IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ANTONIO RAMOS CRUZ Petitioner, v. LORRAINE MARTÍNEZ ADORNO, et al. Respondents	CIVIL NO. 20-1589 (FAB)

AMENDED ANSWER TO SECOND AMENDED PETITION

TO THE HONORABLE COURT:

COMES NOW the Department of Justice of the Commonwealth of Puerto Rico, through the undersigned attorney, on behalf of Respondents, Lorraine Martínez Adorno and Domingo Emanuelli Hernández, in their official capacities, and in answer to the Second Amended Petition very respectfully states, avers, and prays as follows:

GENERAL ALLEGATIONS

1. All conclusions of law and jurisdiction contained in the Second Amended Petition are disputed insofar as applicable to the factual allegations herein.

2. All factual allegations contained in the Second Amended Petition, except those specifically admitted below, and only as qualified herein, are hereby denied.

3. Appearing Respondents reserve the right to amend the answers and affirmative defenses set forth as deemed necessary.[1]

[1] Being that the first part of the Second Amended Petition is not enumerated, in order to make it easier for the Honorable Court, Respondents proceed to answer in order of the paragraphs in each page.

4. The first paragraph of the unnumbered first page of the document does not require a responsive pleading from the appearing Respondents.

5. The second paragraph of the unnumbered first page of the document does not require a responsive pleading from the appearing Respondents since it is the Petitioner's prayer to the Court.

6. The third paragraph of the unnumbered first page of the document is denied.

7. The fourth paragraph of the unnumbered first page of the document is denied.

8. The Table of Contents does not require a responsive pleading, but in the event that it does, it is denied.

INTRODUCTION

1. The first paragraph of p. 1: It is admitted that Mr. Ramos was convicted of three murders in the year 1989, dubbed the Massacre of Trujillo Alto, by a unanimous jury. The statements made by the state prosecutor are admitted. The prosecutor, in his closing argument, also made reference to the testimonies of the two witnesses who located the Petitioner at the crime scene; that Bárbara described the interior of the house; to the existence of pictures that were worth more than a thousand words; to the testimony of Dr. Vera, as to the compatibility of Maymí's and her son's hair; among the rest of the testimony The rest of the paragraph is denied. As to the footnotes, Respondents admit that the petitioner's counsel requested the discovery of all state records and that they were translated in the English language. Furthermore, Respondents once again inform that all state records were produced in a CD to the petitioner's counsel after the Honorable Court denied Respondents' Motion to Dismiss. As to the translations, Respondents filed the

certified translations of the State-Court records required by Rule 5 of the Rules Governing Habeas Cases, with the exception of the transcripts of the 1992 Jury Trial and the Rule 192.1 hearing, which are still pending.

2. The second paragraph of p. 1: It is admitted that the prosecutor behind the remarks mentioned in the previous paragraph was Andrés Rodríguez Elías, and that he prosecuted José Luis Latorre and the case of Caro Pérez, Ruiz Colón, and Ortiz Álvarez in the 1980s and 1990s. The rest of the paragraph is denied, as at least three of the people listed were convicted and those convictions were not declared wrongly convicted by a court of law, but new trial was granted, and the former Attorney General decided not to prosecute once again.

3. The first paragraph of p. 2: It is admitted that Haydeé Maymí Rodríguez and her two children, Eduardito and Melissa, were discovered dead in their Trujillo Alto duplex. It is also admitted that Maymí was found on her back in the bathtub, and the two children were found in the refrigerator and freezer, all stabbed to death with knife wounds to their major organs. It is also admitted that witnesses testified as to many officers and the press having access to the scene, and the lack of control by police of said scene. The rest of the paragraph is denied. Respondents deny all characterizations and subjective interpretations of the available evidence that was evaluated by the jury at trial.

4. The second paragraph of p. 2: It is admitted that Prosecutor Rodríguez-Elías presented the testimonies of siblings Bárbara ("Babi") and José ("Joito") Martínez-Maldonado as part of the case in chief during the jury trial. The prosecution also presented multiple other testimonies at trial, which included the testimonies of an IFS Forensic Pathologist, and the IFS Forensic Medical Technician, police officers, among multiple

others. The rest of the paragraph is denied.

5. The third paragraph of p. 2: It is admitted that Sergeant Gerardo Román was investigating the case, focused on Eduardo Morales-Colberg and Juan Manuel Pagán García. The rest of the paragraph is denied.

6. The first paragraph of p. 3: It is admitted that the neighbors testified that they reported that Morales-Colberg had been stalking Maymí, that he was jealous, and that he would question Maymí when she would go out. It is denied as to Maymi's husband taking the separation badly, as he testified to the contrary. It is also denied that Morales-Colberg fought physically with CIC investigator Pablo Quiñones-Laboy when he was interviewed about Maymí's death as unsupported by the transcript page cited.[2]

7. The second paragraph of p. 3: It is admitted that witnesses testified that Maymí had a sexual relationship with Juanma and that they worked together. It is also admitted that witnesses testified that Maymí and her husband were estranged. The rest of the paragraph is denied.

8. The third paragraph of p. 3: It is admitted that witnesses testified that Juanma's alibi was not explored. The rest of the averment is denied.

9. The fourth paragraph of p. 3: It is admitted that at trial, many of the deceased's neighbors testified, and that the jury was presented with the testimony of the teenage siblings' (Babi and Joito) account of the events, who after being cross-examined by the defense, the jury believed. The rest of the paragraph is denied as it is the opinion of the petitioner. The footnote does not require a responsive pleading by the Respondents, but in

[2] **Exhibit A,** trial transcript, p. 328. [Docket No. 97-1].

the event that it does, is denied.

10. The fifth paragraph of p. 3: It is admitted that prosecutor Rodríguez Elías used Bible quotes in his closing argument. The rest of the paragraph is denied as it is the opinion of the petitioner.

11. The first paragraph of p. 4: It is admitted that the jury heard of hairs atop the victims.[3] It is also admitted that the jury never learned the origin of hair found atop Maymi's underwear, which she had worn on a shaved pubic area. Regardless of Petitioner's opinions on the former prosecutor's presenting of the evidence, which are denied as just opinions, the jury had no trouble in examining the evidence and rendering a unanimous guilty verdict against him.

12. The second paragraph of p. 4: It is admitted that in 2016, Mr. Ramos and Mr. Meléndez sued to obtain DNA testing of the hairs found atop Maymi's underwear. It is admitted that it ruled out any genetic link between the two men and Maymi's underwear, as the hairs examined were found in said underwear. It is also admitted that, after obtaining the mitochondrial DNA evidence, the Court of First Instance ("CFI") granted Mr. Ramos's motion for new trial, and that the state sought appellate review. In 1992, the jury heard testimony as to the only identified fingerprint on the scene belonging to Morales-Colberg, therefore Petitioner's contention as to going "from an unknown percent to zero percent" is denied, since there were witnesses locating Petitioner at the scene of the crime at the approximate time it occurred. The rest of the paragraph is denied.

13. The first paragraph of p. 5: It is admitted that after the new trial was granted,

[3] Averment number 18, in p. 14, was admitted as to human hairs being recovered on Maymí's panties among other places as page 695 of the trial transcript cited by the petitioner supports it.

Mr. Ramos was released on bail to live at home full time. The rest of the paragraph is denied as it is Petitioner's opinion.

14. The second paragraph of p. 5: It is admitted that the state appealed the decision, and the CFI determination was reversed. The rest of the paragraph is denied as it is Petitioner's opinion. As to the grounds for reversal, the Puerto Rico Court of Appeal's ("PRCOA") opinion speaks for itself at length. "[I]I is not the province of a federal habeas court to reexamine state-court determinations on state-law questions." Estelle v. McGuire, 502 U.S. 62, 68 (1991).

