

Aldape: Fed. Habeas Pleadings
(1/13-12/94) (v. 10)



12/13/94

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RICARDO ALDAPE GUERRA,	§	
Petitioner.	§	
	§	
v.	§	Civil Action No. H-93-290
	§	
JAMES A. COLLINS,	§	
Director, Institutional Division,	§	
Texas Department of Criminal Justice,	§	
	§	
Respondent.	§	

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VOLUME X

PLEADING	DATE FILED
60. Witness List for Petitioner and Respondent (duplicate of 59).	11/10/93
61. Respondent's Witness List	11/16/93
62. ORDER to Seal	11/17/93
62A. Petitioner's Letter Regarding Moen's Legal Problems.	12/30/93
63. Petitioner's Proposed Findings of Fact and Conclusions of Law.	12/20/93 & 01/03/94
64. Respondent's Proposed Findings of Fact and Conclusions of Law	12/31/93
65. ORDER granting motions for leave to file <i>amicus curiae</i> brief	1/11/94
66. ORDER on Application for Writ of Habeas Corpus <i>+ LET Letters urging appeal by Hon. D.A. [1/16/94] + Chief of Police [1/18/94]</i>	11/15/94
67. FINAL JUDGMENT	12/13/94
68. Authorization to Send Orders and Judgments	

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69.	Respondent's Unopposed Motion to Alter or Amend the Judgment, Pursuant to Fed.R. Civ. P. 59(e)	12/27/94
70.	Petitioner's Motion to Alter or Amend the Judgment, Pursuant to Fed. R. Civ. P. 52(b) and proposed Order	12/27/94
71.	Petitioner's:	12/28/94
	1) Motion for Attorney Fees and Costs;	
	2) Motion to File Billing Records Under Seal; and	
	3) Appointment of and Authority to Pay Court Appointed Counsel	

THE WILLARD OFFICE BUILDING
1455 PENNSYLVANIA AVE., N.W.
WASHINGTON, D.C. 20004-1008
TELEPHONE (202) 639-6500
FAX (202) 639-6604

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VINSON & ELKINS
L.L.P.
ATTORNEYS AT LAW

2300 FIRST CITY TOWER
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HOUSTON, TEXAS 77002-6760

TELEPHONE (713) 758-2222
FAX (713) 758-2346

WRITER'S DIRECT DIAL

(713) 758-4873

December 28, 1994

cc: Stan
cc: Team
f-plays
3700 TRAMMELL CROW CENTER
200 ROSS AVENUE
DALLAS, TEXAS 75201-2975
TELEPHONE (214) 220-7700
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LONDON W1X 7PB, ENGLAND
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FAX 011 (44-71) 499-5320

By Messenger

Hon. Michael N. Milby, Clerk
United States District Court
United States Courthouse
515 Rusk
Houston, Texas 77002

RECEIVED
DEC 28 1994
S.J. ATLAS

Re: *Ricardo Aldape Guerra v. James A. Collins*; Civil Action No. H-93-290; in the
U.S. District Court for the Southern District of Texas, Houston Division

Dear Mr. Milby:

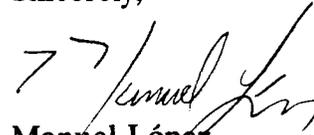
Enclosed for filing in the captioned cause are an original and two copies of (a) Motion for Attorney Fees and Costs, (b) Motion to File Billing Records Under Seal, and (c) Appointment of and Authority to Pay Court Appointed Counsel (the CJA 20 form). Please acknowledge receipt of these documents by file-stamping the extra copy of each of the three documents and returning same to the messenger.

The Vinson & Elkins' invoice attached to the Motion for Attorneys' Fees reflects billings in an amount in excess of the amount charged on the CJA 20 form and the Motion for Attorneys' Fees and Costs. On the CJA 20 and the Motion for Attorneys' Fees and Costs, the amount charged by Vinson & Elkins was reduced by 25% off of the invoice because of the size of the Vinson & Elkins' request. Likewise, the expenses charged by Vinson & Elkins on the CJA 20 form and Motion for Attorneys' Fees and Costs are the expenses on the Vinson & Elkins' invoice discounted by 10% to assure no inadvertent charges for costs associated with contract with the media are included. Expenses are listed separately on the invoice.

Thank you for your attention to this matter.

Hon. Michael N. Milby, Clerk
December 28, 1994
Page 2

Sincerely,



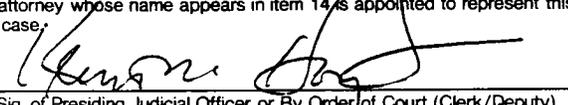
Manuel López

cc: William C. Zapalac - by overnight mail
Ricardo Aldape Guerra
Stanley Schneider
Claudia Frost
Richard Morris

1154:2252

f:\ml1154\guerra\clerk1.ltr

APPOINTMENT AND AUTHORITY TO PAY COURT APPOINTED COUNSEL

1. JURISDICTION 1 <input type="checkbox"/> MAG. 2 <input type="checkbox"/> DIST. 3 <input type="checkbox"/> APPEALS 4 <input type="checkbox"/> OTHER		2. MAG. DOCKET NO.	3. DIST. () DOCKET NO. CA 93--290	VOUCHER NO. 0616205
4. APPEALS DOCKET NO.	5. FOR (DISTRICT/CIRCUIT) District	6. LOC. CODE	7. CHARGE/OFFENSE (U.S. or other code citation)	7A. CASE CODE D-1
8. IN THE CASE OF RICARDO GUERRA vs JAMES COLLINS			9. PERSON REPRESENTED (FULL NAME) RICARDO ALDAPE GUERRA	9A. NO. REPRES.
10. PERSON REPRESENTED (STATUS) 1 <input type="checkbox"/> DEFENDANT-ADULT 2 <input type="checkbox"/> DEFENDANT-JUVENILE 3 <input type="checkbox"/> APPELLANT 4 <input type="checkbox"/> APPELLEE 5 <input checked="" type="checkbox"/> OTHER		11. PROCEEDINGS (Describe briefly) Petition for Writ of Habeas Corpus		
12. PAYMENT CATEGORY A <input type="checkbox"/> FELONY B <input type="checkbox"/> MISDEMEANOR C <input type="checkbox"/> PETTY OFFENSE D <input type="checkbox"/> APPEAL E <input checked="" type="checkbox"/> OTHER		13. COURT ORDER <input checked="" type="checkbox"/> Appointing Counsel F <input type="checkbox"/> Subs. for FD C <input type="checkbox"/> Co-Counsel R <input type="checkbox"/> Subs. for Retained Atty. P <input type="checkbox"/> Subs. for Panel Atty. Name of prior panel attorney _____ Appt. Date _____ Voucher No. _____		
Because the above-named "person represented" has testified under oath or has otherwise satisfied this court that he or she (1) is financially unable to employ counsel and (2) does not wish to waive counsel, and because the interests of justice so require, the attorney whose name appears in item 14 is appointed to represent this person in this case.  Sig. of Presiding Judicial Officer or By Order of Court (Clerk/Deputy) Date of Order _____ Nunc Pro Tunc Date <u>1/15/93</u>		14. FULL NAME OF ATTORNEY/PAYEE (First Name, M.I., Last Name, Including Suffix) AND MAILING ADDRESS Scott J. Atlas Vinson & Elkins 1001 Fannin Suite 2300 Houston, Texas 77002		
		15. WORK PHONE 758-2024	16A. Does the attorney have the preexisting agreement (see instructions) with a corporation, including a professional corporation? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
		16B. SOCIAL SECURITY NO. (Only provide per instructions)	16C. EMPLOYER I.D. NO. (Only provide per instructions)	
		16D. NAME AND MAILING ADDRESS OF LAW FIRM (Only provide per instructions) Vinson & Elkins, L.L.P. 1001 Fannin, #2300 Houston, TX 77002		

CLAIM FOR SERVICES OR EXPENSES

	SERVICE	HOURS	DATES		
IN COURT	17. a. Arraignment and/or Plea	Please see attached Motion for Attorneys Fees and Costs and exhibits thereto.		Multiply rate per hour times total hours to obtain "In Court" compensation. Enter total below.	
	b. Bail and Detention Hearings				
	c. Motions Hearings				
	d. Trial				
	e. Sentence Hearings				
	f. Revocation Hearings				
	g. Appeals Court				
	h. Other (Specify on additional sheets)				
	(Rate per hour =) TOTAL HOURS =			\$	
OUT OF COURT	18. a. Interviews and conferences	Please see attached Motion for Attorneys Fees and Costs and exhibits thereto.		Multiply rate per hour times total hours. Enter total "out of court" compensation below.	
	b. Obtaining and reviewing records				
	c. Legal research and brief writing				
	d. Travel time (Specify on additional sheets)				
	e. Investigative and other work (Specify on additional sheets)				
	(Rate per hour =) TOTAL HOURS =			\$	
EXPENSES	19. TRAVEL, LODGING, MEALS ETC.	AMOUNT	OTHER EXPENSES	AMOUNT	19A. TOTAL TRAVEL EXP.
	Please see attached Motion for Attorneys' Fees and Costs and exhibits thereto.				\$
					19B. TOTAL OTHER EXP.
					\$
				20. GRAND TOTAL CLAIMED	
				\$247,295.70	

21. CERTIFICATION OF ATTORNEY/PAYEE FOR PERIOD January 15, 1993 to December 22, 1994

F Final Payment I Interim Payment No. 1 Has compensation and/or reimbursement for work in this case previously been applied for? YES NO
 If yes, were you paid? YES NO If yes, by whom were you paid? _____ How much? _____ Has the person represented paid any money to you, or to your knowledge to anyone else, in connection with the matter for which you were appointed to provide representation? YES NO
 If yes, give details on additional sheets. N/A
 I swear or affirm the truth or correctness of the above statements  12/28/94
 SIGNATURE OF ATTORNEY/PAYEE DATE

APPROVED FOR PAYMENT	22. IN COURT COMP.	23. OUT OF COURT COMP.	24. TRAVEL EXPENSE	25. OTHER EXPENSES	26. TOTAL AMT. APPROVED/CERT.
	\$	\$	\$	\$	\$
	27. SIGNATURE OF PRESIDING JUDICIAL OFFICER				DATE
28. SIGNATURE OF CHIEF JUDGE, CT. OF APPEALS (OR DELEGATE)				DATE	29. TOTAL AMT. APPROVED
					\$

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RICARDO ALDAPE GUERRA,	§	
	§	
	§	
Petitioner.	§	
	§	
v.	§	Civil Action No. H-93-290
	§	
JAMES A. COLLINS,	§	
Director, Institutional Division,	§	
Texas Department of Criminal Justice,	§	
	§	
Respondent.	§	
	§	

MOTION FOR ATTORNEYS' FEES AND COSTS

TO THE HONORABLE JUDGE HOYT:

Pursuant to the Criminal Justice Act, the Anti-Drug Abuse Act, and Rule 54(d)(2)(B) of the Federal Rules of Civil Procedure, petitioner Ricardo Aldape Guerra files this Motion for Attorneys' Fees and Costs seeking reimbursement for attorneys' fees and costs in the amount of \$247,295.70 (\$220,859.50 in attorneys' fees and \$26,436.20 in costs), a portion of the amount expended in pursuing this death penalty habeas corpus petition.

The Criminal Justice Act, 18 U.S.C. § 3006A(a)(2)(B), permits a United States District Court to appoint counsel for qualifying indigent defendants petitioning for federal habeas relief under 28 U.S.C. § 2254. By order dated February 22, 1993, this court appointed Scott J. Atlas of the law firm of Vinson & Elkins to represent petitioner. Subsequently, the court set January 15, 1993, *nunc pro tunc*, as the date for the commencement of the representation.

The Criminal Justice Act provides for compensation for representation pursuant to this appointment, both for time expended in-court and time expended out-of-court, as well as for expenses reasonably incurred. 28 U.S.C. § 3006A(d)(1). The Anti-Drug Abuse Act has waived the recovery limits established by the Criminal Justice Act for death penalty habeas corpus appointments. 21 U.S.C. § 848(q)(10). The Judicial Conference of the United States has established as a guideline an attorney compensation range of \$75 to \$125 per hour for both in-court and out-of-court time for such death penalty appointments.

The billing invoices attached as Exhibits A through D document the time expended pursuing the federal habeas relief by Scott Atlas and other associates and partners at Vinson & Elkins, the late Thomas Gibbs Gee from Baker & Botts, Stanley G. Schneider from Schneider & McKinney and Richard Alan Morris from Feldman & Associates.^{1/} Thomas Gee and Stanley Schneider have been co-counsel on behalf of the petitioner since June 1992, when the matter was strictly a pro bono matter in Texas state court. Richard Morris originally worked on the petitioner's case while at Vinson & Elkins, but has continued working on the matter since joining Feldman & Associates.

The hourly rates on the invoices reflect the normal private billing rates of all of the attorneys and other personnel involved, with those rates higher than \$125 per hour billed at only \$125 per hour. The attorneys' fees requested in this motion for Vinson & Elkins has been reduced by an additional 25%, given the size of the Vinson & Elkins' request, a discount

^{1/}The attached invoices have been redacted to protect attorney privileges including the attorney work product privilege. In conjunction with this motion, however, petitioner is also filing a Motion to File Bill Under Seal, making available to the court unredacted versions of each of the invoices.

substantially greater than the total amount of reimbursement sought by the other three law firms combined. Expenses charged by Vinson & Elkins have been reduced by 10% to ensure that any incidental expenditure for contact with representatives of the media not already removed from this application are excluded from this request for compensation. The amounts billed by Baker & Botts, Schneider & McKinney and Feldman & Associates have not been so reduced. The requested amounts are apportioned as follows: the law firm of Vinson & Elkins requests \$187,758.75 in fees and \$26,412.39 in expenses; the law firm of Baker & Botts requests \$10,507.00 in fees and \$19.50 in expenses; the law firm of Schneider & McKinney requests \$11,875.00 in fees and \$0.00 in expenses, and the law firm of Feldman & Associates requests \$10,718.75 in fees and \$4.31 in expenses.

Respectfully submitted,

VINSON & ELKINS L.L.P.

BY:

Scott J. Atlas / with permission
SCOTT J. ATLAS

Attorney-in-Charge

Texas Bar No. 01418400

2500 First City Tower

1001 Fannin

Houston, Texas 77002-6760

(713) 758-2024

FAX: (713) 615-5399

OF COUNSEL:

STANLEY G. SCHNEIDER

Texas Bar No. 17790500

Schneider & McKinney

11 E. Greenway Plaza

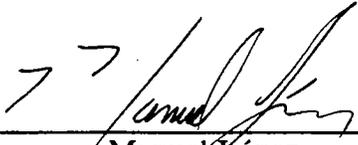
Houston, Texas 77046

(713) 961-5901

ATTORNEYS FOR PETITIONER,
RICARDO ALDAPE GUERRA

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading was served by overnight mail on Hon. Dan Morales, Attorney General; Enforcement Division; Office of the Attorney General; 300 West 15th Street; Austin, Texas 78711, and to William C. Zapalac, Enforcement Division; Office of the Attorney General; P.O. Box 12548, Capitol Station; Austin, Texas 78711, on the 28th day of December, 1994.



Manuel López

f:\ml1154\guerra\ees.mot

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RICARDO ALDAPE GUERRA,	§	
	§	
	§	
Petitioner.	§	
	§	
v.	§	Civil Action No. H-93-290
	§	
JAMES A. COLLINS,	§	
Director, Institutional Division,	§	
Texas Department of Criminal Justice,	§	
	§	
Respondent.	§	
_____	§	

ORDER

On this day came on to be considered Petitioner's Motion for Attorneys' Fees and Costs. After considering said motion, the Court is of the opinion that the Motion is well-founded and should in all things be GRANTED.

It is therefore ORDERED that:

1. the law firm of Vinson & Elkins shall recover _____ in attorneys' fees and _____ in expenses;
2. the law firm of Baker & Botts shall recover _____ in attorneys' fees and _____ in expenses;
3. the law firm of Schneider & McKinney shall recover _____ in attorneys' fees and _____ in expenses; and
4. the law firm of Feldman & Associates shall recover _____ in attorneys' fees and _____ in expenses.

DATED this ____ day of _____, 199__.

HONORABLE KENNETH HOYT
UNITED STATES DISTRICT JUDGE

f:\ml1154\guerra\fee.ord

Billing Allocation Report

Room: 2819
Scott J. Atlas

Invoice: 1042962
December 27, 1994

Billed thru December 22, 1994

Client: PRO127 PRO BONO (CONTINGENT)
Matter: 29000 GUERRA, RICARDO ALDAPE

ID #	Timekeeper	Hours	Amount Billed
399	Scott J. Atlas	704.50	88,062.50
716	Theodore Kassinger	44.00	5,500.00
880	Ann E. Webb	63.00	7,875.00
951	J. Cavanaugh O'Leary	40.25	5,031.25
954	Allan R Conge	24.00	3,000.00
981	Phillip N Sanov	16.75	2,093.75
992	Paul A Wehrmann	32.25	4,031.25
999	Frank A. Parigi	6.75	843.75
1015	Anne Bernard Clayton	25.50	3,187.50
1023	Marc D Fisher	105.75	13,218.75
1029	Lisa R Beck	37.25	4,656.25
1031	Timothy K. Borchers	6.75	843.75
1064	Richard A Morris	92.75	11,130.00
1097	Michael J. Mucchetti	234.25	29,281.25
1154	Manuel Lopez	23.25	2,790.00
1157	James R. Markham	89.75	8,990.00
1166	Peter C Ku	91.25	9,125.00
2932	Esmeralda Casillas	4.00	140.00
3817	Jeffrey D Migit	6.50	227.50
3877	Daniel F. Wiersema	2.00	100.00
4747	Edward O Jackson	23.50	470.00
5179	Cara C. Sion	6.50	195.00
5444	Andrew B. Ruthven	.25	11.25
5479	Karen L. Getty	20.25	1,721.25
5539	Beverly L. Palmer	28.50	2,137.50
5810	Ellen W. M. Gray	3.00	270.00
5816	Kim Elliott Neumann	23.50	1,880.00
6233	Gillian Lachaux	2.75	206.25
6400	Melissa Eason	133.00	10,640.00
6503	Susan-Leigh Brown	142.50	10,687.50
6810	Sara Liz Patterson	1.00	75.00
6865	Melody Hughes Harman	1.00	70.00
7077	Carla S. Danbury	9.50	760.00
7085	Barbara H. Woodward	21.25	1,593.75
7347	Shawn R. Knight	5.00	250.00
7430	Cornelia C. Williams	1.00	50.00
7442	Robert Summerlin	231.75	11,600.00
7456	Rebecca E Schweigert	88.50	4,425.00
7489	Brian L Burgess	23.25	1,162.50
7565	Glenn S Greene	40.25	2,012.50
	Total	2,456.75	250,345.00

Note: Fee allocation will not be posted until the invoice is confirmed

December 27, 1994

Page:

Account
Of PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

Fees for services rendered through December 22, 1994

	Init		Hours
1/15/93	JCO	TEAM MEETING; BEGIN REVISING [REDACTED] SECTION OF BRIEF FOR FILING IN FEDERAL COURT.	2.00
	PAW	TELEPHONE CONFERENCE WITH ALDAPE TEAM.	.75
	RAMO	CONFERENCE WITH SCOTT ATLAS REGARDING PREPARING FEDERAL APPLICATION.	.50
	MM	MEET WITH ALDAPE TEAM TO DISCUSS FILING OF FEDERAL WRIT; OBTAIN INFORMATION REGARDING [REDACTED].	2.00
	JRM	TELEPHONE CONFERENCE WITH SCOTT ATLAS AND ALDAPE GUERRA HABEAS PETITION GROUP REGARDING NEXT STEPS.	1.00
	SLBR	ATTEND TEAM MEETING; OFFICE CONFERENCE WITH SCOTT ATLAS REGARDING REVIEW CASE CITES IN BRIEFS; HIGHLIGHT CASES WITH SUBSEQUENT HISTORIES AND TRANSFER INFORMATION TO RELEVANT PAGES IN BRIEFS.	4.00
1/17/93	ACO	REVIEW SECTIONS OF BRIEF.	.75
1/18/93	ACO	REVIEW AND REVISE BRIEF SECTIONS; REVIEW CASE LAW.	1.00
	JABC	REVISE FEDERAL BRIEF.	1.75
	MDFI	REVIEW OF PRIOR DRAFTS OF BRIEF WITH ALTERATIONS FOR FILING IN FEDERAL COURT AND RESEARCH TO UPDATE LAW.	4.00
	LRB	REVISE ALDAPE BRIEF FOR FEDERAL COURT.	1.50
	RAMO	REVISED STATE APPLICATION FOR PURPOSES OF FILING IN FEDERAL COURT.	3.00
	MM	COLLECT FEDERAL HABEAS MATERIALS.	.50
	SLBR	CONTINUE REVISIONS TO SUBSEQUENT CASE HISTORY CITES IN FIRST AMENDED APPLICATION FOR WRIT OF HABEAS CORPUS.	1.00
1/19/93	PAW	COMBINATION OF SECTIONS FROM AMENDED APPLICATION AND REPLY BRIEF IN TEXAS COURT OF CRIMINAL APPEALS FOR SUBMISSION IN FEDERAL COURT.	2.50
	LRB	REVISE BRIEF FOR FEDERAL COURT FILING; AUTO CITE CASES.	6.00
	RAMO	EDIT AND REVISE BRIEF IN PREPARATION FOR FILING IN FEDERAL COURT.	.75

December 27, 1994

Page:

Account
Of PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

	Init	Hours
1/27/93	TWK TELEPHONE CONFERENCES WITH SCOTT ATLAS AND WORK ON FEDERAL APPLICATION.	1.50
	SLBR CONTINUE CONSOLIDATING AND REVISING CASE CITES AND REVISING TABLE OF AUTHORITIES ACCORDINGLY; ORGANIZE STATEMENT OF FACTS.	2.75
	RESC FINISH CONSOLIDATION OF TABLES OF AUTHORITY FROM BRIEFS "A" AND "B"; MANUAL CITE CHECK OF NEW CASES ADDED THUS FAR.	4.50
1/28/93	SJA WORK ON BRIEF.	7.00
	TWK RESEARCH AND REVISE SECTIONS OF FEDERAL APPLICATION.	3.50
	PAW READ SUPREME COURT'S DECISION IN ██████████, EDIT BRIEF FOR FEDERAL FILING.	3.00
	LRB REVISE AND REVIEW ALDAPE BRIEF; RESEARCH FEDERAL CASES REGARDING LAW ON ██████████	4.00
	MM EDIT HABEAS.	.50
	RESC COMPARE NEW TABLE OF AUTHORITIES TO NEW BRIEF TO CATCH AND CORRECT ERRORS AND IDENTIFY PROBLEM CITES; COMPARE PRODUCT TO COMPUTER-GENERATED TABLE OF AUTHORITIES.	12.00
1/29/93	TWK RESEARCH AND REVISE SECTIONS OF FEDERAL APPLICATION.	2.00
	JABC REVIEW FEDERAL HABEAS PETITION.	1.25
	BLP CITE CHECK APPEAL BRIEF.	15.00
	EWMG HELP CITE CHECK SCOTT ATLAS' BRIEF.	3.00
	MEAS TRANSLATE AFFIDAVIT FOR CLIENT TO SIGN; CONFERENCE WITH SCOTT ATLAS.	3.50
	SLBR ASSIST WITH PREPARATION OF APPENDIX TO BRIEF TO BE FILED IN FEDERAL COURT.	5.00
	CSDA CITE CHECK BRIEF.	5.00
	BHWO CITE CHECK BRIEF ON ALDAPE MATTER.	3.50
	RESC LEXIS CITE-CHECK OF NEW AND RECENT CASE LAW; MANUAL CITE-CHECK OF CODES AND STATUTES; TROUBLE SHOOT PROBLEM CITES; COMPARE MOST RECENT TABLES OF AUTHORITIES TO MOST RECENT BRIEF TO IDENTIFY ERRORS AND MAKE SHORT CITES WHERE NECESSARY.	16.00

December 27, 1994

Page:

Account
Of PRO BONO (CONTINGENT)Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

		Hours
	Init	
1/30/93	TWK RESEARCH AND WORK ON FEDERAL HABEAS APPLICATION.	2.50
	RAMO RESEARCH CITES FOR APPLICATION.	3.00
	RESC DO FINAL CITE-CHECKING; SEND FAXES TO JUDGE GEE; COPY BRIEF; PROOFREAD CHANGES TO BRIEF.	4.00
1/31/93	PNS RESEARCH FOR FEDERAL HABEAS CORPUS BRIEF.	3.00
	RAMO PROOF AND REVISE FEDERAL APPLICATION; COMPILED TABLE OF AUTHORITIES; FINALIZE BRIEF FILED WITH THE COURT.	15.00
	MEAS FINISH TRANSLATION OF AFFIDAVIT FOR PERMISSION TO PROCEED IN FORMA PAUPERIS; GO TO OFFICE TO PICK UP DOCUMENTS TO TAKE TO CLIENT MONDAY MORNING.	3.00
	RESC PREPARE TABLE OF AUTHORITIES, PROOF BRIEF, CORRECT SUPRA AND INFRA CITES.	11.00
2/01/93	SJA WORK ON BRIEF.	7.50
	RAMO PROOF AND REVISE FEDERAL APPLICATION; COMPILE TABLE OF AUTHORITIES; FINALIZE BRIEF BRIEF FILED WITH THE COURT.	14.50
	BLP FINALIZE TABLE OF AUTHORITIES AND PERFORM COPY CHECK ON FINAL VOLUMES OF EXHIBITS AND BRIEFS -- ALDAPE BRIEF.	5.00
	MEAS GO TO TEXAS DEPARTMENT OF CORRECTIONS TO GET AFFIDAVIT FROM CLIENT; TELEPHONE CONFERENCE WITH SCOTT ATLAS.	5.00
	SLBR ATTENTION TO FINALIZING FIRST APPLICATION FOR WRIT OF HABEAS CORPUS.	.50
	BHWO TELEPHONE CONFERENCES WITH REBECCA SCHWEIGERT OF FIRM;. PREPARE TABLE OF AUTHORITIES; COPY CHECK.	5.00
	SRKN ASSIST IN PREPARATION OF MOTION FOR FEDERAL COURT.	5.00
	RESC PROOFREAD TABLE OF CONTENTS AND CHANGES TO BRIEF; DO FINAL CORRECTIONS OF PAGE NUMBERS FOR SUPRA AND INFRA CITES AND FOR TABLE OF AUTHORITIES; COPY CHECK 6 COPIES EACH OF BRIEF AND APPENDIX	17.00
2/02/93	SJA TELEPHONE CONFERENCES REGARDING AMICUS BRIEF.	1.50
	SLBR CONFERENCE WITH KIM NEUMANN REGARDING 	.25

December 27, 1994

Page:

Account
Of PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

	Init		Hours
2/03/93	MEAS	CONFERENCE WITH SCOTT ATLAS REGARDING [REDACTED]; [REDACTED]; REVIEW [REDACTED]; TELEPHONE CONFERENCES WITH [REDACTED], [REDACTED]	5.75
2/04/93	MEAS	TELEPHONE CONFERENCES WITH [REDACTED]	3.75
2/05/93	SJA	MISCELLANEOUS TELEPHONE CONFERENCES REGARDING AMICUS, ETC.	1.75
	MEAS	TELEPHONE [REDACTED]	1.00
2/07/93	SJA	SELECT FACT REFERENCES IN BRIEF.	2.75
	TWK	REVIEW FILINGS.	1.00
2/08/93	MM	[REDACTED]	5.00
2/09/93	SJA	REVIEW BRIEF FOR FACTS.	2.50
	MM	RESEARCH [REDACTED]	13.00
	MEAS	TELEPHONE WITNESSES IN MONTERREY.	.75
2/10/93	SJA	MISCELLANEOUS TELEPHONE CONFERENCES.	.75
2/11/93	SJA	REVIEW FACT PARTS OF BRIEF.	2.00
2/13/93	SJA	REVIEW AMICUS BRIEF AND SELECTED CITES.	2.00
2/15/93	MEAS	TELEPHONE CONFERENCES WITH TWO WITNESSES IN MONTERREY TO POSTPONE INTERVIEWS.	.50
2/18/93	RAMO	DICTATE MEMORANDUM REGARDING WITNESS INTERVIEW; REVIEW SAME.	3.00
2/19/93	RAMO	REVISED MEMORANDUM REGARDING WITNESS INTERVIEW.	.50
2/22/93	SJA	PREPARE FOR AND ATTEND HEARING.	2.75
	LRB	STATUS CONFERENCE IN JUDGE HOYT'S COURT.	2.00
	RAMO	ATTEND HEARING.	2.00
2/26/93	SJA	MISCELLANEOUS CALLS.	2.50
3/02/93	SLBR	RESEARCH [REDACTED]; DRAFT [REDACTED]	1.00
3/03/93	SJA	WORK ON FACT HEARING PREPARATION.	4.25
	SLBR	CONTINUE DRAFT OF [REDACTED]; REVISE SAME; OFFICE CONFERENCE WITH SCOTT ATLAS REGARDING COMPARISON OF PLEADINGS IN FEDERAL COURT WITH OUR PLEADINGS.	1.25

VINSON & ELKINS
L.L.P.
ATTORNEYS AT LAW

HOUSTON DALLAS AUSTIN WASHINGTON LONDON MOSCOW
F.S. NO 74-1183015

December 27, 1994

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Account of PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

	Init	Hours
3/04/93	SJA PREPARE FOR FACT HEARING.	3.50
3/08/93	SJA PREPARE FOR FACT HEARING; TELEPHONE CONFERENCE WITH MELISSA EASON REGARDING SCHEDULING MONTERREY VISIT.	3.75
	MEAS TELEPHONE CONFERENCE WITH SCOTT ATLAS; PREPARE LIST OF MONTERREY WITNESSES WITH TELEPHONE NUMBERS AND ADDRESSES.	2.00
3/09/93	SJA PREPARE FOR FACT HEARING.	3.00
	MEAS TELEPHONE CONFERENCES WITH WITNESSES IN MONTERREY TO MAKE APPOINTMENTS FOR MARCH 22 AND 23.	3.25
	SLBR RESEARCH HOW TO OBTAIN COPY OF FILE CONTENTS FROM FEDERAL COURT; REVIEW FILE AT FEDERAL COURTHOUSE.	5.75
3/10/93	SJA PREPARE FOR FACT HEARING.	5.75
	MEAS TELEPHONE CONFERENCES WITH WITNESSES IN MONTERREY; MAKE UP SCHEDULE OF INTERVIEWS; TELEPHONE CONFERENCE WITH SCOTT ATLAS.	6.25
3/15/93	RAMO TELEPHONE CONFERENCE WITH MELISSA EASON REGARDING [REDACTED]	.25
	PCK DISCUSS GUERRA CASE WITH SCOTT ATLAS.	.25
	MEAS TELEPHONE CONFERENCES WITH SCOTT ATLAS, NANCY BELOTA; LETTER AND SCHEDULE OF INTERVIEWS FOR SANTIAGO ROEL; MEMO TO SCOTT ATLAS; TELEPHONE CONFERENCES WITH MONTERREY WITNESSES.	5.00
3/16/93	PCK READ STATUTES ON [REDACTED]	3.00
	MEAS REVISE SCHEDULE; ATTEMPT TELEPHONE CALLS TO [REDACTED]	1.25
3/17/93	TWK REVIEW RESPONSE BY STATE OF TEXAS.	.25
	PCK READ SECTIONS OF GUERRA BRIEF; [REDACTED]	3.00
3/18/93	RAMO CONFERENCE WITH MICHAEL MUCHETTI REGARDING PREPARING REPLY TO STATE'S RESPONSE OPPOSING EVIDENTIARY HEARING.	.50
	PCK READ SECTIONS OF THE GUERRA BRIEF.	2.00
	MEAS TELEPHONE CONFERENCES WITH MONTERREY WITNESSES TO MAKE AND CONFIRM APPOINTMENTS; REVISE SCHEDULE;	5.50

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Account
Of PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

	Init	Hours
3/18/93	SLBR TELEPHONE CONFERENCES WITH NANCY BELOTA. TELEPHONE CONFERENCE WITH [REDACTED] REGARDING [REDACTED]	.25
3/19/93	RAMO DRAFT INITIAL REPLY TO STATE'S RESPONSE TO ALDAPE'S MOTION FOR EVIDENTIARY HEARING.	2.00
	MEAS TELEPHONE CONFERENCE WITH NANCY BELOTA; EXCHANGE VOICE MAIL MESSAGES WITH SCOTT ATLAS; ORGANIZE [REDACTED] IN PREPARATION FOR TRIP TO MONTERREY; PREPARE PACKAGE OF MATERIALS FOR TRIP.	5.50
3/21/93	SJA TRAVEL TO MONTERREY TO INTERVIEW WITNESSES.	5.25
	MEAS TO MONTERREY, MEXICO WITH SCOTT ATLAS.	3.00
3/22/93	SJA VISIT WITH WITNESSES IN MONTERREY.	11.50
	PCK READ GUERRA BRIEF SECTION [REDACTED]	6.00
	MEAS TRANSLATE FOR SCOTT ATLAS IN WITNESS INTERVIEWS IN MONTERREY.	12.50
3/23/93	PCK CONTINUE READING GUERRA PETITION FOR WRIT OF HABEAS CORPUS.	3.00
3/24/93	SJA RETURN TO HOUSTON FROM MONTERREY.	4.25
	MEAS RETURN TRIP FROM MONTERREY, MEXICO.	5.00
3/26/93	RAMO CONTINUE REVISING REPLY TO STATE'S RESPONSE TO PETITIONER'S MOTION FOR EVIDENTIARY HEARING.	5.75
	SLBR RECEIVE AND REVIEW CORRESPONDENCE [REDACTED] [REDACTED]; ORGANIZE SAME FOR REVIEW BY SCOTT ATLAS.	.25
3/29/93	RAMO REVISE REPLY TO STATE'S RESPONSE TO GUERRA'S MOTION FOR A EVIDENTIARY HEARING.	6.50
3/30/93	RAMO REVIEW LEGAL RESEARCH REGARDING [REDACTED] [REDACTED]; REVISE REPLY TO STATE'S RESPONSE TO GUERRA'S REQUEST FOR AN EVIDENTIARY HEARING.	2.50
3/31/93	SJA REVIEW AND REVISE REPLY ON EVIDENTIARY HEARING; REVIEW CASES REGARDING SAME;	2.50
	RAMO REVIEW AND REVISE REPLY TO STATE RESPONSE TO GUERRA'S MOTION FOR EVIDENTIARY HEARING.	1.50

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Account
Of PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

	Init	Hours
3/31/93	MEAS TELEPHONE CALLS WITH SCOTT ATLAS TO WITNESSES IN MONTERREY, MEXICO.	1.00
	SLBR REVIEW FILES ON [REDACTED]	2.00
4/01/93	SLWP CITE CHECK GUERRA PLEADING FOR SCOTT ATLAS	1.00
	SJA PREPARE AFFIDAVITS; REVIEW AND REVISE REPLY ON EVIDENTIARY HEARING.	2.50
	RAMO REVIEW AND RESEARCH CASES REGARDING [REDACTED]	4.00
4/02/93	RAMO CONFERENCE WITH SCOTT ATLAS REGARDING SAME.	1.00
	MEAS TELEPHONE CALL TO SCOTT ATLAS, TELEPHONE CALL TO [REDACTED] IN MONTERREY.	.50
	SLBR REVIEW PETITIONER'S REPLY TO RESPONDENT'S RESPONSE TO PETITIONER'S MOTION FOR EVIDENTIARY HEARING; CONFERENCE WITH SCOTT ATLAS REGARDING SAME.	.50
4/05/93	MEAS TELEPHONE CONFERENCE WITH SCOTT ATLAS.	.25
4/06/93	MEAS TELEPHONE CALLS TO MONTERREY.	.50
4/15/93	PCK REREAD SECTION OF BRIEF ON [REDACTED]	2.00
4/17/93	PCK READ LAW REVIEW ARTICLES ON [REDACTED]	2.00
4/18/93	PCK RESEARCH SECTION ON [REDACTED]	6.00
4/19/93	PCK FIND ADDITIONAL FIFTH CIRCUIT ON [REDACTED]	8.00
4/20/93	PCK RESEARCH AND COMPLETE MEMORANDUM WITH COMMENTS ON THE GUERRA PETITION FOR WRIT OF HABEAS CORPUS.	5.00
4/21/93	PCK COMPILE CASES CITED IN MEMORANDUM AND RUN AUTO-CITE ON ALL CASES.	2.00
4/23/93	MM REVIEW ALDAPE MEMORANDA.	1.00
4/28/93	SJA WORK ON CASE.	3.00

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Account
Of PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

	Init		Hours
4/28/93	PCK	RESEARCH ISSUE ON [REDACTED]	1.00
4/30/93	PCK	RESEARCH ON [REDACTED]	3.00
5/03/93	PNS	RESEARCH AND DRAFT REPLY PORTION FOR PETITIONER'S BRIEF.	3.00
	PCK	DRAFT MEMORANDUM TO SCOTT ATLAS ON [REDACTED]	1.00
	BHWO	ORGANIZE FILES FOR LISA BECK OF FIRM.	3.00
5/04/93	PNS	RESEARCH NEW CASE LAW FOR PETITIONER'S REPLY.	3.00
	RAMO	DRAFT AND REVISE MEMORANDUM TO SCOTT ATLAS REGARDING [REDACTED]	.50
	SLBR	CONFERENCE WITH SCOTT ATLAS REGARDING [REDACTED]	.25
5/05/93	PNS	RECEIVE AND [REDACTED]	2.50
5/12/93	PNS	REVISE DRAFT OF SECTION FOR BRIEF TO SEND TO SCOTT ATLAS.	3.00
5/14/93	SJA	ATTEND TEAM MEETING.	.75
	TWK	TELEPHONE CONFERENCE REGARDING ALDAPE MATTER.	.50
	LRB	ATTEND TEAM MEETING REGARDING REPLY TO STATE'S RESPONSE.	.75
	RAMO	REVIEW STATE'S ANSWER AND SUMMARY JUDGMENT; TEAM MEETING REGARDING SAME.	1.00
	PCK	ATTEND MEETING TO DISCUSS STATUS OF STATE OF TEXAS' REPLY BRIEF IN THE GUERRA V. COLLINS APPLICATION FOR A WRIT OF HABEAS CORPUS.	2.00
5/15/93	MM	READ STATE'S RESPONSE TO GUERRA HABEAS CORPUS WRIT.	2.00
5/16/93	MM	DRAFT REPLY TO STATE'S RESPONSE TO GUERRA'S HABEAS CORPUS WRIT.	4.00
5/17/93	SJA	REVIEW AND PREPARE SUMMARY OF ALDAPE GUERRA BRIEF	3.50
	LRB	REVIEW STATE'S RESPONSE.	1.25
	RAMO	REVIEW STATE'S COMPLETED ANSWER AND SUMMARY JUDGMENT MOTION.	.75

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PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

	Init		Hours
5/18/93	SJA	WORK ON BRIEF; TELEPHONE CONFERENCES WITH TEAM.	3.50
	JCO	BEGIN REVIEW OF RESPONDENT'S ANSWER; TELEPHONE CONFERENCE WITH SCOTT ATLAS.	.75
	PNS	REVIEW LATEST REVISIONS FOR BRIEF; CONFERENCE WITH CAVANAUGH O'LEARY; SEND REVISIONS TO SCOTT ATLAS.	2.00
	LRB	TELEPHONE CONFERENCE WITH SCOTT ATLAS AND PETER KU REGARDING OUR REPLY; REVIEW BRIEFS.	2.00
	MM	DRAFT [REDACTED]	5.50
	PCK	MEET WITH LISA BECK AND RICK MORRIS TO DISCUSS DIVISION OF GUERRA'S REPLY TO THE STATE'S ANSWER.	1.00
	PCK	WORK ON GUERRA'S REPLY TO STATE'S ANSWER. READ [REDACTED]	4.00
5/19/93	SJA	WORK ON BRIEF; MISCELLANEOUS TELEPHONE CONFERENCES REGARDING SAME.	3.00
	JCO	FINISH REVIEW OF STATE'S RESPONSE; RESEARCH; BEGIN PREPARING REPLY TO STATE'S RESPONSE; TELEPHONE CONFERENCE WITH SCOTT ATLAS.	4.00
	LRB	MEET WITH RICHARD MORRIS AND PETER KU REGARDING BRIEF; REVIEW ARGUMENTS.	2.00
	RAMO	REVIEW STATE'S ANSWER.	2.75
	MM	RESEARCH [REDACTED]	2.00
	JRM	RESEARCH AND DRAFT REPLY.	4.00
	PCK	WORK ON GUERRA'S REPLY TO STATE'S ANSWER.	4.00
5/20/93	SJA	WORK ON BRIEF; MISCELLANEOUS TELEPHONE CONFERENCES.	2.75
	AEW	OFFICE CONFERENCE WITH SCOTT ATLAS REGARDING FEDERAL HABEAS PETITION AND NEED TO SURVEY CASE LAW CONSTRUING [REDACTED]; REVIEW RECENT SUPREME COURT DECISION REGARDING SAME.	1.50
	JCO	BEGIN DRAFTING REPLY; TELEPHONE CONFERENCES WITH SCOTT ATLAS; REVIEW APPLICATION FOR WRIT OF HABEUS	5.00

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Account
Of PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

	Init		Hours
5/20/93	MM	CORPUS; TELEPHONE CONFERENCE WITH LISA BECK.	
	PCK	READ CASES REGARDING [REDACTED].	2.00
	PCK	READ STATE AND FEDERAL CASES ON [REDACTED]. [REDACTED] DECISIONS OF SUPREME COURT. INTEGRATE GUERRA'S STATE PETITION FOR HABEAS CORPUS WITH CURRENT REPLY.	8.00
5/21/93	SJA	WORK ON BRIEF; TELEPHONE CONFERENCES WITH TEAM MEMBERS	7.00
	AEW	REVIEW AND ANALYZE [REDACTED]. [REDACTED]	7.00
	JCO	RESEARCH; CONTINUE DRAFTING REPLY.	2.00
	PAW	PREPARE REPLY BRIEF.	1.00
	JABC	DRAFT REPLY FOR GUERRA.	6.25
	LRB	RESEARCH AND DRAFT REPLY BRIEF.	5.00
	PCK	DRAFT REPLY BRIEF TO STATE'S ANSWER ON ISSUES OF [REDACTED].	6.00
5/22/93	SJA	WORK ON BRIEF.	8.75
	ACO	WORK ON BRIEF.	4.00
	PCK	EDIT GUERRA REPLY BRIEF AND RESEARCH CASES ON [REDACTED].	6.00
5/23/93	SJA	WORK ON BRIEF.	10.00
	ACO	WORK ON BRIEF.	3.75
5/24/93	SJA	WORK ON BRIEF.	5.50
	AEW	REVIEW FACTUAL SUMMARY OF INCIDENT AND ANALYSIS OF EVIDENCE; ANALYZE [REDACTED]; RESEARCH SUPREME COURT AND COURTS OF APPEALS DECISIONS [REDACTED]; ORGANIZE RESULTS OF ANALYSIS; TELEPHONE CONFERENCE WITH TED KASSINGER REGARDING SURVEY OF [REDACTED] DECISIONS; TELEPHONE CONFERENCE WITH MICHAEL MUCCHETTI REGARDING [REDACTED]. [REDACTED]; OFFICE CONFERENCE REGARDING ASSISTING WITH ANALYSIS OF [REDACTED].	6.00
	JCO	RESEARCH; CONTINUE DRAFTING REPLY.	5.00

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Account of PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

	Init		Hours
5/24/93	ACO	WORK ON BRIEF.	2.00
	PNS	CONFERENCE TO MICHAEL MUCCHETTI REGARDING CONSTITUTIONAL ISSUES ON [REDACTED]	.25
	PAW	PREPARE REPLY BRIEF.	8.00
	LRB	DRAFT BRIEF.	6.00
	RAMO	DICTATE SECTION TO BE INCORPORATED INTO ALDAPE'S RESPONSE TO STATE'S ANSWER AND SUMMARY JUDGMENT MOTIONS.	4.00
	MM	REPLY TO STATE'S RESPONSE.	4.00
	PCK	SEARCH FOR [REDACTED]	7.00
	GGRE	RESEARCH ON [REDACTED]	3.00
5/25/93	SJA	WORK ON BRIEF.	6.00
	AEW	CONTINUE TO REVIEW AND ANALYZE [REDACTED]; PREPARE PACKAGE OF INFORMATION FOR ATTORNEYS ASSISTING IN REVIEW OF CIRCUIT COURT DECISIONS [REDACTED]; RESEARCH LAW REVIEW ARTICLES DEALING WITH [REDACTED].	4.50
	JCO	FINISH DRAFTING AND REVISING SECTION OF REPLY.	2.00
	JABC	REVISE BRIEF.	1.25
	LRB	DRAFT BRIEF.	3.00
	RAMO	REVISE SECTION TO BE INSERTED IN RESPONSE TO STATE'S ANSWER; RESPOND TO STATE'S ARGUMENT REGARDING [REDACTED].	6.00
	JRM	DRAFT ADALPE REPLY BRIEF.	5.00
	PCK	MEET WITH LISA BECK AND RICK MORRIS TO DISCUSS DIVISION OF GUERRA'S REPLY TO THE STATE'S ANSWER.	1.00
	GGRE	SHEPARDIZE DEATH PENALTY CASES IN WRIT OF HABEAS CORPUS APPLICATION FOR GUERRA.	5.25
5/26/93	SJA	WORK ON BRIEF.	6.50
	JCO	REVIEW REVISIONS TO SECTION OF REPLY MADE BY SCOTT ATLAS; PROOF AND REVISE SECTION OF REPLY PER SCOTT'S REVISIONS.	1.25

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Account Of PRO BONO (CONTINGENT)

Account Number PRO127 29000
 Billing Attorney Scott J. Atlas
 Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

	Init	Hours
5/26/93	PAW PREPARE REPLY BRIEF IN FEDERAL DISTRICT COURT.	2.00
	JABC REVISE BRIEF.	1.75
	MM REPLY TO STATE'S RESPONSE.	3.00
	JRM MAKE FINAL REVISION TO REPLY BRIEF.	.25
	SLBR DRAFT FOLLOW-UP LETTER TO [REDACTED]	2.00
	[REDACTED] CONFERENCE WITH SCOTT ATLAS REGARDING SAME; MAKE REVISIONS TO SAME; ORGANIZE [REDACTED] SAME.	
5/27/93	SJA WORK ON BRIEF.	11.00
	FAP RESEARCH [REDACTED]	1.00
	JABC REVISE BRIEF.	4.50
	LRB TELEPHONE CONFERENCE WITH SCOTT ATLAS; REVIEW BRIEF.	.50
	TKB RESEARCH [REDACTED]	2.50
5/28/93	SJA WORK ON BRIEF.	6.00
	FAP REVIEW [REDACTED]	1.75
	JABC REVISE BRIEF FOR ALDAPE.	5.75
5/29/93	SJA WORK ON BRIEF.	3.50
5/30/93	SJA WORK ON BRIEF.	2.00
5/31/93	SJA WORK ON BRIEF.	7.50
6/01/93	SJA WORK ON BRIEF.	10.25
	PAW RESEARCH [REDACTED]	4.00
	[REDACTED]	
	FAP REVIEW [REDACTED]	2.00
	TKB RESEARCH [REDACTED]	1.75
	BLP CITE CHECK BRIEFS.	5.00
	BHWO CITE CHECK BRIEF AS REQUESTED BY SCOTT ATLAS.	6.25
	RESC CITE CHECK FEDERAL REPLY BRIEF.	8.00
6/02/93	SJA WORK ON BRIEF.	4.00
	AEW SEVERAL TELEPHONE CONFERENCES WITH SCOTT ATLAS REGARDING ANALYSIS OF FIFTH CIRCUIT PRECEDENT ON [REDACTED] TELEPHONE CONFERENCE WITH PAUL WEHRMAN REGARDING HIS REVIEW OF FIFTH CIRCUIT CASES; REVIEW AND SUMMARIZE [REDACTED]; REVIEW [REDACTED]	6.00

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Account of PRO BONO (CONTINGENT)

Account Number PR0127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

	Init		Hours
		[REDACTED]; REVIEW ANALYSIS OF [REDACTED]	
6/02/93	PAW	READ CASES [REDACTED]	2.00
	FAP	RESEARCH [REDACTED]	2.00
	TKB	CONTINUE RESEARCH REGARDING [REDACTED]	2.50
	BLP	CITE CHECK BRIEF.	3.50
	CSDA	CITE CHECK GUERRA BRIEF	4.50
	RESC	FINISH CITE-CHECKING FEDERAL REPLY BRIEF; PROOFREAD CORRECTIONS.	8.00
6/03/93	AEW	CONTINUE TO REVIEW FIFTH CIRCUIT DECISIONS INTERPRETING [REDACTED] [REDACTED] REVIEW [REDACTED]	6.00
	JCO	REVIEW [REDACTED]	.50
6/04/93	PAW	READ ALL CASES [REDACTED]	4.00
	AEW	CONTINUE TO REVIEW FIFTH CIRCUIT DECISIONS [REDACTED] INCORPORATE ANALYSIS INTO FILE MEMORANDUM; TELEPHONE CONFERENCE WITH PAUL WEHRMANN REGARDING [REDACTED] INCORPORATE SAME INTO MEMORANDUM OF LAW.	8.00
	PAW	READ ALL CASES [REDACTED]	4.00
6/06/93	AEW	REVIEW LAW REVIEW ARTICLES [REDACTED] [REDACTED] INCORPORATE SAME INTO FILE MEMORANDUM.	3.00
6/07/93	AEW	CONTINUE TO REVIEW [REDACTED] REGARDING [REDACTED] LEAVE MESSAGE FOR SCOTT ATLAS AND TED KASSINGER REGARDING STATUS OF RESEARCH.	7.00
	ACO	REVIEW SECTION OF BRIEF.	.75
	LRB	REVIEW AND REVISE BRIEF SECTION.	2.00
6/08/93	AEW	REVIEW AND REVISE FILE MEMORANDUM REGARDING [REDACTED] IN FIFTH CIRCUIT.	4.00

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Account
Of PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

		Hours
	Init	
6/09/93	SJA WORK ON BRIEF.	3.50
	TWK RESEARCH AND REVISE SECTION OF BRIEF.	1.00
	AEW PREPARE FILE MEMORANDUM IN FINAL FORM.	6.00
6/10/93	SJA REVIEW AND REVISE BRIEF	5.50
	AEW REVIEW AND REVISE FILE MEMORANDUM.	4.00
	RESC PROOFREAD REVISIONS TO THE ALDAPE REPLY BRIEF.	1.00
6/11/93	JDMI PROOF BRIEF CORRECTIONS; CITE CHECKED TABLE OF AUTHORITIES; PROOF TABLE OF CONTENTS.	2.50
	DFWI PREPARE TABLE OF AUTHORITIES FOR ALDAPE BRIEF.	1.00
	RESC BEGIN TABLE OF AUTHORITIES FOR THE ALDAPE REPLY BRIEF.	1.00
6/14/93	SJA WORK ON BRIEF.	4.75
	TWK REVIEW MEMO REGARDING [REDACTED]	.75
	DFWI CITE CHECK REVISIONS TO ALDAPE BRIEF.	1.00
	SLBR RECEIPT AND REVIEW OF CORRESPONDENCE [REDACTED] REGARDING [REDACTED] CONFERENCE WITH SCOTT ATLAS REGARDING SAME.	.50
	RESC PREPARE TABLE OF AUTHORITIES FOR RESPONSE TO THE STATE'S REPLY.	1.50
6/15/93	SJA COMPLETE BRIEF	4.00
	TWK RESEARCH AND REVIEW DRAFT BRIEF.	1.25
6/16/93	SJA REVIEW AND REVISE AFFIDAVITS; PREPARE BRIEF ATTACHMENTS FOR FILING	3.75
	BLBU REVIEW THE DIFFERENCE BETWEEN [REDACTED] [REDACTED].	.50
6/18/93	SJA REVIEW AND REVISE AFFIDAVITS.	2.00
	TWK WORK ON GUERRA BRIEF ISSUE.	.75
	BLBU MEMO REGARDING [REDACTED]	4.00
6/21/93	TWK RESEARCH AND PREPARE MEMORANDA REGARDING [REDACTED] [REDACTED]	1.00
6/22/93	SJA REVIEW AND REVISE AFFIDAVITS.	1.50
	TWK RESEARCH AND REVISE MEMO TO ANN WEBB REGARDING [REDACTED]	1.00
	SLBR TELEPHONE CONFERENCE WITH RICK MORRIS REGARDING [REDACTED]	.25

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Account Number PRO127 29000
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Re: GUERRA, RICARDO ALDAPE

	Init		Hours
6/23/93	SJA	REVIEW AND REVISE AFFIDAVITS; REVIEW TED KASSINGER MEMO TO ANN WEBB [REDACTED].	1.00
6/24/93	SJA	REVIEW AND REVISE AFFIDAVITS.	1.50
6/28/93	SJA	TELEPHONE CONFERENCE WITH MELISSA EASON; REVIEW FACT INFORMATION FOR HEARING.	1.75
	MEAS	TELEPHONE CONFERENCE WITH SCOTT ATLAS REGARDING MONTERREY WITNESS AFFIDAVITS.	.50
6/29/93	LRB	REVIEW LAW REVIEW ARTICLES FROM SCOTT ATLAS.	.50
6/30/93	MEAS	TELEPHONE CONFERENCES WITH WITNESSES IN MEXICO; REVIEW AFFIDAVITS.	5.00
7/06/93	PCK	READ [REDACTED]	2.00
	MEAS	TELEPHONE CALLS WITH SCOTT ATLAS, TELEPHONE CALLS TO MONTERREY WITNESSES, REVISE AFFIDAVITS, CONFERENCE WITH MARISA REUTER REGARDING TRANSLATIONS.	8.00
7/07/93	SJA	REVIEW AND REVISE AFFIDAVITS; OFFICE CONFERENCES WITH MELISSA EASON AND SUSAN BROWN REGARDING SAME.	1.25
	TWK	REVIEW MEMO REGARDING [REDACTED].	.25
	JCO	REVIEW MEMO REGARDING [REDACTED].	.50
	PCK	READ MEMORANDUM [REDACTED]	3.00
	MEAS	CONFERENCE WITH SCOTT ATLAS; REVISE AFFIDAVITS OF MONTERREY WITNESSES; TELEPHONE CONFERENCES WITH MARISA REUTER REGARDING TRANSLATIONS AND TRIP TO HUNSTVILLE; TELEPHONE CONFERENCE WITH SCOTT ATLAS; TELEPHONE CALLS TO MONTERREY.	7.50
	SLBR	CONFERENCE WITH SCOTT ATLAS REGARDING VISIT TO RICARDO; OBTAIN COPY OF [REDACTED] AFFIDAVIT FROM MELISSA EASON.	.50

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Account
Of PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

		Hours
	Init	
7/07/93	GGRE READ AND REVIEW TED KASSINGER'S MEMORANDUM DESCRIBING [REDACTED]; BEGIN RESEARCH.	1.00
7/08/93	MEAS TELEPHONE CALLS TO MONTERREY TO [REDACTED].	1.00
	SLBR ARRANGE TRIP TO SEE [REDACTED] WITH MARISA REUTER.	.25
7/09/93	MEAS TELEPHONE CONFERENCE WITH [REDACTED] IN MONTERREY; REVISE AFFIDAVITS; MEMO TO AND CONFERENCE WITH SCOTT ATLAS.	6.75
7/12/93	SLBR ATTENTION TO ARRANGEMENTS TO VISIT [REDACTED] CONFERENCE WITH SCOTT ATLAS REGARDING TOPICS TO BE DISCUSSED WITH [REDACTED]	.50
7/13/93	SLBR TRAVEL TO HUNTSVILLE; VISIT WITH RICARDO REGARDING [REDACTED]; RETURN TO HOUSTON; DRAFT MEMORANDUM TO SCOTT ATLAS REGARDING SAME.	6.00
7/15/93	BLBU REVIEW CASE LAW REGARDING [REDACTED].	3.00
	BLBU DRAFT MEMORANDUM REGARDING [REDACTED].	4.00
7/19/93	BLBU FINISH DRAFT OF MEMORANDUM REGARDING [REDACTED]	5.25
	GGRE RESEARCH MEMORANDUM ON [REDACTED]	.50
7/22/93	TWK REVIEW MEMORANDUM REGARDING [REDACTED] MESSAGES TO SCOTT ATLAS.	.50
	BLBU RESEARCH LATEST CASES [REDACTED]	1.50
7/23/93	BLBU FINISH MEMORANDUM ON [REDACTED]	5.00
	GGRE RESEARCH [REDACTED]	1.00
7/26/93	MEAS REVIEW AFFIDAVITS; ATTEMPTED TELEPHONE CALLS TO MONTERREY WITNESSES.	.50
	GGRE RESEARCH ON GUERRA MEMO REGARDING [REDACTED]	4.25
7/27/93	GGRE RESEARCH ON [REDACTED]	8.00
7/28/93	MEAS TRANSLATE AFFIDAVITS OF [REDACTED]; CONFERENCE WITH SCOTT ATLAS.	9.50
7/29/93	TWK REVIEW RESEARCH MEMORANDUM; TELEPHONE CONFERENCE WITH SCOTT ATLAS ON SAME.	.50
8/02/93	MEAS TELEPHONE CALLS TO TWO MONTERREY WITNESSES.	.75
8/03/93	MEAS TELEPHONE CONFERENCES WITH [REDACTED] IN MONTERREY; TELEPHONE CALLS [REDACTED]	1.00

