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STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO,

PLAINTIFF,

VS.

ALEXANDER RAE BALDWIN III,

DEFENDANT.

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

REPLY IN FURTHER SUPPORT OF DEFENDANT ALEC BALDWIN'S MOTION TO DISMISS THE INDICTMENT

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"*When the debate is lost, slander becomes the tool of the loser.*"

- ANONYMOUS

INTRODUCTION

Alec Baldwin's motion to dismiss raises serious legal issues, makes serious legal arguments that are supported by binding legal precedents, and carries serious legal consequences—not only for Alec Baldwin but for all New Mexico citizens. The motion therefore deserved a serious response addressing Baldwin's arguments about the State's misconduct in the grand jury proceeding. Instead, the State responded with a 32-page jeremiad against Baldwin and his lawyers that does not cite a *single* legal decision, does not distinguish Baldwin's authorities, and spends no more than five pages addressing the core legal issues raised in Baldwin's motion. This fact bears repeating: the State does not cite a single legal decision in its *entire* brief. Literally. A legal brief without any legal authority is not worth the paper it's written on. Unfortunately, that is no surprise: for Special Prosecutor Kari Morrissey, prosecuting Alec Baldwin has never been about the law. It is, in her words, about using the justice system to "humble" an "arrogant" celebrity that she dislikes. The State's "opposition" should be rejected, and Baldwin's motion should be granted.

The State claims, in a brief devoid of legal authority, that Baldwin's motion is just an attempt to "ensure that the case is not heard on its merits" and to "discredit the prosecution . . . so that a conviction becomes unlikely for reasons that have nothing to do with Mr. Baldwin's criminal culpability." The State has it backwards: the State's own misconduct—two-years' worth, and counting—has discredited the prosecution. And the State's entire approach to the grand jury proceeding was designed to prevent the grand jury from hearing the case on the merits: the State elicited false testimony from its own experts to secure Baldwin's indictment, only to elicit the *opposite* testimony from the same witnesses a few weeks later at the trial of Hannah Gutierrez-Reed; made numerous statements in Gutierrez-Reed's trial that contradict the premise of the

State's presentation to the Baldwin grand jury; violated the Court's order on how to conduct a fair and impartial grand jury proceeding, including by refusing to contact witnesses that had information favorable to Baldwin's defense and withholding critical information from the grand jury; read inaccurate jury instructions to the grand jury; and diverted its own witnesses' testimony and the grand jury away from the exculpatory evidence. The list goes on and on. And in the sludge of defamation that permeates the State's brief, Special Prosecutor Morrissey now makes the stunning admission that her decision to rescind Baldwin's plea offer and pursue an indictment had *nothing* to do with the facts of the case. Rather, it was based on her mistaken assumption that Baldwin commissioned a documentary film about *Rust*.

The State violated the U.S. and New Mexico constitutions, violated the rules of ethics and the most basic prosecutorial norms, violated the laws that apply to grand jury proceedings in New Mexico, violated the Court's orders, misled grand jurors and the grand jury judge, and elicited false testimony from its witnesses. For these reasons, the indictment should be dismissed.

ARGUMENT

I. THE STATE FAILS TO ADDRESS THE MAJORITY OF THE ARGUMENTS RAISED IN BALDWIN'S MOTION

Baldwin moved to dismiss the indictment based on several grounds, including the State's intentional misleading of grand jurors, which prevented them from considering evidence they were legally required to consider, and its manipulation of the grand jury process in violation of the Court's orders and New Mexico law. The relief Baldwin seeks is firmly grounded in New Mexico law and supported by binding judicial precedent. *See, e.g.*, NMSA 1978 § 31-6-7(D) (requiring prosecuting attorneys to act "in a fair and impartial manner at all times during grand jury proceedings"); NMSA 1978 § 31-6-11(B) ("It is the duty of the grand jury to weigh all the evidence submitted to it, and when it has reason to believe that other lawful, competent and relevant

evidence is available that would disprove or reduce a charge or accusation or that would make an indictment unjustified, then it shall order the evidence produced."); *Herrera v. Sanchez*, 2014-NMSC-018, ¶ 1, 328 P.3d 1176, 1178 (dismissing indictment where "the prosecutor prevented the grand jury from inquiring into the facts demonstrating probable cause and failed to act in a fair and impartial manner when instructing the grand jury"); *id.* 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."); *State v. Lampman*, 1980-NMCA-166, ¶ 3, 95 N.M. 279, 280, 634 P.2d 1244 (dismissing indictment where prosecutor failed to elicit exculpatory testimony that contradicted testimony from prosecution's law enforcement witness); *see also* Baldwin's Motion to Dismiss ("Mot.").

The State does not devote a single paragraph of its 32-page response ("Br.") to addressing any of the cases or principles cited above and throughout Baldwin's motion. It does not attempt to distinguish those cases by their facts or explain why it shouldn't be bound by the holdings of those cases. Nor does the State offer any authorities to support its conduct. Instead, the State's response to Baldwin's motion consists almost entirely of irrelevant, false, unsupported, and highly prejudicial statements that serve no legitimate purpose. The State begins its response with a purported "recitation of the factual and procedural history of the case as we know it." Br. 2. What follows is a 22-page missive attacking Baldwin and his attorneys, not a single sentence of which is relevant to the legal issues raised on this motion and much of which is false. *See, e.g.*, Br. 1-2 (counting the number of attorneys representing Baldwin, their cities of origin, and the nature of the tasks they have been assigned); *id.* at 4 (stating that Baldwin is "a man who has absolutely no control of his emotions"); *id.* at 6 (describing a call between Baldwin and his family, which took

place before he was interviewed at the sheriff's office and before he had been informed of Hutchins' death); *id.* at 6-10 (inaccurately describing purported discrepancies between Baldwin's various accounts of the incident); *id.* at 12 & State's Exhibit D (purporting to describe Baldwin's "history of attacks and deflection" in unrelated matters dating back to 2007). These statements (and several others like them throughout the State's response) have nothing to do with the issues raised in Baldwin's motion and are clearly intended to prejudice potential jurors, tarnish Baldwin before Your Honor, and deflect from the fact that the State cannot cite a single legal authority to support its arguments.

