

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 MOTION TO DISMISS THE INDICTMENT

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Defendant Alexander R. Baldwin III, by and through undersigned counsel, respectfully moves to dismiss the indictment under NMSA 1978, § 31-6-11.

PRELIMINARY STATEMENT

Nothing is more central to our system of justice than a fair and impartial jury. As Thomas Jefferson put it, “trial by jury [i]s the only anchor ever yet imagined by man, by which government can be held to the principles of its constitution.” So, too, for the grand jury. “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, 568 P.2d 193, 195. The prosecutors obtained the indictment against Alec Baldwin by circumventing this fundamental protection. Over. And over. And over again.

The criminal case against Baldwin started in January 2023, when the *Wall Street Journal* called Baldwin’s attorneys to inform them, for the first time, that Alec Baldwin was being prosecuted for involuntary manslaughter. Immediately after, the State announced the decision publicly and went on a viral press tour to tell the world that Baldwin was guilty and faced a mandatory minimum five-year prison sentence. The State’s approach came by surprise. The State had promised to inform Baldwin well in advance of making such a decision; it also posted on Facebook the day before that it would be making a “somber” and respectful announcement of its charging decision, without making any public appearances. It broke these promises.

The State’s unethical disparagement of Alec Baldwin was a sign of things to come. The State violated the Ex Post Facto clauses of the U.S. and New Mexico Constitutions by charging Baldwin with a firearm enhancement that had not been enacted when the accident occurred. The District Attorney, Mary Carmack-Altwies, appointed Special Prosecutor Andrea Reeb to pursue Baldwin even though she was simultaneously running for a seat in the New Mexico Legislature. Reeb told Carmack-Altwies in a private email exchange that she wanted Carmack-Altwies to

announce her involvement in the prosecution because it would help her election campaign—writing “lol” at the idea of minting her political career in the Republican Party by knocking down Alec Baldwin. When Baldwin filed motions challenging the State’s unconstitutional conduct, the State withered: Carmack-Altwies dismissed the firearm enhancement, and Reeb resigned. Publicly, however, the State disparaged Baldwin and his counsel to divert attention from their misconduct and elementary legal mistakes—calling Baldwin’s counsel “fancy,” “big-city” lawyers who cared about nothing more than billable hours.¹ The world was appalled: commentators noted the prosecutor’s unethical behavior and constitutional violations.² And prominent judges, attorneys, and scholars uniformly criticized the merits of the State’s case against Baldwin.³

¹ Graham Bowley and Julia Jacobs, *Baldwin’s Lawyers Say Manslaughter Charge Was Based on Wrong Law*, N.Y. TIMES (Feb. 10, 2023) <https://www.nytimes.com/2023/02/10/arts/rust-manslaughter-statute-alec-baldwin.html>; Mark Osbourne, *DA drops gun enhancement charge against Alec Baldwin in ‘Rust’ shooting*, ABC NEWS (Feb. 20, 2023), <https://abcnews.go.com/US/da-drops-gun-enhancement-charge-alec-baldwinrust/story?id=97337067>; Julia Jacobs, *Rust’ Prosecutors Downgrade Alec Baldwin’s Manslaughter Charges*, N.Y. TIMES (Feb. 20, 2023), <https://www.nytimes.com/2023/02/20/arts/alec-baldwin-manslaughter-charge-rust.html?smid=nytcore-ios-share&referringSource=articleShare>.

² See, e.g., Rebecca Picciotto, *Prosecutors in Alec Baldwin ‘Rust’ shooting case are getting heat over apparent missteps*, CNBC (Mar. 6, 2023) <https://www.cnbc.com/2023/03/06/alec-baldwin-rust-prosecutors-criticism.html>; Kelly Clark and Andrew George, *Guest Column: Alec Baldwin’s ‘Rust’ Prosecutors Should Do Their Talking in Court*, HOLLYWOOD REPORTER (Mar. 3, 2023) <https://www.hollywoodreporter.com/news/general-news/alec-baldwin-rust-shooting-prosecutors-talk-court-lawyers-1235340165/>.

³ See, e.g., Eugene Volokh (UCLA Law Professor), *What Exactly Is “Manslaughter” in the Alec Baldwin Case?*, REASON (Jan. 19, 2023), <https://reason.com/volokh/2023/01/19/what-exactly-ismanslaughter-in-the-alec-baldwin-case/> (“The prosecution would have to prove, beyond a reasonable doubt, that he was subjectively aware of the danger: that he actually thought about the possibility that the gun might be loaded, and proceeded to point it and pull the trigger despite that.”); Alan Dershowitz, *Why Charging Alec Baldwin with Manslaughter Is Wrong*, NEWSWEEK (Jan. 19, 2023), <https://www.newsweek.com/why-charging-alec-baldwin-manslaughter-wrongopinion-1775163> (“In this case, Baldwin claims that he was explicitly told the gun did not contain live ammunition. Even if prosecutors can cast doubt on this self-serving statement, it will

Carmack-Altwies resigned shortly after Reeb, and she appointed Special Prosecutors Kari Morrissey and Jason Lewis. For a moment, things were different. Morrissey and Lewis dismissed the case against Baldwin in April 2023, after Baldwin's counsel proved to them, accurately, that the gun was modified and that the State had overlooked dozens of legal issues and facts. The summer passed without event. Then, in October 2023, more than *two* years after the accident and *six* months after Baldwin thought this wrongful prosecution was behind him, the case came back again. Morrissey announced her intention to present the case against Baldwin to a grand jury, as well as the November 16, 2023 date of the presentation, in an interview with *The New York Times*. She made false statements about the evidence and Baldwin's guilt in that article, as well.

