

## APPLICATION FOR JUDICIAL OFFICE

### SECTION I: PUBLIC INFORMATION (QUESTIONS 1 THROUGH 65)

#### PERSONAL INFORMATION

1. Full Name: Jorge Lozano
2. Have you ever used or been known by any other name? no If so, state name: George
3. Office Address: THE LOZANO LAW FIRM PLLC  
207 W. Second Street  
Yuma, AZ 85364
4. How long have you lived in Arizona? What is your home zip code?  
I have lived in Arizona for 38 years. My home zip code is 85350.
5. Identify the county you reside in and the years of your residency.  
I reside in Yuma County and have maintained residency in Yuma County for 38 years.
6. If appointed, will you be 30 years old before taking office? ☒ yes ☐ no  
If appointed, will you be younger than age 65 at the time of appointment? ☒ yes ☐ no
7. List your present and any former political party registrations and approximate dates of each:  
Democrat - September 2003 to present.

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8. Gender: Male

Race/Ethnicity: Hispanic

### EDUCATIONAL BACKGROUND

9. List names and locations of all post-secondary schools attended and any degrees received.  
Arizona State University College of Law (Tempe), Juris Doctor  
University of Michigan (Ann Arbor), Bachelor of Arts
10. List major and minor fields of study and extracurricular activities.  
Law, Criminology, Deviance, and Social Inequality.
11. List scholarships, awards, honors, citations and any other factors (e.g., employment) you consider relevant to your performance during college and law school. Conciliator for Arizona Attorney General Consumer Protection Agency  
Victims's Advocate for Advocacy Program for Battered Women

### PROFESSIONAL BACKGROUND AND EXPERIENCE

12. List all courts in which you have been admitted to the practice of law with dates of admission. Give the same information for any administrative bodies that require special admission to practice.  
State Bar of Arizona, 021542, admitted on 10/22/2002.  
U.S. District Court of Arizona, admitted on 12/09/2002.
13. a. Have you ever been denied admission to the bar of any state due to failure to pass the character and fitness screening? no If so, explain.
- b. Have you ever had to retake a bar examination in order to be admitted to the bar of any state? yes If so, explain any circumstances that may have hindered your performance. During law school I was employed full time after graduation to make ends meet and did not devote much time to studying. I passed the next available bar exam.
14. Describe your employment history since completing your undergraduate degree. List your current position first. If you have not been employed continuously since completing your undergraduate degree, describe what you did during any periods of unemployment or other professional inactivity in excess of three months. Do not attach a resume.

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**EMPLOYER****DATES****LOCATION**

Please see attached.

15. List your law partners and associates, if any, within the last five years. You may attach a firm letterhead or other printed list. Applicants who are judges or commissioners should additionally attach a list of judges or commissioners currently on the bench in the court in which they serve.  
None
16. Describe the nature of your law practice over the last five years, listing the major areas of law in which you practiced and the percentage each constituted of your total practice. If you have been a judge or commissioner for the last five years, describe the nature of your law practice before your appointment to the bench.  
I am a Sole-practitioner in general practice and practice in the following areas:  
Municipal Law 50%, Criminal Law 20%, Domestic Relations 20%, and Personal Injury 10%.
17. List other areas of law in which you have practiced.  
Immigration Law, Workman's Compensation, and Civil Litigation.
18. Identify all areas of specialization for which you have been granted certification by the State Bar of Arizona or a bar organization in any other state.  
Not Applicable.
19. Describe your experience as it relates to negotiating and drafting important legal documents, statutes and/or rules.  
I am currently the City Attorney for the City of Somerton. I have negotiated and drafted lease agreements, negotiated land purchases, drafted all Resolutions and Ordinances, and drafted all contracts.
20. Have you practiced in adversary proceedings before administrative boards or commissions? no If so, state:
- a. The agencies and the approximate number of adversary proceedings in which you appeared before each agency.
- b. The approximate number of these matters in which you appeared as:
- Sole Counsel: \_\_\_\_\_
- Chief Counsel: \_\_\_\_\_
- Associate Counsel: \_\_\_\_\_
21. Have you handled any matters that have been arbitrated or mediated? no  
If so, state the approximate number of these matters in which you were involved as:



Sole Counsel: \_\_\_\_\_

Chief Counsel: \_\_\_\_\_

Associate Counsel: \_\_\_\_\_

22. List at least three but no more than five contested matters you negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (3) a summary of the substance of each case; and (4) a statement of any particular significance of the case.

Please see attached.

23. Have you represented clients in litigation in Federal or state trial courts? yes  
If so, state:

The approximate number of cases in which you appeared before:

Federal Courts: 60

State Courts of Record: 750

Municipal/Justice Courts: 500

The approximate percentage of those cases which have been:

Civil: 30%

Criminal: 70%

The approximate number of those cases in which you were:

Sole Counsel: All cases have been sole counsel.

Chief Counsel: \_\_\_\_\_

Associate Counsel: \_\_\_\_\_

The approximate percentage of those cases in which:

You wrote and filed a pre-trial, trial, or post-trial motion that wholly or partially disposed of the case (for example, a motion to dismiss, a motion for summary judgment, a motion for judgment as a matter of law, or a motion for new trial) or wrote a response to such a motion: 5%

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You argued a motion described above 3%

You made a contested court appearance (other than as set forth in the above response) 3%

You negotiated a settlement: 80%

The court rendered judgment after trial: 10%

A jury rendered a verdict: 5%

The number of cases you have taken to trial:

Limited jurisdiction court 32

Superior court 100

Federal district court 0

Jury 40

Note: If you approximate the number of cases taken to trial, explain why an exact count is not possible. Practicing in criminal defense and domestic relations results in constant contested litigation that must be resolved by trial and I do not have a system in place to track all trial work.

24. Have you practiced in the Federal or state appellate courts? no If so, state:

The approximate number of your appeals which have been:

Civil: \_\_\_\_\_

Criminal: \_\_\_\_\_

Other: \_\_\_\_\_

The approximate number of matters in which you appeared:

As counsel of record on the brief:

Personally in oral argument:

25. Have you served as a judicial law clerk or staff attorney to a court? no If so, identify the court, judge, and the dates of service and describe your role.

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26. List at least three but no more than five cases you litigated or participated in as an attorney before mediators, arbitrators, administrative agencies, trial courts or appellate courts that were not negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency and the name of the judge or officer before whom the case was heard; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

Please see attached.

27. If you now serve or have previously served as a mediator, arbitrator, part-time or full-time judicial officer, or quasi-judicial officer (e.g., administrative law judge, hearing officer, member of state agency tribunal, member of State Bar professionalism tribunal, member of military tribunal, etc.), give dates and details, including the courts or agencies involved, whether elected or appointed, periods of service and a thorough description of your assignments at each court or agency. Include information about the number and kinds of cases or duties you handled at each court or agency (e.g., jury or court trials, settlement conferences, contested hearings, administrative duties, etc.).

Please see attached.

28. List at least three but no more than five cases you presided over or heard as a judicial or quasi-judicial officer, mediator or arbitrator. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

Please see attached.

29. Describe any additional professional experience you would like to bring to the Governor's attention.

None

### **BUSINESS AND FINANCIAL INFORMATION**

30. Have you ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office, other than as described at question 14? Yes If so, give details, including dates.

I have previously been employed by Arizona Western College as a Professor of Paralegal Studies in Yuma County. I taught an introductory course at the local community college under the paralegal studies program between July, 2008 to December, 2009.

31. Are you now an officer, director, majority stockholder, managing member, or

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otherwise engaged in the management of any business enterprise? yes If so, give details, including the name of the enterprise, the nature of the business, the title or other description of your position, the nature of your duties and the term of your service. I am a member / manager of The Lozano Law Firm PLLC, which provides legal services, My duties include general management of the firm and attorney services. There are no terms of service.

Do you intend to resign such positions and withdraw from any participation in the management of any such enterprises if you are appointed? yes If not, explain your decision.

