UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

In re: DENNIS J. DECHAINE, Petitioner

MOTION FOR AUTHORIZATION TO FILE A SECOND OR SUCCESSIVE PETITION FOR WRIT OF HABEAS CORPUS 28 U.S.C. § 2244(b)

Petitioner Dennis J. Dechaine respectfully moves this Court for authorization to file a second or successive petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2244(b)(3)(A), or, in the alternative, for transfer to the United States District Court for the District of Maine for full merits consideration.

I. INTRODUCTION

This motion presents a single, substantial constitutional claim that has never been adjudicated on the merits by any state or federal court: ineffective assistance of trial counsel for failing to object to a constitutionally impermissible religious argument by the prosecutor, and ineffective assistance of appellate counsel for failing to raise that error on appeal and for failing to preserve and present the claim in post-conviction review.

The claim was procedurally defaulted solely because Maine law requires ineffective-assistance claims to be raised in post-conviction review, and Petitioner never had conflict-free or effective counsel at that stage. Under Martinez v. Ryan, 566 U.S. 1 (2012), that failure constitutes cause excusing the default.

II. BACKGROUND

Mr. Dechaine was convicted by a jury in 1989 and is currently serving a life sentence at the Maine State Prison. At trial, Mr. Dechaine testified in his own defense, denying the charges and explaining where he was and what he did on the day of the murder. His wife, family members, friends, and the State's own psychologist testified on his behalf.

The State presented testimony from numerous witnesses, but there were no eyewitnesses to the crime. The prosecution's case was entirely circumstantial. Critically, the State failed to produce any forensic or biological evidence linking Mr. Dechaine to the victim or connecting the victim to Mr. Dechaine.

After a ten-day trial and approximately ten hours of deliberation, the jury returned guilty verdicts on all counts.

III. PROCEDURAL HISTORY (SUMMARY)

1989: Petitioner was convicted and sentenced to life imprisonment.

1992: Trial counsel continued to represent Petitioner during the initial post-conviction review proceeding and did not raise his own ineffectiveness. Because Maine law required ineffective-assistance claims to be raised in post-conviction review, no meaningful opportunity existed for the claim to be presented at that stage.

1995: A subsequent post-conviction petition was pursued pro se and dismissed for failure to proceed.

2000–2023: Multiple post-conviction and DNA-related proceedings occurred. None provided a mechanism for raising the claim presented here.

2024–2025: Petitioner raised the present claim for the first time in state post-conviction proceedings. The Superior Court denied relief, concluding that there was no mechanism to revive an argument that could have been raised decades earlier. (See Superior Court Order, Addendum at 3.) The Maine Supreme Judicial Court subsequently denied a certificate of probable cause and denied reconsideration, holding that the claim had been waived because it was not raised in earlier post-conviction proceedings. (See Law Court Orders dated June 25, 2025 and July 24, 2025, Addendum at 4–5.)

IV. THE CONSTITUTIONAL CLAIM

A. Prosecutorial Misconduct

During closing argument, while addressing the complete absence of forensic evidence, the prosecutor told the jury: "I can give you no better answer than to say that's the way God made it." (Trial Tr. p. 1412; Addendum at 6.)

B. Ineffective Assistance of Counsel

Trial counsel failed to object to this argument, despite its clear impropriety. Post-conviction counsel likewise failed to raise the issue during post-conviction review. These failures fell below an objective standard of reasonableness under Strickland v. Washington, 466 U.S. 668 (1984).

C. Prejudice

The State's case contained no forensic or biological evidence linking Petitioner to the crime. A federal court reviewing the record later observed that the absence of such evidence raised troubling questions concerning the strength of the prosecution's case. (See Cohen Excerpts at Addendum at 7–8.)

V. MARTINEZ v. RYAN APPLIES

Maine law requires ineffective-assistance-of-trial-counsel claims to be raised in post-conviction review. Petitioner did not have conflict-free counsel at the initial-review collateral proceeding because trial counsel continued to represent him and could not reasonably be expected to raise his own ineffectiveness. Petitioner later proceeded without counsel, and his petition was dismissed without merits review. The underlying claim is substantial and record-based.

