Submitted by Fax, Mail or Email:

Fax: 214-413-5415

Mail:

IRS EO Classification,
Mail Code 4910DAL
110 Commerce Street
Dallas, TX 75242-1198

Email:

eoclass@irs.gov

Form **13909**
(December 2016)

Department of the Treasury - Internal Revenue Service

Tax-Exempt Organization Complaint (Referral)

1. Name of referred organization

Street address

City	State	ZIP code	Date of referral

2. Organization's Employer Identification Number (EIN)

3. Nature of violation

- ☐ Directors/Officers/Persons are using income/assets for personal gain
- ☐ Organization is engaged in commercial, for-profit business activities
- ☐ Income/Assets are being used to support illegal or terrorist activities
- ☐ Organization is involved in a political campaign
- ☐ Organization is engaged in excessive lobbying activities
- ☐ Organization refused to disclose or provide a copy of Form 990
- ☐ Organization failed to report employment, income or excise tax liability properly
- ☐ Organization failed to file required federal tax returns and forms
- ☐ Organization engaged in deceptive or improper fundraising practices
- ☐ Other *(describe)*

4. Details of violation

Name(s) of person(s) involved

Organizational title(s)

Date(s)	Dollar amount(s) *(if known)*

Description of activities

5. Submitter information

Name

Occupation or business

Street address

City	State	ZIP code	Telephone number

☐ I am concerned that I might face retaliation or retribution if my identity is disclosed

6. **Submission and documentation:** The completed form, along with any supporting documentation, may be mailed to IRS EO Classification, Mail Code 4910DAL, 1100 Commerce Street Dallas, TX 75242-1198, faxed to 214-413-5415 or emailed to eoclass@irs.gov. **Disclaimer Notice:** Your email submission of Form 13909 and attachments are not encrypted for security.

Instructions for Form 13909, Tax-Exempt Organization Complaint (Referral)

General Information

The information provided on this form will help the Internal Revenue Service (IRS) determine if there has been a violation of federal tax law. Submission of this form is voluntary.

Upon receipt of this form, the IRS will send you a letter acknowledging receipt of the information you submitted. If at a later date you wish to submit additional information regarding the organization, please attach a copy of the form initially submitted, and send it to the address shown above.

Specific Instructions

1. **Organization name and address:** Provide the current name and address of the organization. If the organization has used prior or multiple name(s) or address(es), also provide that information.

2. **Employer identification number:** Provide the organization's EIN.
   The EIN is a nine-digit number, issued by the IRS, that the organization uses for tax purposes (like a Social Security Number (SSN) for an individual). If the EIN is unavailable, include a state nonprofit corporation registration number, if available.

3. **Nature of violation**: Mark the description that describes the organization's alleged violation. More than one line may apply. If none of the descriptions appear to apply, briefly state the issue on the Other line.

4. **Details of the violation:** Provide specific details of the alleged violation including names, actions, places, amounts, dates, and the nature of any evidence or documentation (who, what, where, when, how). Include the names of other organizations, entities or persons that may be involved with the organization, providing EINs or SSNs, if available.

5. **Submitter information:** Provide your name, address, and business or occupation. Include your daytime telephone number, in case we wish to contact you. The acknowledgement letter will be sent to the address you provide.

   If you are concerned that you may face retribution if your identity is disclosed, check the box. You may enter "Anonymous" for Submitter's name if you do not want to be identified.

6. **Submission and documentation:** Mail the completed form, including any supporting documentation that you would like for us to review, to the address provided on the form. You may also fax or email the completed form and any supporting documentation to the fax number or email address provided on the form. Include a cover letter describing the documentation or evidence you are providing. If you have already received an acknowledgment letter, include a copy of that letter. If possible, please try to submit all documentation at the same time.

   If your referral relates to a church please be aware that Congress has imposed special limitations, found in IRC section 7611, on how and when the IRS may conduct civil tax inquiries and examinations of churches. You can find out more about these special limitations in Publication 1828, *Tax Guide for Churches and Religious Organizations*, in the section on Special Rules Limiting IRS Authority to Audit a Church.

7. **Claim for reward:** To claim a reward for providing this information to the IRS, file Form 211, *Application for Award for Original Information.*

8. **Note:** Federal law prohibits the IRS from providing you with status updates or information about specific actions taken in response to the information you submit.

501(c)(3) COMPLAINT AGAINST EL PASO MATTERS AND ROBERT "BOB" MOORE

This complaint is filed on the basis that El Paso Matters, through Robert "Bob" Moore, is intentionally involved in political activism and bias and is engaged in deceptive fundraising practices and additionally being used to support illegal activity. These actions are in violation of federal law regulating 501(c)(3) entities.

Robert Moore through El Paso Matters is conspiring with attorneys Justin Underwood, Omar Carmona, and Judge Penny Hamilton to attack and remove elected official District Attorney Yvonne Rosales. All three named individuals routinely appear in his attack stories against DA Rosales. He does so by illegally accessing information not subject to disclosure through the Texas Public Information Act law by submitting or having requests submitted to the El Paso Jail Magistrate Court. He also does so by publishing that information and statements from the above named two lawyers and judge that violate the Texas Rules of Professional Conduct for lawyers and the Canons of the Texas Code of Judicial Conduct for judges, by attempting to influence potential jury pools in a series of cases and influencing their potential outcome. The stories fail to present the other side of the issues.

Robert Moore of El Paso Matters is politically attacking and conspiring to remove elected official DA Yvonne Rosales as evidenced by a conversation Robert Moore had with attorney Justin Underwood on his El Paso Matters Facebook page. Please see Attachment A. Two days after this conversation in which they discussed that with the "right lawyer" DA Rosales could be removed, the petition was actually filed by attorney Omar Carmona. Robert Moore's contributors and close friends are part of the political group who are opponents of DA Rosales' administration. Some of the people close to Robert Moore were not allowed to continue with the Rosales administration, including attorney Omar Carmona's wife, attorney Dana Carmona.

El Paso Matters through Robert Moore recently violated Texas law by engaging in the following unlawful activity:

1) Publishing non-discoverable information from the Jail Magistrate Court in El Paso, Texas in his stories, illegally obtained through the Texas Public Information Act law. El Paso County Attorney Jo Ann Bernal should not have allowed these records to be released by law, as they are non-discoverable under Texas law. **Please see Attachment B.**

2) By colluding with the Court in order to leak and identify confidential communications from law enforcement.

3) By illegally recording in a restricted area of the courtroom in order to obtain the images of the families of the murdered victims of the Walmart shooting case.

4) Robert Moore unlawfully sat in the jury box, took pictures of the families of the murdered victims while the Court was in session, and **published the images of the families of the murdered victims, thereby endangering their physical safety.** It is important to point out the Walmart shooting case involved a white supremacist who murdered 23 victims on the basis of race.

The recent bomb threat that was received by the El Paso County Courthouse and allegedly made by white supremacist supporters of the alleged murderer in the Walmart shooting, show the real risk that results from Robert Moore violating normal court protocols.

Further evidence that El Paso Matters through Robert Moore has engaged in unlawful political activism and bias includes a series of stories he published attacking DA Rosales. The focus of the stories shows blatant political bias and racism through 1) the focus of the story, 2) actual statements made in the stories, 3) failing to present the other side of the issues, and 4) actions taken by their reporters to target families of the victims of crime and endangering their physical safety. The stories include the following:

1) **"Judge Issues Gag Order After Slamming El Paso DA over comments, inaction on Walmart trial" (Attachment C)**

2) **"New DA Dismantles El Paso's legacy on tackling domestic violence" (Attachment D)**

3) **"El Paso public defender may seek dismissal of 1,000 more criminal cases" (Attachment E)**

4) **"Court petition seeks removal of El Paso District Attorney Yvonne Rosales" (Attachment F)**

The very titles and focus of the stories demonstrate a severe antagonism towards political candidates and elected officials that are disfavored by Robert Moore and his core group of contributors. This is easily demonstrated by the contribution records of each candidate. He does not write critical stories regarding any other elected official.

EVIDENCE OF POLITICAL BIAS AND ACTIVISM IN THE FOUR STORIES

Story 1: "Judge Issues Gag Order After Slamming El Paso DA over comments, inaction on Walmart trial"

"The state judge...excoriated District Attorney Yvonne Rosales,"

"A clearly angry 409th District Judge Sam Medrano,"

"he repeatedly criticized Rosales,"

"Medrano...blasted Rosales."

<u>Story 2:</u> "New DA Dismantles El Paso's legacy on tackling domestic violence"

"Many were critical of Rosales' approach to domestic violence, but did not want to be quoted by name, citing fear of retaliation against them or the clients they were defending."

"According to defense attorneys, Rosales' office is far more likely to decline to move forward on domestic violence cases when victims do not wish to press charges against their alleged assailant-a stark departure from the previous DA."

"Paul Ferris, project administrator for the DA's office, later provided written statements to be attributed to 'the administration,' and not Rosales directly."

"In its statement, Rosales' office largely blamed Esparza for case processing challenges."

"Virtually all of its output measures fell short of the VAWA grant targets. For example, the office trained seven criminal justice professionals on how to gather and collect evidence in family violence cases between January and August 2021. The stated goal in the grant application was to train 536 people, with the office saying that "staff were unable to reach out to agencies for training purposes 'due to the pandemic.'"

"That's ridiculous, to blame it on COVID," said former El Paso County Jail Magistrate Judge Penny Hamilton, a fierce critic of Rosales' administration."

"In a 2020 grant submitted months before Rosales took office, Patricia Baca, then head of the office's domestic violence unit and now judge of El Paso's 346th Judicial District Court, noted that the domestic violence unit had three full-time attorneys and six staffers devoted to family violence crimes."

"Critics of Rosales' administration acknowledge that newly elected officials are entitled to reset priorities, choose their staff and restructure the agency they lead. But some question why the office did not keep the specialized domestic violence unit that was a hallmark of Esparza's administration."

"Other district attorney offices in large urban counties in Texas, including those for Travis, Tarrant, Harris and Dallas counties, have domestic or family violence divisions."

"Many of the changes relating to domestic violence have taken place amid broader shifts within the DA's office, which according to exit interviews **first reported by Channel 9-KTSM**, has struggled with staff morale and organizational turmoil-especially following Rosales' controversial decision to remove roughly a quarter of the agency's staff before she took office in January 2021."

"Nearly 18 months later, some vacancies have yet to be filled. Staff turnover also persists, even among Rosales' own hires. Rosales started a DA with a new director and assistant director of the victim assistance program. By August, both had left. Program director Angelica Castillo noted in her exit interview that she did not have a job lined up. 'It should say a lot about morale that I felt I needed to leave even with no job to go to,' Castillo wrote. 'Most people are unhappy and are looking for work elsewhere.'"

"The mass departure at the start of Rosales' term came at a cost, effectively erasing decades of institutional knowledge and specialized legal experience, and placing an increased workload on the staff that remained, several employees said in their exit interviews."

"'It is impossible to have effective prosecutors being short staff(ed) with the amount of attorneys we have,' Teresa Garcia, a senior trial attorney, said during her exit interview with the county six months after she joined the office. 'It was no loner feasible to keep working. This has not been a good experience.'"

"Hamilton said, 'I'm telling you, she doesn't have enough staff, she doesn't have enough prosecutors to try the damn cases-much less do specialty units.'"

"Justin Underwood began his legal career as an assistant district attorney under Esparza. In 2004, after three years of prosecuting felony cases-many of them involving domestic violence-he left to start his own firm as a defense attorney. After making that switch, Underwood said he came to realize that with domestic violence, 'these cases are not just one-sided a lot of the time. Family relationships are complicated.' With domestic violence cases, Esparza's office was 'a 100% prosecution machine,' he said. 'They went forward on every single domestic violence case.'"

Story 3: "El Paso public defender may seek dismissal of 1,000 more criminal cases"

"Between Aug. 15-18, the El Paso Public Defender's Office requested about 390 dismissals under a section of the Texas Code of Criminal Procedure that requires prosecutors to seek indictments within 180 days of arrest."

"However, moving to prosecute years down the line 'would be an extreme injustice not just for my clients, but for the entire legal system,' said El Paso Public Defender Kelli Childress."

"And though Rosales said in an interview with KFOX she'd been 'blindsided' by the dismissal request, Childress said she had contacted the DA's office on multiple occasions to discuss delays in case screenings."

"Rosales did not respond to interview requests with El Paso Matters."

"The DA's delay in screening and indicting cases also has **affected people who are in custody.** Article 17.151 of the Texas Code of Criminal Procedure prohibits jailing defendants past 30 to 90 days if the state isn't ready for trial. Between 2018 and 2020, roughly 14 people were released under this provision each year. In 2021, Rosales' first year in office, that number jumped to 183."

"Defense attorney Omar Carmona said his clients have also experienced delays that would make their cases elgible for dismissal uder 32.01. But while he's planning to request similar dismissals, for now, he said he and other private defense lawyers may wait to see if there's any 'fallout' from this week's hearings. 'We've seen how this (district attorney's) office has been vindictive in the past.'"

"Last fall, Carmona represented Ivan Gabaldon, whose **capital murder charge was dismissed** after a judge ruled that the DA's office had taken 'vindictive actions' against him in a case that was also marked by prosecutorial delays."

"In their motion to dismiss the case, Carmona and co-defense attorneys Denise Butterworth and Felix Valenzuela argued that state prosecutors had asked for the death penalty against their client as a way to buy themselves more time to prepare, and because the defense had sought to protect their client's constitutional right to a speedy trial. In earlier hearings, the DA's senior division chief, Curtis Cox, **acknowledged** that prosecutors had received the case, but 'apparently for at least the next six months effectively did nothing."

"Penny Hamilton, who retired as head jail magistrate for El Paso County this spring, said that when she released people accused of violent offenses from jail, she'd try to establish a 'safety zone' for the person they may have harmed. 'Her inaction is really such a disservice to our community. It's a public safety issue, especially now. I mean (about 400 cases dismissed and a lot of those having victims of violent crime? That's just shameful.'"

"Carmona, who watched some of the dismissals, said 'just to have your prosecutor go up there and say 'nothing from the state'- that's just not good enough. That's a total lack of accountability.'"

Story 4: "Court petition seeks removal of El Paso District Attorney Yvonne Rosales"

"District Attorney Yvonne Rosales should be removed from office because of incompetency and official misconduct, according to a petition filed with the El Paso District Clerk's Office on Wednesday."

"The case, which Rosales called an assault on the political process, was assigned to the 346th District Court presided by District Court Judge Patricia Baca."

"The petition triggers a rarely used mechanism for removing an elected official in Texas, a process that could take months to resolve."

"The petition was filed by defense attorney Omar Camona, who represented a capital murder defendant whose charges were dismissed in 2021 after a judge ruled that the District Attorney's Office had **engaged in prosecution vindictiveness.**"

"Carmona asks that Rosales be temporarily removed from office while the courts consider his petition."

"The effort to oust Rosales, a Democrat who was elected in 2020, comes after months of turmoil in her office, including the **dismissal of hundreds of cases** because of a failure to seek indictments in time, and controversy over the **handling of the Aug. 3, 2019 mass murder** at the Cielo Vista Walmart."

"'Since August 3, 2019, our community has come a long way. We have healed together, we have grieved together and we've cried together...but we still don't have that final closure,' Carmona said. 'So it's time for a change and it's a change we cannot wait for. We cannot wait for the next election cycle. It has to be done right away.'"

"State Rep. Joe Moody, D-El Paso, said Rosales' performance and the attempt to remove her raise challenging questions. 'As someone who believes in our system, I'm always leery about anything that puts a decision about who represents the people in any hands besides the people. We have a removal system, and that's an election in 2024,' said Moody, one of the Legislature's leading voices on criminal justice issues. 'That said, I've never witnessed such gross incompetence-it's not only embarrassing, it's dangerous and disgraceful. A lot of El Pasoans are going to be hurt before 2024 by the very person they should be able to most rely on.'"

ATTACHMENT A

El Paso Matters

August 21 at 11:05 AM ·

With last week's dismissals, any protective conditions imposed on someone as part of their bond, such as restrictions against contacting an alleged victim, were also removed. Victoria Rossi with the latest on the large-scale dismissal of criminal cases in El Paso.

ELPASOMATTERS.ORG

El Paso public defender may seek dismissal of 1,000 more criminal cases - El Paso Matters

Wesley Lawrence For El Paso and 17 others

13 Comments 8 Shares

Like **Comment** **Share**

Most relevant

Write a comment...

Press Enter to post.

Maria Kalman
So why would the cps bother to arrest offenders. A form of cashless bail.

Like **Reply** 3d

Jerry Davis
Recall?

Like **Reply** 1w

Bob Moore
Jerry Davis Texas does not allow recalls, except for home-rule cities that choose to permit recalls for municipal offices.

Like **Reply** 1w

Justin B. Underwood

Bob Moore but you can file a petition for removal under the Texas Government Code

Like **Reply** 6d 2

Justin B. Underwood

Bob Moore section 87.015 to be precise

Like **Reply** 6d

Bob Moore

Justin B. Underwood https://statutes.capitol.texas.gov/Docs/LG/htm/LG.87.htm

STATUTES.CAPITOL.TEXAS.GOV

LOCAL GOVERNMENT CODE CHAPTER 87. REMOVAL OF...

Like **Reply** 6d

Justin B. Underwood

Bob Moore exactly

Like **Reply** 6d

Bob Moore

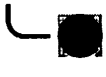
Justin B. Underwood My sense is that a jury would be loath to remove an elected official. Removing someone chosen by voters is a major step. There's a reason this provision is so rarely used.

Like **Reply** 6d

Justin B. Underwood

Bob Moore it would be a tough fight for sure. But if the evidence is there, and you have the right lawyer....

Like **Reply** 6d 3



Reply to Bob Moore...

Press Enter to post.

ATTACHMENT B

JO ANNE BERNAL
EL PASO COUNTY ATTORNEY
500 EAST SAN ANTONIO
ROOM 503, COUNTY COURTHOUSE
EL PASO, TEXAS 79901
(915) 546-2050
FAX: (915) 546-2133

May 11, 2022

Yvonne Rosales
District Attorney
34th Judicial District
500 E. San Antonio, 2nd Floor
El Paso, Texas 79901
YRosales@epcounty.com

SENT VIA ELECTRONIC MAIL

RE: Public Information Request received by Council of Judges for Records Pertaining to Communications between Honorable Penny Hamilton, Yvonne Rosales, and Council of Judges; *Our PIA#100*

Dear Ms. Rosales:

As a courtesy, please be advised that the Council of Judges a received a request for records regarding information related to your office. More specifically, Aaron Montes from KTEP 88.5 FM requested a copy of any and all emails between Penny Hamilton, Yvonne Rosales and the El Paso County Council of Judges between the periods of June 1, 2021, and September 30, 2021. He requested the keywords to be used would be "no bill," "no bills," "inmates," and "no charges." Additionally, he requested summaries, memorandums, notifications or letters concerning individuals in El Paso County jails between the period of June 1, 2021 and September 30, 2021. The Council of Judges then referred the request to the County Attorney's Office for handling.

We are in the process of issuing a response on behalf of the Council of Judges. We will refer the requestor to your office for any potential records your office may have. Please let us know if you have any questions.

Sincerely,

Evette Ugues
Assistant County Attorney

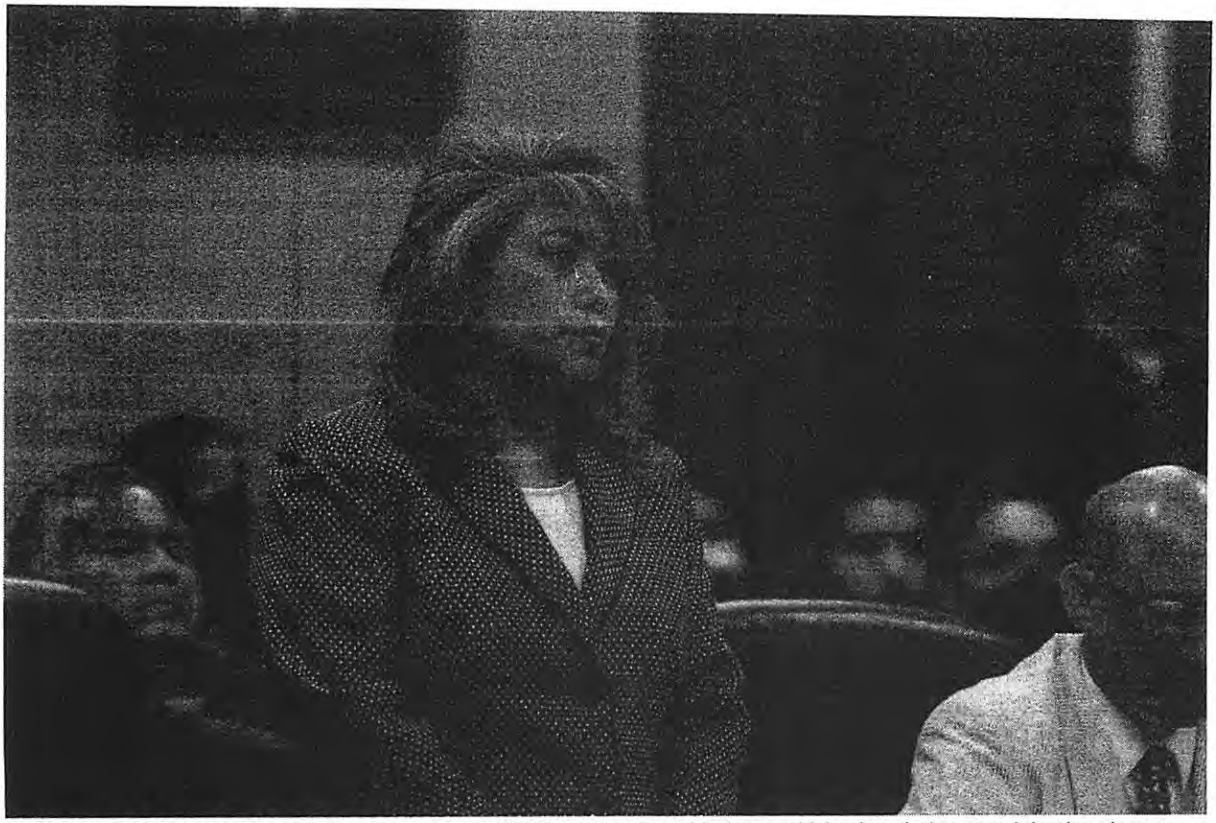
cc: Michael Cuccaro, Executive Director, Council of Judges

ATTACHMENT C

GOVERNMENT

Judge issues gag order after slamming El Paso DA over comments, inaction on Walmart trial

by Victoria Rossi and Robert Moore
July 1, 2022



El Paso District Attorney Yvonne Rosales listens to District Judge Sam Medrano criticize her during at a July 1hearing on the Walmart shooting case. (Corrie Boudreaux/El Paso Matters)

The state judge presiding over the prosecution of the man accused of murdering 23 people at an El Paso Walmart in 2019 excoriated District Attorney Yvonne Rosales on Friday for making public comments about the case while her office has done little to prepare for trial.