32. Have you filed your state and federal income tax returns for all years you were legally required to file them? yes If not, explain.
33. Have you paid all state, federal and local taxes when due? yes If not, explain.
34. Are there currently any judgments or tax liens outstanding against you? no If so, explain.
35. Have you ever violated a court order addressing your personal conduct, such as orders of protection, or for payment of child or spousal support? no If so, explain.
36. Have you ever been a party to a lawsuit, including an administrative agency matter but excluding divorce? yes If so, identify the nature of the case, your role, the court, and the ultimate disposition.  
Please see attached.
37. Have you ever filed for bankruptcy protection on your own behalf or for an organization in which you held a majority ownership interest? no If so, explain.
38. Do you have any financial interests including investments, which might conflict with the performance of your judicial duties? no If so, explain.

|                           |
|---------------------------|
| <b>CONDUCT AND ETHICS</b> |
|---------------------------|

39. Have you ever been terminated, asked to resign, expelled, or suspended from employment or any post-secondary school or course of learning due to allegations of dishonesty, plagiarism, cheating, or any other "cause" that might reflect in any way on your integrity? no If so, provide details.

40. Have you ever been arrested for, charged with, and/or convicted of any felony, misdemeanor, or Uniform Code of Military Justice violation? Yes

If so, identify the nature of the offense, the court, the presiding judicial officer, and the ultimate disposition.

Approximately 20 years ago I was charged with possessing an open container of alcohol in a vehicle in Somerton Justice Court. The Presiding Judge was Hon. Manuel Figueroa and the disposition was dismissal after a deferred prosecution agreement.

41. If you performed military service, please indicate the date and type of discharge. If other than honorable discharge, explain.

Not Applicable.

42. List and describe any matter (including mediation, arbitration, negotiated settlement and/or malpractice claim you referred to your insurance carrier) in which you were accused of wrongdoing concerning your law practice.

None

43. List and describe any litigation initiated against you based on allegations of misconduct other than any listed in your answer to question 42.

None

44. List and describe any sanctions imposed upon you by any court.

None

45. Have you received a notice of formal charges, cautionary letter, private admonition, referral to a diversionary program, or any other conditional sanction from the Commission on Judicial Conduct, the State Bar, or any other disciplinary body in any jurisdiction? no If so, in each case, state in detail the circumstances and the outcome.

46. During the last 10 years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by federal or state law? no If your answer is "Yes," explain in detail.

47. Within the last five years, have you ever been formally reprimanded, demoted, disciplined, cautioned, placed on probation, suspended, terminated or asked to resign by an employer, regulatory or investigative agency? no If so, state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) and contact information of any persons who took such

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action, and the background and resolution of such action.

48. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? no If so, state the date you were requested to submit to such a test, type of test requested, the name and contact information of the entity requesting that you submit to the test, the outcome of your refusal and the reason why you refused to submit to such a test.
49. Have you ever been a party to litigation alleging that you failed to comply with the substantive requirements of any business or contractual arrangement, including but not limited to bankruptcy proceedings? no If so, explain the circumstances of the litigation, including the background and resolution of the case, and provide the dates litigation was commenced and concluded, and the name(s) and contact information of the parties,

**PROFESSIONAL AND PUBLIC SERVICE**

50. Have you published or posted any legal or non-legal books or articles? no If so, list with the citations and dates.
51. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? yes If not, explain.
52. Have you taught any courses on law or lectured at bar associations, conferences, law school forums or continuing legal education seminars? yes If so, describe.
- Please see attached.
53. List memberships and activities in professional organizations, including offices held and dates. Yuma County Bar Association - Past President 2005  
Los Abogados Hispanic Bar Association- Member Board of Directors 2010
- Have you served on any committees of any bar association (local, state or national) or have you performed any other significant service to the bar? no

List offices held in bar associations or on bar committees. Provide information about any activities in connection with pro bono legal services (defined as services to the indigent for no fee), legal related volunteer community activities or

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the like.

Yuma County Bar Association - Past President 2005  
Los Abogados Hispanic Bar Association - Member Board of Directors 2010

54. Describe the nature and dates of any relevant community or public service you have performed.

Please see attached.

55. List any relevant professional or civic honors, prizes, awards or other forms of recognition you have received.

2009 Yuma County nominee Most Influential Hispanic

56. List any elected or appointed public offices you have held and/or for which you have been a candidate, and the dates.

Please see attached.

Have you ever been removed or resigned from office before your term expired?  
no If so, explain.

Have you voted in all general elections held during the last 10 years? yes If not, explain.

57. Describe any interests outside the practice of law that you would like to bring to the Governor's attention.

None

### HEALTH

58. Are you physically and mentally able to perform the essential duties of a judge with or without a reasonable accommodation in the court for which you are applying? yes

### ADDITIONAL INFORMATION

59. Provide any information about yourself (your heritage, background, life experiences, etc.) that you would like the Governor to consider.

Please see attached.

60. Provide any additional information relative to your qualifications you would like to bring to the Governor's attention.

None

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61. If selected for this position, do you intend to serve a full term and would you accept rotation to benches outside your areas of practice or interest and accept assignment to any court location? Yes If not, explain.
62. Attach a brief statement explaining why you are seeking this position.  
Please see attached.
63. Attach two professional writing samples, which you personally drafted (e.g., brief or motion). **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing samples. Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public.  
Please see attached.
64. If you have ever served as a judicial or quasi-judicial officer, mediator or arbitrator, attach sample copies of not more than two written orders, findings or opinions (whether reported or not) which you personally drafted. **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing sample(s). Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public.  
Please see attached.
65. If you are currently serving as a judicial officer in any court and are subject to a system of judicial performance review, please attach the public data reports and commission vote reports from your last three performance reviews.  
Not Applicable.

**-- INSERT PAGE BREAK HERE TO START SECTION II  
(CONFIDENTIAL INFORMATION) ON NEW PAGE --**



## PROFESSIONAL BACKGROUND AND EXPERIENCE

14.

| Employer                            | Dates             | Location     |
|-------------------------------------|-------------------|--------------|
| The Lozano Law Firm PLLC            | 01/2015 – present | Yuma, AZ     |
| Yuma County Justice of the Peace    | 01/2007 – 12/2014 | San Luis, AZ |
| Law Office of Jorge Lozano PLLC     | 12/2004 – 12/2006 | Yuma, AZ     |
| Yuma County Legal Defender's Office | 04/2003 – 12/2004 | Yuma, AZ     |
| Community Legal Services            | 08/2001 – 04/2003 | Yuma, AZ     |

## FIRST MATTER

1. I Represented both husband and wife in an automobile accident from December 30, 2004 through December 31, 2006.
2. The defendant was represented by: David Davies, Attorney  
Turley, Swan, & Childers, P.C. 3101 N. Central, Suite 1300 Phoenix, AZ 85012  
(602) 254-1444
3. Plaintiffs were injured in an auto accident that resulted in various lacerations to their face and legs. A civil complaint was filed in Yuma County Superior Court  
S1400CV2005-490.
4. The case involved mild discovery involving depositions and interrogatories. The case was settled without the need for a trial.

## SECOND MATTER

1. I represented Respondent/Mother in a contested domestic relations matter from April 10, 2014 to February 9, 2016.
2. The Petitioner was represented by: Janet Metcalf / Janet H. Metcalf, P.C. 51 W. 2nd Street, Yuma, AZ 85364 [service@yumafamlaw.com](mailto:service@yumafamlaw.com) (928) 782-2558
3. Respondent/Mother was arrested for felony domestic violence charges, had an order of protection filed that prevented contact with her child, and had an ongoing dissolution of marriage case at the same time in Yuma County Superior Court case S140DO2015-405.
4. The case involved the interplay of three different cases pending at the same time in both Yuma County Superior Court and the San Luis Municipal Court. The results in each proceeding for criminal charges and protective order each had a significant impact on the domestic relations case. The domestic relations case was settled on the day of trial through a Rule 69 agreement.

