

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO,

PLAINTIFF,

VS.

ALEXANDER RAE BALDWIN III,

DEFENDANT.

No. D-0101-CR-2024-0013
Judge Mary Marlowe Sommer

DEFENDANT ALEC BALDWIN'S MOTION TO DISMISS THE INDICTMENT COMBINED EXHIBIT
SET 1 OF 10

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EXHIBIT 1

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT**

STATE OF NEW MEXICO

Plaintiff,

vs.

ALEXANDER RAE BALDWIN III,

Target.

No. D-0101-GJ 2023-00008
Judge T. Glenn Ellington

**MOTION FOR SANCTIONS AGAINST
SPECIAL PROSECUTORS KARI MORRISSEY AND JASON LEWIS**

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Baldwin respectfully submits this motion for sanctions against the State to remedy Special Prosecutor Kari Morrissey's violation of the Court's November 15, 2023 Order not to publicly disclose the content and outcome of the November 15 hearing.

INTRODUCTION

This is a simple motion. The State has repeatedly and improperly disclosed information about the prosecution of Alec Baldwin and the grand jury proceeding—ranging from comments about Baldwin's criminal culpability, to the grand jury date and the rationale behind presenting this case to the grand jury. On November 15, 2023, the Court sought to stop further disclosures about the grand jury process, ordering the parties to refrain from commenting about the grand jury process or the content of any hearings before the Court related to the grand jury. The State has already violated that order. Barely one hour after the Court issued the order, the State disclosed details about the November 15 hearing to NBC News. The Court's order was clear, and the State violated it. The Court should therefore hold the State in contempt and issue appropriate sanctions.

FACTUAL BACKGROUND

The State has pursued a prejudicial media campaign against Baldwin since the beginning of this prosecution. On January 18, 2023, the District Attorney's Office announced that it would reveal its charging decisions related to the *Rust* shooting the following day. The announcement featured high-definition media headshots of District Attorney Mary Carmack-Altwies and Special Prosecutor Andrea Reeb. The announcement stated that there would be "no news conference or public appearances by [the D.A.'s] office" in connection with the decision, and that "the announcement will be a solemn occasion, made in a manner keeping with the office's commitment to upholding the integrity of the judicial process and respecting the victim's family":



First Judicial District Attorney

January 18 · 🌐

On Thursday my office will announce the decision whether to press charges in the 2021 Santa Fe County film-set shooting that killed movie director Halyna Hutchins.

I and special prosecutor Andrea Reeb will announce our decision in a written statement that will be shared with the media and the public at 9 a.m. Mountain Standard Time.

There will be no news conference or public appearances by my office.

"Regardless of the District Attorney's decision, the announcement will be a solemn occasion, made in a manner keeping with the office's commitment to upholding the integrity of the judicial process and respecting the victim's family," said Heather Brewer, spokesperson for the office of the First Judicial District Attorney.

Who: New Mexico First Judicial District Attorney Mary Carmack-Altwies and "Rust" Special Prosecutor Andrea Reeb

What: Announcing their decision whether to file charges in the death of Halayna Hutchins on the "Rust" film set.

Where: Via written statement to be shared with media by email and posted to the District Attorney's official social media accounts.

When: Thursday, January 19, 9 a.m. Mountain Standard Time (Denver)



Forty minutes before the District Attorney's announcement on January 19, Baldwin's counsel received a call from the *Wall Street Journal* asking whether he wanted to comment on the fact that Baldwin would be charged with involuntary manslaughter. (Affirmation of Luke Nikas ("Nikas Aff.") ¶ 4.) This phone call was the first time Baldwin or his counsel learned that the State would be pursuing criminal charges. *Id.*

That morning, at 9 a.m. MST, the District Attorney's office announced that it planned to charge Baldwin with two counts of involuntary manslaughter, plus a sentencing enhancement for the use of a firearm. The press release stated that "[t]he firearm enhancement makes the crime punishable by a mandatory five years in jail." Contrary to their statement that this would be a

“solemn occasion” with “no . . . public appearances,” after announcing the charges, the District Attorney and the Special Prosecutor immediately appeared on several national television programs. During these appearances, Carmack-Altwies and Reeb commented on the evidence, Baldwin’s culpability, the impending charges, and Baldwin’s possible sentence.

For example, less than an hour after charges were announced, Carmack-Altwies appeared on CNN and discussed “key pieces of evidence” with a reporter from the Santa Fe New Mexican.¹ During the program, Carmack-Altwies asserted that Baldwin “had a duty to make sure the set was safe” and he “should have checked that gun, checked those projectiles.” *Id.* Later that same day, Carmack-Altwies and Reeb appeared on Jeanine Pirro’s program on Fox News, stating that “it was not a safe set” and asserting that it was Baldwin’s responsibility to ensure the set’s safety.² In the same interview, Reeb stated that a lab report confirmed that “definitely the trigger was pulled”³ and made false assertions about Baldwin’s mental state, including that “Baldwin knows everything that goes on the set.” *Id.* In an interview with NBC News, Reeb commented on Baldwin’s ultimate

¹ “Santa Fe DA explains decision to charge Alec Baldwin over ‘Rust’ shooting,” CNN (Jan. 19, 2023), <https://www.cnn.com/videos/us/2023/01/19/santa-fe-district-attorney-mary-carmack-altwies-rust-movie-set-shooting-charges-campbell-intv-ath-vpx.cnn>.

² “Alec Baldwin prosecutors reveal evidence that led to charges,” FOX NEWS (Jan. 19, 2023), <https://www.foxnews.com/video/6318931263112>. Carmack-Altwies also disparaged Baldwin and his counsel, falsely accusing Baldwin of deleting information from his phone—a claim she knew was false because Baldwin’s counsel had previously guided the prosecution team to the messages they originally had been unable to locate and falsely claimed were deleted.