A clearly angry 409th District Judge Sam Medrano cited a press release Rosales issued earlier this week announcing her intention to have the case tried next summer in his court. He issued a gag order on Friday preventing prosecutors, defense lawyers, law enforcement officers and witnesses from discussing the case with the media.

"The grandstanding ends today," Medrano said at the conclusion of a 20-minute hearing where he repeatedly criticized Rosales before reporters, attorneys and shooting

victims' families who packed the courtroom. He made it clear his complaints were directed at Rosales.

Medrano also blasted Rosales for suggesting she'd be ready for trial in less than a year. He said her office had not made a single filing in the case since she assumed office in January 2021.

"Not one one pleading, not one motion, not one request, not one business record, not one proposed jury questionnaire, not one subpeona duces tecum, not one witness list, not one expert witness list, has been filed by your office," Medrano said.

409th District Judge Sam Medrano issued a gag order Friday for all attorneys in the state case against the alleged Walmart shooter. (Corrie Boudreaux/El Paso Matters)

When Rosales maintained that she had filed some documents, the judge shot back: "If they were filed, they were filed late yesterday, because I checked the file — not one," he said.

Joe Spencer, one of the attorneys representing the alleged gunman, also told the judge he had not seen any filings from the prosecution for nearly two years. Rosales has been in office for roughly 18 months.

Spencer and Medrano said that Rosales' public comments on the case could impact the defendant's right to a fair trial, and make it difficult to empanel a jury in El Paso.

Medrano is the latest judge to criticize Rosales or her office over their handling of criminal cases.

The court process for a massacre

Rosales, in **a June 27 statement**, said she hoped the state capital murder trial against Patrick Crusius would take place in summer 2023.

Crusius, then 21, of Allen, Texas, was arrested shortly after the Aug. 3, 2019, shooting at the Cielo Vista Walmart that killed 23 and wounded 22 others. Prosecutors allege that shortly before the shooting, he posted an online screed saying he had driven to El Paso from North Texas to carry out an attack to stem a "Hispanic invasion."

He has been held in the El Paso County Jail since his arrest, facing both federal and state charges that carry a potential death penalty. He was not present at Friday's hearing.

Federal prosecutors haven't decided whether to seek the death penalty, but Rosales and her predecessor, Jaime Esparza, both said they would seek Crusius' execution if he was convicted on state charges.

Rosales' statement came three days after U.S. District Judge David Guaderrama, who is presiding over the federal case, set a trial date for Jan. 8, 2024. Prosecutors had asked for the federal trial to begin in June 2023, and Crusius' lawyers had asked for March 2025.

Family members of victims of the Walmart shooting listen as District Judge Sam Medrano issued a gag order after excoriating District Attorney Yvonne Rosales on Friday for making public comments about the case. (Corrie Boudreaux/El Paso Matters)

"I commend Judge Guaderrama for setting the case for trial in a timeframe that will allow the U.S. Attorney's Office to make a final determination whether they will seek the death penalty against Patrick Crusius. The District Attorney's Office will continue to seek the death penalty and as such, we hope to have our case proceed to trial by summer of 2023," the statement read.

The decision to set a trial date rests with the judge and is supposed to involve discussion with both the prosecutors and the defense attorneys.

Although Rosales told Medrano she "did indicate" that process to the media, her press statement made no mention of the defense attorneys or the judge.

From District Attorney Yvonne Rosales:

I commend Judge Guaderrama for setting the case for trial in a timeframe that will allow the US Attorney's Office to make a final determination whether they will seek the death penalty against Patrick Crusius. The District Attorney's Office will continue to seek the death penalty and as such, we hope to have our case proceed to trial by summer of 2023. We are aware that this time-frame may seem long for many, however, keep in mind that trials were delayed due to the pandemic and have only resumed as early as January 2022. There are a series of murder cases that have been successfully prosecuted over the last few months and we are working through the cases that were postponed by the pandemic.

The vacancies have not affected the quality of the prosecutions by the office. These vacancies are deliberate, due to the office space issues we have encountered. We simply do not have the office space to safely house additional personnel with the continued rate of positive Covid testing that is still plaguing the County Courthouse personnel.

District Attorney Yvonne Rosales released this statement to El Paso media on June 27, days after a judge set a date for the federal trial.

When Medrano asked Rosales why she put out the statement, she deflected.

"I don't know what the media put out, your honor. ... I did clearly inform them that we would approach opposing counsel and this court" about setting a trial date, she said, emphasizing that her statement indicated that she "hoped" for a date next summer.

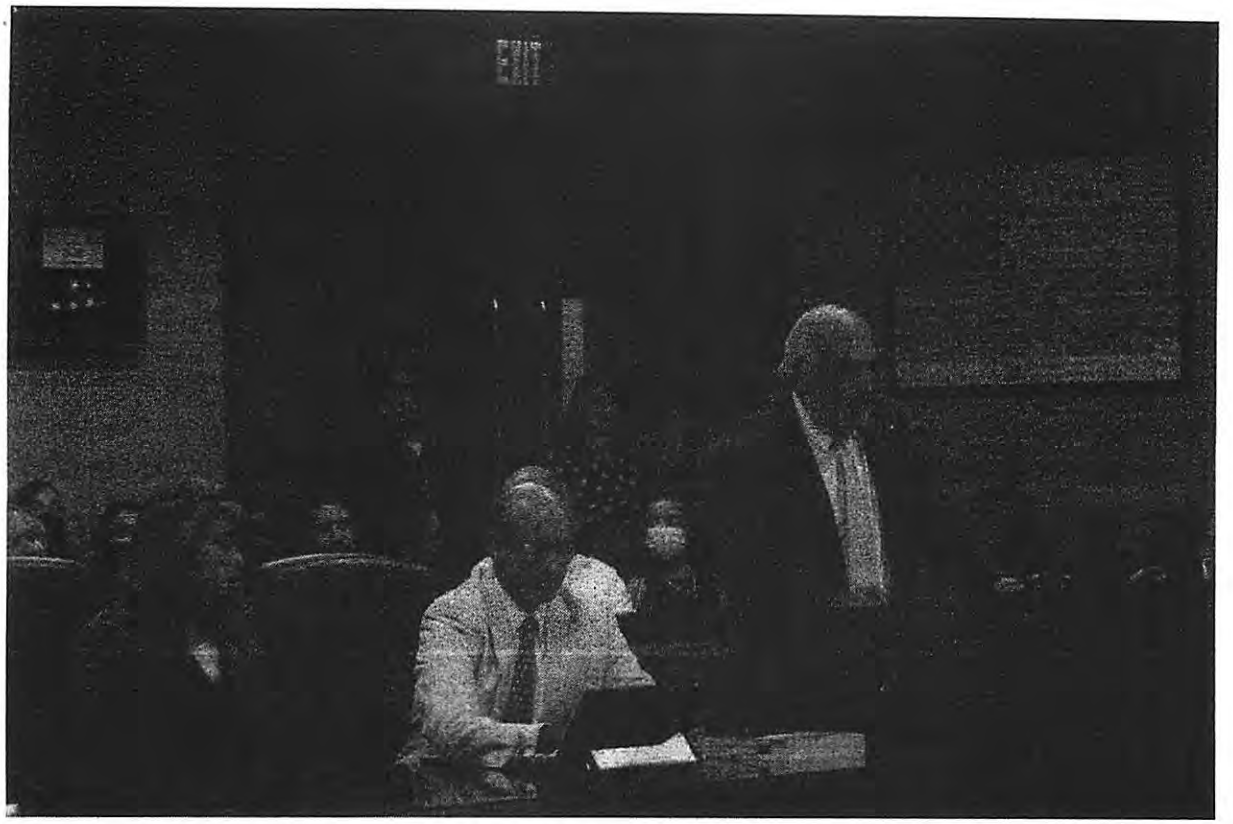
The defense, Medrano noted in court, has not "gone to the media" to publicize their trial date preferences.

Rosales told Medrano that she preferred a state trial setting ahead of the federal case because of the death penalty.

"Our goal was to to have this case scheduled before since we are seeking the death penalty, and the federal court is not seeking the death penalty at this point in time," she said.

Any prosecutorial actions that violate a defendant's due process rights put the case at risk of a retrial — prolonging an already difficult process for victims' family members, Spencer said during Friday's hearing.

"The tenets of due process are at risk in this case," Spencer said. "And this case will be tried over and over again if not done properly."



Joe Spencer, right, one of the attorneys for the alleged El Paso Walmart shooter, speaks at a hearing Friday in the case. (Corrie Boudreaux/El Paso Matters)

Medrano said he issued the gag order to protect the case and ensure a fair trial. He said it's the first such order that he's issued in his 26 years on the bench.

The judge did not say when he'd set a trial date for the state charges, though he said he would not interfere with Guaderrama's federal trial date in January 2024. Spencer said during the hearing that defense lawyers couldn't prepare simultaneously for state and federal trials in the next 18 months.

Previous judicial criticism of Rosales

Medrano is at least the fourth judge in recent months to criticize Rosales or her office.

In December, 210th District Judge Alyssa Perez **dismissed a capital murder charge** after finding that the District Attorney's Office had acted with prosecutorial vindictiveness in suddenly seeking the death penalty against Ivan Gabaldon after admitting prosecutors had mishandled the case.

In March, Jail Magistrate Judge Humberto Acosta sent an email to Rosales critical of repeated instances in which he had to release suspects from jail because her office took

too long to decide whether to seek an indictment. Acosta copied prosecutors, police officers and other judges on the email.

"Prosecutorial decision making of detained individuals is not being prioritized in your office," Acosta wrote in the email, which El Paso Matters obtained under the Texas Public Information Act.

In May, recently retired Jail Magistrate Judge Penny Hamilton similarly **criticized Rosales** for taking too long to make decisions on indictments. Hamilton also took aim at the sharp drop in domestic violence prosecutions during Rosales' tenure, which Hamilton blamed on a lack of staff.

Medrano revealed Friday what he called "the worst kept secret" in El Paso's legal community — that Rosales is "actively seeking, interviewing and attempting to hire out-of-town lawyers that will be prosecuting this case," he said.

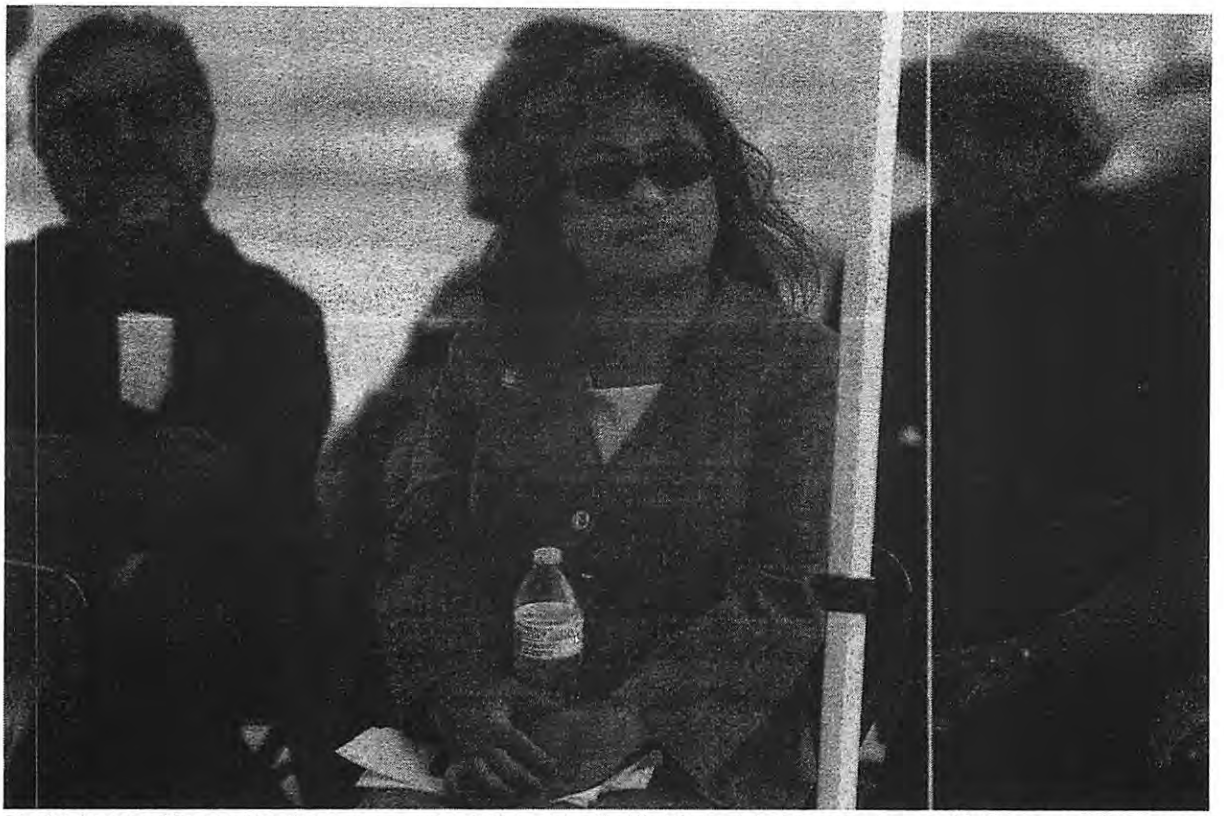
When he asked whether that process had been completed, she acknowledged that it hadn't.
That prompted another rebuke from the judge for Rosales' decision to publicly seek a summer 2023 trial when some attorneys for the case had yet to be hired "and then have not looked at one piece of the evidence in this case."

ATTACHMENT D

GOVERNMENT

New DA dismantles El Paso's legacy on tackling domestic violence

by Victoria Rossi
May 23, 2022



District Attorney Yvonne Rosales was a guest speaker at Austin High School during an underage drinking prevention event on May 18. (Courtesy of El Paso Times)

For four years, Jen tried to leave the man she now refers to simply as "my aggressor."

In May 2019, she brought her safety action plan to fruition, driving a rickety van out of Arizona with her four children in tow until finally, they crossed the Texas state line. Jen pulled over. "I got out and I literally kissed the ground," she said. They'd made it back to El Paso, her hometown. "We're going to be safe," she told her kids.

In some ways, it was the end of a turbulent chapter in Jen's life, marked by what she describes as years of extreme physical, sexual and emotional abuse. Her legal battle, however, was just beginning — one that has caused its own kind of trauma, she says. Three years since her escape to El Paso, safety — much less justice — still feels like a far-off dream.

When Jen moved back home, El Paso was known for its tough stance on family violence offenses. The reputation stemmed largely from policies pushed by then-District Attorney Jaime Esparza, who over the course of his 28-year tenure built a legacy centered on tackling domestic violence.

Esparza's office filed a misdemeanor case against Jen's ex-partner in January 2020 for allegedly violating the protective order issued against him earlier that fall. El Paso Matters is not publishing Jen's real name due to the risk of violence from her former partner. In July 2020, the District Attorney's Office secured a felony indictment against him for violating that protective order multiple times.

That same month, criminal defense and family law attorney Yvonne Rosales made history. When Esparza didn't seek re-election, Rosales ran against three Democratic primary challengers on a platform highly critical of the departing DA. Throughout her campaign, she lambasted Esparza's approach to family violence and promised a "solution-oriented approach" over "the current punishment-centered orientation." She won the July run-off election to become El Paso's first female district attorney.

In the nearly 18 months since she took office, Rosales has adopted a dramatically different approach to domestic violence cases, attorneys and advocates say. El Paso Matters spoke to a dozen current or former employees of both administrations, as well as some defense lawyers, for this article. Many were critical of Rosales' approach to domestic violence, but did not want to be quoted by name, citing fear of retaliation against them or clients they were defending.

A sculpture of Lady Justice in the main lobby of the El Paso County Courthouse. (Corrie Boudreaux/El Paso Matters)

Rosales' office no longer has a specialized domestic violence unit. The new DA also ended many tenets of a domestic violence program called the 24-Hour Domestic Violence Contact Initiative, which aimed to collect evidence from victims and direct them to community support within 24 hours of a family violence incident.

In its first year, the new administration filed 60% fewer felony and misdemeanor assault cases against alleged abusers, despite an overall rise in family violence arrests within the city of El Paso. According to defense attorneys, Rosales' office is far more likely to decline to move forward on domestic violence cases when victims do not wish to press charges against their alleged assailant — a stark departure from the previous DA.

Under Rosales, more people have been released from jail due to a section of the Texas Code of Criminal Procedure that says people cannot be jailed past a certain period if prosecutors are not ready to take their cases to trial. Some of those released held multiple family violence charges, with records that signaled a pattern of escalating violence toward the same victim.

Despite rise in arrests, steep decline in family violence prosecutions

Since Jen returned to El Paso, she has contacted the police dozens of times to report continued threats from her ex-partner, both by phone and in person. Because of those threats, she and her children have moved homes eight times in the last three years, at one point spending months in a domestic violence shelter.

In 2021, El Pasoans made nearly 200,000 calls to police. Domestic violence incidents accounted for more than 26,000 of those calls. According to El Paso Police Department data, officers made more than 2,000 family violence arrests — the highest since 2019.

But even as arrests in El Paso climbed to a three-year high, Rosales' office in 2021 filed far fewer family violence charges than the office did under Esparza.

According to El Paso district and county clerk records, Rosales' office filed 374 misdemeanor charges for assault family violence causing bodily injury and secured 311 grand jury indictments for family violence felonies in 2021 — a 60% drop from 2020, Esparza's last year in office.

In a statement, Rosales office said the decrease was warranted.

"The current administration does not rubber stamp cases that are presented, nor does this administration set goals for a certain number of cases to be filed or indicted. The current administration's focus is JUSTICE," the statement read.

El Paso Matters first requested an interview with Rosales to discuss her approach to domestic violence cases in September 2021. Rosales and her office ignored this request and a follow-up request made in October.

When El Paso Matters again asked to interview Rosales this month, the office requested written questions in advance of an interview. Rosales' staff canceled just before the interview's start, citing an emergency. Paul Ferris, project administrator for

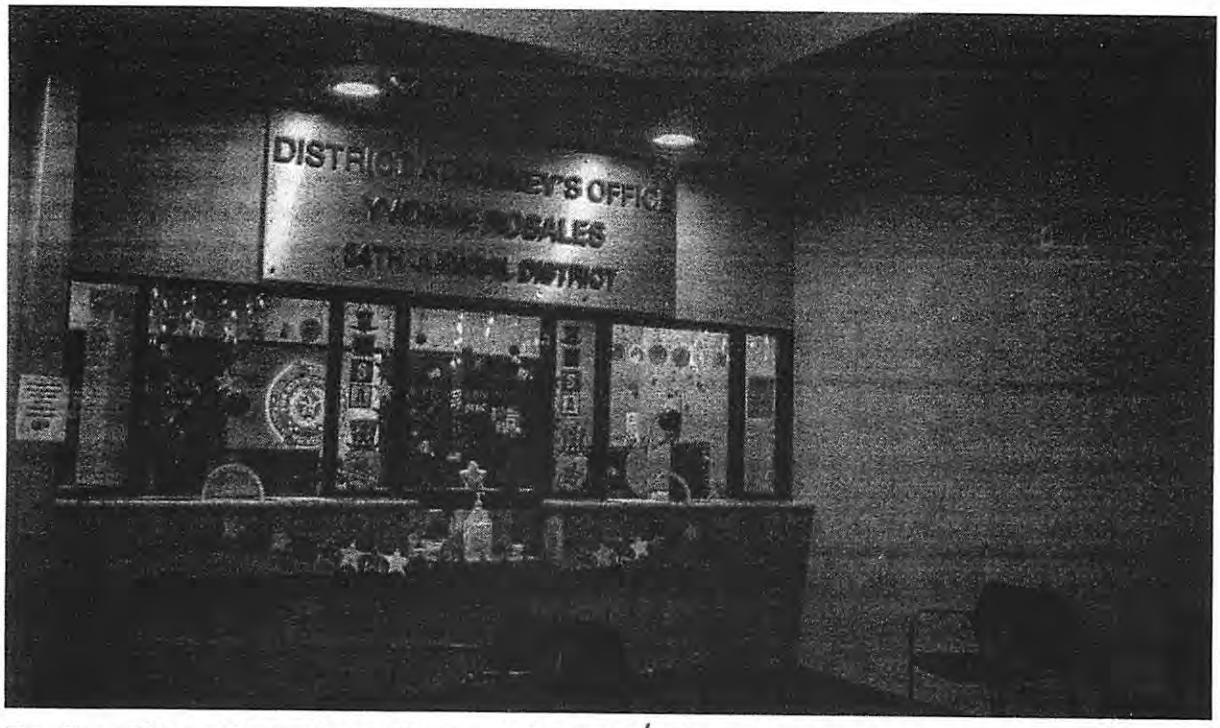
the DA's office, later provided written statements to be attributed to "the administration," and not Rosales directly.

Overall case filings on decline

Family violence misdemeanor filings, which are among the most common cases reported to the El Paso DA, also saw steeper declines than other common cases: Between 2020 and 2021 DA filings for DWI misdemeanors dropped by 44% compared to the 52% drop in family violence misdemeanors.