December 27, 1994

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Account
Of PRO BONO (CONTINGENT)Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

Init		Hours
	[REDACTED]; ATTEMPTED CALLS TO [REDACTED].	
8/05/93	GGRE MEMORANDUM [REDACTED].	8.25
8/06/93	GGRE CONTINUE MEMORANDUM ON [REDACTED].	9.00
8/13/93	JCO REVIEW AMICUS CURIAE BRIEF FILED ON BEHALF OF THE GOVERNMENT OF THE UNITED MEXICAN STATES.	.50
	PAW READ THE FEDERAL DISTRICT COURT AMICUS CURIAE.	.50
	PAW READ THE FEDERAL DISTRICT COURT AMICUS CURIAE.	.50
	MM READ AMICUS BRIEF OF MEXICAN GOVERNMENT.	.25
8/17/93	TWK REVIEW RESEARCH MEMORANDA IN ALDAPE CASE.	.75
8/19/93	TWK READ RECENT DECISIONS AND MEMORANDA REGARDING GUERRA APPEAL.	1.25
	MEAS CONFERENCE WITH SCOTT ATLAS REGARDING AFFIDAVITS.	.75
8/27/93	MEAS TRANSLATE [REDACTED] AFFIDAVIT.	5.00
9/12/93	MEAS FINISH TRANSLATION OF [REDACTED] AFFIDAVIT; TELEPHONE CALL TO [REDACTED]	2.75
9/13/93	MEAS TELEPHONE CALLS TO [REDACTED]	1.25
9/24/93	SLBR CONFERENCE WITH SCOTT ATLAS REGARDING TRANSLATION OF AFFIDAVITS OF MONTERREY WITNESSES; OBTAIN [REDACTED]	.75
9/29/93	SLBR ARRANGE FOR TRANSLATION OF AFFIDAVITS.	.50
9/30/93	KLK RESEARCH REGARDING AFFIDAVITS.	1.50
	SLBR CONFERENCE WITH SCOTT ATLAS REGARDING TRANSLATION OF AFFIDAVITS; INTEROFFICE CONFERENCE WITH KAREN GETTY REGARDING TRANSLATOR.	.25
10/01/93	KLK RESEARCH REGARDING AFFIDAVITS.	1.00
10/05/93	SJA PREPARE FOR AND ATTEND TEAM MEETING; DETERMINE DOCUMENTS TO DISTRIBUTE.	3.50
	TWK TELEPHONE CONFERENCE REGARDING ALDAPE HEARING.	1.00
	JCO TEAM MEETING.	1.25
	ACO ALDAPE MEETING.	1.25
	MDFI ATTEND TEAM MEETING [REDACTED]	2.00
	MM MEETING REGARDING EVIDENTIARY HEARING; PREPARE FOR ALDAPE MEETING, [REDACTED]	3.00

December 27, 1994

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Account
Of PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

	Init		Hours
10/05/93	SLBR	TELEPHONE CONFERENCES WITH [REDACTED] [REDACTED] REGARDING [REDACTED]; ATTEND TEAM MEETING REGARDING PREPARATION FOR EVIDENTIARY HEARING.	1.75
10/06/93	SJA	MISCELLANEOUS TELEPHONE CONFERENCES AND VOICE MAILS WITH MICHAEL MUCHETTI AND SUSAN BROWN REGARDING [REDACTED].	1.25
	ACO	REVIEW WITNESS FILES.	.50
	MM	DRAFT HABEAS CORPUS AD TESTIFICANDUM; REVIEW [REDACTED].	4.50
	EVCA	OBTAIN FORM ON HABEAS CORPUS FOR MICHAEL MUCCHETTI.	.50
	SLBR	CONFERENCE WITH KAREN GETTY REGARDING PREPARATION FOR EVIDENTIARY HEARING; TELEPHONE CONFERENCE WITH RICK MORRIS REGARDING SAME; OBTAIN [REDACTED] [REDACTED]; INTEROFFICE CONFERENCE WITH SCOTT ATLAS REGARDING SAME; ARRANGE FOR MICHAEL MUCCHETTI TO CONTACT [REDACTED] REGARDING SAME; TELEPHONE CONFERENCE WITH WARDEN'S OFFICE REGARDING TRANSPORTATION OF [REDACTED] AND [REDACTED] TO THE EVIDENTIARY HEARING; REVIEW [REDACTED] REGARDING [REDACTED] TELEPHONE CONFERENCE WITH RICK MORRIS REGARDING [REDACTED].	3.00
10/07/93	MM	RESEARCH [REDACTED] CONFERENCE WITH [REDACTED] REGARDING [REDACTED] [REDACTED]	3.25
	JDMI	REVIEW [REDACTED]; [REDACTED] [REDACTED] AND [REDACTED] TO SCOTT ATLAS [REDACTED].	3.50
	KLG	DRAFT [REDACTED].	1.00
	SLBR	TELEPHONE CONFERENCE WITH [REDACTED] REGARDING [REDACTED]; TELEPHONE CONFERENCE WITH RICK MORRIS REGARDING SAME; CONFERENCE WITH MICHAEL MUCCHETTI REGARDING [REDACTED]; CONFERENCE WITH KAREN GETTY REGARDING [REDACTED]	2.00

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Account of PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

	Init		Hours
10/08/93	ACO	REVIEW [REDACTED].	1.50
	JDMI	PREPARE A MEMO TO SCOTT ATLAS CONCERNING PLEADINGS FILED IN FEDERAL COURT.	.50
	KLK	PREPARE [REDACTED].	2.00
10/11/93	MDFI	LETTER TO [REDACTED] TRANSMITTING COPY OF ORDER ENTERED BY THE FEDERAL JUDGE GRANTING RICARDO ALDAPE AN EVIDENTIARY HEARING-[REDACTED]	.25
	MDFI	REVIEW OF VARIOUS FILE DOCUMENTS REGARDING TESTIMONY AND OUT OF COURT STATEMENTS OF WITNESSES [REDACTED]	7.00
	MM	REVIEW [REDACTED]	3.50
	MEAS	[REDACTED] AFFIDAVIT TRANSLATION.	2.50
10/12/93	SJA	MEET WITH TOM GEE TO [REDACTED]	2.75
	JCO	BLGIN REVIEWING [REDACTED]	3.00
	MEAS	FINISH TRANSLATION AND REVISIONS TO [REDACTED] MEMORANDUM TO SCOTT ATLAS.	5.50
	SLBR	TELEPHONE CONFERENCE WITH RICK MORRIS REGARDING [REDACTED] CONFERENCE WITH MICHAEL MUCCHTTI REGARDING SAME.	.25
10/13/93	KLK	CONTINUE TO PREPARE [REDACTED].	.50
10/14/93	JCO	CONTINUE REVIEW OF [REDACTED] BEGIN DRAFTING MEMO TO SCOTT ATLAS REGARDING [REDACTED]; TELEPHONE CONFERENCE WITH RICK MORRIS.	4.00
	KLK	CONTINUE TO PREPARE [REDACTED].	.50
10/15/93	TWK	RESEARCH FILES IN PREPARATION FOR HEARING.	4.00
	JCO	DRAFT AND REVISE MEMO TO SCOTT ATLAS REGARDING [REDACTED]	2.00

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Account Of PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

	Init	Hours
10/16/93	SJA PREPARE FOR EVIDENTIARY HEARING.	7.25
	TWK REVIEW TESTIMONY AND REVISE AFFIDAVITS.	3.50
	ACO REVIEW [REDACTED].	3.00
10/17/93	SJA PREPARE FOR EVIDENTIARY HEARING.	8.00
	ACO REVIEW [REDACTED] R	.75
	[REDACTED].	
10/18/93	TWK RESEARCH, DRAFT, AND REVISE MEMOS AND [REDACTED]	6.00
	JCO REVISE MEMO TO SCOTT ATLAS REGARDING [REDACTED]	.50
	[REDACTED]; TELEPHONE CONFERENCE WITH SCOTT ATLAS.	
	ACO DRAFT MEMO DISCUSSING [REDACTED]S.	1.25
	KLG PREPARE SUMMARY MEMO OF [REDACTED] ADDRESS.	.50
10/19/93	JCO REVISE MEMOS TO SCOTT ATLAS REGARDING [REDACTED],	1.50
	[REDACTED]	
	[REDACTED].	
	MM UPDATE WITNESS REPORTS FOR [REDACTED]	3.00
	[REDACTED].	
10/20/93	TWK REVIEW NEW MATERIALS.	.25
	RELS REVIEW WITNESS STATEMENTS AND POLICE REPORTS AND	3.75
	CREATE A LIST REGARDING THE SAME; MEET WITH SCOTT ATLAS	
	REGARDING AVAILABILITY AND ASSIGNMENTS.	
10/21/93	MM DISCUSSION WITH COURT CLERK CONCERNING THE USE OF	.50
	INTERPRETERS FOR WITNESSES AND THE ACCUSED IN A	
	FEDERAL EVIDENTIARY HEARING.	
	MM READ [REDACTED]	.75
	[REDACTED]	
	KLG CONTINUE TO PREPARE [REDACTED].	1.00
10/22/93	KLG PREPARE [REDACTED].	2.00
10/24/93	SJA OFFICE CONFERENCE WITH ROBERT SUMMERLIN REGARDING	.25
	MISCELLANEOUS TASKS.	
	ACO REVISE [REDACTED]	.75
	[REDACTED]	
10/25/93	SJA PREPARE FOR HEARING; TELEPHONE CONFERENCES WITH	6.75
	TOM GEE, STAN SCHNEIDER, [REDACTED],	
	[REDACTED], MRS. ALDAPE, TEAM MEMBERS; PREPARE	
	INFORMATION FOR WITNESSES' TESTIMONY.	

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Account of PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

	Init		Hours
10/25/93	MDFI	FURTHER RESEARCH AND DRAFT MEMO ON [REDACTED]	3.00
	JRM	DRAFT AND REVISE MEMORANDA REGARDING [REDACTED]	6.25
10/26/93	SJA	PREPARE FOR HEARING.	7.00
	TWK	WORK ON REVISIONS TO [REDACTED]	.25
	ACO	DRAFT MEMO REGARDING [REDACTED]	.75
	JRM	REVIEW MATERIALS REGARDING [REDACTED]	.25
	KLG	PREPARE [REDACTED]	1.50
10/27/93	SJA	PREPARE FOR HEARING; INTERVIEW WITNESSES.	6.00
	JRM	REVIEW [REDACTED]; BEGIN OUTLINE OF MEMO TO SCOTT ATLAS.	3.50
	KLG	PREPARE [REDACTED]	1.50
	SLBR	CONFERENCE WITH KAREN GETTY REGARDING [REDACTED]	.25
10/28/93	SJA	VISIT WITH WITNESSES; PREPARE FOR HEARING.	5.75
	JRM	FURTHER PREPARATION OF MEMORANDUM ON [REDACTED]	3.00
	KEN	INVESTIGATION REGARDING WITNESSES FOR SCOTT ATLAS.	1.50
	RELS	ASSEMBLE STATEMENT OF FACTS NOTEBOOK; REVIEW [REDACTED]; PREPARE PRODUCTION DOCUMENTS TO BE ADDED TO VARIOUS NOTEBOOKS; REVIEW [REDACTED]; CONFERENCE WITH JERRY SIMANDL REGARDING THE SAME.	6.25
10/29/93	SJA	PREPARE FOR TRIAL.	4.00
	JRM	DRAFT PORTION OF MEMO ON [REDACTED]	3.75
	KLG	PREPARE [REDACTED]	1.00
	RELS	CONFERENCE WITH [REDACTED]; PREPARE PRODUCTION DOCUMENTS TO BE ADDED TO NOTEBOOKS; CONFERENCE WITH HEATHER MATHIS REGARDING [REDACTED]; REVIEW [REDACTED]	6.25

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Account of PRO BONO (CONTINGENT)

Account Number PR0127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

	Init	Hours
10/30/93	SJA PREPARE FOR HEARING; VISIT WITNESS. TWK RESEARCH AND REVISE [REDACTED] AND PREPARE MEMO TO SCOTT ATLAS.	7.75 1.50
10/31/93	JRM CONTINUE PREPARING MEMORANDUM. SJA PREPARE FOR HEARING. RELS ASSEMBLE STATEMENT OF FACT NOTEBOOK; REVISE INDEX THE SAME; PREPARE [REDACTED] TO BE ADDED TO NOTEBOOKS; UPDATE [REDACTED]	5.00 9.00 6.00
11/01/93	SJA PREPARE FOR HEARING. JRM FURTHER DRAFTING OF [REDACTED] MEMORANDUM. RELS REVIEW [REDACTED]S, [REDACTED] TO PREPARE NOTEBOOKS FOR EVIDENTIARY HEARING; CREATE [REDACTED] NOTEBOOK; COMPILE AND [REDACTED]S; PREPARE [REDACTED]S	3.50 2.00 9.25
11/02/93	SJA PREPARE FOR HEARING; ATTEND STATE'S HEARING. RELS REVIEW [REDACTED]S, [REDACTED]S; MEET WITH JERRY SIMANDL REGARDING [REDACTED]; REVIEW [REDACTED]E.	5.50 10.25
11/03/93	SJA PREPARE FOR HEARING. MM REVIEW [REDACTED]. JRM REVISE MEMORANDA OF [REDACTED]. KEN BEGIN RESEARCH OF [REDACTED]. SLBR CONFERENCE WITH SCOTT ATLAS REGARDING [REDACTED] AND TRIAL EXHIBITS; DRAFT LETTER TO [REDACTED], ARRANGE FOR PREPARATION OF TRIAL EXHIBITS.	7.50 .50 1.25 4.50 2.00

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Account Of PRO BONO (CONTINGENT)

Account Number PRO127 29000
 Billing Attorney Scott J. Atlas
 Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

	Init		Hours
11/03/93	RELS	TELEPHONE CONFERENCE WITH [REDACTED] REGARDING VIEWING GUERRA AND [REDACTED] TRAVEL TO [REDACTED] REGARDING SAME; ASSIST IN THE ISSUANCE OF [REDACTED] COMPILE AND [REDACTED] DOCUMENTS FOR [REDACTED]; PREPARE TO HAVE [REDACTED] DOCUMENTS COPIED.	8.75
11/04/93	SJA	PREPARE FOR HEARING.	6.50
	RELS	REVIEW [REDACTED], [REDACTED] TO PREPARE NOTEBOOKS FOR EVIDENTIARY HEARING; COMPILE AND VERIFY DOCUMENTS FOR [REDACTED] PREPARE TO HAVE [REDACTED] DOCUMENTS COPIED AND DISTRIBUTED TO TEAM; ASSIST IN THE ISSUANCE OF [REDACTED].	10.00
11/05/93	SJA	PREPARE FOR HEARING.	7.00
	EOJA	PREPARE EXHIBITS; COMPILE AND ASSIMILATE DOCUMENTS TO BE USED IN INTERVIEWS WITH VARIOUS WITNESSES.	4.00
	KEN	RESEARCH [REDACTED].	7.50
	SLBR	CONFERENCE WITH RICK MORRIS AND SCOTT ATLAS REGARDING SCHEDULE VISIT WITH [REDACTED] TELEPHONE CONFERENCE WITH [REDACTED] REGARDING SAME.	.50
	BHWO	PREPARE WITNESS FILES AS REQUESTED BY SCOTT ATLAS.	3.50
	RELS	COMPILE AND VERIFY DOCUMENTS FOR [REDACTED] [REDACTED]; DISTRIBUTE THE SAME; REVIEW [REDACTED] [REDACTED] TO PREPARE NOTEBOOKS FOR EVIDENTIARY HEARING; PREPARE TO HAVE [REDACTED] DOCUMENTS COPIED.	6.50
11/06/93	SJA	PREPARE FOR HEARING.	8.50
	JABC	REVIEW [REDACTED] TESTIMONY.	3.00
11/07/93	SJA	PREPARE FOR HEARING	9.50
	RELS	CREATE A [REDACTED] NOTEBOOK FOR [REDACTED]; COMPILE AND VERIFY DOCUMENTS FOR [REDACTED] [REDACTED] DUPLICATE THE SAME; REVIEW [REDACTED] [REDACTED] TO PREPARE NOTEBOOKS; UPDATE [REDACTED]	6.50

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Account
Of PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

	Init		Hours
11/08/93	SJA	PREPARE FOR HEARING; MEET WITH WITNESSES.	7.50
	ACO	ATTEND INTERVIEW SESSION WITH [REDACTED]	2.00
	MDFI	RESEARCH ON [REDACTED]	3.00
	MM	RESEARCH [REDACTED]; MEET WITH [REDACTED]	3.00
	JRM	TELEPHONE CONFERENCE WITH SCOTT-ATLAS [REDACTED] REGARDING UPCOMING HEARING.	1.50
	KLK	PREPARE [REDACTED]	1.50
	KEN	COMPLETE [REDACTED] AND PREPARE MEMO TO SCOTT ATLAS REGARDING STATUS OF RESEARCH.	7.50
	SLBR	TELECONFERENCES WITH RICK MORRIS REGARDING VISIT WITH [REDACTED]; TELECONFERENCE WITH PRISON REGARDING SAME; PREPARE FOR EVIDENTIARY HEARING.	5.00
	RELS	REVIEW [REDACTED] TO PREPARE NOTEBOOKS FOR EVIDENTIARY HEARING; COMPILE AND [REDACTED] DOCUMENTS FOR [REDACTED] PREPARE TO HAVE [REDACTED] UPDATE [REDACTED]	7.75
11/09/93	SJA	PREPARE FOR HEARING; MEET WITH WITNESSES.	13.00
	TWK	PREPARE FOR AND PARTICIPATE IN TELEPHONE CONFERENCE WITH SCOTT ATLAS AND WITNESS.	.75
	MM	[REDACTED] RESEARCH.	8.00
	KLK	PREPARE [REDACTED]	1.00
	SLBR	PREPARE FOR EVIDENTIARY HEARING.	6.75
	RELS	REVIEW [REDACTED] TO PREPARE NOTEBOOKS FOR EVIDENTIARY HEARING; COMPILE AND VERIFY DOCUMENTS FOR [REDACTED] UPDATE [REDACTED] PREPARE TO HAVE [REDACTED]	9.75
11/10/93	SJA	PREPARE FOR HEARING; INTERVIEW WITNESSES.	9.50
	MDFI	MEET WITH SCOTT ATLAS REGARDING RESEARCH TO BE DONE AND MEET WITH [REDACTED]-THIS EVENING; RESEARCH ON [REDACTED]	6.25

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Account
Of PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

	Init		Hours
		MEET WITH [REDACTED]	
		[REDACTED]	
		[REDACTED]	
		[REDACTED]	
11/10/93	MM	RESEARCH; MEETING WITH [REDACTED]	7.50
	KLK	PREPARE [REDACTED] AND TRANSLATION.	2.00
	SLBR	PREPARE FOR EVIDENTIARY HEARING.	5.00
	CCWI	REVIEW [REDACTED] SEARCH.	1.00
	RELS	REVIEW [REDACTED]	8.25
		[REDACTED] TO PREPARE NOTEBOOKS FOR RAG EVIDENTIARY HEARING; COMPILE AND VERIFY DOCUMENTS FOR [REDACTED]; DISTRIBUTE THE SAME; PREPARE TO HAVE [REDACTED]	
11/11/93	SJA	PREPARE FOR HEARING; VISIT WITH WITNESSES.	5.00
	TWK	REVIEW WITNESS INTERVIEWS AND TELEPHONE CONFERENCES WITH SCOTT ATLAS.	.25
	JCO	REVIEW MEMOS REGARDING WITNESS INTERVIEWS.	1.00
	MDFI	DRAFT MEMO REGARDING [REDACTED]	1.00
	MM	PREPARE ALDAPE CASE FOR TRIAL.	5.50
	EVCA	GATHER CASES FOR RESEARCH MEMORANDUM PER MICHAEL MUCCHETTI'S REQUEST.	1.00
	KLK	REVISE [REDACTED]	1.00
	SLBR	PREPARE FOR EVIDENTIARY HEARING.	10.00
	MHHA	REVIEW, EDIT, AND GATHER CASE LAW RELATING TO SCOTT ATLAS' MEMORANDUM.	1.00
	RELS	REVIEW [REDACTED]	11.25
		[REDACTED] TO PREPARE NOTEBOOKS FOR EVIDENTIARY HEARING; COMPILE AND VERIFY DOCUMENTS FOR [REDACTED]; DISTRIBUTE THE SAME; PREPARE TO HAVE [REDACTED]; ASSIST IN THE ISSUANCE OF [REDACTED] [REDACTED], CREATE A [REDACTED] NOTEBOOK FOR JUDGE GEE; TELEFAX [REDACTED] TO SCOTT	

December 27, 1994

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Account
Of PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

	Init		Hours
		<p>██████████; DISTRIBUTE THE SAME; PREPARE TO HAVE ██████████ ██████████</p>	
11/14/93	SJA	VISIT WITH CLIENT; PREPARE FOR HEARING.	14.00
	MDFI	REVIEW SUMMARIES OF ALL TESTIMONY; PREPARE DOCUMENTS FOR REFERENCE DURING DIRECT EXAMINATION; PREPARE TESTIMONY EXCERPTS FOR JUDGE AND FOR SCOTT ATLAS; ORGANIZE ALL BOXES OF MATERIALS.	9.25
	EOJA	ASSIST WITH PREPARATIONS FOR HEARING ON MONDAY; ORGANIZE ██████████ AND ASSIST WITH VARIOUS OTHER PROJECTS AS NEEDED.	8.50
	CCSI	REVIEW AND REVISE INDEX TO PLEADINGS.	2.50
	SLBR	PREPARE FOR EVIDENTIARY HEARING.	2.25
	RELS	FINALIZE ██████████ ██████████ TO BE USED AS NOTEBOOKS FOR EVIDENTIARY HEARING; COMPLETE ██████████ ██████████	14.00
		██████████, IDENTIFY AND PREPARE PETITIONER EXHIBITS; ORGANIZE AND INDEX PRODUCTION BOXES; CREATE A MASTER INDEX OF ALL BOXES.	
11/15/93	SJA	PREPARE FOR AND ATTEND EVIDENTIARY HEARING.	10.75
	JCO	ATTEND EVIDENTIARY HEARING; REVIEW SUMMARIES OF WITNESS INTERVIEWS.	3.50
	MDFI	ATTEND HEARING; PREPARE WITNESSES FOR TESTIMONY; VARIOUS RESEARCH IN FILE; MEETING AFTER HEARING TO DISCUSS PREPARATION FOR NEXT DAY.	10.00
	MM	EVIDENTIARY HEARING; PREPARE FOR SAME.	10.00
	KLG	PREPARE ██████████	.50
	KEN	FOLLOW-UP ON BACKGROUND ██████████ AND COMPLETED MEMO REGARDING RESEARCH.	2.50
	SLBR	ASSIST AT EVIDENTIARY HEARING.	8.75
	RELS	PREPARE FOR AND ATTEND EVIDENTIARY HEARING; CREATE A PETITIONER EXHIBIT LIST.	11.75
11/16/93	SJA	PREPARE FOR AND ATTEND EVIDENTIARY HEARING	11.00
	MDFI	ATTEND HEARING; PREPARE WITNESSES FOR TESTIMONY; PICK UP AND RETURN WITNESS TO AND FROM COURTHOUSE;	9.00

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Account Of PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

	Init	Hours
	RESEARCH IN FILE.	
11/16/93	MM EVIDENTIARY HEARING; PREPARE FOR SAME; VISIT [REDACTED]; TRANSPORTATION TO [REDACTED]	12.50
	KLG PREPARE [REDACTED]	.25
	SLBR ASSIST AT EVIDENTIARY HEARING.	8.75
	RELS PREPARE FOR AND ATTEND RAG EVIDENTIARY HEARING; UPDATE PETITIONER EXHIBIT LIST AND DUPLICATE AND DISTRIBUTE THE SAME.	12.00
11/17/93	SJA PREPARE FOR HEARING.	7.00
	MDFI RESEARCH ON [REDACTED]	4.00
	MM VISIT-[REDACTED]; TRANSPORTATION TO [REDACTED]; BRING ORDER TO JUDGE HOYT'S OFFICE AND WAIT FOR SIGNATURE; DRAFT ORDER REGARDING ALDAPE GUERRA VISIT; PREPARE FOR EVIDENTIARY HEARING.	6.25
	MM DRAFT FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND CLOSING STATEMENT.	1.50
	RELS TELEPHONE CONFERENCE WITH MYRA BAIRD RE: ADMITTED EXHIBITS; REVIEW [REDACTED]	4.25
	[REDACTED]; UPDATE PETITIONER EXHIBIT LIST; DUPLICATE AND DISTRIBUTE THE SAME.	
11/18/93	SJA PREPARE FOR AND ATTEND HEARING.	13.25
	TWK ATTEND ALDAPE HEARING.	3.00
	MDFI ATTEND HEARING; RESEARCH AND [REDACTED] TO PREPARE PROPOSED CONCLUSIONS OF LAW.	10.50
	MM EVIDENTIARY HEARING; [REDACTED] PREPARE FOR HEARING, INCLUDING EDITING FINDINGS OF FACT.	15.00
	SLBR ASSIST AT EVIDENTIARY HEARING.	8.25
	RELS PREPARE FOR AND ATTEND EVIDENTIARY HEARING; UPDATE PETITIONER EXHIBIT LIST AND DISTRIBUTE THE SAME.	12.00
11/19/93	SJA PREPARE FOR AND ATTEND HEARING.	10.50
	MDFI ATTEND HEARING; RESEARCH [REDACTED] TO PREPARE PROPOSED CONCLUSIONS OF LAW.	9.00

December 27, 1994

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Account
 of PRO BONO (CONTINGENT)

Account Number PRO127 29000
 Billing Attorney Scott J. Atlas
 Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

	Init	Hours
11/19/93	MM EVIDENTIARY HEARING; EDIT FINDINGS OF FACT.	11.00
	SLBR ASSIST AT EVIDENTIARY HEARING.	8.25
	RELS PREPARE FOR AND ATTEND EVIDENTIARY HEARING; UPDATE PETITIONER EXHIBIT LIST AND DISTRIBUTE THE SAME; ASSIST IN THE ISSUANCE OF [REDACTED] SUBPOENA.	14.25
11/20/93	SJA PREPARE FOR HEARING.	10.00
	RELS COMPILE A [REDACTED] COPY OF THE [REDACTED] [REDACTED] UPDATE NOTEBOOKS; REVISE PETITIONER EXHIBIT LIST.	8.25
11/21/93	SJA PREPARE FOR HEARING.	6.00
	MM EDIT FINDINGS OF FACT.	1.00
	RELS CREATE A PETITIONER EXHIBIT NOTEBOOK; TRAVEL TO [REDACTED] REGARDING [REDACTED].	3.25
11/22/93	MDFI ATTEND HEARING; RESEARCH AND [REDACTED] TO PREPARE PROPOSED CONCLUSIONS OF LAW.	8.50
	MM EVIDENTIARY HEARING; PREPARE FOR HEARING; EDIT FINDINGS OF FACT.	10.00
	EVCA TO AND FROM FEDERAL COURTHOUSE FOR DELIVERY OF BRIEF TO MICHAEL MUCCHETTI.	1.00
	SLBR ASSIST AT EVIDENTIARY HEARING.	8.00
	RELS PREPARE FOR AND ATTEND EVIDENTIARY HEARING; UPDATE PETITIONER EXHIBIT LIST.	9.75
11/23/93	MM DRAFT FINDINGS OF FACT.	1.50
	RELS UPDATE PETITIONER EXHIBIT NOTEBOOK; FINALIZE PETITIONER EXHIBIT LIST; DUPLICATE AND DISTRIBUTE THE SAME; REORGANIZE FILES.	4.75
11/24/93	MM EDIT FINDINGS OF FACT.	1.00
11/29/93	JRM TELEPHONE CONFERENCE WITH SCOTT ATLAS AND FOLLOW-UP MEETING WITH TED KASSINGER REGARDING NEW PROJECT; LEGAL RESEARCH REGARDING [REDACTED].	.75
11/30/93	MM EDIT FINDINGS OF FACT.	2.25
12/01/93	TWK REVIEW NEW MATERIALS REGARDING GUERRA CASE.	.25
	MM DRAFT FINDINGS OF FACT.	3.00
12/02/93	MM FINDINGS OF FACT.	3.50

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Account
Of PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

	Init		Hours
12/03/93	MM	FINDINGS OF FACT.	5.00
12/04/93	MM	FINDINGS OF FACT.	1.00
12/06/93	JRM	RESEARCH [REDACTED]	3.00
12/08/93	MDFI	REVIEW OF PROPOSED FINDINGS OF FACT AND WORK ON DRAFTING PROPOSED CONCLUSIONS OF LAW.	5.00
	MM	EDIT FINDINGS OF FACT.	4.00
	JRM	RESEARCH REGARDING [REDACTED]	6.00
12/09/93	JRM	RESEARCH REGARDING [REDACTED]	6.50
12/10/93	SJA	REVIEW AND REVISE FINDINGS OF FACT.	5.00
	MDFI	DRAFT PROPOSED CONCLUSIONS OF LAW.	6.00
	MM	EDIT FINDINGS OF FACT.	2.00
	JRM	FURTHER RESEARCH ON [REDACTED] TELEPHONE CONFERENCE WITH SCOTT ATLAS REGARDING SAME.	5.00
12/13/93	MDFI	DRAFT PROPOSED CONCLUSIONS OF LAW.	2.00
12/14/93	MDFI	TELEPHONE CONFERENCE WITH STAN SCHNEIDER REGARDING CONCLUSIONS OF LAW.	.50
	JRM	RESEARCH ON [REDACTED]	6.00
12/15/93	JRM	FURTHER RESEARCH AND DRAFT MEMORANDUM ON [REDACTED]	4.50
12/17/93	SJA	REVISE PROPOSED FINDINGS.	2.75
12/18/93	SJA	WORK ON FINDINGS.	7.50
12/19/93	SJA	WORK ON FINDINGS.	12.25
	JRM	FURTHER RESEARCH AND DRAFTING OF MEMORANDUM REGARDING [REDACTED]	4.00
12/20/93	SJA	WORK ON PROPOSAL FINDINGS.	6.25
	JRM	RESEARCH REGARDING [REDACTED]	4.00
12/21/93	SJA	REVIEW AND REVISE PROPOSED FINDINGS.	6.00
	MDFI	DRAFT PROPOSED CONCLUSIONS OF LAW.	2.50
	JRM	RESEARCH REGARDING [REDACTED]	3.50
12/22/93	SJA	REVIEW AND REVISE PROPOSED FINDINGS.	10.00

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Account
Of PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

	Init	Hours
12/22/93	MDFI DRAFT PROPOSED CONCLUSIONS OF LAW.	3.00
	JRM RESEARCH REGARDING [REDACTED]	2.00
12/23/93	SJA WORK ON PROPOSED FINDINGS.	16.25
	JRM FINISHED MEMORANDUM ON [REDACTED]	3.50
12/26/93	SJA REVIEW AND REVISE PROPOSED FINDINGS.	8.00
12/27/93	SJA REVIEW AND REVISE PROPOSED FINDINGS.	3.50
12/28/93	SJA REVIEW AND REVISE PROPOSED FINDINGS; MISCELLANEOUS TELEPHONE CALLS REGARDING SAME.	4.75
12/29/93	SJA REVIEW AND REVISE PROPOSED FINDINGS; REVIEW LENGTHY VOICE MAIL MESSAGES REGARDING SAME; TELEPHONE CONFERENCES WITH STAN SCHNEIDER AND TOM GEE REGARDING SAME.	3.50
	TWK REVIEW JIM MARKHAM MEMORANDUM AND DRAFT BRIEF.	1.00
	GLAC CITE CHECK STATEMENT OF FACTS BRIEF.	2.75
12/30/93	SJA FINAL REVIEW AND REVISION OF PROPOSED FINDINGS.	2.75
	TWK RESEARCH, REVIEW, AND REVISE DRAFT PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW; TELEPHONE CONFERENCE WITH SCOTT ATLAS ON SAME.	.75
1/13/94	TWK REVIEW STATE'S PROPOSED FINDINGS OF FACT AND LAW.	.25
1/14/94	JRM FIND AND BEGIN TO REVIEW [REDACTED]	.50
1/15/94	SJA TEAM MEETING TO PLAN FEDERAL HABEAS; NUMEROUS TELEPHONE CONFERENCES WITH TEAMS.	3.00
1/26/94	MM CONVERSATIONS WITH COURT REPORTER, COURT SECRETARY, COURT CLERK, AND SCOTT ATLAS.	1.00
1/27/94	MM DRAFT MOTION, ORDER, AND ATTORNEY AFFIDVIT.	1.00
2/16/94	SJA MISCELLANEOUS TELEPHONE CONFERENCES.	.75
2/17/94	SJA REVISE SUMMARY.	.75
3/23/94	SJA TRANSLATE FOR SCOTT ATLAS IN WITNESS INTERVIEWS.	8.00
5/13/94	SJA ARRANGE FOR [REDACTED]	.25
10/07/94	SJA REVIEW MISCELLANEOUS MATERIALS; RESEARCH [REDACTED]	6.75
10/26/94	SJA TELEPHONE CONFERENCE WITH STANLEY SCHNEIDER REGARDING STATUS OF THE CASE.	.25
11/08/94	SJA REORGANIZE FILES.	2.25

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Account Of PRO BONO (CONTINGENT)

Account Number PRO127 29000
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Re: GUERRA, RICARDO ALDAPE

	Init		Hours
11/11/94	SJA	REVIEW NEW MATERIALS.	4.00
11/14/94	SJA	REVIEW NEW MATERIALS.	6.00
11/15/94	SJA	OBTAIN COURT OPINION; REVIEW SAME.	1.00
	MM	READ ORDER.	1.00
11/20/94	SJA	REVIEW CORRESPONDENCE; REVIEW AND REVISE [REDACTED] [REDACTED] WORK ON LETTER TO ATTORNEY GENERAL; REVIEW RECORD REGARDING OPINION.	4.00
11/21/94	MM	WRITE MEMO REGARDING [REDACTED]	6.00
11/22/94	SJA	TELEPHONE CONFERENCES WITH STAN SCHNEIDER, WILLIAM ZAPALAC; WORK ON RESPONSE TO DISTRICT ATTORNEY LETTER TO ATTORNEY GENERAL; REVIEW AND REVISE [REDACTED]	2.50
	MM	PREPARE MEMO REGARDING [REDACTED]	4.00
11/23/94	SJA	MISCELLANEOUS TELEPHONE CONVERSATIONS; COMPARE [REDACTED]	6.00
	MM	RESEARCH [REDACTED]	2.00
11/28/94	SJA	MISCELLANEOUS TELEPHONE CONFERENCES WITH AMICUS COUNSEL AND CO-COUNSEL; COMPRE [REDACTED] [REDACTED]; BEGIN DRAFT OF REPLY.	6.25
	MM	RESEARCH [REDACTED]	3.50
11/29/94	SJA	REVIEW [REDACTED]	6.75
	MM	RESEARCH [REDACTED]	3.00
11/30/94	SJA	REVIEW OPINION TO IDENTIFY LEGAL ISSUES; TELEPHONE CONFERENCE WITH MANUEL LOPEZ REGARDING ISSUES TO RESEARCH; TELEPHONE CONFERENCES WITH STANLEY SCHNEIDER REGARDING ISSUES TO RESEARCH.	5.25
	MM	[REDACTED]	1.00
	ML	CONFERENCE WITH SCOTT ATLAS REGARDING RESEARCH ON [REDACTED] RESEARCH [REDACTED] [REDACTED]	3.00
12/01/94	SJA	TELEPHONE CONFERENCE WITH STANLEY SCHNEIDER REGARDING [REDACTED]; TELEPHONE CONFERENCE WITH MANUEL LOPEZ REGARDING RESEARCH [REDACTED] [REDACTED] REVIEW VOICE MAIL FROM MANUEL LOPEZ REGARDING RESEARCH [REDACTED] RESEARCH ISSUE OF	6.75

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Account Of PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

Init	Hours
12/01/94 ML	7.50
12/02/94 SJA	6.75
MM	4.00
ML	2.25
12/05/94 SJA	6.25
ML	.50
ABRU	.25
12/06/94 SJA	5.00
MM	1.50

[REDACTED], REVIEW OPINION FOR [REDACTED]
 [REDACTED], PREPARE FOR APPEAL.
 SEND OCTEL TO SCOTT ATLAS REGARDING [REDACTED]
 [REDACTED]; RESEARCH [REDACTED]
 [REDACTED].
 OFFICE CONFERENCE AND TELEPHONE CONFERENCE WITH
 MANUEL LOPEZ REGARDING [REDACTED]
 [REDACTED] REVIEW; REVIEW AND REVISE MICHAEL
 MUCCHETTI'S MEMO REGARDING [REDACTED]
 [REDACTED] AND REVIEW MISCELLANEOUS CASES; REVIEW
 AND REVISE MANUEL LOPEZ' MEMO REGARDING
 [REDACTED]; WORK ON MOTION TO
 AMEND.
 RESEARCH [REDACTED]
 [REDACTED]
 RESEARCH [REDACTED]
 [REDACTED], TELEPHONE CONFERENCE WITH MICHAEL
 MUCCHETTI REGARDING RESEARCH [REDACTED]
 [REDACTED]; READ MEMORANDUM FROM MICHAEL
 MUCCHETTI ON [REDACTED]; LISTEN
 TO OCTEL FROM SCOTT ATLAS REGARDING [REDACTED]
 [REDACTED]; RESEARCH [REDACTED]
 [REDACTED] TELEPHONE
 CONFERENCE WITH SHARON TRIGG IN DISTRICT CLERK'S
 OFFICE REGARDING C.J.A. FORM FOR RECOVERY OF
 ATTORNEYS' FEES.
 COMPARE [REDACTED]; PREPARE FOR
 APPEAL.
 RESEARCH [REDACTED]
 [REDACTED].
 LOCATE [REDACTED]
 [REDACTED].
 COMPARE [REDACTED] PREPARE FOR
 APPEAL.
 RESEARCH [REDACTED].

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Account
Of PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
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Re: GUERRA, RICARDO ALDAPE

	Init		Hours
12/07/94	SJA	COMPARE [REDACTED]; PREPARE FILES FOR APPEAL.	7.00
	MM	[REDACTED]	4.00
12/08/94	SJA	COMPARE [REDACTED]; PREPARE FILE FOR APPEAL.	8.00
	ML	LISTEN TO OCTEL FROM MICHAEL MUCCHETTI REGARDING [REDACTED]; TELEPHONE CONFERENCE WITH MICHAEL MUCCHETTI REGARDING [REDACTED].	.50
12/09/94	SJA	COMPARE [REDACTED] PREPARE FOR APPEAL.	8.50
	MM	EDIT MEMORANDUM REGARDING [REDACTED]	1.00
	ML	CONFERENCES WITH SCOTT ATLAS AND ROBERT SUMMERLIN REGARDING [REDACTED]; TELEPHONE CONFERENCE WITH MICHAEL MUCCHETTI REGARDING [REDACTED].	1.00
12/12/94	SJA	COMPARE [REDACTED]; BEGIN PREPARATION OF MEMO REGARDING SAME; BEGIN PREPARING FOR APPEAL.	7.75
	ML	TELEPHONE CONFERENCE WITH MICHAEL MUCCHETTI REGARDING [REDACTED].	.25
12/13/94	SJA	PREPARE MEMO ANALYZING [REDACTED] PREPARE FOR APPEAL.	4.25
12/14/94	SJA	PREPARE FOR APPEAL; PREPARE MEMO ANALYZING [REDACTED]	1.50
12/15/94	SJA	REVIEW AND REVISE DRAFT MEMO ANALYZING [REDACTED]	.50
12/18/94	ML	EDIT [REDACTED]	1.50
12/19/94	ML	EDIT [REDACTED]	6.25

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Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

	Init		Hours
12/20/94	TWK	REVIEW SCOTT ATLAS MEMORANDA AND CONFERENCES WITH SCOTT ATLAS REGARDING [REDACTED]	.75
	ML	RESEARCH [REDACTED] [REDACTED] EDIT [REDACTED]	.50
12/21/94	RELS	NUMEROUS CONFERENCES WITH MANUEL LOPEZ REGARDING [REDACTED] REVIEW AND REVISE [REDACTED]	2.50

Current fees, total \$250,345.00

Disbursements and other charges through December 22, 1994

COMPUTER RESEARCH			
12/08/92	JRM	WESTLAW	204.72
12/10/92	JRM	LEXIS	166.16
12/10/92	JRM	WESTLAW	126.54
12/22/92	MDFI	LEXIS	16.61
12/22/92	MDFI	WESTLAW	4.37
12/29/92	LRV	WESTLAW	113.86
10/06/93	MM	WESTLAW	193.86
10/21/93	MM	WESTLAW	31.11
11/08/93	KTG	LEXIS	22.66
11/08/93	MM	WESTLAW	548.27
11/08/93	JRM	LEXIS	59.55
11/10/93	MDFI	LEXIS	13.99
11/10/93	MDFI	WESTLAW	55.65
11/11/93	JLG	WESTLAW	290.42
11/16/93	CHM	WESTLAW	45.79
12/19/93	JRM	LEXIS	13.00
12/21/93	JRM	LEXIS	113.60
1/14/94	JRM	LEXIS	33.30

COMPUTER RESEARCH \$2,053.49

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Re: GUERRA, RICARDO ALDAPE

PHOTOCOPY

1/19/93	MKS	UNIT-50	TM-10:47	1.00
1/19/93	ACO	UNIT-66	TM-10:04	3.10
5/06/93	RGAR	UNIT-30	TM-10:19	60.50
7/30/93	SJA	UNIT-48	TM-14:25	4.00
8/05/93	SJA	UNIT-28	TM-11:16	6.80
8/10/93	SJA	UNIT-28	TM-09:23	1.10
8/12/93	SJA	UNIT-25	TM-16:46	38.50
8/12/93	SJA	UNIT-31	TM-15:33	11.30
8/16/93	SJA	UNIT-28	TM-16:29	6.90
9/14/93	SJA	UNIT-28	TM-16:08	1.50
9/22/93	SJA	UNIT-28	TM-17:01	9.50
9/30/93	SJA	UNIT-28	TM-16:20	16.40
9/30/93	SJA	UNIT-31	TM-16:04	28.80
9/30/93	SJA	UNIT-48	TM-16:28	2.50
9/30/93	MALA	UNIT-48	TM-16:52	8.50
10/01/93	MALA	UNIT-28	TM-10:05	36.80
10/04/93	SJA	UNIT-29	TM-12:11	1.00
10/06/93	SJA	UNIT-20	TM-10:36	88.20
10/06/93	SJA	UNIT-21	TM-12:25	24.10
10/06/93	SJA	UNIT-22	TM-10:16	63.00
10/06/93	SJA	UNIT-28	TM-16:10	20.10
10/06/93	MALA	UNIT-28	TM-09:49	28.10
10/06/93	MALA	UNIT-48	TM-11:33	22.40
10/07/93	SJA	UNIT-17	TM-13:48	18.00
10/07/93	SJA	UNIT-28	TM-16:19	15.00
10/07/93	MALA	UNIT-28	TM-15:34	16.30
10/07/93	MALA	UNIT-45	TM-14:33	64.40
10/11/93	SJA	UNIT-17	TM-13:13	16.70
10/11/93	SJA	UNIT-20	TM-13:23	6.30
10/11/93	SJA	UNIT-22	TM-13:24	4.70
10/11/93	SJA	UNIT-28	TM-15:51	14.70
10/12/93	SJA	UNIT-28	TM-15:36	30.30
10/15/93	SJA	UNIT-18	TM-15:32	55.80
10/15/93	SJA	UNIT-20	TM-16:12	3.80
10/15/93	SJA	UNIT-21	TM-15:54	15.80

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Of PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
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Re: GUERRA, RICARDO ALDAPE

10/15/93	SJA	UNIT-28	TM-16:40		5.00
10/15/93	MALA	UNIT-48	TM-14:57		4.20
10/15/93	SJA	UNIT-98	TM-23:44	BINDING & CHRGS	6.00
10/18/93	SJA	UNIT-28	TM-16:53		34.50
10/19/93	MALA	UNIT-28	TM-16:17		1.00
10/19/93	MALA	UNIT-48	TM-16:25		6.40
10/21/93	SJA	UNIT-21	TM-14:56		81.90
10/21/93	SJA	UNIT-22	TM-15:48		40.30
10/21/93	MALA	UNIT-28	TM-10:39		4.00
10/22/93	MM	UNIT-32	TM-12:05		1.70
10/26/93	SJA	UNIT-28	TM-10:14		10.00
10/26/93	SJA	UNIT-29	TM-13:37		32.10
10/27/93	SJA	UNIT-28	TM-18:11		3.60
10/28/93	SJA	UNIT-18	TM-13:50		98.90
10/28/93	MALA	UNIT-28	TM-11:24		2.80
10/28/93	MALA	UNIT-48	TM-15:32		23.00
10/28/93	RELS	UNIT-17	TM-14:22		13.10
10/28/93	RELS	UNIT-22	TM-19:34		32.10
10/28/93	RELS	UNIT-28	TM-18:03		1.40
10/28/93	RELS	UNIT-48	TM-17:04		21.10
10/28/93	RELS	UNIT-73	TM-13:48		4.40
10/29/93	MALA	UNIT-48	TM-12:09		4.80
10/29/93	RELS	UNIT-20	TM-11:21		13.60
10/29/93	RELS	UNIT-28	TM-17:38		6.40
10/30/93	SJA	UNIT-28	TM-15:18		7.10
10/31/93	RELS	UNIT-28	TM-14:17		5.70
11/01/93	SJA	UNIT-28	TM-17:00		2.50
11/01/93	RELS	UNIT-18	TM-11:01		28.50
11/01/93	RELS	UNIT-28	TM-15:38		16.60
11/01/93	RELS	UNIT-48	TM-15:06		10.70
11/02/93	SJA	UNIT-28	TM-17:25		26.10
11/02/93	MALA	UNIT-28	TM-15:43		5.10
11/02/93	RELS	UNIT-27	TM-14:39		1.30
11/02/93	RELS	UNIT-28	TM-17:50		12.90
11/02/93	SJA	UNIT-98	TM-10:33	COLOR COPYING	2.00
11/02/93	SJA	UNIT-98	TM-10:33	COLOR COPYING	12.00
11/03/93	SJA	UNIT-28	TM-17:00		17.00

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Billing Attorney Scott J. Atlas
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Re: GUERRA, RICARDO ALDAPE

11/03/93	MALA UNIT-48	TM-10:46		1.10
11/03/93	RELS UNIT-21	TM-19:34		2.70
11/03/93	RELS UNIT-28	TM-17:54		15.80
11/03/93	RELS UNIT-48	TM-17:21		2.30
11/03/93	RELS UNIT-98	TM-23:43	COLOR COPYING	8.00
11/04/93	SJA UNIT-28	TM-11:52		2.50
11/04/93	MALA UNIT-28	TM-14:10		26.20
11/04/93	RELS UNIT-20	TM-15:04		36.80
11/04/93	RELS UNIT-28	TM-21:17		47.60
11/05/93	SJA UNIT-28	TM-14:13		21.20
11/05/93	EOJA UNIT-26	TM-15:08		11.20
11/05/93	EOJA UNIT-28	TM-17:54		1.70
11/05/93	RELS UNIT-20	TM-17:46		473.20
11/05/93	RELS UNIT-28	TM-15:23		34.10
11/05/93	RELS UNIT-98	TM-18:27	COLOR COPYING	36.00
11/05/93	RELS UNIT-98	TM-18:28	COLOR COPYING	64.00
11/06/93	SJA UNIT-28	TM-16:52		11.30
11/07/93	SJA UNIT-28	TM-19:35		3.20
11/07/93	RELS UNIT-28	TM-21:27		48.10
11/08/93	SJA UNIT-28	TM-17:05		8.50
11/08/93	MALA UNIT-28	TM-10:52		15.00
11/08/93	RELS UNIT-28	TM-20:20		58.60
11/08/93	RELS UNIT-29	TM-13:38		6.70
11/08/93	RELS UNIT-98	TM-07:41	COLOR COPYING	50.00
11/08/93	RELS UNIT-98	TM-22:14	COLOR COPYING	2.00
11/09/93	SJA UNIT-28	TM-20:37		36.60
11/09/93	SJA UNIT-29	TM-15:02		5.80
11/09/93	MALA UNIT-28	TM-16:06		6.00
11/09/93	SLBR UNIT-20	TM-11:20		11.90
11/09/93	SLBR UNIT-23	TM-14:08		19.70
11/09/93	SLBR UNIT-28	TM-13:43		7.10
11/09/93	RELS UNIT-23	TM-12:49		55.60
11/09/93	RELS UNIT-28	TM-17:05		24.40
11/09/93	RELS UNIT-48	TM-14:36		2.70
11/09/93	SJA UNIT-98	TM-08:27	COLOR COPYING	40.00
11/09/93	RELS UNIT-98	TM-08:17	COLOR COPYING	96.00
11/09/93	RELS UNIT-98	TM-08:18	COLOR COPYING	112.00

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Account Number PRO127 29000
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Re: GUERRA, RICARDO ALDAPE

11/10/93	SJA	UNIT-28	TM-17:15		94.70
11/10/93	SLBR	UNIT-29	TM-15:19		1.00
11/10/93	RELS	UNIT-28	TM-16:12		5.80
11/11/93	SJA	UNIT-28	TM-18:03		130.20
11/11/93	SJA	UNIT-34	TM-15:51		12.80
11/11/93	MM	UNIT-37	TM-11:25		3.20
11/11/93	SLBR	UNIT-28	TM-11:24		4.40
11/11/93	RELS	UNIT-21	TM-13:49		46.80
11/11/93	RELS	UNIT-23	TM-20:02		4.20
11/11/93	RELS	UNIT-28	TM-19:05		6.20
11/11/93	RELS	UNIT-48	TM-13:58		5.20
11/11/93	SLBR	UNIT-98	TM-15:44	COLOR COPYING	2.00
11/11/93	SLBR	UNIT-98	TM-15:47	COLOR COPYING	32.00
11/11/93	RELS	UNIT-98	TM-22:55	COLOR COPYING	8.00
11/11/93	RELS	UNIT-98	TM-22:58	COLOR COPYING	4.00
11/11/93	RELS	UNIT-98	TM-22:58	COLOR COPYING	30.00
11/11/93	RELS	UNIT-98	TM-22:59	COLOR COPYING	118.00
11/12/93	SJA	UNIT-18	TM-17:01		6.50
11/12/93	SJA	UNIT-23	TM-12:51		6.20
11/12/93	SJA	UNIT-28	TM-17:11		7.20
11/12/93	MI	UNIT-32	TM-11:25		5.90
11/12/93	SLBR	UNIT-21	TM-17:13		1.40
11/12/93	SLBR	UNIT-28	TM-16:13		5.00
11/12/93	RELS	UNIT-17	TM-13:44		311.00
11/12/93	RELS	UNIT-20	TM-12:59		202.20
11/12/93	RELS	UNIT-21	TM-09:48		24.40
11/12/93	RELS	UNIT-23	TM-20:12		43.70
11/12/93	RELS	UNIT-28	TM-20:28		79.00
11/12/93	RELS	UNIT-29	TM-14:07		2.70
11/12/93	RELS	UNIT-30	TM-14:21		18.80
11/12/93	RELS	UNIT-98	TM-23:19	BINDING & CHRGS	108.00
11/12/93	RELS	UNIT-98	TM-23:22		1.60
11/12/93	RELS	UNIT-98	TM-23:23		26.70
11/12/93	RELS	UNIT-98	TM-23:23	BINDING & CHRGS	2.00
11/13/93	SJA	UNIT-28	TM-18:00		32.00
11/13/93	EOJA	UNIT-28	TM-19:50		88.20
11/13/93	MALA	UNIT-28	TM-13:39		10.10

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Account Number PRO127 29000
Billing Attorney Scott J. Atlas
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Re: GUERRA, RICARDO ALDAPE

11/13/93	RELS UNIT-28 TM-18:14	34.10
11/13/93	RELS UNIT-48 TM-19:23	7.40
11/14/93	SJA UNIT-28 TM-23:22	97.00
11/14/93	MDEI UNIT-28 TM-20:54	2.80
11/14/93	EOJA UNIT-28 TM-22:06	106.20
11/14/93	MALA UNIT-28 TM-17:08	5.10
11/14/93	CCSI UNIT-28 TM-14:54	1.40
11/14/93	RELS UNIT-28 TM-23:10	231.30
11/14/93	RELS UNIT-48 TM-23:28	13.40
11/15/93	MALA UNIT-28 TM-14:34	5.00
11/15/93	MALA UNIT-48 TM-11:04	1.20
11/15/93	RELS UNIT-98 TM-07:54 BINDING & CHRGS	2.00
11/15/93	RELS UNIT-98 TM-08:32 BINDING & CHRGS	8.00
11/15/93	SJA COPIES BY NIGHTRIDER IN COURTHOUSE	2.70
11/16/93	MALA UNIT-28 TM-12:31	16.50
11/16/93	RELS UNIT-28 TM-07:56	1.00
11/17/93	SJA UNIT-28 TM-13:34	1.30
11/18/93	SJA UNIT-28 TM-15:03	17.60
11/18/93	RELS UNIT-28 TM-17:51	49.40
11/19/93	MALA UNIT-48 TM-16:10	1.00
11/19/93	RELS UNIT-28 TM-12:55	3.40
11/19/93	SJA COPIES BY NIGHTRIDER IN COURTHOUSE	.40
11/20/93	SJA UNIT-28 TM-16:49	5.30
11/20/93	RELS UNIT-28 TM-18:59	32.40
11/21/93	SJA UNIT-28 TM-15:33	13.50
11/21/93	RELS UNIT-28 TM-14:38	1.90
11/22/93	SLBR DISCOVERY DOCUMENT SERVICES-COPIES	38.00
11/22/93	SJA UNIT-28 TM-08:25	3.00
11/22/93	MM UNIT-32 TM-11:23	1.50
11/22/93	MM UNIT-52 TM-14:21	2.50
11/22/93	MALA UNIT-48 TM-08:43	1.90
11/22/93	RELS UNIT-28 TM-12:57	2.40
11/22/93	RELS UNIT-48 TM-18:25	8.40
11/23/93	RELS UNIT-28 TM-10:53	4.30
11/23/93	RELS UNIT-48 TM-14:58	1.00
11/23/93	SJA UNIT-98 TM-14:05 COLOR COPYING	2.00
11/24/93	SJA DISCOVERY DOCUMENT SERVICES-COPIES	62.70

