No._____

IN THE

UNITED STATES SUPREME COURT

OF THE UNITED STATES

ANGEL PÉREZ-OTERO

Petitioner

Vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

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Questions presented:

I. Whether the *McCormick's* holding is disregarded when prosecutors are allowed to manipulate the allegations, in an indictment, to avoid complying with it. P.24

II. Whether after *McCormick*, in cases where political campaign contributions are charged as bribery and extortion, evidence of the donor's intention of gaining access to politicians by making said political campaign contributions, is insufficient to prove the charges. P.30

III. Whether evidence of payments of political campaign contributions at trial, that were not included in the allegations of the indictment, is a prejudicial variance. P.38

IV. Whether the District Court erred by instructing the jury that the defendant intended the payments to be bribes and extortions, and not political campaign contributions, in the absence of evidence

regarding defendant's intentions. P.41

V. Whether after *Tsarnaev*, when confronted with a situation in which two jurors failed to disclose an unfavorable bias against the defendant, which resulted in their removal from the jury, the District Court had to conduct a specific and individual inquiry on the matter of bias with the remaining jurors to assure that there were no other biased jurors. P.44

LIST OF PARTIES

Parties: Angel Perez-Otero and United States of America.

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TO THE HONORABLE COURT:

The Petitioner, Angel Pérez-Otero ("Pérez"), 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 ("AC") entered against him in this case.

OPINION BELOW

The opinion was issued on May 15th, 2026. [Appendix ("App."), p. 1.] Rehearing was denied, on July 20th, 2026. [App., p. 40].

PROCEEDINGS IN FEDERAL COURT

Oscar Santamaria ("Santamaria") became a major political donor contributing to the political campaigns of numerous politicians. Santamaria engaged in the practice of making political campaign contributions, in cash, directly to more than twenty mayors and other politicians of all sorts because he wanted to remain anonymous and circumvent the local electoral limits, while still having access to the

politicians. These donations gained him access to politicians ranging from the governor to the heads of the legislature. Santamaría's donation practice consisted of providing cash contributions and lists with names of employees, friends, and other people, under whose names the donations would appear in the electoral reports. In that way, Santamaria was able to donate more than the local law allows and remain anonymous.

Santamaria had known Petitioner Angel Pérez-Otero ("Mayor Pérez") for about twelve years, since about 2004, when they both worked at the House of Representatives. When Mayor Pérez decided to compete for the empty mayoral seat, Santamaria backed Mayor Pérez's rival to occupy the position. Mayor Pérez was upset. After Mayor Pérez won that election and became the mayor, they did not talk for approximately two years afterwards.

After Mayor Pérez won the election, his political campaign committee remained active preparing for his 2020

reelection campaign, and was incurring in expenses and receiving donations, including but not limited to cash donations.

Around mid-2019, Santamaria approached Mayor Pérez with the intention of obtaining a lucrative municipal contract to operate a waste transfer station in the municipality of Guaynabo. He did not express his ulterior motive to Mayor Pérez. During the meeting, Santamaria asked Mayor Pérez about his political campaign debt, and Mayor Pérez told him that his campaign committee had a debt of approximately seventy thousand dollars. Santamaria offered to pay the campaign committee debt. One month later, or around September of 2019, Santamaria began making the political campaign contributions every "four or six weeks", on account of said offer.

The Electoral Comptroller's report ("electoral report"), for Mayor Pérez's political campaign corresponding to the months of January through March of 2019, showed a total

income of $22,271, out of which $6,300 were cash donations. It also showed $3,433, in expenses. The electoral report, for April to June of 2019, showed a total income of $104,643, out of which $33,300 were cash donations. It also showed $27,828, in expenses.

The electoral report, for July to September of 2019, showed a total income of $23,756, out of which $21,805 were anonymous cash donations. It also showed $16,553, in expenses. The electoral report, for October to December of 2019, showed a total income of $168,230, out of which $77,770 were cash donations. It also showed $61,761, in expenses.

Early in 2020, at the height of the COVID-19 Pandemic, Guaynabo needed to make construction works on several rural roads and published formal biddings for those projects requesting proposals. Around that same time, although Mayor Pérez could have awarded the waste transfer station contract directly to Santamaria without

bidding because the contracting of waste management services is exempt from that requisite, Mayor Pérez ordered that a bid process take place and Santamaria participated but was not awarded the contract.