## THIRD MATTER

1. I represented Defendant/Employee in a civil contested matter whereby Defendant was accused of conversion of property by his former employer from July 8, 2016 to October 1, 2016.
2. The Plaintiff was represented by: Ann-Marie Anderson /WRIGHT WELKER & PAUOLE, PLC 10429 South 51st Street, Suite 285, Phoenix, Arizona 85044 (480) 961-0040 [aanderson@wwpfirm.com](mailto:aanderson@wwpfirm.com)
3. The case involved a former employer/construction company that was suing a former employee for lumber and other materials that were used without consent to build Defendant's new residential home. The civil action was filed in Yuma County Superior Court S1400CV2016-444.
4. Defendant/Employee was facing felony charges for theft, therefore it was imperative that counsel negotiate a quick settlement in a civil action to avoid felony criminal charges.

26.

#### FIRST MATTER

1. I represented Defendant in a federal criminal matter from March 14, 2006 to November 13, 2006.
2. The name of the court is United States District Court, District of Arizona and the judge assigned to the case was the Honorable Mary Murgia.
3. Counsel for USA was  
Timothy Andrews  
7102 East 30th Street, Suite 101  
Yuma, Arizona 85365  
928-314-6405
4. Defendant was charged with one count of importation of a controlled substance under Title 21, United States Code, Section 952(A). Defendant drove a van from Mexico and was arrested at the San Luis Port of Entry. A total of 210 kilograms of marijuana was concealed inside a plywood box that was built into the back passenger compartment of the vehicle.
5. The case was significant because Defendant was a Spanish speaker who did not understand basic legal concepts. Defendant was administered a polygraph examination. Ultimately, a plea agreement was negotiated. Following a successful mitigation hearing, Defendant was sentenced to a prison at the lower end of the sentencing guidelines.

#### SECOND MATTER

- 1 I represented the Defendant in State Superior Court from April 2005 to March 2006.
- 2 The name of the Court is Yuma County Superior Court and the judge assigned to the case was the Hon. Richard Donato.
- 3 Counsel for the State was  
James Coil  
250 W. Second Street  
Yuma, AZ 85364  
(928) 817-4301
4. Defendant was charged with one count of Disorderly Conduct involving a Dangerous Weapon. The parties were unable to reach a negotiated plea agreement. The case was tried with a jury of eight jurors. The jury verdict was a not guilty of a felony charge, but Defendant was convicted for lesser included charge of misdemeanor disorderly conduct.
5. The case involved significant discovery, pretrial motions, and jury trial preparation. The stakes were high for the Defendant as a felony conviction would have resulted in a mandatory prison sentence.



### THIRD MATTER

1. I represented the Defendant in State Superior Court from February 12, 2015 to August 1, 2016.
2. The name of the Court is Yuma County Superior Court and the judge assigned to the case was the Hon. John Paul Plante.
3. Counsel for Plaintiff  
John Serrano, Attorney at Law  
209 W Second Street Yuma, AZ 85364  
  
(928) 271-5032  
serranolaw@gmail.com
4. Plaintiff and Defendant were an unmarried couple for over 10 years. Plaintiff and Defendant had a child together and bought four parcels of real estate and held the property jointly. Plaintiff filed for divorce from his wife. Before filing for divorce, Plaintiff deeded all his interest to Defendant. After Plaintiff's divorce was finalized, Plaintiff brought suit to recover all four real estate parcels that he had deeded to Defendant.
5. The case required significant knowledge in real estate transactions and extensive discovery. The matter was settled at the time of trial with both parties keeping two parcels of land each.

### FOURTH MATTER

1. I represented the Defendant in State Superior Court from January 3, 2017 to April 13, 2017.
2. The name of the Court is Yuma County Superior Court and the Judge assigned to the case was the Hon. Lawrence C. Kenworthy.
3. Counsel for Plaintiff was:  
Barry L. Olsen/ LAW OFFICES OF LARRY W. SUCIU, PLC  
101 E. Second Street  
Yuma, AZ 85364  
  
(928) 783-6887  
bolsen@lwslaw.net
4. Plaintiff brought suit to recover over \$15,000 under a new home construction contract. Defendant counter-sued for breach of contract.
5. The case required significant knowledge in debt collection and construction law.

### FIFTH MATTER

1. I represented the Defendant in Yuma County Justice Court from February 26, 2016 to August 16, 2016.
2. The name of the Court is Yuma County Justice Court Precinct One and the judge assigned to the case was the Hon. Yolanda Torok.

3. Counsel for the State  
County Attorney  
Allison Engler  
250 W. Second Street  
Yuma, AZ 85364

(928) 817-4301  
Allison.engler.law@gmail.com

4. Defendant was driving a commercial vehicle and the State alleged he failed to stop at commercial vehicle checkpoint. Defendant was cited for a civil traffic offense and for driving under the influence of alcohol with BAC .08 or more. The State did not charge the Defendant with driving under the influence while impaired to the slightest degree.
5. The case was significant as it required jury trial strategy. At trial, defense counsel was able to commit the case agent to obtaining the breath sample five minutes after the two hour limit had elapsed. Without a relation back expert, a motion for a directed verdict was granted after suppression of the breath sample. State was unable to refile any other DUI charge as jeopardy had attached after jury was empaneled.



**Yuma County Justice of the Peace Precinct #2.** I was elected by voters in Yuma County to serve as judge in Precinct #2 from January 1, 2007 to December 31, 2014. Precinct #2 covers the southwestern border of the State of Arizona. I was responsible for initiating all felony offenses. Because this district is surrounded by three states (Sonora to the south, Baja California to the west, and California to the north), with two ports of entry, the majority of the felonies initiated are drug importation cases. Approximately 325 felony cases got filed each year into Precinct #2 when I was presiding. The hearings in felony matters consisted mostly of conditions of release hearings and preliminary hearings. The court also has jurisdiction over misdemeanor offenses and traffic offenses; misdemeanor offenses include DUI, domestic violence, drugs, property crimes, among others. I presided over approximately 420 criminal misdemeanors, 250 criminal traffic, and 3000 civil traffic cases each year. The court had an average of two DUI jury trials and 25 bench trials per year. The court also has a civil division in which approximately 500 cases got filed per year. The civil division has jurisdiction over claims not exceeding \$10,000 and the court receives numerous filing from debt collectors. In the small claims division, I heard mostly contract disputes. Other matters heard by the civil division included evictions, orders of protection and search warrants. There have been no jury trials in the civil division and the court conducted approximately 150 civil division trials a year.

**Yuma County Justice of the Peace Presiding Judge.** I was appointed to serve as the presiding judge for the justice courts in Yuma County from January 2010 to January 2013. My main duties during my tenure were to coordinate the preparation of the annual budget for the justice courts and submit and present the coordinated budget to the Board of Supervisors. I was also responsible for the supervision of the justice court administrator and training and supervising the weekend court Initial Appearance Masters. Other duties included establishment of a unified bond schedule and coordinating compliance with statistical reporting, jury management, and records management policies and procedures.

**Yuma County Superior Court Judge Pro Tem.** Appointed by the Chief Justice of Arizona Supreme Court with consent of the presiding judge of Yuma County Superior Court to serve as judge for the purpose of enhancing the court's ability to process cases from December 13, 2007 to June 30, 2011. The criminal matters handled in Superior Court consisted of change of plea proceedings, following waivers of preliminary hearing, and setting matters for sentencing. I also handled mental health hearings under Title 36, Chapter 5 for court-ordered evaluation and treatment.



28.