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11/24/93	SLBR DISCOVERY DOCUMENT SERVICES-COPIES	42.22
11/24/93	SJA UNIT-28 TM-15:20	1.70
11/24/93	SJA UNIT-37 TM-11:06	5.30
11/24/93	MALA UNIT-28 TM-12:59	1.20
11/24/93	MALA UNIT-48 TM-14:54	1.20
11/29/93	SJA UNIT-28 TM-10:25	32.10
11/30/93	SJA UNIT-28 TM-17:02	13.30
11/30/93	SJA UNIT-98 TM-07:33 BINDING & CHRGS	2.00
12/01/93	SJA UNIT-28 TM-15:43	34.20
12/03/93	SJA UNIT-28 TM-16:13	4.90
12/03/93	MALA UNIT-28 TM-09:28	1.30
12/04/93	MM UNIT-32 TM-14:22	2.10
12/06/93	SJA UNIT-28 TM-15:55	1.00
12/09/93	RELS UNIT-28 TM-10:42	2.90
12/09/93	JRM UNIT-87 TM-18:33	5.00
12/10/93	MM UNIT-32 TM-09:28	10.00
12/10/93	JRM UNIT-87 TM-18:11	2.40
12/10/93	JRM UNIT-89 TM-16:37	1.70
12/14/93	JRM UNIT-87 TM-16:31	4.20
12/15/93	SJA A-1 BLUE PRINT-COPIES	87.68
12/15/93	SJA A-1 BLUE PRINT-COPIES	43.84
12/15/93	SLBR A-1 BLUE PRINT-COPIES	54.02
12/15/93	RELS A-1 BLUE PRINT-COPIES	41.89
12/15/93	RELS A-1 BLUE PRINT-COPIES	48.71
12/15/93	RELS A-1 BLUE PRINT-COPIES	22.57
12/15/93	RELS A-1 BLUE PRINT-COPIES	43.84
12/24/93	SJA UNIT-28 TM-00:59	5.90
12/26/93	SJA UNIT-28 TM-18:36	1.80
12/27/93	SJA UNIT-22 TM-10:26	55.40
12/27/93	SJA UNIT-28 TM-09:32	10.00
12/27/93	MALA UNIT-22 TM-11:08	35.80
12/27/93	MALA UNIT-28 TM-09:11	15.60
12/27/93	MALA UNIT-48 TM-14:33	7.20
12/30/93	SJA UNIT-28 TM-15:38	9.90
12/30/93	SJA UNIT-48 TM-08:08	1.50
12/30/93	MALA UNIT-28 TM-16:38	10.10
1/03/94	SJA UNIT-18 TM-12:41	39.30

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1/03/94	SJA	UNIT-28	TM-13:55		11.1
1/04/94	SJA	UNIT-28	TM-16:25		60.5
1/07/94	SJA	UNIT-28	TM-15:47		13.2
1/12/94	SJA	UNIT-28	TM-13:18		2.1
1/13/94	SJA	UNIT-36	TM-14:04		11.6
1/19/94	MDFI	UNIT-98	TM-10:24	COPIES	.9
4/26/94	SJA	UNIT-50	TM-13:43		2.1
11/15/94	SJA	UNIT-20	TM-16:25		230.0
11/15/94	SJA	UNIT-28	TM-17:08		28.6
11/16/94	SJA	UNIT-28	TM-10:09		69.6
11/16/94	SJA	UNIT-60	TM-14:54		68.5
11/17/94	SJA	UNIT-28	TM-14:47		93.6
11/17/94	SJA	UNIT-48	TM-13:36		3.0
11/18/94	SJA	UNIT-20	TM-15:08		14.7
11/21/94	SJA	UNIT-28	TM-09:32		7.0
11/21/94	MM	UNIT-51	TM-12:08		3.5
11/22/94	SJA	UNIT-28	TM-15:39		14.1
11/23/94	SJA	UNIT-20	TM-15:25		38.7
11/23/94	SJA	UNIT-28	TM-15:48		12.9
11/23/94	MM	UNIT-52	TM-10:28		3.8
11/28/94	SJA	UNIT-28	TM-16:38		8.5
11/29/94	SJA	UNIT-28	TM-20:07		7.3
11/29/94	SJA	UNIT-29	TM-15:07		56.5
11/30/94	SJA	UNIT-28	TM-16:27		9.4
12/01/94	SJA	UNIT-28	TM-14:14		3.5
12/01/94	MM	UNIT-50	TM-13:24		7.4
12/01/94	ML	UNIT-40	TM-11:38		1.9
12/02/94	MM	UNIT-32	TM-09:39		7.1
12/05/94	SJA	UNIT-28	TM-16:20		3.4
12/05/94	MM	UNIT-50	TM-14:32		7.2
12/06/94	SJA	UNIT-28	TM-13:57		14.6
12/07/94	SJA	UNIT-28	TM-16:03		7.7
12/07/94	MM	UNIT-50	TM-18:37		2.0
12/08/94	SJA	UNIT-28	TM-16:43		9.6
12/08/94	MM	UNIT-50	TM-09:56		3.0
12/08/94	MM	UNIT-52	TM-09:59		6.7
12/12/94	SJA	UNIT-29	TM-14:48		11.6

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12/12/94	SJA	UNIT-60	TM-11:25	10.30
12/12/94	ML	UNIT-29	TM-16:40	6.60
12/14/94	SJA	UNIT-24	TM-14:39	55.90
12/15/94	SJA	UNIT-28	TM-15:01	7.30

PHOTOCOPY -----
\$7,113.00

COURIER SERVICES

8/05/93	SJA	FEDERAL EXPRESS	01836285491	22.5
9/30/93	SJA	09/30/93 HE#0930151	BILL PACK	2.5
9/30/93	SJA	09/30/93 HE#0930154	U.S. DISTRICT COURT	2.5
10/06/93	SJA	HOUSTON TO WASHINGTON	COURIER PAK	8.5
10/06/93	SJA	HOUSTON TO WASHINGTON	COURIER PAK	8.5
10/15/93	SJA	FEDERAL EXPRESS	01836337431	49.2
10/18/93	SJA	COURT MESSENGER SERVICE		5.00
10/21/93	SJA	FEDERAL EXPRESS	01836341001	56.7
10/21/93	SJA	FEDERAL EXPRESS	01836341096	29.00
10/25/93	SJA	10/25/93 HE#1025108	FELDMAN & ASSOCIATES	13.25
10/29/93	SJA	FEDERAL EXPRESS	01836348315	15.00
11/10/93	SJA	COURT MESSENGER SERVICE		5.0
11/11/93	SJA	AUS COURIER: ATTORNEY GENERAL'S	OFFICE	16.2
11/12/93	SJA	11/12/93 HE#1112003	SCHNEIDER & MCKINNEY	11.0
11/12/93	SJA	11/12/93 HE#1112092	FELDMAN AND ASSOCIATES	11.0
11/17/93	SJA	11/17/93 HE#1117093	MEXICAN CONSULATE OFFICE	11.0
12/10/93	SJA	TRANSPORTING DOCS & EXHIBITS	TO & FROM CTHOUS	556.5
12/10/93	MM	12/10/93 HE#1210033	FELDMAN & ASSOCIATES	7.1
12/27/93	SJA	FEDERAL EXPRESS	01836386027	22.5
12/27/93	SJA	12/27/93 HE#1227095	FELDMAN & ASSOCIATES	7.1
12/30/93	SJA	12/30/93 HE#1230142	STANLEY SCHNEIDER	7.1
1/03/94		HOUSTON TO WASHINGTON	COURIER	8.5
1/03/94		HOUSTON TO WASHINGTON	COURIER	8.5
1/03/94	SJA	COURT MESSENGER SERVICE		5.0
2/02/94	SJA	01/13/94 FEDERAL EXPRESS		33.0
10/04/94	SJA	HOUSTON TO WASHINGTON	COURIER	8.5
11/15/94		FEDERAL EXPRESS	03635890221	15.5
11/15/94	SJA	FEDERAL EXPRESS	03635890316	15.5
11/15/94	SJA	FEDERAL EXPRESS	03635890413	15.5

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11/15/94	SJA	FEDERAL EXPRESS	03635890422	22.50
11/15/94	SJA	11/15/94 HE#1115170	STANLEY SCHNEIDER	7.10
11/16/94		FEDERAL EXPRESS	03635890912	15.50
11/16/94	SJA	FEDERAL EXPRESS	03635891086	15.50
11/23/94	SJA	FEDERAL EXPRESS	03635896004	47.50
11/30/94	SJA	FEDERAL EXPRESS	03635899172	15.50
11/30/94	SJA	FEDERAL EXPRESS	03635899181	22.50
12/20/94	SJA	FEDERAL EXPRESS	03635915202	15.50

COURIER SERVICES ----- \$1,139.00

TELEFAX

8/26/93	SJA	TELEFAX		2.00
9/30/93	SJA	TELEFAX		75.00
10/15/93	RGAR	UNIT-30	TM-13:21 918173227463	2.00
10/25/93	SJA	UNIT-28	TM-15:51 99606025	4.00
10/25/93	SJA	UNIT-28	TM-15:54 99606025	2.00
10/25/93	SJA	UNIT-28	TM-15:56 96689054	5.00
10/26/93	SJA	TELEFAX		13.00
10/27/93	MALA	UNIT-28	TM-10:52 90115252803669	3.00
10/28/93	SJA	UNIT-28	TM-13:55 99606025	2.00
10/28/93	SJA	UNIT-28	TM-13:57 92291522	4.00
10/28/93	SJA	UNIT-28	TM-14:51 98612562	5.00
10/30/93	SJA	TELEFAX		9.00
10/30/93	SJA	TELEFAX		12.00
11/01/93	SJA	UNIT-28	TM-16:02 99606025	4.00
11/01/93	SJA	UNIT-28	TM-16:42 98626237	2.00
11/02/93	MALA	UNIT-28	TM-14:29 912034320136	5.00
11/02/93	MALA	UNIT-28	TM-16:08 912034320136	5.00
11/03/93	SJA	UNIT-28	TM-09:50 912024348008	4.00
11/03/93	SJA	UNIT-28	TM-16:05 912066853157	5.00
11/04/93	SJA	TELEFAX		21.00
11/05/93	SJA	TELEFAX		3.00
11/08/93	SJA	UNIT-28	TM-16:50 915124632084	4.00
11/09/93	MALA	UNIT-28	TM-11:25 915124772153	10.00
11/09/93	MALA	UNIT-28	TM-11:33 92291522	10.00
11/09/93	MALA	UNIT-28	TM-11:43 92291522	1.00

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11/10/93	SJA	UNIT-28	TM-09:10	99615954	17.00
11/10/93	SJA	UNIT-28	TM-17:36	915124632084	10.00
11/10/93	SJA	TELEFAX			8.00
11/10/93	SJA	TELEFAX			13.00
11/10/93	SJA	TELEFAX			9.00
11/10/93	SJA	TELEFAX			10.00
11/11/93	SJA	UNIT-28	TM-12:24	99606025	13.00
11/11/93	RELS	UNIT-28	TM-19:06	918132873664	10.00
11/11/93	SJA	TELEFAX			3.00
11/12/93	SJA	UNIT-28	TM-17:20	97555809	9.00
11/12/93	SJA	TELEFAX			2.00
11/12/93	SJA	TELEFAX			2.00
11/12/93	SJA	TELEFAX			2.00
11/12/93	SJA	TELEFAX			10.00
11/12/93	SJA	TELEFAX			2.00
11/13/93	SJA	UNIT-28	TM-11:45	92291522	18.00
11/13/93	SJA	UNIT-28	TM-13:04	99615954	3.00
11/13/93	SJA	UNIT-28	TM-13:50	99615954	8.00
11/13/93	SJA	UNIT-28	TM-13:55	99615954	3.00
11/13/93	SJA	UNIT-28	TM-13:59	92291522	2.00
11/13/93	SJA	UNIT-28	TM-14:11	99615954	2.00
11/13/93	SJA	UNIT-28	TM-14:27	915124772153	11.00
11/13/93	SJA	UNIT-28	TM-16:46	99615954	6.00
11/13/93	SJA	UNIT-28	TM-17:54	99615954	29.00
11/13/93	SJA	UNIT-28	TM-18:08	2346	1.00
11/13/93	SJA	UNIT-28	TM-18:20	99615954	4.00
11/13/93	SJA	UNIT-28	TM-18:22	99615954	3.00
11/13/93	SJA	UNIT-28	TM-18:25	92291522	37.00
11/13/93	SJA	UNIT-28	TM-18:42	92291522	6.00
11/13/93	SJA	UNIT-28	TM-18:46	92291522	6.00
11/13/93	SJA	UNIT-28	TM-18:51	915124772153	2.00
11/13/93	SJA	UNIT-28	TM-18:53	915124632084	2.00
11/13/93	MALA	UNIT-28	TM-10:18	915124632084	2.00
11/13/93	MALA	UNIT-28	TM-12:06	99615954	17.00
11/14/93	SJA	UNIT-28	TM-10:54	99615954	12.00
11/14/93	MALA	UNIT-28	TM-14:38	92291522	4.00
11/14/93	MALA	UNIT-28	TM-14:41	99615954	4.00

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11/14/93	MALA UNIT-28	TM-14:52	99615954	8.00
11/14/93	MALA UNIT-28	TM-16:32	92291522	3.00
11/14/93	MALA UNIT-28	TM-16:36	915124772153	3.00
11/14/93	MALA UNIT-28	TM-16:39	99615954	3.00
11/15/93	SJA	TELEFAX		48.00
11/18/93	SJA	TELEFAX		11.00
11/18/93	SJA	TELEFAX		11.00
11/18/93	SJA	TELEFAX		11.00
11/18/93	SJA	TELEFAX		11.00
11/22/93	SJA UNIT-28	TM-10:46	912022931827	11.00
11/22/93	SJA	TELEFAX		11.00
11/23/93	SJA	TELEFAX		2.00
11/24/93	SJA	TELEFAX		3.00
11/24/93	SJA	TELEFAX		11.00
11/24/93	SJA	TELEFAX		4.00
12/13/93	MDF I	TELEFAX		9.00
12/13/93	MDF I	TELEFAX		9.00
12/16/93	SJA	TELEFAX		4.00
12/21/93	JRM	TELEFAX		6.00
12/29/93	TWK	TELEFAX		5.00
4/07/94	SJA	TELEFAX		1.00
10/21/94	SJA	TELEFAX		7.00
11/15/94	SJA	TELEFAX		28.00
11/15/94	SJA	TELEFAX		28.00
11/15/94	SJA	TELEFAX		28.00
11/15/94	SJA	TELEFAX		28.00
11/16/94	SJA	TELEFAX		46.00
11/16/94	SJA	TELEFAX		47.00
11/18/94	SJA	TELEFAX		4.00

TELEFAX :915.0

OVERTIME

9/30/93	SJA	WORK ON CASE (ALDAPE)	12.5
11/06/93	SJA	REVISE [REDACTED]	112.5
11/07/93	SJA	TYPE & REVISE [REDACTED]	187.5
11/08/93	SJA	ALDAPE-PREPARATION OF DOCS	31.0

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11/09/93	SJA	WORK THOROUGH ON DOCUMENTS	25.0
11/09/93	SJA	PREPARE FOR TRIAL	25.0
11/10/93	SJA	WORK THOROUGH ON DOCUMENTS	25.0
11/10/93	SJA	PREPARE FOR TRIAL	25.0
11/11/93	SJA	WORK THOROUGH ON DOCUMENTS	25.0
11/11/93	SJA	WORK ON DOCUMENTS	62.5
11/11/93	SJA	PREPARE FOR TRIAL	12.5
11/12/93	SJA	DOCUMENT PREPARATION	25.0
11/12/93	SJA	PREPARE FOR TRIAL	25.0
11/13/93	SJA	ASSIST W/TRIAL PREPARATIONS	275.0
11/13/93	SJA	PREPARATION FOR HEARING	187.5
11/13/93	SJA	PREPARE FOR TRIAL	162.5
11/14/93	SJA	ASSIST W/TRIAL PREPARATIONS	187.5
11/14/93	SJA	TYPED AND REVISED [REDACTED]	187.5
11/14/93	SJA	PREPAREING FOR ALDOPE HEARING	137.5
11/15/93	SJA	TYPED AND REVISED [REDACTED]	25.0
11/15/93	SJA	PREPARATION OF DOCS FOR HEARING	25.0
11/15/93	SJA	MISC FOR HEARING	25.0
11/15/93	SJA	MISC. FOR COURT NEXT DAY	50.0
11/16/93	SJA	TYPED AND REVISED [REDACTED]	62.5
11/16/93	SJA	PREPARATION FOR HEARING	18.7
11/16/93	SJA	MISC FOR HEARING	25.0
11/18/93	SJA	PREPARATION OF DOCS FOR HEARING	6.2
11/18/93	SJA	MISC FOR HEARING	25.0
11/19/93	SJA	PREPARATION OF DOCS FOR HEARING	6.2
11/19/93	SJA	MISC FOR HEARING	25.0
11/20/93	SJA	REVISE [REDACTED]	181.2
11/21/93	SJA	REVISE AND FINALIZE [REDACTED]	162.5
11/22/93	SJA	MISC FOCS FOR HEARING	25.0
12/23/93	SJA	ALDAPE DOCUMENTS	360.0
12/24/93	SJA	ALDAPE DOCUMENTS	90.0
12/26/93	SJA	ALDAPE DOCUMENTS	137.5
12/28/93	SJA	FINDINGS OF FACT	25.0
12/30/93	SJA	FINDINGS OF FACT	25.0
12/30/93	SJA	SEND OUT FINDINGS OF FACT	18.7

OVERTIME 33,050.0

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POSTAGE

11/02/93	SJA	POSTAGE	5.50
1/08/94	SJA	POSTAGE	11.50
11/15/94	SJA	POSTAGE	54.90

POSTAGE			\$72.00

OUTSIDE PROF. SVCS.

10/26/93	SJA	[REDACTED]	162.30
11/17/93	SJA	SERVICES RENDERED-RICARDO ALDAPE GUERRA	906.70
11/19/93	SJA	[REDACTED]	297.60
11/23/93	SJA	CONSULTATION, REVIEW RECORDS, EXPERT WITNESS	1,400.00
11/23/93	SJA	[REDACTED]	405.90
11/23/93	SJA	[REDACTED]	405.90
11/23/93	SJA	[REDACTED]	405.90
11/23/93	SJA	[REDACTED]	368.20
12/13/93	SJA	EXPERT WITNESS-ELIZABETH LOFTUS, PHD	7,060.50

OUTSIDE PROF. SVCS.			\$11,413.40

TELEPHONE

7/29/93	SJA	WASHINGTONDC MARY LOU SOLLER	3.20
7/30/93	SJA	WASHINGTONDC MARY LOU SOLLER	.80
8/03/93	MEAS	MEXICO	4.80
8/05/93		WASHINGTONDC MARY LOU SOLLER	4.10
8/05/93	SJA	WASHINGTONDC MARY LOU SOLLAR	9.00
8/05/93	SJA	MEXICO	1.20
8/06/93		MEXICO	1.20
8/17/93	SJA	HUNTSVILLETX	.80
8/18/93	SJA	WASHINGTONDC JULIA SULLIVAN	3.20
9/12/93		MEXICO	5.80
9/12/93		MEXICO	1.70
9/13/93	MEAS	MEXICO	1.20
9/13/93	MEAS	MEXICO	21.10
9/13/93	SJA	HUNTSVILLETX	.80
9/13/93	SJA	MEXICO ALICIA BURPSA	4.30

December 27, 1994

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Account
Of PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

9/20/93	MEAS	LONG DISTANCE TELEPHONE CALLS--	8/2/93 MONTER	5.50
9/24/93	SJA	AUSTIN TX	BARBARA HINES	5.30
9/30/93		AUSTIN TX		1.20
9/30/93	SJA	HUNTSVILLETX	PRISON WARDEN	.80
9/30/93	SJA	MEXICO	ALDAPE'S FAMILY	2.20
10/01/93		WPALMBEACHFL		.80
10/01/93		WASHINGTONDC		.80
10/01/93		MEXICO		1.78
10/01/93	SJA	MEXICO		2.80
10/01/93	SJA	WASHINGTONDC	TED KASSINGER	.80
10/05/93				2.40
10/05/93		WASHINGTONDC	SCOTT ATLAS	16.40
10/05/93		WASHINGTONDC	SCOTT ATLAS	6.90
10/05/93	SJA	WASHINGTONDC	JULIA SULLIVAN	2.40
10/05/93		DALLAS TX	PAUL WEHRMAN	.80
10/06/93	MM	AUSTIN TX		2.40
10/06/93	MM	AUSTIN TX		7.70
10/07/93	SJA	BETHESDA MD	SUSAN BAUSTEIN	1.60
10/07/93	SJA	AUSTIN TX		.80
10/07/93		AUSTIN TX		1.20
10/07/93	MM	AUSTIN TX		2.80
10/12/93	SJA	NEW HAVEN CT	ANDY MC STAY	1.60
10/15/93		SEATTLE WA	ELIZABETH LOFTUS	.80
10/15/93	SJA	SEATTLE WA	ELIZABETH LOFTIS	7.30
10/18/93		AUSTIN TX	WILLIAM ZAPALAC	1.20
10/18/93		AUSTIN TX	WILLIAM ZAPALAC	.80
10/18/93		AUSTIN TX	WILLIAM ZAPALAC	.80
10/20/93		WASHINGTONDC	MARY LOU SOLLER	1.60
10/20/93		WASHINGTONDC	JULIA SULLIVAN	1.20
10/20/93		WASHINGTONDC	MARY LOU SOLLER	1.20
10/20/93		WASHINGTONDC	MARRIOTT	.80
10/25/93		MEXICO		3.30
10/25/93		MEXICO		15.00
10/26/93		HUNTSVILLETX	PRISON	2.00
10/26/93		WILLIS TX	PRISON	6.90
10/26/93	SJA	HUNTSVILLETX	PRISON	1.20
10/26/93	SJA	NEW HAVEN CT	LENWOOD ROSS	3.20

December 27, 1994

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Account
Of PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

10/26/93	SJA	NEW HAVEN CT	LENWOOD ROSS	3.28
10/26/93	SJA	HUNTSVILLE TX		2.46
10/26/93	SJA	HUNTSVILLE TX		.81
10/26/93	SJA	HUNTSVILLE TX	PRISON	1.21
10/26/93	SJA	MEXICO		1.78
10/27/93	SJA	AUSTIN TX		.81
10/28/93	SJA	SEATTLE WA	ELIZABETH LOFTUS	1.64
10/29/93		HUNTSVILLE TX	PRISON	1.21
10/31/93	SJA	SEATTLE WA	ELIZABETH LOFTUS	13.21
11/02/93	SJA	NEW HAVEN CT	LENWOOD ROSS	.81
11/02/93		WASHINGTON DC	JIM MARKHAM	.81
11/03/93		WASHINGTON DC	JIM MARKHAM	1.21
11/03/93		DALLAS TX	DAVID GODBY	3.21
11/04/93		HUNTSVILLE TX	PRISON	1.21
11/04/93	SJA	HOUSTON TX		8.51
11/08/93	SLBR	HUNTSVILLE TX		.81
11/09/93		HUNTSVILLE TX	PRISON	.81
11/09/93	SJA	HOUSTON TX		4.80
11/10/93	SLBR	HUNTSVILLE TX		.81
11/10/93	SJA	MEXICO		3.81
11/10/93	SJA	AUSTIN TX	BILL ZAPALAC	5.31
11/11/93	RELS	ARLINGTON TX		3.21
11/11/93	SJA	SEATTLE WA	ELIZABETH LOFTUS	2.01
11/11/93	SJA	AUSTIN TX		7.31
11/11/93	SLBR	TELEPHONE CALLS		3.01
11/12/93	SLBR	WILLIS TX		2.41
11/12/93	SJA	AUSTIN TX	BILL ZAPALAC	.81
11/14/93	RELS	WILLIS TX	LEGAL ENTERPRISE	1.21
11/14/93	RELS	ARLINGTON TX		4.51
11/15/93	RELS	DALLAS TX		1.21
11/15/93	RELS	ARLINGTON TX		1.21
11/15/93	SJA	MEXICO		1.71
11/15/93	SJA	HUNTSVILLE TX	PRISON	.81
11/15/93	SJA	HUNTSVILLE TX	PRISON	.81
11/15/93	SJA	HUNTSVILLE TX	PRISON	1.21
11/16/93	MSBR	MEXICO		1.71
11/16/93	MSBR	MEXICO		3.81

December 27, 1994

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Account
Of PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

11/17/93	SJA	CASH ADVANCE FOR QUARTERS FOR PHONE CALLS, CO	5.00
11/17/93		SEATTLE WA ELIZABETH LOFTUS	3.28
11/17/93	SJA	HUNTSVILLE TX TDC WARDEN'S OFC.	2.05
11/23/93	SJA	WASHINGTON DC JULIA SULLIVAN	1.64
11/24/93	SJA	WASHINGTON DC	1.23
11/29/93	SJA	WASHINGTON DC TED KASSINGER	4.10
12/08/93	SJA	DALLAS TX PAUL WEHRMANN	2.05
12/20/93		NEW YORK NY	1.23
12/27/93	SJA	BREWSTER MA	1.64
12/28/93		NEW YORK NY SCOTT ATLAS	3.28
1/05/94	SJA	MEXICO	5.35
1/07/94		AUSTIN TX	1.23
1/13/94	SJA	RAMON RODRIQUEZ	1.64
2/04/94		SEATTLE WA DR. LOFTUS	.82
2/10/94	SJA	RAMON RODRIQUEZ	5.33
2/17/94	SJA	MEXICO	4.84
2/23/94		HUNTSVILLE TX	1.23
3/01/94	SJA	HUNTSVILLE TX RECORDS ALDAPE UERRA	1.23
3/17/94	SJA	RICHMOND VA MARGARET EDDES	2.46
4/07/94	SJA	MEXICO	1.27
4/26/94	SJA	HUNTSVILLE TX RICARDO ALDAPE GUERRA	.82
4/26/94	SJA	HUNTSVILLE TX RICARDO ALDAPE GUERRA	.82
5/06/94		AUSTIN TX	9.02
5/06/94		AUSTIN TX	9.02
5/20/94		HUNTSVILLE TX	.82
6/07/94	MEAS	MEXICO PRO BONO - ALDAPE	4.84
7/01/94	SJA	MEXICO	4.33
7/07/94	SJA	WESLACO TX	1.23
9/06/94	SJA	HUNTSVILLE TX ALDAPE	.82
9/14/94	SJA	WASHINGTON DC	2.87
10/21/94		MEXICO	2.29

TELEPHONE 365.66

MISCELLANEOUS

10/28/93	MM	COPY OF ORDER.	1.0
11/01/93	SJA	JW MARRIOTT/ALDAPE/3	38.6

December 27, 1994

Page:

Account Of PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

11/07/93	RELS ADALPE TRIAL-MEALS	6.4
11/07/93	RELS ADALPE TRIAL-MEALS	3.3
11/07/93	RELS ADALPE TRIAL-MEALS	8.6
11/07/93	RELS ADALPE TRIAL-MEALS	3.5
11/07/93	RELS ADALPE TRIAL-MEALS	6.4
11/07/93	RELS ADALPE TRIAL-MEALS	6.4
11/17/93	RELS COPYING CHARGE	3.0
11/18/93	SJA GAS FOR DRIVER TO PICK UP WITNESSES	10.0
11/23/93	SJA LAMADELEINE-11/11/93 D732761 MEALS	86.2
11/23/93	SJA LAMADELEINE-11/16/93 D733861 MEALS	96.4
11/23/93	SJA PJ'S-11/9/93 2601 MEALS	60.8
11/23/93	SJA PJ'S-11/13/93 2516 MEALS	42.3
11/23/93	SJA BASILS-11/10/93 MEALS	56.9
11/23/93	SJA DRIVER OF WITNESSES DURING HEARING	364.0
11/30/93	KLAU HOUSTON AUDIO-VIDEO-26" COLOR MONITOR RENTAL	637.0
12/07/93	SJA PARKING AT FEDERAL COURTHOUSE	20.0
12/08/93	SJA BASILS-11/22/93 MEALS	29.9
12/08/93	SJA BASILS-11/22/93 MEALS	58.7
12/13/93	SJA HOTEL ROOM-THE LANCASTER-LOFTUS	183.3
12/14/93	NACA WILSON BUS PROD-OFFICE SUPPLIES 11/93	230.7
12/27/93	SJA 4 VHS COPIES - ALDAPE GUERRA	80.0
12/27/93	SLBR 3 VHS COPIES - ALDAPE GUERRA NEWSCASTS	60.0
12/27/93	SJA 1 VHS COPY - ALDAPE GUERRA	20.0
12/27/93	SJA 5 VHS COPIES OF 2 NEWSCASTS	100.0
12/28/93	SJA ALONTI-11/8/93 MEALS	63.3
12/28/93	SJA ALONTI-11/15/93 MEALS	94.9
12/28/93	SJA ALONTI-11/18/93 MEALS	94.9
12/28/93	SJA ALONTI-11/19/93 MEALS	24.3
12/28/93	SJA ALONTI-11/22/93 MEALS	24.3
1/14/94	SJA NINFA'S-11/19/93 MEALS	99.3
2/10/94	SJA LANCASTER-LODGING FOR DR ELIZABETH LOFTUS-EXP	183.3

	MISCELLANEOUS	\$2,798.8
	TRAVEL	
10/19/93	SJA PRKG/BAKER & BOTTS-ALDAPE MEETING	10.0
11/02/93	SJA PARKING-COURTHOUSE/STATUS CONFERENCE	6.0

December 27, 1994

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Account
Of PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

11/07/93	RELS ADALPE TRIAL	12.50
11/10/93	SJA PARKING AT FEDERAL COURTHOUSE	40.00
11/11/93	SLBR PASADENA COURT HOUSE	36.37
11/11/93	SLBR PASADENA COURT HOUSE-MEALS	1.72
11/15/93	SJA PARKING-FEDERAL COURT HOUSE	38.00
11/15/93	SJA COURTHOUSE	17.00
11/16/93	MDFI PARKING/FEDERAL COURTHOUSE	8.00
11/17/93	MM TAXI/PARKING FOR EVIDENTIARY HEARING	12.00
11/18/93	MM PARKING CITY OF HOUSTON	6.00
11/18/93	SJA TAXI/CRIMINAL COURTHOUSE, COPY CENTER, FEDERAL	10.50
11/19/93	SJA PARKING/FEDERAL COURTHOUSE	12.00
11/19/93	MSBR PARKING & TOLL ROAD FEES	12.00
11/22/93	SJA TAXI	4.00
11/21/94	SJA MONTERREY, MEXICO	200.46

	TRAVEL	\$426.59
	Total disbursements and other charges	----- \$29,347.11

	Invoice total	\$279,692.11

TOTAL AMOUNT (PAYABLE IN U.S. DOLLARS) DUE WITHIN 30 DAYS OF RECEIPT

Please reference account and
invoice numbers when remitting.

PLEASE REMIT TO: 1001 FANNIN, SUITE 2500
HOUSTON, TEXAS 77002-6760

December 27, 1994

Page: 5

Account
Of PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

Summary of services on this invoice

Name	Hours	Amount
SJA Scott J. Atlas	704.50	\$88,062.50
LRB Lisa R Beck	37.25	\$4,656.25
TKB Timothy K. Borchers	6.75	\$843.75
SLBR Susan Leigh Brown	142.50	\$10,687.50
BLBU Brian L Burgess	23.25	\$1,162.50
EVCA Esmeralda Casillas	4.00	\$140.00
JABC Anne Bernard Clayton	25.50	\$3,187.50
ACO Allan R Conge	24.00	\$3,000.00
CSDA Carla S. Danbury	9.50	\$760.00
MEAS Melissa Eason	133.00	\$10,640.00
MDFI Marc D Fisher	105.75	\$13,218.75
KLG Karen L. Getty	20.25	\$1,721.25
EWMG Ellen W. M. Gray	3.00	\$270.00
GGRE Glenn S Greene	40.25	\$2,012.50
MHHA Melody Hughes Harman	1.00	\$70.00
EOJA Edward O Jackson	23.50	\$470.00
TWK Theodore Kassinger	44.00	\$5,500.00
SRKN Shawn R. Knight	5.00	\$250.00
PCK Peter C. Ku	91.25	\$9,125.00
GLAC Gillian Lachaux	2.75	\$206.25
ML Manuel Lopez	23.25	\$2,790.00
JRM James R. Markham	89.75	\$8,990.00
JDMI Jeffrey D Migit	6.50	\$227.50
RAMO Richard A Morris	92.75	\$11,130.00
MM Michael J. Mucchetti	234.25	\$29,281.25
KEN Kim Elliott Neumann	23.50	\$1,880.00
JCO J. Cavanaugh O'Leary	40.25	\$5,031.25
BLP Beverly L. Palmer	28.50	\$2,137.50
FAP Frank A. Parigi	6.75	\$843.75
SLWP Sara Liz Patterson	1.00	\$75.00
ABRU Andrew B. Ruthven	.25	\$11.25
PNS Phillip N Sanov	16.75	\$2,093.75

December 27, 1994

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Account
Of

PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

Name	Hours	Amount
RESC Rebecca E Schweigert	88.50	\$4,425.00
CCSI Cara C. Sion	6.50	\$195.00
RELS Robert Summerlin	231.75	\$11,600.00
AEW Ann E. Webb	63.00	\$7,875.00
PAW Paul A Wehrmann	32.25	\$4,031.25
DFWI Daniel F. Wiersema	2.00	\$100.00
CCWI Cornelia C. Williams	1.00	\$50.00
BHWO Barbara H. Woodward	21.25	\$1,593.75
	2,456.75	\$250,345.00

December 27, 1994

Account
of

PRO BONO (CONTINGENT)

Account Number PRO127 29000
Billing Attorney Scott J. Atlas
Invoice Number 1042962

Re: GUERRA, RICARDO ALDAPE

-> Remittance Copy <-

Fees for services rendered through December 22, 1994	\$250,345.0
Disbursements and other charges through December 22, 1994	\$29,347.1

Invoice total	\$279,692.1

-> Please return this page with your payment <-

TOTAL AMOUNT (PAYABLE IN U.S. DOLLARS) DUE WITHIN 30 DAYS OF RECEIPT

Please reference account and
invoice numbers when remitting.

PLEASE REMIT TO: 1001 FANNIN ST.
HOUSTON, TEXAS

INVOICE CONFIRMATION ACKNOWLEDGEMENT

To: Billing Dept
Room: 3672

Invoice: 1042962
December 27, 1994

Invoice is: * Confirmed
 Voided

--> Note: If a typed invoice is sent to the client please attach a copy !

Billed thru December 22, 1994
Type of Billing: Fee/Disbursements and other charges
Billing Attorney: Scott J. Atlas Room: 2819

Client: PRO127 PRO BONO (CONTINGENT)
Matter: 29000 GUERRA, RICARDO ALDAPE

For services rendered through December 22, 1994	\$250,345.00
Disbursements and other charges through December 22, 1994	\$29,347.11
Invoice total	\$279,692.11

* Confirmation acknowledges that the billing system generated invoice or the attached invoice was sent to the client.

Signature: _____

B-Manuel Lopez
lcy-m

BAKER & BOTTS

L.L.P.

ONE SHELL PLAZA

910 LOUISIANA

HOUSTON, TEXAS 77002-4995

AUSTIN
DALLAS
MOSCOW
NEW YORK
WASHINGTON, D. C.

TELEPHONE: (713) 229-1234
FACSIMILE: (713) 229-1522
TELEX: 76-2779

PB-565

December 6, 1994

RECEIVED

DEC - 7 1994

S.J.A

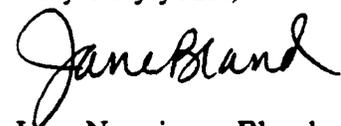
**Mr. Scott J. Atlas
Vinson & Elkins
Suite 2500
1001 Fannin
Houston, Texas 77002-6760**

RE: *Ricardo Aldape Guerra*

Dear Scott:

Enclosed please find a detailed account of Judge Gee's time and expense records for the above-referenced matter. If you need any further information for the fee application, please do not hesitate to call me at 229-1891.

Very truly yours,



Jane Nenner Bland

**JNB:1279
Enclosure**

HOU02:144527

DEC 6 1994

December 6, 1994

Re: *Ricardo Aldape Guerra*

For services rendered and expenses incurred from January 15, 1993 through December 30, 1993 in the above-referenced matter:

Total Fees 83.9 @ \$125 per hour:	\$10,487.50
Total Expenses	<u>19.50</u>
TOTAL FEE AND EXPENSES	<u>\$10,507.00</u>

Expenses:

Duplicating service:

\$19.50

\$19.50

NON-CHARGEABLE
GUERRA, RICARDO ALDAPE

CLIENT
MATTER

DATE	HOURS	DESCRIPTION
01/15/93 GEE, T. G.	.4	TELEPHONE CONFERENCES WITH SCOTT ATLAS
01/28/93 GEE, T. G.	1.0	WORK ON PRO BOND HABEAS.
01/29/93 GEE, T. G.	4.4	REVIEW AND EDIT FEDERAL HABEAS PETITION.
01/30/93 GEE, T. G.	4.2	REVIEW AND EDIT FEDERAL HABEAS PETITION.
01/31/93 GEE, T. G.	4.0	REVIEW AND EDIT FEDERAL HABEAS PETITION.
02/02/93 GEE, T. G.	1.0	REVIEW BRIEFS.
02/03/93 GEE, T. G.	.8	FURTHER STUDY OF BRIEFS
02/19/93 GEE, T. G.	.8	REVIEW BRIEFS
02/20/93 GEE, T. G.	2.8	STUDY BRIEFS AND DRAFT LETTER OPINION
02/22/93 GEE, T. G.	1.2	GET PANEL. FINISH AND SEND LETTER
06/03/93 GEE, T. G.	2.2	REVIEW AND EDIT DRAFT BRIEF
10/01/93 GEE, T. G.	.8	WORK ON HABEAS CORPUS
10/12/93 GEE, T. G.	2.0	(HABEAS CORPUS) OFFICE CONFERENCE WITH SCOTT ATLAS REGARDING FORTHCOMING ORAL HEARING
11/08/93 GEE, T. G.	1.0	HABEAS CORPUS; STUDYING MATERIALS FURNISHED FOR CROSS EXAMINATION OF WITNESSES MOEN AND BAX
11/09/93 GEE, T. G.	1.6	STUDYING AFFIDAVITS AND WITNESS STATEMENTS
11/11/93 GEE, T. G.	4.2	CONFER WITH SCOTT ATLAS AND OTHERS REGARDING CONDUCT OF HEARING NEXT WEEK
11/12/93 GEE, T. G.	3.2	CONTINUED PREPARING FOR HEARING NEXT WEEK
11/15/93 GEE, T. G.	9.2	IN TRIAL OF CASE
11/16/93 GEE, T. G.	8.2	IN TRIAL OF CASE
11/17/93 GEE, T. G.	1.4	PREPARATION FOR CONTINUATION OF TRIAL TOMORROW
11/18/93 GEE, T. G.	8.7	TRIAL OF CASE IN COURT
11/19/93 GEE, T. G.	9.0	TRIAL OF CASE IN COURT

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SCHNEIDER & MCKINNEY, P.C.

ATTORNEYS AT LAW

Eleven Greenway Plaza, Suite 3112

Houston, Texas 77046

(713) 961-5901

Fax (713) 961-5954

Stanley G. Schneider, P.C.
W. Troy McKinney
Thomas D. Moran

December 28, 1994

Ricardo Aldape Guerra
c/o Scott Atlas

Invoice #39

	<u>Hrs/Rate</u>	<u>Amount</u>
Professional services		
01/18/93 SGS Conversation with Bill Zapalac regarding execution date; conversation with Scott Atlas.	1.00 125.00/hr	125.00
01/30/93 SGS Reviewed draft of motion for evidentiary hearing and writ of habeas corpus.	2.00 125.00/hr	250.00
03/17/93 SGS Reviewed state's response to motion for evidentiary hearing; conversation with Scott Atlas.	1.00 125.00/hr	125.00
05/20/93 SGS Reviewed state's response to writ of habeas corpus.	2.00 125.00/hr	250.00
10/01/93 SGS Conversation with Scott Atlas regarding 9/30/93 order.	0.50 125.00/hr	62.50
10/25/93 SGS Conversation with Scott Atlas regarding writ of habeas corpus and testificandum.	0.25 125.00/hr	31.25
11/01/93 SGS Pre-trial conference.	0.50 125.00/hr	62.50

Ricardo Aldape Guerra

Page 2

	<u>Hrs/Rate</u>	<u>Amount</u>
11/01/93 SGS Prepare for hearing.	3.00 125.00/hr	375.00
11/02/93 SGS Prepare for hearing.	3.00 125.00/hr	375.00
11/03/93 SGS Prepare for hearing.	3.00 125.00/hr	375.00
11/04/93 SGS Prepare for hearing.	3.00 125.00/hr	375.00
11/05/93 SGS Prepare for hearing.	3.00 125.00/hr	375.00
11/06/93 SGS Prepare for hearing.	3.00 125.00/hr	375.00
11/07/93 SGS Prepare for hearing.	3.00 125.00/hr	375.00
11/08/93 SGS Prepare for hearing.	3.00 125.00/hr	375.00
11/09/93 SGS Prepare for hearing; meet with witnesses.	6.00 125.00/hr	750.00
11/14/93 SGS Prepare for hearing.	2.00 125.00/hr	250.00
11/15/93 SGS Prepare for and attend evidentiary hearing.	3.00 125.00/hr	375.00
11/16/93 SGS Prepare for and attend evidentiary hearing.	11.00 125.00/hr	1,375.00
11/18/93 SGS Prepare for and attend hearing.	11.00 125.00/hr	1,375.00
11/19/93 SGS Prepare for and attend hearing.	10.50 125.00/hr	1,312.50
11/20/93 SGS Prepare for hearing.	3.00 125.00/hr	375.00
11/21/93 SGS Prepare for hearing.	1.00	125.00

Ricardo Aldape Guerra

Page 3

	<u>Hrs/Rate</u>	<u>Amount</u>
	125.00/hr	
11/22/93 SGS Prepare for and attend hearing.	10.50 125.00/hr	1,312.50
11/23/93 SGS Conversation with Scott Atlas regarding findings of fact.	0.50 125.00/hr	62.50
12/27/93 SGS Reviewed memo regarding prosecutorial misconduct.	0.50 125.00/hr	62.50
12/29/93 SGS Conversation with Scott Atlas regarding proposed findings of fact.	1.00 125.00/hr	125.00
12/30/93 SGS Final review and revise of proposed findings of fact.	2.75 125.00/hr	343.75
12/31/93 SGS Reviewed state's proposed findings of fact.	1.00 125.00/hr	125.00
	<hr/>	<hr/>
For professional services rendered	95.00	\$11,875.00
		<hr/>
Balance due		\$11,875.00
		<hr/>

D

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FELDMAN & ASSOCIATES
Twelve Greenway Plaza
Suite 1202
Houston TX 77046
(713) 960-6000

December 27, 1994

PRO02/001
Vinson & Elkins L.L.P.
1001 Fannin
Houston TX 77002
Attn: Scott Atlas

Invoice #12111

In reference to: Guerra, Ricardo Aldape
Pro Bono

For services rendered through October 31, 1994:

			Hrs/Rate

07/17/93	RM	Prepare witness list.	0.50 125.00/hr
10/06/93	RM	Conversation with Susan Brown regarding preparation for evidentiary hearing and contacting potential witness; review memo re: _____ .	0.25 125.00/hr
10/07/93	RM	Conversation with Susan Brown regarding location of potential witness.	0.50 125.00/hr
10/27/93	RM	Locate and interview witnesses; prepare for hearing.	3.00 125.00/hr
10/28/93	RM	Visit with witnesses; prepare for hearing.	4.00 125.00/hr
10/30/93	RM	Visit with witnesses; prepare for hearing.	6.00 125.00/hr
11/01/93	RM	Review _____	4.00 125.00/hr

			Hrs/Rate	

11/02/93	RM	Draft and revise memo regarding [REDACTED]; attend hearing.	7.00 125.00/hr	
11/03/93	RM	Locate and interview witnesses.	3.00 125.00/hr	
11/05/93	RM	Prepare for evidentiary hearing.	4.00 125.00/hr	
11/06/93	RM	Prepare for evidentiary hearing.	6.00 125.00/hr	
11/07/93	RM	Prepare for evidentiary hearing.	7.00 125.00/hr	
11/08/93	RM	Conversation with Susan Brown regarding [REDACTED].	0.25 125.00/hr	
11/09/93	RM	Prepare for evidentiary hearing; meet witness.	5.00 125.00/hr	
11/15/93	RM	Prepare for and attend evidentiary hearing.	10.00 125.00/hr	
11/16/93	RM	Prepare for and attend evidentiary hearing; interview witnesses.	8.00 125.00/hr	
11/19/93	RM	Prepare for and attend evidentiary hearing; interview witnesses.	9.00 125.00/hr	
11/22/93	RM	Prepare for and attend evidentiary hearing; interview witnesses.	8.25 125.00/hr	
Total fees			----- 85.75	Amount ----- \$10,718.75

	Amount

Costs:	
Photocopy	0.50
Long Dist.	3.81

Total costs	\$4.31

Total amount of this bill	\$10,723.06

Balance Due	\$10,723.06

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RICARDO ALDAPE GUERRA,	§	
	§	
	§	
Petitioner.	§	
	§	
v.	§	Civil Action No. H-93-290
	§	
JAMES A. COLLINS,	§	
Director, Institutional Division,	§	
Texas Department of Criminal Justice,	§	
	§	
Respondent.	§	

MOTION TO FILE BILLING RECORDS UNDER SEAL

TO THE HONORABLE JUDGE HOYT:

Petitioner, Ricardo Aldape Guerra, submits this Motion to File Billing Records Under Seal seeking leave to tender to the court unedited invoices for the court's use in ruling on the petitioner's Motion for Attorneys' Fees and Costs.

Petitioner attached redacted versions of the invoices to the Motion for Attorneys' Fees and Costs. Petitioner felt it necessary to protect attorney confidences and thus removed the descriptions of those attorney activities that petitioner deemed sensitive or privileged. Nevertheless, petitioner recognizes that the court may wish to consider full descriptions of the listed work entries in making its determination on the Motion for Attorneys' Fees and Costs. For that purpose, petitioner requests that the court grant him leave to file the unredacted invoices under seal, not to be made a part of the public record of the case.

Respectfully submitted,

VINSON & ELKINS L.L.P.

BY: Scott J. Atlas / with permission ML

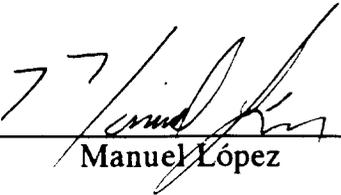
SCOTT J. ATLAS
Attorney-in-Charge
Texas Bar No. 01418400
2500 First City Tower
1001 Fannin
Houston, Texas 77002-6760
(713) 758-2024
FAX: (713) 615-5399

OF COUNSEL:
STANLEY G. SCHNEIDER
Texas Bar No. 17790500
Schneider & McKinney
11 E. Greenway Plaza
Houston, Texas 77046
(713) 961-5901

ATTORNEYS FOR PETITIONER,
RICARDO ALDAPE GUERRA

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading was served by overnight mail on Hon. Dan Morales, Attorney General; Enforcement Division; Office of the Attorney General; 300 West 15th Street; Austin, Texas 78711, and to William C. Zapalac, Enforcement Division; Office of the Attorney General; P.O. Box 12548, Capitol Station; Austin, Texas 78711, on the 28th day of December, 1994.



Manuel López

E:\ml1154\guerra\seal.mot

~~f. plige~~
10y-m
f. plige

VINSON & ELKINS
L.L.P.
ATTORNEYS AT LAW

THE WILLARD OFFICE BUILDING
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LONDON W1X 7PB, ENGLAND
TELEPHONE 011 (44-71) 491-7236
FAX 011 (44-71) 499-5320

December 27, 1994

By Messenger

Hon. Michael N. Milby, Clerk
United States District Court
United States Courthouse
515 Rusk
Houston, Texas 77002

Re: Ricardo Aldape Guerra v. James A. Collins; Civil Action No. H-93-290; in the
U.S. District Court for the Southern District of Texas, Houston Division

Dear Mr. Milby:

Enclosed for filing in the captioned cause are an original and two copies of
Petitioner's Motion to Alter or Amend the Judgment, Pursuant to Fed. R. Civ. P. 52(b) and
a proposed Order. Today, a copy of this pleading is being hand delivered to Judge Hoyt's
chambers and telecopied and mailed by overnight mail to opposing counsel.

Please acknowledge receipt of these documents by file-stamping the extra copy of
each of the two documents and returning same to the messenger.

Very truly yours,



Scott J. Atlas

cc: Hon. Kenneth Hoyt - by hand delivery
William C. Zapalac - by telecopy and overnight mail
Ricardo Aldape Guerra
Stanley Schneider

Hon. Michael N. Milby, Clerk
December 23, 1994
Page 2

bcc: Team

0399:5741
f:\sa0399\Aldape\Clerk22.ltr

FACSIMILE REQUEST

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DATE December 27, 1994		RECIPIENT'S CONFIRMATION NO. (512) 463-2080		
RECIPIENT William C. Zapalac				
COMPANY NAME			NO. OF PAGES 53	
SENDER Scott J. Atlas			EXT. 2024	
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** TX CONFIRMATION REPORT **

AS OF DEC 27 '94 16:40 PAGE.01

VE LLP HOU 758 2346

	DATE	TIME	TO/FROM	MODE	MIN/SEC	PGS	CMD#	STATUS
01	12/27	16:27	512 463 2084	EC--S	13"31	35		OK

** TX CONFIRMATION REPORT **

AS OF DEC 27 '94 16:21 PAGE.01

VE LLP HDU 758 2346

	DATE	TIME	TO/FROM	MODE	MIN/SEC	PGS	CMD#	STATUS
01	12/27	16:19	512 463 2084	EC--S	01"16	01		INC

Vinson & Elkins

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SUITE 2300

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1455 PENNSYLVANIA AVE., N.W., SUITE 600
WASHINGTON, D.C. 20004-1008
TELEPHONE (202) 639-6500
FAX (202) 639-6604

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DATE: December 27, 1994

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TO: William C. Zapalac

COMPANY:

TYPE OF
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PAGES: 53 (including this transmittal page)

FROM: Scott J. Atlas

SENDER'S PHONE #: (713) 758 - 2024

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OPERATOR:

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VINSON & ELKINS
L.L.P.
ATTORNEYS AT LAW

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WRITER'S DIRECT DIAL

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December 27, 1994

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By Messenger

Hon. Michael N. Milby, Clerk
United States District Court
United States Courthouse
515 Rusk
Houston, Texas 77002

Re: Ricardo Aldape Guerra v. James A. Collins; Civil Action No. H-93-290; in the
U.S. District Court for the Southern District of Texas, Houston Division

Dear Mr. Milby:

Enclosed for filing in the captioned cause are an original and two copies of
Petitioner's Motion to Alter or Amend the Judgment, Pursuant to Fed. R. Civ. P. 52(b) and
a proposed Order. Today, a copy of this pleading is being hand delivered to Judge Hoyt's
chambers and telecopied and mailed by overnight mail to opposing counsel.

Please acknowledge receipt of these documents by file-stamping the extra copy of
each of the two documents and returning same to the messenger.

Very truly yours,



Scott J. Atlas

cc: Hon. Kenneth Hoyt - by hand delivery
William C. Zapalac - by telecopy and overnight mail
Ricardo Aldape Guerra
Stanley Schneider

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RICARDO ALDAPE GUERRA,	§	
	§	
	§	
Petitioner.	§	
	§	
v.	§	Civil Action No. H-93-290
	§	
JAMES A. COLLINS,	§	
Director, Institutional Division,	§	
Texas Department of Criminal Justice,	§	
	§	
Respondent.	§	

**PETITIONER'S MOTION TO ALTER OR AMEND THE JUDGMENT,
PURSUANT TO FED. R. CIV. P. 52(b)**

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes Ricardo Aldape Guerra, Petitioner, ("Guerra"), and files this Motion to Alter or Amend the Judgment Pursuant to Fed. R. Civ. P. 52(b), on the following grounds:

1. Guerra has discovered a few factual errors in the findings contained in this Court's Order on Application for Writ of Habeas Corpus (entered Nov. 15, 1994) (the "Order") and requests that the Court modify the findings on pages 3, 6, 8, 17-18, 21-22, 25-29, 32, 34-36, and 38 of the Order as provided in the annotated Order that is attached hereto, marked "Attachment A," and incorporated herein for all purposes.

2. In the Order, the Court indicated that Carasco was known as "Guero" because of his light skin and light-colored blonde-like hair. Order at 3. But as shown by State's

Exhibit 71, which was made a part of the record in the habeas corpus proceeding as Petitioner's Exhibit 2, and numerous police records in Petitioner's Exhibit 4 (such as pages F424 and F497), Carasco's hair was black. Accordingly, Guerra has proposed changes to the Order on pages 3, 17, 18, 21, 25, and 32.

3. Since Jose Heredia testified at the original trial and at the habeas hearing, while his brother, Armando Heredia, never testified at either proceeding, Guerra has proposed revisions on pages 6, 8, 17, 18, and 21.

4. A paragraph in footnote 9 on page 34 appears to be a typographical error of placement, so Guerra has proposed changes on pages 8, 34, and 38.

5. Guerra believes that the remaining changes are self-explanatory.

Respectfully submitted,

VINSON & ELKINS L.L.P.

OF COUNSEL:

STANLEY G. SCHNEIDER
Texas Bar No. 17790500
Schneider & McKinney
11 E. Greenway Plaza
Houston, Texas 77046
(713) 961-5901

BY: 
SCOTT J. ATLAS
Attorney-in-Charge
Texas Bar No. 01418400
2500 First City Tower
1001 Fannin
Houston, Texas 77002-6760
(713) 758-2024
FAX: (713) 615-5399

ATTORNEYS FOR PETITIONER,
RICARDO ALDAPE GUERRA

CERTIFICATE OF CONFERENCE

I, Scott J. Atlas, do hereby certify that I conferred by telephone on December 27, 1994, with William C. Zapalac, attorney for Respondent, about the contents of this motion, and he informed me that he opposes the relief requested in this motion.



Scott J. Atlas

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading was served by overnight mail on Hon. Dan Morales, Attorney General; Enforcement Division; Office of the Attorney General; 300 West 15th Street; Austin, Texas 78711, and to William C. Zapalac, Enforcement Division; Office of the Attorney General; P.O. Box 12548, Capitol Station; Austin, Texas 78711, and 209 W. 14th St. at Lavaca; Austin, Texas, on the 27th day of December, 1994.



Scott J. Atlas



#51

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED

RICARDO ALDAPE GUERRA,

Petitioner,

VS.

JAMES A. COLLINS, DIRECTOR
TEXAS DEPARTMENT OF
CRIMINAL JUSTICE,
INSTITUTIONAL DIVISION,

Respondent.

§
§
§
§
§
§
§
§
§
§

NOV 15 1994

Michael N. Milby, Clerk

CIVIL ACTION NO. H-93-290

ORDER ON APPLICATION FOR WRIT OF HABEAS CORPUS

This case is before the Court pursuant to the application for a writ of habeas corpus filed by the petitioner, Ricardo Aldape Guerra. This Court granted the petitioner's motion for an evidentiary hearing and pursuant thereto, received documentary and testimonial evidence. Having reviewed the writ application, the response, the state trial record, the exhibits introduced into evidence and the testimony presented at the evidentiary hearing, the Court is of the opinion that the writ shall be granted.



ATTACHMENT A

I.

Factual and Procedural History

On July 13, 1982, J. D. Harris, a Houston police officer, was on a patrol in a Hispanic neighborhood. Around 10:00 p.m. a pedestrian, later determined to be George Lee Brown, waved down officer Harris complaining that a black and burgundy Cutlass automobile had almost run him over while he was walking his dog. Within minutes, officer Harris approached a stalled vehicle fitting the description given to him by the pedestrian.

The vehicle was occupied by Ricardo Aldape Guerra and Roberto Carrasco Flores, undocumented workers, who lived in the neighborhood. Pursuant to officer Harris' command, the occupants approached officer Harris' vehicle. The second occupant pulled a nine-millimeter Browning semi-automatic pistol and shot officer Harris three times. It is undisputed that the weapon was owned by Carrasco. At the time of the shooting, the first occupant had placed or was placing his hands on the hood of officer Harris' vehicle in obedience to officer Harris' command. As the individuals fled the scene of the crime, the second occupant fired a nine-millimeter pistol into an approaching vehicle shooting Jose Armijo, Sr., in the presence of his two children.

It is undisputed that Carrasco wore a maroon shirt and brown pants and that Guerra wore a light green shirt and blue jeans. Carrasco was also known in the neighborhood as "Guero" or "Wero" because of his light-skin, ~~and light-colored blond like hair~~. As well, he was clean-shaven and had short hair; Guerra, on the other hand, had black, straight, shoulder-length hair, a mustache, and a beard.¹

Within an hour of the shooting, Carrasco was killed in a shootout with police, but not before he shot and seriously wounded another police officer with the same weapon used to kill officer Harris and Mr. Armijo. Officer Harris' weapon, a .357 Colt Python, was found in Carrasco's waistband when his body was searched or examined at the morgue. Also discovered was an additional "ammo" magazine for the nine-millimeter pistol in a "military-type" magazine pouch attached to Carrasco's belt.

