

# Exhibit B

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS, )

*Respondent* )

v. )

John Martinez, )

*Petitioner.* )

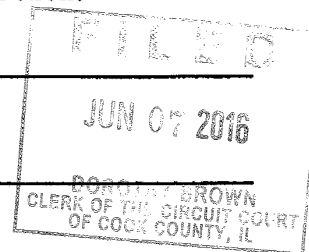
No. 99 CR 6197

Hon. Judge Angela M. Petrone  
presiding.

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NOTICE OF FILING

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TO: Kurt Smitko  
Cook County State's Attorney's Office  
2650 S. California Avenue, 11<sup>th</sup> Floor  
Chicago, IL 60608

Please take notice that on June 7, 2016, we filed the original and one copy of an **Amended Petition for Post-Conviction Relief** in the above captioned case in the Circuit Court of Cook County, Criminal Division, 2650 S. California Avenue, a copy of which is hereby served on you. A courtesy copy was also delivered separately to Judge Petrone.

Respectfully Submitted,

  
Attorney for Petitioner

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Martinez 002915

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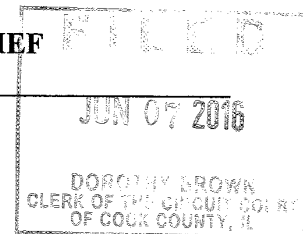
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**AMENDED PETITION FOR POST-CONVICTION RELIEF**

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**Martinez 002916**

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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
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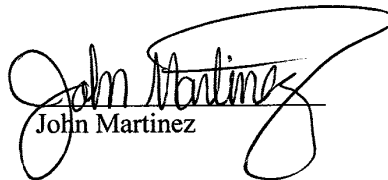
PEOPLE OF THE STATE OF ILLINOIS,	)	
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<i>Respondent</i>	)	
	)	
v.	)	No. 99 CR 6197
	)	
John Martinez,	)	
	)	
<i>Petitioner.</i>	)	Hon. Judge Angela M. Petrone presiding.

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**AFFIDAVIT OF VERIFICATION FOR AMENDED POST-CONVICTION PETITION**

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I, John Martinez, do swear under oath that the allegations set forth in the Amended Petition for Post-Conviction Relief are true to the best of my knowledge and belief.

  
John Martinez

SUBSCRIBED AND SWORN TO BEFORE ME  
This 1<sup>st</sup> day of June, 2016

NOTARY PUBLIC



**Martinez 002918**

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**

**COUNTY DEPARTMENT, CRIMINAL DIVISION**

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
<i>Respondent</i>	)	
	)	
v.	)	No. 99 CR 6197
	)	
John Martinez,	)	
	)	Hon. Judge Angela M. Petrone
<i>Petitioner.</i>	)	presiding.

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**EXHIBIT LIST**

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<u>Exhibit Number</u>	<u>Description</u>
1.	Affidavit of John Deleon, May 5, 2016
2.	CPD Supplementary Report, February 9, 1999
3.	<i>In re People v. Jose Tinajero, John Martinez &amp; Thomas Kelly</i> , 99 CR 6167, March 5, 1999 (Grand jury testimony of Detective Reynaldo Guevara)
4.	CPD Supplementary Report, October 22, 1998
5.	CPD Supplementary Report, December 11, 1998
6.	CPD Supplementary Report, February 5, 1999
7.	CPD Supplementary Report, February 25, 1999
8.	CPD Supplementary Report, February 6, 1999
9.	Statement of Melloney Parker, February 8, 1999, 11:40 p.m.
10.	CPD Supplementary Report, February 14, 1999
11.	Statement of Jose Tinajero, February 7, 1999 at 10:00 p.m.
12.	Statement of John Martinez, February 9, 1999 at 6:45 p.m.

13. Statement of Thomas L. Kelly, February 9, 1999 at 8:50 p.m.
14. Sidley Austin LLP, Final Report on Roberto Almodovar Case, February 9, 2015
15. Sidley Austin, LLP, Guevara Investigation – Armando Serrano and Jose Montanez, March 3, 2015
16. Sidley Austin, LLP, Guevara Investigation – Robert Bouto, March 3, 2015
17. *Rivera v. Guevara et al.*, No. 1:12 CV 04428, Deposition Testimony of Reynaldo Guevara, December 23, 2013
18. *People v. Serrano & Montanez*, No. 93 CR 18173, Post-Conviction Testimony of Reynaldo Guevara, June 17, 2013
19. *People v. Reyes & Solache*, No. 98 CR 12440, Post-Conviction Testimony of Reynaldo Guevara, July 29, 2013
20. *People v. Solache*, 98 CR 1240-03, Post-Conviction Testimony of Bill Dorsch, February 12, 2013
21. *People v. Solache*, 98 CR 12440, Post-Conviction Testimony of David Velasquez and Adolfo Frias, April 11, 2013
22. *People v. Solache*, 98 CR 12440, Post-Conviction Testimony of Adrian Duta and Leshurn Hunt, April 10, 2013
23. *People v. Solache*, 98 CR 12440, Post-Conviction Testimony of Graciela Flores Gardner, June 5, 2013
24. *People v. Solache*, 98 CR 12440, Post-Conviction Testimony of Annie Turner and Gabriel Solache, April 9 2013
25. *People v. Solache*, 98 CR 12440, Post-Conviction Testimony of Arturo Reyes, February 14, 2013
26. FBI Report, June 23, 2001
27. *People v. Juan Johnson*, 89 CR 21806, Testimony of Samuel Perez, February 20, 2004
28. *Johnson v. Guevara*, No. 05-C-1042, Deposition Testimony of Salvador Ortiz, May 19, 2009

29. Affidavit of Virgilio Muniz, August 5, 1994
30. Affidavit Virgilio Calderon Muniz, September 8, 1999; *People v. Vera*, No. 8-11039, Testimony of Virgilio Calderon Muniz, Nov. 20, 1991
31. *People v. Arcos*, No. 91 CR 7432, Testimony of Wilfredo Rosario; *People v. Arcos*, 282 Ill. App. 3d 870 (1<sup>st</sup> Dist. 1996)
32. *People v. Daniel Rodriguez*, No. 91-CR-13938, Testimony of David Velasquez, February 24, 1993
33. Affidavit of Carl Richmond, June 7, 2008
34. *Johnson v. Guevara*, No. 05-C-1042, Deposition Testimony of Edwin Davila, Sr., February 26, 2008
35. Affidavit of Efrain Sanchez (October 5, 1993); Affidavit of Julio Sanchez (June 22, 1998); Police reports re David Colon (Lineup).
36. *Johnson v. Guevara*, No. 05-C-1042, Deposition Testimony of Evelyn Diaz, July 2, 2008
37. *People v. Diaz*, 95 CR 6109, Testimony of Luis Figueroa; Supplementary Police Report (Lineup)
38. *Johnson v. Guevara*, No. 05-C-1042, Deposition Testimony of Gloria Ortiz Bordoy, February 19, 2008
39. Affidavit of Rodolfo Zaragoza, December 4, 2002
40. *People v. Sierra*, No. 95 CR 18601, Testimony of Jose Melendez, February 6, 1997
41. *People v. Conception Santiago & Freddy Santiago*, No. 97-20973, Testimony of Robert Ruiz, September 2, 1998
42. Affidavit of Leshurn Hunt, January 26, 2008; Letter to OPS from Leshurn Hunt, February 28, 1986; *Hunt v. Jaglowski*, 85-C-1976, Testimony of Leshurn Hunt, Richard Arnold Crawford, Lillian Garcia, John McNamara; *Hunt v. Jaglowski*, 926 F.2d 689 (7<sup>th</sup> Cir. 1991).
43. Testimony of Daniel Pena, *People v. Pena*, No. 86 CR 1458; Testimony of Armador Rivera, *People v. Pena*, No. 86 CR 1458; Testimony of Jamie Velez, *People v. Pena*, No. 86 CR 1458
44. Affidavit of Adrian Duta, June 10, 2008



45. *Rivera v. Guevara*, 12 CV 04428, Complaint
46. Affidavit of Orlando Lopez, June 12, 2010
47. Affidavit of Francisco Vicente, May 26, 2004
48. Certificate of Innocence for Jacques Rivera, September 5, 2012
49. Affidavit of Victor Vera, December 20, 2007
50. Affidavit of David Rivera, February 22, 2008
51. Affidavit of Daniel Rodriguez, March 25, 2008
52. *People v. Elizer Cruzado*, 93 CR 24896, Suppression Hearing Testimony of Elizer Cruzado, March 31, 1995
53. Affidavit of Jed Stone, February 20, 2008
54. *People v. Reyes & Solache*, No. 98 CR 12440; Pre-trial Suppression Hearing Testimony of Gabriel Solache and Arturo Reyes, February 4, 2000
55. *People v. Reyes & Solache*, No. 98 CR 12440, Pre-trial Suppression Hearing, Testimony of Rosauo Mejia, June 19, 2000
56. *People v. Reyes & Solache*, No. 98 CR 12440, Pre-trial Suppression Hearing, Testimony of Adriana Mejia, March 30, 2000
57. Affidavit of Reynaldo Munoz, March 17, 2008
58. OPS Complaint No. 124631, Annie Turner; Medical Records of Annie Turner; Testimony of Annie Turner, *Hunt v. Jaglowski*, No. 85 C 1976
59. OPS Complaint No. 125360, Almarie Lloyd; Testimony of Almarie Lloyd, *Hunt v. Jaglowski*, No. 85 C 1976; Testimony of Job Lloyd, *Hunt v. Jaglowski*, No. 85 C 1976
60. Testimony of Graciela Flores, *Hunt v. Jaglowski*, No. 85 C 1976; Testimony of Anna Flores, *Hunt v. Jaglowski*, No. 85 C 1976
61. OPS Complaint of Rafael Garcia, Complaint No. 152902
62. OPS Complaint No. 15047, Melvin Warren; Testimony of Melvin Warren, *Hunt v. Jaglowski*, No. 85 C 1976

- 63. *People v. Smith*, No. 83 C 769(02), July 17, 2014
- 64. *People v. Wrice*, No. 82 C 865503, Order of January 25, 2013
- 65. Testimony of Timothy Rankins, *People v. Serrano*, No. 93 CR 18173, April 3, 2012
- 66. *People v. Solache & Reyes*, No. 98 CR 12440, Order, May 28, 2014
- 67. *People v. Solache & Reyes*, No. 98 CR 12440, Testimony of Gabriel Solache, February 4, 2000
- 68. Affidavit of Armando Serrano, June 30, 2008

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v.	)	No. 99 CR 6197
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John Martinez,	)	
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<i>Petitioner.</i>	)	Hon. Judge Angela M. Petrone presiding.