The State's failure to distinguish Baldwin's authorities or offer legal authority of its own constitutes a waiver. *Delta Automatic Sys., Inc. v. Bingham*, 1999-NMCA-029, ¶ 31, 126 N.M. 717, 974 P.2d 1174, 1181 (failure to respond to an argument in an opposition brief "constitutes a concession on the matter"); *Anderson v. Jenkins Const. Co.*, 1971-NMCA-119, ¶ 12, 83 N.M. 47, 49, 487 P.2d 1352, 1354 (where party "did not controvert or dispute" statements in opponent's brief, "nor even mention the issue," the court may "take the statements as true."). At a minimum, the State has effectively conceded that it has no legitimate legal arguments to contest Baldwin's motion. *State v. Vaughn*, 2005-NMCA-076, ¶ 42, 137 N.M. 674, 686–87, 114 P.3d 354, 366–67 ("Where a party cites no authority to support an argument, we may assume no such authority exists."); *State v. Tafoya*, 2010-NMCA-010, ¶ 53, 147 N.M. 602, 618, 227 P.3d 92, 108 ("Defendant cites no legal authority in support of this argument in his brief in chief, and we therefore decline to address this argument"). As explained below, when the State *does* attempt to address a small handful of Baldwin's arguments, it does so by mischaracterizing Baldwin's position and then responding with a mix of irrelevant and inaccurate assertions that contain no legal support. Baldwin's motion to dismiss should be granted for these reasons alone.

II. THE STATE CONCEDES THAT IT VIOLATED THE COURT'S ORDERS AND NEW MEXICO LAW

A. The State Ensured That The Grand Jury Would Have No Access To Baldwin's Exculpatory Witnesses or Exculpatory Evidence

Baldwin's grand jury alert letter identified more than a half-dozen witnesses who had information favorable to his defense, as well as numerous exculpatory documents. Baldwin also made a separate submission to the grand jury judge that listed numerous questions that should be asked of witnesses to elicit exculpatory evidence. The State refused to present nearly any of the exculpatory documents, objected to presenting testimony from all but one of the witnesses, and refused to pose the questions that Baldwin listed.[1] Following a hearing on this dispute, the grand jury Court ordered the State to alert grand jurors to the existence of all of Baldwin's witnesses and their potential testimony. Ex. 11 ¶ 11(a)(i).[2] The Court then ordered the State to make these witnesses "*readily available* . . . to avoid scheduling disruptions if the grand jury wishes to hear" from them. *Id.* ¶ 16 (emphasis added). The Court's order was issued in accordance with binding New Mexico law. *See Herrera*, 2014-NMSC-018 (following a determination that the target has offered "lawful, competent, and relevant" evidence that "disproves or reduces a charge or accusation" or "makes an indictment unjustified," the grand jury judge "shall issue an order providing the prosecutor with 'clear direction on how to proceed before the grand jury.'") (citing *Jones v. Murdoch*, 2009-NMSC-002, ¶¶ 36, 39).

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[1] Although one of the witnesses on Baldwin's list (Detective Alexandria Hancock) was questioned in front of the grand jury, the State deliberately failed to ask questions that it knew would elicit exculpatory information from her. *See infra* at 10-11; *see also* Ex. 6 at 12-17; Ex. 11 ¶¶ 12-13 (while "the Court declines to prescribe the exact manner of questioning by the State for any target-alerted witness, [it] cautions the State" that it may not "intentionally question[] 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").

[2] Exhibits 1 through 32 refer to the same exhibits that were attached to Baldwin's motion. Exhibits 33 through 35 refer to additional exhibits submitted with this reply.

As explained in Baldwin's motion, the State violated the Court's order. The State did not make the witnesses readily available. The State also violated New Mexico law, because it failed to present any of the exculpatory evidence from those witnesses or the documents Baldwin identified. *See, e.g.*, Ex. 11 ¶¶ 5, 6 (citing *Herrera*, 2014-NMSC-018; *Cruz*, 1983-NMSC-045, ¶ 7) (stating that the State was required to "facilitate the grand jury's inquiry into any lawful, relevant, and competent evidence not initially presented by the State" that would "disprove or reduce" the charges against Baldwin or "make an indictment unjustified"); *Jones*, 2009-NMSC-002, ¶ 2 ("[W]ithholding of potentially exculpatory evidence strikes at the very heart of the grand jury's assessment of probable cause to indict."); NMSA 1978, § 31-6-11(B) (stating grand jury's obligation to "order" exculpatory evidence to be "produced").