Guerra was arrested shortly after Carrasco was killed, while hiding beneath a horse trailer. He was unarmed at the time, although a .45-caliber Detonics pistol was found lying under the trailer, wrapped in a bandanna. After he was arrested, he was taken to the crime scene where spectators had gathered and witnesses were being identified and questioned. Later, he was

¹ These characteristics and features are important because the identity of the "shooter" was in dispute.

taken to the police station.

Guerra was tried for the offense of capital murder and was convicted on October 12, 1982. On October 14, 1982, he was sentenced to death by lethal injection. His conviction was affirmed on May 4, 1988, by the Texas Court of Criminal Appeals in Guerra v. State, 771 S.W.2d 453 (Tex. Crim. App. 1988) (*en banc*), cert. denied, 492 U.S. 925 (1989).

On September 21, 1992, the state trial court denied Guerra's application for writ of habeas corpus, as well his request for an evidentiary hearing and failed to enter findings of fact. Guerra's case was automatically forwarded to the Texas Court of Criminal Appeals, which adopted the trial court's recommendation in an unpublished, per curiam, order. Guerra then filed this application for a federal writ of habeas corpus.

II.

Petitioner's Contention:

In his several arguments, Guerra contends that he was denied a fair and impartial trial because of: (a) pretrial intimidation of witnesses; (b) an improper identification procedure; (c) the prosecutors' failure to disclose materially exculpatory evidence; (d) the prosecutors' use of known false evidence and known illegitimate arguments to the jury; and, (e) the cumulative

effect of the prosecutorial error.

Each of these contentions and the relevant evidence will be addressed in turn. To assist the reader in following this discussion, it should be noted that the evidence consists of (a) the statements of witnesses taken on the morning following the shooting; (b) the trial testimony in the underlying conviction; and (c) the testimony taken in this proceeding.

Restated, Guerra complains that he was brought to the crime scene and location of the witnesses in handcuffs; at the police station, he was twice escorted past the witnesses with handcuffs and bags over his hands; at the lineup, he was the sole Hispanic on exhibition with long-hair; before, during, and after the lineup, the witnesses were permitted to communicate amongst themselves, with one particular witness urging the others to identify Guerra as the shooter; at a reenactment of the crime and at a pretrial weekend meeting of the witnesses, the prosecutor told the witnesses that Carrasco was dead and that Guerra was the shooter; at the trial, two life-size mannequins were stationed in front of the jury from the beginning to the end of the trial. Finally, Guerra argues that the prosecution failed to disclose materially exculpatory evidence and used evidence known to be false, or half truths, to convict him. The cumulative effect of all of these actions resulted in a

violation of his "due process" rights and the fundamental right to a fair procedure leading up to trial.

III.

Pretrial Intimidation of Witnesses:

III (a) The Petitioner's Contentions:

The petitioner contends that several, if not all, of the witnesses were intimidated by the police and the prosecutors, the result of which was that the witnesses either gave contradictory testimony, or their testimony was presented in a manner that shaded the truth. On the question of intimidation, the petitioner called several witnesses who were under the age of 18 at the time: Patricia Diaz (age 17); Elena Holguin; Frank Perez (age 17); Herlinda Garcia (age 14); Jose Heredia (age 14); ~~Armando Heredia (age 16)~~ and Elvira Flores (age 16).

The evidence is undisputed that the witnesses were brought to the police station before midnight on July 13, 1992. They remained until about 6:30 a.m. the next morning. The petitioner asserts that in addition to lack of sleep, the ability to coerce and intimidate the witnesses was made easy by three other factors common to most of the key witnesses, i.e., their inability to speak fluent English, their lack of education, and their youth.

The native language of all but one of the neighborhood witnesses is Spanish and, at the time, many of the witnesses had little or no command of the English language. These facts, coupled with the lack of formal education, according to the petitioner, created a situation where the witnesses' statements as taken lent themselves to selective interpretations. These circumstances, according to the petitioner, set the tone for how the witnesses were handled.

III (b) Federal Habeas Testimony:

During the federal evidentiary hearing, Patricia Diaz, a minor in 1982, testified that she told police officers at the crime scene that she did not see the shooting, but only got a glimpse of Guerra's profile after she heard the shots. She told them that Guerra's hands looked empty. One of the police officers, using vulgar language, insisted that Diaz had seen more and threatened to take away her infant daughter unless she cooperated. While still at the crime scene, Diaz saw another officer yelling at, handcuffing, and placing her aunt, Trinidad Medina, into a police car.

Diaz also testified that at the pretrial weekend meeting, held shortly before trial, the prosecutors also yelled at her, insisting that she change her testimony in some respects. She also told the prosecutor that she never

saw Guerra pointing at officer Harris.²

Elena Holguin also testified at the trial and this proceeding. She stated that she was in her home at the time of the shooting. After she told police officers that she had not seen officer Harris get shot, one of the police officers became angry and told her that she had a duty to help them. Because of her alleged uncooperativeness, she was handcuffed, without provocation or justification, and placed into a police car. She was taken to the police station barefoot because the police would not permit her to get her shoes. She further testified that, in total, she was kept in handcuffs for more than two hours and they were not removed until she reached the police station.

Frank Perez testified that shortly after Harris was shot, a police officer pointed a gun at an unidentified Hispanic male, told him to lie down on the ground and yelled: "Why did you kill the cop?" The man on the ground was neither Carrasco nor Guerra. He also testified that at the pretrial

² During Diaz' testimony the prosecutor, on several occasions, altered the testimony by question and reaffirmed it again and again. For example:

Q. "Could you see or make out, Patricia, what type of object, if anything, this man had in his hand?" (p. 314, L. 6)

Q. "Could you see which way this man went after he pointed at the police officer like you have shown the jury....?" (p. 315, L. 2)

Q. "Now, could you describe this man you saw pointing at the police officer...?" (p. 316, L. 12)

Q. "Does that look a lot better, like the way he looked that night he was pointing at the police officer?" (p. 318, L. 4).

The record shows that Diaz never saw either man pointing at the police officer, only at the car. Further, she never saw any object.

See also note 9A at p. 8 infra.

weekend meeting, he told the prosecutors that, shortly after officer Harris was shot, a man who looked like Carrasco had run past him and pointed an object at him that appeared to be a nine-millimeter gun. In response, the prosecutor insisted that if Perez was less than "100%" certain that the object was a gun, he should not testify that the object pointed at him was a "gun," just an "object."

Jose Luis Luna was called to testify, as well. He testified that after officer Harris had been shot, but shortly before Carrasco was killed, police officers came to his home at 4907 Rusk, with guns drawn. The police officers ordered J. Luna and Jose Manual Esparza outside, forced them face down on the front porch, pointed guns at their heads, put a foot on them and cursed and screamed at them, while they searched the area.

Roberto Onofre testified that he witnessed this event between the police, J. Luna and Esparza as he was returning to the house that he shared with them. Onofre also testified that after Carrasco was killed, two police officers returned and questioned himself, Jose Luna, Jose Esparza and Enrique Torres Luna. During this exchange, the officers screamed, cursed, and threatened to arrest them if they did not tell what they knew. Several police officers then entered the house and searched it.

Onofre and J. Luna both testified that several times during July, after Carrasco's death and the after the arrest of Guerra, police officers came to their home after midnight while they were asleep, entered the house, conducted themselves violently and used abusive language. They would order the residents to sit in the living room while they searched the house, kicking items out of the way and tearing up any newspaper clipping about Guerra. Although Onofre signed a consent to search at the time, he testified that he did so only because of the police officers' conduct, their actions toward the residents, and their mannerisms.

Herlinda Garcia, 14 years old at the time, testified that she told the police that Carrasco was the shooter. At that time, several police officers told her she would be arrested and jailed unless she cooperated. An unidentified police officer stated to her "that she just did not know what all could happen to her and her husband." At the time, Garcia's husband was over 18 years and on parole. She testified that she took these comments as a threat to reincarcerate her husband on rape charges if she did not say what was expected of her.

At the pretrial weekend meeting, after Garcia told one of the prosecutors that Guerra was not the man who had shot officer Harris, the

prosecutor told her that she was confused and that she could not now change her mind because she had already made a statement identifying Guerra as the shooter, not only of officer Harris but also Mr. Armijo.³

George Brown testified that after Mr. Armijo was shot, he was left in his car, without medical attention, for over an hour. However, officer Harris was immediately taken to the hospital within a few minutes after the ambulance arrived.⁴ For the four to six hours leading up to the lineup at 6:00 a.m., Brown was kept separate from the other Hispanic witnesses, they were seated on a bench in a hallway outside the Homicide Division office. He attributes this segregation to the fact that his last name is of European origin.

³ The statement referred to by the prosecutor states in relevant:

"This evening sometime after 10:00 p.m. my sister and me (sic) were going to the store My sister and I was (sic) walking down the sidewalk when I remembered that I had left my money I ran home to get my money When I got back to my sister we saw this black car turn off of Walker on to Lenox street rear (sic) fast As the car was getting ready to back up a police car ... pulled in behind it."

"...[H]e told the men in the black car to get out of the car.... Both men came out of the car on the driver's side [H]e told them to put their hands on the hood...."

"Before I got a chance to move I saw this guy with the blond hair reach into the front of his pants and pull out a pistol and shoot the policeman.... The man with blond hair came after me shooting at me.... [H]e then shot the man in the rear (sic) car." [Mr. Armijo]

"... I did not get to see the other man and I do not know what happened to him ... the man that shot the policeman ... was wearing brown pants and a brown shirt that was open all the way down."

⁴ Mr. Armijo was still alive during this time and was kept at the scene, according to police, because they thought that he had shot officer Harris. This delay by police quite possibly resulted in the death of a key witness.

He could, nevertheless, overhear them talking among themselves about the shooting.

Garcia also testified that while at the police station she overheard police officers tell several of the Hispanic witnesses not to discuss the case with anyone, except the police and the prosecutors, and especially warned them not to talk to Guerra's lawyers or "they [the witness] could get in trouble." In addition, Garcia and several of the other witnesses testified that at the pretrial weekend meeting one of the prosecutors pointed to a picture of Carrasco and stated to the witnesses that the man in the picture was the man who died in the shootout with police. They then pointed to a picture of Guerra and said that he was the man who shot and killed officer Harris and Mr. Armijo.

III (c) Discussion and Conclusion:

Intimidation by the police or prosecution to dissuade a witness from testifying or to persuade a witness to change his testimony, when combined with a showing of prejudice to the defendant, violates a defendant's "due process" rights. See United States v. Heller, 830 F.2d 150, 152-53 (11th Cir. 1987). This was the case in United States v. Smith, 577 F. Supp. 1232, 1236-38 (S.D. Ohio 1983) where the Court found that threats by government agent caused a witness to give false, damaging testimony. See also Webb v.

Texas, 409 U.S. 95 (1972). Thus, the government does not have the unfettered right to interference with any witness, particularly, in making the choice to testify or not. United States v. Hammond, 598 F.2d 1008, 1012-13 (5th Cir. 1979). Where interference occurs by the police, police actions that intimidate witnesses may be imputed to the state in its prosecution. Cf., Fulford v. Maggio, 692 F.2d 354, 358 (5th Cir. 1982), rev'd on other grounds, 462 U.S. 111 (1983). Equally so, the state has a duty to disclose such conduct. This duty is imposed not only upon its prosecutor, but upon on the state as a whole, including its investigative agencies. Therefore, if a confession is in the possession of a police officer, constructively, the state's attorney has both access to and control over the document. *Id.*

It is clear to this Court that the mood and motivation underlying the police officers' conduct arising out of this case was to convict Guerra for the death of officer Harris even if the facts did not warrant that result. The Court finds and holds that the police officers and the prosecutors intimidated witnesses in an effort to suppress evidence favorable and material to Guerra's defense. Specifically, the written statements that were taken after the line-up are in many respects in significant contrast to those taken before the line-up. The Court attributes this to the fact that Carrasco had been killed and the

strong, overwhelming desire to charge both men with the same crime, even if it was impossible to do so.

In addition to the scurrilous conduct exhibited by the police, the Court is confounded by the fact that the police would handcuff two innocent women, threaten to revoke the parole of another's common-law husband, and repeatedly, day after day in the early morning hours, search the residence of innocent people. This conduct alone speaks volumes about the intimidation suffered by these children who were caught up in the police net and the circumstance.

The prosecutors' conduct was equally rank. Before and during the trial, questions to the witnesses were stated in such a manner that the questions stated or implied complicity by Guerra, irrespective of the fact that the answers did not conform. The tone of voice, as well as the artful manner in which the questions were asked, left little room for truthful answers or explanation. When the answers were not to their liking, they resorted to ridicule. Such conduct severely prejudiced Guerra's right to a fair trial and, therefore, violated his right to "due process" of law. See Heller, 830 F.2d at 152-53; Smith, 577 F. Supp. at 1236-38; see generally Webb, 409 U.S. 95 (1972) *cf.*, Hammond, 598 F.2d at 1012-13.

The Court concludes that the pretrial intimidation of the witnesses, most of whom were children, resulted in violating Guerra's right to fundamental "due process" and a fair trial.

IV.

Improper Identification Procedures

IV (a) The Legal Standard:

The Supreme Court has adopted a "totality of the circumstances test" to be utilized in the analysis of identification testimony. Identification testimony is admissible if it appears "reliable," even if it is flawed by improper police behavior. Manson v. Brathwaite, 432 U.S. 98, 114 (1977). Thus, an unnecessarily suggestive identification is not subject to a "per se" exclusion. Id. The Court must determine whether an identification procedure constitutes a denial of "due process." In doing so it must first be determined whether the pretrial identification was unnecessarily suggestive. Assuming that it was, the Court must then determine whether the identification was so unreliable that the defendant's "due process" right to a fair trial would be precluded if the identifications were permitted. Id.

The factors to be considered in evaluating the reliability of an identification are: (i) the witnesses' opportunity to view the accused at the

time of the crime; (ii) the witnesses' degree of attention; (iii) the accuracy of the witnesses' prior description; (iv) the level of certainty demonstrated at the confrontation; and (v) the time between the crime and the confrontation. Id. (citing Neil v. Biggers, 409 U.S. 188 (1972)).

Where the state's use of pretrial identification procedures posed a substantial likelihood of tainting the state witnesses' identifications of the defendant and both, their out-of-court and in-court, identifications are not shown to be independently reliable, the Court must determine if admission of the identifications into evidence is harmless error. See Young v. Herring, 917 F.2d 858, 864 (5th Cir. 1990), cert. denied, 112 S. Ct. 1485 (1992) (citing Chapman v. California, 386 U.S. 18, 23 (1967)). When the state is the beneficiary of any error, the burden of proving that the error was harmless, beyond a reasonable doubt, rest at the state's door. Thigpen v. Cory, 804 F.2d 893, 897 (6th Cir. 1986), cert. denied, 482 U.S. 918 (1987) (citing Chapman, 386 U.S. at 24).

IV (b) Discussion:

The facts of this case present a situation that is somewhat peculiar to the Brathwaite case. Here, the facts show that the petitioner was known in and around the neighborhood, therefore, it was logical that the witnesses could

and others described the shooter in ways that blended characteristics of both men; none pointed unequivocally to Guerra.

identify the petitioner as being at the scene when officer Harris was shot. Moreover, Guerra's presence at the scene is not in dispute. Guerra gave a statement to that effect on the evening of the shootings. What is confounding is that the police took statements shortly after the shooting, ^{Several} ~~that~~ were essentially exculpatory of Guerra. After learning of Carrasco's death and after the lineup, the police took additional statements that contradicted or impeached the prior statements in some subtle and other not so subtle ways.

In this regard, the record shows that there were at least ^{eight} ~~six~~ witnesses who claim to have seen officer Harris shot: Hilma G. Galvan, Herlinda Medina Garcia, Jose Francisco Armijo, Jr., Elvira Medina Flores, Patricia Ann Flores Diaz, Jacinto Vega and Jose and Armando Heredia. When these persons gave their first written statements, between 12:00 a.m. and 1:00 a.m., they stated in relevant part the following:

... "I know the one that shot the officer by sight...."
The shooter "was wearing dark brown pants and a dark brown or black shirt. He (sic) tall and thin and has shoulder length straight blond hair." (Hilma G. Galvan at 12:05 a.m., July 14, 1982).

* * *

... "I saw the guy with the blond hair reach into ... his pants and pull out a pistol and shoot the policeman.... He was wearing brown pants and a brown shirt that was open all the way down." (Herlinda Medina

Garcia, at 12:12 a.m., July 14, 1992).

* * *

... "The man shot the gun with his left hand.... I didn't see the men that shot the policeman too good and I don't remember what they looked like or what they were wearing...." (Jose Francisco Armijo at 12:15 a.m., July 14, 1982).

* * *

... "Both the driver with blond hair and the passenger ... put their hands on the police car.... At this time the blond-haired driver pulled a pistol ... and started shooting at the police officer I don't think I can identify the two persons I saw...." (Elvira Medina Flores at 12:40 a.m., July 14, 1982).

* * *

... "I told the detective that the man that was standing fourth from the left was the same man that I had seen on Walker.... I guess he had a gun in his hand." (Patricia Ann Flores Diaz, second statement, at 6:20 a.m. July 14, 1982).⁵

insert page 18 A

.... "The man that shot the police officer I know him as Wedo (sic). I have known him about a month. As soon as he got out of the car I recognized him. He was also the man that ... shot the policeman."

⁵ Diaz's first statement, given at 1:40 a.m., described the shooter as a Hispanic male with "collar length black hair and was wearing a long sleeve, dark colored shirt." By the time Diaz gave her second statement she was unsure which of the men had shot the officer. For sure she did not know whether Guerra even had a weapon.

..."One of the Mexican[s] ... put his hands on the hood of the police car as if he was under arrest. The other Mexican ... walked up behind the first Mexican ... and all of a sudden ... pulled a pistol out from somewhere and shot at the police officer about four (4) times ... The first Mexican ... was the one who had his hands on the hood of the police car and he would have been the driver of the car ... [T]he one who shot the police was the passenger of the car ... I never got to see their faces so I cannot recognize them if I ever see them again. I cannot remember what they looked like and cannot remember what either one was wearing." (Jacinto Vitales Vega at 12:10 a.m., July 14, 1982).

* * *

... "The man that was driving the car came out of the car and to where the policeman was at. ... [T]he other man in the car ... came out of the car and walked up behind the policeman and shot him. ... I didn't get to see the man's face that was shooting the policeman." (Jose Angel Heredia at 4:15 a.m., July 14, 1982).

* * *

(Armando Heredia at 4:35 a.m. July 14, 1982).

* * *

Two others gave relevant statements that bear upon the identification issue because of their proximity in time and circumstances to the events. John Reyes Matamoros and George Lee Brown gave statements before the lineup. In relevant part they state:

"I was able to see one of the men that had gotten arrested [after Carrasco was killed] and he was the man that was sitting in the front passenger seat [between 9:45 p.m. to 10:00 p.m.]....." (George Lee Brown at 12:40 a.m., July 14, 1982).

* * *

"The man I saw running with the gun was a mexican american (sic) about 20 or 21 years old. He had shoulder length hair that was not as dark as mine and it looked more like hair that a white person would have. He was wearing a button up shirt and brown pants....." (John Reyes Matamoros at 12:10 p.m., July 14, 1982).

Several of the witnesses knew Guerra from the neighborhood. For the police to utilize this familiarity in the reckless manner that it did, is troubling. In fact, the state used a host of improper identification procedures in an effort to manipulate the witnesses' statements and testimony. Notably suggestive were (i) permitting the witnesses to see the petitioner in handcuffs

on several occasions while the witnesses were waiting to view the lineup, and (ii) permitting the witnesses to talk about and discuss identification before, during and after the lineup.

The prosecutors joined the hunt by conducting a reenactment of the shooting shortly after the incident with various chosen witnesses participating. This procedure permitted the witnesses to overhear each others view and conform their views to develop a consensus view. At the pretrial weekend conference, the prosecutors presented the two mannequins intended for use during trial. These life-size mannequins, created in the images of Guerra and Carrasco, were utilized then and throughout the trial to reinforce and bolster the witnesses' testimonies. The effect of these impermissible suggested procedures also resulted in a denial of "due process", as evidenced by the witnesses' federal habeas testimony.

The habeas testimony reveals that Guerra, handcuffed and with paper bags over his hands, was walked and shoved down the hallway outside the Homicide Division offices past the witnesses. He was then taken from the Homicide Division offices to the photo lab, where his clothes were taken from him. On both occasions, he was escorted along the hall before Diaz, Flores, Garcia, Jose, Jr., Galvan, Medina and Perez.

While both Carrasco and Guerra had dark hair, the use of Carrasco's nickname, "Guero," which means "light-skinned" or "light-colored, blond-like hair," to describe the shooter may have confused the police interviewers. Clearly, the word "blond" did not describe Guerra's dark brown hair.

Before the lineup, ~~Galvan~~ Garcia, ~~Flores~~ ^{both Heredias} and Vega described the shooter in such a way that the description fit only Carrasco, i.e., he had blond-was the driver of the car like hair and wore brown pants and a brown/maroon shirt. Jose, Jr., who was 10 years old at the time, could only identify the shooter as being left-handed. This description was critical because Carrasco was left-handed. After the lineup and, with the knowledge that Carrasco was dead, the witnesses gave a series of second statements declaring, in spite of numerous previous assurances to the contrary, that Guerra was the shooter.

The various testimonies also show that Galvan spent most of her time in the hallway talking to Jose, Jr., and Flores. Although a general instruction or warning against talking was given, Galvan continued. She pointed toward Guerra and said to Jose, Jr. and ~~Armando~~ ^{Jose and} Heredia, in Spanish, loud enough for all the witnesses and the officers in the room to hear, that since Carrasco had died, they could blame the man who "looked like God" or the "wetback" from Mexico for the shooting of officer Harris. Based on her various accounts, Galvan's statement, that she actually witnessed the shooting, is suspect. Nevertheless, she encouraged the minors to identify Guerra as the shooter knowing that Guerra did not fit even her own description of the shooter.

She continued by stating that, Mexicans only come to the United States to commit crimes and take jobs away from United States citizens. She repeatedly referred to Mexican Nationals as "Mojados" or "wetbacks". She was also heard repeatedly telling Jose, Jr., that Guerra was the killer. This conduct can be attributed only to her prejudice toward Mexican Nationals who, as Galvan stated, "took the jobs from Americans." The Court concludes that these expressions of prejudice against undocumented aliens was, as likely as any, the motivation for the inconsistencies between Galvan's own statement and her testimony.

Galvan's influence also explains how Jose, Jr.'s testimony was so specific and direct when he was overheard in the hallway at the police station admitting that he had not seen Guerra or Carrasco clearly enough to know which had fired the shots. In fact, Jose, Jr. admitted in his trial testimony (pp. 302-03, 307-08) that he had not seen who shot his father because his father had pushed him below the dashboard as the shooting commenced. He repeated his inability to identify the shooter while he was sitting in the hallway outside the Homicide Division upon seeing Guerra during the lineup.⁶ It is more likely so than not, that

⁶ It was argued by the state that Jose, Jr. became fearful when he saw Guerra and did not want to tell all that he knew. It was later, when he had gathered himself that he had the courage to come forward. However, the court had the benefit of a news clip in which Jose, Jr. was featured and related the incidents to the news media the day after the shooting.

Jose, Jr.'s belief that Guerra was the shooter was a result of seeing Guerra in handcuffs at the police station and hearing Galvan, repeatedly, insist that Guerra was the shooter.

During the trial, the prosecutors placed the mannequins in front of the jury and they remained there during the testimony of the witness. Heredia and Perez testified that during the trial, the positioning of the mannequins helped them identify which of the men was dead. [The Carrasco mannequins' shirt had bullet holes and blood stains, while the shirt on the Guerra mannequin did not.] Donna Monroe Jones, a juror during the trial, also testified. She testified that the jurors noticed that the shirt on the Carrasco mannequin was blood-stained and bullet-riddled. Additionally, she testified that the mannequins made the jurors feel uncomfortable and ill at ease.

Given the undisputed facts leading up to and surrounding the lineup, the identification of Guerra at the lineup was predestined. After all, he was present at the time of the shooting. To then use that fact as the sole basis to prosecute him for capital murder, is more than a stretch. Under the "totality of the circumstances," the identification procedures used by the police and the prosecutors were so corrupting that it caused witnesses, who either

knew otherwise, or did not know at all, to testify that Guerra had committed the crime.

It is also relevant that the police officers and the prosecutors did not quiet Galvan and others, as they commented before, during and after the lineup. It is relevant to this inquiry, as well, that the prosecutors misused the identification of Guerra so as to violate his right to a fair trial. So, different from Thigpen and Neil, it is the effects of these draconian procedures and the results attendant to this abuse of power, that are arresting.

The pretrial use of the mannequins in the meeting with witnesses, at the prosecutors' office the weekend before trial was certain to reinforce the consensus facts so that there would be complete harmony in the testimony. The unrestricted, incessant presence of the mannequins, one wearing a bullet-riddled, blood-stained shirt that the jurors and witnesses saw daily, violated a constitutional guarantee of a fair trial, by injecting impermissible suggestive factors into the trial process. Holbrook v. Flynn, 475 U.S. 560, 570 (1986).

It was no mystery to the state that their entire case against Guerra rested on the witnesses identifying him. The state had to count on the eyewitnesses excluding from their testimony, facts that clearly pointed to

The physical evidence unequivocally pointed to Carrasco as the shooter.

Carrasco.⁷ Therefore, the state, to seal its victory, deliberately chose to taint the identification process by insisting upon perjured testimony. The statements taken before the lineup makes it abundantly clear that the witnesses either identified Carrasco or described a composite of both men as the shooter. It was only after the unexplained misconduct by the police officers, the permitted misconduct on the part of Galvan, and the reinforcement by the prosecutors, that Guerra was chosen as the shooter.

IV (c) Conclusion:

The state has the burden of proving, beyond a reasonable doubt, that the intentional act of causing to be admitted tainted, unreliable and perjured testimony, identifying Guerra as the shooter, was harmless. Thigpen, 804 F.2d at 897 (citing Chapman, 386 U.S. at 24.) The state has offered no evidence to contradict this point and has failed to discharge its duty.

V.

Failure to Disclose Materially Exculpatory Evidence

V (a) The Legal Standard:

There is long standing authority for the principle that, "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material, either to guilt or

⁷ [Richard Bax, one of the prosecutors in the 1982 trial, conceded "the physical evidence ... totally pointed towards Carrasco Flores as being the shooter...."]

to punishment, irrespective of the good faith or bad faith of the prosecution." Brady v. Maryland, 373 U.S. 83, 87 (1963). In order to establish that evidence falls within the purview of Brady, a petitioner must establish that the evidence was suppressed and that it was material and favorable. Id. Suppressed evidence is "material" if there is a reasonable probability that had the evidence been disclosed to the defense, the result of the proceeding would have been different. United States v. Bagley, 473 U.S. 667, 682 (1985).

V (b) Discussion:

Before the trial, Guerra's attorneys filed motions requesting production of all material inconsistent with the guilt or lawful arrest of Guerra. They also filed an extensive motions for pretrial discovery and inspection. Obviously, the conduct of the police and prosecutors was unknown to the defense attorneys. Yet, it was the type of conduct that the motions sought and the type that the prosecutors were duty bound to disclose.

In the discussion that follows, the Court analyzes the various witness statements and the police's and prosecutors' conduct surrounding the statements. It is the conduct giving rise to and surrounding the statement that is the focus of the petitioner's charge.

~~Garcia's first statement identified Carrasco as the shooter. She~~

According to Garcia, she told the police on the night of the shooting that the short-haired man was the shooter. The first written statement prepared for her

She was asked to sign this written statement, which omitted her exonerating reference to the fact that the short-haired man was the shooter and that the long-haired man was the man with the empty hands near the front end of the police car at the time Officer Harris was shot.

described the events and actor as follows:

The blond hair (sic) reach into the front of his pants and pull out a pistol and shoot the policeman ... the man with the blonde hair then shot the man in the read (sic) car ... the man that shot the policeman and the man in the red car had blonde hair and was about 5'8" tall He was wearing brown pants and a brown shirt....

~~This version was reduced to a written statement and she was asked to sign it.~~

Garcia, who had attended only seven years of school, asked the police officer to read it to her because she could not read well. The police officer refused and told her to "just sign it." According to Garcia, she then signed it because of the earlier verbal threat that another police officer made concerning revoking her husband's parole for living with her, Garcia, a minor.

After Garcia watched the lineup, she told the police that the man in the number 4 position was not the shooter but, instead, was the man with empty hands near the front of the police car at the time officer Harris was shot. When the second statement was prepared, it omitted the exonerating information provided by Garcia. This second statement was not read to Garcia. **insert page 27A**

From the Court's perspective, knowledge of this conduct explains the prosecutor's impatience with Garcia during the trial of the case. The

She was asked to sign this second statement. She did so, for the same reason that she had signed the first statement.

At the re-enactment, Garcia told one of the two prosecutors that the short-haired man was the one who appeared to have been the shooter, not the long-haired man. This exculpatory evidence was not recorded and not passed on to the defense.

At the pretrial weekend meeting, Garcia told one of the two prosecutors again that the long-haired man wearing the green shirt was not the man who had shot the police officer. This exculpatory evidence was not recorded and not passed on to the defense.

prosecutor insisted that Garcia had not seen a blond-haired man shoot officer Harris causing her to testify that she had not. The prosecutor then attributed Garcia's reluctance to testify to fear of reprisal from people in the neighborhood.

According to Diaz, she told the police that when officer Harris was shot, the long-haired man was standing on the driver side of the police car near the front end, facing toward the police car with his arms extended out over the police car, feet spread apart, and that the palms of his hands were facing down toward the police car. In addition, his hands were empty and were positioned as if he were about to place his hands on the hood of the car to be searched. **insert page 28A**

After the lineup was conducted, Diaz told the police that the man in the number 4 position was the man who had been on the driver side, near the front, of the police vehicle. In spite of hearing this, an officer prepared another statement omitting the exonerating information provided by her. She signed this statement, as well, without reading it, unaware of its true contents.

At the pretrial weekend meeting, Diaz told one of the two prosecutors that she was at the crime scene at the time of the shooting and that it did not look as though Guerra had a gun, because at the time of the

In spite of hearing this, an officer prepared a statement omitting the exonerating information provided by her and inserting the incorrect information that the long-haired man pointed a gun in the direction of the police car and shot four times at the police car. Tired, she signed this statement without reading it, unaware of its true contents.

shooting Guerra's hands were open with his palms down on the hood of the police car. This exculpatory evidence was not recorded and not passed on to the defense.

During the habeas hearing, Perez testified that he told the police on the night of the shooting that he saw two men running past him that evening after the shooting of officer Harris. The first man ran east on the south side of Walker and turn south onto Lenox. Perez stated that he was too far away to recognize the runner. A second man ran east on the north side of Walker and turned south on Lenox. As the second man ran past Perez, the man who looked like Carrasco, pointed an object at Perez that he was holding in his left hand. As he ran, the object fell from his hand to the street. It made a metallic sound as it hit the pavement and looked like a handgun with a clip. The runner stopped to pick the object up, and continued running south on Lenox toward McKinney.

When Perez's statement was prepared, it omitted the fact that Perez had identified the object as a handgun. The police officer persuaded Perez to have the description in the statement read that the runner had dropped a metallic object. Later, in discussing his testimony with the prosecutor he was informed that he should describe the "object" as an "object"

if he was not "100% certain" that it was a gun.

At the lineup, Perez told the police that he recognized Guerra from having seen him earlier in the hallway, but that Guerra was not the man who had dropped the object as he ran past him earlier that night. He was not invited to the reenactment a week or so after the shooting.

Jose Heredia's testimony in this proceeding and his written statement identifies the passenger as the shooter. He testified that he told the police that when officer Harris was shot, officer Harris was standing just behind his driver's door and that the long-haired man was standing on the driver's side of the police car near the front end. He further stated that the man was facing the police car with his hands on the hood of the police car, a foot apart, palms down and empty. The short-haired man, approaching a few feet southeast of officer Harris and the long haired man (Guerra), pointed a gun at officer Harris and shot him.

After hearing Heredia's version, a police officer prepared a statement that omitted the exonerating information given concerning Guerra; specifically, that Guerra was against the car and empty handed when Carrasco came up behind Guerra and shot officer Harris. Heredia, like several of the other witnesses, tried to read his statement but could not because he could not

read English. Like others, he was told to "just sign it." He further testified that he was afraid not to sign the statement, having seen his mother (Holguin) arrested and handcuffed at the scene.

After Heredia viewed the lineup, he told a police officer that he recognized Guerra as the driver of the black car and that Guerra was not the man that shot officer Harris. Heredia was not asked to sign another statement.

Holguin, Heredia's mother, testified that she told the police that she had not seen the shooting at all. In spite of this, a statement was prepared that she was told to sign. Holguin testified that she informed the police officer who prepared the statement that she could not speak English. No one translated the statement for her benefit. Although completely unaware of the contents of the statement, Holguin testified that she signed it because she was ordered to do so. Earlier that evening, she had been handcuffed at the scene for several hours before being brought to the police station.

George Brown testified in this proceeding that he told the police that, after hearing shots that were later determined to have killed officer Harris, he ran west on Walker street from Delmar past Lenox to Edgewood. As he passed Lenox he saw someone running south on Lenox that appeared

to be Carrasco. Later, he saw Perez who stated to him that the man who was seen running south on Lenox was carrying a gun and had dropped it. Brown related Perez's statement to the police, that the person handling the weapon had dropped it while running. Brown's written statement omitted the information that he had received from Perez and had related to the police.

V (c) Conclusion:

The Court finds that the testimony of Garcia, Diaz, Holguin, Heredia and Perez is credible. Moreover, it is consistent with the physical evidence that establishes that Guerra did not shoot officer Harris and Mr. Armijo. Specifically, the physical evidence shows that the shooter used a nine-millimeter handgun, to kill both, officer Harris and Mr. Armijo. It further shows that the weapon had marks on it of the nature and type that would exist had the weapon been dropped to the pavement.⁸ Important to these findings is the physical description of the shooter given by the scene witnesses in their

initial ^{interviews} ~~statements~~ describing Carrasco,

and the omission of material exonerating information from the written statements prepared by the police based on the interview descriptions.

⁸ Floyd E. McDonald, formerly head of the forensic lab for Houston Police Department, the department where Amy P. Heeter worked, testified that the description by Perez of what occurred on that evening concerning the dropping of the weapon, is consistent with the marks that he found on the weapon. Moreover, the positioning of the parties leads to the conclusion that the person whose hands had been placed on the hood of the vehicle was not the shooter. The shooter, because of the location of the bullets found after the shooting, would have stood east of the police officer and the other person. The bullets lodged in the house on the northwest corner of Walker and Edgewood. Officer Harris' vehicle was parallel to this house.

As well, the fact that the weapon was found on the body of Carrasco was ample evidence of an exonerating nature to put the police and the prosecutors on notice that Carrasco was the killer. The prosecutors' theory, that Guerra and Carrasco had mistakenly switched weapons in the car before the shooting and had exchanged them later at the house (4907 Rusk), was sheer speculation and no evidence was ever proffered to support this theory. Moreover, it was not even a reasonable hypothesis based on any inference that could have been drawn from the evidence.

The police officers and prosecutors had a duty to accurately record the statements of the witnesses, to fairly investigate the case, and to disclose all exculpatory evidence. Moreover, they had a duty to not prosecute an innocent man. They failed in these duties. These intentional omissions, during the investigation and prosecution, and the inclusion of poisonous speculations during trial, had the effect of suppressing and destroying favorable testimony that the Court finds was material to Guerra's defense. The information that the police and prosecutors failed to disclose, as well as the manner that the investigation and prosecution were conducted, hardly left a paper trail, and intentionally so. The concept of deceit was planted by the police and nurtured by the prosecutors. This conduct by the police and prosecutors could only

have been deliberate and, so much so, that even the exonerating evidence was used in such a manner as to create a materially misleading impression.

The prosecutors and officer Amy Parker Heeter, the state's expert on trace metal test, also misled the defense attorneys concerning the trace metal detection test results. Specifically, Guerra's attorneys were not shown or told what the true results of the trace metal detection test were. The prosecutors told the defense attorney only that the test had been positive as to Carrasco's handling of officer Harris' weapon and negative for the murder weapon. According to the defense attorneys, this statement led them to conclude that only one trace metal pattern was found on Carrasco's hands, that of officer Harris' weapon.⁹ This was a half-truth.

In fact, the trace metal pattern matching officer Harris' weapon

⁹It should be noted that during the testing of the nine-millimeter pistol Heeter held it in her left hand, as was observed and reported about Carrasco by the witnesses. Yet, she failed to disclose that trace metal was found on Carrasco's left hand.

During the course of the testimony, the prosecutor inserted in his questions inaccurate statements from Diaz's testimony that were prejudicial to Guerra. The question and answer is as follows:

Q. You say you saw this one man and you saw him "pointing."
Was he pointing toward or in the direction of the police car or the police officer?

A. Uh-huh, the direction of the police car.

On no less than five (5) other occasions, the prosecutor included within the question, an incorrect statement of the witness' prior testimony. He repeatedly used the phrase "pointing at the police officer."

[move to
Footnote
9A on
page 38]

was on Carrasco's right hand. There were also trace metal patterns found on Carrasco's left hand. This revelation could have been utilized by the defense to impeach the expert's testimony and/or impeach the state's theory of the case, that Guerra was the shooter and had, during the course of escaping, returned Carrasco's weapon. More importantly, armed with this knowledge, Guerra's attorneys may have hired their own trace metal expert who could have testified that the trace metal patterns on Carrasco's left hand were consistent with the patterns left by the nine-millimeter weapon found ~~on him~~ under his body after he was shot and killed by the police. ~~at the morgue.~~

The state failed to disclose that there were any trace metal patterns on Carrasco's left hand, even though they knew that they, arguably, matched the nine-millimeter weapon. Although the police were told, repeatedly, that the shooter fired the weapon with his left hand, there is no meaningful record of any efforts to identify the trace metal patterns on Carrasco's left hand. The police and prosecutors had a duty to eliminate Guerra as the shooter, if the evidence supported it.

Floyd McDonald, a ballistics expert, testified at the evidentiary hearing that when held and fired, the murder weapon left a discernible trace metal pattern in less than 60 seconds. He testified that neither sweat nor

normal washing with soap and water would remove the pattern. Rubbing one's hands with sand or dirt, with less than sustained vigor, would not remove such a pattern. Police records reflect that the police believed ~~He opined~~ that the dirt found on Guerra's hands, when he was arrested, came from his having been on the ground being searched by ~~hiding from~~ the police, after his arrest. Although the ground was damp from a light rain, contact with the ground would not have erased any trace metal on his hands.

McDonald also testified that the two trace metal patterns found on Carrasco's left hand after his death are consistent with both the type of trace metal pattern left by firing the nine-millimeter weapon and Perez's testimony that Carrasco dropped and retrieved a gun as he ran past him. This dropping and retrieving of the weapon accounts for the double trace metal image found on Carrasco's left hand. It is undisputed that Guerra had no trace metal of any sort on either hand or on his body. So the testimony of Heeter, that the metal comprising officer Harris' weapon does not easily leave trace metal patterns, was a "red-herring." It was of no evidentiary value to the trial and was designed merely to confuse the jury.

The state's theory, that both defendants laid their weapons on the front seat in the vehicle and somehow ~~did~~ not realize that they had exchanged weapons until they met later at which time they switched weapons, in the face

of this physical evidence, is beyond belief, particularly when the theory does not rise above the level of speculation.

This evidence, even if it were concealed from the prosecution by the police, is imputed to the state prosecutors because the evidence was material and critical to the case and because an inquiry would have revealed it to them. Williams v. Griswald, 743 F.2d 1553, 1542 (11th Cir. 1984); United States v. Antone, 603 F.2d 566, 569 (5th Cir. 1979). By dealing in half-truths and innuendo and by suppressing evidence that was favorable and material to Guerra's defense, the prosecutors violated Guerra's right to a fair trial. Brady, 373 U.S. at 87.

The Court concludes that, but for the conduct of the police officers and the prosecutors, either Guerra would not have been charged with this offense or the trial would have resulted in an acquittal. Bagley, 473 U.S. at 682.

VI.

Prosecution's Use of Known False Evidence And Known Illegitimate Arguments at Trial

Next, the petitioner asserts that the prosecutor used known false testimony and illegitimate arguments in the trial and closing arguments. In this regard, the petitioner asserts that: (a) the prosecutors solicited and encouraged

Garcia and Perez to overstate or understate the facts; (b) the prosecutors injected false statements concerning the character of Heredia, the 14 year old, when they accused him of being either drunk or having "smoked something" because he yawned during his testimony; and (c) the prosecutors questioned Heredia about an alleged murder at the cemetery, near the shooting scene knowing that it was a yarn spun by the children.

The Court has previously stated the facts surrounding the testimony of Garcia and Perez and will not restate the fact here. Suffice it to say that the knowing use of false testimony by the prosecutors violates a defendant's "due process" rights under the Fifth and Fourteenth Amendments. See Napue v. Illinois, 360 U.S. 264, 269 (1959). The Court finds that such violations are abundant in the record.

The prosecutors also committed misconduct by deliberately and knowingly putting into the mouths of witnesses words that the witnesses had not said and did not believe to be true. This was accomplished by persistently cross-examining those witnesses on a false basis and by making improper insinuations and assertions calculated to mislead the jury and discredit unfavorable testimony. ^{9A} The use of this untrue information was material and detrimental to Guerra's defense. United States v. Williams, 112 S. Ct. 1735,

9A] [insert from footnote 9 on page 34]
See also note 2 at p. 8 ³⁸ supra.

1749 (1992) (quoting Berger v. United States, 295 U.S. 78 (1935)).

Regarding the questions to Heredia about alcohol and drugs, the prosecutor asked him if he was drunk or had smoked anything. These questions were designed to strike down the young boy because he would dare testify contrary to the prosecutor's case theory. In closing argument, the prosecutor argued to the jury that Heredia was under the influence of either alcohol or narcotics. This improper conduct is rank ridicule and intimidation utilized to its consummate when any witnesses did not testify to this state's liking.

The petitioner also complains about the trial testimony of officer Jerry Robinette. After J. Luna testified that Carrasco had arrived at their home brandishing both the nine-millimeter weapon and officer Harris' weapon, the state called officer Robinette. Officer Robinette testified that J. Luna and Esparza had told him that they were not home in and around the time that the shootings had occurred because they had left earlier and did not return until around 11:30 p.m., when they were questioned. Even if this is true, the testimony is of no value because they were there when Carrasco arrived later.

Officer Robinette's testimony is inconsistent with J. Luna's trial testimony and also with police reports showing that both J. Luna and Esparza

were home when Carrasco and Guerra left as well as when they returned later that night. The police reports¹⁰ show that officer Antonio Palos questioned J. Luna at 4907 Rusk just before Carrasco was killed. In spite of this knowledge, the prosecutor argued that J. Luna and Esparza had lied when they testified that they were at 4907 Rusk when Carrasco returned.

Both prosecutors claimed as fact, in closing argument, that five eyewitnesses, who had not conferred with each other, told the police that Guerra killed officer Harris and Mr. Armijo and had identified Guerra at the lineup. Both prosecutors knew that this was factually incorrect because at least one of the prosecutors was at the scene shortly after the shooting and participated in the gathering and interviewing of witnesses. Moreover, both had participated in the reenactment and the pretrial weekend meeting where the various statements of the witnesses were discussed and conformed.

The petitioner also urges, and legitimately so, that there was no justification for informing four jurors, during voir dire, that he was an "illegal alien" and that this fact was something that the jurors could consider when answering the punishment special issues. According to the prosecutors, this fact could help in a determination of whether Guerra should received a life

¹⁰ These reports were not produced or made available to the defendant, pretrial, pursuant to the defendant's discovery request.

sentence or the death penalty.

The "offense" of unlawful entry into the United States is irrelevant to the issue of a defendant's propensity for future violent and dangerous criminal behavior. No proof was offered that illegal aliens are more prone than citizens to commit violent crimes. Guerra was entitled to have his punishment assessed by the jury based on consideration of the mitigating and aggravating circumstances concerning his personal actions and intentions, not those of a group of people with whom he shared a characteristic. Zant v. Stephens, 462 U.S. 862, 879 (1983).

The prosecutors also appealed to the jury to "let the other residents at 4907 Rusk ... know just exactly what we citizens of Harris County think about this kind of conduct...." This appeal went beyond arguments seeking law enforcement to improperly play to the jury's prejudice by painting all the residents at 4907 Rusk with the broad brush of shared responsibility for the death of officer Harris. Thus, they were in need of being taught a lesson. This "us" against "them" argument is also nothing more than an appeal to ethnic or national origin prejudice which is constitutionally impermissible. McCleskey, 481 U.S. at 309 n.30; see also McFarland v. Smith, 611 F.2d 414, 416-17 (2d Cir. 1979); United States v. Doe, 903 F.2d 16, 25 (D.C. Cir. 1990);

see Haynes, 481 F.2d at 157.

The petitioner's claim of denial of "due process" did not end with the police and the prosecutor, it continued into the Court process. It is asserted that the inaccurate translations of the witnesses' testimony from Spanish to English by the court interpreters prevented a fair trial. The first interpreter, Linda Hernandez, was removed after one of the jurors complained that she was interpreting inaccurately. The second court interpreter, Rolf Lentz, acted inappropriately by making jokes and adopting an improper casual manner, while communicating with several defense witnesses in Spanish. Much of this went unchecked by the court.

The petitioner also questions the propriety of an experienced prosecutor questioning a witness about the witness' participation in a crime that the witness was not under investigation for and had not been criminally charged. One of Guerra's roommates, who testified in Guerra's defense, was questioned about his "participation" in a robbery that the prosecutors well knew had not resulted in a charge. Yet, it was done in all likelihood, to affect the judgment of the jury in determining the witnesses' credibility. This knowing false accusation by the prosecutors violated Guerra's "due process" rights because the question was not a proper question, even on character.

This type of deliberate violation of oath as a prosecutor and violation of the rules of evidence is incompatible with the rudimentary demands of justice and fair play. This principle remains true even when the state, though not soliciting false evidence, allows it to go uncorrected. Giglio v. United States, 405 U.S. 150, 154 (1972).

VII.

Cumulative Effect of Prosecutorial Error

Finally, the petitioner contends that the cumulative effect of the errors made by the trial court and the prosecutors resulted in an unfair trial. Because the state court, in considering the petitioner's petition for writ of habeas corpus, found no waiver of error, there is no bar to considering the errors found in a cumulative error analysis. Derden v. McNeel, 978 F.2d 1453, 1458 (5th Cir. 1992) (*en banc*), cert denied, 113 S. Ct. 2928 (1993). When the errors of the state infuses a trial with such prejudice and unfairness as to deny a defendant a fair trial, due process has not been enjoyed. Derden, 978 F.2d at 1458.

Here, the extent of the prosecutorial misconduct is legion. The number of instances of misconduct as well as the type and degree compels the conclusion that the cumulative effect of the prosecutors' misconduct rendered

the trial fundamentally unfair. There is no doubt in this Court's mind that the verdict would have been different had the trial been properly conducted. Kirkpatrick v. Blackburn, 777 F.2d 272, 278-79 (5th Cir. 1985), cert. denied, 476 U.S. 1178 (1986).

CONCLUSION.

The police officers' and the prosecutors' actions described in these findings were intentional, were done in bad faith, and are outrageous. These men and women, sworn to uphold the law, abandoned their charge and became merchants of chaos. It is these type flag-festooned police and law-and-order prosecutors, who bring cases of this nature giving the public the unwarranted notion that the justice system has failed when a conviction is not obtained or a conviction is reversed. Their misconduct was designed and calculated to obtain a conviction and another "notch in their guns" despite the overwhelming evidence that Carrasco was the killer and the lack of evidence pointing to Guerra.

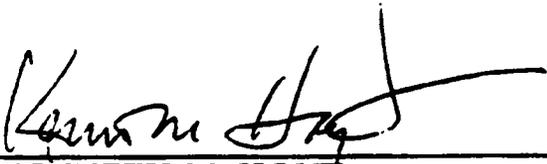
The police officers and prosecutors were successful in intimidating and manipulating a number of unsophisticated witnesses, many mere children, into testifying contrary to what the witnesses and prosecutors knew to be the true fact, solely to vindicate the death of officer Harris and for personal

aggrandizement. The cumulative effect of the police officers' and prosecutors' misconduct violated Guerra's federal constitutional right to a fair and impartial process and trial.

Therefore, the petitioner's Writ of Habeas Corpus is GRANTED, the conviction and judgment are set aside.

It is ORDERED that this case is remanded to the 248th Judicial District Court where the court shall, within 30 days, proceed in conformity with this memorandum opinion to retry the petitioner or release him.

Signed this 14th day of November, 1994.



KENNETH M. HOYT
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RICARDO ALDAPE GUERRA,	§	
	§	
	§	
Petitioner.	§	
	§	
v.	§	Civil Action No. H-93-290
	§	
JAMES A. COLLINS,	§	
Director, Institutional Division,	§	
Texas Department of Criminal Justice,	§	
	§	
Respondent.	§	

ORDER

ON THIS DAY came on to be heard Petitioner's Motion to Alter or Amend the Judgment, Pursuant to Fed. R. Civ. P. 52(b). After considering said Motion, the Court is of the opinion that the Motion is well-founded and should be in all things GRANTED.

It is, therefore, ORDERED that this Court's Order on Application for Writ of Habeas Corpus signed on November 14, 1994, and entered on November 15, 1994, is hereby amended as provided in Attachment A to Petitioner's Motion to Alter or Amend the Judgment, Pursuant to Fed. R. Civ. P. 52(b).

DATED this _____ day of _____, 199_____.

HONORABLE KENNETH HOYT
UNITED STATES DISTRICT JUDGE



69 vol. 10
At: Team
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f- pldgs

Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 27, 1994

The Honorable Michael Milby, Clerk
United States District Court
Southern District of Texas
Houston Division
P.O. Box 61010
Houston, Texas 77208

RECEIVED
DEC 29 1994
S.J. ATLAS

Re: Guerra v. Scott, No. H-93-290

Dear Sir:

Enclosed please find the original and one (1) copy of Respondent's Unopposed Motion to Alter or Amend the Judgment, Pursuant to Fed. R. Div. P. 59(e) to be filed among the papers in the above referenced cause. Also enclosed for the convenience of the Court is a proposed Order.

By copy of this letter, I am forwarding a copy of this instrument to counsel for the Petitioner.

Please indicate the date of filing on the enclosed copy of this letter and return it to me in the enclosed postpaid addressed envelope.

Thank you for your kind assistance in this matter.

Sincerely,

William C. Zapalac
WILLIAM C. ZAPALAC
Assistant Attorney General
(512) 463-2080

WCZ/br

c: Mr. Scott J. Atlas
VINSON & ELKINS
2300 First City Tower
1001 Fannin
Houston TX 77002-6760

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

<i>RICARDO ALDAPE GUERRA</i>	§	
Petitioner	§	
	§	
v.	§	Civil Action No. H-93-290
	§	
<i>JAMES A. COLLINS, DIRECTOR</i>	§	
<i>TEXAS DEPARTMENT OF CRIMINAL</i>	§	
<i>JUSTICE, INSTITUTIONAL DIVISION,</i>	§	
Respondent	§	

**RESPONDENT'S UNOPPOSED MOTION TO ALTER OR AMEND THE
JUDGMENT, PURSUANT TO FED. R. CIV. P. 59 (e)**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Wayne Scott, Director, Texas Department of Criminal Justice, Institutional Division, Respondent ("the Director"), by the Attorney General of Texas, and files this Unopposed Motion to Alter or Amend the Judgment, Pursuant to Fed. R. Civ. P. 59(e). The Director would respectfully show the Court as follows:

I.

On November 15, 1994, the court issued its order conditionally granting the writ of habeas corpus, directing the state to "within 30 days, proceed in conformity with this memorandum opinion to retry the petitioner or release him." Order on Application for Writ of Habeas Corpus, Doc. 51, at 45. On December 14, 1994, the court entered its final judgment, beginning the time for complying with the order. *See* Fed. R. Civ. P. 54, 58.

II.

Fed. R. Civ. P. 59(e) states that "A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment." Pursuant to

Fed. R. Civ. P. 6(a), if the time prescribed or allowed by the rules is less than eleven days, intermediate Saturdays, Sundays, and legal holidays are not counted in determining the due date. "Legal holidays" includes any day designated as a holiday in the state in which the district court is located. In this case, the court's final judgment was entered on December 14, 1994. December 17 and 18 and 24 and 25 were intermediate Saturdays and Sundays, and December 26 was both a national and a Texas state holiday. Excluding these days, this motion pursuant to Rule 59(e) is timely if filed by December 29, 1994.*

III.

The phrase "proceed . . . to retry the petitioner" is vague and lends itself to a variety of interpretations. For example, the order could be satisfied if the state completes the arraignment of the petitioner on the outstanding indictment within thirty days. The order also could be read to mean that the actual trial must have begun within the allotted time. That, in turn, could mean that jury selection must be under way, or that the actual presentation of evidence must have commenced. The phrase also could mean that the trial must have concluded and that a verdict have been rendered.

*Rule 6(a) applies to motions filed under Rule 59(e):

"Under the current version of the Rule, parties bringing motions under rules with 10-day periods could have a few as 5 working days to prepare their motions. This hardship would be especially acute in the case of Rules 50(b) and (c), 52(b), and 59(b), (d), and (e), which may not be enlarged at the discretion of the court."

Fed. R. Civ. P. 6, Advisory Committee Notes.

IV.

As a practical matter, in the case of a capital murder trial only the first possibility -- completing the arraignment of the defendant -- is realistic. Trying a capital murder case requires having a judge free up the docket to the extent that several weeks or months can be devoted to the capital case. Alternatively, the county would need to secure the services of a visiting judge, as well as provide a courtroom for the trial. In either case, once physical facilities are available, arrangements must be made for a special venire to be called from which the jury can be chosen. Individual *voir dire* in a capital case easily can take weeks, and the trial itself can be a lengthy affair. Further, where a retrial is involved, the prosecution must locate witnesses and reassemble evidence to be used at trial. From the defense standpoint, adequate time must be allowed for investigation, location of witnesses, and preparation of a defense. It is impossible from a logistical standpoint to accomplish more than the arraignment in a capital murder trial on only thirty days notice. A clarification of the court's order to specify that the state is in compliance if it completes the defendant's arraignment within thirty days will forestall needless collateral litigation over the court's meaning.

In a similar case, United States District Judge William Wayne Justice conditionally granted the writ and directed the state to release the petitioner if it had not "commenced proceedings for another trial" within ninety days from the date of his order. On motion by the Director, the court recognized the ambiguity of the phrase and noted that the logical import of it was that the state should have completed arraignment within the time allowed. Accordingly, it amended the order to require that petitioner be released if the state had not "commenced proceedings for another trial of applicant, by re-arraigning him" within the time specified. *See Bennett v. Collins*, No. 6:89cv703 (ED Tex. 1994), Order dated June 2, 1994, attached as Appendix A. This court likewise should afford the state

a reasonable opportunity to re-try Petitioner and make clear what actions will constitute compliance with its order.

WHEREFORE, PREMISES CONSIDERED, the Director respectfully requests that the court amend the order of November 15, 1994, made final by the judgment of December 14, 1994, to require that the state arraign Petitioner within thirty days after the judgment is final.

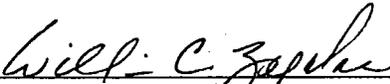
Respectfully submitted,

DAN MORALES
Attorney General of Texas

JORGE VEGA
First Assistant Attorney General

DREW T. DURHAM
Deputy Attorney General for
Criminal Justice

MARGARET PORTMAN GRIFFEY
Assistant Attorney General
Chief, Capital Litigation Division



WILLIAM C. ZAPALAC
Assistant Attorney General
State Bar # 22245480
Southern District # 8615

P.O. Box 12548, Capitol Station
Austin, Texas 78711
(512) 463-2080
Fax No. (512) 320-8132

ATTORNEYS FOR RESPONDENT

CERTIFICATE OF CONFERENCE

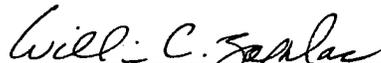
I, William C. Zapalac, Assistant Attorney General of Texas, do hereby certify that I conferred by telephone on December 22, 1994, with Scott Atlas, attorney for Petitioner, about the contents of this motion, and he informed me that he does not oppose it.