A few weeks later, Morrissey served a target notice on Baldwin from which she *removed* the 48-hour deadline for the submission of Baldwin's grand jury alert letter to shorten Baldwin's time to prepare the letter. Morrissey admitted to Baldwin's counsel that she had *never* seen this deadline removed, but then stated, illogically, that she just wanted to ensure that Baldwin was being treated like everyone else. In fact, Morrissey had served a target notice on Hannah Gutierrez-Reed the *same day* that *included* the 48-hour deadline that Morrissey removed from Baldwin's notice. At the same time Morrissey was attempting to tilt that playing field, she also made the unprecedented request to unilaterally voir dire the grand jury.

The Court denied the State's frivolous requests and moved the grand jury date from November 2023 to January 2024. It also expressed concern that the grand jury date and facts about the grand jury process had been disclosed to the *New York Times* (for which the State was solely responsible). The Court noted the prejudicial nature of these disclosures. In this very case, the

be impossible for them to prove beyond a reasonable doubt that Baldwin believed he was risking Hutchins' life by pulling the trigger or cocking the gun.”).

Court explained, a member of the sitting grand jury had asked the Court if he could sit on the grand jury that would hear Baldwin's case. The Court therefore ordered the parties to refrain from disclosing *anything* about the grand jury process to the press while the process was ongoing. Within *one* hour, however, Morrissey violated the Court's order by disclosing the content of that hearing to the press—including the new grand jury date—even after the Court admonished her about the serious prejudice that could arise out of precisely that disclosure. Baldwin therefore filed a sanctions and contempt motion, which prompted Morrissey to violate the Court's order a *second* time because she also disclosed the contents of that motion to the press.

Baldwin next submitted an alert letter identifying significant exculpatory and favorable witnesses and documents, as well as jury instructions on the relevant offense and defenses. But the State refused to present nearly any of that evidence to the grand jury, supporting its position with old caselaw that had been overruled by the New Mexico Supreme Court and New Mexico statutory law. The State also refused to read Baldwin's proposed charging instructions to the grand jury, noting that it would read a different instruction about intervening cause (even though the State's preferred instruction stated that it did not apply in homicide cases), and would not read an instruction about involuntary manslaughter that deviated from the Uniform Jury Instructions. The State therefore filed a motion seeking permission to disregard Baldwin's alert letter.

The Court denied the State's motion with respect to the evidence. The Court ordered the State to make nearly all the favorable evidence and witnesses available to the grand jury. As for the jury instructions, the Court ordered the State to provide Baldwin's requested instruction on the issue of intervening cause if the evidence supported it, and the Court ruled that the State's instruction about involuntary manslaughter must precisely track the Uniform Jury Instructions.

The Court's ruling came just days before the grand jury presentation was set to start, which, given the grand jury schedule, left only two days for the State to present the entire case before the grand jury's term expired. Baldwin warned the State in writing that it would not have enough time to present the evidence from his alert letter before the term ended, and he asked the State to adjourn the grand jury date to ensure his evidence could be presented. But the State ignored Baldwin's letter and jammed through its presentation in barely more than one day. The State did so by violating nearly every rule in the book. It did not explain the meaning or purpose of Baldwin's alert letter to the grand jury. It did not tell the grand jurors that they had the right and, in fact, the obligation to request and hear all exculpatory evidence. *See* 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). The State did not make Baldwin's witnesses available to testify. Nor did it present the exculpatory and favorable evidence to the grand jury. When grand jurors asked questions about exculpatory witnesses or facts, the State instead forced them to hear answers from the State's chosen (and usually paid) witnesses—even when those witnesses had no personal knowledge or foundation for giving testimony about the subject. And to top it all off, the State read the grand jury an involuntary manslaughter instruction that violated the Court's Order, unfairly stacked the deck against Baldwin, and contained language that was inconsistent with both the UJI and the State's own opposition to Baldwin's request for a different instruction.

The State prosecutors have engaged in this misconduct—and publicly dragged Baldwin through the cesspool created by their improprieties—without any regard for the fact that serious criminal charges have been hanging over his head for *two and a half* years. Enough is enough.

This is an abuse of the system, and an abuse of an innocent person whose rights have been trampled to the extreme. The Court should dismiss the indictment. *See Herrera v. Sanchez*, 2014-NMSC-018, ¶ 32, 328 P.3d 1176, 1183 (dismissing indictment where the state “conducted the grand jury proceedings in a manner that violated grand jury statutes designed to protect the structural integrity of our grand jury system, rendering the proceedings fundamentally unfair and warranting a presumption of prejudice to Petitioner”).

FACTUAL BACKGROUND

I. THE INITIAL PROSECUTION AND ITS DISMISSAL

On October 21, 2021, a tragic accident took place at Bonanza Creek Ranch, twenty miles outside of Santa Fe, on the set of the film *Rust*. While the cast and crew were rehearsing a scene, a prop gun was put in Alec Baldwin’s hand. According to most witnesses, the person who gave it to him shouted, “cold gun!” to signify that it was loaded with inert dummy rounds and therefore safe to handle. Halyna Hutchins, the film’s cinematographer, directed Baldwin to draw the gun from its holster and aim it toward the camera. Hutchins, like Baldwin, clearly believed that the gun was cold. Had there been any doubts between them, she would not have instructed him to point the gun in her direction, and he would not have done so. But both Hutchins and Baldwin were wrong—the gun was not cold. Unfathomably, it contained a live round, which discharged and struck Hutchins, killing her.