Early in February of 2020, less than six months after the first payment of political campaign contributions, Santamaria asked Mayor Pérez about the contract for the waste transfer station and Mayor Pérez told him that it had been already awarded. Mayor Pérez, then, told Santamaria that he could participate in upcoming bidding for construction work contracts. Santamaria's right-hand man, De-Jesus, participated in the bidding process.

The electoral report, for January to March of 2020, showed a total income of $2,219, and no cash donations. It also showed $93,574, in expenses.

On June 10, 2020, the Bid Board, after evaluating the different proposals, awarded to Santamaria only one of the two projects for which it presented proposals. It was a two-

year unitary price contract that would end in June of 2022, for $871,751.60.

The electoral report, for April to June of 2020, showed a total income of $2,955, and no cash donations. It also showed $158,157, in expenses. The electoral report, for July to September of 2020, showed a total income of $88,662, out of which $29,100 were cash donations. It also showed De-Jesus' name, Santamaria's right-hand man, in relation to a cash donation made on August 5, 2020, of $1,300, during a get together with Mayor Pérez, and another made on August 8, 2020, of $217, during a breakfast with Mayor Pérez. However, De-Jesus, later, testified that he never met Mayor Pérez. It also showed expenses of $300,819.

On November 2020, Mayor Pérez won the elections and remained as Mayor. The electoral report, for October to December of 2020, showed a total income of $137,355, out of which $57,540 were cash donations. It also showed $90,314, in expenses. The electoral report, for January to March of

2021, showed a total income of $23 and no cash donations. It also showed $1,735 in expenses.

On May 3, 2021, only ten days after a cash donation was made, on April 21, 2021, under De-Jesus' name, Santamaria began cooperating with the FBI.

On May 19th, 2021, in a controlled environment, under the direction and supervision of FBI agent Miguel Rodríguez ("Rodríguez"), who was recording the meeting, Santamaria met with Mayor Pérez gave five thousand dollars in cash to Mayor Pérez. During the meeting, Santamaría thanked Mayor Pérez because a payment on the contract had been received and Mayor Pérez told him that there would be upcoming bids and that he would be invited to participate and compete. **Mayor Pérez also told Santamaria that the best bidder would win to save money for the municipality**.

The electoral report, for April to June of 2021, showed a total income of $23,978, out of which $6,000 were cash

donations. It also showed De-Jesus' name in relation to a $1,500 cash donation, at a cocktail party with Mayor Pérez, on April 21, 2021. It also showed $3,785 in expenses.

On July 1, 2021, Santamaria met Mayor Pérez again, under an FBI controlled environment, and gave five thousand dollars in cash to Mayor Pérez. Mayor Pérez also told Santamaria that more bids would come in July and that he would be notified to compete. On August 19th, 2021, Santamaria met Mayor Pérez, again, and gave five thousand dollars, in cash, to Mayor Pérez.

The electoral controller report for July to September of 2021 showed a total income of $5,021 and no cash donations. It also showed $113, in expenses. The electoral controller record for October to December of 2021 showed a total income of $135,728, out of which $59,400 were cash donations, and the name of De-Jesus in relation to two $1,000 donations, in money orders, on December 2, 2021. It also showed $41,402, in expenses.

All the contracted work was completed to the satisfaction of inspectors and engineers.

On December 8, 2021, before the grand jury, FBI agent Rodríguez testified that Santamaría **offered to take care of Mayor Pérez' electoral committee campaign debt and, pursuant to that offer, the payments of five thousand dollars, every four to six weeks, began**. That same day, with no additional evidence, the prosecution filed the indictment charging Mayor Pérez with three counts.

Count one charged a conspiracy, pursuant to 18 USC 371, to commit federal program bribery, 18 U.S.C. § 666(a)(1)(B), by corruptly soliciting, demanding, accepting, and agreeing to accept for his own benefit, things of value from Santamaria intending to be influenced and rewarded in connection with municipal contracts, as opportunities arose, accepting five-thousand-dollar cash payments, on a regular basis, between late 2019 and May 2021. Count two charged Mayor Pérez, pursuant to 18 U.S.C. § 666(a)(1)(B) & 2, with

committing federal program bribery by corruptly soliciting, demanding, accepting, and agreeing to accept for his own benefit, three payments of $5,000 from Santamaria intending to be influenced and rewarded in connection with municipal contracts, as opportunities arose, between May 19, 2021, and August 19, 2021. Finally, count three charged Mayor Pérez, pursuant to 18 U.S.C. §1951, with extortion by obtaining property not due to him or his office as a public official, from Santamaria, with Santamaria's consent, under color of official right, between approximately late 2019 and August 19, 2021.