WILLIAM C. ZAPALAC
Assistant Attorney General

CERTIFICATE OF SERVICE

I, William C. Zapalac, Assistant Attorney General of Texas, do hereby certify that a true and correct copy of the above and foregoing Respondent's Unopposed Motion to Alter or Amend the Judgment, Pursuant to Fed. R. Civ. P. 59(e) has been served by placing same in the United States Mail, postage prepaid, on this the 27th day of December, 1994, addressed to: Hon. Scott J. Atlas, VINSON & ELKINS, 2300 First City Tower, 1001 Fannin, Houston TX 77002-6760.



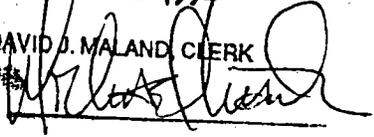
WILLIAM C. ZAPALAC
Assistant Attorney General

APPENDIX A

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

JUN 02 1994

DAVID J. MALAND, CLERK
BY DEPUTY 

BABY RAY BENNETT,
Applicant,

v.

JAMES A. COLLINS, DIRECTOR
TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, INSTITUTIONAL
DIVISION,

Respondent.

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6:89cv703

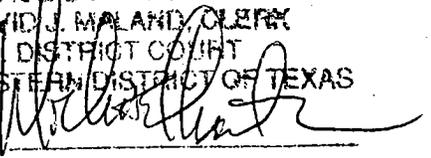
O R D E R

Respondent has filed a motion to alter or amend the writ of habeas corpus issued on May 6, 1994. Respondent contends that the order is unclear because the phrase "commenced proceedings for another trial" is ambiguous. As noted by the respondent, the logical meaning of "commenced proceedings for another trial" is that the state must have re-arraigned applicant no later than ninety days from the date of service of this court's May 6 order. A continuance should be unnecessary for purposes of re-arraigning applicant. Accordingly, it is

ORDERED that respondent's motion to amend the writ of habeas corpus shall be, and it is hereby, **GRANTED**. The amended portion of the writ is as follows: it is

ORDERED that applicant shall be released, if the State of Texas has not commenced proceedings for another trial of applicant, by re-arraigning him, within ninety days from the date of service

A TRUE COPY I CERTIFY
DAVID J. MALAND, CLERK
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

By: 

74

of this [the May 6, 1994] order.

SIGNED this 2nd day of June, 1994.

A handwritten signature in cursive script that reads "Wm. Wayne Justice". The signature is written in dark ink and is positioned above a horizontal line.

William Wayne Justice
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RICARDO ALDAPE GUERRA

Petitioner

v.

JAMES A. COLLINS, DIRECTOR
TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, INSTITUTIONAL DIVISION,

Respondent

§
§
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§

Civil Action No. H-93-290

ORDER

Be it remembered that on this _____ day of _____, 1994, came on to be heard Respondent's Motion to Alter or Amend the Judgment, and the Court after considering the pleadings of the parties filed herein, is of the opinion that the following order should issue:

It is hereby ORDERED, ADJUDGED and DECREED that the last paragraph of the Court's Order on Application for Writ of Habeas Corpus is amended to read:

It is ORDERED that the writ of habeas corpus is conditionally granted unless the state begins retrial proceedings by arraigning the petitioner within thirty days from the date this order becomes final. If the state does not complete the arraignment within the allotted time, the petitioner shall be released from custody.

SIGNED on this the _____ day of _____, 1994, at Houston,
Texas.

United States District Judge

F. all doc
pldy

YOU COULD HAVE RECEIVED THIS NOTICE YESTERDAY BY FAX.

Just complete and return the authorization below and you will receive notice of orders and judgments within hours of their entry. It's FREE and it's FAST!

Scott J Atlas
Vinson & Elkins
1001 Fannin St.
Ste 2500
Houston, TX 77002

4:93-cv-00290 #52
1 page(s).
12/15/94

AUTHORIZATION TO SEND ORDERS AND
JUDGMENTS BY FACSIMILE TRANSMISSION

The Clerk of Court for the Southern District of Texas is authorized to transmit notice of entry of judgment or orders under Fed.R.Civ.P. 77, Fed.R.Crim.P. 49, and Fed.R.Bankr.P. 9022, 9036 by facsimile transmission of judgments, orders or notices in any case in which this capability exists*, and the undersigned appears as attorney in charge. I understand that this electronic notice will be in lieu of notice by mail. The following telephone number is dedicated for facsimile transmission.

FAX Phone No: 713/615-5399

Signature: Scott J Atlas

Address: Vinson & Elkins
1001 Fannin, Ste. 2300

Attorney Name: Scott J. Atlas

Houston, Tx 77002-6760

State Bar No: 01418400

Phone No: 713/758-2024

Mail to: Clerk, Southern District of Texas
P. O. Box 61010
Houston, TX 77208

* Available only in civil and bankruptcy cases pending in the Houston Division, but eventually this capability will be expanded to other divisions.

F- all
pldgs ^{12/3/94}
(deep - but
bite anyway)

SCOTT J. ATLAS

12/16/94

To: Team
Sandra

This triggers the
30 days for appeal,
though it starts
over if anyone files
one of several motions,
including a motion to
amend the findings or for
attorneys' fees.

Scott

MEMORANDUM

December 16, 1994

TO: File, Aldape Guerra

FROM: Scott J. Atlas

RE: Appellate Timetable

The following memorandum will summarize briefly the steps and timetable that probably lie ahead in this case.

The judge signed a one-page judgment on December 13, 1994, and the district clerk entered that judgment on December 14. The State has 30 days from December 14 within which to decide whether to appeal. *See* FED. R. APP. P. 4(a)(1) (notice of appeal must be filed within 30 days after entry of judgment). There are several motions (such as a request to amend or modify the judgment, which I have been told the State plans to file), which would start a new 30-day period once the Court resolves the motion and that ruling is entered. *See* FED. R. APP. P. 4(a)(4) (specifying types of motion that extend time for filing notice of appeal, including a motion to amend the findings or make additional findings or a motion to amend the judgment).

In any event, once that 30-day period begins, the State need only file a simple, one-page document stating their desire to appeal. *See* FED. R. APP. P. 3(c) (contents of notice of appeal). This would begin the appellate process in the U.S. Court of Appeals for the Fifth Circuit. How long that process would take is anyone's guess. The most difficult amount of time to estimate is how long it will take the court reporter to transcribe the proceedings of the November 1993 hearing. Once this has been completed and the record has been filed by the clerk of the Fifth Circuit, the State has 40 days to file its brief, we would have 30 days to file our brief; and the State would have 14 days to file a reply. FED. R. APP. P. 31(a). It is not unusual for either or both sides to request at least an additional 30 days. *See* FED. R. APP. P. 26(b) (providing for motion for enlargement of time). After the first two briefs have been submitted, the court will schedule the case for oral argument, probably in either Houston, Dallas, Austin or New Orleans. *See* FED. R. APP. P. 34(a). Oral argument will likely last a total of less than 60 minutes and will involve presentations in front of three of the Fifth Circuit judges, who normally interrupt each side's presentation with questions. The appeal will be based on the factual and legal decisions made by Judge Hoyt in his November 15, 1994 opinion and the evidence presented during the original trial and the November 1993 hearing. No additional evidence can be presented. The arguments will consist entirely of claims by the State that either Judge Hoyt's factfindings were "clearly

erroneous" or that the legal rulings were incorrect. After the argument, the court will issue an opinion, which typically takes from one to six months.

After the court issues an opinion, the loser has 14 days in which to decide whether to ask for a rehearing by the same three judges, FED. R. APP. P. 40(a), or rehearing by the entire group of judges on the Fifth Circuit (I believe that there are approximately 15), FED. R. APP. P. 35(c). If the loser does not wish to seek additional review in the Fifth Circuit, it has 90 days in which to decide whether to pursue an appeal to the U.S. Supreme Court. SUP. CT. R. 13.1, 13.4. If rehearing is sought in the Fifth Circuit, then we wait for a few months to see whether the three-judge panel or the entire Fifth Circuit will rehear this case. This happens very rarely. If they decide not to rehear the case, then the loser has 90 days after the denial of rehearing to decide whether to ask the U.S. Supreme Court to hear the case (this is technically called a petition for a "writ of certiorari").¹ See SUP. CT. R. 13.4.

A petition for certiorari to the Supreme Court begins a whole new timetable of writing a brief that asks the Supreme Court to hear the case. The Supreme Court refuses to hear most cases. If the Supreme Court refuses, the Fifth Circuit will issue the mandate immediately upon being notified of the Supreme Court's action.² See FED. R. APP. P. 41(b). After the mandate issues, the decision of Judge Hoyt (assuming it was upheld by the Fifth Circuit) would become final.

Only after issuance of the mandate does the 30 days begin to run for the District Attorney to decide whether to retry Ricardo.

Assuming that we win in the Fifth Circuit and that the State does not request a rehearing or review by the U.S. Supreme Court, it will be a minimum of 6 to 12 months before we know whether the D.A. plans to retry Ricardo. It could well take longer.

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¹Only a petition for panel rehearing extends the time for filing a petition for certiorari. See SUP. CT. R. 13.4. A petition for rehearing in banc (before the entire Fifth Circuit) does not do so, SUP. CT. R. 13.4, although, because of Fifth Circuit internal operating procedures that treat a motion for rehearing in banc initially as a motion for panel rehearing, see 5th Cir. I.O.P. 35, some commentators suggest that a motion for rehearing in banc in the Fifth Circuit may extend the time for filing a petition for certiorari, see, e.g., HENRY D. GABRIEL & SIDNEY POWELL, FEDERAL APPELLATE PRACTICE: FIFTH CIRCUIT § 9:10, at 9-5 (1994).

²Filing a petition for certiorari does not automatically stay issuance of the mandate. To obtain a stay, the party filing the petition for certiorari must request one by motion. See FED. R. APP. P. 41(b). Otherwise, the mandate will issue 21 days after the entry of judgment or 7 days after the denial of any petition for rehearing. FED. R. APP. P. 41(a).

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S.J.A

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DON STRICKLIN
FIRST ASSISTANT



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JOHN B. HOLMES, JR.
DISTRICT ATTORNEY
HARRIS COUNTY, TEXAS

November 16, 1994

Attorney General Dan Morales
Attorney General's Office
209 W. 14th
Price Daniel Bldg.
Austin, Texas 78701

Re: Ricardo Aldape Guerra, civil action no. H-93-290

Dear General Morales,

On November 15, 1994, the federal district court granted federal habeas relief in Ricardo Aldape Guerra's case and ordered that the State of Texas re-try Guerra within thirty days from the date of the opinion or release him. A copy of the federal opinion and order is enclosed.

I strongly urge and specifically request that you, through your office, appeal this decision to the Fifth Circuit Court of Appeals. Guerra was convicted of murdering a Houston police officer who was performing his official duty. Also, during the same offense, an innocent civilian was killed and another Houston police officer was shot. Further, it is important that a timely appeal be perfected in order to toll the thirty-day period in which the State was ordered to re-try Guerra.

Based on the record in this case, the State strongly disagrees with the federal district court's findings. For example:

1. The federal district court concludes that certain police reports "were not produced or made available to the defendant, pretrial, pursuant to the defendant's discovery request." *Opinion*, p. 40, n. 10.

- The court disregards evidence that the State's file, including police reports, was made available to defense counsel as part of an open file prior to trial.

2. The federal district court also states "...that the trace metal patterns on Carrasco's left hand were consistent with the patterns left by the nine-millimeter weapon found on him at the morgue." *Opinion*, p. 35, emphasis added.

- The weapon found at the morgue was the police officer's .357, not the nine-millimeter which Carrasco used to shoot and wound the other police officer and which was found at the scene of the offense by Carrasco's body.

3. The federal district court, when concluding that the prosecutors' pre-trial and trial questions were made in a way which stated or implied complicity by Guerra, adds that "[t]he tone of voice, as well as the artful manner in which the questions were asked, left little room for truthful answers or explanation." *Opinion*, p. 14, emphasis added.

- It is unclear how the federal district court is aware of the tone of voice used during a 1982 trial.

4. The federal district court further states that the description of the shooter as being left-handed "was critical because Carrasco was left-handed." *Opinion*, p. 21.

- There was no evidence, other than the applicant's bare allegation, that Carrasco was left-handed.

5. The federal district court further finds that "[i]t is also relevant that the police officers and the prosecutors did not quiet Galvan and others, as they commented before, during and after the lineup." *Opinion* at 24.

- Testimony was presented during the writ evidentiary hearing that the witnesses were admonished not to talk during the identification procedures and, during the procedure, an officer specifically told a witness to stop talking.

6. The federal district court cites relevant parts of the witnesses' first statements describing the shooter and states "[b]efore the lineup, Galvan, Garcia, Flores and Vega described the shooter in such a way that the description fit only Carrasco, i.e., he had blond-like hair and wore brown pants and a brown/maroon shirt." *Opinion* at 17-21, emphasis added.

- Evidence presented shows that the cited descriptions do not fit Carrasco who was not tall and thin; he was shorter and stockier than Guerra. Also, neither Carrasco nor Guerra had "blond" hair, although Guerra's hair was noticeably lighter than Carrasco's. Thus, the witnesses' first descriptions fit Guerra, not Carrasco.

7. The federal district court states that "[t]he prosecutors and officer Amy Parker Heeter, the state's expert on trace metal test, also misled the defense attorneys concerning the trace metal detection test results." *Opinion*, p. 34. The federal district court also states that the "revelation" that trace metal patterns found on Carrasco's left hand could have been utilized by defense counsel and "[t]he state failed to disclose that there were any

trace metal patterns on Carrasco's left hand, even though they knew that they, arguably, matched the nine-millimeter weapon." Opinion, p. 35, emphasis added.

-Amy Heeter, a civilian employee not a police officer, testified at trial concerning the trace metal tests that she performed on both hands of Carrasco.

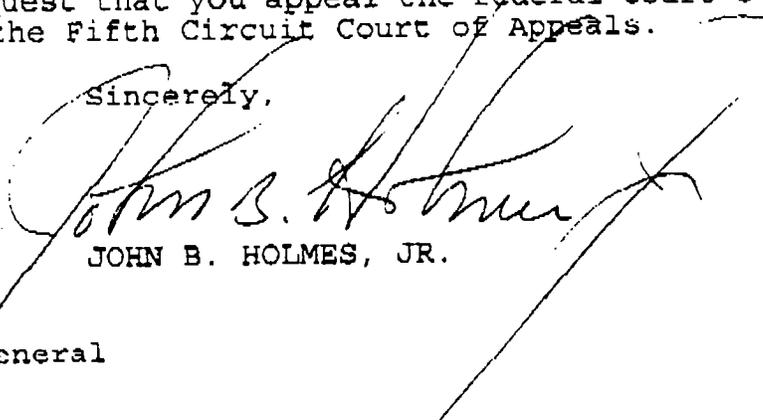
8. The federal district court states that "[g]iven the undisputed facts leading up to and surrounding the lineup, the identification of Guerra at the lineup was predestined." Opinion at 23, emphasis added.

- During the writ evidentiary hearing, the facts concerning the witnesses' identification at the lineup were vigorously disputed.

These are just a few examples of the manner in which the federal district court departs from the record in this case. Further, it is most disconcerting that the federal district court fails to define the harm, if any, that deprived Guerra of a fair trial. However, it should be noted that the Court of Criminal Appeals previously denied habeas relief on virtually the same grounds as those advanced in federal habeas. The Court of Criminal Appeals' denial of habeas relief is consistent with a finding that Guerra was not harmed, if at all, to the extent that his due process rights were violated.

Again, I formally request that you appeal the federal court's decision in this case to the Fifth Circuit Court of Appeals.

Sincerely,



JOHN B. HOLMES, JR.

cc: Drew Durham
Assistant Attorney General

Margaret Griffey
Assistant Attorney General

William Zapalac
Assistant Attorney General



CITY OF HOUSTON

Houston Police Department

61 Riesner Street Houston, Texas 77002 713/247-1000

Bob Lanier, Mayor

CITY COUNCIL MEMBERS: Helen Huey Michael J. Yarbrough Martha J. Wong Alfred J. Calloway Joe Roach Ray F. Driscoll John Kelley Felix Fraga
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November 18, 1994

The Honorable Dan Morales
Attorney General of Texas
209 West 14th Street
Price Daniel Building
Austin, Texas 78701

RECEIVED

Sam Nuchia
Chief of Police



NOV 20 1994

S.J. ATLAS

Dear General Morales:

As you know, a U.S. District Court on November 15, 1994, granted a new trial to Ricardo Aldape Guerra, who has been on death row for 12 years for killing a Houston police officer. In his opinion, the judge accused the police and prosecutors of mishandling the case and acting in bad faith simply to obtain a conviction. The Court's opinion states that police officers and prosecutors in the Guerra case "intimidated and manipulated" witnesses "solely to vindicate the death of Officer Harris and for personal aggrandizement."

I strongly disagree with the Court and urge you to appeal the decision to the Fifth Circuit Court of Appeals. The death of Officer James Harris must not be diminished. Police officers put their lives on the line every day in situations comparable to guerilla warfare. They never know when a simple traffic stop might turn deadly. The punishment for killing a police officer is justifiably harsh, as an attack on an officer represents not only arrogance and contempt for those who are sworn to serve and protect the public, but a flagrant disregard for society's rules.

Houston police officers worked extremely hard, under difficult emotional circumstances, to gather the facts and evidence used in this case. Police officers investigating cases involving the murder of a fellow officer take extraordinary care to adhere to procedure and treat witnesses and suspects with great circumspection. Some of those who labored on this case are still with the Police Department and can attest to that fact. They are fully aware that any missteps on their part will be viewed as retaliatory.

I also ask you to consider the fact that Officer Harris was not the only casualty of this July, 1982 incident. A civilian was also killed and HPD Officer Larry Trepagnier was seriously injured in the shooting. Although twelve years have passed, Officer Trepagnier still bears the



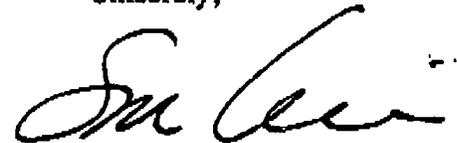
Request for Appeal
Attorney General Morales

2

emotional and physical scars of the confrontation and will probably never recover full health. The possibility that Ricardo Aldape Guerra might walk out of prison a free man within weeks adds to Officer Trepagnier's suffering and that of the family and friends of those who died.

It is my understanding that, in a number of instances, the Court's opinion departs from the record in this case. That, coupled with the heinous nature of the crime, compels me to formally request an appeal of this decision to the Fifth Circuit Court of Appeals. Only in this way will the stain of the Court's opinion be removed from the police officers and prosecutors of our city and justice truly served.

Sincerely,

A handwritten signature in black ink, appearing to read "Sam Nuchia". The signature is fluid and cursive, with a large initial "S" and a long, sweeping underline.

Sam Nuchia
Chief of Police

sn/lja

cc: Drew Durham
Assistant Attorney General

Margaret Griffey
Assistant Attorney General

William Zapalac
Assistant Attorney General

cc: Jean
f- pldgs
(w/ 12/94 Opinion)

MEMORANDUM

February 22, 1995

TO: File, Ricardo Aldape Guerra

FROM: Scott J. Atlas

RE: Outline of 11/94 Opinion Order Habeas Corpus relief

The following will attempt to identify the witnesses whose testimony is relevant to the factual allegations that support the Court's ruling granting habeas relief.

1. Pretrial Intimidation of Witnesses

- a. at Walker: Diaz, Holguin, Perez, Garcia, Brown, Medina, and Heredia;
- b. at 4907 Rusk: Jose Luna, Onofre;
- c. at HPD during questioning: Perez, Brown, Heredia, Medina;
- d. late night searches: Onofre, Jose Luna;
- e. during and after the lineup: Garcia, Diaz, Holguin;
- f. at the re-enactment: Garcia;
- g. at the pretrial weekend meeting: Diaz, Garcia, Perez, Medina;
- h. during trial: Diaz, Garcia, Moen, others;
- i. motive: ?

2. Improper ID procedures

- a. Ricardo in handcuffs pre-line-up: Enrique Luna, Perez, Medina;
- b. Witnesses' conversations with each other, especially Hilma: Diaz, Garcia, Heredia, Holguin, Perez, Medina, Brown;
- c. line-up, with Hilma talking: Diaz, Garcia, Enrique Luna, Perez, Medina;

- d. re-enactment: ?;
- e. mannequins at pretrial weekend meeting and at trial: Diaz, Heredia, Perez, Medina, Garcia, Moen;
- f. result:
- g. Does State have burden to show harmlessness if its conduct was intentional?

3. Failure to Disclose Exculpatory Evidence

- a. statements: Brown, Garcia, Diaz, Perez, Sylvan Rodriguez, Heredia, Holguin, Medina;
- b. re-enactment: Garcia, Perez;
- c. pretrial weekend meeting: Diaz, Garcia, Perez, Medina, Brown;
- d. testimony -- credible and consistent with physical evidence:
 - (i) Carrasco was left-handed: Onofre, Perez;
 - (ii) gun scratch suggested being dropped: Perez, Brown;
- e. TMDT: Moen, Elizondo;
- f. without suppressed evidence, Ricardo would not have been charged or would have been acquitted;

4. Use of Known False Facts and Illegitimate Arguments

- a. Heredia on drugs: Heredia, Linda Hernandez, Moen;
- b. perjured testimony: Garcia;
- c. Jose Luna not home when Carrasco was shot: Linda Hernandez, Onofre, Jose Luna;
- d. Diaz testimony about direction of pointing: Diaz, Moen;
- e. five eyewitnesses failed to confer before identifying Ricardo at line-up: Perez, Diaz, Garcia, Medina, Enrique Luna, Heredia, Holguin, Bax, Moen;
- f. "illegal alien" comments: Moen, Donna Monroe Jones, amicus brief;

- g. improper interpreter conduct: Jose Luna, Heredia, Linda Hernandez;
- h. falsely accusing Enrique Luna of robbery: ?
- i. cemetery murder: Bax, Elizondo, Moen;
- j. victim impact: Bax, Donna Monroe Jones

5. Cummulative Effect

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Misconduct

1. Scene Intimidation. 7/13: Intimidation at the scene sets stage for reinforcing later witness fear.
 - a. yelling and cursing (Diaz Q27; Perez Q43)
 - b. handcuffing Medina (Diaz Q27; Medina Q33, 35) and Holguin (Q16-18)
 - c. threatening Diaz regarding daughter (Diaz Q26; Medina Q30)
 - d. Perez sees apprehension of wrong man (Q43-44)
 - e. circumstantial proof -- the way people on Rusk were treated:
 - (1) Jose Luis and Sepe at gunpoint (Onofre Q31; Jose Luis Q27-31)
 - (2) screaming, cursing and threatening all 4 roommates (Onofre Q48, Jose Luis Q29, 45)
 - (3) middle of night warrantless searches with violence and abuse (Onofre 53-63; Jose Luis Q67-77)
2. 7/13-7/14: Change in police attitude regarding ID of killer [motive for misconduct, not misconduct itself]
 - a. at scene with Perez, focus on Carrasco as killer (Q63-66)
 - b. at station early in evening, same
 - c. early description given by cops and witnesses to T.V. news -- Channel 13 piece (Pet. Ex. 5)
 - d. when RC shot, focus shifted to RAG (Diaz Q30, 36; Perez Q63-66)
 - e. charged before lineup (Pet. Ex. ___) [charged at F341, 640, 683-84; lineup at F620)
3. Handcuffed Showup. 7/14: Walking RAG, in handcuffs and paper bags, in plain view past the witnesses, including Galvan, Vera & Jose, Jr. (Garcia Q38-40; Perez Q54-55; Medina Q34-38; Enrique Q56-59)
 - a. this allowed Galvan the opportunity to brand him as the killer & a "wetback" (Garcia Q41; Medina Q39)

4. 7/14: Attempting to persuade witnesses at HPD to change their stories (Garcia Q47; Heredia Q36-38)
5. Statement Preparation. 7/14: Recording in statements information not provided by witnesses and omitting information provided by witnesses in order to focus more on RAG as shooter and omit exonerating information
 - a. Perez on "gun" vs. "object" (Q82)
 - b. Diaz on shooting at "cop car" vs. "cop" and on saying RAG shot 4 times (Q46-47) and post-lineup statements that "I guess he had a gun" (Q61)
 - c. Medina on seeing no gun or shooting
 - d. Herlinda on man with long hair being the shooter (Q59-60)
 - e. Heredia on Harris beginning to frisk RAG (Q50)
6. Signing 1st Statements. 7/14: Requiring witnesses to sign statements they did not understand, could not read, or were not given time to read, using threats, rushed tones, promises, etc.
 - a. Note: the only Spanish speaker who was read the statement in Spanish and thus knew what he was signing: Enrique, who saw nothing material to the shooting
 - b. Diaz, after being kept at HPD all night, was too tired to read it (Q44-45)
 - c. Holguin (Q26-34) and Heredia (Q42, 46-49, 51) couldn't speak or read English and signed because they were ordered to do so and were scared
 - d. Garcia couldn't read well (Q51-58)
 - e. Perez saw only a few things material to the shooting:
 - (1) the 9mm gun aimed at him by the left handed Carrasco,
 - (2) Carrasco coming from the N side of Walker, and
 - (3) a 2nd man coming from the S side of Walker;
 - (4) his statement omits all this;
 - (5) he is persuaded to change "gun" to "object" (Q82);

- f. Medina was threatened with arrest if she failed to sign, even though she hadn't read it and it said she saw nothing (Q45-47)
 - g. Diaz was told repeatedly to sign post-lineup statement falsely claiming she guessed RAG had a gun in his hands (Q61-62)
7. Lineup. 7/14: Allowing Galvan to talk in the lineup room
- a. loud enough for cops to hear (Heredia Q57; Diaz Q56; Holguin Q49-50; Perez Q90; Enrique Q69-71), and
 - b. brand RAG as the killer & a "wetback" (Diaz Q53-56, 61-62, Garcia Q67-71; Heredia Q59; Holguin Q46, 48; Medina Q56, 58-59)
8. 2nd Statement. 7/14: Forcing Garcia to sign, without reading, a second statement that again focused incorrectly on RAG (Garcia Q78-84)
9. Don't Talk. 7/14: Instructing witnesses not to talk to defense counsel (Garcia Q85; Medina Q63)
10. Reenactment. 7/21: At reenactment,
- a. rejecting and failing to communicate exonerating information contradicting or expanding on their statements (Perez Q100-03; Garcia Q87-88)
11. D.A.'s Office. 10/2: At D.A.'s pretrial prep,
- a. reinforcing the D.A.'s own concept of who was the shooter
 - (1) reference to Carrasco picture as "the man who was killed in shootout" and reference to RAG picture as "the man who shot the cop" (Diaz Q72, Garcia Q95; Medina Q70)
 - b. trying to pressure or confuse witnesses who disagreed
 - (1) Perez on "gun" vs. "object" (Q112-13),
 - (2) Garcia (Q96-98) & Medina (Q71-73) on which man was the shooter, and
 - (3) Diaz on whether RAG had gun in his hand (Q81-82, 84),
 - c. using mannequins to make easy ID of alive killer (Diaz Q73)

12. At trial, deliberately attempting to convey false information
 - a. exploiting false rumor of cemetery murder,
 - b. using victim impact testimony (Monroe Jones Q18-19),
 - c. exploiting ethnic animosity in jury selection (Monroe Jones Q2),
 - d. Diaz on pointing at "cop" vs. "cop car" (Diaz Q76),
 - e. Perez on "object" vs. "gun,"
 - f. Jose Luis on absence from house,
 - (1) Palos interview before Carrasco shot,
 - (2) Robinette interview afterwards,
13. At trial, trying to impeach defense witnesses with false information
 - a. Jose Luis on absence from home (Jose Luis Q36-52, 58-64; Onofre Q45-48)
 - b. Heredia on alcohol and drugs (Heredia Q68-70; L. Hernandez Q18-26)
14. Mannequins at trial (Diaz Q87; Perez Q118-19; Heredia Q66-67)
15. TMDT
 - a. results not adequately produced -- "positive as to police weapon and negative as to murder weapon" -- despite duty to do so and specific request
 - b. never described or gave Px.69 (Candy; McDonald Q32).

Resulting Misidentification

1. no physical evidence pointing to RAG; only so-called eyewitnesses
2. based on HPD reports, the shooter must have been mostly E and a little S of Harris and could not have been due S, near front of car (McDonald Q14, 22)
3. at time of shooting,
 - a. every witness placed RAG near front of car facing car, with open, empty palms flat on car hood (Diaz Q15-22; Garcia Q20-21; Heredia Q11-13; Medina Q12-16)
 - b. witnesses who saw Carrasco placed him mostly E and a little S of Harris and pointing at Harris as if holding a gun (Garcia Q15, 17-18; Heredia Q14-15; Medina Q17-19)
4. RAG's initial statement, pre-lawyer, is consistent with that (McDonald Q19)
5. witnesses saw RCF run on the N side of Walker & RAG on the S Side (Garcia Q23; Perez Q19)
6. Perez saw RCF running away, pointing with his left hand, carrying and dropping a 9mm, which has a scratch (Perez Q22-24, 27, 30, 32-34; McDonald Q29; G. Brown Q___)
7. police misconduct in rewriting statements and getting them signed placed more focus on RAG (& less on RCF) than deserved (Diaz Q61)
8. too much focus on RAG from:
 - a. handcuffed RAG's walk-through;
 - b. Galvan pressuring Jose Jr. all night;
 - c. permitting Galvan to talk in lineup room;
 - d. the witnesses knowing RCF was dead (Garcia Q36; Heredia Q27; Perez Q49, 72-73; Holguin Q37-38); and
 - e. the D.A.'s suggesting and even pressuring witnesses to say RAG was the shooter.
9. telling witnesses not to talk to defense attorneys plus deliberately distorted witness statements prevented RAG's attorneys from discovering that

- a. witnesses thought RCF was the shooter
 - b. witnesses had been pressured, intimidated, even coerced and tricked into signing statements containing false information
 - c. TMDT test results were exonerating
 - d. witness testimony (Diaz) was more helpful than was apparent
 - e. witnesses were scared into covering up the truth about the shooting and the police and D.A. conduct
10. the only witnesses to the contrary were
- a. Vera, who
 - (1) was drunk (Diaz Q7; Garcia Q7; Medina Q9),
 - (2) admitted at the scene that night she hadn't seen the shooting (Perez Q47),
 - (3) was unsure early in the HPD hallway (Perez Q58-70),
 - (4) spent the entire night listening to Hilma and seeing RAG in handcuffs (Perez Q70),
 - (5) admitted later in the day after leaving HPD post-lineup that she was uncertain about which man was the shooter (Garcia Q85A),
 - (6) changed her story dramatically at the reenactment (Brief), and
 - (7) admitted at trial that she didn't see the actual shooting (Br. at ____).
 - b. Jose Jr., who
 - (1) admitted right after the shooting that he hadn't seen who did it (Holguin Q14),
 - (2) repeated his inability to pick the shooter in hallway at HPD upon seeing RAG (Medina Q39),
 - (3) repeated this during the lineup (Holguin Q47; Medina Q57),
 - (4) saw RAG in handcuffs (Perez Q71; Medina Q39),

- (5) suffered Galvan's non-stop pressure, all night, to identify RAG (Holguin Q13),
 - (6) told police 7/14 the shooter was left handed, which meant RCF, not RAG (Onofre Q74-75, 79-80; Perez Q23; Jose Luis Q91-92), and
 - (7) seemed in shock but not scared (Perez Q99).
- c. Hilma, who
- (1) changed stories radically (see Brief),
 - (2) was inside her house at time of shooting (Heredia Q18-24; Holguin Q15, 46),
 - (3) hated "wetbacks" like RAG (Garcia Q41, 69-71; Heredia Q33; Holguin Q48, 58; Medina Q59), and
 - (4) had a reputation as a liar (Holguin Q57).
11. State claims our 6 witnesses are suffering from same post-event suggestion phenomenon that we use in describing Vera & Jose, Jr.
- a. but witnesses gave essentially same version
 - b. it hasn't been in print
 - c. witnesses haven't discussed this with each other (Diaz Q89, Herlinda Q106, Heredia Q73, Holguin Q71, Medina Q79)
 - d. this would not explain the police intimidation and coercion testimony

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opinion

MEMORANDUM

December 22, 1994

TO: File
FROM: Scott J. Atlas
RE: Factual Errors

1. The Area in Which Carrasco Lived (p.2, ¶ 2, line 2): The opinion says that Carrasco "lived in the neighborhood." There was no evidence at the 10/82 hearing about where he lived, and the only evidence at the 11/93 hearing appears in police records, which are inconsistent but suggest that Carrasco might have lived at 4625 Woodside at one time (F349, 352-54, 361-62). He also may have lived at 306 Lockwood. (F362-63)

2.* The Color of Carrasco's Hair (p.3, ¶ 1, lines 2-4): The opinion says that Carrasco was called "Guero" because of his light skin and light-colored blond-like hair. But his hair was black. (F424, 497; State's Exs. 15, 71). In the pictures he does appear to have light skin, however.

3. Length of Time from Harris Shooting to Carrasco Shootout (p.3, ¶ 2, line 1): The opinion says that Carrasco was killed in a shootout within an hour of the Harris shooting. The Harris shooting occurred shortly after 10:00 p.m. (S.F. vol. 20 at 73-74, 83, 97), while the Carrasco shootout occurred at about 11:30 p.m. (F253, 125-26), about 1-1/2 hours later.

4.* Armando vs. Jose Heredia (p.6, ¶ 2, lines 4-7): The opinion says that at the 11/93 hearing we called several witnesses under the age of 18 at the time, including Jose Heredia (age 14) and Armando Heredia (age 16). But we never called Armando Heredia. The opinion omits several witnesses who we did call on the intimidation issue, all over the age of 17 at the time of the original trial: Trinidad Medina, Jose Luna (22), Enrique Luna (20), and Roberto Onofre (21).

5. Did the D.A.'s Yell at Diaz (p.7, ¶ 3, lines 1-2): The opinion claims that Diaz testified that at the pretrial weekend meeting, the D.A.'s yelled at her and insisted that she change her testimony in certain respects. My notes do not reflect whether she testified that the D.A.'s yelled when they told her this.

6. Holguin Was Kept Barefoot at the Murder Scene (p.8, ¶ 2, lines 6-7): The opinion claims that at the murder scene after Holguin was handcuffed and placed in a

police car, she was taken to the police station barefoot because they would not permit her to get her shoes. I have no notes or recollection that she testified about being barefoot.

7.* D.A.'s Mislead Diaz About Direction of Hand-Pointing (p.8, n.2; p.34, n.9, ¶ 2): A portion of the Diaz testimony, which should appear in the footnote on page 8, or on p.29, appears as the second paragraph in the footnote on page 34, where it makes no sense.

8. Why Armijo Remained at the Scene for an Hour (p.11, n.4): The opinion says that police explained that they kept Armijo at the scene because they thought he had shot Harris. George Brown testified that Armijo was still in his car when Brown returned to the scene about 45-60 minutes after the shooting. The source of the police rationale for keeping him at the scene -- thinking he had been the person who shot Harris -- came from the videotape of a TV news broadcast (Pet. Ex. 5), not from the police, though the TV news commentator may have cited the police as his source.

9. No Finding of Credible Testimony (pp.13, ¶ 2 - pp. 14, ¶ 3): The opinion finds that witnesses were intimidated and that the D.A.'s attempted to suppress evidence, without identifying specifically which witnesses gave credible testimony and which evidence the D.A.'s attempted to suppress. The opinion does describe the testimony of certain witnesses, without naming them, and assumes that the testimony was credible. Later in the opinion (p. 32, ¶ 2, lines 1-2), Judge Hoyt finds the testimony of certain witnesses to be credible. Those witnesses testified about intimidation efforts by the D.A.'s and the police.

10.* Whether the Initial Witness Statements Exculpated Guerra (p.17, ¶ 1, lines 4-6): The opinion states that the statements taken by the police shortly after the shooting essentially exculpated Guerra. The Judge's view that the statements were essentially exculpatory is based in part on his belief that Carrasco had blond hair. Removing this, the best that one can say is that the early statements did not point clearly in anyone's direction.

11.* Who Witnessed the Shooting (p.17, ¶ 2, lines 1-5): The opinion says that there were at least six witnesses, including Armando Heredia, who gave statements to the cops between midnight and 1:00 a.m. in which they claimed to have seen Harris shot. Jose Heredia is not listed, even though his statement (Pet. Ex. 28) provides as follows:

The man that was driving the car came out of the car into where the policeman was at. The policeman was standing by the door to his car. . . . [T]he policeman put the man against the car and was going to start to search him. . . . [The other man in the car] came out of the car and walked up behind the policeman and shot him. . . . I could see that he was pointing and shooting at the policeman. . . . I didn't get to see the man's face that was shooting the policeman. (Jose Angel Heredia at 4:15 a.m., July 14, 1982).

While this is later than the midnight to 1:00 a.m. time period, the statement from Armando Heredia is timed at 6:20 a.m., and one from Diaz is timed at 4:35 a.m.

12. Jacinto Vega (p.21, ¶ 1, line 1): The opinion claims that pre-lineup, Vega described the shooter in a way that fit only Carrasco. This is the first time that Vega's name is used, and neither his first name nor an identification of him appears anywhere earlier in the opinion.

13.* Early Descriptions of Shooter Fit Only the Blond Carrasco (p.21, ¶ 1, lines 1-3): The opinion claims that pre-lineup, Galvan, Garcia, Flores, and Vega describe the shooter in a way that fits only Carrasco, *i.e.*, he had blond-like hair and wore brown pants and a brown/maroon shirt. But Carrasco's hair was black, not blond, so the pre-lineup statements of Galvan and Flores (at pp.17-18) cannot fairly be said to describe only Carrasco. Galvan's statement points to Carrasco in describing dark brown pants and a dark brown or black shirt, but point to Guerra in describing shoulder-length hair, and describe neither in referring to blond hair. She also says the shooter was tall and thin. But Carrasco at 5' 8", 158 pounds (F424), was taller and stockier than Guerra at 5' 6" and 127 pounds (F620). I believe that the reference to blond hair was a confusion on the part of the translator after witnesses described the shooter by his nickname, "Guero," which was the nickname used by Carrasco.

14. Galvan told Jose Heredia to Blame Carrasco (p.21, ¶ 2, lines 3-7): The opinion says that Galvan pointed toward Guerra and told Jose, Jr. and Armando Heredia that since Carrasco had died, they should blame the man who "looked like God" or the "wetback" for the shooting. She also told Jose Heredia, according to his testimony.

15.* Galvan's Description of Blond Shooter: At p.21, ¶ 2, last three lines, it says that Galvan encouraged Jose, Jr. and the two Heredia's to identify Guerra as the shooter, "knowing that Guerra did not fit even her own description of the shooter." This is based on Judge Hoyt's belief that Carrasco had blond hair.

16. Jose, Jr. Admits He Did Not See Who Shot his Father (p.22, ¶ 2, lines 4-6): The opinion says that Jose, Jr. admitted in his statement that he had not seen who shot his father because his father pushed him below the dashboard. But Jose, Jr. said nothing about this in his statement (Pet. Ex. 47). Instead, he testified about this at the 10/82 trial (S.F. vol. 21 at 302-303, 307-08).

17.* Early Witness Descriptions of Blond Shooter (p.25, ¶ 1, lines 2-4): Once again, the opinion states that the pre-lineup statements make it clear that the witnesses identified Carrasco as the shooter. (p.25, ¶ 1, lines 2-4)

18.* Garcia First I.D.'s Carrasco (p.26, ¶ 4, line 1 - p.27, lines 1-8): The opinion says that Garcia's first statement identified Carrasco as the shooter. Her first statement describes the shooter as blond, about 5' 8" tall, with brown pants and a brown shirt. The clothing color more accurately describes Carrasco, the blond describes neither, and the 5' 8", while actually Carrasco's height, cannot fairly be said to describe either, since the two men were only two inches apart in height. Again, this statement is based in part on Judge Hoyt's belief that Carrasco's hair is blond.

19.* Omission -- Man Pointing Gun at Perez Looked Like Carrasco (p.29, ¶ 2, lines 5-9): The opinion describes Perez' as testimony at the 11/93 hearing of a second man who ran east on the north side of Walker and, before turning south on Lenox, pointed at Perez an object that looked like a handgun. The opinion fails to mention that at the 11/93 hearing Perez testified that this man looked like Carrasco and that the handgun looked like a 9mm.

20.* Omission -- Heredia Testified that Carrasco was the Shooter (p.30, ¶ 3, lines 1-2, 7-9): The opinion states that Heredia testified at the 11/93 hearing and in his written statement that the passenger, the short-haired man, was the shooter. It neglects to mention that Heredia also testified at the 10/82 trial and that he also described the man in his trial testimony as the light-colored passenger. (S.F. vol. 23 at 744).

21. Did Heredia Sign Statement Because He Saw Mother Arrested (p.31, ¶ 1, lines 2-3): The opinion states that Heredia testified at the 11/93 hearing that he was afraid not to sign the statement, having seen his mother arrested and handcuffed at the scene. My notes of the hearing testimony show that he testified that he signed the statement because he was scared, but they do not reflect his giving the reason for his fear.

22. Omission -- Brown and Medina Gave Credible Testimony (p.32, ¶ 2, lines 1-2): The court finds that the testimony of Garcia, Diaz, Holguin, Heredia and Perez was credible. He omitted Brown and Medina (as well as Guerra's roommates) and did not say that "all" the testimony was credible. Since this statement about credible testimony appears only in the section discussing the failure to disclose materially exculpatory evidence, one can argue that this is the only type of testimony that the judge found credible.

23.* Credibility Finding Is Based on Blond Hair (p. 32, ¶ 2, last three lines): The court references as "[i]mportant to these findings [that five witnesses' testimony was credible] is the physical description of the shooter given by the scene witnesses in their initial statements describing Carrasco." (p.32, ¶ 2, last three lines).

24. Location of Shooter vs. Location of Guerra (p.32, n.8, last three lines): The opinion states that the positioning of the parties supports the conclusion that the person whose hands were on the hood of the vehicle was not the shooter. But it gives a confusing description because it never says that the person with hands on the hood was standing almost due south of Harris and never says that Harris' vehicle was almost due east of the house where the bullets were found after the shooting.

25. Elizondo Gave Credible Testimony (p.34, ¶ 2, lines 3-4): The opinion states that Guerra's attorneys were not shown or told the true results of the trace metal detection test. The only testimony supporting this was from Guerra's trial attorney, Elizondo. Thus, this implies that Elizondo's testimony was credible. It would be nice if the opinion had said so.

26. How Often Police Were Told the Shooter Was a Lefty (p.35, ¶ 2, lines 3-4): The opinion says that the police were told "repeatedly" that the shooter fired the weapon

with his left hand. They were told this (1) once on the night of the shooting by Jose, Jr. and (2) several times by Perez that a man who looked like Carrasco pointed an object that looked like a 9mm gun with his left hand. "Repeatedly" may be too strong a word.

27.* 9mm Gun Was Found at Scene (p.35, ¶ 1, last 2 lines): The opinion says that Guerra could have hired an expert to testify "that the trace metal patterns on Carrasco's left hand were consistent with the patterns left by the 9mm weapon found on him at the morgue." But the 9mm was found under Carrasco's body at the scene where he was shot. (S.F. Vol. 20 at 145-46, 127-28). The gun found at the morgue belonged to Harris (S.F. Vol. 21 at 201-021, which the opinion acknowledges (p. 3, ¶ 2, lines 4-5).

28. Efforts to Identify the Trace Metal Patterns on Carrasco's Left Hand (p.35, ¶ 2, lines 4-5): The opinion states that "there is no meaningful record of any efforts to identify the trace metal patterns on Carrasco's left hand." The only record of such efforts is Amy Heeter's testimony that the pattern she found on Carrasco's left hand was not consistent with the pattern that she received on her left hand from holding the 9mm gun. (S.F. vol.21 at 164, 172-73; State's Exs. 65, 69).

29.* Source of Dirt Found on Guerra's Hands (p.36, ¶ 1, lines 3-4): The opinion says that Floyd McDonald opined at the 11/93 hearing that the dirt found on Guerra's hands, when he was arrested, came from his having been on the ground hiding from the police. But this opinion was found in a statement given by H.P.D. Officer Bratton (F79A), who described Guerra's hands just before they were bagged with a paper sack: "His hands had sand on them from where he had been on the ground being searched by officers." An investigation report indicates the presence of "some rain" earlier in the evening. (F229) McDonald only opined about whether getting moist sand on one's hands from being on the ground being searched would remove a trace metal pattern left by the 9mm gun after it had been fired several times and that neither a normal handwashing nor rubbing one's hands in dirt for a longer period would obliterate trace metal (contrary to Heeter's testimony, S.F. vol. 21 at 162, 174-75), unless done very vigorously.

30. Absence of Trace Metal on Guerra's Body (p.36, ¶ 2, lines 6-7): The opinion states that it is "undisputed that Guerra had no trace metal on his body. But the testimony at the 10/82 trial indicates that Danita Smith checked only Guerra's palms, abdomen and waist, but not his back where he might have held a gun in his pants. (S.F. vol. 21 at 187-88, 194-98)

31. Which Gun Leaves No Trace Metal Pattern (p.36, ¶ 2, last four lines): The opinion says that Heeter testified that the Harris weapon "does not easily leave trace metal patterns." But she testified that she was able to get a pattern after 15 seconds of holding the Harris weapon. (S.F. vol. 21 at 167-68) [note State's Ex. 67, the trace metal sketch from the Harris gun, says that Heeter found no pattern after 15 or 45 seconds], and Danita Smith testified that the Harris gun left a pattern quicker and easier than the 9mm (S.F.vol.21 at 191-192). In contrast, Guerra's weapon, a .45-caliber gun, would leave no trace metal pattern because of the type of metal, according to Danita Smith. (S.F. vol. 21 at 188;

compare State's Ex. 67). In claiming that the testimony that the Harris weapon did not easily leave trace metal patterns was of no evidentiary value and was designed merely to confuse the jury, the opinion ignores the D.A.'s argument that if Guerra was the shooter and shortly thereafter gave Carrasco the murder weapon and the Harris gun, the Harris gun might have left no trace on Guerra's hands and Carrasco would have had the Harris gun in his possession for a longer time than did Guerra.

32. Omission -- D.A.'s Mislead Diaz Testimony (p.37, last line - p.38, ¶ 1, line 1 & ¶ 2, lines 1-2): The opinion states that we argue that the D.A.'s solicited and encouraged Garcia and Perez to overstate or understate the facts in a manner previously discussed in the opinion. But the opinion says nothing about our argument that the prosecutors solicited and encouraged Diaz to overstate or understate the facts. While reference to this in the prosecutorial misconduct section of the habeas petition is somewhat oblique (see Petition at 62, ¶ ii), the same is true about reference to Garcia's testimony (*id.* at 62, ¶ i) and to that of Perez (*id.* at 62, ¶ iii), although the description of the Diaz testimony does appear more clearly in the section on improper identification procedures (Pet. at 168, ¶ 49).

33. Omission -- No Reference to Cemetery Murder (p.38, ¶ 1, lines 4-6): The opinion, in the section concerning use of known false evidence and illegitimate arguments at trial, refers to our argument that the D.A.'s questioned Heredia about the alleged cemetery murder, knowing that it had not occurred. But the opinion never mentions it again. So one cannot tell if it is part of the court's rationale for finding that the prosecutors knowingly used false evidence.

34. D.A.'s Knowledge that Witnesses Had Conferred (p.40, ¶ 2, lines 1-6): The opinion states that when the D.A.'s argued in closing that the eyewitnesses had not conferred with each other when they identified Guerra as the killer, they knew this was factually incorrect because at least one of the D.A.'s was at the scene shortly after the shooting and participated in the gathering and interviewing of witnesses. It is true that a D.A. was at the scene shortly after the shooting, though it is unclear in the police reports if he participated in the gathering and interviewing of witnesses (he did spot and arrest Guerra and help at the crime scene and probably the lineup) (but see F342), but this D.A. was Terry Wilson, as reflected by his statement (F105-06) and the investigation reports (F233, 267). Bax's name does not appear until he witnessed Guerra's so-called "confession" on 7/14 at 3:00 a.m. (F366-67; Pet. Ex. 14). Moen's name first appears when he and Bax were at the 7/22 reenactment (F375).

35. Guerra Had Police Reports of Palos' Questioning (p.40, ¶ 1, lines 2-3 & n.10): The opinion states that the police had not produced or made available pretrial the statement by Officer Bratton (Pet. Ex. 17) showing that Officer Palos questioned Jose Torres Luna just before Carrasco was killed. But I have no notes or recollection that Elizondo testified about not having received this particular document. The only documents that I believed he testified about not having received before trial began were the two trace metal pattern sketches (State's Exs. 68, 69) and the police report showing that the police had discovered that the cemetery murder rumor was false (F376, marked Pet. Ex. 39). The

Petition, when discussing the Palos statement (Pet. at 97-98), never claims that statement had not been produced; it merely mentions that the statement was in the D.A.'s files at the time of trial (Pet. at 98).

36. Enrique Torres Luna Never Testified (p.42, ¶ 2, lines 1-6): The opinion states that we claimed that one of the D.A.'s questioned a witness (described in a way that had to be Enrique Torres Luna) about his "participation" in a bank robbery for which he was not under investigation, and for which he had not been criminally charged. But Enrique never testified and was under suspicion at the time of trial. Our habeas petition (Pet. at 85-87) identified Enrique Torres Luna as a trial spectator, not as a witness, insisted that the State knew that Enrique could not have participated in the robbery because he did not meet the suspect's description, explained that Guerra had identified Enrique's brother, Jose, who was a witnesses for Guerra, as a long time friend, described how the D.A.'s took every opportunity to remind the jury that Jose and Enrique were brothers, and detailed how after Guerra was sentenced to death, the State dropped all charges against Enrique because of insufficient evidence.

f:\sa0399\Aldape\Summary

I.

Factual and Procedural History

On July 13, 1982, J. D. Harris, a Houston police officer, was on a patrol in a Hispanic neighborhood. Around 10:00 p.m. a pedestrian, later determined to be George Lee Brown, waved down officer Harris complaining that a black and burgundy Cutlass automobile had almost run him over while he was walking his dog. Within minutes, officer Harris approached a stalled vehicle fitting the description given to him by the pedestrian.

The vehicle was occupied by Ricardo Aldape Guerra and Roberto Carrasco Flores, undocumented workers, who lived in the neighborhood. Pursuant to officer Harris' command, the occupants approached officer Harris' vehicle. The second occupant pulled a nine-millimeter Browning semi-automatic pistol and shot officer Harris three times. It is undisputed that the weapon was owned by Carrasco. At the time of the shooting, the first occupant had placed or was placing his hands on the hood of officer Harris' vehicle in obedience to officer Harris' command. As the individuals fled the scene of the crime, the second occupant fired a nine-millimeter pistol into an approaching vehicle shooting Jose Armijo, Sr., in the presence of his two children.

It is undisputed that Carrasco wore a maroon shirt and brown pants and that Guerra wore a light green shirt and blue jeans. Carrasco was also known in the neighborhood as "Guero" or "Wero" because of his light-skin, and light-colored blond-like hair. As well, he was clean-shaven and had short hair; Guerra, on the other hand, had black, straight, shoulder-length hair, a mustache, and a beard.¹

Within an hour of the shooting, Carrasco was killed in a shootout with police, but not before he shot and seriously wounded another police officer with the same weapon used to kill officer Harris and Mr. Armijo. Officer Harris' weapon, a .357 Colt Python, was found in Carrasco's waistband when his body was searched or examined at the morgue. Also discovered was an additional "ammo" magazine for the nine-millimeter pistol in a "military-type" magazine pouch attached to Carrasco's belt.

Guerra was arrested shortly after Carrasco was killed, while hiding beneath a horse trailer. He was unarmed at the time, although a .45-caliber Detonics pistol was found lying under the trailer, wrapped in a bandanna. After he was arrested, he was taken to the crime scene where spectators had gathered and witnesses were being identified and questioned. Later, he was

¹ These characteristics and features are important because the identity of the "shooter" was in dispute.

taken to the police station.

Guerra was tried for the offense of capital murder and was convicted on October 12, 1982. On October 14, 1982, he was sentenced to death by lethal injection. His conviction was affirmed on May 4, 1988, by the Texas Court of Criminal Appeals in Guerra v. State, 771 S.W.2d 453 (Tex. Crim. App. 1988) (*en banc*), cert. denied, 492 U.S. 925 (1989).

On September 21, 1992, the state trial court denied Guerra's application for writ of habeas corpus, as well his request for an evidentiary hearing and failed to enter findings of fact. Guerra's case was automatically forwarded to the Texas Court of Criminal Appeals, which adopted the trial court's recommendation in an unpublished, per curiam, order. Guerra then filed this application for a federal writ of habeas corpus.

II.

Petitioner's Contention:

In his several arguments, Guerra contends that he was denied a fair and impartial trial because of: (a) pretrial intimidation of witnesses; (b) an improper identification procedure; (c) the prosecutors' failure to disclose materially exculpatory evidence; (d) the prosecutors' use of known false evidence and known illegitimate arguments to the jury; and, (e) the cumulative

effect of the prosecutorial error.

Each of these contentions and the relevant evidence will be addressed in turn. To assist the reader in following this discussion, it should be noted that the evidence consists of (a) the statements of witnesses taken on the morning following the shooting; (b) the trial testimony in the underlying conviction; and (c) the testimony taken in this proceeding.

Restated, Guerra complains that he was brought to the crime scene and location of the witnesses in handcuffs; at the police station, he was twice escorted past the witnesses with handcuffs and bags over his hands; at the lineup, he was the sole Hispanic on exhibition with long-hair; before, during, and after the lineup, the witnesses were permitted to communicate amongst themselves, with one particular witness urging the others to identify Guerra as the shooter; at a reenactment of the crime and at a pretrial weekend meeting of the witnesses, the prosecutor told the witnesses that Carrasco was dead and that Guerra was the shooter; at the trial, two life-size mannequins were stationed in front of the jury from the beginning to the end of the trial. Finally, Guerra argues that the prosecution failed to disclose materially exculpatory evidence and used evidence known to be false, or half truths, to convict him. The cumulative effect of all of these actions resulted in a

violation of his "due process" rights and the fundamental right to a fair procedure leading up to trial.

III.

Pretrial Intimidation of Witnesses:

III (a) The Petitioner's Contentions:

The petitioner contends that several, if not all, of the witnesses were intimidated by the police and the prosecutors, the result of which was that the witnesses either gave contradictory testimony, or their testimony was presented in a manner that shaded the truth. On the question of intimidation, the petitioner called several witnesses who were under the age of 18 at the time: Patricia Diaz (age 17); Elena Holguin; Frank Perez (age 17); Herlinda Garcia (age 14); Jose Heredia (age 14); Armando Heredia (age 16); and Elvira Flores (age 16).

The evidence is undisputed that the witnesses were brought to the police station before midnight on July 13, 1992. They remained until about 6:30 a.m. the next morning. The petitioner asserts that in addition to lack of sleep, the ability to coerce and intimidate the witnesses was made easy by three other factors common to most of the key witnesses, i.e., their inability to speak fluent English, their lack of education, and their youth.

The native language of all but one of the neighborhood witnesses is Spanish and, at the time, many of the witnesses had little or no command of the English language. These facts, coupled with the lack of formal education, according to the petitioner, created a situation where the witnesses' statements as taken lent themselves to selective interpretations. These circumstances, according to the petitioner, set the tone for how the witnesses were handled.

III (b) Federal Habeas Testimony:

During the federal evidentiary hearing, Patricia Diaz, a minor in 1982, testified that she told police officers at the crime scene that she did not see the shooting, but only got a glimpse of Guerra's profile after she heard the shots. She told them that Guerra's hands looked empty. One of the police officers, using vulgar language, insisted that Diaz had seen more and threatened to take away her infant daughter unless she cooperated. While still at the crime scene, Diaz saw another officer yelling at, handcuffing, and placing her aunt, Trinidad Medina, into a police car.

Diaz also testified that at the pretrial weekend meeting, held shortly before trial, the prosecutors also yelled at her, insisting that she change her testimony in some respects. She also told the prosecutor that she never

saw Guerra pointing at officer Harris.²

Elena Holguin also testified at the trial and this proceeding. She stated that she was in her home at the time of the shooting. After she told police officers that she had not seen officer Harris get shot, one of the police officers became angry and told her that she had a duty to help them. Because of her alleged uncooperativeness, she was handcuffed, without provocation or justification, and placed into a police car. She was taken to the police station barefoot because the police would not permit her to get her shoes. She further testified that, in total, she was kept in handcuffs for more than two hours and they were not removed until she reached the police station.