15. The third paragraph of p. 5: the prayer for relief made by the petitioner does not require a responsible pleading by the appearing respondents, but in the event that it does, it is denied. The rest of the paragraph is denied.

16. The fourth paragraph of p. 5: It is admitted that it is Judge Sánchez's position decades after allowing the case to go to the jury, that "had this been a bench trial, he would have found Mr. Ramos not guilty." Nonetheless, it was Judge Sánchez who, after hearing all the evidence at trial, denied the defense's motion for peremptory acquittal and allowed the case to go the jury instead of dismissing it for lack of evidence.[4] His actions allowed for the jury to render a unanimous guilty verdict against the petitioner. It is also admitted that Judge Seijo-Ortiz wrote the opinion of the new trial motion. The rest of the paragraph is denied. The footnotes do not require a responsive pleading by Respondents, but in the event that

[4] *See,* Trial Transcript, pgs. 7,004-7,009, where Judge Hiram Sánchez makes a summary of the facts, applies the elements of the crimes to the facts, and in denying the defense's motion for peremptory acquittal, concluded that should the jury believe the testimonies of Bárbara Martínez Maldonado and José Martínez Maldonado or even that they hadn't told all the truth of what they knew, the jury was authorized to find proven all the charges against the Petitioner and Mr. Juan Carlos Meléndez. [Docket No. 126-11, pp. 12-17].

they do, they are denied.

17. The first paragraph of p. 6: It is admitted that PRCOA Judge Delgado Schwartz wrote the dissenting opinion. The rest of the paragraph, including the information contained in the table, is denied. Judges from the Puerto Rico Supreme Court ("PRSC") denied Petitioner's request for *Certiorari* and his two (2) motions for reconsideration. The footnote does not require a responsive pleading by Respondents, but in the event that it does, it is denied.

18. The first paragraph of p. 7: the prayer for relief does not require a responsive pleading by the appearing respondents, but in the event that it does, it is denied. The rest of the paragraph is denied.

I. CONVICTION, APPEAL AND POST-CONVICTION MOTIONS[5]

A. Conviction Information

1. The second paragraph of p. 7 is admitted. The information contained in the table is admitted.

B. Direct Appeal Information

1. The first paragraph of p. 8: It is admitted that petitioner appealed his conviction. It is clarified that it was directly with the PRSC, and not with the PRCOA. As to the information contained in the table included, Respondents clarify that the petitioner filed his conviction appeal of July 22, 1997, with the Clerk of the Supreme Court. The rest of the information included is admitted.

[5] All titles and Subtitles are included as they appear in the Second Amended Complaint for the convenience of the Court. Their inclusion *verbatim* does not constitute an admission on the veracity of the contents of either the Titles or Subtitles. In the event that a responsive pleading were to be required, they are denied.

C. Motions filed after Direct Appeal

1. First Motion for New Trial

1. Second paragraph of p. 8: It is admitted that Mr. Ramos filed his first motion for new trial based on microscopic hair analysis and the conduct of the state prosecutor.

2. The third paragraph of p. 8, including the information contained in the table, is admitted.

2. Motion for Mitochondrial DNA Analysis

1. The first paragraph of p. 9, including the footnote, is admitted.

3. Second Motion for New Trial under Puerto Rico Crim. Proc. Rule 192

1. Second paragraph of p. 9: It is admitted that the Petitioner filed a second request for new trial based on the results of the mtDNA testing, and that the CFI granted it. The information contained in the table is admitted. The footnote does not require a responsive pleading from Respondents, but in the event that it does, it is denied.

D. Puerto Rico Appellate Court Decision

1. Third paragraph contained in p. 9: It is admitted that the state appealed the CFI determination, that the PRCOA reversed it, and that there was a dissenting opinion. The information contained in the table is admitted.

E. Request for Certiorari to the Supreme Court of the Commonwealth of Puerto Rico

1. First paragraph of p. 10: It is admitted that the PRSC denied Mr. Ramos's petition for *certiorari* and the two (2) subsequent petitions for reconsideration. The rest of the averment is denied as it contains Petitioner's opinions. The information contained in the table is admitted.

II. FACTUAL AND PROCEDURAL BACKGROUND[6]

A. The investigation and the Death of Haydeé Maymí Rodríguez and her two children in the "Massacre of Trujillo Alto"

1. Averment 1 is admitted.

2. Averment 2 is admitted. Babi also admitted that she did not tell reporters what she knew about the case, that she lied to the reporters since she didn't tell them what she knew about the case.[7] The jury heard those admissions, on which she was cross-examined, and presumably took them into account when assessing her credibility.

3. Averment 3 is admitted.

4. Averment 4 is admitted as to police and forensic personnel responding to the scene, taking pictures, and examining the scene. It is also admitted that witnesses testified that the press had access to the scene while the investigation was taking place. Furthermore, it is admitted that Maymí's relatives went to the scene, after receiving a call from "Sanitation" requiring them to open the house so they could fumigate it. When they arrived at the house and opened it, the personnel from "Sanitation" stated that they wouldn't fumigate until the house was clean, so Maymí's relatives called the CIC of Carolina, who indicated that they were done with the house and that they could clean it. Maymí's relatives burned the mattress and cleaned the house with water. After they were done cleaning, Sanitation proceeded to fumigate the house. After the house was fumigated, Maymí's

[6] Respondents clarify that the first 216 pages of the trial transcript contain the testimonies of the witnesses on a Rule 9 proceeding, which dealt only with the admissibility of pieces of evidence. These testimonies were given exclusively to the judge, without the presence of the jury. **Exhibit B,** trial transcript index, first page. [Docket No. 97-2].

[7] **Exhibit C,** trial transcript, p. 5009. [Docket No. 97-3].

relatives closed it and left. [8] The rest of the averment is denied.

B. Family members "cleaned up" the crime scene, carrying away and burning evidence.

5. As to Averment 5, it is admitted that Maymí's relatives, including her cousin Nydia Magalie Agosto Rodríguez, went to the scene, after receiving a call from "Sanitation" requiring them to open the house so they could fumigate it. When they arrived at the house and opened it, the personnel from "Sanitation" stated that they wouldn't fumigate until the house was clean, so Maymí's relatives called the CIC of Carolina, who indicated that they were done with the house and that they could clean it. Maymí's relatives burned the mattress and cleaned the house with water. After they were done cleaning, Sanitation proceeded to fumigate the house. After the house was fumigated, Maymí's relatives closed it and left.[9] Moreover, the investigating prosecutor, Carlos Beltrán testified that he ordered the sheets to be preserved for blood analysis, but he did not order the preservation of the mattress.[10]

6. Averment 6 is admitted as to the first two sentences. As to the third sentence, it is denied since Nydia did not refer to the knife as the murder weapon. Respondents maintain that references to crime scene lack of control or contamination would only be relevant in the context of specific claims on improper admission or exclusion of evidence, withholding of exculpatory evidence, police, or prosecutorial misconduct. All these references were heard by the jury and adjudicated by them. Those references are

[8] **Exhibit D,** trial transcript, pp. 299-305. [Docket No. 97-4].
[9] Id.
[10] **Exhibit F,** trial transcript, p. 534. [Docket No. 97-6].

inconsequential to Petitioner's argument that the genetic evidence analyzed afterwards allegedly excluded him as a possible author of the murders.

C. The murder weapon was found in Morales-Colberg's possession.

7. Averment 7 is admitted as to Nydia giving much of Maymí's belongings to Morales-Colberg and not recalling cleaning or seeing the knife that was found in the belongings Morales-Colberg received. At no point did she refer to this knife as the murder weapon. The last sentence of the averment is admitted.

