHEARING

Reginald B. Johnson, DC# 280395
Walton Correctional Institution
691 Institution Road
DeFuniak Springs, FL 32433

PETITION FOR REHEARING

Petitioner, Reginald B. Johnson[1], Rules of the Supreme Court of the United State, Rule 44.2, respectfully moves this Honorable Court for a rehearing of the order of this Court entered on October 14, 2025, denying Petitioner's Petition for Writ of Certiorari and contends that the Court has overlooked and misapprehended controlling points of law constituting intervening circumstances of a controlling effect, and in support thereof states as follows:

ARGUMENT ON THE MERITS

Petitioner contends that in denying his Petition for Writ of Habeas Corpus this Court overlooked or misapprehended controlling points of law. In his petition Petitioner argued that the United States of Appeal for the Eleventh Circuit erred by denying Petitioner's appeal without addressing whether the state trial court's violation of Petitioner's confrontation rights under the Sixth Amendment denied Petitioner a fair and impartial trial.

Petitioner avers that the admission Dr. Silla's testimonial report during his trial violated the Confrontation Clause because it allowed the State to recount an inculpatory testimonial statement by a non-testifying witness whom Petitioner never had the chance to cross-examine. In *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004), the Supreme Court held that the Confrontation Clause bars the admission of "testimonial statements" made by a

[1] Petitioner's motion should be liberally construed because he is proceeding *pro se* pursuant to *Haines v. Kerner*, 404 U.S. 519 (1992).

non-testifying witness, unless the witness is unavailable and the defendant had a prior opportunity to cross-examine him.

In *Melendez-Diaz*, 557 U.S. 305, 129 S. Ct. 2527, 174 L. Ed. 2d 314, thsi court concluded that an analyst's sworn certificates-offered by the prosecution to prove that the results of forensic analysis showed that the seized substances were cocaine, and created specifically to serve as evidence in a criminal proceeding-were "testimonial," and that "absent a showing that the analysts were unavailable to testify at trial *and* that petitioner had a prior opportunity to cross-examine them, petitioner was entitled to be 'confronted with' the analysts at trial." This court viewed the case as involving "little more than the application of our holding in *Crawford." Id.* at 329. *Melendez-Diaz* "refused to create a 'forensic evidence' exception to this rule." *Bullcoming*, 131 S. Ct. at 2713 (citing *Melendez-Diaz*, 129 S. Ct. at 2536-38).

To be sure, the Confrontation Clause is not implicated when out-of-court statements are offered, not for the truth they assert, but for other purposes-such as to "provide context for an investigation or explain 'background' facts," especially "whereas defendant challenges the adequacy of an investigation." *Kizzee*, 877 F.3d at 659 (citing *United States v. Smith*, 822 F.3d 755, 761 (5th Cir. 2016); *United States v. Carrillo*, 20 F.3d 617, 619 (5th Cir. 1994); *United States v. Castro-Fonseca*, 423 F. App'x 351, 353 (5th Cir. 2011).

This Court invokes that in *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993), State prisoners "are not entitled to habeas relief based on trial error unless they can

establish that it resulted in actual prejudice" [Doc. 53-1, pg. 11]. Under this test, relief is proper only if the federal court has grave doubt about whether a trial error of federal law had substantial and injurious effect or influence in determining the jury's verdict. *Davis v. Ayala*, 576 U.S. 257, 267-68 (2015).

This court's opinion cited to Williams v. Secretary, 114 F.3d 177, 180 (11th Cir. 1997) there, this Court stated that because "a harmless error inquiry necessarily entails a two-step process," "a court must find an error before it can determine whether the error is harmless." [Doc. 53-1, pg. 11]. This Court further stated:

> "Because we can resolve this appeal based on lack of actual prejudice under Brecht, **we assume—but do not decide—that admission of Dr. Silla's report violated Johnson's constitutional right to confront the witness against him**. See U.S. CONST. amend. VI. The actual-prejudice inquiry turns on whether we have "grave doubt" that the jury would have convicted Johnson without admission of Dr. Silla's report. *Ayala*, 576 U.S. at 268 (citation and internal quotation marks omitted). "Although harmless error is review is necessarily fact-specific and must be performed on a case-by-case basis, the erroneous admission of evidence is likely to be harmless under the Brecht standard where there is significant corroborating evidence or where other evidence of guilt is overwhelming." *Mansfield v. Sec'y, Dep't of Corr.*, 679 F.3d 1301, 1313 (11th Cir. 2012) (citations omitted). Johnson contends that the introduction of the report was not harmless because Dr. Silla "was undoubtedly the state's most important witness" and there was lack of corroborating evidence that the specimens that later proved the DNA match with Johnson came from C.A. The Secretary responds that any error was harmless because the DNA match was thoroughly corroborated regardless of the report based on the testimony of C.A., Nurse Carter, Detective Signori,

and Hinz about the collection, transport, and testing of the specimens collected at the rape treatment center. The Secretary has the better argument.

Johnson fails to establish actual prejudice because other chain-of-custody testimony independently proved that the specimens collected from C.A. contained Johnson's DNA. Even if the trial court had excluded the report, there was still sufficient testimony for the jury to conclude beyond a reasonable doubt that Johnson was the perpetrator due to the DNA match. C.A. testified about how the doctor collected specimens from her. Detective Signori testified that Dr. Silla gave him the specimens—in a sealed bag—after the examination, which he then impounded at the serology. Hinz testified that she took those impounded samples, which "hadn't been opened by anyone else," and ran tests on them that later matched DNA collected from Johnson. And Nurse Carter testified that she signed a report that described C.A.'s examination and the collection of specimens from her. This chain-of-custody evidence is "significant corroborating evidence" of the report's statement that Dr. Silla collected the specimens from C.A.