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**AMENDED PETITION FOR POST-CONVICTION RELIEF**

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Petitioner, JOHN MARTINEZ, through his attorneys, THE EXONERATION PROJECT at the University of Chicago Law School, files this Amended Petition for Post-Conviction Relief. In support thereof, Petitioner states as follows:

**INTRODUCTION**

1. Petitioner John Martinez was convicted at a bench trial for the October 12, 1998 first degree murder of Daniel Garcia. In finding Mr. Martinez guilty, Judge Marcus Salone specifically articulated that he based his conclusion almost exclusively on the testimony of eyewitness Melloney Parker. (R. 8/7/01, at 6-8); *see also People v. Martinez*, 348 Ill. App. 3d 521, 528, 529 (1<sup>st</sup> Dist. 2004). Trial defense counsel for Martinez and his co-defendants,<sup>1</sup> however, maintained that Ms. Parker's testimony—and indeed any and all pre-trial identifications of Martinez—were improperly influenced by Detective Reynaldo Guevara, the lead investigator in this case and the detective who conducted Ms. Parker's

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<sup>1</sup> Martinez's bench trial was held simultaneously with the bench trial of co-defendant Thomas Kelly and the jury trial of co-defendant Jose Tinajero.

photo and live lineups. (R. 7/13/01, at 43-48; 7/16/01, at 134, 214-15; 4/30/02, at R3-10; 6/10/02, at S19-20, 23-24, 26; Ex. 2).

2. In the years since Martinez's conviction, allegations have been repeatedly levied against Detective Guevara that he had a pattern and practice of engaging in investigative misconduct, including improperly influencing pre-trial eyewitness identifications like Melloney Parker's. *See People v. Almodovar*, 2013 IL App (1st) 101476 ¶¶ 54-55 (alleging misconduct by Detective Guevara during out-of-court identification procedures and noting the allegations of Guevara's pattern of using suggestive lineup procedures); *People v. Reyes*, 369 Ill. App.3d 1 (1<sup>st</sup> Dist. 2006) (alleging Guevara's pattern of misconduct, including coercive interrogations); *see also* Exs. 14-16; Melissa Segura, *If These Men Aren't Guilty, Why Can't They Go Free?*, BuzzFeed News, Oct. 5, 2015 (explaining that a city commissioned written report headed by former U.S. Attorney Scott Lassar has concluded that four men alleging misconduct of Detective Guevara are "most likely innocent").<sup>2</sup> As a result of these allegations, Illinois courts have required post-conviction evidentiary hearings in cases where the credibility of Detective Guevara's investigation was at issue. This is so whether the claim was raised in an initial post-conviction petition or a successive one. *See Almodovar*, 2013 IL App (1st) 101476, ¶¶ 3, 54 (successive petition); *Reyes*, 369 Ill. App.3d at 11 (initial petition).

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<sup>2</sup> While the majority or the entirety of the "Lassar report" has been tendered to counsel at the Exoneration Project by the Cook County State's Attorney's Office, Petitioner's counsel is unclear whether certain portions of the city report are currently under seal. Prior to filing, Petitioner's counsel communicated with Assistant State's Attorney Celeste Stack, who indicated that her office's position is that the Lassar report is "protected." Although Petitioner has no desire to seal the pleadings, in due regard of the State's position and until this issue is clarified, Petitioner has filed any exhibits from the Lassar report under seal. Exs. 14-16.

3. In December 2013, Detective Guevara repeatedly took the Fifth when asked about his investigative conduct in *this* case. (Ex. 17, at pp. 503-11). Moreover, within this petition, Petitioner's trial attorney—John Deleon—has sworn under oath that had he been aware of the allegations of Detective Guevara's investigative misconduct, he “would have investigated them, and if they were substantiated, [he] would have used this information to impeach Detective Guevara's credibility.” (Ex. 1).
4. In light of the credibility of Detective Guevara's investigation being the key issue in this conviction, Martinez respectfully requests that this Court, too, order a post-conviction evidentiary hearing, and ultimately a new trial, on the grounds that Petitioner's conviction violates due process under the Illinois and federal constitution, and that Martinez is actually innocent.

#### **RELEVANT PROCEDURAL HISTORY**

5. On October 12, 1998, Daniel Garcia was beaten and murdered by a group of individuals in an alley at Armitage and Whipple in Chicago, Illinois.
6. Based solely on the March 5, 1999 grand jury testimony of Detective Reynaldo Guevara, Jose Tinajero, Thomas Kelly, and John Martinez were all charged with the first degree murder of Mr. Garcia. (Ex. 3).
7. At a bench trial, Martinez was convicted and sentenced to 25 years' imprisonment. Martinez and his co-defendants remain incarcerated.
8. On direct appeal, Martinez challenged, *inter alia*, the sufficiency of the evidence. His conviction was affirmed. *People v. Martinez*, 348 Ill. App. 3d 521 (1<sup>st</sup> Dist. 2004).

9. On April 11, 2006, Martinez filed a *pro se* post-conviction petition, which was summarily dismissed six days later—on April 17, 2006. Martinez’s *pro se* attempt to file a late notice of appeal was also denied. (R. 4/30/13 at EE4).
10. On September 22, 2009, the clerk’s office received Petitioner’s *pro se* motion to vacate a void judgment. This pleading was dismissed on April 30, 2013. (R. 4/30/13 at EE1-9).
11. On July 16, 2013, Martinez, *pro se*, mailed pleadings seeking leave to file a Successive Petition for Post-Conviction Relief. This pleading was ultimately filed-stamped more than a year later on August 4, 2014. The *pro se* pleading revolved mostly around new evidence of investigative misconduct of the lead detective in this case: Reynaldo Guevara.
12. Shortly after the *pro se* petition was file stamped in August 2014, the Exoneration Project entered an appearance as Martinez’s attorney.
13. On October 1, 2014, Martinez, through counsel, filed a Motion for Limited Discovery asking for leave to subpoena the Chicago Police Department (CPD) for a full panoply of police reports related to this investigation. Counsel explained that these police reports were necessary for counsel to conduct an adequate investigation. Petitioner’s Motion was granted.
14. For almost the next year, the CPD responded to multiple subpoenas by merely providing Martinez’s counsel with the permanent retention record. Counsel repeatedly alerted CPD and this Court that this was not responsive to their subpoena.
15. Finally, on June 30, 2015, counsel filed a Petition for Rule to Show Cause for why the CPD Record Keeper should not be held in contempt. After the filing of this Motion, the

CPD finally complied, producing more documents on July 17, 2015 responsive to the subpoena.

16. This Court has since allowed counsel for Martinez time to complete their investigation and file an Amended petition. Counsel does so with this filing.

### **STATEMENT OF FACTS**

#### **A. Homicide of Daniel Garcia**

17. On October 11, 1998, Manuel Rodriguez drove Daniel Garcia to the area of Armitage and Whipple. Garcia exited the car and went into an alley, and Manuel<sup>3</sup> lost sight of him until Garcia came back running to the car. Garcia had cocaine with him when he returned, which Manuel suspected that Garcia stole. (R. 7/11/01, at 65-82).
18. The next day, October 12, 1998 around 1:30 a.m., Jesus Fuentes drove Garcia to the same alley of Whipple and Armitage. Both Esteban Rodriguez (Manuel's brother) and Fuentes's six-year-old son were also in the car, and they, along with Fuentes, remained in the car when Garcia got out. The adults had been drinking on the street near Garcia's house since 10:00 or 11:00 p.m.; they finished their 12-pack of beer and went out to buy more. (*Id.* at 84-86, 101-02, 119; R. 7/12/01 at 6, 19, 24).
19. After about 15 minutes of waiting, Fuentes drove around looking for Garcia. Eventually, they discovered Garcia on the ground, severely beaten. (*Id.* at 91; R. 7/12/01 at 12). Two months later, on December 10, 1998, Garcia died from his injuries. (R. 7/11/01 at 48).

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<sup>3</sup> Given their common surname, Manuel and Esteban Rodriguez are identified by first name throughout this Petition.

**B. Esteban Rodriguez and Jesus Fuentes: Statements to Detective Guevara and Trial Testimony**

20. After the incident but before Garcia's death and the case became a homicide investigation, on October 16, 1998, Detective J. Woodall spoke to Esteban at his home. According to a police report, Esteban specifically stated that he "saw no one on the street" prior to discovering his friend Garcia's body. (Ex. 4).
21. After Garcia's death, homicide Detective Reynaldo Guevara was assigned as the lead investigator. The same day as Garcia's death, December 10, 1998, according to police reports, Detective Guevara re-interviewed Esteban at his home, although Esteban himself denied this interview occurred. (R. 7/12/01 at 38). For the first and only time, Jesus Fuentes, too, was interviewed, seemingly also at Esteban's home, although Fuentes claimed he and Esteban were together at 26<sup>th</sup> and California and it was a different date. (R. 7/11/01 at 111-13). Nevertheless, Esteban repeated that he did not see anyone in the alley upon discovering Garcia's body, but this time said he "heard some voices" while in the alley. Fuentes reportedly said the same. (R. 7/13/01 at 56-57; Ex. 5).
22. On February 4, 1999, Esteban was interviewed again at his home by Detective Guevara. On that date, according to police reports, Esteban said that "he forgot to tell [the detectives] everything" on December 10, 1998. Esteban, however, did not recall saying that to Detective Guevara, and, in fact, denied this interview ever took place. (R. 7/12/01 at 38-39, 72). According to Detective Guevara, however, Esteban relayed that upon discovering Garcia's body and trying to provide aid to him, he observed four Hispanic males at the mouth of the alley. Those four males then started throwing bottles at their van and told them to leave Garcia there. When the four males started running toward Esteban and Fuentes, they left. (R. 7/13/01 at 53, 64-65; Ex. 6).