D. The only fingerprints found at the scene belonged to Morales-Colberg, but a swarm of agents in an unsecured scene destroyed the prospect of dusting for prints.

8. Averment 8 is admitted.

9. Averment 9 is admitted.

E. Knives were identified by crime-scene investigators in Maymi's kitchen but were not dusted for prints or retained by law enforcement.

10. Averment 10 is admitted as to the first two sentences. The third sentence is denied, as unsupported by the transcript page cited.[11] The fourth sentence is also admitted.

F. Other pertinent pieces of evidence were spotted at the crime scene but were never recovered or preserved.

11. Averment 11 is admitted as to its first six sentences. The seventh sentence is denied as stated, being that the witness testified that the mattress had three large blood stains. The eighth sentence is admitted. Moreover, the investigating prosecutor, Carlos Beltrán testified that he ordered the sheets to be preserved for blood analysis, but he did not order the preservation of the mattress.[12]

[11] **Exhibit E,** trial transcript, p. 608. [Docket No. 97-5].
[12] **Exhibit F,** trial transcript, p. 534. [Docket No. 97-6].

12. Averment 12 is admitted.

13. Averment 13 is admitted as to Dean Casillas' testimony. It is clarified that witness Dean Casillas became a clown performing in children's activities after leaving the police force. Any other connotation given to the term "professional clown" as to witness Dean Casillas is denied as inflammatory and inaccurate, and lacking any relevance to the issues of the case.

14. Averment 14 is admitted.

15. Averment 15 is admitted.

G. Maymi's body was found in a bathtub mostly dressed but with her pants unbuttoned.

16. Averment 16 is admitted.

H. A forensic examination of Maymí revealed no signs of bruising to Maymí, but forensics personnel discovered three hairs of unknown origin atop her panties.

17. Averment 17 is admitted.

18. Averment 18 is admitted.

I. The law enforcement investigation initially focused on Morales-Colberg and Maymi's paramour, Juanma, before a new group of investigators took over months into the investigation.

19. Averment 19 is admitted as to the first two sentences. The third sentence is denied as stated. Officer Pablo Quiñones Laboy testified that at the beginning, Román's investigation pointed to Morales Colberg as a suspect, but made no mention of a murder weapon.[13] The rest of the averment is admitted.

20. Averment 20 is admitted as to its first two sentences. The third sentence is

[13] **Exhibit G,** trial transcript, p. 727. [Docket No. 97-7].

denied as stated since the testimony was that Juanma had sex with Maymí at her house in Cupey; no mention was made to the house in Trujillo Alto.[14] The rest of the averment is admitted.

21. Averment 21 is denied as unsupported by the record. Moreover, Petitioner makes no reference to the record to support these allegations.

22. Averment 22 is admitted as to Babi testifying that she was interviewed on two occasions with policemen, and one with Prosecutor Rodríguez Elías. She did not mention being interviewed on "numerous occasions" as the averment mentions. The second sentence of the averment is denied. Babi testified that she was interviewed by the investigating agents, not prosecutors.[15] The third sentence is admitted as to Babi changing her version of the facts on December 14, 1990, the rest of the sentence is denied as unsupported by the transcript page cited.[16] The fourth sentence is denied as stated. There is no reference in the transcript pages cited as to Babi being picked up "before school." Further, she was interrogated from 11:00 a.m. to 10:00 p.m., not "all morning" and "all evening" as averred.[17] The last sentence of the averment is denied as unsupported by the transcript page cited.[18] The jury heard those admissions, on which she was cross-examined, and presumably took them into account when assessing her credibility. "[I]t is the responsibility of the jury-not the court-to decide what conclusions should be drawn from the evidence admitted at trial." Cavazos v. Smith, 565 U.S. 1, 2 (2011); *see also*, Strezelecki

[14] **Exhibit H,** trial transcript, p. 868. [Docket No. 97-8].
[15] **Exhibit I,** trial transcript, pp. 5012-13. [Docket No. 97-9].
[16] **Exhibit J,** trial transcript, p. 5017. [Docket No. 97-10].
[17] **Exhibit K,** trial transcript, pp. 5018-19. [Docket No. 97-11].
[18] **Exhibit J.** [Docket No. 97-10].

v. Cunningham, 2019 WL 6050404 at *15 (E.D.N.Y. 2019) ("[A]ll issues of credibility are to be resolved in favor of the jury's verdict").

23. Averment 23 is admitted as to Joíto being seventeen years old and Babi being fifteen years old at the time of the murders. The first sentence of the averment is denied as unsupported by the transcript pages cited.[19]

24. Averment 24 is denied. The witness testified that he was interviewed from 3:00 p.m. until 1:30 a.m.[20]

25. Averment 25 is denied as to Mr. Ramos working at Suiza Dairy with his uncle, as his aunt denied it. It is denied as to Mr. Ramos' age, as unsupported by the transcript pages cited.[21]

26. Averment 26 is admitted.

27. Averment 27 is denied as stated. Agent Pablo Quiñones Laboy testified that Morales-Colberg's mother handed him a knife that had a hair and what appeared to be blood on it. Quiñones Laboy did not testify that said knife was the "murder weapon." Moreover, Quiñones Laboy testified that he sent the knife to be analyzed to verify whether it was related with the deaths and if it was compatible with the victims' wounds. Nonetheless, he did not testify as to the results of the tests regarding the knife's compatibility with the wounds. He only testified that the labs results confirmed that the hair found on the knife were compatible with Maymí's.[22] The last two sentences of the averment are admitted.

[19] **Exhibit L,** trial transcript, pp. 3039-41. [Docket No. 97-12].
[20] **Exhibit T,** trial transcript, pp. 3079-3087. [Docket No. 97-20].
[21] **Exhibits L; and M,** trial transcript, pp. 7044, 7048. [Docket Nos. 97-12, 97-13].
[22] **Exhibit N,** trial transcript, pp. 723-25. [Docket No 97-14].

J. The 1992 Trial: Witnesses claimed Mr. Ramos was at Maymi's home with co-defendant Meléndez the night she was murdered.

28. Averment 28 is admitted. It is clarified that pursuant to Joíto's testimony, he left at around 10:00 p.m. to watch the game at 10:30 p.m. and spent more than two hours watching it.

29. Averment 29 is admitted.

30. Averment 30 is admitted.

31. Averment 31 is admitted.

32. Averment 32 is admitted.

33. Averment 33 is admitted only as its first two sentences. The third sentence is denied since Babi made no reference in her testimony to "once she changed her story eighteen months after the police investigation began."[23] The fourth sentence is denied as to the reference to Morales-Colberg still being inside as it is unsupported by the transcript page cited.[24] The remainder of the fourth sentence is admitted. The fifth sentence is denied as Babi stated that she did not see him as she left the house.[25] The last sentence is admitted.

34. Averment 34 is admitted.

35. Averment 35 is admitted.

36. Averment 36 is admitted.

37. Averment 37 is admitted.

38. Averment 38: The first sentence is denied as to the characterizations by

[23] **Exhibit O,** trial transcript, pp. 4086-87. [Docket No. 97-15].
[24] Id.
[25] **Exhibit P,** trial transcript, p. 5065. [Docket No. 97-16].

Petitioner. It is admitted that Joíto testified that he went downstairs and sat on Maymí's living room sofa wondering what they were arguing about. The rest of the averment is admitted.

39. Averment 39 is admitted.

40. Averment 40 is admitted.

41. Averment 41 is denied as to its first sentence. The witness testified that he interviewed Bárbara Martínez Maldonado (Babi) on two occasions. There is no mention of Joíto in the transcript pages cited.[26] As to the rest of the averment, it is admitted that the witness testified that in trial.

