

# **Exhibit**

## **M**

**Emails: A.D.A. and Habeas Counsel**



Tate Saunders &lt;tatensaunders@gmail.com&gt;

**State v. Carlos Lozano -- Cause No. 2016-0D-00209 -- Habeas Corpus File Review & Appointment for In-Person Meeting Next Thursday/Friday**

2 messages

**Tate Saunders** <tatensaunders@gmail.com>  
To: DARosales@epcounty.com, tdarnold@epcounty.com

Thu, Mar 17, 2022 at 2:23 PM

Good Afternoon District Attorney Rosales & Mr. Darnold:

As you are aware, I am representing Mr. Carlos Lozano for purposes of seeking post-conviction relief via habeas corpus or otherwise; and to that end would like to schedule an "in-person" meeting with you (District Attorney Rosales) and/or both of you D.A. Rosales & A.D.A. Darnold) next Thursday or Friday -- March 24th or 25th -- to discuss the situation and what, if any, agreements we can make as I move forward with the application for *Habeas Corpus* relief.

My paralegal and I will be arriving at the El Paso Airport on Thursday, March 24th around 9:30 a.m. and I should be able to safely make a meeting any time from about 11:00 a.m. that Thursday through about 2:30 p.m. the following day as out return flight is at approximately 5:00 p.m. that Friday.

Additionally, I need to make arrangements to go through the entire District Attorney's Offices file on Mr. Lozano's Case with the exception of any work product to evaluate several evidentiary issues we are looking at as well as assess the viability of any *Brady/Michael Morton Act* issues that may exist.

That said, please let me know what, if anything, I need to do to get access to your complete file and firm up a meeting time for next Thursday and/or Friday (March 24th and/or 25th, 2022).

Thanks and Best Regards,

TATE N. SAUNDERS  
Post Office Box 1234  
Kyle, Texas 78640  
(210) 702-8919 - Office/Mobile  
(830) 202-5068 - Digital Fax  
tatensaunders@gmail.com

**Tom Darnold** <TDarnold@epcounty.com>  
To: Tate Saunders <tatensaunders@gmail.com>

Fri, Mar 18, 2022 at 2:56 PM

Good afternoon, Mr. Saunders.

District Attorney Rosales is not available to meet with you next Thursday or Friday. To schedule an appointment to meet with District Attorney Rosales, please contact her Executive Assistant, Ms. Corina Cervantes. She can be reached by telephone at (915) 546-2059, or by email at [CoCervantes@epcounty.com](mailto:CoCervantes@epcounty.com).

To schedule a time to review the District Attorney's file in this case, or to request access to our attorney portal where the electronic file can be reviewed, please contact Mr. Curtis Cox, Senior Division Chief. He can be reached by telephone at (915) 546-2059, or by email at [CCox@epcounty.com](mailto:CCox@epcounty.com).

Thank you,

Tom Darnold

[Quoted text hidden]



Tate Saunders &lt;tatensaunders@gmail.com&gt;

**State v. Carlos Lozano -- Cause No. 2016-0D-00209 -- Review of District Attorney's File for Post-Conviction Habeas Corpus**

1 message

**Tate Saunders** <tatensaunders@gmail.com>  
To: CCox@epcounty.com

Fri, Mar 18, 2022 at 5:01 PM

Good Afternoon Mr. Cox:

My name is Tate N. Saunders, and I am an out-of-county attorney representing Mr. Lozano in the above styled and numbered Cause for a *Post-Conviction Habeas Corpus*.

I have previously been in contact with you Appellate Chief, Tom Darnold and ostensibly District Attorney Rosales, about several aspects of this matter via email, and was given your information by Mr. Darnold, in response to an email yesterday about getting access to the District Attorney's physical file next Thursday or Friday when I fly in from San Antonio to evaluate several evidentiary issues we are looking at as well as assess the viability of any *Brady/Michael Morton Act* issues that may exist.

Accordingly, I would greatly appreciate it if you would let me know what, if anything else, I need to do to get access to your office's entire physical file (with the exception of work product, obviously) next Thursday and Friday while I am in town.

I also left you a voice message with regard to this matter an hour or so ago, but thought I had better email you as well since I have not heard back from you yet and we are rapidly running out of workday on a Friday.