Baldwin fully cooperated with the State’s investigation from the beginning. On the day of the accident, he voluntarily sat for an hour-long interview at the Santa Fe Sheriff’s Office, without the presence of counsel, and told investigators he would remain on hand for as long as he was needed. He allowed his entire cell phone to be imaged by law enforcement. At no point did he believe that he was the target of a criminal investigation, and he was told by the State that if he ever did become a target, he would be informed well in advance of any decision to charge him.

The State did not keep its word. Instead, in January 2023, the State blindsided Baldwin with felony charges (which he first learned about from a *Wall Street Journal* reporter forty minutes before they were publicly announced) and then orchestrated a vicious media campaign that annihilated any chance of a fair prosecution.⁴ Led by District Attorney Mary Carmack-Altwies and Special Prosecutor Andrea Reeb, the prosecution violated Baldwin’s constitutional rights and committed numerous procedural and ethical violations that undermined the prosecution’s credibility and exposed the frailty of its case. *Id.* at 4-7. They violated the Ex Post Facto clauses of the United States and New Mexico Constitutions by charging Baldwin with a firearm enhancement that hadn’t been enacted when the accident occurred. They violated the ethical rules governing prosecutors by disparaging Baldwin in the press and commenting on his purported guilt. Reeb wrote to Carmack-Altwies that announcing her role in Baldwin’s prosecution would help her election campaign for the State legislature. Within two months of announcing the charges against Baldwin, Carmack-Altwies and Reeb were forced to resign. *Id.* at 7.

In March 2023, the State appointed Special Prosecutors Kari Morrissey and Jason Lewis. One month later, after a presentation by Baldwin’s counsel, the State dismissed the case.

II. SIX MONTHS AFTER DISMISSING ALL CHARGES AGAINST BALDWIN, THE STATE PURSUES AN INDICTMENT

On October 5, 2023, Morrissey informed Baldwin that she would present the case to a grand jury. That same day, *The New York Times* published an article revealing that Morrissey had conducted an interview with the *Times* about the case in which she improperly disclosed details about her intention to present the case to a grand jury—yet another disclosure that violated basic rules governing grand jury secrecy. *See* Ex. 1 at 7-8. The article explained the prosecution’s view

⁴ *See* Ex. 1 (No. D-0101-GJ 2023-00008, “Motion for Sanctions Against Special Prosecutors Kari Morrissey and Jason Lewis” (Nov. 20, 2023)), at 1-4.

that evidence about the gun “contradicted Mr. Baldwin’s assertion that he had not pulled the trigger,” quoting Morrissey’s statement that “[t]he forensic testing of the gun concluded with certainty that the trigger of the gun had to have been pulled for the gun to go off.”⁵ The article further reported that Morrissey “said the prosecutors intend to begin presenting the case to a grand jury on Nov. 16,” raising the serious risk, which came true, that sitting grand jurors would read the press, be tainted by it, and actively seek to be assigned to Baldwin’s case. *Id.*

III. THE STATE ATTEMPTS TO RIG THE PROCESS AHEAD OF THE GRAND JURY

A. Special Prosecutors File Two Unprecedented Motions, One To Limit Baldwin’s Time To Submit An Alert Letter And The Other To Seek Permission To “Voir Dire” The Grand Jury.

On October 25, 2023, a week after improperly announcing the grand jury date to the public, Morrissey and Lewis served a target notice on Baldwin that omitted the standard 48-hour deadline for the target to provide a grand jury alert letter, even though they simultaneously acknowledged *never* having seen that provision omitted before. *See* Ex. 2 (Oct. 25, 2023 email from K. Morrissey to Baldwin’s counsel) at 2-3 (“Every target notice I have ever seen in NM has a sentence that indicates that the target must notify the prosecution of potential witnesses, questions or exhibits 48 hours prior to the grand jury date.”). After admitting that she had “eliminated” this standard provision from the target letter, Morrissey stated that she was nonetheless “happy to work with [Baldwin’s counsel] in this regard and will fully consider any requests” made by Baldwin’s counsel. *Id.* at 3. Further, although Morrissey said she “intend[ed] to ask the grand jury judge” to shorten the deadline for Baldwin to submit an alert letter (from November 14 to November 10, just

⁵ See Julia Jacobs, *Grand Jury Will Consider New Manslaughter Case Against Alec Baldwin*, N.Y. TIMES (Oct. 17, 2023), <https://www.nytimes.com/2023/10/17/arts/alec-baldwin-grand-jury-rust.html>.

a few weeks after Baldwin received the target notice), Morrissey also asked whether that was “agreeable” and to “[l]et me know your thoughts.” *Id.*

Baldwin responded that, at a minimum, he should receive the full time to submit an alert letter that he is entitled to under New Mexico law, especially given the volume of evidence and number of witnesses involved in the case. *Id.* at 1. In addition, Baldwin stated that the grand jury date should be adjourned to allow the State sufficient time to “review the voluminous alert letter we will be submitting” and to “ensure this process is done properly the first time around.” *Id.* Baldwin believed this to be a reasonable and fair approach, because a prosecuting attorney is required to “alert the grand jury to all lawful, competent, and relevant evidence that disproves or reduces a charge or accusation or that makes an indictment unjustified and that is within the knowledge, possession, or control of the prosecuting attorney”; there is a significant “volume of evidence in this case”; and the “consequences of any failure to present exculpatory evidence” are severe. *Id.*; *see* N.M. R. CRIM. P. DIST. CT. 5-302.2(B)(1). Baldwin therefore asked Morrissey if she was “willing to discuss a reasonable schedule for this process.” Ex. 2 at 1.