Although the grand jury testimony dealt exclusively with the payment of **electoral committee campaign debt**, or payment of political campaign contributions, the allegations made no reference to it.

During discovery, the prosecution provided the case agent's report of Santamaria's interview in which the agent stated that Santamaria offered to pay Mayor Pérez's political

campaign debt, and that, pursuant to that offer, Santamaria had been making five thousand monthly cash payments. With the benefit of said information, Mayor Pérez requested the dismissal of the indictment. He argued that because the report indicated that the payments were political campaign contributions, the opinion of the Supreme Court, in the case of *United States v. McCormick*, 500 U.S. 257 (1991), required the indictment to allege an explicit quid pro quo and, in Mayor Pérez' case, the absence of said allegation required dismissal. Employing a circular reasoning, the District Court ("DC") denied the motion to dismiss stating that *McCormick's* holding was inapplicable because the indictment did not contain allegations of any payments for political campaign contributions.

On the eve of trial, the prosecution discovered the grand jury transcript. It corroborated the statement contained in the report of interview that the testimony of Santamaria, only, referred to political campaign contributions. With the benefit of said information, Mayor

Pérez, again, requested dismissal on the same above-mentioned grounds.

Before jury selection began, prospective jurors knew and commented about the case evidence, at the hallway before entering the courtroom and, later, inside the courtroom, during the voir dire process. DC explained to the jury pool that the jury selection was a critical stage of the trial and stated four times that truthful answers were expected because they were under oath. DC asked if anyone knew Mayor Pérez and only potential juror #40 informed that he knew Mayor Pérez's sister and was excused. DC asked if anyone had personal knowledge about the case, or if any juror had heard about it. Potential juror #48 stated that the press had "really given that case" coverage and that she had seen television and radio programs where the case was discussed profusely. The potential juror stated that the images depicted the man accepting money and his surprised face like "something fishy". The potential juror stated that: "**I think I would be biased and all of Puerto Rico"**. The

Judge replied that she "cannot presume that those that are not telling are not telling", making reference to the potential jurors that remained quiet, and the potential juror told the judge that they were "scared" and that the FBI made sure that the images "went all around". She was excused. Potential juror 27, also, informed knowing about the case because of the media and that he was biased against Mayor Pérez. He was excused.

Upon those answers, Mayor Pérez requested that the jury pool be asked specifically about the case evidence shown in the media coverage. Three potential jurors informed that they knew about the case because of the media coverage, but stated that they could remain unbiased, and were not excused. DC asked if anyone had formed an opinion on the case from what they had seen or read, and no hands were raised. The jury was selected, sworn and summoned to begin the presentation of evidence. Soon, thereafter, the defense discovered that several jurors who denied knowing about the case during the voir dire, had failed to disclose that they had

made comments on Facebook that reflected bias against Mayor Pérez. DC held a hearing and dismissed those jurors.

Mayor Pérez expressed his concern that the dishonest jurors were together with the other jurors and that, during the voir dire, several potential jurors commented about the case evidence, and requested the district court to inquire with the rest of the jurors, individually, on this matter of a biased opinion, but DC denied the request.

During opening statements, the prosecutor stated that Santamaria engaged in a pattern of bribes. The prosecution did not make reference to political campaign contributions. The defense told the jury that Santamaria offered to make political campaign contributions, and that to remain anonymous and to circumvent local electoral limits on donations, he provided the donations in cash, along with lists of names, that did not include him, to whom the donations would be assigned.

FBI agent Rodríguez testified about interviewing Santamaria, and setting the controlled payments of cash by Santamaria to Mayor Pérez, following the same amounts of money that Santamaria had been paying to Mayor Pérez.

Donor Santamaria testified that he was interested in the contract for the waste transfer station and decided to rekindle with Mayor Pérez by paying his political campaign debt, but did not tell Mayor Pérez about his ulterior motive of getting the waste transfer station contract. Santamaria testified that several months later, his construction company was awarded, after a bidding process, a contract with the Guaynabo municipality.

