UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

EDUARDO CORREA-LÓPEZ,
Plaintiff,

v.

EDWIN O. GONZÁLEZ-RAMOS, ET AL.,
Defendants.

Case No. 24-cv-1006-RAM

FIRST AMENDED HABEAS PETITION UNDER 28 U.S.C. § 2254

TO THE HONORABLE COURT:

INTRODUCTION

This petition seeks a writ of habeas corpus for Eduardo Correa-López, presently a prisoner of the Puerto Rico Department of Corrections' Guerrero Institution in Aguadilla, Puerto Rico. Mr. Correa—innocent of all charges against him—is in custody in violation of the U.S. Constitution. 28 U.S.C. § 2254(a).

At his 2008 jury trial, his case was a hair shy of acquittal: two of ten jurors even voted him "not guilty" of murder and illegal weapon use charges.

To begin, as presented in Claim 1, he is actually innocent of the three charges sustained by a non-unanimous 2008 jury. And as argued in state post-conviction proceedings, and here at Claims 2-4, previously suppressed mitochondrial DNA ("mtDNA") evidence warrants the grant of a new trial. Under the Post-Conviction DNA Analysis Act of 2015, he secured access to mtDNA crime scene evidence that had been suppressed by the prosecution. Given abundant evidence of his innocence, a new trial should be granted just as recently occurred in two District of Puerto Rico matters. *See Ramos-Cruz v. Emanuelli-Hernández*, No. 20-1589-FAB, 2024 WL 4403699, at *28 (D.P.R. Sept. 30, 2024) (granting § 2254 relief based on exculpatory mtDNA evidence); *Meléndez-*

Serrano v. Escobar-Pabón, No. 20-1588, ECF No. 77 (D.P.R. Dec. 13, 2024) (same). In addition to violating *Brady* and its progeny, and due process at the trial stage, relief is further justified since the P.R. courts misapplied federal constitutional law in post-conviction relief and engaged in unreasonable determinations of material facts.

But, as presented in Claims 5-11, Mr. Correa's petition for relief is not based solely on the evidentiary weight of untested crime scene evidence: the system failed to detect other evidence of innocence now available. Independently, and cumulatively, multiple additional grounds warrant relief under § 2254. And Mr. Correa can overcome any procedural barriers to merits review of all claims because it is more likely than not that no reasonable juror would convict him in light of new evidence.

As presented in Claims 5, but for trial counsel's ineffective assistance, the jury would have seen numerous compelling pieces of evidence showing that Mr. Correa was not at the crime scene. At the very least, the jury would have heard from Mr. Correa's wife, sister-in-law, and mother-in-law, all of whom saw him return home for dinner and television watching after dropping off his co-workers Tomás Delgado-Nieves ("Delgado") and Luis Torres and getting gas after work. The jury would have also seen cell phone records corroborating Mr. Correa's calls to his wife while on his way home, and it would have seen the presentation of evidence corroborating the time it took for Mr. Correa to drop off his co-workers, gas-up his car, and drive home.

What is more, as Claim 6 argues, but for trial counsel's failure to advise Mr. Correa of his absolute right to testify, the jury would have also heard from Mr. Correa himself who had always maintained his innocence, who lacked a criminal record, and had candidly explained himself to law enforcement and the press. The prejudice from trial counsel's failure to investigate and present

this compelling and credible alibi evidence was magnified by multiple unreasonable actions at trial. First, counsel tried but failed to elicit alibi evidence from a testifying officer that had briefly spoken with Mr. Correa's wife. Second, rather than present alibi witnesses, trial counsel presented character witnesses who could not attest to Mr. Correa's alibi on cross-examination. This allowed the prosecution to exploit the lack of alibi presentation to argue that there is no other version of the case than the one it presented.

Further, as pleaded in Claim 7, in a case where Mr. Correa did not know the victim, and had no motive to harm her, his trial counsel provided ineffective assistance of counsel by failing to move for severance so the defense could either exclude evidence only applicable to Delgado or elicit testimony and evidence adverse to co-defendant Delgado. Prior to trial, trial counsel learned of evidence of recent physical violence and emotional abuse between co-defendant Delgado and the victim. The prosecution's primary witness at trial, Shakira, was the daughter of the co-defendant and the victim, and Shakira had been exposed to this violence. She could have testified to it. Yet, counsel did not file a motion to sever, did not present evidence related to the co-defendant's prior violent conduct, did not elicit testimony regarding that prior violence, and did not otherwise pursue any trial strategy that would have made Delgado appear more guilty.

Moving on, Claims 8-11 address a combination of additional circumstances, which support granting the writ. Claim 8 seeks relief based on the non-unanimous verdict against Mr. Correa in violation of Sixth and Fourteenth Amendments. Claim 9 asserts that due process was violated based on the Commonwealth's failure to test and preserve evidence and investigate witnesses. This includes conduct in relation to the prosecution's treatment of Shakira, who was traumatized once by her mother's killing and a second time by someone who induced her to testify falsely. She's

since recanted her trial testimony. While prosecutors in post-conviction proceedings purported to have obtained statements contradicting the recantation, these statements were obtained in improper circumstances—by threating to charge the child with perjury for her trial statements as an 11-year-old child. Claim 10 argues the evidence at trial was insufficient to convict Mr. Correa, especially in light of the statements from Shakira, which were beyond implausible. Finally, under Claim 11, the previous claims constitute cumulative error supporting Mr. Correa's petition.

* * * *

A Writ of Habeas Corpus must issue.

Contents

Index of Exhibits

Exhibit	Description
1	Declaration of Dimary Crespo-González
2	Declaration of Giselle Crespo-González
3	Declaration of María González-Medero
4	Declaration of Eduardo Correa-López
5	Trial Photograph of Slit Above Door
6	Trial Photograph of Bunk Bed
7	Trial Photograph of Bunk Bed

Abbreviations

Unofficial Trial Transcript Citations: "Tr."[1]

Court of First Instance, Arecibo Part: "CFI"

Court of First Instance Resolution of Second Post-Conviction Motion: "CFI [page no.]"

P.R. Court of Appeals: "COA"

P.R. Court of Appeals Resolution of Second Post-Conviction Motion: "COA [page no.]"

Puerto Rico Supreme Court: "P.R.S.Ct."

Trial Counsel

Trial Counsel from June 1, 2007 through Trial: Mayra López-Mulero, Luis Guzmán-Ortiz

Trial Counsel through June 2007: Héctor Varela-Riestra

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[1] "Tr." citations are to an unofficial packet of record documents pieced together based on initial discovery provided by Respondents' counsel at the Federal Litigation and Bankruptcy Division of the Puerto Rico Department of Justice. Requests that Respondents lodge the official Commonwealth record are pending. Respondents shoulder the burden of submitting English-language copies of Habeas Rule 5 record. *See Ramos-Cruz v. Emanuelli*, 20-cv-1589-FAB, ECF No. 125 at 12 (D.P.R. June 16, 2023) (citing *Atiles-Gabriel v. Commonwealth*, 256 F. Supp. 3d 122, 127-28 (D.P.R. 2019) (Gelpí, J.)). The PDF used to track citations will be provided to Respondents' counsel.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

BACKGROUND

1. In 2006, Petitioner Eduardo Correa López worked at the Eaton factory in Arecibo, doing afternoon/evening shifts. He lived with his children, his wife Dimary, Dimary's parents, Dimary's sister, and her sister's two children. *See* **Exhibits 1-4.**

2. Generally working an afternoon/evening shift Eduardo, would come home and eat dinner late with his wife after saying goodnight to the kids. *See* **Exhibits 1-4.**

INVESTIGATION OF THE NOVEMBER 29, 2006 MURDER OF YADIRA DELGADO-CANDELARIA

3. In the pre-dawn hours of November 29, 2006, someone killed Yadira Delgado-Candelaria, the wife of Tomás Delgado-Nieves ("Delgado").

4. The killing was result of 108 stabbing and blunt force wounds.

5. The storm of puncture wounds was consistent with the phenomenon of overkilling, a term that describes killings driven by extreme passion, rage, or hatred.

6. While Delgado maintained his innocence, and wasn't linked to any forensic crime scene evidence, he and Yadira had a history of domestic violence incidents. She'd gone to the hospital for treatment following claims of violent altercations.

7. The two had recently separated and were caught in one or more love-triangles.

8. During this separation, Yadira stayed in the marital home with the couple's 8-year-old daughter Shakira and their 3-year-old Ninoska.

9. When he moved out, Delgado moved directly across the street from his home with Yadira, Shakira, and Ninoshka, taking up a room in his grandparents' house.

10. Delgado's grandparents' house was adjacent to a piece of land where Delgado raised fighting cocks.

11. The night of her killing, Yadira lay in bed for some time with her paramour Jeffrey Martínez, who claimed to have left the scene of the crime just past midnight. COA 18.

MISMANAGED CRIME SCENE, NO LEADS BASED ON FORENSICS.

12. Yadira's mutilated body was discovered by her eldest daughter Shakira. Investigators worked the crime scene for a few hours on November 29 while giving interviews to reporters who had descended upon the small dead-end Arecibo street Calle Los Delgado.

13. For reasons not explained in the record, the murder scene was left unlocked and unguarded by police and forensics technicians who didn't come back to finish working the scene until December 1 at 3:30 p.m.

14. This investigative failure appeared to be the work of Officer Alejando Montalvo-Argüelles. While the crime scene was unattended, there was at least one known intrusion into it by the family of the victim. COA 22.

15. Investigators nevertheless extracted blood and hair samples from on or near Yadira's body, her bedroom, the bathroom, and the hallway leading from Yadira's bedroom to the bathroom.

- Tr. 925: discussing exhibit showing detection of Yadira's blood on the bathroom sink;
- Tr. 927: describing exhibit containing stained cloth collected from the floor area outside the bathroom;

- Tr. 928: describing exhibit containing stained cloth collected from the hallway wall outside the bathroom, which had genetic material but couldn't yield genetic material through testing.

16. During the investigation, the hairs recovered were placed in envelopes that were left untested and were purposefully withheld from the defense until Prosecutor Diana Cordero-Vásquez inadvertently dropped them on the floor in court. *See infra* ¶¶ 63-67.

EARLY NOVEMBER 29, 2006: WITNESS SHAKIRA (AGE 9) FIRST REPORTS SHE SAW NOTHING.

17. Shakira and her sister Ninoska, age 3, went to bed on their bunkbeds around 11:00 p.m. on November 28, 2006. When they got up around 7:00 a.m. the next day, they went the bathroom. At that time, Shakira, who was nearsighted, didn't know where her eyeglasses were.

18. Shakira heard her mother's phone ringing and answered it, but no one was there. The phone was in the living room at the base of the Christmas tree.

19. Shakira went to wake up her mother and bring her the phone. She saw her mother naked on the bed, covered in blood, and with what she described as a lot of "leaves" [*hojitas*] on her.

20. Scared, Shakira grabbed Ninoska and ran to their great grandparents' house, where her father had been staying since separating from Yadira.

21. Shakira told her great grandmother that she had not seen anything, that she and her sister were sleeping and didn't sense anything wrong at all until she found her mother.

LATER NOVEMBER 29, 2006: WITNESS SHAKIRA SAW THE SHADOW OF HER FATHER.

22. Later that day, Shakira was questioned by investigator Montalvo-Argüelles and gave unrecorded statements to him.

23. According to Montalvo-Argüelles, Shakira said that she'd seen the shadow, or silhouette, of Delgado in the hallway of her mother's house the night she died. Tr. 256.

