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Deputy District Attorney Taylor Waters
Office of the District Attorney of Ventura
800 S. Victoria Ave.
Ventura, CA 93009

Re: People v. Ignacio Ixta, Jr.
VCSC Case No.: 2009046630

Dear Mr. Waters:

Please consider the content of this correspondence and the analysis contained therein, as not only defense discovery in this matter, but also a presentation designed to encourage your office to conclude that Ignacio Ixta, Jr. (Ixta Jr.) should not be further prosecuted, and that on April 12, 2021 the People should dismiss the matter outright. Your office has already acknowledged that the content of the search warrants previously provided contain exculpatory evidence. Applying this exculpatory evidence to the facts of the case and subsequent evidence discovered in Attachments A-V should compel the dismissal of the case. In that regard it is my understanding the standard for review is whether or not the prosecution has a reasonable doubt as to the authenticity of the conviction. Upon review of everything provided, I cannot help but believe you will come to the conclusion Ixta Jr. is factually innocent.

Newly Discovered Exculpatory Evidence **DSK V. HAK**

The search warrants attached hereto as Exhibit "A" previously provided, clearly reference both DSK and HAK as criminal street gangs as determined by the Oxnard Police Department (OPD). Further, the victim of the 12-3-09 shooting at 3010 Merced, Miguel Cortez, had previously been designated as a gang member, of both HAK and Lemonwood. The series of retaliatory shootings between the HAK and DSK street gangs were responsible for the deaths of two HAK members, Jovany Cahuantzi, and Luis Ruiz, and the mother of Luis Ruiz.

Additionally, the search warrant of 1-9-08 "Guava Street Shooting," (Guava) was a HAK retaliatory shooting at the home of victim Robert Gutierrez, a DSK gang member. The warrants clearly identify the vehicle used in the shooting as a white Chevrolet S-10

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pick up truck owned and driven by Miguel Cortez. The warrant at Page 14 states that Miguel "Troubles" Cortez was served with paperwork in 2005 identifying him as a HAK member of that criminal street gang. At the time of the Guava Street shooting the occupants of the Chevy S-10 yelled out HAK. Pursuant to the warrant Miguel Cortez's S-10 was impounded. The loss of this vehicle will become relevant to his acquiring the gray Nissan Altima involved in the 11-27-09 shooting further described herein. This shooting is not the subject of any search warrants provided, occurred only six (6) days prior to the 12-3-09 shooting of Miguel Cortez, and may not have been reported to law enforcement.

The search warrant of 1-22-09 regarding a shooting at 3033 South L Street mentioned a HAK shooting at the home of DSK gang member Daniel Rocha. Alonzo Hernandez is a HAK gang member and close friend of Miguel Cortez. "HAK gang member Alonzo Hernandez was found to be responsible for a shotgun shooting of rival DSK tagger Daniel Rocha." The shooting at 3033 South L Street is also believed to be a retaliatory HAK shooting at a DSK member due to the shooting death of Jovany Cahuantzi. Page 15 of the search warrant documents the back and forth shootings between HAK and DSK. It should also be noted that "HAK gang has been very violent in the past committing robberies, assaults and homicides."

Attached as Exhibit "B" are fifteen (15) F.I. cards on Miguel "Troubles" Cortez. The F.I. cards list Cortez as both a HAK and Lemonwood gang member. Thus, the search warrants and the F.I. cards clearly establish Miguel Cortez as a hard core member of a criminal street gang. This evidence stands in stark contrast to the portrayal of Miguel Cortez and HAK by the People in Ixta Jr.'s jury trial. One example provided in the People's opening statement at Page 11 of the Jury Trial Transcript (J.T.T.) for 12-6-10, attached hereto as Exhibit "C," is as follows:

Roth: In 2005, HA was a tag crew. They didn't get placed under the Criminal Street Act until years later. Mr. Cortez will tell you he got older and more responsible, got a job. He left the tagger lifestyle, but also forgot to send a postcard, or give notice to the over 2,000 Colonia Chiques gang members, that he was no longer tagging.

Obviously, the back and forth shootings between HAK and DSK provide an explanation and motive for the shooting of Miguel Cortez on 12-3-09. Once again, the

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evidence stands in stark contrast to the People's lack of a motive in Ixta Jr.'s jury trial. An example of this is as follows:

Roth: Now, we don't know if the motive, that the defendant had for attempting to kill Mr. Cortez, is based on his being a previous member of HA tag crew, or if it was based on the disrespect that was found out on the streets. Motive is not an element that the People have to prove to you, but it gives you some guideline and some basis for putting the facts together. (emphasis added.)
J.T.T. 12-6-10 at page 12, attached as Exhibit "D."