Although Morrissey expressed a willingness to “work with [Baldwin’s counsel] in this regard” and discuss a schedule that was “agreeable” to Baldwin, Morrissey immediately rejected Baldwin’s request and stated that Baldwin was not “entitled to additional time to submit requests that certain evidence/witnesses be presented the [sic] grand jury.” *Id.* at 1. Morrissey also claimed that the State “intended to treat Mr. Baldwin . . . not differently than similarly situated defendants in New Mexico,” even though she had just admitted that she’d never seen a target treated that way. *Id.* at 1. In fact, the Special Prosecutors *already had* treated Baldwin differently. On the same day they served the target notice on Baldwin, they also served a target notice on Hannah Gutierrez-Reed. But the target notice Morrissey served on Gutierrez-Reed *contained* the 48-hour deadline

that Morrissey had intentionally deleted from Baldwin's letter, which therefore gave Gutierrez-Reed four days more than Baldwin to submit exculpatory material.⁶

On October 30, 2023, the State filed an expedited motion to shorten Baldwin's time to present exculpatory evidence by four days.⁷ In its motion, the State falsely represented that it had provided Baldwin continuous access to its investigative file since April 2023, when the previous prosecution was dismissed, and argued that, in any event, Baldwin didn't need the full statutory period to provide exculpatory evidence because he was already "well aware of all possible directly exculpatory evidence today." Ex. 3 ¶¶ 2, 8; *see* Ex. 4 at 14-15. Beyond that, the State expressed concern that Baldwin would "intentionally withhold the requested exculpatory evidence until exactly forty-eight hours prior to the grand jury to cause the postponement of the grand jury proceeding." *See* Ex. 3 ¶ 8. As Baldwin explained, the State's position was backwards: Baldwin was *entitled* to submit an alert letter up to 48 hours before the grand jury proceeding, and all the State had to do to alleviate its self-imposed time crunch was adjourn its unreasonably accelerated schedule for the grand jury process. *See* Ex. 4 at 14-17. Further, as Baldwin explained, the State's argument made no sense: the purported fact that Baldwin had access to a massive number of files would support giving him *more* time to review the documents and draft an alert letter, not less. The only plausible inference to be drawn from the State's approach—and the fact that Gutierrez-Reed was being afforded the rights that Baldwin was being denied—is that the State wanted to make it harder for Baldwin to alert the grand jury to relevant and exculpatory evidence.

⁶ *See* Ex. 4 (No. D-0101-GJ- 2023 -00008, "Alec Baldwin's Opposition To The State's Expedited Motion For Scheduling Order Establishing [A Shortened] Deadline For *Bort Jones* Letter And For Hearing On Baldwin's Requested Grand Jury Evidence" (Nov. 3, 2023)), at Exs. 4 & 5.

⁷ *See* Ex. 3 (No. D-0101-GJ- 2023-00008, "State's Opposed Expedited Motion For Scheduling Order Establishing Deadline for *Bort Jones* Letter And For Hearing On Defendant's Requested Grand Jury Evidence" (Oct. 30, 2023)).

In parallel with this unprecedented effort to shorten Baldwin’s time to submit an alert letter, the State also made an unprecedented request to conduct a one-sided voir dire of the grand jury. *See* Ex. 13 (No. D-0101-GJ 2023-00008, “State’s Expedited Motion to Permit State to Conduct Voir Dire of Grand Jury Venire” (Nov. 1, 2023)). The purported reason for the State’s request was to control for the “significant amount of information - some of it inaccurate or incomplete - being made available to prospective jurors” through the media. *Id.* at ¶ 3. What the State’s motion failed to acknowledge, however, is that the media environment surrounding the incident—particularly the coverage most prejudicial to Baldwin—was primarily the result of the State’s own unethical press campaign. *See supra* at 1-4, 7-8; *see also* Ex. 1 at 1-4; Ex. 14 (No. D-0101-GJ 2023-00008, “Alec Baldwin’s Response to State’s Expedited Motion to Permit State to Conduct Voir Dire of Grand Jury Venire” (Nov. 7, 2023)) at 3-6.

On November 9, 2023, the Court heard argument regarding the State’s attempt to limit Baldwin’s right to submit an alert letter up to 48 hours before the grand jury, and the State’s request to voir dire the grand jury. *See* Ex. 5. The Court denied both motions. *Id.*

B. Special Prosecutors Contest Their Obligation To Present Exculpatory and Favorable Evidence

On November 14, 2023, 48 hours before the grand jury was scheduled to begin, Baldwin submitted an alert letter to the State that identified several key witnesses and dozens of documents that would disprove the charges against Baldwin or otherwise make an indictment “unjustified.” *See* Ex. 6 (Alert Letter dated Nov. 14, 2023); *see also Herrera*, 2014-NMSC-018, ¶ 20, (citing § 31-6-11(B)).