The drop in filings for family violence cases comes as part of a steep reduction in all types of criminal cases processed by the 34th Judicial District Attorney's Office, which handles adult felony and misdemeanor cases committed in El Paso, Hudspeth and Culberson counties.

According to the 2022 El Paso County Operating Budget, Rosales' office disposed of 2,098 cases in 2021, falling far short of its goal to resolve 26,750 cases that fiscal year. Esparza's office had the same goal the previous year but came much closer to meeting it — disposing of 24,503 cases.



The office of District Attorney Yvonne Rosales within the El Paso County Courthouse. (Corrie Boudreaux/El Paso Matters)

In its statement, Rosales' office largely blamed Esparza for case processing challenges.

"The current administration inherited an extraordinary load of pending cases," the statement read. "Many work hours have been spent on cases pending prior to 2018, including attempting to contact witnesses, victims, and verifying whether these cases are still viable for prosecution."

Her office declined to provide the number of pending cases it inherited from Esparza's administration. Esparza declined to be interviewed for this article.

The DA's office also cited the pandemic as a reason it had not met targets in a September 2021 progress report for a $145,932 Violence Against Women Act (VAWA) grant that had been submitted under Esparza in 2020.

"Covid has virtually frozen our ability to close out cases," the administration wrote in the progress report.

Virtually all of its output measures fell short of the VAWA grant targets. For example, the office trained seven criminal justice professionals on how to gather and collect evidence in family violence cases between January and August 2021. The stated goal in the grant application was to train 536 people, with the office saying that "staff were unable to reach out to agencies for training purposes" due to the pandemic.

"That's ridiculous, to blame it on COVID," said former El Paso County Jail Magistrate Judge Penny Hamilton, a fierce critic of Rosales' administration.

"You know what? The crime didn't stop. And your responsibility as a prosecutor didn't stop," Hamilton said. "And the things that you swore to do when you took an oath to be the district attorney for El Paso County, and to prosecute crimes for our society and our community, and to get justice for victims — that didn't stop because of COVID or any other thing."

Because of the pandemic, there are currently no financial repercussions for missing grant targets, according to the County.

New domestic violence unit model

The DA's office no longer has a specialized domestic violence unit, according to organizational charts obtained through a public records request and a list of specialized units provided by Rosales' office. However, the unit "has not been dismantled," the administration said in its statement. "It has been restructured."

In a 2020 grant submitted months before Rosales took office, Patricia Baca, then head of the office's domestic violence unit and now judge of El Paso's 346th Judicial District

Court, noted that the domestic violence unit had three full-time attorneys and six staffers devoted to family violence crimes.

Now, the new administration says that "all prosecutors are 'the domestic violence unit.'" The statement described the previous domestic violence unit as "simply a set of 3 attorneys who screened the cases."

Critics of Rosales' administration acknowledge that newly elected officials are entitled to reset priorities, choose their staff and restructure the agency they lead. But some question why the office did not keep the specialized domestic violence unit that was a hallmark of Esparza's administration.

Before she became a jail magistrate judge in 2015, Hamilton was the head of the rape and child abuse unit at the El Paso district attorney's office.

Retired El Paso County Jail Magistrate Penny Hamilton speaks about the handling of domestic violence cases at her home on April 27. (Corrie Boudreaux/El Paso Matters)

"I think it's up to each individual district attorney how they decide they want to run their office," Hamilton said of Rosales' move to dismantle the domestic violence and other specialized crime units within the office.

But, she added, "as a prosecutor for over 20 years, and working in a specialized unit as I did for all those years, I think they're vital. There are things about prosecuting family violence cases and child abuse cases that require a lot of specialization."

Without those units, Hamilton said, "I think you lose something. You lose a lot."

Other district attorney offices in large urban counties in Texas, including those for Travis, Tarrant, Harris and Dallas counties, have domestic or family violence divisions.

Many of the changes relating to domestic violence have taken place amid broader shifts within the DA's office, which according to exit interviews **first reported by Channel 9-KTSM**, has struggled with staff morale and organizational turmoil — especially following Rosales' controversial decision to remove roughly a quarter of the agency's staff before she took office in January 2021.

Nearly 18 months later, some vacancies have yet to be filled. Staff turnover also persists, even among Rosales' own hires.

Rosales started as DA with a new director and assistant director of the victim assistance program. By August, both had left. Program director Angelica Castillo noted in her exit interview that she did not have a new job lined up.

"It should say a lot about morale that I felt I needed to leave even with no job to go to," Castillo wrote. "Most people are unhappy and are looking for work elsewhere."

The mass departures at the start of Rosales' term came at a cost, effectively erasing decades of institutional knowledge and specialized legal experience, and placing an increased workload on the staff that remained, several employees said in their exit interviews.

"It is impossible to have effective prosecutors being short staff(ed) with the amount of attorneys we have," Teresa Garcia, a senior trial attorney, said during her exit interview with the county six months after she joined the office. "It was no longer feasible to keep working. This has not been a good experience."

Hamilton said, "I'm telling you, she doesn't have enough staff, she doesn't have enough prosecutors to try the damn cases — much less do specialty units."

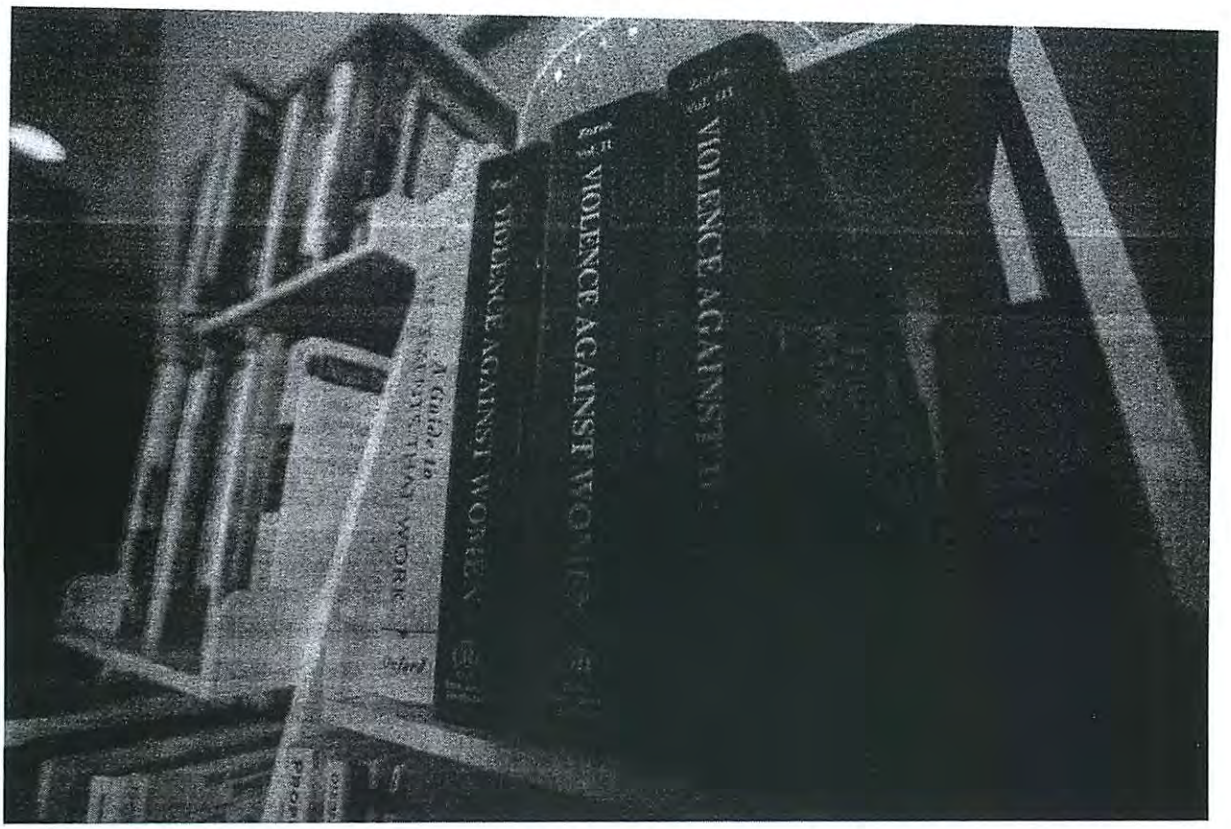
The 24-Hour Domestic Violence Contact Initiative

Under the previous administration, within 24 hours after a domestic violence arrest, a DA investigator and a victim advocate would arrive at a victim's home. The visits were

met with mixed emotions, according to a **2011 evaluation** of the 24-Hour Domestic Violence Contact Initiative by researchers at the University of Texas at Austin.

Some victims were surprised when the two-person team showed up at their doorstep; others were afraid of the unknown law enforcement officers, or embarrassed. But by the end of the visit, most were glad they had come.

"Seeing the interest that the District Attorney's Office has in my situation," one person told UT researchers, "well, that comforts me very much."



A collection of books on violence against women at the Center Against Sexual and Family Violence. (Corrie Boudreaux/El Paso Matters)

Created in 2008, the initiative was the brainchild of Esparza and Gloria Aguilera Terry, then director of the Center Against Sexual and Family Violence, or CASFV. Aguilera Terry left El Paso soon after its formation to lead the Austin-based Texas Council on Family Violence.

"What they did after I left was just phenomenal," Aguilera Terry said, calling the 24-Hour Domestic Violence Contact Initiative a "strong, victim-centered strategy."

In a 2013 **press release**, the Texas District & County Attorneys Association announced that Esparza had won a national award for the initiative, describing it as

"an innovative, first-in-the-nation program ... meant to move family violence crimes more quickly and efficiently through the criminal justice system and to hold family violence offenders accountable for their acts of criminal violence."

Under Esparza, the 24-hour contact team would give victims information about domestic violence resources in the community, telling them where they might turn for counseling, medical attention for their injuries or shelter if needed. This provided "significant emotional support to family violence victims," according to the UT study.

That support isn't just important in the short term, advocates and researchers say. **Studies have found** that interactions with law enforcement, including prosecutors, can impact someone's ability to heal from a traumatic event — for the better, or for the worse.

Conducted daily, the team's home visits also allowed prosecutors to begin building a case right after the incident — a time when physical evidence like bruises might still be visible to photograph or a victim's memory still fresh for a filmed statement. The team then brought what they'd gathered back to the DA's office, where each week Esparza met with prosecutors to screen family violence cases and decide whether to prosecute.

For both the home visits and the weekly screening meetings, speed was crucial — an attempt to address a major roadblock in prosecuting domestic violence cases. According to the UT study, time delays can be "the most significant degrading factor in family violence prosecutions."

On this front, Jen can relate.

For the last three years, her healing has come in fits and starts. There have been victories, like the time she bit into a mini Snickers bar, breaking one of the many rules her aggressor once enforced. Even that word — aggressor — is in its own way a victory: Jen learned to use it from counselors at the CASFV, who suggested it as a way to mentally separate from her ex-partner.

There have also been defeats, some of them at the hands of a confusing tangle of law enforcement agencies she says have done little to protect her and her children. "What they don't tell you is that legal help (for) domestic violence is almost nonexistent," she said.

A collection of books and brochures on domestic violence at the Center Against Sexual and Family Violence. (Corrie Boudreaux/El Paso Matters)

Multiple sources have said that under Rosales, the 24-Hour Domestic Violence Contact Initiative no longer exists — at least, not as it once did.

The DA's office provided no reference to the program's continued existence in response to a public information request asking for the names and titles of employees involved with the program or internal documents or communications that mentioned it.

In its statement to El Paso Matters, Rosales' administration denied that it had discontinued the program but acknowledged that many of its defining features, like the home visits by DA investigators and victim advocates, are no longer in place.

Esparza suspended in-person visits during the pandemic, the DA's statement said, and Rosales has continued the policy: "The health and safety of employees is a huge concern for this administration, and civilians (advocates and DA investigators) should not be sent to an active crime scene due to the uncertainty of the volatile situation. Law enforcement officers can video-record victims for statements, as well as record a defendant's statement which can be used in prosecution."

Rosales' office would not say if it still conducts victim outreach within 24 hours of a family violence arrest.

The 24-hour contact initiative also aimed to screen and file cases swiftly. Records from the El Paso County Clerk's Office show that screening times for misdemeanor family violence assaults causing bodily injury have increased 10-fold under Rosales. A process that once took roughly a week rose to more than three months in 2021.

'Victimless' prosecutions

With its rapid evidence collection and screening process, the 24-hour contact initiative was also designed to help prosecutors pursue cases effectively even without a victim's participation, or in some instances, when a victim did not want to prosecute them at all — what some call "victimless" or "evidence-based" prosecution.

Evidence-based prosecution can be a way for attorneys to lighten the burden for victims who may want to see their abuser punished, but are terrified of testifying against them. This is the most common fear that Monica Barrera, executive director of El Paso's La Posada domestic violence shelter, hears from residents who are involved

Some also argue that family violence is a public safety threat, leaving the state responsible for prosecuting an incident regardless of the victim's wishes. In a 2021 report, the Texas Council on Family Violence noted that 31 of the 228 people killed in the state during domestic violence disputes in 2020 were not the direct target of violence. They were friends, bystanders, other family members and police officers.

Sandra Nevarez Garcia, CASFV's director, has testified as an expert witness in these types of cases. Even though victim testimony is not legally necessary to prove a domestic violence crime, jurors often expect it and can be reluctant to convict without it, she said. Nevarez Garcia would take the stand to explain to jurors why they might not be getting that testimony.

With domestic violence victims, "it's typical that they retract or that they're not available," she said. "You're going to trial months, sometimes even a year or years later. Maybe that relationship has changed; maybe they've gotten back together."

After a violent incident, couples can enter a "honeymoon stage" of the abuse cycle — "the apologies, the 'it won't happen again,' type of circumstance," she said. "That's the challenging part with domestic violence and sexual assault cases."

Some may return to relationships because they're financially or socially dependent on their abuser, or afraid they'll lose their children. Others might feel the incident itself was an accident, or want to see a family member get rehabilitative help rather than criminal punishment.

"But we're not prosecuting what's happened now, and whether the relationship is or isn't better," Nevarez Garcia said. "What you're prosecuting is the incident that happened when it happened. Like, was there a crime committed?"

A sign hangs on a counselor's door at the Center Against Sexual and Family Violence. (Corrie Boudreaux/El Paso Matters)

In the late 1990s, Hamilton was among the first attorneys in Esparza's office to handle a case without a victim's participation. These cases could be incredibly challenging to prosecute, Hamilton said, but "sometimes even if the victim says, 'oh I don't want to go forward,' the better thing to do is to go forward because they can't protect themselves."

"How do you break the cycle?" Hamilton added. "From the little boys growing up thinking that it's okay to beat their women and the little girls growing up thinking, 'well, I just have to put up with it and not say anything, the way that mama did.' You have to look at it globally. You cannot look at it in a tiny little bubble."

Over the years, Esparza's office became known for pursuing such cases. The practice drew a number of critics — among them, Rosales.

'These cases are not just one-sided'

Throughout her campaign for DA, Rosales argued that Esparza was motivated by federal grant money available for family violence convictions. In a 2020 interview with the El Paso Times, she advocated for cooperating "with victims who feel that it was a one-time incident, it was a push, it was a shove."

"Obviously, we never condone anybody laying our hands on anybody else," Rosales continued. "However, people are human, they make mistakes. And if it's never happened in the past and the victim is willing to dismiss the case, then we should respect those wishes."

In its May statement to El Paso Matters, her office wrote, "By addressing the root of the problem, such as providing either alcohol and drug counseling or parenting classes to a defendant, a family can be saved as well as providing coping skills that will hopefully prevent future violence. The goal of only seeking convictions can often have a negative impact not just on the family, but also to the community as a whole.".

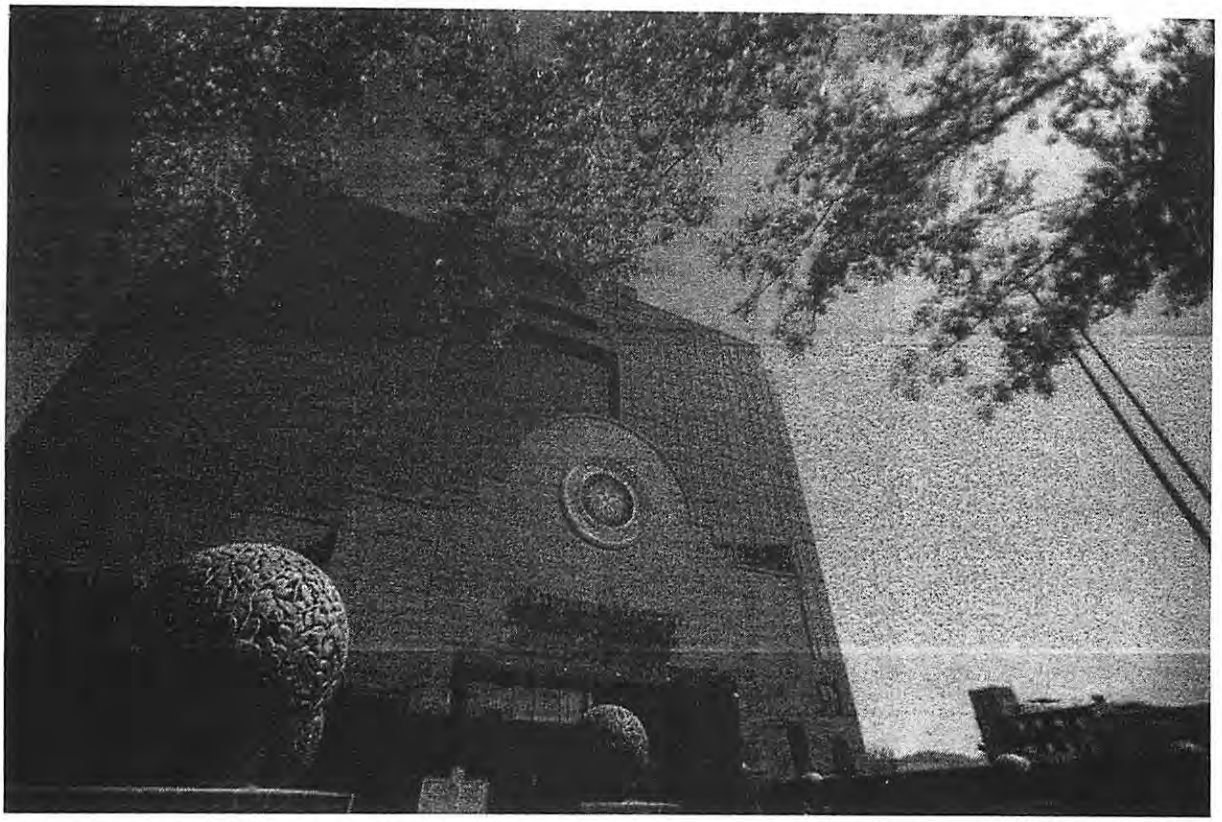
Justin Underwood began his legal career as an assistant district attorney under Esparza. In 2004, after three years of prosecuting felony cases — many of them involving domestic violence — he left to start his own firm as a defense attorney. After making that switch, Underwood said he came to realize that with domestic violence, "these cases are not just one-sided a lot of the time. Family relationships are complicated."

"As a defense lawyer, you're concerned with collateral issues," he said.

In a domestic violence case, those collateral issues might be: What happens to a client's kids if she's the sole breadwinner for the family and loses her job because of the charge against her — before she's even tried? What happens if a client convicted of a family violence misdemeanor isn't a U.S. citizen?

"Domestic violence convictions will get you removed from the United States very quickly," Underwood noted. "The stakes go way up when you've got collateral damage that's going to affect your client — like they're going to lose their job or get deported."

With domestic violence cases, Esparza's office was "a 100% prosecution machine," he said. "They went forward on every single domestic violence case."



The El Paso County Courthouse. (Corrie Boudreaux/El Paso Matters)

Rosales' approach has been more flexible, he said.

"In cases where there's a minor injury, or if it's a brother and a brother fighting, or two sisters fighting, and they don't want to prosecute — those cases need to be resolved with anger management or disorderly conduct. Under the old regime, those cases were treated the same as a husband who's beaten his wife or a spouse that's abusive to a child," Underwood said. "To me, those cases are not the same. They should not get the same attention."

Defense attorney Sergio Saldivar said he appreciates Rosales' willingness to make decisions on a "case-by-case basis" compared to Esparza's more top-down approach.

The difference between the district attorneys' two approaches is especially apparent when victims don't want to press charges, Underwood said. He gave an example: On Friday, a man gets arrested on family violence charges for pushing his wife and by Sunday, they're back together.

"In that situation, we'd get the wife to sign an affidavit saying she doesn't want to prosecute," he said. " In the past, the old regime would never decline that case. They would file it 100 times out of 100 times. Now I would say eight times out of 10, they're not filing it at all."

Saldivar said this approach does a better job of listening to victims. "Yvonne works for the citizens of El Paso," he said. "So she's going to be the voice of the victims — but the victims that want to go forward."

Rosales' office declined to describe any vetting measures it takes to ensure that victims have not been intimidated into submitting these affidavits by the defendants. "Disclosing our safety protocols to protect a victim from the pressures a defendant puts on a victim to sign an affidavit of non-prosecution would not be in the best interest of the victims," the office wrote.

