

D. Boyd

1 LAW OFFICES OF THE ALTERNATE DEFENDER  
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6 Attorneys for Defendant

RECEIVED

FEB 19 2016

7 Santa Clara County  
8 District Attorney's Office

(ENDORSED)  
FILED  
FEB 18 2016

DAVID H. YAMASAKI  
Chief Executive Officer/Clerk  
Superior Court of CA County of Santa Clara  
BY \_\_\_\_\_ DEPUTY  
N. Nguyen

9  
10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11  
12 IN AND FOR THE COUNTY OF SANTA CLARA

13 PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

14 vs.

15 ANTOLIN GARCIA-TORRES,

Defendant

NO: 213515

NOTICE OF MOTION AND MOTION TO  
COMPEL PRODUCTION OF DNA  
(CODIS) EVIDENCE

Date: 03/08/16  
Time: 1:30 P.M.  
Dept.: 29  
Time Est.: 30 MINUTES

19 TO THE CLERK OF THE ABOVE-ENTITLED COURT, AND TO THE  
20 DISTRICT ATTORNEY FOR SANTA CLARA COUNTY:

21 NOTICE IS HEREBY GIVEN that on the 8<sup>th</sup> day of March, 2016, at 1:30 p.m., in  
22 Department 29 of the above-entitled court, the above-named defendant will move the court for  
23 an order requiring the disclosure of scientific materials pertaining to DNA testing including  
24 state database profiles such as CODIS.

25 This motion is made on the grounds that the prosecution has introduced DNA evidence  
26 to the grand jury and it is reasonably anticipated that they will introduce said scientific  
27 evidence at the jury trial in its case in chief. Moreover, the scientific evidence sought through  
28 this motion is required by the defense as it is material to the effective preparation of defenses

1 and cross examination of prosecution witnesses. Mr. Garcia-Torres has a right to a fair trial, to  
2 present evidence, to effectively confront government witnesses called against him, to effective  
3 assistance of counsel, and due process of law under the Fourth, Fifth, Sixth, and Fourteen  
4 Amendments to the U.S. Constitution and their California counterparts, which will be violated  
5 if he is not allowed access to the requested material.

6 This motion is based on this notice, the attached points and authorities, Declaration of  
7 Counsel, the files and records of the case, and any additional argument or evidence submitted  
8 at the hearing on this motion.

9 Dated: February 18, 2016

10 Respectfully submitted,  
11 Davis Epps  
12 Alternate Defender

13 

14 Alfonso O. Lopez  
15 Deputy Alternate Defender

## BACKGROUND:

Antolin Garcia-Torres is charged with capital murder for allegedly kidnapping and killing Sierra LaMar a fifteen year old girl who went missing on March 16, 2012. Her belongings were found a few days later around a work shed with her clothes, bag, school books and other personal property. Her jeans were swabbed for DNA and mixtures were located in several places. The Santa Clara County crime lab created DNA profiles from the mixtures in hopes that they could estimate an individual profile from the complicated mixtures of DNA on the jeans. Based on the profile that they created from the mixture, they submitted that partial profile against the state database. They were informed that the state database listed (13) possible candidates. The crime lab claims they excluded (12) profiles leaving them with the alleged partial profile of Mr. Garcia-Torres. Defense counsel has sought access to the excluded profiles, methods for creating the profiles, and other related evidence regarding the CODIS hits including Mr. Garcia-Torres both on June 10, 2014, and October 23, 2015, through informal discovery requests. Moreover, defense counsel brought a motion to compel the requested discovery and the prosecutor objected to their disclosure. It was agreed by the Court, the prosecutor, and defense counsel that this matter should be briefed under a separate motion to compel and this motion is being brought for that purpose. Since the last court appearance, despite his prior objection, the prosecutor has disclosed some of the requested CODIS type discovery related to Mr. Garcia-Torres but he has not disclosed the (12) other profiles nor the other majority of items requested informally.