Specifically, the alert letter identified the following witnesses whose testimony would be exculpatory or favorable to Baldwin’s case:

- **Joel Souza.** As stated in the alert letter, Joel Souza, the film’s director, “was primarily responsible for all creative aspects of the film and relied on the entire cast and crew to

- bring his creative vision to life.” Ex. 6 at 2. Souza “was present in the church during the rehearsal scene and was struck by the fatal bullet after it passed through Halyna Hutchins.” *Id.* The alert letter stated that Souza’s testimony would “make clear that responsibility for firearm safety lies with the armorer and First Assistant Director, not with actors, and that Mr. Baldwin did not act negligently on set.” *Id.* The alert letter included 40 non-leading questions that could have elicited exculpatory testimony from Souza. *Id.* at 2-4.
- **Dave Halls.** As stated in the alert letter, Halls “was the First Assistant Director and Safety Coordinator on the set of *Rust*.” *Id.* at 4. Halls “was in charge of managing and supervising all departments on set and was responsible for safety conditions on set.” *Id.* Moreover, Halls “is aware of the conditions on set and the day of the incident” and “was present in the church when the fatal shot discharged.” *Id.* The alert letter stated that Halls’ testimony would “establish that responsibility for firearm safety lies with the armorer and First Assistant Director, not with actors[;] that Mr. Baldwin did not act negligently on set[;]” and that Halls admitted he was the “last line of defense” to protect against this accident (*i.e.*, a significant intervening cause). *Id.*; *see also* Ex. 16 (Interview of David Halls dated January 6, 2024) at 138:13-14. The alert letter included 53 non-leading questions that could have elicited exculpatory testimony from Halls. Ex. 6 at 4-7.
 - **Sarah Zachry.** As stated in the alert letter, Zachry “was *Rust*’s prop master, responsible for acquiring, placing, and/or overseeing any props needed for the production, including prop firearms and ammunition.” *Id.* at 7. As prop master, Zachry “oversaw and supervised the armorer, Hannah Gutierrez-Reed, and was the only other person on set with responsibility for the storage and handling of firearms and ammunition,” and for “procuring firearms and ammunition from *Rust*’s third-party supplier.” *Id.* Zachry—the only person who witnessed Gutierrez-Reed loading the gun that killed Hutchins—told investigators on the day of the incident that, based on what she observed, she believed Gutierrez-Reed might have “messed up” when she was checking the rounds that she loaded. The alert letter included 76 non-leading questions that could have elicited exculpatory testimony from Zachry. *Id.* at 7-11.
 - **Ryan Smith.** As stated in the alert letter, Smith “was a Producer of the film” and was “responsible for overseeing the overall production.” *Id.* at 11. Smith has first-hand knowledge of “the various roles and responsibilities of members of the production.” *Id.* The alert letter stated that Smith’s testimony would “establish that Mr. Baldwin did not have responsibility for selection or hiring of crew or for the day-to-day operation of the production, and that he did not act negligently.” *Id.* Smith’s testimony would undercut the State’s “producer theory” of liability, as well as its efforts to blame Baldwin for set safety issues—in fact, he would confirm that Baldwin wasn’t on set or even in the State of New Mexico for most of the filming that was done leading up to the accident. *Id.* The alert letter included 17 non-leading questions that could have elicited exculpatory testimony from Smith. Ex. 6 at 11-12.
 - **Det. Alexandria Hancock.** As stated in the alert letter, Hancock “is a Santa Fe Sheriff’s Detective who acted as the lead investigator on the case.” *Id.* at 12. As the

State knows, Hancock's affidavits describe dozens of exculpatory statements from numerous witnesses, as well as major gaps in the investigation and how evidence was gathered. *Id.* The alert letter included 105 non-leading questions that could have elicited exculpatory testimony from Hancock. *Id.* at 12-17.

- **Det. Joel Cano.** As stated in the alert letter, Cano "is a Santa Fe Sheriff's Detective who acted as one of the investigators on the case. *Id.* at 17. Like Hancock, Cano is familiar with dozens of exculpatory statements from numerous witnesses, as well as major gaps in the investigation and how evidence was gathered. *Id.* The alert letter included 26 non-leading questions that could have elicited exculpatory testimony from Cano. *Id.* at 17-19.
- **Robert Shilling.** As stated in the alert letter, Shilling "was hired as an investigator for the state and was aware of deficiencies in the investigation, including leads that were not run down." *Id.* at 19. Shilling expressed the view that "the investigation conducted by the Santa Fe Sheriff's Office over the course of more than a year" contained numerous critical errors that "could not be remediated." *Id.* The alert letter included nine non-leading questions that could have elicited exculpatory testimony from Shilling. *Id.*

In addition to those witnesses, the alert letter identified 23 documents that Baldwin contended would disprove the charges against him or make an indictment unjustified. Baldwin's proposed documents included, among other things:

- A recording of the 911 call (in which the caller, who witnessed the gun go off, describes it as an "accident" and places blame on someone other than Baldwin).
- Three search warrants containing numerous exculpatory statements from key witnesses (including a statement from a cameraman, who witnessed the gun go off, that Baldwin "had been very careful" with firearms on set; a statement that Halls told everyone (including Baldwin) that the gun was safe to handle before it went off; a statement from Halls that he "should have checked all of [the rounds in the gun], but didn't"; and a statement from Gutierrez-Reed that she "didn't really check [the gun] too much" before the incident). *See* Ex. 6 at 20-21; Ex. 23 at 5-7, 15, 24.
- A report from the New Mexico Occupational Health and Safety Bureau that demonstrates Baldwin was not part of *Rust* management and that his authority on set was limited to creative decisions, and excerpts from the Santa Fe Sheriff's Office Report that contain further exculpatory statements from key witnesses. *See* Ex. 6 at Part III; Ex. 24 at ¶¶ 9-10; Exs. 17-18, 21.
- Text messages between Zachry, Gutierrez-Reed, and Seth Kenney (the film's ammunition supplier), which contain evidence that Gutierrez-Reed went "target shooting" with the driver of the prop truck before the incident and that, unbeknownst to Baldwin, Gutierrez-Reed consistently failed to follow proper safety protocols on the

set of *Rust* and a previous film project. *See* Ex. 6 at 23; Ex. 28 at 7-14, 18, 20; Ex. 29 at 8, 10-14, 20-24.

- A letter signed by many of the cast and crew disputing that the set of *Rust* was inherently unsafe. *See* Ex. 6 at 24; Ex. 26.
- A transcript from Dave Halls’ proffer interview, in which he blames himself for the incident and states that no member of the cast or crew could have anticipated there would be live rounds in the firearm on the set. *See* Ex. 6 at 24; Ex. 16.

The alert letter also requested that the State provide specific instructions to the grand jury on two critical elements of the charging statute. First, Baldwin requested an instruction that the criminal negligence standard “requires the prosecution to show that Mr. Baldwin had subjective knowledge of an actual risk that the firearm placed in his hand had been loaded with live ammunition”—*i.e.*, “that the gun he was handling was likely loaded with live ammunition and therefore posed a substantial risk to human life,” and that he “willfully disregarded that risk when pointing the gun toward Hutchins.” *See* Ex. 6 at 1; *see also* Ex. 9 (No. D-0101-GJ- 2023 -00008, “Alec Baldwin’s Response to State’s Motion to Exclude Baldwin’s Requested Elements Instruction to the Grand Jury” (Dec. 15, 2023)) at 1, 3. Second, Baldwin requested an instruction that “proximate cause is an element of causation, and that the element of proximate cause is negated where the negligence of a third party (*i.e.*, someone other than Mr. Baldwin) was the only significant cause of death or constitutes an intervening cause that broke the foreseeable chain of events.” *See* Ex. 6 at 1; *see also* UJI 14-252 NMRA.

On November 15, 2023, the State filed an expedited motion to “preclude” nearly all of the documents and witnesses that Baldwin identified in his alert letter. *See* Ex. 7 (No. D-0101-GJ- 2023-00008, “State’s Expedited Motion to Preclude Target’s Requested Testimony and Evidence Before the Grand Jury” (Nov. 15, 2023)) at 3-32. The State also sought to preclude Baldwin’s requested jury instruction regarding subjective knowledge, arguing that an “instruction requiring that the target had subjective knowledge of an actual risk that the firearm placed in his hand had

been loaded with live ammunition is an unprecedented departure from the elements of proof the law and rules require.” Ex. 8 (No. D-0101-GJ-2023-00008, “State’s Motion to Exclude Target’s Requested Elements Instructions to the Grand Jury” (Dec. 1, 2023)) at 5. The State further argued that such an instruction improperly “assumes that the factual basis of negligent act [sic] was failing to check the firearm for live rounds.” *Id.* at 7. According to the State, “whether or not [Baldwin] had subjective knowledge of an actual risk that the firearm placed in his hand had been loaded with live ammunition has *nothing* to do with the other ways in which the State intends to show [he] negligently handled a firearm resulting in death.” *Id.* (emphasis added). The State also refused to provide Baldwin’s requested causation instruction; the State stated that it intended to provide a different instruction, even though, in yet another legal blunder, the State’s preferred instruction stated that it didn’t apply in homicide cases. *See* Ex. 9 at 1-2 (citing UJI ¶ 14-134).

On November 15, 2023, the Court held a hearing to discuss the parties’ pending motions, as well as the grand jury schedule. The Court first stated that given “the length and breadth” of the State’s motion to preclude Baldwin’s requested evidence, the Court was vacating and rescheduling the grand jury from November 16, 2023, to January 18, 2024. The Court also postponed argument on the State’s motions to give the Court time to review the parties’ submissions—the exact solution that Baldwin had originally proposed to the State to “ensure this process is done properly the first time around.” *See* Ex. 10 (D-0101-GJ-2023-00008, “Order Vacating and Rescheduling Grand Jury Inquiry” (Nov. 15, 2023)); Ex. 2 at 1.

At the hearing, the Court also expressed deep concern about the fact that the grand jury date and other information about the grand jury process had been disclosed to the media. The Court explained that disclosing the grand jury date to the press (which the State did) created the risk of prejudice, and grand jurors had, in fact, approached the clerk seeking to serve on the grand

jury. The Court therefore unequivocally and repeatedly ordered the parties not to disclose information about the grand jury process or what happened during that day's hearing.