Some jailed defendants wait months for DA decision on their case

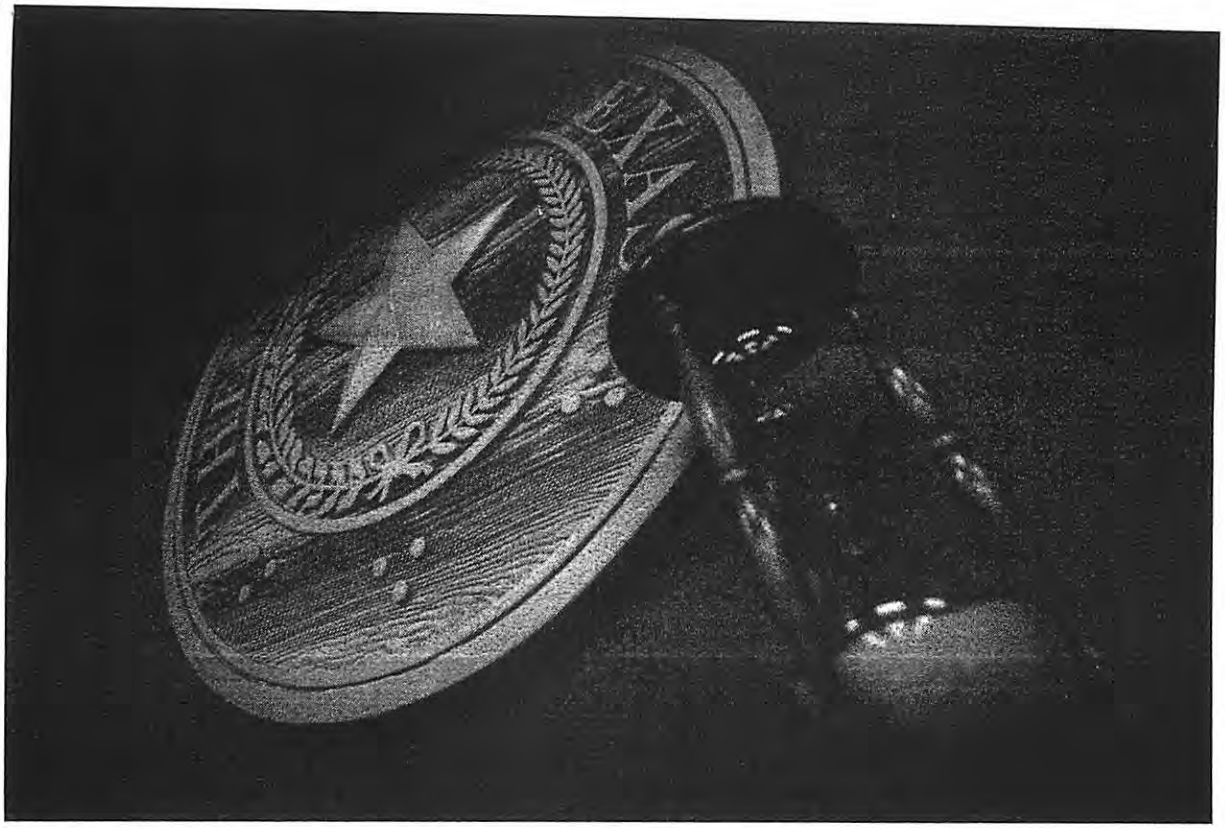
Judge Hamilton grew more and more alarmed as she read the criminal history of the man she was about to release in January. Then the head jail magistrate judge for El Paso County, Hamilton was tasked with deciding who could be released from jail, and what the terms of their release would be. "It's a hard decision every single day ... trying to decide who should stay in jail, who should not stay in jail," she said.

This case, to Hamilton, felt pretty clear-cut. According to the man's criminal history report, he had previously been charged with cruelty to animals, resisting arrest and two different cases of assault family violence, both "with the same victim," Hamilton recalled. His record showed that he'd violated the terms of his release before.

"Each time that he would get out of jail, he would go back to the same alleged victim, and each time, the assaults became more and more violent," Hamilton said. "It's exactly that type of offender who just scares the hell out of me."

Though the man had been arrested on a misdemeanor family assault charge, the DA's office had not yet decided whether to move forward with his case, she said: It hadn't yet filed his case with the county clerk.

A section of the Texas Code of Criminal Procedure prohibits jailing defendants past a certain time limit — usually between 30 to 90 days for more serious misdemeanors or felonies — if the state isn't ready for trial. That section, Article 17.151, is meant to protect the rights of people who are accused of crimes, especially those who can't afford to pay for their release on bond.



A courtroom inside the El Paso County Courthouse. (Corrie Boudreaux/El Paso Matters)

"You're innocent until proven guilty," Hamilton said. "There have to be some sort of checks and balances when it comes to the power of the district attorney to prosecute people. You can't just take forever. People's lives are so significantly impacted by the accusation of a crime."

The DA had taken too long to decide whether to prosecute this man. And so on Jan. 24, Hamilton ordered him to be released.

"It absolutely tore me up," she said.

This isn't the only 17.151 release that haunts Hamilton, who retired from her judicial position in March and is now a temporary employee of the El Paso Council of Judges.

Records kept by magistrate judges at the El Paso County Jail show that 14 people were released on average per year between 2018 and 2020 because Esparza's office was not ready for trial.

In 2021, Rosales' first year in office, that number jumped to 185.

"I'm afraid something really bad is going to happen, because somebody is going to get out and somebody's going to die," Hamilton said. "And it's going to be because the District Attorney's Office didn't do their job."

These 2021 releases were often associated with more serious offenses — among them, terroristic threats, assaulting police officers and smuggling large amounts of drugs. The number of people released who had been charged with family violence offenses also spiked.

In the three years before Rosales took office, just one person facing an assault family violence charge was released under 17.151. From the time that Rosales took office in January 2021 to mid-March 2022, more than 50 people with family violence charges have been released under this provision.

When someone is released under 17.151, that doesn't mean the case has been dropped; the DA could still decide to prosecute. But for Hamilton, this heightens the risk of a case "falling by the wayside" until the statute of limitations runs out and the case can

no longer be prosecuted. To her, the releases speak to a DA's office shirking its responsibility to both victims and defendants.

"How can you say that justice is going on when you have all of these people who have to be released because you're not doing your job and you're not filing the cases?" Hamilton said.

When asked about this rise, the DA's office wrote that "bond decisions are exclusively within the parameters of the Magistrate Judge ... ultimately, the conditions of restrictions are the sole decision of the judge."

In a March 24 email exchange with Rosales, obtained through an open records request, Judge Humberto Acosta took issue with her suggestion that "the problem of tracking cases" fell to the magistrate judges and that cases were "not presented to the DA's office in sufficient time to meet the time deadlines in Article 17.151." Rosales had asked Acosta, who became chief jail magistrate after Hamilton retired, to start informing the DA's office weeks before incarcerated individuals approached their time limit.

The responsibility to "ensure that no one ever languishes in jail without legal cause," Acosta replied, lay squarely with the DA. "This is deeply troubling to me, as your request makes it clear that the prosecutorial decision making of detained individuals is not being prioritized in your office."

In her past career as a prosecutor, Hamilton often found herself explaining to victims that as bad as it felt for an alleged offender to be released from jail on bond, "this is what makes our system fair, even though it doesn't seem very fair to you." What would that conversation be like, she said, "now this person is getting out of jail because the prosecutor didn't do their job? There's a huge difference there."

'Waiting, waiting, waiting'

Justin Underwood has witnessed similar delays among a long list of clients he's defending, most of whom are out on bond, but who have been waiting more than a year to see if the DA's office will file their case for prosecution. "It's like being on probation," he said, "even though they haven't been convicted of anything. And we're just sitting here waiting, waiting, waiting."

As of April 20, the DA's office had more than 5,300 cases in screening that are waiting for a decision on whether to prosecute, according to an open records request. Among these are nearly 630 assault family violence cases — one in four of them for felonies. The office has denied multiple requests for the number of cases in screening that it inherited from the previous DA.

Jen is waiting too.

The case filed under Esparza's administration is set for trial in June. But for everything else she's reported to law enforcement since that one case was filed, she's in the dark. She doesn't know what the police or the DA have done with the new reports she's made, despite numerous calls and attempts to find out.

Three years after her escape, "I'm still somewhere in between victim and survivor," she said. "I can't say I'm a complete survivor, because I'm still being victimized by the system. The system is not fixed."

Just weeks ago, she was left with a chilling reminder of that fact — the business card of her aggressor, who still lives in Arizona, tucked into the windshield of Jen's car. It was parked in a location he wasn't supposed to know about.

"The way I'll know I'm a survivor is when I can look in the mirror and that clock in my head that's counting every infraction I do off of (my aggressor's) list isn't there anymore," she said. "When I can eat a cookie without any anxiety. When I don't have to look over my shoulder in the middle of the day, sitting in a church service. That's when I'll know I'm a survivor."

Correction: An earlier version of this story incorrectly said that several large Texas counties with domestic or family violence units were similar in size to El Paso. The counties are larger.

ATTACHMENT E

EL PASO MATTERS

GOVERNMENT

El Paso public defender may seek dismissal of 1,000 more criminal cases

by Victoria Rossi
August 21, 2022

Public Defender Kelli Childress leaves the courtroom on Monday, Aug. 15, after Jail Magistrate Humberto Acosta granted her motion to dismiss dozens of cases due to the district attorney's inaction in bringing indictments. (Corrie Boudreaux/El Paso Matters)

After four days of hearings last week, a judge dismissed about 370 criminal cases in El Paso because of prosecutorial delays. The El Paso Public Defender's Office, which sought the dismissals, says this is just the beginning: It has more than 1,000 additional cases eligible to be dismissed and plans to file new motions soon.

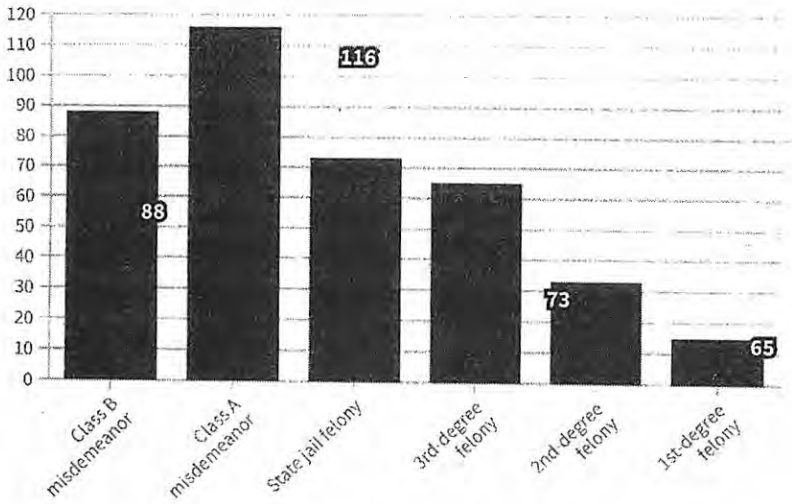
Between Aug. 15-18, the El Paso Public Defender's Office requested about 390 dismissals under a section of the Texas Code of Criminal Procedure that requires prosecutors to seek

indictments within 180 days of arrest. About 20 of those requests were withdrawn; the rest were granted.

The purpose of article 32.01, according to the dismissal motion, is to prevent people from being jailed or placed under bond conditions for lengthy time periods before they're charged with a crime.

The cases dismissed ranged from Class B misdemeanors, which carry sentences as high as six months in county jail, to first-degree felonies, which carry sentences up to 99 years in prison.

Number of dismissal requests by charge level, Aug. 15-18



Source: El Paso Jail Magistrate Court dockets

A Flourish chart

District Attorney Yvonne Rosales has stressed that the dismissals won't keep her from issuing charges on these cases in the future. "Justice will be served," she said in an interview with KFOX-14 TV station. "Their case is not lost."

In a written press statement, she noted that the statute of limitations for many of the dismissed cases runs between two to 10 years.

However, moving to prosecute years down the line "would be an extreme injustice not just for my clients, but for the entire legal system," said El Paso Public Defender Kelli Childress.

Statutes of limitations are intended to be used for "the most unique circumstances," she said.

"They're out there for the times when a crime has been committed and we have no idea who did it, and nine years later, we find DNA and figure out who it was — that's what a statute of limitations is for," she said.

In contrast, Childress said that with these cases Rosales would be "filing for the first time, years after an offense was committed, when you've known of the offender all along."

"Trying to drag these people back to court at this time is going to be much more litigation than they're anticipating," she added, noting that long-time delays could infringe on her clients' constitutional rights to fair and speedy trials.

And though Rosales said in an interview with KFOX that she'd been "blindsided" by the dismissal requests, Childress said she had contacted the DA's office on multiple occasions to discuss delays in case screening.

Rosales did not respond to interview requests from El Paso Matters.

District Attorney Yvonne Rosales at a July 1 status hearing in the Walmart shooting case. (Corrie Boudreaux/El Paso Matters)

'Like I'm starting over'

On Thursday morning, Magdalena and her 18-year-old son sat quietly outside the tiny jail magistrate courtroom while, in less than 45 minutes, Judge Humberto Acosta granted dismissals on 88 cases — hers among them.

It had been 10 months since her arrest for an alleged misdemeanor assault. After about eight hours in jail, Magdalena, a single parent who works at a fast-food restaurant, said she paid $350 for her release on bond, and began monthly email check-ins with a pretrial officer. All the while, she waited for charges that never came.

The threat of that charge has loomed since October not just for Magdalena, but for her son, who works at the same restaurant as his mother and attends Western Technical College. If the DA chose to prosecute, a conviction could mean imprisonment for his mother — leaving him to care for his two younger siblings, he said.

"It was something that was running through our minds every day, Monday through Friday, Saturday, Sunday, you know? You can't focus throughout your day with that," he

said. "It was something that was lingering over me."

El Paso Matters is not using Magdalena's real name at her request, to avoid connecting her to a crime that she has not been charged with.

Both mother and son know the DA could still file the case for prosecution — which Magdalena worried could mean another round of arrest, jail time and money paid to bond out. But she still savored the day's dismissal. Once she and her son left the courthouse, they planned to go home and sleep. They'd come to court straight from a graveyard shift at the restaurant.

"It feels like I'm starting over," she said.

Most of the accused people in last week's cases had already been released from jail, Childress said. But many had faced "oppressive bond conditions" well past the six-month time limit set by article 32.01, she noted.

"What we see is people will spend a year, 18 months, complying with these conditions that are a de facto probation sentence, when not only have they not been found guilty — they haven't even been charged yet," Childress said.

As of April 20, the District Attorney's Office had 5,300 cases in screening, according to the office's response to a public information request from El Paso Matters. While in screening, these cases are considered "pre-filed," meaning that the DA has not yet decided whether to file the case for prosecution and formally charge someone with a crime.

During this pre-filed stage, defense attorneys do not have access to evidence against their client, which can impede their ability to represent them effectively, Childress said.

"The crazy thing is we can't do anything to help a client defend him or herself during this pre-indictment stage. We don't get police reports, we don't know who the witnesses are, we don't have the opportunity to go out and make sure that, you know, videos don't get erased, and people don't leave town and things like that," she said.

The DA's delay in screening and indicting cases also has affected people who are in custody. Article 17.151 of the Texas Code of Criminal Procedure prohibits jailing defendants past 30 to 90 days if the state isn't ready for trial.

Between 2018 and 2020, roughly 14 people were released under this provision each year. In 2021, Rosales' first year in office, that number jumped to 183.

Private defense attorneys weigh whether to follow suit

The Public Defender's Office represents defendants who can't afford to hire a private attorney and handles roughly 40% of criminal cases in El Paso County. Some private defense attorneys are now weighing whether to follow the public defender's lead.

Omar Carmona

Defense attorney Omar Carmona said his clients have also experienced delays that would make their cases eligible for dismissal under 32.01. But while he's planning to request similar dismissals, for now, he said he and other private defense lawyers may wait to see if there's any "fallout" from this week's hearings.

"We've seen how this (district attorney's) office has been vindictive in the past," he said.

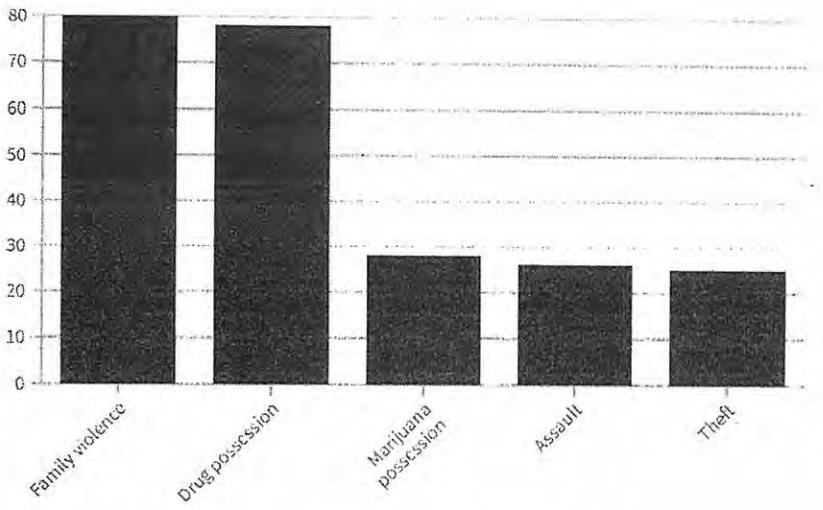
Last fall, Carmona represented Ivan Gabaldon, whose **capital murder charge was dismissed** after a judge ruled that the DA's office had taken "vindictive actions" against him in a case that was also marked by prosecutorial delays.

In their motion to dismiss the case, Carmona and co-defense attorneys Denise Butterworth and Felix Valenzuela argued that state prosecutors had asked for the death penalty against their client as a way to buy themselves more time to prepare, and because the defense had sought to protect their client's constitutional right to a speedy trial. In earlier hearings, the DA's senior division chief, Curtis Cox, **acknowledged** that prosecutors had received the case, but "apparently for at least the next six months effectively did nothing."

What types of cases were dismissed

Most of the week's dismissed cases involved drug-related arrests. About one in five involved people accused of family violence assaults.

Top 5 types of criminal cases in Aug. 14-18 dismissal requests



Source: El Paso Matters analysis of El Paso Jail Magistrate dockets

A Flourish chart

Penny Hamilton, who retired as head jail magistrate for El Paso County this spring, said that when she released people accused of violent offenses from jail, she'd try to establish a "safety zone" for the person they may have harmed. She'd prohibit the accused person from possessing any weapons or ammunition, for example, or bar them from going within 200 yards of an alleged victim's workplace or home.

"You want to avoid any kind of repeat offense or increase in violence that could be committed against the victim," she said.

With last week's dismissals, any protective conditions imposed on someone as part of their bond — such as restrictions against contacting an alleged victim — were also removed.

"Her inaction is really such a disservice to our community. It's a public safety issue, especially now. I mean, (about) 400 cases dismissed and a lot of those having victims of violent crime? That's just shameful," Hamilton said.

Reading about the dismissals, Jen worried that a pending sexual assault case against her former partner, who she says abused her and her children for years, would be among those dropped.

In July 2020, the previous DA's office indicted Jen's ex-partner for multiple alleged violations of a protective order — a felony offense that is set for trial this fall. But Jen said she's been unable to learn the status of the sexual assault case, which she believes has been in screening at the DA's office since 2019. "I have gotten zero confirmation," she wrote in a text message. "We are still in limbo waiting."

El Paso Matters is not publishing Jen's real name due to the risk of violence from her former partner.

"It's very frustrating," Jen said of the dismissals. "Not many (domestic violence) victims feel the DA is on our side. No point in reporting to police if the DA will do nothing."

In her press statement, Rosales wrote that, "victim advocate services are still assisting victims while the cases are pending filing."

No objection from the state

In her statement, Rosales described article 32.01 as a "procedure wherein Judge Humberto Acosta has released defendants from all bond conditions." But though Acosta granted the dismissals, the law gave him little choice in the matter, Hamilton said.

Acosta might have had more discretion if prosecutors had provided a reason, or "good cause" for the delay, she noted.

In comments to the media, Rosales has said the backlog had been caused by the COVID-19 pandemic; older cases lingering from the previous district attorney, Jaime Esparza, who left office in December 2020; and a delayed presentation of cases to her office by the El Paso Police Department during a six-month contract re-negotiation period for the District Attorney Information Management System, an information-sharing program between the two agencies meant to help screen cases more efficiently.

In a press statement, El Paso police wrote: "Cases not presented through DIMS were still presented to the DA's office in a timely manner and most within 10 days of an arrest, or in non-arrest cases, well within the statute of limitations."

Public Defender Kelli Childress describes the hardships imposed on individuals during the pre-indictment phase of their legal proceedings, following an Aug. 15 hearing in which Jail Magistrate Humberto Acosta granted her motion to dismiss dozens of cases due to the district attorney's inaction in bringing indictments. (Corrie Boudreaux/El Paso Matters)

The DA's office did not cite any reasons for lack of prosecution during the dismissal hearings. It did not file affidavits attempting to show good cause for its delays, and at the hearings did not object to the dismissals.

Childress estimated that over the course of the week, she agreed to prosecutors' requests to withdraw about 20 motions before the hearings began.

Carmona, who watched some of the dismissals, said "just to have your prosecutor go up there and say 'nothing from the state' — that's just not good enough.

"That's a total lack of accountability."

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ATTACHMENT F

GOVERNMENT

Court petition seeks removal of El Paso District Attorney Yvonne Rosales

by Victoria Rossi
August 24, 2022

El Paso District Attorney Yvonne Rosales listens to District Judge Sam Medrano criticize her during at a July 1hearing on the Walmart shooting case. (Corrie Boudreaux/El Paso Matters)

3:50 p.m. This story has been updated with comments from El Paso District Attorney Yvonne Rosales and state Rep. Joe Moody.

District Attorney Yvonne Rosales should be removed from office because of incompetency and official misconduct, according to a petition filed with the El Paso District Clerk's Office on Wednesday.

