



1 that the government not argued or claim that the DNA mixtures allegedly containing Mr.  
2 Garcia-Torres' partial DNA profile not be misstated as possible non-sperm portions of semen.


3 The detectives interviewed Mr. Garcia-Torres and specifically asked him if there is any  
4 reason why his fingerprints or DNA would be on the evidence in this case to which Mr. Garcia-  
5 Torres unequivocally stated no (see Exhibit A, pg 3). He was later asked to speculate how his  
6 DNA could have been found and he explains that the only thing he could think of is discarding  
7 soiled tissue and spitting. He is clear that he discarded the tissue in the parking lot of Uvas  
8 reservoir that morning, March 16, 2012. The government's statement to the court that,  
9 "Defendant said his DNA might have come in contact with Sierra because he frequently  
10 masturbated in his car and would throw tissues containing his sperm out his car window,"  
11 (People's Trial Memo., pg 10, ln 12-14) is false and does not accurately reflects the facts of the  
12 interview. The transcript and audio of the interview clearly state the context which clearly  
13 states that Mr. Garcia-Torres was referring to soiled tissue paper in the parking lot of Uvas  
14 reservoir and not on Ms. LaMar (see Exhibit A, pg 6 and 16). In fact, even argument by the  
15 government regarding such a misleading stretch of the facts is improper because such an  
16 argument misstates the facts.

17 Mr. Garcia-Torres objects to the government introducing the masturbation admission  
18 and semen mixture as not relevant, calls for speculation, and violates his right to a fair trial  
19 under state and federal due process. Moreover, the government's evidence should be excluded  
20 under EC352 because it has no probative value, it will necessitate undue consumption of time,  
21 it will unfairly prejudice the case against Mr. Garcia-Torres, and it will confuse the issues and  
22 mislead the jury. Lastly, the proffered admission misstates the facts and it amounts to  
23 misleading the jury.

1 In the event that this Court allows the false evidence proffered by the government, the  
2 defense will present a significant amount of evidence related to this issue. Namely, a  
3 psychologist to explain that it is normal for a healthy young man to masturbate and there is  
4 nothing sinister about that. Secondly, under EC 356, the entire April 7, 2012, interview would  
5 be presented to the jury to allow for the full context of the interview. Lastly, a great deal of time  
6 will be consumed instructing the jury that the government's proffered admission is false and not  
7 supported by the evidence and defense will ask this Court to admonish the jury regarding the  
8 government misstatements.  
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10 Dated: October 6, 2016.

11 Respectfully submitted,

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14 Alfonso O. Lopez  
15 Deputy Alternate Defender  
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