STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO,

PLAINTIFF,

VS.

ALEXANDER RAE BALDWIN III,

DEFENDANT.

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

DEFENDANT ALEC BALDWIN'S OPPOSITION TO STATE OF NEW MEXICO'S EXPEDITED MOTION FOR LEAVE TO FILE SUPPLEMENTAL RESPONSE IN OPPOSITION TO BALDWIN'S MOTION TO DISMISS THE INDICTMENT

LEBLANC LAW LLC

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

QUINN EMANUEL URQUHART & SULLIVAN, LLP

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

Sara Clark (admitted *pro hac vice*)
700 Louisiana St., Ste. 3900
Houston, TX 77002
Tel: 713-221-7000
Fax: 737-667-6110
saraclark@quinnemanuel.com

Attorneys for Alec Baldwin

As the Court knows, motions are typically resolved through a four-part process: the movant files an opening brief, the other party files an opposition brief addressing the arguments made in the opening brief, the movant files a reply brief addressing issues raised in the opposition and reiterating any arguments from the opening brief, and then the parties give oral arguments to address any issues from the briefing that need further debate. This tried-and-true process exists for a few basic reasons: the briefing must stop somewhere, and it should stop with the party who has the burden of seeking the relief. Further, to the extent the opposition brief fails to address arguments or facts in the opening brief, the opposing party has waived the chance to do so; to the extent a reply brief raises brand new arguments that are in no way implicated by the opening brief or warranted based on the opposition, then those arguments do not get considered, either.

The State had a full and fair opportunity through this process to address the arguments and issues raised in Alec Baldwin's motion. The State requested an extra week to respond to Baldwin's motion. Baldwin did not oppose. The State requested permission for its response to exceed the Court's page limits "due to the number of issues raised in [Baldwin's] motion." Baldwin did not oppose. The State had the time and unlimited space it asked for to address Baldwin's arguments and factual assertions. But the State didn't use its time or space wisely. Instead, the State dropped a pile of defamatory and irrelevant misrepresentations about Baldwin, his counsel, and this case, and failed to address a *single* legal authority in Baldwin's opening brief, failed to cite a *single* legal authority of its own, and failed to address virtually every argument Baldwin made.

The State now wants a mulligan; it wants another chance to make arguments it declined to make and present new information it wishes it had previously included—all while having the last word so Baldwin has no written opportunity to demonstrate (once again) that the State's assertions are legally and factually meritless. The State has not demonstrated any special reason the Court

should grant the State another bite at the apple. The State argues, for example, that Baldwin has "taken advantage of the Court's permission to exceed the page limits" and asks to submit "minimal supplemental briefing" to address Baldwin's "new exhibits" and "intentionally misleading statements of law." (State's Mot. ¶ 4.) The State's argument should be rejected. Baldwin's 22-page reply does not raise a single new argument outside of what was raised in his motion or what was necessary to respond to arguments made in the State's opposition.[1] The three short exhibits submitted with Baldwin's reply (only 11 pages in total) relate to the same exact factual issues raised in his opening brief that the State addressed in its opposition. Notably, the State has not identified a *single* fact or argument in Baldwin's reply that falls outside the scope of Baldwin's motion or the State's response. That's because there aren't any.[2] The State had the chance to address these legal and factual issues in its opposition brief. But it declined to do so and must live with the consequences of that deliberate decision.

The State also argues that Baldwin's objection is "simply an attempt to withhold pertinent information that would aid the Court in a full analysis of the facts and law." (State's Mot. ¶ 5.) It's ironic that the State makes this argument in response to a motion in which Baldwin has conclusively demonstrated that the *State* "with[e]ld pertinent information" from the grand jury "that would [have] aid[ed] the [grand jury] in a full analysis of the facts and law." Regardless, the State's argument is incorrect. The Court already has "all [the] factual information" and legal

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[1] The State falsely claims that Baldwin filed a "thirty-page reply" and "approximately ninety pages of motion/reply" (State's Mot. ¶ 4), evidently including the title pages, tables of contents, and tables of authorities in its count. Baldwin's motion and reply contain 74 pages of substantive content—all of which was directly relevant to the requested relief or the State's opposition brief. Regardless, Baldwin properly requested permission to exceed the Court's page limits, the State did not object to either request, and the Court granted Baldwin's unopposed motion.

[2] Even if the State had identified such issues, the appropriate remedy would be to strike those facts or arguments from Baldwin's reply—not to give the State a free pass for failing to provide a substantive legal and factual response to Baldwin's opening brief.

authorities that it needs to decide the motion. (State's Mot. ¶ 5.) It has received Baldwin's arguments, and it has received the State's arguments in response. The State has no right to say more. As Baldwin demonstrated in his brief, the State has *waived* the opportunity to say more. (Baldwin's Reply Br. at 4.) Any further information the State could possibly provide at this point would do nothing to "aid the Court" in its analysis of the relevant issues; rather, allowing the State to file another brief would only give the State an improper opportunity to flood the record with more misstatements and attempt to fix its intentional decision not to cite or discuss a single legal authority in its brief.

"The grand jury is our system's foundation for the protection of individual rights" and a "recognized method by which the public can be certain of protection against abuse of public responsibilities." *Baird v. State*, 1977-NMSC-067, ¶ 10, 90 N.M. 667, 669, 568 P.2d 193, 195; *see also State v. Ulibarri*, 1999-NMCA-142, ¶ 10, 128 N.M. 546, 550, 994 P.2d 1164, 1168 (the grand jury's "duty [is] to protect citizens against unfounded accusations whether they come from the government or others, and to prevent anyone from being indicted through malice, hatred or ill will."). It is therefore imperative that the target's right to a fair and lawful process "be 'rigorously protected.'" *Ulibarri*, 1999-NMCA-142, ¶ 17 (citing *Baird*, 1977-NMSC-067, ¶ 9). At every turn, however, the State seeks to alter and undermine that fair and lawful process. Here, the State filed an opposition brief that is three parts disparagement, one part misstatement of fact, and zero parts law. And it failed to address virtually any of Baldwin's arguments. Apparently realizing the legally required result of this ill-conceived approach—such as waiver—it now wants a new attempt to argue its case.

But this is not a game. This is Baldwin's life and liberty. Baldwin submitted a robust and meritorious motion to dismiss. The State's response brief embodied the same tactics that it used

to secure the indictment in the first place: ignore the law, subvert the truth, and divert attention from what really matters. The State should not be rewarded for this unjustified approach.

For these reasons, Baldwin respectfully requests that the Court deny the State's motion for leave to file a supplemental response.

Date: April 25, 2024

Respectfully submitted,

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By: */s/ Luke Nikas*

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

Sara Clark (admitted *pro hac vice*)
700 Louisiana St., Ste. 3900
Houston, TX 77002
Tel: 713-221-7000
Fax: 737-667-6110
saraclark@quinnemanuel.com

John F. Bash (admitted *pro hac vice*)
300 W. 6th St., Suite 2010
Austin, TX 78701
Tel: 713-221-7000
Fax: 737-667-6110
johnbash@quinnemanuel.com

LEBLANC LAW LLC

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

heather@leblanclawnm.law

Counsel for Defendant Alec Baldwin

CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2024, a true and correct copy of the foregoing brief was emailed to opposing counsel.

/s/ Heather LeBlanc
Heather LeBlanc