23. Five days later, on February 9, 1999, Esteban viewed a lineup conducted by Detective Guevara. Detective Guevara picked Esteban up and was present while he viewed the lineup. (R. 7/12/01 at 54, 67). According to the lineup report, Esteban identified the three charged defendants as “three of the offenders who were beating upon the victim.” (Ex. 2). Prior to this lineup identification, however, Esteban had never indicated that he viewed Garcia being beaten by anyone. A man named Angel Serrano, moreover, was in the lineup; Esteban did not identify him.
24. Two weeks later, on February 23, 1999, Jesus Fuentes viewed a lineup conducted by Detective Guevara. At this point, however, even according to Detective Guevara’s own testimony, not only had Fuentes never indicated he witnessed a beating, but Fuentes had never even reported that he had seen *anyone at all* on the night Garcia was beaten. (R. 7/13/01 at 64, 66-67). Nevertheless, on that date, Fuentes also identified the three charged defendants “who were beating upon the victim.” (Ex. 7).
25. At their 2001 trial testimony, however, Esteban and Fuentes testified to an entirely different story—something that is not reported in any police reports nor testified to by police. According to their testimony, after Garcia got out of their car, they were driving around searching for him. During that drive, Fuentes and Esteban observed from about 40 feet away five or six men in the alley at Whipple and Armitage shoving each other in a playful manner. Garcia was not there. Neither Fuentes nor Esteban had ever seen these men before. Fuentes observed this playful shoving for about 10 seconds. Esteban observed it for “just a moment. It was seconds.” Esteban also agreed he was too far away to determine whether any of the individuals he observed had facial hair or even to describe their haircuts. Ultimately, Esteban testified he “[w]as not able to see it very

well.” (R. 7/11/01 at 86-88, 97, 105-06; 7/12/01 at 9-11, 29-30, 48-49, 51, 57; 7/13/01, at 57-58, 60-64, 104-08).

26. According to Fuentes and Esteban’s trial testimony, both their lineup identifications four months after the incident, and in-court identifications almost three years later, were based only on the individuals they saw play fighting (for seconds in the middle of the night from 40 feet away) while looking for their friend after a night of drinking. (R. 7/11/01 at 88, 94-95, 110, 124; 7/12/01 at 11, 15-16, 42-43, 49-50). Contradicting Detective Guevara’s February 5, 1999 police report, both Fuentes and Esteban denied that anybody ever threw bottles at their van while they were caring for Garcia. (R. 7/11/01 at 135; 7/12/01 at 41, 64). And unlike the lineup reports generated by Detective Guevara, neither Esteban nor Fuentes testified that they ever saw anyone beat the victim. (R. 7/11/01 at 110).

**C. Margarita Casiano: Statements to Detective Guevara and Trial Testimony**

27. According to a police report dated February 6, 1999, five weeks earlier, on December 28, 1998, Detective Guevara was speaking to Margarita Casiano at the 14<sup>th</sup> District about an unrelated shooting that happened that day. Casiano was supposedly right next to the victim of the shooting. During that conversation, Casiano informed Detective Guevara that she had knowledge about the Garcia homicide. (R. 7/13/01, at 11, 18; Ex. 8).
28. Casiano is a self-described daily drug user. According to Detective Guevara’s police report, Casiano informed him that sometime in October 1998, she went to “cope dope” in the alley at Whipple and Armitage. In her testimony, however, Casiano claimed she told Detective Guevara it happened specifically on October 13 or 14, 1998. (R. 7/13/01, at 19). Regardless, Casiano testified that four white male Latin Kings were there that she

knew as Toy, Johnny, Rabbit, and Snoopy. The latter three were “laughing and giggling about some Mexican due they had beaten up and left in the alley. She heard them say that the Mexican had ripped off the girl for rocks the night before.” Casiano identified a picture of Toy as Jose Tinajero. (R. 7/13/01 at 6, 10, 12, 23-24, 16-17; Ex. 8).

29. Four weeks later, on January 24, 1999, the police re-interviewed Casiano and showed her additional photos, and she identified Johnny as John Martinez, Rabbit as Angel Serrano, and Snoopy as Thomas Kelly. (R. 7/13/01 at 13-15; Ex. 8).

**D. Melloney Parker: Statements to Detective Guevara and Trial Testimony**

30. At 1:55 a.m. on October 12, 1999, Melloney Parker was sleeping in her third-floor apartment on Whipple near Armitage. She awoke and went to her living room window, which had a tree in front of it. Parker looked out the window and saw a Hispanic man walking through the alley. She couldn’t describe him any further, but this man approached six or seven guys who were standing in the alley. A man from the group said, “Where’s my money?” After this individual punched the lone victim, a brawl ensued, where the group of guys was beating on the one. After the brawl, one person went over to look at the victim on the ground, and he then said he was getting out of there. Everyone left, except the victim who remained on the ground. (R. 7/12/01 at 81-85, 88, 126, 156, 158; Ex. 8).
31. Parker made an anonymous call to 911. Once an ambulance came, she went back to sleep. She didn’t talk to the police or anyone else about the incident for several months. (R. 7/12/01 at 88, 113; Ex. 8).

32. According to a February 6, 1999 police report, on an unspecified day, Detective Guevara traced Parker's 911 call to her apartment and met with her.<sup>4</sup> This report indicates that Parker told Detective Guevara that she "recognized" the person who yelled out "Where's my money?" and initiated the brawl as a local "gang banger" who drove a grey car. She did not, however, identify him by name. (R. 7/13/01 at 26; Ex. 8).
33. The same February 6, 1999 police report notes that on January 24, 1999, Detective Guevara went to Parker's apartment and showed her a photo array. In that photo array, according to the police report, Parker identified Jose Tinajero as the initiator of the brawl and the individual who yelled out "Where's my money?" In her trial testimony, however, Parker denied making any identification that night. Parker stated clearly: "I didn't recognize any one of the pictures when they came to my apartment on that night." (R. 7/12/01 at 90-91; Ex. 8).
34. Two weeks later, on February 6, 1999, Detective Guevara again came to her apartment with additional photos. Parker told him that she would not make any more identifications. (R. 7/13/01 at 44-45; Ex. 8).
35. Two days later, however, on February 8, 1999 at 9:15 p.m., Detective Guevara conducted a lineup. Almost four months after the incident, Parker identified Tinajero and Martinez as two of the offenders she saw and who she "believe[d] . . . took part in" the beating. Both Thomas Kelly and Angel Serrano were also in the lineup; Parker did not identify either of them. (R. 7/12/01 at 94-95; R. 7/13/01 at 29-30, 48; Ex. 2).

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<sup>4</sup> Detective Guevara testified it "could be a couple of weeks, couple of days. I don't know exactly how long [before January 24, 1999]. It was "probably" no more than a couple of weeks and "probably" in January 1999, "give or take." (R. 7/13/01 at 41).

36. Two hours later, Parker signed a handwritten statement written by the assistant state's attorney on felony review. Detective Guevara was present during the taking of the statement. The statement describes Parker seeing, through her window, Tinajero holding a chair and chasing a van down the alley. Tinajero then swung the chair and hit the van. Seconds later, a second van approached, and Tinajero spoke to the individuals in the van. Then, Tinajero grabbed the chair again and hit this second van. (Ex. 9). There is no description of these "van incidents" in any police report documenting any of Parker's four<sup>5</sup> previous interactions with law enforcement as it relates to this case.
37. In Parker's police statement, besides Tinajero, she only identified Martinez from the group of other individuals that subsequently beat the victim. Parker indicated she remembered Martinez punching the victim but not how many times. Parker also indicated that after the group stopped beating the victim, Tinajero returned twice more to beat on the victim himself, until finally, Tinajero just "pushed or prod[ded]" the victim with his foot. Tinajero then left in his gray car. (Ex. 9).
38. As far as her trial testimony, Parker explained that she couldn't see any of the faces of the group beating on the victim during the brawl. She identified Martinez only from seeing him prior to when the commotion started. Parker admitted that Tinajero and Martinez looked alike to her; indeed, Parker couldn't tell them apart from the lineup photographs

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<sup>5</sup> This includes Parker's original 911 call the day of the incident, the undated initial interaction with Detective Guevara that was "probably" in January, the January 24, 1999 meeting with Guevara, and the February 6, 1999 meeting with Guevara.

she examined during her testimony, mistaking them for Thomas Kelly.<sup>6</sup> Ultimately, Parker's in-court identifications during her trial testimony were so confused that despite only identifying Tinajero and Martinez *pre-trial* as possible offenders (and not Kelly)—and despite specifically identifying Tinajero as the initiator and leader of the entire crime during all pre-trial events—Parker actually identified *Kelly* and Martinez as two of the offenders, and *not* Tinajero. (R. 7/12/01 at 89-90, 128, 130, 135, 149-51).

39. Parker further admitted she could not remember much from the night, and really only 50% of what she said to the police the night of her statement. While repeatedly asserting that whatever was in her February 8, 2001 statement was correct, Parker also explained that she signed and initialed the statement at the police station because she had been there “too long” and wanted to go home. (R. 7/12/01 at 97, 103, 133, 141-42, 149-51).
40. Additionally, when confronted with a picture of Petitioner Martinez during her trial testimony (Exhibit C to her statement), Parker specifically stated that she “never saw the defendant’s face.” (R. 7/12/01 at 99).