VI. 28 U.S.C. § 2244(b)(2)(B)

The claim could not have been raised earlier due to the structure of Maine's post-conviction system and the absence of effective counsel. The constitutional violation undermines confidence in the verdict.

VII. SHINN v. RAMIREZ

This claim relies exclusively on the existing trial and appellate record. No new evidence is required. Shinn v. Ramirez, 596 U.S. 366 (2022), does not bar review.

VIII. CONCLUSION

Petitioner respectfully requests authorization to file a second or successive petition for writ of habeas corpus under 28 U.S.C. § 2254, or, in the alternative, transfer to the United States District Court for the District of Maine for full merits review.

Respectfully submitted,

/s/ John E. Nale

John E. Nale, Esq.

Maine Bar #211

Counsel for Petitioner

Dennis J. Dechaine

ADDENDUM TO MOTION FOR AUTHORIZATION
TO FILE A SECOND OR SUCCESSIVE PETITION
FOR WRIT OF HABEAS CORPUS
28 U.S.C. § 2244(b)

In re:
DENNIS J. DECHAINE,
Petitioner

United States Court of Appeals
for the First Circuit

ADDENDUM

This Addendum contains limited excerpts from the state and federal court record necessary to support Petitioner's Motion for Authorization to File a Second or Successive Petition for Writ of Habeas Corpus. The materials are submitted solely to establish a prima facie showing under 28 U.S.C. § 2244(b) and Martinez v. Ryan, 566 U.S. 1 (2012).

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the recent hearing was generous, because any new evidence might in theory lead jurors to view existing evidence, old and new, differently. Given this broad scope, counsel were allowed to present testimony from Rodney D. Englert, an expert in crime scene reconstruction, to link the new DNA evidence to the trial record.

Alleged Prosecutorial Misconduct

Before analyzing the new DNA evidence in conjunction with all the other evidence in the case, old and new, the Court must resolve an argument Mr. Dechaine presents in both in his petition for post-conviction review and his argument for new trial: that the State unconstitutionally swayed the jury by commenting on the absence of certain evidence in closing argument:

> The point as we tried to make to you with regard to this kind of evidence, whether it be fingerprints or fibers or hairs or what have you, sometimes you have it and sometimes you don't. I can give you no better answer than to say that's the way God made it.

(Trial Tr. vol. 8, 1412 (Mar. 17, 1989).) The State argues that the petition is untimely, the claimed error could have been raised on direct appeal, and it could have been addressed in Mr. Dechaine's first petition for post-conviction review. The Court agrees. If, as Mr. Dechaine argues, the State committed misconduct by making a specific and purposeful appeal to the Deity, the State's error in doing so would have been as obvious in 1989 as he says it is now. There is no mechanism for reviving now an argument that could have been made decades ago.

Beyond that procedural infirmity, the Court cannot agree with the substance of Mr. Dechaine's argument. The State did not appeal to God's will, God's desire, God's view of the evidence, or anything else that might encourage the jury to convict Mr. Dechaine. In context, the prosecutor's comment is simply a theistic version of "that's the way it goes." The State's motion to dismiss the petition for post-conviction review must therefore be GRANTED.

STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court
Docket No. Kno-25-81

DENNIS J. DECHAINE
Petitioner

v.

ORDER DENYING CERTIFICATE OF PROBABLE CAUSE

STATE OF MAINE
Respondent

Panel: STANFILL, C.J., and MEAD, HORTON, LAWRENCE, DOUGLAS, and LIPEZ, JJ.

Pursuant to 15 M.R.S. § 2131(1) (2025) and M.R. App. P. 19, Dennis J. Dechaine has filed a notice of appeal and memorandum seeking a certificate of probable cause permitting full review by the Law Court of the trial court's denial of his petition for post-conviction review.

Dechaine contends that the trial court erred when it determined that the prosecutor's statement during closing argument was not improper and further that this argument had been waived because Dechaine previously filed a petition for post-conviction review and did not raise this issue. The Court has reviewed the judgment entered in the trial court following a two-day hearing regarding the alleged errors and has fully considered the request for a certificate of probable cause. The Court has determined that no further hearing or other action is necessary to a fair disposition of the matter.

