

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

**STATE OF NEW MEXICO,  
Plaintiff,**

**v.**

**No. D-101-CR-2024-00013**

**ALEXANDER RAE BALDWIN,  
Defendant.**

**CORRESPONDENCE TO CLERK OF COURT (CONTINUED)**

*Faith Griego*  
Trial Court Administrative Assistant

# **EXHIBIT 7**

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**From:** Kari Morrissey <ktm@morrisseylewis.com>  
**Sent:** Wednesday, November 1, 2023 2:17 PM  
**To:** Luke Nikas; Jason J. Lewis; Alex Spiro  
**Subject:** Re: Baldwin - Motion to Permit State to Conduct Limited Voir Dire of Grand Jury Venire

[EXTERNAL EMAIL from ktm@morrisseylewis.com]

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Luke

Act in any manner you believe is appropriate. I am happy to answer any questions you have over email. I am not willing to tear a hole in my calendar to discuss charges that your client has been on notice of for nearly a year. I also believe that communicating about these issues in writing at this stage is appropriate. I will respond to Alex's email when I get a moment. I am in Court this morning.

Kari

On 11/01/2023 11:25 AM MDT Luke Nikas <lukenikas@quinnemanuel.com> wrote:

Kari,

I understand. It appears you do not have any interest in avoiding motion practice and conferring about matters, even when that is possible in the circumstances. We will note and act accordingly. Thank you.

Luke Nikas  
Partner  
Quinn Emanuel Urquhart & Sullivan, LLP

51 Madison Avenue, 22nd Floor  
New York, NY 10010  
212-849-7228 Direct  
212-849-7000 Main Office Number  
212-849-7100 FAX  
475-558-9881 Home Office  
lukenikas@quinnemanuel.com  
[www.quinnemanuel.com](http://www.quinnemanuel.com)

---

**From:** Kari Morrissey <ktm@morrisseylewis.com>  
**Sent:** Wednesday, November 1, 2023 12:49:54 PM  
**To:** Luke Nikas <lukenikas@quinnemanuel.com>; Jason J. Lewis <jjl@jjllaw.com>; Alex Spiro <alexspiro@quinnemanuel.com>  
**Subject:** Re: Baldwin - Motion to Permit State to Conduct Limited Voir Dire of Grand Jury Venire

Luke

All motions filed prior to grand jury need to be addressed immediately.

Kari

On 11/01/2023 10:26 AM MDT Luke Nikas <[lukenikas@quinnemanuel.com](mailto:lukenikas@quinnemanuel.com)> wrote:

Jason,

Going forward, it would be helpful if you gave us more than five business hours before filing a motion on which you seek our views, or, if you aren't willing to wait more than a short period, for you to let us know when you intend to file the motion so we can give you our input by that time. We did have views that we wanted to discuss with you about this issue, which we might have been able to resolve before you resorted to immediate motion practice.

Luke Nikas

Partner

Quinn Emanuel Urquhart & Sullivan, LLP

51 Madison Avenue, 22nd Floor

New York, NY 10010

212-849-7228 Direct

212-849-7000 Main Office Number

212-849-7100 FAX

475-558-9881 Home Office

[lukenikas@quinnemanuel.com](mailto:lukenikas@quinnemanuel.com)

[www.quinnemanuel.com](http://www.quinnemanuel.com)

---

**From:** Jason J. Lewis <jjl@jjllaw.com>  
**Date:** Wednesday, November 1, 2023 at 11:00 AM  
**To:** Luke Nikas <lukenikas@quinnemanuel.com>, Alex Spiro <alexspiro@quinnemanuel.com>  
**Cc:** Kari Morrissey <ktm@morrisseylewis.com>  
**Subject:** Baldwin - Motion to Permit State to Conduct Limited Voir Dire of Grand Jury Venire

[EXTERNAL EMAIL from jjl@jjllaw.com]

---

Luke -

The attached motion was filed this morning.

Jason

LAW OFFICE OF JASON J. LEWIS, LLC

JASON J. LEWIS

Attorney

1303 Rio Grande Blvd. NW, Suite 5

Albuquerque, NM 87104

505.361.2138 | 505.214.5108 (f)

# **EXHIBIT 8**

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**From:** Kari Morrissey <ktm@morrisseylewis.com>  
**Sent:** Wednesday, November 1, 2023 4:35 PM  
**To:** Luke Nikas; Alex Spiro  
**Cc:** Jason J. Lewis  
**Subject:** Re: Baldwin - Motion to Permit State to Conduct Limited Voir Dire of Grand Jury Venire

---

[EXTERNAL EMAIL from [ktm@morrisseylewis.com](mailto:ktm@morrisseylewis.com)]

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Luke

We recently attempted to work with you regarding your requested questions and exhibits prior to grand jury and were met with resistance. We understand that you need to represent your client in the manner you see fit. You are now asking us to provide you with information that is not required under New Mexico law prior to a grand jury proceeding. We are declining to discuss with you the details of the theories of the criminal charges we intend to present to the grand jury because we believe that Mr. Baldwin should be treated like every other citizen prosecuted in New Mexico. You have been provided with all of the information we are required to provide prior to a grand jury proceeding. We will be presenting two alternative theories of involuntary manslaughter to the grand jury - these are the same two theories that were contained in the criminal information filed in January 2023. You and your client have been aware of these theories for nearly one year. Obviously, we do not intend to pursue the theory the previous prosecutors indicated on the criminal information from January pertaining to NMSA 30-7-4(A)(4).

Kari

On 11/01/2023 11:25 AM MDT Luke Nikas <lukenikas@quinnemanuel.com> wrote:

Kari,

I understand. It appears you do not have any interest in avoiding motion practice and conferring about matters, even when that is possible in the circumstances. We will note and act accordingly. Thank you.

Luke Nikas  
Partner  
Quinn Emanuel Urquhart & Sullivan, LLP

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[lukenikas@quinnemanuel.com](mailto:lukenikas@quinnemanuel.com)  
[www.quinnemanuel.com](http://www.quinnemanuel.com)

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**Sent:** Wednesday, November 1, 2023 12:49:54 PM  
**To:** Luke Nikas <lukenikas@quinnemanuel.com>; Jason J. Lewis <jjl@jjllaw.com>; Alex Spiro <alexspiro@quinnemanuel.com>  
**Subject:** Re: Baldwin - Motion to Permit State to Conduct Limited Voir Dire of Grand Jury Venire

[EXTERNAL EMAIL from ktm@morrisseylewis.com]

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Luke

All motions filed prior to grand jury need to be addressed immediately.

Kari

On 11/01/2023 10:26 AM MDT Luke Nikas <lukenikas@quinnemanuel.com> wrote:

Jason,

Going forward, it would be helpful if you gave us more than five business hours before filing a motion on which you seek our views, or, if you aren't willing to wait more than a short period, for you to let us know when you intend to file the motion so we can give you our input by that time. We did have views that we wanted to discuss with you about this issue, which we might have been able to resolve before you resorted to immediate motion practice.

Luke Nikas

Partner

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[lukenikas@quinnemanuel.com](mailto:lukenikas@quinnemanuel.com)

[www.quinnemanuel.com](http://www.quinnemanuel.com)

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**From:** Jason J. Lewis <jjl@jjllaw.com>  
**Date:** Wednesday, November 1, 2023 at 11:00 AM  
**To:** Luke Nikas <lukenikas@quinnemanuel.com>, Alex Spiro <alexspiro@quinnemanuel.com>  
**Cc:** Kari Morrissey <ktm@morrisseylewis.com>  
**Subject:** Baldwin - Motion to Permit State to Conduct Limited Voir Dire of Grand Jury Venire

[EXTERNAL EMAIL from jjl@jjllaw.com]

---

Luke -

The attached motion was filed this morning.

Jason

LAW OFFICE OF JASON J. LEWIS, LLC

JASON J. LEWIS

Attorney

1303 Rio Grande Blvd. NW, Suite 5

Albuquerque, NM 87104

505.361.2138 | 505.214.5108 (f)

2023 NOV -6 PM 3: 58

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

STATE OF NEW MEXICO,

Plaintiff,

v.

D-0101-GJ 2023-00008

ALEXANDER RAE BALDWIN,

Defendant.

**REPLY TO TARGET'S RESPONSE TO 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 submits its reply to the target's response to the State's Opposed Expedited Motion for Scheduling Order, and for its reply, the State submits the following:

1. The vast majority of the assertions and arguments made by defense counsel in their response are not germane to the State's motion. Rather, their response is simply an attempt to force the State to disclose its theories of the case and any outstanding discovery to defense counsel prior to grand jury.

2. The defense argues in its introduction that the existence of a live round on a movie set was unfathomable and indiscernible to *anyone* in Baldwin's position. Defense counsel is well aware that other actors on the set of *Rust* took efforts to ensure that live rounds were not present in the gun they were handling by requesting the armorer show the rounds in the gun to the actor prior to use and by dry firing the gun to test every round to ensure that all were inert. Actors frequently take steps to ensure that all rounds are inert because dummy rounds are designed to

look exactly like real bullets therefore an armorer or prop supplier may mistake a dummy round for a live round. Moreover, the Screen Actors Guild disseminates safety bulletins with suggested guidelines for actors handling firearms on movie sets. These guidelines include basic safety protocols such as “treat all weapons as if they are loaded and/or ready to use. Do not play with weapons and **never** point one at anyone, including yourself.” Screen Actors Guild, November 2009, Industry Wide Labor-Management Safety Committee, Safety Bulletins, General Code of Safe Practices for Production, #11. The above-mentioned safety bulletins have existed since the 1980’s – nearly the entire time that Mr. Baldwin has worked in the film industry.

3. Counsel for the State has learned since beginning their investigation into the facts and circumstances surrounding the death of Halyna Hutchins and the maiming of Joel Souza, that the film industry requires very little training and experience of set armorers. A fact that Mr. Baldwin knew or should have known given his vast experience in the entertainment industry. Baldwin was also well-aware that a low budget film such as *Rust* offered lower wages than higher budget films resulting in the hiring of inexperienced and/or less than competent crew members.

4. Counsel for the State dismissed the case against Mr. Baldwin on April 21, 2023, after filing a *nolle prosequi* that clearly indicated that the investigation was ongoing, forensic testing was planned and the state did not have sufficient time to further its investigation prior to the May 3, 2023 preliminary hearing date.

5. Counsel for the defendant stated in their response on page 2 “The Special Prosecutors did not provide any of that information to Baldwin. Not a single page.” This statement is one of many false statements undersigned counsel has heard from counsel for Mr. Baldwin and the numerous false statements are the reason counsel for the State explained to defense counsel on November 1, 2023, that she wished only to communicate in writing about grand jury issues.

6. The discovery in the cases against Hannah Gutierrez and Alec Baldwin is located in an electronic server that both defendants and their counsel have had access to since March 2023. Ms. LeBlanc, local counsel for Baldwin's defense team, was granted access to the discovery server on March 9, 2023 and Mr. Nikas and Mr. Spiro were granted access on March 13, 2023. All defense counsel for Mr. Baldwin were provided hard drives on March 24, 2023 with all of the discovery available to date. See State's attached exhibits A, B, and C. In fact, Ms. LeBlanc personally picked up the hard drive that was provided to her by the District Attorney's office and on at least two occasions thereafter she returned the drive and had the most recent discovery uploaded onto the drive as additional discovery became available. Moreover, despite the fact that the case against Mr. Baldwin was dismissed in April 2023, counsel for the State did not remove defense counsel's access to the electronic server until September 2023. Defense counsel had access to all of the discovery for five months after the dismissal of their client's case. See State's attached exhibit D. All discovery located on the server was always available for download by defense counsel. Undersigned counsel will concede that there is additional discovery that has been obtained since September 2023 that has not been provided to Mr. Baldwin or his counsel as is customary prior to a grand jury proceeding.

7. After reviewing all of the discovery, obtaining new discovery after long and arduous negotiation and litigation with Rust Productions, LLC and completing forensic testing of the gun, the Special Prosecutors made a decision to refile charges against Mr. Baldwin. A plea to a misdemeanor was offered and the Special Prosecutors received no communication from the defense team for one week. During that time the Special Prosecutors learned certain facts about Mr. Baldwin that caused them to rescind the plea prior to the offer being accepted. This fact has

nothing to do with the issue presently before the Court concerning the upcoming grand jury proceeding.

8. Mr. Baldwin is not legally entitled to provide his request for exculpatory evidence at least forty-eight hours prior to the grand jury proceeding. NMRA 5-302.2(D) is clear “the times set forth in this rule may be *changed* by the grand jury judge...” (emphasis added). Mr. Baldwin is entitled to provide his exculpatory information no less than forty-eight hours before the grand jury proceeding unless the Court rules otherwise and the Court has been asked to rule otherwise, due to the need to schedule the travel of out of state witnesses requested by the target and because of the target’s promise to submit a “voluminous” alert letter, which will presumably require significant time to review and for the Court to rule on any disputes over the admissibility over the allegedly exculpatory evidence.

9. NMRA 5-302.2(A)(2) requires that an out of custody defendant be notified of the grand jury proceeding ten business days prior to the grand jury proceeding and submit the request for exculpatory information at least forty-eight hours prior to the proceeding (unless otherwise ordered by Court), giving the target a total of eight days from the time of the notice to the latest possible time that the request for exculpatory information must be provided to the State. In this case, defense counsel was served a target notice fourteen business days prior to the grand jury proceeding (business days were counted excluding weekends, Veteran’s Day and the day of the actual grand jury proceeding) but will not agree to provide the request for exculpatory evidence ten business days after receipt of the target notice. The State’s request that the letter outlining exculpatory evidence be provided on November 10, 2023, gives Mr. Baldwin’s defense team ten business days to provide the alert letter – which is two business days more than Rule 5-302.2 requires.

10. The target notice to Baldwin did not contain the language that the request for exculpatory evidence need be submitted forty-eight hours in advance of grand jury because that language is not required to be in the target notice pursuant to NMRA 5-302.2. Moreover, NMSA 31-6-11(B) sets forth a deadline of at least twenty-four hours for the request for exculpatory evidence thereby being in conflict with NMRA 5-302.2 and counsel for the State intended to ask the Court for a different deadline as she explained in her email. It did not occur to undersigned counsel to notify defense counsel that they were required to provide the request for exculpatory information at least forty-eight hours in advance of the grand jury proceeding and then ask the Court to establish a different deadline. Counsel for the State removed the language from target notice (that is not legally required to be in the target notice), explained to defense counsel that she removed the language from the target notice and asked if they would agree to a deadline of November 10, 2023. The language pertaining to the forty-eight-hour deadline was not removed from Ms. Gutierrez's target notice as the State is not asking that her request for exculpatory evidence be changed by the Court and provided prior to forty-eight hours before the grand jury proceeding.

11. Defense counsel provides a slanted interpretation of *Jones v. Murdoch*, 2009-NMSC-002, 145 N.M. 473. Preliminarily, the Court's holding in that case has nothing to do with the 48-hour alert deadline nor the Court's ability to modify that deadline. Rather, the case affirms a target's right to submit exculpatory evidence to the grand jury and the prosecutor's right to screen the alert letter prior to its submission to the grand jury. "The heart of this case involves the statutorily created right of the target to alert the grand jury to exculpatory evidence. The provision at issue does not purport to command the grand jury to accept the target's evidence. Instead, the provision simply identifies the prosecutor as the conduit by which a target may alert

the grand jury to pertinent evidence. As such, the provision at issue in this case does not diminish the grand jury's prerogative to weigh the evidence before it as it sees fit in making an independent decision whether to indict. Indeed, the grand jury is not even required to hear the evidence once it is made aware of its existence. But the grand jury cannot choose to ignore what it does not know." *Id.* at ¶ 27, 482.

12. Referencing an amendment to N.M.S.A. 1978, § 31-6-11(B), the Court stated, "With that change, the Legislature clearly intended to give the prosecutor time to screen the target's tendered evidence before the commencement of the grand jury proceeding. And as noted above, in our briefing order we already acknowledged the screening function the prosecuting attorney must perform to avoid the presentation of inappropriate information to the grand jury." *Id.* at ¶ 31, 483.

13. Clearly, the Court wished to establish a procedure that protected two rights: the right of the target to submit exculpatory evidence to the grand jury and the right of the prosecutor to have sufficient time to screen the target's tendered evidence. The special prosecutors are not asking the Court to infringe on the target's right to submit evidence or to compress the timeline for him to do so; in fact, the special prosecutor's proposed deadline for submission of an alert letter provides the target's defense counsel two days more than are afforded pursuant to Rule 5-302.2 - rather than having eight business days, the target would have ten. However, the target does not wish to permit the special prosecutors sufficient time to screen what they have admitted will be a "voluminous" alert letter, with attendant requests for the appearance of out-of-state witnesses, in an attempt to circumvent the intent rule. Given the plain language in Rule 5-302.2 which states, "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.” (emphasis added). The rule does not state that the times may only be changed in one direction; it states they may be changed as is necessary to ensure compliance with the requirements of the rule, including the obligation of the prosecutor to be able to screen the submission to ensure it contains evidence that is directly exculpatory before presentation to the grand jury.

14. Counsel for Mr. Baldwin does not need additional time to submit his requested exculpatory evidence. Mr. Baldwin’s legal team have had access to all of the discovery available in this case up to September 2023, and were initially provided a hard drive that contained all of the police reports, FBI reports, body worn camera video and recordings of witness statements.

15. On October 26, 2023, counsel for the State and the First Judicial District Attorney’s office received an IPRA request from Baldwin’s defense team that requests in-part, all of the discovery generated since the current Special Prosecutors took over the case. This IPRA request also requested all communications any of the attorneys have had with “any member of the public.” See State’s attached exhibit E. This IPRA request will likely take significant time to fulfill given the breadth of the request. Defense counsel has had the vast majority of the discovery for nearly a year but would like a postponement of the current grand jury with the hope that their IPRA request will be fully responded to by the time the case proceeds to grand jury at a future date. If defense counsel had the time to put together a lengthy IPRA request, they have the time to research and write the request for exculpatory evidence on November 10, 2023

16. Counsel for the State have overseen an extensive investigation into the facts and circumstances into the fatal shooting and closely examined Mr. Baldwin’s role in the incident prior making a decision to refile charges. While Mr. Baldwin’s counsel feels that this decision is sudden and the grand jury proceeding is being rushed, that is simply not the case. The



investigation has been ongoing for more than two years and a decision has been made to charge Mr. Baldwin with the shooting death of Halyna Hutchins.

17. Defense counsel points the Court to Mr. Shilling's resignation as investigator for the prosecution in this case as though it was somehow relevant to the charges against their client. In truth, Mr. Shilling sent an email resigning after he came to understand that his contract would not be renewed in the coming month. At the time Mr. Shilling tendered his resignation, he was unaware of the vast majority of the efforts that had been made to shore up the investigation, and was not up to date on the current facts known to the Special Prosecutors. Consequently, his opinion as to the quality of investigation was outdated, is irrelevant and lacked foundation.

18. Defense counsel claims that the gun Mr. Baldwin was using at the time of Ms. Hutchins's death contained defective, modified internal components. This is simply another false statement being put forth by defense counsel in an effort to assist their client in escaping responsibility. The State hired the best internationally recognized firearm and ballistics experts who determined that nothing was wrong with the gun prior to the FBI testing. The FBI damaged the hammer of the gun after attempting dozens of times to make it fire without the trigger being pulled in keeping with Mr. Baldwin's report of what happened at the time he shot Ms. Hutchins and Mr. Souza. While it is true that the hammer of the gun was damaged during the FBI testing, the gun still today requires that the trigger be pulled for the gun to fire even with the damaged hammer installed. Moreover, the scenes recorded during the filming of the movie demonstrate that Mr. Baldwin's gun worked exactly as designed. These recorded scenes further demonstrate that Mr. Baldwin handled the gun incorrectly and dangerously on several occasions (this was after using the time allocated for his firearms training to instead engage in horseplay with the gun for cell phone videos to send to his wife and children).

19. During the meeting between defense counsel and the Special Prosecutors in April 2023, defense counsel also claimed that Mr. Baldwin's contract for his services as producer of *Rust* contained limitations such that he only had power over creative decisions and not the general powers of a producer (generally producers are the "boss" of the movie set and have vast powers to change virtually anything related to the set and control set safety). Upon finally receiving a copy of the contract, it became clear that this statement was also false. The contract contains zero limitations on the scope of Mr. Baldwin's authority on set.

20. Counsel for the State delayed the prosecution of Mr. Baldwin in April 2023 at the request of his counsel after being provided misleading information by his attorneys that there was evidence that the hammer of the gun may have been modified pre-production and false information that Mr. Baldwin did not have the full powers of a producer on the set of *Rust*. Counsel for the State is not intending to delay the prosecution further because defense counsel claims they cannot manage to put together a Bort-Jones letter with more than one thousand attorneys at their disposal at one of the largest law firms in the world with two additional business to prepare than is required by the rule. If an attorney with the Office of the Public Defender can prepare a Bort-Jones letter in eight business days with no discovery, certainly the lawyers at Quinn Emmanuel can prepare one in ten business days with access to nearly all of the discovery for eight months.

RESPECTFULLY SUBMITTED,

/s/ Kari T. Morrissey  
Kari T. Morrissey

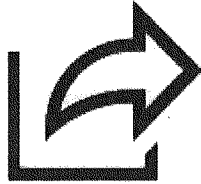
Jason J. Lewis  
Special Prosecutors for the State of New Mexico  
1303 Rio Grande Blvd., NW Suite 5  
Albuquerque, NM 87104  
Phone: 505-361-2138  
Email: [ktm@morrisseylewis.com](mailto:ktm@morrisseylewis.com)  
[jjl@jllaw.com](mailto:jjl@jllaw.com)

I hereby certify that a true and correct  
copy of the foregoing pleading was emailed  
to opposing counsel this 6<sup>th</sup> day of November 2023.

/s/ Kari T. Morrissey  
Kari T. Morrissey

# STATE'S EXHIBIT A


**From:** Shadrick Bowe SBowe@da.state.nm.us  
**Subject:** Shadrick Bowe shared the folder "RustShare" with you.  
**Date:** March 9, 2023 at 9:30 AM  
**To:** heather@bll.law, jason@bowles-lawfirm.com, lisatorraco@gmail.com



## Shadrick Bowe shared a folder with you


FJDA Rust Discovery Share  
Please let Shadrick Bowe, sbowe@da.state.nm.us, know if you have any issues  
with accessing this share.

 RustShare

 This link only works for the direct recipients of this message.

Open

# STATE'S EXHIBIT B

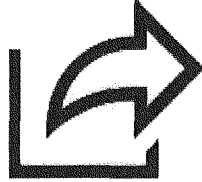
**From:** Shadrick Bowe SBowe@da.state.nm.us 

**Subject:** Shadrick Bowe shared the folder "RustShare" with you.

**Date:** March 13, 2023 at 12:12 PM

**To:** lukenikas@quinnemanuel.com, alexspiro@quinnemanuel.com, saraclark@quinnemanuel.com

SB



## Shadrick Bowe shared a folder with you

FJDA Rust Discovery Share

Please let Shadrick Bowe, sbowe@da.state.nm.us, know if you have any issues with accessing this share.

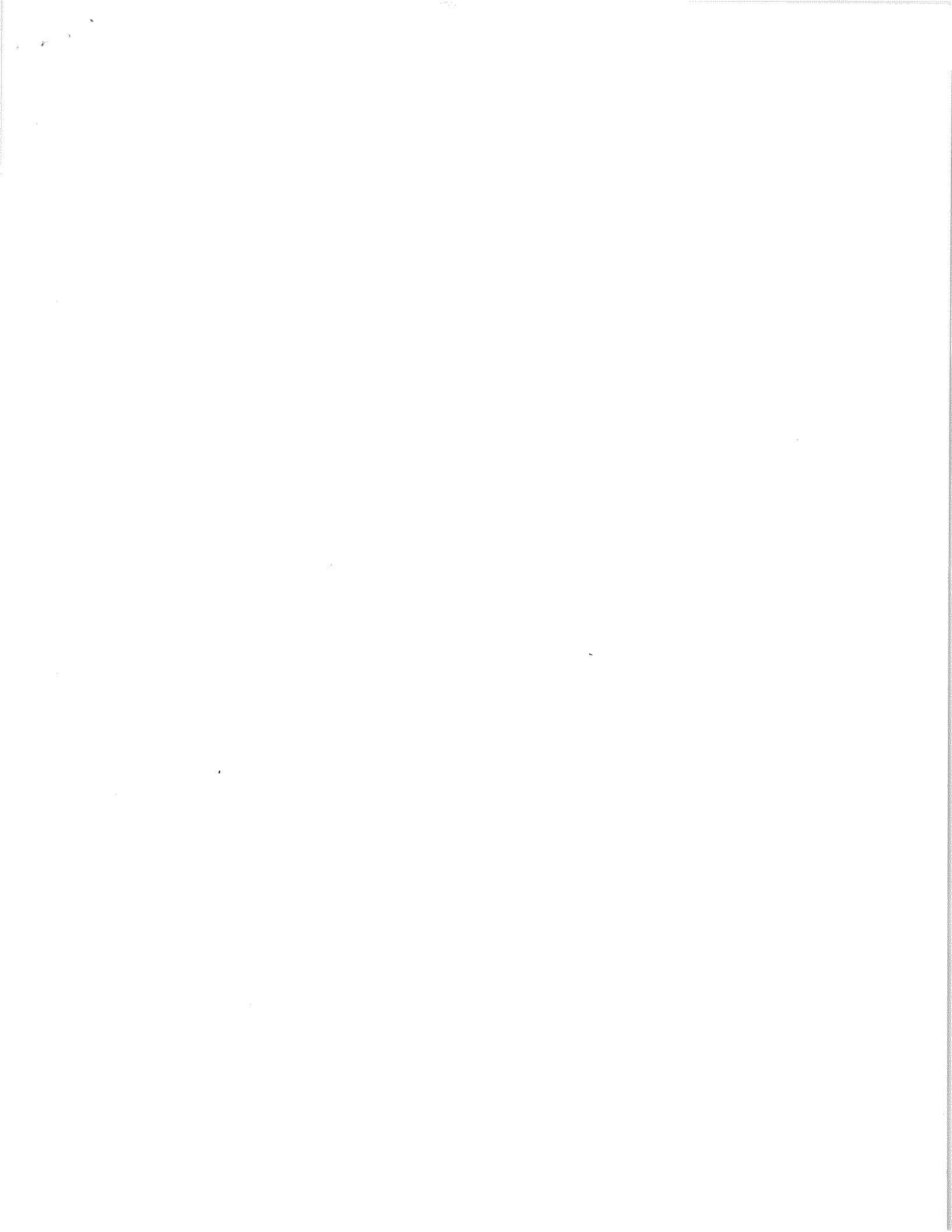
Thank you & Best regards,  
Shad

 RustShare



This link only works for the direct recipients of this message.

Open



# STATE'S EXHIBIT C

**From:** Shadrick Bowe SBowe@da.state.nm.us  
**Subject:** RE: Baldwin discovery  
**Date:** November 6, 2023 at 12:10 PM  
**To:** ktm ktm@morriseylewis.com  
**Cc:** jji jjilaw.com, Mary Carmack-Altwhies MCarmack-Altwhies@da.state.nm.us



USB Stick #1 – Sent to Sara on 24 March 2023, at some point in the afternoon.

RE: NM v. Baldwin - Discovery

 Shadrick Bowe  
To: Sara Clark, Heather LeBlanc  
Cc: Mary Carmack-Altwhies, Cristina Zuniga



Fr 3/24/23



Hi Sara,

I have finished the downloads and imports to your USB sticks. There is one additional item of discovery, lapel camera footage, that I can add to your USB stick or just send the stick as-is.

Attached is the full list of discovery in OneDrive that's been shared with you reflecting the path and, on both USB sticks, I also included the same file as it pertains to the drive letter and path too.

Thank you & Best regards,  
Shad

Shadrick Bowe  
Program Administrator, First Judicial District Attorney  
327 Sandoval Street | Santa Fe, NM 87501  
505-428-6927  
[sbowe@da.state.nm.us](mailto:sbowe@da.state.nm.us)

From: Sara Clark <saraclark@quinnemanuel.com>

USB Stick #2 – Physically picked up by Heather on 24 March 2023, in the afternoon. (I don't remember exactly when she showed up but here is her acknowledgement of picking it up):

Re: NM v. Baldwin - Discovery

 Shadrick Bowe  
To: Heather LeBlanc

**From:** Heather LeBlanc <[heather@leblanclawnm.com](mailto:heather@leblanclawnm.com)>  
**Sent:** Friday, March 24, 2023 4:55:13 PM  
**To:** Shadrick Bowe <[SBowe@da.state.nm.us](mailto:SBowe@da.state.nm.us)>  
**Cc:** Cristina Zuniga <[cristinazuniga@quinnemanuel.com](mailto:cristinazuniga@quinnemanuel.com)>; Mary Carmack-Altwhies <[MCarmack-Altwhies@da.state.nm.us](mailto:MCarmack-Altwhies@da.state.nm.us)>; Sara Clark <[saraclark@quinnemanuel.com](mailto:saraclark@quinnemanuel.com)>  
**Subject:** Re: NM v. Baldwin - Discovery

And I picked up mine in-person a little while ago today. I haven't tried it, yet, but will confirm once I'm in front of my computer.

Thanks, Shad.

On Fri, Mar 24, 2023 at 4:54 PM Shadrick Bowe <[SBowe@da.state.nm.us](mailto:SBowe@da.state.nm.us)> wrote:

Hi Sara,

## STATE'S EXHIBIT D

From: Shadrick Bowe <SBowe@da.state.nm.us>  
Subject: RE: Defense server  
Date: September 13, 2023 at 2:42:27 PM PDT  
To: ktm <ktm@morrisseyLewis.com>  
Cc: jjl <jjl@jjllaw.com>, Shadrick Bowe <SBowe@da.state.nm.us>

Kari,

Their access has been removed.

Thank you & Best regards,  
Shad

Shadrick Bowe  
Program Administrator, First Judicial District Attorney  
327 Sandoval Street | Santa Fe, NM 87501  
505-428-6927  
[sbowe@da.state.nm.us](mailto:sbowe@da.state.nm.us)

**From:** Kari Morrissey <ktm@morrisseyLewis.com>  
**Sent:** Wednesday, September 13, 2023 7:30 AM  
**To:** Shadrick Bowe <SBowe@da.state.nm.us>  
**Cc:** jjl <jjl@jjllaw.com>  
**Subject:** Defense server

Shad

Please remove the access by the Baldwin lawyers from the defense server. I don't want them to have access to it unless we refile. The only people who should have access to it are the lawyers/investigator for Hannah Gutierrez. Thanks,

Kari



**quinn emanuel trial lawyers | new york**

51 Madison Avenue, 22nd Floor, New York, New York 10010-1601 | TEL (212) 849-7000 FAX (212) 849-7100

WRITER'S DIRECT DIAL NO.  
**(212) 849-7228**

WRITER'S EMAIL ADDRESS  
**lukenikas@quinnemanuel.com**

October 26, 2023

**VIA ELECTRONIC MAIL**

Kari T. Morrissey, Esq.  
Special Prosecutor, First Judicial District  
c/o MORRISSEY | LEWIS, LLC  
2501 Rio Grande Blvd. NW Suite B  
Albuquerque, NM 87104  
ktm@morrisseylewis.com

**Re: Request Pursuant to the Inspection of Public Records Act**

Dear Ms. Morrissey:

Pursuant to New Mexico's Inspection of Public Records Act (NMSA 1978, § 14-2-1), the undersigned officially requests that your office make copies of public records relating to the listed topics available to the individuals below. For the avoidance of doubt, this request encompasses documents and communications sent or received on individuals' personal devices (cell phones, computers, tablets) when those individuals were reasonably acting in their official capacity. *See* NMSA 1978, § 14-2-6 (defining "public records" as "all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, *regardless of physical form* or characteristics, that are used, created, received, maintained or held *by or on behalf of any public body* and relate to public business") (emphases added).

- Documents and communications from October 21, 2021, to the present related to requests for funding from the Legislature or Governor's Office, including special or emergency funding requests, for the 2023 and 2024 fiscal year, related to your service as a special prosecutor.
- Documents and communications (including phone records, voicemail, email, and text or other messaging application, or any notes reflecting the same) between you and any member of the public, including, but not limited to, any film industry professional, actor, crew member, armorer, firearms expert or professional, or any other member of the public regarding the incident on the *Rust* set, or that bear in any way on any standard or duty related to actors, producers, or other film or media professionals, the operation of the set, the responsibilities of any cast or crew

**quinn emanuel urquhart & sullivan, llp**

ATLANTA | AUSTIN | BERLIN | BOSTON | BRUSSELS | CHICAGO | DALLAS | DOHA | HAMBURG | HONG KONG | HOUSTON | LONDON |  
LOS ANGELES | MANNHEIM | MIAMI | MUNICH | NEUILLY-LA DEFENSE | NEW YORK | PARIS | PERTH | RIYADH | SALT LAKE CITY |  
SAN FRANCISCO | SEATTLE | SHANGHAI | SILICON VALLEY | STUTTGART | SYDNEY | TOKYO | WASHINGTON, DC | ZURICH

member, or that relate to the use of or operation of firearms, whether generally or specific to certain types of arms or circumstances.

- Documents and communications from October 21, 2021, to the present related to your hiring, employment, retention, or duties of as special prosecutor, including, but not limited to, any documents that memorialize any terms of employment.
- Documents and communications from October 21, 2021, to the present related to the consideration, hiring, employment, retention, or duties of any individual for the position of special prosecutor, including, but not limited to, any documents that memorialize the terms of any such engagement or employment.
- Documents and communications from October 21, 2021, to the present related to the removal of Andrea Reeb as special prosecutor.
- Documents and communications from October 21, 2021, to the present related to the decision to choose you or Jason Lewis to serve as a special prosecutor.
- Communications between you or Jason Lewis and members of the public, including the media, from October 21, 2021, to the present related to information updates or commentary on the investigation into and criminal charges related to the shooting on the *Rust* set.
- Communications between the you or Jason Lewis and any member, employee or advisor of any state or federal governmental entity (including, but not limited to, the Attorney General's Office, the Governor's Office, the state legislature, law enforcement, or the FBI) from October 21, 2021, to the present related to the shooting on the *Rust* set or the service of any individual prosecuting the case.
- Communications between the First Judicial District Attorney's Office, including any employee, former employee, and consultant of that office, and you or Jason Lewis from October 21, 2021 to the present related to the shooting on the set of *Rust*.
- Documents and communications from October 21, 2021, to the present relating to any firearm testing, formal or informal, performed in connection with the shooting on the set of *Rust*.
- Documents or communications regarding the retention of any firearms expert by the First Judicial District Attorney's Office or any special prosecutor in connection with the shooting on the set of *Rust*, including any expert considered but not ultimately retained.
- Documents and communications from October 21, 2021, to the present related to the shooting on the set of *Rust*.

- Documents or communications reflecting any “additional facts that have come to light”<sup>1</sup> since March 27, 2023 related to the shooting on the set of *Rust*.
- Documents and communications produced to the New York Times or other news outlets in response to an IPRA request regarding the shooting on the set of *Rust*.
- Documents and communications with any media organization or journalist related to the shooting on the set of *Rust*.

Please provide copies of the aforementioned records to the individuals listed immediately below.

Luke Nikas  
51 Madison Avenue, 22<sup>nd</sup> Floor  
New York, New York 10014  
lukenikas@quinnemanuel.com  
(212) 849-7228

Alex Spiro  
51 Madison Avenue, 22<sup>nd</sup> Floor  
New York, New York 10014  
alexspiro@quinnemanuel.com  
(212) 849-7364

John F. Bash  
300 W. 6th St., Suite 2010  
Austin, TX 78701  
johnbash@quinnemanuel.com  
(713) 221-7006

As required by § 14-2-8 of the Inspection of Public Records Act, please confirm within three business days when the records will be available for inspection or when you will respond to this request.

Sincerely,

/s/ Luke Nikas

Luke Nikas

---

<sup>1</sup> As referenced in the statement given by the Special Prosecutors on October 17, 2023.

STATE OF NEW MEXICO  
SANTA FE COUNTY  
FIRST JUDICIAL DISTRICT COURT

FILED  
FIRST JUDICIAL  
DISTRICT COURT



2023 NOV -7 AM 10:45

D-101-GJ-2023-00008

IN THE MATTER OF THE GRAND JURY,

STATE OF NEW MEXICO,  
Plaintiff,

vs.

ALEXANDER RAE BALDWIN,  
Target.

### NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a hearing in this case has been set before the  
**Honorable T. Glenn Ellington**, as follows:

Date of Hearing: **Thursday, November 9, 2023 9:00 AM**

Place of Hearing: First Judicial District Court via Google Meet  
Motion Hearing in the Matter of the Grand Jury 2023-8  
Thursday, November 9 · 9:00am – 10:30am  
Time zone: America/Denver  
Google Meet joining info:  
Video call link: <https://meet.google.com/dod-sbqo-bci>  
Or dial: (US) +1 570-671-0182 PIN: 605 446 284#

Matter to be Heard: *State's Opposed Expedited Motion for Scheduling Order Establishing Deadline for Bort Jones Letter and for Hearing on Defendant's Requested Grand Jury Evidence.*

Comments: *This is a Closed Hearing and only parties of record and legal counsel will be allowed into the hearing suite. As this hearing relates to matters before the Grand Jury. Recordings other than the official record are not allowed.*

*Please log in by 8:50 AM.*

### CERTIFICATE OF SERVICE

This document was e-filed and served, on the **date of acceptance**, to all parties below:

Kari T. Morrissey; [ktn@morrisseylewis.com](mailto:ktn@morrisseylewis.com), Jason J. Lewis; [jjl@jjllaw.com](mailto:jjl@jjllaw.com), Luke Nikas; [lukenikas@quinnemanuel.com](mailto:lukenikas@quinnemanuel.com), Alex Spiro; [alexspiro@quinnemanuel.com](mailto:alexspiro@quinnemanuel.com), John F. Bash; [johnbash@quinnemanuel.com](mailto:johnbash@quinnemanuel.com), Heather M. LeBlanc; [heather@leblanclawnm.law](mailto:heather@leblanclawnm.law)

By: \_\_\_\_\_

  
Lorraine Ortiz, MBA

Paralegal to the Honorable T. Glenn Ellington

STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT

SANTA FE COUNTY  
FILED IN THE CLERKS OFFICE  
OF DISTRICT COURT

November 7, 2023

STATE OF NEW MEXICO

Plaintiff,

vs.

ALEXANDER RAE BALDWIN III,

Target.

No. D-0101-GJ 2023-00008

Judge T. Glenn Ellington

**ALEC BALDWIN'S RESPONSE TO STATE'S EXPEDITED MOTION TO  
PERMIT STATE TO CONDUCT VOIR DIRE OF GRAND JURY VENIRE**

LEBLANC LAW LLC

Heather M. LeBlanc  
823 Gold Ave. SW  
Albuquerque, NM 87102  
Tel: 505-331-7222  
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QUINN EMANUEL URQUHART &  
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Luke Nikas (admitted *pro hac vice*)  
Alex Spiro (admitted *pro hac vice*)  
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*Counsel for Alec Baldwin*

Target Alec Baldwin respectfully submits this opposition to the State's Expedited Motion to Permit State to Conduct Voir Dire of Grand Jury Venire. While Baldwin agrees that there is a serious risk of a biased venire, especially given the State's conduct to date, the State's proposed process is insufficient and risks compounding the potential prejudice. Accordingly, Baldwin requests that the Court deny the Motion as presented, convene a conference to discuss appropriate procedures to protect his due process rights, and proceed by written questionnaire and according to the procedures outlined below.

### INTRODUCTION

The State seeks to conduct a one-sided voir dire of the grand jury venire, citing “hundreds, if not thousands, of local, national, and international news stories” “resulting in a significant amount of information - some of it inaccurate or incomplete - being made available to prospective jurors.” (Mot. ¶¶ 2-3.) The State neglects to mention that these “hundreds” or “thousands” of news stories containing “inaccurate or incomplete” information are primarily the result of a deliberate, improper, and highly prejudicial press campaign *conducted by the State*, through which the State repeatedly proclaimed Baldwin's responsibility for Hutchins' tragic death. The State's request comes on the heels of its previous motion to impermissibly shorten Baldwin's time to prepare exculpatory evidence for the grand jury's consideration. Together, the State's motions reflect the Special Prosecutors' intent to conduct this proceeding in a needlessly rushed and unusual manner, without regard for truth, justice, or basic rules governing criminal prosecutions.

The State's conduct in recent weeks continues its troubling pattern of seeking to prejudice Baldwin. On October 5, 2023, six months after dismissing its case against Baldwin, the State informed Baldwin's counsel that it was offering Baldwin a plea deal—a plea to a petty misdemeanor, identical to that accepted by Dave Halls (the First Assistant Director and principal

safety officer on set)—and gave Baldwin until October 27, 2023, to accept. Ten days before that deadline, the Special Prosecutors abruptly reversed course and informed Baldwin’s counsel that they would proceed to a grand jury. On October 25, 2023, the Special Prosecutors served a target notice on Baldwin that omitted the standard 48-hour timeline to submit a grand jury alert letter—a move they acknowledged was unprecedented—while at the same time offering to “work with” Baldwin in regards to timing. When Baldwin’s counsel responded by asking if the State was “willing to discuss a reasonable schedule for this process” given the volume of evidence and number of witnesses, the Special Prosecutors refused to engage and immediately asked the Court to approve their impermissibly shortened timeline.

In support of that request, the Special Prosecutors argued that Baldwin “does not need” the full time afforded by New Mexico law to prepare exculpatory evidence for the grand jury’s consideration because Baldwin has been provided “continuously updated discovery since March 9, 2023” and has “had access to nearly all the discovery in this case for the last eight months.” These representations were not true. The Special Prosecutors have not provided Baldwin with any evidence since March. And they know that. The State expressly informed Baldwin’s counsel in March that the file links they provided were to “produc[e]” the discovery they had conducted (not to provide future discovery), which Baldwin therefore accessed only one time in March 2023.<sup>1</sup> (*See, e.g.*, Ex. 1.) Baldwin even told the State in a videoconference in mid-October, before they filed any of their motions, that Baldwin hadn’t received the information they collected since

---

<sup>1</sup> The State also knows that Baldwin was unable to download the folders provided by the State because the folders were corrupt. To access the folders, Baldwin mailed a USB drive to the State, to which the State uploaded the discovery it had obtained as of March. (*See* Ex. 2.) The State never informed Baldwin or his counsel that those folders would be continually updated after the State’s dismissal of charges in April, and even if it had, the State *knew* Baldwin was unable to download those materials from the State’s platform.

March. Yet each day, Baldwin learns about more information the State has not disclosed, including recordings of over a dozen substantive witness interviews that have apparently been conducted.

Now, the State seeks to conduct a one-sided voir dire of the grand jury venire, without any acknowledgement that the State's own prejudicial media campaign is one of the key reasons such a voir dire is necessary. How can the State be trusted to conduct this process properly when the State's own conduct created the need for it in the first place? And how can the State be trusted to elicit any potential biases when the State's efforts to shorten Baldwin's time to submit exculpatory evidence to the grand jury, as well as its unreasonably rushed process to secure an indictment, suggest its lack of consideration for Baldwin's rights? The simple answer is that it can't. In these circumstances, the voir dire should be conducted by giving the grand jurors a written questionnaire and then having the Court conduct follow-up questioning to vet the grand jurors for potential bias.

