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(ENDORSED)  
**FILED**  
MAR 20 2017

Clerk of the Court  
Superior Court of CA County of Santa Clara  
BY D. COLBENSON DEPUTY

*Attorneys for Antolin Garcia-Torres*

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF SANTA CLARA

10 People of the State of California, ) Case No.: 213515  
11 )  
12 Plaintiff, ) Notice of Motion and Motion  
13 ) to Continue Trial  
14 )  
15 -vs.- )  
16 Antolin Garcia-Torres, ) Date: March 20, 2017  
17 ) Time: 8:45 am  
18 ) Dept.: 40  
19 Defendant. ) Time Est.: 15 minutes

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

22 Notice is hereby given that on the 20th day of March, 2017, the defendant will move  
23 the Court to continue the trial two weeks so that defense counsel can adequately prepare for  
24 cross-examination and to present a defense regarding new discovery produced by the  
25 government. This motion is based on Penal Code section 1050, the 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, and 14<sup>th</sup>

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**1** MOTION TO CONTINUE

1 Amendments to the U.S. Constitution, the California Constitution, Article I, sections 15, 16,  
2 and 17, and the attached declaration of counsel.

3 Date: March 17, 2017

Respectfully submitted,

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Alfonso O. Lopez  
6 Deputy Alternate Defender  
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11 IN AND FOR THE COUNTY OF SANTA CLARA

12 People of the State of California,

13 Plaintiff,

14 -vs.-

15 Antolin Garcia-Torres,

16 Defendant.

) Case No.: 213515

)

) Notice of Motion and Motion

) to Continue Trial

)

) Date: March 20, 2017

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17 Issue Presented

18 The Court may continue the trial upon a showing of good cause. And it should grant  
19 a continuance when one is necessary to preserve constitutional rights. The prosecutor  
20 provided new discovery regarding trace evidence in this case. On February, 16, 2017, the  
21 government provided new discovery when it analyzed and reported on trace evidence in the  
22 case. On March 15 and 17, 2017, the government produced more discovery when it  
23 disclosed expert reports for witnesses they intend to call within the next few court days. The  
24 Court should grant a continuance to allow the defense sufficient time to analyze the new  
25 discovery, view the evidence in light of new expert opinions, consult with experts and to

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MOTION TO CONTINUE

1 bring motions to exclude the new witnesses to ensure the jury is not exposed to unreliable  
2 evidence?

3 Points and Authorities

4 Argument

5 **I. A continuance should be granted to preserve Mr. Garcia-Torres's  
6 constitutional rights**

7 Mr. Garcia-Torres, like all criminal defendants, has several constitutional rights that  
8 are impacted by the Court's decision whether or not to grant a continuance. For example, he  
9 has the right to due process under the 5<sup>th</sup> and 14<sup>th</sup> Amendments. He has the right to the  
10 effective assistance of counsel and to confront witnesses against him under the 6<sup>th</sup>  
11 Amendment. And he has the right to a reliable penalty determination under the 8<sup>th</sup>  
12 Amendment. The California Constitution has similar guarantees. (Cal. Const., art. I, §§ 15,  
13 16, 17.)

14 Penal Code section 1050 provides the process by which a defendant may seek a  
15 continuance. It empowers a court to continue a case upon a showing of good cause. (Pen.  
16 Code § 1050, subd. (e).) Trial courts are given discretion when determining whether good  
17 cause exists, but they may not exercise it in a manner than deprives the defendant of a  
18 meaningful opportunity to prepare a defense. (*Jennings v. Superior Court* (1967) 66 Cal.2d 867.)  
19 Indeed, the constitutional rights to confrontation and effective representation give rise to a  
20 "strong policy favoring continuances when necessary to preserve these rights." (*People v. Fong  
21 Chung* (1907) 5 Cal.App. 587, 590.) An arbitrary "insistence upon expeditiousness in the face  
22 of a justifiable request for delay" violates the right to the assistance of counsel. (*Ungar v.  
23 Sarafite* (1964) 376 U.S. 575, 589.)

24 The right to counsel includes the right to adequately prepare a defense, including the  
25 right to prepare and argue motions. (*People v. Maddox* (1967) 67 Cal.2d 647, 652.) It also  
encompasses the right to the effective assistance of counsel. (*Strickland v. Washington* (1984)  
466 U.S. 668.) This necessarily means that a defendant should not "be brought to trial too

1 soon, i.e., without adequate opportunity for preparation of his defense.” (*People v. Maddox*,  
2 *supra*, 67 Cal.2d at p. 653.)