It is therefore ORDERED that the request for a certificate of probable cause to proceed with the appeal is hereby DENIED.

Dated: June 25, 2025

For the Court,

Matthew E. Pollack
Clerk of the Law Court
Pursuant to M.R. App. P. 12A(b)(5)(B)

STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court
Docket No. Kno-25-81

Dennis J. Dechaine

v.

State of Maine

ORDER DENYING MOTION TO RECONSIDER DISMISSAL OF MOTION TO RECONSIDER DENIAL OF REQUEST FOR CERTIFICATE OF PROBABLE CAUSE

On June 25, 2025, this Court entered an order denying Dennis Dechaine's request for a certificate of probable cause. On July 10, 2025, Dechaine filed a motion pursuant to M.R. App. P. 10(a)(5) to reconsideration that order. On July 14, 2025, this Court dismissed the motion to reconsider as untimely.

Dechaine has now filed a motion to reconsider the order dismissing his original motion to reconsider the order denying the request for a certificate of probable cause. Dechaine claims that his attorney was "left with the understanding that the last day for filing the Motion for reconsideration would have been Thursday, July 10, 2025." He requests that the Court accept the timely payment of the filing fee on July 9, 2025, as the timely filing of his first motion for reconsideration.

The undersigned, as the Court's designated motion justice, elected to refer Dechaine's second motion for reconsideration to the Court, to assure that whatever action was taken reflected the view of the entire Court. *See* M.R. App. P. 10(b). After review and discussion, all members concluded that, even assuming payment of the filing fee had rendered the first motion for reconsideration timely, the motion would still have been denied. The first motion repeats the argument in Dechaine's original memorandum in support of his request for a certificate of probable cause, with some additional case law.

The second motion for reconsideration is therefore DENIED.

Dated July 24, 2025

For the Court,

Andrew M. Horton
Associate Justice

not recovered either. The claim may be, among others, that Sarah Cherry could not have been abducted in the defendant's truck because her prints were not found in the truck. But you know for a fact that the defendant was in that truck yet piy of all of the mess of papers and items found in that truck and on the truck itself only a very few handfuls could be found to have the defendant's fingerprints. The point as we tried to make to you with regard to this kind of evidence, whether it be fingerprints or fibers or hairs or what have you, sometimes you have it and sometimes you don't. I can give you no better answer than to say that's the way God made it.

For all that appears from the evidence, Sarah Cherry's selection of a victim on July 6th, 1988 was random. That may also give you a moments concern; but it should only be a moments concern. For although Mr. Connolly suggested in opening statement isn't it more likely that somebody who knew Sarah Cherry killed her. The evidence is that only her folks, the Henkels, and a friend of Sarah's by the name of Julie Wagg knew she was baby-sitting that day. You know from the evidence that none of them committed this murder. And, more ever, if somebody she knew had come to the house, somebody with whom she was comfortable, she would not have left behind her in leaving the house her glasses and her shoes. She would not have left personal belongs of that sort

could be the source of the DNA evidence. *See* P.L. 2005, ch. 659, §§ 2-5 (effective Sept. 1, 2006), 15 M.R.S. § 2138(10)(C).

On August 28, 2008, Mr. Dechaine filed a motion titled "Motion for New Trial and Motion for DNA Analysis."[2] After ordering the DNA analysis Mr. Dechaine requested, holding hearings on June 12 through June 14, 2012, ordering additional DNA analysis requested by Mr. Dechaine at the close of those hearings, and holding additional hearings on November 7 and November 8, 2013, the Court denied Mr. Dechaine's motion by order dated April 9, 2014. *See* Order on Def.'s Mot. for a New Trial at 28 (Apr. 9, 2014). Mr. Dechaine appealed the decision and the Law Court affirmed the denial of his motion on July 21, 2015. *See State v. Dechaine*, 2015 ME 88, ¶ 1, 121 A.3d 76.