42. Averment 42 is admitted.

K. The 1992 Trial: No physical evidence linked Mr. Ramos or Meléndez to a crime scene rife with biological evidence.

43. Averment 43 is denied.

44. Averment 44 is admitted as to its first three sentences. Nonetheless, the third sentence is not contained in PRCOA 15, as the petitioner cited.[27] The last sentence is admitted as the witness testifying that the evidence was received on March 21, 1991, and that she did not know its precedence.[28]

45. Averment 45: It is admitted that the CFI decision contained the statements averred in the first sentence. The second sentence is admitted.

46. Averment 46 is denied as it is unclear who the Petitioner refers as "they".

[26] **Exhibit Q,** trial transcript, pp. 894-95. [Docket No. 97-17].
[27] See, Dkt. No. 52-1, p. 15.
[28] **Exhibit R,** trial transcript, p. 2080. [Docket No. 97-18].

L. The 1992 Trial: Mr. Ramos's aunt testified that he was at home sleeping on the night of the murders.

47. Averment 47 is admitted as to Mr. Ramos living with his aunt and uncle but denied as to him working with his uncle at Suiza Dairy as his aunt denied it.[29] As to the rest of the averment, it is admitted that was Mr. Ramos's aunt testimony.

M. The 1992 Trial: The prosecution closing recognized failings in the state's investigation but invoked religious imagery of Jesus Christ protecting children and encouraged the jury that God was on the side of the prosecution.

48. Averment 48: The first sentence is denied as the transcript made no reference to a "murder weapon". The second sentence is denied as the transcript page cited does not mention Mr. Ramos and Meléndez returning to clean up the blood. As to the third sentence, it is admitted that CFI 18-19 contains said statement. The last sentence is admitted.

49. Averment 49 is denied as unsupported by the transcript cited.

50. Averment 50 is admitted as to the prosecutor arguing that there was intent to rape and the victim defending her honor.

51. Averment 51 is admitted as to the prosecution making reference to the Bible and religious passages in the closing argument. "Not all 'undesirable' or even 'universally condemned' statements made by a prosecutor amount to due process violations… [f]or example, when a habeas petitioner requests review of closing arguments made by a state prosecutor, the statements must be more than merely false or prejudicial in order to justify the intervention of a federal court (quotations omitted). A court must order whether a

[29] **Exhibit M.** [Docket no. 97-13].

statement fundamentally impacted the trial such that it likely influenced a jury's guilty verdict (quotations omitted). In making this determination, a court should avoid 'giving too much weight to stray remarks in the course of a 'closing argument' and should not assume 'that the jury will interpret each and every statement in the most damaging manner possible." Watkins v. Medeiros, 2020 WL 68245 at *9 (D. Mass. 2020).

52. Averment 52 is admitted.

N. What the jury never heard: The hairs found atop Maymi's underwear matched mitochondrial DNA from Maymi's matrilineal line.

53. Averment 53 is admitted as to the jury hearing no testimony as to whom the hairs belonged to; that in 1992 mtDNA was not available, but it was available by 2012 in the United States; that Ramos was excluded as a donor of the hairs recovered; and that the test linked to Maymi's matrilineal line, including Maymi herself as a donor. The rest of the averment is denied as conclusory and speculative.

O. What the jury never heard: Zero percent of the crime scene had link to Mr. Ramos.

54. Averment 54: it is admitted that the prosecutor made reference to a "comedy of errors" during the police investigation. The rest of the averment is denied being Petitioner's opinion. As to the prosecutor's description of the police investigation, "[c]riminal investigations are often conducted under trying conditions over which officers have limited control." Torchinsky v. Siwinski, 942 F.2d 257, 263 (4th Cir. 1991). "A criminal suspect has no right to a perfect investigation." Tomczak v. Town of Barnstable, 901 F.Supp. 397, 403 (D.Mass.1995).

55. Averment 55 is admitted as to the 2016 testing establishing that Mr. Ramos was excluded as a donor of the hairs found on Maymi's underwear, and that there is no

scientific evidence that links the Petitioner to the crime scene. The rest of the statements made in the averment are denied. Two witnesses linked him to the crime scene at the approximate time of the crimes, whose credibility the jury assessed.

P. Post-Conviction Relief: Mr. Ramos first sought a new trial based on microscopic analysis of crime scene hairs.

56. Averment 56 is admitted.

57. Averment 57 is admitted.

Q. Post-Conviction Relief: Mr. Ramos sought and obtained a new trial based on newly discovered mitochondrial DNA evidence revealing that he was not a contributor to the panty hairs and the contributor was in Maymi's matrilineal line.

58. Averment 58 is admitted.

59. Averment 59 is denied.

R. Post-Conviction Relief: Court of Appeals Decision

60. Averment 60 is admitted as to the PRCOA reversing the CFI determination of granting a new trial. The rest of the averment is denied as it contains interpretations, conclusions and/or opinions of the petitioner.

61. Averment 61 is denied as containing interpretations, conclusions, and opinions of the petitioner. The PRCOA complied its legal mandate of evaluating the evidence as a whole without singling out a particular aspect or category. The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) require "increased deference by federal judges to state courts' factual findings and legal conclusions." Lambert v. Blackwell, 2003 WL 1718511 at *15 (E.D. Pa. 2003).

S. Post-Conviction relief: Certiorari

62. Averment 62 is admitted.

III. GROUNDS FOR RELIEF

CLAIM 1.

63. Averment 63 is admitted as to the dispositions of United States v. Wright, 625 F.2d 1017, 1019 (1st Cir. 1980) and United States v. Hernández-Rodríguez, 443 F.3d 138, 145 (1st Cir. 2006).

64. Averment 64 is admitted.

65. Averment 65 is denied.

A. The PR Supreme Court decision to affirm revocation of the CFI's new trial decision involved an unreasonable application of clearly established Federal law, because the new mtDNA evidence would have resulted in a different result at trial and the state court standard demanded a far higher level of proof at the motion phase.

66. Averment 66 is admitted as to the dispositions of District Attorney's Office v. Osborne, 557 U.S. 52, 69 (2009) and O'Brien v. Marshall, 453 F.3d 13, 19-20 (1st Cir. 2006).

67. Averment 67 is denied.

68. Averment 68 is denied.

69. Averment 69 is admitted as to the dispositions of 28 U.S.C. §§ 2254 (a) and (d), and Rashad v. Walsh, 300 F.3d 27, 34 (1st Cir. 2000).

70. Averment 70 is admitted as to the dispositions of Woods v. Donald, 135 S.Ct. 1372 (2015)(per curiam); Kernan v. Cuero, 138 S. Ct. 4, 9 (2017) (per curiam); and Duhaime v. Ducharme, 200 F.3d 597, 600 (9th Cir. 2000).

71. Averment 71 is admitted as to the dispositions of Panetti v. Quarterman, 551 U.S. 930 (2007); and Williams v. Taylor, 529 U.S. 362, 405, 406 (2000).

72. Averment 72 is admitted as to the dispositions of White v. Woodall, 572 U.S. 415, 425 (2014); Cronin v. Comm'r of Prob., 783 F.3d 47, 50 (1st Cir. 2015); McCambridge

v. Hall, 303 F.3d 24, 36-37 (1st Cir. 2002); Virginia v. LeBlanc, 137 S. Ct. 1726, 1728 (2017)(per curiam); and Lockyer v. Andrade, 538 U.S. 63, 75-76 (2003).

73. Averment 73 is admitted as to the dispositions of 28 U.S.C. § 2254(d)(1); Fry v. Pliler, 551 U.S. 112, 116 (2007), and Francis S. v. Stone, 221 F.3d 100, 111 (2d. Cir. 2000).