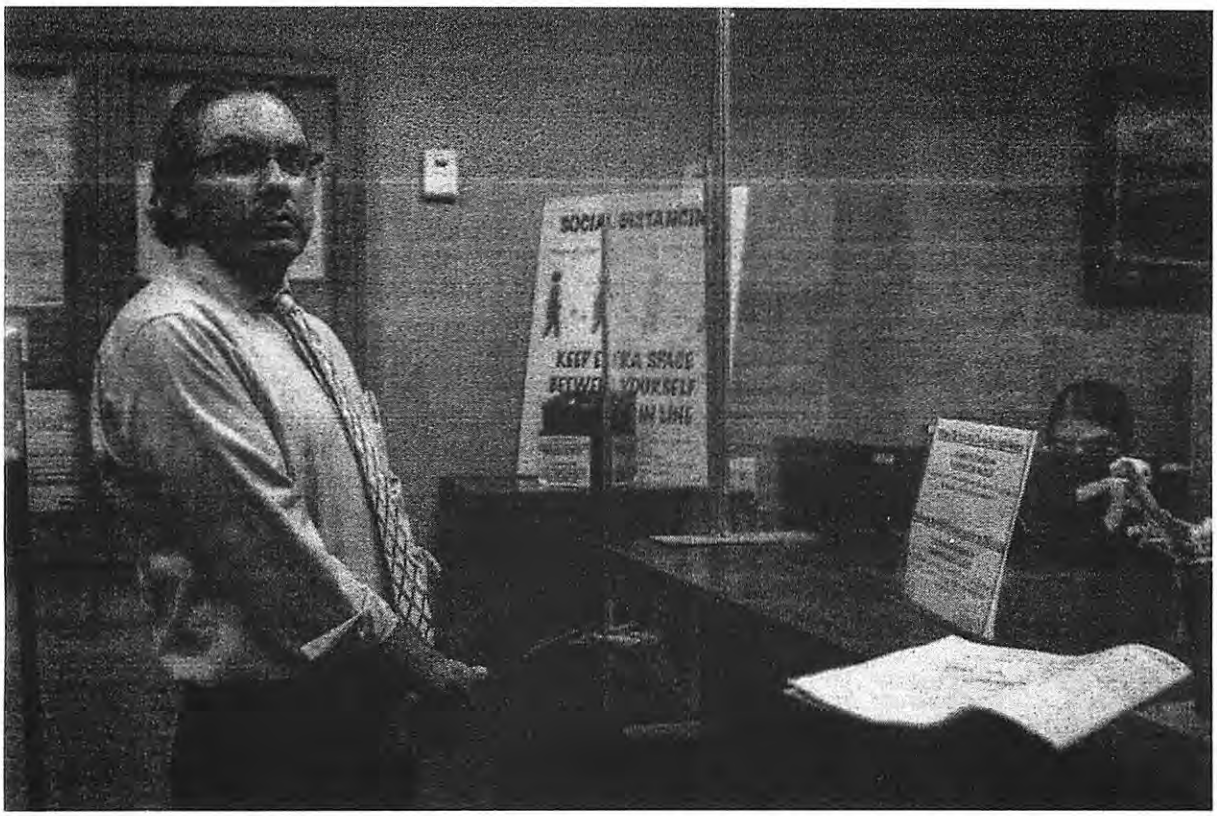
The case, which Rosales called an assault on the political process, was assigned to the 346th District Court presided by District Court Judge Patricia Baca.

The petition triggers a rarely used mechanism for removing an elected official in Texas, a process that could take months to resolve. The petition was filed by defense attorney Omar Carmona, who represented a capital murder defendant whose charges were

dismissed in 2021 after a judge ruled that the District Attorney's Office had **engaged in prosecution vindictiveness**.

Carmona asks that Rosales be temporarily removed from office while the courts consider his petition.

The effort to oust Rosales, a Democrat who was elected in 2020, comes after months of turmoil in her office, including the **dismissal of hundreds of cases** because of a failure to seek indictments in time, and controversy over the **handling of the Aug. 3, 2019, mass murder** at the Cielo Vista Walmart.



Defense attorney Omar Carmona visited the El Paso District Clerk's Office on Wednesday to file a petition to remove District Attorney Yvonne Rosales from office. (Corrie Boudreaux/El Paso Matters)

"Since August 3, 2019, our community has come a long way. We have healed together, we have grieved together and we've cried together ... but we still don't have that final closure," Carmona said. "So it's time for a change and it's a change we cannot wait for. We cannot wait for the next election cycle. It has to be done right away."

Rosales has said the problems are not her fault, instead saying they stem from the effects of the COVID-19 pandemic and alleged failures by her predecessor, longtime District Attorney Jaime Esparza. The Covid-19 pandemic has caused backlogs across the court system nationwide, with larger jurisdictions such as Harris County seeing a backlog of 94,000 pending cases.

In a press release issued Wednesday afternoon, Rosales' office called the petition a political tactic.

"We believe that it is a frivolous attempt by an attorney who has actively been attacking the administration for many months now in regard to a case which is pending on appeal," the statement reads. "The District Attorney is committed to serving the community of El Paso. Every attempt will be made to address and fight this petition. In a democracy, people vote for their elected officials. This is an assault on the electoral process in a manner designed to undermine our democracy."

State Rep. Joe Moody, D-El Paso, said Rosales' performance and the attempt to remove her raise challenging questions.

"As someone who believes in our system, I'm always leery about anything that puts a decision about who represents the people in any hands besides the people. We have a removal system, and that's an election in 2024," said Moody, one of the Legislature's leading voices on criminal justice issues. "That said, I've never witnessed such gross incompetence — it's not only embarrassing, it's dangerous and disgraceful. A lot of El Pasoans are going to be hurt before 2024 by the very person they should most be able to rely on."

501(c)(3) COMPLAINT AGAINST EL PASO MATTERS AND ROBERT "BOB" MOORE

This complaint is filed on the basis that El Paso Matters, through Robert "Bob" Moore, is intentionally involved in political activism and bias and is engaged in deceptive fundraising practices and additionally being used to support illegal activity. These actions are in violation of federal law regulating 501(c)(3) entities.

Robert Moore through El Paso Matters is conspiring with attorneys Justin Underwood, Omar Carmona, and Judge Penny Hamilton to attack and remove elected official District Attorney Yvonne Rosales. All three named individuals routinely appear in his attack stories against DA Rosales. He does so by illegally accessing information not subject to disclosure through the Texas Public Information Act law by submitting or having requests submitted to the El Paso Jail Magistrate Court. He also does so by publishing that information and statements from the above named two lawyers and judge that violate the Texas Rules of Professional Conduct for lawyers and the Canons of the Texas Code of Judicial Conduct for judges, by attempting to influence potential jury pools in a series of cases and influencing their potential outcome. The stories fail to present the other side of the issues.

Robert Moore of El Paso Matters is politically attacking and conspiring to remove elected official DA Yvonne Rosales as evidenced by a conversation Robert Moore had with attorney Justin Underwood on his El Paso Matters Facebook page. Please see Attachment A. Two days after this conversation in which they discussed that with the "right lawyer" DA Rosales could be removed, the petition was actually filed by attorney Omar Carmona. Robert Moore's contributors and close friends are part of the political group who are opponents of DA Rosales' administration. Some of the people close to Robert Moore were not allowed to continue with the Rosales administration, including attorney Omar Carmona's wife, attorney Dana Carmona.

El Paso Matters through Robert Moore recently violated Texas law by engaging in the following unlawful activity:

1) Publishing non-discoverable information from the Jail Magistrate Court in El Paso, Texas in his stories, illegally obtained through the Texas Public Information Act law. El Paso County Attorney Jo Ann Bernal should not have allowed these records to be released by law, as they are non-discoverable under Texas law. **Please see Attachment B.**

2) By colluding with the Court in order to leak and identify confidential communications from law enforcement.

3) By illegally recording in a restricted area of the courtroom in order to obtain the images of the families of the murdered victims of the Walmart shooting case.

4) Robert Moore unlawfully sat in the jury box, took pictures of the families of the murdered victims while the Court was in session, and **published the images of the families of the murdered victims, thereby endangering their physical safety.** It is important to point out the Walmart shooting case involved a white supremacist who murdered 23 victims on the basis of race.

The recent bomb threat that was received by the El Paso County Courthouse and allegedly made by white supremacist supporters of the alleged murderer in the Walmart shooting, show the real risk that results from Robert Moore violating normal court protocols.

Further evidence that El Paso Matters through Robert Moore has engaged in unlawful political activism and bias includes a series of stories he published attacking DA Rosales. The focus of the stories shows blatant political bias and racism through 1) the focus of the story, 2) actual statements made in the stories, 3) failing to present the other side of the issues, and 4) actions taken by their reporters to target families of the victims of crime and endangering their physical safety. The stories include the following:

1) **"Judge Issues Gag Order After Slamming El Paso DA over comments, inaction on Walmart trial" (Attachment C)**

2) **"New DA Dismantles El Paso's legacy on tackling domestic violence" (Attachment D)**

3) **"El Paso public defender may seek dismissal of 1,000 more criminal cases" (Attachment E)**

4) **"Court petition seeks removal of El Paso District Attorney Yvonne Rosales" (Attachment F)**

The very titles and focus of the stories demonstrate a severe antagonism towards political candidates and elected officials that are disfavored by Robert Moore and his core group of contributors. This is easily demonstrated by the contribution records of each candidate. He does not write critical stories regarding any other elected official.

EVIDENCE OF POLITICAL BIAS AND ACTIVISM IN THE FOUR STORIES

Story 1: "Judge Issues Gag Order After Slamming El Paso DA over comments, inaction on Walmart trial"

"The state judge…excoriated District Attorney Yvonne Rosales,"

"A clearly angry 409th District Judge Sam Medrano,"

"he repeatedly criticized Rosales,"

"Medrano...blasted Rosales."

<u>Story 2:</u> "New DA Dismantles El Paso's legacy on tackling domestic violence"

"Many were critical of Rosales' approach to domestic violence, but did not want to be quoted by name, citing fear of retaliation against them or the clients they were defending."

"According to defense attorneys, Rosales' office is far more likely to decline to move forward on domestic violence cases when victims do not wish to press charges against their alleged assailant-a stark departure from the previous DA."

"Paul Ferris, project administrator for the DA's office, later provided written statements to be attributed to 'the administration,' and not Rosales directly."

"In its statement, Rosales' office largely blamed Esparza for case processing challenges."

"Virtually all of its output measures fell short of the VAWA grant targets. For example, the office trained seven criminal justice professionals on how to gather and collect evidence in family violence cases between January and August 2021. The stated goal in the grant application was to train 536 people, with the office saying that "staff were unable to reach out to agencies for training purposes 'due to the pandemic.'"

"That's ridiculous, to blame it on COVID," said former El Paso County Jail Magistrate Judge Penny Hamilton, a fierce critic of Rosales' administration."

"In a 2020 grant submitted months before Rosales took office, Patricia Baca, then head of the office's domestic violence unit and now judge of El Paso's 346th Judicial District Court, noted that the domestic violence unit had three full-time attorneys and six staffers devoted to family violence crimes."

"Critics of Rosales' administration acknowledge that newly elected officials are entitled to reset priorities, choose their staff and restructure the agency they lead. But some question why the office did not keep the specialized domestic violence unit that was a hallmark of Esparza's administration."

"Other district attorney offices in large urban counties in Texas, including those for Travis, Tarrant, Harris and Dallas counties, have domestic or family violence divisions."

"Many of the changes relating to domestic violence have taken place amid broader shifts within the DA's office, which according to exit interviews **first reported by Channel 9-KTSM**, has struggled with staff morale and organizational turmoil-especially following Rosales' controversial decision to remove roughly a quarter of the agency's staff before she took office in January 2021."

"Nearly 18 months later, some vacancies have yet to be filled. Staff turnover also persists, even among Rosales' own hires. Rosales started a DA with a new director and assistant director of the victim assistance program. By August, both had left. Program director Angelica Castillo noted in her exit interview that she did not have a job lined up. 'It should say a lot about morale that I felt I needed to leave even with no job to go to,' Castillo wrote. 'Most people are unhappy and are looking for work elsewhere.'"

"The mass departure at the start of Rosales' term came at a cost, effectively erasing decades of institutional knowledge and specialized legal experience, and placing an increased workload on the staff that remained, several employees said in their exit interviews."

"'It is impossible to have effective prosecutors being short staff(ed) with the amount of attorneys we have,' Teresa Garcia, a senior trial attorney, said during her exit interview with the county six months after she joined the office. 'It was no loner feasible to keep working. This has not been a good experience.'"

"Hamilton said, 'I'm telling you, she doesn't have enough staff, she doesn't have enough prosecutors to try the damn cases-much less do specialty units.'"

"Justin Underwood began his legal career as an assistant district attorney under Esparza. In 2004, after three years of prosecuting felony cases-many of them involving domestic violence-he left to start his own firm as a defense attorney. After making that switch, Underwood said he came to realize that with domestic violence, 'these cases are not just one-sided a lot of the time. Family relationships are complicated.' With domestic violence cases, Esparza's office was 'a 100% prosecution machine,' he said. 'They went forward on every single domestic violence case.'"

Story 3: "El Paso public defender may seek dismissal of 1,000 more criminal cases"

"Between Aug. 15-18, the El Paso Public Defender's Office requested about 390 dismissals under a section of the Texas Code of Criminal Procedure that requires prosecutors to seek indictments within 180 days of arrest."

"However, moving to prosecute years down the line 'would be an extreme injustice not just for my clients, but for the entire legal system,' said El Paso Public Defender Kelli Childress."

"And though Rosales said in an interview with KFOX she'd been 'blindsided' by the dismissal request, Childress said she had contacted the DA's office on multiple occasions to discuss delays in case screenings."

"Rosales did not respond to interview requests with El Paso Matters."

"The DA's delay in screening and indicting cases also has **affected people who are in custody.** Article 17.151 of the Texas Code of Criminal Procedure prohibits jailing defendants past 30 to 90 days if the state isn't ready for trial. Between 2018 and 2020, roughly 14 people were released under this provision each year. In 2021, Rosales' first year in office, that number jumped to 183."

"Defense attorney Omar Carmona said his clients have also experienced delays that would make their cases elgible for dismissal uder 32.01. But while he's planning to request similar dismissals, for now, he said he and other private defense lawyers may wait to see if there's any 'fallout' from this week's hearings. 'We've seen how this (district attorney's) office has been vindictive in the past.'"

"Last fall, Carmona represented Ivan Gabaldon, whose **capital murder charge was dismissed** after a judge ruled that the DA's office had taken 'vindictive actions' against him in a case that was also marked by prosecutorial delays."

"In their motion to dismiss the case, Carmona and co-defense attorneys Denise Butterworth and Felix Valenzuela argued that state prosecutors had asked for the death penalty against their client as a way to buy themselves more time to prepare, and because the defense had sought to protect their client's constitutional right to a speedy trial. In earlier hearings, the DA's senior division chief, Curtis Cox, **acknowledged** that prosecutors had received the case, but 'apparently for at least the next six months effectively did nothing."

"Penny Hamilton, who retired as head jail magistrate for El Paso County this spring, said that when she released people accused of violent offenses from jail, she'd try to establish a 'safety zone' for the person they may have harmed. 'Her inaction is really such a disservice to our community. It's a public safety issue, especially now. I mean (about 400 cases dismissed and a lot of those having victims of violent crime? That's just shameful.'"

"Carmona, who watched some of the dismissals, said 'just to have your prosecutor go up there and say 'nothing from the state'- that's just not good enough. That's a total lack of accountability.'"

Story 4: "Court petition seeks removal of El Paso District Attorney Yvonne Rosales"

"District Attorney Yvonne Rosales should be removed from office because of incompetency and official misconduct, according to a petition filed with the El Paso District Clerk's Office on Wednesday."

"The case, which Rosales called an assault on the political process, was assigned to the 346th District Court presided by District Court Judge Patricia Baca."

"The petition triggers a rarely used mechanism for removing an elected official in Texas, a process that could take months to resolve."

"The petition was filed by defense attorney Omar Camona, who represented a capital murder defendant whose charges were dismissed in 2021 after a judge ruled that the District Attorney's Office had **engaged in prosecution vindictiveness.**"

"Carmona asks that Rosales be temporarily removed from office while the courts consider his petition."

"The effort to oust Rosales, a Democrat who was elected in 2020, comes after months of turmoil in her office, including the **dismissal of hundreds of cases** because of a failure to seek indictments in time, and controversy over the **handling of the Aug. 3, 2019 mass murder** at the Cielo Vista Walmart."

"'Since August 3, 2019, our community has come a long way. We have healed together, we have grieved together and we've cried together...but we still don't have that final closure,' Carmona said. 'So it's time for a change and it's a change we cannot wait for. We cannot wait for the next election cycle. It has to be done right away.'"

"State Rep. Joe Moody, D-El Paso, said Rosales' performance and the attempt to remove her raise challenging questions. 'As someone who believes in our system, I'm always leery about anything that puts a decision about who represents the people in any hands besides the people. We have a removal system, and that's an election in 2024,' said Moody, one of the Legislature's leading voices on criminal justice issues. 'That said, I've never witnessed such gross incompetence-it's not only embarrassing, it's dangerous and disgraceful. A lot of El Pasoans are going to be hurt before 2024 by the very person they should be able to most rely on.'"

ATTACHMENT A

El Paso Matters ...

August 21 at 11:05 AM ·

With last week's dismissals, any protective conditions imposed on someone as part of their bond, such as restrictions against contacting an alleged victim, were also removed. Victoria Rossi with the latest on the large-scale dismissal of criminal cases in El Paso.

ELPASOMATTERS.ORG

El Paso public defender may seek dismissal of 1,000 more criminal cases - El Paso Matters

Wesley Lawrence For El Paso and 17 others 13 Comments 8 Shares

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Write a comment...

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Maria Kalman
So why would the cps bother to arrest offenders. A form of cashless bail.

Like **Reply** 3d

Jerry Davis
Recall?

Like **Reply** 1w

Bob Moore
Jerry Davis Texas does not allow recalls, except for home-rule cities that choose to permit recalls for municipal offices.

Like **Reply** 1w

Justin B. Underwood

Bob Moore but you can file a petition for removal under the Texas Government Code

Like **Reply** 6d 2

[redacted]

Justin B. Underwood

Bob Moore section 87.015 to be precise

Like **Reply** 6d

[redacted]

Bob Moore

Justin B. Underwood https://statutes.capitol.texas.gov/Docs/LG/htm/LG.87.htm

STATUTES.CAPITOL.TEXAS.GOV

LOCAL GOVERNMENT CODE CHAPTER 87. REMOVAL OF...

Like **Reply** 6d

[redacted]

Justin B. Underwood

Bob Moore exactly

Like **Reply** 6d

[redacted]

Bob Moore

Justin B. Underwood My sense is that a jury would be loath to remove an elected official. Removing someone chosen by voters is a major step. There's a reason this provision is so rarely used.

Like **Reply** 6d

[redacted]

Justin B. Underwood

Bob Moore it would be a tough fight for sure. But if the evidence is there, and you have the right lawyer....

Like **Reply** 6d 3

[redacted]

Reply to Bob Moore...

Press Enter to post.

ATTACHMENT B

JO ANNE BERNAL
EL PASO COUNTY ATTORNEY
500 EAST SAN ANTONIO
ROOM 503, COUNTY COURTHOUSE
EL PASO, TEXAS 79901

(915) 546-2050
FAX: (915) 546-2133

May 11, 2022

Yvonne Rosales
District Attorney
34th Judicial District
500 E. San Antonio, 2nd Floor
El Paso, Texas 79901
YRosales@epcounty.com

SENT VIA ELECTRONIC MAIL

RE: Public Information Request received by Council of Judges for Records Pertaining to Communications between Honorable Penny Hamilton, Yvonne Rosales, and Council of Judges; *Our PIA#100*

Dear Ms. Rosales:

As a courtesy, please be advised that the Council of Judges a received a request for records regarding information related to your office. More specifically, Aaron Montes from KTEP 88.5 FM requested a copy of any and all emails between Penny Hamilton, Yvonne Rosales and the El Paso County Council of Judges between the periods of June 1, 2021, and September 30, 2021. He requested the keywords to be used would be "no bill," "no bills," "inmates," and "no charges." Additionally, he requested summaries, memorandums, notifications or letters concerning individuals in El Paso County jails between the period of June 1, 2021 and September 30, 2021. The Council of Judges then referred the request to the County Attorney's Office for handling.

We are in the process of issuing a response on behalf of the Council of Judges. We will refer the requestor to your office for any potential records your office may have. Please let us know if you have any questions.

Sincerely,

Evette Ugues
Assistant County Attorney

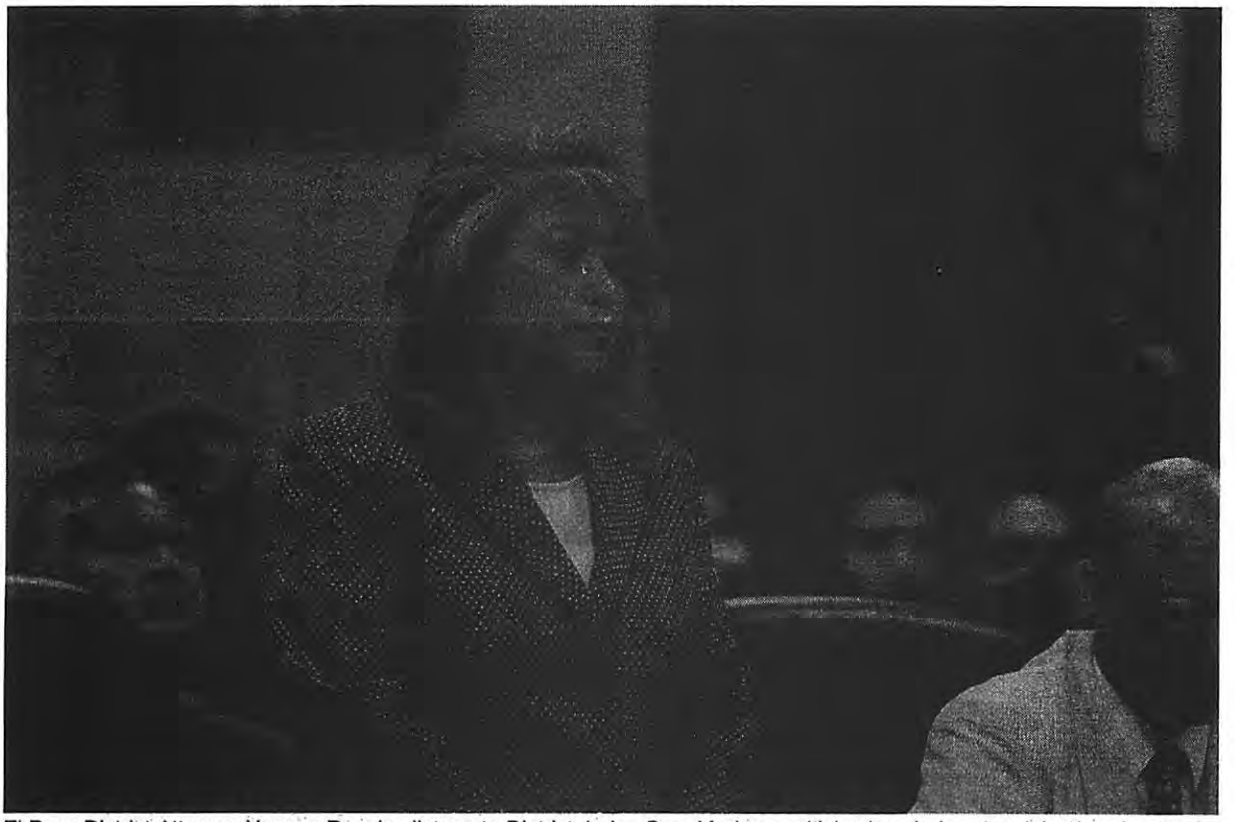
cc: Michael Cuccaro, Executive Director, Council of Judges

ATTACHMENT C

GOVERNMENT

Judge issues gag order after slamming El Paso DA over comments, inaction on Walmart trial

by **Victoria Rossi** and **Robert Moore**
July 1, 2022



El Paso District Attorney Yvonne Rosales listens to District Judge Sam Medrano criticize her during at a July 1hearing on the Walmart shooting case. (Corrie Boudreaux/El Paso Matters)

The state judge presiding over the prosecution of the man accused of murdering 23 people at an El Paso Walmart in 2019 excoriated District Attorney Yvonne Rosales on Friday for making public comments about the case while her office has done little to prepare for trial.