The prosecution also presented documentary evidence, such as the contract, with its amendments and invoices, Mayor Pérez's electoral reports, Mayor Pérez's income tax returns, the audio/video recordings of the meetings between Mayor Pérez and Santamaria, and several

photographs depicting municipal staff during social gatherings with Mayor Pérez.

Mayor Pérez presented the testimony of the past President of the Municipality of Guaynabo Bid Board and past Economic Development Director, Raul Torres. He explained the bidding processes at the municipality.

During closing arguments**, t**he prosecution argued that in the municipality the mayor decided, and that Mayor Pérez manipulated the Bid Board because it was composed of trust employees, who also shared socially with Mayor Pérez, his "friends and family". The prosecution argued that Mayor Pérez was not distanced from the finance department or the Bid Board and that, if he was happy, you got invited. The prosecution argued that Mayor Pérez did not include the payments in the income tax returns, ethics' reports or electoral reports, corresponding to 2019 to 2021, and that, therefore, the payments were bribes and extorsion.

The defense argued that the prosecution was setting a new standard of law for trust positions when there is no requirement to employ people that the mayor doesn't know to avoid corruption charges. The defense argued that the prosecution did not present evidence that the trust employees were corrupt, or that Mayor Pérez gave instructions to favor Santamaria. The defense argued that Santamaria lost bids and did not win the holy grail waste transfer station contract that Mayor Pérez could have awarded directly to Santamaria pursuant to the municipal code. The defense argued that, during the FBI controlled payments, in which the FBI even set up a camera under a table, there is no mention of a quid pro quo.

In rebuttal, the prosecution argued that common sense was that Santamaria was giving money to Mayor Pérez for contracts.

Mayor Pérez objected to jury instructions 11 and 12, which told the jury that: "[i]n this case, there has been

testimony that certain, but not all, of the money that Mr. Santamaria gave to Mr. Pérez-Otero constituted campaign contributions or were intended to pay a political campaign debt". Mayor Pérez was found guilty on all counts.

JURISDICTIONAL STATEMENT

DC's jurisdiction over this criminal case was conferred by 18 U.S.C. section 1331. AC's jurisdiction over this appeal from the DC's judgment of conviction was conferred by 18 U.S.C. 3742(a), and 28 U.S.C. 1291. The jurisdiction of this Court is invoked under 28 USC section 1254(1). On May 15th, 2026, a panel of the First Circuit Court of Appeals, composed by Chief Judge Barron, Thompson and Judge Gelpi, issued an Opinion dismissing the appeal. [App., p. 1] Petitioner filed a petition for rehearing. On July 20th, 2026, AC denied the petition for rehearing en banc. [App., p. 17] This petition is filed within 90 days of AC's denial of the petition for rehearing en banc pursuant Rule 20.1 of this Court.

CONSTITUTIONAL PROVISIONS AND STATUTES

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.

STATEMENT OF THE CASE

The facts that are material to the consideration of the questions presented are included in the section describing the proceedings in federal court. The basis for federal jurisdiction in the court of first instance was Title 18 U.S.C. section 2119(2) and Title 18 U.S.C. Section 2113(b).

ARGUMENTS

I. Deficient indictment

The only witness before the grand jury, FBI agent Rodríguez, testified that Santamaria offered to take care of Mayor Pérez' electoral committee campaign debt and, pursuant to that offer, he made payments of five thousand dollars, every four to six weeks. However, the indictment only stated that Santamaria made payments to Mayor Pérez, that were bribes, or extorted, and, failed to include the factual allegation that the bribes, or extorted payments, were made as political campaign contributions. That was the evidence before the grand jury and it had to be reflected in the indictment.

Mayor Pérez argued that, after *McCormick*, in cases where political campaign contributions are charged, as bribes, or extorted payments, an explicit Quid Pro Quo ("QPQ") is an essential element of the crime, and that, pursuant to that holding, any grand jury that has evidence that political campaign contributions were made, as bribes, or extorted payments, must include those factual allegations in the indictment, as well as an allegation of an explicit QPQ.