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<sup>6</sup> The transcript reflects the following while Parker was examining Exhibit No. 12, the line-up photo:

Question: Do you see Thomas Kelly in that photograph, the fellow sitting back there in the white shirt? Do you see him in that line-up?  
Answer: I don't know because he has hair on his face; I don't know. Is that him or is that him? *They both look alike to me.*  
Question: You just pointed to which one, Number nine, correct?  
Answer: Yes.  
Question: And number five, right?  
Answer: Yes.  
Question: So you are not sure if either one of those two guys is Thomas Kelly, right?  
Answer: Correct.

(R. 7/12/01 at 150; 7/13/01 at 211). Photo No. 5 is Jose Tinajero, Photo No. 9 is John Martinez, and Photo No. 10 is Thomas Kelly. (Ex. 2).

**E. Defendants: Statements to Detective Guevara and Police**

41. Following Casiano and Parker's photo identifications of Jose Tinajero, Detectives Mohan and Troche arrested Tinajero at 5:00 a.m. on February 7, 1999. These detectives questioned Tinajero that morning, and Tinajero denied any knowledge of the offense. (Ex. 10).
42. Detective Guevara came on duty at 3:00 p.m., and almost immediately, Tinajero admitted his involvement in the offense and named Martinez, Kelly, and Angel Serrano as the individuals that beat Garcia. In a court-reported statement at 11:40 p.m. that night—almost 19 hours after Tinajero was taken into custody—Tinajero claimed that he punched Garcia, stole his wallet, and then left the scene, but could see the three defendants beat on Garcia after he left. (Ex. 11).
43. Meanwhile, at 8:15 p.m. on February 7, 1999, police arrested Martinez; two hours later, police arrested Kelly and Serrano. Detective Guevara conducted the initial interrogations of each of them on the evening of February 7, 1999 and “early morning hours” of February 8, 1999. None of them made any admissions while in custody through February 8, 1999. (Ex. 10).
44. After Parker and Esteban Rodriguez's lineups on February 8, 1999, Detective Guevara confronted Martinez and Kelly with the information that they had been identified as two of Garcia's assailants. Neither confessed. (Ex. 10).
45. Finally, after “an extended investigative hold” was placed on Martinez, Kelly, and Serrano, at 6:45 a.m. on February 9, 1999, Martinez eventually signed a handwritten statement written by law enforcement. In that statement, Martinez claimed he heard commotion and arrived to the alley, where he saw the victim lying on the ground and

Tinajero, Serrano, and Kelly standing around him. According to the statement, Martinez gave the victim two kicks to the side, and then used his foot to roll Garcia onto his back. Martinez then got into his car and left. (R. 7/13/01 at 172; Ex. 12).

46. More than twelve hours later, Detective Guevara re-interrogated Thomas Kelly, and at 8:50 p.m. on February 9, 1999—or more than 48 hours after Kelly was arrested—Kelly signed a handwritten statement in the presence of Guevara. This statement indicates Kelly witnessed Tinajero punch Garcia, and then Kelly participated in the subsequent beating of him. The statement indicates that Kelly heard police sirens so left in his car. Kelly came back around, where he saw Tinajero alone still beating on Garcia. Kelly eventually just drove away. Tinajero implicated neither Martinez nor Serrano in the beating. (Ex. 13).

47. Martinez and Tinajero were arrested. Despite being implicated in statements taken from Tinajero and Martinez, Angel Serrano was released and never charged.

#### **F. Trial**

48. In the State's case-in-chief against John Martinez, the State presented the described testimony of Jesus Fuentes, Esteban Rodriguez, Margaret Casiano, and Melloney Parker. John Martinez's signed handwritten statement was also admitted into evidence through the testimony of the felony review prosecutor.<sup>7</sup> *See supra* ¶¶ 25-26, 28, 38-39, 45; R. 7/13/01 at 121-45.

49. Martinez testified in his own defense. Essentially, Martinez testified that he was the man described by Parker that went over to look at the victim on the ground after the beating. *See supra* ¶30. (R. 7/12/01 at 87).

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<sup>7</sup> The statements of Tinajero and Kelly, of course, were not admitted at Martinez's trial, and, as noted, Kelly's did not implicate Martinez anyway.



50. Specifically, Martinez explained that on the evening of October 12, 1998, he was around the area of Whipple and Armitage speaking to a girl. He heard noises from the alley and eventually walked there. When he arrived, Martinez saw a man lying face down in the alley, and Tinajero walking away from him. Martinez walked up to the man and nudged him with his foot in an attempt to see his face. Martinez saw that the man was having a difficult time breathing and left. He never assaulted the man or gave him a hard kick, nor did he participate in any group beating. He also didn't see any one else out on the street other than Tinajero. (R. 7/13/01 at 224-29, 232, 238-39).
51. Martinez also explained his interactions with Detectives Guevara and Troche, and his subsequent handwritten statement. After his arrest on the evening of February 7, 1998, Detective Guevara first questioned him hours after arriving at the station. Detective Guevara was aggressive and yelled at him during that 10-minute conversation. During the subsequent two days Martinez was held, Martinez would try to sleep, but every time he would try detectives came in and woke him up. Martinez told the detectives what he witnessed, *see supra* ¶ 50, but they didn't believe him. (R. 7/13/01 at 229-32, 271, 277).
52. After two nights in a windowless room, during which time Martinez only ate some chips and drank water from the sink when he was given the opportunity to go to the bathroom, Detective Troche told Martinez that an assistant state's attorney was going to come in. Troche told Martinez that if he just signed some papers, Martinez could go home. Troche explained to Martinez that since he just "nudged him with your foot" and "didn't kill anyone," they were just "going to use [him] as a witness as seeing Tinajero leaving from the body." Martinez then signed the statement without reading it. (R. 7/13/01 at 222-23, 233-35, 271-75).

### **G. Verdict**

53. In rendering his decision, Judge Marcus Salone said his guilty verdict was “based primarily on what I believe to be the clear, credible, and convincing testimony of Miss Parker.” Although he recognized that Parker’s trial testimony was uncertain, he credited her February 8, 1998 handwritten statement to Detective Guevara. Judge Salone recognized the “considerable question concerning the accuracy” of the testimony of Esteban Rodriguez and Jesus Fuentes, but determined that was overcome by Parker’s statement to Detective Guevara, which he viewed as reliable. Judge Salone, however, misstated the facts when he said that Parker’s pre-trial statement named co-defendant Kelly as an active participant in the beating; as noted, Parker’s statement did not identify Kelly. (R. 8/17/01 at 6-8; 6/10/02 at S4).

54. Ultimately, Judge Salone acquitted Martinez of robbery but found him guilty of murder. He issued the same judgment against Kelly. The jury convicted Tinajero of all charges. (R. 7/16/01 at 98, 8/17/01 at 8).

### **H. Post-Trial Motion Hearing: Parker Statement**

55. Following the verdict, an investigator for the defense, John Byrne, spoke to Parker, who indicated that an outstanding warrant for her arrest was used to pressure her into giving a statement and making an identification. The court agreed to hear testimony from Parker on the matter. (R. 4/30/02 at R3-4).

56. At the hearing, Parker said that in November 1998—or before her identifications and pre-trial statements in this case—she had an outstanding warrant for possession of stolen property. Parker stated that she learned of the warrant when Detective Guevara came to

her home and told her, and then took her to the police station on February 8, 1999.<sup>8</sup>

Detective Guevara told her that the warrant would be quashed if she would help them identify the guys involved in Garcia's beating. Parker agreed that she did not see the victim but signed a photograph of the victim because Detective Guevara told her that was the victim. Parker, however, denied that Detective Guevara made any threats to her to get her to identify the assailants. (R. 4/30/02, at R6-9, 14, 16).

57. In light of this additional evidence, Martinez's counsel argued that Parker "fudged" her identification "because she was promised this help on the theft warrant." She had motive "to go along with that lie [] because the officers kept on her and kept asking her questions and kept her much longer than she wanted to be." Martinez's counsel also pointed out Parker's limited opportunity to make reliable identifications months later after viewing young men she herself described as similar looking at 2:00 a.m. Ultimately, Martinez's counsel argued that she mistook him for one of the participants in the beating, when Martinez's only role—as he testified to—was as the person Parker described seeing check on and nudge the victim, and then announce he was getting out of there after the beating occurred. (R. 6/10/02 at S18-24).

58. Relying, again, on Parker's pre-trial identification, Judge Salone denied the motion for new trial. He ultimately sentenced Martinez to 25 years' imprisonment. (R. 6/10/02 at S28, S40).

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<sup>8</sup> Parker did not specify the date in her testimony, but she indicated that it was the same night she made an identification and signed a statement at the police station months after the offense, which was February 8, 1999. (R. 4/30/02 at R7, 11).