Thanks and Best Regards,

TATE N. SAUNDERS  
Post Office Box 1234  
Kyle, Texas 78640  
(210) 702-8919 - Office/Mobile  
(830) 202-5068 - Digital Fax  
tatensaunders@gmail.com



Tate Saunders &lt;tatensaunders@gmail.com&gt;

**Carlos Lozano 20160D00209**

15 messages

**Curtis Cox** <CCox@epcounty.com>  
To: Ignacio Frausto <IFrausto@epcounty.com>  
Cc: Tate Saunders <tatensaunders@gmail.com>

Mon, Jun 13, 2022 at 10:24 AM

This is a Conviction Integrity Unit case.

Please contact EPPD and see if the following items of evidence are still in their possession. If so, please have them bring them to us and have them uploaded to the case on the portal:

CD-R (Stanley Hayes)

HJL-03K DVD OF FACEBOOK CARLOS LOZANO (Jorge Hinojos)

(1) CDR VALERO #1359 SUVIEL VIDEO (Alfredo Hernandez)

HJL-01: DVD DISK VIDEO OF PARKING LOT PO (Jorge Hinojos)

**Ignacio Frausto** <IFrausto@epcounty.com>  
To: Curtis Cox <CCox@epcounty.com>  
Cc: Tate Saunders <tatensaunders@gmail.com>

Mon, Jun 13, 2022 at 11:19 AM

Good morning,

Evidence requested from EPPD. The video of parking lot is already uploaded onto portal.

Respectfully,

Ignacio Frausto

[Quoted text hidden]

**Curtis Cox** <CCox@epcounty.com>  
To: Ignacio Frausto <IFrausto@epcounty.com>  
Cc: Tate Saunders <tatensaunders@gmail.com>

Mon, Jun 13, 2022 at 11:24 AM

Thank you

[Quoted text hidden]

**Tate Saunders** <tatensaunders@gmail.com>

Mon, Jun 13, 2022 at 12:15 PM

To: Curtis Cox <CCox@epcounty.com>  
Cc: Ignacio Frausto <IFrausto@epcounty.com>

Please have them forward the Jorge Hinojosa video as well if they've got it.

I've got substantial evidence that there was another video that was not admitted into evidence...via sworn statements of witnesses who saw the other video outside of court...and want to make sure that whatever they've got is the same as the one that is already in evidence.

Thanks and Best Regards,

[Quoted text hidden]

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TATE N. SAUNDERS (210) 702-8919 - Mobile [tatensaunders@gmail.com](mailto:tatensaunders@gmail.com)

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**Curtis Cox** <CCox@epcounty.com>  
To: Tate Saunders <[tatensaunders@gmail.com](mailto:tatensaunders@gmail.com)>  
Cc: Ignacio Frausto <[IFrausto@epcounty.com](mailto:IFrausto@epcounty.com)>

Mon, Jun 13, 2022 at 12:17 PM

I've asked them to obtain everything that I can deduce may be a video, including the videos that show the name Jorge Hinojosa connected to them.

[Quoted text hidden]

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**Tate Saunders** <[tatensaunders@gmail.com](mailto:tatensaunders@gmail.com)>  
To: Curtis Cox <CCox@epcounty.com>  
Cc: Ignacio Frausto <[IFrausto@epcounty.com](mailto:IFrausto@epcounty.com)>

Mon, Jun 13, 2022 at 12:19 PM

Or perhaps I should more accurately say could you please have your evidence archive people forward both videos...the Jorge Hinojosa/Parking Lot video and Alfredo Hernandez/Valero video to make sure I've got both of them for comparison.

Thanks and Best Regards,

[Quoted text hidden]

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**Curtis Cox** <CCox@epcounty.com>  
To: Tate Saunders <[tatensaunders@gmail.com](mailto:tatensaunders@gmail.com)>  
Cc: Ignacio Frausto <[IFrausto@epcounty.com](mailto:IFrausto@epcounty.com)>

Mon, Jun 13, 2022 at 12:20 PM

All of that should be being obtained, but we'll know better in a couple of days, I think

**From:** Tate Saunders [mailto:tatensaunders@gmail.com]  
**Sent:** Monday, June 13, 2022 11:20 AM  
**To:** Curtis Cox <CCox@epcounty.com>  
**Cc:** Ignacio Frausto <IFrausto@epcounty.com>  
**Subject:** Re: Carlos Lozano 20160D00209

Or perhaps I should more accurately say could you please have your evidence archive people forward both videos...the Jorge Hinojosa/Parking Lot video and Alfredo Hernandez/Valero video to make sure I've got both of them for comparison.