Frank Perez testified that shortly after Harris was shot, a police officer pointed a gun at an unidentified Hispanic male, told him to lie down on the ground and yelled: "Why did you kill the cop?" The man on the ground was neither Carrasco nor Guerra. He also testified that at the pretrial

² During Diaz' testimony the prosecutor, on several occasions, altered the testimony by question and reaffirmed it again and again. For example:

Q. "Could you see or make out, Patricia, what type of object, if anything, this man had in his hand?" (p. 314, L. 6)

Q. "Could you see which way this man went after he pointed at the police officer like you have shown the jury....?" (p. 315, L. 2)

Q. "Now, could you describe this man you saw pointing at the police officer...?" (p. 316, L. 12)

Q. "Does that look a lot better, like the way he looked that night he was pointing at the police officer?" (p. 318, L. 4).

The record shows that Diaz never saw either man pointing at the police officer, only at the car. Further, she never saw any object.

weekend meeting, he told the prosecutors that, shortly after officer Harris was shot, a man who looked like Carrasco had run past him and pointed an object at him that appeared to be a nine-millimeter gun. In response, the prosecutor insisted that if Perez was less than "100%" certain that the object was a gun, he should not testify that the object pointed at him was a "gun," just an "object."

Jose Luis Luna was called to testify, as well. He testified that after officer Harris had been shot, but shortly before Carrasco was killed, police officers came to his home at 4907 Rusk, with guns drawn. The police officers ordered J. Luna and Jose Manual Esparza outside, forced them face down on the front porch, pointed guns at their heads, put a foot on them and cursed and screamed at them, while they searched the area.

Roberto Onofre testified that he witnessed this event between the police, J. Luna and Esparza as he was returning to the house that he shared with them. Onofre also testified that after Carrasco was killed, two police officers returned and questioned himself, Jose Luna, Jose Esparza and Enrique Torres Luna. During this exchange, the officers screamed, cursed, and threatened to arrest them if they did not tell what they knew. Several police officers then entered the house and searched it.

Onofre and J. Luna both testified that several times during July, after Carrasco's death and the after the arrest of Guerra, police officers came to their home after midnight while they were asleep, entered the house, conducted themselves violently and used abusive language. They would order the residents to sit in the living room while they searched the house, kicking items out of the way and tearing up any newspaper clipping about Guerra. Although Onofre signed a consent to search at the time, he testified that he did so only because of the police officers' conduct, their actions toward the residents, and their mannerisms.

Herlinda Garcia, 14 years old at the time, testified that she told the police that Carrasco was the shooter. At that time, several police officers told her she would be arrested and jailed unless she cooperated. An unidentified police officer stated to her "that she just did not know what all could happen to her and her husband." At the time, Garcia's husband was over 18 years and on parole. She testified that she took these comments as a threat to reincarcerate her husband on rape charges if she did not say what was expected of her.

At the pretrial weekend meeting, after Garcia told one of the prosecutors that Guerra was not the man who had shot officer Harris, the

prosecutor told her that she was confused and that she could not now change her mind because she had already made a statement identifying Guerra as the shooter, not only of officer Harris but also Mr. Armijo.³

George Brown testified that after Mr. Armijo was shot, he was left in his car, without medical attention, for over an hour. However, officer Harris was immediately taken to the hospital within a few minutes after the ambulance arrived.⁴ For the four to six hours leading up to the lineup at 6:00 a.m., Brown was kept separate from the other Hispanic witnesses, they were seated on a bench in a hallway outside the Homicide Division office. He attributes this segregation to the fact that his last name is of European origin.

³ The statement referred to by the prosecutor states in relevant:

"This evening sometime after 10:00 p.m. my sister and me (sic) were going to the store My sister and I was (sic) walking down the sidewalk when I remembered that I had left my money I ran home to get my money When I got back to my sister we saw this black car turn off of Walker on to Lenox street rear (sic) fast As the car was getting ready to back up a police car ... pulled in behind it."

"...[H]e told the men in the black car to get out of the car.... Both men came out of the car on the driver's side [H]e told them to put their hands on the hood...."

"Before I got a chance to move I saw this guy with the blond hair reach into the front of his pants and pull out a pistol and shoot the policeman.... The man with blond hair came after me shooting at me.... [H]e then shot the man in the read (sic) car." [Mr. Armijo]

"... I did not get to see the other man and I do not know what happened to him ... the man that shot the policeman ... was wearing brown pants and a brown shirt that was open all the way down."

⁴ Mr. Armijo was still alive during this time and was kept at the scene, according to police, because they thought that he had shot officer Harris. This delay by police quite possibly resulted in the death of a key witness.

He could, nevertheless, overhear them talking among themselves about the shooting.

Garcia also testified that while at the police station she overheard police officers tell several of the Hispanic witnesses not to discuss the case with anyone, except the police and the prosecutors, and especially warned them not to talk to Guerra's lawyers or "they [the witness] could get in trouble." In addition, Garcia and several of the other witnesses testified that at the pretrial weekend meeting one of the prosecutors pointed to a picture of Carrasco and stated to the witnesses that the man in the picture was the man who died in the shootout with police. They then pointed to a picture of Guerra and said that he was the man who shot and killed officer Harris and Mr. Armijo.

III (c) Discussion and Conclusion:

Intimidation by the police or prosecution to dissuade a witness from testifying or to persuade a witness to change his testimony, when combined with a showing of prejudice to the defendant, violates a defendant's "due process" rights. See United States v. Heller, 830 F.2d 150, 152-53 (11th Cir. 1987). This was the case in United States v. Smith, 577 F. Supp. 1232, 1236-38 (S.D. Ohio 1983) where the Court found that threats by government agent caused a witness to give false, damaging testimony. See also Webb v.

Texas, 409 U.S. 95 (1972). Thus, the government does not have the unfettered right to interference with any witness, particularly, in making the choice to testify or not. United States v. Hammond, 598 F.2d 1008, 1012-13 (5th Cir. 1979). Where interference occurs by the police, police actions that intimidate witnesses may be imputed to the state in its prosecution. *Cf.*, Fulford v. Maggio, 692 F.2d 354, 358 (5th Cir. 1982), rev'd on other grounds, 462 U.S. 111 (1983). Equally so, the state has a duty to disclose such conduct. This duty is imposed not only upon its prosecutor, but upon on the state as a whole, including its investigative agencies. Therefore, if a confession is in the possession of a police officer, constructively, the state's attorney has both access to and control over the document. *Id.*

It is clear to this Court that the mood and motivation underlying the police officers' conduct arising out of this case was to convict Guerra for the death of officer Harris even if the facts did not warrant that result. The Court finds and holds that the police officers and the prosecutors intimidated witnesses in an effort to suppress evidence favorable and material to Guerra's defense. Specifically, the written statements that were taken after the line-up are in many respects in significant contrast to those taken before the line-up. The Court attributes this to the fact that Carrasco had been killed and the

strong, overwhelming desire to charge both men with the same crime, even if it was impossible to do so.

In addition to the scurrilous conduct exhibited by the police, the Court is confounded by the fact that the police would handcuff two innocent women, threaten to revoke the parole of another's common-law husband, and repeatedly, day after day in the early morning hours, search the residence of innocent people. This conduct alone speaks volumes about the intimidation suffered by these children who were caught up in the police net and the circumstance.

The prosecutors' conduct was equally rank. Before and during the trial, questions to the witnesses were stated in such a manner that the questions stated or implied complicity by Guerra, irrespective of the fact that the answers did not conform. The tone of voice, as well as the artful manner in which the questions were asked, left little room for truthful answers or explanation. When the answers were not to their liking, they resorted to ridicule. Such conduct severely prejudiced Guerra's right to a fair trial and, therefore, violated his right to "due process" of law. See Heller, 830 F.2d at 152-53; Smith, 577 F. Supp. at 1236-38; see generally Webb, 409 U.S. 95 (1972) *cf.*, Hammond, 598 F.2d at 1012-13.

The Court concludes that the pretrial intimidation of the witnesses, most of whom were children, resulted in violating Guerra's right to fundamental "due process" and a fair trial.

IV.

Improper Identification Procedures

IV (a) The Legal Standard:

The Supreme Court has adopted a "totality of the circumstances test" to be utilized in the analysis of identification testimony. Identification testimony is admissible if it appears "reliable," even if it is flawed by improper police behavior. Manson v. Brathwaite, 432 U.S. 98, 114 (1977). Thus, an unnecessarily suggestive identification is not subject to a "per se" exclusion. Id. The Court must determine whether an identification procedure constitutes a denial of "due process." In doing so it must first be determined whether the pretrial identification was unnecessarily suggestive. Assuming that it was, the Court must then determine whether the identification was so unreliable that the defendant's "due process" right to a fair trial would be precluded if the identifications were permitted. Id.

The factors to be considered in evaluating the reliability of an identification are: (i) the witnesses' opportunity to view the accused at the

time of the crime; (ii) the witnesses' degree of attention; (iii) the accuracy of the witnesses' prior description; (iv) the level of certainty demonstrated at the confrontation; and (v) the time between the crime and the confrontation. Id. (citing Neil v. Biggers, 409 U.S. 188 (1972)).

Where the state's use of pretrial identification procedures posed a substantial likelihood of tainting the state witnesses' identifications of the defendant and both, their out-of-court and in-court, identifications are not shown to be independently reliable, the Court must determine if admission of the identifications into evidence is harmless error. See Young v. Herring, 917 F.2d 858, 864 (5th Cir. 1990), cert. denied, 112 S. Ct. 1485 (1992) (citing Chapman v. California, 386 U.S. 18, 23 (1967)). When the state is the beneficiary of any error, the burden of proving that the error was harmless, beyond a reasonable doubt, rest at the state's door. Thigpen v. Cory, 804 F.2d 893, 897 (6th Cir. 1986), cert. denied, 482 U.S. 918 (1987) (citing Chapman, 386 U.S. at 24).

IV (b) Discussion:

The facts of this case present a situation that is somewhat peculiar to the Brathwaite case. Here, the facts show that the petitioner was known in and around the neighborhood, therefore, it was logical that the witnesses could

identify the petitioner as being at the scene when officer Harris was shot. Moreover, Guerra's presence at the scene is not in dispute. Guerra gave a statement to that effect on the evening of the shootings. What is confounding is that the police took statements shortly after the shooting that were essentially exculpatory of Guerra. After learning of Carrasco's death and after the lineup, the police took additional statements that contradicted or impeached the prior statements in some subtle and other not so subtle ways.

In this regard, the record shows that there were at least six witnesses who claim to have seen officer Harris shot: Hilma G. Galvan, Herlinda Medina Garcia, Jose Francisco Armijo, Jr., Elvira Medina Flores, Patricia Ann Flores Diaz and Armando Heredia. When these persons gave their first written statements, between 12:00 a.m. and 1:00 a.m., they stated in relevant part the following:

... "I know the one that shot the officer by sight..."
The shooter "was wearing dark brown pants and a dark brown or black shirt. He (sic) tall and thin and has shoulder length straight blond hair." (Hilma G. Galvan at 12:05 a.m., July 14, 1982).

* * *

... "I saw the guy with the blond hair reach into ... his pants and pull out a pistol and shoot the policeman... He was wearing brown pants and a brown shirt that was open all the way down." (Herlinda Medina

Garcia, at 12:12 a.m., July 14, 1992).

* * *

... "The man shot the gun with his left hand.... I didn't see the men that shot the policeman too good and I don't remember what they looked like or what they were wearing...." (Jose Francisco Armijo at 12:15 a.m., July 14, 1982).

* * *

... "Both the driver with blond hair and the passenger ... put their hands on the police car.... At this time the blond-haired driver pulled a pistol ... and started shooting at the police officer I don't think I can identify the two persons I saw...." (Elvira Medina Flores at 12:40 a.m., July 14, 1982).

* * *

... "I told the detective that the man that was standing fourth from the _____ was the same man that I had seen on Walker.... I guess he had a gun in his hand." (Patricia Ann Flores Diaz, second statement, at 6:20 a.m. July 14, 1982).⁵

* * *

.... "The man that shot the police officer I know him as Wedo (sic). I have known him about a month. As soon as he got out of the car I recognized him. He was also the man that ... shot the policeman."

⁵ Diaz's first statement, given at 1:40 a.m., described the shooter as a Hispanic male with "collar length black hair and was wearing a long sleeve, dark colored shirt." By the time Diaz gave her second statement she was unsure which of the men had shot the officer. For sure she did not know whether Guerra even had a weapon.

(Armando Heredia at 4:35 a.m. July 14, 1982).

* * *

Two others gave relevant statements that bear upon the identification issue because of their proximity in time and circumstances to the events. John Reyes Matamoros and George Lee Brown gave statements before the lineup. In relevant part they state:

"I was able to see one of the men that had gotten arrested [after Carrasco was killed] and he was the man that was sitting in the front passenger seat [between 9:45 p.m. to 10:00 p.m.]....." (George Lee Brown at 12:40 a.m., July 14, 1982).

* * *

"The man I saw running with the gun was a mexican american (sic) about 20 or 21 years old. He had shoulder length hair that was not as dark as mine and it looked more like hair that a white person would have. He was wearing a button up shirt and brown pants....." (John Reyes Matamoros at 12:10 p.m., July 14, 1982).

Several of the witnesses knew Guerra from the neighborhood. For the police to utilize this familiarity in the reckless manner that it did, is troubling. In fact, the state used a host of improper identification procedures in an effort to manipulate the witnesses' statements and testimony. Notably suggestive were (i) permitting the witnesses to see the petitioner in handcuffs

on several occasions while the witnesses were waiting to view the lineup, and (ii) permitting the witnesses to talk about and discuss identification before, during and after the lineup.

The prosecutors joined the hunt by conducting a reenactment of the shooting shortly after the incident with various chosen witnesses participating. This procedure permitted the witnesses to overhear each others view and conform their views to develop a consensus view. At the pretrial weekend conference, the prosecutors presented the two mannequins intended for use during trial. These life-size mannequins, created in the images of Guerra and Carrasco, were utilized then and throughout the trial to reinforce and bolster the witnesses' testimonies. The effect of these impermissible suggested procedures also resulted in a denial of "due process", as evidenced by the witnesses' federal habeas testimony.

The habeas testimony reveals that Guerra, handcuffed and with paper bags over his hands, was walked and shoved down the hallway outside the Homicide Division offices past the witnesses. He was then taken from the Homicide Division offices to the photo lab, where his clothes were taken from him. On both occasions, he was escorted along the hall before Diaz, Flores, Garcia, Jose, Jr., Galvan, Medina and Perez.

Before the lineup, Galvan, Garcia, Flores and Vega described the shooter in such a way that the description fit only Carrasco, i.e., he had blond-like hair and wore brown pants and a brown/maroon shirt. Jose, Jr., who was 10 years old at the time, could only identify the shooter as being left-handed. This description was critical because Carrasco was left-handed. After the lineup and, with the knowledge that Carrasco was dead, the witnesses gave a series of second statements declaring, in spite of numerous previous assurances to the contrary, that Guerra was the shooter.

The various testimonies also show that Galvan spent most of her time in the hallway talking to Jose, Jr., and Flores. Although a general instruction or warning against talking was given, Galvan continued. She pointed toward Guerra and said to Jose, Jr. and Armando Heredia, in Spanish, loud enough for all the witnesses and the officers in the room to hear, that since Carrasco had died, they could blame the man who "looked like God" or the "wetback" from Mexico for the shooting of officer Harris. Based on her various accounts, Galvan's statement, that she actually witnessed the shooting, is suspect. Nevertheless, she encouraged the minors to identify Guerra as the shooter knowing that Guerra did not fit even her own description of the shooter.

She continued by stating that, Mexicans only come to the United States to commit crimes and take jobs away from United States citizens. She repeatedly referred to Mexican Nationals as "Mojados" or "wetbacks". She was also heard repeatedly telling Jose, Jr., that Guerra was the killer. This conduct can be attributed only to her prejudice toward Mexican Nationals who, as Galvan stated, "took the jobs from Americans." The Court concludes that these expressions of prejudice against undocumented aliens was, as likely as any, the motivation for the inconsistencies between Galvan's own statement and her testimony.

Galvan's influence also explains how Jose, Jr.'s testimony was so specific and direct when he was overheard in the hallway at the police station admitting that he had not seen Guerra or Carrasco clearly enough to know which had fired the shots. In fact, Jose, Jr. admitted in his statement that he had not seen who shot his father because his father had pushed him below the dashboard as the shooting commenced. He repeated his inability to identify the shooter while he was sitting in the hallway outside the Homicide Division upon seeing Guerra during the lineup.⁶ It is more likely so than not, that

⁶ It was argued by the state that Jose, Jr. became fearful when he saw Guerra and did not want to tell all that he knew. It was later, when he had gathered himself that he had the courage to come forward. However, the court had the benefit of a news clip in which Jose, Jr. was featured and related the incidents to the news media the day after the shooting.

Jose, Jr.'s belief that Guerra was the shooter was a result of seeing Guerra in handcuffs at the police station and hearing Galvan, repeatedly, insist that Guerra was the shooter.

During the trial, the prosecutors placed the mannequins in front of the jury and they remained there during the testimony of the witness. Heredia and Perez testified that during the trial, the positioning of the mannequins helped them identify which of the men was dead. [The Carrasco mannequins' shirt had bullet holes and blood stains, while the shirt on the Guerra mannequin did not.] Donna Monroe Jones, a juror during the trial, also testified. She testified that the jurors noticed that the shirt on the Carrasco mannequin was blood-stained and bullet-riddled. Additionally, she testified that the mannequins made the jurors feel uncomfortable and ill at ease.

Given the undisputed facts leading up to and surrounding the lineup, the identification of Guerra at the lineup was predestined. After all, he was present at the time of the shooting. To then use that fact as the sole basis to prosecute him for capital murder, is more than a stretch. Under the "totality of the circumstances," the identification procedures used by the police and the prosecutors were so corrupting that it caused witnesses, who either

knew otherwise, or did not know at all, to testify that Guerra had committed the crime.

It is also relevant that the police officers and the prosecutors did not quiet Galvan and others, as they commented before, during and after the lineup. It is relevant to this inquiry, as well, that the prosecutors misused the identification of Guerra so as to violate his right to a fair trial. So, different from Thigpen and Neil, it is the effects of these draconian procedures and the results attendant to this abuse of power, that are arresting.

The pretrial use of the mannequins in the meeting with witnesses at the prosecutors' office the weekend before trial was certain to reinforce the consensus facts so that there would be complete harmony in the testimony. The unrestricted, incessant presence of the mannequins, one wearing a bullet-riddled, blood-stained shirt that the jurors and witnesses saw daily, violated a constitutional guarantee of a fair trial, by injecting impermissible suggestive factors into the trial process. Holbrook v. Flynn, 475 U.S. 560, 570 (1986).

It was no mystery to the state that their entire case against Guerra rested on the witnesses identifying him. The state had to count on the eyewitnesses excluding from their testimony, facts that clearly pointed to

Carrasco.⁷ Therefore, the state, to seal its victory, deliberately chose to taint the identification process by insisting upon perjured testimony. The statements taken before the lineup makes it abundantly clear that the witnesses identified Carrasco as the shooter. It was only after the unexplained misconduct by the police officers, the permitted misconduct on the part of Galvan, and the reinforcement by the prosecutors, that Guerra was chosen as the shooter.

IV (c) Conclusion:

The state has the burden of proving, beyond a reasonable doubt, that the intentional act of causing to be admitted tainted, unreliable and perjured testimony, identifying Guerra as the shooter, was harmless. Thigpen, 804 F.2d at 897 (citing Chapman, 386 U.S. at 24.) The state has offered no evidence to contradict this point and has failed to discharge its duty.

V.

Failure to Disclose Materially Exculpatory Evidence

V (a) The Legal Standard:

There is long standing authority for the principle that, "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material, either to guilt or

⁷ [Richard Bax, one of the prosecutors in the 1982 trial, conceded "the physical evidence ... totally pointed towards Carrasco Flores as being the shooter...."]

to punishment, irrespective of the good faith or bad faith of the prosecution."

Brady v. Maryland, 373 U.S. 83, 87 (1963). In order to establish that evidence falls within the purview of Brady, a petitioner must establish that the evidence was suppressed and that it was material and favorable. Id. Suppressed evidence is "material" if there is a reasonable probability that had the evidence been disclosed to the defense, the result of the proceeding would have been different. United States v. Bagley, 473 U.S. 667, 682 (1985).

V (b) Discussion:

Before the trial, Guerra's attorneys filed motions requesting production of all material inconsistent with the guilt or lawful arrest of Guerra. They also filed an extensive motions for pretrial discovery and inspection. Obviously, the conduct of the police and prosecutors was unknown to the defense attorneys. Yet, it was the type of conduct that the motions sought and the type that the prosecutors were duty bound to disclose.

In the discussion that follows, the Court analyzes the various witness statements and the police's and prosecutors' conduct surrounding the statements. It is the conduct giving rise to and surrounding the statement that is the focus of the petitioner's charge.

Garcia's first statement identified Carrasco as the shooter. She

described the events and actor as follows:

The blond hair (sic) reach into the front of his pants and pull out a pistol and shoot the policeman ... the man with the blonde hair then shot the man in the read (sic) car ... the man that shot the policeman and the man in the red car had blonde hair and was about 5'8" tall He was wearing brown pants and a brown shirt....

This version was reduced to a written statement and she was asked to sign it. Garcia, who had attended only seven years of school, asked the police officer to read it to her because she could not read well. The police officer refused and told her to "just sign it." According to Garcia, she then signed it because of the earlier verbal threat that another police officer made concerning revoking her husband's parole for living with her, Garcia, a minor.

After Garcia watched the lineup, she told the police that the man in the number 4 position was not the shooter but, instead, was the man with empty hands near the front of the police car at the time officer Harris was shot. When the second statement was prepared, it omitted the exonerating information provided by Garcia. This second statement was not read to Garcia.

From the Court's perspective, knowledge of this conduct explains the prosecutor's impatience with Garcia during the trial of the case. The

prosecutor insisted that Garcia had not seen a blond-haired man shoot officer Harris causing her to testify that she had not. The prosecutor then attributed Garcia's reluctance to testify to fear of reprisal from people in the neighborhood.

According to Diaz, she told the police that when officer Harris was shot, the long-haired man was standing on the driver side of the police car near the front end, facing toward the police car with his arms extended out over the police car, feet spread apart, and that the palms of his hands were facing down toward the police car. In addition, his hands were empty and were positioned as if he were about to place his hands on the hood of the car to be searched.

After the lineup was conducted, Diaz told the police that the man in the number 4 position was the man who had been on the driver side, near the front, of the police vehicle. In spite of hearing this, an officer prepared another statement omitting the exonerating information provided by her. She signed this statement, as well, without reading it, unaware of its true contents.

At the pretrial weekend meeting, Diaz told one of the two prosecutors that she was at the crime scene at the time of the shooting and that it did not look as though Guerra had a gun, because at the time of the

shooting Guerra's hands were open with his palms down on the hood of the police car. This exculpatory evidence was not recorded and not passed on to the defense.

During the habeas hearing, Perez testified that he told the police on the night of the shooting that he saw two men running past him that evening after the shooting of officer Harris. The first man ran east on the south side of Walker and turn south onto Lenox. Perez stated that he was too far away to recognize the runner. A second man ran east on the north side of Walker and turned south on Lenox. As the second man ran past Perez, the man pointed an object at Perez that he was holding in his left hand. As he ran, the object fell from his hand to the street. It made a metallic sound as it hit the pavement and looked like a handgun with a clip. The runner stopped to pick the object up, and continued running south on Lenox toward McKinney.

When Perez's statement was prepared, it omitted the fact that Perez had identified the object as a handgun. The police officer persuaded Perez to have the description in the statement read that the runner had dropped a metallic object. Later, in discussing his testimony with the prosecutor he was informed that he should describe the "object" as an "object"

if he was not "100% certain" that it was a gun.

At the lineup, Perez told the police that he recognized Guerra from having seen him earlier in the hallway, but that Guerra was not the man who had dropped the object as he ran past him earlier that night. He was not invited to the reenactment a week or so after the shooting.

Jose Heredia's testimony in this proceeding and his written statement identifies the passenger as the shooter. He testified that he told the police that when officer Harris was shot, officer Harris was standing just behind his driver's door and that the long-haired man was standing on the driver's side of the police car near the front end. He further stated that the man was facing the police car with his hands on the hood of the police car, a foot apart, palms down and empty. The short-haired man, approaching a few feet southeast of officer Harris and the long haired man (Guerra), pointed a gun at officer Harris and shot him.

After hearing Heredia's version, a police officer prepared a statement that omitted the exonerating information given concerning Guerra; specifically, that Guerra was against the car and empty handed when Carrasco came up behind Guerra and shot officer Harris. Heredia, like several of the other witnesses, tried to read his statement but could not because he could not

read English. Like others, he was told to "just sign it." He further testified that he was afraid not to sign the statement, having seen his mother (Holguin) arrested and handcuffed at the scene.

After Heredia viewed the lineup, he told a police officer that he recognized Guerra as the driver of the black car and that Guerra was not the man that shot officer Harris. Heredia was not asked to sign another statement.

Holguin, Heredia's mother, testified that she told the police that she had not seen the shooting at all. In spite of this, a statement was prepared that she was told to sign. Holguin testified that she informed the police officer who prepared the statement that she could not speak English. No one translated the statement for her benefit. Although completely unaware of the contents of the statement, Holguin testified that she signed it because she was ordered to do so. Earlier that evening, she had been handcuffed at the scene for several hours before being brought to the police station.

George Brown testified in this proceeding that he told the police that, after hearing shots that were later determined to have killed officer Harris, he ran west on Walker street from Delmar past Lenox to Edgewood. As he passed Lenox he saw someone running south on Lenox that appeared

to be Carrasco. Later, he saw Perez who stated to him that the man who was seen running south on Lenox was carrying a gun and had dropped it. Brown related Perez's statement to the police, that the person handling the weapon had dropped it while running. Brown's written statement omitted the information that he had received from Perez and had related to the police.

V (c) Conclusion:

The Court finds that the testimony of Garcia, Diaz, Holguin, Heredia and Perez is credible. Moreover, it is consistent with the physical evidence that establishes that Guerra did not shoot officer Harris and Mr. Armijo. Specifically, the physical evidence shows that the shooter used a nine-millimeter handgun, to kill both, officer Harris and Mr. Armijo. It further shows that the weapon had marks on it of the nature and type that would exist had the weapon been dropped to the pavement.⁸ Important to these findings is the physical description of the shooter given by the scene witnesses in their initial statements describing Carrasco.

⁸ Floyd E. McDonald, formerly head of the forensic lab for Houston Police Department, the department where Amy P. Heeter worked, testified that the description by Perez of what occurred on that evening concerning the dropping of the weapon, is consistent with the marks that he found on the weapon. Moreover, the positioning of the parties leads to the conclusion that the person whose hands had been placed on the hood of the vehicle was not the shooter. The shooter, because of the location of the bullets found after the shooting, would have stood east of the police officer and the other person. The bullets lodged in the house on the northwest corner of Walker and Edgewood. Officer Harris' vehicle was parallel to this house.

As well, the fact that the weapon was found on the body of Carrasco was ample evidence of an exonerating nature to put the police and the prosecutors on notice that Carrasco was the killer. The prosecutors' theory, that Guerra and Carrasco had mistakenly switched weapons in the car before the shooting and had exchanged them later at the house (4907 Rusk), was sheer speculation and no evidence was ever proffered to support this theory. Moreover, it was not even a reasonable hypothesis based on any inference that could have been drawn from the evidence.

The police officers and prosecutors had a duty to accurately record the statements of the witnesses, to fairly investigate the case, and to disclose all exculpatory evidence. Moreover, they had a duty to not prosecute an innocent man. They failed in these duties. These intentional omissions, during the investigation and prosecution, and the inclusion of poisonous speculations during trial, had the effect of suppressing and destroying favorable testimony that the Court finds was material to Guerra's defense. The information that the police and prosecutors failed to disclose, as well as the manner that the investigation and prosecution were conducted, hardly left a paper trail, and intentionally so. The concept of deceit was planted by the police and nurtured by the prosecutors. This conduct by the police and prosecutors could only

have been deliberate and, so much so, that even the exonerating evidence was used in such a manner as to create a materially misleading impression.

The prosecutors and officer Amy Parker Heeter, the state's expert on trace metal test, also misled the defense attorneys concerning the trace metal detection test results. Specifically, Guerra's attorneys were not shown or told what the true results of the trace metal detection test were. The prosecutors told the defense attorney only that the test had been positive as to Carrasco's handling of officer Harris' weapon and negative for the murder weapon. According to the defense attorneys, this statement led them to conclude that only one trace metal pattern was found on Carrasco's hands, that of officer Harris' weapon.⁹ This was a half-truth.

In fact, the trace metal pattern matching officer Harris' weapon

⁹It should be noted that during the testing of the nine-millimeter pistol Heeter held it in her left hand, as was observed and reported about Carrasco by the witnesses. Yet, she failed to disclose that trace metal was found on Carrasco's left hand.

During the course of the testimony, the prosecutor inserted in his questions inaccurate statements from Diaz's testimony that were prejudicial to Guerra. The question and answer is as follows:

Q. You say you saw this one man and you saw him "pointing."
Was he pointing toward or in the direction of the police car or the police officer?

A. Uh-huh, the direction of the police car.

On no less than five (5) other occasions, the prosecutor included within the question, an incorrect statement of the witness' prior testimony. He repeatedly used the phrase "pointing at the police officer."

was on Carrasco's right hand. There were also trace metal patterns found on Carrasco's left hand. This revelation could have been utilized by the defense to impeach the expert's testimony and/or impeach the state's theory of the case, that Guerra was the shooter and had, during the course of escaping, returned Carrasco's weapon. More importantly, armed with this knowledge, Guerra's attorneys may have hired their own trace metal expert who could have testified that the trace metal patterns on Carrasco's left hand were consistent with the patterns left by the nine-millimeter weapon found on him at the morgue.

The state failed to disclose that there were any trace metal patterns on Carrasco's left hand, even though they knew that they, arguably, matched the nine-millimeter weapon. Although the police were told, repeatedly, that the shooter fired the weapon with his left hand, there is no meaningful record of any efforts to identify the trace metal patterns on Carrasco's left hand. The police and prosecutors had a duty to eliminate Guerra as the shooter, if the evidence supported it.

Floyd McDonald, a ballistics expert, testified at the evidentiary hearing that when held and fired, the murder weapon left a discernible trace metal pattern in less than 60 seconds. He testified that neither sweat nor

normal washing with soap and water would remove the pattern. Rubbing one's hands with sand or dirt, with less than sustained vigor, would not remove such a pattern. He opined that the dirt found on Guerra's hands, when he was arrested, came from his having been on the ground hiding from the police. Although the ground was damp from a light rain, contact with the ground would not have erased any trace metal on his hands.

McDonald also testified that the two trace metal patterns found on Carrasco's left hand after his death are consistent with both the type of trace metal pattern left by firing the nine-millimeter weapon and Perez's testimony that Carrasco dropped and retrieved a gun as he ran past him. This dropping and retrieving of the weapon accounts for the double trace metal image found on Carrasco's left hand. It is undisputed that Guerra had no trace metal of any sort on either hand or on his body. So the testimony of Heeter, that the metal comprising officer Harris' weapon does not easily leave trace metal patterns, was a "red-herring." It was of no evidentiary value to the trial and was designed merely to confuse the jury.

The state's theory, that both defendants laid their weapons on the front seat in the vehicle and somehow did not realize that they had exchanged weapons until they met later at which time they switched weapons, in the face

of this physical evidence, is beyond belief, particularly when the theory does not rise above the level of speculation.

This evidence, even if it were concealed from the prosecution by the police, is imputed to the state prosecutors because the evidence was material and critical to the case and because an inquiry would have revealed it to them. Williams v. Griswald, 743 F.2d 1553, 1542 (11th Cir. 1984); United States v. Antone, 603 F.2d 566, 569 (5th Cir. 1979). By dealing in half-truths and innuendo and by suppressing evidence that was favorable and material to Guerra's defense, the prosecutors violated Guerra's right to a fair trial. Brady, 373 U.S. at 87.

The Court concludes that, but for the conduct of the police officers and the prosecutors, either Guerra would not have been charged with this offense or the trial would have resulted in an acquittal. Bagley, 473 U.S. at 682.

VI.

Prosecution's Use of Known False Evidence And Known Illegitimate Arguments at Trial

Next, the petitioner asserts that the prosecutor used known false testimony and illegitimate arguments in the trial and closing arguments. In this regard, the petitioner asserts that: (a) the prosecutors solicited and encouraged

Garcia and Perez to overstate or understate the facts; (b) the prosecutors injected false statements concerning the character of Heredia, the 14 year old, when they accused him of being either drunk or having "smoked something" because he yawned during his testimony; and (c) the prosecutors questioned Heredia about an alleged murder at the cemetery, near the shooting scene knowing that it was a yarn spun by the children.

The Court has previously stated the facts surrounding the testimony of Garcia and Perez and will not restate the fact here. Suffice it to say that the knowing use of false testimony by the prosecutors violates a defendant's "due process" rights under the Fifth and Fourteenth Amendments. See Napue v. Illinois, 360 U.S. 264, 269 (1959). The Court finds that such violations are abundant in the record.

The prosecutors also committed misconduct by deliberately and knowingly putting into the mouths of witnesses words that the witnesses had not said and did not believe to be true. This was accomplished by persistently cross-examining those witnesses on a false basis and by making improper insinuations and assertions calculated to mislead the jury and discredit unfavorable testimony. The use of this untrue information was material and detrimental to Guerra's defense. United States v. Williams, 112 S. Ct. 1735,

1749 (1992) (quoting Berger v. United States, 295 U.S. 78 (1935)).

Regarding the questions to Heredia about alcohol and drugs, the prosecutor asked him if he was drunk or had smoked anything. These questions were designed to strike down the young boy because he would dare testify contrary to the prosecutor's case theory. In closing argument, the prosecutor argued to the jury that Heredia was under the influence of either alcohol or narcotics. This improper conduct is rank ridicule and intimidation utilized to its consummate when any witnesses did not testify to this state's liking.

The petitioner also complains about the trial testimony of officer Jerry Robinette. After J. Luna testified that Carrasco had arrived at their home brandishing both the nine-millimeter weapon and officer Harris' weapon, the state called officer Robinette. Officer Robinette testified that J. Luna and Esparza had told him that they were not home in and around the time that the shootings had occurred because they had left earlier and did not return until around 11:30 p.m., when they were questioned. Even if this is true, the testimony is of no value because they were there when Carrasco arrived later.

Officer Robinette's testimony is inconsistent with J. Luna's trial testimony and also with police reports showing that both J. Luna and Esparza

were home when Carrasco and Guerra left as well as when they returned later that night. The police reports¹⁰ show that officer Antonio Palos questioned J. Luna at 4907 Rusk just before Carrasco was killed. In spite of this knowledge, the prosecutor argued that J. Luna and Esparza had lied when they testified that they were at 4907 Rusk when Carrasco returned.

Both prosecutors claimed as fact, in closing argument, that five eyewitnesses, who had not conferred with each other, told the police that Guerra killed officer Harris and Mr. Armijo and had identified Guerra at the lineup. Both prosecutors knew that this was factually incorrect because at least one of the prosecutors was at the scene shortly after the shooting and participated in the gathering and interviewing of witnesses. Moreover, both had participated in the reenactment and the pretrial weekend meeting where the various statements of the witnesses were discussed and conformed.

The petitioner also urges, and legitimately so, that there was no justification for informing four jurors, during voir dire, that he was an "illegal alien" and that this fact was something that the jurors could consider when answering the punishment special issues. According to the prosecutors, this fact could help in a determination of whether Guerra should received a life

¹⁰ These reports were not produced or made available to the defendant, pretrial, pursuant to the defendant's discovery request.

sentence or the death penalty.

The "offense" of unlawful entry into the United States is irrelevant to the issue of a defendant's propensity for future violent and dangerous criminal behavior. No proof was offered that illegal aliens are more prone than citizens to commit violent crimes. Guerra was entitled to have his punishment assessed by the jury based on consideration of the mitigating and aggravating circumstances concerning his personal actions and intentions, not those of a group of people with whom he shared a characteristic. Zant v. Stephens, 462 U.S. 862, 879 (1983).

The prosecutors also appealed to the jury to "let the other residents at 4907 Rusk ... know just exactly what we citizens of Harris County think about this kind of conduct..." This appeal went beyond arguments seeking law enforcement to improperly play to the jury's prejudice by painting all the residents at 4907 Rusk with the broad brush of shared responsibility for the death of officer Harris. Thus, they were in need of being taught a lesson. This "us" against "them" argument is also nothing more than an appeal to ethnic or national origin prejudice which is constitutionally impermissible. McCleskey, 481 U.S. at 309 n.30; see also McFarland v. Smith, 611 F.2d 414, 416-17 (2d Cir. 1979); United States v. Doe, 903 F.2d 16, 25 (D.C. Cir. 1990);

see Haynes, 481 F.2d at 157.

The petitioner's claim of denial of "due process" did not end with the police and the prosecutor, it continued into the Court process. It is asserted that the inaccurate translations of the witnesses' testimony from Spanish to English by the court interpreters prevented a fair trial. The first interpreter, Linda Hernandez, was removed after one of the jurors complained that she was interpreting inaccurately. The second court interpreter, Rolf Lentz, acted inappropriately by making jokes and adopting an improper casual manner, while communicating with several defense witnesses in Spanish. Much of this went unchecked by the court.

The petitioner also questions the propriety of an experienced prosecutor questioning a witness about the witness' participation in a crime that the witness was not under investigation for and had not been criminally charged. One of Guerra's roommates, who testified in Guerra's defense, was questioned about his "participation" in a robbery that the prosecutors well knew had not resulted in a charge. Yet, it was done in all likelihood, to affect the judgment of the jury in determining the witnesses' credibility. This knowing false accusation by the prosecutors violated Guerra's "due process" rights because the question was not a proper question, even on character.

This type of deliberate violation of oath as a prosecutor and violation of the rules of evidence is incompatible with the rudimentary demands of justice and fair play. This principle remains true even when the state, though not soliciting false evidence, allows it to go uncorrected. Giglio v. United States, 405 U.S. 150, 154 (1972).

VII.

Cumulative Effect of Prosecutorial Error

Finally, the petitioner contends that the cumulative effect of the errors made by the trial court and the prosecutors resulted in an unfair trial. Because the state court, in considering the petitioner's petition for writ of habeas corpus, found no waiver of error, there is no bar to considering the errors found in a cumulative error analysis. Derden v. McNeel, 978 F.2d 1453, 1458 (5th Cir. 1992) (*en banc*), cert denied, 113 S. Ct. 2928 (1993). When the errors of the state infuses a trial with such prejudice and unfairness as to deny a defendant a fair trial, due process has not been enjoyed. Derden, 978 F.2d at 1458.

Here, the extent of the prosecutorial misconduct is legion. The number of instances of misconduct as well as the type and degree compels the conclusion that the cumulative effect of the prosecutors' misconduct rendered

the trial fundamentally unfair. There is no doubt in this Court's mind that the verdict would have been different had the trial been properly conducted. Kirkpatrick v. Blackburn, 777 F.2d 272, 278-79 (5th Cir. 1985), cert. denied, 476 U.S. 1178 (1986).

CONCLUSION

The police officers' and the prosecutors' actions described in these findings were intentional, were done in bad faith, and are outrageous. These men and women, sworn to uphold the law, abandoned their charge and became merchants of chaos. It is these type flag-festooned police and law-and-order prosecutors, who bring cases of this nature giving the public the unwarranted notion that the justice system has failed when a conviction is not obtained or a conviction is reversed. Their misconduct was designed and calculated to obtain a conviction and another "notch in their guns" despite the overwhelming evidence that Carrasco was the killer and the lack of evidence pointing to Guerra.

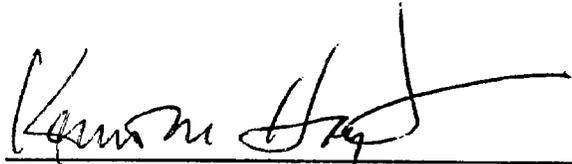
The police officers and prosecutors were successful in intimidating and manipulating a number of unsophisticated witnesses, many mere children, into testifying contrary to what the witnesses and prosecutors knew to be the true fact, solely to vindicate the death of officer Harris and for personal

aggrandizement. The cumulative effect of the police officers' and prosecutors' misconduct violated Guerra's federal constitutional right to a fair and impartial process and trial.

Therefore, the petitioner's Writ of Habeas Corpus is GRANTED, the conviction and judgment are set aside.

It is ORDERED that this case is remanded to the 248th Judicial District Court where the court shall, within 30 days, proceed in conformity with this memorandum opinion to retry the petitioner or release him.

Signed this 14th day of November, 1994.



KENNETH M. HOYT
United States District Judge

TRUE COPY I CERTIFY
ATTEST: *9-11-96*
MICHAEL N. MILBY, Clerk
By *PC* *9-11-96*
Deputy Clerk



J. P. Mayo 48
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED

JAN 11 1994

Michael N. Milby, Clerk

By Deputy: *B. Jarmen*

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RECEIVED

RICARDO ALDAPE GUERRA,

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JAN 12 1994

Petitioner,

S.J.A.

VS.

CIVIL ACTION NO. H-93-290

JAMES A. COLLINS, DIRECTOR
TEXAS DEPARTMENT OF
CRIMINAL JUSTICE,
INSTITUTIONAL DIVISION,

Respondent.

ORDER

The motions for leave to file *amicus curiae* brief (instrument #12 and #24) in this case are Granted.

The motion for summary judgment (instrument #19) is under advisement.

It is so ORDERED.

Signed this 7th day of January, 1994.

KENNETH M. HOYT
United States District Judge

4:93-cv-00290

Scott J Atlas, Esq.
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Houston, TX 77002

bj



f-pldgs

Office of the Attorney General
State of Texas

RECEIVED
JAN - 3 1994
S.J. ATLAS

DAN MORALES
ATTORNEY GENERAL

December 31, 1993

The Honorable Michael Milby, Clerk
United States District Court
Southern District of Texas
Houston Division
P.O. Box 61010
Houston, Texas 77208

Re: *Guerra v. Collins*, No. H-93-290

Dear Sir:

Enclosed please find the original and one (1) copy of **Respondent's Proposed Findings of Fact and Conclusions of Law** to be filed among the papers in the above referenced cause.

By copy of this letter, I am forwarding a copy of this instrument to the Petitioner's attorney.

Please indicate the date of filing on the enclosed copy of this letter and return it to me in the enclosed postpaid addressed envelope.

Thank you for your kind assistance in this matter.

Sincerely,

William C. Zapalac
WILLIAM C. ZAPALAC
Assistant Attorney General
Capital litigation Division
(512) 463-2080

c: Mr. Scott J. Atlas
VINSON & ELKINS
2500 First City Tower
1001 Fannin
Houston TX 77002

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RICARDO ALDAPE GUERRA
Petitioner

v.

JAMES A. COLLINS, DIRECTOR
TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, INSTITUTIONAL DIVISION,
Respondent

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Civil Action No. H-93-290

**RESPONDENT'S PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

NOW COMES James A. Collins, Director, Texas Department of Criminal Justice, Institutional Division, Respondent ("the Director"), by the Attorney General of Texas, and, following the evidentiary hearing held in this case from November 15-22, 1993, files his Proposed Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Petitioner ("Guerra") was indicted for the capital murder of J. D. Harris, a police officer, while Harris was in the lawful discharge of his official duties. Guerra was found guilty by a jury and sentenced to death.
2. Guerra's conviction and sentence were affirmed by the Texas Court of Criminal Appeals. *Guerra v. State*, 771 S.W.2d 453 (Tex.Crim.App. 1988). The Supreme Court denied Guerra's petition for writ of certiorari on July 3, 1989. *Guerra v. Texas*, 492 U.S. 925, 109 S.Ct. 3260 (1989).
3. Guerra filed an application for a writ of habeas corpus in the trial court. The trial court did not enter findings of fact and conclusions of law but did recommend that relief be denied. The Court of Criminal Appeals noted

that, by making no findings of fact, the trial court had found, as a matter of law, that there were no controverted, previously unresolved issues of fact material to Guerra's confinement. In reviewing the record and the pleadings, the Court of Criminal Appeals concluded that the trial court's finding was fully supported. Accordingly, it denied relief on the same basis as the trial court. *Ex parte Guerra*, Application No. 24.021-01 (Tex.Crim.App. January 13, 1993).

4. Guerra then filed this petition for writ of habeas corpus challenging his conviction and sentence. The court held an evidentiary hearing on Guerra's claims that the police and the prosecutors had engaged in misconduct and that the prosecutors had withheld material exculpatory material from Guerra's attorneys.
5. At the evidentiary hearing, Floyd McDonald testified on behalf of Guerra. McDonald was responsible for setting up the Houston Police Department Crime Lab, and was in charge of the crime lab at the time of Officer Harris' murder. His testimony covered two specific areas: an account of the possible locations of the various actors at the time of the shooting, and information about trace metal detection testing and the results he obtained from testing the weapons involved in the crime.
6. McDonald's proposed reconstruction of the scene was flawed in many respects. For example, McDonald did not visit the site either on the night of the murder or later when he was doing his analysis. His reconstruction relied on some assumptions that were contrary to the evidence introduced at trial that was compiled by people working under his supervision. He testified that he had the highest regard and respect for the members of the crime lab, but where their work did not agree with his theory, he disregarded it. For example, Charlie Anderson, a ballistics expert who

worked for McDonald in the crime lab and for whom McDonald had high praise, testified at trial about the number, kind, and locations of shell casings collected at the scene. SF XX:120-21; 142-44. McDonald's testimony about these matters differed from Anderson's testimony.

7. McDonald gave his opinion about the relative locations of Officer Harris, Guerra, and Carrasco Flores at the time Harris was shot. This corresponded with the description given at trial by Jacinto Vega, one of the witnesses who testified on Guerra's behalf. SF XXIII:714-21. The defense had a copy of Vega's statement and of his statement made after viewing a lineup. It is clear that nothing in Vega's testimony that was exculpatory was suppressed by the prosecution. It is also clear that the jury was aware of the possibility, from Vega's eyewitness testimony, that the shooting occurred in much the way that McDonald testified. By its verdict of guilty, the jury rejected this version of events.
8. McDonald testified about trace metal detection tests ("TMDT"), how they are conducted, and what they reveal. He stated that his tests with the guns involved in the shooting produced different results than those obtained by his crime lab personnel. He also agreed, however, that the condition of a person's hands before and after handling a piece of metal can affect whether a pattern is left and how well it is defined. He agreed, too, that such things as rubbing one's hands in dirt or washing them could distort or even eliminate any pattern that existed. He admitted that he did not know anything about the condition of Guerra's hands before the TMDT were conducted and could not swear that the results of his testing necessarily would have been duplicated in Guerra's case. He acknowledged that TMDT is not like reading fingerprints and that different examiners could obtain different results from a test or come to different conclusions about

what test results meant. His testimony about TMDT does not call into question in the court's mind the testimony that was given at trial about the testing of Guerra's and Carrasco Flores' hands.

9. Frank Perez' testimony at the evidentiary hearing differed from his trial testimony about what he saw. In particular, Perez testified at trial that he had seen an individual run past his house shortly after hearing shots, that the person dropped an object that Perez could not identify, that the person picked up the object and continued running. He identified the man as Carrasco Flores. At the evidentiary hearing, Perez testified that he was sure that the object the man dropped was a 9 mm pistol but that he had been told that if he was not "100% sure," to describe it as simply "an object."
10. The court finds that Perez' hearing testimony is not credible. For example, at the trial, Perez testified that he was not paying close attention to the man, that the lighting was poor, and that trees "blocked the light there." SF XXII:411-13. Under these conditions, the court finds it unlikely that he could have identified the object so precisely as a 9 mm pistol. This is especially true given that, at the hearing, he testified that the extent of his knowledge of guns was that he had been target shooting about a year before Officer Harris' murder and had used a 9 mm pistol.
11. Further, at trial Perez was shown a picture of Carrasco Flores and was asked if he was the man he saw running down the street. He testified that he was "pretty certain" it was the same man. SF XXII:414. The court finds it unreasonable to believe that the prosecutors would have demanded that Perez be "100% certain" that he had seen the man drop a gun, but be willing to have him be only "pretty certain" when identifying the man he saw. This is all the more so in light of the fact that Perez reaffirmed his trial testimony at the evidentiary hearing that neither the police nor the

prosecutors had told him what to say when giving his statement or when testifying.

12. In addition, Perez' testimony was full of assumptions and opinions and did not simply relate facts that he had observed. He frequently referred to the man he saw running as "the shooter" although he acknowledged that he had not seen the shooting and could not identify who had shot Officer Harris. When testifying that the police had brought Guerra past the witnesses sitting in the hallway outside the Homicide Office, he stated that it "seemed" like they made a mistake. In describing the actions of one witness, Mrs. Galvan, in allegedly telling everyone to say that Guerra was the one they saw shoot the officer, he said again that it "seemed" like an effort was being made to get the witness stories to coincide. Yet he acknowledged that no one had asked him to change his statement to implicate Guerra. He also testified that Jose Armijo, Jr. gave no indication that he recognized Guerra as the man who had shot his father, but admitted that Armijo did not say that he recognized no one, and that he did not speak with Armijo.
13. Perez also testified at the evidentiary hearing that he thought the lineup was "a joke," and that he told the police that he recognized Guerra because he had seen him being led through the hallway in handcuffs. He apparently never told the police or the prosecutors that he thought the lineup was a joke, nor that Mrs. Galvan allegedly told everyone that they should say that Guerra was the person who had killed Officer Harris. Further, it should be noted that the police did not list him as identifying anyone in the lineup, presumably because he informed them that he recognized Guerra only from seeing him in the hallway.

14. Juror Donna Monroe Jones testified at the evidentiary hearing about the effect of seeing the mannequins of Guerra and Carrasco Flores in the courtroom throughout the trial, the effect of certain photographs of the victim, and the effect of seeing a "large number" of police officers in the audience during the trial. She maintained that the mannequins were frightening and unnerving, that some of the pictures were "gruesome," and that she felt that the presence of the police officers was intended to pressure the jury into finding Guerra guilty and sentencing him to death.
15. The court finds that the testimony of Ms. Jones was an attempt by the petitioner improperly to impeach the jury's verdict. The mannequins were properly admitted into evidence, as were the photographs. Ms. Jones admitted that the mannequins and pictures fairly depicted what they were intended to represent. There was no evidence of any sort that the prosecutors secured the presence of the police officers, if, in fact, there were an unusually large number of officers in the courtroom at any time. Thus, the concerns the court had about whether there was any prosecutorial misconduct involved in the circumstances about which Ms. Jones testified have proven unfounded. The court will order her testimony stricken pursuant to Fed.R.Evid. 606(b) and not consider it for any purpose.
16. In the alternative, the court finds that there was nothing improper about the state's use of the mannequins and photographs or about the presence of police officers in the courtroom. There was no evidence presented that any juror was unduly influenced in reaching a verdict by improper factors. On the contrary, Ms. Jones testified that the jurors discussed the evidence presented at trial in making its decisions, and the record reflects that during its guilt-innocence deliberations, the jury sent out notes regarding the testimony of the identifying witnesses. Tr. 336-37. It is readily apparent

that the jury discharged its duties responsibly and without influence from extraneous sources.

17. Herlinda Garcia testified for Guerra at the evidentiary hearing. She stated that when she gave her statement she did not know how to read and did not read the statement after it had been typed up or before she testified at trial. She claimed that the statement contained inaccurate information and that she had told Robert Moen, one of the prosecutors, prior to trial that Guerra was not the person who shot the officer. She stated that Moen told her she had already signed the statement and that she could not change it at that late date.

18. The court finds that Herlinda Garcia is not a credible witness. She was never able to explain how, if she had not read her statement prior to testifying, and the statement did not accurately reflect what she had said to the police who took it, her trial testimony mirrored the statement. Further, although she claimed that she could not read at the time of trial, the record reflects that, at one point defense attorney Candalario Elizando gave her the statement to refresh her memory of what she had said in the hours following the shooting:

Q. Describe the one that you can describe. What color of pants did he have?

A. What color?

Q. Uh-huh.

A. Well, on my statement I said brown.

Q. You said brown on your statement?

A. Yes.

Q. What about -- what color of shirt did the man that you can describe, what kind of shirt did he have on?

A. I didn't say that.

Q. Are you sure?

A. No.

Q. Go ahead and look at your statement and see if that will refresh your memory, primarily the last paragraph.

(The statement was handed to the witness).

Q. (By Mr. Elizondo) Do you recall now saying or telling the police the color of shirt the man that you can describe had on?

A. Yes.

Q. What color did you tell the police --

A. Brown.

Q. -- back on July 13, 1982.

A. Brown.

SF XXII:466-67. It is obvious to the court that Ms. Garcia was able to read at the time of trial and that her testimony accurately reflected what she told the police on the night of the murder.

19. The court is not persuaded by Garcia's testimony that she told Moen that Guerra was not the person who had done the shooting, but that Moen refused to let her change her story and threatened her if she did so. The court does not believe that a person of Moen's reputation, which is well known to the court, would behave in such a cavalier fashion where another

person's life is concerned. If that were not enough to convince the court that Garcia's testimony is not true, there is the purely practical danger of putting a witness on the stand who has repudiated his or her earlier statement. The risk that the witness will be caught in a lie or repudiate the testimony on the witness stand is too great for the court to believe that Moen would have acted as Garcia claims he did in this case. The court finds that Garcia's trial testimony, which corresponds with her statement given only hours after the shooting, is true and accurate and that her testimony at the evidentiary hearing is not worthy of belief.

20. Mrs. Elena Gonzalez Holguin testified at both the trial, where she was a state's witness, and at the evidentiary hearing, where she testified for Guerra. She testified at the hearing that she had heard Mrs. Galvan telling Mrs. Holguin's sons on at least two occasions that they should say it was Guerra and not Carrasco Flores who committed the murder.
21. Mrs. Holguin did not testify at the evidentiary hearing that either the police or the prosecutors threatened or intimidated any witness to give a statement implicating Guerra as the shooter. If she is to be believed, the only person trying to persuade witnesses to identify Guerra was Mrs. Galvan. In the case of Mrs. Holguin's sons, it is apparent that Mrs. Galvan's efforts were for naught. Jose Heredia testified at trial as a defense witness and stated that Guerra was driving the car on the night of the murder, and that the passenger, Carrasco Flores, was the one who killed the police officer. Armando Heredia, although he identified Guerra as the shooter in the lineup, did not testify at the trial.
22. Mrs. Holguin, like several of the witnesses at the evidentiary hearing, testified that she did not read or speak English and that her statement was not read back to her by the police before she signed it. The court has

reviewed the witness statements as well as the testimony of the witnesses at the trial. In light of the fact that all of the witnesses who claimed that they had not read their statements testified consistently with their statements at trial, the court finds that the statements accurately reflect what the witnesses told the police.

23. Jose Heredia's testimony at the evidentiary hearing was substantially the same as what he said at trial when he testified for Guerra. In addition, he agreed with several other witnesses that Mrs. Galvan had tried to persuade other witnesses that Guerra was the one who shot Officer Harris. Heredia testified at the hearing that he and his brother argued with Mrs. Galvan, saying that she had not been in a position to see anything. His testimony does not implicate either the police or the prosecutors in any wrongdoing, assuming that his testimony about Mrs. Galvan is correct. In his statement to police on the night of the murder, Heredia stated that it was the passenger who shot the police officer, but did not identify either the driver or the passenger. More importantly, he did not claim that the police ever tried to get him to change his statement to name Guerra as the shooter. At trial Heredia testified that Guerra had been driving the car on the night of the murder, and that the passenger, whom he knew as "Guerro" or "Werro," had done the shooting, and at one point he claimed that he had told the police that when he gave his statement. To the extent that this might have been exculpatory, the jury was aware of the testimony. Guerra has not shown that there was any misconduct with respect to Heredia's testimony.
24. Patricia Diaz testified for the prosecution at Guerra's trial and was called as a witness by Guerra at the evidentiary hearing. She had given a statement in which she described the shooter in a way consistent with Guerra's appearance. After the lineup, she informed the police that Guerra was the

one she had seen shoot Officer Harris. Her testimony at trial corresponded with her previous statement. At the hearing, she repudiated her trial testimony and stated that she had not read her statement either before signing it or before testifying. In her testimony at trial, she stated that she had seen Guerra with his arms outstretched "pointing at the police car." At the hearing, she indicated that when she demonstrated at trial what she had seen, she held her arms out with the palms facing down and touching the hood of the car. She maintained at the hearing that she had not seen Guerra shoot Officer Harris but had seen him with his hands on the car. She also stated that she had told the prosecutors this before trial but that they yelled at her and tried to get her to say that Guerra was the one she had seen shoot Officer Harris.