3 The right to due process includes the right to be heard at a meaningful time and in a  
4 meaningful manner. (*Mathews v. Eldridge* (1976) 424 U.S. 319) Thus, defendants are entitled to  
5 discovery for the purpose of bringing a motion to suppress and to bring a motion to set  
6 aside an indictment. (*Magallan v. Superior Court* (2011) 192 Cal.App.4th 1444; *People*  
7 *v. Mouchaourab* (2000) 78 Cal.App.4th 403) A decision on a motion to continue may impinge  
8 on the right to be heard in a meaningful manner when a defendant is given insufficient time  
9 to prepare in the face of new discovery.

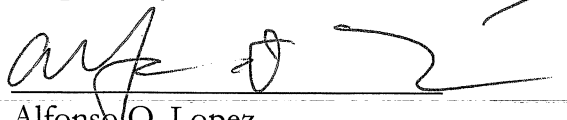
10 The discovery provided by the prosecution has the potential to prejudice the case with  
11 junk science evidence in the case. We don't yet know if this will be true because the reports  
12 documenting the new analysis have not been received by defense consultants and sufficient  
13 amount of time is needed to review the material. For the government to have answered  
14 ready for trial, yet they have had their experts reviewing evidence in the case which they  
15 produced to the defense a few days before they intend to present such evidence runs afoul  
16 of any notion of fairness in the case. The defense is requesting adequate time to conduct  
17 their own analysis, consult with experts, and bring motions as needed.

#### 16 Conclusion

17 It would be fundamentally unfair and a violation of Mr. Garcia-Torres's  
18 constitutional rights to proceed with the trial and allow expert witnesses to testify with only  
19 days for the defense to prepare. In fact, at least one of the reports appears to be based on  
20 junk science and ripe for exclusion. Thus, we respectfully request that the Court continue the  
21 trial to give us adequate time to prepare.

21 Date: March 17, 2017

Respectfully submitted,

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23 Alfonso O. Lopez  
24 Deputy Alternate Defender

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10 Attorneys for Defendant  
11 *Antolin Garcia-Torres*

12 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **IN AND FOR THE COUNTY OF SANTA CLARA**

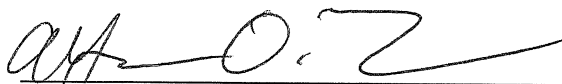
14 PEOPLE OF THE STATE OF CALIFORNIA, NO. 213515  
15 Plaintiff, DECLARATION OF COUNSEL  
16 vs. (Motion to Continue)  
17 ANTOLIN GARCIA-TORRES,  
18 Defendant

19 I, Alfonso O. Lopez, declare as follows:

- 20 1. I am an attorney at the Office of the Alternate Defender for the County of Santa Clara  
21 and I am assigned to represent Mr. Garcia-Torres in the above-entitled matter along with  
22 Brian Matthews and Bicka Barlow who is retained;
- 23 2. That before trial began defense counsel announced not ready while the government  
24 declared ready;
- 25 3. That defense counsel brought several motions to continue indicating they were not ready  
26 for trial;
- 27 4. That the Court's scheduling and other accomodations allowed defense counsel to become  
28 ready on many aspects of the case as the case proceeded by working nights and  
weekends;

- 1 5. That on February 16, 2017, the government produced Supplement 86 to the defense  
2 which was dated by the crime lab on February 9, 2017;
- 3 6. That Supplement 86 was a new report for trace work where the lab compared trace  
4 evidence from the red Jetta to the clothes and bag associated with Sierra LaMar;
- 5 7. That defense counsel sought a court order on February 27, 2017, to have relevant trace  
6 evidence examined by their expert and indicated the they would have their work  
7 completed as the trial proceeded;
- 8 8. That on March 15, 2017, defense counsel received more discovery in regards to more  
9 trace evidence associated with Mr. Garcia-Torres and compared to clothes associated  
10 with Ms. Lamar, Supplement 91, report dated March 7, 2017;
- 11 9. That on March 17, 2017, defense counsel received another report from a government  
12 expert Dr. Justin Whittall which was dated March 15, 2017;
- 13 10. That Dr. Whittall's report involves expert opinion that on the face of the report is not  
14 grounded in science and appears to be opinions tailored to the government's theory of  
15 the case and not science or fact;
- 16 11. That regarding Supplements 86 and 91 the defense needs their consultant to examine the  
17 trace evidence and complete their soil analysis which will take three weeks from the date  
18 of receipt;
- 19 12. That normally the process takes four weeks from receipt but the defense expert will  
20 expedite the work in light of the on going trial;
- 21 13. That defense counsel will need to consult on Dr. Whittall's report and possibly bring  
22 motions to exclude it including a *Kelly/Frye* motion;
- 23 14. That I declare under the penalty of perjury that the foregoing is true and correct.

24 Executed on March 17, 2017, San Jose, California.

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27 Alfonso O. Lopez  
28 Deputy Alternate Defender