The presentation of Ixta Jr. as an "associate gang member" because he had a few F.I. cards alleging he had "associated" with Colonia Chiques gang members as described by alleged Oxnard gang expert Detective Arnett (Arnett) is tortured at best. Combining the F.I. cards (which under the recent Sanchez decision would be inadmissible hearsay) and a pair of cowboy gloves found at Ixta Jr.'s residence, were not enough for even Arnett to conclude Ixta Jr. was a member of the Colonia Chiques. Rather, his "association" with Colonia morphed into "he is an associate" of the Colonia Chiques attempting to seal full membership through a heinous criminal act. Thus the People's theory of motive was presented like this:

Roth: If someone wanted to join Colonia Chiques would shooting an HA tagging member be a good way to prove loyalty?

Arnett: Yes.

Roth: Why is that?

Arnett: Again, Colonia rivals all gangs. And when I say gangs, I also mean tagging crews. They don't get along with any gangs, or any other types of tagging crews. So shooting a gang member would earn you respect, but also shooting at a tagger, especially HAK, would earn you respect also.

J.J.T. 12-8-10 at pages 66-67 attached as Exhibit "E."

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The 11-27-09 Shooting

The wrongful conviction of Ignacio Ixta Jr. attracted the attention of sociologist Natalie Cherot, PhD. The resume of Dr. Cherot and a brief description of her introduction to the case are attached as Exhibits "F" and "G."

Recognizing the miscarriage of justice while researching criminal street gangs in the City of Oxnard, Dr. Cherot did a series of interviews of witnesses related to the 12-3-09 shooting of Miguel Cortez. The most significant of which are interviews of Juan Miguel Ambriz Alvarez (Alvarez) on 7-16-16 and 3-17-17. A report detailing those interviews is attached as Exhibit "H."

Alvarez was a resident at 3310 Merced on 12-3-09. The report should be read in its entirety, but in summary it describes a shooting that occurred between the occupants of a gray Nissan Altima in the possession of and driven by Miguel Cortez, and a white Dodge Charger on 11-27-09, just six days before the 12-3-09 shooting of Miguel Cortez. The shooter from the Charger shot a bullet through the trunk of the Altima. Attached as Exhibit "I" are a picture of the trunk area of the Altima and a flash drive containing a video done by Ignacio Ixta Sr. showing the location of the bullet trajectory. The video was done with the cooperation of the new owner, Romero Raul Ocampo. The vehicle is further described as a 2005 gray Nissan Altima, license number 5MLU181, and Vin Number 1N4AL11D95N47191. This evidence corroborates the statement of Alvarez.

A retaliatory gun shot came from an occupant of the Altima driven by Miguel Cortez. It hit an occupant of the Charger in the upper arm or shoulder according to Alvarez.

Alvarez further stated that he saw the white Dodge Charger on Merced Street on 12-3-09 and attempted to warn Miguel Cortez at that time, but he was not home.

Miguel Cortez was obviously aware that his gray Altima could be identified by the rival gang in the Charger. Fearing retaliation, Cortez hid, and later sold the Altima. However, the custom rims were removed from the Altima and placed in Cortez's residence at 3010 Merced. Exhibit "J" is a crime scene photo taken on 12-3-09 of the custom rims. This evidence further corroborates the statement of Alvarez as it confirms Miguel Cortez's fear of retaliatory violence from the occupants of the Charger, the reason for hiding and partially dismantling the gray Altima. The crime scene photos of the custom rims were shown to HAK gang member Efren Landeros by Dr. Cherot on

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February 24, 2019. Landeros confirmed that the custom rims in the crime scene photo had been on Cortez's 2005 gray Nissan. Dr. Cherot's report is attached hereto as Exhibit "K."

This set of facts is further confirmed by Dr. Cherot's interview of Lisa and Manuel Martin on July 21, 2016 at their home on 3320 Merced Street, attached as Exhibit "L."

Once again, the report should be read in its entirety, but most significantly, Manuel Martin stated "... he might of seen a 2004 white Dodger Charger around the time of the shooting," and Lisa Martin heard Miguel Cortez tell her son, Alonzo Hernandez: "They're some guys we are going to have problems with."