#### FIRST CASE

1. I was the judge assigned to a jury eligible criminal driving under the influence offense from November 10, 2009 to November 18, 2009.
2. The name of the court is Yuma County Justice Court Precinct #1
3. Counsel for the State of Arizona was:  
Deputy County Attorney Jeremy Claridge  
250 W. Second Street Suite G  
Yuma, AZ 85364  
(928) 817-4301  
Counsel for Defendant was:  
William Michael Smith /Bowman and Smith PC  
13 W Giss Parkway Yuma, AZ 85364  
(928) 783-8879
4. Defendant was charged with driving under the influence while impaired to the slightest degree b.) driving with BAC over .15 and c.) driving with BAC over .15. The case was a 2006 case that was delayed due to the multiple defense challenges to the Intoxylizer 8000. I was the county judge assigned to make the rulings on all consolidated cases regarding admission of BAC derived from the Intoxylizer 8000. This case was tried in front of a jury and when the case proceeded to trial, defense counsel filed a motion to exclude the BAC results based on the State not meeting one of the statutory foundational requirements. The State had failed to provide before and after calibration records and the records were disclosed at the beginning of trial. Defense motion was granted. The State filed a special action asking the Superior Court Judge to Order the trial judge to allow the BAC results. On November 16, 2009 after hearing argument from the State and Defendant, Judge Larry Kenworthy of the Yuma County Superior Court declined jurisdiction on the State's Petition for Special Action. The case proceeded to jury trial on the sole count of driving under the influence while impaired to the slightest degree. The jury acquitted the defendant on the remaining count.
5. The case was significant challenge based on the length of time that had elapsed between original citation and jury trial. The State also sought to argue that the air blanks and brackets before and after each test (calibration checks) were sufficient to meet the foundational requirements. Legal precedent was set in Yuma County to obtain a pre-trial order admitting the BAC results into evidence.

#### SECOND MATTER

1. I conducted the initial appearance and set condition of release for two co-defendants from March 24, 2010 to April 8, 2010 on felony charges.
2. The name of the court is Somerton-San Luis Justice Court.
3. Counsel for the State was:  
County Attorney's Office  
250 W Second Street Suite G  
Yuma, AZ 85364  
Counsel for Defendant was:

Michael Breeze/Yuma Public Defender  
168 S. Second Avenue  
Yuma, AZ 85364.

4. Defendant/Mother and Defendant/Father were 21 year-old parents to the victim, a 14 month-old baby who fell and drowned in an open cesspool of sewer. The Defendants were renting a mobile home trailer whose sewer and septic system was connected to the open cesspool. The defendants gave contradicting stories to authorities regarding who was responsible supervising the child at a particular point and how long the baby had been left unattended. There were several other hazards in the fenced yard where the defendants lived. Defendant/Mother was: charged with Count 1: Second Degree Murder and Count 2: Child Abuse. After conditions of release hearing was held, Mother was held on a \$500,000 bond. Defendant/Father was charged with Count 1: Hindering Prosecution in the First Degree. Defendant was held on a \$5,600 bond after conditions of release hearing.
5. The case was a challenge due to the outrageous nature of the death. There was out of the ordinary media interest in this matter from local, state, and federal media outlets. The court had to manage many aspects of the case to ensure defendants' and victim's rights were honored. The court had to manage media outlets and a firestorm of public opinion.

### THIRD MATTER

1. I was the judge assigned to try a civil case from January 29, 2009 to January 30, 2009.
2. The name of the court is Somerton-San Luis Justice Court.
3. Counsel for the Plaintiff was:  
Gregory Torok  
268 S. 1st Avenue  
Yuma, AZ. 85364  
Counsel for Defendant was:  
William Crimmins  
21 S. Second Avenue  
Yuma, AZ 8.5364
4. Plaintiff is a real estate agent who rents and manages rental property. Defendants rented a house which is owned by Plaintiff that later became a home for run-away and at-risk children. On June 30, 2005 a fire in the property of the Plaintiff damaged the main structure (the residential home) and completely destroyed an outside greenhouse. A year later, Defendants left the residence at the request of the Plaintiff. On August 20, 2007, Plaintiff filed a lawsuit asking for damages caused by negligence on the part of Defendants for disconnecting a fire suppression system. Defendants answered that that Statute of Limitations barred any recovery in this case and in the alternative, the boys living in the home caused the fire. Judgment in this case was in favor of the Plaintiff for the jurisdictional limits of the court (\$9,999.99) plus attorney fees.
5. This case was a challenge because it presents the predicaments courts go through in distinguishing torts and contracts. In this case, the attorneys were arguing their case as a tort damage to property. However, the facts as presented

indicated that the Plaintiff was entitled to relief under a contract theory because the parties had a written lease and because the Defendant had a duty to restore the premises back to the original conditions excluding wear-and-tear. Defendant was paid \$5,411.73 from his insurance carrier and did not restore the structures. A tort would have barred recovery with a 2 year statute of limitations. A written contract on the other hand permitted recovery within a 6 year statute of limitations.



## **BUSINESS AND FINANCIAL INFORMATION**

36.

Reyes vs. Housing America Corporation, et. al. United States District Court Case No. 2:08- cv-00532-LOA

In August, 2007, Maritza Reyes ("Reyes"), an employee of Housing America Corporation (HAC) filed a Charge of Discrimination with the United States Equal Employment Opportunity Commission ("EEOC"). Reyes asserted allegations against HAC for sexual discrimination, retaliation, and violation of the Equal Pay Act. HAC responded to the Charge disputing Reyes' allegations. The EEOC did not take any adverse action against HAC and issued a Notice of Right to Sue to Reyes on February 22, 2008 upon closure of the EEOC' s file.

Reyes subsequently filed a Complaint in the United States District Court, Arizona on March 18, 2008 asserting claims against HAC, its Board of Directors and Executive Director for sex discrimination, violation of the Equal Pay Act, negligent supervision, breach of contract, covenant of good faith and fair dealing, public policy. HAC retained Phoenix counsel, Jennings, Strauss & Salmon, to represent and defend its interests as well as the interests of the Board of Directors and Executive Director. HAC filed an Answer to the Complaint disputing the subsequent allegations in Reyes' Complaint. I was a member of the board of the directors at the time and was named as a defendant. The case was settled out of court on April, 2009. Ms. Reyes' counsel was Gary L. Lassen PLC 2020 N. Central Avenue, Suite 1100 Phoenix, AZ 85004.

## **PROFESSIONAL AND PUBLIC SERVICE**

52.

I taught an introductory level course at the local community college under the paralegal studies program from July, 2008 to December, 2009. The name of the course was Introduction to Law. The course was designed to introduce college students to the field of law with an aim to obtaining a paralegal certificate. The course was taught at Arizona Western College.

I was a judge panelist in June 2014 at the State of Arizona Bar Convention and the State of Arizona Judicial Conference. The Yuma County Courts initiated a pilot program for language access via video conferencing for court interpreters. The court located in San Luis, Arizona where I presided was at the forefront of language access and participants discussed the nature of the program.

54.

I have been a volunteer member of the Yuma County ASU Alumni Chapter for the past 15 years. The Chapter works on promoting higher education and plans different events through the year to collect funds for scholarships. The Chapter coordinates and hosts the biggest Tamale Festival in the State of Arizona as our main fundraising event. Over 20,000 people attend the annual tamale festival, now in its eleventh year. As a member of the vendor committee, we qualify and oversee 44 tamale vendors. The committee is also responsible for promoting food safety, fire safety, and health safety. The organizations website is [www.somertontamalefestival.com](http://www.somertontamalefestival.com).



56.

City of Somerton Municipal Property Corporation 2005-2006;

Yuma County Justice of the Peace #2 2007-2014;

Yuma County Superior Court Judge Pro Tempore from December 7, 2007 to June 30, 2011;

2014 Democratic nominee/candidate for Yuma County Superior Court Judge Division 4. Defeated by incumbent Hon. David Haws.

2018 Democratic nominee/candidate for Yuma County Superior Court Judge Division 6. Defeated by incumbent Hon. Brandon Kinsey.

59.

My parents were immigrants from Mexico and both obtained their United States citizenship through hard work and dedication. My parents were farm labor having worked in Yuma County agriculture since the mid 70's. They raised seven children. I was the first child in my family to graduate from college. I was raised in the Roman Catholic faith and continue to raise my children in such faith.