Mayor Pérez argued that the grand jury clause of the Fifth Amendment required that the indictment contain "some amount of factual particularity to ensure that the prosecution will not fill in elements of its case with facts other than those considered by the grand jury." *United States v Pirro*, 212 F.3d 86 (2nd Cir.2000). In this case, the prosecution, instead of including in the indictment the facts considered by the grand jury, that the payments were political campaign contributions, filled the indictment with the element of regular bribes, or extorted payments (not bribes, or extorted payments, in the form of political campaign contributions).

Mayor Pérez also argued that the Sixth Amendment's notice protection is implemented by the requirement of Federal Rule of Criminal Procedure 7(c)(1) that the indictment must be a plain, concise, and definite written statement of the essential facts constituting the offense charged. Mayor Pérez argued that the indictment's failure to include allegations about the essential fact of political

campaign contributions and allegations of an explicit QPQ, violated said legal provisions, and allowed the prosecution to skirt the *McCormick* requirement of an explicit QPQ.

Counts one, two, and three of the Indictment must be dismissed because Mayor Pérez, as a public official, faced prosecution over campaign fundraising and the prosecution did not allege as an element of any of the three counts that Mayor Pérez made an "explicit" corrupt agreement with Santamaria. The indictment did not even mention that the alleged bribes, or extorted payments, were made as political campaign contributions, according to the testimony of the only grand jury witness.

As a matter of fact, the prosecution stated on the record that the indictment did not charge a crime in relation to the cash political campaign contributions, but only in relation to the three FBI controlled payments of $5,000.

In view of the above, the indictment should had been dismissed because it was defective, as it did not reflect the

evidence presented to the grand jury, and was manipulated by the prosecution to avoid the *McCormick* requirement of an explicit QPQ, which the prosecution knew that the case lacked. The defect in the indictment caused prejudice to Mayor Pérez because it subjected him to a different evidentiary standard, than his case required. He was subjected to evidence of any kind of QPQ, silent, implied, explicit, or expressed, when he should had been subjected to evidence of an explicit QPQ, only.

Additionally, Mayor Pérez was prejudiced because the indictment did not adequately notify him that he was charged for an offense related to political campaign contributions, which required different elements than regular bribe and extortion charges and a different defense strategy. With adequate notice, Mayor Pérez would have conducted extensive investigation as to the identity of the names behind Santamaria's anonymous donations to establish, in detail, that the cash donations were reflected on

the electoral reports but obviously not under Santamaria's name, and presented the corresponding evidence.

The indictment, also, subjected Mayor Pérez to being tried for the same offense twice because it did not charge him with the political campaign contributions, but only for the three FBI controlled payments, as admitted by the prosecution. The prosecution could avoid Double Jeopardy and charge him, again, under the same facts, with bribery and extortion specifically for the political campaign contributions and exclude the three controlled FBI payments.

However, AC did not address Mayor Pérez's arguments and simply stated that the indictment was not defective because it was returned by a legally constituted and unbiased grand jury, and because it was facially valid, since it alleged on its face simply that Mayor Pérez received bribes, not bribes in the form of campaign contributions. But that is precisely the problem with the indictment because

that was not the evidence before the grand jury. The prosecution does not get to pick and choose to avoid having to present evidence of an explicit QPQ by just omitting the allegations about the political campaign contributions from the indictment.

II. No evidence of QPQ

Mayor Pérez was convicted on evidence that only proved that Santamaria, his political donor, who had been making cash political campaign contributions to Mayor Pérez designed to skirt donation limits and to stay anonymous from electoral reports, had been awarded a construction contract by the municipality of Guaynabo, of which he was the mayor. This is precisely the kind of conviction that *McCormick* prohibits.

An essential element of the crime was not proven. When political campaign contributions are charged, as bribes, or extorted payments, evidence of an explicit QPQ is

necessary to prove the charges beyond a reasonable doubt. *McCormick v. United States*, 500 U.S. 257(1991).

Santamaria was the critical witness and the only witness, besides Mayor Pérez that could have testified as to any explicit QPQ between Mayor Pérez and himself. As Santamaria testified that the payments were political campaign contributions, but did not testify about any explicit QPQ, the convictions must be dismissed.

AC found that, although Mayor Pérez was right that Santamaría testified that he made at least some of the payments on which the indictment's charges rest to help pay off Pérez's campaign "debt", a rational juror on the particular record could have found beyond a reasonable doubt that Santamaría's payments were not campaign contributions, and, therefore, the element of an explicit QPQ did not apply, or that no evidence of an explicit QPQ was necessary to convict Pérez.