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1                   **POINTS AND AUTHORITY:**

2                   **Defense Counsel is Entitled to Scientific DNA Evidence Including CODIS**

3                   Federal and state due process requires the prosecution to disclose to an accused any favorable  
4                   evidence that is material to guilt, punishment, or impeachment. *Brady v. Maryland*, (1963) 373 U.S.  
5                   83, 87; *People v. Morris*, (1988) 46 Cal. 3d 1, 29; *People v. Phillips*, (1985) 41 Cal. 3d 29, 46. When  
6                   an accused lacks access to the records he seeks, good cause for discovery may be based upon an  
7                   allegation of a plausible basis for believing the records contain information relevant to an issue: “Since  
8                   defendants had no prior access to the psychotherapy records of the . . . victim, it was unnecessary to  
9                   allege with particularity the information they were seeking.” *People v. Reber*, (1986) 177 Cal. App.  
10                   3d 523, 531 [disapproved on other grounds in *People v. Hammon*, (1997) 15 Cal.4th 1117]; *see also*,  
11                   *People v. Memro*, (1985) 177 Cal. 3d 658, 683-84; *Saulter v. Municipal Court*, (1977) 75 Cal. App. 3d  
12                   231; *cf.*, *Pitchess v. Superior Court*, (1974) 11 Cal. 3d 531, 534-35. Under *In re Sassounian*, (1995) 9  
13                   Cal.4th 535, 542, and *United States v. Bagley*, (1985) 473 U.S. 667, 674-678, the prosecution has a  
14                   duty under the Fourteenth Amendment’s due process clause to disclose evidence to a criminal  
15                   defendant. Such evidence must be both favorable to the defendant and material on either guilt or  
16                   punishment. *United States v. Bagley*, *supra*, 473 U.S. at 674. Moreover, evidence is “favorable” if it  
17                   either helps the defendant or hurts the prosecution, for instance by *impeaching* one of its witnesses. *In*  
18                   *re Sassounian*, *supra*, 9 Cal.4th at 544.

21                   In the present case, there is strong justification for discovery of the items requested. The  
22                   prosecution has performed DNA testing on clothes belonging to the missing girl, Sierra LaMar. The  
23                   DNA collected from the clothing contained complicated mixtures which were separated under a  
24                   theory that it contained Sierra LaMar’s DNA, unknown individual DNA, and DNA belonging to a  
25                   potential suspect. The partial DNA profile that was put together by the crime lab was used to obtain  
26                   (13) DNA profile hits from the state data base, CODIS. They are alleging that Mr. Garcia-Torres was  
27                   one of the (13) individuals referenced in the CODIS hits of possible contributors. Moreover, that all  
28

1 the other individuals who were identified were excluded as possible contributors. The method in  
2 which profiles were grouped and methods for excluding the other candidates are all highly relevant in  
3 defending against the government allegations that Mr. Garcia-Torres' DNA was on Sierra LaMar  
4 jeans. Their methods also affect the statistics regarding the likelihood ratios related to the DNA  
5 evidence in this case. The information requested in Exhibit A and B is material in that the outstanding  
6 items have a high probability of containing information that is material to the defendant's challenge  
7 of the DNA evidence at pretrial hearings as well as at trial.  
8

9       The records of state and local database hits or partial hits to other individuals besides Mr.  
10 Garcia-Torres who were identified via the search of either CODIS or any other DNA database, even if  
11 this person was later eliminated as a suspect for any reason, are discoverable under *Brady*. There is no  
12 justification to not produce evidence of possible third party suspects simply because they were  
13 identified via DNA testing. There is no doubt that if an eyewitness to a crime had identified someone  
14 other than the defendant, that evidence would be produced. Even if the government asserts a claim of  
15 privilege to these profiles, the question of whether an assertion of privilege will stand depends on the  
16 basis for the assertion and the need by the party seeking the information. Every privilege is qualified,  
17 *see Marylander v. Superior Court*, (2000) 81 Cal. App. 4th 1095, n.2, and must fall should it conflict  
18 with a constitutional right of the party seeking disclosure. *Davis v. Alaska*, (1974) 415 U.S. 308