³ Reeb omitted that the same lab report referred to testing in which the FBI intentionally broke the firearm at issue by hitting it repeatedly with a rawhide mallet—without first inspecting or documenting the condition of the firearm—thereby preventing the defense from inspecting the condition of the firearm when it discharged or conducting any of its own testing. She also failed to mention “informal testing” that the District Attorney conducted in February 2022, which demonstrated that Baldwin’s claim not to have pulled the trigger was plausible.

guilt, stating that he “is somebody who committed a crime.”⁴ On January 21, 2023, Reeb appeared on another television program—this time, with Sean Hannity—where she commented on both the FBI reports and Baldwin’s prior statements, noting that “all those statements” “would be admissible” and would be “used against” Baldwin.⁵

On January 31, 2023, the government filed an information charging Baldwin with two alternative felony counts of involuntary manslaughter under NMSA 1978, § 30-2-3(B). The last sentence of the second alternative count stated: “This offense shall be enhanced pursuant to the firearm enhancement statute, §31-18-16, NMSA 1978.” From day one, the State’s prosecution contained serious legal defects.

First, the inclusion of the enhancement violated the Ex Post Facto Clauses of both the United States and New Mexico Constitutions, because the statute under which it was brought did not take effect until after the incident occurred, as Baldwin explained in a motion filed February 10, 2023. *See* D-0101-CR-202300-039, “Defendants Notice of Unlawful Enhancement and Motion Not to Bind Over Enhancement” (Feb. 10, 2023). The State issued an extraordinary statement to the media after Baldwin filed his motion, stating, “Another day, another motion from Alec Baldwin and his attorneys in an attempt to distract from the gross negligence and complete disregard for safety on the Rust film set that led to Halyna Hutchins’ death,” and that the District Attorney and Special Prosecutor would remain focused on justice and ensuring “that everyone—even celebrities with fancy attorneys—is held accountable under the law.” Mark Osbourne, “DA drops gun enhancement charge against Alec Baldwin in 'Rust' shooting,” ABC NEWS (Feb. 20, 2023),

⁴ “Prosecutors say they knew early in the probe that the fatal ‘Rust’ shooting would lead to charges,” NBC NEWS (Jan. 19, 2023), <https://www.nbcnews.com/news/us-news/prosecutors-say-knew-early-probe-fatal-rust-shooting-lead-charges-rcna66575>.

⁵ “‘Someone’s political party has never been an issue on why we charge somebody’: ‘Rust’ case special prosecutor,” FOX NEWS (Jan. 21, 2023), <https://www.foxnews.com/video/6319006222112>.

<https://abcnews.go.com/US/da-drops-gun-enhancement-charge-alec-baldwin-rust/story?id=97337067>.

Two days later, on Sunday, February 12, Reeb sent an email to Baldwin’s counsel in which she accused Baldwin’s counsel of failing to follow proper procedure, demanded Baldwin withdraw the motion, and even threatened counsel with sanctions. *See* D-0101-CR-202300-039, “Notice of Withdrawal of Notice of Unlawful Enhancement and Motion Not to Bind Over Enhancement” (Feb. 20, 2023) at Exhibit A. Approximately twenty minutes later, before Baldwin’s counsel had responded, Reeb sent another email, noting that she would “look at the specific numbers and sections to make sure [they had] it correct”—apparently indicating that up to that point, the government had not even examined the statutes charged. *Id.* at Exhibit B. Less than two hours later, Reeb emailed Baldwin’s counsel a third time, now noting that she had been “busy in session all week” due to her simultaneous service in the New Mexico Legislature, but that she had finally reviewed the enhancement statute and now “100 percent agree[d]” with Baldwin’s “assessment of the issue.” *Id.* at Exhibit C. She promised that the State would “amend the criminal information to take off the firearm enhancement.” *Id.* And she requested that Baldwin withdraw the motion in light of the State’s change in position. On February 17, 2023, the State filed a First Amended Criminal Information, which omitted the unconstitutional enhancement.⁶

⁶ Even after downgrading the charges, the State continued to issue prejudicial statements to the media criticizing Baldwin and his counsel for filing a meritorious motion, stating falsely that the government’s withdrawal of the enhancement was intended to “avoid further litigious distractions by Mr. Baldwin and his attorneys” and that the prosecution’s priority is “securing justice, not securing billable hours for big-city attorneys.” Julia Jacobs, “‘Rust’ Prosecutors Downgrade Alec Baldwin’s Manslaughter Charges,” N.Y. TIMES (Feb. 20, 2023), <https://www.nytimes.com/2023/02/20/arts/alec-baldwin-manslaughter-charge-rust.html?smid=nytcore-ios-share&referringSource=articleShare>.

Second, the appointment of Special Prosecutor Reeb was unconstitutional, given that Reeb was simultaneously serving in the New Mexico State Legislature. Baldwin filed a motion to disqualify Reeb as the special prosecutor because her dual service as both a member of the Legislature and a special prosecutor violated the separation-of-powers provision of the New Mexico Constitution, which states that “no person . . . charged with the exercise of powers properly belonging to one of [the legislative, executive, and judicial] departments shall exercise any powers properly belonging to either of the others.” N.M. Const. art. III, § 1. Immediately after the disqualification motion was filed, the District Attorney and Special Prosecutor’s spokesperson told the news media that Baldwin and his lawyers can “use whatever tactics they want to distract from the fact that Halyna Hutchins died because of gross negligence and a reckless disregard for safety on the ‘Rust’ film set.” Graham Bowley and Julia Jacobs, “Alec Baldwin’s Lawyers Say ‘Rust’ Prosecutor Should Be Disqualified,” N.Y. TIMES (Feb. 7, 2023), <https://www.nytimes.com/2023/02/07/arts/andrea-reeb-rust-special-prosecutor.html>. On March 14, 2023, Reeb announced that she was stepping down as Special Prosecutor, effectively conceding Baldwin’s motion. Rather than acknowledge the constitutional violation of serving simultaneously as a member of the legislature and a prosecutor for the State, however, Reeb issued another public statement that characterized her choice to step down as a way to avoid “cloud[ing] the real issue at hand,” and remarking that “the best way I can ensure justice is served in this case . . . is to step down so that the prosecution can focus on the evidence and the facts, which clearly show a complete disregard for basic safety protocols led to the death of Halyna Hutchins.” Julia Jacobs, “‘Rust’ Prosecutor Steps Down After Baldwin Challenges Appointment,” N.Y. TIMES (Mar. 14, 2023), <https://www.nytimes.com/2023/03/14/arts/rust-andrea-reeb-special-prosecutor.html>.