The State responds that it "followed Judge Ellington's . . . Order to the letter" because it presented Baldwin's alert letter "verbally and in writing to every grand juror in the room." Br. 31. But the State does not deny that it refused to contact Baldwin's witnesses before the grand jury proceeding. *See* Ex. 11 ¶ 16; Mot. 27-28.[3] Nor does it dispute that it failed to present the exculpatory evidence identified in Baldwin's alert letter. Instead, Morrissey essentially claims that she was free to ignore the Court's order because "[t]he grand jury did not elect to hear from Mr. Baldwin's witnesses and therefore no scheduling disruptions were encountered." Br. 31. At the same time, the State seeks to reassure the Court that "if [the grand jury] had elected to hear from [Baldwin's witnesses], they would have been presented in person, virtually after seeking and

[3] Baldwin identified his witnesses to the State on November 14, 2023 (*see* Ex. 6), and the grand jury's term did not begin until January 18, 2024. Although the State was not officially ordered to make those witnesses available until a week before the grand jury term began (*see* Ex. 11 ¶ 16), it could have reached out to them sooner, and even if it chose not to, a week was more than enough time to do so. Indeed, when the State requested additional time to "make travel plans and accommodations" for Baldwin's witnesses in November 2023, before the grand jury proceedings were postponed, it told the Court that six days would suffice. *See* Ex. 3 ¶¶ 4-5.

obtaining approval from the Court or via video recorded statements they previously provided to law enforcement and pretrial interviews." Br. 31.

Everything about that response is appalling.

First, it is incorrect that the availability of the witnesses did not matter. The State's claim that the grand jury "had no interest in . . . requesting the attendance of [Baldwin's] witnesses," even after it was alerted to their existence, is false. As Baldwin's motion demonstrates, the grand jury expressed significant interest in Baldwin's witnesses—especially Halls and Zachry—on numerous occasions. *See* Mot. 29-35. Yet each time a grand juror began making inquiries about Halls or Zachry (or inquiries that only Halls or Zachry were qualified to answer), the State would firmly escort them in a different direction, redirect the inquiry to a different witness who was unqualified to answer, or rephrase the inquiry to match the evidence the State wanted the grand jury to hear and exclude the exculpatory evidence it didn't. *Id.*; *see also Herrera*, 2014-NMSC-018, ¶ 24 ("By preventing Petitioner from answering a direct, relevant question from a grand juror, the prosecuting attorney interfered with the grand jury's statutory duty to make an independent inquiry into the evidence supporting a determination of probable cause."); *Lampman*, 1980-NMCA-166, ¶ 3 (dismissing indictment where prosecutor failed to elicit exculpatory testimony that contradicted testimony from prosecution's law enforcement witness).

The State's approach violated both the Court's order and the State's separate obligation to facilitate the grand jury's understanding of its role and the evidence and witnesses that were available to it. *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.") (emphasis added). The State cannot hide the ball and watch as grand jurors meander through the dark in hopes that they won't stumble upon

a witness the State was ordered to make available—especially when the grand jury tapes make clear that grand jurors were clueless as to the significance of Baldwin's alert letter. Mot. 47-49; Ex. 19 at 15:16-16:25.

Instead of taking responsibility for its role as "*an aide*" to the grand jury and its obligation to "*facilitate*" the grand jury's inquiries into exculpatory evidence (*Jones*, 2009-NMSC-002, ¶ 12; *Herrera*, 2014-NMSC-018, ¶ 25), the State also seeks to divert blame to the grand jury judge for failing to keep grand jurors informed—citing the Court's obligation to notify grand jurors of their ability to subpoena witnesses. Br. 23; *see also* State's Ex. F at 2 (noting that grand jury "has the power to order the attendance of witnesses" and to "subpoena witnesses"). But that is irrelevant. There was no need for the grand jury to issue subpoenas to hear from Baldwin's witnesses, because the State was ordered to "secure" their availability *in advance*. Ex. 11 at 7 & ¶ 16.

Second, even if it were true that the grand jurors "had no interest" in this exculpatory evidence (it's not), that would not justify the State's violation of the Court's orders or New Mexico law requiring that the exculpatory evidence be presented. This would also constitute an unjustified derogation of the grand jury's duty to order that exculpatory information be produced for its consideration. NMSA 1978, § 31-6-11(B) ("It is the duty of the grand jury to weigh all the evidence submitted to it, and when it has reason to believe that other lawful, competent and relevant evidence is available that would disprove or reduce a charge or accusation or that would make an indictment unjustified, then it *shall* order the evidence produced") (emphasis added). Thus, according to Morrissey's own assessment of the situation, she either stood idly by while the grand jury violated its duty to order that exculpatory information be produced (*see id.*), or she crafted the grand jury process such that she would refuse to present the exculpatory evidence and would ensure that the grand jury did not understand it had the independent right and *obligation* to

order the evidence produced. *See, e.g.*, Mot. 28-29. Either way, the indictment was procured in violation of New Mexico law.

Finally, the State's halfhearted claim that Baldwin's witnesses "would have been presented" cannot be taken seriously. The State concedes that it could not have secured the physical presence of the witnesses, since it references virtual testimony and prerecorded statements.[4] Nothing in Judge Ellington's order permitted the State to present Baldwin's witnesses virtually. Nor are unsworn "video recorded statements . . . and pretrial interviews" a substitute for grand jury testimony or the additional testimony described in Baldwin's briefing that the Court said should be elicited. Further, no video recorded statements or pretrial interviews even *exist* for several of Baldwin's witnesses—including one of the State's own investigators who was so appalled by the incompetence of the State's investigation that he said it was "reprehensible and unprofessional to a degree I still have no words for" and "could not be remedied." *See* Ex. 32 at Ex. A; *see also* Mot. 13.

In short, the State was required to present exculpatory evidence to the grand jury, but it failed to do so. *Herrera*, 2014-NMSC-018, ¶ 25. And the Court ordered the State to make Baldwin's witnesses "readily available" to testify, but the State ignored the order. Ex. 11 ¶ 16. As a result, the grand jurors were denied the opportunity to consider substantial exculpatory evidence that could easily have led to a decision not to indict Baldwin. The State's conduct, as described above and in further detail in Baldwin's motion, constitutes bad faith that subjects the indictment to judicial review and requires dismissal. *See Herrera*, 2014-NMSC-018, ¶ 13 (citing NMSA

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[4] On April 17, 2024, Baldwin asked Morrissey to disclose all "[c]ommunications from October 1, 2023 to January 31, 2024 between any member of the prosecution team and any witness called to testify before the grand jury in connection with Case No. D-101-GJ 2023-00008." Ex. 33. Unsurprisingly, Morrissey responded that "[t]he State is not in possession of any responsive documents." Ex. 34.