Thanks and Best Regards,

[Quoted text hidden]

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**Tate Saunders** <tatensaunders@gmail.com>  
To: Curtis Cox <CCox@epcounty.com>  
Cc: Ignacio Frausto <IFrausto@epcounty.com>

Mon, Jun 13, 2022 at 1:52 PM

Sounds good! Thank you very much!!!

[Quoted text hidden]

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**Ignacio Frausto** <IFrausto@epcounty.com>  
To: Curtis Cox <CCox@epcounty.com>, Tate Saunders <tatensaunders@gmail.com>

Wed, Jun 15, 2022 at 9:22 AM

Good morning,

All videos requested within this email have been uploaded to our DA Case Portal with the exception of the Face Book Carlos Lozano, files were too large to be uploaded. Please advise how you'd like to proceed with the face book disc.

[Quoted text hidden]

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**Curtis Cox** <CCox@epcounty.com>  
To: Ignacio Frausto <IFrausto@epcounty.com>, Tate Saunders <tatensaunders@gmail.com>

Wed, Jun 15, 2022 at 9:37 AM

Would using Dropbox work?

[Quoted text hidden]

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**Ignacio Frausto** <IFrausto@epcounty.com>  
To: Curtis Cox <CCox@epcounty.com>, Tate Saunders <tatensaunders@gmail.com>  
Cc: DA Tech <DATech@epcounty.com>

Wed, Jun 15, 2022 at 10:55 AM

I cc'ed our da techs to see what they can suggest. As a last resort, I can fedex a copy over if that's an option.

DA Techs,

We have a disk that contains Face Book files that were too large to upload onto portal, any suggestions on how to facilitate an electronic deliver to Mr. Sanders who is also copied on this email? Not sure if Office 365's file share has this capability...

[Quoted text hidden]

**DA Tech** <DATech@epcounty.com> Wed, Jun 15, 2022 at 11:06 AM  
To: Ignacio Frausto <IFrausto@epcounty.com>, Curtis Cox <CCox@epcounty.com>, Tate Saunders <tatensaunders@gmail.com>

We can do that with OneDrive. If you can bring me the disc so I can convert it to an ISO file. I will then forward to Mr. Sanders.

Thanks

Raymond.

[Quoted text hidden]

**Curtis Cox** <CCox@epcounty.com> Wed, Jun 15, 2022 at 1:30 PM  
To: Tate Saunders <tatensaunders@gmail.com>

FYI. We are working out how to get the Facebook stuff to you

[Quoted text hidden]

**Ignacio Frausto** <IFrausto@epcounty.com> Fri, Jun 17, 2022 at 10:11 AM  
To: Curtis Cox <CCox@epcounty.com>, Tate Saunders <tatensaunders@gmail.com>

Good morning,

Facebook files were successfully sent over to Mr. Saunders. I attached the email confirmation sent to our DA Tech Raymond Cano. Please let me know if I am clear to return DVDs back to EPPD Property Office.

Respectfully,



**Ignacio Frausto**  
Investigator -384<sup>th</sup> District Court  
El Paso County District Attorney's Office  
500 E San Antonio 2<sup>nd</sup> Floor, El Paso, Texas 79901  
Phone: (915) 546-2059 Ext. 3716  
Cell: (915) 319-3791

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[Quoted text hidden]

----- Forwarded message -----

**From:** Raymond Cano <RCano@epcounty.com>  
**To:** Ignacio Frausto <IFrausto@epcounty.com>  
**Cc:**  
**Bcc:**  
**Date:** Fri, 17 Jun 2022 14:47:00 +0000  
**Subject:** FW: The link to "Facebook for Carlos Lozano" was successfully used

I sent the Facebook files and the link was used by Tate Saunders. When you get a chance can you pick up the disc, it will be on my desk.

Raymond.

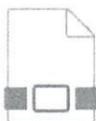
**From:** SharePoint Online <no-reply@sharepointonline.com>  
**Sent:** Thursday, June 16, 2022 2:45 PM  
**To:** Raymond Cano <RCano@epcounty.com>  
**Subject:** The link to "Facebook for Carlos Lozano" was successfully used

tatensaunders@gmail.com has opened the link you sent to "Facebook for Carlos Lozano"!