Around this time, the State produced private messages between Carmack-Altwies and Reeb revealing that Reeb was eager to be involved in a public press strategy against Baldwin to promote herself and her political campaign—a stunning exchange in which Reeb laughed about prosecuting Baldwin in service of her own political agenda. *See* D-0101-CR-202300-039, “Defendant’s Notice of Withdrawal of Motion to Disqualify the Special Prosecutor and Response to Court’s Letter of March 20, 2023” (Mar. 21, 2023) at ¶ 3 (Message from Reeb to Carmack-Altwies: “I . . . won’t talk to the press and will leave that all to you Mary. At some point though, I’d at least like to get out there that I am assisting you....as it might help in my campaign lol.”). Those same messages reveal that Carmack-Altwies was willing to assist Reeb with her mission. *Id.* (Message from Carmack-Altwies to Reeb: “I am intending to either introduce you or send it in a press release when we get the investigation!”).

In March 2023, Kari Morrissey and Jason Lewis were appointed as special prosecutors. In April 2023, they dismissed all charges against Baldwin. On October 5, 2023, Morrissey informed Baldwin’s counsel in writing that the State intended to seek an indictment against him, but that, before doing so, it was offering Baldwin a plea deal identical to the petty misdemeanor deal accepted by Dave Halls. She said that Baldwin had until October 27 to accept the offer. Ten days before that offer expired, however, the Special Prosecutors retracted their plea offer and abruptly informed Baldwin’s counsel that they would be presenting the case to a grand jury.

On the same day that Special Prosecutor Morrissey informed Baldwin’s counsel that she was retracting the plea offer and would present the case to a grand jury, *The New York Times* published an article revealing that Morrissey had conducted an interview with the *Times* about the

case and improperly disclosed details about her intention to present the case to a grand jury.⁷ The article states that “prosecutors said” they “will convene a grand jury to consider whether to refile an involuntary manslaughter charge against Alec Baldwin in the fatal shooting of a cinematographer who was killed on the set of the film ‘Rust’ in 2021.” *Id.* The article quotes Morrissey as stating that “based on our lengthy and detailed investigation [we believe] it is appropriate for a grand jury in New Mexico to make a decision on whether the case should proceed.” *Id.* The article further states that “[p]rosecutors decided to reopen the case after submitting the gun for further analysis, which they said contradicted Mr. Baldwin’s assertion that he had not pulled the trigger,” quoting Special Prosecutor Morrissey’s statement that “[t]he forensic testing of the gun concluded with certainty that the trigger of the gun had to have been pulled for the gun to go off.” *Id.* The article further reports that Special Prosecutor Morrissey “said the prosecutors intend to begin presenting the case to a grand jury on Nov. 16.” *Id.*

As the Court knows, the parties engaged in motion practice following the Special Prosecutor’s interview with the *New York Times*. The State sought to shorten Baldwin’s time to submit exculpatory evidence for the grand jury’s consideration. The State claimed that it “intended to treat Mr. Baldwin . . . not differently than similarly situated defendants in New Mexico,” even as Morrissey simultaneously acknowledged *never* having seen a target notice that shortened the window for a target to submit an alert letter. *See* Ex. 1 (“Every target notice I have ever seen in NM has a sentence that indicates that the target must notify the prosecution of potential witnesses, questions or exhibits 48 hours prior to the grand jury date.”). Yet, on the same day the State served a target notice on Baldwin, it also served a target notice on Hannah Gutierrez-Reed that *included*

⁷ *See* Julia Jacobs, “Grand Jury Will Consider New Manslaughter Case Against Alec Baldwin,” N.Y. TIMES (Oct. 17, 2023), <https://www.nytimes.com/2023/10/17/arts/alec-baldwin-grand-jury-rust.html>.

the 48-hour deadline. *Compare* Ex. 2 *with id.* at Ex. 3. In another unprecedented step, the Special Prosecutors sought to voir dire the grand jury without the involvement of Baldwin’s counsel or the Court. *See* D-0101-GJ 2023-00008, “Expedited Motion to Permit State to Conduct Voir Dire of Grand Jury Venire” (Nov. 1, 2023).

The Court denied the State’s motions and set the schedule for Baldwin’s alert letter and the State’s objections. Baldwin submitted his alert letter on November 14, and the State filed its objections on November 15. The Court then held a hearing in the afternoon of November 15. At the hearing, the Court expressed its deep concern about disclosures that had been made about the grand jury process, noting that members of the grand jury venire had requested to sit on the Baldwin grand jury. The Court therefore unequivocally and repeatedly ordered the parties not to disclose information about the grand jury process or what happened during the November 15 hearing. In response to the Court’s order, Morrissey asked the Court to clarify that its order applied to Baldwin’s counsel as well—notwithstanding the fact that principles of grand jury secrecy are intended to benefit the target, not the State. The Court stated that its order applied to both parties.

Within about an hour of the hearing, at 7:11 and 7:20 p.m. EST, counsel for Baldwin, Luke Nikas, received phone calls from NBC News. Nikas Aff. ¶ 5. When Nikas returned the calls at 8:51 p.m., NBC informed him that it was seeking confirmation of Morrissey’s statement that Your Honor had vacated the grand jury date and moved the date to a later time because the Court did not have an opportunity to review Baldwin’s grand jury submission and the prosecutors’ objections. *Id.* Consistent with Your Honor’s order, Baldwin’s counsel declined to comment. *Id.* By that time, however, NBC had already reported Morrissey’s disclosure of what happened during the Court hearing. *See* Chloe Melas, “Previously unreleased videos show Alec Baldwin firing prop gun with blanks and directing ‘Rust’ crew on safety,” NBC NEWS (Nov. 15, 2023, 7:33 PM EST), <https://www.nbcnews.com/news/us-news/previously-unreleased-videos-show-alec->

baldwin-firing-prop-gun-blanks-rcna125294 (stating that “Special prosecutors in New Mexico were scheduled to convene a grand jury Thursday to consider recharging Baldwin with involuntary manslaughter. But the judge rescheduled it during a teleconference hearing Wednesday, a source familiar with the case said.”); “Alec Baldwin fires prop gun in previously unreleased ‘Rust’ video,” THE TODAY SHOW (Nov. 16, 2023) <https://www.today.com/video/new-videos-show-alec-baldwin-firing-prop-gun-while-filming-rust-198010438001> (stating that the Court adjourned the grand jury hearing because “the judge wanted more time to review the materials in the case”). Special Prosecutor Morrissey violated the Court’s order barely one hour after the Court ordered the parties not to disclose any information regarding the hearing or grand jury process.