1978, § 31-6-11(A)); *see also State v. Deignan*, 2016-NMCA-065, ¶ 6 (defining bad faith as "[d]ishonesty of belief, purpose, or motive").

B. The State Intentionally Questioned Its Witnesses To Elicit False Testimony And Avoid The Disclosure Of Exculpatory Information

In addition to the State's unlawful refusal to present exculpatory evidence to the grand jury, the Special Prosecutors also questioned their own witnesses in a manner that violated the Court's orders and New Mexico law. The State was required to present witnesses "in a fair and impartial manner at all times during [the] grand jury proceedings." NMSA 1978 § 31-6-7(D). Among other requirements, the State was prohibited from "intentionally question[ing] 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." Ex. 11 ¶ 12 (quoting *Jones*, 2009-NMSC-002, ¶ 38); *see also Herrera*, 2014-NMSC-018, ¶ 1 (dismissing indictment where "the prosecutor prevented the grand jury from inquiring into the facts demonstrating probable cause and failed to act in a fair and impartial manner when instructing the grand jury"); *Lampman*, 1980-NMCA-166, ¶ 3 (dismissing indictment where prosecutor failed to elicit exculpatory testimony that contradicted testimony from prosecution's law enforcement witness). The State intentionally violated that bedrock rule, which ensures the grand jury's independence from the prosecutor. *See Jones*, 2009-NMSC-002, ¶ 38 ("[T]he grand jury is not meant to be the private tool of a prosecutor.") (quoting *United States v. Fisher*, 455 F.2d 1101, 1105 (2d Cir. 1972)).

For example, the State's questioning of Detective Alexandria Hancock steered clear of the exculpatory information she possessed. Hancock's investigation into the accident uncovered a flood of information favorable to Baldwin's defense, but Morrissey elicited virtually none of it. She didn't elicit, for example, that Hancock learned it was the responsibility of Gutierrez-Reed and Halls to ensure the gun was safe to handle, and that Halls admittedly failed to properly inspect

the gun before handing it to Baldwin. *See* Ex. 23 (Hancock search warrant affidavit) at 5-6. Instead, Hancock told grand jurors that Gutierrez-Reed told her she "opened up the cylinder of that revolver, showed Dave Halls what was inside that cylinder, spun it, and then gave it to him," omitting Halls' highly exculpatory admission that "when Hannah showed him the firearm before continuing rehearsal, he could only remember seeing three rounds," and that "he should have checked all of them, but didn't, and couldn't recall if she spun the drum." Ex. 19 at 41:1-4; Ex. 23 at 5-6. Nor did Morrissey elicit the fact that Hancock was told by another witness that Baldwin "had been very careful" in handling the gun on set. Ex. 23 at 7.

The State's questioning of Bryan Carpenter, one of its paid "expert" witnesses, was even more egregious. Not only did Carpenter pad his credentials to expand the scope of his purported expertise (Mot. 24-25), but the State elicited his false testimony that it was *Baldwin's* responsibility to ensure the safety of the firearm. *See, e.g.*, Ex. 19 at 169:23-170:6, 206:13-207:17. Morrissey knew this was incorrect and yet elicited the statement from Carpenter anyway. Indeed, just a few weeks after the grand jury proceeding, at the trial of Hannah Gutierrez-Reed, Morrissey elicited the exact *opposite* testimony from Carpenter. At Gutierrez-Reed's trial, Carpenter testified that it was the responsibility of Gutierrez-Reed and Halls—*not the actor*—to check and clear the gun, that it is "rare" for actors to do that, and that "as long as you've done your safety check with at least two other sources and moved through that process then you've done what you should've done." HGR Trial, Day 6 (YouTube) at 16:17-17:43, 29:42-30:22, 2:36:32-43;[5] *see also* Mot. 32-33. The State's improper jury instruction, which mirrors Carpenter's untruthful testimony, magnified the harm of this false testimony. *Infra* at 15-19. The State does not address these issues

[5] The video from Day 6 of the trial is publicly accessible on YouTube at https://www.youtube.com/watch?v=mwtR-L6fHcI.

anywhere in its 32-page response. Of course, there isn't much one can say when the theory underpinning the case against Baldwin contradicts the theory underpinning the jury verdict the State just obtained against Gutierrez-Reed.

The grand jury judge specifically warned the State that if its "questioning runs afoul of the standards" described above, it would entitle Baldwin to post-indictment review of the grand jury proceedings "to evaluate the fairness of the prosecutor's actions." Ex. 11 ¶¶ 12-13 (citing *Jones*, 2009-NMSC-002, ¶ 38). The State disregarded the Court's order, disregarded New Mexico law, presented testimony it knew was false, presented testimony and evidence to the grand jury that contradicted the testimony it presented before Your Honor in the Gutierrez-Reed trial, and withheld exculpatory evidence from the grand jury.

The indictment should also be dismissed on these independent grounds.

