

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILBER ERNESTO MARTINEZ  
GUZMAN,  
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT  
COURT, IN AND FOR THE  
COUNTY OF WASHOE; THE  
HONORABLE CONNIE J.  
STEINHEIMER, DISTRICT JUDGE,  
Respondents,  
and,  
THE STATE OF NEVADA,  
Real Party In Interest.

No.

Electronically Filed  
Jan 14 2021 02:38 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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PETITIONER'S APPENDIX VOLUME TWO

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15 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
16  
17 IN AND FOR THE COUNTY OF WASHOE

18 THE STATE OF NEVADA,  
19 Plaintiff,

CASE NO: CR19-0447

20 v.

DEPT. NO.: 4

21 WILBER ERNESTO MARTINEZ GUZMAN,  
22 Defendant.

23  
24 MOTION TO CORRECT RECORD AND STRIKE STATE'S  
25 ARGUMENT REGARDING DR. PUENTE'S WORK METHODOLOGY  
26 IN MARICOPA COUNTY CASE NUMBER CR2013-001614-001 DUE TO  
THE MATERIAL MISREPRESENTATION PRESENTED IN THE  
STATE'S ARGUMENT (D-28)

27 Wilber Ernesto Martinez Guzman, by and through his attorneys of record,  
28 John L. Arrascada, Katheryn Hickman, Gianna Verness, and Joseph Goodnight,  
29 files this motion to correct the record from the hearing on The Defense Motion to  
30 Continue Due to Global Pandemic. Specifically, the State's cross examination of Dr.

1 Puente regarding his methodology and work on Maricopa County case number  
2 CR2013-001614-001 (D-28). This motion further asks the court to strike and not  
3 consider the State's written argument regarding Dr. Puente and his work and  
4 methodology in the State's Opposition to the Motion to Continue Due to Global  
5 Pandemic located at pg. 8:18-21, pg. 9:22, pg. 10:1-25, pg. 11:1-13, pg. 18:8-18,  
6 pg.19:4-12, and pg. 24:7-12. This motion is based upon the fact that the State,  
7 through cross examination of Dr. Puente, presented an argument that was false and  
8 misleading regarding Dr. Puente's work and methodology in a prior case that was a  
9 material misrepresentation of his work.

10 Due Process and fundamental fairness require the Court to correct the record,  
11 and strike and not consider the State's argument on this issue. This motion is based  
12 upon the transcripts from the hearing, the written arguments, and all previous  
13 pleadings, papers, hearing transcripts and declarations on file.

#### 14 POINTS AND AUTHORITIES

15 The Court held an evidentiary hearing via Zoom July 26, 2020- July 28, 2020  
16 regarding Mr. Martinez Guzman's request to continue both the *Atkins* motion filing  
17 deadline, the scheduled motions hearing, and the trial due to the COVID-19 global  
18 pandemic. Prior to the global pandemic, Mr. Martinez Guzman relied on the ABA  
19 Guidelines for the Appointment and Performance of Defense Counsel in Death  
20 Penalty Cases ("Guidelines"), case law, and the standards of practice in conducting  
21 interviews. However, this has become impossible to do in Mr. Martinez Guzman's  
22 home country, because El Salvador has been closed to visitors. Mr. Martinez  
23 Guzman has requested that this Court allow him to continue to use methods that  
24 have been shown to produce reliable and corroborated data for the Court to rely in  
25 determining intellectual disability. The State has asserted that the Defense should  
26

1 abandon that position and use unreliable and unproven methods to gather the data  
2 to allow the case to move forward on an arbitrary timeline.

3 In support of his position, Mr. Martinez Guzman called a number of experts  
4 to testify regarding in person investigation. One of these experts was Dr. Antonio  
5 Puente, who was hired by the defense to go to El Salvador to complete the  
6 intellectual disability investigation. As outlined in other filings, Dr. Puente was  
7 detained and deported upon arrival in San Salvador because of El Salvador's  
8 response to the global pandemic.

9 During cross examination of Dr. Puente, the State attempted to impeach him  
10 with information regarding a case out of Maricopa County, in Arizona. The State  
11 referred to this case as "Isidro Hernandez Lagunas" and did not provide any further  
12 information about the case. The State did not provide any citations, case numbers,  
13 or information about what it was relying on during the cross examination. During  
14 the hearing, defense counsel could not see if the State was relying on a transcript, a  
15 report, or its own handwritten notes, because of the format of the hearing. Although  
16 not contemporaneous with the questioning, Mr. Martinez Guzman did request the  
17 information that the State was relying on during the hearing when there was still  
18 time to assess the accuracy of the information and recall Dr. Puente if necessary<sup>1</sup>.  
19 The Court denied this request and the State did not offer any further direction  
20 regarding the information that was relied upon.

21 The following exchange was had with Dr. Puente during cross examination:

22 Q: Dr. Puente, are you familiar with a person by the name of Isidro, I-s-i-d-r-  
23 o Hernandez, H-e-r-n-a-n-d-e-z, Lagunas, L-a-g-u-n-a-s?

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25 <sup>1</sup> See NRS 50.135 (1) "In examining a witness concerning a prior statement made by a witness,  
26 whether written or not, the statement need not be shown or its contents disclosed to the witness, but  
on request the statement shall be shown or disclosed to opposing counsel."

1 A: Yes.

2 Q: And, Mr. Lagunas, he's a defendant who is charged with capital murder in  
3 the state of Arizona. Isn't that correct?

4 A: Oh, I don't remember where.

5 Q: Maricopa County, Arizona. Does that help refresh your recollection?

6 A: Yes.

7 Q: And you were retained by the defense in that case to conduct an Atkins  
8 Adaptive Behavior Assessment. Isn't that true?

9 A: I just don't recall when that was, to be frank with you. Do you recall when  
10 that one was?

11 Q: I'll go ahead and ask the questions, Dr. Puente.

12 A: Yeah. I just – I just can't recall when it was. That's my problem.

13 Q: Isn't it true that there were several instances in that case where you  
14 conducted phone only interviews of family members of Mr. Lagunas?

15 A: Yes.

16 Q: And isn't it true that you also relied on video interviews that were  
17 conducted by defense counsel in that case?

18 A: Yes.

19 Q: And you also relied on video interviews that were conducted by the  
20 mitigation specialist or specialists in that case.

21 A: I don't recall, but it seems that way.

22 Q: And because at the time there was reported by you a high number of  
23 kidnapping in this region in Mexico, you refused to travel to Mexico to interview any  
24 of the family members, coworkers, teachers, or anyone along those lines. Isn't that  
25 correct?

26



1 A: I don't think I refused. That was the case I was referring to that the  
2 government had said they would not allow me to go and would not send an escort.  
3 If I was kidnapped, they would not search or retrieve me. It seemed like it was a  
4 dangerous situation and it also seemed like a dangerous situation for the family as  
5 well.

6 Q: But you, in fact, conducted phone interviews and relied upon videos and,  
7 in fact, didn't even conduct a majority of these interviews to obtain anecdotal  
8 information that would assist you in doing an Adaptive Behavior Assessment,  
9 correct?

10 A: Yes. Again, I don't know when that was, though.

11 Q: Dr. Puente, would it be fair to say that your position on cases will change  
12 if you believe it will assist the defendant who you've been retained to do an Adaptive  
13 Behavior Assessment on?

14 A: No. I don't work that way. That's not me.

15 *Testimony of Dr. Antonio Puente, July 27, 2020 p.m. session, Pg.22:21-24, Pg. 23:1-*  
16 *24, Pg. 24:1-24, Pg. 25:1-6.*

17 The State capitalized on the record that it created and the Court's denial of  
18 the request for impeachment information. Specifically, in support of its position that  
19 Mr. Martinez Guzman should be forced to use unreliable methods to gather data,  
20 the State argued that in the "Isidro Hernandez Lagunas" case, Dr. Puente "elected  
21 to employ alternative means to complete his work. He did not wait for the  
22 kidnappings to subside. He did not wait for the government to allow his travel. He  
23 did not wait for a promise of rescue if he were to be taken. He simply picked up a  
24 phone and spoke with an informant. He simply watched a video recording of an  
25 interview conducted by defense counsel. He was nevertheless still able to author a

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1 report despite those limitations.” See *State’s Argument in Opposition to Motion to*  
2 *Continue Due to Global Pandemic COVID-19 (D23)*, Pg. 10:25; Pg. 11:1-7.

3 Mr. Martinez Guzman addressed this argument in his opposition, filed in  
4 compliance with the Court’s order, on August 31, 2020, two business days after the  
5 State filed its argument. See *Reply in Support of Argument in Support of Request to*  
6 *Continue Trial and Potential Atkins Motion Filing Deadline Until an Investigation*  
7 *that Complies with Reasonable Standards of Care can be Completed* (“Reply”),  
8 Pg.6:9-17, Pg. 7:1-18. Mr. Martinez Guzman provided a declaration from Mr.  
9 Hernandez Lauganas’ co-counsel that contradicted the State’s argument. However,  
10 Mr. Martinez Guzman is limited by the Orders sealing the portions of the Maricopa  
11 County Case regarding the *Atkins* investigation and litigation.

12 Mr. Martinez Guzman spent a significant amount of time trying to find a  
13 capital case filed in Maricopa County under “Isidro Hernandez Lagunas,” as  
14 asserted and argued by the State. Not surprisingly, there was not a case found under  
15 “Isidro Hernandez Lagunas” because the defendant is actually named “Moises  
16 Hernandez Lagunas.” This information was difficult to discover.

17 Defense counsel did a google search for “Isidro Hernandez Lagunas” in  
18 Maricopa County, and did not find any information. Counsel then searched prison  
19 records in Arizona, including death row, for an inmate by the name of “Isidro  
20 Hernandez Lagunas.” This did not yield any positive results. Counsel then contacted  
21 the Arizona Capital Project for information on a Mexican national by the name of  
22 “Isidro Hernandez Lagunas.” At that point, counsel was informed that there is not  
23 a Mexican National facing the death penalty in the Arizona by the name of “Isidro  
24 Hernandez Lagunas.” The Arizona Capital Project did inform counsel that there is  
25 a case pending in Maricopa County that did start as a death case with a defendant  
26 by the name of “Moises Hernandez Lagunas.” Counsel then searched the Maricopa

1 County Court website<sup>2</sup> for “Moises Hernandez,” of which there are 22 different case  
2 filings. A search for “Moises Hernandez Lagunas” brings up a 2010 case, which is  
3 not a death penalty case. Finally, a search for “Moises Lagunas” brings up three  
4 cases, one of which is CR2013-001614-001, which is the case at issue. Counsel was  
5 then able to contact Taylor Fox. Mr. Fox is co-counsel for Mr. Hernandez Lagunas,  
6 and provided the Declaration attached as Exhibit 1 to Mr. Martinez Guzman’s Reply  
7 in Support of Argument in Support of Request to Continue Trial and Potential  
8 *Atkins* Motion Filing Deadline Until an Investigation That Complies with  
9 Reasonable Standards of Care Can Be Completed.

10 Notably, Mr. Martinez Guzman argued, with support from the declaration,  
11 that Dr. Puente did much more than was presented by the State. He instead  
12 interviewed all essential *Atkins* lay witnesses face to face, consistent with the ABA  
13 Guidelines for the Appointment and Performance of Defense Counsel in Death  
14 Penalty Cases. The information is vague, because all filings, including reports and  
15 motions, are sealed by the Court. However, the limited information obtained from  
16 Mr. Fox is in direct conflict with the information that was presented by the State.

17 Since that time, Mr. Martinez Guzman has continued to attempt to determine  
18 how the conflict in information arose, consistent with the ethical duties of counsel.  
19 Mr. Martinez Guzman has twice requested that counsel for the State provide the  
20 information relied upon or identify the custodian or custodians of the material and  
21 the contact information for each custodian that possesses the material the State  
22 relied on. The State has declined to provide any information, insisting that the  
23 information is available through public record. This cannot be true given the  
24  
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26 <sup>2</sup> <http://www.superiorcourt.maricopa.gov/docket/CriminalCourtCases/caseSearch.asp>

1 Maricopa County Court orders sealing the reports, motions, and court orders in the  
2 Moises Hernandez Lagunas case and are not accessible absent a court order.

3 The Nevada Rules of Professional Conduct require Candor Toward the  
4 Tribunal. NRPC 3.3 states:

5 (a) A lawyer shall not knowingly:

6 (1) Make a false statement of fact or law to a tribunal or fail to correct a  
7 false statement of material fact or law previously made to the tribunal by the lawyer;

8 (2) Fail to disclose to the tribunal legal authority in the controlling  
9 jurisdiction known to the lawyer to be directly adverse to the position of the client  
10 and not disclosed by opposing counsel; or

11 (3) Offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's  
12 client, or a witness called by the lawyer, has offered material evidence and the  
13 lawyer comes to know of its falsity, the lawyer shall take reasonable remedial  
14 measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to  
15 offer evidence, other than the testimony of a defendant in a criminal matter, that  
16 the lawyer reasonably believes is false.

17 At the heart of the general duty of candor is an attorney's continuing duty to  
18 inform the Court of any development which may conceivably affect the outcome of  
19 the litigation. *Gum v. Dudley*, 202 W.Va. 477, 486, 505 S.E.2d 391 (1997) *citing*  
20 *Tiverton Board of License Com'rs v. Pastore*, 469 U.S. 238, 240, 105 S.Ct. 685, 686,  
21 83 L.Ed.2d 618 (1985). Accordingly, "[c]ounsel may not, knowingly or otherwise,  
22 engage in conduct which may reasonably be perceived as misleading either to the  
23 court or to opposing counsel." *State v. Guthman*, 619 A.2d 1175, 1179  
24 (Del.Supr.1993). *See Griffis v. S.S. Kresge Co.*, 150 Cal.App.3d 491, 499, 197  
25 Cal.Rptr. 771, 777 (1984) ("The concealment of material information within the  
26

1 attorney's knowledge as effectively misleads a judge as does an overt false  
2 statement.”).

3 “Our adversary system for the resolution of disputes rests on the  
4 unshakable foundation that truth is the object of the system's process  
5 which is designed for the purpose of dispensing justice. However,  
6 because no one has an exclusive insight into truth, the process depends  
7 on the adversarial presentation of evidence, precedent and custom, and  
8 argument to reasoned conclusions—all directed with unwavering effort  
9 to what, in good faith, is believed to be true on matters material to the  
10 disposition. Even the slightest accommodation of deceit or a lack of  
11 candor in any material respect quickly erodes the validity of the  
12 process. As soon as the process falters in that respect, the people are  
13 then justified in abandoning support for the system in favor of one  
14 where honesty is preeminent.

15 While no one would want to disagree with these generalities about the  
16 obvious, it is important to reaffirm, on a general basis, the principle  
17 that lawyers, who serve as officers of the court, have the first line task  
18 of assuring the integrity of the process. Each lawyer undoubtedly has  
19 an important duty of confidentiality to his client and must surely  
20 advocate his client's position vigorously, but only if it is truth which  
21 the client seeks to advance. The system can provide no harbor for clever  
22 devices to divert the search, mislead opposing counsel or the court, or  
23 cover up that which is necessary for justice in the end. It is without  
24 note, therefore, that we recognize that the lawyer's duties to maintain  
25 the confidences of a client and advocate vigorously are trumped  
26 ultimately by a duty to guard against the corruption that justice will  
be dispensed on an act of deceit.”

*United States v. Shaffer Equipment Co.*, 11 F.3d 450, 457-58 (4th Cir.1993).

27 Counsel is not able to posit whether the State's misrepresentations were  
28 intentional or negligent, because it has refused to provide the materials or the  
29 location where the materials can be located. However, the record created allows for  
30 reasonable inferences to be drawn. It is clear that the State discussed the case of

1 “Isidro Hernandez Lagunas” with Dr. Martinez. The State presented false or  
2 incomplete information that can only be found in sealed documents or from a party  
3 to the case. There is not a motion to unseal the materials on the Maricopa County  
4 Docket. It is known, from the State’s questioning and argument, that Dr. Martinez  
5 was a party to the case, in that he was the State’s expert, and had recently reviewed  
6 it given the ease in which he was able to answer questions regarding Dr. Puente’s  
7 report.<sup>3</sup>

8 Dr. Martinez is bound by the American Psychological Association’s Ethical  
9 Principles, as well as the American Psychological Association’s Specialty Guidelines  
10 for Forensic Psychology. His disclosure to the State of information regarding the  
11 sealed documents he obtained through his employment in the Moises Hernandez  
12 Lagunas case is likely a violation of those ethical obligations.

13 For example, Principle 8 of the Specialty Guidelines for Forensic Psychology  
14 requires a forensic practitioner to “maintain the confidentiality of information  
15 relating to a client or a retaining party, except insofar as disclosure is consented by  
16 the client or retaining party or required or permitted by law.” Further, Principle  
17 8.02 limits “access to records by anyone other than the retaining party is governed  
18 by legal process, usually a subpoena or court order,” and Principle 8.04 limits the  
19 use of confidential, personally identifiable information of all persons and entities  
20 who would reasonably claim a privacy interest; *using only those aspects of the case*

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22 <sup>3</sup> To illustrate this point, the Court can refer to the Transcript from July 28, 2020, p.m. session, where  
23 Dr. Martinez had to have his recollection refreshed with his own CV to answer the question of “Are  
24 you a past or present member of any professional associations related to your profession?” July 28,  
25 2020 p.m. session, Pg. 46:15-24. In contrast, he answered a question about what was in Dr. Puente’s  
26 report with “My recollection that is not included in the report. Essentially, what the report says was  
that the expert and members of the defense team did not travel to a particular city because of the  
level of violence and kidnappings that were going on at the time.” July 29, 2020 a.m. session, Pg.  
38:2-7.

1 available in the public domain, or obtaining consent from the relevant clients,  
2 parties, participants, and organizations to use the materials for such purposes.”  
3 (Emphasis Added)<sup>4</sup>.

4 The confidential material in Dr. Martinez’s possession should never have  
5 been disclosed to the State or used to present a false narrative to the Court. At this  
6 point in time, the State has an ethical duty to correct the record.

7 Further, S.C.R.250<sup>5</sup> and due process requires the Court to rely upon correct  
8 information. The Court should require that the State correct the record and strike  
9 the section arguing facts that are materially false to the subject of the argument  
10 from the State’s pleading and not rely upon this false information in deciding the  
11 Motion to Continue.

12 Here, the Court has the ability to correct the record before any prejudice  
13 occurs. It would be error for the Court to rely on a material misrepresentation  
14 regarding the prior practice of Dr. Puente because it affects the Court’s  
15 determination of his credibility in this issue, as well as in future litigation, and the  
16

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17  
18 <sup>4</sup> Dr. Puente is similarly bound to these ethical guidelines. He cannot simply produce his report or  
19 share confidential information regarding the Hernandez Lagunas case. He is currently reviewing his  
20 business records maintained in that case and requesting permission to disclose them from the  
21 attorneys who retained him.

22 <sup>5</sup> S.C.R.250(1) states: The provisions of this rule apply only in cases in which the death penalty is or  
23 may be sought or has been imposed, including proceedings for post-conviction relief from a judgment  
24 of conviction and sentence of death. This court places the highest priority on diligence in the  
25 discharge of professional responsibility in capital cases. The purposes of this rule are: to ensure that  
26 capital defenders receive fair and impartial trials, appellate review and post-conviction review; to  
minimize the occurrence of error in capital cases and to recognize and correct promptly any error that  
may occur, and to facilitate the just and expeditious final disposition of all capital cases.

1 Court's ability to determine "good cause" in deciding Mr. Martinez Guzman's  
2 request for a continuance.

3 CONCLUSION

4 The Court should strike the portions of the transcript and pleadings that are  
5 based on material misrepresentations by the State, and disregard the information  
6 going forward in deciding the pending motion to continue, any further litigation and  
7 testimony on this issue and gauging the credibility of Dr. Puente.

8  
9 AFFIRMATION PURSUANT TO NRS 239B.030

10 The undersigned does hereby affirm that the preceding document does not  
11 contain the social security number of any person.

12 DATED this 16th day of October, 2020.

13  
14 JOHN L. ARRASCADA  
15 Washoe County Public Defender

16 By: /s/John L. Arrascada  
17 Public Defender

18 By /s/ Katheryn Hickman  
19 KATHERYN HICKMAN  
Chief Deputy Public Defender

20 By /s/ Gianna Verness  
21 GIANNA VERNESS  
Chief Deputy Public Defender

22 By /s/ Joseph Goodnight  
23 JOSEPH GOODNIGHT  
24 Chief Deputy Public Defender



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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada, and that on this date electronically filed the foregoing, with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Chris Hicks  
District Attorney  
Via ECF System

Travis Lucia  
Deputy District Attorney  
Via ECF System

Mark Jackson  
Deputy District Attorney  
Via ECF System

DATED this 16th day of October, 2020.

/s/ Carinne Glines  
CARINNE GLINES

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INDEX OF EXHIBITS

Exhibit 1

Declaration of Katheryn Hickman

2 pages

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Clerk of the Court  
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EXHIBIT 1

EXHIBIT 1



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Executed this 16<sup>th</sup> day of October, 2020.

s/Katheryn Hickman

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9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
10  
11 IN AND FOR THE COUNTY OF WASHOE.

12 \* \* \*

13 THE STATE OF NEVADA,

14 Plaintiff,

Case No. CR19-0447

15 v.

Dept. No. D4

16 WILBER ERNESTO MARTINEZ GUZMAN,

17 Defendant.

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OPPOSITION TO MOTION TO CORRECT RECORD AND STRIKE STATE'S ARGUMENT  
REGARDING DR. PUENTE'S WORK METHODOLOGY IN MARICOPA COUNTY CASE  
NUMBER CR2013-001614-001 (D-28)

27 COMES NOW, the State of Nevada, by and through CHRISTOPHER J.  
28 HICKS, District Attorney of Washoe County, and MARK JACKSON, District  
29 Attorney of Douglas County, and opposes the Defendant's motion to  
30 correct the record related to the State's cross-examination of  
31 defense expert Dr. Antonio Puente, regarding Dr. Puente's methodology  
32 and work on Maricopa County case number CR2013-001614-001, that was  
33 conducted during the hearing on the Defendant's motion to continue  
34 due to global pandemic held on July 28-29, 2020.

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1 This Opposition is based upon the following Points and  
2 Authorities, all pleadings and papers on file herein, and any oral  
3 and/or documentary evidence that may be presented at a hearing on  
4 this matter.

#### 5 POINTS AND AUTHORITIES

##### 6 I. RELEVANT FACTUAL STATEMENT

7 The Defendant was indicted on March 13, 2019, on ten separate  
8 criminal charges, including four counts of murder with the use of a  
9 deadly weapon. The following day, the State filed a notice of intent  
10 to seek death penalty. The Defendant was arraigned on the Indictment  
11 on March 19, 2019, wherein he stood mute and the Court entered a "not  
12 guilty" plea on his behalf. At his arraignment, an eight (8) week  
13 jury trial in this matter was selected by the parties to commence on  
14 April 6, 2020.

15 The Defendant subsequently filed a series of motions for  
16 continuances: a motion to continue trial date and *Errata*(D-2) filed  
17 on October 4, 2019; a supplement to motion to continue (D-2) filed on  
18 October 22, 2019, and; a second supplement to motion to continue (D-  
19 2) filed on December 6, 2019. The State opposed the motions and  
20 supplements to motion to continue, and a hearing was held on the  
21 motions on January 13, 2020. At the hearing on the motion and  
22 supplements to motion to continue, the Court expressed its  
23 frustration by the Defendant's change of reasons for a continuance,  
24 but found good cause for a short continuance based on the Public  
25 Defender's Office lack of an in-house mitigation specialist. See  
26 Trans. Status Hearing, January 13, 2020, pp. 11: 9-11. Based thereon,

1 the April-May, 2020 trial dates were vacated and the trial was  
2 rescheduled to commence on August 31, 2020, with a hearing on any  
3 Atkins motion to be held the week of July 27-31, 2020. See Trans.  
4 Status Hearing, January 13, 2020, pgs. 53: 19-24; 54: 1-16.

5 On March 13, 2020, the Defendant filed a motion to continue due  
6 to global pandemic COVID-19 (D-22) (sic) and an *Errata* (D-23) to the  
7 motion that same day. The State filed its opposition on March 19,  
8 2020, and the Defendant filed a reply and request for submission on  
9 March 26, 2020.

10 On June 16, 2020, the Court ordered that oral arguments on the  
11 motion to continue due to global pandemic be set for a hearing on  
12 June 22, 2020, in accordance with the Nevada Supreme Court Rules  
13 Governing Appearances by Simultaneous Audiovisual Transmission  
14 Equipment for Criminal Proceedings, Part IX.

15 At the June 22, 2020 hearing, the Court heard arguments from  
16 both parties and then determined that the Court needed more evidence  
17 to render a decision on the Defendant's request to continue the trial  
18 indefinitely; however, the Court ordered, based on evidence  
19 presented, that the case could not be tried to a jury on August 31,  
20 2020, and, therefore, ordered that the jury trial be vacated and that  
21 the Atkins hearing dates also be vacated. See Trans. Hearing, January  
22 13, 2020, pgs. 19: 23-24; 20:1-7. The Court further ordered that an  
23 evidentiary hearing on the motion to continue be conducted the week  
24 of July 27, 2020, and for the defense to present evidence why their  
25 expert, Dr. Fuentó, cannot do anything related to an Atkins  
26 investigation via a teleconferencing platform, and for the State to



1 present evidence, if any, contrary to Dr. Puente's ultimate opinions.  
2 See Trans. Hearing, January 13, 2020, pgs. 21: 1-24; 22: 1-4.

3 The evidentiary hearing on the Defendant's motion to continue  
4 due to global pandemic was held on July 27, 28 and 29, 2020, in  
5 accordance with the Nevada Supreme Court Rules Governing Appearances  
6 by Simultaneous Audiovisual Transmission Equipment for Criminal  
7 Proceedings, Part IX. The Defendant presented the testimony of  
8 several witnesses, via Zoom, including the testimony of Dr. Antonio  
9 Puente who testified on July 27, 2020, during both the morning and  
10 afternoon sessions. See Trans. Evid. Hearing, a.m. session, July 27,  
11 2020, pgs. 18-65; Trans. Evid. Hearing, p.m. session, July 27, 2020,  
12 pgs. 4-54.

13 Following the close of the State's evidence on July 29, 2020,  
14 the Court asked defense counsel if they had rebuttal evidence and the  
15 defense requested, and received, a fifteen-minute recess. See Trans.  
16 Evid. Hearing, p.m. session, July 29, 2020, pg. 100: 2-20. Following  
17 the recess, defense counsel notified the Court that the Defendant  
18 would not be presenting a rebuttal case. Trans. Evid. Hearing, p.m.  
19 session, July 29, 2020, pg. 101: 15-17. The Court then ordered the  
20 parties to prepare and file written closing arguments and ordered a  
21 status conference be held on September 16, 2020.

22 The Defendant filed his argument in support of request to  
23 continue trial (D-23) on August 17, 2020. The State filed its  
24 argument in opposition to motion to continue trial on August 27,  
25 2020. The Defendant filed a reply argument on September 1, 2020,  
26 with two exhibits: (1) a two page Declaration of Taylor Fox; and (2)

1 a nine page Criminal Court Case Information = Case History for a  
2 Maricopa County, Arizona case number CR2013-001614-001.

3 On September 14, 2020, just two days prior to the next scheduled  
4 status hearing, the Defendant filed a request for submission of the  
5 argument in support of request to continue trial. On September 16,  
6 2020, the Court entered an order vacating the status hearing  
7 regarding the motion to continue (D-23), as the Defendant did not  
8 submit the matter for the Court's consideration when the Defendant  
9 filed a reply brief on September 1, 2020. In compliance with the  
10 order, the parties contacted the Court's Judicial Assistant and  
11 submitted an application setting the status hearing for October 23,  
12 2020.

13 On October 14, 2020, just six judicial days before the reset  
14 status hearing, the Defendant filed a motion for an order shortening  
15 time (D-26) and request to file (D-27) the instant motion to correct  
16 record (D-28). The following day, October 15, 2020, the Court issued  
17 an order regarding the Defendant's motion for an order shortening  
18 time and request to file. The Court denied the Defendant's motion  
19 for order shortening time (D-26) as being moot because the Court  
20 granted the Defendant's request to file the instant motion (D-28) and  
21 continued the status hearing from October 23, 2020 until November 23,  
22 2020. The Defendant filed the instant motion to correct record (D-  
23 28) the following day, October 16, 2020.

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1           II.    ARGUMENT

2           In a nutshell, the Defendant claims that the State, based on the  
3 cross-examination of Dr. Puente, "presented an argument that was  
4 false and misleading regarding Dr. Puente's work and methodology in a  
5 prior case that was a material misrepresentation of his work." See  
6 Defense Motion to Correct Record (D-28), pg. 2: 6-9. For the reasons  
7 set forth in the statement of facts, the declaration of Mark Jackson,  
8 the attached exhibits, and the argument below, the Defendant's claims  
9 are reckless, spurious, and completely without merit.

10           A. State's Cross-Examination of Dr. Antonio Puente

11           Cross-examination is generally defined as the opportunity for an  
12 attorney to ask questions in court of a witness who has testified on  
13 behalf of the opposing party. See, e.g., dictionary.law.com. Cross-  
14 examination is limited to the subject matter of the direct  
15 examination and matters affecting the credibility of the witness.  
16 NRS 50.115(2). Leading questions are permitted on cross-examination.  
17 NRS 50.115(3)(b).

18           The Defendant called Dr. Puente as a witness during the hearing  
19 on the Defendant's motion to continue due to global pandemic. During  
20 his direct testimony, Dr. Puente testified, *inter alia*, that in order  
21 to conform to the standard of care in his profession, that an Atkins  
22 Adaptive Behavior Assessment requires that all interviews of  
23 informants, i.e., family members, friends, co-workers, teachers,  
24 etc., need to be conducted in-person, as opposed to through some  
25 alternative method such as via telephone or teleconferencing. The  
26 State's cross-examination of Dr. Puente was directed not only as to

1 that issue and other matters he testified to during his direct  
2 examination, but also to certain matters affecting his credibility in  
3 conformity with NRS 50.115(2).<sup>4</sup>

4 As recited in the Defendant's motion to correct record, the  
5 State asked Dr. Puente several questions related to the methodology  
6 Dr. Puente employed in conducting an Atkins Adaptive Behavior  
7 Assessment of a capital murder defendant, Isidro Hernandez Lagunas  
8 (hereinafter Lagunas), in Maricopa County, Arizona. See Defense  
9 Motion to Correct Record (D-28), pgs. 3: 21-23; 4: 1-25; 5: 1-16.  
10 The questions were directed as to whether Dr. Puente, contrary to his  
11 testimony on direct examination, conducted interviews of informants  
12 in the Lagunas case via telephone and whether he relied on video  
13 interviews conducted by other members of the defense team in  
14 conducting the Adaptive Behavior Assessment of Lagunas. *Id.*

15 The State did not ask Dr. Puente one question about any personal  
16 identifying information related to Lagunas or any informant in that  
17 case. Not one question was asked about the substance of any  
18 interview conducted in that case. Not one question was asked about  
19 anything even remotely related to the collection, analysis and/or  
20 interpretation of any developmental, behavioral, socio-emotional,  
21 cognitive and/or educational information for the purpose of assisting  
22 Dr. Puente in rendering any opinion about the underlying brain  
23 function of Lagunas or any informant in that case. Not one question  
24 was asked about biographical details of Lagunas. In other words, not

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25 NRS 50.115(2) states, "Presumably, a witness is not competent to testify on a matter of the  
26 witness's own character and to testify on a matter of the witness's own character, unless the  
witness is the subject of the accusation, and the witness's testimony is necessary to the  
prosecution's case."

1 a single question was asked related to the Adaptive Behavior  
2 Assessment. The questions, again, were limited solely to Dr.  
3 Puente's methodology in obtaining information from informants in that  
4 case - whether it be - in-person interviews, telephonic interviews,  
5 or relying on recorded interviews conducted by a member of the  
6 defense team.

7 There are two reasons the State did not ask any questions other  
8 than those related to the methodology described above. First and  
9 foremost, the State was not, and is not, privy to any of that  
10 information. The State does not have any psychological reports or  
11 adaptive behavior assessments related to the Lagunas case. In fact,  
12 prior to Friday, October 23, 2020, when Maricopa County Deputy County  
13 Attorney Ellen Dahl provided the State with a copy of Mr. Lagunas'  
14 Indictment and a copy of a motion to unseal a portion of Dr. Puente's  
15 report, that State did not have any judicial records or court records  
16 related to Mr. Lagunas' case in Arizona. Dr. Sergio Martinez did not  
17 discuss any aspect of the adaptive behavior assessment in the Lagunas  
18 case with any member of the prosecution team in the case at bar. Dr.  
19 Martinez relayed his personal knowledge as to the methodology  
20 employed by Dr. Puente in interviewing certain informants and Dr.  
21 Puente's reliance on interviews conducted by third parties when Dr.  
22 Puente conducted his adaptive behavior assessment of Lagunas  
23 approximately three years ago. Secondly, for the purpose of the  
24 hearing on the motion to continue and Dr. Puente's testimony on  
25 direct examination, none of the information related to the Lagunas  
26 case was relevant other than the methodology employed by Dr. Puente

1 in that case being contrary to Dr. Puente's testimony on direct  
2 examination.

3 The Defendant has thus sought to impeach the testimony of his  
4 own expert, Dr. Puente, by submitting an affidavit purportedly from a  
5 defense lawyer on that same case. In so doing, he intentionally or  
6 inadvertently calls into question Dr. Puente's testimony and, as a  
7 result, his credibility. No doubt loath to acknowledge that his own  
8 expert is not credible, the Defendant seeks to focus the Court's  
9 attention on the State. Said another way, the Defendant does not  
10 like the answer and so he seeks to attack the question.

11 However, in doing so, the Defendant has stepped over the line as  
12 addressed *infra*.

13 Moreover, this Court presided over the July 27-29, 2020 hearing  
14 and was present during both the direct examination and cross-  
15 examination of Dr. Puente. The Court can assess the credibility of  
16 Dr. Puente, Dr. Puente's understanding of the questions on cross-  
17 examination related to the methodology of his adaptive behavior  
18 assessment of Lagunas, and Dr. Puente's unequivocal admissions that  
19 he conducted phone only interviews of some family members of Lagunas  
20 and that he relied on some video interviews that were conducted by  
21 other members of the defense team in that case. While Dr. Puente  
22 could not recall the "when and where," it was evident he knew the  
23 case, knew the methodology he employed in conducting interviews of  
24 some of the family informants in that case, and he was specific as to  
25 the circumstances as to why he could not, or would not, travel to a  
26 region of Mexico to conduct in-person interviews of informants. See

1 Trans. Evid. Hearing, p.m. session, July 27, 2020, pgs. 22: 21-24;  
2 23: 1-24; 24: 1-24; 25: 1-6.

3 Based thereon, the scenario that is presented to the Court does  
4 not require resorting to rules of ethics or "fundamental fairness" to  
5 resolve. It is much simpler than that. The Defendant's expert  
6 testified that he did not travel to conduct the Atkins investigation  
7 in the Lagunas case. Dr. Puente was not asked about this case on re-  
8 direct examination nor was he re-called at the conclusion of the  
9 State's evidence. Later, the Defendant supplied this Court with an  
10 affidavit indicating that Dr. Puente's testimony was wrong and that  
11 he did, in fact, travel in the Lagunas case. The Defendant is  
12 legally allowed to impeach his own witness' credibility. NRS 50.075.  
13 As the finder of fact, the issue for the Court is simply whether it  
14 finds the testimony of Dr. Puente credible or not.

15 **B. The State Has Complied With All Rules Of Professional**  
16 **Conduct and Ethics in the Prosecution of Wilber Ernesto**  
17 **Martinez Guzman**

18 The Defendant cites NRPC 3.3 (Candor Toward the Tribunal) as  
19 well as several reported decisions from courts across the country  
20 related to counsel's duty of candor to the court, including the duty  
21 to refrain from conduct that is misleading to the court or opposing  
22 counsel. See Defense Motion to Correct Record (D-18), pg. 8: 3-25;  
23 9: 1-21. As previously stated, and repeated herein, the State has  
24 made no misrepresentations to the Court or defense counsel. The  
25 State did not obtain any documents, reports or other "materials"  
26 related to the Isidro Hernandez Lagunas case from Dr. Sergio

1 Martinez, the Maricopa County Attorney's Office,<sup>2</sup> the Maricopa County  
2 Courts, or from any other source. In the days preceding the July 27-  
3 29 hearing on the motion to continue due to global pandemic, the  
4 State had several communications with the State's retained expert,  
5 Dr. Sergio Martinez, regarding the issues raised by the Defendant in  
6 his motion, the anticipated testimony of Dr. Antonio Puente, and to  
7 discuss the anticipated testimony of Dr. Martinez. See Exhibit 1,  
8 Declaration of Mark Jackson. During one or more of these  
9 communications, Dr. Martinez informed the State that he has conducted  
10 interviews of informants in Atkins cases via alternative methods  
11 other than face-to-face interviews, and that a few years ago the  
12 Defendant's expert, Dr. Antonio Puente, did the same thing involving  
13 his adaptive behavior assessment of a person named Isidro Hernandez  
14 Lagunas in Maricopa County, Arizona.<sup>3</sup> *Id.* Dr. Martinez only discussed  
15 the methodology employed by Dr. Puente in conducting the adaptive  
16 behavior assessment in that case - that Dr. Puente had interviewed  
17 some family members over the telephone and that he also relied on  
18 video-taped interviews of other informants that were conducted by  
19 other members of the defense team. *Id.* Dr. Martinez did not provide  
20 the State with any reports or other documents related to the Isidro  
21 Hernandez Lagunas case. *Id.* Dr. Martinez did not discuss any other  
22 aspect of that case. *Id.* The State did not inquire about, nor did Dr.  
23 Martinez offer, any information related to the content of Dr.

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<sup>2</sup> More than a copy of the Indictment and Motion to Unseal a Portion of Dr. Puente's Report were provided to Maricopa County Deputy County Attorney Mark Jackson in Phoenix, Arizona, on July 27, 2020.  
<sup>3</sup> The Defendant's recollection was corroborated by Dr. Puente's own report submitted to the State.