The State violated the Court's order within *one hour* by disclosing details of the hearing to the press, including the new grand jury date that the Court had instructed the parties *not* to disclose. *See* Ex. 1 at 9-10. Baldwin therefore filed a sanctions and contempt motion, (Ex. 1), which prompted the State to violate the Court's order *again* by making improper disclosures about those filings. Ex. 5 (No. D-0101-GJ- 2023-00008, "Reply in Support of Motion for Sanctions Against Special Prosecutors Kari Morrissey and Jason Lewis" (Dec. 15, 2023)). As if things couldn't get worse, in these discussions, the State also revealed its illicit motivations behind this prosecution. As reported in the article:

Prosecutors haven't said publicly what new evidence they have obtained during their months of investigation. But a source familiar with the case said the special prosecutors have had discussions in which they said they hope the trial will "humble" Baldwin, specifically citing his run-ins with paparazzi and public comments that weren't about the case. The source added that the intention is for it to be a "teachable moment" for Baldwin.⁸

The following morning, on *The Today Show*, the press added that the Special Prosecutors said they were also targeting Baldwin because they think he's "arrogant."⁹ This was a stunning and extreme abuse of prosecutorial power—consistent with the State's motivations from day one, when Reeb told Carmack-Altwies that prosecuting Baldwin would help her election chances. *See* Ex. 14 (at Ex. 3).

⁸ Chloe Melas, *Previously unreleased videos show Alec Baldwin firing prop gun with blanks and directing 'Rust' crew on safety*, NBC NEWS (Nov. 15, 2023, 6:00 PM EST) <https://www.nbcnews.com/news/us-news/previously-unreleased-videos-show-alec-baldwin-firing-prop-gun-blanks-rcna125294>.

⁹ *See Alec Baldwin fires prop gun in previously unreleased 'Rust' video*, THE TODAY SHOW (Nov. 16, 2023) <https://www.today.com/video/new-videos-show-alec-baldwin-firing-prop-gun-while-filming-rust-198010438001>.

C. The Court Orders The State To Make Virtually *All* Of Baldwin’s Exculpatory Evidence Available To The Grand Jury

On January 11, 2024, the Court overruled most of the State’s objections to Baldwin’s evidence and held that the grand jury *must* be told about nearly all of the evidence the State had sought to exclude. *See* Ex. 11 (D-0101-GJ-2023-00008, “Order On State’s Expedited Motion To Preclude Target’s Requested Testimony And Evidence Before The Grand Jury”) at ¶¶ 5-11. The January 11 Order also rejected the State’s narrow view of what it means to conduct a “fair and impartial” grand jury proceeding, *Herrera*, 2014-NMSC-018, ¶ 28, and provided the State with a roadmap to comply with its obligations.

To begin with, the Court explained that the State needed to “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.” Ex. 11 at ¶ 5 (citing *Herrera*, 2014-NMSC-018, ¶ 25; *State v. Cruz*, 1983-NMSC-045, ¶ 7, 99 N.M. 690, 692, 662 P.2d 1357). Special Prosecutors were therefore “obligated” to alert the grand jury to any “lawful, competent and relevant” evidence identified in Baldwin’s alert letter that “would disprove or reduce [an] accusation or . . . make an indictment unjustified.” Ex. 11 at ¶ 7 (citing § 31-6-11(A)-(B); *Herrera*, 2014-NMSC-018, ¶ 20). Moreover, contrary to the State’s inaccurate assertion that it was only required to present evidence that “directly negates defendant’s guilt”—which, adding to its mountain of legal errors, the State cited overruled law to support—the Court confirmed that Baldwin’s evidence “need not be directly exculpatory to compel the State to alert the grand jury to its existence.” Ex. 11 at ¶ 10 (citing *Jones v. Murdoch*, 2009-NMSC-002, ¶ 28, 145 N.M. 473, 483, 200 P.3d 523). As the Court noted, the intent of Section 31-6-11(B) is “to give the grand jury access to more evidence, not less.” Ex. 11 at ¶ 10 (citing *Jones*, 2009-NMSC-002, ¶ 39).

Applying these principles, the Court ruled that *all seven* of Baldwin’s proposed witnesses must be made available to the grand jury. Ex. 11 at ¶ 11(a) (ordering the State to alert the grand jury to “the existence of [Baldwin’s proposed] witnesses and their potential testimony” because “the State fail[ed] to persuade the Court that the potential testimony [of Baldwin’s proposed witnesses] may not disprove or reduce a charge or accusation, or may not make an indictment unjustified.”).¹⁰ As for the documentary evidence, the Court ruled in favor of Baldwin with respect to 20 out of the 21 documents that the State had sought to exclude. Ex. 11 at ¶ 11(b).

In a separate order issued the same day, the Court “caution[ed] the State that it must provide” Baldwin’s requested proximate cause instruction “if the evidence supports its provision to the grand jury.” Ex. 12 (No. D-0101-GJ-2023-00008, “Order Granting in Part and Denying in Part State’s Motion to Exclude Target’s Requested Elements Instructions to the Grand Jury” (Jan. 11, 2024)), at ¶ 10 (citing *State v. Trammel*, 1983-NMSC-095, ¶ 6, 100 N.M. 479, 481, 672 P.2d 652 (“[W]hen there is evidence to support a finding of every element of a defense, an instruction on that defense is required.”)). The Court disagreed with Baldwin, however, that the State was required to instruct the grand jury that it was necessary to prove that Baldwin “was subjectively aware . . . that the gun he was handling was likely loaded with live ammunition” (*see* Ex. 8 at 1, 3), accepting the State’s argument that it was improper to require an instruction that is “materially different” from the relevant UJI instruction. Ex. 12 at ¶ 8; *see also id.* at ¶ 10 (“By adhering to