In violating the Court’s order, the Special Prosecutors also disclosed that evidence they “requested from Rust Movie Productions LLC in the spring” was not received “until October,” in an apparent attempt to further prejudice Baldwin. Chloe Melas, “Previously unreleased videos . . .,” NBC NEWS (Nov. 15, 2023, 7:33 PM EST). The article also reported the Special Prosecutors’ troubling motivations behind the prosecution. As stated in the article:

Prosecutors haven’t said publicly what new evidence they have obtained during their months of investigation. But a source familiar with the case said the special prosecutors have had discussions in which they said they hope the trial will “humble” Baldwin, specifically citing his run-ins with paparazzi and public comments that weren’t about the case. The source added that the intention is for it to be a “teachable moment” for Baldwin.

Id. The following morning, on *The Today Show*, NBC added that the Special Prosecutors not only intended to “humble” Baldwin through this prosecution, but that they also thought he was “arrogant.” See “Alec Baldwin fires prop gun in previously unreleased ‘Rust’ video,” THE TODAY SHOW (Nov. 16, 2023).

Following the State’s violation of the Court’s November 15 Order, Baldwin filed a motion to obtain the audio transcript of the hearing to review and then provide to the Court with this

sanctions motion. Special Prosecutor Morrissey objected to that request, stating that she has concerns about giving Baldwin's counsel access to the transcript (even though it was Morrissey, not Baldwin or his counsel, who had just violated the Court's order, and even though it is almost certainly unprecedented to prevent a party from receiving a transcript of a hearing in his own case).

ARGUMENT

"To hold a party in civil contempt, there must be evidence of: (1) knowledge of the court's order; (2) ability to comply; and (3) willful noncompliance with the order." *Rhinehart v. Nowlin*, 1990-NMCA-136, ¶ 30, 111 N.M. 319, 326, 805 P.2d 88, 95 (citing *Dial v. Dial*, 1985-NMCA-059, ¶ 17, 103 N.M. 133, 136, 703 P.2d 910, 913). Here, the Court unequivocally ordered the parties not to disclose information about the grand jury process or what happened during the November 15 hearing. Special Prosecutor Morrissey violated the Court's order within an hour, telling NBC News that the Court had postponed the grand jury date because the Court did not have an opportunity to review Baldwin's grand jury submission and the prosecutors' objections. *Supra* at 9-10. The State's act of contempt comes on the heels of a significant history of improper public statements that were designed to prejudice Baldwin. The Court should therefore issue sanctions.

"It has long been recognized that a court must be able to command the obedience of litigants and their attorneys if it is to perform its judicial functions." *State ex rel. New Mexico State Highway & Transp. Dep't v. Baca*, 1995-NMSC-033, ¶ 11, 120 N.M. 1, 4, 896 P.2d 1148, 1151. "Courts need not suffer nor tolerate a party's inability to comply with rules and orders," and where a "court's orders were clear and unambiguous . . . the violation of clear and unambiguous orders is only further proof of culpable conduct." *State v. Le Mier*, 2017-NMSC-017, ¶¶ 24, 26, 394 P.3d 959, 967. Here, serious sanctions are warranted for the State's violation of the Court's clear and unambiguous November 15 order. *See, e.g., State v. Cherryhomes*, 1992-NMCA-111, ¶

15, 114 N.M. 495, 498, 840 P.2d 1261, 1264 (“Willful violation of a court’s order without testing its validity through established processes directly affects a court’s ability to discharge its duties . . . [and gives] the district court . . . the discretion to exercise its inherent power to issue a contempt sanction to preserve its authority and maintain respect for the courts.”).

Trial courts possess “broad discretionary authority” to decide what sanction to impose when an order is violated. *State v. Le Mier*, 2017-NMSC-017, ¶ 22, 394 P.3d 959, 965. That determination should account for the severity of the State’s conduct, as well as the history of the State’s conduct in the case. The conduct at issue here is significant: the Court specifically warned the parties of the prejudice of disclosing information about the grand jury, including the fact that certain grand jurors were asking to sit on the Baldwin grand jury (clearly, those individuals are likely to have pre-conceived notions about the case). There was *no* reason for the Special Prosecutor to disclose what occurred at the hearing except to further prejudice Baldwin.

The State’s conduct leading up to the State’s violation is also troubling and highly relevant. The State misled Baldwin as to whether he was considered a target and failed to provide the advance notice it had promised before announcing its charges—instead disclosing that information first to the *Wall Street Journal* in order to generate a massive and prejudicial press cycle. The State conducted a highly improper and unethical media circus within an hour of those charges being announced. The State’s unconstitutionally-appointed special prosecutor, Reeb, whose explicitly unlawful agenda was later revealed, charged Baldwin with an unconstitutional firearm enhancement—missteps that the State privately conceded to Baldwin’s counsel but publicly denied, blaming its decision to drop the enhancement on the “tactics” of Baldwin’s “fancy,” “big city” attorneys. *State v. Brule*, 1999-NMSC-026, ¶ 7, 127 N.M. 368, 370, 981 P.2d 782, 784 (“Due process requires that a defendant be free to exercise his or her procedural, statutory, or

constitutional rights without fear of prosecutorial retaliation”); *see also United States v. Raymer*, 941 F.2d 1031, 1042 (10th Cir. 1991) (inquiry into vindictiveness turns on whether, “as a practical matter, there is a realistic or reasonable likelihood of prosecutorial conduct that would not have occurred but for hostility or punitive animus towards the defendant because he exercised his specific legal right”).