Miguel Cortez's fear of retaliation from the occupants of the white Charger and the HAK shootings on DSK members, is confirmed by his first spontaneous statement made to fellow resident of 3310 Merced, Leonardo Cervantez. Attached as Exhibit "M" is Detective Garcia's report at Pages 44-45 wherein he reports Cortez told Cervantez that "they got him."

Cortez Effort to Avoid Further Retaliation

The initial identification by Miguel Cortez was questionable at best, and subsequent identification was tainted by undue pressure and the positive identification incentive provided by Detective Baldwin as will be discussed shortly. However, the best evidence of why Miguel Cortez would identify someone who was not the shooter was provided by Alvarez to Dr. Cherot. When asked why Cortez identified Ixta Jr., Alvarez said it was because he didn't think Ixta Jr. was "hard," so he wouldn't make any problems for him. Having been shot, and fearing further retaliation should he identify the actual shooter, Miguel Cortez took an easy and malevolent way out to avoid further consequences for his own gang life behavior.

The night of the Cortez shooting Detective Cortez briefly interviewed Ixta Jr.'s brother, Eric Ixta, at 3301 Merced. Eric Ixta reported he had just come to the residence at 1:00 a.m. from Arizona the morning of 12-3-09, the family home of his girlfriend Joanna Larios. Attached as Exhibit "N" is Arnett's report on this encounter at pages 35-37. For some unknown reason Arnett focused on Erik Ixta, failing to consider why he would stay in the area after allegedly being involved in the shooting, and created a photo lineup of

known associates of Erik Ixta for Cortez to view. It should be noted that Arnett referred to victim Miguel Cortez as Miguel “Castro” throughout this report.

When asked at trial about Erik Ixta’s known gang affiliation; Arnett provided the following testimony, remarkably without objection.

Roth: Yes, Ignacio Ixta.

Arnett: When I was called out the night of the incident I was asked to help with interviews. Across the street from 3310 is 3301 where we received information, during the course of the investigation, that the suspect, or suspects, or person of interest, might have been associated with that house.

So I went across the street, and I began interviewing residents of 3301. One of the residents was – I don’t want to say his residence – but one of the persons that was visiting, at the time, was an Erik Ixta.

Roth: You consider Erik Ixta to be an associate of the Colonia Chiques?

Arnett: Yes.

Roth: And you had a big pause there. Why was that?

Arnett: I was trying to think back to one of the packets that I reviewed and I remember seeing his name on one of those gang packets, yes.

...

Arnett: The following day, I conducted a background check on Erik Ixta and found some individuals that he associated with. One of them was – and I don’t know how they’re related, whether they’re brothers or cousins -- but I found Ignacio Ixta, as well as the other individuals, that I ultimately included in photo lineups. So that’s how I ended up getting to the defendants – that’s how I ended up putting the defendant in the photo lineup.

12-9-10 J.T.T. at page 64, attached as Exhibit “O”

There can be no doubt the “expert” opinion that Erik Ixta was an associate of “Colonia Chiques” was without foundation, and will also be subject to the strict scrutiny of the Sanchez decision should some foundation for the opinion ultimately materialize.

Arnett’s trial testimony on the photo lineup shown to Cortez is attached as Exhibit “P” pages 35-38 of J.T.T. on 12-8-10. In relevant part it provides:

Arnett: He looked at the photos. I asked him if he could identify anybody in the 6-pack, in the photo lineup, who looked familiar. He started moving his head up and down meaning yes in the affirmative, then he started to point to a picture which is number 5 of the defendant, Igancio Ixta.

But at that point, he wasn’t verbally communicating to me. He was just physically moving his head up and down and pointing.

So at that point, I wanted to get verbal confirmation from him, so I asked him, “Number 5? Are you pointing to Number 5? Is he the one that shot you?”

Roth: Was Brenda Cervantes present when you had asked that?

Arnett: If I asked if Number 5?

Roth: Yes.

Arnett: She was still seated in the room.

Roth: What happened next?

Arnett: He kept nodding his head. He kept pointing. Then he said, “I think so.” At which point, he started to motion over for Brenda Cervantes to come over to where he was in the bed. At that point, I asked Brenda to go ahead and step out of the room, because I wanted to talk to Miguel without her being present.

Roth: And you specifically said out loud in front of Brenda, “Number 5?”

Arnett: Yes.

...