**NEWLY DISCOVERED EVIDENCE RELATED TO  
DETECTIVE REYNALDO GUEVARA**

59. Substantial new evidence has surfaced that Detective Reynaldo Guevara has a pattern and practice of investigative misconduct corroborating what was alleged by Petitioner Martinez in the proceedings surrounding his conviction.
60. The allegations come from a multitude of sources, including sworn testimony of former Chicago Police Officers; reports generated by the Federal Bureau of Investigation (FBI); citizen's sworn affidavits, deposition or trial testimony, or complaints filed with the Office of Professional Standards (OPS); and civil rights lawsuits. Many of these allegations against Detective Guevara, as detailed more specifically below, have been sustained by judicial or administrative bodies.
61. Most recently, documents generated from a city commissioned report led by Scott Lassar from the law firm of Sidley Austin, LLP ("Lassar Report") provide evidence substantiating many of the citizen complaints about Detective Guevara's misconduct. The investigative materials that ultimately comprised the Lassar Report concluded that in at least in four cases where post-conviction petitions remain pending in the Cook County Circuit Court, petitioners are actually innocent of the crime. Those individuals are Roberto Almodovar, Robert Bouto, Jose Montanez, and Armando Serrano. (Ex. 14-16).
62. In at least two cases (Jacques Rivera and Juan Johnson) where Detective Guevara played a substantial investigative role, convicted individuals already have been exonerated. Jacques Rivera has since been certified innocent by the Cook County Circuit Court and a civil rights complaint naming Detective Guevara as the lead Defendant is pending. (Exs. 45, 48). Juan Johnson's conviction was vacated, he was acquitted at a re-trial, and a

federal jury later awarded him \$21 million<sup>9</sup> in light of Detective Guevara's conduct of coercing eyewitnesses against him.<sup>10</sup>

63. For his part, Detective Guevara has repeatedly asserted the Fifth Amendment when asked questions about allegations that he manipulated dozens of witnesses to provide false identifications and used force in an effort to coerce confessions. In his deposition in the Jacques Rivera civil case, Detective Guevara invoked the Fifth with regard to over 30 different individuals,<sup>11</sup> including during nine pages of questioning about his investigation in this case. Detective Guevara refused to answer any questions about his interactions with Esteban Rodriguez, Jesus Fuentes, Margarita Casiano, Melloney Parker, or John Martinez himself. (Ex. 17, at pp. 502-11).

64. In his post-conviction testimony in the cases of Gabriel Solache, Armando Serrano, and Jose Montanez, Detective Guevara invoked the Fifth with regard to his interactions with over 25 different individuals.<sup>12</sup> (Exs. 18-19). Many of those same witnesses have given sworn statements alleging Detective Guevara's investigative misconduct. *See infra* ¶ 65.

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<sup>9</sup> During the appellate process, a settlement was reached reducing the award to \$16.4 million.

<sup>10</sup> *See* Juan Johnson, National Registry of Exonerations, <http://www.law.umich.edu/special/exoneration/pages/casedetail.aspx?caseid=3331>.

<sup>11</sup> Detective Guevara invoked his Fifth Amendment Rights when asked about each of the following individual defendants: Juan Johnson, William Negron, Robert Almodovar, Charles Ellison, Angel Gaya, Johnny Flores, Rosendo Hernandez, Juan Hernandez, Jacqueline Montenez, Manuel Rivera Virgilio Muniz, Adolfo Rosario, Eruby Abrego, Jose Cruz, Anthony Rosario, Johnny Martinez, Edwin Davila, Luis Serrano, Robert Bouto, Edwin Ortiz, Victor Vera, Tony Gonzalez, Juan Hernandez, David Rivera, Antonio McDowell, Rubin Sanchez, Joaquin Gonzalez, Eliezar Cruzado, Reynaldo Munoz, Almarie Lloyd, and Melvin Warren. (Ex. 17).

<sup>12</sup> Detective Guevara refused to testify about his interactions with: Bill Dorsch (Ex. 18 at 45-50), Francisco Vicente (Ex. 18 at 22-24, 31-38, 41, 44, 45, 68-70), Timothy Rankins (Ex. 18 at 24, 25, 43), Anna Flores (Ex. 18 at 26, 54, 55; Ex. 19 at 30-32), Graciela Flores (Ex. 18 at 26, 54, 55; Ex. 19 at 30, 31), David Velazquez (Ex. 18 at 26, 51-54; Ex. 19 at 20-22), Efrain Sanchez

65. Allegations of Detective Guevara's investigative misconduct include the manipulation of eyewitness identifications, the use of force or other illegal tactics during interrogations of suspects, and extortion and bribery. What follows below are brief descriptions of individual's allegations.<sup>13</sup> None of this information was known or could have been discovered by Martinez or his counsel prior to his 2001 trial.

*Guevara misconduct during identification procedures and/or during witness interviews or suspect interrogations.*

- a. Former Chicago police detective **William Dorsch** has testified under oath that roughly three months before Detective Guevara was promoted to detective, Guevara brought two juveniles to the police station that purported to have witnessed a shooting and recorded the license plate of the shooter in a murder Dorsch was investigating. Based on the information provided, Detective Dorsch created a photo array for the juveniles to attempt to identify the shooter. While the first juvenile was viewing the photo array, and before he identified any of the photographs, Guevara pointed to the suspect's photo and told the juvenile "that's him." The juvenile then agreed with Guevara, saying that was the person who committed the shooting. Dorsch then directed Guevara to leave the room and had the other juvenile view the same photo

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(Ex. 18 at 27, 55, 56), Julio Sanchez (Ex. 18 at 27, 56, 57), Adolfo Frias Munoz (Ex. 18 at 27, 28, 57, 58; Ex. 19 at 16, 17), Jose Melendez (Ex. 18 at 28, 60-62; Ex. 19 at 33, 35), Gabriel Solache (Ex. 18 at 28, 29; Ex. 19 at 8-11), Arturo Reyes (Ex. 18 at 29; Ex. 19 at 5-8, 40, 41), Virgilio Muniz (Ex. 18 at 30, 63), Luis Figueroa (Ex. 18 at 59; Ex. 19 at 37-39), Angel Diaz (Ex. 18 at 59, 60; Ex. 19 at 38, 39, 41), Wilfredo Rosario (Ex. 18 at 64, 65), Xavier Arcos (Ex. 18 at 65; Ex. 19 at 27, 28), Gloria Ortiz Bordoy (Ex. 18 at 65, 66), Robert Ruiz (Ex. 18 at 67; Ex. 19 at 24-26), Leshurn Hunt (Ex. 19 at 14, 15), Adrian Duta (Ex. 19 at 15, 16), Voytek Dembski (Ex. 19 at 18, 19), Daniel Pena (Ex. 19 at 22-24), Annie Turner (Ex. 19 at 28, 29), Samuel Perez (Ex. 19 at 32-34), Juan Johnson (Ex. 19 at 33, 34), and Thomas Sierra (Ex. 19 at 34, 35).

Many of these individuals form the basis of the pattern and practice claim here. *See infra* ¶65.

<sup>13</sup> In the post-conviction hearing in *People v. Solache & Reyes*, No. 98 CR 12440, Presiding Judge Obbish issued an order finding the following individual's testimony relevant to Petitioners' claims that Detective Guevara physically coerced their confessions: Leshurn Hunt, Daniel Pena, William Dorsch, Wilfredo Rosario, David Velasquez, Adolfo Frias, Adrian Duta, Jose Melendez, and Robert Ruiz. *See infra* 65a-k.

In the same ruling, Judge Obbish excluded certain witnesses as irrelevant to Petitioners Reyes and Solache's coerced confession claim. (Ex. 66). It should be noted, however, that Petitioner Martinez herein has alleged Detective Guevara's investigative misconduct not just in the interrogations of suspects (as in Solache and Reyes), but also in the manner he conducted suggestive and coercive identification procedures. Ultimately, Petitioner alleges that all of Detective Guevara's alleged bad acts impeach his credibility to such an extent that Martinez is entitled to a new trial. *See People v. Almodovar*, 2013 IL App (1<sup>st</sup>) 101476, ¶ 69.



array; this juvenile was unable to make any identification. Based on the first juvenile's identification, the suspect was charged with murder. Subsequently, Dorsch spoke to the two juveniles without Guevara present. The juveniles admitted that they had been paid to falsely claim that the suspect was the person responsible for the shooting. After prosecutors spoke to the two juveniles, the suspect was released. (Ex. 20, at pp. 75-85).

- b. In May 1991, after sixteen year-old **David Velasquez** told Detective Guevara he knew nothing about the murder of "Junito," Guevara took Velasquez to a rival gang's territory and falsely alerted local gang members that Velasquez was responsible for the murder of Junito (a member of the local gang). After Velasquez begged Guevara to put him back in the police car, Guevara and his partners drove Velasquez to the station, where they chained him to a wall, beat him, and threatened him if he did not falsely implicate Daniel Rodriguez as "Junito's" shooter two months earlier, Guevara would "pin" Velasquez with it. As a result of Detective Guevara's conduct, Velasquez implicated Rodriguez in a false statement; all of the details in the statement were provided by Guevara. (Ex. 21; Ex. 32, at pp. B18-22).
- c. In 1991, Detective Guevara coerced a false confession from **Daniel Rodriguez** to the murder of Jose Hernandez ("Junito"). While en route to the police station after Rodriguez's arrest, Guevara told him Rodriguez he could cooperate and make it easy on himself, or not, in which case Guevara would raid his house and frame his girlfriend Gloria. During the interrogation, Guevara's partner beat Rodriguez. Guevara, then, told Rodriguez exactly what to say, and Rodriguez had been told that if he agreed, he could go home. Rodriguez eventually signed the false statement. (Ex. 51).
- d. At the trial of Xavier Arcos, **Wilfredo Rosario** swore under oath that in 1991, Detective Guevara threatened that Rosario would be framed for the murder of Orlando Garola if he didn't falsely implicate Arcos. Rosario said that Guevara instructed him to say he heard "five to seven shots." The detectives told him that he was "either going to cooperate with us or we're going to charge you, lock you up and let the Nation [a rival gang] deal with you." (Ex. 31, at J34-39). The appellate court found the State's evidence so lacking in the case that they reversed Arcos's conviction outright. *See People v. Arcos*, 282 Ill. App. 3d 870 (1<sup>st</sup> Dist. 1996).
- e. In February 1997, **Jose Melendez** testified that he viewed a photo array prepared by Detective Guevara. Even though Melendez told Guevara that he "didn't see the person that shot," Guevara held up a specific picture and told Melendez to pick that person out. Melendez identified that person because his friend was the victim and Guevara told him he had reason to believe that person was the killer. (Ex. 40, at E207-12).
- f. **Robert Ruiz** testified that in 1997, Detective Guevara arrived at the wake of Ruiz's friend and told Ruiz he wanted to talk to him. In the days thereafter, Guevara had Ruiz detained several times for hours each time, and eventually just told him that two people had been implicated in the shooting. Guevara then told Ruiz "exactly how to say the story." Ruiz implicated Freddy and Concepcion

Santiago in the murder because Ruiz believed that Guevara would continue to harass him until he changed his story. (Ex. 41 at 75-79, 141-44).