Existing Record Evidence

The body of evidence generated by these events was substantially captured by the Law Court's narrative in its affirmance of the Superior Court's denial of Mr. Dechaine's earlier motion for a new trial brought pursuant to the post-conviction DNA analysis statute. *See id.* ¶¶ 3, 10, 15-29. In its summary, the Law Court quoted extensively from Magistrate Judge Cohen's recommended decision of July 28, 2000. *See id.*, ¶ 3 (quoting *Dechaine*, 2000 WL 1183165, at *1-10, *13-17, *19-21). After reviewing the evidence, Magistrate Judge Cohen articulated certain questions the record could not answer and that might cast doubt on Mr. Dechaine's guilt:

> The voluminous record in this case raises troubling questions. How could the professedly non-violent Dechaine have randomly abducted a twelve-year-old child and committed this atrocious crime? Dechaine denied under oath that he did it. No fingerprints, hairs or fibers matching those of Dechaine were found on or near the victim or at the . . . home [from which she went missing]. Conversely, no fingerprints, hairs or fibers matching those of [the victim] were found on Dechaine or in or on Dechaine's truck. Debris, including a pink synthetic fiber, was found near the crime scene that had no apparent connection to Dechaine or [the victim]. The Maine State Police tracking dog did not pick up a track from one side of Dechaine's truck to the other evidence that the state conceded was "a little ambiguous." [The victim] had been

[2] Although 15 M.R.S. § 2138 has been amended four times since 2006, subsection 10 has remained substantively the same. The motion now before the Court was filed pursuant to the version of the statute that became effective on July 29, 2016.

> warned not to let a stranger into the house, and there was no evidence of a struggle there. Dechaine's purported confessions contained no details of the crime. Dechaine was cooperative with police officers, allowing his person and his truck to be searched (although he admitted both that he hid his keys and at various points lied).

Dechaine, 2000 WL 1183165, at *19.

DNA testing made an early appearance in Mr. Dechaine's case. He sought a continuance a month before trial to seek DNA examination, then in its infancy, of some of the physical evidence. The motion was denied. Scientific analysis was conducted on a number of items with technology customary at the time. Evidence at trial showed that the blood under the victim's fingernails was found to match her own type. The rope that bound the victim's hands was described as similar both to rope found in Mr. Dechaine's truck and to a third length of rope found in the woods near the crime scene, and the latter two lengths of rope were found once to have been a single rope. Microscopic analysis of fibers found on the victim's right wrist, left hand, and right palm were found to resemble fibers in the scarf used to strangle her.[3] A tire track in the driveway of the house from which the victim was abducted was found consistent with the left front tire of Mr. Dechaine's truck.

DNA analysis has developed in the decades since Mr. Dechaine's conviction and has been employed in support of his efforts to secure a new trial. In 1993, DNA analysis of clippings of the victim's two thumbnails—all that remained after the other eight fingernails were consumed in blood-typing—was conducted by CBR Laboratories in Boston, Massachusetts. (*See* Def.'s Ex. 12-A.) CBR's participation was enabled by a series of unusual events in which Mr. Dechaine's then-attorney secured the clippings from the court clerk (thereby corrupting the chain of custody) and sent them for testing without informing the State or the Court. *See* Order on Def.'s Mot. for a New Trial at 12 (Apr. 9, 2014). The testing that followed counsel's maneuvers showed there were two or more

[3] Mr. Dechaine claimed ownership of the scarf through his counsel's closing argument, but that information is not actually included in the trial record. (*See* Trial Tr. vol. 8, 1463, 1467 (Mar. 17, 1989).) Mr. Dechaine's ownership of the scarf is not germane to this Order.

United States Court of Appeals
For the First Circuit

No. 26-1101

DENNIS J. DECHAINE,

Petitioner,

v.

NATHAN THAYER, Warden, Maine State Prison,

Respondent.

CASE OPENING NOTICE

Issued: January 27, 2026

A petition for permission to file a second or successive habeas corpus petition pursuant to 28 U.S.C. § 2254 was received and docketed today by the clerk of the court of appeals in compliance with 1st Cir. R. 22.2.