C. The State's Attempts To Disclaim Responsibility For Its Failures Are Unavailing

On the few occasions where the State does purport to address Baldwin's arguments, it does so by responding to misconstrued assertions that Baldwin never made. For example, the State claims that Baldwin's primary complaint about the State's grand jury presentation is that it was too short. Br. 24-25. Not even close. As Baldwin's motion made clear, the State's presentation violated the Court's orders and failed to comply with New Mexico law in numerous ways that have nothing to do with the length of the proceeding. Baldwin's point about the schedule for the grand jury proceeding is that Morrissey proceeded with the presentation even though she knew it would be impossible to present the significant exculpatory evidence that existed in the short time remaining in the grand jury's term. The State responds to this observation by claiming that its grand jury presentation was "one of the longest in New Mexico history." Br. 25. It is impossible to know whether this is true. But it doesn't matter, because it's irrelevant: the point is that the

State charged headlong into the grand jury proceeding knowing that it would not be able to present the required exculpatory evidence—yet another fact demonstrating the State's bad faith. *See* Mot. 19-20.

The State's brag—the claim to have conducted one of the longest grand jury presentations in New Mexico history—actually shows how disturbing this prosecution has become. The State's admission that it supposedly spent "an unprecedented amount of time" presenting Baldwin's "fourth-degree felony" case to the grand jury—even though it skipped over all the exculpatory evidence—shows only one thing: the State has invested an unprecedented level of commitment toward prosecuting Alec Baldwin. Br. 25. If capital murder cases are "routinely" presented to a grand jury in under three hours, as the State claims, yet it took the State a day and a half to present its case against Baldwin, the only plausible inference to be drawn is that the State's agenda against Baldwin is wildly out of control. Br. 25.[6]

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[6] According to public records, a substantial percentage of the First Judicial District Attorney's total spending in 2023 went toward prosecutions related to the *Rust* incident—a percentage that is likely to increase in 2024 as Special Prosecutors continue to throw taxpayers' dollars at Baldwin's prosecution. *See, e.g.*, T.J. Wilham, "'Rust' prosecution money went to convicted felon," KOAT ACTION 7 NEWS (May 17, 2023), https://www.koat.com/article/alec-baldwin-movie-shooting-rust-prosecution-funds/43918175; Phaedra Haywood, "Prosecution costs climbing as 'Rust' cases crumble," SANTA FE NEW MEXICAN (June 4, 2023), https://www.santafenewmexican.com/news/local_news/prosecution-costs-climbing-as-rust-cases-crumble/article_32484b2e-fb12-11ed-9267-ef86e3409333.html. Meanwhile, the State faces a budgetary crisis that is severely impacting the criminal justice system and the rights of New Mexico citizens. *See* Jeff Proctor, "NM's skeletal criminal justice system needs a cash infusion," NEW MEXICO IN DEPTH (Jan. 13, 2018), https://nmindepth.com/2018/nms-skeletal-criminal-justice-system-needs-a-cash-infusion/; Austin Fisher, "N.M. public defenders beg lawmakers for funding as workloads grow heavier," SOURCE NM (Nov. 17, 2022) https://sourcenm.com/2022/11/17/n-m-public-defenders-beg-lawmakers-for-more-funding-as-workloads-grow-heavier/; Austin Fisher, "N.M. spends tens of millions more every year on prosecutors than public defenders," SOURCE NM (Nov. 20, 2023) https://sourcenm.com/2023/11/20/n-m-spends-tens-of-millions-more-every-year-on-prosecutors-than-public-defenders/.

Similarly, the State claims that Baldwin "demonstrated his ignorance of the rules of evidence as they pertain to grand jury proceedings" by "criticiz[ing] the State for presenting its investigator, Connor Rice to testify as to hearsay related to the investigation and the incident." Br. 27-28. But Baldwin never argued that hearsay was inadmissible in a grand jury proceeding; the word "hearsay" appears nowhere in Baldwin's opening brief. What Baldwin argued is that it was inappropriate to present Rice, a paid private investigator, to testify about the first-hand knowledge of witnesses the State was obligated to (but didn't) make available. And that this was especially problematic because Rice both failed to present the exculpatory evidence that should have been elicited from those witnesses and demonstrated extremely limited knowledge of the relevant facts. *See, e.g.*, Mot. 34.

The State's misdirection appears in other places, as well. For example, Baldwin's motion observed that the State's improper attempt to shorten his time to submit a grand jury alert letter further evidenced the State's bad faith and intent to manipulate the grand jury process. Mot. 8-11. In response, the State simply repeats and "incorporates" the arguments made in its original motion to the grand jury judge. Br. 21; *see also* Ex. 3. Not only did the grand jury judge *reject* those arguments at the time (*see* Ex. 5), but it is now clear that even *those* arguments were made in bad faith. Specifically, the State represented to the Court that it needed to shorten Baldwin's time to submit an alert letter so that it could have additional time (six days) to make "travel plans and accommodations" for "any additional witnesses" it was ordered to make available to the grand jury. Ex. 3 ¶¶ 4-5. Yet when the State was ultimately given a full week to make travel plans and accommodations for the additional witnesses the Court ordered the State to make available, it

didn't bother to contact *any* of them. *See* Ex. 11 ¶ 16 (January 11, 2024 order instructing the State to make Baldwin's witnesses "readily available" by January 18).[7]

The State dodged all of Baldwin's legal authorities and nearly all of his substantive arguments. And on the rare occasion when the State did engage on the issues, it set up and struck down strawmen arguments that bore little or no resemblance to Baldwin's actual position. The Court should therefore reject each of the State's responses to Baldwin's motion to dismiss.