## ARGUMENT

### **I. THE STATE SHOULD NOT BE PERMITTED TO BENEFIT FROM ITS OWN UNSEEMLY PRESS CAMPAIGN THROUGH A PREJUDICIAL, ONE-SIDED VOIR DIRE OF THE GRAND JURY VENIRE**

The State's motion correctly observes the substantial national and local press coverage of this case, and, specifically, of Baldwin's role in the tragic events of October 21, 2021. (Mot. ¶¶ 2-3.) What it fails to acknowledge, however, is that the media environment surrounding the incident—particularly the coverage that has been most damaging to Baldwin—is primarily the result of the State's own highly unusual and improper press campaign. *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.").



On January 19, 2023, District Attorney Carmack-Altwies and the unconstitutionally appointed special prosecutor, Andrea Reeb, issued a press release announcing that they planned to charge Baldwin with two counts of involuntary manslaughter, plus a sentencing enhancement for the use of a firearm.<sup>2</sup> The press release stated that “[t]he firearm enhancement makes the crime punishable by a mandatory five years in jail.”<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup> In the same interview, Reeb stated that a lab report confirmed that “definitely the trigger was pulled,”<sup>6</sup> and

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<sup>2</sup> “News release from DA Mary Carmack-Altwies on charges against Alec Baldwin, Hannah Gutierrez-Reed,” SANTA FE NEW MEXICAN (Jan. 19, 2023), [https://www.santafenewmexican.com/news-release-from-da-mary-carmack-altwies-on-charges-against-alec-baldwin-hannah-gutierrez-reed/article\\_f843a8fc-9814-11ed-9526-032214a2e9cb.html](https://www.santafenewmexican.com/news-release-from-da-mary-carmack-altwies-on-charges-against-alec-baldwin-hannah-gutierrez-reed/article_f843a8fc-9814-11ed-9526-032214a2e9cb.html).

<sup>3</sup> That was false. The firearm enhancement was not enacted until *after* the incident. Therefore, the State’s inclusion of the enhancement in the criminal complaint violated the *ex post facto* clause of the Constitution.

<sup>4</sup> “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>.

<sup>5</sup> “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 at the time because Baldwin’s counsel had guided the prosecution team to the messages they originally had been unable to locate and falsely claimed were deleted.

<sup>6</sup> 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

made false assertions about Baldwin’s mental state, including that “Baldwin knows everything that goes on the set,” including concerns brought to “management.” *Id.* In yet another interview with NBC News, Reeb commented on Baldwin’s ultimate guilt, stating that he “is somebody who committed a crime.”<sup>7</sup> Carmack-Altwies repeated factual conclusions about the evidence, directly rejecting Baldwin’s claim that he didn’t squeeze the trigger: “That’s not true . . . [w]e know from the FBI report that he pulled that trigger.” *Id.* On January 21, 2023, Reeb appeared on yet another television program—this time, with Sean Hannity—where she commented on both the contents of the FBI reports and Baldwin’s prior statements, noting that “all those statements” “would be admissible” and would be “used against” Baldwin.<sup>8</sup> In these national media appearances, Carmack-Altwies and Reeb repeatedly stated that Baldwin was facing many years in prison if convicted. Disturbingly, private messages between Carmack-Altwies and Reeb revealed that Reeb was eager to be involved in a public press strategy against Baldwin to promote herself and her political campaign for a seat in the New Mexico House of Representatives. (*See* Ex. 3 (“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.* (“I am intending to either introduce you or send it in a press release when we get the investigation!”).)

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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.

<sup>7</sup> “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>.

<sup>8</sup> “‘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>.

Most recently, one of the current Special Prosecutors, Kari Morrissey, continued the State's improper press campaign. On October 17, 2023, *The New York Times* published an article revealing that Morrissey had conducted an interview with the *Times* about the case, in which she revealed publicly that the State would present this matter to the grand jury and also discussed the case at length.<sup>9</sup> This latest interview generated yet another round of press coverage that was damaging to Baldwin.

The State now seeks to benefit from its own improper press campaign, requesting permission to conduct a one-sided, live voir dire of the grand jury venire, at which the State proposes to ask certain questions of the venire, and, apparently, influence which grand jurors are fit to serve. The Court should deny the State's motion. Instead, the Court should adopt the following approach to conduct the voir dire and protect Baldwin's rights.

*First*, the questions for the venire should also include questions proposed by the defense, and, in particular, the following:

1. Are you aware of any comments about this case made by prosecutors (current or former) regarding Mr. Baldwin's responsibility for Ms. Hutchins' death? If yes, what were those comments?
2. Are you aware of or have you seen any report(s) or commentary by industry experts related to industry standards governing the use of firearms on set? If so, what is the content of those reports or commentary?
3. Are you aware of or have you seen any report(s) or commentary by industry experts related to the legal standard for criminal liability in accidents involving firearms on set? If so, what was the content of those reports or commentary?
4. Are you aware of any comments about this case made by prosecutors (current or former) regarding Mr. Baldwin's role and responsibilities in connection with the Rust movie set? If so, what were those comments?

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<sup>9</sup> See Julia Jacobs, "Grand Jury Will Consider New Manslaughter Case Against Alec Baldwin," N.Y. TIMES, October 17, 2023, <https://www.nytimes.com/2023/10/17/arts/alec-baldwin-grand-jury-rust.html>.

5. Are you aware of any comments about this case made by prosecutors (current or former) regarding who has the responsibility to check for live rounds in any firearms handled on set? If so, what were those comments?
6. Are you aware of any comments about this case made by prosecutors (current or former) regarding who has the responsibility to ensure the safety of prop weapons on set? If so, what were those comments?
7. Are you aware of any comments about this case made by prosecutors (current or former) regarding whether Mr. Baldwin had responsibility for safety conditions on set?
8. Have you watched any coverage of this case on CNN, Fox News, NBC News, ABC News, YouTube, or any other television stations or media sites? If so, which broadcasts have you watched for coverage of this case?
9. Have you read any coverage of this case in The Santa Fe New Mexican, Albuquerque Journal, Hollywood Reporter, USA Today, The New York Times, Daily Mail, Rolling Stone, Washington Post, Variety, or any other print media outlets? If so, which media outlets have you followed for coverage in this case?
10. Do you own a gun? If so, have you done gun safety training?
11. Do you have any experience with the film industry? Do you have views on whether actors should be handling weapons?
12. Do you have an opinion about whether actors should be responsible for the safety of firearms on movie sets?
13. Do you think that firearms can ever be used safely on a movie set?
14. Do you have an opinion about actors in general? Do you like or dislike them?
15. Do you have an opinion about Hollywood generally? Do you feel positive or negative about it?
16. Do you think that someone should be held criminally responsible for the death of Halyna Hutchins?
17. Do you think that someone should always be held criminally responsible for any death resulting from a firearm?
18. Do you have any familiarity with revolvers? In what context?
19. Do you have any law enforcement experience?
20. Have you ever been part of a homicide investigation? Do you have a view as to how the investigation in this case proceeded? What is that view?

21. Do you have a strong opinion about Alec Baldwin as a person? If so, what is your opinion and what is it based on? Is it possible that your opinion of Mr. Baldwin will influence your judgment of this matter?
22. Do you have a belief at this time about Mr. Baldwin's guilt or innocence in this matter? If so, what is your belief and what is it based on?
23. Do you have any personal feelings about the State's prosecution of this case?
24. Do you have a feeling about what you would like to see happen with this case? If so, what?

*Second*, the questions asked of the venire should be presented in a written survey, and the returned surveys should be provided to the Court, the State, and Baldwin so both the State and Baldwin can submit written objections to individual venire members. These objections should be resolved by the grand jury judge. To the extent additional questioning of any venire member is warranted by the survey responses, the grand jury judge should ask those questions, not the State. The grand jury judge should then determine whether any of the grand jurors have a potential bias that compromises their ability to treat Baldwin fairly.

In short, the State's highly improper press campaign has focused almost exclusively on Baldwin, which has created significant negative publicity. The State has singled out Baldwin for disparate treatment at every turn. The State continues that treatment here, seeking to tilt the grand jury process against Baldwin by proposing to vet the grand jury for potential bias created by its own conduct. Everyone knows that the fox should not be permitted to guard the henhouse. The voir dire should be conducted through a written questionnaire and then through follow-up questioning conducted by the grand jury judge, who should then strike any grand jurors who cannot carry out their responsibilities in accordance with New Mexico law.

## CONCLUSION

For the above reasons, Baldwin respectfully requests that the Court deny the State's Expedited Motion to Permit State to Conduct Voir Dire of Grand Jury Venire. Baldwin requests that the Court instead conduct the voir dire according to the procedures outlined above.

November 7, 2023

Respectfully submitted,

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By: /s/ Luke Nikas  
Luke Nikas (admitted *pro hac vice*)  
Alex Spiro (admitted *pro hac vice*)  
51 Madison Avenue, 22nd Floor  
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*Counsel for Alec Baldwin*

---

**From:** Shadrick Bowe <SBowe@da.state.nm.us>  
**Sent:** Monday, March 13, 2023 3:15 PM  
**To:** Luke Nikas; Alex Spiro; Sara Clark  
**Cc:** Heather LeBlanc  
**Subject:** Rust Discovery Share access

**Follow Up Flag:** Flag for follow up  
**Flag Status:** Flagged

---

[EXTERNAL EMAIL from sbowe@da.state.nm.us]

---

Good afternoon Luke / Alex / Sara,

You'll be receiving an email from the FJDA producing Rust Discovery.

Please let me know if you have any issues with connecting to the share.

Thank you & Best regards,  
Shad

Shadrick Bowe  
Program Administrator, First Judicial District Attorney  
327 Sandoval Street | Santa Fe, NM 87501  
505-428-6927  
[sbowe@da.state.nm.us](mailto:sbowe@da.state.nm.us)

||

---

**From:** Shadrick Bowe <SBowe@da.state.nm.us>  
**Sent:** Friday, March 24, 2023 6:54 PM  
**To:** Sara Clark; Heather LeBlanc  
**Cc:** Mary Carmack-Altwhies; Cristina Zuniga  
**Subject:** RE: NM v. Baldwin - Discovery  
**Attachments:** RustDiscovery2.csv

[EXTERNAL EMAIL from sbowe@da.state.nm.us]

---

Hi Sara,

I have finished the downloads and imports to your USB sticks. There is one additional item of discovery, lapel camera footage, that I can add to your USB stick or just send the stick as-is.

Attached is the full list of discovery in OneDrive that's been shared with you reflecting the path and, on both USB sticks, I also included the same file as it pertains to the drive letter and path too.

Thank you & Best regards,  
Shad

Shadrick Bowe  
Program Administrator, First Judicial District Attorney  
327 Sandoval Street | Santa Fe, NM 87501  
505-428-6927  
[sbowe@da.state.nm.us](mailto:sbowe@da.state.nm.us)

---

**From:** Sara Clark <saraclark@quinnemanuel.com>  
**Sent:** Thursday, March 23, 2023 11:01 AM  
**To:** Shadrick Bowe <SBowe@da.state.nm.us>; Heather LeBlanc <heather@leblanclawnm.com>  
**Cc:** Mary Carmack-Altwhies <MCarmack-Altwhies@da.state.nm.us>; Cristina Zuniga <cristinazuniga@quinnemanuel.com>  
**Subject:** RE: NM v. Baldwin - Discovery

Thank you. Much appreciated.

**Sara Clark**  
*Associate,*  
**Quinn Emanuel Urquhart & Sullivan, LLP**

711 Louisiana Street, Suite 500  
Houston, TX 77002  
713-221-7010 Direct  
713.221.7000 Main Office Number  
210.857.8499 Cell  
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[www.quinnemanuel.com](http://www.quinnemanuel.com)

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**From:** Shadrick Bowe <[SBowe@da.state.nm.us](mailto:SBowe@da.state.nm.us)>  
**Sent:** Thursday, March 23, 2023 12:00 PM  
**To:** Sara Clark <[saraclark@quinnemanuel.com](mailto:saraclark@quinnemanuel.com)>; Heather LeBlanc <[heather@leblanclawnm.com](mailto:heather@leblanclawnm.com)>  
**Cc:** Mary Carmack-Altwhies <[MCarmack-Altwhies@da.state.nm.us](mailto:MCarmack-Altwhies@da.state.nm.us)>; Cristina Zuniga <[cristinazuniga@quinnemanuel.com](mailto:cristinazuniga@quinnemanuel.com)>  
**Subject:** RE: NM v. Baldwin - Discovery

[EXTERNAL EMAIL from [sbowe@da.state.nm.us](mailto:sbowe@da.state.nm.us)]

---

Good morning Sara,

I received both drives and working on adding that data right now. Planning on shipping back out again today.

I'll have that itemized list ASAP.

Thank you & Best regards,  
Shad

Shadrick Bowe  
Program Administrator, First Judicial District Attorney  
327 Sandoval Street | Santa Fe, NM 87501  
505-428-6927  
[sbowe@da.state.nm.us](mailto:sbowe@da.state.nm.us)

---

**From:** Sara Clark <[saraclark@quinnemanuel.com](mailto:saraclark@quinnemanuel.com)>  
**Sent:** Thursday, March 23, 2023 10:44 AM  
**To:** Shadrick Bowe <[SBowe@da.state.nm.us](mailto:SBowe@da.state.nm.us)>; Heather LeBlanc <[heather@leblanclawnm.com](mailto:heather@leblanclawnm.com)>  
**Cc:** Mary Carmack-Altwhies <[MCarmack-Altwhies@da.state.nm.us](mailto:MCarmack-Altwhies@da.state.nm.us)>; Cristina Zuniga <[cristinazuniga@quinnemanuel.com](mailto:cristinazuniga@quinnemanuel.com)>  
**Subject:** RE: NM v. Baldwin - Discovery

Hi Shad,

Checking on the disclosure list. Can you give us an update?

Best,  
Sara

**Sara Clark**  
*Associate,*  
**Quinn Emanuel Urquhart & Sullivan, LLP**

711 Louisiana Street, Suite 500  
Houston, TX 77002  
713-221-7010 Direct  
713.221.7000 Main Office Number  
210.857.8499 Cell  
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[saraclark@quinnemanuel.com](mailto:saraclark@quinnemanuel.com)  
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**From:** Sara Clark  
**Sent:** Tuesday, March 21, 2023 4:29 PM  
**To:** Shadrick Bowe <[SBowe@da.state.nm.us](mailto:SBowe@da.state.nm.us)>; Heather LeBlanc <[heather@leblanclawnm.com](mailto:heather@leblanclawnm.com)>  
**Cc:** Mary Carmack-Altwhies <[MCarmack-Altwhies@da.state.nm.us](mailto:MCarmack-Altwhies@da.state.nm.us)>; Cristina Zuniga <[cristinazuniga@quinnemanuel.com](mailto:cristinazuniga@quinnemanuel.com)>  
**Subject:** RE: NM v. Baldwin - Discovery

Hi Shad,

Further to our conversation, the drives were sent today and should arrive tomorrow morning before 10:30AM. The FedEx tracking number is 3960 2204 9310. Please let us know if there are any issues. Also, please let us know when we can expect the itemized disclosure of discovery.

Best,  
Sara

**Sara Clark**  
*Associate,*  
**Quinn Emanuel Urquhart & Sullivan, LLP**

711 Louisiana Street, Suite 500  
Houston, TX 77002  
713-221-7010 Direct  
713.221.7000 Main Office Number  
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---

**From:** Shadrick Bowe <[SBowe@da.state.nm.us](mailto:SBowe@da.state.nm.us)>  
**Sent:** Monday, March 20, 2023 5:00 PM  
**To:** Sara Clark <[saraclark@quinnemanuel.com](mailto:saraclark@quinnemanuel.com)>; Heather LeBlanc <[heather@leblanclawnm.com](mailto:heather@leblanclawnm.com)>  
**Cc:** Mary Carmack-Altwhies <[MCarmack-Altwhies@da.state.nm.us](mailto:MCarmack-Altwhies@da.state.nm.us)>  
**Subject:** RE: NM v. Baldwin - Discovery

[EXTERNAL EMAIL from [sbowe@da.state.nm.us](mailto:sbowe@da.state.nm.us)]

---

Hi Sara and Heather,

Thank you for your time today sharing the issues you're experiencing.

Please use the following address for that flash drive (Recommend at least 512GB in size or 256GB at an absolute minimum):

First Judicial District Attorney  
c/o Shadrick Bowe  
327 Sandoval Street  
Santa Fe, NM 87501

Thank you & Best regards,  
Shad

Shadrick Bowe  
Program Administrator, First Judicial District Attorney  
327 Sandoval Street | Santa Fe, NM 87501  
505-428-6927  
[sbowe@da.state.nm.us](mailto:sbowe@da.state.nm.us)

-----Original Appointment-----

**From:** Sara Clark <[saraclark@quinnemanuel.com](mailto:saraclark@quinnemanuel.com)>  
**Sent:** Sunday, March 19, 2023 9:20 PM  
**To:** Sara Clark; Shadrick Bowe  
**Cc:** Jack Vallar; Cristina Zuniga; Heather LeBlanc  
**Subject:** NM v. Baldwin - Discovery  
**When:** Monday, March 20, 2023 4:00 PM-5:00 PM (UTC-06:00) Central Time (US & Canada).  
**Where:** <https://protect-us.mimecast.com/s/XqRBC31EZLfwkBAhgX0b2?domain=quinnemanuel.zoom.us>

Sara Clark is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting  
<https://quinnemanuel.zoom.us/j/2315136625>

Meeting ID: 231 513 6625

One tap mobile  
+13462487799,,2315136625# US (Houston)  
+19712471195,,2315136625# US (Portland)

Dial by your location

- +1 346 248 7799 US (Houston)
- +1 971 247 1195 US (Portland)
- +1 213 338 8477 US (Los Angeles)
- +1 253 215 8782 US (Tacoma)
- +1 602 753 0140 US (Phoenix)
- +1 669 219 2599 US (San Jose)
- +1 720 928 9299 US (Denver)
- +1 312 626 6799 US (Chicago)
- +1 470 250 9358 US (Atlanta)
- +1 470 381 2552 US (Atlanta)
- +1 646 518 9805 US (New York)
- +1 646 558 8656 US (New York)
- +1 651 372 8299 US (Minnesota)
- +1 786 635 1003 US (Miami)

+1 267 831 0333 US (Philadelphia)

+1 301 715 8592 US (Washington DC)

Meeting ID: 231 513 6625

Alternate Dial-in Numbers: <https://guinnemanuel.zoom.us/j/kcLW9CmpKj>

Join by SIP

[2315136625@zoomcrc.com](mailto:2315136625@zoomcrc.com)

**Felicia M. Lujan**

---

**From:** Mary Carmack-Altwhies  
**Sent:** Monday, March 6, 2023 3:27 PM  
**To:** Felicia M. Lujan  
**Subject:** FW: contract  
**Attachments:** 20220609\_FIRST JUDICIAL DISTRICT ATTORNEY.pdf

**From:** Mary Carmack-Altwhies  
**Sent:** Thursday, June 9, 2022 5:00 PM  
**To:** Andrea Reeb <[andrea@reeblaw.org](mailto:andrea@reeblaw.org)>  
**Cc:** Brenda Rael <[BRael@da.state.nm.us](mailto:BRael@da.state.nm.us)>  
**Subject:** Re: contract

I think we'll have to or we can redo it when we have the whole investigation.

I am intending to either introduce you or send it in a press release when we get the investigation!

Brenda - can you sign for me or use my stamp thingy?

Sent from my iPhone

On Jun 9, 2022, at 4:49 PM, Andrea Reeb <[andrea@reeblaw.org](mailto:andrea@reeblaw.org)> wrote:

One you have it signed, if you can scan it right back and I will email it to PERA. Thanks! I assume we redo at new physical year? Otherwise it's 22 days? I also 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. Andi

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

2023 NOV -8 PM 1:10

STATE OF NEW MEXICO,

**Plaintiff,**

v.

**D-0101-GJ 2023-00008**

**ALEXANDER RAE BALDWIN, III,**

**Defendant.**

**STATE'S REPLY TO ALEC BALDWIN'S RESPONSE TO STATE'S EXPEDITED  
MOTION TO PERMIT STATE TO CONDUCT VOIR DIRE OF GRAND JURY VENIRE**

**COMES NOW** the State of New Mexico, through Special Prosecutors Kari T. Morrissey and Jason J. Lewis, and submits its reply to the target's response to the State's Expedited Motion to Permit State to Conduct Voir Dire of Grand Jury Venire and submits the following:

1. The target has established by now that he never passes up the opportunity to paint himself as the victim in this case, despite the fact his actions resulted in the death of Halyna Hutchins and the serious wounding of Joel Souza, because he failed to act as a reasonable person with a live firearm would do when pointing said firearm in the direction of living humans. Although he may believe he is a victim here, the State has determined there is probable cause to believe he is actually the perpetrator of a crime.
2. The target continues to state that he does not want to be treated differently than any other person charged with a crime in the State of New Mexico, but then immediately asks to be treated better than every other defendant.
3. The former special prosecutor set up a defense disclosure server to make discovery available to all defendants as it became available to the prosecutor. As has been shown in the exhibits to the State's Motion for Scheduling Order and subsequent briefs, the target's attorneys

were granted access to this server. So were defendants Dave Halls and Hannah Gutierrez.

Defendants Halls and Gutierrez had no issues with the server. Defendant Gutierrez continues to this day to receive regularly updated information on the server.

4. Yet, for reasons that defy explanation, target Baldwin believes he should not have to receive discovery in the same manner as the other defendants. This, despite the fact that his attorneys, Quinn Emmanuel, have a dedicated IT staff to assist him in downloading the information off the server.

5. For reasons unknown to the current special prosecutors, the target's special treatment of receiving a dedicated hard drive was never communicated to them by either the former special prosecutor or anyone on the target's defense team. The current special prosecutors would have never agreed to any special treatment in any case. The current prosecutors have learned that Mr. Shadrick Bowe, who manages the server, scheduled a training with Sara Clark from Quinn Emmanuel and Heather LeBlanc (local counsel for Alec Baldwin) on March 20, 2023, and did in-fact train them how to access the discovery on the disclosure server. Mr. Bowe indicated the issue was related to the IT system at Quinn Emmanuel blocking their access to the server. Mr. Bowe sent out hard drives with discovery so the attorneys for Mr. Baldwin could have the discovery while they were solving their IT problem that created the accessibility issues. Mr. Bowe never intended nor agreed to continually provide discovery updates via hard drive and the defense attorneys never requested discovery from the current prosecutors via hard drive since they took over the prosecution. Certainly, if the target's defense team had ever notified the special prosecutors of this special arrangement or of any on-going agreement to continue providing discovery via hard drive, they would have attached such communications as an exhibit to his response. They did not.

6. However, all of this is irrelevant to the present motion because the bulk of the target's complaints about discovery in this case can be dealt with swiftly: ***he has no entitlement to discovery prior to grand jury.*** N.M.R. Crim. P. Dist. Ct. 5-501 (A) states, "Unless a shorter period of time is ordered by the court, within ten (10) days after arraignment or the date of filing of a waiver of arraignment..." the information designated under the rule shall be disclosed. The target has not been arraigned, thus his entitlement to discovery has not started.

7. While he is free to list his litany of complaints about the former special prosecutor and even complain about honoring his special access to the disclosure information, the target cannot escape the ultimate conclusion here that he is not entitled to one bit of the State's discovery prior to grand jury. *Id.*

8. Having addressed the target's perceived victimization, we can now reply to the actual purpose of the State's motion, which is its request to conduct a limited voir dire of the grand jury venire.

9. It appears the target actually does not object to voir dire being conducted, only that he wants his questions asked also, and wants them asked by the grand jury judge rather than by the special prosecutors.

10. The intent of the State's proposed voir dire questions was simple: to determine whether a prospective grand juror could be fair to both the target and the State. The State did not anticipate the target would wish to conduct an inquiry into the prospective grand jurors' knowledge, for example, of handguns (target's proposed question #10) or their knowledge of the film industry (target's proposed question #11). These questions and many others submitted by the target are appropriate for a petit jury, but not a grand jury. Consequently, the target's proposed additional questions should be excluded from the grand jury.



11. Target's next request is that the grand jury judge conduct the voir dire and any follow-up questioning of the grand jury venire, rather than the special prosecutors. To be clear, this is an extraordinary request. It again highlights the special treatment this target believes he is entitled to from this Court. "In *Chanen*, the court held that courts should not encroach upon the manner in which the prosecutor presents the government's case to the grand jury 'unless there is a clear basis in fact and law for doing so', because it 'could readily prove subversive of the doctrine of separation of powers.'" *Buzbee v. Donnelly*, 96 N.M. 692, 695, 1981-NMSC-097, 13-14, 634 P.2d 1244, 1247, 1981 N.M. LEXIS 2392, \*7. In support of the allegedly extraordinary circumstances warranting a departure from the normal and customary practices in grand jury, the target cited to news articles in which the former and current prosecutors commented publicly on the case. He then made conclusory allegations that this somehow biased his client to such a degree and showed such bias against his client that the current special prosecutors cannot be trusted to fairly question prospective grand jurors. As to the current special prosecutors, the target cited one media report in which Special Prosecutor Morrissey is quoted giving only factual statements: that she was seeking to present the case to a grand jury and then confirming information previously released to the press by Ms. Gutierrez's attorney concerning the forensic testing of the gun. Target's request that the Court usurp a function plainly within the lawful purview of the prosecutor based on these facts is farcical and is and unsupported by law.

12. Comparatively, the target himself granted an hour-long televised interview on the TV news magazine "20/20" which aired on December 3, 2021, a little more than a month after the tragic shooting. During this interview, the target gave a lengthy and detailed statement concerning the actions resulting in him shooting and killing Hutchins and maiming Souza. The target made numerous impromptu statements to the paparazzi and press concerning the case, and

somehow, the details of the plea offer were leaked to the press even though it was transmitted only to Baldwin's attorneys under the condition that plea negotiations remain confidential pursuant to New Mexico law.

13. Similarly, the target's former co-defendants and their counsel made numerous statements to the press and granted an extraordinarily large number of televised and print interviews. For the target to now claim, without anything other than conclusory and self-serving statements, that any and all potential juror bias was caused by the limited and factual statements provided by prosecutors borders on asinine. Having failed to prove actual bias with nothing more than conclusory statements, the target's request to relieve the special prosecutors of their role in questioning prospective grand jurors must be denied.

**WHEREFORE**, the State respectfully requests the Court grant its motion to conduct a limited voir dire of the grand jury venire using the questions identified in its motion and denying the target's requests to submit additional questions to the grand jury venire and to have the Court conduct voir dire questioning.

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](mailto:ktm@morrisseylewis.com)

[jjl@jilllaw.com](mailto:jjl@jilllaw.com)

I hereby certify that a true and correct copy of the foregoing pleading was emailed to opposing counsel this 8<sup>th</sup> day of November 2023.

/s/ Kari T. Morrissey

Kari T. Morrissey

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

STATE OF NEW MEXICO,

Plaintiff,

v.

D-0101-GJ 2023-00008

ALEXANDER RAE BALDWIN,

Defendant.

**STATE'S EXPEDITED MOTION TO PRECLUDE TARGET'S REQUESTED  
TESTIMONY AND EVIDENCE BEFORE THE GRAND JURY**

COMES NOW the State of New Mexico, by and through Special Prosecutors Kari T. Morrissey and Jason J. Lewis, and respectfully requests that the Court exclude or limit the testimony and evidence proposed by the target for presentation to the grand jury as not lawful, competent and relevant, and not directly exculpatory for the purposes of grand jury presentation. N.M.S.A. 1978, §31-6-11(B), N.M.R. CRIM. P. DIST. CT. 5-302.2.

On November 14, 2023, pursuant to N.M.S.A. 1978, §31-6-11, N.M.R. CRIM. P. DIST. CT. 5-302.2, and *Jones v. Murdoch*, 2009- NMSC-002, 145 N.M. 473, the State received the target's cover letter and grand jury evidence alert letter. State's Exhibits 1 and 2. The State has completed its review of the target's cover and alert letters and provides the following response:

**PART I: ELEMENTS**

**A. Criminal Negligence Instruction**

The target is requesting the grand jurors "be alerted to the fact that the criminal negligence standard requires the prosecution to show that Mr. Baldwin had subjective knowledge

of an actual risk that the firearm placed in his hand had been loaded with live ammunition.” This is an incorrect instruction for at least two reasons.

First, there is more than one way to show that an individual acted with criminal negligence resulting in a charge of involuntary manslaughter. N.M.S.A. 1978, 30-2-3(B), provides, “Involuntary manslaughter consists of manslaughter committed in the commission of an unlawful act not amounting to felony, or in the commission of a lawful act which might produce death in an unlawful manner or without due caution and circumspection.” The State can support a criminal charge of involuntary manslaughter, as identified in the target notice, under the theory that the target committed the offense of negligent use of a firearm (an unlawful act not amounting to a felony) and that act resulted in the death of Halyna Hutchins. None of this requires the grand jury to also find that the target had subjective knowledge of an actual risk that the firearm placed in his hand had been loaded with live ammunition. Moreover, if the target had subjective knowledge the gun handed to him was loaded with live ammunition, he could be and would be charged with much more serious crimes, including first and second degree murder, or voluntary manslaughter. The target is asking the Court to impose an unlawfully high standard of proof for a charge of involuntary manslaughter, and that the Court impose an additional element not required by the statute.

Second, the only items to be submitted to the grand jury pertaining to this charge are the applicable Uniform Jury Instruction (UJI) and any definitions required by the UJI. The State is not required to disclose to the target what its proposed theory of the case is nor provide the target with an advance copy of the UJI and applicable definitions.

#### **B. Proximate Cause Instruction**

The State will agree to alert the grand jury to the proximate cause instruction.

## **PART II: WITNESSES**

As an initial matter, it is well established that it is within the purview of the prosecutor to “present specific evidence before a grand jury in a particular manner...and that the [target] does not have a clear legal right to have the grand jury investigation proceed in the same manner as a criminal trial with the full panoply of due process rights.” *Matter of Grand Jury Sandoval Cty.*, 1988-NMCA-007, ¶ 18, 106 N.M. 764, 768, 750 P.2d 464, 468. In this vein, the target is permitted to propose only that testimony and evidence that is directly exculpatory; circumstantial exculpatory evidence is not permitted. The State is required to present to the grand jury only exculpatory evidence that directly negates defendant's guilt. *See State v. Lara*, 110 N.M. 507, 1990-NMCA-075. “Direct evidence is evidence that, if believed, proves the existence of facts without inference or presumption.” *Id.* at 516, ¶ 32. As noted below, the vast majority of the target's proposed testimony and exhibits are not directly exculpatory and are therefore not required to be presented to the grand jury.

### **Witness No. 1: Joel Souza**

Question 1: Mr. Souza's role on the set of *Rust* as director and what that role entailed are irrelevant to the grand jury inquiry, and these questions will not elicit directly exculpatory evidence.

Questions 2-4: Whether Mr. Souza is aware whether anyone raised concerns about Mr. Baldwin's attitude toward safety on set in *Rust* or any other movie is irrelevant to the grand jury's inquiry. Similarly, whether Mr. Souza had concerns about Mr. Baldwin's attitude toward safety on the set of *Rust* is not relevant and is not directly exculpatory.

Questions 5 and 6: The fact that *Rust* is a Western genre film, and the filming included the use of real firearms will be presented to the grand jury through other witnesses. It is unclear

whether the script called for real firearms to be used as props as opposed to inert prop guns similar to the type that were used when Rust resumed filming in Montana.

Question 7-9: Whether other scenes filmed in the movie called for guns to be pointed at actors is irrelevant and not directly exculpatory.

Question 10-11: The crew members responsible for safety on set and responsible for firearm safety is irrelevant and not directly exculpatory. The actor holding the gun is responsible for safe handling of the gun pursuant to the same safety bulletins the target refers to in his request for grand jury evidence. Moreover, persons handling firearms in New Mexico are subject to the laws of the State of New Mexico regardless of the responsibilities of others around them. The fact that the actor shares the responsibility of firearm safety with another person(s) or crew member(s) is not directly exculpatory. Moreover, question 10 is apparently intended to elicit testimony that David Halls "was responsible for safety on set" when in fact David Halls was the "safety coordinator" and all cast and crew are responsible for conducting themselves in a safe manner.

Questions 12-13: How many times Mr. Souza observed Mr. Baldwin using prop weapons and whether Mr. Souza deemed the use dangerous or negligent is irrelevant and not directly exculpatory. It calls for a legal conclusion as the grand jury will be provided the definition of negligence and there is no evidence that Mr. Souza has sufficient experience with firearms, specifically single action revolvers, to know whether the target was behaving dangerously or negligently.

Question 14: What time Mr. Souza arrived on set is irrelevant to whether Mr. Baldwin's conduct meets the elements of the offenses presented to the grand jury and is not directly exculpatory.

Questions 15-17: The scene that was being rehearsed prior to the lunch break on October 21, 2021, was recorded and the grand jury will be provided with the video recording. Moreover, witnesses who were in the church during filming before and after lunch will be called to testify before the grand jury and can describe what was being rehearsed, what happened during the scene and whether it involved firearms. Whether the script directed Mr. Baldwin to draw his pistol during the scene is not competent or relevant evidence given that the script was constantly subject to modification by Mr. Baldwin and Mr. Souza and drawing a pistol during a scene does not include pointing the pistol at Ms. Hutchins while cocking the pistol and pulling the trigger.

Question 18: This question will be posed to witnesses present for the incident who will be called to testify before the grand jury.

Question 19: Whether Mr. Souza had concerns about the positioning of the camera or not is irrelevant to the grand jury's inquiry. Presumably, Mr. Souza had no reason to believe Mr. Baldwin was going to pull the trigger of the gun while it was pointed at Ms. Hutchins. The answer to this question is not directly exculpatory.

Questions 20-21: Mr. Souza does not have first-hand knowledge of the subject matter of questions 20-21. He simply cannot answer the questions and in any event, the answers to them are not directly exculpatory.

Questions 22-23: These questions require Mr. Souza (or any witness) to speculate as to what "everyone" assumed or how people "seemed." Moreover, what other people assumed about the gun or whether anyone "seemed uncomfortable" is irrelevant to the grand jury's inquiry, and the responses are not directly exculpatory.

Questions 24 and 25: Mr. Souza did not give Mr. Baldwin any instructions after Mr. Baldwin was in possession of the gun and did not hear any instructions given by Ms. Hutchins to Mr.

Baldwin. Mr. Souza entered the church seconds before the gun was discharged. Mr. Souza could not see the way Mr. Baldwin was handling the gun in front of the camera. Mr. Souza is 5'4 and was standing behind Ms. Hutchins. Moreover, the responses are not directly exculpatory.

Question 26: It is unclear what this question is intended to elicit and whether that information would be relevant, competent or directly exculpatory.

Question 27-30: Whether Mr. Souza recalls being taken to the hospital or giving statements to investigators is irrelevant to the grand jury's inquiry regarding the conduct of Mr. Baldwin. The fact that Ms. Hutchins was shot and killed, and Mr. Souza was shot and survived is testimony that will be provided to the grand jury through other witness's testimony. Whether Mr. Souza recalls Ms. Gutierrez yelling "I'm sorry, I'm sorry, I'm sorry" and whether he had an understanding of why she was yelling that is irrelevant to the grand jury's inquiry concerning the conduct of Mr. Baldwin. Moreover, this evidence and testimony is not directly exculpatory to Mr. Baldwin. The grand jury and Mr. Souza would be asked to speculate as to why Ms. Gutierrez apologized to Mr. Souza.

Question 31: The fact a production company was formed to make the movie Rust will be presented to the grand jury through other witnesses. The specific name of the production company is irrelevant, and the responses are not directly exculpatory.

Question 32: Whether Mr. Souza was hired by the production company is irrelevant to the grand jury's inquiry regarding the conduct of Mr. Baldwin, and the responses are not directly exculpatory.

Question 34: Whether Rust Movie Productions is Alec Baldwin's company or whether he owned any part of the is irrelevant to the grand jury's inquiry as to whether there is probable



cause that Mr. Baldwin committed the offense of involuntary manslaughter, and the responses are not directly exculpatory.

Questions 35: The fact that Mr. Baldwin was hired as an actor and producer on the movie Rust will be presented to the grand jury through other witnesses.

Question 36: The names of other people hired by Rust Productions and their job duties with respect to hiring, budgeting, scheduling, logistics and management is irrelevant to the grand jury's inquiry, and the responses are not directly exculpatory.

Question 37-40: Mr. Souza's knowledge of Mr. Baldwin's authority or responsibilities is irrelevant. Mr. Baldwin's authority as actor and producer is outlined in his contracts and evidenced by his behavior on set and will be discussed by other witnesses called to testify before the grand jury. This testimony will include that Mr. Baldwin received a producer credit for the film pursuant to his producer contract. What Mr. Souza believed the producer credit was intended to reflect is irrelevant to the grand jury's inquiry, and the responses to these questions are not directly exculpatory.

**Witness No. 2: David Halls**

Questions 1-3: Mr. Halls' general role on the set of Rust as 1st Assistant Director is irrelevant to the grand jury inquiry. The State will present testimony through other witnesses that one of Mr. Halls' responsibilities was to conduct safety briefings, and that on the day of the incident, Mr. Halls handed the target the incident firearm and stated to the target, "Cold gun" or similar language.

Questions 4-5: Mr. Halls' status as a union member and whether the union provides a job description for 1st Assistant Director is irrelevant to the grand jury proceedings and is not directly exculpatory evidence.

Questions 6-8: Mr. Halls' role as safety coordinator is not directly exculpatory evidence except as provided for in the State's response to Questions 1-3. Moreover, Mr. Halls' role as safety coordinator does not relieve any other member of the cast and crew, including the target, from their own responsibilities to act in a safe manner which comports with applicable safety rules and local and state laws.

Questions 9-11: Mr. Halls' knowledge of Industry Safety Bulletins is irrelevant to the grand jury proceeding and is not directly exculpatory evidence. The State will introduce the Industry Safety Bulletins as exhibits and will discuss their contents through one or more witnesses. The State also intends to have one or more witness testify as to the target's statements regarding the safety bulletins.

Questions 12-14: The Safety Bulletins are self-explanatory and do not require Mr. Halls' interpretation. Mr. Halls' knowledge about whether others should expect there to be live ammunition on set is not competent evidence because he cannot know whether any other person on set would ever have any reason to believe live ammunition is on the set. Further, other people's beliefs concerning live ammunition on set is irrelevant as to what the target knew or should have known and is not directly exculpatory evidence.

Questions 16-18: How Mr. Halls' interpreted or perceived the target's behavior and attitude on set and whether anyone raised issues concerning the target's behavior on set is not directly exculpatory evidence.

Question 19: Mr. Halls cannot testify as to what the target knew concerning live ammunition on set and such testimony is not directly exculpatory evidence.

Questions 20-22: The State intends to introduce the role of the armorer and her chain of command through other witnesses. Such testimony is not directly exculpatory evidence.

Question 23: Mr. Halls' understanding of the difference between a blank and dummy round is irrelevant to the grand jury proceedings and is not directly exculpatory evidence.

Question 24-25: Mr. Hall's description of the scene being rehearsed leading up to the incident and whether he was inside the church is irrelevant to the grand jury proceedings and is not directly exculpatory evidence.

Question 26: Whether Mr. Halls asked for the gun to be brought into the church is irrelevant to the grand jury proceedings and is not directly exculpatory evidence.

Question 27: Whether Mr. Halls asked for the gun to be loaded with dummies is irrelevant to the grand jury proceedings and is not directly exculpatory evidence.

Question 28: Whether it was necessary for the gun to be loaded with dummies for the rehearsal will be discussed by other witnesses and is not directly exculpatory evidence.

Questions 29-33: The State will call other witnesses to testify to the appropriate process by which dummies are checked and loaded into firearms on movie sets, and what an actor's responsibilities are as part of this process. Mr. Halls' opinion on whether it is customary for actors generally to rely on assurances from the armorer and 1st Assistant Director are irrelevant to whether it was reasonable for the target to have relied on assurances under the facts of this case. Moreover, none of the testimony expected to be elicited by these questions is directly exculpatory.

Questions 34-35: Any assumptions on the part of Mr. Halls or anyone else are irrelevant and not directly exculpatory. Moreover, this question in isolation - that is, without knowing what the steps were prior to the gun being handed to an actor - is not relevant. The relevant inquiry is of

the circumstances under which the target could have assumed the gun was completely safe to handle. These questions will not elicit evidence that is directly exculpatory or relevant.

Question 36: What Mr. Halls heard some unidentified person ask the target to do is not evidence that the target heard the instruction. The target has offered no evidence that Mr. Halls can answer why other people gave particular instructions. The best evidence of what Mr. Baldwin was asked and he knew are the statements he gave to Detective Hancock. Lastly, the answers to these questions are not directly exculpatory evidence.

Question 37: Mr. Halls cannot answer why the target may have pointed the gun at the camera, and the answer to this question is not directly exculpatory evidence.

Question 38: Mr. Halls' belief as to whether the target acted carelessly, negligently, or in violation of industry standards question is not appropriate testimony and is not directly exculpatory evidence.

Questions 39-45: Statements made to the media by Mr. Halls' attorney are not relevant to the grand jury proceedings and are not directly exculpatory evidence.

Questions 46-48: Questions concerning whether Mr. Halls recalls being interviewed by various state agencies and by members of the DA's office with his counsel present are irrelevant and will not elicit directly exculpatory evidence.

Questions 49-51: Questions concerning the plea agreement Mr. Halls entered into are not relevant to the grand jury proceedings. Because Mr. Halls entered into a plea agreement does not preclude the indictment of the target. The grand jury's charge is to determine whether the target's actions were a significant cause of the injury or harm, irrespective of whether there were other

individuals whose actions were also a significant cause of the injury or harm. *See* UJI 14-134 NMRA.

Question 52: The State is unaware of the “plea interview” to which the target is referring.

Regardless, Mr. Halls’ *feelings* of whether he was responsible are not relevant. A person’s feelings are not a relevant inquiry into legal responsibility or an individual’s legal culpability.

Moreover, the grand jury’s charge is to determine whether the target’s actions were a significant cause of the injury or harm, irrespective of whether there were other individuals whose actions were also a significant cause of the injury or harm. *See* UJI 14-134 NMRA.

Question 53: Mr. Halls’ statement that he was “the last line of defense” is irrelevant and misleading. The industry safety bulletins and state law place duties and responsibilities on actors, including the target. This statement is not directly exculpatory evidence.

**Witness No. 3: Sarah Zachry**

Questions 1-5: Ms. Zachry’s role on the film, who hired her, who did all the hiring (assuming she knows who hired other cast/crew members) and Mr. Baldwin’s role in hiring is irrelevant to the grand jury’s inquiry. Ms. Zachry was not in the church at the time of the shooting and did not load the gun that Mr. Baldwin was handling when Ms. Hutchins was killed. The information elicited by these questions would not be directly exculpatory.