1 Puente's work or report. *Id.* There was no information shared or  
2 exchanged regarding any conclusions, identity of informants, anything  
3 related to any copyright protected tests administered to Lagunas or  
4 any informants, any evaluations, any findings, any criterion, any  
5 Atkins prong material, or any other information that could be  
6 considered confidential. *Id.*

7 It is defense counsel, on the other hand, who is not being  
8 candid with the Court on two arguments raised in the instant motion:

- 9 1. Defense counsel argues, again, that an Atkins and mitigation  
10 investigation cannot be performed in the Defendant's "home  
11 country, because El Salvador has been closed to visitors." See  
12 Defense Motion to Correct Record (D-28), pg. 2: 21-22. The  
13 truth is that the U.S. Embassy in El Salvador has posted on  
14 their website<sup>4</sup>, last updated on October 19, 2020, that El  
15 Salvador reopened its economy on August 24, and that the  
16 Government of El Salvador reopened the International Airport  
17 on September 19 with enhanced health protocols. See Exhibit 2,  
18 U.S. Embassy in El Salvador Travel Advisory. There are no exit  
19 restrictions in place. *Id.* U.S. citizens are required to  
20 present an original negative COVID-19 PCR test issued within  
21 seventy-two (72) hours of entering El Salvador at any point of  
22 entry. *Id.* U.S. citizens with an original negative PCR test  
23 are not required to quarantine upon entrance into El Salvador.  
24 *Id.* All commercial flights, public transportation, taxis and  
25 other private transportation companies are operating normally.

26 <sup>4</sup> <https://photos.state.gov/libraries/salvador/2020/10/19/20201019143043.jpg>

1           Id. There is no curfew in place. Id. There are no legal  
2           restrictions or controls preventing Dr. Puente or other  
3           members of the defense team from traveling to El Salvador to  
4           conduct an Atkins investigations.

5           2. Defense counsel attempts to convince this Court that there is  
6           some confusion as to the person identified by the State as  
7           "Isidro Hernandez Lagunas" during the State's cross-  
8           examination of Dr. Puente on July 27, 2020. See Defense Motion  
9           to Correct Record (D-28), pgs. 6: 12-26; 7: 1-9. Either  
10          defense counsel is being disingenuous with this argument, or  
11          Taylor Fox was not completely forthcoming in his conversation  
12          with defense counsel. First of all, Isidro Hernandez Lagunas'  
13          true name is, in fact, Isidro Hernandez Lagunas. See Exhibit  
14          1, Declaration of Mark Jackson; Declaration of Taylor Fox<sup>5</sup>,  
15          Exhibit 1 to Defendant's Reply in Support of Argument to  
16          Continue Trial (D-23) filed September 1, 2020, pg. 1,  
17          paragraph 1. The State is not responsible for defense  
18          counsel's failure to ask the right questions or the proper  
19          follow-up questions related to this issue, or any other issue  
20          raised by the Defendant. Isidro Hernandez Lagunas stole the  
21          identity of his brother, Moises, and used his brother's name  
22          as an alias at or during the time he committed crimes in  
23          Arizona. Id. Lagunas was indicted under his alias name as  
24          reflected in a copy of his indictment. See Exhibit 3. All of

25  
26          - A clear review of Taylor Fox's declaration acknowledges that Lagunas' true name is  
Isidro Hernandez Lagunas "also reflected in the indictment returned against Isidro Hernandez  
Lagunas." (Taylor's exhibit).

1 Lagunas' known aliases are alleged in the Motion to Unseal a  
2 Portion of Dr. Puente's Report. See Exhibit 4. It is unclear  
3 why Taylor Fox did not inform defense counsel in this case as  
4 to the story behind Isidro Hernandez Lagunas' alias, or if he  
5 did, why defense counsel is not being candid with the Court.  
6 During the July 27, 2020 hearing in this matter, Dr. Antonio  
7 Puente testified that he knows Isidro Hernandez Lagunas as he  
8 was retained by the defense in that capital murder case to  
9 conduct an Atkins Adaptive Behavior Assessment on Lagunas.  
10 Transcript July 27, 2020 p.m. session, pg. 22: 21-24. Dr.  
11 Puente was not confused. While he couldn't remember the  
12 jurisdiction where that case was filed, there is no doubt from  
13 his testimony that Dr. Puente knew exactly who Isidro  
14 Hernandez Lagunas was, as well as the fact that Dr. Puente did  
15 conduct some telephonic interviews of informants in that case  
16 and relied on videotaped interviews of other informants  
17 conducted by other members of the defense team. This is  
18 corroborated by Dr. Sergio Martinez, who testified on the  
19 afternoon of July 28, 2020, and the morning of July 29, 2020,  
20 that Dr. Puente used alternative methods, other than face-to-  
21 face contact, such as telephone and teleconferencing while  
22 interviewing some informants in the Hernandez Lagunas case,  
23 and that Dr. Puente relied on interviews of informants that  
24 were conducted by other members of the defense team.

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1 Transcript July 28, 2020 p.m. session, pgs. 79: 21-24; 80: 1-  
2 6; 131: 6-24; 132: 1-24; 133: 1-18; 136: 1-24; Transcript July 29,  
3 2020 a.m. session, pg. 37: 3-15.

4 Seeking support for an untenable position, the Defendant claims  
5 that the State's question amounts to a material misrepresentation.  
6 Legally speaking, this assertion is without merit. As we constantly  
7 instruct finders of fact in a trial setting, nothing that counsel say  
8 during a trial is evidence, and evidence consists of the testimony of  
9 witnesses and any physical or documentary items that have been  
10 admitted. What the Defendant fails or refuses to acknowledge is that  
11 the source of information for this Court to consider is the  
12 Defendant's own expert, Dr. Antonio Puente. Dr. Martinez  
13 corroborated Dr. Puente's testimony. Now, post-hearing, after  
14 declining any rebuttal, after declining to recall Dr. Puente who had  
15 testified two days prior at the hearing, after declining to call any  
16 other witness, the Defendant submits a declaration of a defense  
17 attorney who makes statements that are not necessarily inconsistent  
18 with the sworn testimony of both Dr. Puente and Dr. Martinez, but  
19 include qualifying terms such "relevant" witnesses, "significant"  
20 mitigation witnesses, and "essential" Atkins lay witnesses. The  
21 State is unable to cross-examine Mr. Fox on his carefully chosen  
22 words. Mr. Fox's declaration creates more questions than it provides  
23 answers. For example, would Mr. Fox deny that Dr. Puente conducted  
24 any interviews of informants via telephone? Would Mr. Fox deny that  
25 Dr. Puente relied on any videotaped interviews conducted by other  
26 members of the defense team? Would the Maricopa County prosecutor's

1 in that case disagree with Mr. Fox's subjective opinion as to who was  
2 a "relevant" or "essential" informant in that case? Is Mr. Fox  
3 stating that Dr. Puente committed perjury when he described in detail  
4 as to why he could not or did not travel to a certain region in  
5 Mexico at a certain time in his investigation to conduct in-person  
6 interviews of some informants, and Dr. Puente's admissions that he  
7 did in fact conduct interviews of informants via telephone? Did Mr.  
8 Fox access a sealed file that the State does not have access to?

9 The Defendant wants this Court to now adopt the statements of  
10 Taylor Fox without the opportunity for the State to cross examine him  
11 or otherwise traverse some of his carefully worded statements, and to  
12 set aside the testimony of both Dr. Puente and Dr. Martinez who were  
13 both subjected to cross examination during the hearing. Then, the  
14 Defendant wants this Court to adopt the outrageous and libelous  
15 conspiracy theory set forth in the Defendant's motion that the only  
16 way the State could have this information is if the State has  
17 possession of a sealed record, and that the State is withholding the  
18 sealed record from the Defendant. The Defendant attempts to argue  
19 all of this despite the fact that the source of the information - Dr.  
20 Antonio Puente - has been available to the Defendant from the moment  
21 he was retained in this case. For the reasons stated herein, such  
22 supposition is groundless and outright false.

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1 C. The State's Discovery Obligations

2 Defense counsel claims that portions of the Lagunas case in  
3 Maricopa County, Arizona, related to the Atkins investigation in that  
4 case, are sealed by Court Order. Defense Motion to Correct Record  
5 (D-28), pg. 6: 9-11; 7: 14-15; 8: 1-2. Prior to the Defendant  
6 raising this issue, the State was not aware of any Court Orders in  
7 the Isidro Hernandez Lagunas case in Maricopa County, Arizona, as the  
8 State did not obtain any judicial records in its possession related  
9 to that case.<sup>6</sup> Defense counsel incorrectly and falsely assumes that  
10 the State has come into possession of sealed, closed and/or otherwise  
11 confidential judicial records related to the Lagunas case in Maricopa  
12 County, Arizona, and then foolishly continues along this misguided  
13 path and carelessly, or even perhaps recklessly, levels false  
14 allegations of professional misconduct by the prosecution as well as  
15 the State's expert, Dr. Sergio Martinez.<sup>7</sup> Defense Motion to Correct  
16 Record (D-28), pgs. 8-11.

17 Notwithstanding the foregoing, the Defendant's spurious claim  
18 does highlight the need to briefly address the State's discovery  
19 obligations. From the outset of this case, the State has complied  
20 with all statutory discovery obligations as well as all discovery  
21 obligations pursuant to Court order. In fact, Washoe County Public  
22 Defender John Arrascada has repeatedly praised the State at status

23 <sup>6</sup> Other than the previously mentioned copy of the indictment and the  
24 portion of Dr. Puente's Report provided to the State on Friday, October 22, 2010.

25 <sup>7</sup> The absurdity of the Defendant's position is found when one follows the logical  
26 implications behind his own argument. If correct, the Defendant's position would  
require the existence of an ethical violation every single time a witness' testimony  
differs in fact from any other witness' testimony. If that were the case, every  
witness would be in violation of the ethical rules of the profession. This is not  
the law, and it is not the State's position.

1 hearings as to the State's disclosure of discoverable evidence, and  
2 even commended the State for what Mr. Arrascada stated "has been the  
3 most effective and efficient and open discovery process to date that  
4 I have ever participated in. . . ." See, e.g., Trans. Status  
5 Hearing, June 24, 2019, pg. 8: 6-17; Trans. Status Hearing, July 29,  
6 2019, pg. 6: 1-8.

7 While the State does not have any court documents, pleadings,  
8 case filings, psychological reports, psychological tests, or an  
9 adaptive behavior assessment reports pertaining to the Lagunas case,<sup>8</sup>  
10 what if the State were to subsequently obtain copies of any such  
11 reports or records in that case? Would the State be required to  
12 provide those reports or records to the Defendant in this case as  
13 part of the State's discovery obligations? The short answer is no.

14 The State's discovery obligations are set forth in NRS 174.234,  
15 NRS 174.235, NRS 174.285, NRS 174.295, this Court's July 24, 2019  
16 Order for Reciprocal Discovery, as well the Constitutional  
17 requirements as set forth in *Brady v. Maryland*, 373 U.S. 83 (1963)  
18 and its progeny.

19 Without having possession of or viewing the adaptive behavior  
20 assessment report prepared by Dr. Puente in the Lagunas case  
21 prosecuted in Maricopa County, Arizona, the State, defense counsel  
22 and this Court are nevertheless familiar with what type of  
23 information is typically included in such reports related to AICAT  
24 investigations in death penalty cases. Based on that general

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<sup>8</sup> AICAT reports are typically maintained by the defendant's attorney as part of the case file. AICAT reports provided to the State are provided to the State.

1 familiarity, there would be no legal, judicial or Constitutional duty  
2 or obligation for the State to provide such information to the  
3 Defendant.

4 Any such report falls outside the discovery provisions of NRS  
5 174.234 et seq.,<sup>3</sup> the discovery order entered in this case, as well as  
6 the State's Constitutional and case law requirements in accordance  
7 with *Brady v. Maryland*, 373 U.S. 83 (1963) (government duty to  
8 disclose material exculpatory evidence), *Giglio v. United States*, 405  
9 U.S. 150 (1972) (when reliability of government witness may be  
10 determinative of guilt of innocent, government must disclose evidence  
11 affecting credibility); *United States v. Bagley*, 473 U.S. 667  
12 (1985) (no legal distinction between exculpatory evidence and  
13 impeachment evidence for purposes of *Brady* rule); *Kyles v. Whitley*,  
14 514 U.S. 419 (1995) (prosecution has duty to learn of any favorable  
15 evidence known to others acting on government's behalf in case,  
16 including police).

17 Information as to Dr. Puente's methodology in conducting an  
18 adaptive behavior assessment of a person other than the Defendant in  
19 this case is not exculpatory nor relevant for impeachment by the  
20 Defendant of any State witness. *Brady, supra; Giglio, supra*. The  
21 Defendant has access to the source of the material, Dr. Puente  
22 himself, and may, if the Defendant so desires, file any motion the

23  
24  
25 <sup>3</sup> For example, the provisions of NRS 174.234(1)(a)-(c) are inapplicable to the  
26 evidence reported on here by a witness that the State intended to call at trial. In  
such a situation, more appropriately, the State's approach to the discovery  
question would be guided through NRS 174.234(1)(d) and (e) which expressly  
require the disclosure to the defense of the State's work product.



1 Defendant deems appropriate in Maricopa County, Arizona, to access  
2 any records in the Lagunas case.

3 What is clear from the record in this case is that Dr. Antonio  
4 Puente testified on both direct and cross-examination on Monday, July  
5 27, 2020. Thereafter, Dr. Sergio Martinez testified on direct  
6 examination for the State and the first part of his cross-examination  
7 on the afternoon of Tuesday, July 28, 2020. The Defendant concluded  
8 the cross-examination of Dr. Martinez the following morning of  
9 Wednesday, July 29, 2020.

10 Dr. Martinez did not view Dr. Puente's testimony and was not  
11 provided with a copy of the transcript from Dr. Puente's testimony.  
12 Transcript July 28, 2020 p.m. session, pg. 88: 21-24; 89: 1-2. Dr.  
13 Puente, on the other hand, viewed the testimony of Dr. Martinez on  
14 Tuesday afternoon and Wednesday morning. The Defendant did not  
15 recall Dr. Puente in rebuttal. The Defendant did not call Taylor Fox  
16 in rebuttal. The defense team had two full days following the  
17 State's cross-examination of Dr. Puente to talk with Dr. Puente about  
18 the Lagunas case. We all know that Dr. Puente was available because  
19 he viewed the majority of the remainder of the hearing. Yet the  
20 Defendant did not recall Dr. Puente in rebuttal.

21 The bottom line is that the July 27-29, 2020 hearing did not go  
22 as the defense team had planned, their self-touted "expert of  
23 experts" was impeached both during cross-examination and subsequently  
24 by the Defendant himself in the declaration he provided from Taylor  
25 Fox, their arguments as to why alternative methods cannot be used have  
26 fallen apart, and now they are faced with the added insurmountable

1 fact that El Salvador is completely open and there is no reason that  
2 the defense team cannot travel to El Salvador to complete the Atkins  
3 investigation.

4 **CONCLUSION**

5 Based thereon, the State respectfully requests the Court deny  
6 the Defendant's Motion to Correct Record and Strike State's Argument  
7 Regarding Dr. Puente's Work Methodology in Maricopa County Case  
8 Number CR2013-001614-001(D-28) as the motion is baseless, mistakenly  
9 relies on inaccurate speculation and conjecture, and is completely  
10 without merit.

11 **AFFIRMATION PURSUANT TO NRS 239B.030**

12 The undersigned does hereby affirm that the preceding document  
13 does not contain the social security number of any person.

14 DATED this 26th day of October, 2020.

15  
16  
17 /s/ Christopher Hicks  
18 CHRISTOPHER HICKS  
19 DISTRICT ATTORNEY

/s/ Mark Jackson  
20 MARK JACKSON  
21 DISTRICT ATTORNEY  
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26



INDEX OF EXHIBITS

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Clerk of the Court  
Transaction # 8134058 : caguilar

# EXHIBIT 1

EXHIBIT 1



- 1 6. During one or more of these communications, I asked Dr. Martinez if he has ever
- 2 conducted any interviews of informants in Atkins cases via telephone or some other
- 3 alternative means such as teleconferencing.
- 4 7. Dr. Martinez informed me that he had conducted interviews of informants by means
- 5 and methods other than in-person.
- 6 8. Dr. Martinez then offered, unsolicited, that Dr. Antonio Puente had interviewed
- 7 informants over the phone in an Atkins case where Dr. Puente was retained by the
- 8 defense in Maricopa County, Arizona.
- 9 9. Dr. Martinez informed me that he recalled that Dr. Puente also relied on interviews
- 10 conducted by other members of the defense team in that same case.
- 11 10. Dr. Martinez informed me that the defendant in that case was Isidro Hernandez
- 12 Lagunas.
- 13 11. Dr. Martinez only shared the methodology employed by Dr. Puente in that case.
- 14 12. Dr. Martinez did not provide me with any reports or other documents related to the
- 15 Isidro Hernandez Lagunas case.
- 16 13. On or about Friday, October 16, 2020, I called the Maricopa County Attorney's
- 17 Office in Arizona and left a message for Ellen Dahl, the Maricopa County
- 18 prosecutor in the Isidro Hernandez Lagunas case, requesting that she contact me
- 19 about that case.
- 20 14. On or about Monday, October 19, 2020, I called and left another message for
- 21 Maricopa County prosecutor Ellen Dahl.
- 22 15. On the afternoon of Tuesday, October 20, 2020, Ellen Dahl returned my call.
- 23 16. During that phone conversation, I framed the issue as to why I was calling her and
- 24 subsequently sent her copies of the Defendant's motion to correct record as well as
- 25 the declaration of Taylor Fox.
- 26 17. Ellen Dahl informed me that Isidro Hernandez Lagunas' true name is Isidro
- 27 Hernandez Lagunas and that he provided his brother's name, Moises, when he was
- 28 arrested.

Douglas County District Attorney  
Post Office Box 218  
Minden, Nevada 89423  
(775) 782-9800 Fax (775) 782-9807

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18. Mr. Lagunas subsequently provided his true legal name to the Court and the Indictment reflects both names.

19. Ellen Dahl sent me a copy of the Indictment on October 23, 2020, and informed me that the Indictment is a public record. A copy of the Indictment is submitted as Exhibit 3.

20. Ellen Dahl has also prepared and filed a motion to unseal a portion of Dr. Puente's report in the Isidro Hernandez Lagunas case and provided me with a copy of the motion she filed on the afternoon of October 23, 2020. A copy of the motion is submitted as Exhibit 4.

21. The motion to unseal part of the record lists numerous names for Isidro Lagunas.

22. Prior to receiving the copy of the Indictment and motion to unseal on October 23, 2020, from Maricopa County prosecutor Ellen Dahl, the State did not, and does not, have any other judicial records or psychological reports or assessments associated with the Isidro Lagunas case.

Dated this 26<sup>th</sup> day of October, 2020.

s/ Mark B. Jackson



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# EXHIBIT 2

EXHIBIT 2



U.S. Embassy in  
El Salvador

## Information for U.S. Citizens and Lawful Permanent Residents

### COVID-19 Information

Last updated: *October 19, 2020*

#### Country-Specific Information:

- El Salvador has confirmed cases of COVID-19 within its borders.
- On August 24, El Salvador reopened its economy. Essential services such as medical assistance, grocery stores, pharmacies, public transportation, and gas stations are operating and available to the public. In-person classes for schools and universities remain suspended through December 31.

#### Entry and Exit Requirements:

- Are U.S. citizens permitted to enter? Yes.
1. The Government of El Salvador reopened the International Airport on September 19 with enhanced health protocols, which may include but not be limited to requiring the wearing of a mask at all times, maintaining social distancing, and temperature checks. For more information regarding the reopening of the airport and the measures that will be implemented, please consult the website of the [Comisión Ejecutiva Portuaria Autónoma \(CEPA\)](#).
- There are no exit restrictions in place.
  - Is a negative COVID-19 test (PCR and/or serology) required for entry? Yes. The government of El Salvador is requiring all airlines to obtain an original negative PCR test result issued within 72 hours of departure for all international passengers prior to allowing them to board. It is very important that you consult with your airline for full details prior to attempting to travel.
1. U.S. citizens are required to present an original negative PCR test result issued within 72 hours of entering El Salvador at any point of entry.

2. If you are a Salvadoran or legal permanent resident of El Salvador different requirements may apply, please visit the [Twitter account](#) of the General Directorate of Migration for more information.

- If you need to extend your Salvadoran visa please visit [this website](#).
- Are health screening procedures in place at airports and other ports of entry? Yes
- If you need to renew your Salvadoran residency please access [this link](#).

#### **Movement Restrictions:**

- Is a curfew in place? No
- Are there restrictions on intercity or interstate travel? Yes. Please see paragraph two immediately below in "Quarantine Information" for possible movement restrictions of indeterminate duration in and out of municipalities with high positivity rates. Outside these municipalities there are no restrictions.

#### **Quarantine Information:**

- Are U.S. citizens required to quarantine? Not upon entrance if an original negative PCR test is presented.
  1. Official confirmation of entry requirements is published at the following government's websites: Comisión Ejecutiva Portuaria Autónoma: [www.cepa.gob.sv](http://www.cepa.gob.sv); and General Directorate of Migration of El Salvador: [www.migracion.gob.sv](http://www.migracion.gob.sv)
  2. The Salvadoran Ministry of Health can place municipalities under special quarantine with little or no prior notice when a high number of COVID-19 cases is detected. Please consult the [Twitter account](#) of the Ministry of Health for more information.

#### **COVID-19 Testing:**

- The Government of El Salvador offers free testing in different locations every day. The locations are announced on the [twitter account](#) of the Salvadoran Interdisciplinary Epidemiological Containment Team (EICE). Testing at national hospitals and health units is at the discretion of the Ministry of Health.
- The following private laboratories in El Salvador are performing COVID-19 test:
  1. Analiza: the cost is \$160, and you need to schedule an appointment by calling 503-2263-0892 or sending a WhatsApp message to 503-7025-6433. For more information please visit their [website](#)
  2. Max Bloch: the cost is \$165, and you need to schedule an appointment by calling 503-2564-6555 or sending a WhatsApp message to 503-7487-5493, you may also schedule an appointment by visiting

their [website](#).

3. Laboratorio Centro de Diagnostico: the cost is \$150, and you need to schedule an appointment by calling 503-2263-6883 or sending a WhatsApp message to 503-7629-3514. For more information please visit their [website](#).

#### Transportation Options:

- Are commercial flights operating? Yes
  - Is public transportation operating? Yes
1. Taxis and other private transportation companies are operating normally.
  2. The Salvadoran government recommends wearing a mask at all times.

**Fines for Non-Compliance:** Not Applicable

#### Consular Operations:

- We have resumed our online appointment system for routine passport and notarial services, though still with limited availability to maintain health and safety. Please visit our website for more information on how to schedule an appointment: [Passport & Notarial](#).
- The Embassy has suspended all routine immigrant and nonimmigrant visa services. For more information, please contact the Visa Information Center at 2113-3122 or email [congansal@state.gov](mailto:congansal@state.gov)

#### Local Resources:

- The U. S. Embassy in San Salvador has compiled a list of health care providers. You can find the complete list by visiting <https://sv.usembassy.gov/u-s-citizen-services/doctors/>.
- If you are experiencing COVID-19 symptoms, please dial 132. The Salvadoran government has enabled this phone number to provide free medical assistance.
- Visit the Government of El Salvador [COVID-19 website](#).
- Check the [Twitter account](#) of the General Directorate of Migration of El Salvador for more information regarding entry restrictions.
- Visit the [webpage](#) and [Twitter account](#) for Comisión Ejecutiva Portuaria Autónoma (CEPA) for information regarding the airport status.
- For more information regarding health measures by the Salvadoran government, please visit the [webpage](#) and official [Twitter account](#) of the Ministry of Health.
- Other links:

10/23/2020

Information for U.S. Citizens and Lawful Permanent Residents | U.S. Embassy in El Salvador

o [COVID-19 crisis page on travel.state.gov](#)

o [CDC page on COVID-19](#)

o [El Salvador Country Information and Travel Advisory](#)

This is the official website of the U.S. Embassy in El Salvador. External links to other Internet sites should not be construed as an endorsement of the views or privacy policies contained therein.



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# EXHIBIT 3

EXHIBIT 3



The State of Arizona further alleges that the offense charged in this count is a dangerous felony because the offense involved the discharge, use, or threatening exhibition of a gun, a deadly weapon or dangerous instrument and/or the intentional or knowing infliction of serious physical injury upon CARLOS CORTES BERNAL, in violation of A.R.S. § 13-704.

A True Bill  
("A True Bill")

WILLIAM G. MONTGOMERY  
MARICOPA COUNTY ATTORNEY

/s/ Jeannette R. Gallagher  
/s/ JEANNETTE R. GALLAGHER  
DEPUTY COUNTY ATTORNEY

Date: March 29, 2013

Anne R. Goldstein  
FORPERSON OF THE GRAND JURY  
Anne L. Goldstein

JRG/lr/OK



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# EXHIBIT 4

EXHIBIT 4

ALLISTER ADEL  
MARICOPA COUNTY ATTORNEY

Ellen M Dahl  
Deputy County Attorney  
Bar ID #: 022405  
225 W Madison St, 4th Floor  
Phoenix, AZ 85003  
Telephone: (602) 506-5780  
sp1div@mcao.maricopa.gov  
MCAO Firm #: 00032000  
Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

THE STATE OF ARIZONA,

Plaintiff,

vs.

MOISES HERNANDEZ LAGUNAS,  
aka ISIDRO HERNANDEZLAGUNAS  
aka ISIDRO LAGUNAS  
aka MIGUEL HERNANDEZ-BERNABE  
aka MIGUEL HERNANDEZ  
aka MOISES LAGUNAS  
aka \* LOCA  
aka MOISES HERNANDEZ-LAGUNA  
aka MOISES HERNANDEZ-LAGUNAS

Defendant.

CR2013-001614-001

STATE'S MOTION TO UNSEAL A PORTION  
OF DR. PUENTE'S REPORT

(Assigned to the Honorable Timothy J  
Ryan, Div. CRJ11)

The State of Arizona moves to unseal a portion of Dr. Puente's report which documents the list of items he reviewed to support his opinion in this matter. The State is not seeking to unseal any other portion of the report. In the alternative, the State is seeking

to share with a fellow prosecutor a broad list of items reviewed by Dr. Puente that he used to form his expert opinion.

#### BASIS FOR THE REQUEST

On October 20, 2020, a district attorney from Douglas County, Nevada spoke to undersigned counsel regarding this case. The district attorney is prosecuting Wilber Ernesto Martinez Guzman, an El Salvadorian national, who is charged with four separate murders that occurred over a one week period in January of 2019 in Nevada. It is in Department 4 of the Second Judicial District Court of the State of Nevada, in and for Washoe County (Case No. CR-19-0447). It is a capital matter and the Defense in that matter is raising an *Atkins* challenge and have noticed Dr. Antonio Puente in support of that claim.

In the Martinez Guzman case, the defense filed a motion to continue due to the global pandemic. The defense argued that Dr. Puente traveled to El Salvador but was detained at the airport and not allowed entrance into the country due to the global pandemic and since Dr. Puente needed to personally meet with the defendant's family, friends, former teachers, and others. The defense requested a continuance of the trial indefinitely and argued that a failure to continue the trial would deny the defendant's due process rights and the effective assistance of counsel. The State opposed the motion and requested a hearing on the motion. The hearing on the motion occurred on July 27-29, 2020. The defendant's first witness was Dr. Puente. On direct examination, Dr. Puente

testified that he could not conduct an *Atkins* investigation due to the global pandemic as it was his opinion that the standard of care and ethical obligations mandated that the interviews of the *Atkins* related informants had to be done in-person and could not be done by any alternative means or methods such as via telephone or a teleconferencing platform, such as Zoom, or a telehealth platform.

The prosecutor in that case received information that there was a matter in Maricopa County where Dr. Puente relied partly upon recorded interviews and communicated with some of the witnesses via phone or other mediums.<sup>1</sup> During the cross-examination of Dr. Puente on July 27, 2020, Dr. Puente stated that he used to conduct *Atkins* investigations by relying on recorded interviews and videos conducted by mitigation specialists. However, he stated that he ceased the practice of relying upon that type of information approximately 10 years earlier. He was confronted with his involvement in the present matter in 2015. Dr. Puente admitted that he conducted several phone-only interviews of family members of Mr. Lagunas and that he relied on video interviews that were conducted by defense counsel and/or mitigation specialists. Dr. Puente stated that there were a high number of kidnappings in that region of Mexico where the Mr. Lagunas' family lived and that the government told him that they would not provide an escort and that if he was kidnapped they would not search for or retrieve him, and that it seemed like a dangerous situation.

---

<sup>1</sup> This information was not provided by anyone from the Maricopa County Attorney's Office.

Following the three day hearing in July on the defense motion to continue, the Court took the matter under submission and ordered both parties to submit any further arguments in writing. As part of the defense argument, they submitted a declaration of Taylor Fox (Attachment A). In that declaration, he stated, "All Atkins lay witnesses who the defense deemed essential *Atkins* lay witnesses were interviewed face to face. These witnesses included the out-of-country witnesses who Dr. Puente, another defense team member and I interviewed."

On Friday, October 16<sup>th</sup>, the Defense in that matter filed a "Motion to Correct Record and Strike State's Argument regarding Dr. Puente's Work Methodology in Maricopa County Case Number CR2013-001614-001 Due to the Material Misrepresentation Presented in the State's Argument."

In order for the prosecutor in that matter to respond to such a serious allegation in that capital case, the State is requesting that the portion of the Dr. Puente's report which refers to materials reviewed be unsealed.

Submitted October 23, 2020.

ALLISTER ADEL  
MARICOPA COUNTY ATTORNEY

BY: Ellen Dahl  
/s/ Ellen M Dahl  
Deputy County Attorney

Copy mailed/delivered October 23, 2020, to:

The Honorable Timothy J Ryan  
Judge of the Superior Court

Tonya J Peterson  
801 N First Ave  
Phoenix, AZ 85003  
Attorney for Defendant

Taylor Fox  
101 N 1st Ave Ste 950  
Phoenix, AZ 85003

BY: Ellen Dahl  
/s/ Ellen M Dahl  
Deputy County Attorney

EMD

1 CODE 2490  
2 Christopher J. Hicks  
3 #7747  
4 P.O. Box 11130  
5 Reno, NV 89520  
6 (775) 328-3200  
7 Attorney for State of Nevada

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
9  
10 IN AND FOR THE COUNTY OF WASHOE.

11 \* \* \*

12 THE STATE OF NEVADA,

13 Plaintiff,

14 Case No. CR19-0447

15 v.

16 Dept. No. D4

17 WILBER ERNESTO MARTINEZ GUZMAN,

18 Defendant.

19  
20 SUPPLEMENTAL EXHIBITS TO OPPOSITION TO MOTION TO CORRECT RECORD AND  
21 STRIKE STATE'S ARGUMENT REGARDING DR. PUENTE'S WORK METHODOLOGY IN  
22 MARICOPA COUNTY CASE NUMBER CR2013-001614-001 (D 28)

23 COMES NOW, the State of Nevada, by and through CHRISTOPHER  
24 J. HICKS, District Attorney of Washoe County, and MARK JACKSON,  
25 District Attorney of Douglas County, and hereby enters these  
26 "Supplemental Exhibits to Opposition to Motion to Correct Record and  
Strike State's Argument Regarding Dr. Puente's Work Methodology in  
Maricopa County Case Number CR2013-001614-001 (D 28)" as a supplement  
to the Opposition filed by the State on October 26, 2020.

The attached exhibits were provided to the State via email  
at 2:35 p.m. on November 20, 2020 as a result of Court order which

1 granted counsel in Maricopa County, Arizona the ability to provide  
2 the redacted exhibits to the State. This order was also entered on  
3 November 20, 2020.

4 AFFIRMATION PURSUANT TO NRS 239B.030

5 The undersigned does hereby affirm that the preceding  
6 document does not contain the social security number of any person.

7 DATED this 20th day of November, 2020.

8  
9  
10 /s/ Christopher Hicks  
11 CHRISTOPHER HICKS  
12 DISTRICT ATTORNEY

/s/ Mark Jackson  
13 MARK JACKSON  
14 DISTRICT ATTORNEY  
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Index of Exhibits

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- Exhibit 1 - E-mail from Brittany Sarracino, 1 page
- Exhibit 2 - Order Granting Motion to Unseal, 2 pages
- Exhibit 3 - Redacted Evaluation Dated 2/3/15, 12 pages
- Exhibit 4 - Redacted Revised Evaluation Dated 5/31/17, 25 pages

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EXHIBIT 1

EXHIBIT 1

Lucia, Travis

---

**From:** Jackson, Mark <mjackson@douglas.nv.gov>  
**Sent:** Friday, November 20, 2020 2:38 PM  
**To:** Lucia, Travis  
**Subject:** Fwd: Order signed  
**Attachments:** 20201120115007025.pdf; ATT00001.htm

[NOTICE: This message originated outside of Washoe County -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Sent from my iPhone  
Mark B. Jackson  
District Attorney  
Douglas County, Nevada

Begin forwarded message:

**From:** Ellen Dahl <dahle@mcao.maricopa.gov>  
**Date:** November 20, 2020 at 2:35:29 PM PST  
**To:** "Jackson, Mark" <mjackson@douglas.nv.gov>  
**Subject:** FW: Order signed

**From:** Brittany Sarracino (SUP) [mailto:Brittany.Sarracino@JBAZMC.Maricopa.Gov]  
**Sent:** Friday, November 20, 2020 11:47 AM  
**To:** Tonya Peterson <tpeterson@jennagroup.com>; Taylor Fox (taylorfoxlaw@gmail.com) <taylorfoxlaw@gmail.com>; Josh Maxwell <maxwej01@mcao.maricopa.gov>; Ellen Dahl <dahle@mcao.maricopa.gov>  
**Subject:** Order signed

He has signed it.  
Thank you and have a great holiday!

**\*\*Please Note We Are Now in SCT5A**

*Brittany Sarracino*

Bailiff to the Honorable Timothy Ryan

SCT5A P:602-372-3082

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**EXHIBIT 2**

**EXHIBIT 2**

ALLISTER ADEL  
MARICOPA COUNTY ATTORNEY

Ellen M Dahl  
Deputy County Attorney  
Bar ID #: 022405  
225 W Madison St, 4th Floor  
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Telephone: (602) 506-5780  
sp1div@mcao.maricopa.gov  
MCAO Firm #: 00032000  
Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

THE STATE OF ARIZONA,

Plaintiff,

vs.

MOISES HERNANDEZ LAGUNAS,  
aka ISIDRO HERNANDEZLAGUNAS  
aka ISIDRO LAGUNAS  
aka MIGUEL HERNANDEZ-BERNABE  
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aka MOISES LAGUNAS  
aka \* LOCA  
aka MOISES HERNANDEZ-LAGUNA  
aka MOISES HERNANDEZ-LAGUNAS

Defendant.

CR2013-001614-001

ORDER RE: DR. PUENTE REPORTS

(Assigned to the Honorable Timothy J  
Ryan, Div. CRJ11)

Having read the foregoing Motion to Unseal, and

Having found good cause,

IT IS ORDERED that counsel may provide redacted Dr. Puente reports to counsel for Wilber Ernesto Martinez Guzman, Case No. CR-19-0447. The agreed upon redacted reports shall be placed under seal in this matter.

Ordered this 20th day of NOVEMBER 2020.