III. THE STATE ISSUED AN IMPROPER JURY INSTRUCTION

As demonstrated in Baldwin's motion, the import of the State's jury instruction was that probable cause existed to indict Baldwin for involuntary manslaughter if he "discharged a firearm during the production of the movie without first verifying the firearm contained no live ammunition and while the firearm was pointed in the direction of another," and if he "should have known of the danger involved from [those] actions." Ex. 19 at 3:21-24; Ex. 20 at 97:7-10. That instruction violates New Mexico law. The State effectively instructed the grand jury that Baldwin had a duty to check the firearm for live ammunition and to refrain from pointing it at anyone. But those are precisely the questions that the grand jury was supposed to decide for itself based on the evidence—not based on immutable instructions of law. Once grand jurors were told that Baldwin had such a legal duty and didn't obey it, what was left for the grand jury to decide?

The State argues that it "did not deviate from UJI 14-231, [it] simply filled in the language that was required to be filled in and did so in accordance with the instruction and the facts presented to the grand jury." Br. 29-30. To justify the way it "filled in the language" on the UJI form, the

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[7] Another argument the State made in that motion before the grand jury judge—that it was "concerned about wasting public funds on travel arrangements for witnesses only to have the grand jury proceeding postponed after a hearing on the defense request for exculpatory evidence at the eleventh hour" (Ex. 3 ¶ 9)—also strains credulity, considering that, based on public records, the State appears to have incurred millions of dollars of charges on the *Rust* prosecution to date.

State argues that "[t]he reason Baldwin's behavior was a violation of the law is because he pointed a gun at a person, cocked it and pulled trigger having no personal knowledge what type of ammunition was in the gun." Br. 30. It further argues that Baldwin "had a duty to confirm that only inert ammunition had been placed in the gun before pointing it at person, cocking it and pulling the trigger as a gun handler in the State of New Mexico subject to New Mexico laws and his failure to do so resulted in negligent homicide as long as the other elements of the crime are satisfied." *Id.* Those are fictious statements of law that the prosecutors fabricated out of whole cloth—without citing a single legal authority to support them.

Instead of citing law to support its legal position, the State claims that the legal instruction was appropriate because of "the facts presented to the grand jury." Br. 30. To begin with, this is a non-sequitur. The State cannot create a legal standard using facts. The legal standard is what it is, and the facts then tell us how the legal standard applies in the circumstances. *See State v. Neely*, 1991-NMSC-087, ¶ 17, 112 N.M. 702, 707, 819 P.2d 249, 254 ("[T]he jury is provided with standards and guidance to properly draw the appropriate legal conclusions from the facts presented to it"); *State v. Padilla*, 1977-NMCA-055, ¶ 13, 90 N.M. 481, 484, 565 P.2d 352, 355 (requiring jury instructions to be "free from hypothesized facts"); *State v. Stalter*, 2023-NMCA-054, ¶ 20, 534 P.3d 989, 1000 ("Under well-established New Mexico law, an improper comment on the evidence is one that . . . argues or hypothesizes on factual issues within the jury's purview to decide"). Moreover, the State further prejudiced the grand jury with this approach because the grand jury hadn't been presented with any facts when the State first read the instruction, which primed the grand jury to view the evidence through the State's unsupported legal theory. *See* Ex. 19 at 2:3-4:4.

The State's effort to avoid the law by wrapping itself in "the facts presented to the grand jury" also collapses for two additional reasons: the State not only failed to present numerous exculpatory facts to the grand jury, in violation of New Mexico law (as explained in the Motion and above), but the State's grand jury instruction also contradicts its own statements and expert's testimony at Gutierrez-Reed's trial. For example, the following are just some of Morrissey's statements at the trial:

- "If you think the intervening event is that Baldwin manipulated the gun, that's the whole purpose of the prop. He's going to manipulate it. You saw a bunch of other actors do it." HGR Trial, Day 10 (YouTube) at 2:49:02-2:49:18.[8]

- "You [*i.e.*, Gutierrez-Reed] don't escape accountability when you load a live round into a prop gun, tell the crew that it has dummy rounds in it, hand it off to an actor, and leave the room because [Baldwin] manipulated it. That was the whole point to him having it. Of course he was going to manipulate it. It's foreseeable." *Id.* at 1:11:34-1:12:02.

- "Dummies look exactly like real bullets. As you can tell from kind of that main image there, although this evidence dummy round has some writing on it, you wouldn't be able to distinguish that from a live bullet if you were just looking at it with your eyes. And because these dummy rounds are designed to look exactly like live ammunition, every round has to be thoroughly checked before it is put inside of one of these firearms." HGR Trial, Day 1 (YouTube) at 1:17:26-1:18:01.[9]

- "The OSHA finding that Rust Productions failed to properly supervise her is surprisingly incorrect because the armorer has no supervisor when it comes to weapons and gun safety on the movie set. Mr. Halls is just there to be a second pair of eyes." HGR Trial, Day 10 (YouTube) at 57:15-57:41.

- "Keep in mind, the armorer has autonomy. So Gabrielle Pickle is not Hannah Gutierrez's boss when it comes to firearm safety. Ms. Gutierrez gets to do what she wants." *Id.* at 59:04-59:19.

- "[Gutierrez-Reed] is the autonomous decision-maker with regard to gun safety." *Id.* at 59:51-59:55

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[8] The video from Day 10 of the trial is publicly accessible on YouTube at https://www.youtube.com/watch?v=Sj2SJ-DCEck&t=3598s.

[9] The video from Day 1 of the trial is publicly accessible on YouTube at https://www.youtube.com/watch?v=LTcWvTKSs5k.

Each of these statements—made by Kari Morrissey to this Court, as an officer of the Court—contradicts the premise of the State's jury instruction to the Baldwin grand jury and the theory of its case before the grand jury. It also highlights the extensive exculpatory evidence the State knew about but refused to present to the grand jury.