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Facebook for Carlos Lozano

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 **FW: The link to "Facebook for Carlos Lozano" was successfully used.eml**  
39K

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**Tate Saunders** <tatensaunders@gmail.com>  
To: David Mains <davidm@ecrnw.com>

Wed, Jun 22, 2022 at 12:26 PM

[Quoted text hidden]

----- Forwarded message -----

From: Raymond Cano <RCano@epcounty.com>

To: Ignacio Frausto <IFrausto@epcounty.com>

Cc:

Bcc:

Date: Fri, 17 Jun 2022 14:47:00 +0000

Subject: FW: The link to "Facebook for Carlos Lozano" was successfully used

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Raymond.

From: SharePoint Online <no-reply@sharepointonline.com>

Sent: Thursday, June 16, 2022 2:45 PM

To: Raymond Cano <RCano@epcounty.com>

Subject: The link to "Facebook for Carlos Lozano" was successfully used

tatensaunders@gmail.com has opened the link you sent to "Facebook for Carlos Lozano"!

If this is unexpected, you can open your document and manage its sharing permissions by [clicking here](#).



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## Facebook for Carlos Lozano

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 Microsoft OneDrive

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Microsoft Corporation, One Microsoft Way, Redmond, WA 98052

[Notification Settings](#)

[Quoted text hidden]

----- Forwarded message -----

**From:** Raymond Cano <[RCano@epcounty.com](mailto:RCano@epcounty.com)>  
**To:** Ignacio Frausto <[IFrausto@epcounty.com](mailto:IFrausto@epcounty.com)>  
**Cc:**  
**Bcc:**  
**Date:** Fri, 17 Jun 2022 14:47:00 +0000  
**Subject:** FW: The link to "Facebook for Carlos Lozano" was successfully used

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Raymond.

**From:** SharePoint Online <[no-reply@sharepointonline.com](mailto:no-reply@sharepointonline.com)>  
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**To:** Raymond Cano <[RCano@epcounty.com](mailto:RCano@epcounty.com)>  
**Subject:** The link to "Facebook for Carlos Lozano" was successfully used

[tatensaunders@gmail.com](mailto:tatensaunders@gmail.com) has opened the link you sent to "Facebook for Carlos Lozano"!

If this is unexpected, you can open your document and manage its sharing permissions by clicking [here](#).



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## Facebook for Carlos Lozano

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**FW: The link to "Facebook for Carlos Lozano" was successfully used.eml**  
39K



Tate Saunders &lt;tatensaunders@gmail.com&gt;

**State v. Carlos Lozano; Cause No. 2016-0D-00209; Video Issues Raised by Expert & Status of CD/DVD's Requisitioned from Storage**

6 messages

Tate Saunders <tatensaunders@gmail.com>  
To: CCox@epcounty.com

Wed, Apr 20, 2022 at 1:24 PM

Good Afternoon Curtis:

I apologize for taking so long to get back to you with our Video Expert's Evaluation of the surveillance video used at Mr. Lozano's trial, but there was an additional potential issue with the said video raised by an independent surveillance company owner/expert who looked at the video recently that we needed to have our expert look at before sending it through.

The additional issue raised involved the digital watermark on the surveillance video but ended up not amounting to anything conclusive that our expert thought would bolster his original opinion/evaluation.

Accordingly, I have attached a copy of our Video Expert's Evaluation of the surveillance video along with a copy of his resume for your review before we proceed further with the habeas corpus in this matter.

I am hoping that between the issues with the integrity of the surveillance video raised by our expert and the fact that the Court of Criminal Appeals has essentially judicially pronounced Mr. Lozano's trial counsel was ineffective by failing to put him on the stand to provide the subjective evidence/statement of fear for his life/serious bodily injury necessary to support his use of deadly force in self-defense from his vehicle; we might, at the very least, be able to agree that his counsel was ineffective and come up with an appropriate resolution of this matter, sooner rather than later.

I have a recording of my interview with Mr. Lozano's trial counsel -- who is very old and retired shortly after the trial in this matter by the way -- where he states that his only reason for not putting Mr. Lozano on the stand to testify with regard to self-defense was his criminal history -- a criminal history which amounted to all of a successfully completed probation on a California DWI Case nearly 20 year prior to the murder trial in this matter -- if you would like to hear it.