Because "a rational jury could consider the DNA evidence to be powerful evidence of guilt," this DNA evidence linking Johnson to the rape supported the jury's verdict regardless of the report. *McDaniel v. Brown*, 558 U.S. 120, 132 (2010). As the Secretary explains, "even excluding the report, Johnson had no plausible explanation for how his semen happened to be in police custody. The only rational conclusion for a jury to reach was that his semen was tied to this rape." So, even if there were some inconsistencies between C.A.'s recollection of the number and type of specimens taken from her by Dr. Silla and other evidence presented at trial, Johnson's failure to rebut the DNA match mitigated any risk of prejudice.) [Doc. 53-1, pg. 16-18].

In this case, Petitioner avers that this Honorable Court overlooked or misapprehended a controlling point of law as it applies to this case. The opinion issued by this Honorable Court recites the correct harmless error standard for cases where evidence is introduced in violation of the Confrontation Clause: "There must be '[no] reasonable possibility that the evidence complained of might have contributed to the conviction.'" (Quoting, *United States v. Alvarado-Valdez*, 521 F.3d 337, 341 (5th Cir. 2008). But this Honorable Court concludes that the government has met this admittedly "demanding" burden "for one simple reason: The prosecution's case turned on statements made by in-court witnesses and not on Dr. Silla's testimonial report.

The question is not whether there was sufficient *untainted* evidence to convict Petitioner, but whether the government "demonstrated beyond a reasonable doubt that the *tainted* evidence did not contribute to Petitioner's conviction." *Alvarado-Valdez*, 521 F.3d at 342. Other precedents have rejected this "mere sufficiency-of-the-*untainted*-evidence analysis" in Confrontation Clause cases. *Lowery v. Collins*, 988 F.2d 1364, 1373 (5th Cir. 1993).

For instance, in *Alvarado-Valdez* after noting that the prosecution relied on the tainted evidence in its closing, this court explained that "there is no way to determine whether the jury would have convicted the defendant purely on the basis of [someone else's] testimony or of any of the other evidence," because doing so "would require retrying the case on appeal, at best, or engaging in pure speculation, at worst." See, e.g., *Rhodes v. Dittmann*, 903 F.3d 646, 665-66 (7th Cir. 2018), *reh'g*

denied (Oct. 10, 2018) (explaining that harmless error review "is not the same as a review for whether there was sufficient evidence at trial to support a verdict"); *see also Foster*, 910 F.3d at 821 (explaining that, in the Confrontation Clause context, "our focus is on the possibility of harm arising from [the tainted testimony] and not necessarily on the possibility of its relationship to other evidence")

See also Foster, 910 F.3d at 821-22 (rejecting government's argument "that it meets its [harmless error] burden by pointing to other evidence in the record to support conviction"); *Kizzee*, 877 F.3d at 662 ("While other circumstantial evidence implicated [defendant] and corroborated [the inadmissible] out-of-court statements, we find this evidence is insufficient to show harmless error beyond a reasonable doubt."); *Jackson*, 636 F.3d at 697 (concluding government cannot show harmless error "in light of [its] reliance on tainted evidence, and notwithstanding the other evidence implicating [defendant] in the conspiracy").

This Honorable Court's opinion insists that the prosecution "did not need" the substance of Dr. Silla's testimonial report to connect Petitioner to the crime and that the jury had ample evidence to convict Petitioner "independent of" Dr. Silla's testimonial report. [Doc. 53-1, pg. 17].

Whether or not that is true, it is precisely the kind of analysis other precedents instruct the Court not to undertake in assessing harm from introduction of testimony in violation of the Confrontation Clause. Instead, "the reviewing court must concentrate on the evidence that violated [the defendant's] confrontation right,

not the sufficiency of the evidence remaining after excision of the tainted evidence."

Lowery, 988 F.2d at 1373.

This Court has overlooked or misapprehended controlling points of law demonstrating that the Confrontation Clause violation was not harmless and Petitioner was prejudiced by such, and due to these intervening circumstances of a substantial or controlling effect, Petitioner is entitled to a new trial.

WHEREFORE, based on the foregoing facts, argument, and authorities cited herein, Petitioner prays that this Honorable Court grant the instant Petition for Rehearing, reconsider its decision to deny Petitioner's Petition for Writ of Certiorari, and all relief that this Honorable Court deems just and proper.

Respectfully Submitted,

Reginald B. Johnson, DC#280395
Walton Correctional Institution
691 Institution Road
DeFuniak Springs, Florida 32433

OATH / CERTIFICATE OF COMPLIANCE

I declare and certify that I understand English and have read the foregoing document and the facts stated therein are true and correct; that the style and type used to generate this document is 12-point Century, in compliance with Rules of the Supreme Court, Rule 33; the word count does not exceed 3,000.

Reginald B. Johnson, DC#280395
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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Petition for Rehearing was placed into the hands of institutional official at Walton C.I. to be furnished via U.S. Mail, First-Class Postage prepaid to the Office of the Attorney General, The Capitol, PL-01, Tallahassee, FL 32399-1050, on this 7th day of November 2025.

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Respondent.

CERTIFICATE OF UNREPRESENTED PARTY

I certify that this petition is restricted to intervening circumstances of a substantial or controlling effect in compliance with Rules of the Supreme Court, Rule 44.1 and is presented in good faith and not for delay.

Respectfully submitted,

Reginald B. Johnson, DC#280395
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