  
\_\_\_\_\_  
Judge of the Superior Court

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**EXHIBIT 3**

**EXHIBIT 3**



Hernandez Lagunas, Isidro

02.03.2015

Page 1 of 12

**Antonio E. Puente, Ph.D.**  
Neuropsychology  
1508 Military Cutoff Road, Suite 303  
Wilmington, North Carolina 28403  
Tel. 910/509-9371 Fax.910/509-9372

**NEUROPSYCHOLOGICAL EVALUATION**

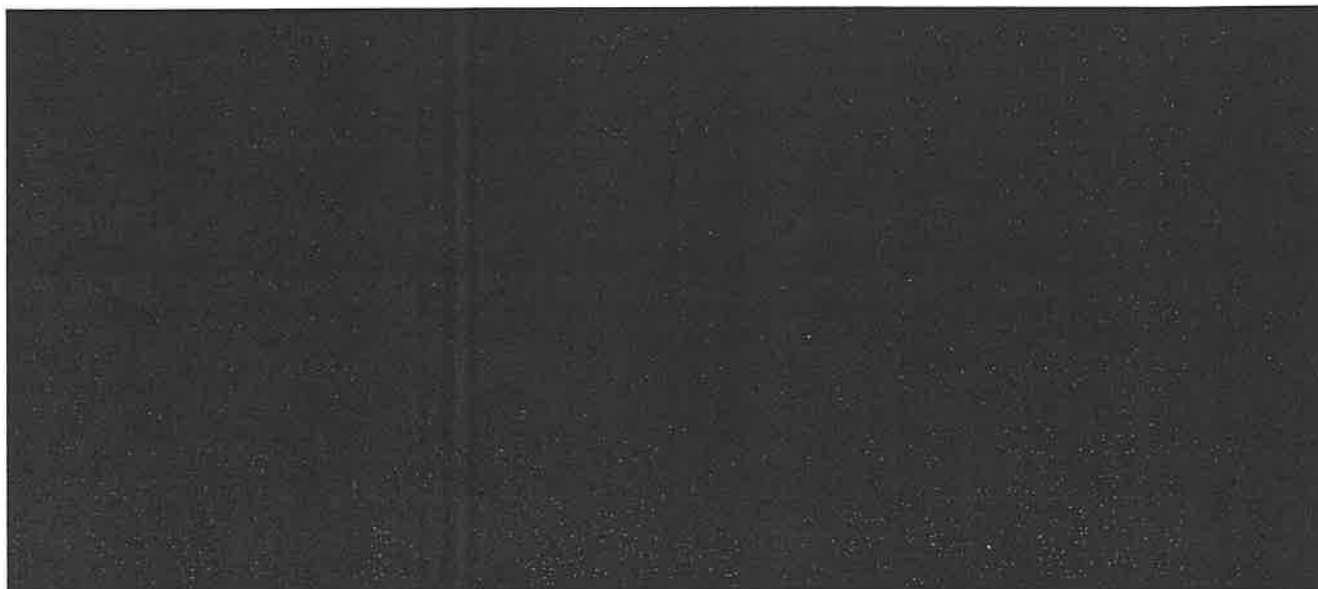
**IDENTIFYING INFORMATION:**

**NAME:** Isidro Hernandez Lagunas

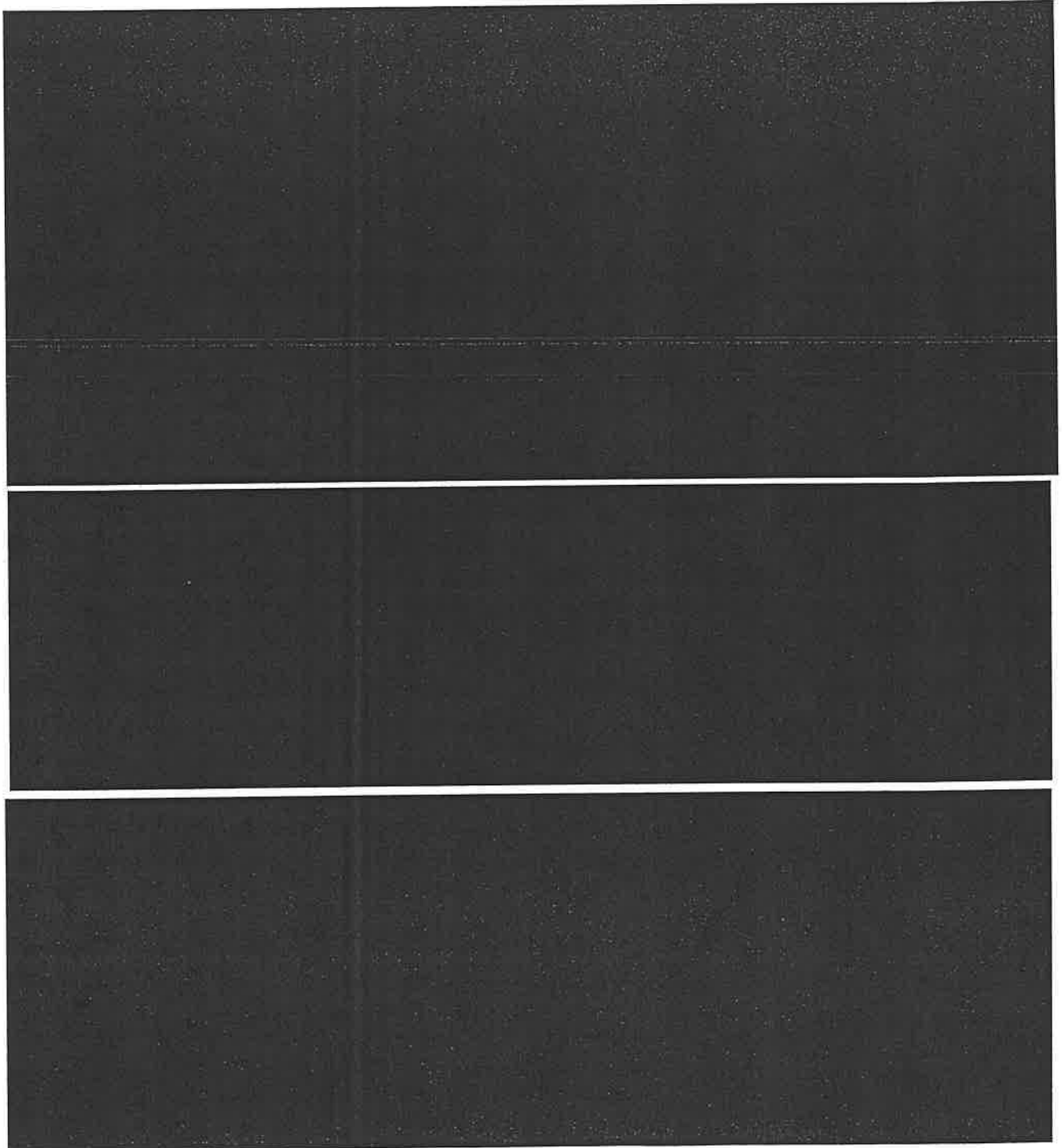


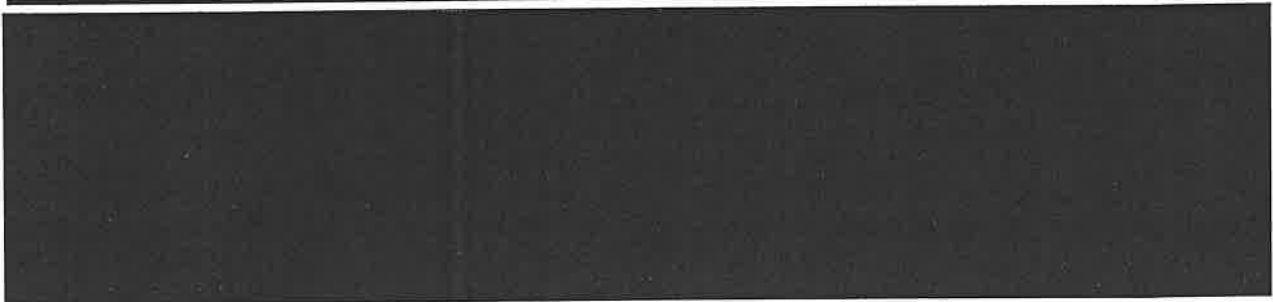
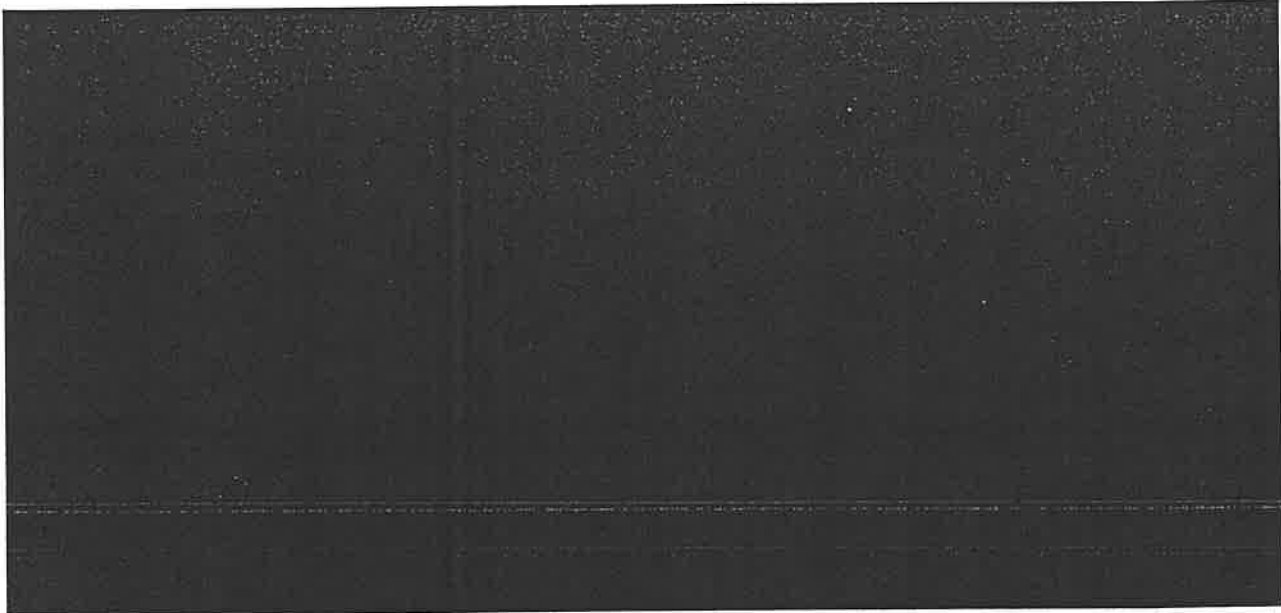
**DATE:** 02.03.2015

**REASON FOR SERVICE AND EVALUATION PROCEDURE:**



**REVIEW OF RECORDS:**

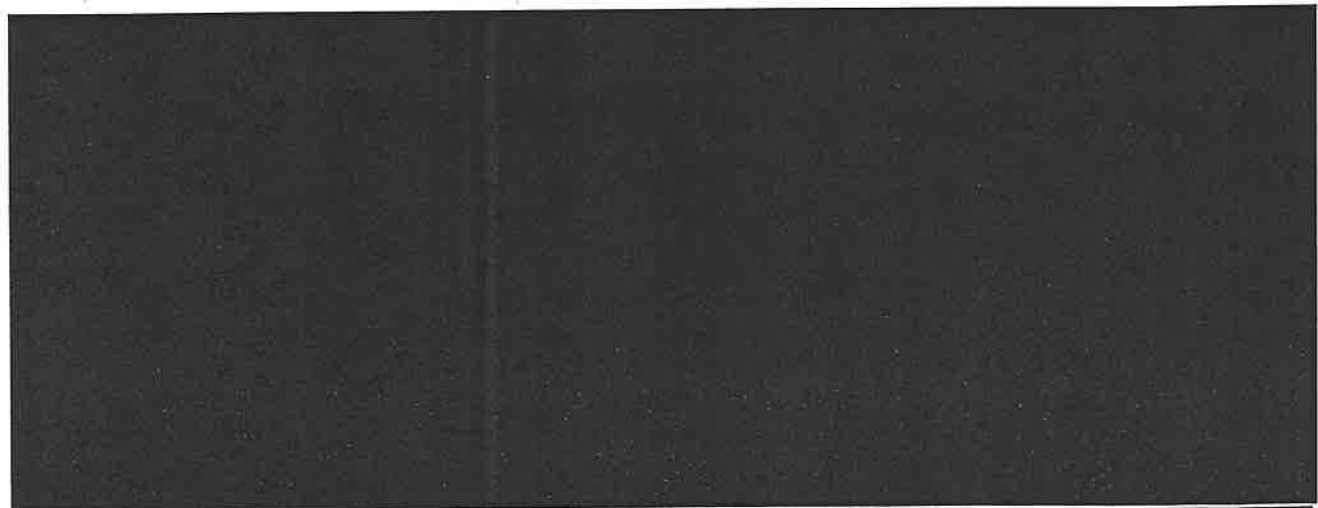
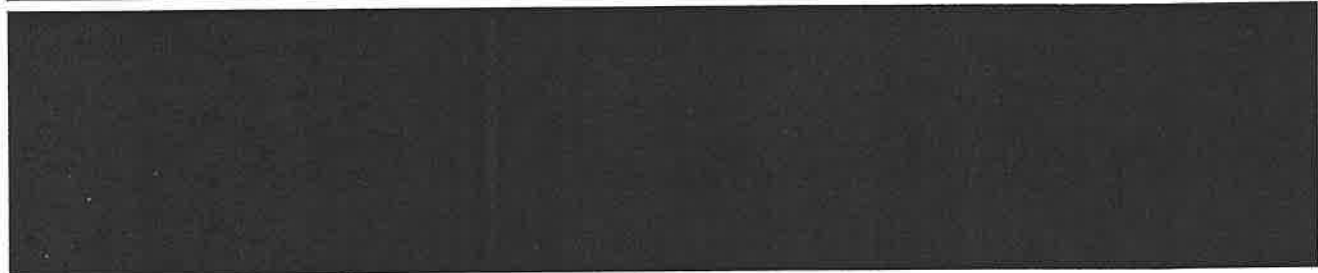
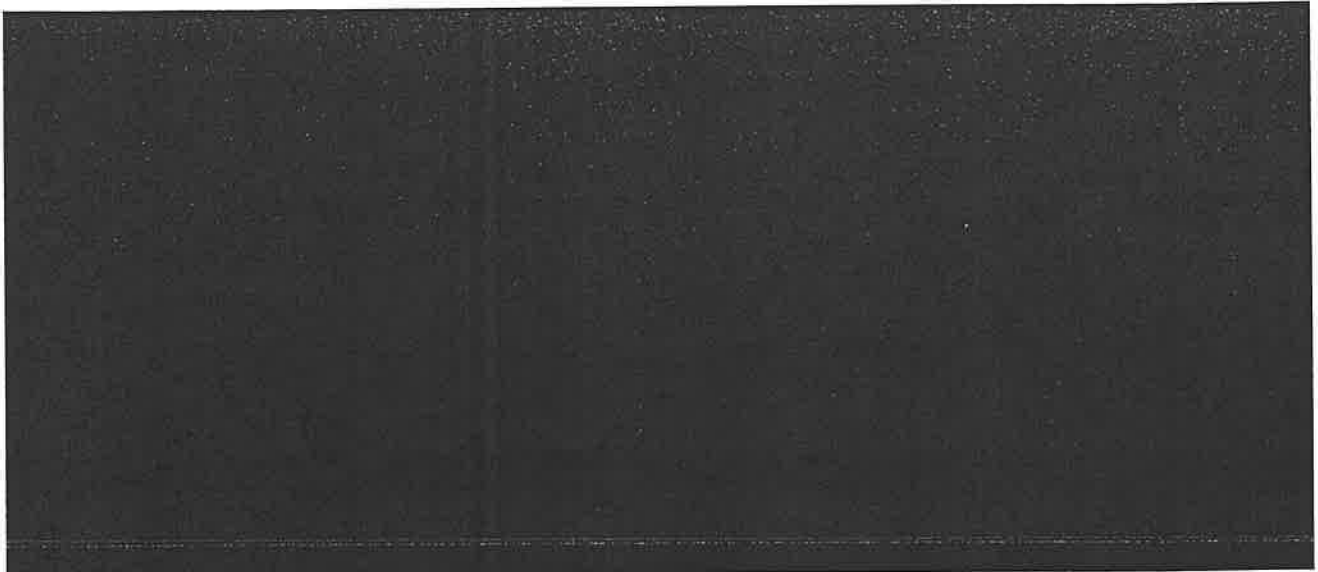


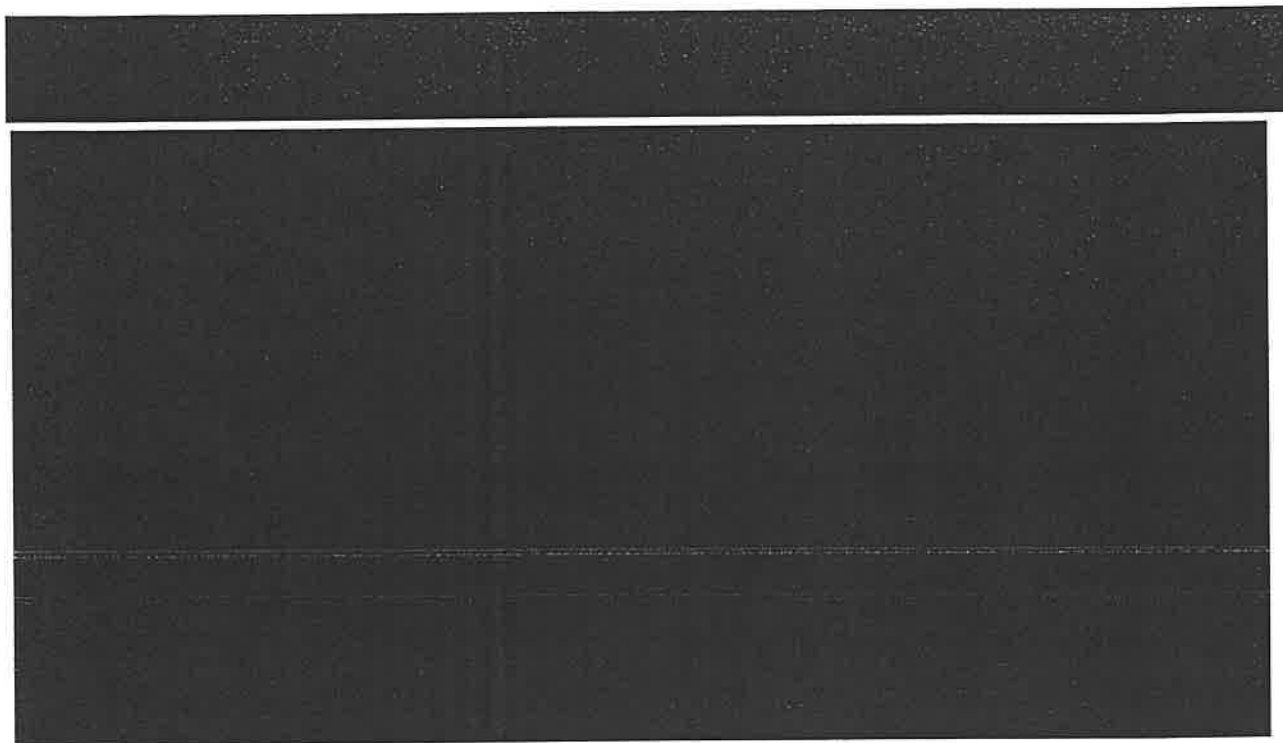


**MITIGATION DIFFICULTIES**

- 1) Records were lost due to the flood that occurred September (2013) when two hurricanes, one from the Atlantic and the other Pacific, came together causing flooding of two rivers that were on the edge of town. When the river overflowed about 3-4 meters, the house was flooded.
- 2) The evaluator is currently unable to travel to Ajuchitlan, Mexico due to the unusually large number of drug and kidnapping related murders in that area. Having bodyguards is not sufficient. Further, taking photos and talking to others would be dangerous to the family. The recent kidnapers appear to be experienced, dangerous and intelligent. It might be possible for the evaluator to go to a third location such as Zihuatanejo/Ixtapa to meet with the family.



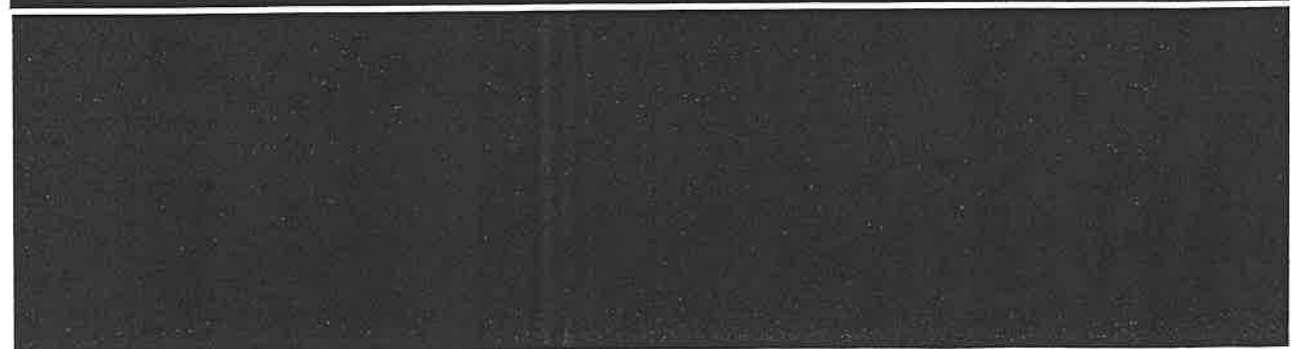
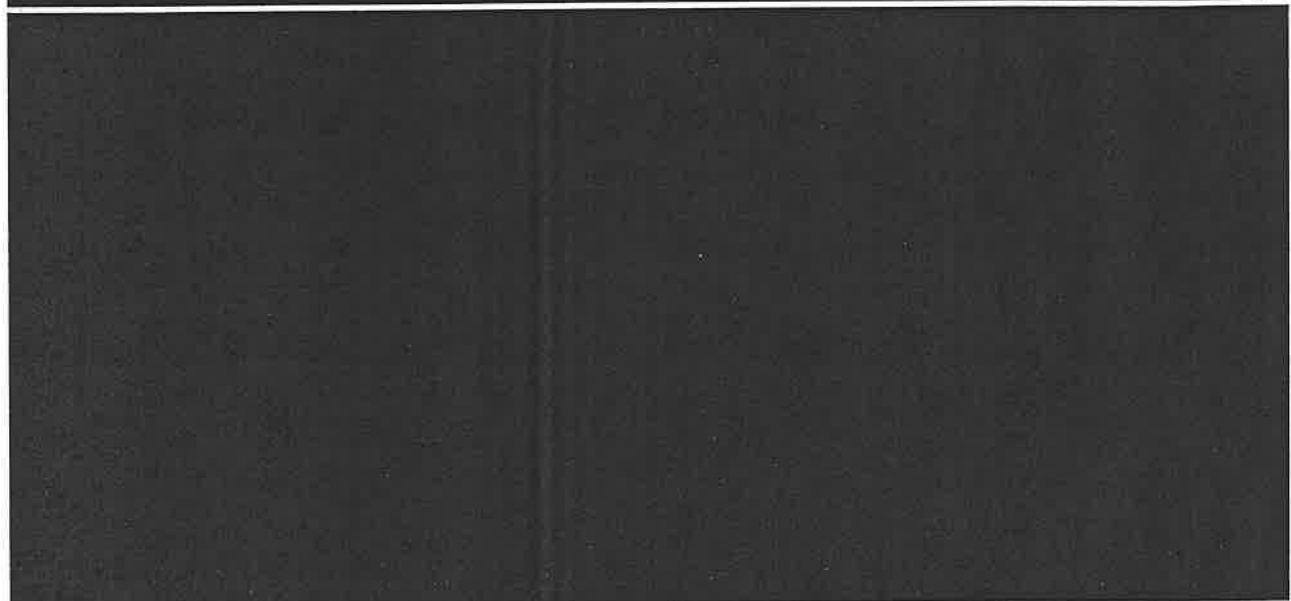
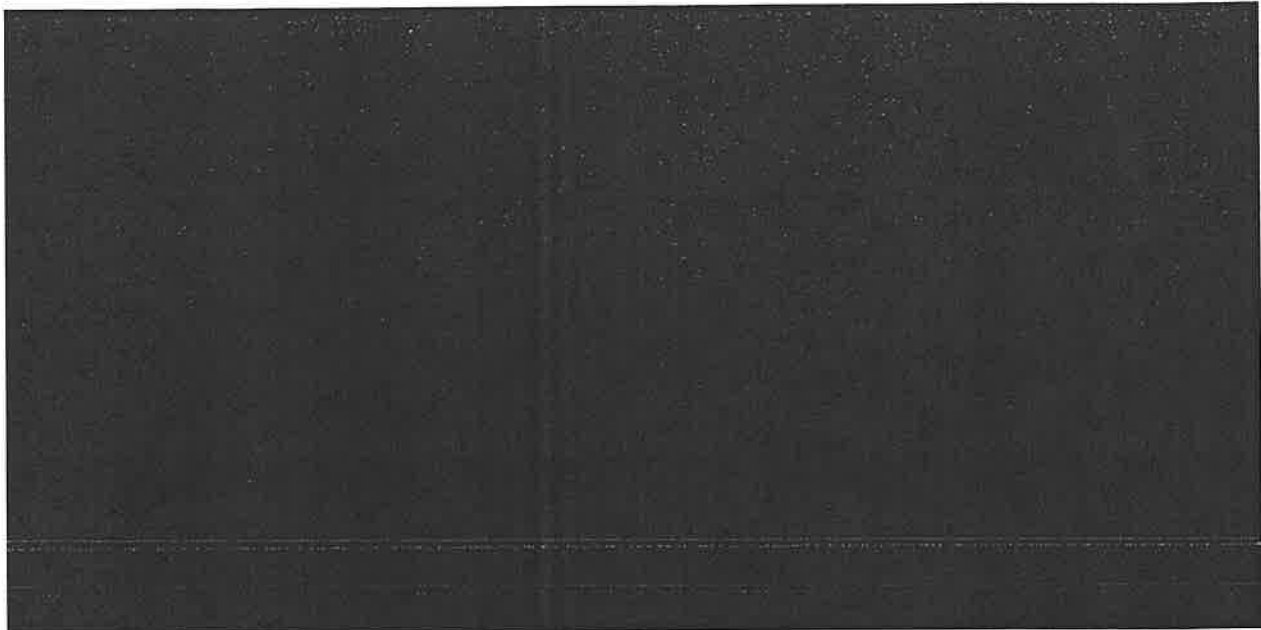


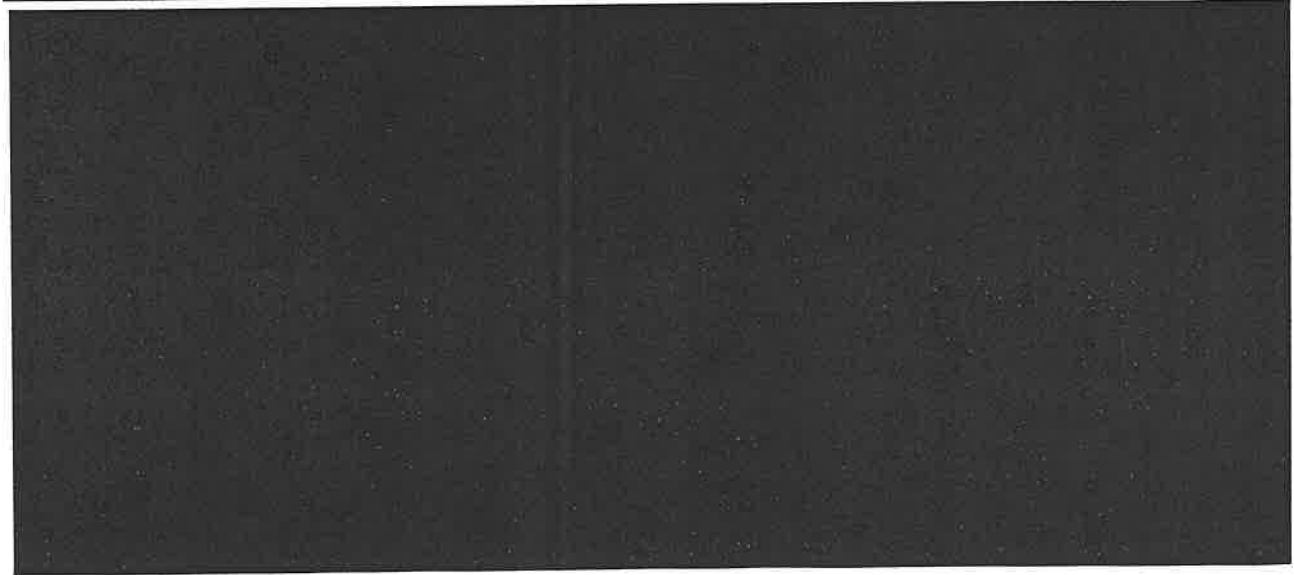
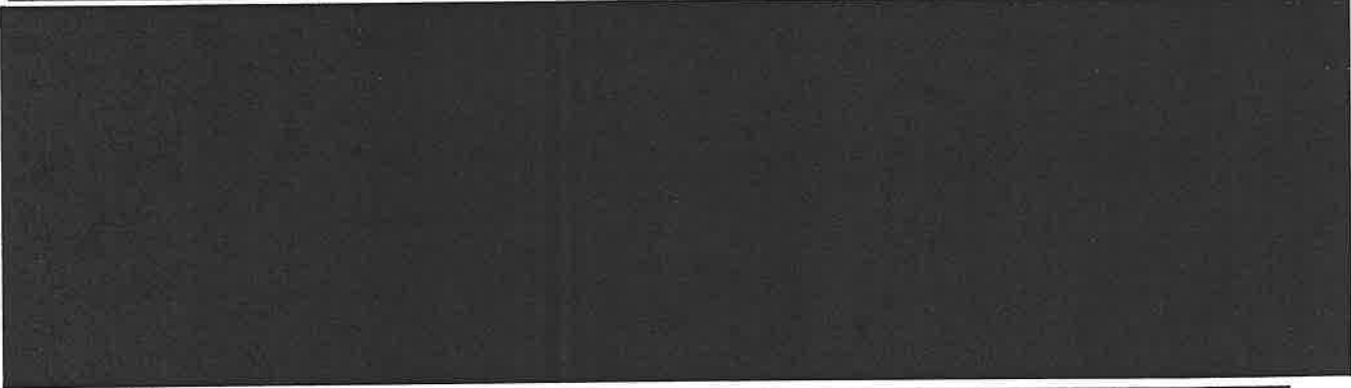
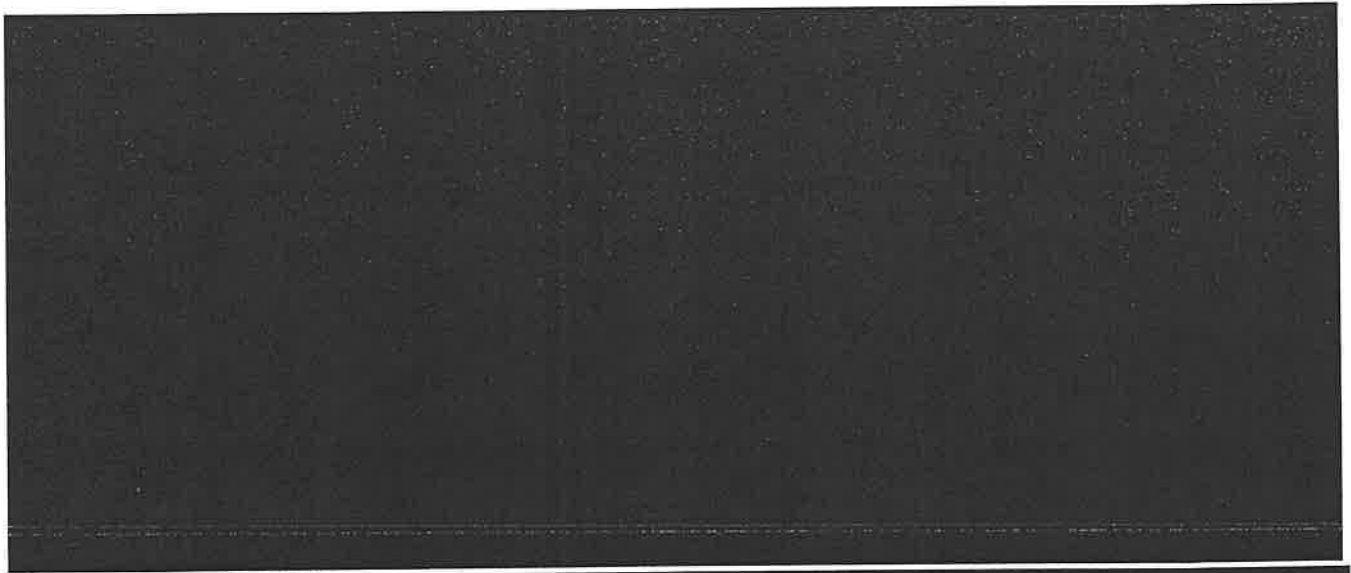


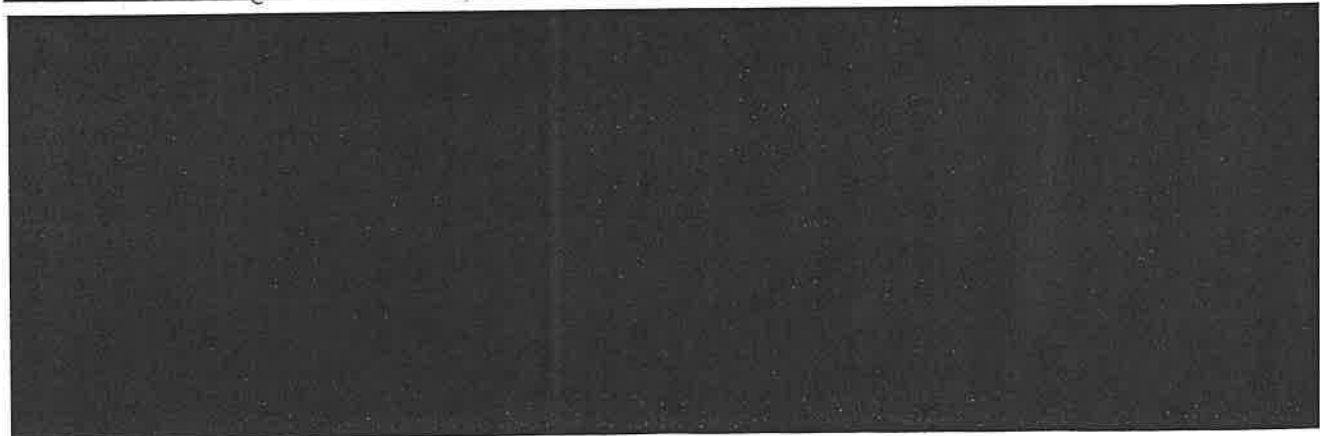
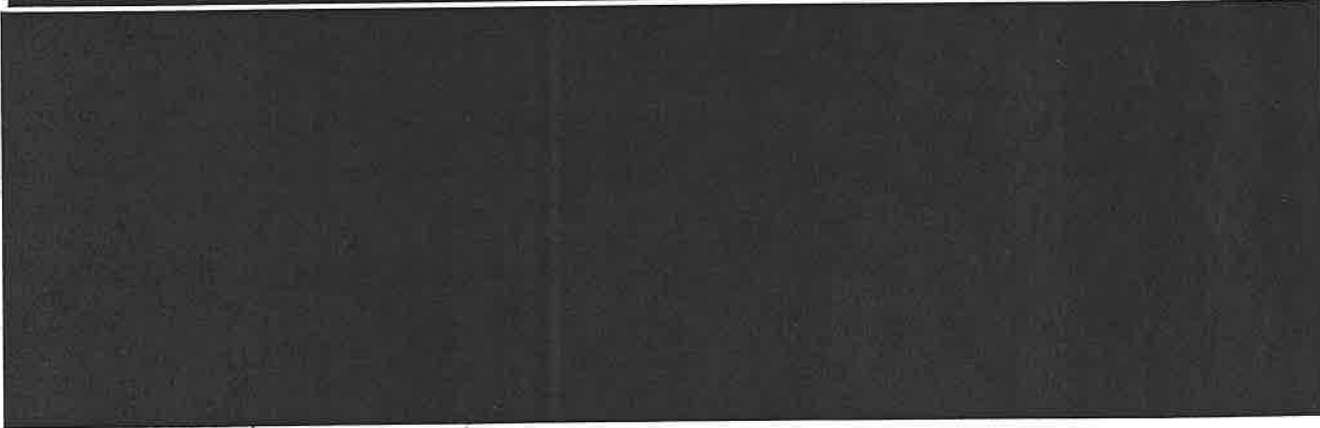
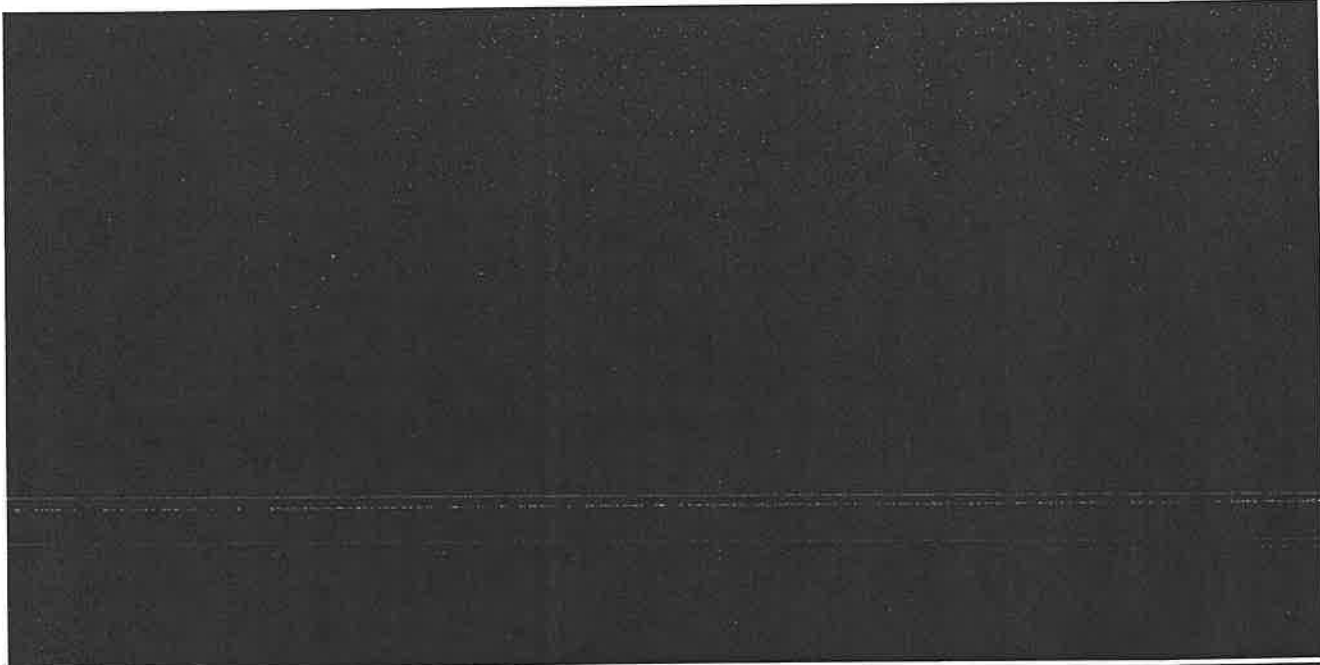
**COLLATERAL INTERVIEWS:**

The following individuals were interviewed face-to-face (unless otherwise stated) in California:

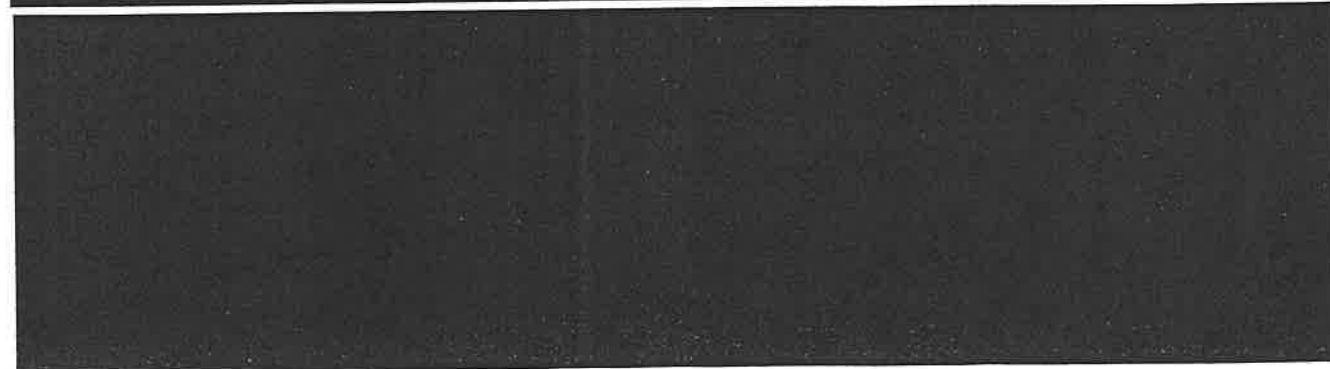
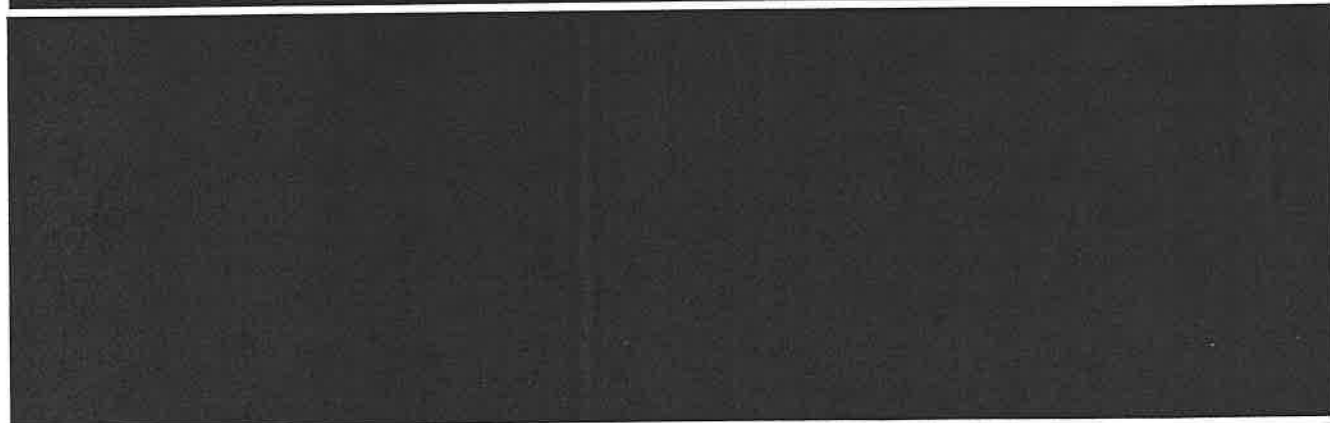
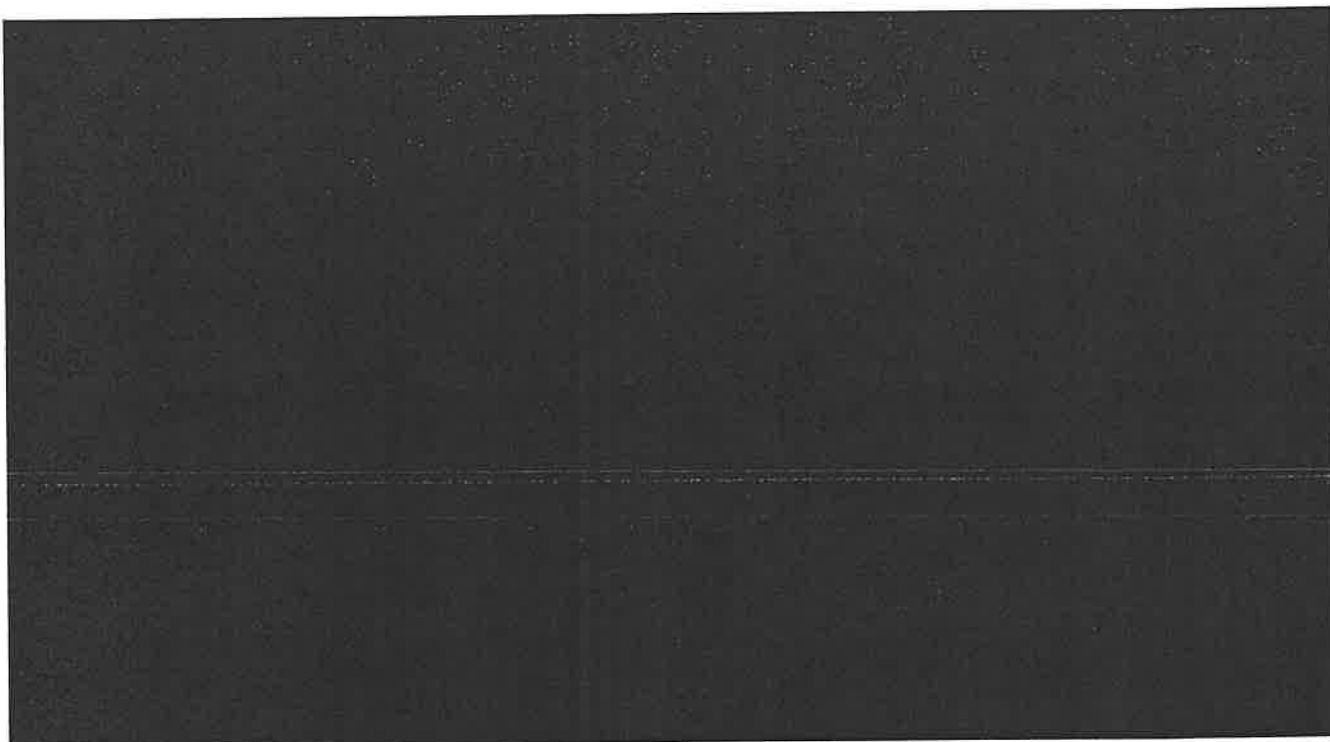
- 1) [REDACTED] in Santa Ana, California  
Sister-in-law, who has known him since 1993
- 2) [REDACTED] in Santa Ana, California; (07.21.14 and 12.08.14) via telephone  
Oldest brother
- 3) [REDACTED] in Santa Ana, California  
Cousin
- 4) [REDACTED] in Santa Ana, California  
Cousin
- 5) [REDACTED] in Santa Ana, California  
Cousin
- 6) [REDACTED] in Lodi, California; and via telephone (07.21.14 and 12.05.14)  
Ex-wife
- 7) [REDACTED] in Lodi, California via telephone  
Brother-in-law
- 8) [REDACTED] Ajuchitlan, Mexico via telephone  
Brother
- 9) [REDACTED] Ajuchitlan, Mexico via telephone  
Mother

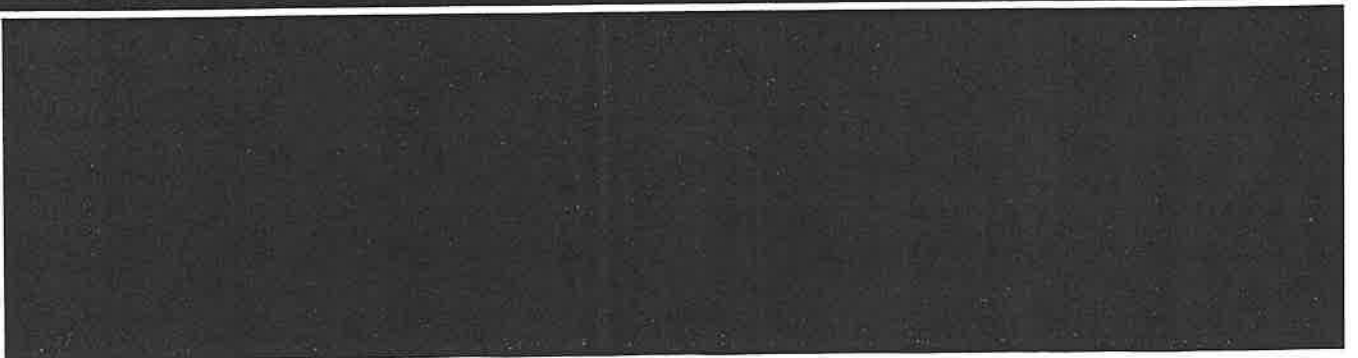
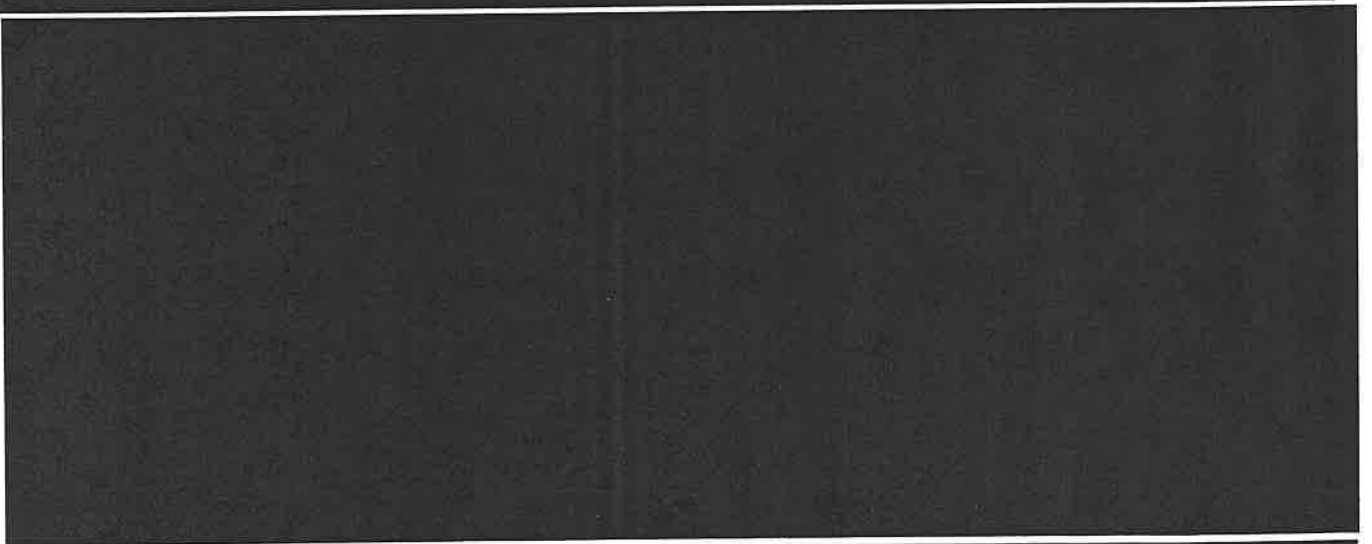
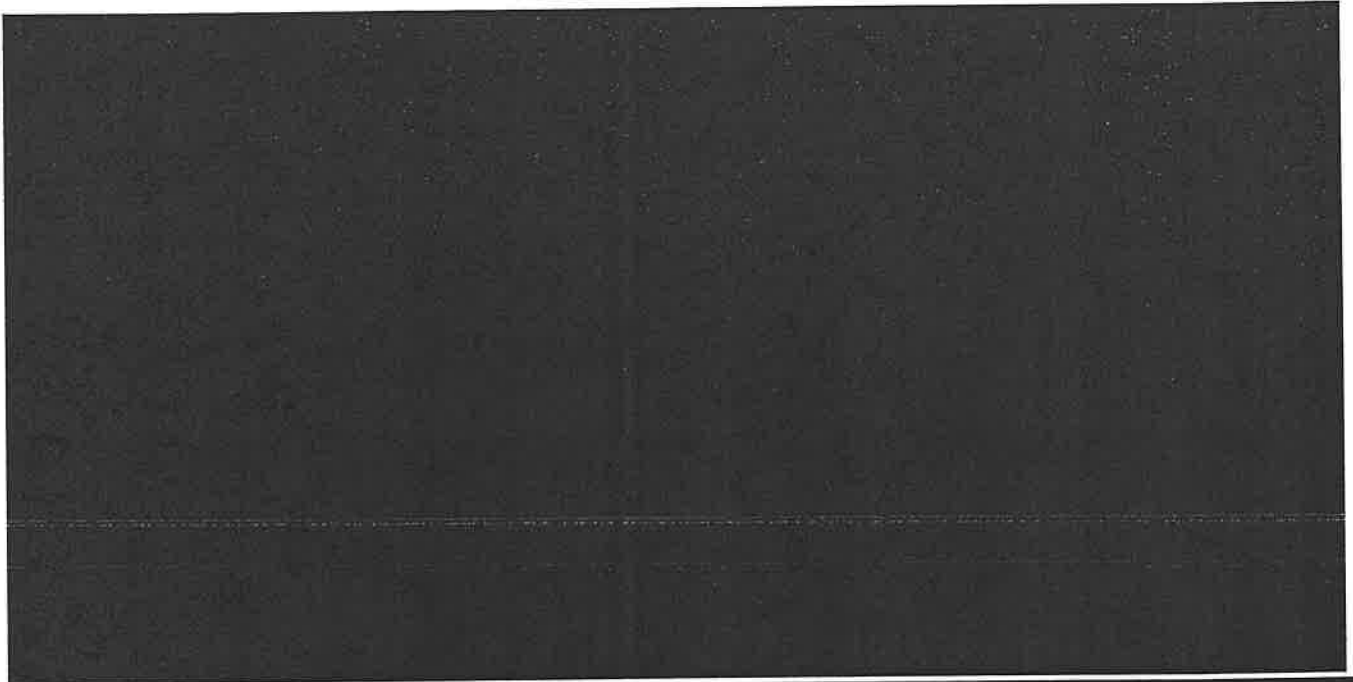


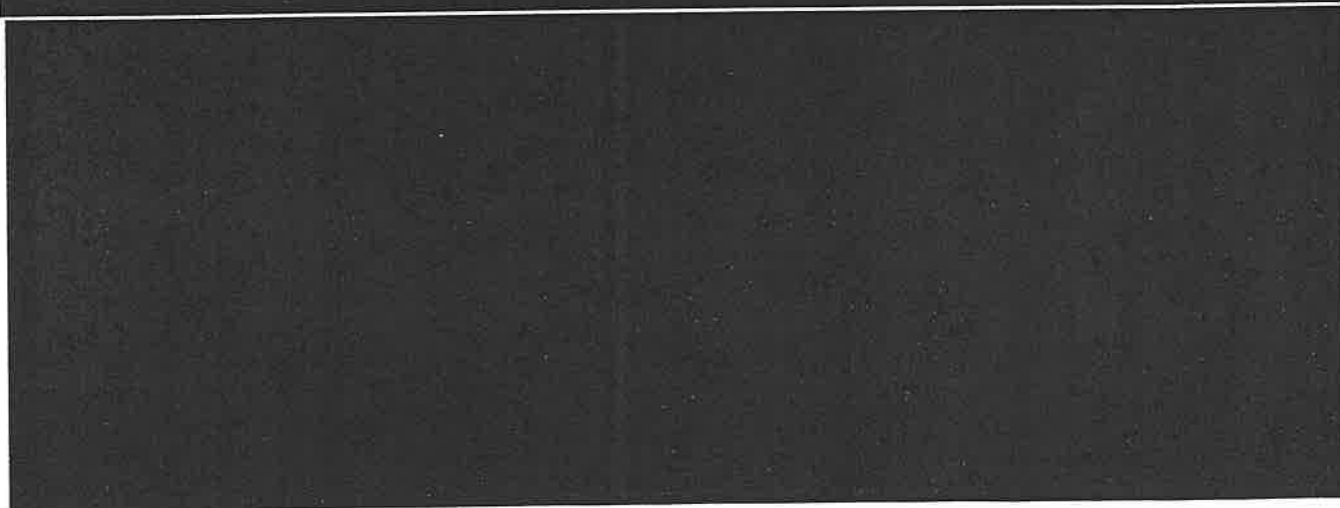
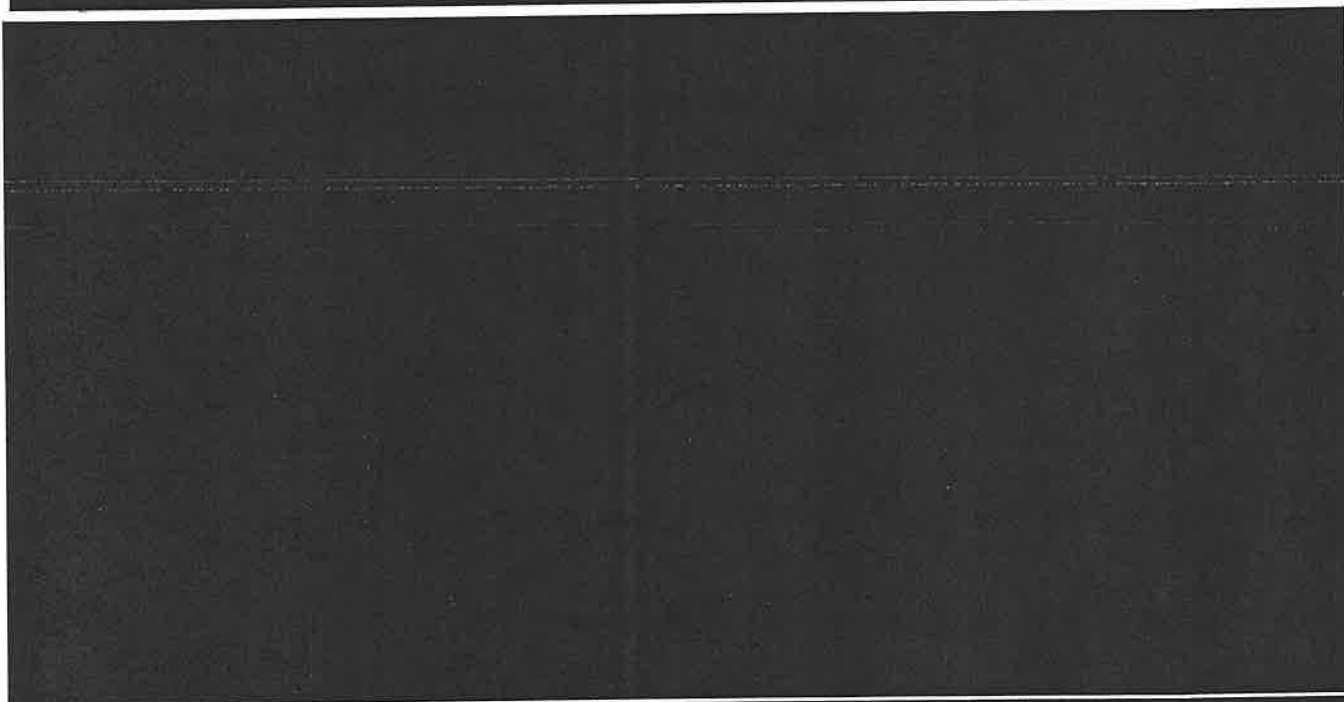
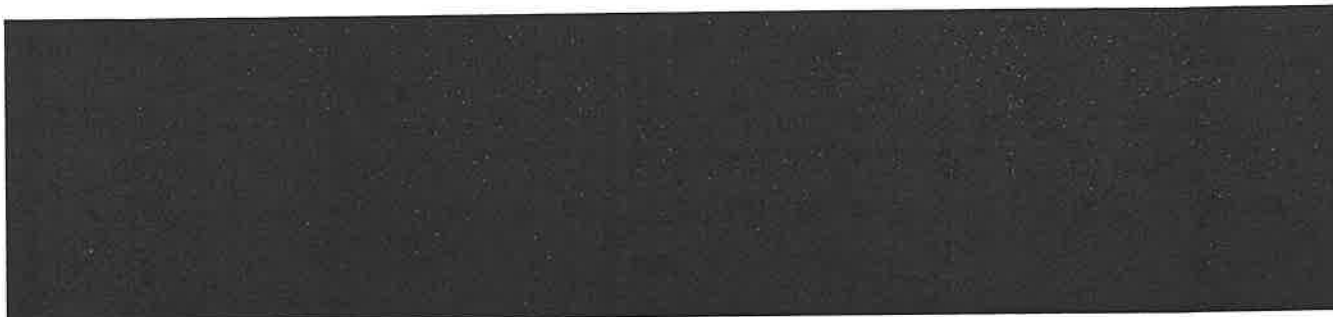










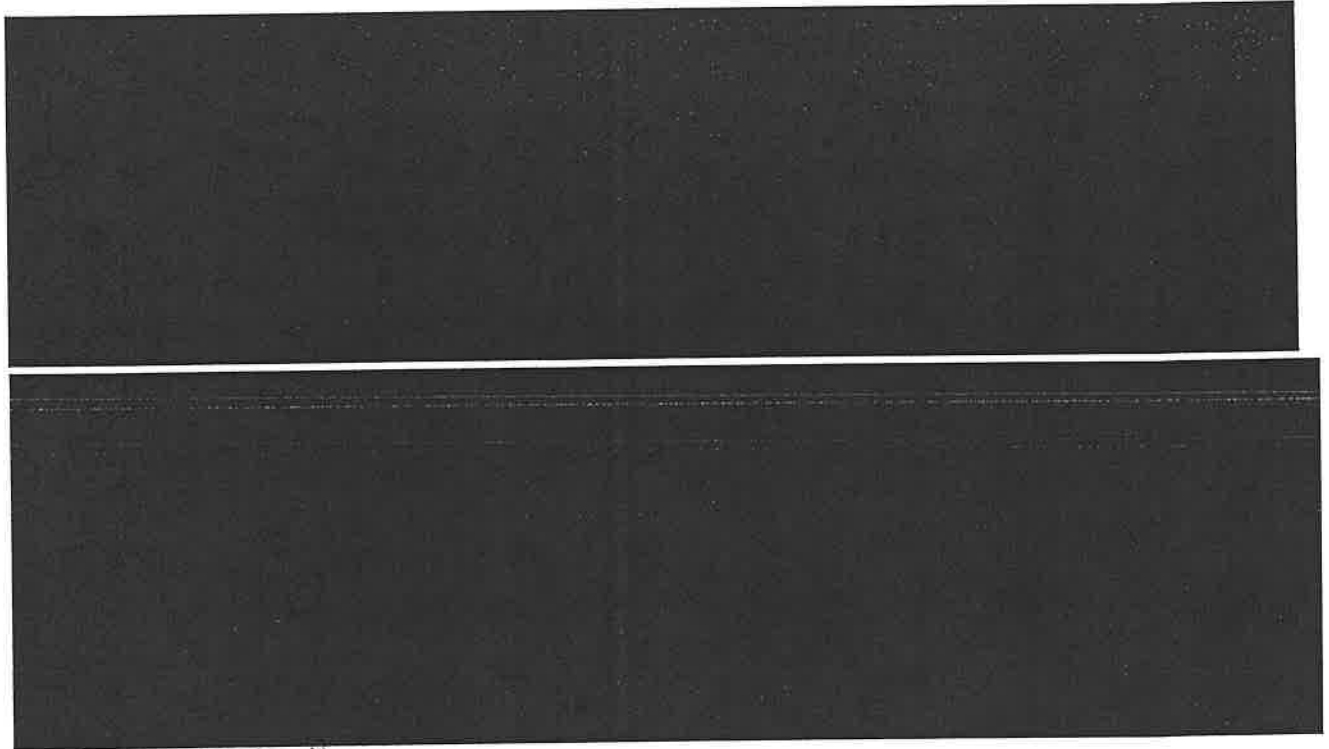


Hernandez Lagunas, Isidro

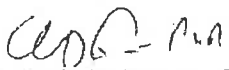
02.03.2015

Page 12 of 12

These findings are based on interviews of Mr. Hernandez Lagunas as well as 9 other individual family members in two separate locations. The inter-rater reliability among all 10 persons interviewed, including Mr. Hernandez Lagunas, was very high.



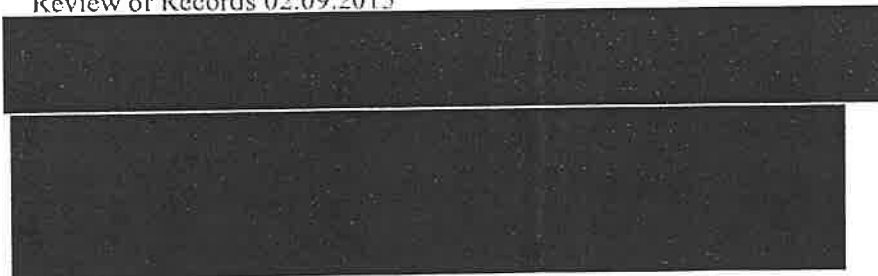
Sincerely,

  
Antonio E. Puente, Ph.D.

CC: Tonya J. Peterson

Attachments:

Review of Records 02.09.2015



FILED  
Electronically  
CR19-0447  
2020-11-20 03:22:39 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 8172661

**EXHIBIT 4**

**EXHIBIT 4**

Antonio E. Puente, Ph.D.  
Neuropsychology  
1508 Military Cutoff Road, Suite 303  
Wilmington, North Carolina 28403  
Tel. 910/509-9371 Fax.910/509-9372

**NEUROPSYCHOLOGICAL EVALUATION**

**REVISED REPORT**

**IDENTIFYING INFORMATION:**

NAME: Isidro Hernandez Lagunas

DATE: 05.31.2017

**REASON FOR SERVICE AND EVALUATION PROCEDURE**

[REDACTED]

[REDACTED] Members of his family were interviewed 06.27.14, 06.28.14, 06.29.14, 07.21.14, 07.22.14, 07.14.15, 07.15.15, and 02.10.16. These interviews were similarly conducted in Spanish. The interviews took place in the California cities of Sacramento, Lodi and Santa Ana, and the Mexican city of Acapulco, Guerrero. The evaluator also conducted several telephonic interviews. [REDACTED]

[REDACTED]

[REDACTED] On 12.05.14, 12.08.14, 07.14.15, and 07.15.15, his brother [REDACTED] and his mother [REDACTED] were tested in Acapulco, Mexico and subsequently via telephone. His ex-wife, [REDACTED] was tested on 12.05.14 via telephone. His partner, [REDACTED] was tested on 02.10.16. His oldest brother, [REDACTED] was tested on 12.08.14 via telephone.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**REVIEW OF RECORDS**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

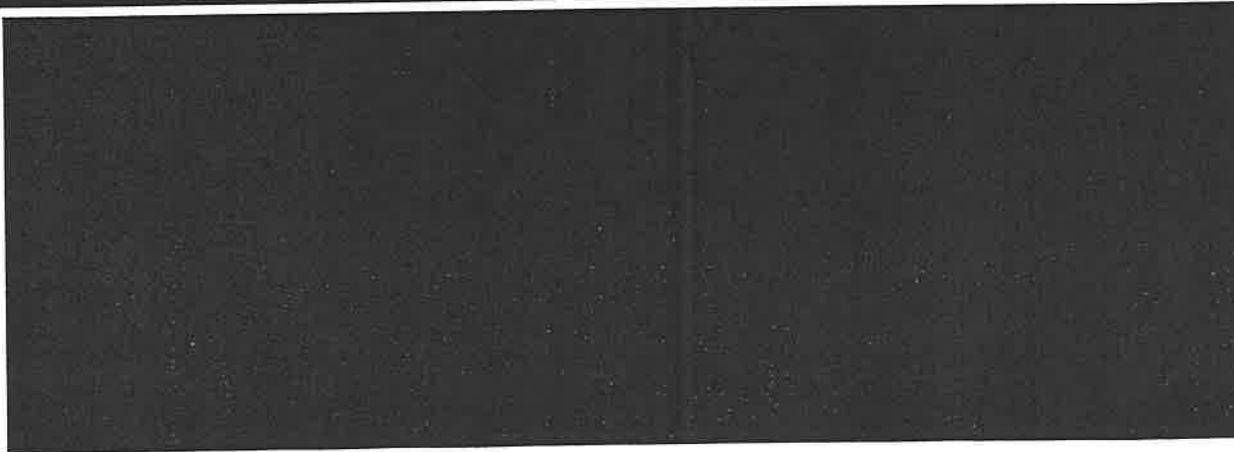
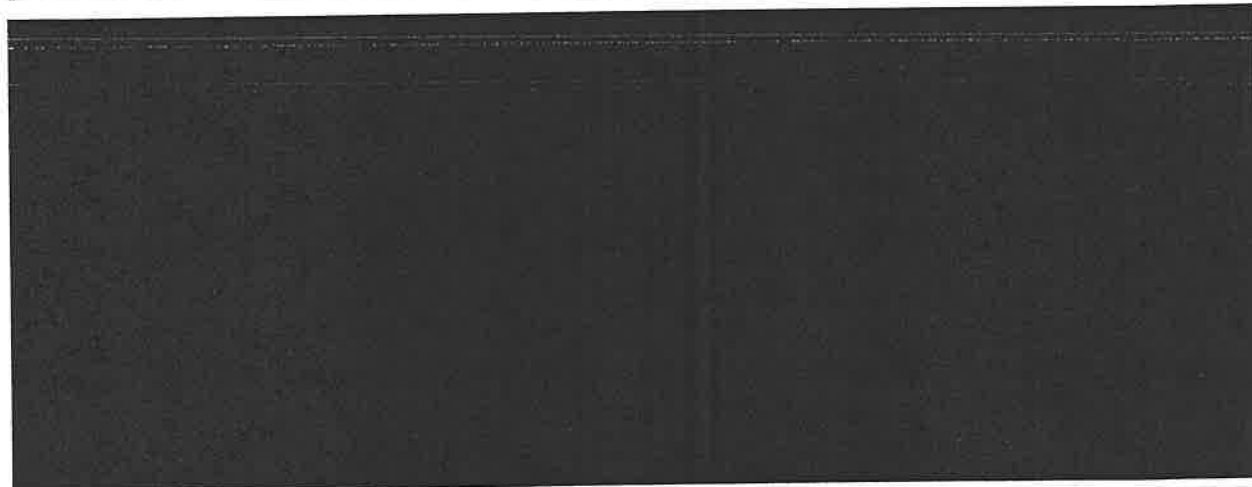
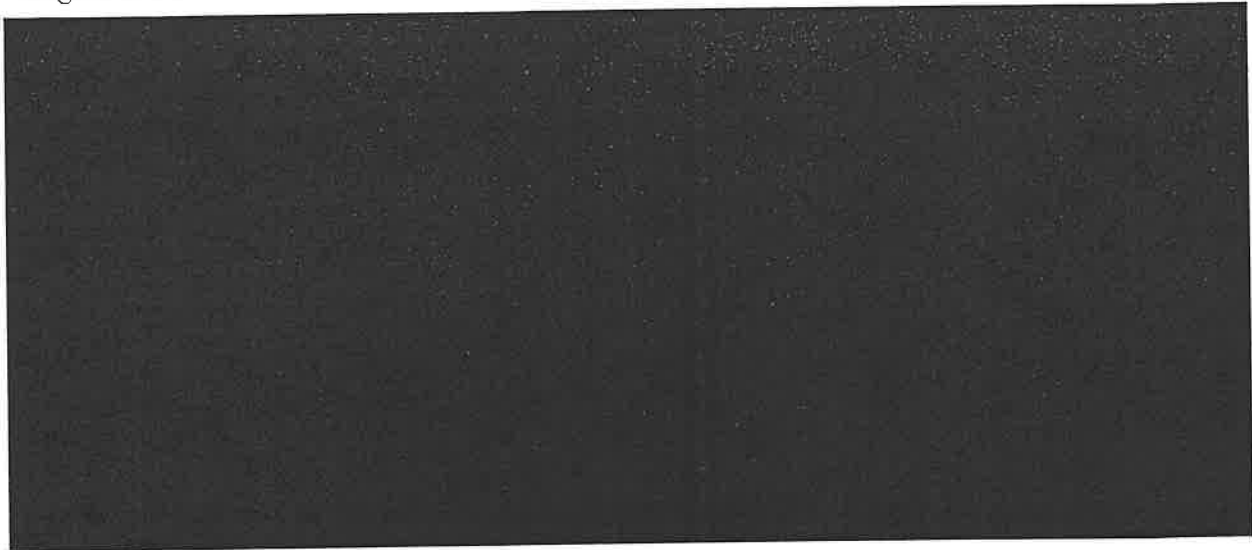
[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]



Hernandez Lagunas, Isidro

Page 5 of 25

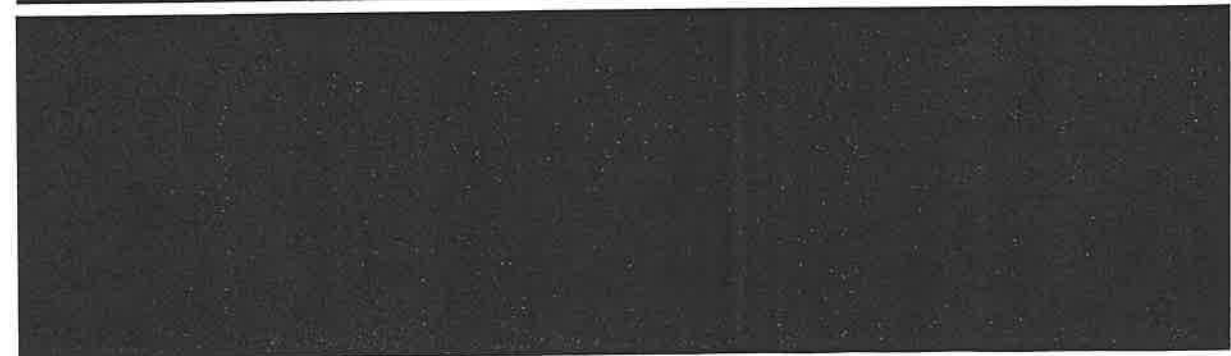
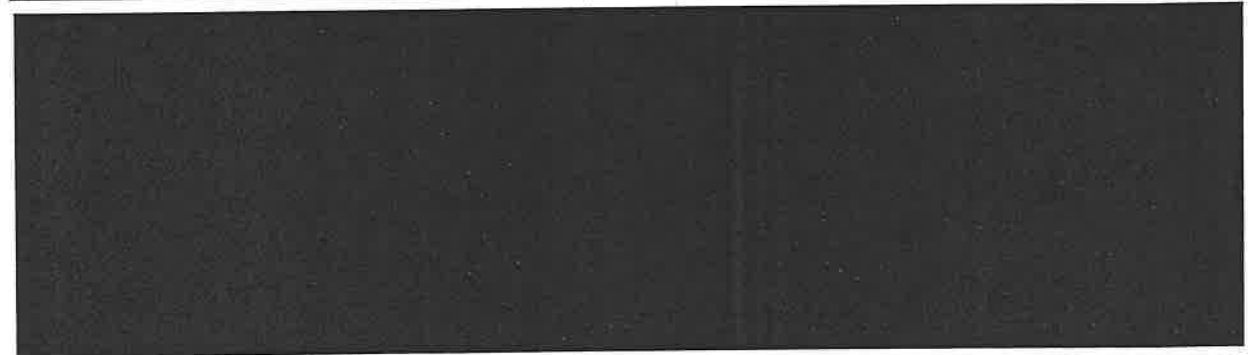
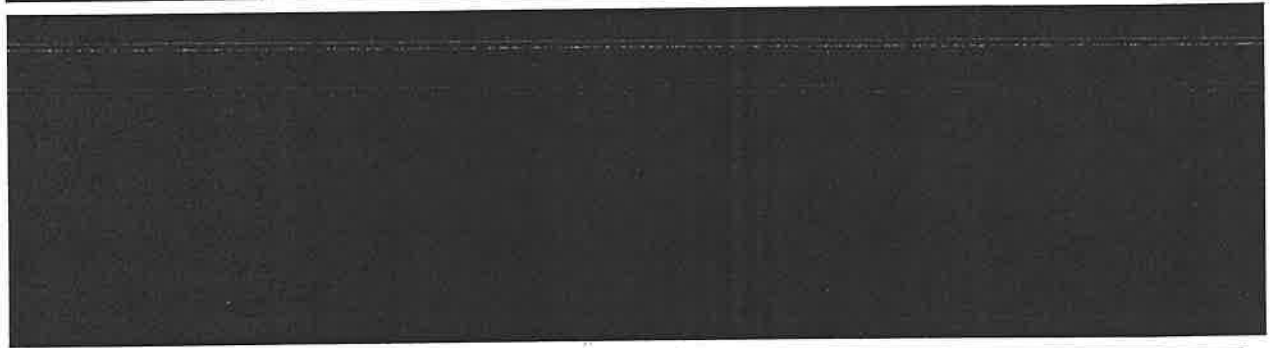
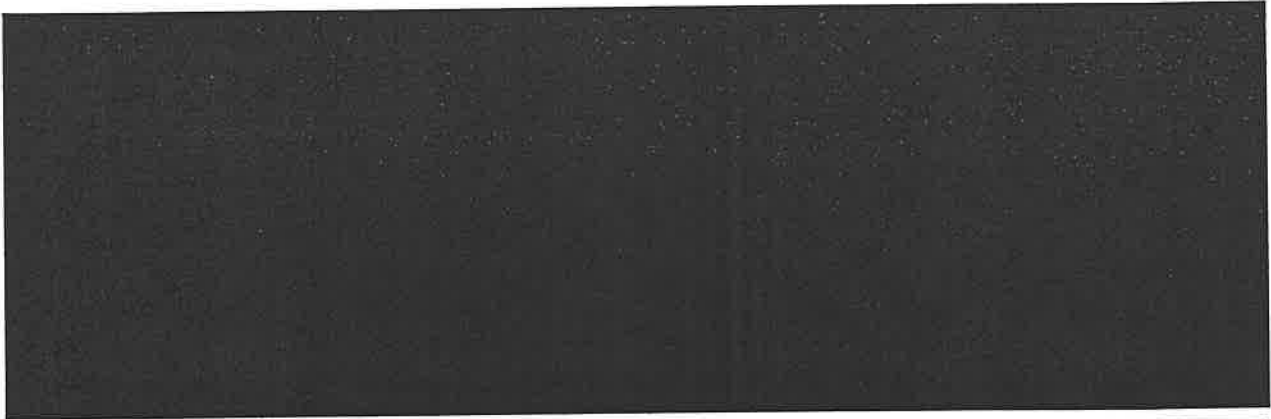
*Interview of*