That said, please let me know what your thoughts are on how to proceed after you and/or the video expert you mentioned when we met have had a chance to review the surveillance video in light of our expert's opinion.

And regardless of where you end up coming down on the integrity of the surveillance video and ineffective assistance of counsel issue referenced above, I need to ascertain the status of the additional CD's and/or DVD's that you indicated were not in your electronic file you were requisitioning from long term storage to provide copies on the DVD's I left with you when you get a chance.

Thanks and Best Regards,

TATE N. SAUNDERS  
Post Office Box 1234  
Kyle, Texas 78640  
(210) 702-8919 - Office/Mobile  
(830) 202-5068 - Digital Fax  
tatensaunders@gmail.com

**2 attachments** **Video Review - Adam Key, PhD, MFA.pdf**  
972K **Adam Matthew Key - Expert Witness CV.pdf**  
22K

Curtis Cox &lt;CCox@epcounty.com&gt;

Tue, May 31, 2022 at 11:44 AM

To: Tate Saunders <tatensaunders@gmail.com>

After conferring with our appellate section, I must ask you to please file your writ, and we will then let things proceed in the customary fashion.

**From:** Tate Saunders [mailto:tatensaunders@gmail.com]

**Sent:** Wednesday, April 20, 2022 12:25 PM

**To:** Curtis Cox <CCox@epcounty.com>

**Subject:** State v. Carlos Lozano; Cause No. 2016-0D-00209; Video Issues Raised by Expert & Status of CD/DVD's Requisitioned from Storage

You don't often get email from tatensaunders@gmail.com. Learn why this is important

[Quoted text hidden]

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**Tate Saunders** <tatensaunders@gmail.com>

Fri, Jun 3, 2022 at 7:41 PM

To: Curtis Cox <CCox@epcounty.com>

Alright that's disappointing but we will proceed accordingly. That said, I still need the copies of the CD/DVD's that you indicated were not in the electronic file when we met with you in person. It's been more than two months since you told us you would order them the day after we met: when can we expect to receive them?

[Quoted text hidden]

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TATE N. SAUNDERS (210) 702-8919 - Mobile tatensaunders@gmail.com

---

**Curtis Cox** <CCox@epcounty.com>

Sat, Jun 4, 2022 at 8:01 AM

To: Tate Saunders <tatensaunders@gmail.com>

I will request those at the beginning of next week

[Quoted text hidden]

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**Curtis Cox** <CCox@epcounty.com>

Sun, Jun 12, 2022 at 9:17 AM

To: Tate Saunders <tatensaunders@gmail.com>

Now that we have run the panel on the murder trial I was working on, I will work on this tomorrow

[Quoted text hidden]

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**Tate Saunders** <tatensaunders@gmail.com>

Wed, Jun 22, 2022 at 12:25 PM

To: David Mains <davidm@ecrnw.com>

[Quoted text hidden]

**Exhibit**

**N**

**Saunders Affidavit**

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## AFFIDAVIT OF TESTIMONY

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COMES NOW, TATE NEILSON SAUNDERS, the attorney of record for the Applicant, CARLOS LOZANO (TDCJ No. 02156992), and makes the following statement under oath, and further asserts that the facts contained therein are true and correct and within his personal knowledge.

I initially reached out to the El Paso County District Attorney's Office through its then Appellate Division Chief, TOM DARNOLD, on March 17<sup>th</sup>, 2022, in attempt to sit down with him and/or the then District Attorney, YVONNE ROSALES, to discuss the potential for an agreed resolution of a habeas corpus situation after securing a video expert's report (See the Report of ADAM KEY, Ph.D, MFA attached as Exhibit to *Application for Writ of Habeas Corpus* before the Court) confirming that the video footage presented at trial as the only video evidence available **had, in fact, been tampered with by being cropped and edited** presumably to remove evidence favorable to the Applicant's anticipated assertion of the use of deadly force in self-defense. Additionally, I had arranged to fly out to El Paso with my paralegal, DAVID MAINS, to engage in the said discussion with the DA and her Appellate Chief as well as to physically go through the District Attorney's entire file to look for the missing video footage as well as additional surveillance video evidence from a business adjacent to the pool hall bar where the alleged murder occurred that we had reason to believe existed from the sworn testimony of other witnesses – and any other Brady violations that may have been engaged in by the State under the circumstances.