After the first prosecution team resigned, the current Special Prosecutors improperly disclosed the grand jury date to the media, commented on Baldwin’s culpability, and discussed details about their intended presentation to the grand jury. *Supra* at 7-10. The State’s conduct has violated the rules of grand jury secrecy. *See* N.M.S.A. 31-6-4 (noting that “all [grand jury] deliberations shall be conducted in a private room outside the hearing or presence of any person other than the grand jury members”); *c.f.* N.M. R. Crim. P. Dist. Ct. 5-506 (providing for the release of the sound recording of grand jury testimony to a party only upon request of that party); *Davis v. Traub*, 1977-NMSC-049, ¶ 10, 90 N.M. 498, 501, 565 P.2d 1015, 1018 (“There is a uniform policy among all states that grand jury proceedings must be secret and insulated from all outside influences”). The State has violated the prosecutorial code of ethics. *See* N.D.A.A. Nat’l Prosecution Standard 2-14.2 (“The prosecutor should refrain from making extrajudicial comments before or during trial that promote no legitimate law enforcement purpose and that serve solely to heighten public condemnation of the accused.”); *id.* 2-14.2 (“Prior to and during a criminal trial the prosecutor should not make any public, extrajudicial statement that has a substantial likelihood of materially prejudicing a judicial proceeding.”). And now the State has violated an unequivocal order of this Court.⁸ The timing and seriousness of the Special Prosecutors’ violation—barely an

⁸ Baldwin would have quoted the Court’s order and provided an audio transcript for the Court’s review, but Special Prosecutor Morrissey objected to the Court providing Baldwin’s counsel with the transcript. Critically, in doing so, Morrissey admits that the Court Order she violated was

hour after the Court issued the Order and described the seriousness of the prejudice such a disclosure could create—demonstrates that there are no rules the State won’t break to put its thumb on the scale.

Severe sanctions are warranted against the State. At a minimum, Special Prosecutors Morrissey and Lewis should be disqualified. *See State v. Brule*, 1999-NMSC-026, ¶ 5, 127 N.M. 368, 370, 981 P.2d 782, 784 (stating that “while all forms of prosecutorial misconduct may impinge to some degree on a defendant’s right to due process, prosecutorial vindictiveness constitutes a particularly severe, prejudicial, and repugnant due process violation”); *see also State v. Lucero*, 1998-NMSC-044, ¶ 20, 126 N.M. 552, 557, 972 P.2d 1143, 1148 (“Perjury, deceit, or malicious overreaching that subverts a grand jury proceeding constitutes conduct that infringes upon the independent judgment of the jurors”). The State, and Special Prosecutor Morrissey personally, should also be required to pay significant monetary sanctions, including the fees and costs that Baldwin incurred in connection with the preparation of this motion, monetary sanctions to punish the State and Morrissey for their flagrant violation of the Court’s order, and monetary sanctions to encourage the State and Morrissey’s compliance with future Court orders.

The Court should also impose additional sanctions that it believes to be just and proper in the circumstances, because monetary sanctions are not adequate to remedy the harm. The State

“clear” and therefore required no clarification. *See* D-0101-GJ 2023-00008, “State’s Response in Opposition to Motion to Permit Target’s Counsel to Obtain Recording of Proceeding” (Nov. 20, 2023) at ¶ 6. Separately, the State objected to Baldwin’s request on the basis that Baldwin would somehow use the transcript publicly, even if it were under seal as Baldwin’s counsel requested. *Id.* ¶ 5. While the State may have no concern violating the Court’s orders, Baldwin has never done so and has no intention of ever doing so. Moreover, the State’s criticism that Baldwin did a short interview on CNN several months ago (*id.* ¶ 3), when the criminal case was not pending, ignores the avalanche of State-generated media that has attempted to destroy Baldwin and prejudice these proceedings, the distinct ethical rules that govern the State’s use of media in a criminal case (which the State, including Morrissey, has violated), and the fact that, unlike with the State, ethical rules do not bar criminal defendants or targets from engaging with the media.

should not be permitted to buy its way out of trouble for conduct that previously caused Baldwin prejudice by disclosing information about the grand jury process and for continuing to cause such harm by violating the Court's November 15 order. New Mexico courts apply severe remedies to address prosecutorial misconduct. *See, e.g., State v. Gonzales*, 2002-NMCA-071, ¶ 14, 132 N.M. 420, 423, 49 P.3d 681, 684 ("The law in New Mexico recognizes that a court can dismiss criminal charges based on severe prosecutorial misconduct."). Thus, the Court should impose additional sanctions that it deems necessary to reduce the prejudice caused by the State's conduct, which may include but not be limited to striking the State's objections to submitting the evidence listed in Baldwin's alert letter or requiring disclosures to the grand jury that to the extent they have read about the State's intention to present the case to the grand jury, the grand jury date, or anything that may have occurred in a hearing before the Court about the grand jury process, these disclosures were made by the State in violation of the grand jury secrecy rules, the National Prosecution Standards, and in contempt of the Court's November 15 Order.

CONCLUSION

For the foregoing reasons, Baldwin respectfully requests that the Court sanction the State as set forth above and in any further manner the Court believes to be just and proper.

Date: November 20, 2023

Respectfully submitted,

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alexspiro@quinnemanuel.com

John F. Bash (admitted *pro hac vice*)
300 W. 6th St., Suite 2010
Austin, TX 78701
Tel: 713-221-7000
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LEBLANC LAW LLC

Heather M. LeBlanc
823 Gold Ave. SW
Albuquerque, NM 87102
Tel: 505-331-7222
heather@leblanclawnm.law

Counsel for Alec Baldwin

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2023, a true and correct copy of the foregoing motion, as well as all supporting papers, were emailed to opposing counsel

/s/ Heather LeBlanc
Heather LeBlanc

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT**

STATE OF NEW MEXICO

Plaintiff,

vs.

ALEXANDER RAE BALDWIN III,

Target.

No. D-0101-GJ 2023-00008
Judge T. Glenn Ellington

AFFIRMATION OF LUKE NIKAS IN SUPPORT OF MOTION FOR SANCTIONS

I, Luke Nikas, having been duly sworn, affirm as follows:

1. I am a partner in the law firm of Quinn Emanuel Urquhart & Sullivan, LLP, and am admitted to practice law in the State of New York.
2. In this matter, I am associated with Heather LeBlanc, Esq., counsel licensed to practice law in New Mexico, and was granted admission *pro hac vice* in the matter of the *State of New Mexico v. Alexander R. Baldwin III*.
3. On January 19, 2023, the District Attorney's office announced to the public that it would charge Baldwin with two alternative felony counts of involuntary manslaughter under NMSA 1978, § 30-2-3(B). Approximately forty minutes before the announcement, I received a call from the *Wall Street Journal* asking whether Baldwin wanted to comment on the fact that he would be charged with involuntary manslaughter. This phone call was the first time Baldwin or I learned that the State would be pursuing criminal charges against him.