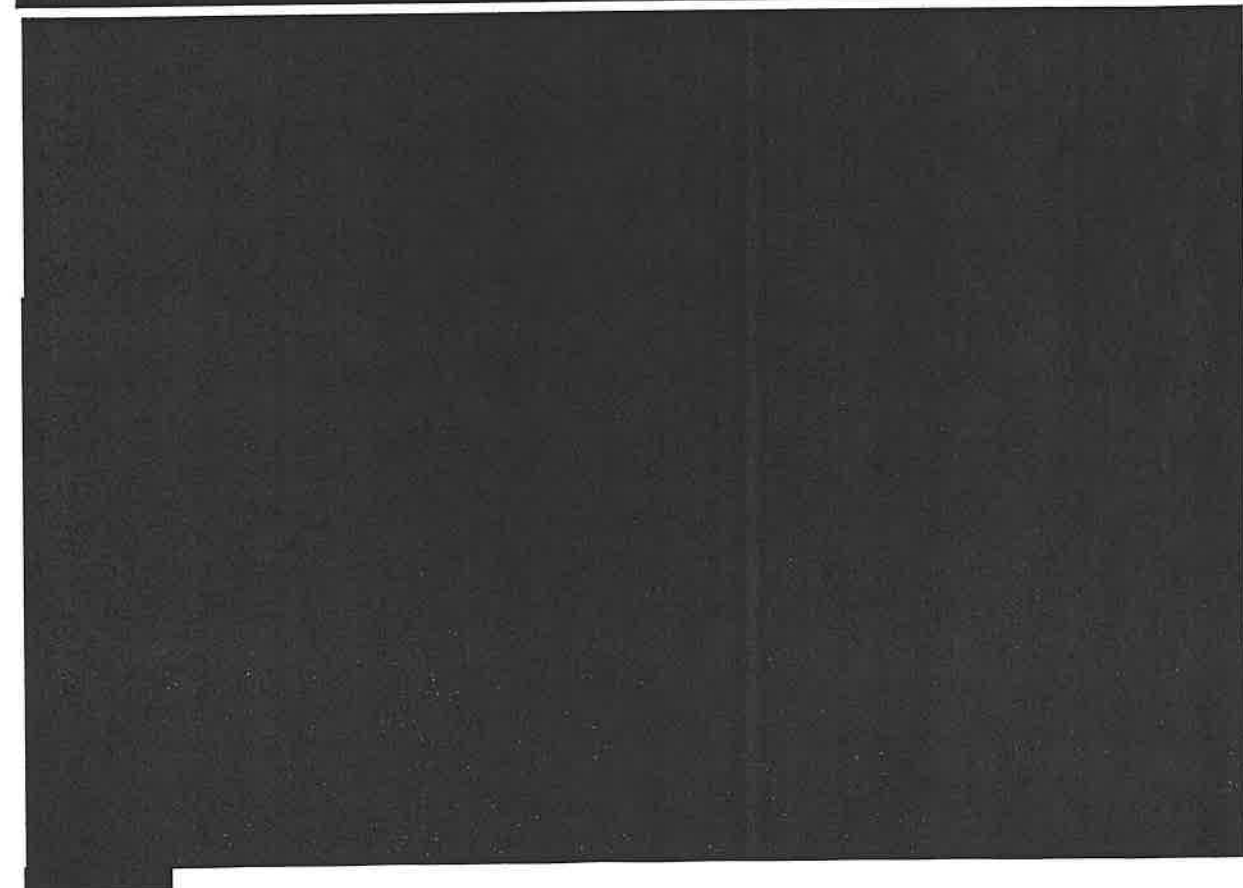
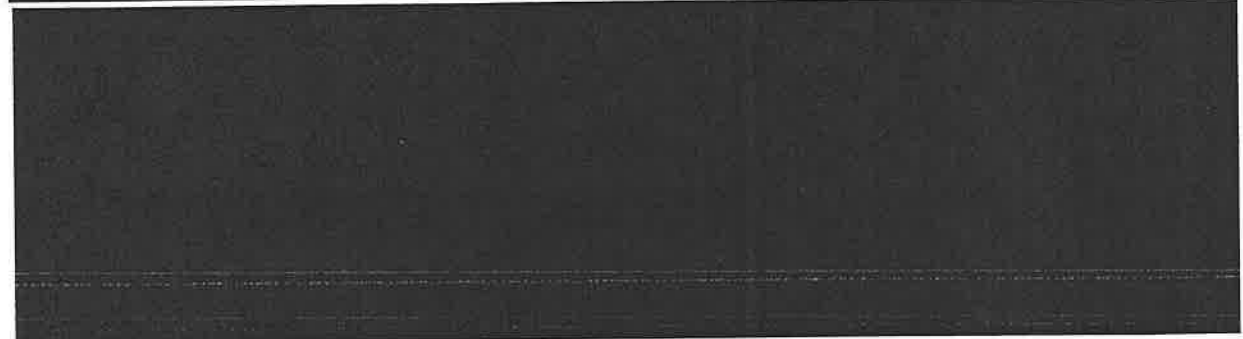
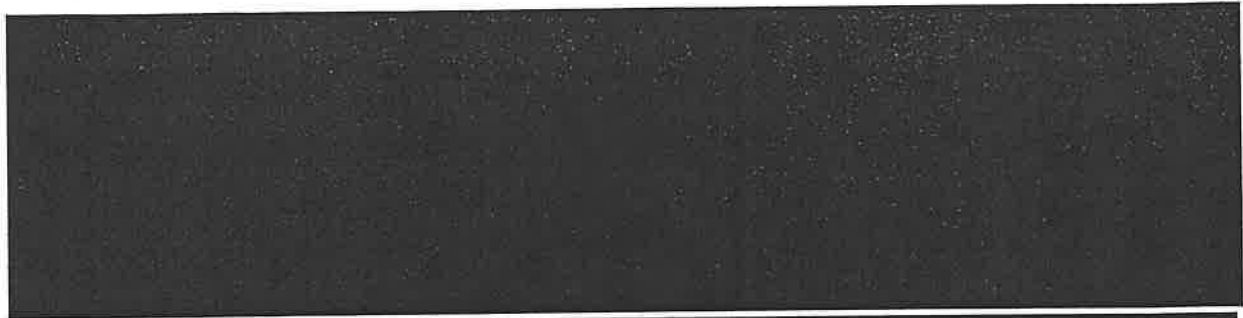
Mr. Taylor W. Fox, attorney at law, conducted a telephonic interview of Mr. who was Mr. Hernandez Lagunas' employer

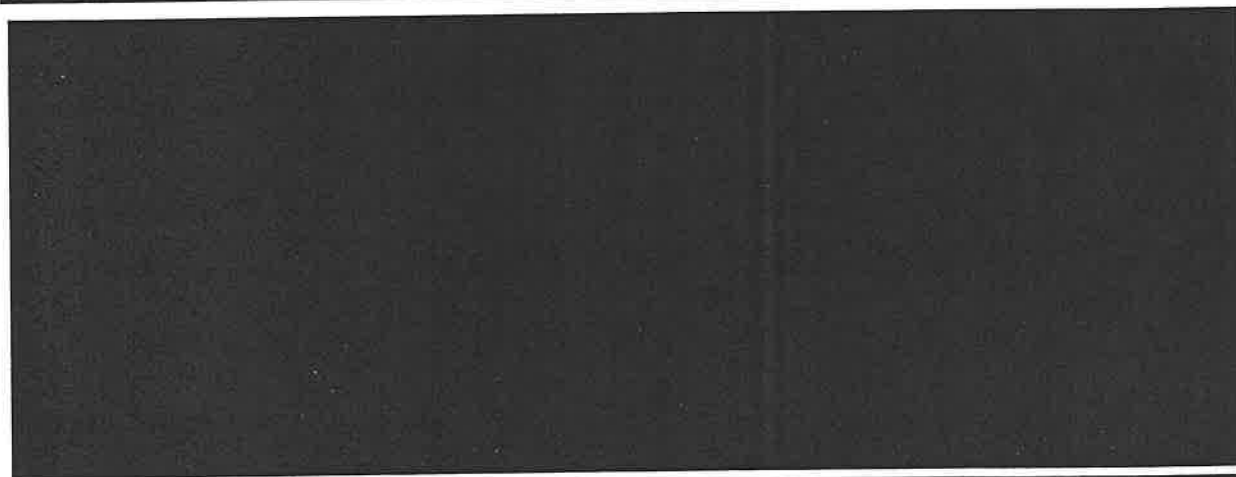
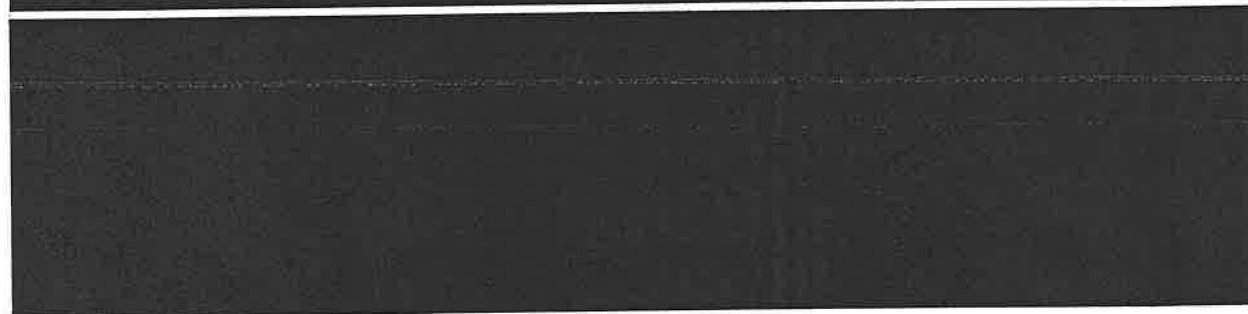
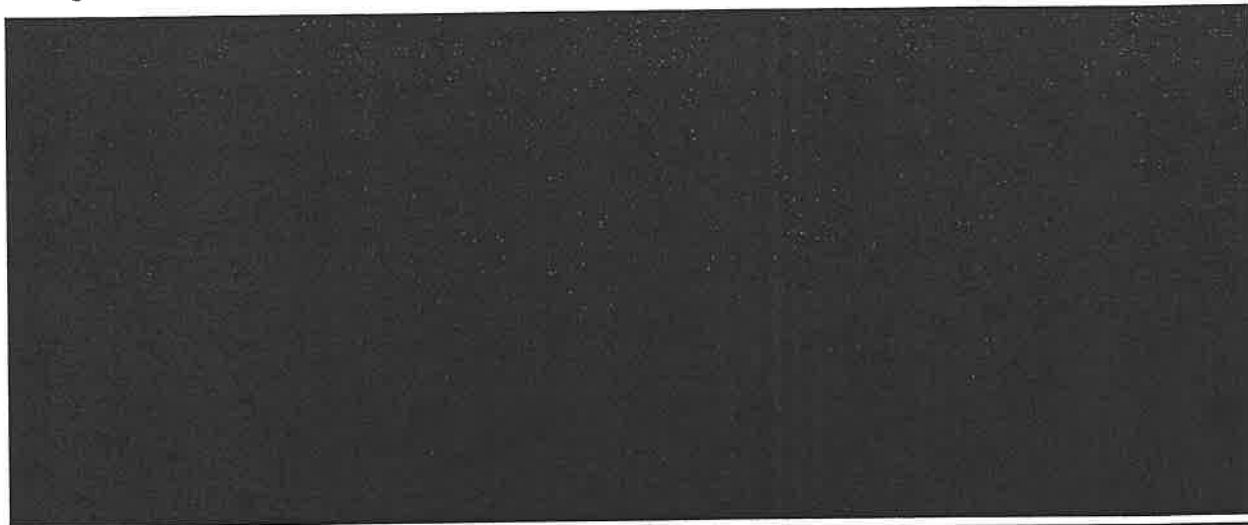
#### MITIGATION DIFFICULTIES

- 1) According to sources in Mexico, records were lost due to the flood that occurred in September (2013) from hurricane activity. When the river overflowed by about 3-4 meters, the house was flooded.
- 2) The evaluator and members of the defense team were unable to travel to Ajuchitlan, Mexico due to the unusually large number of drug and kidnapping related murders in that

area. Having bodyguards is not sufficient. Further, taking photos and talking to others would be dangerous to the family. The recent kidnappers appear to be experienced, dangerous and intelligent.







[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

COLLATERAL INTERVIEWS

The following individuals were interviewed face-to-face by myself (unless otherwise stated) in Arizona, California, and Mexico:

- 1) [REDACTED] (06.28.14) in Santa Ana, California  
Sister-in-law, who has known him since 1993
- 2) [REDACTED] (06.28.14) in Santa Ana, California; 07.21.14 and 12.08.14 (via telephone)  
Oldest brother
- 3) [REDACTED] (06.28.14) in Santa Ana, California  
Cousin
- 4) [REDACTED] (06.28.14) in Santa Ana, California  
Cousin
- 5) [REDACTED] (06.28.14) in Santa Ana, California  
Cousin
- 6) [REDACTED] (06.29.14) in Lodi, California; and via telephone (07.21.14 and 12.05.14)  
Ex-wife
- 7) [REDACTED] (07.22.14) in Lodi, California (via telephone)  
Brother-in-law
- 8) [REDACTED] via telephone (07.23.14) and in Acapulco, Mexico (07.14.15, 07.15.2015)  
Brother
- 9) [REDACTED] via telephone (7.23.14) and in Acapulco, Mexico (07.14.15, 07.15.2015)  
Mother
- 10) [REDACTED] (07.14.15) in Acapulco, Mexico  
Sister
- 11) [REDACTED] (07.14.15) in Acapulco, Mexico  
Brother
- 12) [REDACTED] (07.15.15) in Acapulco, Mexico  
Sister
- 13) [REDACTED] (02.10.2016) in Phoenix, Arizona  
Partner

Video Interviews (Recorded by Taylor Fox and Alan Ellis, Ph.D. in Acapulco, Mexico):

- 1) [REDACTED] (07.15.15)  
Sister
- 2) [REDACTED] (07.15.15)  
Sister
- 3) [REDACTED] (07.15.15)  
Mother
- 4) [REDACTED] (07.15.15)  
Brother

[REDACTED]

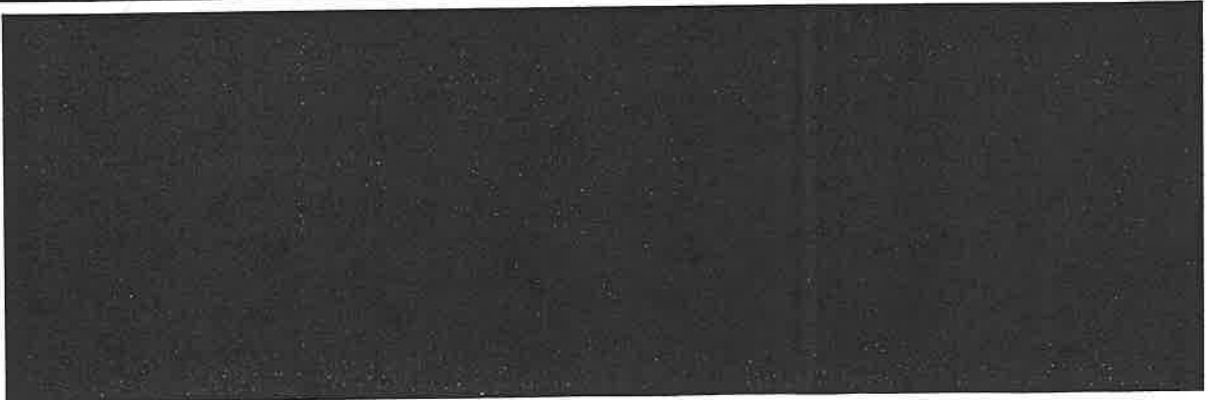
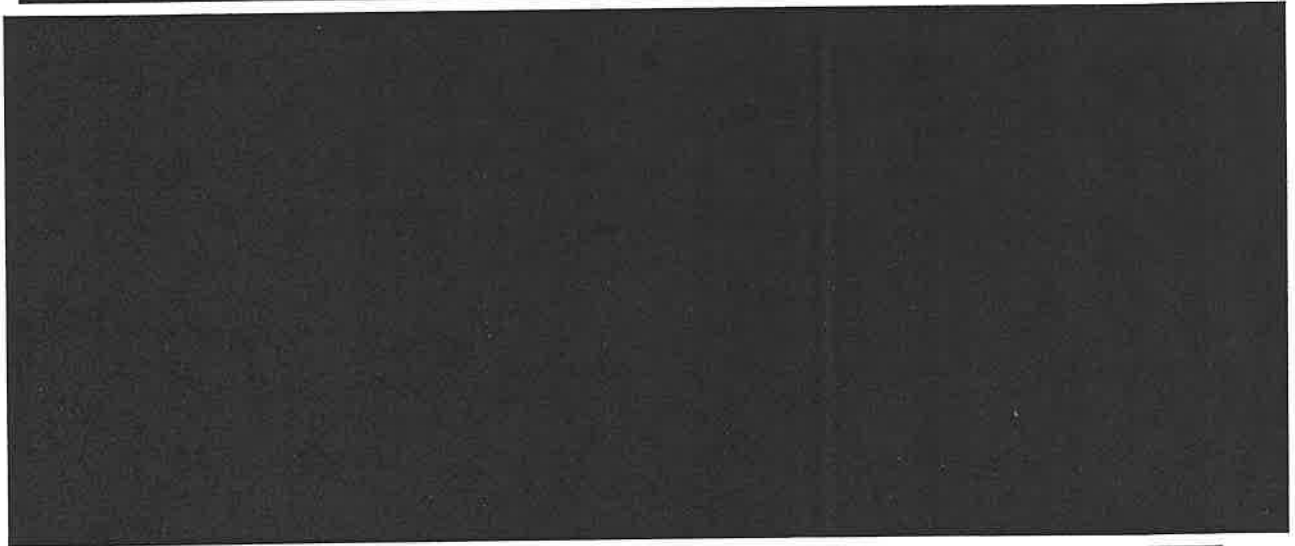
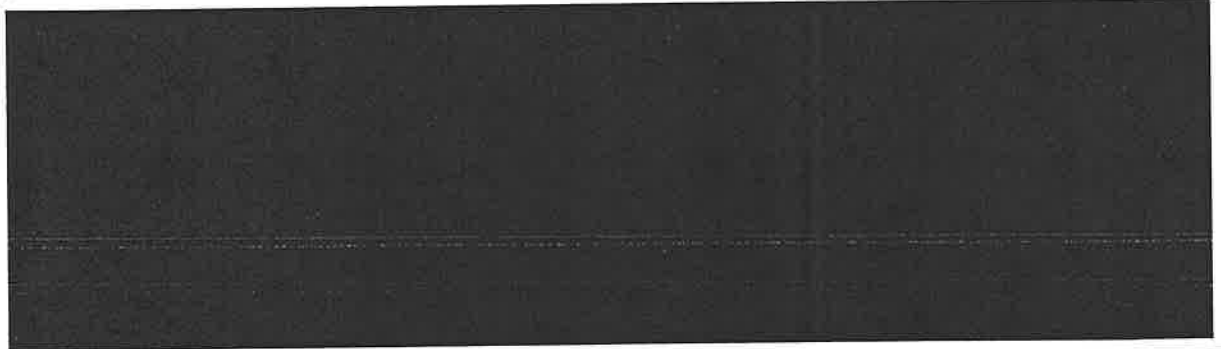
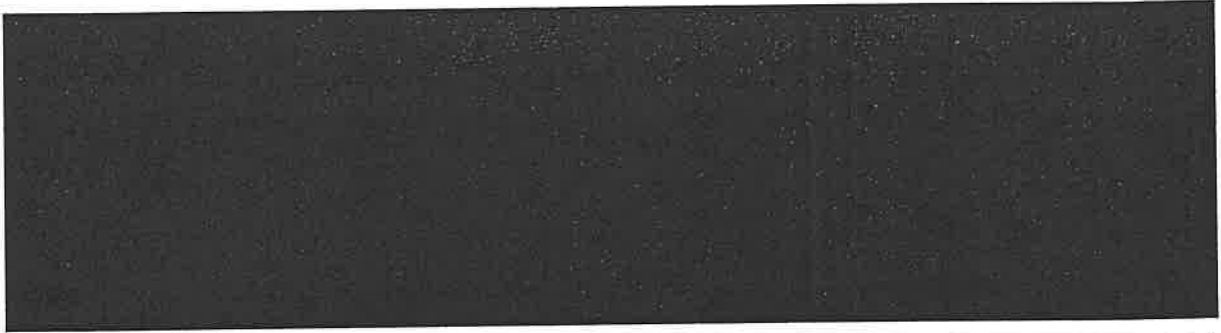
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]





[REDACTED]

[REDACTED]

[REDACTED]

These [REDACTED] were obtained from family members and significant others through interviews. Most of the interviews were done in person, though some telephonically. Two sets were done in California, one set in Mexico, and one interview in Phoenix.

[REDACTED]

[REDACTED]

**REVIEW OF INTERVIEW SUMMARIES OF FAMILY LIVING IN SANTA ANA, CALIFORNIA BY LEGAL DEFENSE TEAM**

The following is a review of the summaries of interviews completed by the legal defense team. They include interviews of the following individuals:

1. [REDACTED] (brother's wife) 02.23.14
2. [REDACTED] Lagunas (brother) 01.26.14
3. [REDACTED] (son) 02.23.2014

4. [REDACTED] (brother of wife) undated
5. [REDACTED] (paternal first cousin) 02.22.14
6. [REDACTED] (wife/mother of children) 0.23.14
7. [REDACTED] (paternal first cousin) 02.22.14
8. [REDACTED] (paternal aunt) 02.23.14
9. [REDACTED] (paternal first cousin) 02.22.14

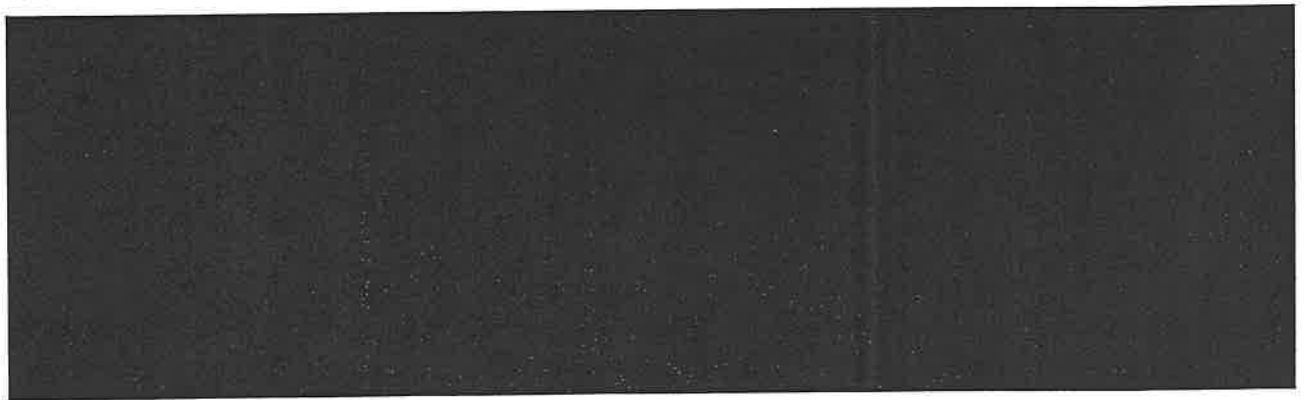
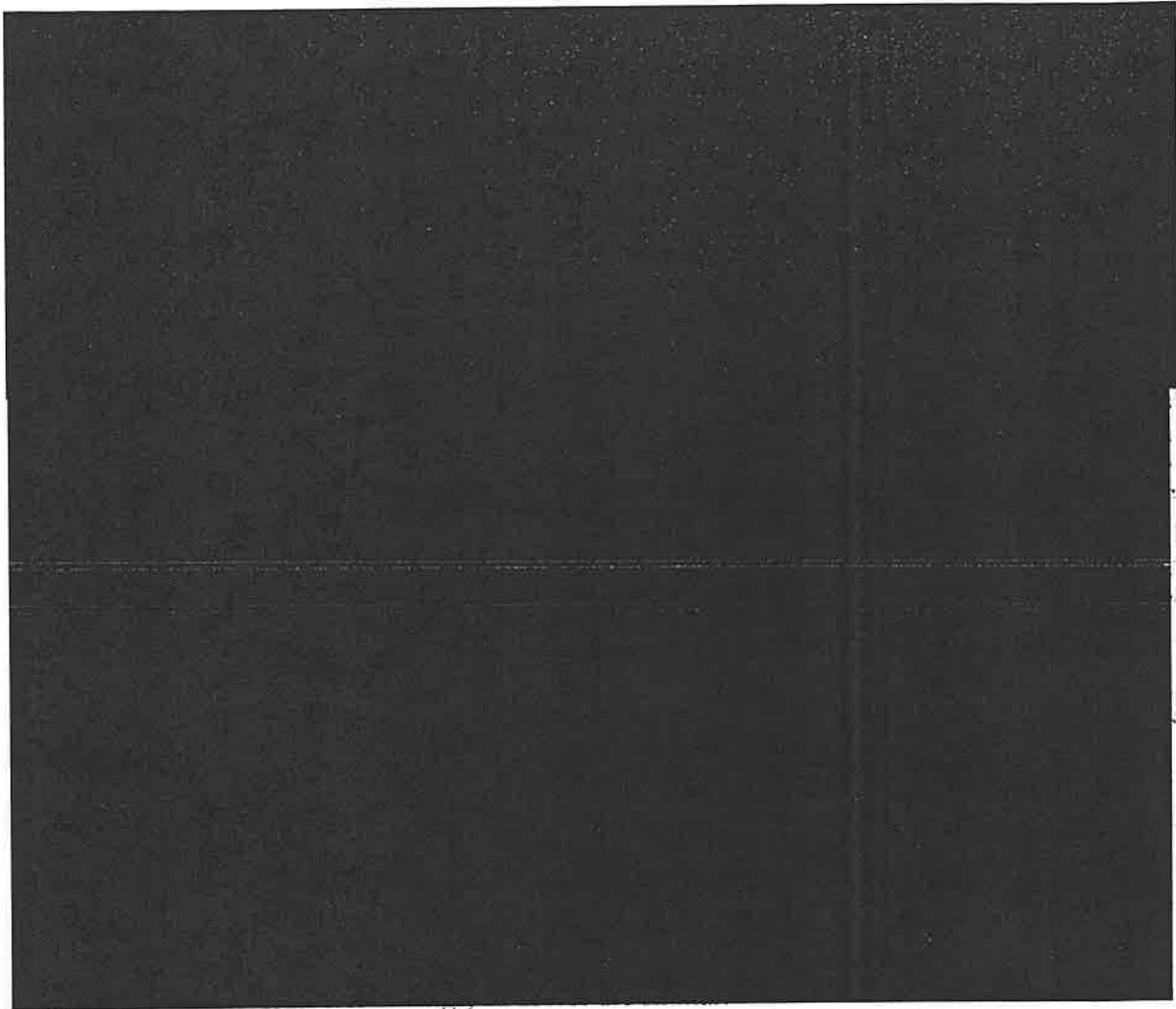
Throughout the interviews, information was consistent with my previous findings. [REDACTED]

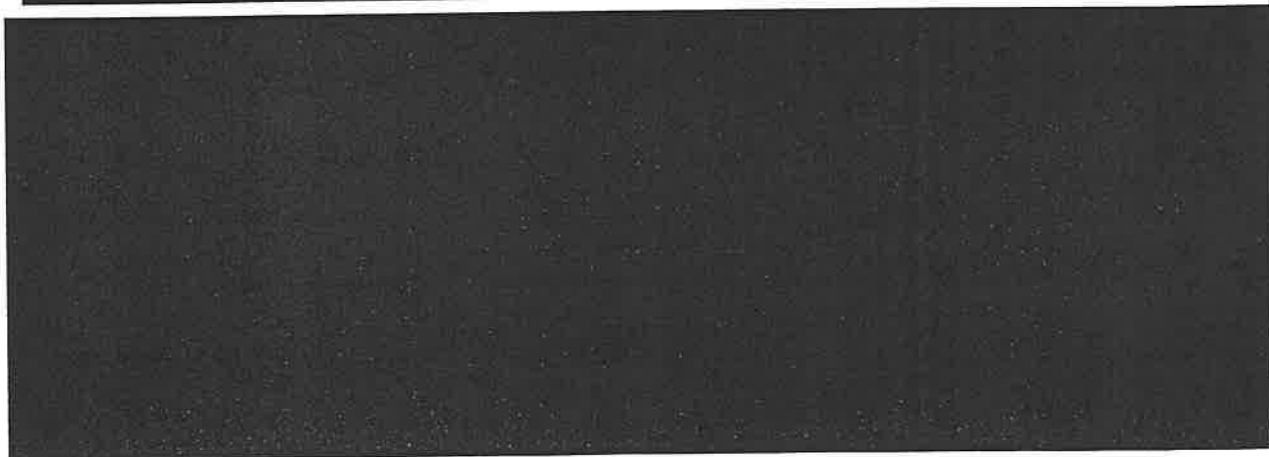
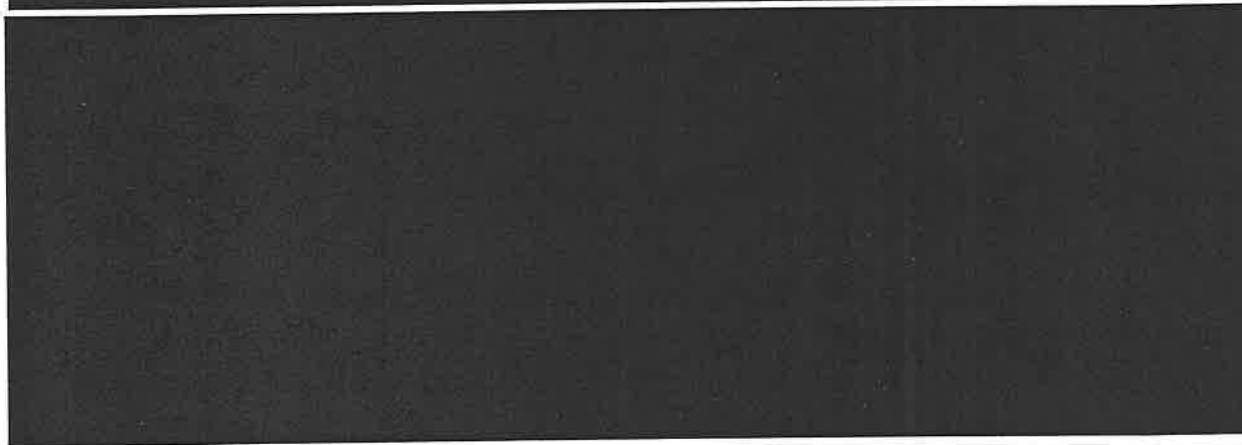
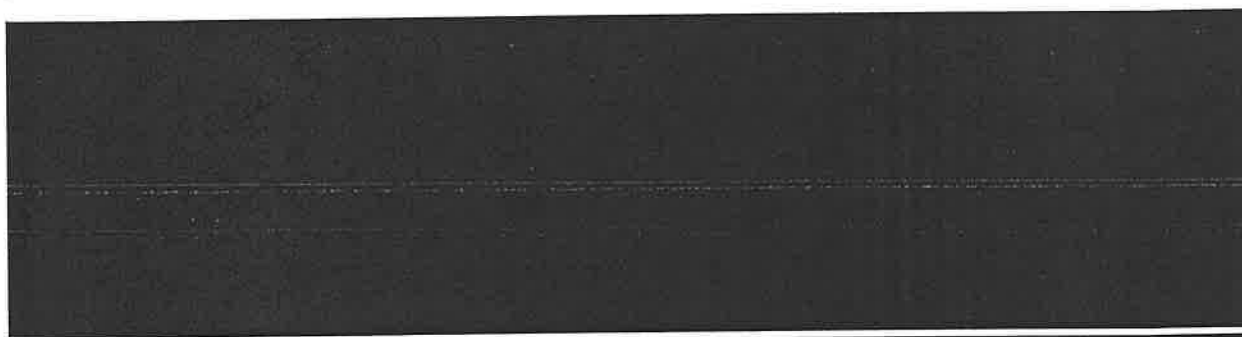
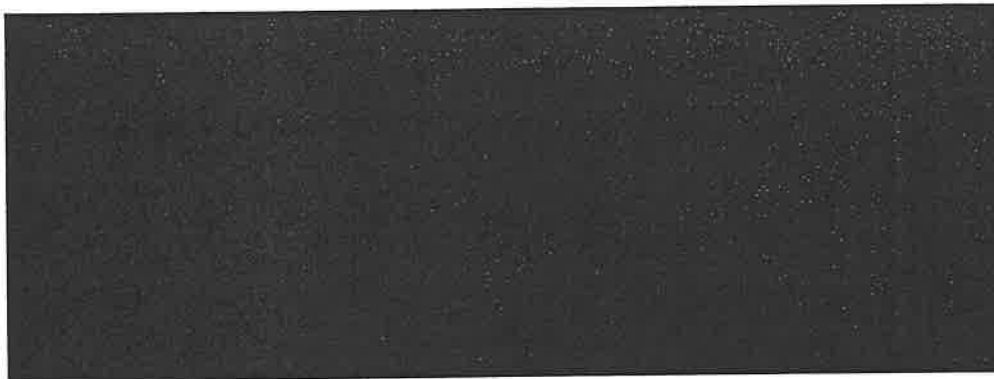
[REDACTED]

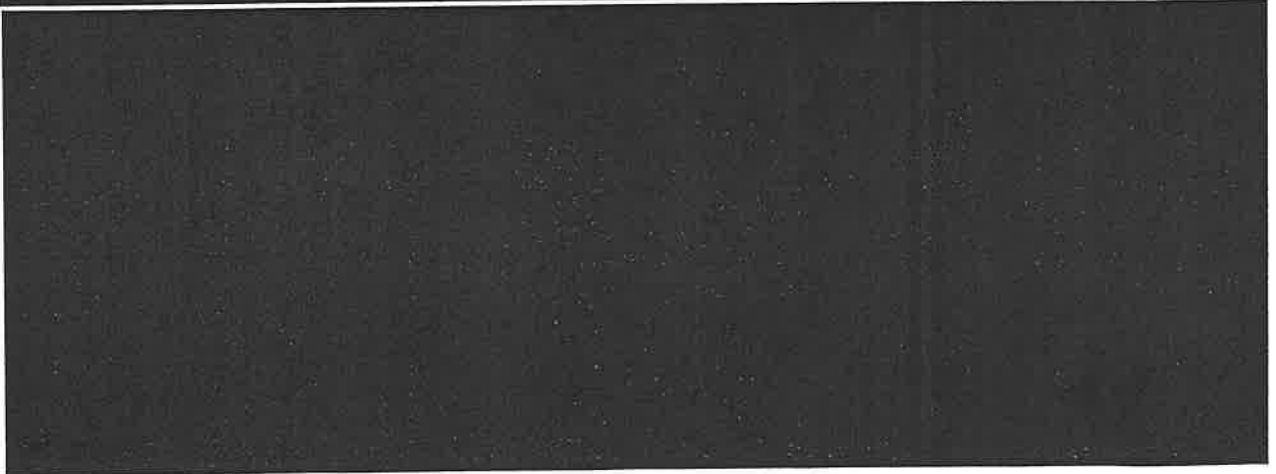
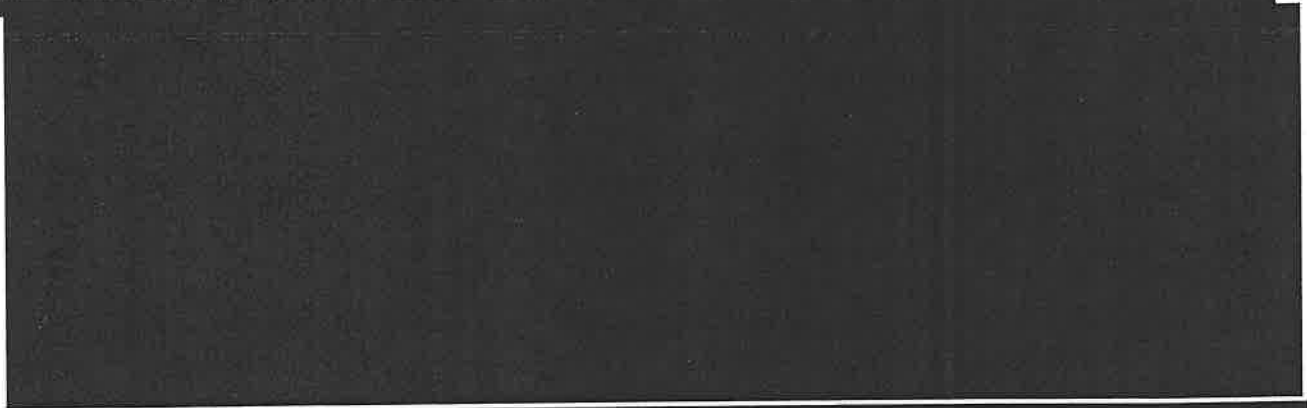
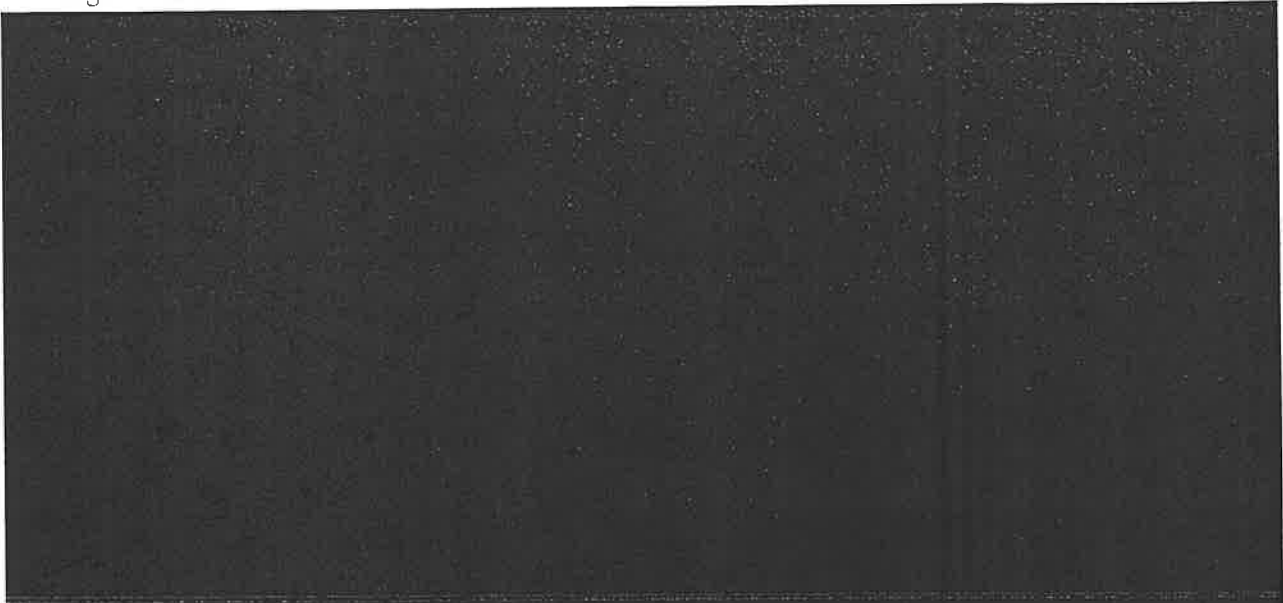
[REDACTED]