Questions 6 and 7: Ms. Zachry’s understating of Mr. Baldwin’s supervision or managing of the various departments on set is irrelevant to the grand jury’s inquiry. Likewise, Ms. Zachry’s knowledge or lack thereof about Mr. Baldwin’s responsibilities for ensuring safety protocols were followed is irrelevant to the grand jury’s inquiry. Moreover, there is no information that Ms. Zachry, the prop master, knew or understood these roles or had reason to know. However, witnesses subpoenaed for the grand jury can testify that Mr. Baldwin’s producer contract states

“Production Company (Rust Movie Productions, LLC) engages lender (El Dorado Pictures, Inc, which is Alec Baldwin’s production company) to cause Artist (Alec Baldwin) to *render those services customarily rendered by a producer in connection with the production of the motion picture tentatively entitled “Rust” (the “Picture”).*” (emphasis added). The contract goes on to add “Lender shall cause Artist to render all pre-production, production, and post-production services reasonably requested by Production Company and *customarily rendered by individual Producers in the motion picture industry.*” (emphasis added).

Questions 8-9: Ms. Zachry’s knowledge of whether Mr. Baldwin was involved in scheduling hours or budgeting or other persons who were involved in those tasks is irrelevant to the issue before the grand jury and is not directly exculpatory.

Question 10: Whether Ms. Zachry ever observed Mr. Baldwin doing anything in relation to the production other than acting is irrelevant and not directly exculpatory. Upon information and belief, Ms. Zachry did notice that Mr. Baldwin controlled more aspects of the filming and management on set than the other cast members who were not also contracted as producers.

Question 11: Witnesses subpoenaed to testify before the grand jury will testify that Hannah Gutierrez was the armorer.

Questions 12-14: Whether it was Ms. Zachry’s job to oversee the armorer, acquire firearms and ammunition for the set and who she shared those responsibilities with is not relevant for the grand jury’s inquiry and not directly exculpatory.

Questions 15-16: Witnesses already subpoenaed for the grand jury proceeding will testify that the gun used in the incident that resulted in Ms. Hutchins death was a .45 Long Colt Caliber Pietta Single Action Army revolver and that the ammunition on set included dummy rounds, blank rounds and six live rounds.

Questions 17-18: Where the firearms and ammunition were acquired is not relevant to the grand jury's inquiry into Mr. Baldwin's negligent handling of the firearm on set by pointing a gun at another person, cocking the gun and pulling the trigger without personal knowledge of what was in the firearm. The origin of the firearms and ammunition is not directly exculpatory to Mr. Baldwin.

Questions 19-28: These questions are irrelevant to the specific inquiry of the grand jury and not intended to elicit directly exculpatory information.

Question 29: Testimony will be elicited from other witnesses concerning the differences between dummy rounds and blank rounds.

Questions 30-31: The question is improper and is not intended to elicit relevant information or directly exculpatory information.

Questions 32-34: How well Ms. Gutierrez performed her job functions in the opinion of Ms. Zachry is not relevant or intended to elicit directly exculpatory evidence. The grand jury will hear testimony from other witnesses that Ms. Gutierrez was the person who loaded the gun that was provided to Mr. Baldwin before the shooting that resulted in the death of Ms. Hutchins.

Questions 35-42: None of the questions requested by the target relate to whether or not Mr. Baldwin behaved negligently once the firearm was in his possession, as such they are irrelevant and not intended to elicit exculpatory information.

Question 43: The grand jury will hear testimony from other witnesses that Hannah Gutierrez was working on the set of Rust on October 21, 2021.

Question 44: The grand jury will hear testimony about the gun Mr. Baldwin was using before lunch. Mr. Baldwin only used one gun and did not use others and the grand jury will not be

presented with testimony about other guns in the possession of other actors as it is irrelevant to the grand jury's inquiry into Mr. Baldwin's conduct and is not directly exculpatory.

Question 45: Where the guns were stored during lunch and whether they were unloaded is not relevant to Mr. Baldwin's conduct when the gun was in his possession. "What about the cart? Was *anything* left of the cart?" (emphasis added) are not proper questions intended to lead to relevant or exculpatory information.

Question 46-48: The targets proposed questions are not intended to lead to relevant or directly exculpatory testimony or evidence.

Question 49: The grand jury will hear testimony that Hannah Gutierrez loaded Mr. Baldwin's gun before and after the lunch break on October 21, 2021.

Question 50: Ms. Zachry was recently interviewed by Ms. Gutierrez's counsel and stated definitively that she did not see Ms. Gutierrez load Mr. Baldwin's gun, therefore this question will not lead to relevant or exculpatory information.

Question 51: Whether there were any rounds left in the gun from before lunch is not relevant and will not lead to directly exculpatory evidence. The follow-up questions are not clear as to who *she* is and should not be asked in their currently form and would unlikely lead to exculpatory evidence even if reworded.

Question 52-53: Ms. Zachry stated that she did not see Ms. Gutierrez load the gun after lunch. These questions will not lead to relevant or exculpatory information.

Question 54: The target's proposed questions are not proper and complete questions and therefore will not lead to relevant and exculpatory information.

Question 55: The target's proposed question is unclear as it does not give a time frame that could lead to relevant information. Moreover, Ms. Zachry has already stated that she did not see



Ms. Gutierrez load the gun after lunch. These questions will not lead to relevant or exculpatory information.

Question 56: The target's proposed question is unclear as it does not give a time frame that could lead to relevant, directly exculpatory information. Moreover, Ms. Zachry was never in the church before or after lunch during filming and could not have seen what happened "after Hannah brought the gun into the church."

Questions 57-60: The target's proposed questions will not lead to relevant or directly exculpatory information.

Question 61: Testimony will be presented to the grand jury by other witnesses that Ms. Zachry checked the box that she believed Ms. Gutierrez was pulling dummy rounds from and discovered other rounds that did not appear or sound to be dummy rounds. Three of these live rounds were later determined to be live rounds.

Question 62-65: The target's proposed questions are not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and the information elicited by these questions would not be directly exculpatory.

Question 66: Testimony will be presented by other witnesses about how to distinguish a live round from a dummy round.

Question 67-70: The target's proposed questions are not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin.

Question 71-74: The target's proposed questions are not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin.

Question 75: How closely Ms. Zachry worked with Mr. Baldwin and whether she ever spoke to him is not relevant to the grand jury's inquiry. On October 13, 2021 Ms. Zachry sent a text message to her then fiancée and described Mr. Baldwin as "a difficult man." Presumably, this is Ms. Zachry's opinion of what Mr. Baldwin was *like* and counsel will present this text message to the grand jury if the target wishes it to be presented but was not intending to present it.

Questions 54-57: These questions are incorrectly numbered and are irrelevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin.

Questions 76: Ms. Zachry's opinion about who is responsible for Ms. Hutchins' death is not relevant to whether there is probable cause to believe that Mr. Baldwin violated New Mexico law. The information elicited by these questions would not be directly exculpatory.

**Witness No. 4: Ryan Smith**

Questions 1-3: Mr. Smith's role on Rust, his involvement in Rust Movie Productions, LLC, and Rust Movie Productions LLC's ownership is irrelevant to the grand jury inquiry and the responses to these questions are not directly exculpatory evidence.

Question 4: Whether the target was hired by Rust Movie Productions and Mr. Smith's description of "what he was hired to do" is irrelevant to the grand jury proceedings. The target's employment as an actor and producer was reduced to a written contract and the contract speaks for itself. The responses to these questions are not directly exculpatory evidence.

Question 5-6: The State intends to inform the grand jury regarding target's employment contracts via other witnesses. The question of whether the contract limits the target's authority in any way calls for a legal conclusion; the best evidence of what the contract does is the plain language of

the contract. Nothing in the contract, Mr. Smith's interpretation of the contract, or why it was important for the target to be credited as a producer is directly exculpatory evidence.

Question 7: Whether Rust Movie Productions hired cast and crew is irrelevant and is not directly exculpatory evidence.

Question 8: Who at the production company was responsible for hiring crew members is irrelevant to the grand jury proceedings and is not directly exculpatory evidence.

Question 9: Whether the target was involved in the hiring of cast members is irrelevant to the grand jury proceedings and is not directly exculpatory evidence.

Question 10: Whether the target could hire cast members on his own without the production company's permission is irrelevant to the grand jury proceedings and is not directly exculpatory evidence.

Questions 11-14: Whether the target was involved in any of the activities listed in questions 11-14 is irrelevant to the grand jury proceedings and is not directly exculpatory evidence.

Questions 15-17: Whether Mr. Smith ever observed the target on set, whether anyone raised concerns to Mr. Smith regarding target's attitude toward safety on set or regarding the target's general conduct on the set is not directly exculpatory evidence.

**Witness No. 5: Det. Alexandria Hancock:**

Question 1: Detective Hancock will be asked to describe her role in the investigation.

Questions 2-3. Whether law enforcement separated potential witnesses and whether it is standard practice to do so is not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin.

Questions 4-5: The ammunition in the firearm was already removed by Ms. Gutierrez by the time law enforcement arrived. Given that the ammunition was already removed from the firearm before law enforcement arrived the questions are not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin.

Questions 6-10: The target's proposed questions are not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin.

Questions 11 and 12: Detective Hancock will be asked if she interviewed Hannah Gutierrez (the film's armorer) and whether she developed an understanding of the role and responsibilities of an armorer from her interviews with Mr. Gutierrez and other witnesses.

Questions 13-19: The target's proposed questions are not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin.

Question 20: The target's proposed question will elicit the same testimony as question 11 and counsel incorporates her response to Questions 11 and 12 hereto.

Questions 21: The target's proposed question is not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin.

Questions 22-32: The target's proposed questions are not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin. The actions of Ms. Gutierrez actions that contributed to the death of Ms. Hutchins are not a relevant line of

inquiry for the grand jury tasked with determining probable cause against Mr. Baldwin. The fact that another person shares responsibility for the death of Ms. Hutchins is not a relevant or exculpatory line of inquiry. The proximate cause jury instruction that the grand jury will be alerted to requires that the act of the defendant be a significant cause of the death and there may be more than one significant cause of the death. *See* UJI 14-251.

Question 33: As explained above, the difference between dummy rounds and blanks will be testified to by other witnesses before the grand jury.

Questions 34-56: The target's proposed questions are not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin. The actions of Ms. Gutierrez that contributed to the death of Ms. Hutchins are not a relevant line of inquiry for the grand jury tasked with determining probable cause against Mr. Baldwin. The fact that another person shares responsibility for the death of Ms. Hutchins is not a relevant or exculpatory line of inquiry. The proximate cause jury instruction that the grand jury will be alerted to requires that the act of the defendant be a significant cause of the death and there may be more than one significant cause of the death. *See* UJI 14-251. Moreover, as to any comments by Ms. Gutierrez that there was a box of dummy rounds that suddenly appeared on October 21, 2021, that she was using to source dummy rounds is contrary to the evidence and is therefore not competent. Two boxes of dummy rounds containing .45 Long Colt dummies were supplied to the movie. One box was supplied by Hannah Gutierrez and the other box was supplied by Seth Kenney. Both boxes are in evidence and have been identified as being supplied by Hannah Gutierrez and Seth Kenney. There is no other box of .45 Long Colt dummy rounds in evidence and Hannah Gutierrez identified the box she was sourcing dummy rounds from on October 21,

2021 to Lt. Tim Benavidez with the Santa Fe County Sheriff's Department when he arrived on scene. Hannah Gutierrez acknowledged during her interview with Detective Hancock that the box she provided to Lt. Benavidez was the same box she provided to the set. Moreover, there is substantial evidence that the live rounds found on the set of Rust after the death of Ms. Hutchins had been on the set for at least several days, possibly longer.

Question 57: Evidence will be presented to the grand jury that a total of six live rounds were located on the set of Rust (including the spent casing from the round that killed Ms. Hutchins). The testimony will include where the live rounds were located and that all live rounds were .45 Long Colt rounds with Starline Brass casings.

Question 58: Detective Hancock's level of confidence that Ms. Gutierrez thoroughly checked each round she was loading into the gun is irrelevant and not directly exculpatory to Mr. Baldwin. Moreover, the question as posed is improper as it does not give a time frame that could lead to relevant information.

Questions 59-67: The target's proposed questions are not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin. The actions of Mr. Halls that may have contributed to the death of Ms. Hutchins are not a relevant line of inquiry for the grand jury tasked with determining probable cause against Mr. Baldwin. The fact that another person shares responsibility for the death of Ms. Hutchins is not a relevant or exculpatory line of inquiry. The proximate cause jury instruction that the grand jury will be alerted to requires that the act of the defendant be a significant cause of the death and there may be more than one significant cause of the death. UJI 14-251.

Question 68: Testimony will be presented to the grand jury that either Mr. Halls or Ms. Gutierrez stated "cold gun on set" or similar language and the jury will hear evidence as to the difference between a hot gun (gun loaded with blanks) and cold gun (empty gun or gun loaded with dummy rounds).

Questions 69 and 70: The target's proposed questions are not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin.

Question 71: The target's proposed question is not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin. Moreover, there has been no competent evidence to date that Hannah Gutierrez shot live rounds out of any guns off or on set at anytime. The target is asking that witnesses testify to rumor and speculation.

Questions 72 and 73: The target's proposed questions are not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin. Moreover, there has been no competent evidence to date that Hannah Gutierrez shot live rounds out of any guns off or on set at anytime. The target is asking that witnesses testify to rumor and speculation.

Questions 74-80: The target's proposed questions are not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin.

There is evidence that Thell Reed and Seth Kenney obtained live .45 Long Colt live rounds for the purpose of training actors to shoot guns for the television show 1883. There is evidence that Seth Kenney took possession of the remaining live rounds left over from the 1883.

training camp. The remaining rounds were seized from PDQ Props after the execution of a search warrant and were determined to be substantially different in projectile shape and gun powder than the live rounds found on the set of Rust. There is no competent evidence that the live rounds seized from PDQ Props that were obtained for the 1883 training camp were provided to the set of Rust intentionally or accidentally. The gun powder from the live rounds seized from PDQ is of a completely different chemical design than the live rounds found on the set of Rust. The projectiles from the live rounds seized from PDQ Props were semi-wadcutters and the projectiles from the live rounds found on the set of Rust are not semi-wadcutters rounds. If asked to give an opinion as to whether the live rounds seized from PDQ were similar to the live rounds found on the set of Rust Detective Hancock would state that they were/are not similar in shape or chemical composition.

Questions 81-85: The target's proposed questions are not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin.

Questions 86 and 87: Mr. Souza's statements to Detective Hancock and specifically a statement about Ms. Gutierrez apologizing to him are not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin.

Questions 88-89: Detective Hancock will be asked whether she interviewed Alec Baldwin on the date of the incident and that he waived his right to counsel.

Question 91: The length of the interview with Mr. Baldwin is irrelevant to the grand jury's inquiry and will not lead to directly exculpatory evidence.



Question 92: Whether or not Mr. Baldwin believed there could be live ammunition on set is not directly exculpatory and should not be presented to the grand jury. Real guns are dangerous (and despite this, witnesses will testify he insisted on always using the real gun and never a rubber gun or other stand-in) and Mr. Baldwin knew that dummy rounds are designed to look exactly like live rounds. Mr. Baldwin took no steps to determine that there were no live rounds present in the gun he was using prior to pointing it at a person, cocking it and pulling the trigger.

Mr. Baldwin is aware and acknowledged during his interview with Detective Hancock that Hannah Gutierrez gave him the option of checking the gun himself as is standard protocol for the use of real guns on movie sets. It is standard protocol that the armorer load the gun in the presence of the actor and shake the dummy rounds in the presence of the actor so the actor and all other actors and crew members in the area have heard that the rounds rattle consistent with dummy rounds.

When asked by Detective Hancock why he failed to ask the armorer to load the gun in front of him and shake the rounds in his presence to ensure they were dummy rounds, Mr. Baldwin explained that he didn't want to insult Ms. Gutierrez. By his own admission Mr. Baldwin decided to forgo a safety check designed for the sole purpose of ensuring live rounds were not in the gun (because live rounds can easily be brought onto a movie set intentionally or accidentally if mistaken for dummy rounds). Mr. Baldwin decided to forgo the safety check even though he knew that the scene he was preparing to film was going to require him to pull his gun in the direction of crew members and cock the hammer.

The safety bulletins provided to movie sets by the Screen Actors Guild (a professional organization that Mr. Baldwin is surely a member of) specifically state "Treat all weapons as though they are loaded and/or ready to use. Never point one at anyone. Never place your finger

on the trigger until you are ready to shoot.” The sole reason that dummy rounds are used on movie sets is because they look exactly like live rounds. The only way to tell if a dummy round is not a live round is to shake it to determine if it rattles (many dummy rounds have a bb inside) or look at it to ensure it has a hole in the side of the casing so no gun powder could be contained in the brass. Mr. Baldwin understood that each dummy round needed to be checked to ensure it was not a live round. The entire reason these stringent protocols were developed is because there is the possibility of live ammunition being mistaken for a dummy. If the presence of live rounds on movie sets was an impossibility, there would be no reason to inspect every single dummy round to ensure they are not live. Mr. Baldwin was well aware that live rounds can be present on a movie set and failed to conduct his own safety check. The gun/ammo safety check serves a similar purpose as an airbag in a car: it provides protection in the event of a possible, if unlikely, crash. What Mr. Baldwin did is the equivalent of disconnecting an airbag.

Questions 93-102: The target’s proposed questions are not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin.

Questions 103-105: The target’s proposed questions are not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin. Katya Luce was a crew member on the set of Rust who claims to have overheard Hannah Gutierrez and one of the horse wranglers possibly discussing the firing of guns over the lunch hour on October 21, 2021. Ms. Luce was contacted by the office of special prosecutors and clarified that she thinks she heard Mr. Wilson (one of the wranglers) speaking to Ms. Gutierrez over the radio about “using her toys.” Ms. Luce assumed this statement meant using the set guns. Ms. Luce further

explained that she could not recall exactly what Hannah Gutierrez stated in response, but it was something similar to “you can (play with my toys) as long as I don’t know about it.” Again, Ms. Luce assumed that this conversation was referring to the horse wranglers desire to shoot the guns provided to the movie set. This is not competent and relevant evidence and it is not directly exculpatory to charges related to Mr. Baldwin.

**Witness No. 6: Det. Joel Cano**

Questions 1-9: The State may elicit general testimony from one or more witnesses concerning the initial response to the scene,. However, the State objects to questions 1-9 being mandated for presentation to the grand jury as the responses to the questions will not elicit directly exculpatory evidence.

Question 10: Whether witnesses characterized the incident as an accident or intentional shooting is irrelevant to the grand jury proceedings, and is not competent evidence as there is no foundation laid for what facts and information these individuals had leading them for form an opinion one way or another. Furthermore, the response to this question is not directly exculpatory evidence.

Question 11: Questions concerning whether the firearm was secured and who had possession of the firearm when law enforcement arrived will not lead to directly exculpatory evidence.

Questions 12-14: Questions concerning Detective Cano’s understanding of the role and responsibilities of the armorer or the identity of armorer will not lead to directly exculpatory evidence.

Questions 15-18: Questions concerning Sarah Zachary’s role and responsibilities on the movie, or her opinions of what may have happened to cause the firearm to discharge a live round inside the church will not lead to directly exculpatory evidence.

Questions 19-21: Questions concerning Mamie Mitchell's location when the gun went off, and the alleged statement by Halls that he noticed one of the rounds looked different from the other five rounds will not lead to directly exculpatory evidence.

Questions 22-24: Questions concerning warrants issued, whether the warrants referenced a crime and how many days after the incident the prop truck warrant was executed will not lead to directly exculpatory evidence.

Question 25: The identity of individuals who had access to the prop truck during the time between the incident and the execution of the warrant is not directly exculpatory evidence.

Question 26: The identity of the individual who provided Cano's "office" with access to the truck when the search warrant was executed is not directly exculpatory evidence.

**Witness No. 7: Robert Shilling**

Questions 1-9: None of the offered questions for this witness will lead to directly exculpatory evidence.

**PART III: DOCUMENTS**

The State lodges a global objection to the introduction of all proffered exhibits, as they were not tendered to the State within 48 hours of the start of the grand jury. As the Court is aware, the State made a request for the target to submit his alert letter and exhibits more than 48 hours prior to the start of grand jury. The Court denied this request. As part of its ruling, the Court stated that the rules of the grand jury control and that all evidence from the target must be tendered not later than 9:00 a.m. Mountain Time November 14, 2023. At approximately 9:03 a.m. Mountain Time, the State received an email from the target's local counsel, Heather LeBlanc, stating that, "We are having issues with the exhibit attachments and will send that file separately shortly. Please let me know if you have any difficulties opening any of the

attachments.” See Exhibit 3, p. 1, “Email from Heather LeBlanc dated November 14, 2023.” At approximately 9:09 a.m. Mountain Time, the State received a second email from Ms. LeBlanc stating, “For some reason, I cannot get this to send from my primary email address, so I am sending from this one. Please continue to use heather@leblanclawnm.com for communications.” See Exhibit 3, p. 2. This email also contained a link to a location from which the State could download a ZIP file of the attachments. The landing page to this file sharing download indicates the files were not uploaded to the site until 9:01AM See Exhibit 4: Screenshot of Quinn Emmanuel File Sharing Landing Page. Because the documents were not tendered to the State within 48 hours of the start of grand jury as required by the Court’s verbal order on November 9, 2023, and as required by N.M. R. Crim. P. Dist. Ct. 5-302.2 (B)(3)(c) "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, the State objects to their presentation to the grand jury, except to the extent the State was already planning to introduce the exhibits as part of its own presentation.

The global objection notwithstanding, the State submits the following specific objections to the target’s proffered exhibits:

**Document No 1: Recording of 911 Call:** The recording of Mamie Mitchell saying that an accidental shooting occurred and attributing responsibility for the incident to Dave Halls is irrelevant and not directly exculpatory. As stated previously in this letter, the proximate cause instruction allows more than one individual to be held responsible for a single criminal act. Placing responsibility on Halls does not relieve the target of his responsibility.

**Document No. 2: Prop Truck Warrant:** The warrant, which includes statements that the target had been careful with the gun, that the incident was not a deliberate act, and that Halls was

responsible is irrelevant and not directly exculpatory. The proximate cause instruction allows more than one individual to be held responsible for a single criminal act. Again, placing responsibility on Halls does not relieve the target of his responsibility.

**Document No. 3: Church Search Warrant:** The State intends to have a witness testify that Halls reportedly told the target “cold gun.” The State agrees to present this information to the grand jury, although not via this document.

**Document No. 4: PDQ Arm & Prop LLC Search Warrant:** The warrant containing the statement that Hannah Gutiérrez “didn’t really check [the gun] too much” after lunch, the fact that multiple live rounds were found on set, and that the ammo may have come from a can of ammo Gutierrez’s [step] father had given Seth Kenny, owner of PDQ, is not directly exculpatory evidence. As previously stated, the State contends Baldwin had responsibilities as an actor handing a live firearm that he failed to follow and had the target followed the guidelines, the incident would not have occurred. Again seeking to place blame on another does not relieve the target of his own significant contributions to the incident. This evidence is irrelevant and not directly exculpatory:

**Document No. 5: New Mexico Occupation Health and Safety (OSHA) Report:** The OSHA report and its findings are not binding on the grand jury. The findings that the target’s authority on the set was limited to approving script changes and actor candidates is based on the target’s own self-serving testimony. OSHA did not review the target’s employment contract, which is the best evidence for determining what the target’s authority was - whether he exercised it or not is irrelevant. The report is also not directly exculpatory evidence.

**Document No. 6: Excerpts from Santa Fe Sheriff’s Office Report:**

a. Joel Souza - Mr. Souza's recollection of Hannah Gutierrez standing over him apologizing, his opinion there was not negligence on the set, and his opinion of that the 1st Assistant Director and armor hold responsibility for the incident is irrelevant and not directly exculpatory evidence.

b. Hannah Gutierrez - None of the proffered conclusory statements are directly exculpatory evidence and are irrelevant.

c. Sarah Zachary - Ms. Zachary's statements that she thought there were other live rounds in the box of ammunition being used by Gutierrez on the day of the incident, that Gutierrez brought ammunition used from another set, and her identification of blank and dummy ammunition (which does not in any way resemble the live rounds found on set) are irrelevant and not directly exculpatory. A question for the grand jury is whether the target's failure to act in accordance with the safety guidelines for actors was a significant cause of the injury to Ms. Hutchins. Said differently, Ms. Hutchins would not have been killed if the target had done what the guidelines required of him *even if* there was a live bullet in the gun.

d. Dave Halls - Halls' statements of a 5-minute gap between when he checked the revolver and when Gutierrez returned with the gun and his recollection of seeing three depressed primers is not directly exculpatory. The report's conclusion as to who is responsible for firearm safety is irrelevant, as that is fact for the jury to decide.

e. Reid Russel - Russell's general statements that the target was "really safe" on set and the report's conclusion are not directly exculpatory, are irrelevant, and are not controlling as to the grand jury.

f. Jensen Ackles - Mr. Ackles' opinion of what an actor's responsibility is on set is irrelevant. The industry-issued safety guidelines, which the grand jury will see, are controlling as

to the issue of actor's responsibilities on set. Moreover, these statements are not directly exculpatory. Additionally, what Mr. Ackles heard Ms. Hutchins say is irrelevant; the relevant inquiry is what the target heard. This statement is also not directly exculpatory.

g. Ross Addiego – The State intends to call Mr. Addiego as a witness to the grand jury. However, the statement that Gutierrez did not check the gun again after lunch is not directly exculpatory as to the target and his responsibilities as the person holding and discharging the firearm.

h. Sarah Zachary cell phone report: The target has provided an inadequate explanation of the direct exculpatory value of this exhibit. The only information provided by the target was, "Summary of text messages related to the incident found on Sarah Zachary's phone." Consequently, the State having looked at the summary of the messages without any context, believes they are not direct exculpatory evidence and should be excluded.

i. Seth Kenny cell phone report - the same problem exists here as in (h). The target failed to provide any explanation of the exculpatory value of these messages and provided what appears to be an incomplete sentence, "The report also contains statements that suggest the origin of the live ammunition, but that were not investigation by the state at the time including of:" and the sentence cuts off there. Without any explanation, the State reviewed the messages and find that none contain anything rising to the level of directly exculpatory evidence.

j. Katya Luce: This exhibit also fails to include any explanation from the target of the exhibit's proposed exculpatory value. Having reviewed the exhibit, the target highlighted the following statement, "Katya Luce returned my phone call at approximately 12:15 p.m. She called from 808-276-7186. She said she was at base camp when the incident occurred. She said during the day, she heard Raleigh who is one of the Wranglers speaking to Halyna about one of the



firearms and that if they did, she would not want to see it. I did inform the case agents about this information.” Without further explanation from the target, the State cannot respond other than to say on its face, this statement does not rise to the level of directly exculpatory evidence.

**Document No. 7: Text Messages between Sarah Zachary and Seth Kenney:** Here, the target provides general allegations that the armorer failed to follow property safety protocols on the set, a fragmented sentence reading, “truck the night before the incident took place” and a conclusory statement that this document therefore demonstrates Gutierrez was an independent intervening cause of Ms. Hutchins death. After reviewing these messages, none of them contain anything that is directly exculpatory.

**Document No. 8: Text messages between Hannah Gutierrez and Seth Kenney:** The target’s proffer is seriously misleading to the Court. The allegation that these messages contain evidence Gutierrez went “target shooting” with the driver of the prop truck is a complete misrepresentation of the messages. There is a message dated August 15 (several weeks before production even began on the Rust movie) in which Gutierrez asks Kenney if she can shoot “hot” “like actual ammunition” out of the trap door (referencing a firearm). Kenney responds to never shoot live ammo out of a prop gun, and Gutierrez says “...ok fair enough” but indicates she is “still gunna shoot [her personal gun] tho.” At this point in time, Rust production had not begun, Gutierrez was not in New Mexico, the incident firearm had not even been shipped from the seller, and it is therefore impossible Gutierrez was target shooting with the prop truck driver. Any statements about Gutierrez lying about her residency and her failure to generally follow safety protocols are not directly exculpatory evidence.

**Document No. 9: Industry Wide Labor-Management Safety Bulletin No. 1.** The State intends to submit this document to the grand jury.

**Document No. 10: Crew Letter:** Nothing in this letter is directly exculpatory evidence.

**Document No. 11: Video Clip from Rust Set:** The State intends to introduce this video clip to the grand jury.

**Document No. 12: Video clip from Rust Set:** This clip contains no directly exculpatory evidence.

**Document No. 13: Video Clip from Rust Set:** This clip contains no directly exculpatory evidence.

**Document No. 14: Halls Proffer Transcript:** This document contains nothing that constitutes directly exculpatory evidence. Halls' statements that he did not check the gun thoroughly before handing it to Baldwin is not directly exculpatory, as multiple people can be found by the grand jury to have been significant contributors to the harm caused. *See* UJI 14-134 NMRA.

### CONCLUSION

For the reasons stated herein, the State respectfully requests the Court enter an order denying and/or limiting the target's requested testimony and evidence, as set forth herein.

RESPECTFULLY SUBMITTED,

/s/ Kari T. Morrissey

Kari T. Morrissey

Jason J. Lewis

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I hereby certify that a true and correct copy of the foregoing pleading was emailed to opposing counsel this 15<sup>th</sup> day of November 2023.

/s/ Kari T. Morrissey  
Kari T. Morrissey

**VIA E-MAIL**

Special Prosecutor Kari Morrissey  
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November 14, 2023

**GRAND JURY EVIDENCE NOTICE TO DISTRICT ATTORNEY**

**INVESTIGATION RE:** Alexander Rae Baldwin III

**Hearing Date:** November 16, 2023

**Case No.:** D-101-GJ 2023-00008

Dear Ms. Morrissey and Mr. Lewis:

In accordance with Section 31-6-11 NMSA, *Jones v. Murdoch*, 2009-NMSC-002, 145 N.M. 473, and N.M. R. Crim. P. Dist. Ct. 5-302.2(B), the above-noted target of the Grand Jury proceeding in this case requests that the Grand Jurors be alerted to the following lawful, competent, and relevant evidence, and that the proposed questions be asked of the witnesses called before the Grand Jury.

**PART I: ELEMENTS<sup>1</sup>**

Mr. Baldwin requests that the Grand Jurors be alerted to the fact that the criminal negligence standard requires the prosecution to show that Mr. Baldwin had subjective knowledge of an actual risk that the firearm placed in his hand had been loaded with live ammunition.

Mr. Baldwin requests that the Grand Jurors be alerted that proximate cause is an element of causation, and that the element of proximate cause is negated where the negligence of a third party (*i.e.*, someone other than Mr. Baldwin) was the only significant cause of death or constitutes an intervening cause that broke the foreseeable chain of events.

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<sup>1</sup> Given the factual chain of events that led to Ms. Hutchins' death and based on the core principles of Section 31-6-11 NMSA and *Jones v. Murdoch*, Mr. Baldwin submits that failure to instruct the Grand Jury on the applicability of these specific elements will result in fundamental unfairness to Mr. Baldwin.

**EXHIBIT**

**1**

## PART II: WITNESSES

### Witness No. 1: Joel Souza

**Potential Testimony:** Mr. Souza is the Director of *Rust*. He was primarily responsible for all creative aspects of the film and relied on the entire cast and crew to bring his creative vision to life. He was present in the church during the rehearsal scene and was struck by the fatal bullet after it passed through Halyna Hutchins. He suffered non-life threatening injuries. Mr. Souza's testimony will make clear that responsibility for firearm safety lies with the armorer and First Assistant Director, not with actors, and that Mr. Baldwin did not act negligently on set.

### **Questions:**

1. What was your role on the film *Rust*? What did that entail?
2. To the best of your knowledge, did anyone ever raise any concerns about Mr. Baldwin's attitude towards safety on the set of *Rust*?
3. To the best of your knowledge, has anyone ever raise any concerns about Mr. Baldwin's attitude towards safety on any movie set?
4. Did you personally have any concerns about Mr. Baldwin's attitude toward safety on the set of *Rust*?
5. What kind of movie is *Rust*?
6. Does the script call for the use of firearms?
7. Does the script include scenes that required actors to point prop guns at other actors?
8. Are there any roles for children in the film? What roles?
9. Does the *Rust* script include any scenes that call for a prop gun to be pointed at a child?
10. Who was responsible for safety on the set of *Rust*?
11. Who was responsible for firearm safety on the set of *Rust*?
12. Did you observe Mr. Baldwin handling prop weapons during the production? How many times?
13. Did you ever observe Mr. Baldwin using prop weapons on the set of *Rust* in a way that seemed dangerous or negligent?
14. Do you recall what time you arrived on set on October 21, 2021?
15. Can you describe the scene that was being rehearsed before and after lunch? What happens during that scene? Does the scene involve any firearms?
16. What was the purpose of the rehearsal that began in the church after lunch?
17. Did the script direct Mr. Baldwin to draw his pistol during that scene?

18. Where did you want the camera positioned in relation to Mr. Baldwin?
19. Did you have any concerns about positioning the camera so close to where Mr. Baldwin would be drawing the pistol? Why or why not?
20. Do you recall anyone asking for Mr. Baldwin's revolver to be brought into the church? Do you recall who brought it in?
21. Do you recall how the revolver got into Mr. Baldwin's hand?
22. As far as you could tell, was everyone under the assumption that the gun was safe to handle?
23. As far as you could tell, did anyone seem uncomfortable once the gun was brought in?
24. Once Mr. Baldwin had possession of the gun, did he receive any instructions from you or Ms. Hutchins? What were the instructions?
25. Did you have any concerns about the way Mr. Baldwin was handling the gun in front of the camera?
26. What happened next?
27. Do you recall being taken to a hospital? Can you describe your injuries?
28. Do you recall giving a statement to investigators the following day?
29. Do you recall telling investigators that, shortly after the gun went off, you remember the armorer, Hannah Gutierrez-Reed, standing over you hysterically yelling "I'm sorry, I'm sorry, I'm sorry"?
30. Based on the circumstances, her demeanor and body language, and any other information you had, did you have an understanding at the time of why she was yelling that?
31. Was there a production company that was set up to make *Rust*? What was it called?
32. Were you hired by the production company?
33. Is Rust Movie Productions Alec Baldwin's company?
34. As far as you know, did Mr. Baldwin ever own any part of the production company?
35. Was Mr. Baldwin hired by the production company?
36. Leading up to and during the production, were there people working for the production company whose jobs were strictly to deal with hiring, budgeting, scheduling, logistics, day-to-day management on set, and those sorts of things? Can you briefly name those people and describe their roles?
37. Do you know whether Mr. Baldwin had the authority to hire any crew members?

38. As far as you know, was Mr. Baldwin responsible for managing or supervising any crew members?
39. Did Mr. Baldwin receive a Producer credit for the film?
40. What was that credit intended to reflect?

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**Witness No. 2: David Halls**

**Potential Testimony:** Mr. Halls was the First Assistant Director and Safety Coordinator on the set of *Rust*. He was in charge of managing and supervising all departments on set and was responsible for safety conditions on set. He is aware of the conditions on set and the day of the incident. He was present in the church when the fatal shot discharged. Mr. Halls's testimony will establish that responsibility for firearm safety lies with the armorer and First Assistant Director, not with actors, and that Mr. Baldwin did not act negligently on set.

**Questions:**

1. What was your role on the *Rust* set?
2. What is the job of a First Assistant Director?
3. Have you worked as a First Assistant Director on other films? How many?
4. Are you a member of a union? Which union?
5. Does the union provide a specific job description for the role of a First Assistant Director? What does it say?
6. Who was the Safety Coordinator on the *Rust* set?
7. As First Assistant Director and Safety Coordinator, what were your responsibilities with respect to set safety on the *Rust* set?
8. As First Assistant Director and Safety Coordinator, what were your responsibilities with respect to firearm safety on the *Rust* set?
9. Are you familiar with Industry Safety Bulletins? What are they?
10. Are you familiar with Industry Safety Bulletin No. 1? What does it say?
11. Does Safety Bulletin No. 1 note that live ammunition should never be on set? Is that consistent with your understanding and experience on film sets?
12. Based on your experience and industry knowledge, is there ever any reason that anyone on a film set would expect there to be live ammunition anywhere near the set?
13. Did you observe anything at any time during the production of *Rust* that gave you a reason to suspect there might be live ammunition on set?

14. Are you aware of any reasons why anyone else might have expected to find live ammunition anywhere on the set?
15. Did you work with Alec Baldwin at all during the making of *Rust*? How closely did you work with him?
16. Did anyone ever raise any concerns with you with respect to Mr. Baldwin's attitude towards safety on set?
17. Did you personally have any concerns about Mr. Baldwin's attitude toward safety on set?
18. Did anyone ever raise any concerns with you regarding Mr. Baldwin's general conduct on the movie set?
19. Are you aware of any reasons why Alec Baldwin would have had any reason to suspect that live ammunition could be found anywhere on the set?
20. What is the role of the armorer on a movie set?
21. Who was the armorer on the set of *Rust*?
22. Was Hannah someone over whom you would have had oversight and control in terms of making sure they are following her department's safety protocols?
23. What is the difference between a blank and a dummy round?
24. Can you describe the scene that was being rehearsed leading up to the incident?
25. Were you present inside the church during the rehearsal?
26. Did you get on your radio and call for the gun to be brought into the church? What did you say?
27. Did you ask for it to be loaded with dummies?
28. Was it necessary for the gun to be loaded with dummies for the rehearsal? If not, why was it loaded?
29. Are there certain industry protocols that an armorer is supposed to follow when loading dummy rounds into a gun? What are they?
30. Is it customary for the armorer to take each dummy round out of the gun and shake each round before handing the gun off to the actor? If so, why?
31. Is the process of checking a firearm for dummies typically something that happens between the armorer and the First Assistant Director?
32. To the best of your knowledge, are there any rules that require actors to be involved in the process of checking the dummies that are loaded into a prop gun?
33. Is it customary for actors working with prop firearms to rely on assurances from the armorer and First Assistant Director that the firearm is safe to handle?



34. By the time a prop gun loaded with dummies is placed into an actor's hand, is it assumed that the gun is completely safe to handle?
35. Is there any reason at all why Mr. Baldwin would have or should have assumed otherwise on this set?
36. Was Mr. Baldwin asked the point the revolver in the direction of the camera? By whom? Why was that instruction given?
37. Do you have any reason to think Mr. Baldwin would have pointed the gun toward the camera if he wasn't instructed to do so?
38. In your opinion, under the circumstances as you witnessed them, did Mr. Baldwin act carelessly, negligently, or contrary to industry standards in the moments leading up to the gun's discharge?
39. Are you aware of any statements made by your lawyer to the media after the charges against Mr. Baldwin were dropped?
40. Did your lawyer state, "Mr. Halls never believed Mr. Baldwin should be charged with a crime. It was a tragic accident that is best resolved out of criminal court"?
41. Did that statement by your lawyer accurately reflect your views at the time?
42. Have your views since then changed?
43. Are you aware of any statements made by your lawyer to the media in December 2021, before charges were filed against Mr. Baldwin?
44. Did your lawyer state, "Dave has told me since the very first day I met him that Alec did not pull that trigger"? Is that an accurate statement by your lawyer?
45. And does your lawyer speak for you?
46. Do you recall being interviewed by investigators from various state agencies over the past couple years?
47. Do you recall being interviewed in January 2023 by members of the District Attorney's office?
48. Was your counsel present?
49. Did that interview take place in connection with a plea agreement?
50. What was the nature of the plea agreement?
51. Did your plea interview and plea agreement happen before or after charges were initially filed against Mr. Baldwin?
52. During your plea interview, did the Special Prosecutor ask if you felt partially responsible for Ms. Hutchins' death? If so, what was your response?

53. During that interview, did you refer to yourself as “the last line of defense”? What did you mean by that?

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**Witness No. 3: Sarah Zachry**

**Potential Testimony:** Ms. Zachry was *Rust*'s prop master, responsible for acquiring, placing, and/or overseeing any props needed for the production, including prop firearms and ammunition. As prop master, she oversaw and supervised the armorer, Hannah Gutierrez-Reed, and was the only other person on set with responsibility for the storage and handling of firearms and ammunition. Along with Hannah Gutierrez-Reed, she was responsible for procuring firearms and ammunition from *Rust*'s third-party supplier. Ms. Zachry will indicate that there were additional live rounds in the box of ammunition that Gutierrez-Reed used the day of the incident, and that Gutierrez-Reed had brought ammunition from another set she had worked on. Zachry will also identify the origin of some of the ammunition on the set. The introduction of a live round is an intervening cause that precludes liability for Mr. Baldwin.

1. What was your role on the film? What did it entail?
2. Who hired you?
3. Is that who did all the hiring?
4. Do you know if Mr. Baldwin was involved in your hiring?
5. Do you know if Mr. Baldwin was involved in the hiring of any other crew members? Whose job was that?
6. Do you know if Mr. Baldwin was involved in supervising crew members or managing any of the various departments on set? Whose job was that?
7. Do you know if Mr. Baldwin was responsible for ensuring crew members followed safety protocols? Whose job was that?
8. Do you know if Mr. Baldwin was involved in scheduling hours for crew members? Whose job was that?
9. Do you know if Mr. Baldwin was involved in budgeting for hours worked by crew members? Whose job was that?
10. Did you ever observe Mr. Baldwin doing anything in relation to the production other than acting?
11. Who was the armorer on the film?
12. As prop master, was part of your job to oversee the armorer?
13. Was part of your job acquiring prop firearms and ammunition to be used on set?
14. Did you share that responsibility with anyone else?

15. What kinds of firearms did you acquire?
16. What kinds of ammunition did you acquire?
17. Where did you acquire prop firearms and ammunition?
18. Do you know if Hannah brought any of her own ammunition to the set of *Rust*? If so, do you know why she did and where it came from?
19. When did you first meet Hannah? What was your initial impression of her?
20. Did you and Hannah spend a lot of time together on the set?
21. Did she take her job seriously?
22. Did she generally get along with others?
23. Did she pay attention and follow instructions?
24. Was she better at some parts of her job than others?
25. Did Hannah ever talk about her father? What did she say about him?
26. Did Hannah project confidence in her knowledge and handling of firearms?
27. Did you ever feel like she might have gotten too confident or lax around firearms from having grown up around them with her father?
28. Did you ever get the impression that Hannah felt like she could do things her own way because of who her father was?
29. Can you explain the difference between a blank and a dummy?
30. Under what circumstances would they be using blanks on set?
31. Under what circumstances would they be using dummies on set?
32. Is it important for an armorer to be well organized?
33. Did Hannah seem well organized to you? Did she have a system for keeping the different types of rounds separated? Did she keep loose rounds floating around the cart or in her pockets?
34. Did Hannah ever put things in the wrong place or get things mixed up? Did she ever forget about things? Did she ever lose or misplace things?
35. How were firearms and ammunition being stored on set?
36. Can you describe the prop truck that you used on set?
37. Who had access to it during the day? At night?
38. When were the guns put in the safe? Who had the code to the safe?

39. How was the ammo delivered to set? Did it come in boxes? What did the boxes look like?
40. Were boxes of ammo kept in the safe or on the truck?
41. How did you transport things from the truck to the set?
42. Do you remember what time you arrived on set on October 21, 2021?
43. Were you working with Hannah that day?
44. Were there guns being used before lunch? Which ones? Were they loaded?
45. What did you do with the guns during lunch? Were they unloaded? What about the cart? Was anything left on the cart?
46. When you got back from lunch, what was happening on set? Were the same guns being used after lunch? Who got the guns from the truck?
47. Was Alec's gun different than the others? Who carried Alec's gun? Who carried the ammo?
48. Did you notice anything different about the guns or the ammo that afternoon? Did you notice anything different about Hannah?
49. Who was going to be loading Alec's gun for the scene in church?
50. Did you watch Hannah load the gun? How many rounds did she load into the gun?
51. Were there any rounds left in the gun from before lunch? Did she take them out and check them? Is that something she was supposed to do?
52. How many rounds did Hannah load into the gun after lunch? Did you see what kind of rounds they were?
53. Did you see where Hannah pulled the rounds from? Was there anything unusual about the way in which she pulled the rounds? Did she say anything as she was pulling the rounds?
54. At what point did they ask for the gun to be brought into the church? Who asked for it? How did he ask for it?
55. Did Hannah finish loading the gun before she went into the church? Were you near her when she finished loading the gun? Did you watch her do it? Did she seem distracted? Did she do everything she was supposed to do? If not, what do you think she should have done differently?
56. What happened after Hannah brought the gun into the church?
57. Did you hear the gun go off? Where were you? What did you think it was?
58. How many minutes elapsed between the time Hannah brought the gun into the church and the time you heard the loud noise?