The State's expert, Carpenter, provides yet another example of evidence presented by the State at the Gutierrez-Reed trial that contradicted the State's presentation to the Baldwin grand jury. As explained in Baldwin's motion, Carpenter told the grand jury that Baldwin was responsible for gun safety and checking the weapon. Mot. 32-33. Yet he told the jury in Gutierrez-Reed's trial that Gutierrez-Reed and Halls—*not* the actor—have the obligation to check and clear the gun. HGR Trial, Day 6 (YouTube) at 29:42-30:22 (Carpenter testifying at trial that actors can check the gun if they want to, "however, those safety checks are more for a warm and fuzzy feeling for them," and "that's rare"), 16:17-17:43 (Carpenter: "You clear that weapon with at least two representatives on set. Anybody that wants to see it, it gets cleared with them if they request, but generally it's going to be your first AD and possibly the DP as well . . . ." Morrissey: "Are you testifying that you show the individual dummy rounds to the AD and whoever else wants to see?" Carpenter: "Absolutely." Morrissey: "And the actor?" Carpenter: "The actor may or may not be on set yet, but when they get there, this is done again. So, with the actor. And sometimes you'll have an actor that says, 'nah, I don't want to see it' and they'll just brush it off. But as long as you've done your safety check with at least two other sources and moved through that process then you've done what you should've done."), 2:36:32-2:36:43 (Morrissey: "And whose responsibility is it to ferret out any possible live rounds on a movie set?" Carpenter: "It's the armorer's

responsibility.").[10] Carpenter also acknowledged that the actor has *no* obligation to even *watch* the gun be cleared. *Id.* The State's reply does not dispute any of these statements or testimony, or justify its improper presentation of contradictory facts to the grand jury.

The State's jury instruction violated the Court's order, New Mexico law, the exculpatory information the State improperly refused to present, and the State's own factual representations at the Gutierrez-Reed trial. The indictment should therefore be dismissed on this separate ground. *See, e.g.*, *Herrera*, 2014-NMSC-018, ¶ 1 (dismissing indictment where prosecutor "failed to act in a fair and impartial manner when instructing the grand jury"); *see also id.* ¶ 28; *State v. Ulibarri*, 1999-NMCA-142, ¶ 17, 128 N.M. 546, 552, 994 P.2d 1164, 1170 (the target's right to a fair and lawful process "should be 'rigorously protected.'") (citing *Baird v. State*, 1977-NMSC-067, ¶ 9, 568 P.2d 193).

IV. THE STATE ADMITS ITS BAD-FAITH MOTIVES FOR PURSUING AN INDICTMENT

Baldwin's motion sets forth several examples of the State's bad-faith conduct before and during the grand jury proceedings (*e.g.*, Mot. 14-18, 36-39, 50-51), including Morrissey's statements to the media that the purpose of the State's prosecution is to "humble" Baldwin because she finds him "arrogant" and wants to give him a "teachable moment" (*id.* at 16). Baldwin also details Morrissey's sanctionable conduct in connection with her violation of Judge Ellington's confidentiality order. *See* Ex. 1. In response to Baldwin's motion, the State does not deny making these statements or disclaim the improper motives they reflect. Instead, it corroborates them.

The State's improper motives for prosecuting Baldwin are reflected in Special Prosecutor Morrissey's own words explaining her reasons for rescinding Baldwin's plea offer. On October

[10] The video from Day 6 of the trial is publicly accessible on YouTube at https://www.youtube.com/watch?v=mwtR-L6fHcI.

5, 2023, the State offered Baldwin a "very favorable" plea agreement "with the intention of ensuring that similarly situated defendant's [sic] do not receive disparate treatment." Br. 19. According to the State, "it seemed only fair" to offer Baldwin the same deal that was offered (ten months earlier) to Dave Halls, who told the State he was the "last line of defense" to protect against this accident (Ex. 16 at 138:13-14) and who testified at Gutierrez-Reed's trial that he accepted the plea deal because he was "negligent in checking the gun properly" before he handed it to Baldwin. Mot. 41.[11] The State gave Baldwin until October 27, 2023 to accept the plea offer.

Yet the State withdrew that plea offer long *before* the deadline, shortly *after* Baldwin's attorneys contacted Morrissey to discuss the offer. Morrissey says she withdrew the offer because she believes Baldwin had "commissioned his own documentary" about Hutchins' death and sought to interview witnesses for the purported film. Br. 20. As an initial matter, the "information" that ultimately prompted Morrissey to rescind the plea offer is inaccurate. As far as Baldwin is aware,

[11] On December 12, 2023, Halls sat for a deposition, which Morrissey attended, in connection with the State's case against Gutierrez-Reed. Halls was asked whether he believes "any one person bears responsibility for what happens to Ms. Hutchins, or was this an accident that was caused by multiple people and multiple events?" Ex. 35 at 96:9-12. In response, Halls listed, "in order of importance," what he believed to be the causes of Hutchins' death: "Certainly, the number one important factor in all this is that a live round of ammunition ended up on a film set. Two, that the gun was not checked properly by the armorer and myself. Three . . . the camera crew resigning left the camera crew shorthanded . . . which forced both Halyna and Joel into the church to look at this tiny . . . onboard monitor to look at the shot and to light the shot." *Id.* 96:21-98:11. He further testified that as Hutchins was looking at the monitor, she was "telling [Baldwin] where to . . . point the gun," and that he "[didn't] know if [Baldwin] knew he was pointing it directly at her." *Id.* And that, "looking back . . . if perhaps [he] had seen all of those rounds . . . [he] would have taken appropriate action." *Id.* Morrissey, who watched Halls give this testimony just five weeks before the grand jury was convened, refused to make Halls available to the grand jury. And she continued to deny them access to Halls even after a grand juror specifically asked: "so the bottom line is the responsibility of making sure these guns – these bullets are not live are up to, what, David Halls and – Hannah?" Ex. 19 at 66:25-67:2. At that point, Morrissey had an absolute duty to allow the grand jury to hear from Halls directly. Instead, she stated: "We are going to have another witness address those issues for you." *Id.* at 67:3-6. The witness she was referring to was Bryan Carpenter, whose testimony directly contradicted the answer Halls would have given and Carpenter's *own* sworn testimony at Gutierrez-Reed's trial. *See supra* at 11-12, 18-19.