Upon arrival in El Paso, we were referred to a Senior Assistant District Attorney (ADA) and Trial Division Chief, CURTIS COX, for assistance with getting access to the El Paso District Attorney's Office's digital portal for the bulk of the file; but were also informed that there were some additional DVD's referenced in the said electronic file that for some reason were not accessible/viewable. These additional DVD's were allegedly in long-term storage and we were told that it would take a week or two for someone to dig them out of it for copying and production so my paralegal and I left a package of 30 DVD's we had brought for copying purposes for the DA's Office to make the additional recordings. Furthermore, I was supposed to send ADA CURTIS COX a copy of our video expert's analysis for review and authentication by an unnamed State's video expert,

which I did approximately 3 weeks later on April 20<sup>th</sup>, 2022, to no avail – meaning as far as I know nobody from the DA’s Office has ever even thoroughly evaluated it or bothered to vet it with their own expert. (See Attached Exhibit with email correspondence with ADA CURTIS COX for corroboration of the facts asserted in the paragraphs above and below that reference text messages with CURTIS COX and/or other staff or employees in the El Paso County District Attorney’s Office).

After more than two-and-a-half months of being put off, ADA CURTIS COX had a paralegal or office assistant of some sort emailed a link to Facebook posts that were not in the DA’s Offices’ electronic file; but never produced the evidence that was on the “additional DVD’s that he had initially indicated were logged in but not accessible – or even have the decency to ship the 30-pack of DVD’s we left for him to make copies on shipped back to us for that matter. And shortly thereafter, then District Attorney, YVONNE ROSALES, was forced to resign under a cloud of impropriety and her whole staff was fired by the interim District Attorney who took over in towards the end of November 2022.

Having hit a brick wall on getting the additional DVD evidence, my paralegal, DAVID MAINS, and I moved onto another potential issue in the Applicant, CARLOS LOZANO’s, habeas corpus case – namely, a missing reference to blood splatter evidence in the said Applicant’s truck that the El Paso District Attorney’s Office had insisted needed to have DNA testing run on it at a pretrial hearing – which becomes even more interesting from a Brady evidentiary disclosure standpoint when one considers that no DNA testing was performed at all on the blood splatter evidence in the Applicant’s truck despite the District Attorney’s Office withholding of the vehicle from being returned to the Applicant and his family for almost two (2) years on the pretense of needing to conduct that testing. It took months of pressuring the trial court and its court reporter, GENESIS STEPHENS, via a “Public Information Request” (PIA), a Texas Attorney General’s Office Opinion, a number of phone calls, and lastly a “Motion for Access to the Original Audio Recording of the Transcript” to finally get something done, which took the form of a hearing on the said motion. The hearing was conducted in-person in the trial court (384<sup>th</sup> Judicial District) on March 20<sup>th</sup>, 2023; and the trial judge, JUDGE PATRICK GARCIA, did allow the undersigned affiant/habeas counsel to listen to the recordings of a few pretrial hearings where we knew that the



**Exhibit**

**O**

**Truck Damage Photos**



State's Exhibits 186 & 187: Showing condition of truck when seized with closed closed.)



Photo by Private Investigator: Showing condition of outside of truck and open driver's side window in impound lot.



Photo by Private Investigator: Showing passenger side window and sunroof open, and condition of interior.



State's Exhibit 197: Showing condition of vehicle when seized.