59. Did you or Hannah go into the church to see what had happened? At what point did you realize the gun had discharged?
60. What do you remember Hannah doing and saying over the next couple minutes? Did she say anything that stood out to you? How would you describe her emotional state?
61. Did you go back and check the box where she had pulled the rounds from that she loaded into Alec's gun? What did you find? Could you tell if there were any live rounds in there? How could you tell?
62. What was Hannah saying and doing over the next couple hours?
63. At what point did you learn that Alec was holding the gun that went off? Did you talk to him? What was he doing and saying? Can you describe his emotional state?
64. Did anybody think that a live round had been discharged at this point? At what point did you learn that was the case?
65. Do you have an opinion as to how a live round ended up on the set?
66. How does one identify a live round from a dummy round?
67. Is Hannah able to identify a dummy round from a live round?
68. Do you think if Hannah was properly checking the rounds as she was loading Alec's gun, she would have noticed that one of them was a live round?
69. What was the name of your ammo supplier?
70. Did you let him know what had happened? When? What did he say? Did he say anything that suggested he might have made a mistake?
71. After the incident with Halyna, did you become aware of a text message conversation between Hannah and Seth where Hannah asked if she could shoot "hot rounds" out of a prop gun on the set of a different film? What do you remember about the conversation? Did it surprise you?
72. Have you heard rumors Hannah engaged in "target practice" on the set of *Rust* at night or on the weekends? What did you hear? Did you think it was true?
73. To your knowledge, did Hannah drink or do drugs while she was working on set? Did she drink or do drugs off when she wasn't working?
74. Have you ever been to Seth's shop where he keeps his firearms and ammo? How would you describe it? Is it well organized?
75. How closely did you work with Alec Baldwin during the production? Did you ever speak to him? What was he like?
54. Did you have any concerns about Alec's attitude toward firearm safety on set?

55. To your knowledge, did anyone else have any concerns about Alec's attitude toward firearm safety?
56. Did you or anyone else have concerns about Alec's general conduct on the movie set?
57. Did you ever observe him handling the firearms in a way that seemed unsafe?
76. Do you have an opinion about who is responsible for causing Halyna's death?

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**Witness No. 4: Ryan Smith**

**Potential Testimony:** Mr. Smith was a Producer of the film *Rust* and was responsible for overseeing the overall production. He has knowledge of the various roles and responsibilities of members of the production. Mr. Smith will establish that Mr. Baldwin did not have responsibility for selection or hiring of crew or for the day-to-day operation of the production, and that he did not act negligently.

1. What was your role in connection with the film *Rust*?
2. What is Rust Movie Productions LLC? Did you have any involvement in that company? What was your involvement?
3. Is Rust Movie Productions Alec Baldwin's company?
4. Was Alec Baldwin hired by Rust Movie Productions? What was he hired to do?
5. Was there a contract between Rust Movie Productions and Alec Baldwin? Did the contract limit Mr. Baldwin's authority in any way?
6. Did the contract say that Alec Baldwin would be credited as a Producer? Why was it important for Mr. Baldwin to be credited as a Producer?
7. Were cast and crew members hired by Rust Movie Productions?
8. Who at the production company was responsible for hiring crew members?
9. Was Mr. Baldwin involved in hiring any crew members?
10. If Mr. Baldwin wanted to hire a crew member, is that something he could have done on his own without the production company's permission?
11. Was Mr. Baldwin involved in supervising crew members or managing any of the various departments on set? Whose job was that?
12. Was Mr. Baldwin responsible for ensuring that crew members followed safety protocols? Whose job was that?
13. Was Mr. Baldwin involved in scheduling hours for crew members to work? Whose job was that?

14. Was Mr. Baldwin involved in budgeting for hours worked by crew members? Whose job was that?
15. Did you ever observe Mr. Baldwin on set?
16. Did anyone ever raise any concerns with you with respect to Mr. Baldwin's attitude towards safety on set?
17. Did anyone ever raise any concerns with you regarding Mr. Baldwin's general conduct on the movie set?

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**Witness No. 5: Det. Alexandria Hancock**

**Potential Testimony:** Detective Hancock is a Santa Fe Sheriff's Detective who acted as the lead investigator on the case. She has knowledge of how the investigation proceeded and the evidence it yielded, how evidence was gathered, and potential gaps in the investigation that suggest Mr. Baldwin's innocence.

**Questions:**

1. What was your overall role in the investigation of this matter?
2. Once law enforcement arrived at the scene where the incident took place, did law enforcement do anything to isolate potential witnesses from one another?
3. Is it standard practice to do so?
4. Did the officers clear the firearm?
5. Is it standard practice to do so?
6. Did you issue any search warrants in this case?
7. Did you list a suspected crime in any of those warrants?
8. How long after the incident did you execute the warrant on the prop truck?
9. Did anybody have access to the prop truck during that six-day interim period? Who?
10. Who provided you with access to the truck when you executed the warrant?
11. In connection with your investigation, did you interview the film's armorer?
12. Did you develop an understanding of the role and responsibilities of an armorer?
13. Do you know who Hannah reported to? Was it Sarah Zachry, the Prop Master?
14. Did you interview an actor named Jensen Ackles in connection with the incident?
15. Did Mr. Ackles strike you as someone who was familiar with firearms?

16. Did you get the impression that Mr. Ackles was more comfortable and knowledgeable around firearms than the average actor?
17. Did Mr. Ackles ever tell you that Hannah portrayed a “cocky persona” and appeared “confident in what she did” as an armorer?
18. Based on your interviews with witnesses and other evidence you have seen, did you get the sense that Hannah projected confidence around firearms?
19. Based on your interviews with witnesses and other evidence you have seen, did you get the sense that Hannah was less experienced or less organized than she appeared?
20. Did you conduct an interview with Hannah at the Sherriff’s Office a few hours after the incident?
21. When you entered the interview room to speak with Hannah, did she immediately ask if anyone was able to get her fanny-pack, which was still at the scene where the incident took place? Did that make you wonder whether she was concerned that someone might go through the fanny-pack and find something that shouldn’t be in there?
22. During your initial interview with Hannah, did Hannah describe how she loaded the gun that killed Halyna Hutchins?
23. Did she advise that she loaded five rounds into the gun before lunch, but was having trouble getting the sixth round to go in at that time?
24. Did she advise that, after lunch, she “didn’t really check” the gun because it had been locked up during lunch?
25. Did she advise that the box from which she grabbed the rounds that were loaded into the gun after lunch may have had some “wonky” rounds in it?
26. Did she state that she “wishes she would have checked [the gun] more” before bringing it to the set?
27. Did you conduct a second interview with Hannah on November 9, 2021?
28. Did Hannah’s story change at all from what she had told you on the day of the incident?
29. During your second interview with Hannah, did Hannah describe her process for keeping blanks and dummy rounds organized?
30. Did she state that many of the dummies on the set of *Rust* were “loose dummies” that she had found in a bag from a previous project?
31. Did she state that she used various types of dummies on the set of *Rust* and that the different types would regularly get mixed up?
32. Did she state that she would put both dummy rounds and blanks in her fanny-pack?
33. What’s the difference between a dummy round and blank?



34. Did she state that she had a "pocket system" where she would put different types of ammo in different pockets?
35. Did she state that she also kept trash in her pockets?
36. Did she state that she carried her "favorite dummies" in her pocket because that's what her dad taught her to do?
37. Did you ask Hannah which box she was pulling ammunition from on the day Halyna Hutchins was killed?
38. Did Hannah state that the box she was pulling ammunition from on that day looked "peculiar"?
39. Did she state that she couldn't recall ever seeing that box on the prop truck before that day?
40. Did she state that she shook the whole box and heard it rattle, which indicated to her that they must be dummies?
41. Did she state that she brought that box to her prop cart for the day?
42. Did she state, as she had in her previous interview with you, that she loaded five rounds into the gun before lunch, but had trouble loading the sixth round and saved it for after lunch?
43. Did she state that she loaded the sixth round after lunch?
44. Did you ask Hannah if she checked the round that she loaded after lunch?
45. Did she state that the round "seemed fine" to her and that she "checked it while Dave [Halls] was speaking over the radio in her earpiece as she shook it"?
46. Did Hannah's description of events give you the impression that she was rushing to load the gun as she was walking into the church?
47. Did Hannah's description of events give you the impression that she may not have carefully checked the last round as she loaded it into the gun?
48. Did Hannah state that she showed the gun to Dave Halls when she brought it into the church so that Halls could check it?
49. Did you ask Hannah what that check consisted of when she showed the gun to Halls?
50. Did she state that the check consisted of her spinning the cylinder and telling Halls that it was "dummied up"?
51. Did she state that she left the church at that point after she gave the gun to Halls?
52. Did she state that she was standing outside of the church when she heard the gunshot?
53. Did she state that she went into the church and was informed that the loud noise came from the gun?

54. Did she state that her immediate response to learning about the discharge was to say "go check that fucking box," meaning the box where she had pulled the ammunition from?
55. Did you ask Hannah if anyone on set was drinking alcohol or using drugs?
56. Did she state that she typically smoked marijuana on the weekends and "a little bit before bed"?
57. Other than the bullet that killed Halyna Hutchins, did you find any other live ammunition on the set? If so, what did you find? Where?
58. Based on your interviews with Hannah and other witnesses, are you confident that Hannah thoroughly checked each round as she was loading them into the gun?
59. In connection with your investigation of this matter, did you interview the First Assistant Director, Dave Halls?
60. Did Mr. Halls tell you that he was the Safety Coordinator on the set?
61. Do you have an understanding of what Mr. Halls' responsibilities were with respect to safety on set?
62. Do you have an understanding of what Mr. Halls' responsibilities were with respect to firearms on set?
63. Did you speak to Mr. Halls on the day of the incident?
64. Do you recall asking Mr. Halls about safety protocol on set in regards to firearms?
65. In response to that question, did Mr. Halls give the following statement: "I check the barrel for obstructions, most of the time there's no live fire, she (Hannah) opens the hatch and spins the drum, and I say cold gun on set."
66. Did Mr. Halls advise that on this occasion, "when Hannah showed him the firearm before continuing rehearsal, he could only remember seeing three rounds."
67. Did Mr. Halls advise that "he should have checked all of them, but didn't, and couldn't recall if [Hannah had] spun the drum"?
68. Were you advised by any witnesses who were inside the church at the time of the incident whether Mr. Halls did, in fact, say "cold gun on set" as the gun was being handed to Mr. Baldwin? How many witnesses told you that?
69. Who is Seth Kenny?
70. Did Seth's company, PDQ Arm & Props, supply the firearms and ammunition for *Rust*?
71. Are you aware of any evidence that Hannah engaged in "target practice" on the set of *Rust* at night or on the weekends? What evidence is that?

72. Were you ever informed that one of the truck drivers working on the production claimed to have engaged in target practice with Hannah on the set of *Rust* prior to October 21, 2021?
73. Did your office pursue that lead during your investigation? What did your office do to pursue that lead?
74. Were you ever informed that Seth and Hannah's father, Thell Reed, worked on a television show together before *Rust*? Was that show called *1883*?
75. Were you ever advised that Seth and Thell Reed were asked to train some of the *1883* actors with live ammo?
76. Were you ever advised that Thell Reed brought his own live ammo to the set of *1883*, which Seth then took back to his shop once the show was over?
77. Did you ever obtain a search warrant to search Seth's business?
78. Did you search the premises? What did it look like? Was it well organized?
79. Did you find live rounds on the premises of Seth's business? If so, were they similar to the live rounds that were found on the set of *Rust*?
80. Based on your investigation, do you have an opinion as to whether Seth may have inadvertently supplied Hannah with live ammunition?
81. Did you ever obtain a warrant to search the prop truck on the set of *Rust*?
82. What was the prop truck used for?
83. How many days after the incident did you execute that warrant?
84. Do you know whether anybody had access to the prop truck before you executed the warrant?
85. Do you feel confident that no one accessed the prop truck between the time of the incident and the time you executed the search warrant?
86. Are you familiar with the various statements that Joel Souza has made in connection with the investigation into this matter?
87. Do you recall a statement by Mr. Souza that, shortly after the gun went off and he hit the floor, he remembered Hannah Gutierrez-Reed standing over him hysterically yelling "I'm sorry, I'm sorry, I'm sorry"?
88. In connection with your investigation, did you interview Alec Baldwin?
89. Did you interview him the day of the incident? Where?
90. Did Mr. Baldwin volunteer to answer questions? Did he ask for a lawyer to be present?
91. Did that initial interview last for more than an hour?

92. Are you aware of any evidence that Mr. Baldwin believed there could be live ammunition on the set of *Rust*?
93. Are you aware of any evidence that Mr. Baldwin didn't trust the other professionals on the set to perform their various roles?
94. Are you aware of any evidence that Mr. Baldwin didn't have confidence in Hannah's abilities as an armorer?
95. Are you aware of any evidence that Mr. Baldwin didn't have confidence in Dave Halls' abilities as a First Assistant Director?
96. Are you aware of any evidence that Mr. Baldwin was responsible for hiring or supervising any crew members?
97. Are you aware of any evidence that Mr. Baldwin was responsible for ensuring that crew members complied with safety protocols on set?
98. Based on your investigation, do you have an understanding of who was responsible for hiring and supervising crew members?
99. Based on your investigation, do you have an understanding of who was responsible for ensuring compliance with safety protocols on set?
100. Did you receive a report from the Medical Examiner?
101. Did it recite a cause of death?
102. What was the cause of death listed in that report?
103. As part of your investigation, did someone from your team speak to Katya Luce?
104. Are you aware of what Ms. Luce reported with respect to the interaction between the wranglers on set and Hannah Gutierrez-Reed?
105. Did you or your office follow up with Ms. Luce to clarify her comments?

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**Witness No. 6: Det. Joel Cano**

**Potential Testimony:** Detective Cano is a Santa Fe Sheriff's Detective who acted as one of the investigators on the case. He has knowledge of how the investigation proceeded and the evidence it yielded, how evidence was gathered, and potential gaps in the investigation that suggest Mr. Baldwin's innocence.

**Questions:**

1. What was your overall role in the investigation of this matter?
2. Did you report to the set following the accident?

3. Around what time did you arrive?
4. Did you have an understanding as to what had happened before you arrived?
5. Was the scene of the accident secured when you arrived?
6. How was it secured?
7. Once law enforcement arrived at the scene where the incident took place, did law enforcement do anything to isolate potential witnesses from one another?
8. Were the individuals inside the church separated from one another or were they permitted to intermingle and converse with one another?
9. After being briefed by your colleagues, did you speak to any individuals who had witnessed the incident?
10. Did the witnesses characterize the incident as an accident or an intentional shooting?
11. By time you arrived at the scene, had the firearm that was involved in the incident been secured? Do you know who had possession of the firearm when your law enforcement colleagues arrived on the scene?
12. Do you have an understanding as the role of an armorer on a film set?
13. Do you have an understanding as to who the armorer was on the set of *Rust*?
14. Do you have an understanding as to what Hannah's responsibilities were as the armorer?
15. Did you ever interview a crew member named Sarah Zachry?
16. Did you have an understanding as to Ms. Zachry's role in the production?
17. Did you have an understanding as to whether Ms. Zachry acted in a supervisory role in relation to Hannah?
18. Did you ask Ms. Zachry's opinion as to what might have happened to cause the firearm to discharge a live round inside the church?
19. A couple hours after the incident, did you interview a witness by the name of Mamie Mitchell?
20. Did Ms. Mitchell say where she was when the gun went off?
21. Did Ms. Mitchell state that shortly after the gun went off, she saw Mr. Halls weeping and saying how when he checked the revolver, he noticed that one of the rounds looked different from the other five rounds?
22. Are you aware of any warrants issued in connection with this case?
23. Did any of those warrants reference a crime?

24. How many days after the incident did you execute the warrant on the prop truck?
25. Do you know if anybody had access to the prop truck during that six-day interim period? Who?
26. Do you know who provided your office with access to the truck when the search warrant was executed?

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**Witness No. 7: Robert Schilling**

**Proposed Testimony:** Mr. Schilling was hired as an investigator for the state and was aware of deficiencies in the investigation, including leads that were not run down. He expressed his view that the investigation conducted by the Santa Fe Sheriff's Office over the course of more than a year could not be remediated, which, in turn, suggests Mr. Baldwin is not responsible for the death of Ms. Hutchins.

**Questions:**

1. How did you come to be involved in the investigation?
2. At what point did you become involved?
3. What was your specific role?
4. Did you interview any witnesses? Examine any evidence?
5. Did the investigation follow the protocols you were used to seeing? If not, what differed?
6. Did you do or say anything to try to correct any flaws you perceived in the way the investigation was being approached?
7. Were there any decisions made during the investigation by law enforcement or the District Attorney's office that caused you to doubt the motives of the decisionmakers?
8. Did you ever communicate your discomfort with the investigation to anyone?
9. Did you become aware of the District Attorney's decision to charge Alec Baldwin with involuntary manslaughter in January 2023?

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**PART III: DOCUMENTS**

**Document No. 1: Recording of 911 Call**

The document is an audio-recording of the 911 call placed by Mamie Mitchell, the film's script supervisor, immediately after the incident took place. Ms. Mitchell witnessed the incident from inside the church and was standing just a few feet away from where the gun went off. On the recording, Ms. Mitchell can be heard telling the 911 operator that two people were "accidentally

shot” on a movie set. She is also heard saying that Dave Halls, the First Assistant Director, was “supposed to check the gun” and that “he’s responsible for [inaudible].” The recording demonstrates that Mr. Baldwin lacked the requisite state of mind and that Mr. Halls was an independent intervening cause of Ms. Hutchins’ death.

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### **Document No. 2: Prop Truck Warrant**

On October 27, 2021, the Sante Fe Sherriff’s Office executed a warrant for the prop truck on the *Rust* movie set, which is where firearms and ammunition were stored throughout the production. The warrant contains numerous exculpatory statements from several witnesses, including a statement from camera operator Reid Russel (who said Mr. Baldwin “had been very careful” with the firearms) and a statement from Dave Halls, who said the incident “was not a deliberate act” and “he [Halls] should have checked all of [the rounds in the gun], but didn’t.” This document demonstrates that Mr. Baldwin lacked the requisite state of mind and that Mr. Halls was an independent intervening cause of Ms. Hutchins’ death. Furthermore, the warrant does not identify any crime being committed, and the fact that it was not executed until six days after the fatal incident demonstrates that there was ample time for the prop truck to be tampered with by the armorer or ammunition supplier, both of whom had access.

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### **Document No. 3: Church Search Warrant**

On October 22, 2021, the Sante Fe Sherriff’s Office executed a warrant at the church on the *Rust* movie set where the incident took place. The warrant contains numerous exculpatory statements from the affiant, including a statement that Dave Halls “handed the gun to” Mr. Baldwin and “yelled, ‘Cold Gun,’ indicating the prop-gun did not have any live rounds.” This document therefore demonstrates that Mr. Baldwin lacked the requisite state of mind and that Mr. Halls was an independent intervening cause of Ms. Hutchins’ death.

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### **Document No. 4: PDQ Arm & Prop LLC Search Warrant**

On November 30, 2021, the Sante Fe Sherriff’s Office executed a warrant at PDQ Arm & Prop LLC, the shop that supplied the rounds to the *Rust* set. The warrant states that Hannah Gutierrez-Reed, the film’s armorer, admitted that she “didn’t really check [the gun] too much” after lunch. The warrant also states that multiple live rounds were found on the set in the box of ammo that Gutierrez-Reed was pulling from, and that Gutierrez-Reed’s father had given Seth Kenney, the owner of PDQ, a can of live ammo that may match the live ammo found on the *Rust* set. This document therefore demonstrates that Mr. Baldwin lacked the requisite state of mind and that others—particularly Hannah Gutierrez-Reed and Seth Kenney—were independent intervening causes in Halyna Hutchins’ death

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## **Document No. 5: New Mexico Occupational Health and Safety Report**

This document is a report from the New Mexico Occupational Health and Safety Bureau, which conducted an investigation to determine whether the incident was caused by the failure of Rust Movie Productions LLC or its employees to implement proper workplace safety protocols. The report demonstrates that Mr. Baldwin was not part of *Rust* Management—*i.e.*, the individuals responsible for hiring, scheduling, budgeting, and overseeing set safety. The report states that “Baldwin’s authority on the set” was limited to “approving script changes and actor candidates.” This document demonstrates that Mr. Baldwin was not responsible for hiring crew members or for any scheduling or budgeting decisions and therefore had no knowledge of any issues that might contribute to an unsafe work environment (*e.g.*, the fact Hannah Gutierrez-Reed had asked for more armorer days).

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## **Document Nos. 6(a)-6(j): Excerpts From Santa Fe Sherriff’s Office Report<sup>2</sup>**

These documents represent excerpts of reports from the Santa Fe Sherriff’s Office. Each report was prepared by the lead investigator, Det. Alexandria Hancock, or by another investigator, Joel Cano. The reports summarize interviews with several key witnesses which were conducted on the scene immediately following the incident and in the weeks that followed, including:

### **a. Joel Souza (director)**

The report indicates that Souza, who was hit by the bullet that fired the day of the incident, recalled Hannah Gutierrez-Reed standing over him apologizing. He identified her as the person on set responsible for firearms, and that guns are to be checked by the armorer (Gutierrez-Reed) and the First Assistant Director (Halls). The report reflects that Souza did not believe there was negligence on set. The report makes clear that responsibility for firearm safety lies with the armorer and First Assistant Director, not with actors, and that Mr. Baldwin did not act negligently on set.

### **b. Hannah Gutierrez-Reed (armorer)**

The report indicates that Gutierrez-Reed stated that she was the armorer on set and that she loaded the firearm involved in the incident. Gutierrez-Reed stated that she handed the firearm off to Dave Halls before the incident. She also stated that the dummy rounds were provided to her by Seth Kenny, who, in turn borrowed them from someone else.

### **c. Sarah Zachry (prop master)**

The report indicates that Zachry thought there were additional live rounds in the box of ammunition that Gutierrez-Reed used the day of the incident, and that Gutierrez-Reed had brought ammunition from another set she had worked on. Zachry identified the origin of

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<sup>2</sup> The Target anticipates the entire Sheriff’s Report, which was made public, will be presented to the Grand Jury, but, given its volume, the Target has excerpted these particular sections and submits them for the Grand Jury’s consideration.



some of the ammunition on the set as from Seth Kenny and Billy Ray. The introduction of a live round is an intervening cause that precludes liability for Mr. Baldwin.

**d. Dave Halls (first assistant director)**

The report indicates that Halls stated he was the safety coordinator and that the armorer was Hannah Gutierrez-Reed. He explained that he would routinely check firearms with the armorer, but that, the day of the incident, there was a 5 minute gap between when he checked the revolver at issue was empty and when Gutierrez-Reed returned, having loaded what he understood to be dummy rounds in the revolver. He recalled seeing three depressed primers. The report makes clear that responsibility for firearm safety lies with the armorer and First Assistant Director, not with actors.

**e. Reid Russel (camera man)**

The report states that Reid reported that Mr. Baldwin was "really safe" on set, including asking to move a child actor away from gunfire. The report indicates Mr. Baldwin was not negligent in his handling of firearms.

**f. Jensen Ackles (actor)**

The report indicates that Ackles explained that it is not the job of an actor to check their own firearms. Ackles also reported that he had not seen Baldwin handle firearms in a reckless manner on the set, and that, the time of the incident, he had heard Halyna Hutchins tell Mr. Baldwin to "show her the action" just before the fatal shot fired. He concluded that Mr. Baldwin would have been doing as instructed at the time the shot fired. The report indicates Baldwin was not acting negligently, and did not have the required state of mind, and that he was not responsible for checking his own weapon.

**g. Ross Addiego (electrical)**

The report indicates Mr. Addiego heard that Gutierrez-Reed say that the firearm was clear, but also that she did not check it after lunch and before the rehearsal began in the church.

The reports also summarize information obtained from the cell phones of Sarah Zachry and Seth Kenney:

**h. Sarah Zachry cell phone report**

Summary of text messages related to the incident found on Sarah Zachry's phone.

**i. Seth Kenney cell phone report**

Summary of text messages related to the incident found on Seth Kenney's phone.

The report also contains statements that suggest the origin of the live ammunition, but that were not investigated by the state at the time, including of:

**j. Katya Luce**

Summary of statements from Katya Luce related to statements she overheard by one of the wranglers on set.

These excerpts of the Santa Fe Sheriff's Office contain numerous statements from each witness that demonstrate that Mr. Baldwin lacked the requisite state of mind and that others—particularly Hannah Gutierrez-Reed, Dave Halls, and Seth Kenney—were independent intervening causes in Halyna Hutchins' death.

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**Document No. 7: Text messages between Sarah Zachry and Seth Kenney**

This document contains excerpts of text messages exchanged between Sarah Zachry, the film's prop master, and Seth Kenney, the ammo supplier for the production. The messages reflect that the film's armorer, Hannah Gutierrez-Reed, failed to follow proper safety protocols on the set of *Rust* and a previous film project. truck the night before the incident took place. This document therefore demonstrates that Ms. Gutierrez-Reed, who was responsible for the safety of prop firearms on set, was an independent intervening cause of Halyna Hutchins' death.

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**Document No. 8: Text messages between Hannah Gutierrez-Reed and Seth Kenney**

This document contains excerpts of text messages exchanged between Hannah Gutierrez-Reed, the film's armorer, and Seth Kenney, the ammo supplier for the production. The messages reflect that Gutierrez-Reed failed to follow proper safety protocols on the set of *Rust*, was negligent in her handling and storage of firearms and ammunition, and lied about her work experience and residency in applying the armorer's union in California. The messages also contain evidence that Ms. Gutierrez-Reed went "target shooting" with the driver of the prop truck. The messages also contain evidence that Dave Halls, the first assistant director, did not follow safety protocols on set. This document therefore demonstrates that Hannah Gutierrez-Reed and/or Dave Halls acted as independent intervening causes of Halyna Hutchins' death.

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**Document No. 9: Industry Wide Labor-Management Safety Bulletin No. 1**

This document contains guidelines for the proper handling of firearms and ammunition on film sets, including that the Prop Master and First Assistant Director are responsible "for obtaining, maintaining and handling all firearms for the production" and that "the production's designated Safety Representative [is] to assure that" the safety protocols are adhered to.

The Bulletin also states that actors must be "allowed to" (but are not required to) witness the loading of firearms, and that firearms must be checked by the prop master or weapons handler "before each use." This document demonstrates that Mr. Baldwin complied with firearm safety protocols on set, but that the armorer, prop master, and first assistant director did not. The document therefore demonstrates that others—particularly Hannah Gutierrez-Reed, Sarah Zachry and/or Dave Halls—acted as independent intervening causes of Halyna Hutchins' death.

### **Document No. 10: Crew Letter**

The letter, signed by many of the cast and crew, refutes that the set of *Rust* was inherently unsafe, or that it was an unpleasant environment. It notes that producers were supportive of the cast and crew. This refutes any assertion that the set was inherently dangerous, or made that way by any action by Mr. Baldwin.

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### **Document No. 11: Video Clip from *Rust* Set**

This video depicts Mr. Baldwin being attentive to safety on set, and specifically shows him asking a cast member to move to another position so that he is not in the line of fire in a scene involving blanks. The video shows that Mr. Baldwin was not negligent or careless regarding set safety or the handling of firearms during the course of the filming.

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### **Document No. 12: Video Clip from *Rust* Set**

This video depicts Mr. Baldwin being attentive to proper firearm handling on set, and specifically shows him asking that a blanket be placed on the ground where he will have to throw a revolver in the scene so that the firearm is not thrown in the dirt. The video shows that Mr. Baldwin was not negligent or careless regarding set safety or the handling of firearms during the course of the filming.

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### **Document No. 13: Video Clip from *Rust* Set**

This video depicts Mr. Baldwin being attentive to safety on set, and specifically shows him halting a scene due to unstable footing for the camera crew. The video shows that Mr. Baldwin was not negligent or careless regarding set safety during the course of the filming.

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### **Document No. 14: Halls Proffer Transcript**

The transcript reflects that Mr. Halls was in charge of safety on the set of *Rust* and that he worked with armorer Gutierrez-Reed to ensure the safety of firearms used on set. He explains that Gutierrez-Reed loaded the firearm with dummies in between the time Halls checked it with her, and that he did not check it thoroughly, though that had been his past practice. The transcript further underscores that no member of the cast or crew could have anticipated there would be live rounds in the firearm on the set.

The transcript reflects several intervening causes that negate Mr. Baldwin's potential culpability, and undermines the assertion that Mr. Baldwin acted recklessly or negligently with respect to firearms on the set of *Rust*.

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\* \* \* \* \*

Contact information for the witnesses above is in the attached Grand Jury Evidence Alert Letter as required by *Jones v. Murdoch*, 2009-NMSC-002, 143 NM 473.

Pursuant to Section 31-6-11(B) NMSA and *Jones*, 2009-NMSC-002, the Grand Jury Evidence Alert Letter attached must be presented to the Grand Jury in this matter. We request that the Evidence Alert Letter be read into the grand jury proceeding record and provided directly to the grand jurors.

Furthermore, if any of the witnesses listed in the attached Grand Jury Evidence Letter testify before the Grand Jury, the proposed target requests that the witnesses be questioned in a manner that elicits the general information contemplated by the proposed questions attached. *See Jones v. Murdoch* (prosecutor must elicit general information contemplated by target).

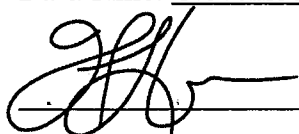
Failure to present the attached letter or ask the appropriate questions of witnesses will violate Section 31-6-11 and *Jones*, 2009-NMSC-002, unless the prosecutor files a motion with the grand jury judge, with notice to the target and his or her counsel, seeking the court's permission to not present the requested evidence or grand jury letter. Notice of any motion filed may be made directly to me by email to [Heather@LeBlancLawNM.com](mailto:Heather@LeBlancLawNM.com).

In addition to the proposed witnesses, questions, and instruction, please be advised that the above noted client does not wish to testify.

In the event our client is indicted, we respectfully request that they be sent notice of the arraignment hearing so that they may make a voluntary appearance.

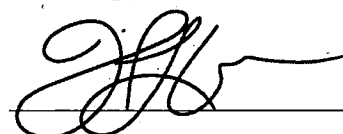
This will certify that a copy of the foregoing  
emailed to the above-named prosecutor on:

Date/Time: November 14, 2023

  
\_\_\_\_\_

Heather M. LeBlanc  
Counsel for Mr. Baldwin

Respectfully submitted,  
LEBLANC LAW LLC

  
\_\_\_\_\_

Heather M. LeBlanc  
823 Gold Ave. SW  
Albuquerque, NM 87102  
[Heather@LeBlancLawNM.com](mailto:Heather@LeBlancLawNM.com)  
Phone: 505-331-7222

**GRAND JURY EVIDENCE ALERT LETTER**

**INVESTIGATION RE:** Alexander Rae Baldwin III

**Hearing Date:** November 16, 2023

**Case No.:** D-101-GJ 2023-00008

Dear Grand Jurors:

In accordance with the rights and obligations of the Grand Jury under New Mexico law, the above-noted subject/target of the Grand Jury proceeding in this case requests the grand jury consider the following evidence:

**PART I: ELEMENTS**

Mr. Baldwin requests that the Grand Jurors be alerted to the fact that the criminal negligence standard requires the prosecution to show that Mr. Baldwin had subjective knowledge of an actual risk that the firearm placed in his hand had been loaded with live ammunition.

Mr. Baldwin requests that the Grand Jurors be alerted that proximate cause is an element of causation, and that the element of proximate cause is negated where the negligence of a third party (*i.e.*, someone other than Mr. Baldwin) was the only significant cause of death or constitutes an intervening cause that broke the foreseeable chain of events.

**PART II: WITNESSES**

**Witness No. 1: Joel Souza:** Contact: souzajoel007@yahoo.com (510) 552-2171

**Potential Testimony:** Mr. Souza is the Director of *Rust*. He was primarily responsible for all creative aspects of the film and relied on the entire cast and crew to bring his creative vision to life. He was present in the church during the rehearsal scene and was struck by the fatal bullet after it passed through Halyna Hutchins. He suffered non-life threatening injuries.

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**Witness No. 2: David Halls:** Contact: davehalls.ad@gmail.com (612) 414-6056

**Potential Testimony:** Mr. Halls was the First Assistant Director and Safety Coordinator on the set of *Rust*. He was in charge of managing and supervising all departments on set and was responsible for safety conditions on set. He is aware of the conditions on set and the day of the incident. He was present in the church when the fatal shot discharged.

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**EXHIBIT**

**2**

**Witness No. 3: Sarah Zachry:** Contact: Sarahbrianne97@gmail.com (505) 264-1702

**Potential Testimony:** Ms. Zachry was *Rust*'s prop master, responsible for acquiring, placing, and/or overseeing any props needed for the production, including prop firearms and ammunition. As prop master, she oversaw and supervised the armorer, Hannah Gutierrez-Reed, and was the only other person on set with responsibility for the storage and handling of firearms and ammunition. Along with Hannah Gutierrez-Reed, she was responsible for procuring firearms and ammunition from *Rust*'s third-party supplier.

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**Witness No. 4: Ryan Smith:** Contact: rs@streamlineglobal.com

**Potential Testimony:** Mr. Smith was a Producer of the film *Rust* and was responsible for overseeing the overall production. He has knowledge of the various roles and responsibilities of members of the production. He will be able to provide testimony about Mr. Baldwin's contractual agreements, roles, and responsibilities for the film. He will be able to testify as to the extent and limitations of Mr. Baldwin's contract with the film with respect to hiring and supervising other cast and production members in their roles.

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**Witness No. 5: Det. Alexandria Hancock:**

Contact: c/o Sergeant Alderete ealderete@santafecountynm.gov

**Potential Testimony:** Detective Hancock is a Santa Fe Sheriff's Detective who acted as the lead investigator on the case. She has knowledge of how the investigation proceeded, how evidence was gathered, and potential gaps in the investigation.

---

**Witness No. 6: Det. Joel Cano:**

Contact: c/o Sergeant Alderete

ealderete@santafecountynm.gov

**Potential Testimony:** Detective Cano is a Santa Fe Sheriff's Detective who acted as one of the investigators on the case. He has knowledge of how the investigation proceeded, how evidence was gathered, and potential gaps in the investigation that suggest Mr. Baldwin's innocence.

---

**Witness No. 7: Robert Schilling:** Contact: Shilling.robert@gmail.com

**Proposed Testimony:** Mr. Schilling was hired as an investigator for the state and was aware of deficiencies in the investigation, including leads that were not run down. He expressed his view that the investigation conducted by the SFSO over the course of more than a year could not be remediated.

---

## **PART III: DOCUMENTS**

### **Document No. 1: Recording of 911 Call**

The document is an audio-recording of the 911 call placed by Mamie Mitchell, the film's script supervisor, immediately after the incident took place. Ms. Mitchell witnessed the incident from inside the church and was standing just a few feet away from where the gun went off. On the recording, Ms. Mitchell can be heard telling the 911 operator that two people were "accidentally shot" on a movie set. She is also heard saying that Dave Halls, the First Assistant Director, was "supposed to check the gun" and that "he's responsible for [inaudible]."

---

### **Document No. 2: Prop Truck Warrant**

On October 27, 2021, the Sante Fe Sheriff's Office executed a warrant for the prop truck on the *Rust* movie set, which is where firearms and ammunition were stored throughout the production. The warrant contains numerous exculpatory statements from several witnesses, including a statement from camera operator Reid Russel (who said Mr. Baldwin "had been very careful" with the firearms) and a statement from Dave Halls, who said the incident "was not a deliberate act" and "he [Halls] should have checked all of [the rounds in the gun], but didn't."

---

### **Document No. 3: Church Search Warrant**

On October 22, 2021, the Sante Fe Sheriff's Office executed a warrant at the church on the *Rust* movie set where the incident took place. The warrant contains numerous exculpatory statements from the affiant, including a statement that Dave Halls "handed the gun to" Mr. Baldwin and "yelled, 'Cold Gun,' indicating the prop-gun did not have any live rounds."

---

### **Document No. 4: PDQ Arm & Prop LLC Search Warrant**

On November 30, 2021, the Sante Fe Sheriff's Office executed a warrant at PDQ Arm & Prop LLC, the shop that supplied the rounds to the *Rust* set. The warrant states that Hannah Gutierrez-Reed, the film's armorer, admitted that she "didn't really check [the gun] too much" after lunch. The warrant also states that multiple live rounds were found on the set in the box of ammo that Gutierrez-Reed was pulling from, and that Gutierrez-Reed's father had given Seth Kenney, the owner of PDQ, a can of live ammo that may match the live ammo found on the *Rust* set.

---

### **Document No. 5: New Mexico Occupational Health and Safety Report**

This document is a report from the New Mexico Occupational Health and Safety Bureau, which conducted an investigation to determine whether the incident was caused by the failure of Rust Movie Productions LLC or its employees to implement proper workplace safety protocols. The

report demonstrates that Mr. Baldwin was not part of *Rust* Management—*i.e.*, the individuals responsible for hiring, scheduling, budgeting, and overseeing set safety. The report states that “Baldwin’s authority on the set” was limited to “approving script changes and actor candidates.”

---

### **Document Nos. 6(a)-6(j): Excerpts From Santa Fe Sherriff’s Office Report**

These documents represent excerpts of reports from the Santa Fe Sherriff’s Office. Each report was prepared by the lead investigator, Det. Alexandria Hancock, or by another investigator, Joel Cano. The reports summarize interviews with several key witnesses which were conducted on the scene immediately following the incident and in the weeks that followed, including:

**a. Joel Souza (director)**

The report indicates that Souza, who was hit by the bullet that fired the day of the incident, recalled Hannah Gutierrez-Reed standing over him apologizing. He identified her as the person on set responsible for firearms, and that guns are to be checked by the armorer (Gutierrez-Reed) and the First Assistant Director (Halls).

**b. Hannah Gutierrez-Reed (armorer)**

The report indicates that Gutierrez-Reed stated that she was the armorer on set and that she loaded the firearm involved in the incident. Gutierrez-Reed stated that she handed the firearm off to Dave Halls before the incident. She also stated that the dummy rounds were provided to her by Seth Kenny, who, in turn borrowed them from someone else.

**c. Sarah Zachry (prop master)**

The report indicates that Zachry thought there were additional live rounds in the box of ammunition that Gutierrez-Reed used the day of the incident, and that Gutierrez-Reed had brought ammunition from another set she had worked on. Zachry identified the origin of some of the ammunition on the set as from Seth Kenny and Billy Ray.

**d. Dave Halls (first assistant director)**

The report indicates that Halls stated he was the safety coordinator and that the armorer was Hannah Gutierrez-Reed. He explained that he would routinely check firearms with the armorer, but that, the day of the incident, there was a 5-minute gap between when he checked the revolver at issue was empty and when Gutierrez-Reed returned, having loaded what he understood to be dummy rounds in the revolver. He recalled seeing three depressed primers.

**e. Reid Russel (camera man)**

The report states that Reid reported that Mr. Baldwin was “really safe” on set, including asking to move a child actor away from gunfire.



**f. Jensen Ackles (actor)**

The report indicates that Ackles explained that it is not the job of an actor to check their own firearms. Ackles also reported that he had not seen Baldwin handle firearms in a reckless manner on the set, and that, the time of the incident, he had heard Halyna Hutchins tell Mr. Baldwin to “show her the action” just before the fatal shot fired.

**g. Ross Addiego (electrical)**

The report indicates Mr. Addiego heard that Gutierrez-Reed say that the firearm was clear, but also that she did not check it after lunch and before the rehearsal began in the church.

The report also summarizes information obtained from the cell phones of Sarah Zachry and Seth Kenney:

**h. Sarah Zachry cell phone report**

Summary of text messages related to the incident found on Sarah Zachry’s phone.

**i. Seth Kenney cell phone report**

Summary of text messages related to the incident found on Seth Kenney’s phone.

The report also contains statements regarding the potential origin of the live ammunition on set:

**j. Katya Luce**

Summary of statements from Katya Luce related to statements she overheard by one of the wranglers on set.

---

**Document No. 7: Text messages between Sarah Zachry and Seth Kenney**

This document contains excerpts of text messages exchanged between Sarah Zachry, the film’s prop master, and Seth Kenney, the ammo supplier for the production. The messages reflect that the film’s armorer, Hannah Gutierrez-Reed, failed to follow proper safety protocols on the set of *Rust* and a previous film project.

---

**Document No. 8: Text messages between Hannah Gutierrez-Reed and Seth Kenney**

This document contains excerpts of text messages exchanged between Hannah Gutierrez-Reed, the film’s armorer, and Seth Kenney, the ammo supplier for the production. The messages reflect that Gutierrez-Reed failed to follow proper safety protocols on the set of *Rust* and was negligent in her handling and storage of firearms and ammunition. The messages also contain evidence that Ms. Gutierrez-Reed went “target shooting” with the driver of the prop truck the night before the fatal incident. The messages also contain evidence that Dave Halls, the first assistant director, did not follow safety protocols on set.

---

**Document No. 9: Industry Wide Labor-Management Safety Bulletin No. 1**

This document contains guidelines for the proper handling of firearms and ammunition on film sets, including that the Prop Master and First Assistant Director are responsible “for obtaining, maintaining and handling all firearms for the production” and that “the production’s designated Safety Representative [is] to assure that” the safety protocols are adhered to. The Bulletin also states that actors must be “allowed to” (but are not required to) witness the loading of firearms, and that firearms must be checked by the prop master or weapons handler “before each use.”

---

**Document No. 10: Crew Letter**

The letter, signed by many of the cast and crew, refutes that the set of *Rust* was inherently unsafe, or that it was an unpleasant environment. It notes that producers were supportive of the cast and crew.

---

**Document No. 11: Video Clip from *Rust* Set**

This video depicts Mr. Baldwin being attentive to safety on set, and specifically shows him asking a cast member to move to another position so that he is not in the line of fire in a scene involving blanks.

---

**Document No. 12: Video Clip from *Rust* Set**

This video depicts Mr. Baldwin being attentive to proper firearm handling on set, and specifically shows him asking that a blanket be placed on the ground where he will have to throw a revolver in the scene so that the firearm is not thrown in the dirt.

---

**Document No. 13: Video Clip from *Rust* Set**

This video depicts Mr. Baldwin being attentive to safety on set, and specifically shows him halting a scene due to unstable footing for the camera crew.

---

**Document No. 14: Halls Pröffer Transcript**

The transcript reflects that Mr. Halls was in charge of safety on the set of *Rust* and that he worked with armorer Gutierrez-Reed to ensure the safety of firearms used on set. He explains that Gutierrez-Reed loaded the firearm with dummies in between the time Halls checked it with her,

and that he did not check it thoroughly, though that had been his past practice. The transcript further reflects that no member of the case or crew could have anticipated the presence of live ammunition in the firearm or anywhere on the set.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'HL', written over a horizontal line.