there are two documentaries currently being made about the *Rust* tragedy. The first is a documentary by Rachel Mason, which, according to news reports, has the "full support" of the *Rust* production and Hutchins' husband, who is involved as an executive producer.[12] The second is a documentary by filmmaker Rory Kennedy. Baldwin has no ownership or financial stake in either documentary. He didn't hire Kennedy or commission her documentary. He has no title or credit in either documentary. He's not a producer and has no control, of any kind, over either documentary. In both documentaries, Baldwin is only a subject, along with other members of the cast and crew. Baldwin never commissioned a documentary about *Rust* or Hutchins' death.[13]

Morrissey's stated reason for rescinding Baldwin's plea offer is a completely inappropriate basis for prosecutorial action and alone demonstrates her bad faith. That's in addition to the fact that her basis for withdrawing the plea offer long before the written deadline is not even true. Morrissey makes numerous other false statements in her brief about the events resulting in the dismissal of the case in April 2023 and leading up to her plea offer in October 2023. For example, she falsely states that Baldwin's counsel said Harrison Ford and Helen Mirren would be testifying at the trial; Baldwin's counsel never mentioned these actors in discussions with the State or said that they would be testifying. Morrissey's assertions about what Baldwin's counsel told NBC

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[12] *See* Gene Maddaus, "'Rust' Production Names Cinematographer to Succeed Halyna Hutchins, Announces Documentary About Film's Completion," VARIETY (Feb. 14, 2023), https://variety.com/2023/film/news/rust-production-cinematographer-documentary-halyna-hutchins-1235521751/.

[13] To the extent Morrissey has been "informed" otherwise, she may have "received [her] information" from an inaccurate article in the *Daily Mail*, a British tabloid that reported (incorrectly) that Baldwin "hired" Kennedy to make a documentary film about him. *See* Ruth Styles, "Alec Baldwin hires Oscar-nominated Rory Kennedy – RFK's youngest child and sister of long-shot presidential contender Bobby Jr. – to film his every move for documentary about his ill-fated movie Rust with all-female crew," DAILY MAIL (April 21, 2023), https://www.dailymail.co.uk/news/article-12000219/Alec-Baldwin-hired-Rory-Kennedy-film-documentary-ill-fated-movie-Rust.html.

around the time of the plea offer are also false. As one of several examples, Baldwin first learned about the State's intended plea offer, as well as the State's decision to prosecute Baldwin instead of reinstating that offer after the parties discussed it, *not* from the State, but from NBC when it sought comment on those developments. It would be easy to go one-by-one through the rest of the State's inaccurate, unprofessional, and *ad hominum* attacks. And that's exactly what the State wants Baldwin to do, because the State's largely irrelevant brief is designed to defame Baldwin and his counsel and therefore divert attention from the State's proven misconduct and inability to cite a single legal authority to support its position.

Morrissey's stated reasons for pursuing an indictment are completely divorced from the public interest and reflect a stunning abuse of prosecutorial power. *State v. Ahasteen*, 126 N.M. 238, 242 (N.M. Ct. App. 1998) ("One limit . . . on a prosecuting attorney's charging decision is improper motive."); *State v. Bolton*, 122 N.M. 831, 832 (N.M. Ct. App. 1996) ("our appellate courts have held that trial courts may and should interfere with prosecutorial discretion when prosecutors have bad reasons for their actions."); N.D.A.A. Nat'l Prosecution Standard 1-1.1 ("The primary responsibility of a prosecutor is to seek justice, which can only be achieved by the representation and presentation of the truth."); *id.* 4-1.3 ("Prosecutors should screen potential charges to eliminate from the criminal justice system those cases where prosecution is not justified or not in the public interest.").

* * * *

Baldwin's motion to dismiss demonstrated a litany of defects in the grand jury process—defects that were more severe, and more numerous, than we were able to locate in *any* single reported judicial decision in New Mexico. Deny the grand jury exculpatory evidence? Baldwin cites a decision justifying dismissal for that defect alone. Refuse to facilitate the grand jury's access to exculpatory evidence, divert the grand jury from hearing testimony relevant to its explicit

inquiries, and refuse to present exculpatory evidence that contradicted testimony from the prosecution's law enforcement witness? Baldwin cites cases that justify dismissal for *each* of these deficiencies. Read the grand jury an inaccurate legal instruction? Baldwin cites a separate case justifying dismissal for that, too. Conduct the grand jury proceedings in a manner that renders them fundamentally unfair? Baldwin has listed a mountain of misconduct by the State and authorities that justify dismissal. In addition to these and other unrebutted judicial decisions, Baldwin also cites several statutory provisions that justify dismissal.

The State's response has remained constant since the first time the prosecutors went on a national media tour disparaging Baldwin and his lawyers: defame and deflect. The State's failures to distinguish Baldwin's authorities, cite any authorities of its own, or properly address the actual grounds for Baldwin's motion to dismiss require that the indictment be dismissed.

CONCLUSION

For the above reasons and the reasons set forth in his opening brief, Baldwin respectfully requests that the Court dismiss the indictment.

Date: April 22, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2024, a true and correct copy of the foregoing brief was emailed to opposing counsel.

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