An appearance form should be completed and returned immediately by any attorney who wishes to file pleadings in this court. 1st Cir. R. 12.0(a) and 46.0(a)(2). Petitioner must file an appearance form by **February 12, 2026** in order for it to be deemed timely filed. Any attorney who has not been admitted to practice before the First Circuit Court of Appeals must submit an application and fee for admission using the court's Case Management/Electronic Case Files ("CM/ECF") system prior to filing an appearance form. 1st Cir. R. 46.0(a). *Pro se* parties are not required to file an appearance form.

Dockets, opinions, rules, forms, attorney admission applications, the court calendar and general notices can be obtained from the court's website at www.ca1.uscourts.gov. Your attention is called specifically to the notice(s) listed below:

- Notice to Counsel and Pro Se Litigants

If you wish to inquire about your case by telephone, please contact the case manager at the direct extension listed below.

Anastasia Dubrovsky, Clerk

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT
John Joseph Moakley
United States Courthouse
1 Courthouse Way, Suite 2500
Boston, MA 02210
Case Manager: Gerry - (617) 748-4275

United States Court of Appeals
For the First Circuit

NOTICE OF ELECTRONIC AVAILABILITY OF CASE INFORMATION

The First Circuit has implemented the Federal Judiciary's Case Management/Electronic Case Files System ("CM/ECF") which permits documents to be filed electronically. In addition, most documents filed in paper are scanned and attached to the docket. In social security and immigration cases, members of the general public have remote electronic access through PACER only to opinions, orders, judgments or other dispositions of the court. Otherwise, public filings on the court's docket are remotely available to the general public through PACER. Accordingly, parties should not include in their public filings (including attachments or appendices) information that is too private or sensitive to be posted on the internet.

Specifically, Fed. R. App. P. 25(a)(5), Fed. R. Bank. P. 9037, Fed. R. Civ. P. 5.2 and Fed. R. Cr. P. 49.1 require that parties not include, or partially redact where inclusion is necessary, the following personal data identifiers from documents filed with the court unless an exemption applies:

- **Social Security or Taxpayer Identification Numbers.** If an individual's social security or taxpayer identification number must be included, only the last four digits of that number should be used.
- **Names of Minor Children.** If the involvement of a minor child must be mentioned, only the initials of that child should be used.
- **Dates of Birth.** If an individual's date of birth must be included, only the year should be used.
- **Financial Account Numbers.** If financial account numbers are relevant, only the last four digits of these numbers should be used.
- **Home Addresses in Criminal Cases.** If a home address must be included, only the city and state should be listed.

See also 1st Cir. R. 25.0(m).

If the caption of the case contains any of the personal data identifiers listed above, the parties should file a motion to amend caption to redact the identifier.

Parties should exercise caution in including other sensitive personal data in their filings, such as personal identifying numbers, medical records, employment history, individual financial information, proprietary or trade secret information, information regarding an individual's cooperation with the government, information regarding the victim of any criminal activity, national security information, and sensitive security information as described in 49 U.S.C. § 114.

Attorneys are urged to share this notice with their clients so that an informed decision can be made about inclusion of sensitive information. The clerk will not review filings for redaction.

Filers are advised that it is the experience of this court that failure to comply with redaction requirements is most apt to occur in attachments, addenda, or appendices, and, thus, special attention should be given to them. For further information, including a list of exemptions from the redaction requirement, see http://www.privacy.uscourts.gov/.

United States Court of Appeals
For the First Circuit

NOTICE TO COUNSEL REGARDING
MANDATORY REGISTRATION AND TRAINING
FOR ELECTRONIC FILING (CM/ECF)

On August 21, 2017, the U.S. Court of Appeals for the First Circuit upgraded its CM/ECF system to NextGen CM/ECF, the latest iteration of the electronic case filing system. Use of the electronic filing system is mandatory for attorneys. If you intend to file documents and/or receive notice of docket activity in this case, please ensure you have completed the following steps:

- **Obtain a NextGen account.** Attorneys who had an e-filing account in this court prior to August 21, 2017 are required to update their legacy account in order to file documents in the NextGen system. Attorneys who have never had an e-filing account in this court must register for an account at www.pacer.gov. For information on updating your legacy account or registering for a new account, go to the court's website at www.ca1.uscourts.gov and select *E-Filing (Information)*.