Heather M. LeBlanc

Attorney at Law

Date Submitted: November 14, 2023

**CERTIFICATE OF SERVICE**

**Grand Jury Evidence Notice to District Attorney**

**and**

**Grand Jury Evidence Alert Letter**

DATE: November 14, 2023

2<sup>nd</sup> Judicial District Attorney

520 Lomas Blvd, NW

Albuquerque, NM 87102

**INVESTIGATION RE:** Alexander Rae Baldwin III

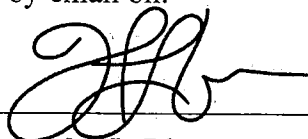
**Hearing Date:** November 16, 2023

**Case No.** D-101-GJ 2023-00008

Pursuant to Rule 5-102 NMRA, Section 31-6-11 NMSA, and *Jones v. Murdoch*, 2009-NMSC-002, 143 NM 473, the below-signed counsel certifies that the documents listed above were served upon the First Judicial District Attorney's Office by email on:

November 14, 2023

Date/Time



Heather M. LeBlanc, Attorney

## Re: Grand Jury Alert Letter

Heather LeBlanc <[heather@leblanclawnm.com](mailto:heather@leblanclawnm.com)>

Tue 11/14/2023 9:03 AM

To: [ktm@morrisseylewis.com](mailto:ktm@morrisseylewis.com) <[ktm@morrisseylewis.com](mailto:ktm@morrisseylewis.com)>; Jason J. Lewis <[jjl@jjllaw.com](mailto:jjl@jjllaw.com)>

 1 attachments (417 KB)

Baldwin - Grand Jury Alert Letter - FINAL VERSION.pdf;

Good morning:

Resending to include Jason. Apologies for leaving him off the first email.

We are having issues with the exhibit attachments and will send that file separately shortly. Please let me know if you have any difficulties opening any of the attachments.

Sincerely,  
Heather M. LeBlanc  
(505) 331-7222

On Tue, Nov 14, 2023 at 9:02 AM Heather LeBlanc <[heather@leblanclawnm.com](mailto:heather@leblanclawnm.com)> wrote:

**EXHIBIT**

**3**

**Fwd: FW: Link to documents for alert letter**

Heather LeBlanc <heather@bll.law>

Tue 11/14/2023 9:09 AM

To:Ktm <ktm@morrisseyLewis.com>;Jason J. Lewis <jjl@jjllaw.com>

For some reason, I cannot get this to send from my primary email address, so I am sending from this one. Please continue to use [heather@leblanclawnm.com](mailto:heather@leblanclawnm.com) for communications.

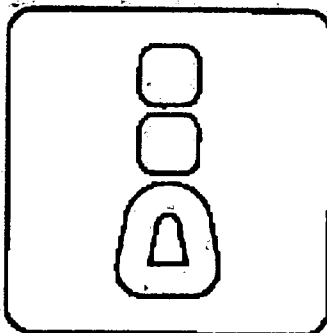
Sincerely,

Heather M. LeBlanc

---

<https://qe.sharefile.com/d-s719c7f27159e42e3b9cc84bcd0773dee>

Baldwin Alert Letter Documents.zip



Baldwin Alert Letter Documents.zip

470 MB

Last updated

11/14/2023 9:01AM

Creator: Michael Nosanchuk

Download

EXHIBIT  
4

STATE OF NEW MEXICO  
SANTA FE COUNTY  
FIRST JUDICIAL DISTRICT COURT

SANTA FE COUNTY *W*  
FILED IN THE CLERKS OFFICE  
OF DISTRICT COURT

November 15, 2023

D-101-GJ-2023-00008

IN THE MATTER OF THE GRAND JURY,

STATE OF NEW MEXICO,  
Plaintiff,

vs.

ALEXANDER RAE BALDWIN,  
Target.

**SCHEDULING ORDER**

THE COURT submits the following dates and briefing in this Matter:

- 1. Briefing Deadline on Target's Requested Elements Instructions**  
December 1, 2023 at 9:00 AM  
Response due December 15, 2023  
Reply due December 22, 2023
- 2. Motion Hearing on State's Expedited Motion to Preclude Target's Requested Evidence Before the Grand Jury**  
January 11, 2023 from 1:00 to 5:00 PM  
Time zone: America/Denver  
Google Meet joining info  
Video call link: <https://meet.google.com/dod-sbqo-bci>

*This is a Closed Hearing and only parties of record and legal counsel will be allowed into the hearing suite. As this hearing relates to matters before the Grand Jury. Recordings other than the official record are not allowed.*

- 3. Grand Jury Presentation**

January 18, 2023 at 9:00 AM  
Possibly January 19, 2023 at 9:00 AM

  
\_\_\_\_\_  
T. Glenn Ellington  
DISTRICT COURT JUDGE

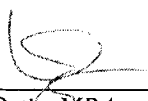


**CERTIFICATE OF SERVICE**

This document was e-filed and served, on the **date of acceptance**, to all parties below:

Kari T. Morrissey; [ktm@morrisseylewis.com](mailto:ktm@morrisseylewis.com), Jason J. Lewis; [jjl@jjllaw.com](mailto:jjl@jjllaw.com), Luke Nikas; [lukenikas@quinnemanuel.com](mailto:lukenikas@quinnemanuel.com), Alex Spiro; [alexspiro@quinnemanuel.com](mailto:alexspiro@quinnemanuel.com), John F. Bash; [johnbash@quinnemanuel.com](mailto:johnbash@quinnemanuel.com), Heather M. LeBlanc; [heather@leblanclawnm.law](mailto:heather@leblanclawnm.law).

By: \_\_\_\_\_



*Lorraine Ortiz, MBA*

*Paralegal to the Honorable T. Glenn Ellington*

STATE OF NEW MEXICO  
SANTA FE COUNTY  
FIRST JUDICIAL DISTRICT COURT

SANTA FE COUNTY  
FILED IN THE CLERKS OFFICE  
OF DISTRICT COURT

*W*  
November 15, 2023

D-101-GJ-2023-00008

IN THE MATTER OF THE GRAND JURY,

STATE OF NEW MEXICO,  
Plaintiff,


vs.

ALEXANDER RAE BALDWIN,  
Target.

**ORDER VACATING AND RESCHEDULING GRAND JURY INQUIRY**

THIS MATTER, coming before the Court on the Court's own Motion to Vacate the Grand Jury Presentation in this Inquiry on November 16, 2023 and Reset the Grand Jury Inquiry.

IT IS THEREFORE ORDERED that the Grand Jury Presentation in this Inquiry scheduled for November 16, 2023 is hereby Vacated and Reset on January 18, 2023 at 9:00 AM.




**T. Glenn Ellington**  
**DISTRICT JUDGE**


**CERTIFICATE OF SERVICE**

This document was e-filed and served, on the **date of acceptance**, to all parties below:

Kari T. Morrissey; [ktm@morrisseylewis.com](mailto:ktm@morrisseylewis.com), Jason J. Lewis; [jjl@jjllaw.com](mailto:jjl@jjllaw.com), Luke Nikas; [lukenikas@quinnemanuel.com](mailto:lukenikas@quinnemanuel.com), Alex Spiro; [alexspiro@quinnemanuel.com](mailto:alexspiro@quinnemanuel.com), John F. Bash; [johnbash@quinnemanuel.com](mailto:johnbash@quinnemanuel.com), Heather M. LeBlanc; [heather@leblanclawnm.law](mailto:heather@leblanclawnm.law)

By:   
Lorraine Ortiz, MBA  
Paralegal to the Honorable T. Glenn Ellington

STATE OF NEW MEXICO  
SANTA FE COUNTY  
FIRST JUDICIAL DISTRICT COURT

  
FILED  
FIRST JUDICIAL  
DISTRICT COURT

2023 NOV 15 AM 11:51

D-101-GJ-2023-00008

IN THE MATTER OF THE GRAND JURY,

STATE OF NEW MEXICO,  
Plaintiff,

vs.

ALEXANDER RAE BALDWIN,  
Target.

### NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a hearing in this case has been set before the  
**Honorable T. Glenn Ellington**, as follows:

Date of Hearing: **Wednesday, November 15, 2023 3:30 PM**

Place of Hearing: First Judicial District Court via Google Meet  
Motion Hearing in the Matter of the Grand Jury 2023-8  
Thursday, November 15, 2023 at 3:30 PM  
Time zone: America/Denver  
Google Meet joining info:  
Video call link: <https://meet.google.com/dod-sbqo-bci>  
Or dial: (US) +1 570-671-0182 PIN: 605 446 284#

Matter to be Heard: *Expedited Motion to Preclude Target's Requested Evidence Before  
the Grand Jury*


Comments: *This is a Closed Hearing and only parties of record and legal counsel will be  
allowed into the hearing suite. As this hearing relates to matters before the Grand  
Jury. Recordings other than the official record are not allowed.*

*Please log in by 3:20 PM.*

### CERTIFICATE OF SERVICE

This document was e-filed and served, on the **date of acceptance**, to all parties below:

Kari T. Morrissey; [ktm@morrisseylewis.com](mailto:ktm@morrisseylewis.com), Jason J. Lewis; [jjl@jjllaw.com](mailto:jjl@jjllaw.com), Luke Nikas;  
[lukenikas@quinnemanuel.com](mailto:lukenikas@quinnemanuel.com), Alex Spiro; [alexspiro@quinnemanuel.com](mailto:alexspiro@quinnemanuel.com), John F. Bash;  
[johnbash@quinnemanuel.com](mailto:johnbash@quinnemanuel.com), Heather M. LeBlanc; [heather@leblanclawnm.law](mailto:heather@leblanclawnm.law)

By:   
Lorraine Ortiz, MBA  
Paralegal to the Honorable T. Glenn Ellington

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

SANTA FE COUNTY  
FILED IN THE CLERKS OFFICE  
OF DISTRICT COURT

November 15, 2023

IN THE MATTER OF THE GRAND JURY

No.: D-101-GJ-2023-00008

STATE OF NEW MEXICO,  
Plaintiff,

v.

Alexander Rae Baldwin III,  
Target.

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

THIS MATTER came before the Court on the State's Opposed Expedited Motion for Scheduling Order Establishing Deadline for Bort Jones Letter and For Hearing on Defendant's Requested Grand Jury Evidence (the "Expedited Motion"), filed October 30, 2023. Having reviewed the briefing, considered oral argument, and being otherwise fully advised, THE COURT FINDS, CONCLUDES, AND ORDERS:

**PROCEDURAL SUMMARY**

1. On October 30, 2023, the State filed its Expedited Motion. In response, on November 3, 2023, Target Alexander Rae Baldwin III filed his Opposition to the State's Expedited Motion for Scheduling Order Establishing [A Shortened] Deadline for Bort Jones Letter and For Hearing on Baldwin's Requested Grand Jury Evidence. In turn, on November 6, 2023, the State filed its Reply to Target's Response to State's Opposed Expedited Motion

for Scheduling Order Establishing Deadline for Bort Jones Letter and for Hearing on Defendant's Requested Grand Jury Evidence.

2. On November 9, 2023, the Court held a remote hearing to consider oral argument on the Expedited Motion. Ms. Kari Morrissey, Special Prosecutor, appeared and argued on behalf of the State. Mr. Luke Nikas, Attorney for Target Baldwin, appeared and argued on behalf of the Target.

### ANALYSIS

3. Rule 5-302.2(B)(3) NMRA provides, in pertinent part, “[i]f the target submits written notice to the prosecuting attorney of exculpatory evidence . . . , or a relevant defense, the prosecuting attorney shall alert the grand jury to the existence of the evidence.” With respect to timing of such written notice, Rule 5-302.2(B)(3)(c) states, “[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.”
4. Once a target submits the aforementioned written notice, “[t]he prosecuting attorney assisting the grand jury may only be relieved of the duty to alert the grand jury to the target’s evidence or defenses by obtaining a court order prior to the grand jury proceeding.” Rule 5-302.2(B)(4). The process for obtaining such a court order is further described in Rule 5-302.2(B)(4).
5. As to modifications of the timeframes set forth in Rule 5-302.2, the rule provides, “[t]he 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.” Rule 5-302.2(D).
6. Here, the State makes the following requests in its Expedited Motion:

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.

Expedited Mot., pp. 4-5.

7. The Court finds and concludes that the State has failed to “demonstrat[e] that an extension [of the Rule 5-302.2(B)(3)(c) alert letter deadline] is necessary in order to assure compliance with the requirements of [Rule 5-302.2].” Rule 5-302.2(D).
8. Pursuant to Rule 5-302.2(B)(3)(c), the Target has until Tuesday, November 14, 2023, 9:00 AM (Mountain Time), to submit its Rule 5-302.2(B)(3) alert letter to the Special Prosecutors for the State. To the extent the Special Prosecutors invoke the process outlined in Rule 5-302.2(B)(4), the Court will hold a hearing in the afternoon on Wednesday, November 15, 2023. The Court will issue separate notice for such hearing.

### **CONCLUSION**

IT IS THEREFORE ORDERED that the State's Opposed Expedited Motion for Scheduling Order Establishing Deadline for Bort Jones Letter and for Hearing on Defendant's Requested Grand Jury Evidence is hereby DENIED.

**IT IS HEREBY ORDERED.**

  
\_\_\_\_\_  
T. GLENN ELLINGTON  
DISTRICT COURT JUDGE  
DIVISION VII

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on the date of acceptance for filing a true and correct copy of the foregoing was emailed to counsel for the parties as listed below.


Kari T. Morrissey  
Jason J. Lewis  
1303 Rio Grande Blvd., NW Suite 5  
Albuquerque, NM 87104  
ktm@morrisseylewis.com  
jjl@jjllaw.com  
*Special Prosecutors for the State*

Quinn Emanuel Urquhart & Sullivan, LLP  
Luke Nikas (*pro hac vice*)  
Alex Spiro (*pro hac vice*)  
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New York, NY 10010  
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alexspiro@quinnemanuel.com

John F. Bash (*pro hac vice*)  
300 W. 6th Street, Suite 2010  
Austin, TX 78701  
johnbash@quinnemanuel.com

LeBlanc Law LLC  
Heather M. LeBlanc  
823 Gold Ave. SW  
Albuquerque, NM 87102  
heather@leblanclawnm.law

*Attorneys for Target Baldwin*

By:   
\_\_\_\_\_  
*Lorraine Ortiz, MBA*  
*Paralegal*  
*TCAA to the Honorable T. Glenn Ellington*

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

SANTA FE COUNTY  
FILED IN THE CLERKS OFFICE  
OF DISTRICT COURT

November 15, 2023

IN THE MATTER OF THE GRAND JURY

No.: D-101-GJ-2023-00008

STATE OF NEW MEXICO,  
Plaintiff,

v.

Alexander Rae Baldwin III,  
Target.

**ORDER DENYING STATE'S EXPEDITED MOTION TO PERMIT  
STATE TO CONDUCT VOIR DIRE OF GRAND JURY VENIRE**

THIS MATTER came before the Court on the State's Expedited Motion to Permit State to Conduct Voir Dire of Grand Jury Venire (the "Expedited Motion"), filed November 1, 2023. Having reviewed the briefing, considered oral argument, and being otherwise fully advised, THE COURT FINDS, CONCLUDES, AND ORDERS:

**PROCEDURAL SUMMARY**

1. On November 1, 2023, the State filed its Expedited Motion. In response, on November 7, 2023, Target Alexander Rae Baldwin III filed his Response to State's Expedited Motion to Permit State to Conduct Voir Dire of Grand Jury Venire. In turn, on November 8, 2023, the State filed its Reply to Alec Baldwin's Response to State's Expedited Motion to Permit State to Conduct Voir Dire of Grand Jury Venire.
2. On November 9, 2023, the Court held a remote hearing to consider oral argument on the Expedited Motion. Ms. Kari Morrissey, Special Prosecutor, appeared and argued on behalf



of the State. Mr. Luke Nikas, Attorney for Target Baldwin, appeared and argued on behalf of the Target.

### ANALYSIS

3. Pursuant to NMSA 1978, Section 31-6-1 (1983), “[t]he district judge shall summon and qualify as a panel for grand jury service such number of jurors as he deems necessary.” Further, “[t]he district judge may discharge or excuse members of a grand jury and substitute alternate grand jurors as necessary.” *Id.* In interpreting this statute, the New Mexico Court of Appeals held, “[i]t is the district judge convening the grand jury who has general supervisory authority over the qualifications and eligibility of persons called to serve as grand jurors, not the prosecutor.” *Matter of Grand Jury Sandoval Cnty.*, 1988-NMCA-007, ¶ 16, 106 N.M. 764 (citing § 31-6-1); *see also Herrera v. Sanchez*, 2014-NMSC-018, ¶ 16, 328 P.3d 1176 (expounding upon target and his attorney’s limited permissible involvement in the grand jury process).
4. Similarly, the New Mexico Supreme Court explicitly vests the district court with the sole authority to screen, select, and excuse grand jurors. *See De Leon v. Hartley*, 2014-NMSC-005, ¶¶ 17-20, 316 P.3d 896. Given that a departure from the standard set forth in *De Leon* will likely result in the quashing of a grand jury indictment, the Court emphasizes critical and specific holdings from the *De Leon* opinion:

The manner in which grand jurors are selected and excused goes to the very heart of how the public views the integrity of the grand jury system.

[ . . . ]

Petitioner having established that the district attorney was in control of the actual selection and excusal of the grand jurors and having brought that fact to the attention of the district court well before trial, the district court should have quashed the indictment and erred by refusing to do so.

While the selection of grand jurors can be a straightforward process, the important role the district court has to play in that process should not be

minimized. Delegating the selection and excusal of grand jurors to the prosecution only invites suspicion and guarantees challenges to a process that must be above reproach. We will not countenance a process that causes the diversion of scarce resources to investigate a process that can be easily structured to avoid even the hint of prosecutorial overreaching. The informality that may often accompany the process of excusing grand jurors at the last minute who present a compelling enough reason for not attending a particular session of the grand jury, is exactly why the district court—not the district attorney—must oversee the process.

The district court is the constitutionally and statutorily designated neutral entity that is assigned the responsibility for determining which grand jurors sit in any particular case to decide the question of indictment. Without the district court actively involved in the entire grand jury process, public confidence in the integrity of the process is at risk. And if the integrity of the grand jury is called into question, there is little hope that the public at large, or the accused in particular, will view the grand jury as capable of returning well-founded indictments or serving as a realistic barrier to an overzealous prosecution.

We therefore reiterate that the district courts in this state must not delegate their core supervisory responsibilities over grand jury proceedings. And when undeniable irregularities in the grand jury process are brought to the court's attention well in advance of trial, as was the case here, a grand jury indictment resulting from that flawed process must be quashed.

*Id.* (internal citations and text omitted as indicated).

5. Here, the State's Expedited Motion provides, "[a]s a matter of fairness to both the State and the target, the State requests to conduct a limited voir dire of prospective jurors to ensure that exposure to news stories or other information about the target has not biased any juror for or against either party." Expedited Mot., p. 2. The State's request to conduct a voir dire of the grand jury venire constitutes a clear departure from statute, case law, and rule. *See, e.g.*, § 31-6-1; *De Leon*, 2014-NMSC-005, ¶¶ 17-20; UJI 14-8001 NMRA.
6. Instead, to address the State's concerns, the Court will rely upon procedural protections already codified in statute and rule. For instance, grand jurors swear an oath that they shall *inter alia* "indict no person through malice, hatred or ill will; nor have any not indicted

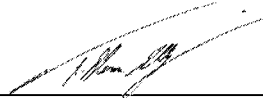
through fear, favor or affection, or for any reward or the hope or promise thereof.” NMSA 1978, § 31-6-6(A)(1) (1979). Further, pursuant to UJI 14-8001, grand jurors are instructed that they “must not consider anything you may have read or heard about the case except as a part of your inquiry as members of the grand jury,” and warned that if they violate their oath they “may be prosecuted.” UJI 14-8001. In addition, to the extent a grand juror’s impartiality is called into question, “[t]he foreperson, for good cause, may request the court to excuse or discharge individual grand jurors and to replace them with alternate grand jurors as necessary to continue the work of the grand jury.” *Id.*

7. Therefore, the State’s Expedited Motion is denied.

#### **CONCLUSION**

IT IS THEREFORE ORDERED that the State’s Expedited Motion to Permit State to Conduct Voir Dire of Grand Jury Venire is hereby DENIED.

**IT IS HEREBY ORDERED.**



---

T. GLENN ELLINGTON  
DISTRICT COURT JUDGE  
DIVISION VII

#### **CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on the date of acceptance for filing a true and correct copy of the foregoing was emailed to counsel for the parties as listed below.


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*Attorneys for Target Baldwin*

By:   
\_\_\_\_\_  
*Lorraine Ortiz, MBA*  
*Paralegal*  
*TCAA to the Honorable T. Glenn Ellington*

SANTA FE COUNTY  
FILED IN THE CLERKS OFFICE  
OF DISTRICT COURT

November 16, 2023

STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO

Plaintiff,

v.

D-101-GJ-2023-00008

ALEXANDER RAE BALDWIN,

Target.

**MOTION TO PERMIT TARGET'S COUNSEL TO OBTAIN  
RECORDING OF PROCEEDING**

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*Counsel for Target*

Alexander R. Baldwin III, by and through undersigned counsel, respectfully moves this Court to permit Mr. Baldwin's counsel to obtain a recorded copy of the hearing on the State's Expedited Motion to Preclude Target's Requested Evidence Before the Grand Jury, which was held on November 15, 2023, to allow counsel to review the specific language of the Court's statements at the conference to evaluate and ensure compliance with the Court's instructions, statements, guidance and orders. The hearing was conducted under seal and an order of protection prohibiting public dissemination of the recording accompanies this motion.

Counsel reached out to opposing counsel but was unable to obtain a position.

Date: November 16, 2023

Respectfully submitted,

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By: /s/ Luke Nikas

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*Counsel for Target*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 16, 2023, a true and correct copy of the foregoing notice was emailed to opposing counsel.

/s/ Heather M. LeBlanc  
Heather M. LeBlanc

STATE OF NEW MEXICO  
COUNTY OF SANTA FE, RIO ARRIBA, LOS ALAMOS  
FIRST JUDICIAL DISTRICT COURT

SANTA FE COUNTY  
FILED IN THE CLERKS OFFICE  
OF DISTRICT COURT

TS

November 16, 2023

CASE NO. D-101-GJ-2023-8

STATE OF NEW MEXICO  
PLAINTIFF/PETITIONER/IN THE MATTER OF:

vs.

ALEXANDER BALDWIN  
DEFENDANT/RESPONDENT

CD REQUEST

DATE OF HEARING November 15, 2023  
JUDGE/HEARING OFFICER Hon. T. Glenn Ellington  
TYPE OF HEARING Mtn to Preclude Target's Requested Evidence Before GJ  
CD FORMAT (CHECK ONE) AUDIO  FTR/MP3  FTR   
\*\*/\*\*/\*\* (SEE BELOW) \*\*\*\*\*PRINTED LOG NOTES

Heather M. LeBlanc  
NAME OF REQUESTOR

823 Gold Ave SW  
ADDRESS

Albuquerque, New Mexico 87102  
CITY STATE ZIP

( 505 ) 835-0836  
PHONE

- \* Audio: Can be played back on any home/car stereo and Media Player. (Does not include Log Notes)
- \*\* FTR/MP3(For the Record/MP3): Audio will be reformatted and can be played back in any Media Player that supports MP3. Log Notes will be in HTML format.
- \*\*\*FTR(For the Record): Must download the software for the Playback Panel from [www.fortherecord.com](http://www.fortherecord.com). Log Notes will be in FLS (For the Record) format.
- \*\*\*\*Printed Log Notes can be requested for a fee of \$.35 cents per page.



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

FIRST JUDICIAL  
DISTRICT COURT YW

2023 NOV 20 PM 1:22

STATE OF NEW MEXICO,  
Plaintiff,

v.

D-101-GJ-2023-00008

ALEXANDER RAE BALDWIN,  
Target.

**STATE'S RESPONSE IN OPPOSITION TO MOTION TO PERMIT TARGET'S  
COUNSEL TO OBTAIN RECORDING OF PROCEEDING**

COMES NOW, the State of New Mexico, by and through Special Prosecutors for the First Judicial District, Kari T. Morrissey and Jason J. Lewis, who respectfully submit the following in response to the target's Motion to Permit Target's Counsel to Obtain Recording of Proceeding:

1. On November 15, 2023 the Court held a hearing wherein the Court vacated the grand jury hearing scheduled for November 16, 2023 and established certain deadlines and a future hearing date to hear arguments regarding the target's request for evidence before the grand jury. The Court made no substantive legal rulings during the brief hearing on November 15, 2023.
2. Also on November 15, 2023, the evening before the grand jury was set to convene, NBC News (the same network that produces Saturday Night Live) ran a story showing several videos from the filming of the movie *Rust* that seemingly depicted the target behaving in a thoughtful and careful manner on the movie set. <https://www.nbcnews.com/news/us-news/previously-unreleased-videos-show-alec-baldwin-firing-prop-gun-blanks-rcna125294>. The timing of this news story was not a coincidence. The video clips recorded on the set of *Rust* (which include more than one hundred clips) were released to

Special Prosecutors previously under a protective order due to Rust Productions, LLC's claimed proprietary interest in the clips.

3. The NBC News reporter who "broke" the story on November 15, 2023 (Chloe Melas) is the same reporter who previously worked for CNN and conducted an on air interview with the target and his attorney in August 2022 giving him a platform to publicly present his defense that he did not pull the trigger when the gun went off killing Halyna Hutchins and injuring Joel Souza on October 21, 2021 and giving his counsel an opportunity to make a public plea that a criminal prosecution of his client would be unjust.
4. Since seeing the videos on NBC news on November 15, 2023, undersigned counsel contacted the attorney for Rust Productions, LLC to inquire as to the continuing need for the protective order given that Rust Productions, LLC obviously released the videos unrestricted to other parties or persons. Undersigned counsel was notified that the video footage was released unrestricted to all producers of the film. Mr. Baldwin is a producer of the film and presumably was provided the video footage.
5. Undersigned counsel is concerned that the target and/or his counsel released the cherry-picked videos to NBC News (likely through a third party) with the intention of generating sympathy for the target. The videos were released to the national press on the eve of the grand jury proceeding in an effort to taint the grand jurors and the grand jury process. Counsel for the state is concerned that any recordings of hearings related to the grand jury proceedings will be used to continue to taint the grand jury process by the target and/or his counsel.
6. NMSA § 31-6-8 allows for recording of grand jury proceedings to be released only if and when an indictment is returned. While the hearing on November 15, 2023 was not a

proceeding before the grand jurors, the state asserts that the recording of the hearing relating to the evidence before the grand jury should not be released as it is a part of the general grand jury proceedings. There is no need for the parties to be in possession of the recording of the grand jury hearing on November 15, 2023 for “clarification” of the Court’s ruling when the Court’s ruling was clear, the target had three attorney’s present taking notes of the Court’s ruling and the Court did not make any actual legal rulings related to the defendant’s requested evidence to be presented before the grand jury that should require any clarification. If the target’s three attorneys were so confused by the Court’s ruling or deadlines that they require clarification, counsel for the target can simply ask the Court for clarification through an email to the Court’s paralegal with all counsel copied.

WHEREFORE, for the above stated reasons the state requests the Court deny the target’s motion to release the recording of the November 15, 2023 hearing.

RESPECTFULLY SUBMITTED,

/s/ Kari T. Morrissey

Kari T. Morrissey

Jason J. Lewis

Special Prosecutors for the State of New Mexico

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I hereby certify that a true and correct copy of the foregoing pleading was emailed to opposing counsel this 20<sup>th</sup> day of November 2023.

/s/ Kari T. Morrissey

Kari T. Morrissey

FILED  
FIRST JUDICIAL  
DISTRICT COURT

2023 NOV 21 AM 11:15

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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*Counsel for Alec Baldwin*

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.

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Who: New Mexico First Judicial District Attorney Mary Carmack-Altweis 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.<sup>1</sup> 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.<sup>2</sup> In the same interview, Reeb stated that a lab report confirmed that “definitely the trigger was pulled”<sup>3</sup> 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

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<sup>1</sup> “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>.

<sup>2</sup> “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.

<sup>3</sup> 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.”<sup>4</sup> 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.<sup>5</sup>

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),

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<sup>4</sup> “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>.

<sup>5</sup> “‘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.<sup>6</sup>

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<sup>6</sup> 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.<sup>7</sup> 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*

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<sup>7</sup> *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.<sup>8</sup> The timing and seriousness of the Special Prosecutors’ violation—barely an

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<sup>8</sup> 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

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“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,

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By: /s/ Luke Nikas  
Luke Nikas (admitted *pro hac vice*)  
Alex Spiro (admitted *pro hac vice*)  
51 Madison Avenue, 22nd Floor  
New York, NY 10010  
Tel: 212-849-7000  
Fax: 212-849-7100  
lukenikas@quinnemanuel.com  
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johnbash@quinnemanuel.com

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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

# **EXHIBIT 1**

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**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]

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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 Direct

212-849-7000 Main Office Number

212-849-7100 FAX

475-558-9881 Home Office

lukenikas@quinnemanuel.com

www.quinnemanuel.com

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**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]

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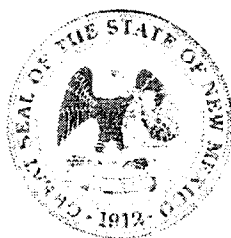
Luke and Alex



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-Altwies, District Attorney**

**LEGAL MAIL**

**October 25, 2023**

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

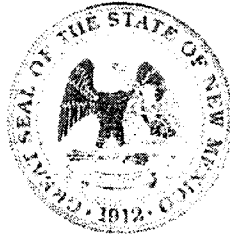
You or your attorney may submit proposed questions and exhibits to the district attorney prior to the grand jury proceedings. If you or your attorney wishes to submit proposed questions or exhibits, or for further information on the time and date of the grand jury, you may call Kari T. Morrissey at (505)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

A handwritten signature in black ink, appearing to read "Kari T. Morrissey".

Kari T. Morrissey  
Special Prosecutor

cc: Robert Jason Bowles

STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT

FILED  
FIRST JUDICIAL  
DISTRICT COURT

TS

2023 NOV 21 AM 11:15

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



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Luke Nikas

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

FIRST JUDICIAL  
DISTRICT COURT  
2023 DEC -1 PM 12:10

**STATE OF NEW MEXICO,**

**Plaintiff,**

**v.**

**D-0101-GJ 2023-00008**

**ALEXANDER RAE BALDWIN, III,**

**Defendant.**

**STATE'S MOTION TO EXCLUDE TARGET'S REQUESTED ELEMENTS  
INSTRUCTIONS TO THE GRAND JURY**

**COMES NOW** the State of New Mexico, through Special Prosecutors Kari T. Morrissey and Jason J. Lewis, and submits its Motion to Exclude Target's Requested Elements Instructions to the Grand Jury. In support of its motion, the State submits the following:

**INTRODUCTION**

In his Grand Jury Evidence Alert letter dated November 14, 2023, the target requested the Grand Jury be alerted to two elements instructions: a subjective knowledge instruction and a proximate cause instruction. The target did not provide any factual statements or legal authority to justify the inclusion of these elements instructions, so the State will make its best efforts to anticipate target's arguments for including the elements, although additional arguments may be raised in the State's reply to the target's response to this motion, once it has seen the target's reasons and authority for alerting the grand jurors to these elements instructions.



**I. TARGET HAS NO RIGHT TO OFFER ELEMENTS INSTRUCTIONS OR DEFINITIONS IN GRAND JURY PROCEEDINGS**

As a preliminary matter, the target does not have a right at this stage in the process to determine what instructions and definitions are provided to the Grand Jury. In *Jones v. Murdoch (In re Grand Jury Presentation Concerning Jones)*, 145 N.M. 473, 2009-NMSC-002, the New Mexico Supreme Court completed a sweeping analysis of the rights of targets during Grand Jury proceedings. While acknowledging a target has rights at this stage, the rights are extremely limited. Specifically, the target has the right to alert the Grand Jury to directly exculpatory evidence. “However, to avoid disputes regarding what is argument and what is evidence, a letter from a target intended for delivery to the grand jury generally should focus on simply providing the grand jury with a factual and nonargumentative description of the nature of any tangible evidence and the substance of the potential testimony of any suggested witnesses, along with the names and contact information of the necessary witnesses who could provide the exculpatory information.” *Id.* at 485, ¶ 34.

Moreover, it is well established that it is within the purview of the prosecutor to “present specific evidence before a grand jury in a particular manner...and that the [target] does not have a clear legal right to have the grand jury investigation proceed in the same manner as a criminal trial with the full panoply of due process rights.” *Matter of Grand Jury Sandoval Cty.*, 1988-NMCA-007, ¶ 18, 106 N.M. 764, 768, 750 P.2d 464, 468. In this vein, the target is permitted to propose only that testimony and evidence that is directly exculpatory; circumstantial exculpatory evidence is not permitted. The State is required to present to the grand jury only exculpatory evidence that directly negates defendant's guilt. *See State v. Lara*, 110 N.M. 507, 1990-NMCA-075. “Direct evidence is evidence that, if believed, proves the existence of facts without inference or presumption.” *Id.* at 516, ¶ 32. Nowhere in any of these cases does a Court find that the target has

the right to comment on, propose, or much less require that certain jury instructions and definitions be provided to the Grand Jury.

This idea is further codified in the Court's rules. N.M.R. CRIM. P. DIST. CT. Rule 5-302.2 (D) provides:

**“D. Instructions to grand jury.**

**(1) Elements and defenses.** The prosecuting attorney who is assisting the grand jury shall provide the grand jurors with instructions setting forth the elements of each offense being investigated and the definitions of any defenses raised by the evidence.

**(2) Other instructions.** The prosecuting attorney shall provide the grand jury with other instructions that are necessary to the fair consideration by the grand jury of the issues presented.”

Here, the Court makes clear that it is the prevue of the prosecuting attorney to provide Grand Jurors with the elements, definitions, and other instructions that are applicable to the offenses charged. The rule specifically fails to provide a mechanism for the target to comment on, object to, or otherwise participate in the process of determining what elements, instructions, and definitions to go the Grand Jury. Indeed, if the target believes the instructions provided are somehow deficient, then he may and likely will file a motion to quash the indictment, presuming an indictment issues.

Despite the case law and court rules which clearly preclude the target from participating in the crafting of Grand Jury instructions and definitions, should the Court allow the target to patriciate in this case, the target's proposed elements are nevertheless inappropriate.

The proposed elements instructions at issue here are:

1. Mr. Baldwin requests that the Grand Jurors be alerted to the fact that the crininal negligence standard requires the prosecution to show that Mr. Baldwin had subjective knowledge of an actual risk that the firearm placed in his hand had been loaded with live ammunition.

2. Mr. Baldwin requests that the Grand Jurors be alerted that proximate cause is an element of causation, and that the element of proximate cause is negated where the negligence of a third party (*i.e.*, someone other than Mr. Baldwin) was the only significant cause of death or constitutes an intervening cause that broke the foreseeable chain of events.

As set forth below, the target's proposed subjective knowledge instruction is not supported by the law, while the proximate cause instruction is appropriate, although not as written by the target. Instead, the proximate cause Uniform Jury Instruction provided in N.M.R. CRIM. P. DIST. CT. Rule 14-134 should be given to ensure conformity and to avoid the risk of juror confusion.

## **II. SUBJECTIVE KNOWLEDGE PROPOSED ELEMENT INSTRUCTION**

As the Court is aware, the target is charged with two counts of involuntary manslaughter pursuant to N.M.S.A. 1978, § 30-2-3 (B). Count I requires the grand jury to consider whether the target caused the death of Halyna Hutchins, committed in the commission of an unlawful act, to wit: negligent use of a deadly weapon, contrary to N.M.S.A. 1978 § 30-7-4 (a)(3). Alternative Count I requires the grand jury to consider whether the target caused the death of Halyna Hutchins, committed in the commission of a lawful act, which might produce death in an unlawful manner or without due caution and circumspection, contrary to N.M.S.A. 1978, § 30-2-3 (B).

The State acknowledges the criminal negligence standard requires the prosecution to show that the target had subjective knowledge of an actual risk of danger, although that standard is already built into the language of the standard UJI, discussed below. "Criminal negligence in the context of involuntary manslaughter requires subjective knowledge by the defendant of the danger or risk to others posed by his or her actions. A jury may not be instructed on involuntary manslaughter unless the evidence presented at trial shows the defendant could be found criminally negligent when engaging in the act causing the victim's death." *State v. Henley*, 148 N.M. 359, 364, 2010-NMSC-039, ¶ 17. The Court also stated:

Our case law has long integrated the requirement of subjective knowledge into the showing [\*\*\*\*11] of criminal negligence required by our involuntary manslaughter statute. *See State v. Harris*, 1937- NMSC 046, 41 N.M. 426, 428, 70 P.2d 757, 758 (1937) (defining criminal negligence required for involuntary manslaughter as "so reckless, wanton, and willful as to show an utter disregard for the safety of [others]"); *see also Yarborough*, 1996 NMSC 68, P 20, 122 N.M. 596, 930 P.2d 131 (noting, in a vehicular homicide case, that to find criminal negligence, "[the jury] must find that [the defendant] drove with willful disregard of the rights or safety of others and in a manner which endangered any person or property" (quoting NMRA 14-241 (1996))); *Romero*, 2005 NMCA 60, P 17, 137 N.M. 456, 112 P.3d 1113 (finding that an involuntary manslaughter jury instruction should have been given where the defendant presented evidence that he was acting lawfully in selfdefense [sic] but "without due caution or circumspection due to" the victim's medical condition, of which the defendant was aware); *cf. Lucero*, 2010 NMSC 11, P 14, 147 N.M. 747, 228 P.3d 1167 (stating that a jury instructed on involuntary manslaughter is not also instructed on accident, as accident requires proof of "usual and ordinary caution and without any unlawful intent," in contrast to the required showing of criminal negligence for an [\*\*\*\*12] involuntary manslaughter instruction (internal quotation marks and citation omitted) (emphasis omitted)).

*Id.*

The target's proposed elements instruction requiring that the target had subjective knowledge of an actual risk that the firearm placed in his had had been loaded with live ammunition is an unprecedented departure from the elements of proof the law and rules require. The Supreme Court has adopted two rules which set forth the elements necessary to establish the target's criminal culpability as charged: N.M.R. CRIM. P. DIST. CT. Rule 14-231, Involuntary Manslaughter; essential elements and Rule 14-133, Negligence, defined.

Rule 14-231, Involuntary Homicide, establishes the foregoing elements and use notes:

**14-231. Involuntary manslaughter; essential elements.<sup>1</sup>**

For you to return a true bill on the charge of involuntary manslaughter [as charged in Count \_\_\_\_\_],<sup>2</sup> you must find probable cause as to each of the following elements of the crime:

1. \_\_\_\_\_ (name of defendant) \_\_\_\_\_ (describe defendant's act);
2. \_\_\_\_\_ (name of defendant) should have known of the danger involved by \_\_\_\_\_'s (name of defendant) actions;
3. \_\_\_\_\_ (name of defendant) acted with a willful disregard for the safety of others;

4. \_\_\_\_\_'s (*name of defendant*) act caused the death of \_\_\_\_\_ (*name of victim*);
5. This happened in New Mexico on or about the \_\_\_\_\_ day of \_\_\_\_\_,

#### USE NOTES

1. This instruction is used in all involuntary manslaughter prosecutions.
2. Insert the count number if more than one count is charged.

Under Element No. 1 the State would insert the words, “negligently used a firearm” and include the following definition of “negligence” and “deadly weapon” for the Grand Jury’s use.

#### **14-133. "Negligence" and "recklessness"; defined.<sup>1</sup>**

For you to find that the defendant [acted]<sup>2</sup> [recklessly] [with reckless disregard] [negligently] [was negligent] [ \_\_\_\_\_ ]<sup>3</sup> in this case, you must find that the defendant acted with willful disregard of the rights or safety of others and in a manner which endangered any person or property.<sup>4</sup>

#### USE NOTES

1. For use when "negligence", "reckless", "recklessly", "knew or should have known" or similar term or phrase is an element of the crime charged. This instruction should not be given with any elements instruction which already adequately defines the concept of a defendant's criminal negligence set forth by the Supreme Court. *See for example State v. Yarborough*, 1996-NMSC-068, 122 N.M. 596, 930 P.2d 131, and *Santillanes v. State*, 115 N.M. 215, 849 P.2d 358 (1993).
2. Use only applicable alternative.
3. Set forth the term or terms used in the elements instruction (or statute if no elements instruction exists) for criminal negligence if the previous alternatives are not used in the essential elements instruction of a "criminal negligence" offense.
4. If the statutory offense identifies some injury other than to a person or the property of others, set forth statutory language.

Thus, the subjective knowledge analysis the Supreme Court wishes jurors to consider is already included in the UJI; no additional or modified language is warranted. The analysis for the alternative count, Involuntary Manslaughter committed via a lawful act without due caution and circumspection, is the exactly the same – and consequently no modification to the language is necessary.

The New Mexico Supreme Court adopted the foregoing rules with full knowledge and understanding of the caselaw, and consequently built into the UJIs the elements that apply to each

of the named offenses. None of the UJIs (or even caselaw reviewing the UJIs) require or even suggest that an individual charged with involuntary manslaughter committed via negligent use of a deadly weapon had to have subjective knowledge of an actual risk that the firearm placed in his hand had been loaded with live ammunition. New Mexico's lawbooks are filled with defendants charged with and convicted of involuntary manslaughter who all said some version of the same thing: that they did not know there was a bullet in the gun. The common fact they share with target is that they, too, failed to inspect the gun prior to pointing it at another human and pulling the trigger, resulting in death.

Target's request for the subjective knowledge instruction also assumes that the factual basis of negligent act was failing to check the firearm for live rounds. Failing to check the firearms for live rounds was one of, but not the only way, in which the target was negligent. The State is under no obligation to disclose to the target the theory of its case and consequently declines to state here all of the ways in which it believes the target was negligent. Suffice it to say whether or not the target had subjective knowledge of an actual risk that the firearm placed in his hand had been loaded with live ammunition has nothing to do with the other ways in which the State intends to show the target negligently handled a firearm resulting in death.

This, too, highlights another reason why the Court should not consider the target's proposed elements instruction at this time. Until the State has set forth the entirety of its factual evidence before the Grand Jury, the Court cannot know whether the jurors should or should not have been alerted to specific instructions and definitions. To consider the instructions at this stage would require the State to disclose its anticipated evidence and theory of the case not only to the Court but also to the target. Not only does this put the cart before the horse, but this would constitute an intrusion by the Court into a function that is purely within the purview of the

prosecutors, and would require the disclosure of the State's legal strategy before the Grand Jury convenes. If the target is dissatisfied with the elements instructions and definitions given to the Grand Jury, the target has a remedy and that remedy is to file a motion to quash any indictment that might issue after the Grand Jury process is complete – not before.