24. In this statement, Shakira didn't say that the "shadow" was carrying anything. Tr. 256-257.

25. According to Shakira, that night she'd spotted her father through a crack between her bedroom door, which she looked through from the top of her bunk bed. **Exhibits 5-6.**

26. Having interviewed Delgado on November 29, 2006, Officer Montalvo-Argüelles interviewed Mr. Correa in front of his home where he lived with his wife Dimary Crespo-González.

27. Officer Montalvo-Argüelles received Mr. Correa's name from Delgado and Delgado's grandmother since they'd indicated Mr. Correa had given Delgado a ride to and from work. CFI 88.

28. Mr. Correa told the officer that he saw a strange car alongside that of Delgado's wife's car when he dropped off Tomás. CFI 44.

THE ACTIVE CRIME SCENE IS LEFT UNATTENDED AND UNSECURED FOR DAYS.

29. For his part, Delgado, who had been temporarily living across the street from Yadira and their two daughters, called 9-1-1 shortly after Shakira and her younger sister appeared at Delgado's home, where he'd been staying with his grandparents.

30. After working the scene on November 29, 2006, Montalvo left the crime scene unattended from November 29 through December 1 at 3:30 p.m. There was at least one known intrusion into the crime scene by the family of the victim. COA 22.

31. Montalvo never measured anything related to the crime scene, including the distance from the bunkbed to the door or the size of the crack above the door.

JANUARY 30, 2007: AFTER SEEING HIM AT A RESTAURANT, SHAKIRA SAYS MR. CORREA WAS ALSO THERE IN THE HALLWAY.

32. After Yadira's death, Shakira went to live her maternal grandmother, María "Mary" Candelaria-Andújar. Tr. 544, 1266. Mary first took Yadira to Washington through January 7, 2007.

33. Throughout her time in Washington, Mary was talking to Officer Montalvo-Argüelles regularly. Tr. 1320-1321.

34. Throughout that time, Yadira was placed under the care of Dr. Felipe Reyes at the P.R. Department of Family. Dr. Reyes saw her roughly 7 times through December 2006 and January 2007. Tr. 1303.

35. Mary knew Dr. Reyes since she used to work at the Department of Family.

36. In early January, just after Three Kings Day, Mr. Correa dined with his family at El Mofongo de Doña Rosa. Shakira's grandmother and other family members happened to eat there the same day.

37. After playing with Eduardo's son, Shakira told her grandmother Mary that Eduardo was friends with Delgado, her father. Tr. 1283; CFI 35.

38. Weeks passed. Mary continued taking Shakira to see Dr. Reyes who questioned her about whether she was afraid of anyone. Tr. 1284.

39. Then one day, according to Grandma Mary, Shakira asked for an interview with law enforcement. So Mary asked Montalvo-Argüelles to take another statement from her. Tr. 1285.

40. Montalvo-Argüelles took this statement on January 30, 2007. Shakira said she saw her father and a friend in the hallway the night her mother was killed. This statement described numerous articles of clothing on Mr. Correa and Delgado, alleged that both men were carrying

knives, and had blood on them. She said Delgado had a lot of blood on him and Mr. Correa had a "regular" amount.

41. Shakira didn't want Mary to be in the room when she told Montalvo-Argüelles this new version where she saw two people in detail instead of one silhouette. Tr. 1286. So Ana Otero, Mary's daughter-in-law, sat with Shakira and Montalvo-Argüelles. Tr. 1286-1287.

42. Despite the conflict between this statement and the one two months earlier, Officer Montalvo-Argüelles never conducted a line-up to test whether Shakira could identify Mr. Correa.

COMPLAINT AGAINST MR. CORREA AND DELGADO

43. A complaint filed on February 8, 2007, in Arecibo, Puerto Rico, then charged Petitioner Eduardo Correa López and Delgado with Yadira's murder. It also charged both men with two counts of carrying and using weapons.[2]

NEW COUNSEL APPEAR BEFORE TRIAL

44. Just before trial in the summer of 2007 before Judge Reyes Caraballo (now retired), Attorney Héctor Varela Riestra sought to withdraw from representation.

45. Just before the change in counsel, Attorney Varela's investigation had produced evidence corroborating Mr. Correa's alibi that, at the time of the crime, he was at home where he lived with his wife, two children, and numerous members of his wife's family.

46. Attorney Varela's investigator obtained phone records corroborating Mr. Correa's calls to his wife on his way home from work on the night in question.

[2] The case numbers for these charges are CVI2007-G-0011, CLA2007-G-101, CLA2007-G-102.

47. On or about May 23, 2007, Mr. Correa's mother retained Attorney Mayra López-Mulero. On or about June 1, 2007, Mayra López-Mulero and her associate Luis Guzmán-Ortiz (collectively, "trial counsel") assumed Mr. Correa's representation as trial counsel, first by written motion then by appearance in the CFI.

48. Before trial, trial counsel learned that Delgado and Yadira had a history of physical violence and emotional abuse. Some incidents had resulted in charges under Puerto Rico's Domestic Abuse and Prevention Act (colloquially known as Law 54).

49. Mr. Correa discussed in detail with trial counsel what happened when he got off work on November 28, 2006, and dropped off Delgado and a third coworker before returning home.

50. Documentation of Attorney Varela's investigation was available to trial counsel.

51. Trial counsel was aware that Mr. Correa went home on November 28, 2006. Trial counsel learned that Mr. Correa called his wife on the way, and she prepared him dinner, which he ate after greeting his two children.

52. Trial counsel was aware that numerous witnesses saw Mr. Correa return home to have dinner and watch a television series through the early hours of November 29, 2006. These included his sister-in-law, Giselle Crespo, his mother-in-law, María González, and his wife's cousin John Alexander Kay.

53. Trial counsel told Mr. Correa's wife that she couldn't testify on his behalf since the two are related by marriage.

54. After assuming representation in June 2007, trial counsel did not hire an investigator to prepare for trial.

55. Trial counsel did not interview Mr. Correa's sister-in-law Giselle Crespo. Nor did they subpoena her or otherwise ask her to testify at trial.

56. Trial counsel did not interview Mr. Correa's mother-in-law, María González. Nor did they subpoena her or otherwise ask her to testify at trial.

57. Trial counsel did not interview Mr. Correa's wife's cousin, John Alexander Kay. Nor did they subpoena him or otherwise ask him to testify at trial.

58. Trial counsel did not file a motion for a separate trial.

59. Trial counsel did not seek a court order to obtain the notes of Dr. Reyes. Nor did trial counsel subpoena Dr. Reyes to testify at trial.

60. Trial counsel did not submit a notice of alibi evidence.

61. Trial counsel met with co-defendant Delgado and his counsel on numerous occasions without entering a joint defense agreement.

62. Trial counsel never informed Mr. Correa of the potential conflict of interest in aligning his defense with Delgado's. Nor did trial counsel execute any waiver in that respect.

TRIAL

MID-TRIAL REVELATION OF 14 UNTESTED CRIME-SCENE HAIRS

63. During trial, Prosecutor Diana Cordero-Vázquez revealed that the Commonwealth was holding 14 crime scene hairs, which had not been previously revealed. Tr. 192-193, 700-702; *see also supra* ¶ 16.

64. These were addressed just after CFI Judge Maribel Ruiz-Soto assumed responsibility for the case after the mid-trial retirement of Judge Reyes Caraballo. Tr. 193-195, 700.

65. Specifically, the prosecution and forensics analysts chose not to focus on the hairs because a technician thought the hairs originated from the victim. Tr. 193-195. And the prosecution mistakenly believed they didn't have to be disclosed if not to be used in the case in chief. Tr. 710.

66. When counsel for Mr. Correa and co-counsel sought testing of the hairs, the parties discussed whether they should be compared against those of Yadira's paramour, Jeffrey Martínez, who'd been at the house just before she was killed. Tr. 195.

67. The Commonwealth did not allow the defense to have the hair samples analyzed, and the CFI refused to order such analysis be conducted. Instead, the CFI ruled that the case was not about scientific evidence; rather, the court opined, it was really about whether the jury would believe the testimony of Shakira. Tr. 708.

SHAKIRA'S TESTIMONY AND STIPULATION OF INCONSISTENCIES

68. The Commonwealth presented testimony from Shakira through a closed-circuit audio-visual system.

69. The Commonwealth presented testimony about Shakira's alleged observations despite the fact that the crack above the door was multiple feet from the bunk bed and would not have provided the full view of a person walking down the hallway. Since the Commonwealth had access to the bedroom itself and had photographs, it could have verified that such observations were not possible.

70. The court had the parties submit an extensive list of 35 inconsistencies between her November 2006 statements, her January 2007 statements, and those made at the 2008 trial. CFI 94-96.

TESTIMONY REGARDING UNTESTED HAIRS

71. Forensic technician Fernando Mercedes-Fernández testified that various hairs were found at the crime scene. His conclusion was that, under magnification, they were similar to samples taken from Yadira. They'd obtained hair from the hallway outside the bathroom, five hairs from her head and seven from her body. CFI 104.

72. Inspector Mercedes didn't know if they originated from Yadira or from another person. CFI 104. The pathologist who did Yadira's autopsy specified the various places of Yadira's body from which the hairs were taken. None were taken from her pubic area, which was shaved. CFI 71.

SECRET VISITS FROM "COUSIN" "EL CHINO"

73. After Yadira's death, Officer Montalvo told Shakira's family members to listen closely to what Shakira said because it could be important to the investigation. Tr. 577.

74. As a result, Yadira's aunt, Ana Otero, wrote down spontaneous statements Shakira made about Yadira: she was being visited by a man known as "El Chino." Tr. 578. According to Ms. Otero, Shakira had said that, when El Chino visited Yadira, he would park his car far away so no one would see him coming to the house. Tr. 578-579. There actually was a cousin of Yadira named José Santiago-Medina, who used the alias "El Chino." Tr. 578. Shakira described this secret visitor as being "trigueño," "flaco," and eñema'o," meaning olive-skinned, skinny, and dragging. Tr. 581. He didn't have a very big nose and had short black hair. Tr. 582. But, when pressed, Shakira said this "El Chino" was like her mom's cousin but was not him. Tr. 582-583.

75. Shakira described El Chino as "a cousin no one knows." Tr. 586. When he came to see Yadira, the two would smoke together in the house. Tr. 590.

76. And Shakira said that, if her father, Tomás Delgado, found out El Chino was coming by to see Yadira, then something would happen to her mother Yadira. Tr. 587.

77. El Chino would party with Yadira and their other cousin Mayra Santiago-Medina. Tr. 466.

Fighting with Husband Delgado, Lying in Bed with Paramour Martínez

78. The night she was killed by 100-plus stab wounds, Yadira told her cousin Mayra by phone that her lover, Jeffrey Martínez, was coming over that night. Tr. 462-463.

79. Mayra warned Yadira to talk about whatever she needed to with Jeffrey and have him get out before Delgado got home from work. Tr. 462-463. Yadira had just been fighting with Delgado over some items that Delgado had taken out of the house. Tr. 462.

Trial Counsel Tries, and Fails, to Elicit Alibi Statements Attributed to Mr. Correa's Wife, Dimary Crespo

80. Trial counsel asked Officer Montalvo-Argüelles numerous questions to elicit hearsay statements based on his interview with Mr. Correa's wife, Dimary Crespo. Tr. 293-294.