20       In *Davis v. Alaska*, (1974) 415 U.S. 308, the U.S. Supreme Court held that a defendant's Sixth  
21 Amendment right to confront and cross examine witnesses was violated when the state court refused  
22 to order production of juvenile records of a key witness. The Supreme Court rejected that state's  
23 rationale of an "important interest in protecting the anonymity of juvenile offenders and that this  
24 interest outweighs any competing interest this petitioner might have in cross-examining Green about  
25 his being on probation." *Id.* at 319. Failure to provide the written documents because trial counsel  
26  
27

1 was effectively barred from making a record from which to argue his key point: bias of the witness.  
2 (Id. at 318)

3 Clearly if other individuals were identified in part or in whole via the convicted offender  
4 database, Mr. Garcia-Torres has a right to obtain that information. Even if the government has  
5 excluded these individuals as suspects, Mr. Garcia-Torres is entitled to conduct his own investigation  
6 of these individuals, just as if they had been identified by an eyewitness or fingerprint. As this Court  
7 well knows, "DNA evidence is different," *People v Venegas*, (1998) 18 Cal.4th 47, 81. DNA  
8 evidence is the type of evidence where, "the method of scientific proof is so impenetrable that it  
9 would ' " ... assume a posture of mystic infallibility in the eyes of a jury." *Id.* at 84 [citations omitted].  
10 Denying discovery of the other matching profiles and the identities of those individuals would deny  
11 Mr. Garcia-Torres his right to confront and undermine the key evidence against him in this case.  
12

13 The materials requested are necessary to the preparation of the defense and for consideration  
14 by any defense consultant. By the very nature of this evidence, defendant cannot be expected to  
15 prove that it will be exculpatory when he is being denied access to the materials needed to make  
16 such a showing. It is sufficient that defendant has shown the necessity of review of these materials,  
17 both by counsel and by any defense expert. Without the requested materials, defendant has no  
18 means to check or challenge the accuracy and admissibility of this allegedly damning evidence. As  
19 set forth in the attached Declaration of Counsel, the defendant will be denied effective assistance of  
20 counsel if his attorney is left without means to challenge this evidence. Any privacy claims by the  
21 government can be address through a protective order of the items sought. In sum, without the  
22 materials requested, there is no means for the defendant to effectively challenge the DNA results  
23 either in a hearing regarding its admissibility or at trial.  
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## **CONCLUSION:**

The requested discovery is essential for the preparation of the defense in this case. Failure of the government to provide the requested discovery would violate the defendant's right to a fair trial. The defendant plans to oppose vigorously the introduction of the DNA evidence at this trial. Therefore, his motion for an order requiring the prosecutor to produce all relevant and pertinent evidence concerning the DNA testing must be granted.

Dated: February 18, 2016

Respectfully submitted,  
Davis Epps  
Alternate Defender

Alfonso O. Lopez  
Deputy Alternate Defender

1 (ENDORSED)  
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FILED

FEB 18 2016

DAVID H. YAMASAKI

Chief Executive Officer/Clerk  
Superior Court of CA County of Santa Clara

BY N. Nguyen DEPUTY

1 Bicka Barlow  
2 SBN 178723  
3 2358 Market Street  
4 San Francisco, CA 94114  
5 Phone/Fax: 415-553-4110

6 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 IN AND FOR THE COUNTY OF SANTA CLARA

8 PEOPLE,

Case No.: 213265

9 Plaintiff,

10 vs.

11 ANTOLIN GARCIA-TORRES,

12 DECLARATION OF BICKA BARLOW  
13 IN SUPPORT OF DEFENDANT'S  
14 MOTION TO COMPEL DISCOVERY OF  
15 DNA EVIDENCE

16 Defendant

1 I Bicka Barlow do state and declare:

2 I am an attorney licensed to practice law in the State of California and I have been  
3 retained to assist counsel for Antolin Garcia-Torres in the above matter in the capacity of  
4 DNA attorney.