4. On November 15, 2023, I attended the hearing held before the Court in this matter. Within about an hour of the hearing, at 7:11 and 7:20 p.m. EST, I received phone calls from NBC News. I was unavailable at the time and did not answer those calls. When I returned the calls at 8:51 p.m. EST, NBC informed me that it had called to seek confirmation of Special Prosecutor Morrissey's statement that the Court had vacated the grand jury date and moved the date to a later time because the Court did not have an opportunity to review Baldwin's grand jury submission and the prosecutors' objections. Consistent with the Court's order, I declined to comment.

The statements in this affirmation are true and accurate to the best of my knowledge and belief.

DATED: November 20, 2023

A handwritten signature in black ink, appearing to read "Luke Nikas", is written above a horizontal line.

Luke Nikas

EXHIBIT 1

From: Kari Morrissey <ktm@morrisseylewis.com>
Sent: Friday, October 27, 2023 5:50 PM
To: Luke Nikas; Alex Spiro
Cc: Jason J. Lewis
Subject: Re: Baldwin target notice

[EXTERNAL EMAIL from ktm@morrisseylewis.com]

Luke

I think you are referring to 5-302.2 and we disagree with your interpretation of it. Mr. Baldwin is in a unique position - his attorneys are currently in possession of 95% of the discovery in the case. The vast majority of defendants and defense attorneys have no discovery prior to the grand jury. As such, we disagree that Mr. Baldwin and his counsel are entitled to additional time to submit requests that certain evidence/witnesses be presented the the grand jury. We intend to treat Mr. Baldwin fairly but not differently than similarly situated defendants in New Mexico. We will file our motion and note your opposition. Thank you.

Kari Morrissey

On 10/27/2023 3:21 PM MDT Luke Nikas <lukenikas@quinnemanuel.com> wrote:

Kari,

Rule 5-302A of N.M. R. Crim. P. Dist. Ct. 5 contains the 48-hour deadline. Specifically, that rule states that "[t]he target's written notice of evidence shall be provided to the prosecuting attorney no less than forty-eight (48) hours in advance of the scheduled grand jury proceeding." So we do not consent to a shortened deadline of November 10.

In fact, we believe the current grand jury date of November 16 is too soon to ensure your compliance with Rule 302.2(B). As you know, Rule 302.2(B) requires you to present all exculpatory evidence to the grand jury. Rule 302.2(B) ("The prosecuting attorney shall alert the grand jury to all lawful, competent, and relevant evidence that disproves or reduces a charge or accusation or that makes an indictment unjustified and that is within the knowledge, possession, or control of the prosecuting attorney."). We do intend to send you an alert letter setting forth certain evidence we believe you are required to present to the grand jury, including witnesses we believe you are required to call. Given the volume of evidence in this case, and the consequences of any failure to present exculpatory evidence (e.g., motions to quash), we want to ensure this process is done properly the first time around.

We therefore believe it is necessary to adjourn the November 16 grand jury date to ensure that you can coordinate appearances of the witnesses we identify and review the voluminous alert letter we will be submitting. Please let us know if you are willing to discuss a reasonable schedule for this process.

Luke Nikas

Partner

Quinn Emanuel Urquhart & Sullivan, LLP

51 Madison Avenue, 22nd Floor

New York, NY 10010

[212-849-7228](tel:212-849-7228) Direct

[212-849-7000](tel:212-849-7000) Main Office Number

[212-849-7100](tel:212-849-7100) FAX

[475-558-9881](tel:475-558-9881) Home Office

lukenikas@quinnemanuel.com

www.quinnemanuel.com

From: Kari Morrissey <ktm@morrisseylewis.com>

Date: Wednesday, October 25, 2023 at 7:50 PM

To: Luke Nikas <lukenikas@quinnemanuel.com>, Alex Spiro <alexspiro@quinnemanuel.com>

Cc: Jason J. Lewis <jjl@jjllaw.com>

Subject: Baldwin target notice

[EXTERNAL EMAIL from ktm@morrisseylewis.com]

Luke and Alex

The target notice for Alec Baldwin is attached. Every target notice I have ever seen in NM has a sentence that indicates that the target must notify the prosecution of potential witnesses, questions or exhibits 48 hours prior to the grand jury date. I have never found any basis under the law for the 48 hour deadline and as a result I have eliminated that sentence from this notice. There is a procedure under NM law for you to submit requested questions/exhibits to the prosecution for their consideration at grand jury. I assume you are aware of this procedure and intend to use it. I am happy to work with you in this regard and will fully consider any requests you make. Due to the fact that I have witnesses traveling from out of state to testify before the grand jury on 11/16/23 I intend to ask the grand jury judge (Judge Ellington) if he will establish a deadline for you to provide that information to me of November 10, 2023. Is that agreeable to you? Let me know your thoughts. Thank you.

Kari Morrissey

EXHIBIT 2



**Office of the District Attorney
First Judicial District
Mary Carmack-Altwhies, District Attorney**

LEGAL MAIL

October 25, 2023

Alexander Rae Baldwin,
c/o Luke Nikas (lukenikas@quinnemanuel.com); Alex Spiro (alexspiro@quinnemanuel.com)

Dear Mr. Alexander Rae Baldwin,

You are the target of a grand jury investigation in Santa Fe County. The crimes being investigated are:

Count 1: Involuntary Manslaughter, alleged to have occurred on or about October 21, 2021, contrary to 30-02-03(B);

Count 2: Involuntary Manslaughter, alleged to have occurred on or about October 21, 2021, contrary to 30-02-03(B);

Other possible charges may arise from the grand jury investigation.

You have the following rights with respect to this investigation:

- (1) You have a right to counsel to assist you in this matter. If you cannot afford an attorney, one will be appointed for you.
- (2) You have a right to testify before the grand jury if you desire.
- (3) You have the right not to testify.
- (4) You have a right to submit proposed questions and exhibits to the prosecution.
- (5) You have a right to alert the grand jury to the existence of evidence that would disprove or reduce an accusation or that would make an indictment unjustified, by notifying the prosecution.

On November 16, 2023, at 9:00 a.m., This case will be presented to the grand jury at the Steve Herrera Complex, located at 225 Montezuma Avenue, Santa Fe, New Mexico. If you wish to testify at this proceeding, you may appear at that time and place.

You or your attorney may submit proposed questions and exhibits to the district attorney prior to the grand jury proceedings. If you or your attorney wishes to submit proposed questions or exhibits, or for further information on the time and date of the grand jury, you may call Kari T. Morrissey at (505) 361-2138.