Currently, the Yuma County Superior Court Bench is underrepresented with minorities and people of color in a county that is over 50% Hispanic. Additionally, there are no judges that reside in the rural part of the county.

I am a native of Yuma County and a testament to the beautiful opportunities this country has to offer. I have been a resident of Yuma County for 35 years and at a young age learned that education and hard work were a key to success. I was raised in an underprivileged, rural area in the outskirts of the City of Somerton. My parents were field workers who raised seven children and had limited resources. Therefore, it came as a big surprise that one child graduated in the top ten of Cibola High School. I went on to attend the University of Michigan on a scholarship ('98), where I graduated with class honors and received a degree in Sociology/Criminology. I concluded my studies at Arizona State University School of Law, where I obtained my doctorate in 2001. After law school, I returned to Yuma County and began working as an attorney at Community Legal Services, an organization that provides legal services to low-income individuals. In an effort to continue working with disenfranchised individuals, I joined the Office of the Legal Defender representing criminal defendants. Having obtained experience in both civil and criminal law, I opened up my first private law firm. After two years of working on my own I decided that I wanted to serve my community in a more direct way even if it meant leaving my lucrative private practice behind. I decided to run for Justice of the Peace and was first elected to public office in 2006.

When I became an attorney, I knew that I wanted to give something back to the community that has given so much to me. Being appointed as Yuma County Superior Court Judge would allow me to continue my dedication to public service and Yuma County citizens that began with my selection as Justice of the Peace and appointment as Superior Court Judge Pro Tern.

If selected by the governor, I would ensure that the legal system is available to all and that the system works with fairness and justice to all. I have the ability to control a courtroom setting and I regularly review and process substantial volumes of information no matter what the format. I am able to actively listen to attorneys and parties in court, quickly discern what they are communicating, and interact with them on all levels to conclude the matters before the court. Because of my training as an attorney and judge, I am able to absorb, analyze and weigh complex issues quickly and accurately. I have proven that I am able to respond to situations with discretion, judgment and restraint while under pressure.

Judges should be of the highest moral character, possess proper judicial temperament and be fair and impartial. Judges are pillars of their communities and should reflect the high moral and values of their community. In my professional career, both as a lawyer and judge, I have never been disciplined by any commission on ethical or judicial conduct.

Finally, I have a thorough understanding of Yuma County policies and procedures that can be an asset to the Superior Court. As presiding judge of the Justices of the Peace in Yuma County, I was responsible for preparing, submitting, and presenting the courts' budget to the board of supervisors. I had a duty to ensure that the courts stay within budget and properly safeguard the monies of our taxpayers while meeting the demands of our court operations. I have a good understanding of human resources policies and procedures to ensure that all employees are properly trained, promoted, compensated, or disciplined.





Jorge Lozano (Bar # 021542)  
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Attorney for Defendant

**FILED**  
2015 MAR 26 PM 2:41  
CLERK OF SUPERIOR COURT  
YUMA, ARIZONA

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YUMA**

STATE OF ARIZONA,

Plaintiff,

vs.

ELVA LUZ BUSTAMANTE-CARRASCO

Defendant.

**S1400CR2015-193**

**Motion for Remand to  
Grand Jury**

The Defendant, by and through undersigned counsel, move this Court to remand this case to the grand jury pursuant to Rule 12.9 of the Arizona Rules of Criminal Procedure for a new finding of probable cause. A motion to challenge grand jury proceedings may be filed within 25 days of arraignment or the filing of the grand jury transcript, whichever is later per Rule 12.9(b). In this case the Defendant's arraignment was held on March 2, 2015 but the grand jury transcript was not filed until March 6, 2015. The present motion is therefore timely. The following Memorandum of Points and Authorities supports the Defendants' motion.

## MEMORANDUM & POINTS OF AUTHORITY

The function of the grand jury is to investigate whether there is probable cause that a crime was committed and whether the person under investigation committed it. *State v. Superior Court of the State of Arizona*, 186 Ariz. 143, 144, 920 P.2d 23, 24 (App. 1996). The Due Process Clause of the Fourteenth Amendment, and Art. 2 §§ 3 and 4 require an unbiased grand jury and a fair and impartial presentation of the evidence. *State v. Emery*, 131 Ariz. 493, 506, 642 P.2d 838, 851 (1982). Grand jury proceedings may be challenged by motion for a new finding of probable cause when the defendant was denied a substantial procedural right. *Ariz. R. Crim. P. 12.9(a)*. Whether false or misleading evidence is presented to the grand jury intentionally or unintentionally misleading evidence which goes without correction by the prosecutor and is used as a basis for the finding probable cause denies the defendant a substantial procedural right, and serves as grounds for remand for the new findings of probable cause. *Nelson v Royston*, 137 Ariz. 272, 277, 669 P.2d 1349, (App. 1983).

Additionally, while a court may not conduct an investigation into the sufficiency of the evidence behind an indictment, a court can determine that the evidence was not presented in a fair and impartial manner, which is a substantial procedural right, *Crimmins v. Superior Court*, 137 Ariz. 39, 43 668 P.2d 822, 886 (1983), or that no evidence whatsoever was presented to support one or more elements of the crime. Rule 16.6(d); see, *State v. Cutshaw*, 7 Ariz. App. 217, 437 P.2d 962, 969 (1971). The charging document provides the court with jurisdiction to try the accused, and if that document is insufficient as a matter of law, the court has no jurisdiction to proceed against the defendant. *State v. Howell*, 226 Kan. 511. 601 P.2d 1141, 1143 (1979). Defects in the indictment must be attached by way of the Rule 16.6 motion. *State v. Superior Court, Pima Co.* 121 Ariz. 341, 342, 590 P.2d 457, 458 (App. 1977).



**STATEMENT OF FACTS**

Defendant was indicted by a grand jury on February 24, 2015. The indictment charges the Defendant with four counts: one count of Transportation of a Narcotic Drug for Sale, a Class 2 Felony; one count of Possession of Narcotic Drug for Sale, a Class 2 Felony; one count of Possession of Drug Paraphernalia, a Class 6 Felony; and one count of Importation of Narcotic Drug, a Class 2 Felony.

According to the attached transcript of the grand jury proceedings, Special Agent James Evans, investigator with Homeland Security, was called as a witness and testified to the following two highly prejudicial and irrelevant statements:

A: At that time, I ran a criminal background check on Ms. Bustamante. She has a previous conviction for possession of drug paraphernalia in Tennessee in 2008. It was originally charged as manufacturing a controlled substance. It was pled down to a lesser felony. Exhibit A, Page 6, Lines 6-10

A: ...I brought her into a room, advised her of her rights and asked if she would consent to an interview. She refused and said she would like to speak to a lawyer. At that point, the interview was terminated...

Exhibit A, Page 6, Lines 11-15

The witnesses' testimony to the grand jury is only 26 lines contained in Page 5 and Page 6 of Exhibit A. Out of these 26 lines, 10 lines were these two highly prejudicial and irrelevant statements. Nathaniel Sorenson was the Deputy County Attorney who presented the case to the grand jury.

## LEGAL ARGUMENT

### **A. The State violated the Defendant's Due Process Rights by Improperly Presenting Testimony of the Defendant's Prior Bad Acts.**

Rule 404(b) of the Arizona Rules of Evidence states, in pertinent part, that "evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." The county attorney has two main duties in grand jury proceedings: (1) to instruct the jury on the applicable law, and (2) to make a fair and impartial presentation of the evidence. In this case, the Defendant is accused of allegedly transporting, importing, or possessing narcotic drugs. The fact that the Special Agent Evans mentioned to the grand jury that Defendant was charged with "manufacturing" a controlled substance in Tennessee in 2008 serves only to prejudice the grand jury in inferring that Defendant is a drug dealer, or has a drug dealing past, and therefore must have committed the current offenses.

Further, the prosecutor failed to give the proper admonition to the grand jury; he failed to instruct the grand jury that they should disregard and not make a decision based on a prior drug charge or conviction. Because the grand jury heard testimony of a prior drug offense, it is certain that they based their decision on past conduct.