81. Montalvo-Argüelles denied taking notes on anything Mrs. Crespo said to him when they spoke. Tr. 294.

Trial Counsel Presents No Alibi Evidence But Presents "Reputation" Witnesses

82. Trial counsel presented Rosa De Laust-Ganges and Carlos R. Rodríguez-Borrás as character or reputation witnesses. CFI 89-91.

83. On cross-examination, each was tested by the prosecution as to their knowledge of Mr. Correa's alibi. Neither had seen Mr. Correa on the night in question. CFI 89-91.

No Sixth Amendment Waiver

84. The trial court did not inquire whether Mr. Correa had made a knowing, voluntary, and intelligent waiver of his right to testify.

85. When the prosecution rested, there was no discussion between trial counsel and Mr. Correa about whether Mr. Correa would take the stand.

Closing Arguments on Lack of Alibi and Crime-Scene Hairs

86. In the prosecution's closing argument, the prosecution—having observed a lack of alibi evidence presented by trial counsel—commented that, while the defense argued there were two versions of events, there was just one version.

87. Mr. Correa's counsel argued that the hairs should have been disclosed for testing. CFI 93.

88. In its rebuttal, the prosecution argued that other people had access to the crime scene after the murder, so if the hairs belonged to someone else, that didn't necessarily mean the accused were innocent.

Non-unanimous Verdict

89. On February 26, 2008, two of the twelve Arecibo jurors held that Mr. Correa was not guilty of murder (P.R. Pen. Code, Art. 106) and weapons law violations (P.R. Weapons Law, Art. 5.05). The ten remaining jurors dissented from their co-jurors' determination.

90. Because this repugnant verdict was issued prior to *Ramos v. Louisiana*, 590 U.S. 83 (2020), it was allowed to stand. It is not yet known whether *Ramos* is retroactive under P.R. post-conviction law, which is more expansive that federal law.

Direct Appeal: Trial Counsel Appeals Jointly with Delgado

91. Mr. Correa, represented by the same attorney serving as trial counsel, appealed directly from his conviction and sentence to the P.R. COA in KLAN200800866.

92. Among the issues raised on direct appeal, Mr. Correa argued the prosecution committed misconduct by hiding crime scene evidence, including several hairs.

93. He likewise argued it was misconduct to deny the defense access to the hair to have them tested for DNA. He further argued that the CFI erred in refusing to declare a mistrial with regard to this failed disclosure or issue an order allowing DNA testing of the subject hairs. And he argued the evidence was insufficient to convict on any of the charges.

94. Trial counsel did not personally draft the appellate briefing. On or about June 5, 2008, trial counsel subcontracted to have Attorney Rosa I. Ward-Cid draft it. Attorney Ward, retained by co-defendant Delgado as well, drafted joint pleadings for both men.

95. Judgment was affirmed May 13, 2010. The P.R.S.Ct. denied certiorari on January 21, 2011, in Case No. CC-2010-0603.

First State Post-Conviction Motion

Trial Counsel Files Joint State Post-Conviction Motion with Delgado

96. On October 29, 2012, Mr. Correa, represented again by his trial and direct-appeal attorney, filed his first motion for a new trial based on a recantation of the only witness purporting to place him at the crime scene, Shakira.

97. Mr. Correa's counsel filed that motion in collaboration with Mr. Correa's co-defendant, Delgado.

98. The motion was denied on October 24, 2013. It was affirmed by the COA on October 28, 2014 in Case No. KLCE201301427.

SECOND STATE POST-CONVICTION MOTION

99. After the P.R. legislature passed the P.R. Post-Conviction DNA Analysis Act of 2015,[3] Mr. Correa—represented by new counsel from the Puerto Rico Innocence Project—filed a motion for mitochondrial DNA ("mtDNA") testing of materials that had not been tested by Respondents. With no opposition from Respondents, it was granted.

100. Based on the results of the mtDNA testing, Mr. Correa filed a motion for a new trial under Puerto Rico Criminal Procedure Rule 192.1, P.R. Laws Ann. tit. 34, App. II, R. 192.1.

101. As part of these post-conviction proceedings, the Puerto Rico Innocence Project did not conduct new fact investigation outside the mtDNA analysis, which was presented as a new-evidence petition under P.R. Criminal Procedure Rule 192, P.R. Laws Ann. tit. 34, App. II, R. 192.

102. For the court-ordered testing, Mr. Correa had submitted hair samples of his own to compare with that of Yadira.

103. Mr. Correa's mtDNA profile only differs slightly from that of Yadira, which is not unusual in a relatively small population like that of Puerto Rico. But Yadira's mtDNA profile was a nearly perfect match to hairs found on her body. CFI 106-107. So Forensic Scientist Phillip Hopper concluded that the mtDNA sequence identified was consistent with her being the source or the source being someone with her same maternal lineage. CFI 105-106.

104. Mr. Correa, on the other hand, came out inconclusive. According to interpretive guidance, the official estimate was that Mr. Correa could not be "excluded" as a contributor be-

[3] 2015 P.R. Laws No. 246, Art. 5; P.R. Laws Ann. tit. 34, § 4021, et seq.

cause his hairs differed by only a single mtDNA sequence. CFI 106. It appeared the Hopper analysis of Mr. Correa's hair was made independently from that of Yadira such that no expert was ever asked to make a determination on the probability that he is the contributor to any of seven hairs when he differs by one position from all of them and another person is a match to those hairs.

105. Two hairs obtained from the wall just outside the bathroom were determined not to match either Yadira or Mr. Correa. CFI 108.

106. The new-trial motion was denied by the CFI.

107. The CFI entered a final determination without reference to the fact that two of twelve jurors held that the Commonwealth had failed to prove Mr. Correa's guilt beyond a reasonable doubt.

108. The CFI rehashed the testimony of Shakira and claimed that the new evidence presented did not change the testimony from Shakira.

109. The CFI denied relief, the COA affirmed in Case No. KLCE202100891,[4] and the P.R. Supreme Court denied certiorari. CC-2023-0271.

110. Mr. Correa filed a *pro se* petition under 28 U.S.C. § 2254.

111. This amended petition follows.

[4] Judgment located at 2023 PR App. LEXIS 810; 2023 WL 2993848.

GROUNDS FOR RELIEF

CLAIM 1. MR. CORREA IS ACTUALLY INNOCENT: HIS CONVICTION AND CONTINUED INCARCERATION FOR FIRST-DEGREE MURDER AND WEAPONS OFFENSES DENY HIM THE RIGHT TO DUE PROCESS OF LAW IN VIOLATION OF THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS.

SUPPORTING FACTS

112. Petitioner alleges and incorporates by reference paragraphs 1 through 111 above.

113. Actual innocence means "it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt." *Schlup v. Delo*, 513 U.S. 298, 327 (1995). This standard, however, is less strict than the insufficient evidence standard outlined in *Jackson v. Virginia*, 443 U.S. 307, (1979), which "looks to whether there is sufficient evidence which, if credited, could support the conviction," because it focuses on what a reasonable juror would do. *Id.* at 329-30 (emphasis added).

114. It also "does not require absolute certainty about the petitioner's guilt or innocence." *House v. Bell*, 547 U.S. 518, 538 (2006). Nor is "the mere existence of sufficient evidence to convict" outcome determinative. *Schlup*, 513 U.S. at 330. "To be credible, [an actual innocence] claim requires petitioner to support his allegations of constitutional error with new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial." *Id.* at 324 (emphasis added).

115. Such evidence does not necessarily need to be newly discovered, merely newly presented. *Gómez v. Jaimet*, 350 F.3d 673, 679 (7th Cir. 2003) (finding "[i]f procedurally defaulted ineffective assistance of counsel claims may be heard upon a showing of actual innocence, then it would defy reason to block review of actual innocence based on what could later amount to the counsel's constitutionally defective representation.").

116. Among the evidence supporting Mr. Correa's claim of actual innocence under *Schlup* is evidence from child-witness Shakira's own statement that she could see only the shadow or silhouette of her father through a slit above her bedroom door. And the record contains a pattern of prosecutorial conduct that supports Mr. Correa's claim of actual innocence. The distinct pattern includes: (1) the suppression of exculpatory mtDNA evidence; (2) the presentation of untrue testimony from the child, later recanted, obtained following months of phone calls with the grandmother of the child, who took custody of her and brought her to psychology sessions where she was prodded to disclose an additional person she might be afraid of; (3) mismanagement of the crime scene, which was left open for days ; (4) the intentional disregard of glaring discrepancies in the child's testimony, prior statements, and the physical setting of her room; (5) disregard of a lack of fingerprint or other evidence linking Mr. Correa to the crime scene; and (6) disregard for following up on readily available witnesses and evidence corroborating Mr. Correa's alibi. *See* **Exhibits 1-3**.

117. But Mr. Correa's claim of actual innocence is further supported by exculpatory mtDNA evidence showing that hair specimens are either a near perfect match to the victim or match neither Mr. Correa nor the victim.

118. In addition, the majority of evidence suggesting a link to the crime or a motive relates solely to co-defendant Delgado, while not applying to Mr. Correa. Delgado had a history of violent conduct and emotional abuse with Yadira. Delgado was in one or more love triangles with Yadira and had just observed a car outside Yadira's house suggesting the presence of a late-night visitor. And where Mr. Correa did not know Yadira, her wounds involved "overkilling," a phenomenon linked to extreme passion, rage, or hatred.

119. In addition, however, ineffective trial counsel prevented the presentation of numerous exculpatory witnesses and alibi evidence at trial. *See infra*, Claims 5-6, ¶¶ 139-171. The tenuous, inconsistent, and beyond implausible statements from Shakira would have been completely neutralized by the three-plus adult witnesses who all saw Mr. Correa come home to greet his wife and kids, serve himself dinner, and sit to watch a series with his wife and her cousin. **Exhibit 1-4.** And this would have included, but for trial counsel's constitutionally deficient performance, Mr. Correa's own testimony—a particularly compelling source of testimony in a close case. *This case was beyond close*, as the two-juror not-guilty holding would today have precluded conviction and would have likely prolonged jury deliberation until a fully not-guilty verdict was reached.

120. The above, taken together, make it "more likely than not that no reasonable juror would have found" Mr. Correa "guilty beyond a reasonable doubt." *Schlup*, 513 U.S. at 327.

CLAIM 2. THE CONVICTION VIOLATES *BRADY* DUE TO THE SUPPRESSION OF DNA EVIDENCE BY THE PROSECUTION.

SUPPORTING FACTS

121. Petitioner alleges and incorporates by reference paragraphs 1 through 120 above.

122. The Supreme Court in *Brady* held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process." *Brady v. Maryland*, 373 U.S. 83, 87 (1963). This affirmative obligation applies "irrespective of the good faith or bad faith of the prosecution." *Id.*

123. "There are three components of a true *Brady* violation: [1] The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; [2] that evidence must have been suppressed by the State, either willfully or inadvertently; and [3] prejudice must have ensued." *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999). The prejudice

or materiality requirement is satisfied if "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *United States v. Bagley*, 473 U.S. 667, 682 (1985)). Importantly, the question is whether in the evidence's absence Mr. Correa received a fair trial, understood as a trial resulting in a verdict worthy of confidence. *See Kyles v. Whitley*, 514 U.S. 419, 437 (1995) (The test is whether the undisclosed evidence "undermines confidence in the outcome of the trial.").