[REDACTED]

[REDACTED]







[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

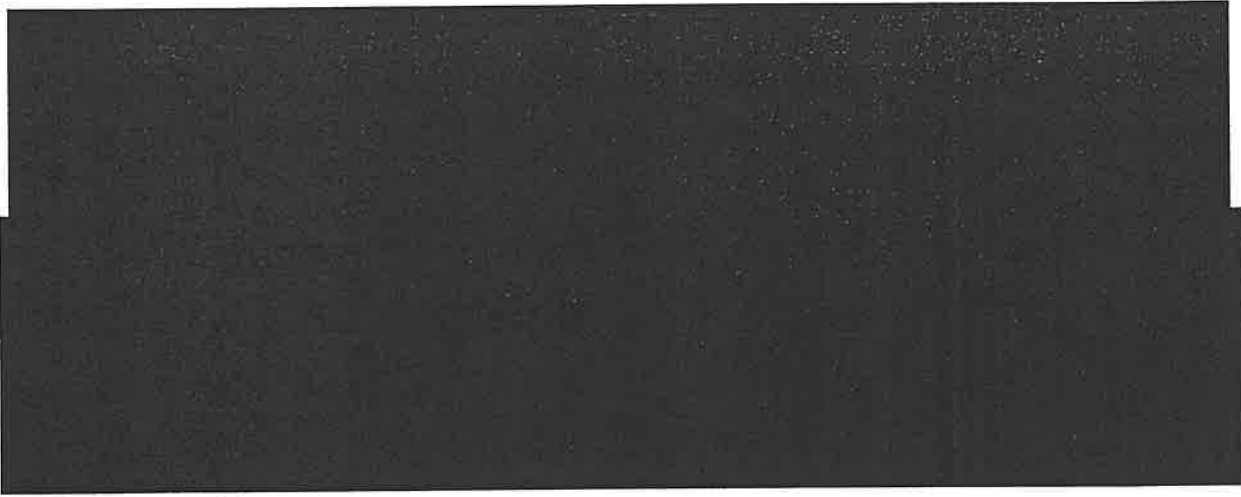
[REDACTED]

[REDACTED]

[REDACTED]

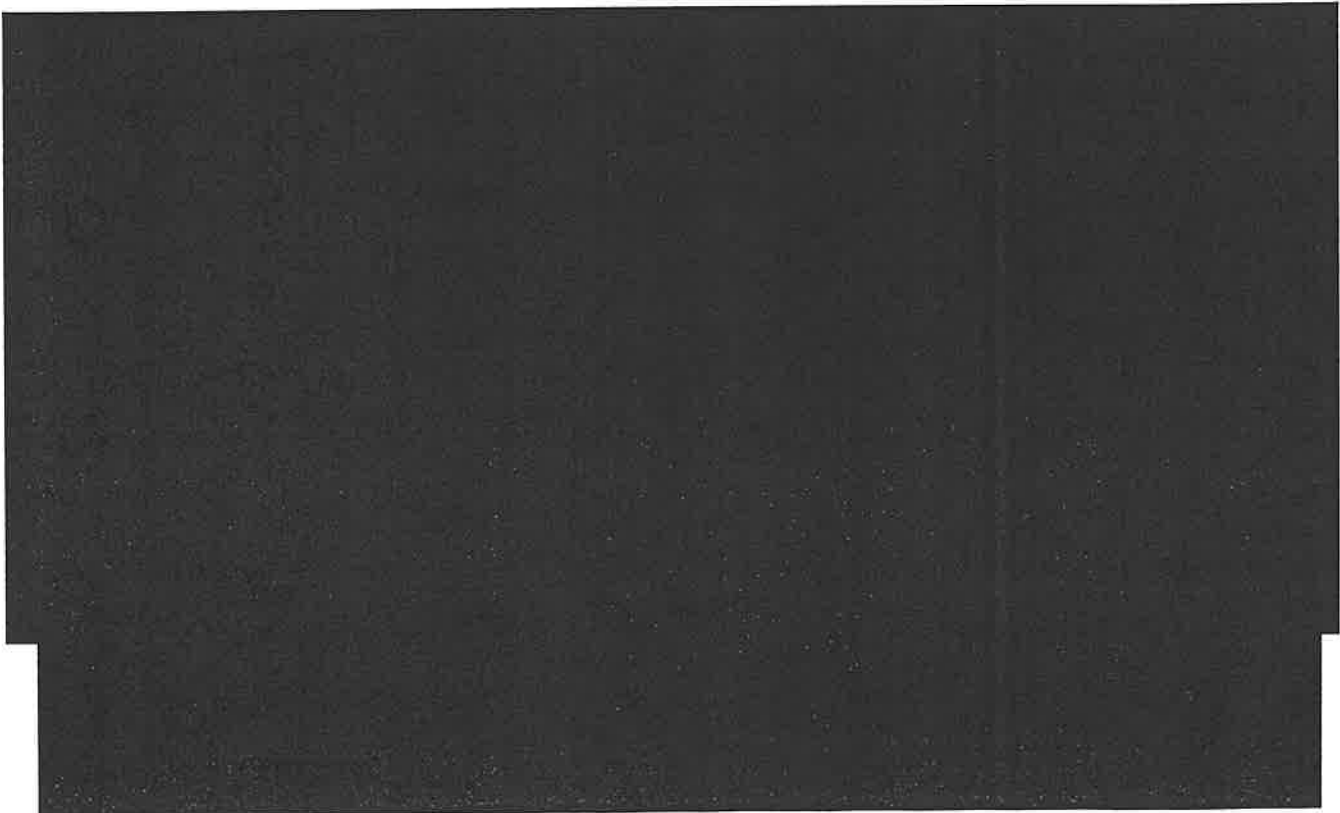
[REDACTED]





[REDACTED]  
The administration of the [REDACTED] was also administered to the following members of his family:

- [REDACTED] Ex-Spouse on 12.05.14 via telephone
- [REDACTED] Brother on 12.08.14 via telephone
- [REDACTED] Brother on 07.14.15 in Acapulco, Mexico
- [REDACTED] Mother on 07.15.15 in Acapulco, Mexico
- [REDACTED] Partner on 02.10.16 in Phoenix, Arizona



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Testing of Family:

One of his brothers as well as his mother was tested in Mexico for [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

These findings are based on interviews of Mr. Hernandez Lagunas, as well as 13 other individual family members in four separate locations. The inter-rater reliability among all individuals interviewed, including Mr. Hernandez Lagunas, was very high.

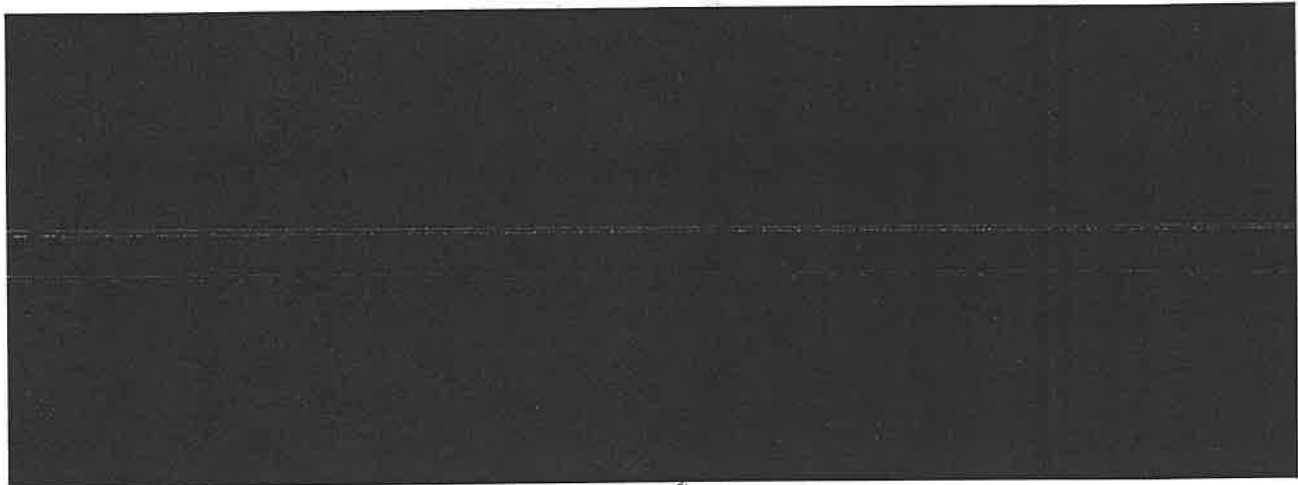
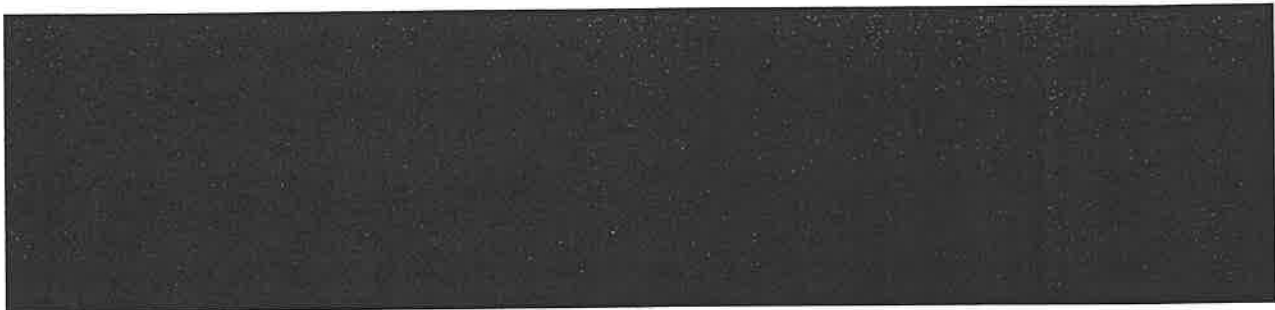
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Sincerely,

Antonio E. Puente, Ph.D.

CC: Tonya J. Peterson

Attachments:

A. Compilation of Records Reviewed

- 1.
- 2.
- 3.
- 4.
5. Review of Video Deposition of Family Members – pg. 20
- 6.
- 7.



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 4185  
2 JUDITH ANN SCHONLAU  
3 CCR #18  
4 75 COURT STREET  
5 RENO, NEVADA

6  
7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
8 IN AND FOR THE COUNTY OF WASHOE  
9 BEFORE THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

10 -o0o-

11 THE STATE OF NEVADA, )  
12 )  
12 Plaintiff, )  
13 )  
13 vs. ) CASE NO. CR19-0447  
14 ) DEPARTMENT NO. 4  
14 WILBER MARTINEZ GUZMAN, )  
15 )  
15 Defendant. )  
16 \_\_\_\_\_ )

17 TRANSCRIPT OF PROCEEDINGS

18 STATUS HEARING

19 MONDAY, NOVEMBER 23, 2020, 10:00 A.M.

20 Reno, Nevada

21  
22 Reported By: JUDITH ANN SCHONLAU, CCR #18  
23 NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER  
24 Computer-aided Transcription

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A P P E A R A N C E S

FOR THE PLAINTIFF:           OFFICE OF THE DISTRICT ATTORNEY  
  
                                  BY:   CHRISTOPHER HICKS, EQ.  
  
                                  DISTRICT ATTORNEY  
  
                                  TRAVIS LUCIA, ESQ.  
  
                                  DEPUTY DISTRICT ATTORNEY  
  
                                  1 S. SIERRA STREET  
  
                                  RENO, NEVADA

                                  DOUGLAS COUNTY DISTRICT ATTORNEY  
  
                                  BY:   MARK JACKSON, ESQ.  
  
                                  DISTRICT ATTORNEY  
  
                                  1038 BUCKEYE ROAD  
  
                                  MINDEN, NEVADA

FOR THE DEFENDANT:

                                  JOHN ARRASCADA, ESQ.  
  
                                  PUBLIC DEFENDER  
  
                                  KATE HICKMAN, ESQ.  
  
                                  JOSEPH GOODNIGHT, ESQ.  
  
                                  GIANNA VERNES, ESQ.  
  
                                  DEPUTY PUBLIC DEFENDERS  
  
                                  350 S. CENTER STREET  
  
                                  RENO, NEVADA



1 RENO, NEVADA; MONDAY, NOVEMBER 23, 2020; 10:00 A.M.

2 -oOo-

3  
4 THE COURT: Thank you. Please be seated. Good  
5 morning. Let the record reflect that this session of the  
6 Court is taking place on November 23, 2020. It is being held  
7 remotely because of the closure of the courthouse t 75 Court  
8 Street Reno, Washoe County, Nevada. The Court and all the  
9 participants are appearing through simultaneous audiovisual  
10 transmission.

11 I am physically located in Reno, Washoe County,  
12 Nevada, which is the site of today's court session. The other  
13 court personnel who are present will identify themselves for  
14 the record and where they are appearing from.

15 COURT CLERK: Good morning. My name is Marci tone.  
16 I am appearing from Washoe County, Nevada.

17 COURT REPORTER: Judy Schonlau, court reporter,  
18 Washoe County, Nevada.

19 THE COURT: We have a bailiff assisting us today.  
20 Deputy? Although I don't know if he can hear me because they  
21 are on the Spanish channel, so I guess not. But there are  
22 bailiffs in the room from 911 Parr Boulevard.

23 In addition, the public is able to listen and view  
24 these proceedings through the video-audio link found at

1 washoecourts.com. If anyone during the proceedings cannot see  
2 or hear the other participants in this hearing, notify the  
3 Court as it takes place.

4 In a few minutes, I am going to ask counsel to  
5 identify where they are appearing from as well as their name  
6 and note whether or not they received notice that this hearing  
7 is taking place pursuant to Nevada Supreme Court Rules Part IX  
8 relating to simultaneous audiovisual transmission in criminal  
9 matters, and note whether they have any objection to  
10 proceeding in this manner this morning.

11 I also at this time would like the interpreter to  
12 identify herself.

13 THE INTERPRETER: Good morning, Your Honor, Jessica  
14 Escobar, one of the two certified court interpreters this  
15 morning for the State of Nevada appearing in Washoe County,  
16 Nevada. My certification number is NVEJ 100. If I may have a  
17 moment to interpret that into Spanish for Mr. Martinez Guzman  
18 and allow my colleague to introduce himself as well.

19 THE COURT: Okay. The other interpreter.

20 THE INTERPRETER: Good morning, Your Honor, this is  
21 Joseph Miller State certified court interpreter for Nevada,  
22 certification NVMJ 501, and I am located in Washoe County.  
23 Your Honor, may this interpreter request a moment to interpret  
24 this for the defendant now?

1 THE COURT: Ms. Escobar you didn't interpret that  
2 for the defendant?

3 THE INTERPRETER: The interpreter mode in Zoom does  
4 not allow the interpreters to hear each other. Mr. Miller  
5 will have to do it himself.

6 THE COURT: Go ahead, Mr. Miller.

7 The record should also reflect that this is case  
8 CR19-0447, State of Nevada versus Wilber Ernesto Martinez  
9 Guzman. Mr. Guzman, can you hear me okay?

10 THE DEFENDANT: Yes. Yes, I do hear you.

11 THE COURT: And you are appearing from 911 Parr  
12 Boulevard; is that correct?

13 THE DEFENDANT: Yes.

14 THE COURT: There is an order in place with regard  
15 to the face masks. And I can hear you, and as long as the  
16 interpreters can hear and the court reporter, I am fine with  
17 you leaving your face masks on in order to fulfill the  
18 requirement of the COVID pandemic, but we'll tell you to lower  
19 it if we can't hear you. Is that okay with you?

20 THE DEFENDANT: Yes, that's fine.

21 THE COURT: All right. Thank you. This is the time  
22 set for a status hearing. I'd ask for the State to identify  
23 themselves at this time.

24 MR. JACKSON: Good morning, Your Honor, Mark Jackson

1 on behalf of the State of Nevada. I am located here in Washoe  
2 County, Nevada. I have received a copy of the Notice that the  
3 Court spoke of regarding the Supreme Court Rules Part IX, and  
4 I have no objection to proceeding in this matter in that  
5 manner.

6 THE COURT: Thank you.

7 MR. LUCIA: Good morning, Your Honor, Travis Lucia  
8 appearing from Washoe County, Nevada, for the State in this  
9 case. I have also received the aforementioned Notice and have  
10 no objection to proceeding in this fashion.

11 THE COURT: Thank you.

12 MR. HICKS: Good morning, Your Honor, Chris Hicks on  
13 behalf of the State. I also have received and read the Notice  
14 and have no objection to proceeding in that manner, and I am  
15 in Washoe County. Thank you.

16 THE COURT: Counsel for the defense, would you  
17 identify yourselves, please?

18 MR. ARRASCADA: John Arrascada on behalf of  
19 Mr. Martinez Guzman appearing in Washoe County, Nevada. I am  
20 familiar with the Order as entered. No objection for purposes  
21 of this hearing.

22 THE COURT: Thank you.

23 MR. VERNES: Good morning, Your Honor, Gianna  
24 Verness on behalf of Mr. Guzman. I have received the

1 appropriate Notice and have no objection to a hearing or the  
2 hearing proceeding in this manner.

3 THE COURT: Where are you appearing from?

4 MS. VERNES: In Washoe County, Nevada, Your Honor.

5 THE COURT: Okay. Thank you.

6 MS. HICKMAN: Good morning, Your Honor, Kate Hickman  
7 on behalf of Mr. Martinez Guzman. I am in Washoe County this  
8 morning. I have notice of the Order, and I have no objection  
9 to proceeding this way.

10 THE COURT: Thank you. Does that conclude the  
11 defense?

12 MR. GOODNIGHT: Joe Goodnight on behalf of  
13 Mr. Martinez Guzman. I am in Washoe County. I received the  
14 Notices and I have no objection to proceeding in this manner.

15 THE COURT: Okay. Thank you. Mr. Goodnight, are  
16 you the last defense attorney?

17 MR. GOODNIGHT: I am. Thank you.

18 THE COURT: Mr. Guzman, were you able to hear  
19 everyone so far?

20 THE DEFENDANT: Yes.

21 THE COURT: Okay. Then we will proceed with the  
22 hearing today. It has been set as a status hearing. We  
23 currently had a request to continue the trial and continue any  
24 hearings regarding a potential Atkins motion which I have

1 still not seen. We had vacated the jury trial because of the  
2 timing of all of these pleadings. Also, I note that the  
3 defense has filed an appeal with the Nevada Supreme Court, but  
4 I don't know what the status of that appeal is.

5 Then on Friday, we received a Supplement to the  
6 Motion by the defense which we called D-28, and that  
7 Supplement was filed on Friday. So here we are with our  
8 status. And it appears to me that, since I am waiting to  
9 decided D-23 in part until I decide D-28, I can't really make  
10 a decision today until the defense is given an opportunity to  
11 respond to the pleading that was filed on Friday. So that was  
12 sort of my thoughts about today, and I am certainly open to  
13 suggestions. I think my plan for today would be to hear if  
14 there are any updates with regard to the case that you all  
15 wanted to tell me about, and then give the defense until a  
16 week from today to file and submit any response they want to  
17 make to the State's Supplemental Opposition and then have  
18 another status hearing two weeks from today on Monday,  
19 December, Ms. Clerk is it the 8th or 7th?

20 THE CLERK: It would be December 7th.

21 THE COURT: December 7th at 10:00 a.m. And between  
22 now and the time-- between the time the defense responds to  
23 the State's Supplement and before that status hearing, I will  
24 have made a ruling. If I want to set the case for trial and

1 other hearings, we would do that on the December 7th hearing.  
2 And if we are going to delay further, we'll notify you and  
3 talk about that based on the ruling I make to D-23 and D-28.  
4 So that was my proposal for what we would do today.

5 Mr. Jackson, what were your thoughts about today's  
6 hearing.

7 MR. JACKSON: Mark Jackson for the record. Thank  
8 you, Your Honor. I will try to speak loud and maybe slow down  
9 a bit, because I know that the court reporter cannot see my  
10 mouth or lips because it is covered by the mask.

11 Your Honor, I appreciate your comments. The State  
12 appreciates your comments. The Supplement that was filed on  
13 Friday were supplemental exhibits. There was no argument at  
14 all, but it goes right to the heart of the matter of the  
15 Defendant's Motion to Strike D-28 that they had filed as well  
16 as the State's Opposition to the Motion to Strike which  
17 included all the actual arguments. So these were timely filed  
18 in the context that these exhibits were not obtained by the  
19 State until Friday afternoon, and then they were submitted to  
20 the Court and to defense counsel immediately thereafter. So we  
21 have no objection if that is the way the Court would want to  
22 proceed.

23 The State is prepared to argue based upon what has  
24 been filed with the Court as well as the supplemental

1 exhibits, but we fully understand that the Court would like to  
2 give the defense an opportunity to submit any other type of  
3 other exhibits or argument in connection with the supplemental  
4 exhibits that were filed on Friday.

5 THE COURT: Okay. Thank you. Ms. Hickman.

6 MS. HICKMAN: Thank you, Your Honor. Can I have a  
7 brief moment just real quickly?

8 THE COURT: Certainly.

9 MS. HICKMAN: Thank you, Your Honor. Based on the  
10 Court's comments, we would agree to continue this to a hearing  
11 date in December. In terms of time to file anything based on  
12 what was filed by the State on Friday, given the holiday, we  
13 just ask we have until Wednesday instead of Monday to file  
14 anything.

15 THE COURT: Okay. That's fine. It has to be filed  
16 by noon on Wednesday. What is the date, Ms. Clerk? Is it  
17 December 2nd or 3rd?

18 THE CLERK: Yes. It would be December 2nd, I think.  
19 December 2nd.

20 THE COURT: So on Wednesday, December 2nd by noon it  
21 must be filed with the Court. Mr. Jackson, I didn't really  
22 anticipate argument on the motions. I think the pleadings are  
23 sufficient for me to make a ruling, and so I was thinking I  
24 would make my decision based on the pleadings before the



1 hearing so we would have an event we would actually do  
2 something, either continuing it out for further status  
3 hearings because of an indefinite continuance, or,  
4 specifically state a date or whatever we need to do. Are you  
5 comfortable with not arguing the Opposition to the Motion to  
6 Strike?

7 MR. JACKSON: Your Honor, I have no objection to  
8 proceeding like that.

9 COURT REPORTER: I am sorry, Your Honor. I am  
10 having trouble understanding Mr. Jackson.

11 THE COURT: Mr. Jackson if you would make sure  
12 everybody in the room is away from you far. Make sure  
13 Mr. Hicks and Mr. Lucia are away from you. I know it's a big  
14 room, and you can repeat what you said.

15 MR. JACKSON: I have no objection to proceeding in  
16 the manner that you described, Your Honor. It has been very  
17 well briefed in the State's Opposition to the Motion to Strike  
18 which is Defense Motion D-28 as well as the supplemental  
19 exhibits that were filed on Friday which go to the heart of  
20 the matter.

21 THE COURT: Okay. So is there any other updates in  
22 any other aspect of the case that anyone would like to present  
23 today to me? Anything for the defense?

24 MR. GOODNIGHT: I can update. Ms. Hickman, are you

1       okay with that? So, Your Honor one of tasks I have been  
2       working on and we are kind of in a holding pattern on right  
3       now is arranging an actual appearance of our witnesses from  
4       El Salvador. Currently, the U.S. Embassy in El Salvador is  
5       closed, and they're not processing those applications. So  
6       when we ultimately find a date for the Atkins hearing and the  
7       trial guilt phase and penalty phase if we get there, we are  
8       not able right now to arrange the presence of our witnesses.  
9       We have been working on this diligently. At the last trip  
10      right before the pandemic you recall Dr. Puente was detained  
11      in the airport and not allowed to actually conduct his Atkins  
12      investigation. We were able to continue to identify what we  
13      think will be potential witnesses for an Atkins claim and for  
14      witnesses at the penalty phase if we get there. And so, you  
15      know, that trip did not go wasted. We were able to apply for  
16      passports for many of these witnesses. We were able to start  
17      filling out the Visa applications, but the U.S. Embassy and  
18      the Secretary of State stopped processing these applications  
19      on March 30th, I believe. We have been exploring other  
20      avenues, trying to get information, and we are just not  
21      getting anywhere. Nothing is moving when it comes to the Visa  
22      applications. There is parole we can apply for, but it's at a  
23      standstill right now because of the global pandemic. We didn't  
24      want it to be a surprise to the Court. It is something we are

1 in a holding pattern right now. We are still trying to pursue  
2 other avenues, but nothing has revealed itself, and so we are  
3 waiting for, I guess, the countries to open back up. And it's  
4 an issue that isn't totally ripe yet, because we don't know  
5 the dates that will be set for the Atkins hearing and for the  
6 trial, and we aren't exactly sure who the witnesses will be if  
7 Dr. Puente identifies other witnesses that would be relevant  
8 to Mr. Guzman's case, and we have got to start that  
9 application process from the beginning. We wanted to update  
10 the Court, just to let you know we are working on it. I didn't  
11 want it to be a surprise to anybody.

12 THE COURT: All right. Thank you. Does the State  
13 have anything?

14 MR. LUCIA: I know Your Honor had mentioned a status  
15 on the appeal. The Supreme Court has asked the State for  
16 briefing on the Writ that was filed, and our response is due  
17 December 11th. So we are working on that. As we know from the  
18 first iteration of this, I wouldn't even guess when that might  
19 resolve. Just so the Court has the most updated information,  
20 December 11th is when our response is due.

21 THE COURT: Okay. Thank you. Is there anything  
22 further?

23 MR. LUCIA: One moment, if I may. No, thank you,  
24 Judge. Appreciate it.

1 THE COURT: Okay. The Motion to Continue the Atkins  
2 hearing involves whether or not people can appear in ways  
3 other than traditional in-person appearance, so I think some  
4 of that, Mr. Goodnight, may be addressed by the Order, and I  
5 may say yes, I agree we have to continue this out and stay in  
6 the holding pattern, or there may be information that I  
7 provide to you. I anticipate whatever we decide to do, I am  
8 sure there will be more pleadings from one side or the other.  
9 So we'll see where we go with this. I want to make sure we  
10 get the decisions in in light of the situation at the Supreme  
11 Court. Even if the Supreme Court were to reverse me and say  
12 that those counts that are out of Douglas County cannot  
13 continue in this action, it wouldn't change that this action  
14 would proceed without those counts. So we need to proceed in  
15 this case as though we have all the counts, but if the Supreme  
16 Court says no, Mr. Guzman will have to address both cases  
17 separately, then sobeit, and that won't really change our  
18 process here in Washoe County. So I think it is best to just  
19 continue assuming that I will be affirmed, even though we have  
20 no idea when that will be, but I think I will just proceed as  
21 though we are going forward on all counts at this time. Thank  
22 you for the update. I know that you thought we might get  
23 little more done today, but it is good to at least know where  
24 we are at. I would not anticipate any other pleadings other

1 than what the defense files next week and then be able to  
2 resolve this issue and move forward on December 7th so one way  
3 or another, we can know what we are going to be looking at.

4 The one thing I did want to note, there was a  
5 request for a definite trial date in this case instead of the  
6 flights that we are putting criminal cases on. There also has  
7 been a request, global request from the State and defense  
8 attorneys to have global dates or not have flight dates on  
9 Class A felonies, murder and sexual assaults. So that is under  
10 consideration. So, hopefully, all of that will be resolved  
11 within the District by December 7th also so that everybody  
12 will know whether or not you are in a stacked flight or  
13 whether or not you are not. In your particular case, it really  
14 does not make any difference, because your case takes  
15 precedence over every case in the District. So whether you  
16 are in a stacked flight or a definite trial date, you have a  
17 definite trial date because you are number one no matter what.  
18 So once we set it, it doesn't really matter if we are calling  
19 it flights or if we're calling it a definite set. Now the  
20 other Class A felonies are not in the same boat, but because  
21 of the status, you are the number one set no matter what we  
22 say. You would bump any kind of civil case, any kind of  
23 criminal case, everything. You get first priority. It may not  
24 be as important to you, but it was raised by the defense.

1           So that said, there may not be anything else to do  
2 today. We will look forward to seeing the defense response,  
3 and we'll get a written Order out on D-23 and D-28 prior to  
4 your December 7th hearing. Mr. Guzman, were you able to hear  
5 everything?

6           THE DEFENDANT: Yes, I was able to hear everything.

7           THE COURT: Did you need to speak with your  
8 attorneys?

9           THE DEFENDANT: Yes.

10          THE COURT: You do want to speak to them?

11          THE DEFENDANT: Yes.

12          THE COURT: Deputy, do you have a phone number the  
13 attorneys can call?

14          THE CLERK: Your Honor, they already have that.  
15 They spoke to him just prior to court. They have a whole  
16 process.

17          THE COURT: They spoke to the bailiff prior to court  
18 or to the defendant?

19          THE CLERK: To the defendant with the interpreters.

20          THE COURT: Okay. Who is going to call Mr. Guzman?

21          THE INTERPRETER: Your Honor, I believe Jessica has  
22 those numbers. We could just redial them as a phone call  
23 between the office of the Public Defender and Mr. Martinez  
24 Guzman.

1 THE COURT: Okay. Thank you. I will just wait until  
2 that is finished.

3 THE INTERPRETER: I was unable to hear my colleague.  
4 Is he calling or am I?

5 THE COURT: You are.

6 THE INTERPRETER: Okay. Thank you.

7 THE CLERK: Your Honor, just so you know,  
8 Ms. Escobar will conference call in the interpreters, the  
9 people at WCPD as well as the jail so they can all speak  
10 together at the same time.

11 THE INTERPRETER: By way of informing the Court,  
12 they're speaking on the phone right now. I facilitated the  
13 conference call. Mr. Miller is interpreting for them at this  
14 time. I am muted on the phone just so everyone knows.

15 Your Honor, the phone call has just concluded.

16 THE COURT: Thank you. I see Mr. Guzman has returned  
17 to the courtroom, and I have not seen -- There is the Public  
18 Defender. So, counsel, have you concluded your conference with  
19 Mr. Guzman?

20 MS. HICKMAN: We have.

21 THE COURT: Mr. Guzman, is there anything further  
22 that you'd like to discuss with the Court this morning?

23 THE DEFENDANT: No.

24 THE COURT: All right. Thank you. Is there

1 anything further from the State?

2 MR. LUCIA: No. Thank you for your time, Your Honor.  
3 Happy Thanksgiving.

4 THE COURT: Thank you. The same to all of you.  
5 Stay safe everyone. Take care. We'll see you after the  
6 holiday on December 7th. If there is nothing further, we'll be  
7 in recess. Thank you.

8 (Whereupon, the proceedings were concluded.)

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1 STATE OF NEVADA, )  
2 COUNTY OF WASHOE. ) ss.

3 I, Judith Ann Schonlau, Official Reporter of the  
4 Second Judicial District Court of the State of Nevada, in and  
5 for the County of Washoe, DO HEREBY CERTIFY:

6 That as such reporter I was present in Department  
7 No. 4 of the above-entitled court on MONDAY, NOVEMBER 23,  
8 2020, at the hour of 10:00 a.m. of said day and that I then  
9 and there took verbatim stenotype notes of the proceedings had  
10 in the matter of THE STATE OF NEVADA vs. WILBER MARTINEZ  
11 GUZMAN, Case Number CR19-0477.

12 That the foregoing transcript, consisting of pages  
13 numbered 1-19 inclusive, is a full, true and correct  
14 transcription of my said stenotypy notes, so taken as  
15 aforesaid, and is a full, true and correct statement of the  
16 proceedings had and testimony given upon the trial of the  
17 above-entitled action to the best of my knowledge, skill and  
18 ability.

19 DATED: At Reno, Nevada this 23rd day of November, 2020.

20  
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22  
23  
24

/s/ Judith Ann Schonlau  
JUDITH ANN SCHONLAU CSR #18

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15 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
16  
17 IN AND FOR THE COUNTY OF WASHOE

18 THE STATE OF NEVADA,

19 Plaintiff,

Case No. CR19-0447

20 vs.

Dept. No. 4

21 WILBER ERNESTO MARTINEZ GUZMAN,

22 Defendant.

23  
24  
25  
26  
RESPONSE TO STATE'S SUPPLEMENTAL EXHIBITS TO OPPOSITION  
TO MOTION TO CORRECT RECORD AND STRIKE STATE'S ARGUMENT  
REGARDING DR. PUENTE'S WORK METHODOLOGY IN MARICOPA  
COUNTY CASE NUMBER CR2013-001614-001 DUE TO THE MATERIAL  
MISREPRESENTATION PRESENTED IN THE STATE'S ARGUMENT

(D-28)

27 Wilber Ernesto Martinez Guzman, through counsel, Washoe County Public  
28 Defender, John L. Arrascada, Katheryn Hickman, Gianna Verness and Joseph

1 Goodnight, files this Response to the State’s Supplemental Exhibits Regarding D-  
2 28 filed by the State on November 20, 2020.

3 This Response is based on the attached Points and Authorities, previously  
4 filed documents, and oral arguments.

5 POINTS AND AUTHORITIES

6 On October 16, 2020, Mr. Martinez Guzman filed (D-28) requesting to  
7 correct the court record and strike the State’s argument regarding Dr. Puente’s  
8 work in a previous case out of Maricopa County. The State filed its Opposition to  
9 the Motion on October 26, 2020, and the Motion was submitted to the Court on the  
10 same day.

11 In its opposition, the State argued that Dr. Puente interviewed *some* family  
12 members over the phone, and that he also relied on videotaped interviews of other  
13 informants,<sup>1</sup> which is a different position than the State took in its original written  
14 argument in response to the hearings held in July of 2020. The State’s original  
15 argument was that Dr. Puente “elected to employ alternative means to complete  
16 his work. He did not wait for the kidnappings to subside. He did not wait for the  
17 government to allow his travel. He did not wait for the promise of rescue if he were  
18 to be taken. He simply picked up a phone and spoke with an informant. He simply  
19 watched a video recording of an interview conducted by defense counsel. He was  
20 nevertheless still able to author a report despite those limitations.” *See State’s*  
21 *Argument in Opposition to Motion to Continue Due to Global Pandemic COVID-19*  
22 *(D-23)*, Pg. 10:25; Pg.11:1-7.

23 The change in the State’s argument, which now is that only some interviews  
24 were conducted remotely, and that Dr. Puente partly relied on videotaped

25 \_\_\_\_\_  
26 <sup>1</sup> State’s Opp. Pg.11:16-18.

1 interviews goes to the heart of the Motion to Correct the Record and Strike the  
2 State's Argument. If Dr. Martinez told the State the information in the way that  
3 the State is currently arguing it, the information presented to the court in the  
4 State's Opposition to Motion D-23, was a material misrepresentation. To the  
5 extent that the State has now learned that only some telephonic interviews were  
6 conducted, and Dr. Puente only partly relied on those telephonic interviews and  
7 the new information is inconsistent with the record and its argument, the State  
8 and this Court have a duty to correct the record and the pleadings.

9         The Documents that were filed on November 20, 2020 support and  
10 exemplify the argument that the Court must allow Mr. Martinez Guzman time to  
11 conduct an *Atkins* investigation that complies with the minimum standards that  
12 Mr. Martinez Guzman has argued in D-23, the Motion to Continue due to Global  
13 Pandemic COVID-19.

14         On February 3, 2015, Dr. Puente authored a *NEUROPSYCHOLOGICAL*  
15 *EVALUATION* in the case of Isidro Hernandez Lagunas. This evaluation was filed  
16 under seal in Maricopa County, Arizona. At that time, Dr. Puente noted that  
17 travel to Ajuchitlan, Mexico would be extremely dangerous to him and the family,  
18 but that it might be possible to travel to a third location to meet with the family,  
19 which is exactly what he ended up doing. In authoring the first evaluation, Dr.  
20 Puente interviewed seven witnesses face to face, all in California. Of those seven  
21 witnesses, he followed up with two of them, the defendant's oldest brother and his  
22 ex-wife, by telephone. He spoke to two witnesses located in Ajuchitlan, Mexico by  
23 phone- the defendant's mother and a brother. He traveled to two locations in  
24 California to conduct face to face interviews with collateral witnesses. These  
25 interviews took place in July and December of 2014. After interviewing ten people,

26

1 including the defendant, Dr. Puente found that the “inter-rater reliability among  
2 all 10 persons interviewed, including Mr. Hernandez Lagunas, was very high.”

3 This first report is consistent with his testimony in Mr. Martinez Guzman’s  
4 case. He interviewed several people, face to face to get data that was reliable, and  
5 was able to corroborate that data between multiple subjects. He traveled to  
6 California to interview most of the collateral witnesses, in person. He noted the  
7 mitigation difficulties that prevented him from interviewing two collateral  
8 witnesses in person. However, unlike Mr. Martinez Guzman’s case, the problem  
9 preventing travel was limited to a small area and could be worked around. It was  
10 entirely different from a worldwide pandemic.