- **Apply for admission to the bar of this court.** Attorneys who wish to e-file must be a member of the bar of this court. For information on attorney admissions, go to the court's website at www.ca1.uscourts.gov and select *Attorney Admissions* under the *Attorney & Litigants* tab. Bar admission is not required for attorneys who wish to receive notice of docket activity, but do not intend to e-file.

- **Review Local Rule 25.** For information on Loc. R. 25.0, which sets forth the rules governing electronic filing, go to the court's website at www.ca1.uscourts.gov and select *First Circuit Rulebook* under the *Rules & Procedures* tab.

United States Court of Appeals
For the First Circuit

ORDER OF COURT

Entered: February 9, 2021

In response to recent disclosures of wide-spread breaches of both private sector and government computer systems, the Court has adopted new security procedures to protect any highly sensitive document (HSD) filed with the Court that, if improperly disclosed, could cause harm to the United States, the Federal Judiciary, litigants, or others.

HSDs are documents containing information that is likely to be of interest to the intelligence service of a foreign government and the use or disclosure of such information by a hostile foreign government would likely cause significant harm to the United States or its interests. Examples of HSDs include unclassified sealed documents involving national security, foreign sovereign interests, criminal activity related to cybersecurity or terrorism, investigation of public officials, and extremely sensitive commercial information likely to be of interest to foreign powers.

The following types of sealed documents, if they do not fall into one of the categories above, typically will not qualify as HSDs: (1) presentence reports and related documents; (2) pleadings related to cooperation in criminal cases; (3) Social Security records; (4) administrative immigration records; and (5) most sealed documents in civil cases.

The designation of a document as highly sensitive is typically made by the district court or originating agency. Documents that have previously been designated by the district court or an agency as highly sensitive will ordinarily be treated in the same manner by this court. See 1st Cir. R. 11.0(c)(1).

If a document qualifies as an HSD as that term is described above, a filer is required to file a motion to treat that document as an HSD. The movant must serve the motion and the proposed HSD on all other parties by mail with proof of service under Fed. R. App. P. 25(d)(1). The motion and each proposed HSD should be conspicuously marked as a "HIGHLY SENSITIVE DOCUMENT" and placed inside an envelope marked "HIGHLY SENSITIVE." The motion to treat a document as an HSD should be filed contemporaneously with the filing of a motion to seal the document and should be filed in paper format only under the procedures and requirements of 1st Cir. R. 11.0(c). The motion must set forth in detail why the proposed document constitutes a highly sensitive document under the criteria set out in this order, including the specific grounds for asserting that the document contains information that is likely to be of interest to the intelligence service of a foreign government and the use or disclosure of such information by a hostile foreign government would likely cause significant harm to the United States or its interests. Conclusory assertions will not be deemed a sufficient basis for filing a motion to treat a sealed document as an HSD. If a filer believes that a previously filed document in an ongoing case before

the court qualifies as an HSD, a motion to treat the sealed document as an HSD may be filed. There is no need to file such a motion in a closed case.

/s/ Jeffrey R. Howard
Jeffrey R. Howard
Chief Judge

cc:
Dennis J. Dechaine
Aaron M. Frey
John E. Nale

United States Court of Appeals
For the First Circuit

NOTICE TO ALL CM/ECF USERS REGARDING
"NATIVE" PDF REQUIREMENT

All documents filed electronically with the court must be submitted as "native" Portable Document ("PDF") files. See 1st Cir R. 25.0. A **native PDF file** is created by electronically converting a word processing document to PDF using Adobe Acrobat or similar software. A **scanned PDF file** is created by putting a paper document through an optical scanner. Use a scanner ONLY if you do not have access to an electronic version of the document that would enable you to prepare a native PDF file. If you fail to file a document in the correct format, you will be asked to resubmit it.