BRADY ELEMENTS ONE AND TWO

124. The prosecution first withheld the subject hair sample evidence with no intention to make its existence known to Mr. Correa's counsel. The prosecution further violated *Brady* by not permitting testing of the hair evidence. The Commonwealth knew at the time the account of the child Shakira was highly questionable if not completely unreliable if compared against her earlier statements and the physical structure of the crack above her door. **Exhibits 5-7.**

125. The evidence here was exculpatory because it makes it more likely that someone else and not Mr. Correa was the contributor to biological evidence placed before the jury without analysis.

126. While courts need not determine evidence was suppressed willfully, the material here came out without the Commonwealth desiring to disclose. And during trial, the prosecution denied the defense access to have mtDNA sequencing conducted.

PREJUDICE

127. Suppression of the mtDNA evidence undermines the outcome of a trial where already two jurors did not accept the Commonwealth's version of the case. Already, the beyond implausible account of Shakira was facing an absence of biological evidence. But none of that actually appeared to point to someone who was not Mr. Correa. And the jury had been told the

hairs could have come from Yadira but might have come from someone else. While the CFI and COA seek to discount the value of Yadira's perfect match vis-à-vis the "inconclusive" determination about Mr. Correa's hair, it's unreasonable to assert that a jury would not have been affected by the extreme variation between the two options they'd face in deciding whether any hair belongs to Mr. Correa when all are a match to Yadira and two match neither him nor Yadira.

CLAIM 3. MR. CORREA'S FIFTH, SIXTH, AND FOURTEENTH AMENDMENT DUE PROCESS RIGHTS REQUIRE A NEW TRIAL BASED ON NEWLY DISCOVERED EVIDENCE. HIS CONVICTION AND CONTINUED INCARCERATION FOR MURDER AND WEAPONS OFFENSES DENY HIM HIS RIGHT TO DUE PROCESS OF LAW.

SUPPORTING FACTS

128. Petitioner alleges and incorporates by reference paragraphs 1 through 127 above.

129. On habeas review, courts must consider whether either the rules governing a motion for a new trial or the state court's application of those rules "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental or transgresses any recognized principle of fundamental fairness in operation." *District Attorney's Office v. Osborne*, 557 U.S. 52, 69 (2009). Federal rights are violated "when state rules or particular results are shocking or indefensible." *O'Brien v. Marshall*, 453 F.3d 13, 19-20 (1st Cir. 2006).

130. The federal new trial standard requires a defendant seeking a new trial on the basis of newly discovered evidence to demonstrate that: "(1) the evidence was unknown or unavailable to the defendant at the time of trial; (2) failure to learn of the evidence was not due to a lack of diligence by the defendant; (3) the evidence is material, and not merely cumulative or impeaching; and (4) it will probably result in an acquittal upon retrial of the defendant." *United States v. Wright*, 625 F.2d 1017, 1019 (1st Cir. 1980).

131. The COA's application of the new-trial-based-on-newly-discovered-evidence test relied on a distorted and reductionist frame of analysis to reverse the trial court. The P.R. courts inexplicably claimed that a different result was not likely to ensue even when the jury was already divided two to ten, meaning the evidence was already insufficient for a sizable number of jurors.

132. The COA further discounted the exculpatory value of a third party's biological specimen at the crime scene.

133. The P.R. courts' decisions therefore were contrary to, and involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; they also were based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. 28 U.S.C. § 2254(d); *Rashad v. Walsh*, 300 F.3d 27, 34 (1st Cir. 2000); *see also Andrew v. White*, 145 S. Ct. 75, 81 (2025) (Established federal law includes principals that are "indispensable" to Court decisions.). The state courts' errors had a "substantial and injurious effect or influence in determining the jury's verdict." *Fry v. Pliler*, 551 U.S. 112, 116 (2007) (quoting *Brecht v. Abrahamson*, 507 U.S. 619, 631 (1993)).

134. A reasonable jury, facing the totality of the evidence would have reached a different result facing hairs that were a perfect match to the victim and not a match to Mr. Correa. A categorical DNA-based exclusion would have cast doubt on the prosecution's theory that Mr. Correa had somehow helped co-defendant Delgado commit the crime.

135. Moreover, the hairs just outside the bathroom provided additional fuel for reasonable doubt given the range of possible suspects and scenarios, which included Yadira's cousin El Chino and Yadira's paramour, Jeffrey Martínez.

136. As such, the state court's new-trial analysis was objectively unreasonable. *See* 28 U.S.C. § 2254(d)(1), and habeas relief is warranted. *Fry*, 551 U.S. at 116; *Brecht*, 507 U.S. at 631.

CLAIM 4. THE P.R. COURTS' DECISION ON NEW DNA EVIDENCE WAS BASED ON AN UNREASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE EVIDENCE PRESENTED.

SUPPORTING FACTS

137. Petitioner alleges and incorporates by reference paragraphs 1 through 136 above.

138. As was the case in *Ramos-Cruz* and *Meléndez-Serrano*, the P.R. courts engaged in unreasonable determinations in light of the evidence presented. 2024 WL 4403699, at 24-28; *Meléndez-Serrano*, No. 20-1588, ECF No. 77 at 71-80. It was patently unreasonable to assert that the evidence presented would not be likely to garner a different result given the beyond implausible testimony from Shakira, later recanted, alongside the conflict between the physical structure of her room and her own prior statements disavowing a clearer frame of vision beyond seeing a silhouette. As such, in addition to violating *Brady* and its progeny, and due process at the trial stage, relief is further justified since the P.R. courts misapplied federal constitutional law in post-conviction relief and engaged in unreasonable determinations of material facts.

CLAIM 5. MR. CORREA RECEIVED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL GUARANTEED UNDER THE SIXTH AND FOURTEENTH AMENDMENTS WHERE TRIAL COUNSEL FAILED TO ADEQUATELY INVESTIGATE, DEVELOP, AND PRESENT READILY AVAILABLE EXCULPATORY WITNESS TESTIMONY AND ALIBI EVIDENCE AT TRIAL.

SUPPORTING FACTS

139. Petitioner alleges and incorporates by reference paragraphs 1 through 138 above.

140. Mr. Correa's conviction and sentence are invalid under the constitutional guarantees of the right to due process and effective assistance of counsel due to the ineffective assistance of trial counsel. U.S. Const. V, VI, XIV.

141. The Sixth and Fourteenth Amendments guarantee the right to effective assistance of counsel at a criminal trial. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668, 686 (1984).

142. "The failure to call a known alibi witness generally would constitutes ineffective assistance of counsel." *Bigelow v. Williams*, 367 F.3d 562, 570 (6th Cir. 2004); *see also Code v. Montgomery*, 799 F.2d 1481, 1483-84 (11th Cir. 1986) (failure to investigate potential alibi witness when relying on alibi defense is unreasonable); *see also Bigelow v. Haviland*, 582 F.3d 670, 670 (6th Cir. 2009) (counsel provided ineffective assistance where "counsel could have uncovered [alibi] witnesses with minimal additional investigation").

DEFICIENT PERFORMANCE

143. Trial counsel failed to take steps to investigate and present numerous pieces of powerful and credible alibi evidence. While trial counsel was aware that at least three adults saw Mr. Correa return home after dropping off Delgado, counsel told Mr. Correa's wife Dimary Crespo-González that she'd not be called at trial due to their family relationship through marriage. Trial counsel similarly failed to interview Giselle Crespo-González, his sister-in-law, María González-Medero, Mr. Correa's mother-in-law, or John Kay, his wife's cousin. *See* **Exhibits 1-4.**

144. Trial counsel did not so much as contract a separate investigator to contact these witnesses, three of which lived at Mr. Correa's home, a short distance from the Arecibo court-house.

145. Nor did trial counsel review and verify corroborating evidence developed by Mr. Correa's prior counsel in the form of phone records showing he called his wife after leaving work and showing his account was consistent with the time it takes to drive from the Eaton factory, get gas, and drop off his two coworkers before returning home.

146. First, it is defense counsel's duty to investigate witnesses or make a reasonable decision not to investigate further. Counsel's failure to interview Dimary, Giselle, and Maria for trial cannot be strategic because their recollection is consistent with statements that were already in the record but put in doubt by questions to Montalvo-Argüelles and the presentation of reputation witnesses.

147. The majority of federal appellate courts agree that "the refusal even to interview a witness with potentially exculpatory information cannot be considered 'strategic' and thus generally constitutes deficient performance." *López v. Miller*, 915 F. Supp. 2d 373, 427 (E.D.N.Y. 2013); *see also Poindexter v. Booker*, 301 F. App'x 522, 528 (6th Cir. 2008).[5] Further, trial counsel clearly knew the identities of these witnesses and that they could support Mr. Correa's alibi. The failure to contact known alibi witnesses meets the first prong of *Strickland*. *See, e.g., Grooms v. Solem*, 923 F.2d 88, 90 (8th Cir. 1991) ("Once a defendant identifies potential alibi witnesses, it is unreasonable not to make some effort to contact them to ascertain whether their testimony would aid the defense."); *see also Miller v. Singletary*, 958 F. Supp. 572, 577 (M.D. Fla. 1997) (considering importance of witness's testimony and the gravity of the charges, failure to interview witness was unreasonable); *Bryant v. Scott*, 28 F.3d 1411, 1417 (1994) (where trial counsel has contact information for an alibi witness, it is "incumbent" that he or she contact the witness).

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[5] *See also Peña-Martínez v. Duncan*, 112 F. App'x 113, 114 (2d Cir. 2004); *see Richards v. Quaterman*, 578 F. Supp. 2d 849, 870 (N.D. Tex. 2003), *aff'd*, 566 F.3d 553 (5th Cir. 2009) ("There is no excuse for [counsel's] failure to interview in advance of trial the important witnesses."); *Pavel v. Hollins*, 261 F.3d 210, 220-21 (2d Cir. 2001); *Griffin v. Warden, Md. Corr. Adjustment Ctr.*, 970 F.2d 1355, 1358–59 (4th Cir. 1992); *Grooms v. Solem*, 923 F.2d 88, 90 (8th Cir. 1991); *Lawrence v. Armontrout*, 900 F.2d 127, 129 (8th Cir. 1990); *Harris v. Reed*, 894 F.2d 871, 878–79 (7th Cir. 1990); *Crisp v. Duckworth*, 743 F.2d 580, 584 (7th Cir. 1984).

148. Moreover, as counsel did not even speak to Giselle, María, or John Kay, counsel did not make a reasonably informed decision whether their testimony would be helpful. *See Wiggins v. Smith*, 539 U.S. 510, 527-28 (2003) (Without a reasonable investigation, a fully-informed decision with respect to trial strategy is "impossible.").

PREJUDICE

149. The prejudice from failing to develop and present exculpatory witnesses and alibi evidence is immense for several complementary reasons.

150. First, the case against Mr. Correa was extraordinarily feeble, turning almost entirely on the testimony of a child witness whose statements were inconsistent, implausible, and physically impossible given the layout of her room and viewing angle. Even with this tenuous evidence and no alibi defense presented, two jurors still voted to acquit Mr. Correa. Where the case was already this close, presenting the available alibi evidence would have swayed additional jurors to vote for acquittal.

151. Second, the alibi defense was exceptionally strong, consistent, and corroborated by multiple witnesses. Three adults—Mr. Correa's wife Dimary Crespo-González, his sister-in-law Giselle Crespo-González, and his mother-in-law María González-Medero—were all prepared to testify that Mr. Correa was at home with them during the critical timeframe when the murder occurred. *See* **Exhibits 1-3**. Their testimony would have been corroborated by phone records showing Mr. Correa called his wife on his way home and by evidence regarding the time it took for Mr. Correa to drop off his co-workers, gas-up his car, and drive home. The jury would have been presented with a compelling, consistent alternative narrative directly contradicting the prosecution's theory.

