

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.

PETITION FOR OUT-OF-STATE SUBPOENA AD TESTIFICANDUM
ISSUED TO ELIZABETH SMALL

COMES NOW Petitioner, Alexander Rae Baldwin, by Sara Clark, defense counsel, hereby respectfully petitions this Honorable Court for an order, pursuant to NMSA 1978, Section 31-8-3, directing the Clerk of the Court to issue a subpoena, a copy of the subpoena which is attached hereto, incorporated herein by this reference, and marked Exhibit A, and the order by this Court on subpoena which is attached hereto, incorporated herein by this reference, and marked Exhibit B, compelling Elizabeth Small to give a statement concerning the above captioned matter. In support hereof, Petitioner submits the following:

1. Petitioner is the Defendant in a criminal proceeding currently pending in the New Mexico District Court entitled *State of New Mexico v. Alexander Rae Baldwin*, Case No. D-101-CR-2024-0013.
2. Petitioner has prepared a Subpoena for a witness statement pursuant to a Subpoena Ad Testificandum, to be served upon Elizabeth Small in Virginia concerning the above captioned matter; however, such Subpoena has not yet been served pending the actions of this Court regarding this Petition.

3. Upon information and belief, Elizabeth Small is a material witness in the prosecution pending before this Court. Elizabeth Small resides in Virginia as identified in the Subpoena Ad Testificandum.
4. A statement by Elizabeth Small is necessary in the proceedings before this Court.
5. Pursuant to Rule 5-503(C) NMRA, information sought in discovery need not be admissible at trial “if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.”
6. Petitioner has a good faith basis to believe that Elizabeth Small is a material witness regarding the events of October 21, 2021 that are at issue in this case. Accordingly, the Petitioner seeks a statement by Elizabeth Small, as it may be relevant in the pending prosecution.
7. The statement requested by the Subpoena Ad Testificandum will not, based upon information and belief, be burdensome to Elizabeth Small; and Petitioner will tender all fees costs and costs, if any, to Elizabeth Small regarding this statement.
8. The State of New Mexico has adopted the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings, which Uniform Act is also codified in the State of Virginia (VA Code 1950, § 19.1-279).
9. As stated herein, the Petitioner will pay any and all reasonable costs, fees, and/or expenses with regard to the statement requested by the Subpoena Ad Testificandum.
10. That if Elizabeth Small does not give a statement as requested by the Subpoena Ad Testificandum, in disobedience to the subpoena (Exhibit A) directing Elizabeth Small to give a statement, Elizabeth Small will be subject to all legal consequences include but not

limited to arrest in connection with such disobedience to produce the items and materials identified.

11. Counsel for the State of New Mexico has been contacted for their position on this Petition and said counsel (Attorney Kari Morrissey) advised the State does not take a position on this Petition.

WHEREFORE, Petitioner respectfully requests that the Court issue an Order, in the form and content as set forth in Exhibit B, by which the Clerk of the District Court is directed to issue the subpoena (Exhibit A) and further issue a certified copy of same to Petitioner, compelling Elizabeth Small to give a statement as requested by the subpoena (Exhibit A), as such statement is necessary to the prosecution of the above-entitled matter.

Dated: April 28, 2024

/s/ Sara Clark

Sara Clark, Counsel for Defendant
Quinn Emanuel Urquhart & Sullivan, LLP
700 Louisiana St., Ste. 500
Houston, Texas 77002
(713) 221-7000
(713) 221-7100
saraclark@quinnemanuel.com

CERTIFICATE OF SERVICE

I certify that on April 29, 2024, I caused a copy of this Petition to be electronically filed, which caused all counsel of record to be served by electronic means, as more fully reflected in the Notice of Electronic Filing.

/s/ Heather LeBlanc _____

Heather LeBlanc
Counsel for Defendant

STATE OF NEW MEXICO
COUNTY OF SANTA FE
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STATE OF NEW MEXICO,

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Defendant.

ATTORNEY'S AFFIDAVIT IN SUPPORT OF UNOPPOSED PETITION FOR OUT-OF-STATE SUBPOENA AD TESTIFICANDUM TO BE ISSUED TO ELIZABETH SMALL

I, Sara Clark, defense counsel, being duly sworn, deposes and says:

1. I am an attorney admitted *pro hac vice* to practice law as defense counsel in the above-entitled matter.
2. I am an attorney for the above-named Defendant.
3. I made this Affidavit in support of the Unopposed Petition for Out-of-State Subpoena Ad Testificandum for a statement from Elizabeth Small ("Small" herein) who resides in Virginia.
4. A detailed investigation and due diligence reveal that Elizabeth Small has the following service address:

Elizabeth Small
Evidence Management Unit
Laboratory Division
Federal Bureau of Investigation
2501 Investigation Parkway
Quantico, VA 22135
eksmall@fbi.gov

6. Small's statement, as requested in the Subpoena Ad Testificandum, is a critical piece of information concerning key elements of this criminal prosecution.
7. WHEREFORE, your affiant respect prays that process be issued and the Unopposed Petition for Out-of-State Subpoena Ad Testificandum for a statement from Small be granted.