AC did not state that there was evidence of an explicit QPQ between Santamaria and Pérez to exchange cash for municipal contracts, or other favors. Therefore, AC indirectly, or implicitly, admitted that there was no evidence of an explicit QPQ.

Santamaria testified that he had a practice of making cash political campaign contributions that would be registered to other persons, in the electoral reports, to remain anonymous so that newspapers would not publish articles about his donations. The record shows that Santamaria was not impeached and his credibility was not questioned at any moment during trial. Santamaria cannot be impeached on appeal. Therefore, his statements must be taken as true. The jury could only convict Mayor Pérez on Santamaria's word. Santamaria testified that he was able to gain access to politicians by making cash political campaign contributions to many politicians, that the contributions were made in cash to remain anonymous and avoid newspaper reporting because the funds would be registered

to other persons, that he would give the funds to candidates directly, that he offered Mayor Pérez to make cash political campaign contribution to pay Mayor Pérez' $70,000 campaign debt, that he did not keep track of the payments and, that he paid more than $70,000 to Mayor Pérez.

There is no evidence of personal use of the cash political campaign contributions. The only evidence of its use are the documents presented by the prosecution in its case in chief known as Electoral Comptroller's reports ("electoral reports"), for Mayor Pérez's political campaign. The prosecution did not present the 2018 electoral report. The 2019 electoral report showed a total income of $318,900, out of which $139,175 was received in cash, and payment of expenses in the amount of $109,555. The 2020 electoral report showed a total income of $340,746, out of which $86,640 were received in cash, and payment of expenses totaling $642,864. The 2021 electoral report showed a total income of $164,300, out of which $65,400 were received in cash, and the payment of expenses totaling $47,035.

Mayor Pérez's income tax returns from 2019 to 2021 only showed his income as mayor. The prosecution did not present Mayor Pérez's bank statements, nor evidence of a lavish lifestyle.

The only relevant consideration is whether the funds were used for political campaign expenses and the evidence supported that conclusion beyond a reasonable doubt. The electoral reports, presented by the prosecution in its case in chief, showed cash donations that were consistent with Santamaria's testimony, during the relevant time period. As stated above, the 2019 electoral report showed a total income of $318,900, out of which $139,175 was received in cash, which is almost double the $70,000 provided by Santamaria and payment of expenses in the amount of $109,555, which is also more than the $70,000 debt. Additionally, Santamaria's associates appeared in the lists of donors.

Therefore, taking the evidence in the light most favorable to the prosecution, no reasonable juror could find

that the payments were not political campaign contributions beyond a reasonable doubt because Santamaria testified that he gave political campaign contributions to Mayor Pérez and the documentary evidence, particularly the electoral reports, presented by the prosecutor supports said conclusion. Those are simply the facts; the rest is speculation.

To find Mayor Pérez guilty beyond a reasonable doubt of taking bribes, or extorting Santamaria, without an explicit QPQ, the jury had to find beyond a reasonable doubt that the cash payments that Mayor Pérez received from Santamaria were not political campaign contributions. On this record, no reasonable juror could find beyond a reasonable doubt that the payments were not meant and used for payment of political campaigns and that the payments were not meant nor used for personal expenses. There was simply no other evidence as to this matter.

Therefore, evidence that Santamaria made secret anonymous cash political campaign contributions to Mayor Pérez, with the intention of gaining access to him, is insufficient to prove that Mayor Pérez engaged in bribery or extortion.

The opinion criminalizes everyday duties of a mayor who is in charge of making the necessary works and finding the best companies to do the job at the best price. In the recordings Mayor Pérez can be heard talking with his donor, Santamaria, about upcoming contracts and telling him that there would be bids to find the best contractors for the municipality to save money. There is nothing wrong with Pérez asking Santamaria if he could work with green areas, which is obviously a recurrent need at the municipality, and the mayor is responsible for maintaining the green areas. There is nothing wrong with a municipal employee calling prospective bidders to provide information about the bidding process. There is nothing wrong with Pérez discussing additional road improvements projects. On the contrary, it is

his job to find the best companies to bid. There is nothing wrong with Pérez discussing with Santamaria that a waste contract will be renewed soon which is public information available to anyone. There is nothing wrong with Mayor Pérez making sure that the municipality abides by the contracts with contractors and pays them for their work.