152. Third, trial counsel's handling of the alibi issue actively harmed Mr. Correa's defense. Counsel unsuccessfully tried to elicit testimony about alibi statements from Officer Montalvo-Argüelles, drawing attention to potential alibi evidence but failing to deliver on it. *See* Tr. 293-294 (counsel arguing back and forth with Officer Montalvo-Argüelles about whether he wrote anything down about an interview with Mr. Correa's wife, Dimary Crespo; Officer Montalvo-Argüelles denying taking notes of the interview). This was compounded when counsel presented two reputation witnesses who, when cross-examined about Mr. Correra's whereabouts on the night of the murder, could not provide alibi testimony. CFI 89-91.

153. Fourth, the prosecution relied heavily on this absence of alibi evidence in closing argument, telling the jury there was "just one version" of events: the Commonwealth's version. Had the alibi witnesses testified, this powerful rhetorical argument would have been neutralized, and the jury would have been presented with a stark choice between believing multiple consistent adult alibi witnesses versus a single child witness whose testimony was plagued by numerous inconsistencies and reflected claimed observations that were not possible to make through the door slit. *See* **Exhibits 5-7.** Already, two of twelve jurors did not accept the version of fact offered by the Commonwealth through Shakira.

154. Accordingly, for the reasons set forth herein, there is a reasonable probability that the outcome of the proceedings would have been different had Mr. Correa not been deprived of effective assistance of counsel.

CLAIM 6. MR. CORREA RECEIVED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL GUARANTEED UNDER THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS WHERE TRIAL COUNSEL FAILED TO ADVISE MR. CORREA OF HIS RIGHT TO TESTIFY AND FAILED TO ADVISE HIM THAT THE DECISION TO TESTIFY OR NOT IS ONE THAT MUST BE MADE BY HIM ALONE.

SUPPORTING FACTS

DEFICIENT PERFORMANCE

155. Petitioner alleges and incorporates by reference paragraphs 1 through 154 above.

156. At no time did trial counsel inform Mr. Correa of his right to testify, secure his knowing waiver, and present his testimony, in violation of his Fifth, Sixth, and Fourteenth amendment rights. **Exhibit 4 at 4-6.**

157. Eduardo Correa-López had a fundamental constitutional right to testify at his own trial. Trial counsel failed to advise him of this essential right, never secured a knowing and voluntary waiver, and did not facilitate the presentation of his testimony to the jury. These failures were not "strategic"; they were serious constitutional violations that undermine confidence in the verdict and cry out for relief.

158. First, as the Supreme Court has recognized, every accused person has the "fundamental constitutional right" to testify in their own defense. *See Rock v. Arkansas*, 483 U.S. 44, 51-52 (1987). That right must be "unfettered." *Harris v. New York*, 401 U.S. 222, 230 (1971). Grounded in the Due Process Clause of the Fifth and Fourteenth Amendments, and the Sixth Amendment's Compulsory Process and Assistance of Counsel Clauses, this right is personal and must be waived expressly by the accused; acting alone, counsel cannot waive or override the right. *See Jones v. Barnes*, 463 U.S. 745, 751 (1983) (identifying the right to testify as one of the few "fundamental decisions" exclusively reserved to a defendant).

159. Effective representation under the Sixth Amendment demands counsel explicitly advise the client of their right to testify, its scope and implications, and to ensure that any waiver is knowing and voluntary. *See Lema v. United States*, 987 F.2d 48, 52-53 (1st Cir. 1993). Failure to adequately advise the defendant constitutes ineffective assistance if it results in the accused's ignorance of or inability to exercise this right. *See Owens v. United States*, 483 F.3d 48, 58-59 (1st Cir. 2007).

160. As attested in his **affidavit**, Mr. Correa was never informed by his counsel, or by the trial court, of his fundamental and personal right to testify at trial. Counsel never asked whether he wanted to testify. **Exhibit 4 at 4-6.** And he wasn't otherwise aware of this fundamental right.

161. The record, moreover, is devoid of evidence that counsel ever informed Mr. Correa of his fundamental right to testify at trial or discussed the strategic implications of testifying. There was no on-the-record colloquy by the CFI or affirmative statement on the record by counsel documenting that Mr. Correa understood or personally waived this crucial constitutional right. Absent a showing of an informed and voluntary waiver, Mr. Correa's right to testify was effectively nullified.

162. Given counsel's failure to discuss the right to testify, Mr. Correa could not and did not provide a knowing and voluntary waiver of his right. A waiver of a fundamental right, particularly one as personal and impactful as the right to testify, must be explicit, informed, and voluntary. *Rock*, 483 U.S. at 53; *Lema*, 987 F.2d at 52-53. Here, there is no record of a colloquy, consultation, or even a casual inquiry by counsel or the court regarding Mr. Correa's wishes. The record is silent, and silence cannot equate to a valid waiver of this fundamental right. *See United States v. Anderson*, 695 F.3d 390, 395-96 (6th Cir. 2012) (rejecting silent record as valid waiver); *see also*

Owens, 483 F.3d at 58 ("Where counsel has failed to inform a defendant of his right to testify, we do not believe that a waiver of that right may be implied from defendant's silence at trial.").

163. Moreover, when viewed in light of a trial and defense that should not have been joined with that of co-defendant Delgado, the joint-defense coordinating meetings further shows the absence of waiver, as a much more difficult calculus existed for co-defendant Delgado, who could have been questioned on his prior violence and abuse with Yadira and the impact of her extramarital contacts on him. His jealousy was already on the record. But, in Mr. Correa's circumstances, exculpatory witness statements were available to him, he had no prior criminal record, and he had already candidly told members of the press and investigators that he'd gone home right after dropping off Delgado so he could have dinner next to his wife after tucking in his two small children. The absence of any informed and explicit waiver demands this Court's intervention.

PREJUDICE

164. Prejudice under *Strickland v. Washington*, 466 U.S. 668 (1984), ensues when there is a reasonable probability that the outcome of the trial would have differed had the accused testified. *Id.* at 694.

165. In evaluating prejudice, federal courts emphasize the inherently personal and powerful nature of a defendant's own testimony, particularly in *close or circumstantial cases* where credibility is paramount. *See, e.g., Owens v. United States*, 483 F.3d 48, 58-59 (1st Cir. 2007). This was a case so close that the verdict would mean a hung jury after the Supreme Court's decision in *Ramos*. Testimony of child witness Shakira was heavily laden with inconstancies suggesting reasonable doubt as to how the child developed statements implicating Mr. Correa after months with family members who took her to therapy while coordinating with Montalvo-Argüelles during highly traumatic circumstances.

166. First, trial counsel's failure prejudiced Mr. correa by denying the jury vital evidence necessary for an effective defense.

167. Counsel's objectively unreasonable performance had severe consequences, plainly prejudicing Mr. Correa's defense. As noted, *Strickland* prejudice requires a reasonable probability that, but for counsel's blunders, the outcome would have differed. That standard is squarely satisfied here.

168. The prosecution's theory of guilt relied principally on circumstantial evidence, centered on the shifting testimony of Shakira Delgado, a child witness whose reliability and credibility were deeply questionable. Recall, portions of Shakira's testimony were later recanted and contradicted by mtDNA evidence discovered post-trial.

169. Given the shaky foundations of the state's case, Mr. Correa's direct testimony was crucial. Had he testified, Mr. Correa would have directly contested or contextualized the factual narrative of the prosecution's sole eyewitness, clarified his own movements that night, and undermined key aspects of the prosecution's already weak case. **Exhibit 4 at 4-6.** Had he testified, his own testimony would have provided the jury with a vital alternative perspective to the prosecution's claim that only version of the facts existed. This would have enabled the jury to critically evaluate and likely reject the prosecution's already tenuous theory of guilt. Had he testified, it is reasonably probable that the likelihood of reasonable doubt in at least one more juror's mind would have substantially increased.

170. The prejudice stemming from Mr. Correa's silence at trial is manifest. The jury was sharply divided, with two of twelve jurors voting to acquit despite Mr. Correa's absence from the stand.

171. Moreover, post-trial developments, like the recantation by the prosecution's key witness, DNA evidence undermining the prosecution's forensic narrative, and compelling alibi evidence expose the fragility of the original conviction. In such a close case, the omission of Mr. Correa's testimony is not merely theoretical prejudice; it undermines confidence in the trial's fundamental fairness and reliability. *See Strickland*, 466 U.S. at 694. And this prejudice is magnified when added to that caused by the additional claims of ineffective assistance in Claims 5 and 7 herein.

CLAIM 7. MR. CORREA RECEIVED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL GUARANTEED UNDER THE SIXTH AND FOURTEENTH AMENDMENTS WHERE COUNSEL FAILED TO MOVE TO SEVER HIS TRIAL FROM CO-DEFENDANT TOMÁS DELGADO-NIEVES.

SUPPORTING FACTS

DEFICIENT PERFORMANCE

172. Petitioner alleges and incorporates by reference paragraphs 1 through 171 above.

173. The evidence pointing to the involvement of Mr. Correa's co-defendant Tomás Delgado-Nieves was strong, highly inflammatory, and inapplicable to Mr. Correa. Delgado was separated from victim Yadira after ten years of marriage. Delgado had been fighting with Yadira that day. Yadira was home that night with a paramour whom Yadira's cousin warned her should be gone before Delgado got home. And multiple witnesses testified about the couple's recent separation and ongoing conflicts.

174. In contrast, Mr. Correa had no connection to Yadira whatsoever. He did not know her personally, and he had no motive to harm her. Yadira's family members didn't know who Mr. Correa was until Shakira said that he was a "friend" of Delgado since Mr. Correa occasionally gave Delgado rides to work. Mr. Correa had no criminal background and lived in a household with

three strong women without conflict. As discussed above, all three would have testified on Mr. Correa's behalf had defense counsel performed an adequate investigation. The jury's exposure to the highly prejudicial evidence concerning Delgado's troubled relationship with Yadira created a substantial risk that the jury would find Mr. Correa guilty through association rather than on the evidence specific to him.

175. Trial counsel's failure to move for severance was objectively unreasonable. While none of the evidence regarding Delgado's relationship conflicts applied to Mr. Correa, they were tried together without objection by trial counsel. Courts regularly grant severance when there is significant disparity in evidence against co-defendants or where evidence against one defendant would be inadmissible and prejudicial against another. *See Zafro v. United States*, 506 U.S. 534, 539 (1993). While "spillover" evidence, by itself, does not require severance of co-defendants' trials, such evidence may reach a level where a defendant's conviction is predicated merely on his association with a more culpable defendant. *United States v. Stoecker*, 920 F. Supp. 876, 886 (N.D. Ill. 1996). The extensive evidence of Delgado's conflict history, jealousy, and motive would have been inadmissible character evidence against Mr. Correa in a separate trial; yet, by trying the defendants together, the jury inevitably considered this highly inflammatory evidence when evaluating the case against Mr. Correa.

176. Further, the joint trial prevented Mr. Correa from presenting a complete defense. Had the trials been severed, Mr. Correa could have more aggressively argued that Delgado alone committed the crime, presented evidence of Delgado's violent history with Yadira, or called Delgado as a witness, strategic options foreclosed in a joint jury trial. *See United States v. Tootick*,

952 F.2d 1078, 1082 (9th Cir. 1991) (recognizing joint trials can impair an accused's ability to present exculpatory evidence).

