

1 LAW OFFICES OF THE ALTERNATE DEFENDER
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5 County of Santa Clara
6 701 Miller Street
7 San Jose, California 95110
8 Telephone: (408) 299-7207
9 Attorneys for Defendant

FILED

2015 JUL 24 P 2:26

County of Santa Clara
Clerk of the Superior Court



DIANA GUTIERREZ

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
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 FOR
CONTINUANCE
Date: 07/29/15
Time: 01:30 P.M.
Dept.: 24
Time Est.: 5 min

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

21 NOTICE IS HEREBY GIVEN that on the 29TH day of July, 2015, at 1:30 PM., in Department
22 24 of the above-entitled court, the above named defendant will move the court to continue the above
23 entitled action, which is currently scheduled for trial setting, to **September 23, 2015**, or a date
24 convenient to the court and all parties.

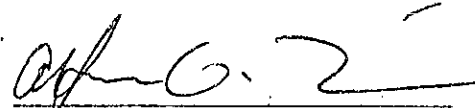
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1 This motion is made pursuant to Penal Code §1050 and will be based on the attached
2 declaration and statements of counsel. It is anticipated it will require (5) minutes to hear, argue and
3 submit.

4 Dated: July 24, 2015

5 Respectfully submitted,

6 David Epps
7 Alternate Defender

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9 Alfonso O. Lopez
10 Deputy Alternate Defender

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7 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
8 IN AND FOR THE COUNTY OF SANTA CLARA
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10 PEOPLE OF THE STATE OF CALIFORNIA,

11 Plaintiff,

Case No. 213515
DECLARATION IN SUPPORT OF
MOTION FOR CONTINUANCE

12 -vs-

13 ANTOLIN GARCIA-TORRES,

14 Defendant.

15 I, Alfonso O. Lopez, do declare:

16 I am a Deputy Alternate Defender for the County of Santa Clara and I am one of the attorneys
17 assigned to represent the above-named defendant in the above-entitled action. This case is set for
18 trial setting on July 29, 2015, at 1:30 PM, in Department 24. A continuance is requested to
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20 September 23, 2015, or a date convenient to the court and all parties, for the following reasons:

- 21 1. This is an extremely complicated capital case involving voluminous amounts of discovery,
22 videos, and audio;
- 23 2. That discovery is ongoing from the government including scheduling a meeting to view some
24 of the evidence in the case and for them to provide further mitochondrial DNA reports;
- 25 3. The defense is not ready for trial as additional time is needed to continue to consult with
26 experts regarding crime lab evidence and anticipated defenses;
- 27 4. That the defense team has retained many consultants in this case some of which have not
28 completed their evaluation of the case related to their expertise;

- 1 5. That the **ABA Guidelines for the Appointment and Performance of Defense Counsel in**
2 **Death Penalty Cases** requires that, "Counsel at every stage have an obligation to conduct
3 thorough and independent investigations related to the issue of both guilt and penalty."
4 (Guideline 10.7-Investigation, page 1015), also see Wiggins v. Smith (2003) 539 US 510,
5 on the duties of defense counsel in a capital case, Lockett v. Ohio (1978) 438 US 586, on
6 the requirement for individual mitigating factors to be consider as an 8th and 14th Amendment
7 right of the U.S. Constitution.
- 8 6. That the defense team needs more time to complete their thorough investigation of both the
9 guilt and penalty phases of the case;
- 10 7. That the defense team has made much progress in the area of investigating the case but
11 further investigation is ongoing and necessary;
- 12 8. That the defense team is also working on pre-trial motions some of which are highly time
13 consuming and massive but at least one should be ready to file around the time of the next
14 court date;
- 15 9. That defense counsel does not expect to be ready for trial in (6) weeks but may have a better
16 forecast on their readiness for trial by then;
- 17 10. That the defense team will be rendered ineffective for trial without thoroughly investigating
18 the case and filing the appropriate motions as required by both State and Federal due process
19 rights;
- 20 11. That defense counsel believes good cause exists for a further continuance and is prepared to
21 discuss their ongoing investigation and motion preparation with the court in more detail so
22 long as it does so in camera;
- 23 12. That an in camera hearing, if needed, is required for specific details of the ongoing defense
24 investigation and motion work as disclosure will reveal privileged attorney client statements
25 and defense work product, (People v. Collin (1986) 42 Cal.3d 378, 394);

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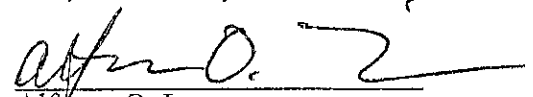
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13. That defense counsel has communicated with the prosecutor that a continuance is necessary and he replied that he is available on September 23, 2015, but that he cannot say if he will agree with defense counsel's request;

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

Executed on this 24th day of July, 2015, at San Jose, California.


Alfonso O. Lopez
Deputy Alternate Defender

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PROOF OF SERVICE

STATE OF CALIFORNIA }
COUNTY OF SANTA CLARA }

Case No. 213515
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.

On July 24, 2015, I served the within MOTION FOR CONTINUANCE on the Plaintiff in this action, by personally serving a true and correct copy thereof on:

The Office of the District Attorney
Santa Clara County
70 West Hedding Street
San Jose, CA 95110
Via Court Clerk

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

Executed on July 24, 2015, at San Jose, California.