11 On May 31, 2017, 848 days after his initial report,<sup>2</sup> Dr. Puente authored a  
12 second *NEUROPSYCHOLOGICAL EVALUATION REVISED REPORT*. This report  
13 noted that Dr. Puente interviewed family members on 8 different dates, in  
14 Spanish, in four different locations, including Acapulco, Mexico. Acapulco is  
15 approximately 6 hours from Ajuchitlan and would not require a passport or a  
16 travel visa for members of the defendant’s family to travel. In Acapulco, Dr.  
17 Puente was able to interview two brothers, two sisters, and the mother in person.  
18 Those four people were *also* interviewed on video, in Acapulco, by a defense  
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21 <sup>2</sup> The Court should note the amount of time it took to conduct an *Atkins* investigation in  
22 Hernandez Lagunas, because of the similarities between the two cases. The defendants  
23 are both from rural areas in foreign countries, rife with gang activity and danger to the  
24 defense team. Both have mitigation difficulties. Mr. Martinez Guzman must be provided  
25 the similar ability to prove his intellectual disability to this Court.

26 In Hernandez Lagunas, the time between reports was 848 days. As of November 30, 2020,  
Mr. Martinez Guzman’s case has only been active for 627 days. 262 of which have been  
during the global pandemic.

1 attorney and Alan Ellis, Ph. D, who was the mitigation specialist working on the  
2 defense team.

3 Mr. Hernandez Lagunas' employer was interviewed via telephone. Nine  
4 other people were interviewed by the defense legal team, and Dr. Puente reviewed  
5 the summaries of those interviews. It is unknown if some of those people, such as a  
6 brother and sister in-law, were later interviewed by Dr. Puente in person. Dr.  
7 Puente also conducted testing on 5 witnesses, the majority of which were in  
8 person. Dr. Puente conducted follow-up testing on two people via telephone, *after*  
9 he interviewed them in person. He also tested a brother and the defendant's  
10 mother for something (the condition is blacked out), in person, in Mexico.

11 The records obtained by the State support Mr. Martinez Guzman's  
12 argument in both the *Motion to Continue due to Global Pandemic COVID-19 (D-*  
13 *23)* and the subsequent testimony and written arguments, and the *Motion to*  
14 *Correct the Record and Strike the State's Argument (D-28)*. The *Atkins*  
15 investigation, as well as the mitigation investigation, must comply with the  
16 minimum practice standards outlined in The ABA Guidelines for the Appointment  
17 and Performance of Defense Counsel in Death Penalty Cases, the performance  
18 standards in Capital Cases contained in ADKT 411 and Supreme Court Rule 250.  
19 The work done in Hernandez Lagunas supports Dr. Puente's testimony and the  
20 testimony of Dana Cook, which is that in person, face-to-face interviews, testing  
21 and meetings are the standard of care in capital cases, and are the best methods to  
22 get valid, reliable data that can be corroborated and presented to the Court as  
23 evidence supporting a medical diagnosis of intellectual disability. There is no work  
24 around to this recognized standard of care.

1 Further, the records show, contrary to the State's argument, that Dr.  
2 Puente did not "simply pick up a phone" or "simply watched a video recording of an  
3 interview conducted by defense counsel." He traveled to four different locations,  
4 including Acapulco, Mexico. He interviewed thirteen people in person. These  
5 records show that the *Atkins* investigation cannot solely be done remotely. To the  
6 extent that the State now agrees in its revised argument that Dr. Puente did *some*  
7 interviews telephonically, and *partially* relied on video interviews, the record  
8 should be corrected, and the previous argument put forth by the State located at  
9 pg. 8:18-21, pg. 9:22, pg. 10:1-25, pg. 11:1-13, pg. 18:8-18, pg. 19:4-12 and pg. 24:7-  
10 12, should be stricken.

11 Finally, the records answer the questions posed by the State in its  
12 Opposition to D-28, as to why Dr. Puente was not recalled at the motions hearing  
13 to correct the record and cast doubt on the State's assertion that the information it  
14 previously relied upon was "publicly available." Dr. Puente could not reveal who he  
15 interviewed in person or where he interviewed them because that information was  
16 part of a sealed record and could not be disclosed absent a court order. Nothing  
17 presented by the State was public record. Nothing in the documents that have now  
18 been produced is public record.

### 19 CONCLUSION

20 Based on the Supplemental Exhibits, and all previous filings and arguments  
21 on this matter, the Court should grant the *Motion to Continue due the Global*  
22 *Pandemic COVID-19 (D-23)*, and postpone an *Atkins* hearing and trial until an  
23 investigation that complies with the minimum standards of care can be completed,  
24 AND the Court should grant the *Motion to Correct the Record and Strike the*

1 *State's Argument (D-28)*, based on the information provided to the Court in the  
2 Supplemental Exhibits.

3 AFFIRMATION PURSUANT TO NRS 239B.030

4 The undersigned does hereby affirm that the following document does not  
5 contain the social security number of any person.

6 Dated this 30th day of November, 2020.

7  
8 JOHN L. ARRASCADA  
9 Washoe County Public Defender

10 By: /s/John L. Arrascada  
11 Public Defender

12 By /s/ Kathryn Hickman  
13 KATHERYN HICKMAN  
14 Chief Deputy Public Defender

15 By /s/ Gianna Verness  
16 GIANNA VERNESSE  
17 Chief Deputy Public Defender

18 By /s/ Joseph Goodnight  
19 JOSEPH GOODNIGHT  
20 Chief Deputy Public Defender

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CERTIFICATE OF SERVICE

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I hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada, and that on this date electronically filed the foregoing, with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Chris Hicks  
Washoe County District Attorney

Travis Lucia  
Washoe County Deputy District Attorney

Mark Jackson  
Douglas County District Attorney

DATED this 30th day of November, 2020.

/s/ Carinne Glines  
CARINNE GLINES

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,  
  
Plaintiff,  
  
vs.  
  
WILBER ERNESTO MARTINEZ GUZMAN,  
  
Defendant.

CASE NO.: CR19-0447  
DEPT. NO.: 4

**ORDER ADDRESSING: (1) MOTION TO CORRECT RECORD AND STRIKE STATE'S ARGUMENT REGARDING DR. PUENTE'S WORK METHODOLOGY IN MARICOPA COUNTY CASE NUMBER CR2013-001614-001 DUE TO THE MATERIAL MISREPRESENTATION PRESENTED IN THE STATE'S ARGUMENT (D-28) and (2) MOTION TO CONTINUE TRIAL FOR INVESTIGATION OF POTENTIAL ATKINS MOTION (D-23)**

On March 13, 2019, the Washoe County Grand Jury returned an *Indictment*, which Washoe and Douglas County District Attorneys jointly sought against WILBER ERNESTO MARTINEZ GUZMAN (hereinafter "Mr. Guzman") for Count I-Burglary (Washoe County), Count II-Burglary While Gaining Possession of a Firearm (Washoe County), Count III-Murder With the Use of a Deadly Weapon (Douglas County), Count IV-Burglary While in Possession of a Firearm (Douglas County), Count V-Murder With the Use of a Deadly Weapon (Douglas County), Count VI-Burglary While in Possession of a Firearm (Douglas County), Count VII-Murder With the Use of a Deadly Weapon (Washoe County), Count VIII-Murder With the Use of a Deadly Weapon (Washoe County), Count IX-Burglary While in Possession of a Firearm (Washoe County), and Count X-Possession of a Stolen Firearm (Washoe County, and/or Douglas County, and/or Carson City).

On March 19, 2019, Mr. Guzman was arraigned on the Indictment, wherein Mr. Guzman stood mute and the Court entered a "not guilty" plea on his behalf. At that same time, the State also

1 issued its *Notice of Intent to Seek Death* for each of the murder counts. The State of Nevada  
2 (hereinafter “the State”) is represented by and through Christopher J. Hicks, Washoe County District  
3 Attorney, Mark Jackson, Douglas County District Attorney, and Travis Lucia, Washoe County  
4 Deputy District Attorney. Mr. Guzman is represented by John Arrascada, Washoe County Public  
5 Defender, Gianna Verness, Washoe County Chief Deputy Public Defender, Joseph Goodnight,  
6 Washoe County Chief Deputy Public Defender, and Katheryn Hickman, Washoe County Chief  
7 Deputy Public Defender.

8 Trial was originally set for April 6, 2020. However, on January 13, 2020, the Court orally  
9 granted in part Mr. Guzman’s *Motion to Continue (D-2)*, and the trial was re-set to commence on  
10 August 31, 2020. In addition, the Court entered an Order that the Motion regarding NRS 174.098  
11 shall be filed and set a 5-day evidentiary hearing on the Motion to commence on July 27, 2020.

12 On March 13, 2020, Mr. Guzman filed a *Motion to Continue Due to Global Pandemic*  
13 *COVID-19 (D-22)* and an *Errata to Motion to Continue Due to Global Pandemic COVID-19 (D-22)*.  
14 On March 19, 2020, the State filed an *Opposition to Motion to Continue Due to Global Pandemic*  
15 *Covid-19 (D-23)*. On March 26, 2020, Mr. Guzman filed a *Reply to Opposition to Motion to Continue*  
16 *Due to Global Pandemic Covid-19 (D-23)* and submitted the matter to the Court for consideration.

17 On June 10, 2020, the Court entered *Order Regarding Motion to Continue (D-22)* wherein  
18 the Court set oral argument for June 22, 2020. On June 22, 2020, the Court entered *Corrected Order*  
19 *Regarding Motion to Continue (D-23)*, to reflect the correct pleading number of the Motion.

20 On June 22, 2020, the Court heard oral argument on Mr. Guzman’s Motion to Continue Due  
21 to Global Pandemic COVID-19 and the Motion to Continue Trial via simultaneous audiovisual  
22 transmission pursuant to Supreme Court Rules Part IX due to the courthouse’s closure in light of the  
23 COVID-19 pandemic. At the hearing, Katheryn Hickman, Washoe County Chief Deputy Public  
24 Defender, argued on behalf of Mr. Guzman, who was present from the Washoe County Jail located  
25 at 911 Parr Blvd, Reno, Nevada. The opposition was argued by Travis Lucia, Washoe County Deputy  
26 District Attorney. The Court held that the August 31, 2020 jury trial was to be vacated and continued  
27 the trial and the potential Atkins motion hearing to be set at a future date. However, the Court found  
28 that it needed more evidence to render a decision on Mr. Guzman’s request to continue the trial

1 indefinitely. The Court ordered that an evidentiary hearing on the Motion to Continue be conducted  
2 the week of July 27, 2020, and for the defense to present evidence as to why their expert, Dr. Antonio  
3 Puente (hereinafter “Dr. Puente”), could not do an Atkins investigation via a teleconferencing or  
4 simultaneous audiovisual platform, and for the State to present evidence, if any, contrary to Dr.  
5 Puente’s ultimate opinions.

6 On July 27, 28, and 29, 2020, the Court heard Mr. Guzman’s Request to Continue Trial for  
7 Investigation of Potential Atkins Motion (D-23) via simultaneous audiovisual transmission pursuant  
8 to Supreme Court Rules Part IX due to the courthouse’s closure in light of the COVID-19 pandemic.  
9 At the hearing, Mr. Guzman, again appeared and was present via simultaneous audiovisual  
10 transmission from the Washoe County Jail located at 911 Parr Blvd, Reno, Nevada. Mr. Guzman  
11 called three expert witnesses, Dr. Antonio Puente, Dr. Brian Leany, and Dana Cook who testified  
12 regarding the requirements of Adaptive Behavioral Assessments, including in-person interviews, for  
13 the purpose of conducting Atkins investigations. The State also called three expert witnesses, Dr.  
14 Sergio Martinez, Deborah Moreno, and Stephanie Brady to rebut the defense’s arguments as to the  
15 requirement of in-person interviews, as well as to rebut the argument that Mr. Guzman’s family does  
16 not have adequate access to technology and internet service in El Salvador to conduct interviews via  
17 telephone or videoconferencing.

18 Following the close of the State’s evidence on July 29, 2020, the Court asked defense counsel  
19 if they had rebuttal evidence and defense counsel requested and received a fifteen-minute recess.  
20 Upon the Court reconvening, defense counsel notified the Court that Mr. Guzman would not be  
21 presenting a rebuttal case. The Court then ordered the State and defense counsel to submit their  
22 closing arguments as written briefs and provided the parties a schedule for filing their briefs. Upon  
23 submission of the closing briefs, the Court would then take the matter under consideration.

24 On August 17, 2020, Mr. Guzman filed *Argument in Support of Request to Continue Trial*  
25 *and Potential Atkins Motion Filing Deadline Until an Investigation that Complies with Reasonable*  
26 *Standards of Care Can be Completed*. On August 28, 2020, the State filed *State’s Argument in*  
27 *Opposition to Motion to Continue Due to Global Pandemic COVID-19 (D23)*. On September 1,  
28 2020, Mr. Guzman filed *Reply in Support of Argument in Support of Request to Continue Trial and*

1 *Potential Atkins Motion Filing Deadline Until an Investigation That Complies with Reasonable*  
2 *Standards of Care Can be Completed.* On September 14, 2020, just two days prior to the next  
3 scheduled status hearing, Mr. Guzman filed a request for submission of the argument in support of  
4 its request to continue trial.

5 On September 16, 2020, the Court entered *Order Vacating Status Hearing Regarding Motion*  
6 *to Continue Due to Global Pandemic COVID-19 (D-23)* because the matter was not timely submitted  
7 to the Court for consideration pursuant LCR 7(f). On September 21, 2020, an *Application for Setting*  
8 was filed, and the status hearing was rescheduled for October 23, 2020 at 11:00 A.M.

9 On October 14, 2020, Mr. Guzman filed *Motion for an Order Shortening Time (D-26) Re:*  
10 *Request to File (D-27) Re: Motion to Correct Record and Strike State's Argument Regarding Dr.*  
11 *Puente's Work Methodology in Maricopa County Case Number CR2013-001614-001 Due to the*  
12 *Material Misrepresentation Presented in the State's Argument (D-28).* That same day, Mr. Guzman  
13 filed *Request to File (D-27) Motion to Correct Record and Strike State's Argument Regarding Dr.*  
14 *Puente's Work Methodology in Maricopa County Case Number CR2013-001614-001 Due to the*  
15 *Material Misrepresentation Presented in the State's Argument (D-28).*

16 On October 15, 2020, the Court entered an *Order Regarding Defendant's Motion for Order*  
17 *Shortening Time (D-26) and Defendant's Request to File (D-27).* The Court denied Mr. Guzman's  
18 motion for order shortening time (D-26) as being moot because the Court granted Mr. Guzman's  
19 request to file the motion (D-27), which the Court will decide the merits of in this Order (D-28). In  
20 addition, the Court held that a decision on Mr. Guzman's Motion to Continue Trial and Potential  
21 Atkins Motion Filing Deadline Until an Investigation That Complies with Reasonable Standards of  
22 Care can be Completed (D-23) would be held in abeyance pending the outcome of Mr. Guzman's  
23 Motion (D-28). Furthermore, the Court ordered that the status hearing scheduled for October 23,  
24 2020 at 11:00 a.m. be continued until November 23, 2020 at 10:00 a.m.

25 On October 16, 2020, Mr. Guzman filed *Motion to Correct Record and Strike State's*  
26 *Argument Regarding Dr. Puente's Work Methodology in Maricopa County Case Number CR2013-*  
27 *001614-001 Due to the Material Misrepresentation Presented in the State's Argument (D-28).* On  
28 October 26, 2020, the State filed *Opposition to Motion to Correct Record and Strike State's Argument*

1 *Regarding Dr. Puente's Work Methodology in Maricopa County Case Number CR2013-001614-001*  
2 *(D-28)*. That same day, the matter was submitted to the Court for consideration.

3 On November 20, 2020, the State filed *Supplemental Exhibits to Opposition to Motion to*  
4 *Correct Record and Strike State's Argument Regarding Dr. Puente's Work Methodology in Maricopa*  
5 *County Case Number CR2013-001614-001 (D 28)*. The exhibits attached to the Supplement were  
6 provided to the State via email on November 20, 2020 as a result of an Arizona court order which  
7 granted counsel in Maricopa County, Arizona the ability to provide redacted copies of Dr. Puente's  
8 reports in the Isidro Hernandez Lagunas case to the State of Nevada.

9 At the November 23, 2020 status hearing, the Court gave defense counsel time to respond to  
10 the State's November 20, 2020 Supplement and set the next status hearing for December 7, 2020.

11 On November 30, 2020, Mr. Guzman filed *Response to State's Supplemental Exhibits to*  
12 *Opposition to Motion to Correct Record and Strike State's Argument Regarding Dr. Puente's Work*  
13 *Methodology in Maricopa County Case Number CR2013-001614-001 Due to the Material*  
14 *Misrepresentation Presented in the State's Argument (D 28)*. That same day, Mr. Guzman submitted  
15 the matter for the Court's consideration.

16 In this Order, the Court will first address Mr. Guzman's Motion to Correct Record and Strike  
17 State's Argument Regarding Dr. Puente's Work Methodology in Maricopa County Case Number  
18 CR2013-001614-001 Due to the Material Misrepresentation Presented in the State's Argument (D-  
19 28). Second, after deciding the issue presented in Mr. Guzman's Motion (D-28), the Court will  
20 address Mr. Guzman's Motion to Continue Due to Global Pandemic COVID-19 (D-23).

21 Mr. Guzman's Motion to Correct the Record (D-28) is based upon the evidentiary hearing  
22 conducted on Mr. Guzman's Motion to Continue Due to the Global Pandemic (D-23). Mr. Guzman  
23 claims that the State, during its cross-examination of Dr. Puente, presented an argument that was false  
24 and misleading regarding Dr. Puente's work and methodology in a prior case. Mr. Guzman argues  
25 due process and fundamental fairness require this Court to correct the record, and strike and not  
26 consider the State's argument regarding Dr. Puente and his work and methodology in the State's  
27 Opposition to the Motion to Continue Due to the Global Pandemic located at pages 8:18-21, 9:22,  
28 10:1-25, 11:1-13, 18:8-18, 19:4-12, and 24:7-12.

1 Mr. Guzman argues that under Nevada Supreme Court Rule 250, it would be error for the  
2 Court to rely on the State's material misrepresentation regarding the prior practice of Dr. Puente.  
3 SCR 250 states: "[t]he provisions of this rule apply only in cases in which the death penalty is or may  
4 be sought or has been imposed ... This court places the highest priority on diligence in the discharge  
5 of professional responsibility in capital cases. The purposes of this rule are: to ensure that capital  
6 defendants receive fair and impartial trials, appellate review, and post-conviction review; to minimize  
7 the occurrence of error in capital cases and to recognize and correct promptly any error that may  
8 occur; and to facilitate the just and expeditious final disposition of all capital cases." *SCR 250(1)*.

9 Cross-examination is defined as "the questioning of a witness ... at a hearing by the party  
10 opposed to the party in whose favor the witness has testified." *Cross-examination, Black's Law*  
11 *Dictionary* (5th pocket ed. 2016). "Cross-examination is limited to the subject matter of the direct  
12 examination and matters affecting the credibility of the witness, unless the judge in the exercise of  
13 discretion permits inquiry into additional matters as if on direct examination." *NRS 50.115(2)*.  
14 "Leading questions are permitted on cross-examination." *NRS 50.115(3)(b)*. As a general rule and  
15 as the Court consistently instructs the finders of fact in a trial setting, evidence consists of the  
16 testimony of the witnesses, the exhibits admitted in evidence, and stipulations. Arguments and  
17 statements by lawyers are not evidence. *Glover v. Eighth Judicial Dist. Court of State ex rel. County*  
18 *of Clark*, 125 Nev. 691, 719 (2009), as corrected on denial of reh'g (Feb. 17, 2010).

19 On July 27, 2020, Mr. Guzman called Dr. Puente as a witness during the evidentiary hearing  
20 on Defendant's Motion to Continue Due to the Global Pandemic. Dr. Puente testified that in order  
21 to conform to the standard of care, that an *Atkins* Adaptive Behavior Assessment requires interviews  
22 of informants, i.e., family members, friends, co-workers, teachers, etc. be conducted, if possible, in-  
23 person as opposed to through alternative methods. [Trans., July 27, 2020, A.M. Session, 23:8-24,  
24 24:1-24, 25:1-3; 56:4-11]. Dr. Puente stated that although he has used alternative means to gather  
25 and analyze data in forming his opinion as to defendants' Adaptive Behavior Assessments in the past,  
26 he moved away from using those methods and has increasingly opted for in-person interviews over the  
27 past five to ten years, when the opportunity arises. [Trans., July 27, 2020, A.M. Session, 27:4-24,  
28 28:1-24, 29:1-2; Trans., July 27, 2020, P.M. Session, 21:21-24, 22:1-3].

1           The State asked Dr. Puente several questions related to the methodology Dr. Puente employed  
2 in 2015 when conducting an Atkins Adaptive Behavior Assessment of a capital murder defendant,  
3 Isidro Hernandez Lagunas (hereinafter “Mr. Lagunas”), in Maricopa County, Arizona. [Trans., July  
4 27, 2020, P.M. Session, 22:21-24, 23:1-24, 24:1-24, 25:1-6]. The State asserts the questions were  
5 directed as to whether Dr. Puente, contrary to his testimony on direct examination, conducted  
6 interviews of informants in the Lagunas case via telephone and whether he relied on video interviews  
7 conducted by other members of the defense team in forming opinions as to Lagunas’ Adaptive  
8 Behavior Assessment within the past five years. The State contends that the source of information  
9 for this Court to consider is the Defendant’s own expert, Dr. Puente, and the State’s witness, Dr.  
10 Sergio Martinez (hereinafter “Dr. Martinez”), corroborated Dr. Puente’s testimony at the evidentiary  
11 hearing. The State argues that it’s cross-examination of Dr. Puente was directed not only as to that  
12 issue and other matters he testified to during his direct examination, but also to matters affecting his  
13 credibility in conformity with NRS 50.115(2).

14           Mr. Guzman also argues that the State violated discovery rules, and the Nevada Rules of  
15 Professional Conduct requiring Candor Toward the Tribunal, including the duty to refrain from  
16 conduct that is misleading to the Court or opposing counsel and by coming into possession of sealed,  
17 closed and/or otherwise confidential judicial records related to the Lagunas case in Maricopa County,  
18 Arizona. Mr. Guzman asserts the State’s witness, Dr. Martinez also violated the American  
19 Psychological Association’s Ethical Principles and the American Psychological Association’s  
20 Specialty Guidelines for Forensic Psychology by disclosing information regarding sealed documents  
21 he obtained through his employment in the Lagunas case.

22           Pursuant to NRS 50.135(1), “[i]n examining a witness concerning a prior statement made by  
23 the witness, whether written or not, the statement need not be shown or its contents disclosed to the  
24 witness, but on request the statement shall be shown or disclosed to opposing counsel.” *NRS*  
25 *50.135(1)*. In addition, counsel has a “continuing duty to inform the Court of any development which  
26 may conceivably affect the outcome of the litigation.” Bd. of License Com'rs of Town of Tiverton  
27 v. Pastore, 469 U.S. 238, 240 (1985) (internal quotation omitted).

28     ///



1 NRPC 3.3 states:

2 (a) A lawyer shall not knowingly:

3 (1) Make a false statement of fact or law to a tribunal or fail to correct a false statement of  
4 material fact or law previously made to the tribunal by the lawyer;

5 (2) Fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the  
6 lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

7 (3) Offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a  
8 witness called by the lawyer, has offered material evidence and the lawyer comes to know of its  
9 falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the  
10 tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal  
11 matter, that the lawyer reasonably believes is false.”

12 Mr. Guzman argues that the State did not provide any citations, case numbers, or any other  
13 information about the case, nor explained what it was relying on during its cross-examination of Dr.  
14 Puente. Although not contemporaneous with Dr. Puente’s questioning, Mr. Guzman requested that  
15 the State provide them information that the State relied on during the hearing when there was still  
16 time to assess the accuracy of the information and recall Dr. Puente, if necessary. The Court denied  
17 this request as it was not made as an objection contemporaneously to the material that was discussed  
18 two days earlier. [Trans., July 29, 2020, A.M. Session, 8:2-24, 9:1-10]. Since then, Mr. Guzman  
19 twice requested that the State provide information relied upon or identify the custodians of the  
20 material and their contact information. Mr. Guzman contends the State has declined to provide any  
21 information, insisting that the information is available through public record.

22 Mr. Guzman contends that without assistance from the State, it spent a significant amount of  
23 time trying to find a capital case filed in Maricopa County under “Isidro Hernandez Lagunas,” as  
24 asserted and argued by the State, only to learn that the case started as a death penalty case with a  
25 defendant by the name of “Moises Hernandez Lagunas.” [Mot. to Correct R. and Strike State’s Arg.  
26 Re: Dr. Puente’s Work Methodology in Maricopa County Case (D-28), Oct. 16, 2020, 6:12-26, 7:1-  
27 4]. Defense counsel was able to contact Taylor Fox, Esq. (hereinafter “Mr. Fox”), co-counsel for Mr.  
28 Lagunas, who provided a Declaration, which is attached to Mr. Guzman’s Reply in Support of

1 Argument in Support of Request to Continue Trial and Potential Atkins Motion Filing Deadline Until  
2 an Investigation That Complies with Reasonable Standards of Care Can Be Completed (D-23). [*Id.*  
3 at 7:4-9]. Mr. Guzman claims he was limited by the Orders sealing the portions of the Maricopa  
4 County case regarding the Atkins investigation and litigation. [*Id.* at 6:9-11]. Mr. Guzman argues  
5 that Mr. Fox, in his Declaration, contradicted the State’s argument regarding Dr. Puente using  
6 alternative means to conduct his Atkins investigation in the Lagunas case. [*Id.* at 6:8-9; See also  
7 Reply to Continue Trial for Investigation of Potential Atkins Motion (D-23), Ex. 1, Decl. of Taylor  
8 Fox]. Mr. Fox asserted that Dr. Puente interviewed all “essential” Atkins lay witnesses face-to-face,  
9 consistent with the ABA Guidelines for the Appointment and Performance of Defense Counsel in  
10 Death Penalty Cases.

11 The State argues that defense counsel’s confusion as to the person identified by the State’s  
12 cross-examination of Dr. Puente on July 27, 2020 was either disingenuous or Mr. Fox was not  
13 completely forthcoming in his conversation with defense counsel. The State argues that Isidro  
14 Hernandez Lagunas’ true name is, in fact, Isidro Hernandez Lagunas. [Opp’n to Mot. to Correct R.  
15 and Strike State’s Arg. Re: Dr. Puente’s Work Methodology in Maricopa County Case (D-28), Oct.  
16 26, 2020, Ex. 1, Dec. of Mark Jackson, 2:26-28; Reply to Continue Trial for Investigation of Potential  
17 Atkins Motion (D-23), Ex. 1, Decl. of Taylor Fox, 1:3-5]. Isidro Hernandez Lagunas stole the  
18 identity of his brother, Moises, and used his brother’s name as an alias at or during the time he  
19 committed crimes in Arizona. [*Id.*]. Mr. Lagunas was indicted under his alias name as reflected in a  
20 copy of his indictment. [Opp’n to Mot. to Correct R. and Strike State’s Arg. Re: Dr. Puente’s Work  
21 Methodology in Maricopa County Case (D-28), Oct. 26, 2020, Ex. 3, pg. 1]. The State contends a  
22 closer look at Mr. Fox’s Declaration acknowledges that Lagunas’ true name is Isidro Hernandez  
23 Lagunas as Mr. Fox states that he is “co-counsel of record for Isidro Hernandez Lagunas, also  
24 designated in court records as Moises Hernandez Langunas.” Reply to Continue Trial for  
25 Investigation of Potential Atkins Motion (D-23), Ex. 1, Dec. of Taylor Fox, 1:3-5].

26 During the July 27, 2020 hearing, Dr. Puente testified that he knows Mr. Lagunas as he was  
27 retained by defense counsel in that capital murder case to conduct an Atkins Adaptive Behavior  
28 Assessment on Mr. Lagunas. [Trans., July 27, 2020, P.M. Session, 22:21-24, 23:1-24]. The State

1 argues that Dr. Puente was not confused, and while he could not remember the jurisdiction in which  
2 the case was filed, there is no doubt from his testimony that Dr. Puente knew exactly who Mr. Lagunas  
3 was, and the methodology used in light of the circumstances of that case.

4 The State further argues that Mr. Fox used qualifying terms such as “relevant” witnesses,  
5 “significant” mitigation witnesses, and “essential” Atkins law witnesses, to which the Maricopa  
6 County prosecutors in that case may have disagreed with Mr. Fox’s subjective opinion as to who was  
7 “relevant” or “essential” informants. The State is unable to cross-examine Mr. Fox on his carefully  
8 chosen words. The State contends Mr. Fox’s Declaration creates more questions than it provides  
9 answers. Mr. Fox’s Declaration does not state Dr. Puente did not conduct any interviews of  
10 informants over the telephone, nor deny Dr. Puente relied on any videotaped interviews conducted  
11 by other members of the defense team. The State argues that Mr. Fox implies that Dr. Puente  
12 committed perjury when he described why he could not or did not travel to a certain region in Mexico  
13 at a certain time in his investigation to conduct in-person interviews of some informants, and Dr.  
14 Puente’s admissions that he did in fact conduct at least some interviews of informants via telephone.

15 The State asserts that defense counsel chose not to ask Dr. Puente about the Lagunas’ case on  
16 re-direct examination, nor was Dr. Puente re-called at the conclusion of the State’s evidence. The  
17 State argues that Mr. Guzman has supplied this Court with an affidavit indicating Dr. Puente’s  
18 testimony regarding the Lagunas’ case was incorrect and that he did in fact travel in the Lagunas case  
19 at some point. It does not, however, contradict the point the State was making, that Dr. Puente could,  
20 if he chose to, conduct interviews via alternative means other than in-person. Thus, the State asserts  
21 defense counsel has inadvertently impeached their own witness’ credibility. *NRS 50.075* (“The  
22 credibility of a witness may be attacked by any party, including the party calling the witness.”).

23 Furthermore, the State argues that at the time they filed their Opposition to D-28, the State  
24 did not have any court documents, pleadings, case filings, psychological reports, psychological tests,  
25 or an Adaptive Behavior Assessment report pertaining to the Lagunas case and that, and stated that  
26 even if they did, it would fall outside of the State’s discovery obligations as set forth in the provisions  
27 of NRS 174.234, NRS 174.235, NRS 174.285, NRS 174.295, this Court’s July 24, 2019 Order for  
28 Reciprocal Discovery, as well as the Constitutional requirements set forth in Brady v. Maryland, 373

1 U.S. 83 (1963) (government duty to disclose material exculpatory evidence), Giglio v. United States.  
2 405 U.S. 150 (1972) (when reliability of government witnesses may be determinative of guilt or  
3 innocent, government must disclose evidence affecting credibility); United States v. Bagley, 473 U.S.  
4 667 (1985) (no legal distinction between exculpatory evidence and impeachment evidence for  
5 purposes of Brady rule); Kyles v. Whitley, 514 U.S. 419 (1995) (prosecution has duty to learn of any  
6 favorable evidence known to others acting on government's behalf in case, including police).

7 The State contends information as to Dr. Puente's methodology in conducting an Adaptive  
8 Behavior Assessment of a person other than the Defendant in the Lagunas case is not exculpatory nor  
9 relevant for impeachment by the Defendant of any State witness. The Court and the parties herein  
10 are familiar with what type of information is typically included in such reports related to Atkins  
11 investigations in death penalty cases, therefore the State asserts that there is no legal, judicial, or  
12 Constitutional duty or obligation for the State to provide such information to the Defendant. The  
13 State argues defense counsel had access to the source of the material, Dr. Puente himself, and may,  
14 if Mr. Guzman so desires, file any motion Mr. Guzman deems appropriate in Maricopa County,  
15 Arizona, to access any records in the Lagunas case.

16 Further, the State argues that it has made no misrepresentations to the Court or defense  
17 counsel. In addition, the State asserts that it did not obtain any documents, psychological reports, or  
18 adaptive behavior assessments related to the Lagunas case from Dr. Martinez, the Maricopa County  
19 Attorney's Office, the Maricopa County Courts, or from any other source. In fact, prior to October  
20 23, 2020, the State contends it did not have any judicial records or court records related to Lagunas'  
21 case. On October 23, 2020, Maricopa County Deputy County Attorney Ellen Dahl provided the State  
22 with a copy of Lagunas' Indictment and a copy of a motion to unseal a portion of Dr. Puente's report.

23 The State, in preparation for the evidentiary hearing on Mr. Guzman's Motion to Continue,  
24 had several communications with Dr. Martinez, the State's retained expert regarding the issues raised  
25 by Mr. Guzman in his motion, the anticipated testimony of Dr. Puente, and to discuss the anticipated  
26 testimony of Dr. Martinez. [Opp'n to Mot. to Correct R. and Strike State's Arg. Re: Dr. Puente's  
27 Work Methodology in Maricopa County Case (D-28), Oct. 26, 2020, Ex. 1, Dec. of Mark Jackson,  
28 1:17-26, 2:1-15]. Dr. Martinez informed the State that he had conducted interviews of informants in

1 Atkins cases via alternative methods rather than face-to-face interviews, and that a few years ago the  
2 Defendant's expert, Dr. Puente, did the same thing involving his Adaptive Behavior Assessment of a  
3 person named Isidro Hernandez Lagunas in Maricopa County, Arizona. [Id.]. The State asserts Dr.  
4 Martinez's recollection was corroborated by Dr. Puente's own sworn testimony in this regard.

5 The State argues that Dr. Martinez simply relayed his knowledge as to the methodology  
6 employed by Dr. Puente in interviewing certain informants such as family members over the  
7 telephone and Dr. Puente's reliance on videotaped interviews of other informants conducted by third  
8 parties and members of the defense team when he conducted his Adaptive Behavior Assessment of  
9 Mr. Lagunas. [Id.]. However, the State asserts Dr. Martinez did not discuss any aspect or details of  
10 the Mr. Lagunas' Adaptive Behavior Assessment or case with any member of the prosecution in this  
11 case. In addition, the State contends that Dr. Martinez did not share any conclusions, identity of  
12 informants, or anything related to any copyright protected tests administered to Mr. Lagunas or any  
13 informants, evaluations, any findings, any criterion, any Atkins prong material, or any other  
14 information that could be considered confidential. [Opp'n to Mot. to Correct R. and Strike State's  
15 Arg. Re: Dr. Puente's Work Methodology in Maricopa County Case (D-28), Oct. 26, 2020, Ex. 1,  
16 Dec. of Mark Jackson, 1:17-26, 2:1-15; See also Trans., July 28, 2020, P.M. Session, 79:21-24, 80:1-  
17 6, 131:6-24, 132:1-24, 133:1-18, 136:1-24; Trans., July 29, 2020, A.M. Session, 37:3-15].

18 The State asserts and the Court finds that the State did not ask Dr. Puente questions about  
19 personal identifying information related to Mr. Lagunas or any informant in that case, the substance  
20 of any interview conducted in that case, or anything remotely related to the collection, analysis, and/or  
21 interpretation of any developmental, behavioral, biographical, socio-emotional, cognitive and/or  
22 educational information for the purpose of assisting Dr. Puente in rendering an opinion about the  
23 underlying brain function of Mr. Lagunas or any informant in that case. Thus, not a single question  
24 was asked related to the Adaptive Behavior Assessment and the State's questions were limited solely  
25 to Dr. Puente's methodology in obtaining information from informants in that case – whether it be –  
26 in-person interviews, telephonic interviews, or relying on recorded interviews conducted by a  
27 member of the defense team. Therefore, the Court finds neither the State, nor Dr. Martinez violated  
28 legal, judicial, Constitutional duties or obligations.

1           The State, in its Supplement to its Opposition (D-28), filed four (4) exhibits that were provided  
2 to the State via email on November 20, 2020 as a result of an Arizona court order which granted  
3 counsel in Maricopa County, Arizona the ability to provide redacted exhibits to the State of Nevada.  
4 [Supplement to Opposition (D-28), Ex. 1, E-mail from Brittany Sarracino; Supplement to Opposition  
5 (D-28), Ex. 2, Order Granting Motion to Unseal].

6           Exhibit 3 shows that on February 3, 2015, Dr. Puente authored his initial report titled  
7 “NEUROPSYCHOLOGICAL EVALUATION” in the Lagunas case. [Supplement to Opposition  
8 (D-28), Ex. 3, Redacted Evaluation Dated 2/3/15, pg. 1]. At the time he published the first report,  
9 Dr. Puente noted that travel to Ajuchitlan, Mexico, would be extremely dangerous to him and the  
10 family, but that it might be possible to travel to a third location to meet with the family. [Id. at 3]. In  
11 2014, Dr. Puente traveled to two locations in California to conduct seven (7) face-to-face interviews  
12 of collateral witnesses. [Id. at 5]. Of those seven (7) witnesses, Dr. Puente followed up with two (2)  
13 of them, the defendant’s oldest brother and his ex-wife, by telephone. [Id.]. In addition, Dr. Puente  
14 spoke to two (2) witnesses located in Ajuchitlan, Mexico by telephone, the defendant’s mother and a  
15 brother. [Id.]. After interviewing ten (10) people, including the defendant, Dr. Puente found that the  
16 “inter-rater reliability among all 10 persons interviewed, including Mr. Hernandez Lagunas, was very  
17 high.” [Id. at 12].