Finally, were the Court to adopt the elements instruction as proposed by the target, the State is concerned the standard of proof for an involuntary manslaughter charge would be too high, and more akin to second degree murder charge. Indeed, if the target had actual knowledge of the risk that the firearm was loaded with live ammunition, yet still pointed the gun in the direction of another living person and pulled the trigger, his exposure under the law would increase significantly. “To convict Defendant of second-degree murder, the State was required to prove Defendant killed Shamika White (Victim), Defendant knew that his ‘acts created a strong probability of death or great bodily harm’ to Victim, and ‘[D]efendant did not act as a result of sufficient provocation[.]’ UJI 14-210 NMRA (2010) (describing the elements of second-degree murder); see NMSA 1978, § 30-2-1(B)(1994) (defining second-degree murder).” *State v. Jackson*, 2019 N.M. App. Unpub. LEXIS 496, \*2, 2019 WL 13156000. If the Court accepts the target's proposed elements instruction that the target had to have been aware of an actual risk that the firearm was loaded with live ammunition, the target would then necessarily have been aware that by pointing the gun at another person and pulling the trigger, his acts created a strong probability of death or great bodily harm – and therefore would be guilty of second degree murder, and not involuntary manslaughter. For these reasons, the target's proposed instruction should be denied.

### **III. Proximate Cause Elements Instruction**

The State intends to submit N.M.R. CRIM. P. DIST. CT. Rule 14-134, “Proximate Cause”, defined, to the Grand Jurors, as adopted by the Supreme Court, without the changes submitted by

the target, but modifying the standard of proof to be probable cause, rather than beyond a reasonable doubt. As to the target's proposed modification on this element, the State incorporates its previous arguments that the target has no right to suggest modifications to the elements instructions, pursuant to *Jones v. Murdoch (In re Grand Jury Presentation Concerning Jones)*, 145 N.M. 473, 2009-NMSC-002 and N.M.R. CRIM. P. DIST. CT. Rule 5-302.2 (D).

Nevertheless, should the Court decide to entertain the target's proposed modification, the State objects on the grounds that the proposed modification is unsupported by the rules adopted by the Supreme Court and could lead to jury confusion. The rule as adopted states:

**14-134. "Proximate cause"; defined.<sup>1</sup>**

In addition to the other elements of the crime of \_\_\_\_\_ (*name of crime*) as set forth in instruction number \_\_\_\_\_,<sup>2</sup> you must find probable cause as to each of the following elements:

1. \_\_\_\_\_ (*name of victim*) was \_\_\_\_\_ (*describe injury or harm*);
2. The injury or harm was the foreseeable result of the defendant's act; and
3. The act of the defendant was a significant cause of the injury or harm.

The defendant's act was a significant cause of the injury or harm if it was an act which, in a natural and continuous chain of events, uninterrupted by an outside event, resulted in the injury or harm and without which the injury or harm would not have occurred.

[There may be more than one significant cause of the injury or harm. If the acts of two or more persons significantly contribute to the cause of the injury or harm, each act is a significant cause of the injury or harm.]<sup>3</sup>

**USE NOTES**

1. This instruction should be used in cases in which causation is an issue. It is not to be used in homicide cases. *See* Instructions 14-251 and 14-252.
2. Insert here the number assigned by the court to the elements instruction for the named offense.
3. Use the bracketed language if there is evidence that the acts of more than one person contributed to the injury or harm to the victim.

The target's proposed language, "the element of proximate cause is negated where the negligence of a third party (i.e., someone other than [the target]) was the only significant cause of



death or constitutes an intervening cause that broke the foreseeable chain of events” could confuse jurors into believing that if another individual was a significant cause of death, that the target would be relieved of responsibility. Comparatively, the rule as adopted by the Supreme Court makes clear that there can be more than one individual whose actions were a significant cause of death and that all parties whose actions were a significant cause of death share culpability. There are no compelling reasons to deviate from the instruction as adopted by the Court, and because any attempt by the target to modify the elements instructions is an unlawful intrusion into the prosecutor’s purview in assisting the Grand Jury, the State requests the Court reject the target’s proposed modification.

**CONCLUSION**

For the reasons stated herein, the State respectfully requests the Court enter an order denying the target’s proposed elements instructions.

RESPECTFULLY SUBMITTED,

/s/ Jason J. Lewis  
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I hereby certify that a true and correct copy of the foregoing pleading was emailed to opposing counsel this 1<sup>st</sup> day of December, 2023.

/s/ Jason J. Lewis  
Jason J. Lewis

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FIRST JUDICIAL  
DISTRICT COURT

2023 DEC 5 PM 11:31

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

STATE OF NEW MEXICO,

Plaintiff,

v.

No. D-101-GJ-2023-00008

ALEXANDER RAE BALDWIN III,

Target.

**STATE'S RESPONSE TO MOTION FOR SANCTIONS AGAINST  
SPECIAL PROSECUTORS KARI MORRISSEY AND JASON LEWIS**

COMES NOW, Kari T. Morrissey and Jason J. Lewis, Special Prosecutors for the First Judicial District Attorney's Office, who submit the following in response to the target's motion for sanctions:

1. In his motion for sanctions, defense counsel claims that Special Prosecutor Kari T. Morrissey released information that the Court vacated the grand jury setting and reset it to a later date so it could address outstanding legal issues and did this within an hour of the conclusion of the November 15, 2023 hearing. Defense counsel is mistaken, undersigned counsel did not wait an hour after the hearing to disclose the information, she disclosed it within minutes of the conclusion of the hearing, although not to the media.
2. As the Court noted at the beginning of the November 15, 2023 hearing, undersigned counsel had numerous witnesses scheduled to appear to give testimony before the grand jury on November 16, 2023, some of whom were travelling from out-of-state. Undersigned counsel notified all of her witnesses immediately after the hearing that the grand jury setting on November 16, 2023 was vacated. She further notified her witnesses

that it had been rescheduled to January 18, 2024 so that they could make the appropriate changes to their January schedules. Making these changes likely requires the witnesses to notify their spouses, children and employers of the need to testify and the date that the testimony is required. When asked why the grand jury was being vacated with such little notice, counsel explained to the witnesses that there were outstanding legal issues that needed to be addressed by the Court. There is nothing sanctionable about this conduct and undersigned counsel did not intentionally violate the Court's verbal order handed down on November 15, 2023. In fact, undersigned counsel went further than the Court ordered and instructed all witnesses not to disclose the January grand jury date in order to avoid it becoming public. The comments Mr. Nikas complains of can absolutely be attributed to undersigned counsel as she had to notify her witnesses of the status of the grand jury proceeding. The case against Mr. Baldwin has garnered a great deal of press coverage that is largely outside the control of the prosecution and the Court.

3. The state, by current or previous prosecutors, has not pursued a prejudicial media campaign against Mr. Baldwin. In January 2023 the State issued a press release that did not violate the Rules of Professional Conduct and was issued subsequent to numerous public statements made by Mr. Baldwin and Ms. Gutierrez's lawyers. Like Ms. Gutierrez's counsel, Mr. Baldwin and his counsel have consistently used the press to disseminate detailed information about the case and have made patently false statements to the press in order to sway public opinion against the prosecution and cast doubt on the criminal investigation.
4. Mr. Baldwin appeared in a highly televised interview with his personal friend, George Stephanopoulos on December 2, 2021. Mr. Baldwin gave a detailed interview about the

tragedy and denied all culpability related to the death of Ms. Hutchins. During the interview he asserted that someone was responsible for Ms. Hutchins death, but it wasn't him. He seemed to point the finger at Ms. Gutierrez and Mr. Halls, even though it was Mr. Baldwin who failed to confirm that the gun in his hand was safe to handle before he pointed it at Ms. Hutchins, cocked it and pulled the trigger. Mr. Baldwin vehemently denied pulling the trigger of the gun but conveniently gave no reasonable explanation for how a single action revolver could discharge without the trigger being pulled.

(<https://abcnews.go.com/Entertainment/alec-baldwin-exclusive-trigger-pulled-pull-trigger/story?id=81491305>). He was not able to give such an explanation because there is none to give. No doubt, many targets of criminal investigations would like to have an opportunity to convince the public that they are being unfairly targeted but don't have the public notoriety or powerful friends to obtain a prime-time platform on a national television network. Mr. Baldwin's appearance and blanket denial of all responsibility in the death of Ms. Hutchins kindled a flame with the media that he continues to stoke.

5. On December 8, 2021, Mr. Baldwin gave a statement to OSHA investigators in New Mexico where he was asked if it seemed "like the gun may have had a mechanical defect." Mr. Baldwin responded unequivocally that the gun had no defects and that the only "problem with the gun" was that there was a live bullet in the gun. "The problem didn't have to do with the gun. It had to do with the bullet." See OSHA interview by Safety Compliance Officer, Lorenzo Montoya of Alec Baldwin, December 8, 2021, page 42 lines 10-21. This statement is seemingly in direct conflict with the statements he gave to ABQ News a mere six days earlier.

6. On August 19, 2022 Mr. Baldwin again used his celebrity status to sway public opinion concerning the details of the investigation into the death of Halyna Hutchins. Mr. Baldwin appeared on CNN for an interview with Chloe Melas wherein he asserted that he hired his own investigator who he claimed obtained information from the Santa Fe County Sheriff's Department that the Sheriff's Department "knew" in January 2022 that he would not be criminally charged. Mr. Baldwin made this statement presumably with full knowledge that law enforcement officers do not make final charging decisions in felony criminal cases. Mr. Baldwin went further during the televised interview and accused prop supplier Seth Kenney of co-mingling live rounds in the dummy rounds that he provided to the set of *Rust*.

(<https://www.cnn.com/videos/entertainment/2022/08/19/alec-baldwin-rust-shooting-melas-intvu-new-day-dnt-vpx.cnn>). Mr. Baldwin did this after the interview with Hannah Gutierrez by sheriff's detectives on November 9, 2021 wherein Ms. Gutierrez acknowledged that she personally provided (albeit unknowingly) the box of dummy rounds that contained the live rounds, not Mr. Kenney. See AHancock\_Lapel\_1171-3R9U1X\_0325\_S1.mp4 at 10:00.

7. As a result of the misleading statements made by Mr. Baldwin and Ms. Gutierrez's lawyers concerning the origin of the live rounds, Mr. Kenney's lucrative business supplying props to western genre films and television shows was destroyed. A consequence that has likely not crossed Mr. Baldwin's mind. The Santa Fe County Sheriff's Department made available to the public all of the evidence related to its investigation on April 25, 2022 by making a link to the evidence available for electronic download. Mr. Baldwin was certainly in possession of all of the video interviews of the

witnesses long before his media appearance on August 19, 2022 and likely watched the video of the interview of his co-defendant.

8. On August 19, 2022 Mr. Nikas appeared in an interview with Chloe Melas prior to any charging decisions against his client being announced by the District Attorney's Office. Mr. Nikas stated that any criminal charges against his client would be "huge miscarriage of justice." (<https://www.cnn.com/videos/entertainment/2022/08/19/alec-baldwin-rust-shooting-melas-intvu-new-day-dnt-vpx.cnn>).
9. Mr. Baldwin used his position as a famous actor to cast doubt on the criminal investigation less than six weeks after he shot and killed Halyna Hutchins. Mr. Baldwin has continued to use his status to cast doubt on the validity of the criminal investigation, the prosecutors and the criminal charges being considered against him. As recently as October 31, 2023 a podcast by Kelly Ripa aired concerning Mr. Baldwin's new reality television show. Mr. Baldwin made time during the interview that had nothing to do with the ongoing criminal proceedings to comment on the status of the case.  
<https://podcasts.apple.com/fr/podcast/alec-baldwin-eight-is-enough/id1676166337?i=1000633303999>.
10. There is no law preventing Mr. Baldwin from using the national press to sway public opinion in the hope that he will escape criminal prosecution. However, it hardly seems appropriate to complain in November 2023 that prosecutors in January 2023 made statements to the press that prejudiced him when he made false statements to the press intended to sway public opinion in December 2021 and August 2022.
11. Defense counsel points to press conferences made by the previous prosecutors and a flippant and joking email exchange between Ms. Carmack-Altweis and Ms. Reeb. It is

important to review the supposed political motives defense counsel alleges were in play at the time of the email exchange. The email shows that Ms. Reeb's intention was, in fact, to **not** announce that she was going to be the special prosecutor, specifically assuring District Attorney Carmack-Altwies that she would not disclose to any media personnel that she had been chosen as special prosecutor. Then, in a clear joking aside, Ms. Reeb states, "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." District Attorney Carmack-Altwies replied that it was her intent to announce Ms. Reeb's appointment at some future date, once the investigation was handed over to the DA's office. **Nearly two months later, and after the primary election was already over,** on August 3, 2022, the District Attorney's office announced Ms. Reeb's appointment. Compelling evidence of political impropriety this is not.

12. Had Ms. Reeb been serious in her desire to make the announcement of being appointed as special prosecutor in order to aid her campaign, it defies logic that the announcement would come nearly two months later, and after the primary election was over. Moreover, to the extent her request could be construed as serious, it was rejected. District Attorney Carmack-Altwies responded by saying that an announcement would only come after the investigation was complete, with no timeline promised, and not contemporaneously with Ms. Reeb's jovial request. Indeed, time reveals that District Attorney Carmack-Altwies acted exactly as she said she would: nearly two months later, and after the investigation was released by the Sheriff's office, only then was Ms. Reeb's appointment announced.
13. Mr. Nikas complains that the previous prosecutors acted unlawfully when failing to notify Mr. Baldwin that he would be charged prior to releasing the information to the

press. Mr. Nikas claims that the *Wall Street Journal* article from January 2023 “resulted in a massive and prejudicial press cycle.” In truth, the massive press cycle was started by Mr. Baldwin appearing on prime-time news programs within weeks of Ms. Hutchin’s death, again appearing personally on CNN, discussing the case with Kelly Ripa in an interview that had nothing to do with the case and seemingly using the media to sway grand jurors on November 15, 2023. It’s difficult to imagine that Mr. Baldwin and his counsel did not play a role in the NBC Nightly News story on November 15, 2023 given the timing and sympathetic tone of the story. Finally, Mr. Baldwin has commissioned a documentary about the death of woman he killed without the approval of the victims or their families. Mr. Baldwin has used his status to inappropriately attempt to persuade witnesses to the killing of Ms. Hutchins to participate in the documentary in the hopes of improving his long-tarnished public image. See Unopposed Petition for Out-of-State Subpoena Duces Tecum Issued to Moxie Films, Inc. filed on November 2, 2023 in D-101-CR-2023-40.

14. In March 2023 Kari Morrissey and Jason Lewis were appointed special prosecutors.

Speaking for herself, undersigned counsel entered into the case against Mr. Baldwin with a healthy level of skepticism about the criminal charges against Mr. Baldwin.

Undersigned counsel had personally been swayed by Mr. Baldwin’s claims that he was not responsible as he was told the gun was safe to handle. Upon entering into the case and beginning a review of the massive amount of available discovery, counsel determined it prudent to hire a ballistics expert to examine the gun and Mr. Baldwin’s statements that the gun discharged without the trigger being pulled. As the preliminary hearing neared, Mr. Nikas provided information in the form of photographs that he



claimed supported the defense that the hammer of the gun had been intentionally modified (a claim that was later determined to be patently false). Undersigned counsel assured Mr. Nikas that his concerns about any potential modification of the gun would be addressed by the future forensic examination of the gun by the retained expert. In response, Mr. Nikas requested that the case against Mr. Baldwin be dismissed without prejudice while the testing of the gun and further investigation proceeded. Mr. Nikas explained that it wasn't fair to put his client through the cost of a preliminary hearing and maintain the criminal charges while the investigation was ongoing. Counsel agreed to dismiss the charges against Mr. Baldwin without prejudice until further investigation was completed. When the further investigation was completed, counsel for the state notified Mr. Baldwin of their intent to present his case to a grand jury.

15. Presenting the case to a grand jury, rather than proceeding to a preliminary hearing, provides two obvious benefits to Mr. Baldwin. First, Mr. Baldwin does not have to pay his attorneys to appear at a preliminary hearing that would likely take approximately two-weeks, a task that Mr. Nikas indicated would cost Mr. Baldwin well into the six-figure range. Second, all of the evidence against Mr. Baldwin (including several highly relevant videos from the filming of *Rust*) would not be presented publicly as it would during a preliminary hearing.
16. Out of fairness to Mr. Baldwin, and in the spirit of ensuring that similarly situated defendants do not receive disparate treatment by the prosecution, Mr. Baldwin was offered the same plea that was previously offered and accepted by David Halls. This plea offer was tendered despite Mr. Nikas' previous statements that he and his client would not consider such a resolution. Counsel for the state was under the mistaken belief that

they were engaging in confidential plea negotiations with defense counsel. While awaiting Mr. Baldwin's decision regarding the proposed plea, counsel for the state received information that the details of the supposed confidential plea negotiations had been leaked to the press by defense counsel and that a strategy had been developed by the defense team to use the press to deflect attention from the plea, should Mr. Baldwin agree to take it. While this realization was unsettling, state's counsel did not rescind the plea offer until they were notified about Mr. Baldwin's ongoing conduct that will continue to cause harm to the victims and their families. Upon confirming the information about Mr. Baldwin's conduct, the plea offer was rescinded.

17. On or about October 17, 2023 undersigned counsel announced that the charges against Mr. Baldwin would be presented to a grand jury and did provide the anticipated date of the presentation. While counsel is more than willing to abide by the Court's order and keep the grand jury presentation date secret, she has been unable to find anything in New Mexico law that mandates that the date of the proceeding must be held in confidence. After all, the date of the presentment is released to members of the public out of necessity by notifying the target and the witnesses of the presentment date. Undersigned counsel now understands the difficulty this announcement created for the Court and will not release the date to anyone other than the witnesses. If the Court believes this conduct is sanctionable, counsel will accept the sanction.

18. The portion of the October 17, 2023 article that pertained to the forensic testing of the gun and the conclusion that the trigger had to have been pulled for the gun to fire was previously released to the press and was the subject of countless news articles when the ballistics report was released by Ms. Gutierrez's counsel, Mr. Bowles.

<https://www.nytimes.com/2023/08/16/arts/alec-baldwin-gun-trigger-rust.html>;  
<https://www.ebsnews.com/news/rust-shooting-alec-baldwin-charges-halyna-hutchins-gun-analysis-pulled-trigger-forensic-report/>; <https://www.nbcnews.com/news/us-news/alec-baldwin-may-still-face-charges-fatal-rust-shooting-new-report-all-rena100158>;  
<https://www.usatoday.com/story/entertainment/celebrities/2023/08/16/alec-baldwin-rust-new-gun-analysis/70601042007/>; <https://www.latimes.com/entertainment-arts/business/story/2023-08-15/rust-alec-baldwin-firearms-report-trigger-pulled>;  
<https://www.ksat.com/article/new-report-rust-movie-shooting/44823227>;  
<https://www.cnn.com/2023/08/16/entertainment/rust-shooting-gun-report-alec-baldwin/index.html>; <https://variety.com/2023/film/news/alec-baldwin-rust-charged-trigger-pulled-1235697194/>; <https://people.com/alec-baldwin-could-still-be-charged-over-rust-shooting-7643987/>; <https://www.boston25news.com/news/trending/rust-shooting-alec-baldwin-pulled-trigger-firearms-report-shows/E2S17AJAMBH5XIFLMLTTNGTP3M/>; <https://nypost.com/2023/08/16/alec-baldwin-could-be-charged-again-over-rust-shooting/>; <https://www.rollingstone.com/tv-movies/tv-movie-news/rust-shooting-forensic-report-alec-baldwin-claim-1234807240/>;  
<https://www.foxnews.com/entertainment/alec-baldwin-could-be-charged-again-fatal-rust-shooting-new-report-claims-he-pulled-trigger>; <https://abcnews.go.com/US/gun-rust-shooting-fired-pulling-trigger-fbi-report/story?id=88311336>;  
<https://www.salon.com/2023/08/16/alec-baldwin-rust-trigger/>;  
<https://www.npr.org/2022/08/15/1117577604/alec-baldwin-fbi-report-movie-shooting>;  
[https://www.unionleader.com/news/back\\_page/alec-baldwin-must-have-pulled-the-trigger-in-rust-shooting-new-firearms-report-says/article\\_997d5202-77ba-5877-8a29-](https://www.unionleader.com/news/back_page/alec-baldwin-must-have-pulled-the-trigger-in-rust-shooting-new-firearms-report-says/article_997d5202-77ba-5877-8a29-)

[d2c8fe6773d1.html](#) and many more. Mr. Bowles was provided the report as it is exculpatory to Mr. Gutierrez in her reliance on the same defense of proximate cause that Mr. Baldwin relies upon. Ms. Gutierrez claims that the chain of proximate cause was broken by Mr. Baldwin pulling the trigger of the gun, while Mr. Baldwin claims that the chain of proximate cause was broken by Ms. Gutierrez unknowingly placing a live bullet in the gun.

19. Mr. Bowles avoided allegations of extra-judicial comments contrary to NMRA 16-306 by filing a frivolous motion with the Court on August 15, 2023 and attaching the full forensic report as an exhibit. (See Defendant Motion Requesting Jury Instruction on Causation). Judge Marlowe Sommer relieved the state of its obligation of filing a formal response to Mr. Bowles' motion because the issues raised in the motion were not yet ripe for consideration. Within hours of the filing of the motion every major news outlet in the country had a full copy of the forensic report that concluded that Mr. Baldwin had to have pulled the trigger of the gun for the gun to have discharged the live round. See numerous cites provided above. Undersigned counsel referred to the report that had previously been made public by Mr. Bowles when she commented in the October 17, 2023 article. The only reason there is an issue as to whether Mr. Baldwin pulled the trigger of the gun is because Mr. Baldwin appeared on a national prime time news network and claimed that he did not pull the trigger. Mr. Baldwin's lawyers now want to cry that they have been unduly prejudiced after Mr. Baldwin initially brought this issue to the press and Ms. Gutierrez's lawyer released evidence contrary to Baldwin's claim to the press in an attempt to sway the media against Mr. Baldwin. The state is not responsible for the conduct of Mr. Baldwin or Ms. Gutierrez or their counsel.

20. The ABA Model Rules do not provide specific information about when lawyers generally, and prosecutors in particular, should discuss their cases in the media, they do focus on circumstances in which lawyers may not speak extrajudicially. Under the ABA Model Rules, all lawyers, including prosecutors, may not make extrajudicial statements that they “know or reasonably should know will be disseminated to ...the public,” and that would have a “substantial likelihood of materially prejudicing an adjudicative proceeding.” See ABA Model Rule 3.6 (a): Trial Publicity.

21. New Mexico Rules of Professional Conduct, Rule 16-306 (A), Trial Publicity, states, “A lawyer shall not make any extrajudicial or out-of-forum statement in a proceeding that may be tried to a jury that the lawyer knows or reasonably should know: (1) is false; or (2) creates a clear and present danger of prejudicing the proceeding.” The Committee Commentary goes on to state in Footnote 6,

Finally, extrajudicial statements that might otherwise raise a question under this rule may be permissible when they are made in response to statements made publicly by another party, another party's lawyer, or third persons, where a reasonable lawyer would believe a public response is required in order to avoid prejudice to the lawyer's client. When prejudicial statements have been publicly made by others, responsive statements may have the salutary effect of lessening any resulting adverse impact on the adjudicative proceeding. Such responsive statements should be limited to contain only such information as is necessary to mitigate undue prejudice created by the statements made by others.

22. Mr. Baldwin has provided no evidence to the Court that the proceeding, the grand jury or a future jury would be prejudiced by the limited statements made to the press by the prosecutors. If Mr. Baldwin is frustrated by the press coverage of the criminal investigation and proceedings, perhaps he should stop using the press to attempt to sway public opinion.

The law in New Mexico is not that the defendant and his counsel can continue to use and manipulate the press but the prosecution must remain silent.

23. Defense counsel expressed concerns about *NBC News* reports on November 15 and 16, 2023. The news story on November 15, 2023 concerned a handful of videos from the filming of the movie that purportedly depicted Mr. Baldwin in a positive light. Some of the videos shown by *NBC News* are the exact videos referenced in the target's Bort-Jones letter as being exculpatory. The special prosecutors and counsel for Ms. Gutierrez were provided the videos under a protective order and were not aware that *Rust* producers, Mr. Baldwin among them, had copies of the videos as Mr. Nikas previously indicated that he was not privy to the videos (a claim that now appears to be untrue). State's counsel was more than surprised to see the videos on the *NBC News* website prior to the story being aired during the prime evening broadcast. Undersigned counsel does not watch the news on any of the primary network stations (NBC, ABC, CBS or FOX) but was notified of the story when she was contacted by *NBC News* on November 15, 2023 and asked to comment on the videos. State's counsel refused to comment of the videos pursuant to the protective order but did notice and expressed concern to NBC that the videos aired were not complete. To be clear, *NBC News* modified the videos prior to airing them and removed portions that would have been damaging to Mr. Baldwin. The November 15, 2023 article states "*NBC News* asked Kari Morrissey – one of two lead special prosecutors on the case with Jason Lewis, which footage her team reviewed and whether any of it was involved in charging decisions. She declined to comment, citing the pending grand jury proceedings." It is undersigned counsel's recollection that she

declined to comment due to the ongoing protective order, not pending grand jury proceedings but reporters frequently get the facts wrong.

24. Undersigned counsel does not watch the *Today Show* or any other morning news program. She was completely unaware of the portion of the *Today Show* on November 16, 2023 that pertained to the case against Mr. Baldwin until receiving Mr. Nikas' motion for sanctions. After finally locating a video of the *Today Show* portion related to Mr. Baldwin on *YouTube* (which appeared to be a re-broadcast of the November 15, 2013 story that was aired on *NBC Nightly News*) she noticed at the 1:00 minute mark the story narrator stated "Baldwin's legal team and the special prosecutors declined to comment on the videos."
25. Defense counsel has expressed concerns over the statements in both articles related to prior instances where Mr. Baldwin's has run afoul of the law, and assertions that the prosecutors believe him arrogant, and that the prosecution is simply an attempt at humbling Mr. Baldwin. Charges against Mr. Baldwin are not being pursued because of his criminal history, his impressive level of arrogance or to teach him a lesson. State's counsel did not anticipate refiling charges against Mr. Baldwin after the *nolle prosequi* was filed in April 2023. Counsel's intention was to complete the investigation and make a sound and reasonable charging decision in a case where a human life was lost. The loss of human life necessitated that a full and detailed investigation be completed. The evidence that came to light during the course of the investigation made clear that a probable cause determination must be formally made as inculpatory information has been discovered concerning Mr. Baldwin's conduct on the set of *Rust* that is relevant to the

charge of Involuntary Manslaughter. Out of fairness to Mr. Baldwin counsel offered him a very generous plea but was forced to rescind the plea due to Mr. Baldwin's actions.

26. In May 2023 Ms. Gutierrez's lawyers filed a motion that was strikingly similar to the instant motion asking the Court to dismiss the charges against her due to prejudice suffered as a result of the previous prosecutors' statements to the press. The Court properly denied that motion and in doing so noted that Ms. Gutierrez failed to establish any prejudice that did not amount to speculation. See Order Denying Defendant's Motion to Dismiss First Amended Information, and Supplement to Motion to Dismiss Second Amended Information and Motion to Dismiss Third Amended Information, filed August 7, 2023, D-101-CR-2023-40.

27. Here, Mr. Baldwin has failed to establish that he has suffered any prejudice from the limited statements made by prosecutors to the press. The defense must do more to prove prejudice than simply assert in a pleading that prejudice has been suffered. As Judge Marlowe Sommer noted in her August 7, 2023 order, "dismissal of an indictment before *voir dire* is an extreme remedy." See *Id* at page 3, ¶ 1. Judge Marlowe Sommer cited *United States v. Silver*, 103 F. Supp. 370, 380 (S.D.N.Y. 2015)(citing *United States v. Curcio*, 712 F.2d 1532, 1544 (2<sup>nd</sup> Cir. 1983))("[E]ven publicity partly engendered by the Government would not warrant the extreme remedy of dismissal of an indictment before a *voir dire*.").

28. In the instant case, counsel for the state requested that they be able to ask a limited number of questions to ensure that the grand jurors could be fair to the state and to the target given the amount of press coverage of the incident, criminal investigation and prosecution. The special prosecutors do not wish to present the case to a grand jury that



cannot be fair to Mr. Baldwin. The Court denied that request noting that the grand jurors have already been counseled on the requirement that they are fair and impartial.

29. Counsel for the state previously addressed the targets claims that he was treated unfairly by being provided a target letter that removed the language concerning the forty-eight-hour deadline for the Bort-Jones letter. The reason this was done is simple and was not done to disadvantage Mr. Baldwin. The language was removed because the forty-eight-hour deadline can be modified by the Court, the state intended to ask the Court to modify the deadline and indeed motioned the Court to modify the deadline. Moreover, undersigned counsel notified defense counsel that she was removing the language. The fact that the Court denied the state's motion is not evidence of unclean hands on the part of the prosecutors. The State's request to the Court for the setting of some reasonable deadlines was appropriate and still left Mr. Baldwin with two days more time to prepare his Bort-Jones letter than the rule contemplates. The fact that Mr. Nikas continues to claim prejudice does not make it so.

30. Mr. Baldwin has a history of using his fame and influence to access the media to defend his criminal conduct. In 2018 Mr. Baldwin allegedly punched a man in the face for taking his parking spot. After the incident Mr. Baldwin appeared on the Ellen Degeneres show and claimed that the victim had tried to run over his wife, Hilaria Baldwin. (<https://www.thedailybeast.com/alec-baldwin-comes-clean-to-ellen-i-never-punched-anybody-over-parking-space>). Mr. Baldwin was sued by the victim and in-turn filed a countersuit against the victim for defamation claiming that he pushed the victim but did not punch him in the face. Mr. Baldwin' litigation included a signed "affirmation" from Luke Nikas asserting that the video of the incident absolved Mr. Baldwin of wrongdoing.

In the end, Mr. Baldwin entered a guilty plea to harassment and settled civilly with the victim. (<https://pagesix.com/2020/03/27/newly-released-video-shows-alec-baldwins-parking-spot-fight/>)

31. Mr. Baldwin has a long history of engaging in aggressive, inappropriate and/or criminal conduct and then using the press or social media to sway public opinion. For example, in 2007 there was a great deal of press coverage over rude comments he made to his daughter, he responded on his professional website that his conduct was actually the fault of his ex-wife subjecting him to parental alienation.

<https://www.theguardian.com/world/2007/apr/21/usa.richardadams>. In 2011 Mr. Baldwin was kicked off an American Airlines flight for refusing to turn his phone off. In response Mr. Baldwin posted on social media and agreed to an interview with the Huffington Post wherein he blamed the flight attendant for “singling him out.” In 2012 Mr. Baldwin was accused of physically assaulting a photographer in New York City. Mr. Baldwin’s responded by having a “representative” conduct an interview with People magazine and posting on social media that the paparazzi should be “waterboarded.” In 2013 Mr. Baldwin was criticized for using a homophobic slur (one that he continued to use in the video clips from the filming of *Rust*). His response was to deny the use of the slur and then post on the MSNBC website apologizing for use of the slur. In 2014 Mr. Baldwin was arrested for failing to produce his identification after being stopped for a violation while riding his bicycle. In response, Mr. Baldwin posted on Twitter and blamed the police officer. (<https://people.com/tv/alec-baldwin-history-arrests-paparazzi/>).

32. Mr. Baldwin's conduct in all of the instances outlined above has absolutely nothing to do with the current case involving the death of Ms. Hutchins. However, what Mr. Baldwin is doing in the current case, by using the press and blaming others (even blaming others for using the press) is par for course for him and he has even been aided in the past by Mr. Nikas. While all of the press contacts and coverage in this case are new to New Mexico prosecutors and courts, they are not new to Mr. Baldwin – this is what he does. He deflects the negative attention that his conduct invites by turning the focus to others by using the press. Undersigned counsel would gladly enter into a full gag order on all things pertaining to Mr. Baldwin and the criminal charges being proposed against him. Based on Mr. Baldwin's history of consistently using the news media and social media to his own benefit, it is highly unlikely that he or his attorneys would agree to anything that would limit their ability to use the press for their own benefit, so it appears the status quo will continue.

33. As to the motion to remove and/or sanction Special Prosecutor Jason J. Lewis, the State sees zero allegations in the target's motion that even allege any misconduct by Mr. Lewis. It is asinine that target even included Mr. Lewis' name in the motion given the target cannot and does not point to a single instance of alleged misconduct by Mr. Lewis. The target's counsel should be sanctioned for filing a frivolous motion against Mr. Lewis.

### **CONCLUSION**

For the reasons stated herein, the State respectfully requests the Court enter an order denying the target's motion for sanctions.

RESPECTFULLY SUBMITTED,

/s/ Kari T. Morrissey

Kari T. Morrissey

Jason J. Lewis

Special Prosecutors for the State of New Mexico

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[jjl@jllaw.com](mailto:jjl@jllaw.com)

I hereby certify that a true and correct  
copy of the foregoing pleading was emailed  
to opposing counsel this 5<sup>th</sup> day of December, 2023.

/s/ Kari T. Morrissey

Kari T. Morrissey

FILED  
FIRST JUDICIAL DISTRICT  
D. SANTA FE

2023 DEC 15 AM 11:14

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

STATE OF NEW MEXICO,

Plaintiff,

v.

D-0101-GJ 2023-00008

ALEXANDER RAE BALDWIN, III,

Defendant.

**NOTICE OF FILING OF ATTACHED AFFIDAVIT OF KARI T.  
MORRISSEY IN REPOSE TO TARGET'S REPLY TO MOTION FOR SANCTIONS**

COMES NOW the State of New Mexico, through Special Prosecutors Kari T. Morrissey and Jason J. Lewis and submits the attached affidavit for the Court's consideration in response to target's reply to Motion for Sanctions Against Special Prosecutors Kari Morrissey and Jason Lewis.

RESPECTFULLY SUBMITTED,

/s/ Kari T. Morrissey

Kari T. Morrissey

Jason J. Lewis

Special Prosecutors for the State of New Mexico

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I hereby certify that a true and correct  
copy of the foregoing pleading was emailed  
to opposing counsel this 15<sup>th</sup> day of December, 2023.

/s/ Kari T. Morrissey

Kari T. Morrissey

## **AFFIDAVIT OF KARI MORRISSEY**

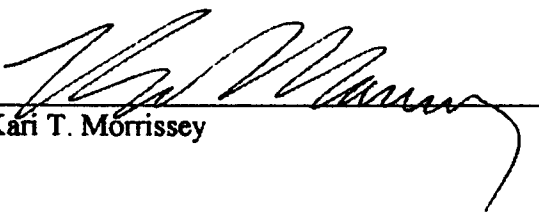
**Kari T. Morrissey appeared in person before me today and stated under oath:**

**I am Kari Morrissey and I am a Special Prosecutor appointed to prosecute and investigate the fatal shooting of Halyna Hutchins on October 21, 2021. I am above the age of eighteen years, and I am fully competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.**

- 1. On November 20, 2023 at 5:47 p.m. mountain time I received a notification from Jason Lewis that Mr. Nikas filed a motion for sanctions and that it was available in my email. I read the motion and attached affirmation shortly thereafter.**
- 2. I was scheduled to appear in-person for a board meeting at a local community center near my personal residence at 7:00 p.m. mountain time. The board meeting lasted approximately one hour.**
- 3. When the board meeting was over, I was in my car and I called the only reporter from *NBC News* I could recall speaking to on November 15, 2021. This was the same reporter who reached out to me for comment on November 15, 2023 regarding the *NBC News* story intended to paint Mr. Baldwin in a sympathetic light (the news story that depicted modified videos of Mr. Baldwin's conduct on set).**
- 4. I explained to the reporter that a motion for sanctions was filed concerning my contact with an unnamed *NBC News* reporter. I summarized from memory the allegations outlined in Mr. Nikas' affirmation as I did not have a copy of the motion or affidavit with me at the time. I asked the reporter if she provided the described information to Mr. Nikas – she**

indicated she did not.

5. I took appropriate actions to investigate the claims made by Mr. Nikas in his unnotarized *affirmation*. I did not yell at anyone, nor did I threaten anyone with subpoenas. I did not read portions of the affirmation or the motion to the reporter as I did not have them with me at the time I made the call from my car.

  
Kari T. Morrissey

SIGNED under oath before me by Kari T. Morrissey on December 15, 2023

STATE OF NEW MEXICO  
NOTARY PUBLIC  
PATRICIA A. HERRERA  
COMMISSION # 1061834  
EXPIRES APRIL 18, 2027

  
Notary Public, State of New Mexico

STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT

FILED  
FIRST JUDICIAL  
DISTRICT COURT  
2023 DEC 15 AM 10:19

STATE OF NEW MEXICO

**Plaintiff,**

vs.

**ALEXANDER RAE BALDWIN III,**

**Target.**

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

**REPLY IN SUPPORT OF MOTION FOR SANCTIONS AGAINST  
SPECIAL PROSECUTORS KARI MORRISSEY AND JASON LEWIS**

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*Counsel for Alec Baldwin*



## INTRODUCTION

As Baldwin demonstrated in his opening brief, this is a straight-forward motion. The State violated the Court's clear order. Instead of coming clean, however, Morrissey implies that she did not disclose information to *NBC*—notwithstanding the fact that an *NBC* journalist called Baldwin's counsel moments after the hearing ended, explicitly stated that she spoke directly with Morrissey, and both described in detail and requested a comment on Morrissey's statements to the journalist about what transpired in the hearing before Your Honor. Morrissey's false excuse—that she told witnesses details about the hearing and that those witnesses must have called *NBC* immediately and disclosed everything—is implausible, to put it mildly.

If Morrissey has nothing to hide, why didn't she submit an affidavit, under penalty of perjury, stating that she didn't speak to the journalist? And that she didn't say anything about the hearing to *NBC*? Why didn't she submit an affidavit attaching the phone records from that day of every telephone she has access to? And why does the State spend the vast majority of its brief gratuitously trashing Baldwin about irrelevant matters and disputing remedies that Baldwin does not currently seek and arguments he doesn't make? The answer to these questions is clear: Morrissey violated the Court's order and has no evidence to demonstrate otherwise. The State's distractions and factual misrepresentations cannot change that fact. Rather, the State's effort to dodge responsibility by offering a false excuse compounds the State's wrongdoing.

The State's conduct has only gotten worse since this motion was filed. Baldwin's counsel served the opening sanctions motion on the State by email on November 20, 2023. That evening, within hours of serving the sanctions motion, Baldwin's counsel received two phone calls from *NBC*. Baldwin's counsel did not answer the phone. *NBC* called again the next morning. In light of the repeated calls and their proximity to the service of the sanctions motion, Baldwin's counsel

returned *NBC*'s call that morning. The journalist at *NBC* stated that Morrissey had called her the prior evening shortly before she called Baldwin's counsel (*i.e.*, shortly after the sanctions motion was filed), read her substantial portions of Baldwin's sanctions motion, yelled at her for publishing Morrissey's statements disclosing the grand jury information and motivations for prosecuting this case, and threatened to serve her with subpoenas. The journalist was seeking comment or confirmation regarding Baldwin's motion. When Baldwin's counsel asked the journalist to describe the details Morrissey had relayed (in order to verify the accuracy of the journalist's statements), she responded by accurately recounting substantial portions of Baldwin's motion.

The State's initial violation of the Court's order that prompted this motion, as well as Morrissey's false excuse, were severe enough to warrant the sanctions that Baldwin has requested. But even the most significant sanctions seem mild for what the State has now done. It is beyond the pale, plus some, for the State to violate the Court's order, violate the Court's order *again* by disclosing details about Baldwin's sanctions motion to *NBC*, lie to the Court about what actually occurred, and then threaten and intimidate the journalist with the power of the State for exercising the media's First Amendment rights.

The Court should hold the State in contempt and issue maximum sanctions.

#### **I. THE STATE SHOULD BE HELD IN CONTEMPT AND SANCTIONED**

The elements of contempt have been met here: the State had "(1) knowledge of the court's order [*i.e.*, not to disclose any information about the proceeding]; (2) the ability to comply [*i.e.*, by not disclosing any such information]; and (3) willful noncompliance with the order [*i.e.*, by disclosing the information to *NBC*]." *Rhinehart v. Nowlin*, 1990-NMCA-136, ¶ 30, 805 P.2d 88, 95 (*citing Dial v. Dial*, 1985-NMCA-059, ¶ 17, 703 P.2d 910, 913).

*First*, the State had "knowledge of the court's order." *See id.* At the November 15 hearing,

the Court repeatedly ordered the parties not to disclose information about the grand jury process or what happened during the November 15 hearing. The Court stated that disclosing information about the grand jury process (*N.B.*, which the State had improperly done before) created a substantial risk of prejudice to Baldwin. For example, the Court noted that at least one member of a currently empaneled grand jury had asked to sit on the grand jury in Baldwin’s case—a troubling request that highlighted the real potential for prejudice. The State acknowledged during and after the hearing that the Court’s order was clear.<sup>1</sup> Despite the fact that the Court issued a clear order—and even gave this specific example of the prejudicial consequences of violating it—Morrissey says that she “*now* understands the difficulty this announcement [of the grand jury date] created for the Court and will not release the date to anyone other than the witnesses.” (Opp. Br. at ¶ 17 (emphasis added).) But that “difficulty” was clear from the Court’s statements at the November 15 hearing. Morrissey also says that *now* she will “gladly” enter into a gag order to alter the “status quo.” (Opp. Br. at ¶ 32.) As if the Court’s order had not *already* altered the “status quo” by barring her from making the disclosure to *NBC*. The State had knowledge of the Court’s order, and it has offered no good-faith basis to find otherwise.

*Second*, the State had “the ability to comply” with the order. *See id.* Compliance was simple: in this instance, the State just needed to refrain from disclosing the content of the hearing. Baldwin’s counsel complied; there was nothing preventing the State from doing the same.

*Finally*, the State engaged in “willful noncompliance with the order.” *See id.* After the Court repeatedly admonished the parties not to disclose the contents of the grand jury process or the hearing, the State could barely wait an hour before defying the Court’s ruling. Morrissey

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<sup>1</sup> The State acknowledged this fact after the hearing in its written opposition to Baldwin’s request to obtain the hearing transcript, which the State inexplicably still opposes.

immediately spoke with *NBC*, violated the order by disclosing the details of the hearing, and made statements demonstrating her illicit motivations behind this prosecution. *NBC* stated that it spoke directly with Morrissey and that she made these statements. (*See* Affirmation of Luke Nikas, filed Nov. 20, 2023 (“First Nikas Aff.”) at ¶ 4.)

In response, the State manufactures an unpersuasive excuse, and then devotes nearly its entire brief to disparaging Baldwin and making unprofessional and false attacks on Baldwin’s counsel. Notably, the State’s description of what happened with the disclosure is suspiciously ambiguous. The State says “undersigned counsel did not wait an hour after the hearing to disclose the information, she disclosed it within minutes of the conclusion of the hearing, although not to the media.” (Opp. at ¶ 1.) The State also quotes the *NBC* article reporting that no one “comment[ed]” for the article. (*E.g.*, Opp. at ¶ 24.) While the State may or may not have disclosed information to a witness “within minutes,” and while the State may or may not have given a formal “comment” for the article, it’s clear that Morrissey disclosed substantial information directly to *NBC* within the next hour, in violation of the Court’s order. (*See generally* First Nikas Aff.) Why doesn’t the State clearly and definitively deny that fact under oath if it isn’t true? Why does the State parse its words so carefully and deceptively to avoid having to explicitly deny that fact? Why doesn’t Morrissey sign an affidavit under penalty of perjury with that denial and disclose the phone records from every phone she has access to? Why does the State quickly move from its absurd excuse about the disclosure into a 16-page diatribe about Baldwin and his counsel—nearly all of which is highly misleading, irrelevant, and untrue? There’s only one reason: the State knows it violated the Court’s order, the State has no evidence to dispute what *NBC* said to Baldwin’s counsel about the source of the information it obtained, the State knows that *NBC* published the information after speaking with Morrissey and didn’t get the information from any purported

“witnesses,” and the State knows that both Morrissey’s and the journalist’s phone records would show their phone call immediately after the Court hearing and immediately before *NBC* updated the article with information it obtained from Morrissey on the call. In short, the State knows it does not have competent evidence to oppose Baldwin’s motion.