- g. In February 1983, Detective Guevara and other officers forcibly removed **Leshurn Hunt** from his home and handcuffed him to a ring in the wall at the police station where he was beaten about the head, face, and body until he confessed to murder and robbery charges. Hunt was detained for approximately 23 hours and deprived of food, water, and sleep until after he confessed. Hunt sought medical treatment for his injuries and filed a complaint with the Office of Professional Standards. Witnesses who saw Hunt while in custody corroborated his claim of a beating by the police. The criminal court judge suppressed Hunt's confession, and Hunt brought a successful civil rights action against, *inter alia*, Detective Guevara. (Exs. 22, 42).
- h. In 1986, Detective Guevara and two other officers coerced a confession from **Daniel Pena** by beating him in the face and ribs with their hands, and the groin and thighs with flashlights, during an interrogation. Pena was taken to see a doctor where he complained about being beaten by the police. The doctor found bruising to Pena's legs and abrasions and lacerations to Pena's nose. Family members corroborated Pena's claim that he had been beaten while in police custody. (Ex. 43).
- i. In 1993, Detective Guevara used physical force and threats to coerce a false confession from **Adolfo Frias-Munoz** to the murder of Dora Alva. Over the course of a two-day interrogation, Frias-Munoz was handcuffed to a ring on the wall of the interrogation room, hit in the face with an open hand by Detective Guevara, and beaten by two other officers. Though isolated in a locked interrogation room, Frias-Munoz could hear his wife screaming and his son crying in another room. Guevara also brought Frias-Munoz's nephew into the room, who appeared beaten about the face. Guevara threatened Frias-Munoz that if he did not confess, his wife would go to prison and his children would be taken away. Frias-Munoz, who did not speak English, agreed to give a statement to an assistant state's attorney. Frias-Munoz spoke in Spanish and Guevara translated the statement so that the prosecutor could write the statement in English. Frias-Munoz then signed a statement he could not read. (Ex. 21).
- j. **Adrian Duta** testified that in 1994, Detective Guevara interrogated him about a murder he knew nothing about. During the interrogation, Guevara became mad, smacked him in the head with a folder, and punched him in the stomach. After getting punched, Duta signed a statement prepared by Guevara, because Guevara promised him he could go home if he did. Duta did not go home, but as soon as his Dad visited him in county jail, Duta told his Dad what Guevara did. (Exs. 22, 44).
- k. In 1989, Detective Guevara coerced both **Samuel Perez-Melendez** and **Salvador Ortiz** into falsely identifying Juan Johnson and others as the individuals who killed Ricardo Fernandez. Perez-Melendez explained that Guevara put him inside his car, showed Perez-Melendez a photo of Juan Johnson, and told Perez-Melendez that he wanted Juan Johnson to take the blame for the murder. Based upon his past interactions with Detective Guevara, Perez took it as a threat and believed that



Guevara would frame him for the murder if Perez did not implicate Johnson. Perez subsequently falsely identified Johnson even though he did not witness the murder and even though he never told Guevara he could make an identification. For his part, Ortiz testified that Guevara “suggested” that Perez should implicate Johnson. (Ex. 27 at 65-70; Ex. 28 at 109-12).

- l. **Virgilio Muniz** has sworn under oath that in 1989, Detective Guevara coerced him into falsely identifying Manuel Rivera during a lineup and interrogation as the murderer of Marlon Wade. Detective Guevara pointed to a picture of Manuel Rivera and told Muniz: “I know it was him so tell me now.” Guevara “pressur[ed] and scar[ed]” the teenager by repeatedly telling Muniz that if he didn’t make the identification, he would “go down for the murder.” Muniz explained that he, **Genaro Roza**, and **Loretta Hellen** then spoke and agreed they would all testify against Manuel Rivera to protect themselves because even two years later, Detective Guevara was “still on our ass, pressuring and demanding we show up to testify.” (Ex. 29).
- m. In 1989, Detective Guevara coerced a false confession from **Victor Vera** to the murder of Edwin Castaneda. While Vera maintained his innocence and refused to implicate himself, Guevara threatened to lock up Vera’s brother and parents if he didn’t confess. Detective Guevara also promised Vera that “nothing would come back to” him and that Guevara would give him “total control over the Spanish Cobras neighborhood” if he admitted his involvement. When that still didn’t work, Guevara drove him to rival gang territory and announced on a bullhorn that Vera was in the car, and Guevara tried to shove Vera out of the car. At that point, fearing for his life, Vera agreed to falsely confess. (Ex. 49).
- n. **Virgilio Calderon Muniz** (unrelated to Virgilio Muniz, *see supra* 62.) swore under oath that in April 1989, Detective Guevara pointed to a picture of Victor Vera and ordered Muniz and **Angel Lauzerique** to identify Vera in the lineup. Muniz said the detectives said “they were going to have trouble every time they seen [*sic*] us” if they didn’t make the identifications. (Ex. 30 at D48).
- o. Detective Guevara threatened to “put a case” on **Carl Richmond** if he didn’t implicate Robert Bouto in the May 14, 1993 shooting of Salvador Ruvulcaba. At the lineup, “Detective Guevara told the other witnesses and me that they had the shooter, and that all we had to do was identify Bouto as the shooter. He whispered to each of us what position the suspect would be in.” Each witness went in separately, but each came back “and confirmed to the other witnesses that the suspect was in that position.” Richmond complied and implicated Bouto because Guevara promised to “make [his] life uncomfortable” if he didn’t. From past experiences with Guevara, Richmond knew to take this threat seriously, and Richmond agreed to testify falsely because of Guevara’s threat. Further, while at the police station, Richmond also heard Bouto getting beat up in an interrogation room. (Ex. 33).
- p. Statements implicating Armando Serrano and Jose Montanez are also tainted by allegations of Detective Guevara’s misconduct. **Francisco Vicente** swore that

Guevara threatened him when Vicente originally refused to falsely implicate Serrano and Montanez. (Guevara had beaten Vicente previously in other contexts.) Guevara followed by promising Vicente money and aid on unrelated pending charges if he did cooperate. Vicente implicated Serrano and Montanez only after Guevara gave him all of the details of the crime. (Ex. 47). Further, Guevara abused **Timothy Rankins** by putting a phone book over his head and beating it with a flashlight, threw Rankins out of his chair, and placed Rankins in a chokehold to induce him to sign a pre-prepared statement implicating Serrano and Montanez. As a result, Rankins testified falsely against the men in the Grand Jury. (Ex. 65). Further, Guevara hit **Armando Serrano** himself in the face and body while Serrano was shackled to a police station wall in an attempt to get Serrano to confess to murder. When Serrano's mother and father arrived at the police station, they could hear their son screaming for a lawyer. (Ex. 68).

- q. In 1995, Detective Guevara arrested **Edwin Davila** and, in an attempt to coerce a confession, chained him to the wall of an interrogation room and told Davila that he was going to frame him for murder. After Davila told Guevara that he did not commit the murder, Guevara forced Davila to participate in a lineup in which two witnesses identified Davila as the perpetrator, despite the fact that each of those witnesses had previously told the police that they had not been able to see the shooter. (Ex. 34 at 19, 84-112).
- r. Detective Guevara told **Efrain Sanchez** and **Julio Sanchez** to pick David Colon (position No. 5) out of a lineup. As a result of pressure from Detective Guevara, these men did so and falsely claimed that Colon had committed murder. (Ex. 35).
- s. In 1995, Detective Guevara coerced **Evelyn Diaz** into making a false identification and providing false testimony to the Grand Jury against Luis Serrano by threatening Diaz that if she did not identify Serrano, her children would be taken away by the Department of Children and Family Services. Guevara pointed to a particular photograph and told Diaz "that was the guy." (Ex. 36 at 51-52, 70-71).
- t. In 1995, Detective Guevara told **Luis Figueroa** to falsely identify Angel Diaz as the shooter of his girlfriend Yolanda Leal even though Figueroa did not see the shooter. Figueroa identified Diaz but recanted his identification at trial. (Ex. 37 at B56).
- u. During an interrogation in 1995, Detective Guevara threatened to hit **Gloria Ortiz Bordoy**, threatened that her children would be taken by the Department of Children and Family Services, called her "the B word," and told her that she was involved in the crime and was "going down for a long time" during a six-to-eight-hour interrogation. Finally, without reading its contents, Bordoy signed a statement that the detectives wrote out for her because she just wanted to "get out of there." Detective Guevara kept trying to make her say things she was "not aware of." (Ex. 38 at 44-82, 101-06).
- v. In 1995, Detective Guevara coerced **Rodolfo Zaragoza** into falsely identifying Ricardo Rodriguez as a shooter. Guevara intimidated Zaragoza into identifying and later

testifying against Rodriguez. Zaragoza identified Rodriguez because Guevara told him that Rodriguez was the shooter. (Ex. 39).