At page 37:

Roth: Did Mr. Cortez circle or sign off on People's Exhibit 21, which is the picture with Mr. Ixta in position 5?

Arnett: No.

Roth: Why didn't you have him circle or initial that?

Arnett: It's my practice that I only have the victim, or the witness, initial and circle only if they positively identified somebody in that particular case.

Roth: And did Mr. Cortez positively identify him?

Arnett: No.

Roth: What were his exact words, if you recall?

Arnett: "I think so."

This questionable identification is consistent with Cortez's initial statements about identifying the shooter wherein he stated, "He did not know," "He did not know," and "It was too dark." See attachments "Q" and "R" reports of Officers Vega and Velasquez. Only when Detective Baldwin interviewed Miguel Cortez on 12-16-09 did Cortez's identification of Ixta Jr. solidify. A transcript of this interview is attached as Exhibit "S." Baldwin interviewed Cortez again because in Cortez's initial identification of Ixta Jr. he said "he could not be sure." See Attachment "T", Baldwin's report on page 62. A small portion of Baldwin's 12-16-09 interview of Cortez is as follows:

At Page 3.

Baldwin: They said, "You also have a big bill in the hospital." [humor in voice]

Cortez: Um-hmm.

Baldwin: "And your goin' to be paying [chuckles] 'cuz that was a [inaudible]"

lesson” and I was, like, “I don’t wanna.” “You know, just think about that. Your gonna be paying for some other dumb ass?”

Um-hmm. Yeah. Your gonna be paying for them and, you know plus if you don’t cooperate, you know, the state’ll send us a form and they’ll say, hey, you know, from Victim’s Compensation, “should we help him out with his medical bills?” “Why, no, he’s not cooperating,” you know? So it’s almost like you kinda brought it on.

At Page 7-8:

Baldwin: ... If we get a letter from the Victim’s Advocate people, you know, you’re trying to cooperate to the best of your ability. Okay? You know, at the same time I can’t ... I can’t guarantee you the fact that if you do or do not identify, I can’t tell you that that’s gonna automatically solve the case. Okay? Number one, the first thing a defense attorney is gonna bring up is the fact that you were questionable on the first time. Yeah, we’ll be able to explain it, “Hey, he was afraid for his family, he was afraid for his girlfriend.” [emphasis added.]

It should come as no surprise that throughout his trial testimony, Miguel Cortez, when pressed about his initial questionable identification, consistently stated it was due to fear of retaliation upon his girlfriend or his family – the entire interview goes on for forty (40) pages, it should be read in its entirety to gather the full expression of Baldwin’s manipulation of Cortez’s subsequent “positive” identification.

In retrospect, one has to wonder why Arnett focused on Erik Ixta initially. Even a cursory investigation of the occupants of 3301 Merced would have revealed the presence of one Jose Sanchez Aguilera, AKA “Rito.” A records check reveals that “Rito” has a felony criminal record, but more significantly he clearly “claims Colonia” as the screen shot taken of his back on his Facebook page makes clear. The tattoo “COLONIA” is across his shoulders as depicted in Attachment “U.” A digital copy of the screen shot that is easier to view will be provided. Needless to say, “Rito” did not hang around to be interviewed by OPD on 12-3-09.

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Identification of Brenda Cervantez

During Brenda Cervantez' testimony, when the prosecutor stood behind Ixta Jr. and asked Cervantez who he is, Cervantez replied, "That's the person that shot [Cortez]."

Attached as Exhibit "V" is a copy of the unpublished Decision of the Second District Court of Appeal of Ignacio Ixta. At page four (4) of the decision the Court concluded it was error for the trial court to overrule Ixta Jr.'s objection and deny his motion to strike. Thus upon any retrial of the case, Brenda Cervantez will not be allowed to identify Ixta Jr. as the shooter of Cortez.

CONCLUSION

Ignacio Ixta, Jr. applauds the current administration under District Attorney Erik Nasarenko and yourself for the decision to acknowledge the search warrants, and the related OPD reports about the DSK and HAK gang rivalry constituting exculpatory evidence withheld from the defense before trial. Based on the foregoing, we seek the further implementation of the highest calling of a prosecutor's office, and that is to do justice in each and every case. Justice in the case of People v. Ignacio Ixta, Jr. compels a decision to not retry him, and dismiss the action outright.

Thank you for your time and consideration of this matter.

Very truly yours,


PHILIP R. DUNN, ESQ

PRD/gf
Enclosures (stated)