### **B. The State violated the Defendant's Due Process Rights by Improperly Presenting Evidence that the Accused Refused to an Interview and wanted a Lawyer.**

When a defendant invokes the Fifth Amendment, jurors are not permitted to take a refusal to testify into consideration when deciding whether a defendant is guilty. In the 2001 case *Ohio v. Reiner* 532 U.S. 17; 121 S. Ct. 1252 (2001), the U.S. Supreme Court held that "a witness may have a reasonable fear of prosecution and yet be innocent of any wrongdoing. The

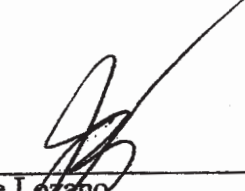
1 [Fifth Amendment right against self-incrimination] serves to protect the innocent who otherwise  
2 might be ensnared by ambiguous circumstances." This case further supported an earlier ruling  
3 that prosecutors cannot ask a jury to draw an inference of guilt from a defendant's refusal to  
4 testify in her own defense.

5  
6 In this case, Special Agent Evans told the grand jury "refused" to an interview and  
7 wanted to "speak to a lawyer." In other words, the grand jury was free to infer that the accused  
8 was hiding something, was uncooperative, or had substantial experience with the criminal justice  
9 system. Because the grand jury heard testimony of a refusal and wanting counsel, it is certain  
10 that they based their decision on these prejudicial statements.  
11

12 **CONCLUSION**

13 Therefore, based on the law and reason cited above, the Defendant respectfully requests  
14 that the Court enter an Order dismissing the indictment and remanding the case back to the grand  
15 jury.  
16

17 DATED this March 26, 2015.

18  
19   
20 \_\_\_\_\_  
21 Jorge Lozano  
22 THE LOZANO LAW FIRM PLLC.  
23 106 S. Madison Avenue, Suite A  
24 Yuma, AZ 85364  
25 Attorney for Defendant

21 ORIGINAL filed this  
22 March 26, 2015 to:

23 Yuma County Clerk of Superior Court  
24 250 W. 2<sup>nd</sup> Street  
25 Yuma, AZ 85364

26 COPY of the foregoing delivered this  
27 March 26, 2015 to:

28 County Attorney - Yuma County  
Attn: Felony Unit  
250 W. 2<sup>nd</sup> Street Suite G  
Yuma, AZ 85364



**THE LOZANO LAW FIRM PLLC.**

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207 W. 2<sup>nd</sup> Street  
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TEL: (928) 783-5377

Attorney for Defendant

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

UNITED STATES OF AMERICA,  
Plaintiff,  
vs.

DAMARHA ABIGAIL CARRILLO ALANIZ,  
Defendant.

**CR-17-00521-PHX-SMM**

**MOTION FOR DOWNWARD VARIANCE  
(Sentence 08/30/17 at 10:00 am)**

Defendant Damarha Abigail Carrillo Alaniz, by and through undersigned counsel, hereby moves this court to sentence Defendant to less than twenty-four (24) months of incarceration in accordance with the terms of the plea agreement and the argument presented in this motion. This sentence would be consistent with the United States Sentencing Guidelines and the factors pursuant to 18 U.S.C. §3553(a). Excludable delay under 18 U.S.C. §3161(h) (8) (B) (IV) and §3161(1) (B) (adequate time for preparation) will not result from this motion.

The Plea Agreement provides that “[t]he Court is required to consider the Sentencing Guidelines in determining the defendant’s sentence. However, the Sentencing Guidelines are advisory, and the Court is free to exercise its discretion to impose any reasonable sentence.” PA,

1 Page 2, ¶4(c). Such exercise of discretion includes but is not limited by government  
2 recommendations for downward variance based on a Guideline Amendment and Minor Role.  
3 The government recommendations do not preclude a request for further downward variance.

4       The “starting point and the initial benchmark” of any sentencing is the calculation of the  
5 applicable Guideline range. Gall v. United States, 128 S.Ct. 586, 596, 169 L.Ed.2d 445  
6 (2007) (Gall). However, the Guidelines are “not the only consideration”--a district judge  
7 should then “consider all of the factors [listed in 18 U.S.C. § 3553(a)] to determine whether they  
8 support a sentence requested by a party.” Gall, 128 S.Ct. at 596. The judge “may not presume  
9 that the Guidelines range is reasonable.” Gall, 128 S.Ct. at 597. However, “a district judge must  
10 give serious consideration to the extent of any departure from the Guidelines and must explain  
11 his conclusion that an unusually lenient or an unusually harsh sentence is appropriate in a  
12 particular case with sufficient justifications.” Gall, 128 S.Ct. at 594. A sentence departing  
13 downward from the Guidelines to impose no or only nominal imprisonment “can be justified  
14 only by a careful impartial weighing of the statutory sentencing factors.” United States v.  
15 McIlrath, 512 F.3d 421, 426 (7th Cir.2008) (quoting United States v. Goldberg, 491 F.3d  
16 668, 673 (7th Cir.2007)). That said, the Supreme Court has held that requiring “extraordinary  
17 circumstances” to justify a sentence outside the Guidelines range or mandating the use of “a rigid  
18 mathematical formula” comes “too close to creating an impermissible presumption of  
19 unreasonableness for sentences outside the Guideline range.” Gall, 128 S.Ct. at 595. A court  
20 should “impose a sentence sufficient, *but not greater than necessary*,” to comply with  
21 the purposes set out in § 3553. 18 U.S.C

1 The term "variance" refers to a non-Guideline sentence which is not imposed under the  
2 framework set out in the guidelines. Irizarry v. United States, 553 U.S. 708 (2008). The  
3 Guideline determination under USSG §2D1.1 is based on the specific drug seized in the offense  
4 and its quantity measured by weight. Under the circumstances of the present offense, Defendant  
5 was not aware of either of those guideline factors. She was 18 years old with no criminal  
6 history. This offense is her first and only felony. She has very limited vocational skills working  
7 previously in office secretarial positions, as a waitress, and as a home cleaner. She has never  
8 held a job which paid more than \$61.00 per week. Her educational background is minimal  
9 having failed to complete high school in San Luis Rio Colorado, Sonora, Mexico.  
10

11 For some time, Ms. Carrillo-Alaniz had suffered from a dysfunctional family with limited  
12 income and without a father figure. She was offered \$3,000 to take drugs across the border and  
13 deliver them to Los Angeles, California. She accepted not knowing what she was transporting  
14 and the quantity of the drugs. Damarha was young, beautiful, and naïve; an easy target for drug  
15 traffickers. Damarha was preyed upon by the drug trafficking organization; she was reminded  
16 many times that they knew where her family lived, insinuating great harm to her loved ones if  
17 she did not participate. She was willing to transport drugs to cover basic living necessities and  
18 help her unemployed mother.  
19

20 Damarha did not know much of the drug trafficking organization other than phone calls  
21 she received for pick-up of the vehicle in a convenience store in Mexico. In fact, the vehicle  
22 Damarha crossed in was not her vehicle despite being registered under her name, as the drug  
23 trafficking organization kept the vehicle always. She did not know the type or quantity of the  
24 drugs involved since she did not load or unload the vehicle. She is extremely remorseful for her  
25 lapse in judgment and finding an easy way out of her financial predicament.  
26  
27  
28



1 Damarha's acquaintances describe her as an honest, disciplined, and hard working  
2 person. (Pleased see attached letters from acquaintances). Damarha, as a legal permanent  
3 resident, was living with her aunt in San Luis, Arizona. Her mother, grandmother, and brother  
4 are living in San Luis Rio Colorado, Mexico. Damarha has been a legal permanent resident for  
5 approximately 18 months and this behavior is out of character since she has always been a law-  
6 abiding resident and kind-hearted individual. The lack of a father figure and living between  
7 homes were big contributors to her misconduct. She was easily recruited hanging out at a  
8 nightclub in Mexico as soon as she turned eighteen.