5 I have a B.S. from the University of California, Berkeley, in Genetics, and a M.S.  
6 from Cornell University in Developmental Genetics, with minors in Cellular Biology and  
7 Plant Molecular Biology. I received my J.D. from the University of San Francisco,  
8 School of Law. I began consulting on DNA cases as a law student in 1994. In 2004, I  
9 was hired as the DNA attorney for the San Francisco Public Defender's Office. During  
10 my nine years at the office, my practice was focused almost completely on DNA cases. In  
11 2013, I left the office and have been consulting on DNA cases throughout the United  
12 States, in both state and federal courts.

13 I have acted as DNA counsel or as a consultant on cases involving DNA evidence  
14 in over 200 cases including capital cases, and in both trial and post-conviction  
15 proceedings. Additionally, I have been retained in three cases as a "Strickland" expert to  
16 assess the performance of trial counsel as it related to the DNA evidence. As DNA  
17 counsel I have reviewed case files for DNA evidence from many labs throughout  
18 California and the United States including the California Department of Justice, SERI,  
19 Orchid Cellmark, the FBI, the St. Charles, MO, Police Department Crime Lab, Contra  
20 Costa County Police Crime Lab, the Oakland Police Crime Lab, the Santa Clara County  
21 District Attorney Crime Lab, and the Arizona Department of Public Safety.

1 I regularly communicate with attorneys and experts who specialize in DNA  
2 evidence. I also regularly train attorneys in the area of DNA evidence. I have reviewed  
3 the material provided to the defendant in this case regarding the DNA testing done. I  
4 have been asked to offer my opinion regarding the type of information that counsel in a  
5 case involving DNA evidence needs to offer competent representation and to be prepared  
6 to confront and cross- examine the government's experts regarding the DNA evidence.  
7

8 I have been provided with voluminous material relating to DNA testing in this  
9 case. This declaration relates primarily to the testing and search of the state database of  
10 Item 16 9108-5ec, which is a sample taken from a pair of jeans. I am informed and  
11 believe that this sample was tested with Identifiler Plus (nuclear DNA) and for Y-STR  
12 DNA. The results from this sample indicate a mixture of at least 3 individuals using  
13 nuclear DNA tests, and a mixture of at least four individuals (3 males) from the Y-STR  
14 test. (Bates 309). The data from the nuclear testing was interpreted and a "deduced  
15 profile" was uploaded to the California state DNA database (known as CODIS or SDIS).<sup>1</sup>  
16 This profile returned 13 hits in the CODIS database. (Bates Lab-4494). Of these  
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<sup>1</sup> The search conducted in this case consisted of a search of the entire state DNA database. This database consists of subsets of DNA profiles from known individuals: arrestees; convicted offenders and "suspect known." (Bates Lab-4494). The database also contains subsets of profiles from forensic or evidentiary samples: forensic mixture STR and forensic STR. The sample 16 9108-5ec was searched against *all of these databases*. Mr. Garcia-Torres' DNA profile was contained in the arrestee database. The discovery provided so far does not indicate in which of the databases the other candidate matches were found.

1 "candidates," 3 were 12 locus matches, 9 were 10 locus matches and one was a 9 locus  
2 match. (*Id.*) Mr. Garcia-Torres was one of the 3 reported 12 locus candidates.

3 A review of the data from Item 169108-5ec and the deduced profile shows that the  
4 lab was uncertain of the genetic type of the unknown male that was obtained from this  
5 sample. At D7, D8, FGA and vWA, the lab did not upload any data from this sample  
6 even though analytical results were obtained. Additionally, at loci D21 and D13, the lab  
7 assumed that information from Mr. Garcia-Torres had "dropped out" in order to reach a  
8 conclusion that he was included as a possible source for the evidence profile.<sup>2</sup> The  
9 profile uploaded also "matched" Mr. Garcia-Torres at 5 of the 12 loci at only one allele.<sup>3</sup>