74. Averment 74 is admitted as to the dispositions of Pike v. Guarino, 492 F.3d 61, 68 (1st Cir. 2007), and 28 U.S.C. § 2254(e)(1).

i. Under the correct federal standard, the CFI properly granted Mr. Ramos a new trial.

75. Averment 75 is denied. The PRCOA, after evaluating the totality of the evidence presented at the evidentiary hearing on the Rule 192.1 motion and the jury trial evidence, concluded that the CFI abused its discretion in granting new trial and reversed its decision.

a. The state court accepted that the new evidence was not previously discoverable, was credible, and was not merely cumulative.

76. Averment 76 is admitted.

77. Averment 77 is admitted as to its first sentence. The second sentence is denied.

78. Averment 78 is admitted as to its first sentence. The rest of the averment is denied.

79. Averment 79 is admitted. Furthermore, the PRCOA established that the microscopic hair analysis performed by 2012 also excluded Mr. Ramos as a donor of the hairs. A fact known to Mr. Ramos since 2012.

80. Averment 80 is denied.

b. The COA was wrong to conclude the new mitochondrial DNA evidence was not likely to change the result at trial.

81. Averment 81 is admitted as to the CFI opinion containing the statements cited. The PRCOA correctly reversed the CFI opinion for abuse of discretion.

82. Averment 82 is denied.

83. Averment 83 is denied.

84. Averment 84 is denied.

ii. The Mitochondrial DNA report proved no link between Mr. Ramos and Meléndez and a crime scene rife with biological tissue and signs of struggle.

85. Averment 85 is admitted.

86. Averment 86 is admitted.

87. Averment 87 is denied as to the first sentence. CFI 4 clearly states that Maymí had a totally shaven pubic area, and that she had no panty nor brassier on.[30] The second sentence is admitted.

iii. The Mitochondrial DNA studies of pubic hairs and the condition of Maymí at the time of the autopsy are newly discovered exculpatory evidence.

88. Averment 88 is admitted as to the pathologist not testifying, but she was made available to the defense who decided not to call her as a witness.[31] The rest of the averment is admitted.

89. Averment 89 is admitted as to its first three (3) sentences. The rest of the averment is denied.

[30] **Exhibit S,** Resolution of the Court of First Instance (CFI), p. 4. [Docket No. 97-19].
[31] Dkt. No. 52-1, at *4.

iv. Mitochondrial DNA results exclude Mr. Ramos and Meléndez and point to a narrow range of the possible suspects.

90. Averment 90 is admitted.

91. Averment 91 is admitted.

92. Averment 92 is admitted as to the PRCOA making those statements in its Opinion. It is admitted that the victims' bodies were exhumed to retrieve hairs for comparison. The rest of the averment is denied as containing interpretations, conclusions and/or opinions of the petitioner.

93. Averment 93 is denied.

94. Averment 94 is admitted as to the first sentence. The second sentence is admitted it being the witness' testimony.

95. Averment 95 is admitted as to a knife found in possession of Morales-Colberg and Carmen Rosa Colberg was analyzed forensically and found to be consistent with the wounds to Maymí and her children, and that Morales consulted a lawyer before the knife was turned over to investigators. Any reference to the knife being the murder weapon is denied. The rest of the averment is denied.

96. Averment 96 is admitted as to the last two sentences. The rest of the averment is denied.

97. Averment 97 is denied except for the statement of the victim dying protecting herself from being raped.

v. the new evidence casts serious doubts on the prosecution's theory that a motive to rape motivated the killing.

98. Averment 98 is admitted.

99. Averment 99 is admitted as to its first three sentences. The rest of the averment is denied.

100. Averment 100 is denied.

101. Averment 101 is denied.

102. Averment 102 is denied.

103. Averment 103 is denied.

104. Averment 104 is denied.

B. The state court unreasonably required the new evidence to undermine all other evidence in the trial and establish conclusive proof of innocence at the motion stages.

105. Averment 105 is denied.

106. Averment 106 is denied.

107. Averment 107 is denied.

C. The state court unreasonably applied an unintelligible standard of materiality to revoke Mr. Ramos's grant of a new trial.

108. Averment 108 is denied.

109. Averment 109 is denied.

110. Averment 110 is denied.

111. Averment 111 is denied.

CLAIM 2.

112. Averment 112 is denied.

A. The COA erroneously held the probative value of microscopic hair analysis is no different that mtDNA analysis.

i. Definition of Hair Analysis

113. Averment 113 is denied.

ii. Definition of Mitochondrial DNA Analysis

114. Averment 114 is admitted as stated in the PRCOA opinion.

iii. The state court's conclusion that microscopic hair analysis was no different that mtDNA testing for exclusion purposes was an unreasonable factual determination.

115. Averment 115 is denied.

CLAIM 3.

116. Averment 116 is admitted as to the dispositions of Schlup v. Delo, 513 U.S. 298, 327 (1995); Jackson v. Virginia, 443 U.S. 307 (1979); and House v. Bell, 547 U.S. 518, 538 (2006).

117. Averment 117 is admitted as to the dispositions of Gómez v. Jaimet, 350 F.3d 673, 679 (7th Cir, 2003).

118. Averment 118 is denied.

119. Averment 119 is admitted that Former Judge Hiram Sánchez Martínez wrote a letter to the governor stating that he did not think there was sufficient evidence to convict the petitioner thirty years after he allowed conviction by a unanimous jury based on that same evidence that he now finds insufficient. Nonetheless, this is the same judge that denied the peremptory acquittal request by the defense maintaining that there was enough evidence for the jury to render a verdict, which the jury reached unanimously, convicting the Petitioner for murder and violation of the weapons law. This Court should draw a clear distinction between formal court findings subject to appellate scrutiny and informal statements at a point in time in which they carry no legal consequence.

120. Averment 120 is denied.

PRAYER FOR RELIEF

All statements raised in the Prayer for Relief as to any unconstitutional confinement and restraint, and the violation of Petitioner's rights, are denied.

Petitioner's request for his conviction and sentence to be vacated, and, consequently, that he be discharged from his "unconstitutional confinement and restraint" is not warranted pursuant to the evidence in the case against him, as analyzed by the State Courts; the instant case is time barred, not available for the applicability of equitable relief for lack of diligence by the petitioner and his attorney in state court; and for the inapplicability of the actual innocence defense for the petitioner.

AFFIRMATIVE DEFENSES

1. The Petitioner has failed to rebut the presumption of correctness of the state court with clear and convincing evidence. "In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State Court, a determination of a factual issue made by a State Court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence." (Emphasis added); *see* Section 2254(e)(1) of the Antiterrorism and Effective Death Penalty Act ("AEDPA"), 28 U.S.C. 22 seq.

2. "[F]ederal courts sitting in habeas [corpus] are not an alternative forum for trying facts and issues which a prisoner made insufficient effort to pursue in state proceedings." Cullen v. Pinholster, 536 U.S. 170, 186 (2011).

3. The Petition is time barred pursuant to the statute of limitations established in AEDPA, 28 U.S.C. §§ 2244(d)(1)(A) and (D).

4. Equitable tolling is inapplicable to the instant case since the Petitioner failed to comply with his burden of showing entitlement to it.

5. Petitioner lacked diligence in pursuing his state court post-conviction proceedings and his habeas relief.

6. There were no extraordinary circumstances that prevented the petitioner from timely filing his habeas relief.

7. The petitioner failed to establish actual innocence. Claim of actual innocence based on newly discovered evidence is not ground for federal habeas relief absent an independent constitutional violation occurring in the underlying state criminal proceeding. Herrera v. Collins, 506 U.S. 390, 400 (1993).