In these circumstances, the Court should hold the State in contempt and issue sanctions.<sup>2</sup> The State’s violation is significant. Less than an hour before the State’s violation, the Court issued the Order and repeatedly reiterated the importance of compliance—even giving a specific example of the prejudicial consequences that could result from a violation. Yet the State showed zero regard for the Court’s authority, showed zero concern about the prejudicial impact on Baldwin, and deliberately defied the Court’s order by disclosing information to a major media outlet.

It would be difficult to imagine a more serious or malicious violation. Except that a more serious and malicious violation happened after Baldwin filed this sanctions motion. Baldwin’s counsel served the opening sanctions motion on the State by email on November 20 at 7:24 p.m. (Second Affirmation of Luke Nikas, at ¶ 3 (“Second Nikas. Aff.”).) A few hours later, at 9:59 p.m. and 10:00 p.m., Baldwin’s counsel received two phone calls from *NBC*. (*Id.* at ¶ 4.) Baldwin’s counsel did not answer the phone. (*Id.*) *NBC* called again the next morning, at 8:03 a.m. (*Id.* at ¶ 5.) Given the frequency of the calls, and how closely timed they were to service of

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<sup>2</sup> The State argues that it was frivolous for Baldwin to name Special Prosecutor Jason Lewis in the sanctions motion, since Morrissey is the one who violated the Court’s order, not Lewis. (Opp. Br. at ¶ 33.) The State misses the point. Baldwin did make clear which sanctions should apply to whom based on their role in the misconduct at issue, such as requesting monetary sanctions personally against Morrissey, but not Lewis, because she willfully violated the Court’s order, necessitated this briefing, and therefore should be required to pay for it. In other instances, however, such as Baldwin requesting broader sanctions that should bind the State and both of the Special Prosecutors, naming Lewis in the motion is appropriate given that he represents the State, the State’s pattern of misconduct occurred at least in part on both Morrissey and Lewis’s watch, and certain sanctions should be binding on the State and each of its representatives.

the sanctions motion, Baldwin’s counsel returned *NBC*’s call at 8:39 a.m. (*Id.* at ¶ 6.) The journalist at *NBC* stated that Morrissey had called her the prior evening shortly before she called Baldwin’s counsel, that Morrissey read her substantial portions of Baldwin’s sanctions motion and yelled at her for publishing Morrissey’s statements disclosing the grand jury information and her motivations for prosecuting this case, that Morrissey threatened to serve her with subpoenas, and that the journalist was seeking comment or confirmation. (*Id.* at ¶ 6.) To verify the accuracy of these statements, Baldwin’s counsel asked the journalist to describe the details that Morrissey relayed regarding Baldwin’s motion—to which the journalist responded by accurately recounting substantial portions of Baldwin’s motion. (*Id.* at ¶ 7.) Baldwin’s counsel thanked the journalist for the call and declined to comment. (*Id.* at ¶ 8.)

It is difficult to overstate the seriousness of Morrissey’s misconduct. The State violated the Court’s order moments after it was issued. The State then violated the Court’s order a second time moments after Baldwin filed a sanctions motion about the State’s first violation. And then, while in the process of committing that second act of contempt, Morrissey threatened to use the State’s subpoena power to intimidate a journalist who was exercising the media’s First Amendment right to cover this case. *See Tachias v. Los Lunas Sch. Bd. of Educ.*, 636 F. Supp. 3d 1328, 1348 (D.N.M. 2022) (“[A]ny form of official retaliation for exercising one’s freedom of speech, including prosecution, threatened prosecution, bad faith investigation, and legal harassment, constitutes an infringement of that freedom.”); *see also Smith v. Daily Mail Pub. Co.*, 443 U.S. 97, 103 (1979) (“[I]f a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need to further a state interest of the highest order.”). Next, as if things couldn’t get worse, the State filed an opposition brief falsely explaining how *NBC* obtained the

details of the November 15 hearing. Morrissey's conduct is a threat to the integrity of the New Mexico criminal justice system. It is a threat to this Court's authority. It is a threat to Baldwin's constitutional rights. It is a threat to the First Amendment. And it is a threat to the Rule of Law. The Court should impose the maximum sanctions available.

Although the Court need not consider any further information to issue sanctions,<sup>3</sup> the State's history of misconduct reinforces the importance of imposing maximum sanctions. From day one, the State has engaged in underhanded tactics designed to prejudice Baldwin, violated the ethical rules governing prosecutors' public statements (*N.B.*, which apply *only* to prosecutors for obvious reasons that have been explained in numerous ethics decisions and articles),<sup>4</sup> violated the

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<sup>3</sup> See *State v. Cherryhomes*, 1992-NMCA-111, ¶ 15, 840 P.2d 1261, 1264 (holding that “[w]illful violation of a court’s order without testing its validity through established processes directly affects a court’s ability to discharge its duties” and where “evidence indicates that [an attorney] violated a court order, the district court had the discretion to exercise its inherent power to issue a contempt sanction to preserve its authority and maintain respect for the courts”); *In re Byrnes*, 2002-NMCA-102, ¶ 14, 54 P.3d 996, 1002 (noting that an attorney may be held in contempt and sanctioned for disobeying a court order); *State v. Le Mier*, 2017-NMSC-017, ¶ 24, 394 P.3d 959, 966 (“a single violation of a discovery order may suffice to support a finding of culpability”).

<sup>4</sup> 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.”); *id.* 2-14, cmt. (“Because of the prosecutor’s unique role as a representative of all of the people in the quest for justice, it would be unfair for him or her to diminish the rights of a defendant to a trial by an unprejudiced jury of his or her peers by broadcasting information through the media where it would go untested by the time-tested procedures incorporated into our criminal justice system.”). See also ABA Standard 3-1.10(g) (“The prosecutor has duties of confidentiality and loyalty, and should not secretly or anonymously provide non-public information to the media, on or off the record, without appropriate authorization.”); Andrew McCarthy, *Alec Baldwin Charge Dropped, but Prosecutor Should Throw the Whole Thing Out*, FOX NEWS (Feb. 21, 2023), <http://bitly.ws/BTsW> (“[E]thical prosecutors do not denigrate the exercise of due process rights, especially in a manner designed to prejudice the jury pool against the defendant.”); see also, e.g., Thomas Frampton (@TFrampton), TWITTER (Feb. 20, 2023, 8:30 PM) (University of Virginia Law School Professor), <http://bitly.ws/BTt2>: (“Here’s the New Mexico Rule of Professional Conduct (16-308) governing extrajudicial statements by prosecutors. Hard to see how a gratuitous shot at

New Mexico and U.S. Constitutions (twice),<sup>5</sup> violated the New Mexico statute governing the appointment of a special prosecutor (which resulted in the district attorney’s withdrawal from the case),<sup>6</sup> violated grand jury secrecy rules,<sup>7</sup> violated the State statute regarding the timing of Baldwin’s alert letter (while giving his co-target the full statutory period), and conducted an investigation that was so egregious and flawed that the State’s own investigator found it necessary to put his concerns in writing. (*See generally* Baldwin Opening Br.) The list of the State’s troubling conduct goes on and on, to the point where prominent legal experts around the country, including former judges, law professors, and lawyers, have written articles stating that this prosecution is frivolous.<sup>8</sup>

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defense counsel (for correctly objecting to an obviously unconstitutional charge) is consistent with this?”); Kyle Clark and Andrew George, *Guest Column: Alec Baldwin’s ‘Rust’ Prosecutors Should Do Their Talking in Court*, The Hollywood Reporter (Mar. 3, 2023), <http://tinyurl.com/43sh3dfu>; Rebecca Picciotto, *Prosecutors in Alec Baldwin ‘Rust’ shooting case are getting heat over apparent missteps*, CNBC (Mar. 6, 2023), <http://tinyurl.com/5de7uau2> (describing the case as a “media circus” and noting that “poison[ing] the jury pool” “certainly could be an issue” in this case).

<sup>5</sup> *See State v. Baldwin*, D-0101-CR-202300-039, “Defendants Notice of Unlawful Enhancement and Motion Not to Bind Over Enhancement” (Feb. 10, 2023), “Notice of Withdrawal of Notice of Unlawful Enhancement and Motion Not to Bind Over Enhancement” (Feb. 20, 2023), “Defendant’s Motion to Disqualify the Special Prosecutor Under Article III of the New Mexico Constitution” (Feb. 7, 2023), “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).

<sup>6</sup> D-0101-CR-202300-039, “State’s Notice and Motion to Vacate Hearing” (March 29, 2023); *State v. Gutierrez-Reed*, D-101-CR-2023-00040, “Order Amending April 21, 2023 Order on Defendant’s Brief Addressing District Attorney’s Power to Continue as Special Co-Prosecutor After Appointment of Special Prosecutor (Aug. 7, 2023), ¶¶ A-C.

<sup>7</sup> *See 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”); 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).

<sup>8</sup> *See* Debra Cassens Weiss, *Prosecutors face obstacles in prosecution of Alec Baldwin and armorer for cinematographer’s death*, ABA Journal (Jan. 23, 2023), <http://tinyurl.com/mpemhtck>; Jack Queen, *Analysis: Alec Baldwin ‘Rust’ shooting case could be tough for prosecutors*, Reuters



The State’s response glosses over that history. Instead, the State attempts to paint Baldwin as the one responsible for generating the media attention—going all the way back to irrelevant press about Baldwin from 16 years ago. Although it is the State’s misconduct that matters here, not how much press Baldwin has gotten in his lifetime, it is worth noting that the State’s description of Baldwin’s recent press interactions is misleading. For example, the press appearances that the State describes only occurred when there were *no* charges pending. Baldwin made one appearance shortly after the accident in December 2021, over two years *before* charges were filed. For the State to say that this single appearance is from the same press cycle that the State improperly started two years later at the end of January 2023 (Opp. at ¶ 13), when it set up a press hit on Baldwin with the *Wall Street Journal*, is meritless. And Baldwin then made one short appearance on *CNN* in August 2022, more than five months *before* charges were filed and at a time when the State had given Baldwin false comfort that charges were unlikely. The State doesn’t identify any other appearances. That’s it.<sup>9</sup> In contrast to the State’s extensive, disparaging press strategy against Baldwin and his counsel, neither Baldwin nor his counsel have made comments about this matter while charges were pending.

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(Jan. 31, 2023), <http://tinyurl.com/2s4cky8>; Nadira Goffe, *The Manslaughter Charges Against Alec Baldwin Truly Make No Sense*, Slate (Jan. 20, 2023), <http://tinyurl.com/4wb6jkw>; *Harvard Law expert analyzes Alec Baldwin charges in tragic ‘Rust’ shooting death*, Harvard Law Today (Jan. 23, 2023), <http://tinyurl.com/3af2f29t>; Stephen L. Carter, *Alec Baldwin Manslaughter Charge Is a Stretch*, Bloomberg Opinion, <http://tinyurl.com/2eebjr3s>; David Oscar Markus, *Prosecutors Pursuing Alec Baldwin for All the Wrong Reasons*, ALBUQUERQUE J. (Jan. 24, 2023), <http://tinyurl.com/2vem779s>; Andrew McCarthy, *Alec Baldwin charge dropped, but prosecutor should throw the whole thing out*, Fox News (Feb. 21, 2023), <http://tinyurl.com/2f89pzs>.

<sup>9</sup> The State portrays Baldwin’s October 31, 2023 discussion on a podcast with Kelly Ripa as conduct intended to improperly influence these proceedings. (Opp. Br. at ¶ 9.) The reality is that Baldwin devoted the entire interview to subjects unrelated to this case, and then at the very end, when he was asked about this matter, he simply said that he would like to see reforms enacted that get real guns off movie sets. Although the State’s reference to this interview is legally and factually irrelevant, the State’s attempt to use this benign encounter to attack Baldwin highlights the extreme lengths to which the State will go to avoid responsibility for its contempt.

The State’s other arguments—that the prior prosecutors were just joking about announcing the prosecution to help Andrea Reeb (even though a self-promoting press cycle is exactly what they later did), that the Court should ignore the State investigator’s blistering email about the State’s investigation, and that the Court should focus on Baldwin’s public life and image from nearly two decades ago—are as frivolous as they are irrelevant. The fact that the State feels compelled to dredge up a 16 year-old voicemail Baldwin left for his daughter, as well as refer to what they characterize as Baldwin’s “impressive level of arrogance” (Opp. Br. at ¶ 25), only underscores the illicit motivations behind this prosecution and the State’s desperate effort to deflect from its violation of the Court’s order.

The bottom line is that the State violated the Court’s order twice, and the State’s sloppy cover-up story, as well as the circumstances of those violations, reinforce the need to impose the most serious sanctions.

### CONCLUSION

Baldwin respectfully requests that the Court grant Baldwin’s motion and impose the maximum sanctions available against the State and Morrissey personally.

Date: December 15, 2023

Respectfully submitted,

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*Counsel for Alec Baldwin*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 15, 2023, a true and correct copy of the foregoing brief was emailed to opposing counsel.

*/s/ Heather LeBlanc* \_\_\_\_\_  
Heather LeBlanc

FILED  
FIRST JUDICIAL  
DISTRICT COURT

2023 DEC 15 AM 10:19

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

**SECOND 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. I served the Motion for Sanctions against Special Prosecutors Kari Morrissey and Jason Lewis on the State by email on November 20, 2023, at 7:24 p.m. EST.

4. At 9:59 p.m. and 10:00 p.m. EST on November 20, 2023, I received two phone calls from *NBC*. I did not answer either call.

5. *NBC* called me again on November 21, 2023, at 8:03 a.m.

6. Given the frequency of the calls, and how closely timed they were to service of the sanctions motion, I returned *NBC*'s call at 8:39 a.m. On that call, the journalist at *NBC*

stated that Kari Morrissey had called her the prior evening shortly before the journalist called me. She relayed that Morrissey read her substantial portions of the sanctions motion. She also stated that Morrissey yelled at her for publishing Morrissey's statements disclosing the grand jury information and Morrissey's motivations for prosecuting this case. Finally, she stated that Morrissey threatened her with subpoenas. The journalist said she was seeking comment or confirmation regarding Baldwin's motion.

7. To verify the accuracy of these statements, I asked the journalist to describe the details that Morrissey relayed regarding Baldwin's sanctions motion. The journalist responded by accurately recounting substantial portions of that motion.

8. I thanked the *NBC* journalist for the call and declined to comment.

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

Dated: December 15, 2023



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Luke Nikas

FILED  
FIRST JUDICIAL  
DISTRICT COURT

2023 DEC 15 AM 10:19

STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO

Plaintiff,

v.

D-101-GJ-2023-00008

ALEXANDER RAE BALDWIN,

Target.

**NOTICE OF COMPLETION OF BRIEFING**

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Alexander R. Baldwin III, by and through undersigned counsel, advises the Court that the “Motion for Sanctions Against Special Prosecutors Kari Morrissey and Jason Lewis” is now fully briefed. The pleadings related to that Motion and their filing dates are reflected below:

1. “Motion for Sanctions Against Special Prosecutors Kari Morrissey and Jason Lewis” and “Affirmation of Luke Nikas in Support of Motion for Sanctions” were submitted for filing on November 20, 2023 and were accepted for filing and endorsed on November 21, 2023.
2. “State’s Response to Motion for Sanctions Against Special Prosecutors Kari Morrissey and Jason Lewis” was filed on December 5, 2023.
3. “Reply in Support of Motion for Sanctions Against Special Prosecutors Kari Morrissey and Jason Lewis” and “Second Affirmation of Luke Nikas in Support of Motion for Sanctions” were submitted for filing on December 15, 2023, with a courtesy copy provided to this Court.
4. “Notice of Completion of Briefing” was submitted for filing on December 15, 2023.



Date: December 15, 2023

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 15, 2023, a true and correct copy of the foregoing notice was emailed to opposing counsel.

/s/ Heather M. LeBlanc  
Heather M. LeBlanc

STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT

SANTA FE COUNTY  
FILED IN THE CLERKS OFFICE  
OF DISTRICT COURT

TS

December 15, 2023

STATE OF NEW MEXICO

Plaintiff,

vs.

ALEXANDER RAE BALDWIN III,

Target.

No. D-0101-GJ 2023-00008

Judge T. Glenn Ellington

**ALEC BALDWIN'S RESPONSE TO STATE'S MOTION TO EXCLUDE  
BALDWIN'S REQUESTED ELEMENTS INSTRUCTIONS TO THE GRAND JURY**

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*Counsel for Alec Baldwin*

## INTRODUCTION

The accident on the set of *Rust* was precisely that—an accident. Alec Baldwin had no reason to believe there were live bullets in the gun, in the church, or even on the property. He had no reason to believe that *anyone* was in danger when rehearsing the scene that led to Hutchins' death. That is clear from the testimony of numerous witnesses, as well as the fact that Hutchins herself directed Baldwin where to point the gun. Hutchins and Baldwin shared the same state of mind in that moment: Hutchins never would have given those directions if she thought Baldwin's conduct presented any danger. Nor would the Director, Joel Souza, who was sitting behind Hutchins, have permitted the rehearsal to continue if he believed Baldwin was willfully disregarding a risk to human life.

Yet the State seeks to transform this tragic accident into a homicide charge against Baldwin. It does so, at least in part, by refusing to give two jury instructions that apply under settled New Mexico law. *First*, the grand jury should be told that the State must prove Baldwin was subjectively aware of the specific risk at issue—*i.e.*, that the gun he was handling was likely loaded with live ammunition and therefore posed a substantial risk to human life—and that he willfully disregarded that risk when pointing the gun toward Hutchins. That is the law in New Mexico. It is also common sense. In the movies, actors throw each other out of buildings and over cliffs all the time, even though engaging in similar conduct in real life would land them in prison. But we don't charge them with attempted homicide or similar crimes, because they do not have subjective knowledge of a specific risk that the safety harnesses are likely to break or the net at the bottom of the cliff is likely to fail. If the State's theory of the case were adopted, it would be virtually impossible to make a movie. And we would be regularly charging people involved in accidents with homicide even when they had no reason to believe their conduct threatened human

life. The Court should require the knowledge instruction that Baldwin requests, which comprehensively explains the requisite state of mind consistent with governing law.

*Second*, Baldwin requests a proximate cause instruction, since the conduct of other individuals on the movie set were intervening causes of Hutchins' death. Although the State does not dispute that Baldwin is entitled to a proximate cause instruction, it argues that the Court should require UJI 14-134 instead of Baldwin's proposed language. But UJI 14-134 explicitly states that it "is not to be used in homicide cases," and instead refers to Instructions 14-251 and 14-252 for use in homicide cases. The State's request is contrary to New Mexico law and should be rejected.

Separately, the State also argues that Baldwin should have no say about which instructions are given to the grand jury. The State is wrong. In *Jones v. Murdoch*, 145 NM 473, 2009 NMSC-002, the New Mexico Supreme Court stated that a target is entitled to submit an alert letter to the Court with relevant evidence, *as well as* "any other matters that may be helpful to communicate to the prosecutor or judge." It is clearly helpful for Baldwin to communicate the content of proper jury instructions, especially here, where the State has repeatedly engaged in conduct designed to prejudice Baldwin and where its brief proposes incomplete and inapplicable instructions.

The Court should provide Baldwin's requested instructions to the grand jury.

#### ARGUMENT

As the State concedes, it is required to "provide the grand jurors with instructions setting forth the elements of each offense being investigated and the definitions of any defense raised by the evidence" and "other instructions that are necessary to the fair consideration by the grand jury of the issues presented." (State Br. at 3.) Baldwin's requested instructions satisfy this standard.

#### **I. THE COURT SHOULD PRESENT BALDWIN'S REQUESTED KNOWLEDGE INSTRUCTIONS TO THE GRAND JURY**

Baldwin has requested that the Court inform the grand jury that he must have been

subjectively aware of a risk that the gun was likely loaded with a live round. Although the State concedes that Baldwin must have had “subjective knowledge . . . of the danger or risk posed to others by his actions” to be charged with involuntary manslaughter, the State does not want the grand jury to know what that “danger” or “risk” actually is. The State should not be permitted to hide the ball from the grand jury.

As the State acknowledges, the Uniform Jury Instructions (UJI 14-231) state that the following instruction regarding knowledge must be used in involuntary manslaughter cases:

[T]he state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

...

2. \_\_\_\_\_ (name of defendant) should have known of the danger involved by \_\_\_\_\_’s (name of defendant) actions;

3. \_\_\_\_\_ (name of defendant) acted with a willful disregard for the safety of others; . . . .

The State accepts this instruction, yet it balks at Baldwin’s request that the State describe the danger or risk of which he supposedly should have known. But “danger” and “risk” do not exist in a vacuum. A target must have been aware of the danger or risk of *something*. Here, that “something” is whether the gun was likely loaded with live bullets and therefore posed a substantial risk to human safety. There is no evidence, for example, that Baldwin purchased the gun, oversaw the acquisition of props, purchased the bullets, or hired the armorer and first safety officer. Therefore, to charge Baldwin, he must have been subjectively aware that pointing the gun toward Hutchins posed a danger to her life because it was likely loaded with live ammunition. The State does not want the Court to inform the grand jury of this requirement, however, because it *knows* that Baldwin had no such subjective knowledge—indeed, there’s no way Hutchins or Souza would have directed or permitted Baldwin’s conduct if they thought it was dangerous. This case

is not about an individual mishandling a firearm in a home or private setting; this tragedy occurred on a movie set, where witnesses have already stated that the presence of live ammunition was universally considered “unfathomable.”

In these circumstances, the State should not be permitted to confuse the grand jury about the danger or risk at issue. Instead, the grand jurors should first be instructed that the criminal negligence standard requires the State to prove that Baldwin had subjective knowledge of an actual risk or danger to Hutchins’ life. As noted in the comments to UJI 14-231, manslaughter requires a showing of criminal negligence, which, in turn, includes the concept of recklessness. UJI 14-231, cmt. 1; *State v. Grubbs*, 85 N.M. 365, 512 P.2d 693 (Ct. App. 1973) (finding that manslaughter committed by a lawful act done in an unlawful manner or without due caution and circumspection requires a showing of criminal negligence, *i.e.*, conduct that is reckless, wanton, or willful); *State v. Salazar*, 1997–NMSC–044, ¶ 54, 123 N.M. 77 (same); *State v. Henley*, 2010-NMSC-039, ¶ 16, 148 N.M. 359 (the “showing of criminal negligence required for an involuntary manslaughter jury instruction includes the concept of recklessness”). Therefore, the grand jury should be told that the State must prove the “defendant ‘consciously disregarded a substantial and unjustifiable risk’ that harm will result from his conduct. ... To be convicted of involuntary manslaughter, a defendant must have been aware of the risk caused by his or her conduct and continued to act.” *Henley*, 2010-NMSC-039, ¶ 16; *see also State v. Skippings*, 2011-NMSC-021, ¶ 18, 150 N.M. 216 (“the defendant must possess subjective knowledge ‘of the danger or risk to others posed by his or her actions.’”).

The grand jury should next be instructed that, in order to indict Baldwin, the State must prove that Baldwin was aware of the specific risk at issue—the risk that the gun was likely loaded with live ammunition—and that he willfully disregarded this risk by following Hutchins’ direction

to point the gun toward the camera. *See State v. Campos*, 2019 WL 13156049, at \*3 (N.M. Ct. App. Dec. 23, 2019) (“As for subjective knowledge, Defendant said that he kicked the knife and picked it up so he would not get stabbed and his daughter would not get injured. These statements show that Defendant *understood he or another could be injured by the knife given the circumstances*. From this, a rational jury could infer Defendant possessed the subjective knowledge of the danger posed to others by picking up the knife.”) (emphasis added); *Skippings*, 2011-NMSC-021, ¶ 19 (“Even though Defendant contended at trial that he was unaware of the danger posed by his actions, a jury could infer from the circumstances that Defendant possessed the required subjective knowledge. As the State suggested at trial, a jury could conclude that Defendant was aware ‘of the danger or risk to others posed by his ... actions’ *when he caused Victim to fall on the hard asphalt, a commonly understood peril.*”) (emphasis added). *See also* Eugene Volokh (UCLA Law Professor), *What Exactly Is “Manslaughter” in the Alec Baldwin Case?*, Reason (Jan. 19, 2023), <https://reason.com/volokh/2023/01/19/what-exactly-is-manslaughter-in-the-alec-baldwin-case/> (“The prosecution would have to prove, beyond a reasonable doubt, that he was subjectively aware of the danger: that he actually thought about the possibility that the gun might be loaded, and proceeded to point it and pull the trigger despite that.”); Alan Dershowitz, *Why Charging Alec Baldwin with Manslaughter Is Wrong*, Newsweek (Jan. 19, 2023), <https://www.newsweek.com/why-charging-alec-baldwin-manslaughter-wrong-opinion-1775163> (“In this case, Baldwin claims that he was explicitly told the gun did not contain live ammunition. Even if prosecutors can cast doubt on this self-serving statement, it will be impossible for them to prove beyond a reasonable doubt that Baldwin believed he was risking Hutchins’ life by pulling the trigger or cocking the gun.”).



In short, the State must prove that Baldwin had subjective knowledge that pointing the gun toward Hutchins, at her direction, presented a danger or risk to her life because it was likely to be loaded with live rounds. There is no legitimate reason to deny the grand jury this critical information. The Court should require the instruction that Baldwin has requested.

## **II. THE COURT SHOULD PRESENT BALDWIN'S REQUESTED PROXIMATE CAUSE INSTRUCTIONS TO THE GRAND JURY**

The State concedes that a proximate cause instruction must be read to the grand jury. The State argues, however, that the instruction should be modeled after UJI 14-134. The State is wrong. The notes to UJI 14-134 state that it "is not to be used in homicide cases." Instead, UJI 14-134 refers to Instructions 14-251 and 14-252 for use in homicide cases. This is a homicide case, since the State seeks to charge Baldwin with involuntary manslaughter. *See* 1978 NMSA, Ch. 30, Art. 2: Homicide (including 1978 NMSA 30-2-3, Manslaughter). Therefore, the Court should reject the State's position and instruct the grand jury as Baldwin has requested.

Specifically, the grand jury should be instructed that proximate cause is an element of causation and that proximate cause is negated when a third party's negligence was the only significant cause of death *or* constituted an intervening cause that broke the foreseeable chain of events. *See State v. Munoz*, 1998-NMSC-041, 126 N.M. 371, 970 P.2d 143 (stating that proximate cause has two elements: (1) defendant's act was a significant cause of the harm; and (2) the harm or injury was a foreseeable result of the defendant's act). To explain these elements, UJI 14-251 requires the following instruction:

In addition to the other elements of the crime of \_\_\_\_\_ (name of crime) as set forth in instruction number \_\_\_\_\_, the state must also prove to your satisfaction beyond a reasonable doubt that

1. The death was a foreseeable result of \_\_\_\_\_;
2. The act of the defendant was a significant cause of the death of \_\_\_\_\_ (name of victim). The defendant's act was a significant cause of death if it was an

act which, in a natural and continuous chain of events, uninterrupted by an outside event, resulted in the death and without which the death would not have occurred.

3. There may be more than one significant cause of death. If the acts of two or more persons significantly contribute to the cause of death, each act is a significant cause of death.<sup>1</sup>

When evidence exists that a third-party's negligence was an intervening cause that broke the causal chain, the Defendant is entitled to an intervening cause instruction to be used alongside UJI 14-251. *See State v. Benavidez*, 1980-NMSC-097, 94 N.M. 706, 616 P.2d 419; *State v. Brown*, 2022 WL 10225171, at \*3 (N.M. Ct. App. Oct. 17, 2022) ("Where the jury could reasonably find that the negligence of another person was a cause of an injury . . . that negligence should be considered by the jury in determining whether the defendant's conduct was the proximate cause of the injury, and the court must instruct the jury accordingly."). Thus, UJI 14-252 requires the following instruction:

The State must prove beyond a reasonable doubt that the defendant's act was a significant cause of the death of \_\_\_\_\_ (name of victim). An issue in this case is whether the negligence of a person other than the defendant may have contributed to the cause of death. Such contributing negligence does not relieve the defendant of responsibility for an act that significantly contributed to the cause of the death so long as the death was a foreseeable result of the defendant's actions.

However, if you find the negligence of a person other than the defendant was the only significant cause of death or constitutes an intervening cause that breaks the foreseeable chain of events, then the defendant is not guilty of the offense of \_\_\_\_\_ (name of offense).

In this case, the evidence shows that others were directly responsible for set safety in general, and firearm safety in particular. For example, David Halls described himself as the "last line of defense" and admitted that he did not fully check the gun before handing it to Baldwin. And Halls' check came only after Hannah Reed, the armorer, violated her obligations by loading

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<sup>1</sup> UJI 14-251 provides that this instruction should be included when, as here, more than one person contributed to the cause of death.

the gun with live rounds, which were prohibited from being on set. The list of intervening causes is long, each of which terminates Baldwin's criminal exposure.

The Court should require the proximate cause instructions that Baldwin requested.

**III. THE COURT SHOULD EXERCISE ITS AUTHORITY UNDER *JONES V. MURDOCH* AND REQUIRE THE INSTRUCTIONS THAT BALDWIN HAS REQUESTED**

The State argues that the Court should ignore Baldwin's requested instructions because they do not constitute "exculpatory evidence." At this point, it is far from surprising that the State's brief has misstated the law. Indeed, the State started this prosecution by charging Baldwin with a firearm enhancement that had not been enacted when the accident occurred, and the State then threatened Baldwin with sanctions and disparaged his counsel in the media for pointing out that fact to the Court. It is troubling, however, that the State would urge the Court to ignore Baldwin's position entirely—as if this is the Star Chamber in which Baldwin has no right to be heard. That's especially so when Baldwin's requested instructions are required by settled law, and the State's proposed instructions are incomplete and inapplicable. It is for situations like this that the New Mexico Supreme Court issued its decision in *Jones v. Murdoch*, which gives Your Honor the supervisory powers to ensure a fair process.

In *Jones v. Murdoch*, 145 NM 473, 2009 NMSC-002, the Court recognized the importance of avoiding an unjust indictment. As the Court explained,

a wrongful indictment is no laughing matter; often it works a grievous, irreparable injury to the person indicted. The stigma cannot be easily erased. In the public mind, the blot on a man's escutcheon, resulting from such a public accusation of wrongdoing, is seldom wiped out by a subsequent judgment of not guilty. Frequently, the public remembers the accusation, and still suspects guilt, even after an acquittal.

*Jones*, 145 NM at 480 (citing *In re Fried*, 161 F.2d 453, 458–59 (2d Cir. 1947)).

To that end, *Jones* held that the grand jury judge has supervisory control over the grand jury proceedings. It is the Court, not the State, that has the authority to determine the requirements

of fairness, due process, and New Mexico law. *See Jones*, 145 N.M. at 478-479 (stating that the court has a “supervisory duty,” and that the prosecutor is a mere “aide to the grand jury” and does not occupy the “role of the grand jury itself”).

The Court in *Jones* also noted that a target’s alert letter may contain both relevant evidence, as well as “any other matters that may be helpful to communicate to the prosecutor or judge.” *Id.* at 485. That is precisely what Baldwin has submitted here: helpful information about jury instructions that are required by New Mexico law and therefore should be given to the grand jury. If Baldwin hadn’t supplied this information, then the State would have presented jury instructions that were both incomplete and inapplicable.<sup>2</sup> And it would have refused to give the accurate instructions that Baldwin has requested. That is a quintessential example of helpful information that a target should be permitted to communicate to the Court and the State. It is also information that the State should not be permitted to ignore.

The Court should exercise its supervisory duty under *Jones* and require that Baldwin’s proposed subjective knowledge and proximate cause instructions be given to the grand jury.

#### CONCLUSION

The Court should order that Baldwin’s proposed instructions be given to the grand jury.

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<sup>2</sup> Notably, the State also would have ignored nearly all of the facts contained in Baldwin’s alert letter on the basis that, in the State’s mistaken view, they did not constitute “exculpatory evidence that directly negates [a finding of] guilt.” (Resp. at 2.) Once again, the State seeks to hold Baldwin to a higher standard than the law requires. The Court in *Jones* did not prohibit a target from presenting evidence unless it is directly exculpatory. Rather, *Jones* ruled that the target may present any “evidence that is ‘lawful, competent, and relevant’ and ‘that would disprove or reduce an accusation or that would make an indictment unjustified.’” *Jones*, 145 N.M. at 485 (citing NMSA 1978. § 31-6-11).

Date: December 15, 2023

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 15, 2023, a true and correct copy of the foregoing brief was emailed to opposing counsel.

*/s/ Heather LeBlanc* \_\_\_\_\_  
Heather LeBlanc

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

FILED  
FIRST JUDICIAL  
DISTRICT COURT

2023 DEC 20 PM 1:43

**STATE OF NEW MEXICO,**

**Plaintiff,**

**v.**

**D-0101-GJ 2023-00008**

**ALEXANDER RAE BALDWIN,**

**Defendant.**

**REPLY TO TARGET'S RESPONSE TO STATE'S MOTION TO EXCLUDE  
BALDWIN'S REQUESTED ELEMENTS INSTRUCTION TO THE GRAND JURY**

**COMES NOW** the State of New Mexico, through Special Prosecutors Kari T. Morrissey and Jason J. Lewis, and submits the following in reply to the target's response to the State's Motion to Exclude Baldwin's Requested Elements Instruction to the Grand Jury:

1. The State intends to present the facts of the case against the target to a grand jury for a probable cause determination. The special prosecutors have tirelessly investigated this case and reviewed hundreds of videos, thousands of photos and thousands of documents. In addition, the special prosecutors have interviewed numerous witnesses to the shooting incident and some of these witnesses will be testifying before the grand jury. Should the grand jury decide that there is no probable cause to believe The target was a significant cause of the death of Ms. Hutchins, the grand jury will return a no bill and The target's case will be closed. The special prosecutors are not acting in bad faith by simply presenting the facts of the case to a grand jury. The special prosecutors engaged in good faith preindictment plea negotiations and attempted to resolve the case prior to a grand jury proceeding. The target and/or his counsel failed to act in good faith and plea negotiations were terminated and now a probable cause determination must be made.

**BALDWIN'S PROPOSED KNOWLEDGE INSTRUCTION IS NOT  
APPROPRIATE FOR INVOLUNTARY MANSLAUGHTER**

2. The jury instructions for involuntary manslaughter are clear and include the requirement that the target have subjective knowledge. The second element of the instructions will read "Alec Baldwin should have known the danger involved by Alec Baldwin's action." This is the language of the uniform jury instructions that imposes the requirement of subjective knowledge.

3. In the instant case there are guidelines created and disseminated by the Screen Actor's Guild that provide as follows:

Treat all weapons as though they are loaded and/or ready to use.

Refrain from pointing a firearm at anyone, including yourself. If it is absolutely necessary to do so on camera, consult the property master (or, in his/her absence, the weapons handler and/or other appropriate personnel determined by the locality of the needs of the production.

Never place your finger on the trigger until you're ready to shoot. Keep your finger alongside the firearm and off the trigger.

4. The Screen Actor's Guild safety guidelines outlined above are created for the gun handler, the actor – not the cinematographer (Ms. Hutchins) or the director (Mr. Souza). Presumably, Ms. Hutchins and Mr. Souza were not expecting The target to point the gun at a human being and pull the trigger having failed to make any inquiry as to what the gun was loaded with (because he was afraid of insulting Ms. Gutierrez). There is evidence that Ms. Hutchins told The target to point the gun in the direction of "camera left" – not directly at her. Ms. Hutchins certainly didn't instruct The target to fail to determine the contents of the gun and also pull the trigger in clear violation of the safety guidelines that have existed since the 1980's. According to Baldwin's interview with law enforcement on October 21, 2021 he has appeared in approximately seventy-five movies. He is very familiar with all of the safety requirements for



the handling of firearms on movie sets and is well aware that dummy rounds are made to look exactly like real bullets. The target further understood that all of the safety measures in place for the use of real firearms on movie sets exist for the sole purpose that guns are dangerous and live rounds can be mistakenly brought onto a movie set because they look exactly like dummy rounds.

5. Moreover, there are witnesses who will testify that the incident occurred when a scene was not being filmed – The target was working with Ms. Hutchins to set-up the shot. The target and Ms. Hutchins were practicing for the way the shot would be filmed once cameras were on. The safety guidelines only permit an actor to point a gun at another person for on-camera filming. The target could have used a replica or rubber gun for the simple exercise of setting up the shot but, according to witnesses, The target insisted on always using his real gun.

6. The videos obtained from Rust Productions, LLC of all of the scenes filmed for the movie depict The target yelling and demanding that the cast and crew work faster. The target refused to give the crew adequate time to perform their jobs safely and also rushed Ms. Gutierrez when she was loading guns to be used for filming. If the State's theory of the case were to be adopted movies can and would be made safely by requiring the cast and crew to simply follow the safety guidelines created by their own professional organizations.

7. In the instant case, The target knew there was a risk associated with the use of real guns on movie sets – a risk that was so significant the Screen Actor's Guild developed safety guidelines to appropriately mitigate the risk of using real guns with fake ammunition that looks exactly like real ammunition. If The target (and Ms. Gutierrez) had only followed the simple safety guidelines set forth by the Screen Actor's Guild, Ms. Hutchins would be alive today as 1). The target would not have pointed the gun at her and pulled the trigger or 2). The target would

have used a replica gun in place of the real gun because a scene was not being filmed at the time of the incident or 3). The target would have asked Ms. Gutierrez to show him the ammunition that was in the gun – a right granted him under the Screen Actor’s Guild safety guidelines. There were so many opportunities for The target to follow one or another of the safety protocols in place for the actor holding the gun but The target chose to ignore the safety protocols. Further, The target was aware and witnessed other actor’s performing their own safety checks of the ammunition in the guns. For example, Jensen Ackles religiously dry fired his revolver six times into the ground every time he was given a gun and told it was “cold” (meaning it either contained no ammunition at all or inert dummy rounds). It is more than disingenuous for The target to claim ignorance of the danger of real guns on movie sets when his own professional organization has released safety guidelines and he watch another actor check his gun to live rounds every time it was provided to him. The target recounted to detectives during his interview on October 21, 2021 that there were two previous fatal shootings on movie sets in the past of which he was aware. The target was well aware that real guns on movie sets can lead to death of cast and crew if safety protocols are not followed. Yet he chose to forgo safety protocols because he was feeling rushed. After all, the target gets paid his fee whether he works five hours a day or fifteen hours a day.

8. The target is asking the Court to dictate to the State the details of the instructions given to the grand jury but the target is not aware of all of the evidence and testimony that will be presented to the grand jury. Moreover, the target is asking the Court to apply the standard of Second Degree Murder to Involuntary Manslaughter. If the target had subjective knowledge that the gun “likely” contained live ammunition and he pointed the gun at Ms. Hutchins and pulled the trigger he would appropriately be charged with Second Degree Murder. The primary

element of Second Degree Murder is “The defendant knew that his acts created a strong probability of death or great bodily harm...”. UJI 14-211 NMRA. Discharging a gun pointed at a person with subjective knowledge that it is “likely” loaded with live ammunition is not involuntary manslaughter – it is second degree murder. In this case, the appropriate charge is involuntary manslaughter because the target knew he had a real gun, he did not know what it was loaded with, he knew dummy rounds are commonly used and look exactly like real bullets, and yet he nevertheless pointed the gun at Ms. Hutchins and pulled the trigger.

9. New Mexico courts have decided this issue previously and recently. In State v. Xavion M., 2021 N.M. App. Unpub. the defendant, a child, challenged the sufficiency of the evidence after being convicted of involuntary manslaughter after accidentally shooting someone. The defendant claimed exactly what the target claims now – that he had no idea the gun was loaded and didn’t intentionally pull the trigger. In the case of Xavion M., the child had gone shooting with some friends. The teens were shooting at AR-15 that contained a large clip of ammunition. After the teens finished shooting the AR-15, the defendant went to the restroom and when he returned, he noticed that the ammunition clip was no longer in the gun. As a result, he believed the gun to be unloaded and picked up the gun, unintentionally pulled the trigger and killed another teen sitting nearby. Id at 2. Unlike the instant case, in Xavion M. it doesn’t appear that the child intended to point the gun at the victim and the State stipulated that the trigger of the gun was not intentionally pulled. Id. at 6. The Court affirmed the conviction and explained as follows:

Our Legislature has defined involuntary manslaughter as "the unlawful killing of a human being without malice . . . committed in the commission of an unlawful act not amounting to felony, or in the commission of a lawful act which might produce death in an unlawful manner or without due caution and circumspection." Section 30-2-3(B). Manslaughter is an unintentional killing: the defendant's conduct resulted in Victim's death, but the defendant did not intend Victim's death. See State v. Henley, 2010-NMSC-

039, ¶ 14, 148 N.M. 359, 237 P.3d 103. Our courts have interpreted this statutory scheme to encompass unintentional killings that result due to (1) "the commission of an unlawful act not amounting to a felony [that causes death]"; (2) "the commission of a lawful act that might produce death, in an unlawful manner"; or (3) "the commission of a lawful act that might produce death without due caution and circumspection." Id. (internal quotation marks and citation omitted). Our courts have recognized that the "required mens rea for conviction of involuntary manslaughter is criminal negligence." Id. ¶ 15. Any misdemeanor requiring a showing of at least criminal negligence can serve as the predicate unlawful act for involuntary manslaughter. See State v. Yarborough, 1996-NMSC-068, ¶ 20, 122 N.M. 596, 930 P.2d 131. Criminal negligence requires "subjective knowledge by the defendant of the danger or risk to others posed by his or her actions." Henley, 2010-NMSC-039, ¶ 17. Criminal negligence exists "when a person 'acts with willful disregard of the rights or safety of others and in a manner which endangers any person or property.'" Id. ¶ 16 (quoting UJI 14-133 NMRA) (alteration omitted). "Likewise, the instruction on involuntary manslaughter states that the defendant 'should have known of the danger involved by [his or her] actions[.]'" Id. (quoting UJI 14-231 NMRA). Xavion M. at 6-8.

10. In Xavion M. the jury instructions submitted to the jury were as follows:

1. [Child] handled or used a firearm in a negligent manner;
2. [Child] should have known of the danger involved by [his] actions;
3. [Child] acted with a willful disregard for the safety of others; [and]
4. 4. [Child's] act caused the death of [Victim.]

11. In this case the grand jury will be provided the appropriate Uniform Jury Instructions set forth in 14-231 NMRA for the theories of involuntary manslaughter committed in commission of an unlawful act not amounting to a felony (negligent use of a firearm) and in the commission of a lawful act which might produce death in an unlawful manner or without due caution and circumspection (pointing a gun at person, pulling the trigger without personal knowledge of the ammunition in the gun). The grand jury will also be provided the definition of Negligence as set forth in 14-133 NMRA.