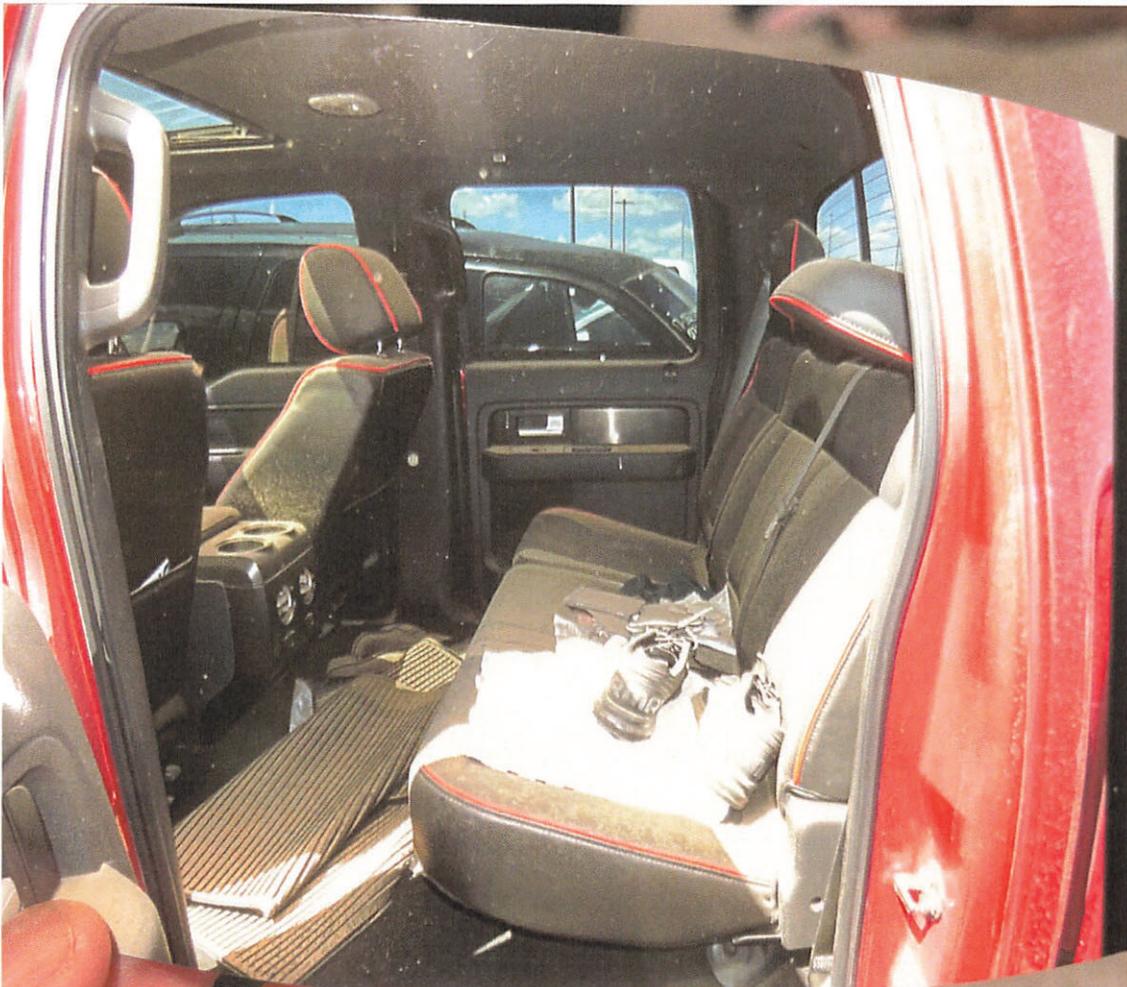
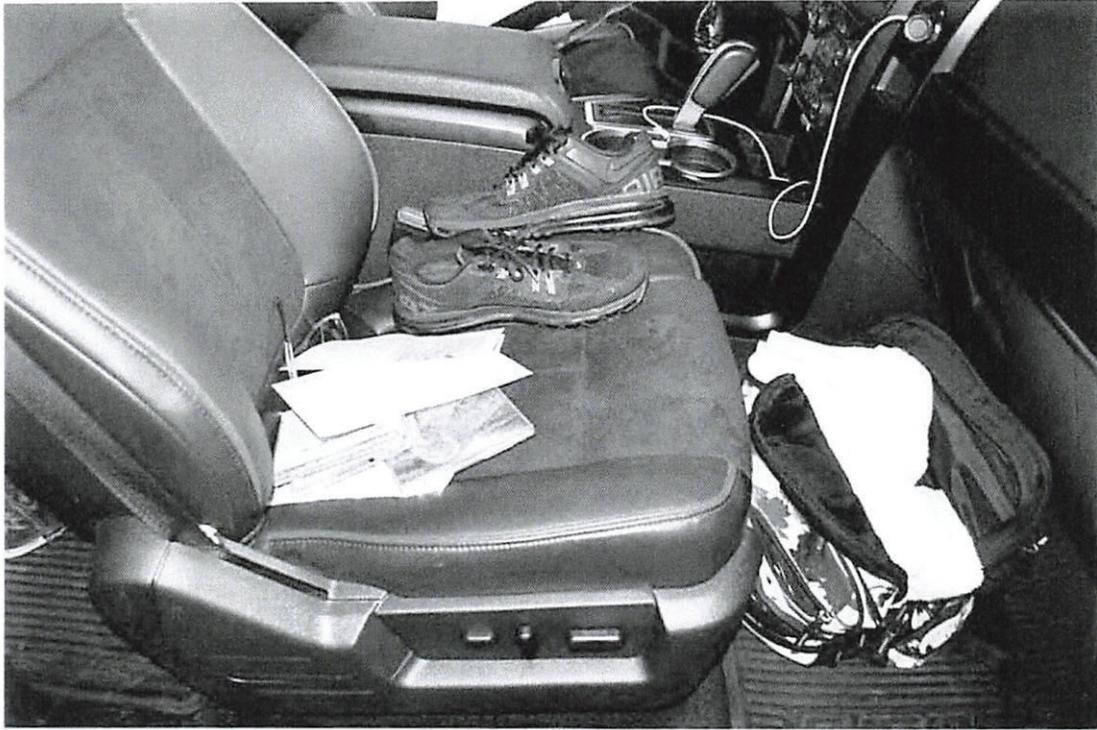