- w. At their post-conviction hearing, both **Arturo Reyes** and **Gabriel Solache** testified that in 1998, during their interrogations, Detective Guevara repeatedly struck and beat them while they were handcuffed as they denied the accusations that they committed a murder and stole a baby. Detective Guevara threatened Reyes with the electric chair during a three-day-long interrogation. Reyes eventually signed a false inculpatory statement. For his part, due to the Guevara's beatings, Solache signed a statement in English he couldn't read or understand. He signed it because Guevara told him to sign it. (Exs. 24, 25, 54, 67).
- x. In 1998, in the case in which Gabriel Solache and Arturo Reyes were convicted, Detective Guevara repeatedly hit **Rosauro Mejia** in an attempt to coerce a confession from him. Guevara similarly pulled **Adriana Mejia's** hair and struck her on the back of the neck while interrogating her. Adriana also testified that Guevara threatened her with life in prison. Rosauro never confessed and was finally released after being held in custody for three days. (Ex. 55, at Q22; Ex. 56 at D69).
- y. In 1998, Detective Guevara used suggestive tactics to force twelve-year-old Orlando Lopez to falsely identify **Jacques Rivera**. As a result, Rivera was exonerated. (Exs. 46, 48).
- z. In 1991, Detective Guevara coerced **David Rivera** into signing a confession by telling him that if he confessed and pled guilty, he would serve seven years in prison whereas if he did not confess, he would be sent away for fifty years. Guevara also promised Rivera that if he signed a statement at the police station, he could go home. (Ex. 50).
- aa. In 1993, Detective Guevara arrested fifteen year old **Elizer Cruzado** and threatened him with life imprisonment if he did not make a statement implicating himself in a murder. Guevara also told Cruzado that he could go home and see his family again, but only if he agreed to make a statement. At the time, Cruzado had a limited ability to read and write. (Ex. 52).
- bb. According to an affidavit of attorney Jed Stone, in 1997, Detective Guevara arrested **Voytek Dembski**, a Polish National who did not speak English. During a subsequent interrogation, Dembski alleged that Guevara beat, slapped, and yelled at him while he was handcuffed to a chair in an interrogation room. Guevara later got a partner to secure a statement from Dembski in English, which Dembski signed even though he could not read English. (Ex. 53).
- cc. In 1985, Detective Guevara arrested **Reynaldo Munoz** and questioned him about multiple crimes. During the process, Guevara hit Munoz in the mouth with his fist. Guevara further drove Munoz to rival gang territory and threatened to throw him out of the car and let rival gang members do to him "whatever they were going to do."

Indeed, Guevara did stop the car, pulled Munoz out of the car, and let rival gang members spit and beat on Munoz. (Ex. 57).

*Other Misconduct by Detective Guevara*

- dd. In an **FBI report** detailing the criminal activity of Chicago Police Joseph Miedzianowski,<sup>14</sup> Detective Guevara was named by some of the same informants who implicated Miedzianowski. The report indicates that Guevara, in his capacity as a police officer, would apprehend drug and gun dealers and then allow them to “buy their way of trouble.” According to the report, Guevara also took bribes to alter both positive and negative lineups of murder suspects. Finally, the report states that Guevara, using an attorney as a conduit, would receive cash in exchange for the ultimate dismissal of murder cases he investigated. (Ex. 26).
- ee. In 1986, Detective Guevara threw **Rafael Garcia** against a car, struck him in the face several times, kicked him, and hit him in the head. Garcia filed a complaint with the Chicago Police Department’s Office of Professional Standards (OPS). Although Guevara denied the charges, Garcia’s complaints were corroborated by physical evidence, as he was treated at the hospital for lacerations to the head. After an investigation into the incident, OPS found that Guevara had lied about the incident and recommended that Guevara be suspended for two days. (Ex. 61).
- ff. In 1986, Detective Guevara pulled over **Melvin Warren** because Warren cut him off while driving westbound on Augusta Boulevard. Guevara called Warren a “nigger dog” and “threatened to tear [Warren’s] head off.” Guevara hit Warren in the face with a closed fist and then forced him down into the front seat of his car and began to choke him. Two eyewitnesses confirmed that Guevara initiated the beating. In response to this incident, Warren sought medical treatment and filed a complaint with the Office of Professional Standards (OPS). OPS sustained Warren’s allegations that Guevara had physically and verbally assaulted him and recommended that Guevara be reprimanded. (Ex. 62).
- gg. In 1982, Detective Guevara and another officer arrested and physically assaulted **Annie Turner** for smoking on a bus. Guevara called her a “bitch” and pushed her out the back door of the bus. Guevara twisted her arm, threatened to “snap” it, and handcuffed her so tightly that her skin broke. He also hit her across the face with a metal bracelet he was wearing and called her a “nigger bitch.” Turner sought medical treatment and filed a complaint with the Office of Professional Standards. (Exs. 24, 58).
- hh. In 1982, Detective Guevara and three other officers broke through the locked front door of **Almarie Lloyd** and conducted a warrantless search of her home. When Lloyd

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<sup>14</sup> Disgraced Officer Miedzianowski has been called “the most corrupt cop in the city’s history.” He is currently serving a life sentence in a federal prison. Todd Lighty & Matt O’Connor, *Rogue cop gets life*, Chi. Trib., January 25, 2003.

asked who they were, she was told to shut up. The officers terrified Lloyd, her brother, and her two children, and left the home in shambles. Lloyd filed a complaint with the Office of Professional Standards the next day. (Ex. 59).

- ii. In 1984, Detective Guevara and other officers physically assaulted **Graciela Flores** and her 14-year old sister **Anna Flores** during a search of their home, during which the officers did not identify themselves as police. Guevara repeatedly slapped Graciela, called her a “bitch,” and pulled her hair. As a result of this incident, Graciela’s arm was put in a sling and she spent one week in the hospital. (Exs. 23, 60)..

66. Having only now been made aware of these allegations against Detective Guevara, Martinez’s trial counsel, John Deleon, has sworn under oath that he would have investigated the allegations had he been made aware previously. Deleon also swore that if his investigation substantiated the allegations, he would have used the information to impeach Detective Guevara’s credibility. (Ex. 1).

#### ARGUMENT

#### **CLAIM I: DUE PROCESS VIOLATIONS: 5<sup>TH</sup> AND 14<sup>TH</sup> AMENDMENTS, U.S. CONSTITUTION; ARTICLE 2, SECTION 2, ILLINOIS CONSTITUTION**

**The newly discovered evidence relating to allegations of investigative misconduct of Detective Reynaldo Guevara is conclusive enough that it would have changed the result of John Martinez’s trial.**

67. Petitioner Martinez incorporates each of the preceding paragraphs as though fully restated herein.
68. It is well established that a petitioner is entitled to a hearing on a claim that his conviction violates due process when he sets forth substantial newly discovered evidence of police misconduct that supports a claim that investigative misconduct procured an unconstitutional conviction. *See People v. Patterson*, 192 Ill. 2d 93, 145 (2000); *People v. King*, 192 Ill. 2d 189, 198-99 (2000) (new evidence of police misconduct at Area 2, which did not come to light until after the defendants’ trials in those cases, was sufficient in terms of relevancy and materiality to call for relaxation of *res judicata* and to require



evidentiary hearings on the petitioners' claims of torture); *People v. Cannon*, 293 Ill. App. 3d 634 (1st Dist. 1997); *People v. Mitchell*, 2012 IL App (1<sup>st</sup>) 100907 (1<sup>st</sup> Dist. 2014); *People v. Nicholas*, 2013 IL App (1st) 103202, ¶ 44; *People v. Whirl*, 2015 IL App (1st) 111483; *People v. Tyler*, 2015 IL App (1st) 123470 (courts reconsidered the voluntariness of the defendants' alleged confessions that would otherwise be barred due to the pervasive pattern of criminal conduct by police officers in Area 2). These courts have so held for both initial post-conviction petitions, as well as successive petitions, noting that the 2006 Special Prosecutor's Report and other sources shedding light on the Jon Burge scandal, for example, satisfy the "cause" element for the "cause-and-prejudice" test that applies to successive petitions. *See e.g., Mitchell* at ¶ 60; *see also* 725 ILCS 5/122-1(f).

69. More specifically, appellate courts have also repeatedly held that newly discovered allegations of Detective Reynaldo Guevara's investigative misconduct are cognizable under the Post-Conviction Hearing Act and warrant evidentiary hearings under the same due process legal theory and, again, even for successive petitions. *See People v. Reyes*, 369 Ill. App. 3d 1, 14-24 (2006) (citing *Patterson*, 192 Ill. 2d 93); *People v. Almodovar*, 2013 IL App (1<sup>st</sup>) 101476 (noting the newly-discovered allegations against Detective Guevara establish cause-and-prejudice).<sup>15</sup>
70. The appellate courts have so held for both allegations of Guevara's misconduct during suspect interrogations as well as identification procedures. In so concluding, these courts have relied on many of the same allegations cited within and relied upon in paragraph 65 of this pleading. *See e.g., Reyes*, 369 Ill. App. 3d at 15-17 (citing to the allegations that

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<sup>15</sup> Evidentiary hearings are currently ongoing or awaiting a ruling in the circuit court of Cook County for the Appellants in both *Reyes* and *Almodovar*.

Guevara improperly influenced the identification testimony of David Velasquez, Luis Figueroa, and Jose Melendez (all similarly cited in paragraph 65 of this pleading), and the allegations of Guevara's improper and illegally coercive interrogations of Armando Serrano and Daniel Pena, and mistreatment of Melvin Warren (all similarly cited herein as well). Notably, the courts in *Reyes* and *Almodovar* so held even prior to the Lassar report (which substantiated that Guevara had a pattern of misconduct and concluded that at least four of Guevara's victims were innocent), prior to the exoneration of Jacques Rivera, and prior to Detective Guevara's repeated invocations of the Fifth (including in the instant case). *See supra* 60-63; *see also People v. Whirl*, 2015 IL App (1st) 111483, ¶107 (explaining that in a post-conviction proceeding, a negative inference should be drawn where a detective takes the Fifth Amendment when asked about allegations of misconduct).

71. Substantively, a petitioner is entitled to relief under a due process claim based upon newly discovered evidence of a pattern of misconduct by the investigating police officers if the evidence is (1) of such conclusive character that it will probably change the result on retrial; (2) material to the issue, not merely cumulative; and (3) discovered since trial and of such character that the defendant in the exercise of due diligence could not have discovered it earlier. *Mitchell* at ¶ 61 (citing *People v. Orange*, 195 Ill. 2d 437, 450-51 (2001)); *Tyler* at ¶ 158. The standard requires the court to determine whether the allegations undermine the credibility of the investigating officers to the extent that the result of a new trial would be different. *See Almodovar* at ¶ 69 (explaining that “[t]he new evidence merely sought to establish a pattern and practice of abuse by Detective Guevara, which, if true, would have a severe negative impact on the credibility of Detective

Guevara's testimony that no such abuse occurred in defendants' case"); *Tyler* at ¶ 193 (citing *Patterson*, 192 Ill. 2d at 145) (noting that the standard requires the court "to determine whether any of the detectives who interrogated the defendants may have participated in systemic and methodical abuse and whether those detectives' credibility at trial might have been impeached as a result").