10 In this case, Damarha will unquestionably be deported. The consequence of deportation  
11 mitigates the amount of imprisonment necessary to punish. See, e.g. Jordan v. De George, 341  
12 U.S. 223, 232 (1951) (Jackson, J.) (deportation is "a life sentence of banishment in addition to  
13 the punishment which a citizen would suffer from the identical acts."); United States v. Szanto,  
14 2007 WL 3374399 (N.D. Ill. Nov. 8, 2007) (District court granted a downward variance on  
15 several factors. First the defendant was a minimal participant in the crime since he believed he  
16 was transporting Viagra not Ecstasy. Second, financial hardships were a motivating factor but  
17 during a two-year pretrial detention, the defendant had mastered the English language making  
18 him more employable. Finally, he was a Canadian citizen and agreed to be deported. Court  
19 varied by 12 months and sentenced him to 24 months, time served.). Damarha is a legal  
20 permanent resident who has only recently obtained such status. Based on this conviction, she  
21 will suffer a lifetime deportation and prohibition from ever returning to the United States. This  
22 conviction qualifies as an aggravated felony, which triggers a 16-level enhancement to the  
23 United States Sentencing Guidelines for Illegal Re-entry. The need for "deterrence" is minimal  
24 since the defendant's life in Arizona is at an end.

1 Further, Damarha's status as a legal permanent resident alien having committed an  
2 offense will subject her to more severe punishment than would normally be accorded to other  
3 prisoners under the same circumstances. See, e.g., United States v. Navarro-Diaz, 420 F.3d 581  
4 (6th Cir. 2005) (illegal reentry case remanded in light of United States v. Booker, 543 U.S. 220  
5 (2005) where district court noted defendant would be punished more than a citizen due to  
6 ineligibility for six months' half way house at end of term); see also, United States v. Cardosa-  
7 Rodriguez, 241 F.3d 613 (8<sup>th</sup> Cir. 2001). After Booker, this circumstance can still be a mitigating  
8 consideration. United States v. Davoudi, 172 F.3d 1130 (9th Cir.1999) (ineligibility for  
9 minimum security designation of up to six months of home confinement authorized by 18 U.S.C.  
10 § 3624(c) can justify departure); United States v. Martinez- Ramos, 184 F.3d 1055 (9th Cir.  
11 1999); United States v. Pacheco-Soto, 386 F. Supp. 2d 1198 (D.N.M.2005) (deportable alien  
12 convicted of drug crime sentenced to 60 months, rather than minimum guideline term of 74  
13 months, in light of his ineligibility for early release, minimum security prison, or credits for  
14 participation in residential drug or alcohol abuse program). With her impending and inevitable  
15 deportation, Damarha is not entitled to any of the sentencing alternatives or reduction programs.  
16  
17  
18  
19  
20  
21

22 For the foregoing reasons, Damarha Abigail Carrillo-Alaniz respectfully requests that  
23 this court review the record, the facts and arguments contained in this memorandum, all the  
24 exhibits and letters of recommendations, and find that substantial mitigating factors for variance  
25 have been presented to warrant the imposition of a sentence that does not require more than  
26 twenty-four months of incarceration under the circumstances of this case and which is consistent  
27 with the terms of the plea agreement and the goals of sentencing.  
28

1 DATED this August 16, 2017.

2 /s/  
3

4 \_\_\_\_\_  
5 Jorge Lozano  
6 Attorney for Defendant Damarha Abigail Carrillo-Alaniz  
7

8 Certificate of Service

9 I hereby certify that, on August 16, 2017, I transmitted the attached document to the clerk's  
10 office using the CM/ECF System for Electronic Filing and transmittal of a Notice of Electronic  
11 Filing to the following CM/ECF registrants:  
12

13 John Ballos  
14 United States Attorney  
15 7102 E. 30<sup>th</sup> St. Ste. 101  
16 Yuma, AZ 85365  
17 John.Ballos@usdoj.gov

18 Dante Jefferson  
19 US. Probation Officer  
20 Phoenix, AZ  
21 Dante\_Jefferson@azd.uscourts.gov

22 /s/ Jorge A. Lozano  
23 Jorge Lozano  
24  
25  
26  
27  
28



64.

1                   IN THE SOMERTON-SAN LUIS JUSTICE COURT, SECOND PRECINCT  
2                   IN AND FOR THE COUNTY OF YUMA, STATE OF ARIZONA

3  
4                   KATHYA OCHOA,  
5                                 Plaintiff,  
6                   vs.  
7                   CARLOS GUIVERRA,  
8                                 Defendant.  
9

) Case No.: J1402CV2009-261  
)  
) ORDER  
)  
) (Hon. Jorge Lozano)  
)  
)  
)  
)  
)  
)

10  
11                   The Court having considered the evidence in the above-  
12                   entitled cause on the 22nd of December 2009, and both parties  
13                   having appeared, IT IS ORDERED this case is dismissed with  
14                   prejudice, each party to bear their own legal costs and fees.

15                   -----  
16                   **FACTS:**

17                   Kathya Ochoa and Carlos Guiverra were involved in a romantic  
18                   relationship in 2008. One child was born out of wedlock on  
19                   December, 2008 out of this relationship. Both parties testified  
20                   that Plaintiff, a single mother of one child from a previous  
21                   relationship, knew Defendant was still married and going through  
22                   a divorce when they began their relationship. Kathy Ochoa sold  
23                   her 2004 Jeep Liberty to Silvia Valencia for \$6,400 on or about  
24                   May 2008. Mr. Guiverra, although not physically present during  
25                   the sale of the automobile, was consulted over the phone in  
26                   regards to the sale. The parties have since separated, Mr.  
27                   Guiverra has reconciled with his spouse, and the parties have a  
28                   pending child support and custody case in Yuma County Superior  
29                   Court.

30                   Silvia Valencia was called as a witness by Plaintiff. Ms.  
31                   Valencia testified that she purchased a 2004 Jeep Liberty from  
32                   Kathya Ochoa in the cash amount of \$6,400. Ms. Valencia stated  
33                   that Mr. Guiverra was not present during the sale and understood  
34                   the parties were to use the proceeds of the sale to buy household  
35                   furniture. Ms. Valencia gave the money directly to Kathya Ochoa.  
36                   Ms. Valencia further stated that there was no sales receipt or  
37                   other documentary evidence that she paid \$6,400 for the vehicle.

38                   Martha Ochoa was called as a witness by Plaintiff. Mrs.  
39                   Ochoa states she is the mother of the Plaintiff and has no  
40                   firsthand knowledge of the sale. She testified that she drove

1 with Plaintiff to a local bank to deposit proceeds of the sale  
2 into an account held by Mr. Guiverra. She has no firsthand  
3 knowledge as to how much money was deposited into Mr. Guiverra's  
4 account.

5 Marcos Ochoa was called as a witness by Plaintiff. Mr.  
6 Ochoa has no firsthand knowledge as to any of the events in  
7 question.

8 Plaintiff Kathya Ochoa testified that she sold her personal  
9 vehicle for \$6,400 cash to Silvia Valencia because Mr. Guiverra  
10 promised to let her have his Chevy Silverado. Ms. Ochoa then  
11 testified that she kept \$400 of the sale for personal matters,  
12 that she gave \$3,000 to the defendant for his personal legal  
13 matters (defendant was a party in a contested divorce proceeding  
14 at the time), and that she personally deposited \$3,000, the  
15 remaining balance, into a personal account in the name of the  
16 defendant. Ms. Ochoa presents no documentary evidence or bank  
17 deposit slip to prove her transaction. Ms. Ochoa did drive the  
18 Chevy Silverado for some months, after which the Defendant  
19 demanded the return of his truck. The relationship thereafter  
20 ended.