A clearly angry 409th District Judge Sam Medrano cited a press release Rosales issued earlier this week announcing her intention to have the case tried next summer in his court. He issued a gag order on Friday preventing prosecutors, defense lawyers, law enforcement officers and witnesses from discussing the case with the media.

"The grandstanding ends today," Medrano said at the conclusion of a 20-minute hearing where he repeatedly criticized Rosales before reporters, attorneys and shooting

victims' families who packed the courtroom. He made it clear his complaints were directed at Rosales.

Medrano also blasted Rosales for suggesting she'd be ready for trial in less than a year. He said her office had not made a single filing in the case since she assumed office in January 2021.

"Not one one pleading, not one motion, not one request, not one business record, not one proposed jury questionnaire, not one subpeona duces tecum, not one witness list, not one expert witness list, has been filed by your office," Medrano said.

409th District Judge Sam Medrano issued a gag order Friday for all attorneys in the state case against the alleged Walmart shooter. (Corrie Boudreaux/El Paso Matters)

When Rosales maintained that she had filed some documents, the judge shot back: "If they were filed, they were filed late yesterday, because I checked the file — not one," he said.

Joe Spencer, one of the attorneys representing the alleged gunman, also told the judge he had not seen any filings from the prosecution for nearly two years. Rosales has been in office for roughly 18 months.

Spencer and Medrano said that Rosales' public comments on the case could impact the defendant's right to a fair trial, and make it difficult to empanel a jury in El Paso.

Medrano is the latest judge to criticize Rosales or her office over their handling of criminal cases.

The court process for a massacre

Rosales, in **a June 27 statement**, said she hoped the state capital murder trial against Patrick Crusius would take place in summer 2023.

Crusius, then 21, of Allen, Texas, was arrested shortly after the Aug. 3, 2019, shooting at the Cielo Vista Walmart that killed 23 and wounded 22 others. Prosecutors allege that shortly before the shooting, he posted an online screed saying he had driven to El Paso from North Texas to carry out an attack to stem a "Hispanic invasion."

He has been held in the El Paso County Jail since his arrest, facing both federal and state charges that carry a potential death penalty. He was not present at Friday's hearing.

Federal prosecutors haven't decided whether to seek the death penalty, but Rosales and her predecessor, Jaime Esparza, both said they would seek Crusius' execution if he was convicted on state charges.

Rosales' statement came three days after U.S. District Judge David Guaderrama, who is presiding over the federal case, set a trial date for Jan. 8, 2024. Prosecutors had asked for the federal trial to begin in June 2023, and Crusius' lawyers had asked for March 2025.

Family members of victims of the Walmart shooting listen as District Judge Sam Medrano issued a gag order after excoriating District Attorney Yvonne Rosales on Friday for making public comments about the case. (Corrie Boudreaux/El Paso Matters)

"I commend Judge Guaderrama for setting the case for trial in a timeframe that will allow the U.S. Attorney's Office to make a final determination whether they will seek the death penalty against Patrick Crusius. The District Attorney's Office will continue to seek the death penalty and as such, we hope to have our case proceed to trial by summer of 2023," the statement read.

The decision to set a trial date rests with the judge and is supposed to involve discussion with both the prosecutors and the defense attorneys.

Although Rosales told Medrano she "did indicate" that process to the media, her press statement made no mention of the defense attorneys or the judge.

From District Attorney Yvonne Rosales:

I commend Judge Guaderrama for setting the case for trial in a timeframe that will allow the US Attorney's Office to make a final determination whether they will seek the death penalty against Patrick Crusius. The District Attorney's Office will continue to seek the death penalty and as such, we hope to have our case proceed to trial by summer of 2023. We are aware that this time frame may seem long for many, however, keep in mind that trials were delayed due to the pandemic and have only resumed as early as January 2022. There are a series of murder cases that have been successfully prosecuted over the last few months and we are working through the cases that were postponed by the pandemic.

The vacancies have not affected the quality of the prosecutions by the office. These vacancies are deliberate, due to the office space issues we have encountered. We simply do not have the office space to safely house additional personnel with the continued rate of positive Covid testing that is still plaguing the County Courthouse personnel.

District Attorney Yvonne Rosales released this statement to El Paso media on June 27, days after a judge set a date for the federal trial.

When Medrano asked Rosales why she put out the statement, she deflected.

"I don't know what the media put out, your honor. ... I did clearly inform them that we would approach opposing counsel and this court" about setting a trial date, she said, emphasizing that her statement indicated that she "hoped" for a date next summer.

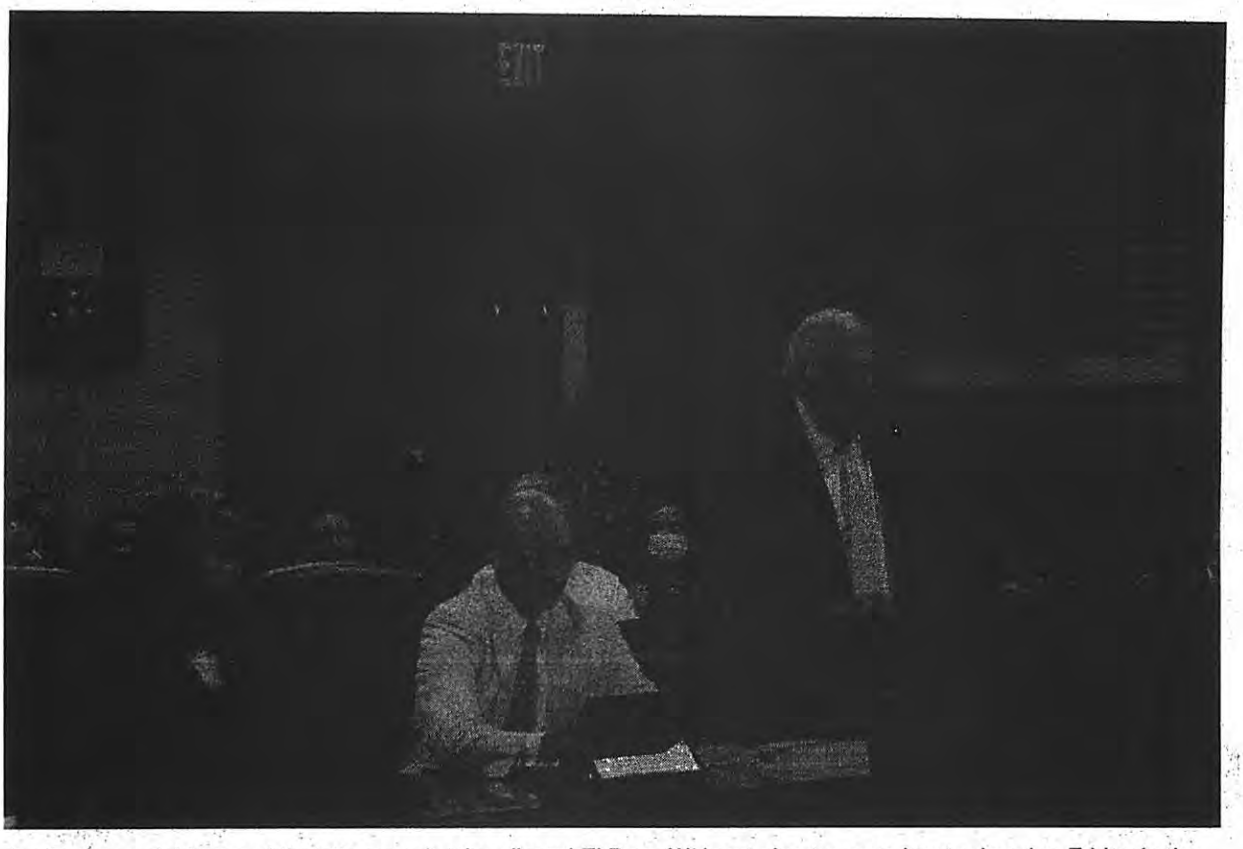
The defense, Medrano noted in court, has not "gone to the media" to publicize their trial date preferences.

Rosales told Medrano that she preferred a state trial setting ahead of the federal case because of the death penalty.

"Our goal was to to have this case scheduled before since we are seeking the death penalty, and the federal court is not seeking the death penalty at this point in time," she said.

Any prosecutorial actions that violate a defendant's due process rights put the case at risk of a retrial — prolonging an already difficult process for victims' family members, Spencer said during Friday's hearing.

"The tenets of due process are at risk in this case," Spencer said. "And this case will be tried over and over again if not done properly."



Joe Spencer, right, one of the attorneys for the alleged El Paso Walmart shooter, speaks at a hearing Friday in the case. (Corrie Boudreaux/El Paso Matters)

Medrano said he issued the gag order to protect the case and ensure a fair trial. He said it's the first such order that he's issued in his 26 years on the bench.

The judge did not say when he'd set a trial date for the state charges, though he said he would not interfere with Guaderrama's federal trial date in January 2024. Spencer said during the hearing that defense lawyers couldn't prepare simultaneously for state and federal trials in the next 18 months.

Previous judicial criticism of Rosales

Medrano is at least the fourth judge in recent months to criticize Rosales or her office.

In December, 210th District Judge Alyssa Perez **dismissed a capital murder charge** after finding that the District Attorney's Office had acted with prosecutorial vindictiveness in suddenly seeking the death penalty against Ivan Gabaldon after admitting prosecutors had mishandled the case.

In March, Jail Magistrate Judge Humberto Acosta sent an email to Rosales critical of repeated instances in which he had to release suspects from jail because her office took

too long to decide whether to seek an indictment. Acosta copied prosecutors, police officers and other judges on the email.

"Prosecutorial decision making of detained individuals is not being prioritized in your office," Acosta wrote in the email, which El Paso Matters obtained under the Texas Public Information Act.

In May, recently retired Jail Magistrate Judge Penny Hamilton similarly **criticized Rosales** for taking too long to make decisions on indictments. Hamilton also took aim at the sharp drop in domestic violence prosecutions during Rosales' tenure, which Hamilton blamed on a lack of staff.

Medrano revealed Friday what he called "the worst kept secret" in El Paso's legal community — that Rosales is "actively seeking, interviewing and attempting to hire out-of-town lawyers that will be prosecuting this case," he said.

When he asked whether that process had been completed, she acknowledged that it hadn't.
That prompted another rebuke from the judge for Rosales' decision to publicly seek a summer 2023 trial when some attorneys for the case had yet to be hired "and then have not looked at one piece of the evidence in this case."

ATTACHMENT D

GOVERNMENT

New DA dismantles El Paso's legacy on tackling domestic violence

by Victoria Rossi
May 23, 2022

District Attorney Yvonne Rosales was a guest speaker at Austin High School during an underage drinking prevention event on May 18. (Courtesy of El Paso Times)

For four years, Jen tried to leave the man she now refers to simply as "my aggressor."

In May 2019, she brought her safety action plan to fruition, driving a rickety van out of Arizona with her four children in tow until finally, they crossed the Texas state line. Jen pulled over. "I got out and I literally kissed the ground," she said. They'd made it back to El Paso, her hometown. "We're going to be safe," she told her kids.

In some ways, it was the end of a turbulent chapter in Jen's life, marked by what she describes as years of extreme physical, sexual and emotional abuse. Her legal battle, however, was just beginning — one that has caused its own kind of trauma, she says. Three years since her escape to El Paso, safety — much less justice — still feels like a far-off dream.

When Jen moved back home, El Paso was known for its tough stance on family violence offenses. The reputation stemmed largely from policies pushed by then-District Attorney Jaime Esparza, who over the course of his 28-year tenure built a legacy centered on tackling domestic violence.

Esparza's office filed a misdemeanor case against Jen's ex-partner in January 2020 for allegedly violating the protective order issued against him earlier that fall. El Paso Matters is not publishing Jen's real name due to the risk of violence from her former partner. In July 2020, the District Attorney's Office secured a felony indictment against him for violating that protective order multiple times.

That same month, criminal defense and family law attorney Yvonne Rosales made history. When Esparza didn't seek re-election, Rosales ran against three Democratic primary challengers on a platform highly critical of the departing DA. Throughout her campaign, she lambasted Esparza's approach to family violence and promised a "solution-oriented approach" over "the current punishment-centered orientation." She won the July run-off election to become El Paso's first female district attorney.

In the nearly 18 months since she took office, Rosales has adopted a dramatically different approach to domestic violence cases, attorneys and advocates say. El Paso Matters spoke to a dozen current or former employees of both administrations, as well as some defense lawyers, for this article. Many were critical of Rosales' approach to domestic violence, but did not want to be quoted by name, citing fear of retaliation against them or clients they were defending.

A sculpture of Lady Justice in the main lobby of the El Paso County Courthouse. (Corrie Boudreaux/El Paso Matters)

Rosales' office no longer has a specialized domestic violence unit. The new DA also ended many tenets of a domestic violence program called the 24-Hour Domestic Violence Contact Initiative, which aimed to collect evidence from victims and direct them to community support within 24 hours of a family violence incident.

In its first year, the new administration filed 60% fewer felony and misdemeanor assault cases against alleged abusers, despite an overall rise in family violence arrests within the city of El Paso. According to defense attorneys, Rosales' office is far more likely to decline to move forward on domestic violence cases when victims do not wish to press charges against their alleged assailant — a stark departure from the previous DA.

Under Rosales, more people have been released from jail due to a section of the Texas Code of Criminal Procedure that says people cannot be jailed past a certain period if prosecutors are not ready to take their cases to trial. Some of those released held multiple family violence charges, with records that signaled a pattern of escalating violence toward the same victim.

Despite rise in arrests, steep decline in family violence prosecutions

Since Jen returned to El Paso, she has contacted the police dozens of times to report continued threats from her ex-partner, both by phone and in person. Because of those threats, she and her children have moved homes eight times in the last three years, at one point spending months in a domestic violence shelter.

In 2021, El Pasoans made nearly 200,000 calls to police. Domestic violence incidents accounted for more than 26,000 of those calls. According to El Paso Police Department data, officers made more than 2,000 family violence arrests — the highest since 2019.

But even as arrests in El Paso climbed to a three-year high, Rosales' office in 2021 filed far fewer family violence charges than the office did under Esparza.

According to El Paso district and county clerk records, Rosales' office filed 374 misdemeanor charges for assault family violence causing bodily injury and secured 311 grand jury indictments for family violence felonies in 2021 — a 60% drop from 2020, Esparza's last year in office.

In a statement, Rosales office said the decrease was warranted.

"The current administration does not rubber stamp cases that are presented, nor does this administration set goals for a certain number of cases to be filed or indicted. The current administration's focus is JUSTICE," the statement read.

El Paso Matters first requested an interview with Rosales to discuss her approach to domestic violence cases in September 2021. Rosales and her office ignored this request and a follow-up request made in October.

When El Paso Matters again asked to interview Rosales this month, the office requested written questions in advance of an interview. Rosales' staff canceled just before the interview's start, citing an emergency. Paul Ferris, project administrator for

the DA's office, later provided written statements to be attributed to "the administration," and not Rosales directly.

Overall case filings on decline

Family violence misdemeanor filings, which are among the most common cases reported to the El Paso DA, also saw steeper declines than other common cases: Between 2020 and 2021 DA filings for DWI misdemeanors dropped by 44% compared to the 52% drop in family violence misdemeanors.

The drop in filings for family violence cases comes as part of a steep reduction in all types of criminal cases processed by the 34th Judicial District Attorney's Office, which handles adult felony and misdemeanor cases committed in El Paso, Hudspeth and Culberson counties.

According to the 2022 El Paso County Operating Budget, Rosales' office disposed of 2,098 cases in 2021, falling far short of its goal to resolve 26,750 cases that fiscal year. Esparza's office had the same goal the previous year but came much closer to meeting it — disposing of 24,503 cases.

The office of District Attorney Yvonne Rosales within the El Paso County Courthouse. (Corrie Boudreaux/El Paso Matters)

In its statement, Rosales' office largely blamed Esparza for case processing challenges.

"The current administration inherited an extraordinary load of pending cases," the statement read. "Many work hours have been spent on cases pending prior to 2018, including attempting to contact witnesses, victims, and verifying whether these cases are still viable for prosecution."

Her office declined to provide the number of pending cases it inherited from Esparza's administration. Esparza declined to be interviewed for this article.

The DA's office also cited the pandemic as a reason it had not met targets in a September 2021 progress report for a $145,932 Violence Against Women Act (VAWA) grant that had been submitted under Esparza in 2020.

"Covid has virtually frozen our ability to close out cases," the administration wrote in the progress report.

Virtually all of its output measures fell short of the VAWA grant targets. For example, the office trained seven criminal justice professionals on how to gather and collect evidence in family violence cases between January and August 2021. The stated goal in the grant application was to train 536 people, with the office saying that "staff were unable to reach out to agencies for training purposes" due to the pandemic.

"That's ridiculous, to blame it on COVID," said former El Paso County Jail Magistrate Judge Penny Hamilton, a fierce critic of Rosales' administration.

"You know what? The crime didn't stop. And your responsibility as a prosecutor didn't stop," Hamilton said. "And the things that you swore to do when you took an oath to be the district attorney for El Paso County, and to prosecute crimes for our society and our community, and to get justice for victims — that didn't stop because of COVID or any other thing."

Because of the pandemic, there are currently no financial repercussions for missing grant targets, according to the County.

New domestic violence unit model

The DA's office no longer has a specialized domestic violence unit, according to organizational charts obtained through a public records request and a list of specialized units provided by Rosales' office. However, the unit "has not been dismantled," the administration said in its statement. "It has been restructured."

In a 2020 grant submitted months before Rosales took office, Patricia Baca, then head of the office's domestic violence unit and now judge of El Paso's 346th Judicial District

Court, noted that the domestic violence unit had three full-time attorneys and six staffers devoted to family violence crimes.

Now, the new administration says that "all prosecutors are 'the domestic violence unit.'" The statement described the previous domestic violence unit as "simply a set of 3 attorneys who screened the cases."

Critics of Rosales' administration acknowledge that newly elected officials are entitled to reset priorities, choose their staff and restructure the agency they lead. But some question why the office did not keep the specialized domestic violence unit that was a hallmark of Esparza's administration.

Before she became a jail magistrate judge in 2015, Hamilton was the head of the rape and child abuse unit at the El Paso district attorney's office.

Retired El Paso County Jail Magistrate Penny Hamilton speaks about the handling of domestic violence cases at her home on April 27. (Corrie Boudreaux/El Paso Matters)

"I think it's up to each individual district attorney how they decide they want to run their office," Hamilton said of Rosales' move to dismantle the domestic violence and other specialized crime units within the office.

But, she added, "as a prosecutor for over 20 years, and working in a specialized unit as I did for all those years, I think they're vital. There are things about prosecuting family violence cases and child abuse cases that require a lot of specialization."

Without those units, Hamilton said, "I think you lose something. You lose a lot."

Other district attorney offices in large urban counties in Texas, including those for Travis, Tarrant, Harris and Dallas counties, have domestic or family violence divisions.

Many of the changes relating to domestic violence have taken place amid broader shifts within the DA's office, which according to exit interviews **first reported by Channel 9-KTSM**, has struggled with staff morale and organizational turmoil — especially following Rosales' controversial decision to remove roughly a quarter of the agency's staff before she took office in January 2021.

Nearly 18 months later, some vacancies have yet to be filled. Staff turnover also persists, even among Rosales' own hires.

Rosales started as DA with a new director and assistant director of the victim assistance program. By August, both had left. Program director Angelica Castillo noted in her exit interview that she did not have a new job lined up.

"It should say a lot about morale that I felt I needed to leave even with no job to go to," Castillo wrote. "Most people are unhappy and are looking for work elsewhere."

The mass departures at the start of Rosales' term came at a cost, effectively erasing decades of institutional knowledge and specialized legal experience, and placing an increased workload on the staff that remained, several employees said in their exit interviews.

"It is impossible to have effective prosecutors being short staff(ed) with the amount of attorneys we have," Teresa Garcia, a senior trial attorney, said during her exit interview with the county six months after she joined the office. "It was no longer feasible to keep working. This has not been a good experience."

Hamilton said, "I'm telling you, she doesn't have enough staff, she doesn't have enough prosecutors to try the damn cases — much less do specialty units."

