

1 LAW OFFICES OF THE ALTERNATE DEFENDER  
2 DAVID EPPS, Supervising Attorney #160173  
3 ALFONSO O. LOPEZ, #203564  
4 BRIAN MATTHEWS, #191508  
5 BICKA BARLOW, #178723  
6 County of Santa Clara  
7 701 Miller Street  
8 San Jose, CA 95110  
9 Telephone: (408) 299-7207

6 Attorneys for Defendant

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David H. Yarnowski, Clerk of the Superior Court  
County of Santa Clara, California

By  Deputy Clerk  
Train Tran

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **IN AND FOR THE COUNTY OF SANTA CLARA**

11 PEOPLE OF THE STATE OF CALIFORNIA,

12 Plaintiff,

13 vs.

14 ANTOLIN GARCIA-TORRES,

15 Defendant

NO: 213515

SUPPLEMENTAL BRIEF DEFENSE  
MOTION TO COMPEL PRODUCTION  
OF DNA (CODIS) EVIDENCE

Date: 03/17/16

Time: 1:30 P.M.

Dept.: 29

Time Est.: 30 MINUTES

18 **BACKGROUND:**

19 This brief is being submitted to the court as supplemental argument on the issue of equal  
20 protection which was raised during oral arguments. Although defense counsel did raise the  
21 Fourteenth Amendment to the U.S. Constitution which includes "equal protection of the laws," we  
22 did not specifically address said clause nor discuss it in our moving papers. We will discuss the  
23 constitutional applications of the Fourteenth Amendment which includes the equal protection and due  
24 process clauses on the interpretation of Penal Code section 299.5.  
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1           Construing the language of Penal Code section 299.5 in the manner favored by the  
2 government would lead to an unreasonable result, namely a violation of Mr. Garcia-Torres'  
3 constitutional rights under the Fifth, Sixth and Fourteenth Amendments which includes equal  
4 protection and due process of the law. As evidenced by the arguments at the hearing on the motion,  
5 the term "other forensic identification information" is not defined in the statute and has no usual and  
6 ordinary meaning. The term on its face is ambiguous. The language clearly contemplates that the  
7 statute is designed to protect the privacy of the individuals within the state database but section  
8 299.5(g) also provides for discovery to be made to a defendant in a criminal proceeding.  
9 Additionally, the language of section 299.5(k) clearly contemplates that the "other forensic  
10 identification information" would apply to DNA profiles or information from *individuals who are*  
11 *not charged defendants*, but someone whom the government seeks to exclude (such as a possible  
12 third party suspect). Thus, the statute clearly contemplates the use of DNA profiles of individuals  
13 who are *not* defendants.  
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16           Given the ambiguity and the statutory balance that is struck, the most reasonable construction  
17 to effectuate both interests and comply with the Constitution would be to provide the anonymous  
18 partially matching profiles with a protective order as requested by the defense. This interpretation  
19 would avoid the constitutional pitfalls of adopting the government's interpretation of the statute.  
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21           In *Wardius v. Oregon* (1973) 412 U.S. 470, 473, fn. 6, the United States Supreme Court  
22 warned that "state trial rules which provide *nonreciprocal benefits* to the State when the lack of  
23 reciprocity interferes with the defendant's ability to secure a fair trial" violate the defendant's due  
24 process rights under the Fourteenth Amendment. [emphasis added]( *also see Washington v. Texas*  
25 (1967) 388 U.S. 14, 22; *Gideon v. Wainwright* (1963) 372 U.S. 335, 344; *Izazaga v. Superior Court*  
26 (1991) 54 Cal.3d 356, 372-377). Observing that the due process clause "does speak to the balance of  
27 forces between the accused and his accuser," *Wardius* held that "in the absence of a strong showing  
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1 of state interests to the contrary . . . there must be a two-way street” as between the prosecution and  
2 the defense. (*Wardius v. Oregon, supra*, 412 U.S. at p. 474).

3 Not only is the government’s interpretation of Penal Code section 299.5(k) not reciprocal, it  
4 creates an advantage for the government that violates the Fourteenth Amendment’s due process and  
5 equal protection clauses. “[T]he equal protection clause [of the Fourteenth Amendment] requires that  
6 those similarly situated not be treated differently unless the disparity is justified.” *Board of*  
7 *Supervisors v. Local Agency Formation Com.* (1992) 3 Cal.4th 903, 914; *see also, Purdy &*  
8 *Fitzpatrick v. State of California* (1969) 71 Cal.2d 566, 578. The Fourteenth Amendment’s guarantee  
9 of equal protection and the California Constitution’s protection of the same right (Cal. Const., art. I, §  
10 7, subd. (a), art. IV, § 16, subd. (a)) are substantially equivalent and are analyzed in a similar fashion.  
11 (*In re Demergian* (1989) 48 Cal.3d 284, 291–292; *Smith v. Board of Medical Quality Assurance*  
12 (1988) 202 Cal.App.3d 316, 324).