177. Puerto Rico law on severance is broad: "If it is shown that a defendant … shall be prejudiced by joining several offenses or defendants in a … joint trial, the court may order a separate trial … , or grant any other remedy proper at law." P.R. Law Ann. tit. 34A, § II, R. 90.

178. Trial counsel's decision not to present argument or testimony or elicit evidence regarding past violent conduct between Delgado and Yadira demonstrates counsel's fear that the jury would convict both men based on evidence that applied solely against Delgado.

PREJUDICE

179. Had trial counsel filed a motion to sever Mr. Correa's case from Delgado's, it would have been granted.

180. The prejudice from counsel's failure to move for severance was substantial and outcome-determinative. A reasonable likelihood exists that, had Mr. Correa been tried separately:

a. The jury would not have been exposed to the inflammatory evidence of Delgado's turbulent relationship with Yadira, which created an implicit-guilt-by-association effect;

b. Had such evidence emerged, Mr. Correa could have mounted a more aggressive defense, focusing on Delgado's perspicuous motive and opportunity to commit the crime alone;

c. the jury could have more readily considered the alibi evidence specific to Mr. Correa without the distraction of evidence against Delgado;

d. Mr. Correa could have potentially called Delgado as a witness to elicit testimony regarding Mr. Correa's non-involvement;

e. the case against Mr. Correa, consisting primarily of a child's inconsistent and beyond implausible testimony, would have been evaluated on its own merits rather than against the backdrop of compelling evidence of Delgado's motive and history.

181. Finally, that two jurors voted to acquit despite this prejudicial joinder strongly suggests that, in a separate trial without the spillover prejudice, additional jurors would have voted to acquit, resulting in, at minimum, a hung jury.

CLAIM 8. CONVICTION BY NON-UNANIMOUS JURY VERDICT VIOLATED MR. CORREA'S SIXTH AND FOURTEENTH AMENDMENT RIGHTS.

SUPPORTING FACTS

182. Petitioner alleges and incorporates by reference paragraphs 1 through 181 above.

183. In *Ramos v. Louisiana*, 590 U.S. 83 (2020), the Supreme Court held that all trials by jury which result in conviction of a crime must be by unanimous verdict of the jury.

184. The Supreme Court determined in *Edwards v. Vannoy*, 593 U.S. 255, 276 (2021), that *Ramos* is not automatically retroactive to cases on federal collateral review under *Teague v. Lane*, 489 U.S. 288, 310 (1989).

185. The Commonwealth of Puerto Rico may waive *Teague*'s retroactivity limitations. The Supreme Court has explicitly recognized that "a State may waive a *Teague* defense by expressly choosing not to rely on it, or by failing to raise it in a timely manner." *Danforth v. Minnesota*, 552 U.S. 264, 289 (2008). This doctrine has been consistently applied by federal courts. *See, e.g.*, *Farhane v. United States*, 121 F.4th 353, 373 (2d Cir. 2024) (en banc) (enforcing *Teague* waiver against the respondent where it failed to raise the argument in district court); *see also Collins v. Youngblood*, 497 U.S. 37, 41 (1990) (observing *Teague* "is not 'jurisdictional' in the sense" that

courts "*must* raise and decide the issue *sua sponte*."). Given that the Commonwealth has not yet had the opportunity to respond to this petition, the Court should preserve this claim pending the respondents' potential waiver.

CLAIM 9. THE CONVICTION VIOLATES DUE PROCESS DUE TO THE COMMONWEALTH'S FAILURE TO TEST AND PRESERVE EVIDENCE AND INVESTIGATE WITNESSES.

SUPPORTING FACTS

186. Petitioner alleges and incorporates by reference paragraphs 1 through 185 above.

187. "The government may not use 'improper methods calculated to produce a wrongful conviction' at trial." *United States v. Ramos-Báez*, 86 F.4th 28, 64 (1st Cir. 2023) (quoting *United States v. Young*, 470 U.S. 1, 7 (1985) and *Berger v. United States*, 295 U.S. 78, 88 (1935)).

188. First, the prosecution failed to disclose exculpatory notes, dates and information related to numerous interviews and informal contacts between a prosecution-hired psychologist, a Department of Family-provided psychologist, Officer Montalvo-Argüelles and Shakira and her caretakers. This deprived the defense of the ability to investigate and present exculpatory evidence regarding a suggestive process leading to Shakira's erroneous purported identification of Mr. Correa.

189. Evidence that the prosecution induced testimony is impeachment evidence and must be disclosed to the defense. *See, e.g.*, *Napue v. Illinois*, 360 U.S. 264, 270 (1959). While the state disclosed a confidential psych report prepared for the prosecution on Shakira, it did not disclose additional details regarding witness interviews of Shakira, her aunt, and grandmother coordinated for the same dates. And it did not disclose the entire trail of communication where Mr. Correa's name was eventually learned and rehearsed with Shakira so she could use it in the statements taken in late January 2007 by Montalvo-Argüelles without recording them.

190. Moreover, when she recanted her statements, we see a level of extreme coercion deployed against the child through threats of perjury prosecution if she does not say her trial statements—*and not the recantation*—were the truth. The ABA Standards and Supreme Court jurisprudence place a heightened duty on prosecutors to not just win but to seek justice. *Berger*, 295 U.S. at 88. The race to threaten perjury upon recantation conflicts with that duty and demonstrates, together with the record of the case, improper results-oriented methods that insufficiently protected the truth-seeking trial process.

CLAIM 10. THE EVIDENCE AT TRIAL WAS CONSTITUTIONALLY INSUFFICIENT TO SUPPORT MR. CORREA'S CONVICTIONS.

191. Petitioner alleges and incorporates by reference paragraphs 1 through 190 above.

192. Mr. Correa's convictions and sentences are invalid under the federal constitutional guarantees of due process, effective assistance of counsel, freedom from cruel and unusual punishment, and equal protection because the evidence at trial was legally insufficient to support his conviction of first-degree murder and weapons offenses. *See* U.S. Const. amends. V, VI, VIII, & XIV.

193. The Due Process Clause of the Fourteenth Amendment protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which the accused is charged. *In re Winship*, 397 U.S. 358, 364 (1970). "The constitutional necessity of proof beyond a reasonable doubt is not confined to those defendants who are morally blameless," nor is it confined to those facts which, if not proved, would "wholly exonerate" the defendant. *See Jackson v. Virginia*, 443 U.S. 307, 323–24 (1979). Rather, "[u]nder our system of criminal justice even a thief is entitled to complain that he has been unconstitutionally convicted and imprisoned as a burglar." *Id.* "[I]n a challenge to a state criminal conviction

brought under 28 U.S.C. § 2254 . . . the applicant is entitled to habeas corpus relief if it is found that upon the record evidence adduced at the trial no rational trier of fact could have found proof of guilt beyond a reasonable doubt." *Id.* at 324.

194. The evidence at trial was constitutionally insufficient to allow a reasonable juror to conclude, beyond a reasonable doubt, that Mr. Correa was responsible for murder or use of a knife as weapon. The Commonwealth presented testimony that Shakira saw Mr. Correa in her hallway with Delgado the night someone killed Delgado's wife Yadira, but the images of Shakira's viewing angle and the surrounding circumstances make this alleged identification impossible.

195. No blood or biological evidence was found in Mr. Correa's car. Witnesses testified that Mr. Correa and Delgado both stated that Mr. Correa returned home after dropping off Delgado hours before the murder took place.

196. On this record, it is more likely that someone else killed Yadira or Delgado killed her alone when the forensics suggested that the killing could have been accomplished with a single knife.

197. Further, the pattern of interviews with child witness Shakira and various adults' persistent contact with Montalvo-Argüelles and her psychologist implicate suggestive interviewing and communication in the emergence of the impossible and implausible statements implicating Mr. Correa. The statements of not just seeing two men after saying she just saw a silhouette but also seeing down to their shoes, seeing gloves and different amounts of blood is beyond implausible.

198. The fact that two of ten jurors voted for acquittal further supports this claim especially when a prior version of the P.R. Code of Criminal Procedure allowed guilty verdicts by a slim three-fourths majority. P.R. Laws Ann. tit. 34A, § II, R. 112 (2019) ("Juries shall be of twelve

(12) residents of the district, who shall render a verdict by the concurrence of not less than nine (9) votes.").

199. Faced with law requiring unanimity, a full and fair deliberation would not permit any reasonable juror to convict.

CLAIM 11. CUMULATIVE ERROR

200. Petitioner alleges and incorporates by reference paragraphs 1 through 199 above.

201. Viewed cumulatively, the myriad constitutional violations overwhelmingly deprived Mr. Correa of the constitutional rights to due process, a fair trial, equal protection, and effective assistance of counsel. Here, the evidence against Mr. Correa was limited to the beyond-implausible statements by Shakira that emerged after months of post-trauma contact with law enforcement officers and others working for the Commonwealth.

202. The inconsistent statements, in conflict with the physical structure of Shakira's room, synergized with ineffective assistance of trial counsel who failed to combat this flailing evidence with readily available testimony from exculpatory witnesses and evidence corroborating Mr. Correa's alibi. In turn, the multiple instances of ineffective assistance merged synergized with one another and with the constitutional violations related to the suppression of biological evidence to produce a fundamentally unfair trial. The impact and prejudice of all these specific violations together was amplified by the now-stricken rule allowing conviction by the mere "concurrence" of just nine jurors.

PRAYER FOR RELIEF

203. For the reasons stated above, this Court should issue a writ of habeas corpus and vacate Eduardo Correa López's conviction and sentence and grant him a new trial.

March 31, 2025

RESPECTFULLY SUBMITTED,

RACHEL BRILL
Federal Public Defender
District of Puerto Rico

FRANCO L. PÉREZ-REDONDO
Assistant Federal Public Defender
Supervisor, Appeals Section

S/ KEVIN E. LERMAN
USDC-PR No. G03113
Assistant Federal Public Defender

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E: Kevin_Lerman@fd.org

VERIFICATION

Under penalty of perjury, the undersigned declares that he is counsel for Eduardo Correa-López named in the foregoing petition and knows the contents thereof; that the pleading is true to the best of his knowledge; and that he is acting on behalf of Mr. Correa. 28 U.S.C. § 2242.

March 31, 2025

S/ KEVIN E. LERMAN
USDC-PR No. G03113
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the March 31, 2025, a true and correct copy of the foregoing Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2254 by a Person in State Custody was served by ~~the United States District Court, CM/ECF electronic filing system to~~: email to counsel for Respondents: Idza Díaz Rivera, idiaz@justicia.pr.gov.

March 31, 2025

S/ KEVIN E. LERMAN
USDC-PR No. G03113
Assistant Federal Public Defender

Yo, Dimary Crespo González, nacida el [redacted], vecina de Arecibo declaro lo siguiente so pena de perjurio:

1. Para noviembre de 2006, vivía con mi esposo, Eduardo Correa López, en [redacted] en la Barriada San José, Arecibo.

2. Mi familia y yo le decimos a Eduardo "Eduard." Sus padres también usan el mismo apodo para distinguirle de su padre, quien también se llama Eduardo.

3. Eduard y yo nos conocimos en la high, nos volvimos novios allí y nos casamos en el año 2000. Luego, entre 2003 o 2004, se mudó a la casa en [redacted], donde yo ya vivía con mis padres, mi hermana y varios perros.

4. En la casa, vivíamos Eduard y yo junto a las siguientes personas: nuestros dos hijos, Kenay y Yitzhael, mi padre, José Crespo, mi madre, María González, mi hermana, Giselle Crespo González y su hija Alysha.