8. The state court decision was based on a reasonable application of clearly established federal law, as determined by the United States Supreme Court, regarding the granting of a new trial based on the results on a mitochondrial DNA test that the petitioner describes as newly discovered evidence. 28 U.S.C. § 2254(d)(1).[32]

9. All state courts decisions in Petitioner's criminal case were based on a reasonable application of clearly established state and federal law.

10. The state court decision was based on a reasonable determination of facts in light of the evidence presented in the state court proceedings. 28 U.S.C. § 2254 (d)(2).

11. This Honorable Court lacks jurisdiction over the subject matter in the instant action.

12. This Honorable Court lacks jurisdiction over the appearing Respondents.

[32] Respondents reiterate and maintain their position regarding the characterization of the mtDNA as newly discovered evidence as argued in their Motion to Dismiss, Docket No. 46.

13. The Petition fails to state a claim cognizable under any applicable federal or state statute.

14. Petitioner has not been deprived of any federally protected right or privilege by the appearing Respondents.

15. Petitioner did not comply with the pleading standard for his claims.

16. Petitioner did not comply with Federal Rule of Civil Procedure 8 when drafting this Petition.

17. Petitioner is not entitled to an evidentiary hearing since there is a fully developed State Court record, being that the State Court adjudicated Petitioner's new trial request on the merits.

18. The appearing Respondents hereby reserve the right to amend the pleadings, to bring any other party, and/or to raise any other affirmative defense, according to the established procedure, that may arise as a result of the discovery.

19. Appearing Respondents do not waive any other affirmative defense that may arise during discovery proceedings or upon good cause shown.

REQUIREMENTS OF RULE 5 OF THE RULES GOVERNING SECTION 2254 CASES

1. In compliance with Rule 5 of the Rules Governing Section 2254 cases, Respondents filed Spanish language of the documents mandated by said Rules. [Docket No. 76]. English translations of these documents were filed with the Court.

2. Respondents filed the certified English translation of the determination of the Puerto Rico Court of Appeals reversing the granting of new trial by the Court of First Instance. [Docket No. 52-1]. Respondents also filed on this date the Official Translation of

the Judgment confirming the conviction of the petitioner by the Puerto Rico Supreme Court on January 26, 1999. [Docket No. 89-3].

3. Also available is the transcript of the evidentiary hearing before the Court of First Instance, in which Petitioner's new trial request was being discussed. This transcript was filed as Annex IX of Petitioner's Writ of Certiorari before the Puerto Rico Supreme Court, CC-19-0413, filed on June 4, 2019, and is part of the documents that Respondent provided Petitioner's counsel on a CD containing all the files produced by State Court regarding Petitioner's criminal case. This was filed with the Court on July 31, 2023, in the Spanish language pending translation, along with the transcript of the 1992 Jury Trial.

4. Lastly, Respondents maintain that there is no available copy of the evidentiary hearing before the Puerto Rico Court of Appeals in the case where the granting of the new trial was being discussed before said forum.

RESPONDENTS' ARGUMENTS ON THE MERITS

A. HABEAS CORPUS STANDARD

"Federal courts are not forums in which to relitigate state trials." Barefoot v. Estelle, 463 U.S. 880, 887 (1983). Federal habeas relief is available **only to review constitutional error.** Subiloski v. Callahan, 689 F.2d 7, 9 (1st Cir. 1982) (citing Salemme v. Ristiano, 587 F.2d 81, 87 (1st Cir. 1978)). [Emphasis added]. A state court's determination that a claim lacks merit precludes federal habeas relief so long as "fairminded jurists could disagree" on the correctness of the state court's decision. Harrington v. Richter, 562 U.S. 86, 101 (2011) (citing Yarborough v. Alvarado, 541 U.S. 652, 664 (2004)).

"The writ of habeas corpus ordinarily will not lie solely to correct alleged errors in evidentiary rulings." Allen v. Snow, 635 F.2d 12, 15 (1st Cir. 1980), cert. denied, 451 U.S. 910

(1981). "To rise to constitutional magnitude, such an error must 'so infuse the trial with inflammatory prejudice as to render a fair trial impossible.'" Id. (quoting Salemme v. Ristiano, 587 F.2d at 86). It is well settled that upon habeas corpus "the court will not weigh the evidence." Herrera v. Collins, 506 U.S. 390, 401 (1993) (quoting Hyde v. Shine, 199 U.S. 62, 84 (1905)). "As the writ of habeas corpus does not perform the office of a writ of error or an appeal, [the facts establishing guilt] cannot be reexamined or reviewed in this collateral proceeding."). Id. (quoting Ex parte Terry, 128 U.S. 289, 305 (1888)).

A habeas petition may not be granted unless the state court decision: (1) "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States" or (2) "was 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). This is a "highly deferential standard for evaluating state-court rulings, which demands that state-court decisions be given the benefit of the doubt." Cullen v. Pinholster, 563 U.S. 170, 181 (2011) (quoting Woodford v. Visciotti, 537 U.S. 19, 24 (2002) (per curiam). The burden of proof falls on the petitioner. Id. (citing Woodford, 537 U.S. at 25).

Under AEDPA's deferential standards, error by a state court, without more, is not enough to warrant federal habeas relief. Cronin v. Commissioner of Probation, 783 F.3d 47, 50 (1st Cir. 2015) (citing McCambridge v. Hall, 303 F.3d 24, 36 (1st Cir. 2002) (en banc)). A state court's findings on factual issues "shall be presumed to be correct" and the petitioner bears the burden of disproving factual holdings by "clear and convincing evidence." 28 U.S.C. § 2254(e)(1); Ouber v. Guarino, 293 F.3d 19, 27 (1st Cir. 2002).

A state court decision is "contrary to" Supreme Court authority when "the state court arrives at a conclusion opposite to that reached by [the Supreme] Court on a question of law or if the state court decides a case differently than [the Supreme] Court has on a set of materially indistinguishable facts." Williams v. Taylor, 529 U.S. 362, 412-13 (2000). "Clearly established Federal law" under Section 2254(d)(1) entails that State-court decisions are measured against the Supreme Court's precedents as of "the time the state court renders its decision." Cullen, 563 U.S. at 181 (quoting Lockyer v. Andrade, 538 U.S. 63, 71-72 (2003)).

An unreasonable application of clearly established federal law occurs when "the state court correctly identifies the governing legal principle, but (i) applies those principles to the facts of the case in an objectively unreasonable manner; (ii) unreasonably extends clearly established legal principles to a new context where they should not apply; or (iii) unreasonably refuses to extend established principles to a new context where they should apply." Cronin, 783 F.3d at 50-51 (citing Sleeper v. Spencer, 510 F. 3d 32, 38 (1st Cir. 2007)). For a federal court to grant habeas, the state court decision must be more than incorrect or erroneous, it must be objectively unreasonable. Andrade, 538 U.S. at 75.

"The Supreme Court has made it very clear that 'it is the responsibility of the jury-not the court-to decide what conclusions should be drawn from evidence admitted at trial. A reviewing court may set aside the jury's verdict on the ground of insufficient evidence only if no rational trier of fact could have agreed with the jury. What is more, a federal court may not overturn a state court decision rejecting a sufficiency of the evidence challenge simply because the federal court disagrees with the state court. The federal court instead may do so only if the state court decision was 'objectively unreasonable.'" Cavazos v. Smith,

565 U.S. 1, 2 (2011). Given the existence of ample room for disagreement among reasonable people, "the inevitable consequence of this settled law is that judges will sometimes encounter convictions that they believe to be mistaken, but that they must nonetheless uphold." Id. When facing a record supporting conflicting inferences, federal courts in habeas cases "must presume-even if it does not affirmatively appear in the record-that the trier of fact resolved any such conflicts in favor of the prosecution and **must defer to that resolution.**" Id. at 7. [Emphasis added]. As to whether the prosecution's theory was correct, juries and not courts get to decide that question. Id. at 8. The Supreme Court "[has] never questioned the sufficiency of circumstantial evidence in support of a criminal conviction, even though proof beyond a reasonable doubt is required." Desert Palace Inc. v. Costa, 539 U.S. 90, 100 (2003).