Photo by Private Investigator: Showing condition of truck after being left outside with sunroof and windows left open.



State's Exhibit 194: Showing condition of vehicle when seized.

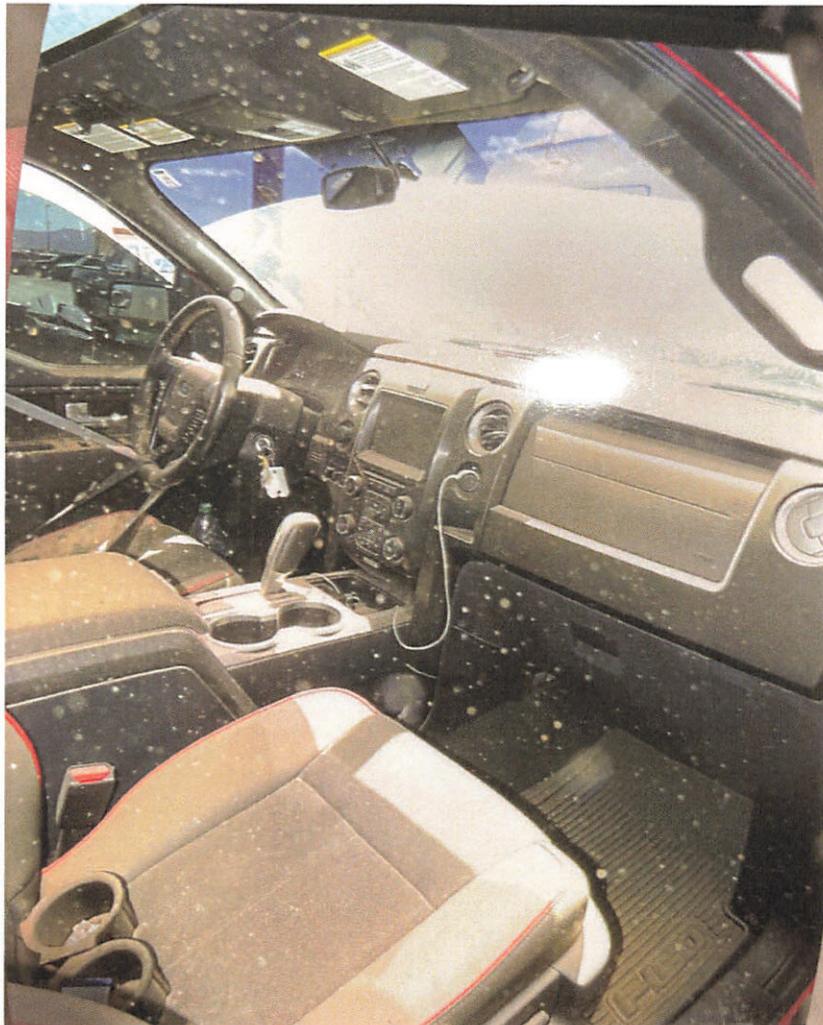


Photo by Private Investigator: Showing condition of truck after being left outside with sunroof and windows left open.



State's Exhibit 191: Showing condition of vehicle when seized.



Photo by Private Investigator: Showing condition of truck after being left outside with sunroof and windows left open.



State's Exhibit 197: Showing condition of vehicle when seized.



Photo by Private Investigator: Showing condition of truck after being left outside with sunroof and windows left open.