5. La calle frente a la casa era estrecha y sin salida. Como Eduard trabajaba el turno de la tarde y mi padre salía temprano en la mañana, Eduard se estacionaba frente al carro de mi padre. Cuando la vecina del otro lado de la calle estuvo en casa, Eduard no podía salir sin que alguien moviera el carro de mi padre.

6. Para esa época, Eduard trabajaba en la compañía Eaton. Mi madre y mi hermana también trabajaban en Eaton.

7. Para el tiempo en que Eduardo trabajaba en Eaton, era costumbre que Eduard me llamara de su teléfono celular al salir del trabajo. Cuando recibía su llamada, yo comenzaba a prepararle la cena para que comiera al llegar a casa.

DCG

8. La noche del martes, 28 de noviembre de 2006, Eduard me llamó, como de costumbre, alrededor de las 11:30 p.m. cuando salía del trabajo. Me dijo que le estaba dando pon a dos compañeros del trabajo, Tomás Delgado Nieves, de apodo "Puchy," y Luis Torres.

9. En la misma llamada, Eduard me informó que iba dejar a Luis en la entrada de Islote y estaría dejando a Puchy en su casa antes de regresar a la nuestra.

10. Entiendo que Puchy necesitaba pon debido la lluvia que caía ese día, ya que Puchy se transportaba en su motora para llegar al trabajo.

11. Yo tenía la cena preparada para Eduard (de alitas y arroz con salchicha) y esperándolo a que llegara porque a Eduard le gustaba comer su comida bien caliente al llegar del turno.

12. Eduard llegó alrededor de las 11:50 p.m. a 12:05 a.m. de la medianoche. Eduard entró a la casa, saludó a los nenes, y se sirvió comida.

13. Para esa noche, mi primo, John Kay, se quedaba en la casa de mi abuela, que queda a tres calles más arriba de nuestra casa.

14. John había subido a nuestra casa esa noche, y cuando Eduard se retiró a nuestro cuarto con su cena, John nos acompañó para ver unos episodios de una serie de televisión.

15. John salió de nuestra casa alrededor de las 3:00 a.m. el 29 de noviembre para dormir en la casa de mi abuela.

16. Luego, Eduard y yo nos acostamos a dormir.

17. Eduard durmió al lado mío el resto de la noche y no salió de la casa.

18. Durante esa época, el número de teléfono de Eduard era 787-233-6527. Eduard tenía servicio celular de la compañía Verizon. Su celular estaba en una cuenta que compartíamos con mi hermana Giselle.

DC G

19. Yo le comuniqué todo lo anterior al licenciado Jorge Gordon y a la licenciada Mayra López Mulero. Los licenciados me dijeron que yo no podía ser llamada como testigo de coartada debido a mi relación familiar como esposa de Eduard.

20. Ningún agente de la policía de Puerto Rico se me acercó para entrevistarme sobre el paradero de Eduard la noche del 28 de noviembre y la madrugada del 29 de noviembre de 2006.

21. Ni los investigadores de la policía ni los abogados de Eduard pidieron revisar o analizar el teléfono celular de Eduard.

22. Tengo entendido que ni los abogados de la defensa ni la policía buscaron sus récords telefónicos como parte de su investigación.

23. Ningún licenciado o fiscal pidió que yo testificara en el juicio de Eduard.

24. Si los abogados de la defensa o la fiscalía me hubieran citado a testificar en el juicio, hubiera testificado a los hechos aquí declarados.

25. Si se fuera a celebrar un nuevo juicio, testificaría a los hechos que aquí he declarado.

Declaro la presente so pena de perjurio en Arecibo, Puerto Rico, a 5 de febrero de 2025.

Dimary Crespo González

I, Dimary Crespo González, born on [redacted], resident of Arecibo, state the following under penalty of perjury:

1. By November 2006, I was living with my husband, Eduardo Correa López, at [redacted], in the San José neighborhood, Arecibo.

2. My family and I call Eduardo "Eduard." His parents also use the same nickname to distinguish him from his father, who is also named Eduardo.

3. Eduard and I met in high school, we started dating there and we got married in 2000. Then, between 2003 or 2004, he moved to the house at [redacted], where I already lived with my parents, my sister and several dogs.

4. In the house, Eduard and I lived with the following people: our two children, Kenay and Yitzhael, my father, José Crespo, my mother, María González, my sister, Giselle Crespo González and her daughter Alysha.

5. The street in front of the house was narrow and dead-end. Since Eduard worked the afternoon shift and my father left early in the morning, Eduard parked in front of my father's car. When the neighbor across the street was home, Eduard couldn't go out without someone moving my father's car.

6. At that time, Eduard was working at the Eaton company. My mother and sister also worked at Eaton.

DCG

7. By the time Eduardo was working at Eaton, it was customary for Eduard to call me on his cell phone after work. When I received his call, I would start preparing dinner for him to eat when he got home.

8. On the evening of Tuesday, November 28, 2006, Eduard called me, as usual, around 11:30 p.m. as he was leaving work. He told me he was giving a lift to two co-workers, Tomás Delgado Nieves, nicknamed "Puchy," and Luis Torres.

9. In the same call, Eduard informed me that he was going to leave Luis at the entrance to *Islote* and would be leaving Puchy at his house before returning to ours.

10. I understand that Puchy needed a lift because of the rain that was falling that day, since Puchy was riding his motorbike to get to work.

11. I had dinner prepared for Eduard (wings and rice with sausage) and was waiting for him to arrive because Eduard liked to eat his hot food when he arrived from the shift.

12. Eduard arrived around 11:50 p.m. to 12:05 a.m. midnight. Eduard entered the house, greeted the children, and served himself food.

13. For that night, my cousin, John Kay, was staying at my grandmother's house, which is three blocks from our house.

14. John had come up to our house that night, and when Eduard retired to our room with his dinner, John accompanied us to watch a few episodes of a television series.

15. John left our house around 3:00 a.m. on November 29th to sleep at my grandmother's house.

16. Then Eduard and I went to sleep.

17. Eduard slept next to me for the rest of the night and did not leave the house.

18. During that time, Eduard's phone number was 787-233-6527. Eduard had cell service from the Verizon company. His cell phone was on an account that we shared with my sister Giselle.

DCG

19. I communicated all of the above to Mr. Jorge Gordon and Mrs. Mayra López Mulero. The lawyers told me that I could not be called as an alibi witness because of my family relationship as Eduard's wife.

20. No Puerto Rico police officer approached me to interview me about Eduard's whereabouts on the night of November 28 and the early morning of November 29, 2006.

21. Neither police investigators nor Eduard's lawyers asked to review or analyze Eduard's cellphone.

22. It is my understanding that neither the defense attorneys nor the police searched his phone records as part of their investigation.

23. No lawyer or prosecutor asked me to testify in Eduard's trial.

24. If the defense counsel or the prosecution had subpoenaed me to testify at trial, I would have testified to the facts herein stated.

25. If a new trial were to be held, I would testify to the facts which I have stated herein.

I hereby declare under penalty of perjury in Arecibo, Puerto Rico, on the 5th day of February, 2025.

/s/ Dimary Crespo González
Dimary Crespo González

Translator's Certificate
hereby certify that the foregoing is a true and exact, to the best of my abilities, translation of the Spanish original provided to me.
Ana Angélica López Hernández, Translator (Phase I FCICE)

Yo, Giselle Crespo González, nacida [redacted], vecina de Arecibo declaro lo siguiente so pena de perjurio:

1. Para noviembre de 2006, vivía en la casa de mis padres en [redacted], en Barriada San José, Arecibo.

2. Allí vivía con mi madre María González, mi padre José Crespo, mi hija Alysha, mi hermana Dimary, mi cuñado Eduardo Correa López, y sus dos hijos Kenay y Yitzhael.

3. Yo estuve presente con mi hermana (Dimary) la noche del martes, 28 de noviembre de 2006, cuando Eduardo le llamó al salir de su turno en Eaton. Mi hermana le estaba cocinando su cena.

4. Alrededor de las 12:00 a.m. o justo antes, yo vi a Eduardo llegar a casa, y lo vi buscar su plato de comida en la cocina. Después lo vi retirarse a su cuarto acompañado de Dimary y John Kay, nuestro primo, quien en ese momento se quedaba en la casa de mi abuela, que queda cerca de nuestra casa.

5. En esa época, mi cuarto tenía una ventana que daba hacia la entrada exterior del cuarto de Eduardo y Dimary.

6. Como de costumbre, yo me acosté tarde esa noche, más o menos a las 3:00 a.m., cuando John salió para regresar a la casa de mi abuela.

7. Para esa época, yo era la clienta principal en una cuenta de servicio celular de Verizon que compartía con Eduardo y Dimary. El número telefónico de Eduardo era 787-233-6527.

8. Antes del juicio de Eduardo, ningún abogado me entrevistó sobre el paradero de Eduardo la noche del 28 de noviembre y la mañana del 29 de noviembre. Tampoco fui entrevistada por la policía de Puerto Rico ni por la fiscalía.

9. Ningún abogado o fiscal pidió que yo testificara en el juicio de Eduardo.

10. Si los abogados de la defensa o la fiscalía me hubieran citado a testificar en el juicio, hubiera testificado sobre los hechos que aquí declaro.

11. Si se celebra un nuevo juicio, testificaría a los hechos aquí declarados.

G. C. G.

Declaro la presente so pena de perjurio en Arecibo, Puerto Rico, a 3 de febrero de 2025.

Giselle Crespo González

I, Giselle Crespo González, born on [redacted], a resident of Arecibo, declare the following under penalty of perjury:

1. By November 2006, I was living in my parents' house at [redacted], in San José Ward, Arecibo.

2. I lived there with my mother María González, my father José Crespo, my daughter Alysha, my sister Dimary, my brother-in-law Eduardo Correa López, and their two children Kenay and Yitzhael.

3. I was present with my sister (Dimary) on Tuesday night, November 28, 2006, when Eduardo called her after his shift at Eaton. My sister was cooking his dinner.

4. Around 12:00 a.m. or just before, I saw Eduardo come home, and I saw him look for his plate in the kitchen. Then I saw him retire to his room accompanied by Dimary and John Kay, our cousin, who at that time was staying at my grandmother's house, which is near our house.

5. At that time, my room had a window that looked out onto the outside entrance to Edward and Dimary's room.

6. As usual, I went to bed late that night, at about 3:00 a.m., when John left to go back to my grandmother's house.

7. At the time, I was the primary customer on a Verizon wireless account that I shared with Eduardo and Dimary. Eduardo's phone number was 787-233-6527.

8. Prior to Eduardo's trial, no lawyer interviewed me about Eduardo's whereabouts on the night of November 28 and the morning of November 29. Nor was I interviewed by the Puerto Rico police or the prosecutor's office.

9. No lawyer or prosecutor asked me to testify at Eduardo's trial.

10. If the defense attorneys or the prosecution had subpoenaed me to testify at trial, I would have testified about the facts I have stated herein.

11. If a new trial is held, I would testify to the facts stated herein.

G.C.G.

I hereby declare under penalty of perjury in Arecibo, Puerto Rico, on the 3rd day of February, 2025.

