

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

STATE OF NEW MEXICO,

Plaintiff,

v.

No. D-101-CR-2024-00013  
Judge Mary Marlowe Sommer

ALEXANDER RAE BALDWIN,

Defendant.

**DEFENDANT ALEC BALDWIN'S MOTION TO STRIKE THE STATE'S REPLY TO THE DEFENDANT'S  
RESPONSE TO THE STATE'S MOTION FOR LEAVE TO FILE A SUPPLEMENTAL RESPONSE IN  
OPPOSITION TO DEFENDANT'S MOTION TO DISMISS THE INDICTMENT**

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Defendant Alexander R. Baldwin III, by and through undersigned counsel, respectfully moves to strike the State’s *Reply to the Defendant’s Response to the State’s Motion for Leave to File a Supplemental Response in Opposition to Defendant’s Motion to Dismiss* (the “Reply”), filed yesterday, April 28, 2024. The State’s Reply is substantively and procedurally improper and should be disregarded.

Defendant Alec Baldwin filed a motion to dismiss the indictment. In response, the State requested permission to exceed the Court’s page limitations and additional time to prepare its opposition. Baldwin consented to both requests. Despite having unlimited space and a generous deadline, however, the State’s opposition did not raise legal arguments, address a *single* legal authority cited in Baldwin’s motion, or cite a *single* legal authority of its own. The State later sought a do-over by filing a motion for leave to file a supplemental brief. Baldwin opposed the request, because, among other reasons, it is settled law that the State already waived the legal and factual rejoinders it declined to make in its opposition brief.

The State’s Reply does not demonstrate why it is entitled to file a supplemental brief in further opposition to Baldwin’s motion to dismiss. Once again, the State fails to provide controlling authority for its arguments, provides no authorities showing it hasn’t waived its arguments and conceded Baldwin’s points, and provides no factual support to justify its failure to timely address Baldwin’s arguments through the process set forth in the Court’s February 26, 2024 Scheduling Order. Instead, the State has improperly used its Reply to make substantive legal arguments that it failed to include in its opposition to Baldwin’s motion to dismiss—arguments that the State declined to include in its opposition and therefore already waived.<sup>1</sup> *See Delta*

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<sup>1</sup> The State’s untimely legal arguments are also inaccurate, as the Court can see from Baldwin’s briefs and authorities in the motion to dismiss and which we can further explain at oral argument if necessary.

*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”).

The State’s unauthorized and untimely substantive argument should not be permitted in the guise of a Reply in support of its request to present those same arguments. Its Reply should therefore be stricken. *See, e.g., State v. Lauderdale*, 1973-NMCA-035, ¶ 8, 85 N.M. 157, 159, 509 P.2d 1352, 1354 (striking a supplemental brief where the submitting party had failed to obtain permission to submit the same). In fact, the State’s approach to the Reply—include legal arguments that it declined to make in its opposition brief on Baldwin’s motion to dismiss—only highlights the glaring deficiencies in the State’s opposition brief. And it reflects the State’s understanding that it wasted its opportunity to present those arguments by instead launching *ad hominem* attacks on Baldwin and his counsel. If those attacks were legally and factually adequate, in the State’s mind, to oppose the motion, then why is it fighting so hard to submit the legal and factual arguments it chose to exclude?

This is a double fault in the extreme: the State used its Reply to raise legal arguments for the first time on this motion (one waiver) that actually relate to Baldwin’s entirely separate motion to dismiss that should have been made three briefs ago when the State filed its opposition to Baldwin’s motion (yet another waiver). The State is playing games with the Court’s rules and with Baldwin’s right to be fairly heard. The State’s Reply brief should be stricken.

Date: April 29, 2024

Respectfully submitted,

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By: /s/ Luke Nikas

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 29, 2024, a true and correct copy of the foregoing filed through the New Mexico Odyssey File & Serve system, which caused all counsel of record to be served by electronic means.

*/s/ Heather M. LeBlanc*

Heather M. LeBlanc