Sincerely,

Kari T. Morrissey
Special Prosecutor

cc: Alex Spiro, Luke Nikas

EXHIBIT 3



**Office of the District Attorney
First Judicial District
Mary Carmack-Altewies, District Attorney**

LEGAL MAIL

October 25, 2023

Hannah Gutierrez, c/o Jason Bowles (Jason@bowles-lawfirm.com)

Dear Ms. Hannah Gutierrez,

You are the target of a grand jury investigation in Santa Fe County. The crimes being investigated are:

Count 1: Unlawful Carrying of a Firearm in Licensed Liquor Establishment, alleged to have occurred on or about October 1, 2021, contrary to 30-07-03;

Other possible charges may arise from the grand jury investigation.

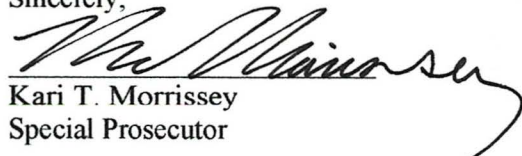
You have the following rights with respect to this investigation:

- (1) You have a right to counsel to assist you in this matter. If you cannot afford an attorney, one will be appointed for you. Call the Public Defender's Office at (505) 395-2888.
- (2) You have a right to testify before the grand jury if you desire.
- (3) You have the right not to testify.
- (4) You have a right to submit proposed questions and exhibits to the prosecution.
- (5) You have a right to alert the grand jury to the existence of evidence that would disprove or reduce an accusation or that would make an indictment unjustified, by notifying the prosecution.

On November 16, 2023, at 9:00 a.m., This case will be presented to the grand jury at the Steve Herrera Complex, located at 225 Montezuma Avenue, Santa Fe, New Mexico. If you wish to testify at this proceeding, you may appear at that time and place.

You or your attorney may submit proposed questions and exhibits to the district attorney at least forty-eight (48) hours prior to the grand jury proceedings. If you or your attorney wishes to submit proposed questions or exhibits, or for further information on the time and date of the grand jury, you may call Kari T. Morrissey at (505)361-2138.

Sincerely,


Kari T. Morrissey
Special Prosecutor

cc: Robert Jason Bowles

EXHIBIT 2

From: Kari Morrissey <ktm@morrisseylewis.com>
Sent: Friday, October 27, 2023 5:50 PM
To: Luke Nikas; Alex Spiro
Cc: Jason J. Lewis
Subject: Re: Baldwin target notice

[EXTERNAL EMAIL from ktm@morrisseylewis.com]

Luke

I think you are referring to 5-302.2 and we disagree with your interpretation of it. Mr. Baldwin is in a unique position - his attorneys are currently in possession of 95% of the discovery in the case. The vast majority of defendants and defense attorneys have no discovery prior to the grand jury. As such, we disagree that Mr. Baldwin and his counsel are entitled to additional time to submit requests that certain evidence/witnesses be presented the the grand jury. We intend to treat Mr. Baldwin fairly but not differently than similarly situated defendants in New Mexico. We will file our motion and note your opposition. Thank you.

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Kari,

Rule 5-302A of N.M. R. Crim. P. Dist. Ct. 5 contains the 48-hour deadline. Specifically, that rule states that "[t]he target's written notice of evidence shall be provided to the prosecuting attorney no less than forty-eight (48) hours in advance of the scheduled grand jury proceeding." So we do not consent to a shortened deadline of November 10.

In fact, we believe the current grand jury date of November 16 is too soon to ensure your compliance with Rule 302.2(B). As you know, Rule 302.2(B) requires you to present all exculpatory evidence to the grand jury. Rule 302.2(B) ("The prosecuting attorney shall alert the grand jury to all lawful, competent, and relevant evidence that disproves or reduces a charge or accusation or that makes an indictment unjustified and that is within the knowledge, possession, or control of the prosecuting attorney."). We do intend to send you an alert letter setting forth certain evidence we believe you are required to present to the grand jury, including witnesses we believe you are required to call. Given the volume of evidence in this case, and the consequences of any failure to present exculpatory evidence (e.g., motions to quash), we want to ensure this process is done properly the first time around.

We therefore believe it is necessary to adjourn the November 16 grand jury date to ensure that you can coordinate appearances of the witnesses we identify and review the voluminous alert letter we will be submitting. Please let us know if you are willing to discuss a reasonable schedule for this process.

Luke Nikas

Partner

Quinn Emanuel Urquhart & Sullivan, LLP

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lukenikas@quinnemanuel.com

www.quinnemanuel.com

From: Kari Morrissey <ktm@morrisseylewis.com>

Date: Wednesday, October 25, 2023 at 7:50 PM

To: Luke Nikas <lukenikas@quinnemanuel.com>, Alex Spiro <alexspiro@quinnemanuel.com>

Cc: Jason J. Lewis <jjl@jjllaw.com>

Subject: Baldwin target notice

[EXTERNAL EMAIL from ktm@morrisseylewis.com]

Luke and Alex

The target notice for Alec Baldwin is attached. Every target notice I have ever seen in NM has a sentence that indicates that the target must notify the prosecution of potential witnesses, questions or exhibits 48 hours prior to the grand jury date. I have never found any basis under the law for the 48 hour deadline and as a result I have eliminated that sentence from this notice. There is a procedure under NM law for you to submit requested questions/exhibits to the prosecution for their consideration at grand jury. I assume you are aware of this procedure and intend to use it. I am happy to work with you in this regard and will fully consider any requests you make. Due to the fact that I have witnesses traveling from out of state to testify before the grand jury on 11/16/23 I intend to ask the grand jury judge (Judge Ellington) if he will establish a deadline for you to provide that information to me of November 10, 2023. Is that agreeable to you? Let me know your thoughts. Thank you.

Kari Morrissey

EXHIBIT 3

**FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO**

STATE OF NEW MEXICO,

Plaintiff,

v.

D-0101-GJ 2023-00006

ALEXANDER RAE BALDWIN,

Defendant.