There is no evidence that Mayor Pérez exerted pressure on the bid board, but only that he named its members and shared socially with its members. That is not the criteria to be applied for such a finding.

AC's decision is setting a new standard of law for trust positions when there is no requirement to employ people that the mayor doesn't know to avoid corruption charges. The prosecution did not present evidence that the trust employees were corrupt, or that Mayor Pérez gave instructions to favor Santamaria. On the contrary, Santamaria lost bids and did not win the holy grail waste transfer station contract that Pérez could have awarded

directly to Santamaria pursuant to the municipal code. During the FBI controlled payments, in which the FBI even set up a camera under a table, there is no mention of a quid pro quo, and Santamaria did not ask incriminatory questions to Pérez during their recorded conversations because he knew that Pérez would deny any corrupt intention because there was none.

III. **Variance**

AC found that there was no variance because Mayor Pérez was charged for personal cash payments and the trial evidence supported said allegations. However, as explained above, the trial evidence was not of personal cash payments but rather of political campaign contributions (that violated local electoral laws). At page 18, of AC's opinion, it recognized that there was some basis for concern that the jury convicted Mayor Pérez based on his having received bribes from Santamaría in the form of campaign contributions, notwithstanding that the indictment did not allege an "explicit promise or undertaking by the official to

perform or not to perform an official act." Therefore, AC recognized that the variance took place. *United States v. Chan*, 981 F.3d 39 (1st Cir. 2020). However, AC found that it caused no prejudice to Mayor Pérez.

But, the variance seriously prejudiced Mayor Pérez. On account of the allegations contained in the indictment with no reference to political campaign contributions and the prosecutor's written express statement that Mayor Pérez was not charged for the political campaign contributions but only for the three $5,000 payments controlled by the FBI, Pérez prepared to face trial on non-political campaign related payments[1]. Mayor Pérez did not prepare for a trial in which the prosecutor's opening statement included the political campaign contribution payments as part of the charged crimes, and the testimony of the prosecution's main

[1] The prosecutor stated that the government was "well aware that individual A paid [Mayor Pérez Otero's] campaign debt (believed to be approximately $70,000) from the 2017 special election and the government specifically did not include the repayment of this debt within the scope of the conspiracy or either substantive count of the indictment"

witness about those payments. The defect in the indictment caused prejudice to Pérez because it did not adequately notify him that he was charged for an offense related to political campaign contributions, which required different elements than regular bribe and extortion charges and a different defense strategy. With adequate notice, Pérez would have conducted extensive investigation as to the identity of the names behind Santamaria's anonymous donations to establish that the cash donations were reflected on the electoral reports but obviously not under Santamaria's name, in more detail, and presented that evidence.

The indictment subjected Mayor Pérez to being tried for the same offense twice because it did not charge him with the political campaign contributions. The prosecution could avoid Double Jeopardy and charge Mayor Pérez, again, under the same facts, with bribery and extortion specifically for the political campaign contributions and exclude the three controlled FBI payments.

Therefore, since the variance was prejudicial, reversal was required. *United States v. Mangual-Santiago*, 562 F.3d 411, 421 (1st Cir. 2009)

IV. **Jury instructions**

Jury instructions 11 and 12 told the jury that there was testimony about Mayor Pérez's intention that some payments were not political campaign contributions, which meant that there was evidence that some payments were bribes and extorted payments. Instructing the jury that there was "testimony that certain, but not all, of the money that Santamaria gave to Mayor Pérez constituted campaign contributions or were **intended** to pay a political campaign debt", invaded the province of the jury who had to find the intent behind the payments, or whether the payments were political campaign contributions or not. The charged statutes contain the element of intent, and it goes without saying that matters of intent are for the jury to consider. *Cheek v. United States,* 498 U. S. 192, 203 (1991). Therefore, the instruction that told the jury that the evidence showed that Mayor

Pérez's intention was that some payments were political campaign contributions and that some were not, should not have been given, because it invaded the province of the jury and, even more, because of the absence of any testimony, or evidence, about Mayor Pérez's intention. By giving an instruction that told the jury that some payments were intended as political campaign contributions, and some were not, DC prejudged the intention of the parties. But, as Mayor Pérez argued, in his brief, Santamaria did not even testify about what Mayor Pérez's intention was in receiving the FBI moneys. Santamaria only testified about his own personal intentions of getting the waste contract. Therefore, the judge impermissibly commented her opinion on the evidence on the main issue of intent. The influence of the trial judge on the jury is necessarily and properly of great weight and the trial judge's lightest word or intimation is received with deference. *Starr v. United States*, 153 U.S. 614, 626 (1894).