10  
11 Once the candidates are identified via the database search, the lab is provided with  
12 the profiles of all thirteen individuals and either the analyst or the CODIS administrator  
13 will assess which of those individuals will be dispositioned as a "hit" or as a "non-  
14 match." This process is subjective in nature and often requires an assessment of the  
15 original data and the application of assumptions to the analysis.  
16  
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23 <sup>2</sup> For example, if person A is a 12, 13 at locus X, and the evidence profile is just a 12  
24 allele, a lab could include person A as a source if they conclude that the 13 allele has  
25 "dropped out" based on an artifact of the system. Person B would also be included if  
they were a 12, 14 as well.

26  
27 <sup>3</sup> For example, in this case, the lab uploaded an 8 allele at D13 and Mr. Garcia-Torres is an  
28 8, 10 at that locus. For the reason laid out in footnote 1, *supra*, Mr. Garcia-Torres was  
included despite the fact that only one of his two alleles were uploaded to the database.  
This is also one of the loci that the lab had to invoke allelic drop-out to include Mr.  
Garcia-Torres.

1 All four of these factors, plus the fact that the mixture is from at least 4  
2 individuals, create a situation in which the lab must make subjective choices as to who is  
3 the “candidate match” or “hit” versus who can be excluded or deemed a “non-match.”  
4

5 In the last three years of my practice, I have encountered a number of cases in  
6 which a database search has resulted in more than one candidate and in which, upon court  
7 order, the profiles of the other “non-matching” profiles have been provided to the defense  
8 under court order. The number of “non-matching” profiles varies from case to case and  
9 include one case in Santa Clara County, *People v George Shirakawa*, case no: 213265  
10 and one case in San Francisco County, *People v. Hernandez*, case no: 12015380. The  
11 *Hernandez* case is illustrative of the subjective nature of the interpretation. In  
12 *Hernandez*, the lab uploaded multiple interpretations of a mixed sample to the state  
13 database. One interpretation, returned 5 candidates, and the second returned 28  
14 candidates (including the defendant). In *Hernandez*, the lab opined that two of the  
15 candidates could not be excluded as a source while a defense expert reached a different  
16 opinion that 15 of the candidates could not be excluded.  
17

18 In this case, in a letter dated October 23, 2015, the defense requested specific  
19 information regarding the state DNA database search (hereinafter referred to as CODIS  
20 or SDIS). Information that was requested by the defense but not provided includes Items  
21 1, 2, 3, 4, 5, 6, 8, 9 and 10. All of the items requested involve various aspects of the  
22 search of the database.  
23

1                   **Item 1: Cold Hit Discovery**

2                   The defense has received to date one Match Detail Report for the match between  
3                   the deduced profile from Item 169108-5ec and Mr. Garcia-Torres. The defendant is  
4                   requesting all of the Match Detail Reports for the 12 other individuals who were  
5                   identified via the database search (see below, Item 8). The defendant has received a  
6                   limited amount of discovery of communications regarding the search and is requesting all  
7                   of the communications as set forth in the letter regarding all of the potential candidate  
8                   matches.

9  
10                  **Item 2: Searches done on *all samples* other than Item 169108-5ec.**

11                  **Item 3 and 4: All interpretations prior to upload of samples.**

12                  To date, the defendant has received handwritten notes with the initials BB that  
13                  indicate the deduced profile from Item 169108-5ec, which was uploaded to SDIS. (Bates  
14                  Lab 4467-70). The defense is requesting all notes that relate to the interpretation of this,  
15                  or any other sample whether by the original analyst, second reader, technical reviewer or  
16                  CODIS administrator. The lab's manual calls for a "CODIS Team Case Review" prior to  
17                  entry into a database. (SCCCL Forensic Biology Procedures Manual, 11/16/2010, at  
18                  Databases pg 3 of 18). This review requires a member of the CODIS team to review the  
19                  Green, Blue or Yellow sheets and reports, prior to entry to "ensure that profiles are  
20                  properly designated for entry."