25. The court finds that Diaz' testimony at the hearing is not credible. As with other witnesses who testified that they did not read their statements before signing them and before testifying, Diaz cannot explain why her testimony at trial corresponded with what was in her statement, unless both were true and accurate.
26. In addition, after demonstrating at trial how she had seen Guerra "pointing," the prosecutor asked her "Could you see or make out, Patricia, what type of object, if anything, this man had in his hand? Could you make it out?" SF XXI:314. If, as she stated at the hearing, she had demonstrated that Guerra's hands were open, with the palms pointing down, this is a curious question.¹ Moreover, at the hearing, Diaz was asked to describe a person with his arms outstretched, palms down on the hood of a car, and she

¹The record does not describe how Diaz was standing. Her comment was "He was like that. That is all I got to see." SF XXI:314. The prosecutor did not describe further how Diaz was standing.

replied, "Leaning." When asked to describe a person with arms outstretched, hands together aimed outward, she replied, "Pointing." It is clear to the court that when she demonstrated how she had seen Guerra standing, she indicated that he was pointing, not leaning on the car. Candalario Elizando, one of Guerra's attorneys, agreed during questioning at the hearing that Diaz had demonstrated Guerra's "pointing" by aiming her hands away from her, not by having her palms face down. The latter would have been helpful to Guerra's case, in Elizando's opinion, and he would have made use of it in questioning Diaz. The description and the prosecutor's question are not logical if her current description are accepted. The court therefore finds that Diaz' statement and testimony at trial reflect what she witnessed on the night of the murder.

27. Even if Diaz' testimony at the hearing was accurate, there is no credible evidence that she was induced in any way to identify Guerra by the actions of the police or the prosecutors. Diaz claimed that the prosecutors yelled at her when she told them that Guerra had not been the shooter. Once again, the court does not find this testimony credible. It is not believable that the prosecutors would go to trial with numerous witnesses repudiating their statements, upon which the state's case was based. The court cannot rationally find that the assistant district attorneys ignored the protests of their witnesses and sought the death penalty against a person the witnesses were saying did not commit the crime. The court is strengthened in this belief because, when Jose Heredia said prior to trial that he could not identify the person who did the shooting, no effort was made to get him to change his story. Guerra has failed to show any misconduct on the part of state authorities.

28. Trinidad Medina did not testify at trial but did testify at the evidentiary hearing. She claimed that she had seen Guerra leaning on the police car and Carrasco Flores pointing at Officer Harris; then she saw fire coming from Carrasco Flores' hands. The statement she gave after the shooting stated that she did not see the shooting or even anyone in the area with a gun. At the hearing, she testified that she told the police what she had seen, *i.e.*, what she testified to at the hearing, but did not read her statement before signing it because the police would not let her. She also testified that she had heard Mrs. Galvan telling Jose Armijo, Jr. that Guerra was the one who had killed the police officer and Jose's father. She admitted that she did not hear any police officers on the night of the killing say that Guerra had committed the murder of Officer Harris.
29. The court finds that Ms. Medina's evidentiary hearing testimony is not credible. Medina admitted that she did not want to get involved and so she told the police that she had not seen anything. She then said that the police officers were being abusive and threatening, so she decided not to cooperate with them. According to her account, the police then handcuffed her and put her in a patrol car. But she admitted that she had been present and heard what Patricia Diaz told the police. It is apparent to the court that the police believed that Medina had similar information but was obstructing justice by not telling what she knew. There had been one police officer killed and an innocent passer-by seriously wounded at that time. There was much confusion at the scene of the crime. The court finds that the police reasonably felt that if Medina was removed from the chaotic scene they might be able to convince her to cooperate and tell what she had seen. Nothing credible that has been presented to the court indicates in any way that the police were abusive or engaged in any misconduct toward Medina.

30. In addition, Medina insisted that she refused to cooperate with the police because of the treatment she had received from them. Yet, later she testified that what she told the police was the same as her testimony at the evidentiary hearing, but that she simply had not been given the opportunity to read the statement before signing it. Medina offered no reason for allegedly changing her mind and agreeing to tell the authorities what she had seen.
31. Roberto Onofre and Jose Luis Torres Luna testified at the evidentiary hearing about searches conducted at their residence, where Guerra also lived. According to the witnesses, on each occasion, the police were abusive and threatened the residents with arrest if they did not cooperate. These versions were denied by Sergeant Webber, a Houston Police officer who assisted in conducting the searches. Webber stated that the police went to 4907 Rusk to search for evidence relating to the crimes. He testified that in each instance they either had a warrant or asked for permission to search from those present. He did not recall the occupants of the house being uncooperative and denied that the police had been abusive to them.
32. The court finds that Webber was a credible witness and Onofre and Torres were not. Given the seriousness of the crimes that had been committed, it is not surprising that the police might be serious and even somber in going about their work. That is a far cry from the kind of abusive behavior attributed to them by Onofre and Torres. On the other hand, Onofre and Torres had had a friend arrested and another shot and killed by the police. It is reasonable to assume that they had hostile feelings toward the police and that they would tend to view the police behavior as being aggressive and threatening.

33. In addition, the behavior of the police, even if Onofre and Torres are believed, cannot have affected the outcome of the trial. Onofre did not testify at trial, and Torres testified for Guerra. There is no evidence in the record to support a finding that the police engaged in misconduct that compelled witnesses to testify differently than they would have otherwise.
34. Guerra called Elizabeth Loftus as an expert witness on the malleability of memory. The testimony was of a very general nature and did not address any of the witnesses or the specific circumstances in this case. In addition, Dr. Loftus also admitted that, just as memory can be manipulated by false evidence shortly after an event occurs, it can also be affected by false evidence many years later. She also acknowledged that some witnesses can remember more with the passage of time than they can shortly after an event. Because Dr. Loftus did not deal with the particulars of this case, and because for other reasons the court has found the testimony of many of Guerra's witnesses not credible, the court finds that this testimony does not help in assessing the credibility of the testimony presented.
35. The court does not find credible any of the testimony from witnesses who claimed to have heard Mrs. Galvan telling people in the lineup room that they should identify Guerra as the person who shot Officer Harris and Jose Armijo, Sr. James Montero of the Houston Police Department testified that before the witnesses went into the lineup room, they were instructed to sit apart from each other and not to speak while they were in the room. They were particularly admonished not to say anything if they recognized any one in the lineup. Because many of the witnesses spoke only Spanish, the instructions were given in both English and Spanish. All of the witnesses confirmed this much of Montero's testimony. Montero also testified that if anyone disregarded the instructions and spoke during the proceedings, they

would be told immediately to be quiet; if they persisted, they would be removed from the room. He stated that he did not recall the lineup in this case in particular but that he would have remembered if there had been the kind of commotion that other witnesses described. The court finds this credible. The police were dealing with the killing of a fellow officer. Although professional behavior is to be expected of the police in the investigation of any crime, it is even more likely in such a case. It is not reasonable for them to jeopardize any possible prosecution by allowing contamination of witnesses like that described by some of the people in the lineup room to go on. Further, not all of the witnesses said they heard Mrs. Galvan's remarks. If she had been as vociferous as some of the witnesses indicated, the court does not believe that her behavior could have been missed. Similarly, because of the importance of the case, Montero's testimony that he would have remembered a disturbance if one had occurred is credible. The lineup would have been routine, even in an important case, if nothing out of the ordinary had happened. Thus, the court finds that the actions attributed to Mrs. Galvan during the lineup did not occur.

36. George Brown was called by the respondent to testify at the evidentiary hearing. Brown testified about the circumstances he observed at the time of the crime in a way that was consistent with his trial testimony. He positively identified Guerra as the passenger in the car that passed him about twenty minutes before the shooting of Officer Harris, and stated that there was sufficient time for him and the driver to have changed places before the shooting. Brown was an entirely believable witness. His testimony at trial and at the hearing was consistent but not in a rote or memorized way. He readily admitted when he was not sure of some detail

and never appeared to be trying to extrapolate from facts he did know to those about which he was uncertain. His explanations and descriptions were reasonable and believable. Although he was not in a position to identify the person who shot Officer Harris and Mr. Armijo, Sr., his testimony reinforces other credible evidence that Guerra was the shooter.

37. Both of the assistant district attorneys who prosecuted the case testified at the evidentiary hearing. The court finds that both Richard Bax and Robert Moen were credible witnesses and worthy of belief. This is so for many reasons. For example, they were in agreement that the evidence initially seemed to point to Carrasco Flores as the one who committed the murders. However, after reviewing the witness statements, they found that everyone who could identify the shooter described Guerra, not Carrasco Flores. They realized that the two men had radically different appearances. They decided to meet with the witnesses to see if they were believable, and to partially re-enact the crimes to determine if they could have seen what they were describing. The re-enactment persuaded them that the witnesses were telling the truth and that Guerra had been the triggerman.
38. As already indicated, if some of the witnesses had actually changed their stories prior to trial and informed the prosecutors that it was not Guerra who had committed the murders, it is not reasonable to believe that the prosecution would have gone forward. Not only is it extremely risky to put on a witness who has indicated that he or she might not testify as expected, it is as big a risk to have them testify and be subjected to cross-examination about a story they have said is not the truth. In addition, most of the witnesses used by the state were young and many were not native speakers of English; in fact, some did not speak English at all. Such witnesses could be confused easily enough during questioning if they were telling the exact

truth; if they were trying to testify to something that was untrue, it would be even easier to have their testimony rendered useless. The court cannot accept that any of the witnesses ever approached the prosecutors and told them that the statements they had given were not true.

39. Neither can the court accept the notion that the police falsified statements of witnesses and left out information that witnesses related to them, and then forced the witnesses to sign the statements without reading them or having them read to them in Spanish. To believe this, it would be necessary for the court to acknowledge a large conspiracy by the Houston Police Department to convict Guerra at any cost. As already noted, the evidence initially indicated that it was more likely that Carrasco Flores committed the murder of Officer Harris and Mr. Armijo, Sr. Nonetheless, to believe the testimony presented at the evidentiary hearing, the court would have to find that the officers at the police station, who were not present at the scene and who could not have known any of the physical details of the crimes, came up in a very short time with a scenario of what happened, *i.e.*, that Guerra committed the murders. The court would have to further find that the officers determined among themselves to force the witnesses' statements to fit that version of events. In addition, the officers would have to have agreed not to let the witnesses read their statements before signing them. The court would then have to find that the police staged events at the police department so that everybody who had given statements identifying Carrasco Flores as the murderer, as some of them now claim they did, would nonetheless identify Guerra during the lineup. Finally the court would have to find that the police believed that the witnesses would adopt their false statements -- which they had not read -- in talking with investigators and prosecutors, and that they would testify later in court in

accordance with their false statements. These assumptions the court would have to make are incredible and irrational and the court refuses to stretch the limits of credulity to such extremes.

40. The court finds that there is no credible evidence before it that either the police or the prosecutors engaged in any misconduct in the investigation and prosecution of the capital murder case against Guerra.

CONCLUSIONS OF LAW

1. The prosecutors neither suppressed material exculpatory evidence nor knowingly relied on perjured testimony. Thus, there was no due process violation in the manner in which Guerra was convicted. *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972).
2. There were no threats or other forms of intimidation directed at witnesses by anyone acting on behalf of the state to force them to testify falsely or to refrain from testifying truthfully. Accordingly, there was no violation of Guerra's rights. *Giglio, supra*.
3. There were no suggestive identification procedures employed by the police prior to the lineup conducted in this case. Because there was not dispute that Guerra was present at the time of the murders, neither his arrest in the presence of some of the witnesses, nor his being seen by witnesses at the police station could have led to an erroneous identification of him. See *Manson v. Brathwaite*, 432 U.S. 98 (1977).
4. There was no misconduct on the part of authorities in the manner in which the lineup was arranged and carried out. *Id.*
5. Because most of the witnesses who testified at trial either knew Guerra or had seen him in the neighborhood, there was no possibility that any of the

procedures used, even if improper, contributed to a misidentification at trial. *Neil v. Biggers*, 409 U.S. 188 (1972).

6. Due to the vastly different appearances of Guerra and Carrasco Flores at the time of the killings, there is no reasonable likelihood that any of the witnesses would have misidentified the person they saw shoot Officer Harris and Mr. Armijo, Sr. *Id.*; *Simmons v. United States*, 390 U.S. 377 (1968).
7. The prosecutor's reference to Guerra's status as an illegal alien during the punishment phase of the trial was proper because it demonstrated that Guerra had a general disregard for this country's laws and tended to show that he probably would be a danger to society in the future.

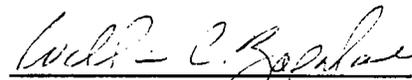
Respectfully submitted,

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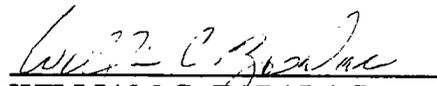
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CERTIFICATE OF SERVICE

I, William C. Zapalac, Assistant Attorney General of Texas, do hereby certify that a true and correct copy of the above and foregoing Respondent's Proposed Findings of Fact and Conclusions of Law has been served by placing same in Federal Express on this the 31st day of December, 1993, addressed to: Mr. Scott J. Atlas, VINSON & ELKINS, 2500 First City Tower, 1001 Fannin, Houston, Texas 77002.



WILLIAM C. ZAPALAC
Assistant Attorney General

*F. pldgs
(w/ Proposed Findings)*

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January 3, 1994

By Messenger

Hon. Michael N. Milby, Clerk
United States District Court
United States Courthouse
515 Rusk
Houston, Texas 77002

RE: Ricardo Aldape Guerra v. James A. Collins; Civil Action No. H-93-290; in the
U.S. District Court for the Southern District of Texas, Houston Division

Dear Mr. Milby:

Enclosed for filing in the captioned cause is Petitioner's Proposed Written Findings of Fact and Conclusions of Law. A copy of this pleading was hand delivered to Judge Hoyt's chambers on December 30 and was mailed by certified mail, return receipt requested, to opposing counsel on the same date. A copy of this letter is being sent to opposing counsel by regular mail today.

Very truly yours,



Scott J. Atlas

cc: William C. Zapalac (letter only)
Assistant Attorney General
Enforcement Division
P.O. Box 12548
Capitol Station
Austin, Texas 78711

Ricardo Aldape Guerra (letter only)
Hon. Thomas Gibbs Gee (letter only)

Michael Milby
January 3, 1994
Page 2

Stanley Schneider (letter only)

Michael Milby
January 3, 1994
Page 3

bcc: Sandra Babcock (w/ attachments)
Francisco Gonzalez de Cossio (w/ attachments)
Hernan Ruiz Bravo (w/ attachments)
Santiago Roel (w/ attachments)
Mary Lou Soller (w/ attachments)
Julia E. Sullivan (w/ attachments)
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December 30, 1993

BY MESSENGER

Honorable Kenneth Hoyt
United States Courthouse
515 Rusk
Houston, Texas 77002

Re: Civil Action No. H-93-290; Ricardo Aldape Guerro v. James A. Collins; in
the U.S. District Court for the Southern District of Texas, Houston Division

Dear Judge Hoyt:

As you requested, I am enclosing a copy of Petitioner's Proposed Findings of Fact and Conclusions of Law. Since we have not received the Transcript, we have relied entirely on our notes in preparing the enclosed document.

In reviewing the enclosed Proposed Findings and Conclusions, I hope that you will review two state court appellate decisions, Ferris v. State, 676 SW.2d 674 (Tex. App. -- Houston [1st Dist.] 1984), and Huffman v. State, 676 SW.2d 677 (Tex. App. -- Houston [1st Dist.] 1984). These decisions bear directly on the credibility of one of the two trial prosecutors, Robert Moen.

According to those opinions, which must be read together, Mr. Moen, then an Assistant Harris County District Attorney, made a promise to request lenient sentencing to one of two men accused of a brutal rape in return for the man's testimony against his friend. Ferris, 676 SW.2d at 676-77. He deliberately failed to disclose that promise, as required, to the judge and the jury in the trial of the other man. Id. at 675, 677. Then, he stood by silently and allowed the defendant to whom Mr. Moen had promised lenient treatment to perjure himself at the trial by testifying that he had received no promise of leniency. Id. at 675. Finally, he stood by silently and allowed the cooperating witness, who later pleaded guilty to aggravated rape, to mislead the trial judge at his own sentencing hearing by deliberately hiding the fact that he was basing his guilty plea on Mr. Moen's promise of leniency. Huffman, 676 SW.2d at 683. With respect to the conduct in which Mr.

Honorable Kenneth Hoyt
December 30, 1993
Page 2

Moen and, in one instance, defense counsel, engaged, the court of appeals concluded as follows: "We cannot condone such deceptiveness in our courts, and, no matter how artful, view it as injurious to both bench and bar." Ferris, 676 SW.2d at 677; Huffman, 676 SW.2d at 683. The only place in either opinion in which Mr. Moen is identified as the prosecutor whose conduct is being criticized is in Huffman, 676 SW.2d at 679.

While I saw no reason to cite these cases in open court, I thought that I should bring them to your attention.

Very truly yours,


Scott J. Atlas

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Enclosure

cc: William C. Zapalac - Certified Mail, Return Receipt Requested
Ricardo Aldape Guerra
Hon. Thomas Gibbs Gee
Stanley Schneider

Honorable Kenneth Hoyt
December 30, 1993
Page 3

bcc: Team

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

<hr/>		§
RICARDO ALDAPE GUERRA,		§
		§
Petitioner.		§
		§
v.		§
	Civil Action No. H-93-290	§
		§
JAMES A. COLLINS,		§
Director, Institutional Division,		§
Texas Department of Criminal Justice,		§
		§
Respondent.		§
<hr/>		§

**PETITIONER'S PROPOSED WRITTEN FINDINGS
OF FACT AND CONCLUSIONS OF LAW**

Petitioner Ricardo Aldape Guerra urges that the Court enter the following proposed findings of fact and conclusions of law.

Respectfully submitted,

VINSON & ELKINS L.L.P.

BY: Scott J. Atlas / nsc

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ATTORNEYS FOR PETITIONER
RICARDO ALDAPE GUERRA

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

AFFIDAVIT OF VERIFICATION

I, THOMAS GIBBS GEE, upon oath state that I have read the foregoing PETITIONER'S PROPOSED WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW; I am familiar with its contents, and to the best of my knowledge and belief the matters set forth therein are true and correct.



Thomas Gibbs Gee

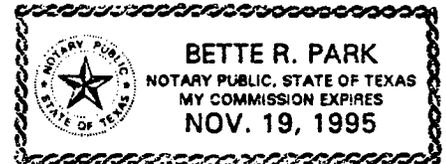
Subscribed and sworn to before me this 30th day of December, 1993.



Notary Public

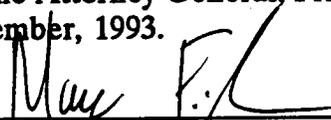
My Commission Expires:

November 19, 1995



CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading was served by certified mail, return receipt requested, on Hon. Dan Morales, Attorney General; Enforcement Division, Office of the Attorney General; Price Daniel Sr. Bldg.; Austin, Texas 78711, on the 30 day of December, 1993.



Marc D. Fisher

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PROPOSED FINDINGS OF FACT

Based on a review of the state trial record, the exhibits introduced into evidence, and the testimony presented at the evidentiary hearing, the Court finds the following:

I. POLICE AND PROSECUTORIAL MISCONDUCT

A. Overview

1. The in-court identification of Ricardo Aldape Guerra ("Guerra") as the person who killed Houston Police officer James D. Harris ("Harris") by all the witnesses who gave such testimony in the 1982 trial of Guerra for capital murder (the "1982 trial") was unduly influenced by the following police and/or prosecutorial conduct, separately and in combination (the separate components of this finding, with citations to the Transcript, are listed below in separate findings):

- a. during the first few hours after the shooting of Harris, Houston police officers and detectives (the "police") intimidated witnesses at or near the crime scene by attempting to confuse witnesses, yelling and cursing at them, threatening to arrest them, handcuffing them, threatening to take away the infant daughter of one witness, threatening to prosecute the husband of another witness, questioning witnesses at gunpoint, and conducting repeated warrantless, unconsented searches after midnight at the home of several actual and potential witnesses while using unnecessary force and vulgar language;

- b. during the first approximately eight hours after the shooting of Harris, the police intimidated witnesses at the police station by threatening them with arrest and other dire consequences unless they agreed to say that Guerra had shot Harris;
- c. several hours after the shooting of Harris but before a lineup conducted on July 14, 1982 at about 6:00 a.m. (the "Lineup"), the police paraded a handcuffed Guerra in front of witnesses twice;
- d. the police deliberately inserted inaccurate information into witness statements either to reinforce the notion that Guerra was the shooter of Harris or that Carrasco was not the shooter, or to hide evidence that the witness had seen something suggesting that Carrasco, not Guerra, was the shooter of Harris;
- e. the police refused to read statements to partially or completely illiterate witnesses, even on request;
- f. the police refused to interpret statements for witnesses who read little or no English, even on request;
- g. the police urged or threatened witnesses to sign statements without reading them;
- h. the police allowed witnesses to sign statements with no idea about what the statements said;
- i. during the Lineup, the police allowed witnesses to talk among themselves;

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- j. during the Lineup, the police allowed witnesses, in a manner that could be heard by other witnesses, to identify Guerra as someone they recognized or had seen at or near the crime scene near the time Harris was shot;
- k. during the Lineup, the police allowed Hilma Galvan ("Galvan") in the presence of other witnesses, to identify Guerra as the shooter of Harris and of Jose Armijo, Sr. ("Armijo Sr.") and call Guerra a "wetback" who, like other wetbacks, she accused of coming to the U.S. just to commit crimes and take jobs away from U.S. citizens;
- l. on the morning of July 14, 1982, at the police station, the police warned witnesses not to talk to Guerra's attorneys;
- m. on or about July 22, 1982, Richard Bax ("Bax") and Robert Moen ("Moen") (collectively, the "Prosecutors") conducted a reenactment (the "Reenactment") of the shootings of Harris and Armijo Sr., thereby allowing witnesses to synchronize their versions of the shootings;
- n. during the Reenactment, the Prosecutors insisted that Guerra has shot Harris even when witnesses offered evidence to the contrary;
- o. at a meeting in the Harris County District Attorney's office with the Prosecutors during the weekend before the witnesses testified in early October 1982 (the "October Weekend Meeting"), the Prosecutors showed the witnesses mannequins that looked like Guerra and Roberto Carrasco Flores ("Carrasco"), with the Carrasco mannequin

- dressed in a bullet-riddled, blood-stained shirt that telegraphed to the witnesses which man had been shot and killed by the police;
- p. at the October Weekend Meeting, the Prosecutors showed the witnesses photographs of Guerra and Carrasco while describing Carrasco as "the man killed by the police" and Guerra as "the man who shot the cop," or words to the same effect;
 - q. at the October Weekend Meeting, the Prosecutors discouraged witnesses from offering testimony that would have tended to exonerate Guerra of the shooting of either Harris or Armijo Sr.;
 - r. during the 1982 trial, one of the Prosecutors deliberately and repeatedly mischaracterized the testimony of Patricia Diaz ("Diaz") to give the incorrect impression that she claimed to have seen Guerra point toward Harris at the time of the shooting.
 - s. during Guerra's trial for capital murder in 1982 (the "1982 trial"), the Prosecutors displayed in full view of the witnesses and the jury during each witness's entire testimony the Guerra and Carrasco mannequins, with the Carrasco mannequin again dressed in a bullet-riddled, blood-stained shirt;

2. The police and Prosecutors deliberately withheld from Guerra's lawyers before and during the 1982 trial the following evidence favorable to Guerra and material to his defense (Candelario Elizondo ("Elizondo") Test., Tr. vol. ___ at ___; see Bax Test., Tr. vol. ___ at ___; Moen Test., Tr. vol. ___ at ___):

- a. the conduct described in parts a-l, n-q of finding 1 above;
- b. the information provided to the police at the police station in the early morning of July 14, 1982, by several witnesses that at the time of the Harris shooting, Guerra's hands were pointing away from Harris (westward) and were open and empty and that Guerra was standing in a location (south of Harris) where the shooter could not have been standing, Diaz Test., Tr. vol. ___ at ___; Herlinda Garcia ("Garcia") Test., Tr. vol. ___ at ___; Trinidad Medina ("Medina") Test., Tr. vol. ___ at ___; Jose Heredia ("Heredia") Test., Tr. vol. ___ at ___; McDonald ("McDonald") Test., Tr. vol. ___ at ___;
- c. the information provided to police at the police station in the early morning of July 14, 1982, by several witnesses and to the Prosecutors at the Reenactment (by Garcia) and at the October Weekend Meeting that at the time of the Harris shooting, Carrasco was standing in a location (east and slightly south of Harris) where the shooter could have been standing and was holding his arms out, pointing at Harris, holding a gun with fire coming out of the barrel, Garcia Test., Tr. vol. ___ at ___; Medina Test., Tr. vol. ___ at ___; Heredia Test., Tr. vol. ___ at ___;
- d. the information provided to the police at the police station in the early morning of July 14, 1982, and at the Reenactment to the Prosecutors. that only moments after Harris and Armijo Sr. were shot, a man who looked like Carrasco had been seen around the corner holding an

object that looked like a nine-millimeter gun with a clip in his left hand, dropped it, and retrieved it, Frank Perez ("Perez") Test., Tr. vol. ___ at ___; see George Brown ("Brown") Test., Tr. vol. ___ at ___;

- e. the information provided to the police at the police station in the early morning of July 14, 1982, that Galvan was inside her house at the time Harris was shot and could not have seen the shooting, Heredia Test., Tr. vol. ___ at ___;
- f. the rumor that a woman who lived in a cemetery near the crime scene had been shot and killed on the same night as the Harris murder had been investigated and proven false, as reflected by Petitioner's ("Pet.") Ex. 39, which was not given to Guerra's attorneys before the 1982 trial, Elizondo Test., Tr. vol. ___ at ___; and
- g. accurate information about the trace metal detection test results showing a trace metal pattern found on Carrasco's left hand, as reflected by State's Ex. 69, which was not given to Guerra's attorneys until the morning on which Amy Heeter testified about it during the 1982 trial, Elizondo Test., Tr. vol. ___ at ___.

3. The police and Prosecutors intimidated witnesses in the manner described in paragraph A.1.a, b, e, f, g, l, n, o, p, r, and s. Compare Bax Test., Tr. vol. ___ at ___; Moen Test., Tr. vol. ___ at ___. In addition, the police intimidated witnesses by immediately providing medical attention to Harris while letting Armijo Sr. remain in his car unattended for more than 45 minutes. Brown Test., Tr. vol. ___ at ___; see Moen Test., Tr. vol. ___ at ___.

4. As a result of the intimidating conduct described in paragraph 3, several witnesses testified either falsely or in a misleading fashion about material matters at the 1982 trial. Garcia Test., Tr. vol. ___ at ___; Diaz Test., Tr. vol. ___ at ___; Perez Test., Tr. vol. ___ at ___; Jose Torres Luna ("J. Luna") Test., Tr. vol. ___ at ___. At the time this testimony was given in the 1982 Trial, the Prosecutors and the police were aware that the testimony was false and/or misleading.

5. The motivation underlying the intimidating conduct by the police is that many police officers believed then and still believe that even if Carrasco shot Harris and Armijo Sr. and Guerra's only offense was carrying a gun, the two men (Carrasco and Guerra) were equally blameworthy. When a police officer is killed, other police officers take it personally. Jim Montero ("J. Montero") Test., Tr. vol. ___ at ___.

6. The police and prosecutorial misconduct described in these findings was intentional, bad faith, and outrageous misconduct calculated to obtain a conviction and the death penalty despite over-whelming evidence of Guerra's innocence.

B. Pretrial Intimidation of Witnesses

7. At the crime scene shortly after the Harris shooting, Medina initially cooperated with the police. But police officers called her a drunk, threatened to take away Diaz's infant daughter, threatened to arrest Diaz and Medina, and arrested and handcuffed Medina. This scared and angered Medina, so she subsequently refused to cooperate. She was kept in handcuffs for about an hour. Medina Test., Tr. vol. ___ at ___.

8. At the crime scene shortly after the Harris shooting, after Diaz told police officers what she had seen, one of the police officers kept insisting that she must have seen more and threatened to take away her infant daughter unless she told more. At about the same time, Diaz saw the police yell at and handcuff Medina, who is Diaz's aunt. Diaz Test., Tr. vol. ___ at ___.

9. At the crime scene during the first hour after the Harris shooting, after Holguin told police officers that she had not seen the Harris shooting, they handcuffed her with no justification, took her to the police station, and kept her in handcuffs for about three hours. Elena Holguin ("Holguin") Test., Tr. vol. ___ at ___.

10. Shortly after the Harris shooting, a police officer pointed a gun at a Hispanic man lying on the ground and yelled at him: "Why did you kill the cop?" The man on the ground was neither Carrasco nor Guerra. Perez Test., Tr. vol. ___ at ___.

11. Armijo Sr. was left in his car for approximately one hour after he was shot, although Harris was taken to an ambulance within a few minutes after he was shot. Brown Test., Tr. vol. ___ at ___.

12. Shortly before Carrasco was killed, Houston police officers came to the door of 4907 Rusk with guns drawn, took J. Luna and Jose Manuel Esparza ("Esparza") outside, threw them face down on the front porch, pointed guns at their heads, put a foot on J. Luna's leg, and cursed and screamed at the two men. J. Luna was understandably terrified. Roberto Onofre ("Onofre") Test., Tr. vol. ___ at ___; J. Luna Test., Tr. vol. ___ at ___.

13. Less than an hour after Carrasco was killed, two police officers questioned J. Luna, Esparza, Onofre, and Enrique Torres Luna ("E. Luna"). These police officers, in a loud voice, screamed, cursed, and threatened to arrest the four men unless they told what they knew. Several police officers then entered the house at 4907 Rusk without a warrant or consent, and searched the house. J. Luna and Onofre were understandably scared. Onofre Test., Tr. vol. ___ at ___; J. Luna Test., Tr. vol. ___ at ___.

14. At the police station, while being questioned by a police officer in the early morning of July 14, 1982, Garcia said that the man with the short hair (Carrasco) was the shooter. The police officer tried to confuse her by insisting that the shooter wore a green shirt and had a beard (Guerra). Garcia Test., Tr. vol. ___ at ___.

15. While at the police station a few hours after the Harris shooting, after telling the police that the short-haired man (Carrasco) was the shooter, Garcia was told by several police officers that she would be arrested and jailed unless she told the truth and that "you don't know what else can happen to you and your husband." Since at the time she was a minor while her husband was over 18 years old and on parole, she reasonably interpreted these comments as threats to arrest her husband if she did not cooperate with the police in every way they asked, including by signing a statement that she had not read. She was scared and thought that her husband would be harmed unless she did as the police told her. Garcia Test., Tr. vol. ___ at ___.

16. At the police station in the early morning of July 14, 1982, after Medina had told the police what she had seen at the time of the shooting, the police threatened to put her in jail if she did not sign the pre-Lineup Statement (Pet. Ex. 33), even though she had not read it.

17. During the early morning of July 14, 1982 at the police station, for four or five hours before the Lineup began at about 6:00 a.m., Hispanic witnesses were kept on a bench in a hallway outside the Homicide Division office, except during the time that they were answering police questions. During the same period, Brown, the only witness with an Anglo last name, was kept separated from the other witnesses in an office or cubicle. Brown Test., Tr. vol. ___ at ___.

18. The witnesses were kept at the police station from around midnight on the night Harris was killed until about 6:30 a.m. the next morning, July 14, 1982.

19. Most of the significant witnesses at the police station on July 14, 1982 were younger than 20 years old, including Jose, Jr. (10 years old), Garcia (14 years old), Heredia (14 years old), Elvira Flores ("Flores") (16 years old), Diaz (17 years old), Perez 17 years old), and Armando Heredia (18 years old). Heredia Test., Tr. vol. __ at __; Holguin Test., Tr. vol. __ at __; Diaz Test., Tr. vol. __ at __; Perez Test., Tr. vol. __ at __; Garcia Test., Tr. vol. __ at __; Pet. Ex. 4 at F18, 40. Thus, they were particularly susceptible to police intimidation techniques. In contrast, Galvan was 44 years old. Pet. Ex. 4 at F9.

20. Several times during the month after July 13, 1982, police officers came to 4907 Rusk after midnight, while the residents were asleep, entered the house without consent, acted angry, used abusive language, ordered the residents to sit in the living room, and searched the house without consent, kicking items out of the way and generally acting abusively. Once, using threats and coercion, they obtained Onofre's signature on a consent to search form (Pet. Ex. 34). Onofre Test., Tr. vol. ___ at ___; J. Luna Test., Tr. vol. ___ at ___.

21. At the Reenactment, in response to being told by Garcia that Guerra was not the shooter, Moen told her that Guerra was the shooter and that the other man (Carrasco) was dead. Garcia Test., Tr. vol. ___ at ___.

22. At the October Weekend Meeting, the Prosecutors tried to make Diaz say things that she did not believe were true. She told them at that meeting that when Harris was shot, she saw the man with the long hair (Guerra) with his hands open, empty, palms down on the hood of Harris's car, and pointing away from Harris and that it did not look like Guerra had a gun in his hand. One of the Prosecutors attempted to persuade her to testify, contrary to her actual recollection, that when Harris was shot, she saw the man with the long hair (Guerra) holding a gun. Diaz Test., Tr. vol. ___ at ___.

23. At the October Weekend Meeting, Medina told the Prosecutors that the man who looked like the short-haired mannequin (Carrasco) had shot Harris. The Prosecutors tried to persuade her that she was wrong. Medina Test., Tr. vol. ___ at ___.

24. At the October Weekend Meeting, while reviewing the photos of Guerra and Carrasco, Garcia told one of the Trial D.A.'s that Guerra was not the killer and that when Harris was shot, she saw Guerra with his hands open, empty, palms down and outstretched, pointing away from Harris. In response, that Trial D.A. told her that she could not change her mind because she had already made a statement and it was too late to modify it. Garcia Test., Tr. vol. ___ at ___.

25. At the October Weekend Meeting, Perez told the Prosecutors that shortly after Officer Harris was shot, a man who looked like Carrasco had run past Perez and pointed at him with an object that appeared to be a nine-millimeter gun that looked like the murder weapon. In response, Bax told Perez that if he was less than 100% certain that

the object was a gun, Perez should not testify that the object pointed at him was a "gun," just an "object." Perez Test., Tr. vol. ___ at ___.

26. At the October Weekend Meeting, one of the Prosecutors, pointing to a picture of Carrasco, said to several witnesses that the man in the picture was the man who died in the shootout with police. He then pointed to a picture of Guerra and said that the man in the picture was the man who shot and killed Harris. Diaz Test., Tr. vol. ___ at ___; Medina Test., Tr. vol. ___ at ___; Garcia Test., Tr. vol. ___ at ___.

27. When first shown the mannequins, either during the October Weekend Meeting or when they appeared in court to testify during Guerra's 1982 trial, witnesses were "taken aback," startled, and/or scared by the mannequins. Bax Test., Tr. vol. ___ at ___; Diaz Test., Tr. vol. ___ at ___; Elizondo Test., Tr. vol. ___ at ___; Perez Test., Tr. vol. ___ at ___.

28. Coercion and intimidation, such as that by the police and Prosecutors here, can create false memories. Elizabeth Loftus ("Loftus") Test., Tr. vol. ___ at ___.

C. Improper Identification Procedures

29. At the Houston police station during the early morning of July 14, 1982, before the Lineup, Galvan spent most of time sitting in the hallway outside the Homicide Division offices talking to Jose Jr. and Flores. Heredia Test., Tr. vol. ___ at ___; Perez

Test., Tr. vol. ___ at ___; Medina Test., Tr. vol. ___ at ___; *see* Diaz Test., Tr. vol. ___ at ___; Brown Test., Tr. vol. ___ at ___.

30. While at the police station on July 14, 1982 before the Lineup began, Guerra, handcuffed and with paper bags on his hands, was walked and pushed down the hallway outside the Homicide Division offices at the Houston police station (the "Handcuffed Guerra Walk-Thru"). He was then taken from the Homicide Division offices to the Photo Lab, where his clothes were taken from him. Both times, he was walked in front of, and was seen by, Diaz, Flores, Garcia, Jose Jr., Galvan, Medina, and Perez. Garcia Test., Tr. vol. ___ at ___; Heredia Test., Tr. vol. ___ at ___; Perez Test., Tr. vol. ___ at ___; Medina Test., Tr. vol. ___ at ___; E. Luna Test., Tr. vol. ___ at ___; *see* L.E. Webber ("Webber") Test., Tr. vol. at ___.

31. By the time Guerra arrived at the police station and was viewed by witnesses in handcuffs on July 14, 1982 during the Handcuffed Guerra Walk-Thru, Galvan, Flores, Jose Jr., Perez, Medina, Garcia, Diaz, and Holguin knew that the police had killed the short-haired man present at the crime scene. Diaz Test., Tr. vol. ___ at ___; Garcia Test., Tr. vol. ___ at ___; Perez Test., Tr. vol. ___ at ___; Medina Test., Tr. vol. ___ at ___; Heredia Tet., Tr. vol. ___ at ___; Holguin Test., Tr. vol. ___ at ___.

32. On July 14, 1982, while Guerra was being led through the hallway at the police station during the Handcuffed Guerra Walk-Thru, Galvan pointed at Guerra and said to Jose Jr., loud enough for the other witnesses to hear, that since the other man who was

at the crime scene when Harris was shot had died, everyone should blame the "wetback" from Mexico (Guerra) for the Harris shooting and that the handcuffed man had shot Jose Jr.'s father. Garcia Test., Tr. vol. ___ at ___; Medina Test., Tr. vol. ___ at ___.

33. Jose Jr. sat next to Galvan before and during the Lineup. J. Montero Test., Tr. vol. ___ at ___; E. Luna Test., Tr. vol. ___ at ___; see Garcia Test., Tr. vol. ___ at ___; Holguin Test., Tr. vol. ___ at ___; Medina Test., Tr. vol. ___ at ___.

34. Guerra was the only one of the six men in the Lineup with collar-length hair (Pet. Ex. 24), the description originally given to the police of one of the men seen at the crime scene (Pet. Ex. 30; Pet. Ex. 4 at F8).

35. During the Lineup, many people from the neighborhood, especially Galvan, were talking in the Lineup room. Police officers in the Lineup room with the witnesses during the Lineup could hear the witnesses talking but made either no effort or too little effort too late to stop that talking. Diaz Test., Tr. vol. ___ at ___; Heredia Test., Tr. vol. ___ at ___; Garcia Test., Tr. vol. ___ at ___; Holguin Test., Tr. vol. ___ at ___; Perez Test., Tr. vol. ___ at ___; Medina Test., Tr. vol. ___ at ___; E. Luna Test., Tr. vol. ___ at ___.

36. During the Lineup, Galvan pointed toward Guerra and said to Jose Jr. and Jose and Armando Heredia in Spanish, loud enough for all the witnesses and Houston police officers in the room to have heard, that since the other man at the crime scene (Carrasco) had died, they should blame the man who "looked like God" or the "wetback

from Mexico" for the shooting of Harris, since Mexicans only come to the U.S. to commit crimes and take jobs away from U.S. citizens. Garcia Test., Tr. vol. ___ at ___; Heredia Test., Tr. vol. ___ at ___; Holguin Test., Tr. vol. ___ at ___; Medina Test., Tr. vol. ___ at ___; see Diaz Test., Tr. vol. ___ at ___; Perez Test., Tr. vol. ___ at ___.

37. During the Lineup, Galvan repeatedly told Jose Jr. that Guerra was the killer. Diaz Test., Tr. vol. ___ at ___.

D. Ordering Witnesses Not to Talk to Defense Attorneys

38. At the police station in the early morning of July 14, 1982, a Houston police officer told several witnesses not to discuss the case with anyone except the police and the people from the Prosecutors' office, and specifically warned them not to talk to Guerra's lawyers. Garcia Test., Tr. vol. ___ at ___; Medina Test., Tr. vol. ___ at ___.

E. Deliberate Creation of Incomplete and Inaccurate Witness Statements that Witnesses Were Forced to Sign Without Reading

39. During the early morning of July 14, 1982 at the police station, Garcia told the police that when Harris was shot, Harris was standing just behind (north of) his open driver door; the long-haired man (Guerra) was standing on the driver (east) side of the police car near the front (south) end, facing toward the police car (west) with his hands one to two feet apart and the palms of his hands facing down and empty; and the short-haired man (Carrasco) ran to a few feet east and slightly south of Harris, pulling something from

his waist, and pointed at Harris as if Carrasco were holding a gun; and then, after the shooting, Carrasco ran east down the north side of Walker and shot a man (Armijo Sr.) driving a car west on Walker with two children in the car. Garcia Test., Tr. vol. ___ at ___.

40. After hearing Garcia's version of what happened, a police officer prepared a statement (Pet. Ex. 23) that omitted all the exonerating information about Guerra provided by Garcia. A police officer showed Garcia this statement and asked her to sign it. Garcia, who had attended only seven years of school, asked him to read it to her because she could not read well. The police officer refused to read it to her and told her to "just sign it" and that the police would not bother her any more if she signed it. Garcia then signed it because she was scared as a result of earlier verbal threats by the police to arrest her husband for being with a minor and to revoke his parole, and because she wanted to be left alone. When she signed the statement, she was completely unaware of its contents. Garcia Test., Tr. vol. ___ at ___.

41. After Garcia watched the Lineup, she told the police that the man in the number 4 position was not the shooter but was the other man with empty hands near the front of the police car at the time of the Harris shooting. After hearing this, a Houston police officer prepared another statement (Pet. Ex. 25) that omitted the exonerating information provided by Garcia and inserted inaccurate information prejudicial to Guerra, *i.e.*, that Garcia had picked him in the Lineup as the shooter of Harris and Armijo Sr. Garcia asked the police officer to read the statement to her, because she did not read well. The officer refused to do so. Out of fear based on the same reasons she had signed the

earlier statement, she signed the second statement, again completely unaware of its contents. Garcia Test., Tr. vol. ___ at ___.

42. During the early morning of July 14, 1982, at the police station, Diaz told the police that, when Harris was shot, the long-haired man (Guerra) was standing on the driver (east) side of the police car near the front (south) end, facing towards the police car (west) with his arms extended out over the police car (west) and spread about a foot apart and the palms of his hands facing down and empty as if he had just had his hands on the hood of the car about to be searched. Diaz Test., Tr. vol. ___ at ___.

43. After hearing Diaz's version of what happened, a police officer prepared a statement (Pet. Ex. 30) that omitted all the exonerating information about Guerra provided by Diaz and inserted inaccurate information prejudicial to Guerra, *i.e.*, that Diaz had seen a Mexican man point a gun and shoot four times at the police car. Diaz read some, but not all, of the statement. After having been threatened at the crime scene with the loss of her daughter earlier in the evening and having been detained at the police station all night, Diaz was tired and wanted to go home. So she signed the statement, unaware of most of its contents, including the inaccurate information described above. Diaz Test., Tr. vol. ___ at ___.

44. After Diaz saw the Lineup, she told the police that the man in the Number 4 position was the man she had seen on the driver side near the front of the police car. After hearing this, a police officer Robert Gatewood prepared another statement (Pet. Ex. 31)

that omitted the exonerating information provided by Diaz and inserted inaccurate information prejudicial to Guerra, *i.e.*, that Diaz had picked him in the Lineup as a man she saw standing on the side of a car with his hands outstretched and "I guess he had a gun in his hand." Diaz signed this statement without reading it because the police kept telling her to sign it and she was very tired. When she signed the statement, she was unaware of its contents. Diaz Test., Tr. vol. ___ at ___.

45. During the early morning of July 14, 1982 at the police station, Medina told the police that, when Harris was shot, the police officer (Harris) was standing just behind (north of) his driver door and the long-haired man (Guerra) was standing on the driver (east) side of the police car near the front (south) end, facing the police car (west) with his hands on the hood of the police car, a foot apart, palms down and empty, while the short-haired man (Carrasco) was a few feet east and slightly south of Harris pointing at Harris, with fire seeming to come out of Carrasco's hands. Medina Test., Tr. vol. ___ at ___.

46. After hearing Medina's version of what happened, a police officer prepared a statement (Pet. Ex. 33) that omitted all the exonerating information about Guerra provided by Medina and inserted half-truths prejudicial to Guerra, *i.e.*, that she did not see anyone shoot Harris or with pistols. After Medina had read the first four sentences of the statement, a police officer told her to hurry and sign it. She told him that she had not read it. He then threatened to jail her if she did not sign it. She then signed it, unaware of the rest of its contents, including the information described above. Medina Test., Tr. vol. ___ at ___.

47. After Medina saw the Lineup, she told the police that she recognized the long-haired man (Guerra) but that he was the other man, not the shooter. She was not asked to sign another statement. Medina Test., Tr. vol. ___ at ___.

48. During the early morning hours of July 14, 1982, at the police station, Perez told the police that, about a minute after hearing the shots that he later learned had killed Harris, Perez saw (a) one man, who had been running east on the south side of Walker, turn south onto Lenox, and run very fast on the west side of Lenox past Perez but too far away to recognize, and (b) a second man, who had been running east on the north side of Walker, turn south on Lenox, and run at a jog in the middle of Lenox about 15 to 30 feet behind the first man, and as he ran past Perez, the second man, who looked like Carrasco, pointed at Perez with his left hand, Perez heard a click, the man brought his left hand down to his side and dropped an object on the ground that made a metallic sound, stopped, with his left hand picked up the object, which looked like a nine-millimeter gun with a clip, and continued running south on Lenox to McKinney. Perez Test., Tr. vol. ___ at ___.

49. After hearing Perez's version of what had happened, a police officer prepared a statement (Pet. Ex. 21) that omitted all the exonerating information about Guerra provided by Perez. The police officer then persuaded Perez to change the description in the statement of the dropped metallic object from "gun" to "object" by insisting that Perez describe it as an "object" if he was not 100% certain that it was a gun. Perez then signed the statement. Perez Test., Tr. vol. ___ at ___.

50. After Perez saw the Lineup, he told police that he recognized Guerra from having seen him earlier in the hallway, but that Guerra was not the man who had pointed a gun at him and he did not know if Guerra was the second man who had run past Perez. Perez was not asked to sign another statement. Perez Test., Tr. vol. ___ at ___.

51. During the early morning of July 14, 1982, at the police station, Heredia told the police that, when Harris was shot, the police officer (Harris) was standing just behind (north of) his driver door and the long-haired man (Guerra) was standing on the driver (east) side of the police car near the front (south) end, facing the police car (west) with his hands on the hood of the police car, a foot apart, palms down and empty, while the short-haired man (Carrasco) was a few feet east and a little south of Harris pointing a gun at Harris, with Galvan inside her house and unable to see the shooting. Heredia Test., Tr. vol. ___ at ___.

52. After hearing Heredia's version of what happened, a police officer prepared a statement (Pet. Ex. 28) that omitted all the exonerating information about Guerra provided by Heredia and inserted inaccurate information prejudicial to Guerra, *i.e.*, that Heredia had seen Harris put the driver of the black car against the car and start to search him while the other man walked behind Harris and shot him. A police officer showed Heredia the statement and asked him to sign it. Heredia, who had attended only a few years of school in Mexico, tried to read it but could not because he could not then read English. The police officer told Heredia to "just sign it," which he did because he was scared, having seen his mother (Holguin) arrested and handcuffed only a few hours earlier.

When he signed the statement, Heredia was completely unaware of its contents. Heredia Test., Tr. vol. ___ at ___.

53. After Heredia saw the Lineup, he told a police officer that he recognized Guerra as the driver of the black car, but that Guerra was not the man Heredia had seen shoot Harris. Heredia was not asked to sign another statement. Heredia Test., Tr. vol. ___ at ___.

54. During the early morning hours of July 14, 1982 at the police station, Holguin told the police that she had not seen the shooting of Harris and Armijo Sr. but provided other information about events that occurred after the shootings. Holguin Test., Tr. vol. ___ at ___.

55. After hearing Holguin's version of what had happened, a police officer prepared a statement (Pet. Ex. 26) and told her to sign it. That police officer knew that Holguin, who had attended less than two years of school in Mexico and none in the United States, could neither speak nor read English, but no one translated the statement into Spanish for her. Although completely unaware of the contents of the statement, Holguin signed it because she was ordered to do so by the police and she was scared after having been arrested at the crime scene earlier that evening and handcuffed for about three hours. Holguin Test., Tr. vol. ___ at ___.

56. During the early morning of July 14, 1982 at the police station, Brown told the police that after hearing shots that he later determined had killed Harris, Brown ran west on Walker from Delmar past Lenox to Edgewood, that as he passed Lenox he saw someone running south on Lenox who could have been Carrasco, that shortly thereafter he saw Perez, who said that the man Brown had seen running south on Lenox had been carrying a gun and had dropped it, and much additional information. Brown Test., Tr. vol. ___ at ___.

57. After hearing Brown's version of what happened, a police officer prepared a statement (Pet. Ex. 45) omitting the exonerating information that Perez had told Brown about the man running down Lenox dropping a gun. Unaware of the significance of this omission, Brown signed the statement. Brown Test., Tr. vol. ___ at ___.

58. At the Reenactment, Garcia told Flores in front of the Prosecutors and told Moen several times that the long-haired man (Guerra) was not the one who shot Harris. But a police report describing Garcia's comments at the Reenactment (Pet. Ex. 4 at F376) omitted exonerating information about Guerra provided by Garcia and included inaccurate information prejudicial to Guerra by claiming that she had identified Guerra as the shooter. Garcia Test., Tr. vol. ___ at ___.

59. The exonerating information about Guerra omitted from, and the inaccurate information prejudicial to Guerra inserting into, the statements given to witnesses to sign

as described in findings 39-58 above were of such a nature and quantity that they could only have been deliberate conduct by the police.

60. The police and Prosecutors failed to disclose to Guerra's attorneys the police conduct and the omissions from and inaccurate inclusions in the witness statements described in findings 39-58 above. Elizondo Test., Tr. vol. ___ at ___. These omissions and inclusions were material, exonerating evidence that created a materially misleading impression prejudicial to Guerra's defense. This information that the police and Prosecutors failed to disclose to Guerra's attorneys was of such a nature and quantity that this failure to disclose could only have been deliberate conduct by the police and Prosecutors.

F. Failure to Disclose Material Exculpatory Evidence

61. Before the 1982 trial, Guerra's attorneys filed a motion requesting production by the Prosecutors of all material inconsistent with guilt or lawful arrest and an extensive motion for pretrial discovery and inspection. Pet. Ex. 3 at 17-18, 20-22. All the suppressed evidence described in these findings was encompassed by the items requested by these motions.

62. At the Reenactment, Garcia told Moen several times that Guerra was not the shooter. She also told this to Vera Flores ("Flores") in front of the Prosecutors. Garcia Test., Tr. vol. ___ at ___.

63. At the Reenactment, Perez told Moen in Bax's presence that shortly after the shooting, Perez had seen a short-haired man, who looked like Carrasco, run from the north side of Walker Street, turn south onto Lenox Street, run past Perez on Lenox, point at Perez with his left hand from a distance of about 15-20 feet, drop on the ground an object that looked like a nine-millimeter gun with a clip; retrieve it, and continue running. Guerra was not the man who had pointed the gun at him shortly after the shooting. Perez Test., Tr. vol. ___ at ___.

64. At the October Weekend Meeting Diaz told one of the two Prosecutors that she was at the crime scene at the time of the shooting of Harris and that it did not look like Guerra had a gun, since at the time of the shooting she could see that Guerra's hands were open with his palms down on the hood of the police car. Diaz Test., Tr. vol. ___ at ___.

65. If Guerra's lead defense counsel during the 1982 trial, Elizondo, had known that Diaz had told the police that Guerra was not holding a gun and was standing in a position where "pointing at the car" meant that Guerra was not pointing at Officer Harris, it would have affected Elizondo's reaction to Moen's repeated mischaracterization (in Pet. Ex. 1, vol. 21 at 313, 316-318) of Diaz's testimony (which appears in Pet. Ext. 1, vol. 21 at 312-13), that just before Harris was shot, she saw Guerra pointing towards the police car. Elizondo Test., Tr. vol. ___ at ___.

66. Diaz never told either of the Prosecutors or any of the police that at or near the time of the Harris shooting, Guerra was either holding a gun, pointing at Harris, or looking like he was shooting Harris. Diaz Test., Tr. vol. ___ at ___.

67. At the October Weekend Meeting, while reviewing the photos of Guerra and Carrasco, Garcia told one of the Prosecutors that Guerra was not the killer and that when Harris was shot, she saw Guerra with his hands open, empty, palms down and outstretched, pointing away from Harris. In response, one of the Prosecutors told her that she could not change her mind because she had already made a statement and it was too late to modify it. Garcia Test., Tr. vol. ___ at ___.

68. At the October Weekend Meeting, Medina told the Prosecutors that the man with short hair, who she identified as Carrasco, was the man whom she had seen shoot Harris. Medina Test., Tr. vol. ___ at ___.

69. Sometime before testifying, Brown told one of the Prosecutors that within minutes after the shooting of Harris, Perez had told Brown that a short-haired man who Brown thought could have been Carrasco and could not have been Guerra, had a gun and dropped it. Brown Test., Tr. vol. ___ at ___.

70. The prosecution withheld Guerra's attorneys the information in paragraphs 1-25, 27-66 above (Elizondo Test., Tr. vol. ___ at ___), all of which was material exonerating evidence.

71. As to the results of the trace metal detection test on Carrasco's hands, the Prosecutors told Elizondo only that the test had been positive as to Harris' weapon and negative for the murder weapon. Elizondo reasonably interpreted this comment to mean that only one trace metal pattern was found on Carrasco's hands. Elizondo Test., Tr. vol. ___ at ___; see Floyd McDonald ("McDonald") Test., Tr. vol. ___ at ___. Neither the Prosecutors nor anyone on their behalf ever told Guerra's lawyers that the pattern matching Harris's weapon was on Carrasco's right hand, that two trace metal patterns were found on Carrasco's other hand, or that both these two undisclosed patterns were on Carrasco's left hand. Elizondo Test., Tr. vol. ___ at ___.

72. Before the day on which Amy Heeter ("Heeter"), the police expert on trace metal detection tests, testified in early October 1982 (Pet. Ex. 1, vol. 21 at 158-79), Guerra's attorneys had never been shown or accurately told the results of the trace metal detection test on Carrasco's hands. Elizondo Test., Tr. vol. ___ at ___.

73. The two trace metal patterns on Carrasco's left hand were consistent with the pattern left by the murder weapon. McDonald Test., Tr. vol. ___ at ___.

74. Guerra's lawyers at the 1982 trial could have impeached Heeter by hiring a trace metal expert to prove that the trace metal patterns on Carrasco's left hand were consistent with the pattern left by the nine-millimeter gun (the "murder weapon") used to kill Harris and Armijo Sr. if he had known that there were trace metal patterns on Carrasco's left hand. Elizondo Test., Tr. vol. ___ at ___.

75. The two trace metal patterns on Carrasco's left hand were consistent with Carrasco's having fired the murder weapon to kill Harris and Armijo Sr., dropping the murder weapon as Carrasco ran past Perez, and firing the murder weapon again at Houston Police Officer Lawrence Trepagnier. McDonald Test., Tr. vol. ___ at ___.

76. Carrasco was left-handed. Perez Test., Tr. vol. ___ at ___; Onofre Test., Tr. vol. ___ at ___.

77. Guerra was and is right-handed. J. Luna Test., Tr. vol. ___ at ___; Onofre Test., Tr. vol. ___ at ___.

78. At the police station several hours after the shooting of Harris, Jose Jr. told the police that the man who shot Harris and Armijo Sr. fired with his left hand. Pet. Ex. 47.

79. Elizondo could have impeached the testimony of Jose Jr. by proving that if the shooter of Harris was left-handed, as Jose Jr. had told the police on the morning after the Harris shooting, January 14, 1982, Carrasco must have been the shooter. Elizondo Test., Tr. vol. ___ at ___.