Adherence to the principles and requirements of federal habeas corpus "serves important interests of federalism and comity." Woods v. Donald, 575 U.S. 312, 316 (2015). AEDPA's requirements reflect a "presumption that state courts know and follow the law." Id. (quoting Woodford, 537 U.S. at 24). When reviewing state court determinations on collateral review, federal judges must "afford state courts due respect by overturning their decisions only when there could be no reasonable dispute that they were wrong." Id. Federal habeas review exists as "a guard against extreme malfunctions in the state criminal justice systems, not as a substitute for ordinary error correction through appeal." Id. (quoting Harrington, 562 U.S. at 102-103).

B. PETITIONER'S IS NOT ENTITLED TO NEW TRIAL

1. Newly discovered evidence standard.

A request for new trial on the basis of newly discovered evidence will not ordinarily

be granted unless the moving party demonstrates 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 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 to the defendant." U.S. v. Wright, 625 F.2d 1017, 1019 (1st Cir. 1980) (citing Pelegrina v. United States, 601 F.2d 18, 20-21 (1st Cir. 1979)). Courts may deny the request for a new trial if it finds that any one of these requirements is lacking. Id.

Courts will affirm the denial of a new trial unless the court that took the determination manifestly abused its discretion; "the court's findings of fact will not be overturned **unless they are without any support in the record**. Id. (citing C. Wright & A. Miller, Federal Practice and Procedure, § 559, at 541-42 (1969)). [Emphasis added]. In order to assess newly discovered evidence, courts will conduct "an evaluation of the new evidence in juxtaposition to the evidence actually admitted at trial." United States v. Josleyn, 206 F.3d 144, 157 (1st Cir. 2000). The newly discovered evidence will be examined "**within the context of the record as a whole**, not on the basis of wishful thinking, rank, conjecture, or unsupportable surmise." United States v. Martínez-Mercado, 261 F. Supp. 3d 293, 298-99 (D.P.R. 2017, Besosa, J.) (citing U.S. v. Natanael, 938 F.2d 302, 314 (1st Cir. 1991)). [Emphasis added]. "Where defendants have received a full and fair factual review in the state courts, the federal courts, in habeas proceedings, will not engage in second guessing." Subilosky, 689 F.2d at 9 (quoting Grace v. Butterworth, 586 F.2d 878, 881 (1st Cir. 1978)).

In order to prevail on a request for new trial, materiality of the new evidence must be shown. Wright, 625 F.2d at 1019. New evidence is material when it has the potential to

"alter the outcome of the lawsuit under the applicable legal tenets." United States v. Hernández-Rodríguez, 443 F.3d 138, 145 (1st Cir. 2006).

2. **Petitioner is not entitled to Habeas Corpus based on newly discovered evidence since the PRCOA's decision was based on reasonable determination of facts.**

Petitioner claims that: (1) the PRCOA reached an unreasonable determination that Phillip Hopper's, who testified about the mtDNA analysis, political affiliation affected the reliability his report and sided with the Puerto Rico forensic analyst in what he portrays as a "manufactured credibility dispute"; and (2) the PRCOA came to the conclusion that the mtDNA results would not have yielded anything different than microscope analysis done years later since that mtDNA evidence has the same force of excluding donor as microscopic hair analysis. [Docket No. 63, p. 46].

A state court's factual findings "are presumed to be correct unless the petitioner rebuts the presumption with clear and convincing evidence." Companiono v. O'Brien, 672 F.3d 101, 109 (1st Cir. 2012); Torres v. Dennehy, 615 F.3d 1, 5 (1st Cir. 2010), *cert. denied,* – — U.S. ——, 131 S.Ct. 1038, 178 L.Ed.2d 845 (2011); *see also* Clements v. Clarke, 592 F.3d 45, 47 (1st Cir.), *cert. denied,* —— U.S. ——, 130 S.Ct. 3475, 177 L.Ed.2d 1070 (2010) (observing that presumption of correctness applies to factual determinations made by both state trial and appellate courts). *See also*, 28 U.S.C. § 2254(e)(1).

Petitioner's conviction was confirmed by the PRSC on January 26, 1999. In its decision, the PRSC concluded:

> "Our independent and impartial examination of the evidence presented has convinced us that there was enough evidence for a jury to be able to infer **that all of the elements of murder in the first degree were present, and to connect the defendants to the crime.** … Furthermore, two witnesses placed the defendants in the home of the victim at the approximate time at which another witness, the victim's next door

> neighbor, heard screams of distress coming from the house of the deceased. Said time coincides with the time at which, according to the performed forensic analyses, the crime must have taken place.
>
> . . .
>
> Upon determining that the evidence presented by the Prosecution was sufficient in law for a jury, exercising its duty, **to find the [petitioner] guilty of classic first degree murder**, we affirm the verdict.
>
> . . .
>
> The jury saw and heard the witnesses testify, adjudicated credibility of the testimonies, evaluated the evidence and unanimously found the [petitioner] guilty. In absence of passion, prejudice, partiality or manifest error, it is not our duty to intervene with said ruling."

See, Docket No. 52-1, pp. 4-5. [Emphasis added].

The PRCOA, in reviewing the CFI's grant of new trial, reexamined the testimonies of the main witnesses who testified at the evidentiary hearing, including that of Roberto López Arroyo, Serologist of the Forensic Science Institute, and Phillip Hopper, DNA analyst at the SERI laboratory. López Arroyo, who, in 2010, performed the microscopic analysis of the pubic hair found on the victim's underwear, testified that, upon the defense's request, forensic analysis was performed on the hair. He further testified that a DNA analysis could not be performed since no genetic material was found. He performed the microscopic analysis of the hair and compared it with the petitioner's sample and concluded that the petitioner was excluded as a donor of the hair. As to the mitochondrial DNA analysis, López Arroyo testified that it complemented the result that was obtained in 2010 (that the petitioner was excluded as the donor of the hair) and indicated that while the mitochondrial analysis was more conclusive, they were both equally reliable. López Arroyo also explained that for the purpose of excluding a donor, there was no difference between the mitochondrial analysis and the microscopic hair comparison. [Docket No. 52-1, pp. 7-8].

Mr. Phillip Hopper performed the mitochondrial DNA analysis on the hairs sent by

the Forensic Science Institute and prepared an Analytical Report dated September 13, 2016. The report concluded that the three hairs found on the victim's underwear had the same sequence among them, and in comparison, with those of the victim. After comparing them with the petitioner's sample, he concluded that the petitioner was excluded as the donor of the hairs. Mr. Hopper testified that if the results of the tests indicated that sequence of the hairs coincided with those of the petitioner, that *per se* would result insufficient to conclude that the petitioner was the author of the crime. [Docket No. 52-1, pp. 7-8].

In analyzing the totality of the evidence, which the jury heard at trial and the CFI heard at the evidentiary hearing on the Rule 19.1 motion, the PRCOA concluded that the victim's piece of underwear was not material for Petitioners' guilty verdict. Id. at 26. The PRCOA also considered the theory of the prosecution as to the motive of the murder was having sexual relations with the victim and determined that there was evidence that showed that the victim defended herself from that act. This evidence was heard by the jury at trial. After evaluating the totality of the evidence heard by the jury at trial, the PRCOA concluded that "[h]aving weighed all of the evidence, the fact-finder considered all of the elements of the crime of murder to have been proven. From said evidence and more, which we have alluded to, we cannot determine that a different result from the guilty verdict would probably be reached." Id.