1                   **Item 5. Match Estimator results.**

2                   As a part of the CODIS computer system, the lab has the ability and is required to  
3                   determine the probability of match from a specific profile when a database of a specific  
4                   size is searched. The lab's protocols call for use of this tool during the evaluation of a  
5                   sample for upload to the CODIS/SDIS database. (SCCCL Forensic Biology Procedures  
6                   Manual at Databases pg 3 of 18).

7                   **Item 6: Documents relating to the candidate matches of any of the**  
8                   **interpreted profiles from the Match Manager software.**

9                   **Item 8. Partially Matching Profiles whether or not dispositioned as a non-**  
10                   **match or no hit.** These documents are describe above and consist of 12 individuals  
11                   other than Mr. Garcia-Torres. Because the database continues to be searched against the  
12                   deduced profile in Item 16 9108-5ec, so that as the database grows in size, the number of  
13                   candidates may increase. The lab is routinely notified of these candidate matches and  
14                   keeps electronic copies of them. Therefore, this request is ongoing and not limited to the  
15                   12 profiles already identified. Because of the nature of the search and the deduced  
16                   profile, as well as the fact that at least 4 individuals DNA, including 3 males, were found  
17                   in this sample, the interpretation of the search results is complex and subjective. The  
18                   assumptions of the analyst in the lab may differ from those of a defense expert based on  
19                   his or her review of the data and the candidate matches, as illustrated by *Hernandez*,  
20                     
21                   *supra*.

1                   The likelihood of a hit to an innocent person goes up as the number of loci tested  
2 goes down and as the size of the database searched increases. The fact that there are  
3 others who matched is powerful evidence that Mr. Garcia-Torres is not guilty.  
4

5                   **Item 9: Documents relating to the CODIS database and CHOP program.**

6                   This information is being sought in order to fully understand the process of  
7 searching and identifying individuals who are identified via a database search. These  
8 documents are ones that are relied upon by analysts in the lab as well as the CODIS  
9 administrator when profiles are uploaded to CODIS. The defendant would be unable to  
10 effectively cross examine these individuals and prepare a defense if these documents are  
11 not provided.  
12

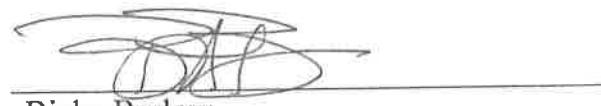
13                   **Item 10: Validation studies relating to the stochastic threshold.**

14                   All labs are required by SWGDAM guidelines and the accrediting body, to  
15 conduct validation studies when implementing a test method. In 2010, SWGDAM  
16 required that labs not only conduct these studies, but also determine what is known as a  
17 stochastic threshold for the laboratory. This threshold identifies the data quality below  
18 which the lab does not feel confident that all alleles or types have been successfully  
19 amplified. This type of data is subject to increased artifacts including allelic drop-out  
20 (referenced *supra*, which was invoked by the laboratory in deducing the profile 16 9108-  
21 5ec), allelic drop-in (where alleles or types not actually present in the sample appear),  
22 peak height imbalance and increased stutter. All of these artifacts impact the reliability  
23 of the data and confound interpretation in mixed samples. Here, much of the data found  
24  
25  
26  
27  
28

1 in Item 16 9108-5ec, falls below the lab's stochastic threshold and the sample is a  
2 mixture of at least 4 individuals. The validation studies are material and relevant to the  
3 defense in a number of ways. These studies could undermine the conclusion and  
4 interpretations drawn by the lab, they could be used to impeach the analyst on cross, and  
5 to show that the studies are insufficient in light of the type of sample in this case.