G. Prosecution's Use of Known False Evidence at Trial

80. At the 1982 trial, Moen allowed Garcia to testify extensively about seeing Guerra shoot Harris, not seeing Carrasco at the time of the shooting, picking Guerra as the

shooter out of the Lineup, and never talking to either of the Prosecutors at the Reenactment (Pet. Ex. 1, vol. 22 at 449-50, 460-61, 477-80, 492-93), even though Moen knew this testimony to be inaccurate, Garcia Test., Tr. vol. ___ at ___.

81. At the 1982 trial, Moen repeatedly asked Diaz about the man she had seen pointing "at the police officer" (Pet. Ex. 1, vol. 21 at 313-18), knowing that Guerra's attorneys would think this meant that the man was pointing northward, even though Moen knew that Diaz had testified -- and meant -- that the man had been pointing "at the police car" (Pet. Ex. 1, vol. 21 at 313), which was in a westerly direction (Diaz Test., Tr. vol. ___ at ___; Moen Test., Tr. vol. ___ at ___).

82. At the 1982 trial, Moen permitted Perez to testify that he could not identify the object dropped by the man who ran past him on Lenox (Pet. Ex. 1, vol. 22 at 411), even though Moen knew that Perez thought that the object looked like a gun. Perez Test., Tr. vol. ___ at ___.

83. At the 1982 trial, Moen asked Heredia if he was drunk or had smoked anything. Pet. Ex. 1, vol. 23 at 747-48. Then, in closing argument, Moen commented that Heredia was under the influence of either alcohol or narcotics while in court testifying. (1982 trial, Tr. vol. 25 at 981). While Heredia yawned several times during his testimony, this was attributable solely to the fact that he had been awake since 3:00 a.m. Heredia had consumed no drugs or alcoholic beverage during the 48 hours before he testified in October 1982. Heredia Test., Tr. vol. ___ at ___. While testifying during Guerra's trial in October

1982, Heredia did not appear to be under the influence of either alcohol or narcotics. Linda Hernandez ("Hernandez") Test., Tr. vol. ___ at ___.

84. At the 1982 trial, Moen questioned Heredia about an alleged murder of a woman who lived in a nearby cemetery on the same evening that Harris was shot. Pet. Ex. 1, vol. 23 at 746-47. Moen questioned Heredia about the non-existent cemetery murder in a manner implying that Guerra and Carrasco had participated in that murder. Moen had no legitimate reason for asking Heredia those questions (compare Moen Test., Tr. vol. ___ at ___) and did so in order to unfairly prejudice Guerra in the juror's eyes. When asking these questions, Moen knew that this alleged murder was a hoax that had never occurred. Pet. Ex. 39; Moen Test., Tr. vol. ___ at ___. Elizondo did not expect Heredia to mention the alleged murder in the direct examination of Heredia. Elizondo Test., Tr. vol. ___ at ___.

85. At the 1982 trial, Bax permitted police officer Jerry Robinette to testify that J. Luna and Esparza had told him, at about 11:30 p.m. on July 13, 1982, shortly after Carrasco was shot, that they had left home together shortly after the departure of Carrasco and Guerra earlier in the evening and had not returned until Robinette saw them. Pet. Ex. 1, vol. 24 at 879-88. Then in closing argument (Pet. Ex. 1, vol. 24 at 784-85, 815), Moen argued that J. Luna and Esparza had lied when they testified that they were at 4907 Rusk sometime after the Harris shooting, when Carrasco came inside the house with two pistols and bragged that he had killed a policeman. But J. Luna and Esparza remained home on the night of July 13, 1982, from the time that Carrasco and Guerra left shortly after

9:00 p.m. until Carrasco was killed at about 11:30 p.m. J. Luna Test., Tr. vol. ___ at ___; see Onofre Test., Tr. vol. ___ at ___. Police Officer Antonio Palos ("Palos") found J. Luna at 4907 Rusk a few minutes before Carrasco was killed on July 13, 1982. While J. Luna was on the ground of the front porch at 4907 Rusk shortly before Carrasco was shot and the police were screaming and pointing guns at him, he did not tell the police that he had left home with his brother. J. Luna Test., Tr. vol. ___ at ___. The Prosecutors should have known, based on a written statement from Palos in their files (Pet. Ex. 35), that J. Luna had not left home with his brother and remained away from home until after Carrasco was killed.

86. At the 1982 trial, both Prosecutors claimed as fact in closing argument that five eyewitnesses, without conferring, had told police that Guerra killed Harris and Armijo and identified Guerra at the Lineup. Pet. Ex. 1, vol. 25 at 932-33, 969-72. Both Prosecutors knew that this was factually incorrect and was based on information outside the record (Bax Test., Tr. vol. ___ at ___; Moen Test., vol. ___ at ___) that was materially harmful to Guerra's defense. These statements were incorrect because (1) the witnesses had conferred in the hallway at the police station and during the Lineup, (2) the only witnesses from the 1982 trial who told the police that Guerra killed Harris were Galvan, Armijo, and, at the Reenactment, Flores, (3) the only witness who testified to having seen Guerra kill Armijo Sr. was Armijo, Jr., and (4) the only witness from the 1982 trial who identified Guerra at the Lineup as the shooter was Galvan.

H. Display of Mannequins Throughout Trial

87. When they saw the mannequins during the October Weekend Meeting, several witnesses noticed that one of the mannequin's shirts had bullet holes and blood stains, which made it easy for them to tell which individual was already dead. Diaz Test., Tr. vol. ___ at ___; Perez Test., Tr. vol. ___ at ___.

88. During the 1982 trial, the positioning of the Guerra and Carrasco mannequins in plain view of each witness helped the witnesses identify which of the men was dead because as they testified, each witness could see that the shirt on the Carrasco mannequin had bullet holes and blood stains while the shirt on the Guerra mannequin did not. Pet. Ex. 19 (picture of mannequins); Heredia Test., Tr. vol. ___ at ___; Perez Test., Tr. vol. ___ at ___. The shirt with bullet holes and blood helped witnesses know which man was already dead. Heredia Test., Tr. vol. ___ at ___; Perez Test., Tr. vol. ___ at ___.

89. During the 1982 trial, the jurors noticed that the shirt on the mannequin that looked like Carrasco was blood-stained and bullet ridden. Donna Monroe Jones ("Jones") Test., Tr. vol. ___ at ___.

90. During the 1982 trial, the mannequins made the jurors feel uncomfortable and ill-at-ease. Jones Test., Tr. vol. ___ at ___.

91. During the 1982 trial, the mannequins were placed in plain view of the jury (beginning at Pet. Ex. 1, vol. 21 at 43; see id. vol. 25 at 899) and remained there during the entire testimony of every witness. Elizondo Test., Tr. vol. ___ at ___; Jones Test., Tr. vol. ___ at ___.

92. During the 1982 trial, the Prosecutors had no purpose for clothing the Carrasco mannequin in Carrasco's shirt with its bullet holes and blood stains except to inflame the jury and to make it easier for eyewitnesses to identify which one was still alive. See Moen Test., Tr. vol. ___ at ___; Bax Test., Tr. vol. ___ at ___. A new shirt of the same color could have been used. Elizondo Test., Tr. vol. ___ at ___.

93. The use of mannequins in the manner employed by the Prosecutors in the 1982 trial can create false memories. Loftus Test., Tr. vol. ___ at ___.

94. During the 1982 trial, Elizondo saw the mannequins for the first time. Elizondo Test., Tr. vol. ___ at ___.

95. During the 1982 trial, the combination of the use of Carrasco's bullet-riddled, blood-stained shirt on the Carrasco mannequin and the mannequins' disturbing facial expressions and constant presence in front of the jury tainted the in-court witness identifications of Guerra and prejudiced jurors against Guerra.

I. Appeal to Ethnic Prejudice

96. Moen had no legitimate justification for informing four jurors during *voir dire* that Guerra was an "illegal alien" and that this fact was something that the jurors could consider, if they convicted Guerra, in answering the punishment special issues that would determine whether Guerra received a life sentence or the death penalty. Compare Moen Test., Tr. vol. ___ at ___.

97. Guerra's undocumented status was irrelevant in his 1982 trial in determining whether he should receive the death penalty. Compare Moen Test., Tr. vol. ___ at ___.

98. During jury deliberations in the guilt-innocence phase of Guerra's 1982 trial, one or two jurors commented that Guerra was an illegal alien. Jones Test., Tr. vol. ___ at ___.

J. Use of Irrelevant and Inflammatory Character and Victim Impact Testimony

99. The pictures shown to the jury during the 1982 trial (State's Exs. 73-77; see Pet. Ex. 1, vol. 23 at 688-91) of Officer Harris's bullet-riddled head at the morgue (the "Harris pictures") were gruesome. Jones Test., Tr. vol. ___ at ___.

100. The testimony of Harris's widow during the guilt-innocence phase of the 1982 trial, over repeated objections, did not address any relevant issue, nor did it present to the

jury any relevant fact. Mrs. Harris testified regarding matters that, if at all relevant, pertained only to sentencing.

101. The combination of the use of the Harris pictures followed by the poignant, but irrelevant, testimony from Harris's widow (Pet. Ex. 1, vol. 23 at 708-10) was intended by the Prosecutors, especially Bax, to appeal improperly to the jurors' emotions rather than reason in deciding on Guerra's guilt or innocence. This emotional appeal worked to some degree. Jones Test., Tr. vol. ___ at ___. Bax had no legitimate reason for obtaining the testimony from Harris's widow during the guilt-innocence phase of the trial. Compare Bax Test., Tr. vol. ___ at ___.

K. Portraying Guerra as Dangerous

102. During the 1982 trial, approximately five to eight uniformed police officers remained in the courtroom at almost all times. During the first day of testimony and during closing argument on both phases of the trial, this number increased to approximately 25-30, occupying fully 50% of the visitor seats in the courtroom. Jones Test., Tr. vol. ___ at ___; Elizondo Test., Tr. vol. ___ at ___. There was no legitimate security need for more than one or two police officers. Combined with testimony from several witnesses that they or others were either afraid of Guerra or afraid to testify (Pet. Ex. 1, vol. 22 at 434-35, 518, 592-93; id. vol. 21 at 290, 293; id. vol. 23 at 617-20, 632-33), this communicated to the jurors the unmistakable message that Guerra was dangerous and that the police wanted Guerra convicted and given the death penalty. Cf. Jones Test., Tr. vol. ___ at ___.

L. Improper Translation

103. During Guerra's 1982 trial, court interpreter Rolf Lentz ("Lentz") acted inappropriately by making jokes and adopting an improperly casual manner while communicating with several defense witnesses in Spanish. J. Luna Test., Tr. vol. ___ at ___; Hernandez Test., Tr. vol. ___ at ___.

104. When J. Luna testified that after confessing to having killed a policeman, Carrasco offered him a gun, the interpreter joked about it being a Christmas present. J. Luna Test., Tr. vol. ___ at ___.

105. During Guerra's 1982 trial, court interpreter Lentz made dozens of interpreting errors that occasionally changed the meanings of questions and answers, including:

- a. failing to interpret for the witnesses some parts of the questions posed by the lawyers;
- b. failing to interpret into English some parts of the answers given by the witnesses;
- c. adding words to the Spanish interpretation for the witnesses that were not contained in the English questions from the lawyers;
- d. adding words to the English interpretation that were not contained in the answers given in Spanish by the witnesses;
- e. misinterpreting the questions; and

f. misinterpreting the answers.

Hernandez Test., Tr. vol. ___ at ___.

M. Witness Credibility :

106. The entire testimony of police officer L.E. Webber ("Webber") concerning the events of July 13, 14 and 22, 1982, was not credible because he exaggerated, had poor recall, and gave some testimony that is patently incredible. For example, even though he had reviewed no files about the Harris murder investigation since 1982, he claimed to remember Flores' name and that shortly after Harris was shot, she told him that the shooter was between 5'6" and 5'8", weighed 160 pounds, and wore a green jacket. None of this information appeared in Flores' statement taken on July 14, 1982 (Pet. Exs. 41, 42) or in any police offense report purporting to describe information provided by Flores. Moreover, Webber testified that the murder weapon (State's Ex. 44) was found near Guerra and that the .45 caliber gun (State's Ex. 43) was discovered near Carrasco (Webber Test., Tr. vol. ___ at ___), although the reverse is accurate (Pet. Ex. 1, vol. 20 at 25-28, 50-51, 146). Additionally, he described as "calm", without anger, shouting or cursing, the demeanor of the police at the crime scene and outside 4907 Rusk shortly before Carrasco was shot, Webber Test., which contradicts other witnesses (Medina Test., Tr. vol. ___ at ___; Holguin Test., Tr. vol. ___ at ___; Diaz Test., Tr. vol. ___ at ___; Onofre Test., Tr. vol. ___ at ___; J. Luna Test., Tr. vol. ___ at ___), and seems unlikely. Most incredibly, Webber claimed that the police had no weapons drawn as they entered 4907 and 4911 Rusk in search of

Harris' murderer (Webber Test., Tr. vol. ___ at ___), which contradicts other witnesses (J. Luna Test., Tr. vol. ___ at ___; Pet. Ex. 1, vol. 24 at 791-92, 817-18) and common sense.

107. The entire testimony of police officer Jim Montero concerning the events of July 1982 was not credible because he testified as if he specifically recalled what occurred during the Lineup before finally admitting he had no independent recollection of the Lineup.

108. The testimony of Perez, Garcia, Heredia, Holguin, Diaz, and Medina is credible and consistent with all the physical evidence.

II. ACTUAL INNOCENCE

109. The evidence overwhelmingly shows that Guerra was not guilty of shooting Harris and Armijo Sr.

A. Eyewitness Testimony

110. At the time of the shooting of Harris, Guerra was standing on the driver (east) side of Harris's car near the front (south) end of the car, facing the car (west), with his hands stretched out over the car (to the west), one or two feet apart, with his palms down and his hands open and empty. Heredia Test., Tr. vol. ___ at ___; Diaz Test., Tr. vol. ___ at ___; Medina Test., Tr. vol. ___ at ___; Garcia Test., Tr. vol. ___ at ___.

111. At the time Harris was shot, Harris was standing directly behind (to the north) and within a foot of the open driver door of his car, and the shooter must have been standing close enough to Harris that the nine-millimeter gun was east and slightly south of Harris's head. The shooter could not have been standing near the front (south) end of the police car, *i.e.*, where Guerra was standing at the time Harris was shot. Pet. Ex. 11; McDonald Test., Tr. vol. ___ at ___.

112. At the time of the Harris shooting, Carrasco was a few feet east and slightly south of Harris, in the location where the shooter must have been standing, with his hands outstretched, pointing at Harris, holding a gun, with fire coming out of it. Garcia Test., Tr. vol. ___ at ___; Heredia Test., Tr. vol. ___ at ___; Medina Test., Tr. vol. ___ at ___; McDonald Test., Tr. vol. ___ at ___.

113. Carrasco shot Armijo Sr. Garcia Test., Tr. vol. ___ at ___.

114. The man who shot Harris and Armijo Sr. was left-handed. Pet. Ex. 47 (Statement of Jose Jr.); Perez Test., Tr. vol. ___ at ___. Carrasco was left-handed, Perez Test., Tr. vol. ___ at ___; Onofre Test., Tr. vol. ___ at ___, while Guerra is right-handed, J. Luna Test., Tr. vol. ___ at ___; Onofre Test., Tr. vol. ___ at ___.

115. After shooting Harris and Armijo Sr., Carrasco ran east down the north side of Walker, firing the nine-millimeter murder weapon several more times. When he reached Lenox, he turned south onto Lenox, tried to fire his empty gun at Perez, dropped the

murder weapon, retrieved it, and continued running. Perez Test., Tr. vol. ___ at ___; Garcia Test., Tr. vol. ___ at ___; see Brown Test., Tr. vol. ___ at ___. After the shooting Harris and Armijo Sr., the killer ran east on the north side of Walker Street. Pet. Ex. 1, vol. 20 at 104-05.

116. After shooting Harris and Armijo Sr., Carrasco ran into the house at 4907 Rusk and boasted to J. Luna and Esparza that he had just shot a policeman. As he spoke, he was holding the nine-millimeter murder weapon (State's Ex. 44) and Harris's gun (State's Ex. 66). J. Luna Test., Tr. vol. __ at __.

117. A few hours after the Harris shooting, Guerra gave a voluntary statement, unaided by counsel, in which he explained his actions at the time of the shooting. Pet. Ex. 4 at F264, 366-67. This statement is entirely consistent with the physical evidence concerning the location of the shooter (Carrasco) at the time he shot Harris. McDonald Test., Tr. vol. ___ at ___.

118. The testimony at the 1982 trial of Garcia, Flores, Galvan, Jose Jr., and Diaz, insofar as it identifies Guerra as the shooter, is inconsistent with the physical evidence showing where the shooter must have been standing at the time he shot Harris. McDonald Test., Tr. vol. ___ at ___.

119. The testimony now of Garcia, Diaz, Holguin, Heredia, Perez, and Medina is credible and, insofar as it points to Carrasco as the killer of Harris and Armijo Sr. and the

location of Guerra and Carrasco at the time of the Harris shooting, is entirely consistent with the physical evidence. McDonald Test., Tr. vol. ___ at ___.

B. Physical Evidence

120. No physical evidence linked Guerra to either the murder of Harris or the murder of Armijo Sr. Bax Test., Tr. vol. ___ at ___.

121. Guerra's fingerprints were not found on the murder weapon. Pet. Ex. 4 at F368.

122. When held and fired, the murder weapon leaves a discernible trace metal pattern in less than 60 seconds. Neither sweat, normal washing with soap and water, nor rubbing one's hands with sand or dirt using less than sustained vigor would remove such a pattern. McDonald Test., Tr. vol. ___ at ___.

123. The dirt found on Guerra's hands when he was arrested came from his having been on the ground being searched by Houston police. Pet. Ex. 17. The ground was damp from a light rain. Pet. Ex. 4 at F229. This contact with the ground would not have erased any trace metal on his hands. McDonald Test., Tr. vol. ___ at ___.

124. The two trace metal patterns found on Carrasco's left hand after his death (State's Ex. 69) are consistent with (a) the trace metal pattern left by the nine-millimeter

gun (State's Ex. 44) used to kill Harris and Armijo Sr. (McDonald Test., Tr. vol. ___ at ___), and (b) Perez's testimony that Carrasco dropped a nine-millimeter gun out of his left hand and then retrieved it (McDonald Test., Tr. vol. ___ at ___; Perez Test., Tr. vol. ___ at ___).

125. Guerra had no trace metal on either hand or anywhere else on his body. Pet. Ex. 1, vol. 21 at 181, 194-97; Pet. Ex. 4 at F187-88, 197.

126. It strains credulity to believe the prosecution's "gun switch" theory (Pet. Ex. 1, vol. 25 at 907-09), i.e., that after seeing Guerra shoot and obviously kill Harris, take Harris's gun, and shoot Armijo Sr., Carrasco would accept from Guerra the murder weapon and Harris's gun.

C. Galvan, Jose Jr., and Flores

127. At the time of the shooting, Galvan was inside her house. Heredia Test., Tr. vol. ___ at ___; Garcia Test., Tr. vol. ___ at ___; see Holguin Test., vol. ___ at ___. Heredia told this to the police when giving his statement at the police station. Heredia Test., Tr. vol. ___ at ___.

128. Before seeing Guerra in handcuffs, Galvan stated to others that she had no idea who had shot Harris. Perez Test., Tr. vol. ___ at ___. She changed stories radically

from the night of the shooting (Pet. Ex. 4 at F7-9), to the Reenactment a week later (Pet. Ex. 4 at F375-76), to the trial 2-1/2 months later (Pet. Ex. 1, vol. 22 at 547-94).

129. Galvan's reputation in the neighborhood for truth and for veracity was bad. She was known as a liar. Holguin Test., Tr. vol. ___ at ___.

130. Galvan repeatedly expressed disdain and resentment for undocumented aliens, especially those from Mexico. She repeatedly referred to them as "mojados" or "wetbacks." She told others that she believed that undocumented aliens came to the United States only to commit crimes and take jobs away from United States citizens. Garcia Test., Tr. vol. ___ at ___; Heredia Test., Tr. vol. ___ at ___; Holguin Test., Tr. vol. ___ at ___; Medina Test., Tr. vol. ___ at ___. This expression of prejudice against undocumented aliens likely motivated her false testimony.

131. At the time Harris was shot, Jose Jr. did not see Guerra or Carrasco clearly enough to know which one had shot Harris. Medina Test., Tr. vol. ___ at ___; Holguin Test., Tr. vol. ___ at ___; see Perez Test., Tr. vol. ___ at ___.

132. Immediately after the shooting, Jose Jr. admitted that he had not seen who shot his father because he ducked below the dashboard before his father was shot. Holguin Test., Tr. vol. ___ at ___; accord, Pet. Ex. 1, vol. 21 at 302-03, 307-08. He repeated his inability to identify the shooter while he was sitting in the hallway outside the Homicide Division office at the police station upon seeing Guerra during the Handcuffed Guerra

Walk-Thru (Medina Test., Tr. vol. ___ at ___) and during the Lineup (Holguin Test., Tr. vol. ___ at ___; Medina Test., Tr. vol. ___ at ___).

133. It seems reasonably likely that Jose Jr. only began to believe that Guerra was the shooter as a result of seeing Guerra in handcuffs at the police station and hearing Galvan repeatedly over several hours at the police station before and during the Lineup, insist that Guerra was the murderer and criticize Guerra as a "wetback" (Diaz Test., Tr. vol. ___ at ___; Garcia Test., Tr. vol. ___ at ___; Heredia Test., Tr. vol. ___ at ___; Holguin Test., Tr. vol. ___ at ___; Medina Test., Tr. vol. ___ at ___; Perez Test., Tr. vol. ___ at ___, Loftus Test., Tr. vol. ___ at ___), followed by pressure from the Prosecutors, who ignored or argued with witnesses providing evidence of Guerra's innocence and reminded witnesses at the October Weekend Meeting that Guerra was "the man who shot the cop" (see findings 21-26, 58, 62-64, 67-69, above).

134. Memory can be molded after only a few hours of inaccurate post-event suggestion. Loftus Test., Tr. vol. ___ at ___. Apparently that occurred here with Jose Jr. and Flores.

135. Flores told the police at the station that she had not seen the shooting. Perez Test., Tr. vol. ___ at ___.

136. Flores did not see the actual shooting and, for several weeks after July 13, 1982, told others that she was completely uncertain whether Guerra or Carrasco was the

man who shot Harris and Armijo Sr. Perez Test., Tr. vol. ___ at ___; Garcia Test., Tr. vol. ___ at ___.

137. At the time of the Harris and Armijo Sr. shootings, Flores was sufficiently intoxicated that it seems likely that her perceptions were significantly impaired. See Garcia Test., Tr. vol. ___ at ___; Medina Test., Tr. vol. ___ at ___. Thus, Flores's testimony during the 1982 trial about the circumstances surrounding the shooting of Harris is suspect.

D. Carrasco's Violent Nature; Guerra's Clean Record

138. Carrasco was violent and was known to shoot guns. Holguin Test., Tr. vol. ___ at ___; see Onofre Test., Tr. vol. ___ at ___.

139. At about 11:30 p.m. on July 13, 1982, Carrasco came out shooting as the police closed in on his hiding place. Pet. Ex. 1, vol. 23 at 672-80; Pet. Ex. 4 at F327.

140. Carrasco had a history of armed robbery, gun possession, and possibly murder. Pet. Ex. 4 at F36, 286, 409, 489-90, 503-04, 507.

141. Guerra was docile when he was discovered hiding behind a trailer in the back yard of 4911 Rusk shortly after Carrasco was killed. Guerra had access to a gun lying nearby but chose not to try to use it. See Bax Test., Tr. vol. ___ at ___.

PROPOSED CONCLUSIONS OF LAW

A. Actual Innocence

1. Guerra's persuasive evidence beyond a reasonable doubt of his actual innocence, based on evidence not available to him or his attorney at the original 1982 trial, renders his conviction a violation of the Eighth and Fourteenth Amendments. Herrera v. Collins, 113 S. Ct. 853, 874 (1993) (O'Connor & Kennedy, J.J., concurring); id. at 875 (White, J., concurring); id. at 878-84 (Blackmun, Stevens & Souter, J.J., dissenting). No rational trier of fact could find proof of Guerra's guilt beyond a reasonable doubt.

B. Cumulative Effect of Prosecutorial Error

2. Prosecutorial misconduct violates a defendant's constitutional right to due process when the cumulative effect of the prosecutor's misconduct makes the trial fundamentally unfair. In the 1982 trial, there is a reasonable probability that the verdict might have been different had the trial been properly conducted. Kirkpatrick v. Blackburn, 777 F.2d 272, 278-79 (5th Cir. 1985), cert. denied, 476 U.S. 1178 (1986).

3. Errors of state and constitutional law so infused the 1982 trial with unfairness as to deny Guerra due process of law. Derden v. McNeel, 978 F.2d 1453, 1458 (5th Cir. 1992) (en banc), rev'g 938 F.2d 605 (5th Cir. 1991). These errors created a record that more likely than not caused a suspect verdict. Id.

142. Before he was arrested on July 13, 1982 for the Harris murder, Guerra had never previously been convicted or even arrested for any offense in Mexico or the United States. Stipulation, Tr. vol. ___ at ___.

E. Carrasco's Ownership and Possession of the Murder Weapon

143. It is undisputed that Carrasco owned the murder weapon, was almost always carrying it on him, and was very possessive of it. J. Luna Test., Tr. vol. ___ at ___; Onofre Test., Tr. vol. ___ at ___.

144. It is undisputed that Carrasco used the murder weapon to shoot at police officers shortly before Carrasco was killed. E.g., Pet. Ex. 1, vol. 23 at 672-75; vol. 20 at 146; Pet. Ex. 4 at F259-60, 327, 356.

145. It would have been difficult for Carrasco and Guerra to switch guns accidentally without immediately realizing it because the two guns feel so different. F. McDonald Test., Tr. vol. ___ at ___.

4. Because the state court, in considering Petitioner's Petition for Writ of Habeas Corpus, found no waiver of error, there is no bar to considering those errors in a cumulative error analysis. Derden v. McNeel, 978 F.2d 1453, 1458 (5th Cir. 1992) (en banc), rev'g 938 F.2d 605 (5th Cir. 1991).

C. Suppression of Evidence

5. The Prosecutors committed misconduct by deliberately and knowingly putting into the mouths of witnesses things that the witnesses had not said and did not believe to be true, by persistently cross-examining those witnesses on that basis, and by making improper insinuations and assertions calculated to mislead the jury. This untrue information was material and detrimental to Guerra's defense. United States v. Williams, 112 S. Ct. 1735, 1749 (1992) (Stevens, Blackmun, O'Connor and Thomas, JJ., dissenting) (quoting Berger v. United States, 295 U.S. 78 (1935)).

6. By suppressing evidence that was favorable to Guerra and material to his defense after a proper request by Guerra's attorney, the Prosecutors violated Guerra's rights to due process. Brady v. Maryland, 373 U.S. 83, 87 (1963); Derden v. McNeel, 938 F.2d 605, 617 (1991), rev'd on other grounds, 978 F.2d 1453 (5th Cir. 1992).

7. There is a reasonable probability that, had any of the suppressed evidence been disclosed to Guerra's attorney, the results of the 1982 trial would have been different. United States v. Bagley, 473 U.S. 667, 682 (1985).

8. Any knowledge on the part of the police regarding evidence favorable to the Petitioner and material to his defense that is not produced to Petitioner's attorney after a proper request is imputed to the state prosecutors as part of the prosecution team, which includes both investigative and prosecutorial personnel. Williams v. Griswald, 743 F.2d 1533, 1542 (11th Cir. 1984); see also United States v. Antone, 603 F.2d 566, 569 (5th Cir. 1979).

D. Intimidation of Witnesses

9. The police and Prosecutors intimidated witnesses to prevent them from testifying to evidence favorable to Guerra and material to his defense. The police and Prosecutors also intimidated witnesses to persuade them to give perjured testimony materially unfavorable to Guerra. Such conduct severely prejudiced the 1982 trial against Guerra and therefore violated his right to due process. See United States v. Heller, 830 F.2d 150, 152-53 (11th Cir. 1987); United States v. Smith, 577 F. Supp. 1232, 1236-38 (S.D. Ohio 1983); see generally Webb v. Texas, 409 U.S. 95 (1972); cf. United States v. Hammond, 598 F.2d 1008, 1012-13 (5th Cir. 1979).

10. Police actions that intimidate witnesses are imputed to the prosecutors. Fulford v. Maggio, 692 F.2d 354, 358 n.2 (5th Cir. 1982), rev'd. on other grounds, 462 U.S. 111 (1983).

E. Suggestive Identification Procedures

11. The improper one-person show up of Guerra when he was walked, in handcuffs and with bags over his hands, and passed several witnesses as they were sitting in the hall of the police station on the night of the Harris murder, all of which occurred before the Lineup, together with the communications among witnesses during the Lineup and statements made in the presence of witnesses by Hilma Galvan during the Lineup that Guerra was the murderer, improperly and irreparably tainted any identification of Guerra in the Lineup, and the admission into evidence of the Lineup identifications resulted in a denial of Guerra's right to due process. Manson v. Brathwaite, 432 U.S. 98 (1977); Stovall v. Denno, 388 U.S. 293, 301-02 (1967); Dispensa v. Lynaugh, 847 F.2d 211, 220 (5th Cir. 1988); Swicegood v. Alabama, 577 F.2d 1322, 1325 (5th Cir. 1978).

12. Given the facts surrounding the Lineup, the identifications of Guerra at the Lineup was so unreliable that the identification procedure was unnecessarily suggestive, and Guerra's due process right to fair judicial procedure was violated by the admission of the identifications into evidence and by allowing the witnesses to re-identify Guerra as the murderer during their trial testimony. Manson v. Brathwaite, 432 U.S. 98 (1977); Stovall v. Denno, 388 U.S. 293, 301-02 (1967).

13. Under the totality of the circumstances, the improperly suggestive identification procedures used by the police and the Prosecutors was so corrupting that it led to a substantial likelihood of irreparable in-court misidentification by the witnesses.

Passman v. Blackburn, 652 F.2d 559, 569 (5th Cir. 1981), cert. denied, 455 U.S. 1022 (1982); Neil v. Biggers, 409 U.S. 188, 198 (1972); Simmons v. United States, 390 U.S. 377, 384 (1968).

14. Under the totality of the circumstances, the impermissibly suggestive identification procedures used by the police and the Prosecutors was so corrupting that it led to a substantial likelihood of misidentification at the Lineup at the police station, such that admission of testimony regarding the out-of-court identification at the Lineup was a violation of Guerra's right to due process. Rodriguez v. Young, 906 F.2d 1153, 1167 (7th Cir. 1990), cert. denied, 111 S. Ct. 698 (1991) (citing Neil v. Biggers, 409 U.S. 188, 198 (1972)). The State has failed to establish by clear and convincing proof that the in-court testimony at the 1982 trial was not the fruit of earlier unnecessary suggestive identification procedures. Herrera v. State, 682 S.W.2d 313, 318 (Tex. Crim. App. 1984) (en banc), cert. denied, 471 U.S. 1131 (1985).

15. The State has failed to prove beyond a reasonable doubt that the error in admitting tainted and unreliable testimony identifying Guerra during the 1982 trial and regarding out-of-court identification of Guerra before the 1982 trial was harmless. Thigpen v. Cory, 804 F.2d 893, 897 (6th Cir. 1986), cert. denied, 428 U.S. 918 (1987) (citing Chapman v. California, 386 U.S. 18, 24 (1967), cert. denied sub nom. Charles v. Butler, 111 S. Ct. 384 (1990)).

16. The issue in considering whether the admission of evidence that is the result of improperly suggestive identification procedures is harmful beyond a reasonable doubt is not whether the legally admitted evidence was sufficient to support the jury's verdict, but rather whether the State has proved beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained. Satterwhite v. Texas, 486 U.S. 249, 259 (1988) (quoting Chapman v. California, 386 U.S. 18, 24 (1967)).

17. The presentation of Guerra in the Lineup as the only one of the six people in the Lineup with long hair when two key witnesses had identified the shooter as having long hair, improperly suggested whom the witnesses should identify and therefore denied Guerra's right to due process of law. Dispensa v. Lynaugh, 847 F.2d 211, 218 (5th Cir. 1988).

18. It is irrelevant that the police and the Prosecutors may not have solicited the comments by Hilma Galvan and others, made both before and during the Lineup, that Guerra was the murderer. It is the likelihood of misidentification that violated Guerra's right to due process, and so only the effects of, rather than the causes for, pre-identification encounters are determinative of whether the confrontations were unduly suggestive. Thigpen v. Cory, 804 F.2d 893, 895 (6th Cir. 1986), cert. denied, 482 U.S. 918 (1987); Neil v. Biggers, 409 U.S. 188, 198 (1972); Green v. Loggins, 614 F.2d 219, 222 (9th Cir. 1980).

19. The pretrial use of the mannequins in the meeting with witnesses at the Prosecutors' office the weekend before trial was the equivalent of a one-person show up or

a two-person show up (where it was clear that the second person was dead). Such a show up is a violation of Guerra's due process rights. United States v. Wade, 388 U.S. 218 (1967); Herrera v. Collins, 904 F.2d 944, 947 n.2 (5th Cir.), cert. denied, 111 S. Ct. 307 (1990); see also Babers v. Estelle, 616 F.2d 178 (5th Cir.), cert. denied, 449 U.S. 985 (1980); Rodriguez v. Young, 906 F.2d 1153, 1167 (7th Cir. 1990), cert. denied, 111 S. Ct. 698 (1991) (citing Neil, 409 U.S. at 198). The use of the mannequins, with one wearing an obviously bullet-riddled, blood-stained shirt that the witnesses could see, violated Guerra's due process rights by injecting impermissibly suggestive factors into the trial process. Holbrook v. Flynn, 475 U.S. 560, 570 (1986).

F. Knowing Use of False Evidence

20. The Prosecutors' questions implying falsely that there had been a murder in a nearby cemetery on the same night as the Harris murder and that Guerra had participated in that murder were known by the police and the Prosecutors to be false and could in all reasonable likelihood have affected the judgment of the jury. This knowing use of false testimony by the Prosecutors violated Guerra's right to due process. See Napue v. Illinois, 360 U.S. 264, 269, 271 (1959); Giglio v. United States, 405 U.S. 150, 154 (1972). Moreover, these questions and answers deliberately left a materially false impression and were material to the jury's deliberations. May v. Collins, 955 F.2d 299, 315 (5th Cir.), cert. denied, 112 S. Ct. 1925 (1992); United States v. Lochmondy, 890 F.2d 817, 822 (6th Cir. 1989); see also United States v. Anderson, 574 F.2d 1347, 1355 (5th Cir. 1978). These questions had a substantial and injurious effect or influence in determining the jury's verdict and constituted

a deliberate and especially egregious error that, when combined with the pattern of misconduct in which the Prosecutors engaged in this case, infected the integrity of the entire 1982 trial. Brecht v. Abrahamson, 113 S. Ct. 1710, 1714, 1722 (1993).

21. The Prosecutors' use of evidence that one of Guerra's roommates, who had testified in Guerra's defense, had participated in a robbery was known to be false by the Prosecutors and could in all reasonable likelihood have affected the judgment of the jury. This knowing use of false testimony by the Prosecutors violated Guerra's due process rights. See Napue v. Illinois, 360 U.S. 264, 269, 271 (1959); Giglio v. United States, 405 U.S. 150, 154 (1972).

22. The deliberate deception of the state trial court and jurors by the Prosecutors' deliberate presentation of known false evidence is incompatible with the rudimentary demands of justice and requires a new trial. This is true even when the State, though not soliciting false evidence, allows it to go uncorrected when it appears. Mooney v. Holohan, 294 U.S. 103, 112 (1935); Giglio v. United States, 405 U.S. 150, 154 (1972).

23. Guerra was entitled to a jury that was not laboring under a government-sanctioned false impression of material evidence when it decided the question of guilt or innocence. United States v. Barham, 595 F.2d 231, 242 (5th Cir. 1979), cert. denied, 450 U.S. 1002 (1981).

G. Portraying Guerra as Dangerous

24. The Prosecutors' implications and solicitation of evidence that witnesses were too scared to testify, combined with the overwhelming and unnecessary uniformed police presence in the courtroom and the direct references during voir dire and more subtle references during closing argument to Guerra's status as an "illegal alien," made it more likely that the jury would find Guerra guilty and created an unacceptably high risk to Guerra's right to a fair trial of impermissible factors affecting the jury and constituted prosecutorial misconduct. B. L. Gershman, Prosecutorial Misconduct § 10.2(c), at 10-11 to -12 (4th ed. 1988) (citing numerous cases); cf. Holbrook v. Flynn, 475 U.S. 560, 567-70 (1986); Estelle v. Williams, 425 U.S. 501, 503-05 (1976); Dawson v. Delaware, 112 Ct. 1093 (1992); Woods v. Dugger, 923 F.2d 1454 (11th Cir.), cert. denied, 112 S. Ct. 407 (1991); Norris v. Risley, 918 F.2d 828, 830-33 (9th Cir. 1990); United States v. Yahweh, 779 F. Supp. 1342 (S.D. Fla. 1992); United States v. Herberman, 583 F.2d 222, 230 (5th Cir. 1978).

25. Irrespective of whether certain prosecutorial misconduct that occurred before and during the 1982 trial, standing alone, is constitutional error, the sum of these errors prevented Guerra from obtaining a fair and impartial trial in violation of his right to due process. United States v. Herberman, 583 F.2d 222, 230 (5th Cir. 1978).

H. Appeals to Ethnic Prejudice

26. The Prosecutors' appeals during the 1982 trial to prejudice against "illegal aliens" were unconstitutional. McClesky v. Kemp, 481 U.S. 279, 309 n.30 (1987); see also McFarland v. Smith, 611 F.2d 414, 416-17 (2d Cir. 1979). Such appeals to prejudice distort the search for truth and drastically affect the jury's impartiality. United States v. Doe, 903 F.2d 16, 25 (D.C. Cir. 1990); see United States ex rel. Haynes v. McKendrick, 481 F.2d 152, 157 (2d Cir. 1973). Racial, ethnic, and ancestral fairness of judicial proceedings is an indispensable ingredient of due process. See Doe, 903 F.2d at 25; see Batson v. Kentucky, 476 U.S. 79, 89 (1986); Vasquez v. Hillery, 474 U.S. 254, 262 (1986). The Prosecutors' appeal to prejudice by emphasizing emotion rather than evidence rendered the argument constitutionally impermissible. Doe, 903 F.2d at 25. The harm caused by such prejudicial appeals is heightened in the present case where the victim was of a different race than the defendant. Turner v. Murray, 476 U.S. 28, 35 n.7 (1986). The State's contention that the "offense" of unlawful entry into the United States helps prove the defendant's propensity for future violent and criminal behavior and thus may help justify the imposition of a death sentence, is outrageous ethnic stereotyping that has no place in an American courtroom.

27. Guerra's status as an illegal alien was irrelevant to the jury's deliberations in the punishment phase of the 1982 trial.

28. The "offense" of unlawful entry into the United States is irrelevant to the issue of a defendant's propensity for future violence and dangerous criminal behavior. There is

no proof that illegal aliens are more prone than people legally in the United States to commit violent crimes. Guerra was entitled to have his punishment assessed by the jury based on consideration of the mitigating and aggravating circumstances concerning his personal actions and intentions, not those of a group of people with whom he shares some characteristic. Zant v. Stephens, 462 U.S. 862, 879 (1983).

29. The Prosecutors' appeal to the jury to "let the other residents at 4907 Rusk . . . know just exactly what we citizens of Harris County think about this kind of conduct . . ." improperly sought to play on the jury's assumption that Guerra's roommates were also illegal aliens and thus potentially dangerous and in need of being taught a lesson. There is no other explanation for why Guerra's roommates needed to receive such a message. This emotional appeal to ethnic prejudice was constitutionally impermissible. McCleskey v. Kemp, 481 U.S. 279, 309 n.30 (1987); see also McFarland v. Smith, 611 F.2d 414, 416-17 (2d Cir. 1979); United States v. Doe, 903 F.2d 16, 25 (D.C. Cir. 1990); see United States ex rel. Haynes v. McKendrick, 481 F.2d 152, 157 (2d Cir. 1973).

I. Use of Victim Impact and Character Testimony

30. The testimony of Harris's widow, as well as that of the widow of Armijo Sr., had no tendency to make the existence of any fact relevant to the determination of Guerra's guilt more or less probable, and such testimony, particularly that of Mrs. Harris, clearly was offered solely to inflame the jury. In light of the manifest weakness of the Prosecutors' other evidence and the lack of any physical evidence of Guerra's guilt, the admission of the

testimony of both Mrs. Harris and Mrs. Armijo, Sr., over Guerra's objection, constituted fundamental constitutional error. Satterwhite v. Texas, 486 U.S. 249, 256 (1988); United States ex rel. Palmer v. DeRobertis, 738 F.2d 168, 171 (7th Cir. 1984), cert. denied, 469 U.S. 924 (1984); Dudley v. Duckworth, 854 F.2d 967, 970 (7th Cir. 1988), cert. denied, 490 U.S. 1011 (1989).

31. Although, subject to the requirements of due process, victim impact evidence may be relevant to the factors considered during the sentencing phase of a capital murder trial, such evidence is irrelevant to the question of guilt and is extremely prejudicial to a fair determination of that question. South Carolina v. Gathers, 409 U.S. 805 (1989), overruled in part, Payne v. Tennessee, 111 S. Ct. 2597 (1991). In the 1982 trial, Mrs. Harris's testimony was extensive, yet bore no relevance to any fact or issue except the impact of Harris's death on his family. Admission of the testimony of Mrs. Harris during the guilt phase of the 1982 trial, rather than at the sentencing phase, defeated the entire purpose of the bifurcated capital trial structure, by allowing the jury to consider highly prejudicial evidence, relevant only to sentencing, during the jury's deliberations regarding the guilt or innocence of Guerra. Because the bifurcated trial is central to the constitutionality of any capital proceeding, admission of such prejudicial evidence at the guilt/innocence phase, in contravention of the bifurcated trial procedure, renders Guerra's conviction and sentence a violation of the Eighth Amendment. Gregg v. Georgia, 428 U.S. 153, 198 (1976).

32. The Prosecutors' introduction of victim impact and character testimony in the 1982 trial had a substantial and injurious effect or influence on the jury's verdict and was

a deliberate and especially egregious error that, especially when combined with the pattern of misconduct in which the Prosecutors engaged in this case, infected the integrity of the entire 1982 trial. Brecht v. Abrahamson, 113 S. Ct. 1710, 1714, 1722 (1993).

J. Use of Evidence Outside the Record

33. The Prosecutors' comment in closing argument that a key defense witness had probably testified under the influence of illegal drugs or alcoholic beverage injected new, extremely harmful extrinsic facts unsupported by the record and was calculated to create and did create incurable prejudice that deprived Guerra of a fair trial. United States v. Herberman, 583 F.2d 222, 230 (5th Cir. 1978); United States v. Morris, 568 F.2d 396, 401 (5th Cir. 1978).

34. The Prosecutors' comments in closing argument that five of the State's witnesses had identified Guerra as the man who shot Harris and Armijo Sr. and that five eyewitnesses had picked Guerra in the Lineup as the killer of both men, by relying on witnesses who did not testify, went outside the record in a manner that was inappropriate and harmful, and that affected Guerra's substantial rights. United States v. Pineda-Ortuno, 952 F.2d 98, 106 (5th Cir.), cert. denied sub nom. Ramirez-Carranza v. United States, 112 S. Ct. 1190 (1992); United States v. Herberman, 583 F.2d 222, 230 (5th Cir. 1978); United States v. Morris, 568 F.2d 396, 401 (5th Cir. 1978) (cited approvingly in United States v. Murrah, 888 F.2d 24, 26 (5th Cir. 1989)).

K. Impact of Misconduct

35. Any police or prosecutorial misconduct was harmful error because Guerra is actually innocent and the proof of guilt was extremely weak.

36. The manifest improprieties and the pattern of intentional, extensive, and outrageous misconduct by the police and Prosecutors in the pretrial and trial proceedings has irretrievably tainted Guerra's prosecution and cannot be sorted out and corrected so as to provide Guerra a fair trial.

SIGNED this _____ day of _____, 1994, at Houston, Texas.

United States District Judge

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December 30, 1993

BY MESSENGER

Honorable Kenneth Hoyt
United States Courthouse
515 Rusk
Houston, Texas 77002

Re: Civil Action No. H-93-290; Ricardo Aldape Guerro v. James A. Collins; in
the U.S. District Court for the Southern District of Texas, Houston Division

Dear Judge Hoyt:

As you requested, I am enclosing a copy of Petitioner's Proposed Findings of Fact and Conclusions of Law. Since we have not received the Transcript, we have relied entirely on our notes in preparing the enclosed document.

In reviewing the enclosed Proposed Findings and Conclusions, I hope that you will review two state court appellate decisions, Ferris v. State, 676 SW.2d 674 (Tex. App. -- Houston [1st Dist.] 1984), and Huffman v. State, 676 SW.2d 677 (Tex. App. -- Houston [1st Dist.] 1984). These decisions bear directly on the credibility of one of the two trial prosecutors, Robert Moen.

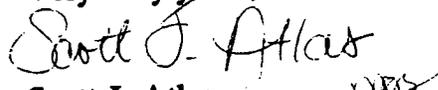
According to those opinions, which must be read together, Mr. Moen, then an Assistant Harris County District Attorney, made a promise to request lenient sentencing to one of two men accused of a brutal rape in return for the man's testimony against his friend. Ferris, 676 SW.2d at 676-77. He deliberately failed to disclose that promise, as required, to the judge and the jury in the trial of the other man. Id. at 675, 677. Then, he stood by silently and allowed the defendant to whom Mr. Moen had promised lenient treatment to perjure himself at the trial by testifying that he had received no promise of leniency. Id. at 675. Finally, he stood by silently and allowed the cooperating witness, who later pleaded guilty to aggravated rape, to mislead the trial judge at his own sentencing hearing by deliberately hiding the fact that he was basing his guilty plea on Mr. Moen's promise of leniency. Huffman, 676 SW.2d at 683. With respect to the conduct in which Mr.

Honorable Kenneth Hoyt
December 30, 1993
Page 2

Moen and, in one instance, defense counsel, engaged, the court of appeals concluded as follows: "We cannot condone such deceptiveness in our courts, and, no matter how artful, view it as injurious to both bench and bar." Ferris, 676 SW.2d at 677; Huffman, 676 SW.2d at 683. The only place in either opinion in which Mr. Moen is identified as the prosecutor whose conduct is being criticized is in Huffman, 676 SW.2d at 679.

While I saw no reason to cite these cases in open court, I thought that I should bring them to your attention.

Very truly yours,


Scott J. Atlas

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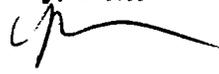
Enclosure

cc: William C. Zapalac - Certified Mail, Return Receipt Requested
Ricardo Aldape Guerra
Hon. Thomas Gibbs Gee
Stanley Schneider

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED

NOV 17 1993

Michael N. Milby, Clerk
By Deputy: 

RICARDO ALDAPE GUERRA, §
§
§
 Petitioner. §
§
v. §
§
JAMES A. COLLINS, §
Director, Institutional Division, §
Texas Department of Criminal Justice, §
§
 Respondent. §
§

Civil Action No. H-93-290

ORDER

TO: James Collins, Director of Texas Department of Corrections, and U.S. Marshal's Office or any other proper U.S. authority.

Greetings:

You are commanded to permit a contact visit between Petitioner Ricardo Aldape Guerra and two of his attorneys, J. Anne Bernard Clayton and Michael J. Mucchetti. Such contact visit will permit them an unobstructed view to photograph with still ~~and video~~ ^{KH} cameras certain portions of Petitioner's body. Such visit shall occur on Wednesday, November 17, 1993 during normal visitation hours.

Dated at Houston, Texas, this 17th day of November, 1993.

TRUE COPY I CERTIFY
ATTEST:
MICHAEL N. MILBY, Clerk
By  Deputy Clerk


UNITED STATES DISTRICT JUDGE



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

NOV 17 1993

Michael N. Milby, Cler
By Deputy:

RICARDO ALDAPE GUERRA,

Petitioner,

VS.

JAMES A. COLLINS, DIRECTOR
TEXAS DEPARTMENT OF
CRIMINAL JUSTICE,
INSTITUTIONAL DIVISION,

Respondent.

§
§
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§

CIVIL ACTION NO. H-93-290

ORDER TO SEAL

On this day the Court entered an Order concerning the plaintiff
this Order instrument number 37 is Ordered SEALED.

It is so ORDERED.

Signed this 17th day of November, 1993.

KENNETH M. HOYT
United States District Judge

TRUE COPY I CERTIFY
ATTEST:
MICHAEL N. MILBY, Clerk
By Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED

NOV 17 1993

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Texas Department of Criminal Justice, §
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Civil Action No. H-93-290

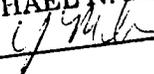
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ATTEST:
MICHAEL N. MILBY, Clerk
By:  Deputy Clerk


UNITED STATES DISTRICT JUDGE

f. pldgs 61
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1/16/93

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RICARDO ALDAPE GUERRA §
V. § Civil Action No. H-93-290
JAMES A. COLLINS, DIRECTOR §
TEXAS DEPARTMENT OF CRIMINAL' §
JUSTICE, INSTITUTIONAL DIVISION, §
Respondent

RESPONDENT'S WITNESS LIST

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES James A. Collins, Director, Texas Department of Criminal Justice, Institutional Division, Respondent ("the Director"), by the Attorney General of Texas, and files this Witness in connection with the evidentiary hearing scheduled in this cause.

I.

At the evidentiary hearing scheduled to begin on November 15, 1993, the Director proposed to take testimony from the following witnesses in addition to those included on the Petitioner's witness list:

1. Officer G. T. Neely, Houston Police Department, to testify concerning the scene investigation in this case;
2. Officer L. E. Webber, Houston Police Department, to testify to statements of witnesses at the scene of the crime;
3. George E. Brown, to testify about what he observed at and in the vicinity of the crime and about the line-up procedures;
4. Officer Montereio, to testify concerning the lineup conducted for witnesses in this case;
5. Officer B. E. Frank, to testify concerning the taking of witness statements.

new
new

6. Jose Armijo, Jr., who testified at trial.

Respectfully submitted,

DAN MORALES
Attorney General of Texas

WILL PRYOR
First Assistant Attorney General

DREW T. DURHAM
Deputy Attorney General for
Criminal Justice

MARGARET PORTMAN GRIFFEY
Assistant Attorney General
Chief, Capital Litigation Division

WILLIAM C. ZAPALAC
Assistant Attorney General
Southern District #8615

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f- pldgs 60

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November 10, 1993

By Messenger

Hon. Ken Hoyt
515 Rusk
Suite 9513
Houston, TX 77002

RE: Civil Action No. H-93-290; Ricardo Aldape Guerra v. James A. Collins; in the
U.S. District Court for the Southern District of Texas, Houston Division

Dear Judge Hoyt:

As you requested at the status hearing on November 2, I have enclosed a witness list
for Petitioner and Respondent as well as a list of unusual exhibits for Petitioner.

Very truly yours,



Scott J. Atlas

cc: William Zapalac - (by telecopy - 512/463-2084)
Roe Wilson
Hon. Thomas Gibbs Gee
Stanley Schneider

Hon. Ken Hoyt
November 10, 1993
Page 2

cc: Ricardo Aldape Guerra
Kari Sckerl

6. Patricia Diaz: testified
7. Candelario Elizondo: pretrial discussions with witnesses; what information he was given pretrial by D.A.'s; J. Heredia demeanor at trial; use of mannequins and uniformed police presence at trial; client right handedness
8. Elvira Flores: testified
9. Hilma Galvan: testified
10. Herlinda Garcia: testified
11. Armando Heredia: interviewed by HPD and gave statement
12. Jose Heredia: testified
13. Joe Hernandez: pretrial discussions with witnesses; what information he was given pretrial by D.A.'s; J. Heredia demeanor at trial; use of mannequins and uniformed police presence at trial; client right handedness
14. Linda Hernandez: J. Heredia demeanor at trial; character and quality of trial translations;
15. Elena Gonzalez Holguin: testified
16. Donna Monroe Jones: use of mannequins and uniformed police presence at trial; impact of "illegal alien," parole and law of parties comments and victim impact and character testimony;
17. Elizabeth Loftus: expert on the nature and malleability of memory
18. John Matamoros: interviewed by HPD and gave statement
19. Floyd McDonald: expert on crime reconstruction, TMDT, weapons
20. Trinidad Medina: interviewed by HPD and gave statement
21. Robert Moen: substantially as described in habeas petition
22. John Nail: number of local TV clips about the case
23. Roberto Onofre: interviewed by police

24. Frank Perez: testified
25. Sylvan Rodriguez: his likely sources for a news story that aired on Channel 13, 6 p.m. news, July 14, 1982
26. Enrique Torres Luna: interviewed by police
27. Jose Luis Torres Luna: testified
28. Channel 13 TV videotape library custodian: the authenticity of a videotaped news story aired on Channel 13's 6 p.m. news, July 14, 1982.

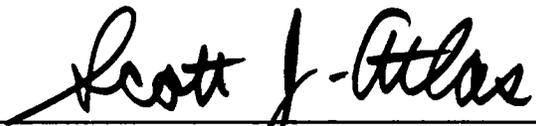
B. At the evidentiary hearing scheduled to begin on November 15, 1993, Guerra proposes to introduce the following unusual exhibits:

1. Video clips from 1982 TV news programs re: case
2. Sketches of crime scene neighborhood

Respectfully submitted,

VINSON & ELKINS L.L.P.

BY: _____


SCOTT J. ATLAS
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OF COUNSEL:

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(713) 229-1198

**ATTORNEYS FOR APPLICANT,
RICARDO ALDAPE GUERRA**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading was served by regular mail, and by telecopy on William C. Zapalac, Assistant Attorney General; Enforcement Division; Office of the Attorney General; P.O. Box 12548, Capitol Station, Austin, Texas 78711, on the 10th day of November, 1993.



Scott J. Atlas

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

<i>RICARDO ALDAPE GUERRA</i>	§	
Petitioner	§	
	§	
v.	§	Civil Action No. H-93-290
	§	
<i>JAMES A. COLLINS, DIRECTOR</i>	§	
<i>TEXAS DEPARTMENT OF CRIMINAL</i>	§	
<i>JUSTICE, INSTITUTIONAL DIVISION,</i>	§	
Respondent	§	

RESPONDENT'S WITNESS LIST

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES James A. Collins, Director, Texas Department of Criminal Justice, Institutional Division, Respondent ("the Director"), by the Attorney General of Texas, and files this Witness List in connection with the evidentiary hearing scheduled in this cause.

I.

At the evidentiary hearing scheduled to begin on November 15, 1993, the Director proposes to take testimony from the following witnesses in addition to those included on the Petitioner's witness list:

1. Officer G. T. Neely, Houston Police Department, to testify concerning the line-up conducted for witnesses in this case;
2. Officer L. E. Weber, Houston Police Department, to testify to statements of witnesses at the scene of the crime describing the murderer;
3. George E. Brown, to testify about what he observed at and in the vicinity of the scene of the crime and about the line-up procedures;

4. Jose Armijo, Jr., who testified at trial.

WHEREFORE, PREMISES CONSIDERED, the Director respectfully submits his witness list.

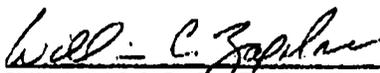
Respectfully submitted,

DAN MORALES
Attorney General of Texas

WILL PRYOR
First Assistant Attorney General

DREW T. DURHAM
Deputy Attorney General for
Criminal Justice

MARGARET PORTMAN GRIFFEY
Assistant Attorney General
Chief, Capital Litigation Division



WILLIAM C. ZAPALAC
Assistant Attorney General
Southern District #8615

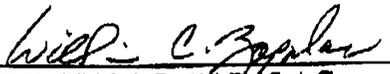
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ATTORNEYS FOR RESPONDENT

11/10/93 11:11 LEADS FILE GEN. 512-463-2084 004

CERTIFICATE OF SERVICE

I, William C. Zapalac, Assistant Attorney General of Texas, do hereby certify that a true and correct copy of the above and foregoing Respondent's Witness List has been served by facsimile transmission to (713) 758-2024, and by placing same in the United States Mail, postage prepaid, on this the 10th day of November, 1993, addressed to: Mr. Scott J. Atlas, VINSON & ELKINS, 2500 First City Tower, 1001 Fannin, Houston, Texas 77002-6760.



WILLIAM C. ZAPALAC
Assistant Attorney General