AC agreed with Mayor Pérez that, in making the statement in question, the District Court did comment on the

evidence because, on its face, the statement draws an inference from the evidence by effectively asserting that none of the testimony demonstrated that Santamaría made campaign contributions. However, AC found that it need not decide, whether this comment constituted "improper judicial intervention.", pursuant to *United States v. Rivera-Rodríguez*, 761 F.3d 105, 112 (1st Cir. 2014), because Mayor Pérez failed to show that "there is a reasonable probability that, but for the error claimed, the result of the proceeding would have been different." Id. at 112.

However, Mayor Pérez argued that, without the trial judge's comment about his corrupt intention, there is a reasonable probability that he would not have been convicted, but once the judge signaled to the jury her opinion that Pérez's intention was that some of the payments were not political campaign contributions, it improperly altered the jurors' ability to evaluate, on their own, whether the payments were political campaign contributions, or not. Mayor Pérez was certainly prejudiced because the judge

filled an element of the crime that had not been proven by the prosecution: that there was intent that some payments were not political campaign contributions, and, therefore, there was a corrupt intent on some of the payments. That statement meant that there was evidence of a corrupt QPQ at least for some of the payments because it referred to Mayor Pérez's intention when there was no evidence of Mayor Pérez's intentions. The jury instructions were clearly prejudicial.

V. Failure to investigate juror bias

In *United States v. Tsarnaev*, 595 U.S. 302, 313 (2022), this Court stated that, because conducting voir dire is committed to the district court's sound discretion, there is no blanket constitutional requirement that it must ask each prospective juror what he heard, read, or saw about a case in the media. Rather, the Court noted, a district court's duty is to conduct a thorough jury-selection process that allows the judge to evaluate whether each prospective juror is to be

believed when he says he has not formed an opinion about the case.

In the present case, by pure chance, Mayor Pérez found that two of the selected jurors, who had denied knowing about the case during voir dire, had failed to disclose that they had published statements that showed bias against Mayor Pérez in their Facebook accounts. Mayor Pérez argued that said discovery was evidence that there was a flaw in the voir dire and reason to believe that additional jurors had failed to disclose their bias, and requested that all of the potential jurors and the jurors be asked about the matter. Mayor Pérez request was precisely, as the Supreme Court stated, in *Tsarnaev*, to be adequate, to evaluate whether each prospective juror was to be believed when they said that they had not formed an opinion about the case, in light of the evidence that two jurors had failed to disclose bias when they were asked during voir dire. Mayor Pérez did not request the district court to ask each prospective juror what he heard, read, or saw about a case in

the media, but only if they had a bias against Mayor Pérez, again, in light of the failure of two jurors to apparently understand the question when it was made during the jury selection.

Mayor Pérez made a colorable claim of juror bias resulting from the finding of jurors who failed to disclose their bias against Mayor Pérez, during the voir dire, therefore, the court had a duty to investigate. *United States v. French*, 904 F.3d 111, 121 (1st Cir. 2018).

CONCLUSION

WHEREFORE, Petitioner respectfully requests that the Honorable Court grant this petition.

Respectfully Submitted, in San Juan, Puerto Rico, this 6th day of October 2025.

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CERTIFICATE OF SERVICE

I, José R. Olmo-Rodríguez, court appointed counsel for the petitioner Angel Pérez-Otero, 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 16th day of October 2026.

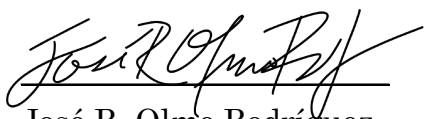


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CERTIFICATE OF COMPLIANCE

I, José R. Olmo-Rodríguez, court appointed counsel for the petitioner Angel Pérez-Otero, hereby CERTIFY that this petition complies with the page limit as it contains 40 pages, with the exclusion of the questions presented, the list of parties and the corporate disclosure statement, the table of contents, the table of cited authorities, the listing of counsel at the end of the document, or any appendix.

In San Juan, Puerto Rico, this 6th day of October 2026.



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APPENDIX

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