6  
7 I declare under penalty of perjury that the foregoing is true and correct, and that  
8 those matters stated upon information and belief are true to the best of my knowledge.  
9

10 Executed at San Francisco, California on Feb 17, 2016

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Bicka Barlow

## EXHIBIT A



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DAVID EPPS  
Supervising Attorney

October 23, 2015

David Boyd  
Office of the District Attorney  
70 W. Hedding Street  
San Jose, CA 95110

RE: Antolin Garcia Torres  
DOCKET#: 213515

Dear Mr. Boyd:

This is an informal request for discovery pursuant to the procedures specified in Penal Code section 1054.5(b) and *Brady v. Maryland* (1963) 373 U.S. 83, *Kyles v. Whitley* (1994) 514 U.S. 419, *Thompson v. Superior Court* (1997) 53 Cal.App.4th 480, *People v. Little* (1997) 59 Cal.App.4th 426, *People v. Wheeler* (1992) 4 Cal.4th 284, and *In re Brown* (1998) 17 Cal.4th 873.

Defendant hereby requests that all of the materials and information specified in Penal Code section 1054.1 and **Brady** be provided as soon as possible, but not later than 15 days from the date you receive this letter.

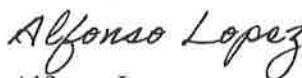
Additionally, defendant specifically requests that the following materials and information be provided:

1. Cold Hit Discovery. In the event that this case involves a 'cold hit' please provide all records pertaining to any sample taken from the defendant for inclusion in a convicted offender genetic database, from the initial collection of said sample to its current disposition. These materials should include, but not be limited to, records of sample collection, chain of custody records, bench-notes for DNA testing (including printed electropherograms), electronic data, computer entry forms, **Match Details Reports**, corrective actions and any communications pertaining to these samples or searches involving these samples, including letters, emails, memos and records of telephone conversations;  
//

2. For testing done on all samples in this case (even if the case does not arise from a cold hit) that have been submitted to any of the database associated with the national CODIS DNA database system including the local database (LDIS), state database (SDIS) and national database (NDIS);
3. All interpretations made by any lab member including the analysts and CODIS administrators of any sample in this case that was subsequently uploaded to any of the listed databases;
4. All notes of any interpretation conducted by the lab kept either in the case file or with documents associated with the CODIS system including any CODIS search requests, spreadsheets or hand written documents associated with the CODIS system;
5. Match estimator results for all interpretations uploaded to any of the listed databases;
6. Any documents relating to candidate matches to any of the interpreted profiles from the Match Manager software, including any handwritten notes regarding interpretation or disposition of a candidate;
7. Long form candidate match reports for all candidates indicating the number of hits in any of the databases listed above;
8. All partially matching candidates returned via a search including those that are dispositioned by the lab to be non-matching or no hit, even if the lab has dispositioned one of the candidates as a "hit." This is an ongoing request because as the database grows the probability of obtaining more matches also grows;
9. Please provide FBI decision tree diagram for CODIS hits, CHOP Procedures for Crime Laboratories, Law Enforcement Agencies, and District Attorneys (if the CHOP software is in use), any state manuals regarding the use of the SDIS and NDIS databases, training material, whether formal or informal, on the use of the SDIS and NDIS databases including but not limited to those regarding data interpretation and criteria for upload.
10. Stochastic Threshold Discovery. A copy of all validation studies conducted in connection with the establishment of the stochastic threshold used in the analysis.

Your cooperation and quick response will be appreciated.

Sincerely,



Alfonso Lopez

Deputy Alternate Defender

(408) 288-7207

## **EXHIBIT B**

## Lopez, Alfonso

---

**From:** Lopez, Alfonso  
**Sent:** Tuesday, June 10, 2014 10:06 AM  
**To:** 'David Boyd'  
**Cc:** Matthews, Brian J  
**Subject:** AGT-Discovery request

Hi Mr. Boyd,

We have reviewed the case with our DNA consultant and the CODIS hit is an important part of the defense. We need all the information, notes, letters, reports, emails, list, related to the CODIS hit. For example, the grand jury testimony of Brooke Barloewen, beginning on page 1660, discusses that a DNA profile was create by your lab, sent to CODIS and a cold hit of (12) profiles was provide to your lab. We need to review the created profile sent to CODIS and the (12) profile list you received. Moreover, we need all the related information on how (11) profiles were excluded by your lab including reports, notes, emails, etc.