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15 “When a law impinges on certain fundamental rights . . . it will ordinarily be subject to strict  
16 judicial scrutiny.” (*Board of Supervisors, supra*, 3 Cal.4th at 913 [citing *Wesberry v. Sanders* (1964)  
17 376 U.S. 1, 17; Cal. Const., art. 2, § 2]). “Under this very severe standard, a discriminatory law will  
18 not be given effect unless its classification bears a close relation to the promoting of a compelling state  
19 interest, the classification is necessary to achieve the government’s goal, and the classification is  
20 narrowly drawn to achieve the goal by the least restrictive means possible.” Whether the Court  
21 considers this under the due process or equal protection clause of the Fourteenth Amendment, the  
22 position taken by the government that section 299.5 does not allow the requested potentially  
23 exculpatory partially matching profiles to be provided to the defendant, violates Mr. Garcia-Torres’  
24 fundamental rights under the state and federal Constitutions. The government’s interpretation of  
25 section 299.5(k) sets up a non-reciprocal discovery scheme that favors the government and  
26 disadvantages the defendant violating his due process rights. According to the government’s  
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1 reasoning, under section 299.5(k), the government has *sole discretion*, regardless of Constitutional  
2 requirements, to use “DNA and other forensic identification information” with a jury, grand jury,  
3 administrative agency, or other judicial or administrative proceeding when public disclosure is  
4 “necessary because the DNA information pertains to the basis for law enforcement’s identification,  
5 arrest, investigation, prosecution, or exclusion of a particular person related to the case.”  
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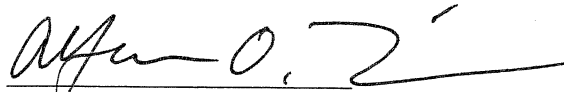
7 As set forth in Mr. Garcia-Torres’ briefing, the evidence is material, relevant, and necessary to  
8 his defense. Without access to this material, he would be unable to undermine the government  
9 expert’s interpretation regarding the initial upload as well as the opinion that Mr. Garcia-Torres and  
10 none of the other (11) individuals identified by the database search, is the “best” match to the  
11 evidentiary sample. Moreover, the defense experts would be at a disadvantage in their evaluation of  
12 the case because they would not be allowed to examine the subjective methods employed by the  
13 government experts in their “exclusion” methods. Without adequate defense consultation based on a  
14 thorough investigation of all the crucial DNA evidence, defense counsel would be rendered  
15 ineffective in their cross-examination of the government experts. Lastly, the (12) cold hits were  
16 produced from the same partial profile subjectively created by the government experts from the DNA  
17 mixture on the jeans, the Defense experts should be granted the same opportunity to examine all the  
18 cold hits and render their independent opinions.  
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21 We referred to the partial profile obtained from the jeans as subjectively created because this  
22 case is far from a typical more reliable single source DNA profile. In a typical DNA case the  
23 methodology is less suspect than in this case because the typical profile involves a single source  
24 profile or a mixture of two individuals with a known person in the mixture. That is not the case here  
25 where the mixture includes four or more individuals and the known contributors are also suspect. The  
26 government experts are assuming that Sierra LaMar’s DNA profile must be on the back pocket area  
27 of the jeans and is the more major profile. Moreover, the government experts examined the mixture  
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1 and organized them subjectively based on their training and experience by assuming certain alleles  
2 belong together based on the amounts present including a manner that would render the most hits  
3 from the state database. The partial profile that they created based on their subjective assumptions  
4 resulted in (12) hits including Mr. Garcia-Torres. The government experts then claimed to have  
5 excluded (11) and not Mr. Garcia-Torres. The DNA evidence in this case is not reliable as it is  
6 subject to human error based on incorrect assumptions which must be independently investigated by  
7 the defense.  
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9 Dated: March 11, 2016  
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11 Respectfully submitted,  
12 Davis Epps  
13 Alternate Defender



14 Alfonso O. Lopez  
15 Deputy Alternate Defender  
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