The PRCOA also determined that the new evidence combined with the facts already proven at trial, prevent it from being established that the Petitioner was not at the crime scene, nor allows to decide that he had no contact with the victim and her children, as Petitioner alleges. The PRCOA reiterated that "the results of the mtDNA test *have no use whatsoever to place respondents outside of the scene of the crime."* Id. at 26-27 [Italics in original].

The PRCOA, after an exhaustive examination of the evidence in the new trial hearing and in transcript of the trial, found that the CFI abused its discretion in granting new trial, since the new evidence did not make more probable the innocence of the petitioner. [Docket No. 52-1, pp. 18-28]. The PRCOA concluded:

> "[T]he CFI incurred in a clear and unequivocal abuse of discretion when granting the request for new trial filed by respondents. The decision that the court of first instance took was predicated on an incorrect weighing of the evidence since, as established above, it ignored important facts, did not evaluate the totality of the testimony, gave weight and value to irrelevant facts and ignored material and important facts. Therefore, based on the evidence that was presented in the new trial hearing, studied and analyzed along with the totality of the evidence submitted and adjudicated in the trial, the lower court lacked discretion to order a new trial. The motion for new trial is not a *new opportunity for convicts to reverse* a verdict. In the instant case, a complete serene and dispassionate appraisal of the results of the mtDNA test as new evidence along with all of the evidence submitted in the original trial, *does not make judgment in favor of respondents more favorable,* nor does it allow it to be inferred in any way that it could create in the fact-finder a reasonable doubt as to their guilt. In the instant case, the new evidence that corroborates what has been known since 2010 does not comply with the criteria of producing a different result in light of the evidence admitted during the trial that gave rise to the guilty verdict as we have discussed." [Docket No. 52-1, pp. 27-28].

Lastly, Petitioner's claim that the PRCOA disregarded Mr. Hopper's testimony and sided with the Institute of Forensic Science because of Mr. Hopper's political affiliation[33] holds no water. The PRCOA's evaluation of the evidence included Mr. Hopper's testimony, and precisely with the support of said testimony discarded Petitioner's theory that the new evidence excluded him from being at the scene at all. Id. at 27.

In summary, federal courts "have long recognized that 'a mere error of state law' is not a denial of due process." Swarthout v. Cooke, 562 U.S. 216, 222 (2011) (quoting Engle

[33] Docket No. 63, at p. 41.

v. Isaac, 456 U.S. 107, 121, n.21 (1982)). It is not the province of a federal habeas court to reexamine state-court determinations on state-law questions." Estelle v. McGuire, 502 U.S. 62, 67–68 (1991); *see also* Carrizales v. Wainwright, 699 F.2d 1053, 1054–55 (11th Cir. 1983). A claim grounded on issues of state law provides no basis for federal habeas relief because a violation of a state statute or rule of procedure is not, in itself, a violation of the federal constitution. Engle, 456 U.S. at 120–21; Verne v. Jones, 2017 WL 1190386, at *11 (N.D. Fla. Mar. 10, 2017), report and recommendation adopted, 2017 WL 1196440 (N.D. Fla. Mar. 29, 2017).

Petitioner's whole argument is premised on the genetic test results of the hair samples found in Maymi's piece of clothing somehow ruling out completely the possibility of his presence at the scene of the crime, and thereby ruling him out as a possible author. Petitioner claims that these test results rule out any possibility of establishing his presence at the time and place of these murders. But the only thing such tests can establish conclusively is that the particular hair sample that was examined did not belong to Petitioner. It rules out nothing else. The jury heard and evaluated testimony from two witnesses who placed them at the scene of these tragic murders at the approximate time they took place. As to the reliability of that testimony, the record amply demonstrates that the witnesses were thoroughly cross examined on the investigation and the circumstances of their testimony, and the jury chose to believe them. The test results in no way undermine their testimonies because it only established that those particular hair samples did not belong to Petitioner. The judge who presided the case found such testimony was legally sufficient for the case to go to the jury, a decision which was subsequently upheld by more than one higher court in the Commonwealth of Puerto Rico. Those testimonies, the rulings

of the presiding judge, and the subsequent conclusions of the courts of Puerto Rico in the appellate and petition-for-new-trial process are entitled to a very high degree of deference under current habeas doctrine. Such deference constitutes a bar Petitioner has not been able to overcome. His petition should therefore be denied.

C. PETITIONER IS NOT ENTITLED TO HABEAS RELIEF: HIS CLAIM OF ACTUAL INNOCENCE BASED ON NEWLY DISCOVERED EVIDENCE IS NOT GROUNDS FOR FEDERAL HABEAS RELIEF

Petitioner claims that he was convicted in a trial that presented no direct evidence of his involvement in the murder of the victim and her two children. He further claims that the testimony of the witnesses that put him on the scene at the approximate time of the murders were obtained in "highly suspect circumstances" by the prosecution. He continues to make reference to the letter that the trial judge that denied the peremptory acquittal request at the time of trial, and allowed the case to go to the jury, who decades later states a suspicious belief that there was not enough evidence to convict. Based on these contentions, Petitioner requests that the Court grant habeas relief and orders a new trial in which the "new evidence" will be considered by the jury.

The Supreme Court in Herrera v. Collins, 506 U.S. 390 (1993), held that claim of actual innocence based on newly discovered evidence is not ground for federal habeas relief. The Court discussed that this was the case "absent an independent constitutional violation **occurring in the underlying state criminal proceeding.**" Id. at 400. [Emphasis added].

In Jackson v. Virginia, 443 U.S. 307 (1979), the Court held that "a federal habeas court may review a claim that the evidence adduced at a state trial was not sufficient to convict a criminal defendant beyond a reasonable doubt." Herrera. 506 U.S. at 401. In so

holding, the Court emphasized that:

> "[T] his inquiry does not require a court to 'ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt.' Instead, the relevant question is whether, after viewing the evidence in light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. This familiar standard gives full play to the **responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.**" Jackson, 443 U.S. at 318-319 (citations omitted; italics in original). [Emphasis added].

This standard does not allow a court "to make its own subjective determination of guilt or innocence." Id. at 320, n. 3. Jackson "does not extend to nonrecord evidence, including newly discovered evidence." Herrera, 506 U.S. at 402. The Jackson inquiry "does not focus on whether the trier of fact made the *correct* guilt or innocence determination, but rather whether it made a *rational* decision to convict or acquit." Id.

In the instant case, Petitioner supports his request for new trial on alleged violations of the Fifth, Sixth, and Fourteenth Amendments theorizing that the newly discovered evidence will convince a jury to determine that he was not in the crime scene at the time of the murders, all because he was excluded as the donor of the hairs found on the victim's underwear. Petitioner's theory is grounded on the alleged newly discovered evidence and not on a violation of any constitutional right on the jury trial that resulted in his conviction. The Supreme Court in Herrera has already established that claims of actual innocence based on newly discovered evidence will not be grounds for habeas relief. Therefore, Petitioner's request for habeas relief based on his alleged actual innocence must be denied, because Petitioner cannot link this so-called newly discovered evidence to any constitutional violation carried out by any state actor in the underlying state criminal

proceeding.

WHEREFORE, the appearing Respondent respectfully request and pray the Court that the Second Amended Petition be dismissed, and judgment entered in favor of Respondents.

I HEREBY CERTIFY that on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and have sent a copy to the petitioner to his addresses of record.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 15th day of August 2023.

DOMINGO EMANUELLI-HERNÁNDEZ
Secretary of Justice

SUSANA I. PEÑAGARÍCANO-BROWN
Deputy Secretary in Charge of Litigation

MARCIA I. PÉREZ-LLAVONA
Director of Federal Litigation and Bankruptcy Division

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