/s/ Giselle Crespo González
Giselle Crespo González

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

Ana Angélica López Hernández, Translator (Phase I FCICE)

Yo, María Antonia González Medero, nacida el [redacted] vecina de Arecibo declaro lo siguiente so pena de perjurio:

1. Para noviembre de 2006, vivía en [redacted], en Barriada San José, Arecibo.

2. Allí vivía con mi esposo, José Crespo, mis hijas Dimary y Giselle, mis nietos, Kenay, Yitzhael, y Alysha, y mi yerno Eduardo Correa López, el esposo de Dimary.

3. Yo estuve presente la noche del martes, 28 de noviembre de 2006, cuando Eduardo llegó de su turno en Eaton. Mi hija Dimary le estaba cocinando su cena.

4. Yo vi a Eduardo llegar a casa, y lo vi retirarse a su cuarto con su plato de comida. Lo acompañaron Dimary y John Kay, un sobrino mío quien en ese momento se quedaba en la casa donde vivía mi suegra, que queda cerca de nuestra casa.

5. Para esa época, toda la familia nuestra menos mi esposo nos acostábamos tarde. Mi esposo se acostaba temprano porque salía temprano en la mañana para trabajar. Como de costumbre, yo me acosté tarde esa noche, más o menos a las 2:00 a.m. o las a 2:30 am.

6. Antes del juicio de Eduardo, ningún abogado me entrevistó sobre el paradero de Eduardo la noche del 28 de noviembre y la mañana del 29 de noviembre.

7. Tampoco fui entrevistada por la policía de Puerto Rico ni por la fiscalía.

8. Ningún abogado o fiscal pidió que yo testificara en el juicio de Eduardo.

9. Si los abogados de la defensa o la fiscalía me hubieran citado a testificar en el juicio, hubiera testificado sobre los hechos que aquí declaro.

10. Si se celebra un nuevo juicio, testificaría a los hechos que aquí declaro.

Declaro la presente so pena de perjurio en Arecibo, Puerto Rico, a 3 de febrero de 2025.

María Antonia González Medero

I, María Antonia González Medero, born on [redacted], a resident of Arecibo, declare the following under penalty of perjury:

1. By November 2006, I lived at [redacted], in the San José Ward, Arecibo.

2. I lived there with my husband, José Crespo, my daughters Dimary and Giselle, my grandchildren, Kenay, Yitzhael, and Alysha, and my son-in-law Eduardo Correa López, Dimary's husband.

3. I was present on Tuesday night, November 28, 2006, when Eduardo arrived from his shift at Eaton. My daughter Dimary was cooking him dinner.

4. I saw Eduardo come home, and I saw him retire to his room with his plate of food. He was accompanied by Dimary and John Kay, a nephew of mine who at the time was staying at the house where my mother-in-law lived, which is near our house.

5. At that time, our whole family except my husband went to bed late. My husband went to bed early because he left early in the morning to work. As usual, I went to bed late that night, around 2:00 a.m. or 2:30 a.m.

6. Prior to Eduardo's trial, no lawyer interviewed me about Eduardo's whereabouts on the night of November 28 and the morning of November 29.

7. Neither was I interviewed by the Puerto Rico police nor by the prosecutor's office.

8. No lawyer or prosecutor asked me to testify at Eduardo's trial.

9. If the defense attorneys or the prosecution has subpoenaed me to testify at trial, I would have testified about the facts I am testifying herein.

10. If a new trial is held, I would testify to the facts as stated herein.

I hereby declare under penalty of perjury in Arecibo, Puerto Rico, on the 3rd day of February, 2025.

/s/ María Antonia González Medero
María Antonia González Medero

Translator's Certificate
hereby certify that the foregoing is a true and exact, to the best of my abilities, translation of the Spanish original provided to me.
Ana Angélica López Hernández, Translator (Phase I FCICE)

Yo, Eduardo Correa López, nacido el [redacted], soltero y residente en Aguadilla, declaro lo siguiente so pena de perjurio:

1. Para noviembre de 2006, vivía con mi esposa, Dimary Crespo González, mis dos hijos, y varios familiares de mi esposa en [redacted], en la Barriada San José, Arecibo.

2. Para esa época, yo trabajaba en la compañía Eaton en Arecibo.

3. Para el tiempo en que trabajaba en Eaton, era costumbre que yo llamara a mi esposa desde mi teléfono celular al salir del trabajo. Cuando recibía mi llamada, ella comenzaba a prepararme la cena para que comiera al llegar a casa.

4. La noche del martes, 28 de noviembre de 2006, llamé a mi esposa Dimary, como de costumbre, alrededor de las 11:30 p.m. cuando salía del trabajo. Le avisé que le estaba dando pon a dos compañeros del trabajo, Tomás Delgado Nieves, de apodo "Puchy," y Luis Torres.

5. En la misma llamada, le informé que iba dejar a Luis en la entrada de Islote y estaría dejando a Puchy en su casa antes de regresar a la nuestra.

E.C.L. 6. Puchy necesitaba pon debido a la lluvia que caía ese día. Puchy normalmente se transportaba en su motora para llegar al trabajo.

7. Al llegar a la casa del turno, Dimary me tenía la cena preparada (alitas y arroz con salchichas).

8. Llegué alrededor de las 11:50 p.m. a 12:05 a.m. de la medianoche. Entré a la casa, saludé a los nenes, y me serví comida.

9. Después de ver unos episodios de una serie, me acosté alrededor de las 3:00 a.m. el 29 de noviembre.

10. Durante esa época, mi número de teléfono era 787-233-6527. Yo tuve servicio celular de la compañía Verizon. Mi celular estaba en una cuenta que compartíamos con mi cuñada Giselle.

11. Antes del juicio, la Lcda. Mayra López Mulero tuvo muy poca comunicación conmigo. Cuando se reunía conmigo en la corte antes de las vistas, estuvieron presentes el Sr. Tomás Delgado Nieves y su abogado Jorge Gordon.

12. Entiendo que la Lcda. López comunicó a mi esposa que no podía ser llamada como testigo de coartada debido a su relación familiar conmigo.

13. Cuando intenté hacerle preguntas sobre cómo iban las preparaciones para el juicio, la Lcda. López me decía que no me preocupara que tenía todo bajo control.

14. La Lcda. López jamás ocupó mi teléfono celular y entiendo que nunca solicitó información de la compañía Verizon sobre mi ubicación e historia de llamadas el día de los hechos.

15. La Lcda. López en ningún momento me pidió si yo deseaba y no deseaba coordinar mi defensa con el coacusado Delgado. Ni me explicó el riesgo, posible conflicto de interés, o desventaja estratégica presente con alinear mi defensa con la del coacusado Delgado.

16. Durante todas las comunicaciones que la Lcda. López tuvo conmigo, jamás me presentó con la opción de testificar en el juicio. Nunca me explicó que tenía derecho a testificar.

17. Además, la Lcda. López nunca me explicó que el derecho de testificar era un derecho fundamental y personal y que era yo solamente quien tenía el poder de determinar si testificaría o no.

E.C.L.

18. El tribunal tampoco me explicó que tenía el derecho de testificar y no me preguntó si renunciaba el derecho de testificar.

19. Previamente, le he explicado a periodistas que me entrevistaron que, en la noche del 28 de noviembre de 2006, yo regresé a mi casa después de dejar a Puchy en la suya y comí alitas de pollo y arroz con salchicha que mi esposa había preparado en anticipación de mi llegada.

20. Yo también le conté a la Lcda. López en detalle lo que había acontecido esa noche y expliqué que mi esposa y varias otras personas, incluso mi suegra, María González, y mi cuñada Giselle Crespo, me vieron llegar a casa y luego retirarme a mi habitación a acostarme esa noche.

21. Ni antes ni durante el juicio supe que tuve ese derecho fundamental que me brindaba a mí personalmente el poder de decidir si yo testificaba o no.

22. Si mi abogada o el tribunal me hubieran explicado el derecho que yo tenía a testificar en el juicio, hubiera testificado a los hechos aquí declarados.

23. Si se fuera a celebrar un nuevo juicio, testificaría a los hechos que aquí he declarado.

Declaro la presente so pena de perjurio en Aguadilla, Puerto Rico, a 17 de marzo de 2025.

Eduardo Correa López

Eduardo Correa López

I, Eduardo Correa López, born on [redacted] single and resident in Aguadilla, declare the following under penalty of perjury:

1. By November 2006, I was living with my wife, Dimary Crespo González, my two children, and several of my wife's relatives at [redacted], in the San José Ward, Arecibo.

2. At that time, I was working at the Eaton company in Arecibo.

3. By the time I was working at Eaton, it was customary for me to call my wife on my cell phone after work. When she received my call, she would start making dinner for me to eat when I got home.

4. On the evening of Tuesday, November 28, 2006, I called my wife Dimary, as usual, around 11:30 p.m. as I was leaving work. I told her that I was giving a lift to two co-workers, Tomás Delgado Nieves, nicknamed "Puchy," and Luis Torres.

5. In the same call, I informed her that I was going to drop Luis off at the entrance to Islote and would be dropping Puchy off at his house before returning to ours.

E.C.L.

6. Puchy needed a lift because of the rain that was falling that day. Puchy usually rode his motorbike to get to work.

7. When I got home from my shift, Dimary had dinner prepared for me (wings and rice with sausages).

8. I arrived around 11:50 p.m. to 12:05 a.m. midnight. I went into the house, greeted the kids, and helped myself to food.

9. After watching a few episodes of a series, I went to bed around 3:00 a.m., on November 29.

10. During that time, my phone number was 787-233-6527. I had cell service from the Verizon company. My cell phone was on an account that we shared with my sister-in-law Giselle.

11. Before the trial, attorney Mayra López Mulero had very little communication with me. When she met with me in court before the hearings, Mr. Tomás Delgado Nieves and his attorney, Jorge Gordon, were present.

12. I understand that attorney López told my wife that she could not be called as an alibi witness due to her family relationship with me.

13. When I tried to ask her questions about how the preparations for the trial were going, attorney López told me not to worry that she had everything under control.

14. Attorney Lopez never took my cell phone, and I understand that she never requested information from Verizon about my location and call history on the day of the events.

15. Attorney López at no time asked me if I wanted to and did not want to coordinate my defense with co-defendant Delgado. Nor did she explain to me the risk, possible conflict of interest, or strategic disadvantage present with aligning my defense with that of co-defendant Delgado.

16. During all communications that attorney López had with me, she never presented me with the option of testifying in the trial. She never explained to me that I had the right to testify.

E.C.L.

17. In addition, attorney López never explained to me that the right to testify was a fundamental and personal right and that it was only I who had the power to determine whether or not I would testify.

18. The court also did not explain to me that I had the right to testify and did not ask me if I waived the right to testify.

19. Previously, I have explained to reporters who interviewed me that, on the evening of November 28, 2006, I returned home after dropping Puchy off at his house and ate chicken wings and sausage rice that my wife had prepared in anticipation of my arrival.

20. I also told Atty. Lopez in detail what had happened that night and explained that my wife and several other people, including my mother-in-law, Maria Gonzalez, and sister-in-law Giselle Crespo, saw me come home and then retire to my room to go to bed that night.

21. Neither before nor during the trial did I know that I had that fundamental right that gave me personally the power to decide whether or not to testify.

22. If my attorney or the court had explained to me the right I had to testify at trial, I would have testified to the facts stated herein.

23. If a new trial were to be held, I would testify to the facts I have stated herein.

I hereby declare under penalty of perjury in Aguadilla, Puerto Rico, on the 17th day of March, 2025.

/s/ Eduardo Correa López
Eduardo Correa López

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

Ana Angélica López Hernández, Translator (Phase I FCICE)

Ex. 5

Ex. 6