**14-251 NMRA SHOULD BE SUBMITTED TO THE  
GRAND JURY FOR PROXIMATE CAUSE**

12. The State agrees that the appropriate instruction for proximate cause is 14-251 NMRA. The instruction drafted by the State in advance of the November 16, 2023 grand jury setting was sourced from 14-251 NMRA. Due to a miscommunication between State's counsel a reference to Rule 14-134 remained in the briefing erroneously. The State will present 14-251 NMRA for the grand jury's consideration concerning proximate cause.

**CONCLUSION**

The target's response brief woefully fails to address the primary issue raised by the State: that New Mexico caselaw and its court rules do not permit the target to offer or insist on particular instructions to be given to the grand jury. The target's limited role in grand jury proceedings is limited to offering evidence that is directly exculpatory to the charged crimes or to any defenses. The closest the target gets to this point is referencing some dicta in Jones stating that a target's alert letter may contain both relevant evidence, as well as "any other matters that may be helpful to communicate to the prosecutor or judge." Jones 145 N.M. at 485. Mission accomplished. The target has thusly communicated his "helpful matters" to the prosecution and to the judge. Nowhere does this cited dicta support the target's expanded conclusion that the "helpful matters" must be provided to the grand jury. Indeed, the holding of Jones and the resulting court rules make clear any such expansion of a target's participation in grand jury is rejected.

Of course this is not the only instance of the target's response brief misstating the case law and offering up legally unsupported mandates. Namely, the target's response fails to address the State's concern that it is backwards to force any instruction to be given to the grand jury prior to the State's presentation of evidence. The target continues to insist the only way the grand jury

could indict him is under the extremely limited factual circumstance that the target had actual knowledge of a significant risk that the firearm had been loaded with live ammunition. As discussed in the State's opening brief and further explored in this reply, there are more potential theories for establishing the target's criminal culpability than the single theory offered by the target – a theory, of course convenient for the target, that would raise the burden of proof more in line with a charge of second degree murder, rather than involuntary manslaughter. For the foregoing reasons, the State respectfully requests the Court deny the target's proposed elements instructions.

RESPECTFULLY SUBMITTED,

/s/ Kari T. Morrissey

Kari T. Morrissey

Jason J. Lewis

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I hereby certify that a true and correct copy of the foregoing pleading was emailed to opposing counsel this 20<sup>th</sup> day of December 2023.

/s/ Kari T. Morrissey

Kari T. Morrissey

AP

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

2023 05

**STATE OF NEW MEXICO,**

**Plaintiff,**

**v.**

**D-0101-GJ 2023-00008**

**ALEXANDER RAE BALDWIN,**

**Defendant.**

**AMENDED REPLY TO TARGET'S RESPONSE TO STATE'S MOTION TO EXCLUDE  
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**COMES NOW** the State of New Mexico, through Special Prosecutors Kari T. Morrissey and Jason J. Lewis, and submits the following in reply to the target's response to the State's Motion to Exclude Baldwin's Requested Elements Instruction to the Grand Jury:

1. The State intends to present the facts of the case against the target to a grand jury for a probable cause determination. The special prosecutors have tirelessly investigated this case and reviewed hundreds of videos, thousands of photos and thousands of documents. In addition, the special prosecutors have interviewed numerous witnesses to the shooting incident and some of these witnesses will be testifying before the grand jury. Should the grand jury decide that there is no probable cause to believe the target was a significant cause of the death of Ms. Hutchins, the grand jury will return a no bill and the target's case will be closed. The special prosecutors are not acting in bad faith by simply presenting the facts of the case to a grand jury. The special prosecutors engaged in good faith preindictment plea negotiations and attempted to resolve the case prior to a grand jury proceeding. The target and/or his counsel failed to act in good faith and plea negotiations were terminated and now a probable cause determination must be made.

**BALDWIN'S PROPOSED KNOWLEDGE INSTRUCTION IS NOT  
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2. The jury instructions for involuntary manslaughter are clear and include the requirement that the target have subjective knowledge. The second element of the instructions will read "Alec Baldwin should have known the danger involved by Alec Baldwin's action." This is the language of the uniform jury instructions that imposes the requirement of subjective knowledge.

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the handling of firearms on movie sets and is well aware that dummy rounds are made to look exactly like real bullets. The target further understood that all of the safety measures in place for the use of real firearms on movie sets exist for the sole purpose that guns are dangerous and live rounds can be mistakenly brought onto a movie set because they look exactly like dummy rounds.

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**14-251 NMRA SHOULD BE SUBMITTED TO THE  
GRAND JURY FOR PROXIMATE CAUSE**

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The target's response brief woefully fails to address the primary issue raised by the State: that New Mexico caselaw and its court rules do not permit the target to offer or insist on particular instructions to be given to the grand jury. The target's limited role in grand jury proceedings is limited to offering evidence that is directly exculpatory to the charged crimes or to any defenses. The closest the target gets to this point is referencing some dicta in Jones stating that a target's alert letter may contain both relevant evidence, as well as "any other matters that may be helpful to communicate to the prosecutor or judge." Jones 145 N.M. at 485. Mission accomplished. The target has thusly communicated his "helpful matters" to the prosecution and to the judge. Nowhere does this cited dicta support the target's expanded conclusion that the "helpful matters" must be provided to the grand jury. Indeed, the holding of Jones and the resulting court rules make clear any such expansion of a target's participation in grand jury is rejected.

Of course this is not the only instance of the target's response brief misstating the case law and offering up legally unsupported mandates. Namely, the target's response fails to address the State's concern that it is backwards to force any instruction to be given to the grand jury prior to the State's presentation of evidence. The target continues to insist the only way the grand jury

could indict him is under the extremely limited factual circumstance that the target had actual knowledge of a significant risk that the firearm had been loaded with live ammunition. As discussed in the State's opening brief and further explored in this reply, there are more potential theories for establishing the target's criminal culpability than the single theory offered by the target – a theory, of course convenient for the target, that would raise the burden of proof more in line with a charge of second degree murder, rather than involuntary manslaughter. For the foregoing reasons, the State respectfully requests the Court deny the target's proposed elements instructions.

RESPECTFULLY SUBMITTED,

/s/ Kari T. Morrissey

Kari T. Morrissey

Jason J. Lewis

Special Prosecutors for the State of New Mexico

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Phone: 505-361-2138

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[jjl@jilllaw.com](mailto:jjl@jilllaw.com)

I hereby certify that a true and correct copy of the foregoing pleading was emailed to opposing counsel this 20<sup>th</sup> day of December 2023.

/s/ Kari T. Morrissey

Kari T. Morrissey

STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT

FILED  
FIRST JUDICIAL DISTRICT COURT

2024 JAN 11 PM 4:39

IN THE MATTER OF THE GRAND JURY

No.: D-101-GJ-2023-00008

STATE OF NEW MEXICO,  
Plaintiff,

v.

ALEXANDER RAE BALDWIN III,  
Target.

**ORDER ON STATE'S EXPEDITED MOTION TO PRECLUDE TARGET'S  
REQUESTED TESTIMONY AND EVIDENCE BEFORE THE GRAND JURY**

THIS MATTER came before the Court on the State's Expedited Motion to Preclude Target's Requested Testimony and Evidence Before the Grand Jury (the "Expedited Motion"), filed November 15, 2023. Having reviewed the briefing and being otherwise fully advised, THE COURT FINDS, CONCLUDES, AND ORDERS:

**PROCEDURAL SUMMARY**

1. On November 15, 2023, the State filed its Expedited Motion in response to an alert notice, entitled Grand Jury Evidence Notice to District Attorney, dated November 14, 2023, and provided to the State by the Target pursuant to Rule 5-302.2(C) NMRA. *See* Expedited Mot., Exs. 1, 2.
2. The Court initially held a remote hearing to consider oral argument on the Expedited Motion on November 15, 2023. However, given the length and breadth of the Expedited Motion, the Court rescheduled this hearing to January 11, 2024.
3. On January 11, 2024, the Court held a remote hearing to verbally announce its decision. Ms. Kari Morrissey and Mr. Jason Lewis, Special Prosecutors, appeared on behalf of the

State. Mr. Luke Nikas, Mr. Alex Spiro, and Ms. Heather LeBlanc, Attorneys for Target Baldwin, appeared on behalf of the Target.

4. The Court exercises its discretion to rule on the filed pleadings without considering oral argument. *See* Rule LR1-305(D) NMRA; *see also* Rule 5-302.2(C)(4) NMRA (regarding a motion on the target's proposed evidence or defenses, while the Court "may convene a hearing," the Court must "give the prosecuting attorney clear direction on how to proceed before the grand jury, making a record of the decision").

### ANALYSIS

#### The Court Overrules the Bulk of the State's Objections to the Target's Evidence.

5. "When serving as an aide to the grand jury, a prosecuting attorney must facilitate the grand jury's inquiry into any lawful, relevant, and competent evidence not initially presented by the State and cannot unilaterally withhold evidence or witnesses requested by the grand jury." *Herrera v. Sanchez*, 2014-NMSC-018, ¶ 25, 328 P.3d 1176 (citations omitted); *see also State v. Cruz*, 1983-NMSC-045, ¶ 7, 99 N.M. 690 ("In dealing with the grand jury, the prosecutor's duty is to protect both the public's interest and the rights of the accused." (citation omitted)).
6. Per NMSA 1978, Section 31-6-11(B) (2003), "the target or his counsel may 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 prosecuting attorney who is assisting the grand jury in writing regarding the existence of that evidence."
7. "If the target timely submits a grand jury alert notice to the prosecutor, the prosecutor is obligated to alert the grand jury to any target-offered evidence that is 'lawful, competent and relevant,' § 31-6-11(A), and 'that would disprove or reduce [an] accusation or . . .



make an indictment unjustified,’ § 31-6-11(B).” *Herrera*, 2014-NMSC-018, ¶ 20 (citing *Jones v. Murdoch*, 2009-NMSC-002, ¶ 33, 145 N.M. 473). Notably, New Mexico’s “grand jury statutes require only that the prosecuting attorney *alert* the grand jury to the existence of target-offered evidence and do not require the prosecutor to actually *present* such evidence.” *Id.* (citing *Jones*, 2009-NMSC-002, ¶¶ 12, 24) (emphasis in original); *see also Jones*, 2009-NMSC-002, ¶ 28 (“Thus, in light of past practice, it would be unreasonable to conclude that the Legislature decided to explicitly give the target the right to alert the grand jury to the existence of exculpatory evidence while nevertheless allowing the prosecutor to reject such offers without a check, particularly since the 2003 amendments to Section 31-6-11(B) also eliminated the prosecutor’s duty to present evidence that directly negates guilt.” (citation omitted)).

8. “Once alerted to target-offered evidence, ‘the grand jury remains free to decide not to hear the evidence . . . or to hear the evidence and weigh it as it sees fit.’” *Herrera*, 2014-NMSC-018, ¶ 20 (quoting *Jones*, 2009-NMSC-002, ¶ 12).
9. Here, invoking Rule 5-302.2(C) NMRA, the Target provided the State with a Grand Jury Evidence Notice to District Attorney on November 14, 2023. In turn, via the Expedited Motion, the State objects to nearly all evidence about which the Target seeks to alert the Grand Jury. Specifically, the State argues that the “target is permitted to propose only that testimony and evidence that is directly exculpatory; circumstantial exculpatory evidence is not permitted. The State is required to present to the grand jury only exculpatory evidence that directly negates defendant’s guilt.” Expedited Mot. 3. In support thereof, the State cites to cases that precede the paradigm-shifting decision of *Jones v. Murdoch*, 2009-NMSC-002, 145 N.M. 473, and the subsequent expounding decision of *Herrera v.*

*Sanchez*, 2014-NMSC-018, 328 P.3d 1176. Ultimately, the Court disagrees with the State's analysis.

10. Rather, the Court's analysis is guided by the analytical framework developed in *Jones* and *Herrera*. As explained in *Herrera*, "the grand jury judge must determine whether the target-offered evidence is 'lawful, competent, and relevant,' and whether the evidence 'disproves or reduces a charge or accusation' or 'makes an indictment unjustified.'" *Herrera*, 2014-NMSC-018, ¶ 21 (citations omitted); *see also* § 31-6-11(A) ("The Rules of Evidence shall not apply to a grand jury proceeding."). Hence, the target-offered evidence need not be directly exculpatory to compel the State to alert the grand jury to its existence. *See Jones*, 2009-NMSC-002, ¶ 28. Further, "[b]ecause the Legislature intended to give the grand jury access to more evidence, not less, the prosecution carries the burden of persuading the grand jury judge that the grand jury should not be alerted to target-offered evidence." *Id.* ¶ 39.
11. Regarding the Target's proposed witnesses and tangible evidence, the Court finds, concludes, and orders as follows:
  - a. Witness No. 1: Joel Souza; Witness No. 2: David Halls; Witness No. 3: Sarah Zachry; Witness No. 4: Ryan Smith; Witness No. 5: Det. Alexandria Hancock; Witness No. 6: Det. Joel Cano; and, Witness No. 7: Robert Schilling.
    - i. The State fails to persuade the Court that the potential testimony is not lawful, competent, or relevant. Further, the State fails to persuade the Court that the potential testimony may not disprove or reduce a charge or accusation, or may not make an indictment unjustified. The State shall alert the grand jury to the existence

of these witnesses and their potential testimony via the Target's grand jury evidence alert letter.

- b. Document No. 1: Recording of 911 Call; Document No. 2: Prop Truck Warrant; Document No. 3: Church Search Warrant; Document No. 4: PDQ Arm & Prop LLC Search Warrant; Document No. 5: New Mexico Occupational Health and Safety Report; Document Nos. 6(a)-(i): Excerpts From Santa Fe Sheriff's Office Report – (a) Joel Souza, (b) Hannah Gutierrez-Reed, (c) Sarah Zachry, (d) Dave Halls, (e) Reid Russel, (f) Jensen Ackles, (g) Ross Addiego, (h) Sarah Zachry Cell Phone Report, & (i) Seth Kenney Cell Phone Report; Document No. 7: Text Messages Between Sarah Zachry and Seth Kenney; Document No. 8: Text Messages Between Hannah Gutierrez-Reed and Seth Kenney; Document No. 10: Crew Letter; Document No. 12: Video Clip from *Rust* Set; Document No. 13: Video Clip from *Rust* Set; and, Document No. 14: Halls Proffer Transcript.
  - i. The State fails to persuade the Court that the proposed evidence is not lawful, competent, or relevant. Further, the State fails to persuade the Court that the proposed evidence may not disprove or reduce a charge or accusation, or may not make an indictment unjustified. The State shall alert the grand jury to the existence of this evidence and the corresponding non-argumentative description via the Target's grand jury evidence alert letter.
- c. Document No. 9: Industry Wide Labor-Management Safety Bulletin No. 1; Document No. 11: Video Clip from *Rust* Set.
  - i. Per the State's Expedited Motion, the State will present these materials to the grand jury. *See* Expedited Mot. 31-32.

- d. Document No. 6(j): Excerpts From Santa Fe Sheriff's Office Report - (j) Katya Luce.
  - i. Based upon the proffer by the Target, and the State's response within the Expedited Motion, the Court grants the State's motion to exclude this information from the Target's grand jury evidence alert letter. Based upon the proffers, the proposed evidence appears not relevant, and does not appear to disprove or reduce a charge or accusation, or make an indictment unjustified.

The Court Refrains from Addressing the State's Objections to the Target's Proposed Questions.

12. The State's Expedited Motion comprehensively analyzes the Target's proposed questions for the Target's potential witnesses. However, as explained by the New Mexico Supreme Court in *Jones*, "[the N.M. Supreme Court] find[s] it imprudent to fashion a pre-indictment mechanism to ensure that the prosecutor questions the witness in the manner proposed by the target or otherwise elicits the evidence in the way that the target intended. To begin with, the grand jury very well might decline to hear the target-offered evidence upon learning of its existence. And even if the grand jury does ask the prosecutor to call the target-offered witnesses, to require the grand jury judge to formulate the script by which the prosecutor must question the witness would be highly impractical and most likely ineffective . . . ." *Jones*, 2009-NMSC-002, ¶ 37. Rather, if the prosecution "intentionally question[s] the witness in a manner intended to keep the witness from providing the grand jury with information that the target wanted before the grand jury," then "the only practical recourse for the target must come post-indictment after the target has the opportunity to

review the transcript of the grand jury proceedings to evaluate the fairness of the prosecutor's actions." *Id.* ¶ 38.

13. Therefore, the Court declines to prescribe the exact manner of questioning by the State for any target-alerted witness, but cautions the State on the Target's potential remedy identified above if the State's questioning runs afoul of the standards described in *Jones*.

The Court Instructs the Target to Rewrite Its Grand Jury Evidence Alert Letter within the Parameters Set Forth in Rule 5-302.2 NMRA.

14. When a target elects to submit an evidence alert letter to the grand jury, the "target's submission shall consist of a factual and non-argumentative description of the nature of any tangible evidence and the potential testimony of any witnesses, along with the names and contact information of any witnesses necessary to provide the evidence." Rule 5-302.2(C)(3)(a) NMRA. Here, the Court finds that the Target's proposed grand jury evidence alert letter contains argument in several instances. *See Black's Law Dictionary* (11th ed. 2019), argument (" . . . 2. A statement that attempts to persuade by setting forth reasons why something is true or untrue, right or wrong, better or worse, etc.; *esp.*, *the remarks of counsel in analyzing and pointing out or repudiating a desired inference, made for the assistance of a decision-maker*. 3. The act or process of attempting to persuade." (emphasis added)); *see generally* Expedited Mot., Ex. 2 (setting forth Target's proposed grand jury evidence alert letter).

15. Therefore, the Court instructs the Target to modify its Grand Jury Evidence Alert Letter to remove the struck language as appearing in the attached Court's Exhibit 1.


The Court Declines to Instruct the State on the Logistics of Securing the Availability of the Target's Alerted Witnesses and Tangible Evidence.

16. “Once alerted to target-offered evidence, ‘the grand jury remains free to decide not to hear the evidence . . . or to hear the evidence and weigh it as it sees fit.’” *Herrera*, 2014-NMSC-018, ¶ 20 (quoting *Jones*, 2009-NMSC-002, ¶ 12). Accordingly, the Court instructs the State to make readily available the proposed tangible evidence and potential witnesses to avoid scheduling disruptions if the grand jury wishes to hear the evidence once alerted. However, the Court declines to provide additional instruction to the State on securing witness availability. *See Herrera*, 2014-NMSC-018, ¶ 25 (“When serving as an aide to the grand jury, a prosecuting attorney must facilitate the grand jury’s inquiry into any lawful, relevant, and competent evidence not initially presented by the State and cannot unilaterally withhold evidence or witnesses requested by the grand jury.” (citations omitted)).

#### CONCLUSION

IT IS THEREFORE ORDERED that the State and Target shall proceed in accordance with this Order and as further directed herein.

**IT IS HEREBY ORDERED.**

  
\_\_\_\_\_  
T. GLENN ELLINGTON  
DISTRICT COURT JUDGE  
DIVISION VII

#### CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date of acceptance for filing a true and correct copy of the foregoing was emailed to counsel for the parties as listed below.

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*Attorneys for Target Baldwin*

  
\_\_\_\_\_  
Trial Court Administrative Assistant

**EXHIBIT**

Court's  
Exhibit 1

**GRAND JURY EVIDENCE ALERT LETTER**

**INVESTIGATION RE: Alexander Rae Baldwin III**

**Hearing Date: November 16, 2023**

**Case No.: D-101-GJ 2023-00008**

**Dear Grand Jurors:**

In accordance with the rights and obligations of the Grand Jury under New Mexico law, the above-noted subject/target of the Grand Jury proceeding in this case requests the grand jury consider the following evidence:

**PART I: ELEMENTS**

~~Mr. Baldwin requests that the Grand Jurors be alerted to the fact that the criminal negligence standard requires the prosecution to show that Mr. Baldwin had subjective knowledge of an actual risk that the firearm placed in his hand had been loaded with live ammunition.~~

~~Mr. Baldwin requests that the Grand Jurors be alerted that proximate cause is an element of causation, and that the element of proximate cause is negated where the negligence of a third party (i.e., someone other than Mr. Baldwin) was the only significant cause of death or constitutes an intervening cause that broke the foreseeable chain of events.~~

**PART II: WITNESSES**

**Witness No. 1: Joel Souza: Contact: souzajoel007@yahoo.com (510) 552-2171**

**Potential Testimony:** Mr. Souza is the Director of *Rust*. He was primarily responsible for all creative aspects of the film and relied on the entire cast and crew to bring his creative vision to life. He was present in the church during the rehearsal scene and was struck by the fatal bullet after it passed through Halyna Hutchins. He suffered non-life-threatening injuries.

**Witness No. 2: David Halls: Contact: davehalls.ad@gmail.com (612) 414-6036**

**Potential Testimony:** Mr. Halls was the First Assistant Director and Safety Coordinator on the set of *Rust*. He was in charge of managing and supervising all departments on set and was responsible for safety conditions on set. He is aware of the conditions on set and the day of the incident. He was present in the church when the fatal shot discharged.



**Witness No. 3: Sarah Zachry:** Contact: Sarahbrienne97@gmail.com (505) 264-1702

**Potential Testimony:** Ms. Zachry was Rust's prop master, responsible for acquiring, placing, and/or overseeing any props needed for the production, including prop firearms and ammunition. As prop master, she oversaw and supervised the armorer, Hannah Gutierrez-Reed, and was the only other person on set with responsibility for the storage and handling of firearms and ammunition. Along with Hannah Gutierrez-Reed, she was responsible for procuring firearms and ammunition from Rust's third-party supplier.

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**Witness No. 4: Ryan Smith:** Contact: rs@streamlineglobal.com

**Potential Testimony:** Mr. Smith was a Producer of the film *Rust* and was responsible for overseeing the overall production. He has knowledge of the various roles and responsibilities of members of the production. He will be able to provide testimony about Mr. Baldwin's contractual agreements, roles, and responsibilities for the film. He will be able to testify as to the extent and limitations of Mr. Baldwin's contract with the film with respect to hiring and supervising other cast and production members in their roles.

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**Witness No. 5: Det. Alexandria Hancock:**

Contact: c/o Sergeant Alderete calderete@santafecountynm.gov

**Potential Testimony:** Detective Hancock is a Santa Fe Sheriff's Detective who acted as the lead investigator on the case. She has knowledge of how the investigation proceeded, how evidence was gathered, and potential gaps in the investigation.

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**Witness No. 6: Det. Joel Cano:**

Contact: c/o Sergeant Alderete

calderete@santafecountynm.gov

**Potential Testimony:** Detective Cano is a Santa Fe Sheriff's Detective who acted as one of the investigators on the case. He has knowledge of how the investigation proceeded, how evidence was gathered, and potential gaps in the investigation that suggest Mr. Baldwin's innocence.

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**Witness No. 7: Robert Schilling:** Contact: Shilling.robert@gmail.com

**Proposed Testimony:** Mr. Schilling was hired as an investigator for the state and was aware of deficiencies in the investigation, including leads that were not run down. He expressed his view that the investigation conducted by the SFSO over the course of more than a year could not be remediated.

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## PART III: DOCUMENTS

### **Document No. 1: Recording of 911 Call**

The document is an audio-recording of the 911 call placed by Mamie Mitchell, the film's script supervisor, immediately after the incident took place. Ms. Mitchell witnessed the incident from inside the church and was standing just a few feet away from where the gun went off. On the recording, Ms. Mitchell can be heard telling the 911 operator that two people were "accidentally shot" on a movie set. She is also heard saying that Dave Halls, the First Assistant Director, was "supposed to check the gun" and that "he's responsible for [inaudible]."

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### **Document No. 2: Prop Truck Warrant**

On October 27, 2021, the Sante Fe Sheriff's Office executed a warrant for the prop truck on the *Rust* movie set, which is where firearms and ammunition were stored throughout the production. The warrant contains numerous exculpatory statements from several witnesses, including a statement from camera operator Reid Russel (who said Mr. Baldwin "had been very careful" with the firearms) and a statement from Dave Halls, who said the incident "was not a deliberate act" and "he [Halls] should have checked all of [the rounds in the gun], but didn't."

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### **Document No. 3: Church Search Warrant**

On October 22, 2021, the Sante Fe Sheriff's Office executed a warrant at the church on the *Rust* movie set where the incident took place. The warrant contains numerous exculpatory statements from the affiant, including a statement that Dave Halls "handed the gun to" Mr. Baldwin and "yelled, 'Cold Gun,' indicating the prop gun did not have any live rounds."

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### **Document No. 4: PDQ Arm & Prop LLC Search Warrant**

On November 30, 2021, the Sante Fe Sheriff's Office executed a warrant at PDQ Arm & Prop LLC, the shop that supplied the rounds to the *Rust* set. The warrant states that Hannah Gutierrez-Reed, the film's armorer, admitted that she "didn't really check [the gun] too much" after lunch. The warrant also states that multiple live rounds were found on the set in the box of ammo that Gutierrez-Reed was pulling from, and that Gutierrez-Reed's father had given Seth Kenney, the owner of PDQ, a can of live ammo that may match the live ammo found on the *Rust* set.

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### **Document No. 5: New Mexico Occupational Health and Safety Report**

This document is a report from the New Mexico Occupational Health and Safety Bureau, which conducted an investigation to determine whether the incident was caused by the failure of Rust Movie Productions LLC or its employees to implement proper workplace safety protocols. The

report demonstrates that Mr. Baldwin was not part of ~~Rus~~ Management i.e., the individuals responsible for hiring, scheduling, budgeting, and overseeing set safety. The report states that "Baldwin's authority on the set" was limited to "approving script changes and actor candidates."

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**Document Nos. 6(a)-6(j): Excerpts From Santa Fe Sherriff's Office Report**

These documents represent excerpts of reports from the Santa Fe Sherriff's Office. Each report was prepared by the lead investigator, Det. Alexandria Hancock, or by another investigator, Joel Cano. The reports summarize interviews with several key witnesses which were conducted on the scene immediately following the incident and in the weeks that followed, including:

**a. Joel Souza (director)**

The report indicates that Souza, who was hit by the bullet that fired the day of the incident, recalled Hannah Gutierrez-Reed standing over him apologizing. He identified her as the person on set responsible for firearms, and that guns are to be checked by the armorer (Gutierrez-Reed) and the First Assistant Director (Halls).

**b. Hannah Gutierrez-Reed (armorer)**

The report indicates that Gutierrez-Reed stated that she was the armorer on set and that she loaded the firearm involved in the incident. Gutierrez-Reed stated that she handed the firearm off to Dave Halls before the incident. She also stated that the dummy rounds were provided to her by Seth Kenny, who, in turn borrowed them from someone else.

**c. Sarah Zachry (prop master)**

The report indicates that Zachry thought there were additional live rounds in the box of ammunition that Gutierrez-Reed used the day of the incident, and that Gutierrez-Reed had brought ammunition from another set she had worked on. Zachry identified the origin of some of the ammunition on the set as from Seth Kenny and Billy Ray.

**d. Dave Halls (first assistant director)**

The report indicates that Halls stated he was the safety coordinator and that the armorer was Hannah Gutierrez-Reed. He explained that he would routinely check firearms with the armorer, but that, the day of the incident, there was a 5-minute gap between when he checked the revolver at issue was empty and when Gutierrez-Reed returned, having loaded what he understood to be dummy rounds in the revolver. He recalled seeing three depressed primers.

**e. Reid Russel (camera man)**

The report states that Reid reported that Mr. Baldwin was "really safe" on set, including asking to move a child actor away from gunfire.

**f. Jensen Ackles (actor)**

The report indicates that Ackles explained that it is not the job of an actor to check their own firearms. Ackles also reported that he had not seen Baldwin handle firearms in a reckless manner on the set, and that, the time of the incident, he had heard Halyna Hutchins tell Mr. Baldwin to "show her the action" just before the fatal shot fired.

**g. Ross Addiego (electrical)**

The report indicates Mr. Addiego heard that Gutierrez-Reed say that the firearm was clear, but also that she did not check it after lunch and before the rehearsal began in the church.

The report also summarizes information obtained from the cell phones of Sarah Zachry and Seth Kenney:

**h. Sarah Zachry cell phone report**

Summary of text messages related to the incident found on Sarah Zachry's phone.

**i. Seth Kenney cell phone report**

Summary of text messages related to the incident found on Seth Kenney's phone.

The report also contains statements regarding the potential origin of the live ammunition on set:

**j. Katya Luce**

Summary of statements from Katya Luce related to statements she overheard by one of the wranglers on set.

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**Document No. 7: Text messages between Sarah Zachry and Seth Kenney**

This document contains excerpts of text messages exchanged between Sarah Zachry, the film's prop master, and Seth Kenney, the ammo supplier for the production. The messages reflect that the film's armorer, Hannah Gutierrez-Reed, failed to follow proper safety protocols on the set of *Rust* and a previous film project.

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**Document No. 8: Text messages between Hannah Gutierrez-Reed and Seth Kenney**

This document contains excerpts of text messages exchanged between Hannah Gutierrez-Reed, the film's armorer, and Seth Kenney, the ammo supplier for the production. The messages reflect that Gutierrez-Reed failed to follow proper safety protocols on the set of *Rust* and was negligent in her handling and storage of firearms and ammunition. The messages also contain evidence that Ms. Gutierrez-Reed went "target shooting" with the driver of the prop truck the night before the fatal incident. The messages also contain evidence that Dave Halls, the first assistant director, did not follow safety protocols on set.

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**Document No. 9: Industry Wide Labor-Management Safety Bulletin No. 1**

This document contains guidelines for the proper handling of firearms and ammunition on film sets, including that the Prop Master and First Assistant Director are responsible "for obtaining, maintaining and handling all firearms for the production" and that "the production's designated Safety Representative [is] to assure that" the safety protocols are adhered to. The Bulletin also states that actors must be "allowed to" (but are not required to) witness the loading of firearms, and that firearms must be checked by the prop master or weapons handler "before each use."

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**Document No. 10: Crew Letter**

The letter, signed by many of the cast and crew, refutes that the set of *Rust* was inherently unsafe, or that it was an unpleasant environment. It notes that producers were supportive of the cast and crew.

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**Document No. 11: Video Clip from *Rust* Set**

This video depicts Mr. Baldwin being attentive to safety on set, and specifically shows him asking a cast member to move to another position so that he is not in the line of fire in a scene involving blanks.

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**Document No. 12: Video Clip from *Rust* Set**

This video depicts Mr. Baldwin being attentive to proper firearm handling on set, and specifically shows him asking that a blanket be placed on the ground where he will have to throw a revolver in the scene so that the firearm is not thrown in the dirt.

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**Document No. 13: Video Clip from *Rust* Set**

This video depicts Mr. Baldwin being attentive to safety on set, and specifically shows him halting a scene due to unstable footing for the camera crew.

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**Document No. 14: Halls Pröffler Transcript**

The transcript reflects that Mr. Halls was in charge of safety on the set of *Rust* and that he worked with armorer Gutierrez-Reed to ensure the safety of firearms used on set. He explains that Gutierrez-Reed loaded the firearm with dummies in between the time Halls checked it with her,

~~and that he did not check it thoroughly, though that had been his past practice. The transcript further reflects that no member of the cast or crew could have anticipated the presence of live ammunition in the firearm or anywhere on the set.~~

Respectfully submitted,



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Heather M. LeBlanc

Attorney at Law

Date Submitted: November 14, 2023

STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT

FILED  
FIRST JUDICIAL  
DISTRICT COURT  
2024 JAN 11 PM 4:33

IN THE MATTER OF THE GRAND JURY

No.: D-101-GJ-2023-00008

STATE OF NEW MEXICO,  
Plaintiff,

v.

ALEXANDER RAE BALDWIN III,  
Target.

**ORDER GRANTING IN PART AND DENYING IN PART STATE'S MOTION TO EXCLUDE TARGET'S REQUESTED ELEMENTS INSTRUCTIONS TO THE GRAND JURY**

THIS MATTER came before the Court on the State's Motion to Exclude Target's Requested Elements Instructions to the Grand Jury (the "Motion"), filed December 1, 2023. Having reviewed the briefing and being otherwise fully advised, THE COURT FINDS, CONCLUDES, AND ORDERS:

**PROCEDURAL SUMMARY**

1. On December 1, 2023, the State filed its Motion. In response, on December 15, 2023, Target Alexander Rae Baldwin III filed his Response to State's Motion to Exclude Baldwin's Requested Elements Instructions to the Grand Jury. In turn, on December 20, 2023, the State filed its Amended Reply to Target's Response to State's Motion to Exclude Baldwin's Requested Elements Instruction to the Grand Jury.
2. On January 11, 2024, the Court held a remote hearing to verbally announce its decision. Ms. Kari Morrissey and Mr. Jason Lewis, Special Prosecutors, appeared on behalf of the

State. Mr. Luke Nikas, Mr. Alex Spiro, and Ms. Heather LeBlanc, Attorneys for Target Baldwin, appeared on behalf of the Target.

3. The Court exercises its discretion to rule on the filed pleadings without considering oral argument. *See* Rule LR1-305(D) NMRA; *see also* Rule 5-302.2(C)(4) NMRA (regarding a motion on the target's proposed evidence or defenses, while the Court "may convene a hearing," the Court must "give the prosecuting attorney clear direction on how to proceed before the grand jury, making a record of the decision").

#### ANALYSIS

4. The State's Motion makes three primary arguments. First, the State asserts that "the target does not have a right at this stage in the process to determine what instructions and definitions are provided to the Grand Jury." Mot. 2. Second, the State contests the Target's requested addition to UJI 14-231 NMRA and UJI 14-133 NMRA to reflect that the "criminal negligence standard requires the prosecution to show that Mr. Baldwin had subjective knowledge of an actual risk that the firearm placed in his hand had been loaded with live ammunition." *See* State's Expedited Mot. to Preclude Target's Requested Testimony and Evidence Before the Grand Jury, Ex. 2 at p. 1; Mot. 5. Third, the State disagrees with, or at least does not address, a proximate cause instruction requested by the Target. The Court addresses these issues below.
5. Regarding the State's first argument, the Court disagrees with the State. Rule 5-302.2(C)(3) NMRA provides, "If the target submits written notice to the prosecuting attorney of exculpatory evidence . . . , or a relevant defense, the prosecuting attorney shall alert the grand jury to the existence of the evidence." Further, Rule 5-302.2(D)(1) NMRA states, "The prosecuting attorney who is assisting the grand jury shall provide the grand



jurors with instructions setting forth the elements of each offense being investigated and the definitions of any defenses raised by the evidence.” Thus, to the extent that a target notices the prosecution to a relevant defense, and a jury instruction relates to the noticed defense, the Court concludes that the target may raise objections to any proposed jury instructions that bear on the noticed defense. *Cf. State v. Trammel*, 1983-NMSC-095, ¶ 6, 100 N.M. 479 (“Furthermore, we have determined that when there is evidence to support a finding of every element of a defense, an instruction on that defense is required.” (citation omitted)); *see generally State v. Bradford*, 2013-NMCA-071, ¶ 4, 305 P.3d 975 (“[T]he remedy for a failure to advise the grand jury of the essential elements is a dismissal of the charges without prejudice.” (citation and quotation marks omitted)). Therefore, the Court denies the Motion to the extent it argues that the Target may not take issue with instructions to the grand jury that bear on relevant defenses.

6. Regarding the State’s second argument, the Court agrees with the State. “When a uniform jury instruction exists, that instruction must be used without substantive modification.” *State v. Caldwell*, 2008-NMCA-049, ¶ 24, 143 N.M. 792 (citation omitted). In addition, fundamental error exists when the instruction given “differ[s] materially from the uniform jury instruction, . . . omit[s] essential elements, . . . or [is] so confusing and incomprehensible that a court cannot be certain that the jury found the essential elements under the facts of the case.” *Id.* (internal citations and quotation marks omitted).
7. Here, the Target proposes to supplement UJI 14-231 NMRA and UJI 14-133 NMRA such that “the State [must] describe the danger or risk of which [the Target] supposedly should have known” vis-à-vis element nos. 2 and 3 of UJI 14-231 NMRA. *See* Resp. 3. Specifically, the Target contends that “the grand jurors should first be instructed that the

criminal negligence standard requires the State to prove that Baldwin had subjective knowledge of an actual risk or danger to Hutchins' life," Response 4; and, the "grand jury should next be instructed that, in order to indict Baldwin, the State must prove that Baldwin was aware of the specific risk at issue—the risk that the gun was likely loaded with live ammunition—and that he willfully disregarded this risk by following Hutchins' direction to point the gun toward the camera," Response 4-5.

8. The Target's requested instructions materially differ from UJI 14-231 NMRA and UJI 14-133 NMRA. *See Caldwell*, 2008-NMCA-049, ¶ 24. Therefore, the Court grants the State's requested exclusion of the Target's proffered criminal negligence standard instructions.
9. Regarding the State's third argument, the Court acknowledges that the State conceded in its Amended Reply that it "will present [UJI] 14-251 NMRA for the grand jury's consideration concerning proximate cause." Am. Reply 7. However, the Target requested that the State provide both UJI 14-251 NMRA and UJI 14-252 NMRA to the grand jury, Response 6-8; and, the State's Amended Reply is silent on the State's position vis-à-vis UJI 14-252 NMRA.
10. Given this silence, the Court cautions the State that it must provide UJI 14-252 NMRA if the evidence supports its provision to the grand jury. *See Use Notes to UJI 14-252 NMRA* ("For use in conjunction with UJI 14-251 NMRA when there is evidence of negligence by another person. This instruction may be modified and used as appropriate in non-homicide cases."); *State v. Trammel*, 1983-NMSC-095, ¶ 6, 100 N.M. 479 ("Furthermore, we have determined that when there is evidence to support a finding of every element of a defense, an instruction on that defense is required." (citation omitted)); *see also Herrera v. Sanchez*, 2014-NMSC-018, ¶ 28, 328 P.3d 1176 ("Our grand jury statutes require the prosecuting

attorney to act in a fair and impartial manner at all times during grand jury proceedings, including when instructing the grand jury on the applicable law. . . . By adhering to instructions modeled on the Uniform Jury Instructions promulgated by [the N.M. Supreme Court], the prosecuting attorney can avoid improper statements and fulfill the dual obligations of protecting not only the public interest but also the rights of the accused.” (internal citations omitted, quotation marks omitted, additional text omitted)).

**CONCLUSION**

IT IS THEREFORE ORDERED that the State’s Motion to Exclude Target’s Requested Elements Instructions to the Grand Jury is hereby GRANTED IN PART and DENIED IN PART.

**IT IS HEREBY ORDERED.**



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T. GLENN ELLINGTON  
DISTRICT COURT JUDGE  
DIVISION VII

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on the date of acceptance for filing a true and correct copy of the foregoing was emailed to counsel for the parties as listed below.

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**Trial Court Administrative Assistant**

STATE OF NEW MEXICO  
FIRST DISTRICT COURT  
COUNTY OF SANTA FE

FILED  
FIRST JUDICIAL  
DISTRICT COURT  
2024 FEB 27 AM 10:57

**IN THE MATTER OF SANTA FE GRAND JURY**

D-101-GJ-2023-00008

EXHIBIT RECEIPT

Type of Proceeding: Grand Jury  
Date of Proceeding: January 18, 2024 – January 19, 2024  
Counsel for Plaintiff: Kari Morrissey & Jason Lewis

I hereby certify that on the 19<sup>th</sup> day of January 2024, I filed with the District Court Clerk's Office the following exhibits:

STATE EXHIBITS:

- Grand Jury Exhibit 86: Rust Call Sheet
- Grand Jury Exhibit 1: Image of white box that contains 45 Long Colt Dummies
- Grand Jury Exhibit 2: Image of bullet rounds in styrofoam container
- Grand Jury Exhibit 3: Image of bullets lying flat; 4 bullets contain a hole on the side
- Grand Jury Exhibit 4: Image of bullets lying flat next to white box
- Grand Jury Exhibit 6: Up close Image of bullet lying flat with hole on side SFSD # 2021007949
- Grand Jury Exhibit 7: Image of a different angle of bullet shown in Exhibit 6
- Grand Jury Exhibit 8: Image of two bullets lying side by side SFSD # 2021007949
- Grand Jury Exhibit 9: Image of different angle of bullets shown in Exhibit 8
- Grand Jury Exhibit 10: Image of 6 bullets laying side by side SFSD # 2021007949
- Grand Jury Exhibit 11: Image of spent casing of bullet (from top of cart) SFSD # 2021007949
- Grand Jury Exhibit 12: Image of same spent casing show in Exhibit 11
- Grand Jury Exhibit 13: Image of gun belt with 6 bullets (from top of cart) SFSD # 2021007949
- Grand Jury Exhibit 14: Image of 4 bullets located within gun belt
- Grand Jury Exhibit 15: Image of gun belt with 5 bullets and a knife (Marker #22) SFSD # 2021007949
- Grand Jury Exhibit 16: Up close image of the 5 bullets located in gun belt
- Grand Jury Exhibit 17: Image of same 5 bullets in Exhibit 16 lying flat
- Grand Jury Exhibit 18: Image of 6 bullets lying flat SFSD # 2021007949
- Grand Jury Exhibit 19: Image of white box in Lt. Benavidez's vehicle
- Grand Jury Exhibit 20: Image of white box that contains 45 Long Colt Dummies inside Lt. Benavidez's vehicle

Exhibit Box 346

- Grand Jury Exhibit 22: Image of bullet rounds in styrofoam container inside Lt. Benavidez's vehicle
- Grand Jury Exhibit 23: Image of gun located in white box SFSO# 2021007949
- Grand Jury Exhibit 24: Up close image of the same gun in Exhibit 23
- Grand Jury Exhibit 26: Image of bullet rounds in styrofoam container next to white box
- Grand Jury Exhibit 27: Image of white box of Dummy Rounds, .45 LC
- Grand Jury Exhibit 28: Image of 17 bullet lying flat side by side
- Grand Jury Exhibit 29: Video of Alec Baldwin performing scene in church
- Grand Jury Exhibit 30: Video of Alec Baldwin and younger actor performing outside scene
- Grand Jury Exhibit 31: 3D rendering of how gun functions
- Grand Jury Exhibit 33: Image of 3 silver bullets lying side by side
- Grand Jury Exhibit 34: Image of pieces of the evidence gun
- Grand Jury Exhibit 35: Image of side view of the piece of the evidence gun
- Grand Jury Exhibit 36: Side view image of the physical match of the broken sear of the gun
- Grand Jury Exhibit 37: Image showing the damage that was inflicted on the evidence gun by the FBI with mallet
- Grand Jury Exhibit 38: Image of 4 hammers side by side
- Grand Jury Exhibit 39: Video demonstration of gun similar to the evidence gun
- Grand Jury Exhibit 40: Video of demonstration of cocking the same gun in Exhibit 39
- Grand Jury Exhibit 41: Video demonstration of gun in Exhibit 39
- Grand Jury Exhibit 42: Video of demonstration of de-cocking the same gun in Exhibit 39
- Grand Jury Exhibit 43: Video of Alec Baldwin drawing gun in church scene
- Grand Jury Exhibit 44: Video of evidence gun located at SFSO
- Grand Jury Exhibit 45: Video of evidence gun located at SFSO
- Grand Jury Exhibit 47: Video of Alec Baldwin performing scene outside, firing gun
- Grand Jury Exhibit 48: Video of Alec Baldwin performing scene outside, firing gun
- Grand Jury Exhibit 49: Screen Actors Guild Safety Bulletins
- Grand Jury Exhibit 50: Industry Wide Labor-Management Safety Committee Safety Bulletin
- Grand Jury Exhibit 85: Image of white box that contains 45 Long Colt Dummies

  
 COURT CLERK

  
 CERTIFIED COURT MONITOR