18           On May 31, 2017, 848 days after his initial report, Dr. Puente authored a second report titled,  
19 “NEUROSPYCOLOGICAL EVAULUATION REVISED REPORT.” [Supplement to Opposition  
20 (D-28), Ex. 4, Redacted Revised Evaluation Dated 5/31/17, pg. 1]. This report notes that Dr. Puente  
21 interviewed family members on eight (8) different dates, in Spanish, in four different locations,  
22 including Sacramento, California; Lodi, California; Santa Ana, California; and Acapulco, Mexico.  
23 [Id.]. The evaluator also conducted several telephonic interviews. [Id.]. Mr. Guzman asserts that  
24 Acapulco was used as a safer alternative site for interviews because it is approximately six (6) hours  
25 from Ajuchitlan and would not require a passport or a travel visa for the defendant’s family members  
26 to travel. In Acapulco, Dr. Puente was able to interview two (2) brothers, two (2) sisters, one (1)  
27 brother-in-law, and the mother in-person; two of whom were first interviewed via telephone a year  
28 prior to giving in-person interviews. [Id. at 10]. Mr. Lagunas’ two (2) sisters, one of his brothers,

1 and his mother were also interviewed on video in Acapulco by Mr. Fox, and Alan Ellis, Ph.D, who  
2 was the mitigation specialist working on the defense team. [Id.]. Mr. Lagunas' employer was also  
3 interviewed via telephone by Mr. Fox. [Id. at 5]. Nine (9) other family members were interviewed  
4 by the defense legal team in Santa Ana, California, and Dr. Puente reviewed the summaries of those  
5 interviews. [Id. at 13-14]. Dr. Puente also conducted testing on five (5) witnesses, Mr. Lagunas' ex-  
6 spouse, two (2) brothers, his mother, and his partner, but only three (3) of the five (5) test  
7 administrations were conducted in-person; two were conducted via telephone. [Id. at 20].

8 Mr. Guzman, in his Response to the State's Supplement, argues that contrary to what the State  
9 has argued subsequent to the July hearings, the information regarding the Lagunas case was not a  
10 public record. Mr. Guzman argues that the recently unsealed and redacted exhibits attached to the  
11 State's Supplement actually supports Mr. Guzman's position and show that the Atkins investigation  
12 cannot solely be done remotely or conducted through alternative means to in-person interviews.

13 In addition, Mr. Guzman contends that the Lagunas Neuropsychological Evaluation reports  
14 are consistent with Dr. Puente's testimony in the present case, as Mr. Guzman asserts that Dr. Puente  
15 interviewed several people face-to-face to get reliable data and was able to corroborate that data  
16 between multiple subjects in the Lagunas case. Although Dr. Puente was unable to do in-person  
17 interviews with all witnesses, Mr. Guzman contends that Dr. Puente traveled to California and  
18 Acapulco, Mexico to interview most of the collateral witnesses in-person. Furthermore, Mr. Guzman  
19 argues that unlike the present case, the problem preventing travel in the Lagunas case was limited to  
20 a small area (Ajuchitlan, Mexico) which could be worked around, which is different than the  
21 worldwide pandemic Mr. Guzman's defense team now faces.

22 Mr. Guzman also argues that the State simplified its assertions regarding Dr. Puente's use of  
23 alternative means of conducting an Atkins investigation in the Lagunas case and Dr. Puente's ability  
24 to use those same alternative means to conduct the Atkins investigation in this case. Furthermore,  
25 Mr. Guzman argues that the State's argument has changed since its July 2020 cross-examination of  
26 Dr. Puente; from Dr. Puente simply electing to employ alternative means to complete his work in the  
27 Lagunas case due to the danger of traveling to Ajuchitlan, Mexico, to now stating that Dr. Puente  
28 only conducted some interviews remotely and Dr. Puente partly relied on videotaped interviews in

1 that case. Mr. Guzman asserts that the extent of Dr. Puente's use of alternative means to in-person  
2 interviews is a material misrepresentation that goes to the heart of the Motion to Correct the Record  
3 and Strike the State's argument. Therefore, Mr. Guzman argues that the record should be corrected,  
4 and the previous argument set forth by the State should be stricken as a material misrepresentation of  
5 Dr. Puente's methodology employed in the Lagunas case.

6 Based on the foregoing, the Court finds that it can adequately assess the credibility of Dr.  
7 Puente, Dr. Puente's understanding of the questions on cross-examination related to the methodology  
8 utilized in his Adaptive Behavior Assessment of Mr. Lagunas, and Dr. Puente's admissions that he  
9 has conducted phone only interviews of some of Mr. Lagunas' family members and relied on some  
10 video interviews that were conducted by other members of the defense team in that case. The Court  
11 finds that while Dr. Puente could not recall the "when and where," it was evident he knew the case,  
12 knew the methodology he employed in conducting interviews of some of the informants in that case,  
13 and he was specific as the circumstances as to why he could not, or would not, travel to a certain  
14 region of Mexico to conduct in-person interviews of informants. [Trans., July 27, 2020, P.M. Session,  
15 22:21-24, 23:1-24, 24:1-24, 25:1-6].

16 The Court also finds that the State did not violate any legal, judicial, Constitutional duties or  
17 obligations, nor made material misrepresentations as to Dr. Puente's methodology used in the Atkins  
18 investigation in the Lagunas case. Therefore, the Court denies Mr. Guzman's Motion to Correct  
19 Record and Strike State's Argument Regarding Dr. Puente's Work Methodology in Maricopa County  
20 Case Number CR2013-001614-001 Due to the Material Misrepresentation Presented in the State's  
21 Argument (D-28) as the Court finds there is no error to correct in the record.

22 Second, the Court will address Mr. Guzman's Motion to Continue Due to Global Pandemic  
23 COVID-19 (D-23). Mr. Guzman argues that due to COVID-19 he will not be able to fulfill the  
24 obligations of the Pretrial Order and will not have adequate time to prepare for an Atkins hearing  
25 prior to trial. In Atkins v. Virginia, 536 U.S. 304 (2002), the U.S. Supreme Court announced the three  
26 prong test to determine whether a defendant is intellectually disabled. The elements are: 1)  
27 defendant must be of subaverage intelligence; 2) defendant had significant limitations in adaptive  
28 skills, such as communication, self-care and self-direction; and 3) that these qualities became



1 manifest before the age of 18. In Atkins, the Court held that to execute an intellectually disabled  
2 offender is “cruel and unusual” and constitutes excessive punishment in violation of the Eighth  
3 Amendment to the U.S. Constitution. Atkins, 536 U.S. at 321. The Nevada Legislature adopted the  
4 Atkins test and provided the procedures for presenting evidence of a defendant’s intellectual disability  
5 in NRS 174.098. In Mr. Guzman’s case, the experts must interview witnesses located in El Salvador  
6 where he grew up. If Mr. Guzman can prove he is intellectually disabled, after an Atkins investigation  
7 and hearing is conducted, the death penalty cannot be imposed on him, if he is found guilty of  
8 the murder charges.

9 Issues surrounding Mr. Guzman’s intellectual functioning requiring further investigation into  
10 his background, and if appropriate, a motion pursuant to NRS 174.098 and Atkins v. Virginia, 536  
11 U.S. 304 (2002) have been before the Court since August 2019. On August 26, 2019, the Court was  
12 advised that the defense team planned to travel to El Salvador to begin investigating Mr. Guzman’s  
13 background relevant to his intellectual disability and case mitigation following Dr. Martha  
14 Mahaffey’s evaluation of Mr. Guzman. On September 3, 2019, Dr. Mahaffey authored a report  
15 finding the Mr. Guzman’s GIA and FSIQ scores are two standard deviations below the mean, and  
16 asserted Mr. Guzman meets the first criteria for intellectual disability pursuant to NRS 174.098. On  
17 September 16, 2019, the Court was advised that a continuance of the trial would be necessary to allow  
18 Mr. Guzman time to complete a thorough investigation, as constitutionally mandated, into his  
19 intellectual functioning. On January 13, 2020, Mr. Guzman presented arguments on the motion to  
20 continue trial, stating that the continuance was necessary to permit Mr. Guzman adequate time to  
21 conduct a full investigation and preparation of a potential motion pursuant to NRS 174.098 and  
22 Atkins. Thereafter, the Court set a hearing date of July 27, 2020 to address a potential motion to be  
23 filed by Mr. Guzman pursuant to NRS 174.098 and the Court granted a continuance of the trial from  
24 April 6, 2020 to August 31, 2020.

25 On January 13, 2020, the Court was also informed that defense expert, Dr. Puente, would be  
26 traveling to El Salvador in March 2020. Dr. Puente is a board-certified neuropsychologist who is  
27 also bilingual and familiar with El Salvadoran culture. [Mot. to Continue Due to Global Pandemic  
28 COVID-19 (D-23), Mar. 13, 2020. 5:3-5]. The March 2020 trip was for Dr. Puente to conduct

1 neuropsychology testing and interviews of friends and family who knew Mr. Guzman prior to the age  
2 of 18 to assist Dr. Puente in forming an opinion regarding Mr. Guzman's adaptive functioning upon  
3 which a motion could be filed pursuant to NRS 174.098. However, the President of El Salvador,  
4 Nayib Bukele, issued a decree stating that foreigners who had recently visited various countries,  
5 including Spain, were banned due to growing concerns about the spread of COVID-19. [Id. at 4:13-  
6 17]. As Dr. Puente had recently returned to the United States from Spain, he was not permitted  
7 entrance into El Salvador on March 10, 2020. [Id. at 4:8-12, 17-18].

8 In his Motion, Mr. Guzman sought to have the trial continued, which the Court has since  
9 vacated, but has not yet reset, pending the decision to be made in this Order. In addition, Mr. Guzman  
10 sought to continue both the Atkins motion filing deadline and the scheduled motions hearing which  
11 has been vacated, but has also not yet been reset. Mr. Guzman argues that due to COVID-19 he will  
12 not be able to fulfill the obligations of the Pretrial Order in a way that complies with reasonable  
13 standards of care. Mr. Guzman argues a continuance is necessary because his expert, Dr. Puente must  
14 interview witnesses face-to-face in El Salvador regarding Mr. Guzman's life history before the age  
15 of 18. In furtherance of that claim, defense counsel at the June 22, 2020 hearing stated alternatives  
16 to in-person contact were not possible because of, among other things, low quality of internet in El  
17 Salvador, teleconferencing technology was not widely used in El Salvador, nor within the home  
18 which would allow for such communication, and therefore administration of tests "really can't be  
19 done remotely." [Trans., June 22, 2020, 11:1-4, 7-11]. Subsequently, Mr. Guzman has argued that  
20 conducting such an investigation via alternative means would result in unreliable results for the Court  
21 to consider during an Atkins hearing. Thus, Mr. Guzman argues trial must be continued until the  
22 COVID-19 pandemic subsides and it is safe for the defense team to travel to El Salvador to conduct  
23 the interviews. Mr. Guzman seeks to have the trial delayed until he can properly investigate his  
24 intellectual disability and allow the Court to determine if he is a person suffering from an intellectual  
25 disability. Furthermore, Mr. Guzman seeks to maintain the practice of having regular status hearings  
26 every 30-45 days to monitor the progress of the case, the state of the pandemic, the Court's ability to  
27 summon jurors safely, and Mr. Guzman's ability to finish his Atkins investigation.

28 ///

1 A motion to continue a criminal case may be granted for good cause. *WCDR 13 (1)*. The  
2 Nevada Supreme Court “reviews the district court's decision regarding a motion for continuance for  
3 an abuse of discretion.” *Higgs v. State*, 126 Nev. 1, 9 (2010), quoting *Rose v. State*, 123 Nev. 194,  
4 206 (2007). “[N]ot every denial of a request for additional time violates due process.” *Zessman v.*  
5 *State*, 94 Nev. 28, 31 (1978) (citation omitted). “Each case turns on its own particular facts, and  
6 much weight is given to the reasons offered to the trial judge at the time the request for a continuance  
7 is made.” *Higgs*, 126 Nev. at 9, citing *Zessman*, 94 Nev. at 31. If a “defendant fails to demonstrate  
8 that he was prejudiced by the denial of the continuance, [then] the district court’s decision denying the  
9 continuance is not an abuse of discretion.” *Rose v. State*, 123 Nev. 194, 206 (2007).

10 Mr. Guzman argues that the Constitution forbids state actions that “creat[e] an unacceptable  
11 risk that persons with intellectual disability will be executed.” *Moore v. Texas*, 137 S. Ct. 1039, 1043  
12 (2017). Mr. Guzman argues that it has become impossible to comply with the ABA Guidelines for  
13 the Appointment and Performance of Defense Counsel in Death Penalty Cases as interviews were  
14 unable to be conducted in-person in El Salvador, which was closed to visitors due to the pandemic.  
15 Mr. Guzman argues that until Dr. Puente can conduct the necessary tests and interviews in-person in  
16 El Salvador, Mr. Guzman cannot amass evidence necessary and sufficient to file a motion pursuant  
17 to NRS 174.098 and meet his burden of proof at the *Atkins* hearing regarding intellectual disability.  
18 Mr. Guzman asserts because of circumstances outside of his control and due to the uncertain nature  
19 of global and local events, counsel is unable to speculate when the investigation can proceed.

20 Defense counsel argues that if the Court refuses to allow such interviews, Mr. Guzman’s  
21 constitutional rights of due process, effective assistance of counsel, right to a fair trial, and the right  
22 to be free from cruel and unusual punishment will be violated. To support these claims, defense  
23 counsel relies on the American Bar Association’s (ABA) Guidelines for the Appointment and  
24 Performance of Defense Counsel in Death Penalty Cases, Revised Edition, February 2003. Defense  
25 counsel asserts that Nevada has adopted the guidelines as performance standards in Capital Cases in  
26 ADKT 411. The relevant section is Guideline 10.7 – Investigations. The Guideline states that  
27 counsel has an obligation to thoroughly and independently investigate issues in both the guilt and  
28 penalty phases of the trial.

1 Defense counsel argues the Guidelines require a continuance must be granted and if they are  
2 not allowed to conduct the face-to-face interviews in El Salvador, then defense counsel will be found  
3 to be ineffective. Mr. Guzman argues that the State is advocating that defense counsel should  
4 abandon the use of reliable and proven methods of gathering data to allow for this case to move  
5 forward on an arbitrary timeline. Mr. Guzman argues the “[g]overnment violates the right to effective  
6 assistance when it interferes in certain ways with the ability of counsel to make independent decisions  
7 about how to conduct the defense. See, e.g., Geders v. United States, 425 U.S. 80 (1976) (bar on  
8 attorney-client consultation during overnight recess); Herring v. New York, 422 U.S. 853 (1975) (bar  
9 on summation at bench trial); Brooks v. Tennessee, 406 U.S. 605, 612–613 (1972) (requirement that  
10 defendant be first defense witness); Ferguson v. Georgia, 365 U.S. 570, 593–596 (1961) (bar on direct  
11 examination of defendant).” Strickland v. Washington, 466 U.S. 668, 686 (1984). Furthermore, Mr.  
12 Guzman asserts that “[w]hen experts request necessary information and are denied it, when testing  
13 requested by expert witnesses is not performed, and when experts are placed on the stand with  
14 virtually no preparation or foundation, a capital defendant has not received effective penalty phase  
15 assistance of counsel.” Bean v. Calderon, 163 F.3d 1073, 1079 (9th Cir. 1998).

16 Mr. Guzman also cites to Harmelin v. Michigan, 501 U.S. 957 (1991) and Zant v. Stephens,  
17 462 U.S. 862 (1983), arguing there is heightened requirement for the reliability of information in an  
18 Atkins context. However, the Court finds that authority requires an individualized determination of  
19 whether the death sentence is appropriate and the need for independent and heightened review on  
20 direct appeal. SCR 250 and NRS 177.055 satisfy these requirements and afford capital cases  
21 heightened review on appeal. Belcher v. State, 136 Nev. Adv. Op. 31 (2020) (the Supreme Court is  
22 “obligated to afford extra resources and heightened scrutiny to death penalty cases”) (internal  
23 quotation and citation omitted). “The imperative to cast a wide net for all relevant mitigating evidence  
24 is heightened at a capital sentencing hearing because the Constitution prohibits imposition of the  
25 death penalty without adequate consideration of factors which might evoke mercy.” Doe v. Ayers,  
26 782 F.3d 425, 435 (9th Cir. 2015) (internal quotation and citation omitted). “Although counsel's duty  
27 to seek out evidence of mitigation is not limitless, the Supreme Court has recognized that the failure  
28 to pursue avenues of readily available information . . . may constitute deficient performance.” Id.

1           Whether defense counsel is ineffective is not before the Court at this time. Moreover, the  
2 ABA Guidelines are just that – merely a guide; not a U.S. Supreme Court decision. See Strickland  
3 v. Washington, 466 U.S. 668, 688-689 (1984) (referring to the ABA Standards for Criminal Justice  
4 as being “only guides”); also citing United States v. Decoster, 624 F.2d 196 (1979), wherein the Court  
5 stated “the existence of detailed guidelines for representation could distract counsel from the  
6 overriding mission of vigorous advocacy of the defendant’s cause,” as the guarantee of the Sixth  
7 Amendment is to ensure a defendant receives a fair trial. Moreover, even if the Court considered the  
8 Guidelines, there is nothing in them or in the Atkins case that require face-to-face interviews.  
9 Therefore, the Court finds the Guidelines and cases cited by Mr. Guzman do not require the Court to  
10 categorically reject alternative means of gathering information for an Atkins motion.

11           During the pandemic, state and federal courts have had to adapt and adopt technology to allow  
12 court proceeding to continue to take place and to ensure that due process and justice are served, all  
13 while keeping the community safe. In the Second Judicial District Court, the Chief Judge has issued  
14 several Administrative Orders to address court proceedings during the COVID-19 pandemic. The  
15 Second Judicial District Court, in Administrative Order 2020-02(E), stated “[d]ue to the on-going  
16 health crisis caused by the COVID-19 pandemic, all scheduled District Court hearings ... shall  
17 continue to be conducted by alternative means to in-person hearings, or decided on the papers, or  
18 rescheduled unless otherwise provided for in AOs or otherwise directed by the Chief Judge. Hearings  
19 ... shall be conducted in accordance with the Nevada Supreme Court Rules Governing Appearance  
20 by Audiovisual Transmission Equipment, Part IX.”

21           Consequently, the use of video or telephonic conferences is hardly a novel idea or procedure,  
22 as argued by Mr. Guzman. These mediums of communication have been successfully and reliably  
23 used by the courts for years so out-of-state witnesses do not have to travel to the State of Nevada to  
24 offer their testimony. Proof of the success of simultaneous audiovisual transmission was evidenced  
25 by its use in Mr. Guzman’s July hearing wherein multiple participants were able to see and talk to  
26 each other, even though many witnesses appeared from out-of-state. The witnesses, including Dr.  
27 Puente and Dr. Martinez, were easy to understand and were clearly visible during their appearances.

28   ///

1 Dr. Puente testified via simultaneous audiovisual transmission that he not only needed to  
2 interview the witnesses face-to-face, but he prefers to personally locate school, medical and criminal  
3 records, if any, and interview those custodians of the records in El Salvador. Dr. Puente stated he  
4 obtains better information when he is able to question witnesses and custodian witnesses face-to-face.  
5 Therefore, Mr. Guzman insists the only way to interview the informants in this case is by face-to-  
6 face meetings in El Salvador.

7 The State argues that Mr. Guzman's request for a continuance should be denied because there  
8 is no evidence that alternative methods to in-person interviews of informants in Atkins investigations  
9 have been prohibited, nor is in-person interviews required to show Mr. Guzman has an intellectual  
10 disability. In fact, the State argues that alternative methods, such as telephonic interviews, and  
11 recorded interviews conducted by defense mitigation teams have not only been used, but have been  
12 utilized by Mr. Guzman's own expert, Dr. Puente, for Atkins investigations in the past. Both Dr.  
13 Puente and Dr. Martinez testified that they have used alternatives to in-person, face-to-face interviews  
14 of informants for Atkins investigations in the past. [Trans., July 28, 2020, P.M. Session, 81:12-24,  
15 82:1, 133:2-11].

16 The State contends that a significant portion of Dr. Puente's career in this area has found him  
17 relying completely on alternative sources of information as opposed to in-person interviews, as Dr.  
18 Puente described that his historical practice was to not travel as part of his assessment process.  
19 [Trans., July 27, 2020, A.M. Session, 26:22-24, 27:1-2]. Rather, Dr. Puente would rely on  
20 information obtained by mitigation specialists in arriving at his ultimate opinion regarding a diagnosis  
21 of intellectual disability, sometimes exclusively and would not conduct any testing himself. [Id. at  
22 27:9-12; Trans., July 27, 2020, P.M. Session, 28:12-20]. Dr. Puente has, nevertheless, changed his  
23 practice over time to now providing direction to mitigation specialists as to what information he  
24 desires and his current preference for conducting in-person interviews, which even he acknowledges  
25 is overflowing with qualifiers. Dr. Puente testified that "[i]f at all possible, it would be best to obtain  
26 information firsthand and face to face as a means of getting the greatest validity of the information,  
27 if the opportunity arises." [Trans., July 27, 2020, A.M. Session, 24:5-10, 27:18-24].

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1 As discussed above, Dr. Puente used alternative means to in-person interviews when he was  
2 retained to conduct an Atkins assessment of defendant, Isidro Hernandez Lagunas, when he chose  
3 not to travel to a dangerous region in Mexico. Dr. Puente testified that he used alternative methods;  
4 relying in part on videotaped interviews conducted by Mr. Lagunas' own counsel and conducted  
5 some telephone interviews with family members. [Trans., July 27, 2020, P.M. Session, 23:17-24,  
6 24:1-4]. Dr. Puente has "done intellectual disability cases or mental retardation cases involving death  
7 penalty [for] approximately twenty-five years." [Trans., July 27, 2020, A.M. Session, 52:1-3]. Dr.  
8 Martinez testified that Dr. Puente's report in the Lagunas case was authored in May or July of 2017,  
9 just over three years ago, yet Dr. Puente testified that his personal shift toward in-person interviewing  
10 occurred about five to ten years ago. [Trans., July 29, 2020, A.M. Session, 37:9-19; See also Trans.,  
11 July 27, 2020, P.M. Session, 21:21-24]. Three years ago, Dr. Puente in the Lagunas case did not wait  
12 for it to be safe to travel to that region of Mexico and conducted an Atkins investigation by finding  
13 alternative sites to do in-person interviews or via alternative means, as is proposed by the State now.  
14 Therefore, the Court does not accept Dr. Puente's insistence that to do so in this case would constitute  
15 a violation of his ethical obligations, as he has used alternative methods in the past.

16 In addressing the second prong of Atkins, experts review relevant documents that can be  
17 obtained, information from interviews with informants, and via the administration of standardized  
18 behavioral scales such as the ABAS or VINELAND instruments. Dr. Martinez testified that it is  
19 important to keep in mind that the subject of the assessment is the defendant – not his family members,  
20 or others who knew him prior to the age of 18. [Trans., July 28, 2020, P.M. Session, 118:14-24,  
21 119:1-4]. Pursuant to the standard administration procedures of either instrument, the examiner is  
22 not required to assess the informant's memory, intellectual ability, and so forth. [Id.].

23 With respect to each assessment instrument – unstructured or semi-structured interviews and  
24 the administration of behavioral scales – there exists alternative methods which have been utilized by  
25 both Dr. Martinez and Dr. Puente, which are available for remote administration. Dr. Martinez  
26 testified that both the current versions of the ABAS and VINELAND are available to be administered  
27 through some form of telecommunication. [Id. at 85:11-17; Trans., July 29, 2020, A.M. Session,  
28 11:15-22]. VINELAND has even provided guidelines to practitioners regarding the administration

1 of this instrument in a remote fashion. [Id. at 12:2-6]. Dr. Puente testified that he was aware that the  
2 developer of VINELAND and ABAS scales provided information on the remote administration of  
3 those instruments. [Trans., July 27, 2020, P.M. Session, 5:17-24, 6:1-13]. Further, Dr. Puente  
4 acknowledged that he would likely administer VINELAND or ABAS scales to informants such as  
5 the Defendant's mother or perhaps a teacher. [Trans., July 27, 2020, A.M. Session, 39:1-3].

6 During his testimony, Dr. Puente also acknowledged that several psychological services have  
7 been expressly approved for telehealth via telecommunication by the American Psychological  
8 Association (APA) including psychiatric diagnosis interviews, psychological and neurological  
9 testing, health behavior assessments, neuro behavioral status examinations, and behavioral  
10 screenings. [Trans., July 27, 2020, P.M. Session, 17:4-12]. Dr. Puente acknowledged that the APA  
11 has approved assessments of adaptive behavior via videoconferencing. [Id. at 17:5-12, 17:21-24,  
12 18:1-6]. The State argues that the stakes of this case are no different than the stakes of an individual  
13 who is suicidal, homicidal, or suffering from major depressive disorder or any significant, life-  
14 threatening mental health condition.

15 The Court finds that although the purpose of assessing whether Mr. Guzman is intellectually  
16 disabled is not for the purpose of providing educational services or treatment, the assessment is still  
17 medically diagnostic in nature. [See Trans., Feb. 24, 2020, 16:1-5, 55:16-24, 56:1-3; See also Trans.,  
18 July 28, 2020, P.M. Session, 32:15-19]. Although Dr. Puente sought to distinguish the assessment  
19 of adaptive behavior in diagnostic settings as opposed to a forensic setting, the Court finds that the  
20 underlying standards for assessing and diagnosing someone with intellectual disability is the same  
21 without regard for the circumstances which precipitate the assessment. [Trans., July 28, 2020, P.M.  
22 Session, 134:4-24].

23 Dr. Martinez further testified that even if informants are in a third world country, the  
24 instruments can be administered via some telecommunication platform so that the examiner could  
25 observe the individual completing the form; noting the caveat that quite often the forms are provided  
26 to informants without the examiner being present. [Trans., July 29, 2020, A.M. Session, 15:9-23].  
27 Like Dr. Puente, Dr. Martinez has experience with Atkins investigations which center around  
28 defendants who are from another country, and he testified that in situations such as the COVID-19



1 pandemic, evaluators need to “adapt and adjust.” [Trans., July 28, 2020, P.M. Session, 60:5-10,  
2 73:10-24, 74:1-9].

3 The State further argues that Mr. Guzman has failed to prove that Dr. Puente cannot conduct  
4 these interviews via telephone or videoconferencing. The State contends that Mr. Guzman has made  
5 clear that he enjoys the assistance of lawyers representing the country of El Salvador, consular  
6 officials, and retained experts, both within the United States and El Salvador. The State argues that  
7 one of those individuals in El Salvador could supply Mr. Guzman’s family members, friends, and  
8 former educators with technology to facilitate Dr. Puente’s interviews.

9 Furthermore, during the afternoon session of the July 29, 2020 hearing, the Court watched a  
10 20-minute video of Mr. Guzman in the Washoe County Jail talking with his family in El Salvador via  
11 an iWeb simultaneous audiovisual transmission on June 17, 2020. Detective Stephanie Brady  
12 recognized Mr. Guzman’s mother and sister as participants to that video call. [Trans., July 29, 2020,  
13 P.M. Session, 62:17-24, 63:1]. Detective Brady also recognized that Mr. Guzman’s family was  
14 conducting the videocall from their home in El Salvador based on a comparison with photographs  
15 taken of the family home in September of 2019 during one of the defense team’s visits to the area.  
16 [Id. at 71:11-24 thru 81:1-4].

17 Deborah Moreno of the Washoe County Jail explained the process for setting up iWeb visits  
18 and the prerequisite to joining that videocall; someone in the family’s home in El Salvador must have  
19 had a working email address to log onto iWeb. [Trans., July 29, 2020, A.M. Session, 50:6-9, 51:5-  
20 15]. Here, Mr. Guzman’s sister’s email address was used. [Id.]. On the video, the parties could  
21 clearly see one another and understood one another (in Spanish). The video shows that Mr. Guzman’s  
22 family has the requisite capability to engage in videoconferencing over the internet from their home  
23 in rural El Salvador and it is possible for Mr. Guzman’s family to be interviewed via  
24 telecommunication and video communication.

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1 Mr. Guzman also argues that teleconferencing or video conferencing will not work for an  
2 Atkins investigation because multiple interviews are necessary to establish trust and elicit sensitive  
3 information, and that interviews with family members and other informants are nearly always  
4 conducted in the informant's home in locations which are often rural communities. Mr. Guzman  
5 asserts that informants are typically racial and ethnic minorities who are socioeconomically poor or  
6 working-class. The State argues that since the defense team has twice traveled to El Salvador and  
7 has been building rapport and trust since September of 2019, this should not be an issue. [Trans.,  
8 Status Hearing, Sept. 16, 2019, 25:1-3 (noting that the interactions in El Salvador were primarily  
9 about building trust); Trans., Status Conference, Sept. 16, 2019, pg. 4 (discussing interview with ten  
10 family members, two teachers, and so forth which were conducted with the assistance of two bilingual  
11 investigators that are professed experts in mitigation investigation and intellectual disability claims);  
12 See also Trans., July 27, 2020, A.M. Session, 31:17-22 (stating, "Two of the trips had been held by  
13 the defense team and the last one, some additional information had been obtained as to potential  
14 informants that proved to be valid and reliable and knowledgeable of who he was prior to the age of  
15 eighteen."]. The State asserts that Mr. Guzman's family has been interviewed by mitigation  
16 specialists employed by the defense team and are presently capable of telecommunicating via video  
17 or telephone. Based on the foregoing, the Court finds alternative methods to in-person contact  
18 presently exists and are available in the instant case.

19 Dr. Martinez testified that experts should "follow the approach that is recommended by the  
20 publisher of the test and try to adhere as much as you can to the standard procedures for  
21 administration." [Trans., July 28, 2020, P.M. Session, 78:9-16]. The State argues that despite ABAS  
22 and the VINELAND behavioral scales having limitations on retrospective use and their not being  
23 scaled to Latin American norms, these tools are commonly used by practitioners in diagnosing  
24 intellectual disability. Both Dr. Puente and Dr. Martinez have used these scales in Latin America and  
25 as required, have disclosed the deviation from the standardized approach in their prior reports as a  
26 limitation. [Trans., July 28, 2020, P.M. Session, 97:12-16]. Dr. Puente contends that all tests have  
27 limitations. [Trans., July 27, 2020, A.M. Session, 42:21-24]. Dr. Martinez testified that using  
28 teleconference and interviewing witnesses remotely qualifies as a subsequent limitation to be

1 disclosed but does not preclude one from using such approach. [Trans., July 28, 2020, P.M. Session,  
2 78:14-18, 86:3-20]. The Court finds the spectrum of potential limitations should not bar the finding  
3 that alternative methods exist and are available to further Mr. Guzman's Atkins investigation.  
4 Furthermore, the Court finds that the greatest potential for error comes from the failure to gather  
5 information at all, as people can die, informants can move, and memories can fade leaving less  
6 evidence to support the Defendant's anticipated motion pursuant to NRS 174.098.

7 Therefore, the Court finds that alternative methods to in-person interviews exist, are  
8 professionally accepted, and have been utilized by both doctors in the past. The Court finds that the  
9 State's exhibits of the recently unsealed and redacted neuropsychological evaluation reports authored  
10 by Dr. Puente in the Lagunas case show that alternative methods to in-person interviews have been  
11 conducted during Atkins investigations in the recent past by defense counsel's own expert, Dr.  
12 Puente. The Court further finds that since Dr. Puente was able to use alternatives to in-person  
13 interviews in Atkins investigations in the recent past, to do so here during a global pandemic that  
14 requires individuals to avoid unnecessary travel and gatherings, would not be a violation of any legal  
15 or ethical requirements. In addition, the Court finds that alternative methods of administering the  
16 behavioral scales are expressly advanced by the developers of the same instruments, and although the  
17 resulting purpose surrounding testing differs, the methods have been formally accepted for the  
18 medical diagnosis of intellectual disability. Therefore, since no scientific data or legal precedent  
19 supports Mr. Guzman's claim that in-person interviews is the only method to obtain reliable  
20 information, the Court finds that alternative methods can be employed by the defense team.

21 The Court also takes note that Mr. Guzman has continually argued that an Atkins and  
22 mitigation investigation cannot be performed in the Defendant's home country of El Salvador because  
23 it has been closed to visitors. [Mot. to Correct R. and Strike State's Arg. Re: Dr. Puente's Work  
24 Methodology in Maricopa County Case (D-28), Oct. 16, 2020, 2:21-22]. However, as of August 24,  
25 2020, El Salvador reopened its economy and as of September 19, 2020, the Government of El  
26 Salvador reopened the International Airport with enhanced health protocols. [Opp'n to Mot. to  
27 Correct R. and Strike State's Arg. Re: Dr. Puente's Work Methodology in Maricopa County Case  
28 (D-28), Oct. 26, 2020, pg. 12; Id. at Ex. 2, U.S. Embassy Travel Advisory; See also U.S. Embassy,

1 last updated on Oct. 19, 2020, <http://sv.usembassy.gov/covid-19-information/>]. Dr. Puente has said  
2 that he will travel to El Salvador to conduct in-person interviews only when El Salvador reopens and  
3 he has gotten the COVID-19 vaccine. [Trans., July 27, 2020, A.M. Session, 52:9-12]. However,  
4 there is no certain date set for when vaccines will be given out to the general public. Thus, the State  
5 argues there is no legal restrictions currently preventing Dr. Puente or other members of the defense  
6 team from traveling to El Salvador to conduct an Atkins investigation in-person, if they so choose.

7 Without question, the Court finds Mr. Guzman has the right to the effective assistance of  
8 counsel, due process, and to conduct a full investigation into intellectual disability, the merits of the  
9 evidence, and mitigating information. While it may be preferable to Dr. Puente to conduct in-person  
10 interviews as part of his investigation, when health experts recommend refraining from in-person  
11 contact to the extent practicable, and with technological advances that are being utilized around the  
12 world, the Court finds that alternative methods of conducting interviews abroad are available and  
13 certainly can be utilized in this case. The Court finds video conferencing of witnesses has met the  
14 Court's needs in trials and hearings during normal times and such use has been extended during the  
15 pandemic. The Court also finds that since alternatives to in-person interviews with informants has  
16 been used in the past, is presently available to be used in the case at hand, and since there is no legal  
17 requirement that the interviews and assessments of informants be in-person, Mr. Guzman has failed  
18 to meet the burden to establish good cause exists to justify the granting of his request for an indefinite  
19 continuance for the Atkins investigation.

20 Based on the above, the Nevada Supreme Court Rules, the recent Second Judicial District  
21 Court Administrative Orders, as well as taking into consideration the Nevada Revised Statutes, legal

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1 precedent, and all pleadings, supplemental pleadings, evidence presented to the Court, and oral  
2 arguments set forth, the Motion for an indefinite continuance will be denied.

3 Good cause appearing and in the interest of justice,

4 IT IS HEREBY ORDERED that Mr. Guzman's *Motion to Correct Record and Strike State's*  
5 *Argument Regarding Dr. Puente's Work Methodology in Maricopa County Case Number CR2013-*  
6 *001614-001 Due to the Material Misrepresentation Presented in the State's Argument (D-28)* is  
7 DENIED.

8 IT IS HEREBY FURTHER ORDERED that Mr. Guzman's *Motion to Continue Trial for*  
9 *Investigation of Potential Atkins Motion (D-23)* for an indefinite period of time is DENIED.

10 IT IS HEREBY FURTHER ORDERED that the previously entered scheduling order is  
11 modified as follows:

12 If Mr. Guzman chooses to file a motion pursuant to NRS 174.098, he must do so no later than  
13 April 12, 2021 at 5 p.m., the State to respond within ten (10) days of service of the motion.

14 If Mr. Guzman chooses to file a motion pursuant to NRS 174.098, that the State opposes, the  
15 State and Defense must be ready to hold an evidentiary Atkins hearing beginning on May 17, 2021  
16 continuing through May 28, 2021.

17 If either party has good cause to file additional pretrial motions or to file additional Notice of  
18 Expert Witness such must be filed no later than July 19, 2021, Responses filed no later than July 29,  
19 2021, and an evidentiary hearing is set for August 9, 2021 continuing through August 13, 2021.

20 IT IS HEREBY FURTHER ORDERED that the Trial in this matter is set for eight (8) weeks  
21 beginning on September 20, 2021 (TF 14).

22 DATED this 5 day of December, 2020.

23   
24 DISTRICT JUDGE

CERTIFICATE OF SERVICE

CASE NO. CR19-0447

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 5 day of December, 2020, I filed the **ORDER ADDRESSING: (1) MOTION TO CORRECT RECORD AND STRIKE STATE'S ARGUMENT REGARDING DR. PUENTE'S WORK METHODOLOGY IN MARICOPA COUNTY CASE NUMBER CR2013-001614-001 DUE TO THE MATERIAL MISREPRESENTATION PRESENTED IN THE STATE'S ARGUMENT (D-28) and (2) MOTION TO CONTINUE TRIAL FOR INVESTIGATION OF POTENTIAL ATKINS MOTION (D-23)** with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

         Personal delivery to the following: [NONE]

         **xx** Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User Agreement.

MARILEE CATE, ESQ. for STATE OF NEVADA  
CHRISTOPHER HICKS, ESQ. for STATE OF NEVADA  
MARK JACKSON, ESQ. for STATE OF NEVADA  
GIANNA VERNES, ESQ. for WILBER ERNESTO MARTINEZ GUZMAN  
JOHN PETTY, ESQ. for WILBER ERNESTO MARTINEZ GUZMAN  
JOSEPH GOODNIGHT, ESQ. for WILBER ERNESTO MARTINEZ GUZMAN  
DIV. OF PAROLE & PROBATION  
KATHERYN HICKMAN, ESQ. for WILBER ERNESTO MARTINEZ GUZMAN  
TRAVIS LUCIA, ESQ. for STATE OF NEVADA

         Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada: [NONE]

         Placed a true copy in a sealed envelope for service via:

         Reno/Carson Messenger Service – [NONE]

         Federal Express or other overnight delivery service [NONE]

DATED this 5 day of December, 2020.

  
\_\_\_\_\_

## CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 14th day of January 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows: Jennifer P. Noble, Chief Appellate Deputy and Marilee Cate, Appellate Deputy, Washoe County District Attorney's Office.

I certify that I served a copy of this document by e-mailing a true and correct copy thereof to:

Hon. Connie J. Steinheimer  
Second Judicial District Court, Dept. 4

Christopher J. Hicks  
Washoe County District Attorney

Mark Jackson  
Douglas County District Attorney

John Reese Petty  
John Reese Petty  
Washoe County Public Defender's Office