In addition to the above, we also need all the items listed below:

1. Copies of validation studies undertaken by the San Mateo Laboratory regarding use of the Identifier Plus test kit including but not limited to studies supporting the laboratory's interpretation guidelines, stochastic threshold and mixture interpretation.
2. Unexpected results and corrective actions: For each laboratory that performed DNA testing in the instant case, please provide copies of the laboratory's log of unexpected results and corrective actions. The logs should be provided for the time period beginning six months before the start of testing and ending six months after the completion of testing. Documentation should be provided for unexpected result events that arose due to mechanical, chemical and analyst operations, including; contamination, the presence of extraneous DNA, sample handling errors or any other reason. The logs should be provided for all laboratory personnel not just the analyst(s) who performed the testing in the instant case. Please note, this is a request for the logs themselves, not just for entries within the logs that pertain to the instant case.
3. Laboratory protocols, frequency tables and interpretation guidelines: Please provide a copy of the standard operating protocols (SOPs), frequency tables and interpretation guidelines relied upon to perform the testing in the instant case. Interpretation guidelines should include those that address; (i) peak detection threshold(s), (ii) stochastic threshold(s), (iii) interpretation of mixed samples, (iv) declaration of inclusions, exclusions and inconclusive findings, and (v) policies for reporting results and statistics.
4. Information relating to profiles in this case that were uploaded to CODIS and any and all match detail reports that were obtained from this.
5. Accreditation: Please provide copies of the following for any laboratory that performed DNA testing in the instant case:
  - 5.1 All licenses or other certificates of accreditation held by the laboratory.
  - 5.2 Quality Assurance Audit Documents bracketing the testing in the instant case, including the last external audit before the start of testing, the first external audit after the completion of testing and all audits, both external and internal, for the time period between. This information should include the audit documents and all communications between the auditing agency and the laboratory being audited. Electronic copies preferred.

THE FOLLOWING LANGUAGE APPLIES TO CASES INVOLVING A COLD HIT AND SHOULD BE ADDRESSED TO THE LABORATORY RESPONSIBLE FOR MAINTAINING THE CONVICTED OFFENDER DATABASE (Richmond DOJ)

6. Hit-file: In the event that this case involves a 'cold hit' please provide all records pertaining to any sample taken from the defendant for inclusion in a convicted offender genetic database, from the initial collection of said sample to its current disposition. These materials should include, but not be limited to, records of sample collection, chain of custody records, bench-notes for DNA testing (including printed electropherograms), electronic data, computer entry forms, Match Details Reports, unexpected results/corrective actions and any communications pertaining to these samples or searches involving these samples, including letters, emails, memos and records of telephone conversations.

Please let me know if you have any questions.

Thank you for your cooperation.

Alfonso Lopez

Deputy Alternate Defender

408-299-7207

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## PROOF OF SERVICE

## STATE OF CALIFORNIA

No. 213515

## COUNTY OF SANTA CLARA

People v. Garcia-Torres

I am a citizen of the United States and am employed in the County aforesaid; I am over the age of eighteen years and not a party to this action; My business address is: 701 Miller Street, San Jose, CA 95110-2121.

On February 18, 2016, I served the within Motion to Compel...on the Plaintiff in this action, by personally serving a true and correct copy thereof on: **(ENDORSED)**

**THE OFFICE OF THE DISTRICT ATTORNEY**  
SANTA CLARA COUNTY  
70 West Hedding Street  
San Jose, CA 95110  
via court clerk's office and email

(ENDORSED)

FEB 18 2016

DAVID H. YAMASAKI  
Chief Executive Officer/Clerk  
Superior Court of CA County of Santa Clara

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I declare under the penalty of perjury that the foregoing is true and correct.

et.  
N. Nguyen

Executed on February 18, 2016, at San Jose, California.

Alfonso O. Lopez  
Deputy Alternate Defender

Alfonso O. Lopez

### Deputy Alternate Defender