21 Defendant Carlos Guiverra testified that he did not conduct  
22 the sale of the automobile and disputes that he ever received any  
23 money from Kathya Ochoa. He stated that if Ms. Ochoa placed any  
24 monies into his bank account, it was money from two different  
25 jobs he held during the time of their relationship. Mr. Guiverra  
26 told the court Plaintiff kept the entire amount to pay back taxes  
27 and court fines. Plaintiff and Defendant lived together  
28 approximately three months with Ms. Ochoa's parents and three  
29 months with Mr. Guiverra's parents. He did not dispute that Ms.  
30 Ochoa was driving his Chevy Silverado for some time.

### 31 ANALYSIS:

32 The court determines that Plaintiffs claim is for \$3,000  
plus any consequential damages. By her own sworn testimony, Ms.  
Ochoa gave Mr. Guiverra \$3,000 for his divorce case and kept \$400  
for herself. A gift is generally defined as a voluntary transfer  
of property by owner to another without consideration, and, if  
payment proceeds primarily from incentive of anticipated benefit  
to payor beyond satisfaction which flows from the performance of  
generous act, it is not a gift. Collman vs. C.I.R., 511 F.2nd  
1263 (1975). The court finds that the \$3,000 given to Mr.  
Guiverra was given freely, voluntarily, and without consideration  
by Ms. Ochoa. Thus, \$3,000 of the sale was gifted to Mr.  
Guiverra.

The court next turns to the remaining \$3,000. Property and  
support disputes between unmarried cohabitants must be  
resolved by means outside the statutory scheme for dissolution  
of marriages, typically, under general contract principles.  
Therefore, the parties must be capable of contracting and have



1 reached a meeting of the minds, which is supported by  
2 consideration while having a lawful purpose. The facts in  
3 this case show that there was no specific intent that the  
4 parties intended to enter into a contract. The facts show  
5 that Ms. Ochoa sold her vehicle in anticipation of buying  
6 household furniture and in furtherance of their domestic  
7 relationship. The evidence does not support that Mr. Guiverra  
8 agreed to give Ms. Ochoa a new Chevy Silverado truck in  
9 consideration of her selling her personal vehicle.

10 The court next considers whether or not the Plaintiff can  
11 recover under a theory of unjust enrichment. Unjust  
12 enrichment provides that one person should not be permitted to  
13 unjustly enrich him or herself at the expense of another. The  
14 court agrees that there are signs that Mr. Guiverra enriched  
15 himself to the detriment of Ms. Ochoa, however the burden is  
16 on Ms. Ochoa to prove her claim. The court has no supporting  
17 evidence other than Ms. Ochoa's sworn testimony that she  
18 deposited \$3,000 in an account held by Mr. Guiverra. At a  
19 minimum, Plaintiff could have subpoenaed Mr. Guiverra's bank  
20 records in support of her claim. Further, she has no proof of  
21 any consequential damages (taxi cab receipt, gasoline  
22 receipts, etc.). Thus, Ms. Ochoa has not met the burden of  
23 proof in support of her claim.

24 **CONCLUSION:**

25 The Plaintiff must prove her case by a preponderance of  
26 the evidence. The court finds that Ms. Ochoa could have  
27 recovered \$3,000 under a theory of unjust enrichment in this  
28 case, however there is no evidence to support her claim.

29 DATED this 7th day of January, 2010.

30   
31 JUSTICE OF THE PEACE 

32 Hon. Jorge Lozano  
Justice of the Peace

Copy mailed/delivered  
to:

Plaintiff(x) c/o Attorney Vida Florez  
Defendant(x) c/o Attorney Gregory Torok

1                   IN THE SOMERTON-SAN LUIS JUSTICE COURT, SECOND PRECINCT  
2                   IN AND FOR THE COUNTY OF YUMA, STATE OF ARIZONA  
3

4                   ROSA VELIA OCHOA,                   ) Case No.: J1402CV2009-00382  
5                                   Plaintiff,                   ) ORDER  
6                   vs.                   ) (Hon. Jorge Lozano)  
7                   G & M AUTO SALES,                   )  
8                                   Defendant.                   )  
9                   \_\_\_\_\_ )

10  
11                   The Court having considered the evidence in the above-  
12                   entitled cause on the 1ST of April 2010, and both parties having  
13                   appeared, IT IS ORDERED judgment in favor of the Plaintiff in the  
14                   amount of \$429, plus costs in the amount of \$130 and all at 10%  
15                   interest per annum from date of judgment until paid in full.  
16                   -----

17                   The Court arrives at its conclusion as follows:

18                   The parties both testified that they have a written contract  
19                   for the purchase of a used vehicle. The contract was entered  
20                   into on August 19, 2008 and was for the purchase of a 1992 Honda  
21                   Civic with 125,991 original miles in the amount of \$4,746.91.  
22                   Such contract has an addendum in Spanish which states, among  
23                   other things, that "in case there are two late payments, you lose  
24                   and/or all your rights are annulled in the vehicle. G&M also  
25                   makes it clear that in a 24 hour lapse your vehicle will be  
26                   repossessed (picked up)." The original contract states that two  
27                   payments are due each month (every 15 days) in the amount of  
28                   \$104.

29                   Plaintiff testified that she had previously purchased a used  
30                   vehicle from the Defendant and her dealings with the dealer were  
31                   pleasant. Plaintiff returned to purchase the vehicle in question  
32                   and she testified that she gave a down payment of \$1,100 by two  
33                   separate checks. Plaintiff admits she was late a few times but  
34                   continuously gave payments on her vehicle. Plaintiff testified  
35                   that her vehicle was repossessed without notice on October 15,  
36                   2009. The total amount owed by Plaintiff on the date of  
37                   repossession was \$1,166.



38                   Defendant testified that he is the son of Gustavo Celaya and  
39                   an employee at G&M Auto Sales. Defendant testified that he and  
40                   his staff repossessed Plaintiff's vehicle on October 15, 2009 for

1 default in payments. Defendant states that G&M did not receive  
2 payment for the month of September 2009 and that a late payment  
3 check of \$100 returned with insufficient funds. Defendant  
4 further testified that no notice was given to Plaintiff of the  
5 repossession and that the vehicle in question has already been  
6 re-sold by G&M Auto Sales. Defendant was unaware as to the  
7 amount of the re-sale. Defendant did not provide Plaintiff with  
8 any notice of their intent to re-sell the vehicle.

9 In this case, we have a valid written contract entered into  
10 between the parties and the court shall not disrupt such contract  
11 absent a showing of fraud, misrepresentation, or mistake. The  
12 court finds that there was a default in payment through the  
13 admission of the Plaintiff and testimony of the Defendant.  
14 A.R.S. 47-9601 et. seq. leaves to the agreement of the parties  
15 the circumstances giving rise to default. In the case the  
16 agreement clearly states default occurs "in case there are two  
17 late payments" and therefore repossession of the vehicle by the  
18 Defendant was a valid remedy.

19 The Defendant, however, did not follow Arizona law under  
20 A.R.S. 47-9613 which requires written notification before  
21 disposition of collateral and A.R.S. 47-9615 which indicates how  
22 the seller should apply the proceeds of the sale. In this case,  
23 G&M re-sold the vehicle in question and provided no evidence as  
24 to the amount of the re-sale value of Plaintiff's vehicle or that  
25 they notified her whether there was a deficiency or a surplus  
26 resulting from the sale. When no evidence is presented as to the  
27 re-sale, the court shall fill in the gap of this sale. The court  
28 finds that the Kelly Blue Book value of the vehicle was \$1,595 on  
29 October 15, 2009. This value contemplates the private-party sale  
30 of used 2002 Honda Civic in "good" condition with standard  
31 equipment and 135,000 miles. Defendant owed \$1,166 on the  
32 original contract. The court subtracts the amount owed on the  
original contract to the actual private-party value of the  
vehicle and concludes Plaintiff is entitled to a surplus of \$429.

DATED this 6th day of April, 2010.

  
  
JUSTICE OF THE PEACE  
Hon. Jorge Lozano  
Justice of the Peace

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to:

Plaintiff(x)  
Defendant(x)