Dated: April 28, 2024

/s/ Sara Clark

Sara Clark, Counsel for Defendant
Quinn Emanuel Urquhart & Sullivan, LLP
700 Louisiana St., Ste. 500
Houston, Texas 77002
(713) 221-7000
(713) 221-7100
saraclark@quinnemanuel.com

EXHIBIT A

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.

SUBPOENA

SUBPOENA FOR

APPEARANCE OF PERSON FOR

STATEMENT DEPOSITION PRELIMINARY EXAMINATION

SUBPOENA FOR DOCUMENTS OR OBJECTS

INSPECTION OF PREMISES

TO:

Elizabeth Small
Evidence Management Unit
Laboratory Division
Federal Bureau of Investigation
2501 Investigation Parkway
Quantico, VA 22135
eksmall@fbi.gov

YOU ARE HEREBY COMMANDED TO APPEAR as follows:

PLACE: VIA Zoom

Join Zoom Meeting

[REDACTED]

Meeting ID: 231 513 6625

One tap mobile

[REDACTED]

Alternate Dial-in Numbers:

[REDACTED]

Join by SIP

[REDACTED]

DATE: May 6, 2024
TIME: 1:00 p.m. MT -- 2:00 p.m. MT to:

- testify at the taking of a deposition in the above case
- testify at preliminary examination
- permit inspection of the following described documents or objects
- permit the inspection of the premises located at:
- give a statement.

IF YOU DO NOT COMPLY WITH THIS SUBPOENA you may be held in contempt of court and punished by fine or imprisonment.

/s/ Sara Clark

Sara Clark, Counsel for Defendant
Quinn Emanuel Urquhart & Sullivan, LLP
700 Louisiana St., Ste. 500
Houston, Texas 77002
(713) 221-7000
(713) 221-7100
saraclark@quinnemanuel.com

RETURN FOR COMPLETION BY SHERIFF OR DEPUTY

I certify that on the ____ day of _____, _____, in _____ County, I served this subpoena on _____ by delivering to the person named a copy of the subpoena, [a witness fee in the amount of \$ _____ and mileage in the amount of \$ _____].

Deputy sheriff

RETURN FOR COMPLETION BY OTHER PERSON MAKING SERVICE

I being duly sworn, on oath say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that on the _____ day of _____, _____, in _____ County, I served this subpoena on _____ by delivering to the person named a copy of the subpoena, a witness fee in the amount of \$ _____, and mileage as provided by law in the amount of \$ _____.

[Person making service]

SUBSCRIBED AND SWORN to before me this _____ day of _____,

_____.

[Judge, notary or other officer authorized to administer oaths]

THIS SUBPOENA issued by or at request of:
Defense Counsel, Sara Clark

EXHIBIT B

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.

**ORDER/CERTIFICATE ON PETITION FOR OUT-OF- STATE SUBPOENA AD
TESTIFICANDUM ONTO ELIZABETH SMALL**

The matter having come before the Court upon the Petition for Out-of-State Subpoena Ad Testificandum for issuance onto Elizabeth Small (“Small”) (“Petition”) and the Court being fully advised in the premises finds the Petition well taken.

This Court, being the court of record in the above-entitled matter, finds that Elizabeth Small resides in Virginia and is located at:

Elizabeth Small
Evidence Management Unit
Laboratory Division
Federal Bureau of Investigation
2501 Investigation Parkway
Quantico, VA 22135
eksmall@fbi.gov

The requested statement is discussed and set forth in the Petition, the Subpoena, and in the Attorney’s Affidavit all of which have been presented to this Court.

IT IS THEREFORE:

ORDERED and CERTIFIED by this Court that the Clerk of the District Court issue, and provide a certified copy of same to Petitioner, a Subpoena Ad Testificandum in the form and

content as presented to this Court by virtue of the Petition (Exhibit A thereto) compelling the production by Small of a statement as requested by the Subpoena Ad Testificandum concerning this matter to be used in the same.

Dated: _____

Judge Mary Marlowe Sommer
First Judicial District Court Judge

Submitted by:

Sara Clark

Sara Clark

Attorney for Defendant Alexander Rae Baldwin