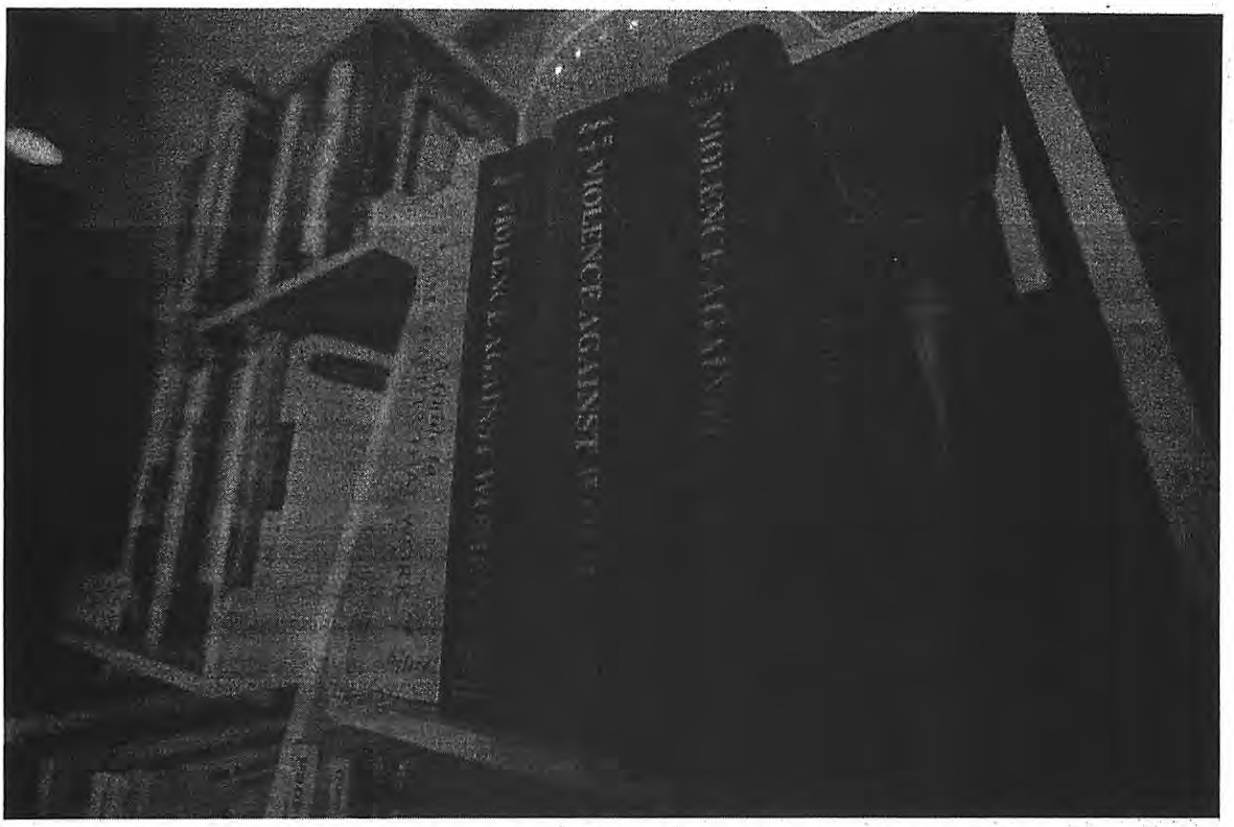
The 24-Hour Domestic Violence Contact Initiative

Under the previous administration, within 24 hours after a domestic violence arrest, a DA investigator and a victim advocate would arrive at a victim's home. The visits were

met with mixed emotions, according to a **2011 evaluation** of the 24-Hour Domestic Violence Contact Initiative by researchers at the University of Texas at Austin.

Some victims were surprised when the two-person team showed up at their doorstep; others were afraid of the unknown law enforcement officers, or embarrassed. But by the end of the visit, most were glad they had come.

"Seeing the interest that the District Attorney's Office has in my situation," one person told UT researchers, "well, that comforts me very much."



A collection of books on violence against women at the Center Against Sexual and Family Violence. (Corrie Boudreaux/El Paso Matters)

Created in 2008, the initiative was the brainchild of Esparza and Gloria Aguilera Terry, then director of the Center Against Sexual and Family Violence, or CASFV. Aguilera Terry left El Paso soon after its formation to lead the Austin-based Texas Council on Family Violence.

"What they did after I left was just phenomenal," Aguilera Terry said, calling the 24-Hour Domestic Violence Contact Initiative a "strong, victim-centered strategy."

In a 2013 **press release**, the Texas District & County Attorneys Association announced that Esparza had won a national award for the initiative, describing it as

"an innovative, first-in-the-nation program ... meant to move family violence crimes more quickly and efficiently through the criminal justice system and to hold family violence offenders accountable for their acts of criminal violence."

Under Esparza, the 24-hour contact team would give victims information about domestic violence resources in the community, telling them where they might turn for counseling, medical attention for their injuries or shelter if needed. This provided "significant emotional support to family violence victims," according to the UT study.

That support isn't just important in the short term, advocates and researchers say. **Studies have found** that interactions with law enforcement, including prosecutors, can impact someone's ability to heal from a traumatic event — for the better, or for the worse.

Conducted daily, the team's home visits also allowed prosecutors to begin building a case right after the incident — a time when physical evidence like bruises might still be visible to photograph or a victim's memory still fresh for a filmed statement. The team then brought what they'd gathered back to the DA's office, where each week Esparza met with prosecutors to screen family violence cases and decide whether to prosecute.

For both the home visits and the weekly screening meetings, speed was crucial — an attempt to address a major roadblock in prosecuting domestic violence cases. According to the UT study, time delays can be "the most significant degrading factor in family violence prosecutions."

On this front, Jen can relate.

For the last three years, her healing has come in fits and starts. There have been victories, like the time she bit into a mini Snickers bar, breaking one of the many rules her aggressor once enforced. Even that word — aggressor — is in its own way a victory: Jen learned to use it from counselors at the CASFV, who suggested it as a way to mentally separate from her ex-partner.

There have also been defeats, some of them at the hands of a confusing tangle of law enforcement agencies she says have done little to protect her and her children. "What they don't tell you is that legal help (for) domestic violence is almost nonexistent," she said.

A collection of books and brochures on domestic violence at the Center Against Sexual and Family Violence. (Corrie Boudreaux/El Paso Matters)

Multiple sources have said that under Rosales, the 24-Hour Domestic Violence Contact Initiative no longer exists — at least, not as it once did.

The DA's office provided no reference to the program's continued existence in response to a public information request asking for the names and titles of employees involved with the program or internal documents or communications that mentioned it.

In its statement to El Paso Matters, Rosales' administration denied that it had discontinued the program but acknowledged that many of its defining features, like the home visits by DA investigators and victim advocates, are no longer in place.

Esparza suspended in-person visits during the pandemic, the DA's statement said, and Rosales has continued the policy: "The health and safety of employees is a huge concern for this administration, and civilians (advocates and DA investigators) should not be sent to an active crime scene due to the uncertainty of the volatile situation. Law enforcement officers can video-record victims for statements, as well as record a defendant's statement which can be used in prosecution."

Rosales' office would not say if it still conducts victim outreach within 24 hours of a family violence arrest.

The 24-hour contact initiative also aimed to screen and file cases swiftly. Records from the El Paso County Clerk's Office show that screening times for misdemeanor family violence assaults causing bodily injury have increased 10-fold under Rosales. A process that once took roughly a week rose to more than three months in 2021.

'Victimless' prosecutions

With its rapid evidence collection and screening process, the 24-hour contact initiative was also designed to help prosecutors pursue cases effectively even without a victim's participation, or in some instances, when a victim did not want to prosecute them at all — what some call "victimless" or "evidence-based" prosecution.

Evidence-based prosecution can be a way for attorneys to lighten the burden for victims who may want to see their abuser punished, but are terrified of testifying against them. This is the most common fear that Monica Barrera, executive director of El Paso's La Posada domestic violence shelter, hears from residents who are involved in a court case.

Some also argue that family violence is a public safety threat, leaving the state responsible for prosecuting an incident regardless of the victim's wishes. In a 2021 report, the Texas Council on Family Violence noted that 31 of the 228 people killed in the state during domestic violence disputes in 2020 were not the direct target of violence. They were friends, bystanders, other family members and police officers.

Sandra Nevarez Garcia, CASFV's director, has testified as an expert witness in these types of cases. Even though victim testimony is not legally necessary to prove a domestic violence crime, jurors often expect it and can be reluctant to convict without it, she said. Nevarez Garcia would take the stand to explain to jurors why they might not be getting that testimony.

With domestic violence victims, "it's typical that they retract or that they're not available," she said. "You're going to trial months, sometimes even a year or years later. Maybe that relationship has changed; maybe they've gotten back together."

After a violent incident, couples can enter a "honeymoon stage" of the abuse cycle — "the apologies, the 'it won't happen again,' type of circumstance," she said. "That's the challenging part with domestic violence and sexual assault cases."

Some may return to relationships because they're financially or socially dependent on their abuser, or afraid they'll lose their children. Others might feel the incident itself was an accident, or want to see a family member get rehabilitative help rather than criminal punishment.

"But we're not prosecuting what's happened now, and whether the relationship is or isn't better," Nevarez Garcia said. "What you're prosecuting is the incident that happened when it happened. Like, was there a crime committed?"

A sign hangs on a counselor's door at the Center Against Sexual and Family Violence. (Corrie Boudreaux/El Paso Matters)

In the late 1990s, Hamilton was among the first attorneys in Esparza's office to handle a case without a victim's participation. These cases could be incredibly challenging to prosecute, Hamilton said, but "sometimes even if the victim says, 'oh I don't want to go forward,' the better thing to do is to go forward because they can't protect themselves."

"How do you break the cycle?" Hamilton added. "From the little boys growing up thinking that it's okay to beat their women and the little girls growing up thinking, 'well, I just have to put up with it and not say anything, the way that mama did.' You have to look at it globally. You cannot look at it in a tiny little bubble."

Over the years, Esparza's office became known for pursuing such cases. The practice drew a number of critics — among them, Rosales.

'These cases are not just one-sided'

Throughout her campaign for DA, Rosales argued that Esparza was motivated by federal grant money available for family violence convictions. In a 2020 interview with the El Paso Times, she advocated for cooperating "with victims who feel that it was a one-time incident, it was a push, it was a shove."

"Obviously, we never condone anybody laying our hands on anybody else," Rosales continued. "However, people are human, they make mistakes. And if it's never happened in the past and the victim is willing to dismiss the case, then we should respect those wishes."

In its May statement to El Paso Matters, her office wrote, "By addressing the root of the problem, such as providing either alcohol and drug counseling or parenting classes to a defendant, a family can be saved as well as providing coping skills that will hopefully prevent future violence. The goal of only seeking convictions can often have a negative impact not just on the family, but also to the community as a whole."

Justin Underwood began his legal career as an assistant district attorney under Esparza. In 2004, after three years of prosecuting felony cases — many of them involving domestic violence — he left to start his own firm as a defense attorney. After making that switch, Underwood said he came to realize that with domestic violence, "these cases are not just one-sided a lot of the time. Family relationships are complicated."

"As a defense lawyer, you're concerned with collateral issues," he said.

In a domestic violence case, those collateral issues might be: What happens to a client's kids if she's the sole breadwinner for the family and loses her job because of the charge against her — before she's even tried? What happens if a client convicted of a family violence misdemeanor isn't a U.S. citizen?

"Domestic violence convictions will get you removed from the United States very quickly," Underwood noted. "The stakes go way up when you've got collateral damage that's going to affect your client — like they're going to lose their job or get deported."

With domestic violence cases, Esparza's office was "a 100% prosecution machine," he said. "They went forward on every single domestic violence case."

The El Paso County Courthouse. (Corrie Boudreaux/El Paso Matters)

Rosales' approach has been more flexible, he said.

"In cases where there's a minor injury, or if it's a brother and a brother fighting, or two sisters fighting, and they don't want to prosecute — those cases need to be resolved with anger management or disorderly conduct. Under the old regime, those cases were treated the same as a husband who's beaten his wife or a spouse that's abusive to a child," Underwood said. "To me, those cases are not the same. They should not get the same attention."

Defense attorney Sergio Saldivar said he appreciates Rosales' willingness to make decisions on a "case-by-case basis" compared to Esparza's more top-down approach.

The difference between the district attorneys' two approaches is especially apparent when victims don't want to press charges, Underwood said. He gave an example: On Friday, a man gets arrested on family violence charges for pushing his wife and by Sunday, they're back together.

"In that situation, we'd get the wife to sign an affidavit saying she doesn't want to prosecute," he said. " In the past, the old regime would never decline that case. They would file it 100 times out of 100 times. Now I would say eight times out of 10, they're not filing it at all."

Saldivar said this approach does a better job of listening to victims. "Yvonne works for the citizens of El Paso," he said. "So she's going to be the voice of the victims — but the victims that want to go forward."

Rosales' office declined to describe any vetting measures it takes to ensure that victims have not been intimidated into submitting these affidavits by the defendants. "Disclosing our safety protocols to protect a victim from the pressures a defendant puts on a victim to sign an affidavit of non-prosecution would not be in the best interest of the victims," the office wrote.

Some jailed defendants wait months for DA decision on their case

Judge Hamilton grew more and more alarmed as she read the criminal history of the man she was about to release in January. Then the head jail magistrate judge for El Paso County, Hamilton was tasked with deciding who could be released from jail, and what the terms of their release would be. "It's a hard decision every single day ... trying to decide who should stay in jail, who should not stay in jail," she said.

This case, to Hamilton, felt pretty clear-cut. According to the man's criminal history report, he had previously been charged with cruelty to animals, resisting arrest and two different cases of assault family violence, both "with the same victim," Hamilton recalled. His record showed that he'd violated the terms of his release before.

"Each time that he would get out of jail, he would go back to the same alleged victim, and each time, the assaults became more and more violent," Hamilton said. "It's exactly that type of offender who just scares the hell out of me."

Though the man had been arrested on a misdemeanor family assault charge, the DA's office had not yet decided whether to move forward with his case, she said: It hadn't yet filed his case with the county clerk.

A section of the Texas Code of Criminal Procedure prohibits jailing defendants past a certain time limit — usually between 30 to 90 days for more serious misdemeanors or felonies — if the state isn't ready for trial. That section, Article 17.151, is meant to protect the rights of people who are accused of crimes, especially those who can't afford to pay for their release on bond.

A courtroom inside the El Paso County Courthouse. (Corrie Boudreaux/El Paso Matters)

"You're innocent until proven guilty," Hamilton said. "There have to be some sort of checks and balances when it comes to the power of the district attorney to prosecute people. You can't just take forever. People's lives are so significantly impacted by the accusation of a crime."

The DA had taken too long to decide whether to prosecute this man. And so on Jan. 24, Hamilton ordered him to be released.

"It absolutely tore me up," she said.

This isn't the only 17.151 release that haunts Hamilton, who retired from her judicial position in March and is now a temporary employee of the El Paso Council of Judges.

Records kept by magistrate judges at the El Paso County Jail show that 14 people were released on average per year between 2018 and 2020 because Esparza's office was not ready for trial.

In 2021, Rosales' first year in office, that number jumped to 185.

"I'm afraid something really bad is going to happen, because somebody is going to get out and somebody's going to die," Hamilton said. "And it's going to be because the District Attorney's Office didn't do their job."

These 2021 releases were often associated with more serious offenses — among them, terroristic threats, assaulting police officers and smuggling large amounts of drugs. The number of people released who had been charged with family violence offenses also spiked.

In the three years before Rosales took office, just one person facing an assault family violence charge was released under 17.151. From the time that Rosales took office in January 2021 to mid-March 2022, more than 50 people with family violence charges have been released under this provision.

When someone is released under 17.151, that doesn't mean the case has been dropped; the DA could still decide to prosecute. But for Hamilton, this heightens the risk of a case "falling by the wayside" until the statute of limitations runs out and the case can

no longer be prosecuted. To her, the releases speak to a DA's office shirking its responsibility to both victims and defendants.

"How can you say that justice is going on when you have all of these people who have to be released because you're not doing your job and you're not filing the cases?" Hamilton said.

When asked about this rise, the DA's office wrote that "bond decisions are exclusively within the parameters of the Magistrate Judge ... ultimately, the conditions of restrictions are the sole decision of the judge."

In a March 24 email exchange with Rosales, obtained through an open records request, Judge Humberto Acosta took issue with her suggestion that "the problem of tracking cases" fell to the magistrate judges and that cases were "not presented to the DA's office in sufficient time to meet the time deadlines in Article 17.151." Rosales had asked Acosta, who became chief jail magistrate after Hamilton retired, to start informing the DA's office weeks before incarcerated individuals approached their time limit.

The responsibility to "ensure that no one ever languishes in jail without legal cause," Acosta replied, lay squarely with the DA. "This is deeply troubling to me, as your request makes it clear that the prosecutorial decision making of detained individuals is not being prioritized in your office."

In her past career as a prosecutor, Hamilton often found herself explaining to victims that as bad as it felt for an alleged offender to be released from jail on bond, "this is what makes our system fair, even though it doesn't seem very fair to you." What would that conversation be like, she said, "now this person is getting out of jail because the prosecutor didn't do their job? There's a huge difference there."

'Waiting, waiting, waiting'

Justin Underwood has witnessed similar delays among a long list of clients he's defending, most of whom are out on bond, but who have been waiting more than a year to see if the DA's office will file their case for prosecution. "It's like being on probation," he said, "even though they haven't been convicted of anything. And we're just sitting here waiting, waiting, waiting."

As of April 20, the DA's office had more than 5,300 cases in screening that are waiting for a decision on whether to prosecute, according to an open records request. Among these are nearly 630 assault family violence cases — one in four of them for felonies. The office has denied multiple requests for the number of cases in screening that it inherited from the previous DA.

Jen is waiting too.

The case filed under Esparza's administration is set for trial in June. But for everything else she's reported to law enforcement since that one case was filed, she's in the dark. She doesn't know what the police or the DA have done with the new reports she's made, despite numerous calls and attempts to find out.

Three years after her escape, "I'm still somewhere in between victim and survivor," she said. "I can't say I'm a complete survivor, because I'm still being victimized by the system. The system is not fixed."

Just weeks ago, she was left with a chilling reminder of that fact — the business card of her aggressor, who still lives in Arizona, tucked into the windshield of Jen's car. It was parked in a location he wasn't supposed to know about.

"The way I'll know I'm a survivor is when I can look in the mirror and that clock in my head that's counting every infraction I do off of (my aggressor's) list isn't there anymore," she said. "When I can eat a cookie without any anxiety. When I don't have to look over my shoulder in the middle of the day, sitting in a church service. That's when I'll know I'm a survivor."

Correction: An earlier version of this story incorrectly said that several large Texas counties with domestic or family violence units were similar in size to El Paso. The counties are larger.

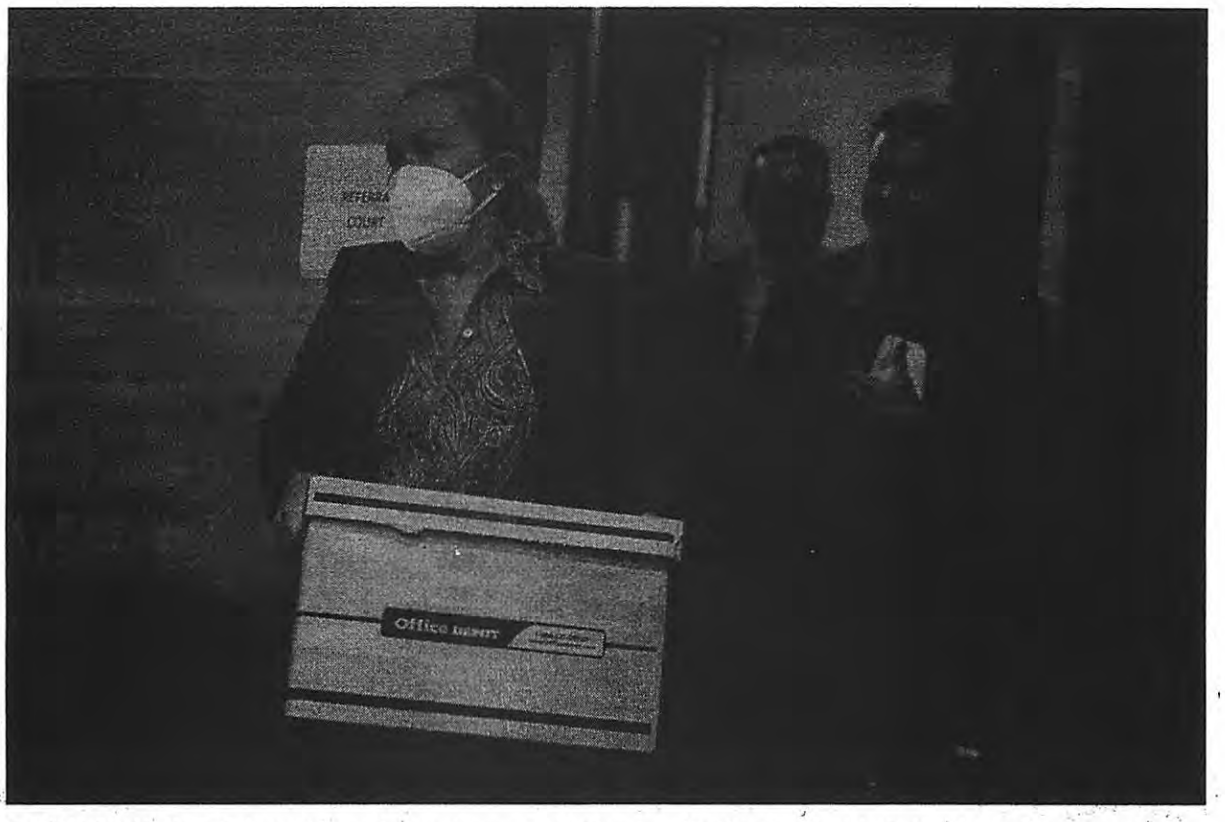
ATTACHMENT E

EL PASO MATTERS

GOVERNMENT

El Paso public defender may seek dismissal of 1,000 more criminal cases

by **Victoria Rossi**
August 21, 2022



Public Defender Kelli Childress leaves the courtroom on Monday, Aug. 15, after Jail Magistrate Humberto Acosta granted her motion to dismiss dozens of cases due to the district attorney's inaction in bringing indictments. (Corrie Boudreaux/El Paso Matters)

After four days of hearings last week, a judge dismissed about 370 criminal cases in El Paso because of prosecutorial delays. The El Paso Public Defender's Office, which sought the dismissals, says this is just the beginning: It has more than 1,000 additional cases eligible to be dismissed and plans to file new motions soon.

