

**CAUSE NO. 20160D00209-384-1**

**EX PARTE**

**CARLOS LOZANO,**

**APPLICANT**

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**IN THE 384<sup>th</sup> DISTRICT COURT**

**EL PASO COUNTY, TEXAS**

**THE STATE’S PRELIMINARY ANSWER  
TO APPLICANT’S APPLICATION  
FOR WRIT OF HABEAS CORPUS**

COMES NOW, Respondent, the State of Texas, by the undersigned Assistant District Attorney for the 34<sup>th</sup> Judicial District, and files this, the State’s preliminary answer to the applicant’s application for writ of habeas corpus under article 11.07 of the Texas Code of Criminal Procedure, generally denying the applicant’s allegations, and would further show the Court the following:

**I.**

On July 12, 2025, applicant filed his first application for article 11.07 post-conviction writ of habeas corpus, a copy of which was served upon the State by the District Clerk on July 18, 2025. *See* (writ application). In his writ application, the applicant contends that he is entitled to relief because his due-process rights were violated due to the following: 1) a video admitted into evidence at trial was allegedly edited and manipulated by the State in a manner designed to increase the

State's chances for a conviction; 2) the State allegedly withheld exculpatory video footage from a business that was adjacent to the location where the incident leading to his arrest for murder occurred; and 3) the State's failure to conduct DNA testing on the blood located in his truck, along with the failure to preserve the blood evidence, violated his due-process rights. The applicant also asserts that his trial counsel provided ineffective assistance of counsel and alleges as follows: 1) trial counsel allegedly failed to object to the State's misstatement of the law concerning the now-repealed-duty-to-retreat language of §9.32 and to the inclusion of a duty-to-retreat instruction in the proposed jury charge; 2) trial counsel allegedly failed to allow him to testify at trial; and 3) trial counsel allegedly failed to secure an expert witness to expose the State's alleged manipulation of the video footage introduced at trial. Finally, the applicant complains about the Court of Criminal Appeal's decision in his case, asserting that the decision contravenes the legislature's intent to enable Texas residents to stand their ground in their homes, businesses, and vehicles.

## **II.**

Due to the nature of applicant's allegations, further investigation, research, and analysis will be necessary to determine whether applicant's contentions are meritorious. Additionally, because of the time needed to properly investigate and research applicant's contentions, including 1) the interviewing and/or deposing of

witnesses; 2) securing affidavits from witnesses; 3) contacting appropriate external agencies for relevant documentation; 4) obtaining and reviewing records from the Court's Reporter; and 5) the time to review such information and determine whether further investigation is necessary, the State is unable at this juncture to specifically answer all of applicant's numerous contentions within thirty days of receiving applicant's writ application.

Consequently, the State files this preliminary answer, generally denying each of applicant's contentions, and requests leave to file an amended answer to any issues designated by this Court.

### **III.**

In the event that this Court determines that there are controverted, previously unresolved facts material to the legality of the applicant's confinement, the State moves that this Court, pursuant to article 11.07 § 3(d) of the Code of Criminal Procedure, enter an order designating issues (ODI), and requests that this Court designate for resolution the following controverted, previously unresolved fact issues as specifically alleged by the applicant in his writ application:

1. Whether the State presented false evidence, to-wit: A cropped and edited version of video surveillance footage; at trial violated the applicant's right to due process and undermined the integrity of the verdict;
2. Whether the State's withholding of material and highly probative additional video footage from a neighboring business constituted a

violation of the Brady doctrine which deprived the applicant of due process and undermined the integrity of the verdict;

3. Whether the State's spoliation of blood splatter evidence rose to the level of a Brady violation which deprived the applicant of due process and undermined the integrity of the verdict; and

4. Whether the applicant was denied the effective assistance of counsel at the guilt-innocence state of trial.<sup>1</sup>

#### IV.

For the foregoing reasons, the State respectfully moves that it be permitted to file an amended answer addressing the unresolved fact issues, including all documentation, affidavits, and other evidence in support thereof.

The State asserts that this Court is not required by article 11.07 to conduct an evidentiary hearing and that there is no necessity for the Court to conduct such a hearing in this matter at this time. The State believes that this Court will be able to resolve these issues from applicant's writ application, the applicant's attachments to his writ application, the State's amended answer thereto, including affidavits, depositions, or other evidence gathered by the State, and the Court's record and recollection of the proceedings. Thereafter, after the filing of the State's forthcoming amended answer, the Court can then determine what further findings

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<sup>1</sup> The additional ground that applicant raises, where he complains about the Court of Criminal Appeal's decision in his case, presents only a question of law.

and orders should be entered, including whether an evidentiary hearing is necessary.

This preliminary answer and motion to file an amended answer are not made for purposes of delay, but are made for purposes of promoting justice and judicial economy.

V.

**PRAYER**

WHEREFORE, the State prays that in the event this Court decides that there are controverted, previously unresolved facts material to the legality of the applicant's confinement, the Court enter an order designating issues, grant the State's motion to file an amended answer, and hold in abeyance any evidentiary hearing until the Court has received the State's forthcoming amended answer in response to applicant's contentions.

Respectfully submitted,

JAMES MONTOYA  
DISTRICT ATTORNEY  
34<sup>th</sup> JUDICIAL DISTRICT

/s/ Rebecca E. Quinn

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ATTORNEYS FOR THE STATE

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a copy of the above preliminary answer was sent by email via the e-file system on August 13, 2025 to appellant's attorney: Tate Saunders, [tatesaunders@gmail.com](mailto:tatesaunders@gmail.com).

/s/ Rebecca Estrada Quinn

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REBECCA ESTRADA QUINN

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Rebecca Quinn on behalf of Rebecca Quinn

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Status as of 8/14/2025 2:32 PM MST

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