72. Both the appellate court decisions in *Almodovar* and *Reyes* establish that the allegations against Detective Guevara outlined in paragraph 65 of this pleadings are material and either newly discovered or could not have been discovered with due diligence. *See Reyes* at 18-19; *Almodovar* at ¶¶ 67-68. Again, many of these allegations mirror the ones discussed in those appellate decisions, which found that in cases from the same era (the defendants in *Reyes* went to trial in June 2000, and Martinez's trial began just one year later), evidence of Detective Guevara's misconduct that pre-dated their trials was still newly discovered. Of course, other evidence in this petition—like the Lassar report and both Guevara's repeated invocation of the Fifth and his specific invocation in this case—long post-date Martinez's trial, so could not have been discovered earlier. *See Whirl*, 2015 IL App (1st) 111483, ¶107.
73. Further, the newly-discovered allegations relating to Detective Guevara's investigative misconduct are conclusive and would likely change the result on retrial. Detective Guevara was involved in every aspect of the investigation, and his credibility, therefore, was paramount. *See Almodovar* at ¶ 68. Judge Salone found much of that investigation resulted in unreliable evidence; Judge Salone discounted the trial testimony of Jesus Fuentes and Esteban Rodriguez and their confusing supposed pre-trial identifications procured by Detective Guevara. *See supra* ¶¶ 20-26, 53.



74. Rather, Judge Salone based his guilty verdict solely on the *pre-trial statement* of Melloney Parker, who purportedly identified Martinez as one of the assailants in the group of perpetrators. (Judge Salone acknowledged that Parker's actual trial testimony was uncertain.) The fact that Detective Guevara has now taken the Fifth in relation to his investigative interactions with Parker in the context of this case is, alone, conclusive enough to warrant relief. (Ex. 17, at 507-10).
75. Moreover, Martinez's counsel John Deleon argued both during trial and vigorously at a post-trial motion that Parker's pre-trial identification was improperly influenced by Detective Guevara, who was present when she signed the statement. Attorney Deleon maintained that the circumstances of Parker's identification rendered it almost impossible for her to make a reliable identification, and the fact that she repeatedly confused the alleged perpetrators during trial substantiated that she was only identifying Martinez at the behest and threats of Detective Guevara. Attorney Deleon further suggested that Parker maintained that her pre-trial statement was not improperly influenced only out of continuing fear as a result of Detective Guevara's previous promises or threats to her. *See supra* ¶¶ 30-39, 55-58.
76. As part of this petition, Attorney Deleon has signed an affidavit explaining that had he been aware of the allegations of Guevara's misconduct, Deleon would have investigated the claims and utilized any of the information that was substantiated to impeach Detective Guevara.
77. There are similarities to the allegations in paragraph 65 to the circumstances in this case. For example, Detective Guevara procured statements from non-English speakers Esteban Rodriguez and Jesus Fuentes in English (like alleged by Voytek Dembski and Adolfo

Frias-Munoz) and had them view lineups even where they never indicated they witnessed anything (like alleged by Gloria Ortiz Bordoy, Edwin Davila and Luis Figueroa). And many individuals indicate that Guevara threatened them, screamed at them, and made false promises to them in exchange for statements, like alleged by Martinez himself herein. Guevara, further, did not hesitate to mistreat and threaten females like Melloney Parker, as Annie Turner, Almarie Lloyd, and the Flores sisters attest. *See supra* ¶ 65

78. Ultimately, Martinez's own testimony establishes that he merely walked over to the victim after any beating was concluded. Martinez stood over the victim and slightly nudged him with his foot in an attempt to rouse him: After realizing the victim was badly beaten, Martinez walked away. Parker testified to witnessing this exact event—she merely identified that person as Tinajero, not Martinez. However, given Parker's testimony that Tinajero and Martinez looked alike to her—and that she could not tell them apart from in the lineup photos or during her trial testimony, *see supra* ¶¶ 37-38—it is far from unlikely that Detective Guevara improperly influenced Parker to identify Martinez as having a different, or culpable, role. And given the litany of newly discovered allegations substantiating Guevara's pattern of investigative misconduct—and especially pattern of improperly influencing or lying about identifications—Martinez's theory becomes all the more likely. *See supra* ¶ 65. The result of a new trial, therefore, would not be a guilty verdict.

**CLAIM II: *BRADY V. MARYLAND* DUE PROCESS VIOLATIONS: 5<sup>TH</sup> AND 14<sup>TH</sup> AMENDMENTS, U.S. CONSTITUTION; ARTICLE 1, SECTION 2, ILLINOIS CONSTITUTION**

**The failure to disclose to the defense the allegations of Detective Guevara's investigative misconduct in this case, and others, violated *Brady v. Maryland*.**

79. Petitioner Martinez incorporates each of the preceding paragraphs as though fully restated herein.
80. A petitioner establishes a *Brady* violation by showing that (1) undisclosed evidence by the State is favorable to the accused because it is either exculpatory or impeaching; (2) the evidence was suppressed by the State either willfully or inadvertently; and (3) the accused was prejudiced because the evidence is material to guilt. *People v. Beaman*, 229 Ill. 2d 56, 74 (2008). A *Brady* error is never harmless. *Id.* For a successive petition, cause-and-prejudice is established if the petitioner satisfies the second and third components of the substantive *Brady* test. *See Strickler v. Greene*, 527 U.S. 263, 282 (1999) (explaining that the State's suppression of evidence, *i.e.*, prong 2 of *Brady*, constitutes "cause"—or the "objective factor" impeding the ability to raise the claim earlier—and a demonstration of materiality, *i.e.*, prong 3 of *Brady*, establishes "prejudice"); see also *Banks v. Dretke*, 540 U.S. 668, 691 (2004) (explaining that "a petitioner shows 'cause' when the reason for his failure to develop facts in state-court proceedings was the State's suppression of the relevant evidence . . . [and] prejudice within the compass of the 'cause and prejudice' requirement exists when the suppressed evidence is 'material' for *Brady* purposes"); *Beaman*, 229 Ill. 2d at 74 (explaining that the same federal *Brady* standard applies in Illinois).
81. Based upon the same factual allegations, Martinez is entitled to relief under the Post-Conviction Hearing Act that the State violated his rights by withholding *Brady v.*

*Maryland* evidence of Guevara's investigative misconduct. Many of the allegations outlined in paragraph 65 of this pleading pre-dated Martinez's 2001 trial. *See Mitchell* at ¶¶ 71-72 (explaining that under *Kyles v. Whitley*, 514 U.S. 419 (1995), knowledge by any agents of the State, such as police officers, is imputed to the State); *People v. Wrice*, No. 82 C 865503, Order of January 25, 2013, at 5-6 (Clay, J.), attached as Ex. 64 (petitioner's *Brady* claim that the State failed to disclose exculpatory evidence regarding systemic abuse at Area 2 Police Headquarters warrants an evidentiary hearing); *People v. Smith*, No. 83 C 769 (02), Tr. of Proceedings at 6, July 17, 2014 (Reddick., J), attached as Ex. 63.

82. Obviously, Detective Guevara was aware that he engaged in investigative misconduct in these instances (indeed, he has taken the Fifth in relation to these allegations), including in this case (again, he took the Fifth), and this information therefore is imputed to the State and falls under the rubric of *Brady*. *But see People v. Orange*, 195 Ill. 2d 437, 456-58 (2001); *People v. Mahaffey*, 194 Ill. 2d 154, 171-74 (2000) (rejecting the argument that "*Brady* requires the prosecution to disclose information about misconduct in unrelated cases known only to individual police officers where the nexus between the other cases of alleged abuse and the defendant's case was not known until years after the defendant's trial"). Petitioner's trial counsel John Deleon, moreover, has sworn under oath he was not made aware of these allegations. (Ex. 1).

**CLAIM III: ACTUAL INNOCENCE**

83. Petitioner Martinez incorporates each of the preceding paragraphs as though fully restated herein.


84. To establish a claim of actual innocence under the Post-Conviction Hearing Act, a petitioner must set forth evidence that is new, material, noncumulative, and of such conclusive nature that it would probably change the result on retrial. *People v. Coleman*, 2013 IL 113307, ¶ 84. In *People v. Tyler*, 2015 IL App (1st) 123470, ¶¶ 189, 200, the First District Appellate Court held that “evidence of systemic police misconduct is sufficient to support defendant’s claim of actual innocence” under the Post-Conviction Hearing Act. Based on allegations of police misconduct alone, the *Tyler* court remanded for an evidentiary hearing on petitioner’s actual innocence claim. *Tyler* at ¶¶ 200-02. *See also Almodovar* at ¶¶ 77-79 (concluding it need not rule on the issue but stating that “a strong argument could be made” that petitioner’s allegations relating to Detective Guevara would satisfy the actual innocence standard in light of the questionable inculpatory evidence and the import of Guevara’s credibility).

85. On the same grounds, and based on the same allegations and reasons indicated throughout this pleading, Petitioner is entitled to relief on his claim of actual innocence. The allegations of investigative misconduct against Detective Guevara are new, material and noncumulative, and conclusive. *See Coleman*, 2013 IL 113307, ¶ 84.

### CONCLUSION

For the reasons stated throughout this petition, John Martinez respectfully request that this Court vacate his convictions or conduct an evidentiary hearing pursuant to the Post-Conviction Hearing Act. Petitioner Martinez further reserves the right to seek to amend his claims and/or seek additional discovery prior to an evidentiary hearing.

Respectfully Submitted,

  
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