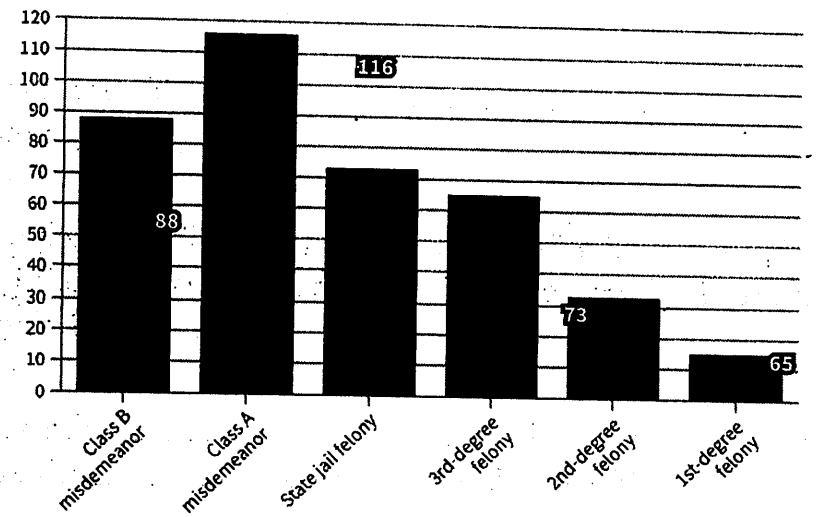
Between Aug. 15-18, the El Paso Public Defender's Office requested about 390 dismissals under a section of the Texas Code of Criminal Procedure that requires prosecutors to seek

indictments within 180 days of arrest. About 20 of those requests were withdrawn; the rest were granted.

The purpose of article 32.01, according to the dismissal motion, is to prevent people from being jailed or placed under bond conditions for lengthy time periods before they're charged with a crime.

The cases dismissed ranged from Class B misdemeanors, which carry sentences as high as six months in county jail, to first-degree felonies, which carry sentences up to 99 years in prison.

Number of dismissal requests by charge level, Aug. 15-18



Source: El Paso Jail Magistrate Court dockets

A Flourish chart

District Attorney Yvonne Rosales has stressed that the dismissals won't keep her from issuing charges on these cases in the future. "Justice will be served," she said in an interview with KFOX-14 TV station. "Their case is not lost."

In a written press statement, she noted that the statute of limitations for many of the dismissed cases runs between two to 10 years.

However, moving to prosecute years down the line "would be an extreme injustice not just for my clients, but for the entire legal system," said El Paso Public Defender Kelli Childress.

Statutes of limitations are intended to be used for "the most unique circumstances," she said.

"They're out there for the times when a crime has been committed and we have no idea who did it, and nine years later, we find DNA and figure out who it was — that's what a statute of limitations is for," she said.

In contrast, Childress said that with these cases Rosales would be "filing for the first time, years after an offense was committed, when you've known of the offender all along."

"Trying to drag these people back to court at this time is going to be much more litigation than they're anticipating," she added, noting that long-time delays could infringe on her clients' constitutional rights to fair and speedy trials.

And though Rosales said in an interview with KFOX that she'd been "blindsided" by the dismissal requests, Childress said she had contacted the DA's office on multiple occasions to discuss delays in case screening.

Rosales did not respond to interview requests from El Paso Matters.

District Attorney Yvonne Rosales at a July 1 status hearing in the Walmart shooting case. (Corrie Boudreaux/El Paso Matters)

'Like I'm starting over'

On Thursday morning, Magdalena and her 18-year-old son sat quietly outside the tiny jail magistrate courtroom while, in less than 45 minutes, Judge Humberto Acosta granted dismissals on 88 cases — hers among them.

It had been 10 months since her arrest for an alleged misdemeanor assault. After about eight hours in jail, Magdalena, a single parent who works at a fast-food restaurant, said she paid $350 for her release on bond, and began monthly email check-ins with a pretrial officer. All the while, she waited for charges that never came.

The threat of that charge has loomed since October not just for Magdalena, but for her son, who works at the same restaurant as his mother and attends Western Technical College. If the DA chose to prosecute, a conviction could mean imprisonment for his mother — leaving him to care for his two younger siblings, he said.

"It was something that was running through our minds every day, Monday through Friday, Saturday, Sunday, you know? You can't focus throughout your day with that," he

said. "It was something that was lingering over me."

El Paso Matters is not using Magdalena's real name at her request, to avoid connecting her to a crime that she has not been charged with.

Both mother and son know the DA could still file the case for prosecution — which Magdalena worried could mean another round of arrest, jail time and money paid to bond out. But she still savored the day's dismissal. Once she and her son left the courthouse, they planned to go home and sleep. They'd come to court straight from a graveyard shift at the restaurant.

"It feels like I'm starting over," she said.

Most of the accused people in last week's cases had already been released from jail, Childress said. But many had faced "oppressive bond conditions" well past the six-month time limit set by article 32.01, she noted.

"What we see is people will spend a year, 18 months, complying with these conditions that are a de facto probation sentence, when not only have they not been found guilty — they haven't even been charged yet," Childress said.

As of April 20, the District Attorney's Office had 5,300 cases in screening, according to the office's response to a public information request from El Paso Matters. While in screening, these cases are considered "pre-filed," meaning that the DA has not yet decided whether to file the case for prosecution and formally charge someone with a crime.

During this pre-filed stage, defense attorneys do not have access to evidence against their client, which can impede their ability to represent them effectively, Childress said.

"The crazy thing is we can't do anything to help a client defend him or herself during this pre-indictment stage. We don't get police reports, we don't know who the witnesses are, we don't have the opportunity to go out and make sure that, you know, videos don't get erased, and people don't leave town and things like that," she said.

The DA's delay in screening and indicting cases also has affected people who are in custody. Article 17.151 of the Texas Code of Criminal Procedure prohibits jailing defendants past 30 to 90 days if the state isn't ready for trial.

Between 2018 and 2020, roughly 14 people were released under this provision each year. In 2021, Rosales' first year in office, that number jumped to 183.

Private defense attorneys weigh whether to follow suit

The Public Defender's Office represents defendants who can't afford to hire a private attorney and handles roughly 40% of criminal cases in El Paso County. Some private defense attorneys are now weighing whether to follow the public defender's lead.

Omar Carmona

Defense attorney Omar Carmona said his clients have also experienced delays that would make their cases eligible for dismissal under 32.01. But while he's planning to request similar dismissals, for now, he said he and other private defense lawyers may wait to see if there's any "fallout" from this week's hearings.

"We've seen how this (district attorney's) office has been vindictive in the past," he said.

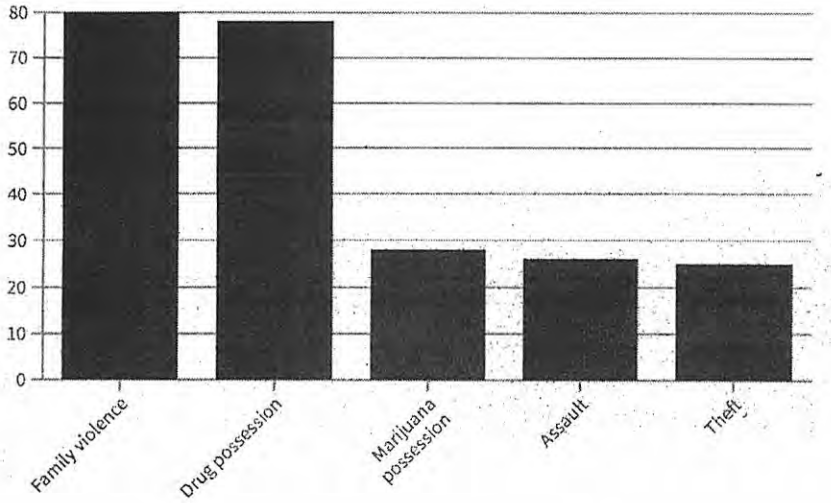
Last fall, Carmona represented Ivan Gabaldon, whose **capital murder charge was dismissed** after a judge ruled that the DA's office had taken "vindictive actions" against him in a case that was also marked by prosecutorial delays.

In their motion to dismiss the case, Carmona and co-defense attorneys Denise Butterworth and Felix Valenzuela argued that state prosecutors had asked for the death penalty against their client as a way to buy themselves more time to prepare, and because the defense had sought to protect their client's constitutional right to a speedy trial. In earlier hearings, the DA's senior division chief, Curtis Cox, **acknowledged** that prosecutors had received the case, but "apparently for at least the next six months effectively did nothing."

What types of cases were dismissed

Most of the week's dismissed cases involved drug-related arrests. About one in five involved people accused of family violence assaults.

Top 5 types of criminal cases in Aug. 14-18 dismissal requests



Source: El Paso Matters analysis of El Paso Jail Magistrate dockets

A Flourish chart

Penny Hamilton, who retired as head jail magistrate for El Paso County this spring, said that when she released people accused of violent offenses from jail, she'd try to establish a "safety zone" for the person they may have harmed. She'd prohibit the accused person from possessing any weapons or ammunition, for example, or bar them from going within 200 yards of an alleged victim's workplace or home.

"You want to avoid any kind of repeat offense or increase in violence that could be committed against the victim," she said.

With last week's dismissals, any protective conditions imposed on someone as part of their bond — such as restrictions against contacting an alleged victim — were also removed.

"Her inaction is really such a disservice to our community. It's a public safety issue, especially now. I mean, (about) 400 cases dismissed and a lot of those having victims of violent crime? That's just shameful," Hamilton said.

Reading about the dismissals, Jen worried that a pending sexual assault case against her former partner, who she says abused her and her children for years, would be among those dropped.

In July 2020, the previous DA's office indicted Jen's ex-partner for multiple alleged violations of a protective order — a felony offense that is set for trial this fall. But Jen said she's been unable to learn the status of the sexual assault case, which she believes has been in screening at the DA's office since 2019. "I have gotten zero confirmation," she wrote in a text message. "We are still in limbo waiting."

El Paso Matters is not publishing Jen's real name due to the risk of violence from her former partner.

"It's very frustrating," Jen said of the dismissals. "Not many (domestic violence) victims feel the DA is on our side. No point in reporting to police if the DA will do nothing."

In her press statement, Rosales wrote that, "victim advocate services are still assisting victims while the cases are pending filing."

No objection from the state

In her statement, Rosales described article 32.01 as a "procedure wherein Judge Humberto Acosta has released defendants from all bond conditions." But though Acosta granted the dismissals, the law gave him little choice in the matter, Hamilton said.

Acosta might have had more discretion if prosecutors had provided a reason, or "good cause" for the delay, she noted.

In comments to the media, Rosales has said the backlog had been caused by the COVID-19 pandemic; older cases lingering from the previous district attorney, Jaime Esparza, who left office in December 2020; and a delayed presentation of cases to her office by the El Paso Police Department during a six-month contract re-negotiation period for the District Attorney Information Management System, an information-sharing program between the two agencies meant to help screen cases more efficiently.

In a press statement, El Paso police wrote: "Cases not presented through DIMS were still presented to the DA's office in a timely manner and most within 10 days of an arrest, or in non-arrest cases, well within the statute of limitations."

Public Defender Kelli Childress describes the hardships imposed on individuals during the pre-indictment phase of their legal proceedings, following an Aug. 15 hearing in which Jail Magistrate Humberto Acosta granted her motion to dismiss dozens of cases due to the district attorney's inaction in bringing indictments. (Corrie Boudreaux/El Paso Matters)

The DA's office did not cite any reasons for lack of prosecution during the dismissal hearings. It did not file affidavits attempting to show good cause for its delays, and at the hearings did not object to the dismissals.

Childress estimated that over the course of the week, she agreed to prosecutors' requests to withdraw about 20 motions before the hearings began.

Carmona, who watched some of the dismissals, said "just to have your prosecutor go up there and say 'nothing from the state' — that's just not good enough.

"That's a total lack of accountability."

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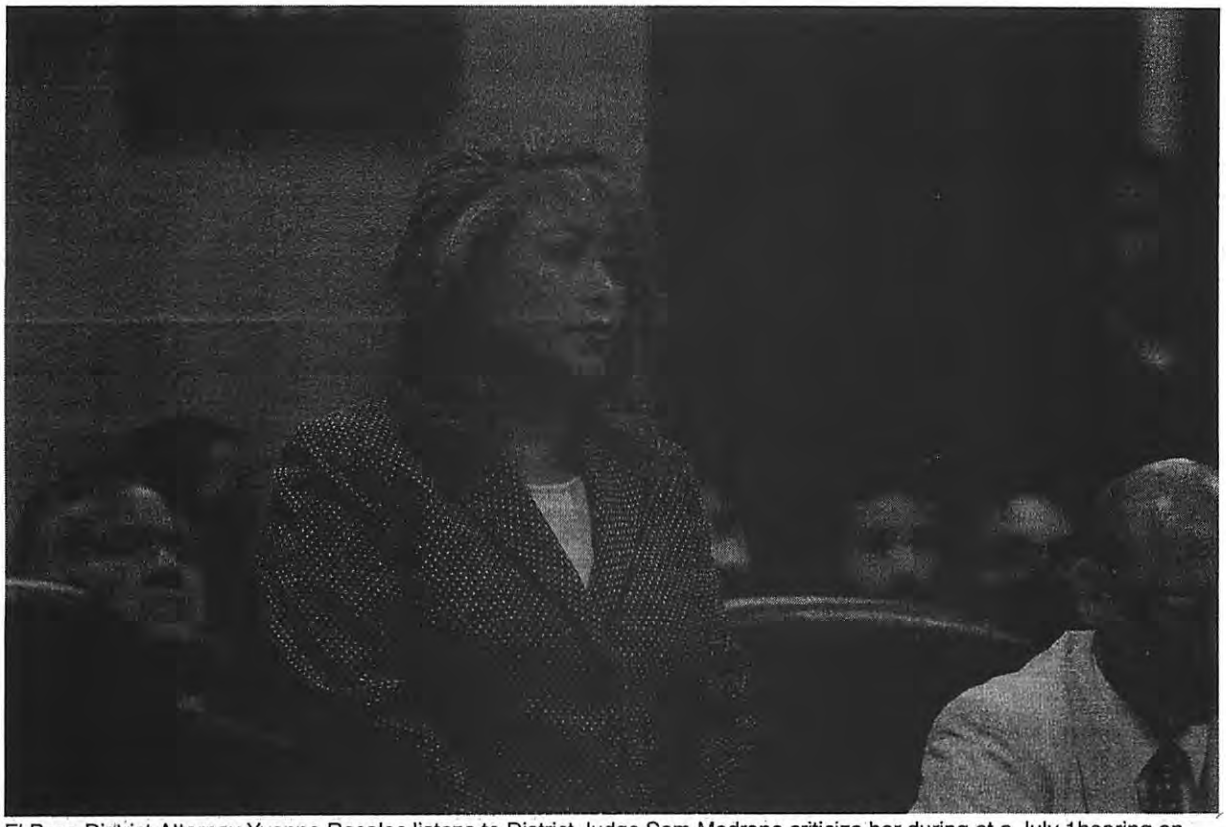
ATTACHMENT F

GOVERNMENT

Court petition seeks removal of El Paso District Attorney Yvonne Rosales

by **Victoria Rossi**
August 24, 2022



El Paso District Attorney Yvonne Rosales listens to District Judge Sam Medrano criticize her during at a July 1hearing on the Walmart shooting case. (Corrie Boudreaux/El Paso Matters)

3:50 p.m. This story has been updated with comments from El Paso District Attorney Yvonne Rosales and state Rep. Joe Moody.

District Attorney Yvonne Rosales should be removed from office because of incompetency and official misconduct, according to a petition filed with the El Paso District Clerk's Office on Wednesday.

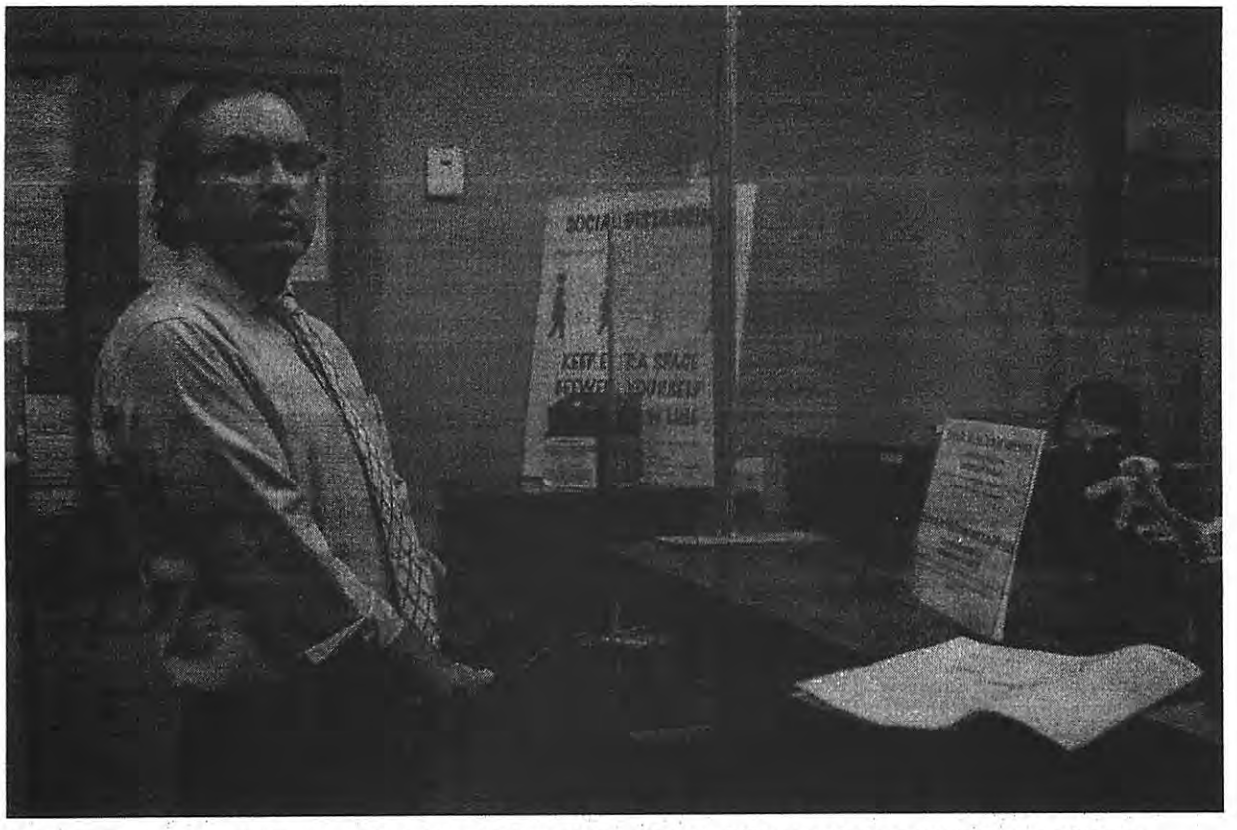
The case, which Rosales called an assault on the political process, was assigned to the 346th District Court presided by District Court Judge Patricia Baca.

The petition triggers a rarely used mechanism for removing an elected official in Texas, a process that could take months to resolve. The petition was filed by defense attorney Omar Carmona, who represented a capital murder defendant whose charges were

dismissed in 2021 after a judge ruled that the District Attorney's Office had **engaged in prosecution vindictiveness**.

Carmona asks that Rosales be temporarily removed from office while the courts consider his petition.

The effort to oust Rosales, a Democrat who was elected in 2020, comes after months of turmoil in her office, including the **dismissal of hundreds of cases** because of a failure to seek indictments in time, and controversy over the **handling of the Aug. 3, 2019, mass murder** at the Cielo Vista Walmart.



Defense attorney Omar Carmona visited the El Paso District Clerk's Office on Wednesday to file a petition to remove District Attorney Yvonne Rosales from office. (Corrie Boudreaux/El Paso Matters)

"Since August 3, 2019, our community has come a long way. We have healed together, we have grieved together and we've cried together ... but we still don't have that final closure," Carmona said. "So it's time for a change and it's a change we cannot wait for. We cannot wait for the next election cycle. It has to be done right away."

Rosales has said the problems are not her fault, instead saying they stem from the effects of the COVID-19 pandemic and alleged failures by her predecessor, longtime District Attorney Jaime Esparza. The Covid-19 pandemic has caused backlogs across the court system nationwide, with larger jurisdictions such as Harris County seeing a backlog of 94,000 pending cases.

In a press release issued Wednesday afternoon, Rosales' office called the petition a political tactic.

"We believe that it is a frivolous attempt by an attorney who has actively been attacking the administration for many months now in regard to a case which is pending on appeal," the statement reads. "The District Attorney is committed to serving the community of El Paso. Every attempt will be made to address and fight this petition. In a democracy, people vote for their elected officials. This is an assault on the electoral process in a manner designed to undermine our democracy."

State Rep. Joe Moody, D-El Paso, said Rosales' performance and the attempt to remove her raise challenging questions.

"As someone who believes in our system, I'm always leery about anything that puts a decision about who represents the people in any hands besides the people. We have a removal system, and that's an election in 2024," said Moody, one of the Legislature's leading voices on criminal justice issues. "That said, I've never witnessed such gross incompetence — it's not only embarrassing, it's dangerous and disgraceful. A lot of El Pasoans are going to be hurt before 2024 by the very person they should most be able to rely on."