

**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 THE STATE'S
MOTION FOR USE IMMUNITY FOR HANNAH GUTIERREZ**

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Defendant Alec Baldwin, by and through his attorneys Quinn Emanuel Urquhart & Sullivan LLP and LeBlanc Law, hereby opposes the State's Expedited Motion for Use Immunity for Hannah Gutierrez-Reed, and responds as follows:

PRELIMINARY STATEMENT

The State's late-filed motion for use immunity to secure live testimony from Hannah Gutierrez-Reed should be denied. The testimony the State purports to seek is contained in Gutierrez-Reed's prior statements the State has had for years. If the State felt it needed a grant of use immunity in this matter, it should have filed this motion when it first learned Gutierrez-Reed intended to assert her Fifth Amendment privilege. The State did not do so, and all parties continued to prepare for trial on the understanding that Gutierrez-Reed would be unavailable at trial. The late addition of Gutierrez-Reed to the State's witness list to provide open-ended, unspecified testimony at this late date is unjustified and prejudicial. The motion should be denied.

BACKGROUND

Under the Court's February 26, 2024 scheduling order, the parties were directed to "make their respective discovery disclosures within the time frames as set forth in Rule 5-510 NMRA and Rule 5-502 NMRA." The scheduling order further provided that "[u]nless the Court finds good cause, no party may file an amended witness list to add new witnesses after May 6, 2024."

The State had filed an initial witness list on February 6, 2024 listing thirty witnesses; it followed this with amended witness lists on April 3 and April 19 disclosing new witnesses. The State then filed an addendum to its third amended witness list on April 25, 2024 adding yet another witness, and a further addendum on May 6, 2024, the deadline set by the Court to add new witnesses, adding another eight witnesses. The same day, the State filed a motion to exclude "defense witnesses disclosed for the first time on May 6, 2024," arguing that "the State is prejudiced by the defendant's improper tactic aimed at sandbagging the state."

None of the State's timely filed witness lists included Hannah Gutierrez-Reed. Of course, the State has known about Gutierrez-Reed since well before its first witness list was filed; Gutierrez-Reed was tried and convicted for the same incident by the same prosecutors in February and March of 2024, and has a pending appeal. Defendant's first amended witness list, filed on April 19, 2024, did include Gutierrez-Reed. Accordingly, the State requested a pretrial interview for Gutierrez-Reed, which was held on May 19, 2024. Well before that date, the State was advised by counsel for Gutierrez-Reed that she would assert her Fifth Amendment privilege, and the State proceeded to confirm that position in the interview. Gutierrez-Reed answered a few preliminary questions about her employment on the set of *Rust*, and then asserted her Fifth Amendment privilege against self-incrimination for the remainder of the interview, as is her right. The State did not indicate it would seek use immunity or otherwise attempt to circumvent that assertion of privilege at the time. On May 30, 2024, the State provided the defense with more than **350** recordings of calls purportedly made by Gutierrez-Reed from prison. The State has provided no further context or explanation of the relevance of those calls.

On June 3, 2024, the State filed a purported "Third Addendum to the State's Third Amended Witness List" disclosing, without providing explanation or cause, three witnesses not included on any of the State's five previous witness lists. One of these witnesses was Gutierrez-Reed. The State then for the first time, and two days before the pretrial interview deadline, presented the instant request for the Court to grant use immunity for Gutierrez under Rule 5-116 NMRA.

ARGUMENT

The State's belated request that the Court grant use immunity for Gutierrez-Reed's testimony at trial and order her to testify at trial, as well as its untimely addition of Gutierrez-Reed to its sixth witness list, comes months after Gutierrez-Reed was disclosed on Defendant's witness

list, weeks after Gutierrez-Reed's (entirely non-substantive) pretrial interview was completed, well after the deadline for adding witnesses, and just weeks before trial is set to begin. There can be no good cause for the State's untimely request; the State has known about Gutierrez-Reed's involvement in this case since 2021, has known that she was on Defendant's witness list since mid-April, and has known that she intended to assert her Fifth Amendment privilege since early May. If the State wished to secure live and unfettered testimony from Gutierrez-Reed despite her ongoing appeal of her criminal conviction—something the State has known about since March—it should have made this request well in advance to allow all parties a fair opportunity to explore Gutierrez-Reed's testimony.

The State's request is not only untimely, but is also prejudicial. The parties have concluded the pretrial interview process and are fully engaged in preparing for trial, including preparing for the State's *forty-four* timely disclosed witnesses. Moreover, days before it filed this request, the State disclosed hundreds of Gutierrez-Reed's prior statements for the first time, stating that this disclosure was made "in anticipation of [her] testimony at trial." The Defendant understood from Gutierrez-Reed's interview process that she would not, in fact, be available for trial, and has been preparing accordingly, with no indication that the State had anything else in mind.

Allowing the State use immunity at this late juncture to introduce a previously unavailable witness with hundreds of previously undisclosed statements, after the deadline for witness disclosures has passed, without time to conduct proper pretrial interviews, and just weeks before a complex trial would prejudice Defendant's due process rights. *See March v. State*, 1987-NMSC-020, ¶ 8, 734 P.2d 231 ("The due process right carries with it the right to a reasonable amount of time to prepare a defense."); *see also State v. Ortega*, 1991-NMSC-084, 817 P.2d 1196 (granting a continuance for as long as defense counsel required to "prepare adequately," where defendant

“argued that the State’s request of a grant of immunity was untimely because counsel would be unable effectively to represent his client”). Indeed, it is hard to imagine how the State could claim that this belated disclosure and request is not prejudicial, when it previously asserted that it was prejudiced by the Defendant’s *timely* witness disclosures—characterizing those disclosures as a “calculated game of sandbagging as less than thirty days remain for conducting pretrial witness interviews” and the defense as “cho[osing] to lie in wait,” because the State would not have an adequate opportunity to conduct interviews and investigate the witnesses with an entire month remaining of the pretrial interview period. That period, of course, has now passed entirely, such that the Defendant would have no ability to investigate the additional statements—favorable or not—that Gutierrez-Reed might make at this late juncture.¹

Here, a continuance is not required or sought because the State has not made any specific showing as to why Gutierrez-Reed’s live testimony at trial is “necessary” under Rule 5-116 NMRA. The State offers no explanation as to how it contends that “[t]he defendant’s opposition to this motion is a clear indicator that the defendant intends that only exculpatory testimony from Ms. Gutierrez be presented to the jury.” The parties have anticipated, since at least May 19, that Gutierrez-Reed would be unavailable to testify. The State has offered no justification for why, at this late stage, it is necessary for the Court to grant its request for use immunity.

CONCLUSION

For the foregoing reasons, the Court should deny the State’s request.

¹ Because the hearing on this issue is scheduled for June 21, 2024, the Defendant will not be able to prepare for Gutierrez-Reed’s unknown testimony until two weeks before trial (at most), if the State’s motion is granted.

Date: June 7, 2024

Respectfully submitted,

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By: /s/ Luke Nikas

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CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2024, a true and correct copy of the foregoing brief was emailed to opposing counsel.

/s/ Heather LeBlanc
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