**STATE'S OPPOSED EXPEDITED MOTION FOR SCHEDULING ORDER
ESTABLISHING DEADLINE FOR BORT JONES LETTER
AND FOR HEARING ON DEFENDANT'S REQUESTED GRAND JURY EVIDENCE**

COMES NOW the State of New Mexico, through Special Prosecutors Kari T. Morrissey and Jason J. Lewis, pursuant to N.M.S.A. 1978, §31-6-11 and N.M.R. CRIM. P. DIST. CT., Rule 5-302.2, and respectfully requests this Court: 1) enter a scheduling order which establishes a reasonable deadline for submission of the target's requested evidence and witnesses and 2) schedule a hearing prior to the grand jury presentation date of November 16, 2023, to hear arguments regarding the target's requested grand jury evidence. As grounds for this motion, the State submits the following:

1. On January 31, 2023, Alexander Rae Baldwin, III, the target, was charged with two counts (in the alternative) of involuntary manslaughter. The State on April 21, 2023, dismissed without prejudice the charges against Mr. Baldwin less than two weeks before the scheduled preliminary examination was to begin on May 3, 2023.

ENDORSED
First Judicial District Court

OCT 30 2023
Santa Fe, Rio Arriba &
Los Alamos Counties
PO Box 2268
Santa Fe, NM 87504-2268

2. The State began sharing discovery with Mr. Baldwin and his attorneys on or about March 9, 2023. Mr. Baldwin and his attorneys have had access to the continuously updated discovery since March 9, 2023, and have conducted their own extensive investigation into the allegations.

3. Mr. Baldwin's counsel, Luke Nikas, flew to Santa Fe, NM and met with the special prosecutors on April 3, 2023, to outline the evidence they claim should result in an abandonment of the charges against the target. Shortly thereafter, defense counsel provided evidence to the special prosecutors that indicated additional investigation should be performed on the functionality of the firearm used in the shooting of the alleged victims in this case.

Consequently, the case against Mr. Baldwin was dismissed without prejudice and the State conducted additional investigation and testing of the firearm. The investigation has now concluded, and defense counsel are in possession of the full ballistics report from the State's expert witness.

4. The special prosecutors notified defense counsel of their intention to refile charges on October 5, 2023, and served defense counsel with a target notice on October 25, 2023. In response to the target notice, defense counsel stated that it was their intent to "send [the State] an alert letter setting forth certain evidence we believe you are required to present to the grand jury, including witnesses we believe you are required to call" and further requested an adjournment of the November 16 grand jury date "to ensure that you can coordinate appearance of the witnesses we identify and review the voluminous alert letter we will be submitting." N.M.R. CRIM. P. DIST. CT., Rule 5-302.2 (B)(3)(c) provides that the target's written notice of evidence shall be provided to the prosecuting attorney no less than forty-eight (48) hours in advance of the scheduled grand jury proceeding. Given the target's intention to identify witnesses to be called to testify at the grand jury and the target's intention to submit a "voluminous" alert letter, the State requested

defense counsel agree to provide the defendant's requested grand jury evidence sooner than forty-eight (48) hours prior to the grand jury hearing to ensure that all requested evidence could be adequately reviewed by the state and the Court and so that travel plans and accommodations could be made for any additional witnesses necessary for the grand jury hearing.

5. The State requested the witnesses be identified and the alert letter be provided by November 10, 2023. Defense counsel notified the state on October 27, 2023, that they will not agree to a date prior to November 14, 2023 (forty-eight hours prior to the hearing), to provide the defendant's proposed exculpatory evidence and witnesses. Defense counsel also requested that the grand jury date of November 16, 2023, be postponed.

6. The special prosecutors declined to postpone the current grand jury presentation date given that two years have passed since the date of the incident, the target has been in possession of a large amount of discovery for nearly eight months, has had two years to conduct his own investigation and his attorneys began to prepare for a preliminary hearing in May 2023 that was vacated due to the filing of a *nolle prosequi*. Defense counsel does not need additional time to submit a request for the presentation of directly exculpatory evidence to the State in advance of the grand jury proceeding.

7. N.M.R. CRIM. P. DIST. CT., Rule 5-302.2 (D) provides, "The times set forth in this rule may be changed by the grand jury judge on written motion demonstrating that an extension is necessary in order to assure compliance with the requirements of this rule."

8. The target is in a unique position as he and his attorneys have had access to nearly all the discovery in this case for the last eight months. Mr. Baldwin's attorneys met with the special prosecutors for approximately four hours in April 2023 and explained in painstaking detail all the investigation they conducted and the evidence they believed warranted a dismissal of the charges

against the target. Counsel for the target are in a better position than all other similarly situated targets, as they know and understand the evidence against their client, have conducted their own investigation and can easily provide a written request for exculpatory evidence well in advance of the grand jury hearing. The State is concerned defense counsel intends to intentionally withhold the requested exculpatory evidence until exactly forty-eight hours prior to the grand jury to cause the postponement of the grand jury proceeding despite the fact that they are well aware of all possible directly exculpatory evidence today.

9. The special prosecutors are aware of the requirement that directly exculpatory evidence be presented to the grand jury and intend to conduct the grand jury hearing in accordance with the requirements of Rule 5-302.2. Many of the witnesses in this case do not reside in New Mexico and need to travel to New Mexico to testify before the grand jury. The state has two witnesses travelling to New Mexico to provide testimony to the grand jury on November 16, 2023. The special prosecutors are concerned about wasting public funds on travel arrangements for witnesses only to have the grand jury proceeding postponed after a hearing on the defense request for exculpatory evidence at the eleventh hour.

10. The special prosecutors want to work in conjunction with defense counsel to ensure all directly exculpatory evidence is presented to the grand jury. Defense counsel has been in possession of the discovery in the case and have had two years to conduct their own exhaustive investigation. The State respectfully requests this Court order that an alert letter including all exculpatory evidence and witnesses be provided by the target by close of business November 10, 2023. The State further requests a hearing be scheduled on or about November 14, 2023, to ensure that the State and the Court can carefully review the target's alert letter including the

requested evidence and make decisions concerning the inclusion of evidence at the grand jury presentation prior to the grand jury presentation date of November 16, 2023.

RESPECTFULLY SUBMITTED,

/s/ Kari T. Morrissey

Kari T. Morrissey

Jason J. Lewis

Special Prosecutors for the State of New Mexico

1303 Rio Grande Blvd., NW

Suite 5

Albuquerque, NM 87104

Phone: 505-361-2138

Email: ktm@morrisseylewis.com

jjl@jjllaw.com

I hereby certify that a true and correct copy of the foregoing pleading was emailed to opposing counsel this 30th day of October 2023.

/s/ Kari T. Morrissey

Kari T. Morrissey