¹⁰ Notably, the Court specifically instructed the State “to make readily available the proposed tangible evidence and potential witnesses to avoid scheduling disruptions if the grand jury wishes to hear the evidence once alerted.” Ex. 11 at ¶ 16 (citing *Herrera*, 2014-NMSC-018, ¶ 25). As this instruction makes clear, the State was not only barred from withholding the evidence identified in Baldwin’s alert letter, but it had an affirmative duty to facilitate the grand jury’s inquiry into such evidence, *e.g.*, by ensuring that each of Baldwin’s proposed witnesses were immediately available to testify and making sure the grand jury was aware that it could request to hear from those witnesses at any time.

instructions modeled on the Uniform Jury Instructions . . . the prosecuting attorney can avoid improper statements and fulfill the dual obligations of protecting not only the public interest but also the rights of the accused.” (quoting *Herrera*, 2014-NMSC-018, ¶ 28)). In other words, the State was required to track the UJI precisely, without importing any specific information about the nature of the target’s duty of care (*e.g.*, to check the firearm).

IV. THE SPECIAL PROSECUTORS CONDUCT A SHAM GRAND JURY PROCEEDING IN VIOLATION OF THE COURT’S ORDERS AND NEW MEXICO LAW

Despite the Court’s order that the State had an obligation to “act in a fair and impartial manner at all times during grand jury proceedings,” *Herrera*, 2014-NMSC-018, ¶ 28 (citing § 31–6–7(D)), Morrissey and Lewis had a different agenda.

As a starting point, the State intended to proceed with the grand jury on January 18, even though the grand jury’s term was set to expire on January 19 and there was no way the State could present all the relevant evidence in that timeframe. Therefore, on January 18, 2024, Baldwin sent a letter to the Special Prosecutors expressing concerns about the Special Prosecutors’ willingness and ability to comply with their obligations. *See* Ex. 15 (Letter to K. Morrissey (Jan. 18, 2024)). Specifically, Baldwin’s counsel stated that “[b]ased on the numerous questions you asked the Court about the logistics of completing this process within only two days, we are concerned that you will be unable or unwilling to present all the information in the Alert Letter or may attempt to circumvent your obligation to do so.” *Id.* Baldwin therefore “reiterate[d] that the State is required to present the Alert Letter in its entirety, and to completely present any information the grand jury wishes to hear, regardless of when the grand jury’s term expires,” and that “[a]ny effort to circumvent that obligation—including directly or implicitly encouraging the grand jury not to hear the information because it will prolong their term of service—would violate New Mexico law.” *Id.* The letter requested that the State’s presentation “go before a new grand jury that has sufficient

time to hear the necessary evidence,” and explicitly reserved Baldwin’s right to seek to dismiss any charges that resulted from the State’s “failure to comply with the above obligations.” *Id.* The State ignored Baldwin’s letter and conducted the grand jury proceedings in an expedited and unlawful manner.

A. The State Presents False And Inaccurate Testimony To The Grand Jury

The State presented seven witnesses to the grand jury. Three are on the District Attorney’s payroll, two are from the Santa Fe Sheriff’s Office (the “SFSO”), one is suing Baldwin for money, and another began blaming Baldwin in the media within days of Hutchins’ death even though he quit the production before the accident and was not on set when it occurred. Of the State’s seven witnesses, only one—Ross Addiego, the one suing Baldwin for money—witnessed the accident.

Alexandria Hancock, the lead investigator on the case, and Marissa Poppell, a crime scene technician, were called to testify about their investigation. The SFSO mangled nearly every aspect of the investigation.¹¹ But Morrissey did not elicit that relevant, exculpatory evidence. Nor did she elicit the exculpatory evidence in affidavits gathered through the investigation. Instead, she

¹¹ For example, in the immediate aftermath of the accident, SFSO left the prop cart unattended such that cast and crew members were able to tamper with the evidence. Similarly, the prop truck, where firearms and ammunition were stored overnight, was left unsecured on the property for nearly a week before it was searched, which allowed at least one crew member—Hannah Gutierrez-Reed—to remove evidence from the truck before SFSO executed its search warrant. Furthermore, SFSO received reports from multiple people concerning allegations that individuals connected to the film were firing live ammunition at the Bonanza Creek ranch on or around the day of the accident. The statements were apparently brushed aside, and they barely receive mention in the Sheriff’s Report. Another individual reported that, shortly after the incident, he overheard individuals who worked on another film discussing how some of the people working on *Rust* had been shooting cans off posts. This individual reported what he overheard to SFSO, but there was no follow-up. It has further been reported that SFSO “as a team” decided not to seek fingerprint or DNA testing of live rounds found on the set to identify who was responsible for bringing them there. Finally, the firearm that discharged a live round—one of the most significant, if not the most significant, pieces of material evidence—was destroyed by the FBI at the direction of SFSO and therefore cannot be tested in the condition it was in when the accident occurred.

guided these witnesses through tightly controlled and misleading questions that supported the State's narrative against Baldwin, even when that narrative contradicted the evidence.¹²

After Hancock and Poppell, the State called Michael Haag, one of the State's purported firearms experts, to testify that the firearm would not have fired on the day of the incident unless Baldwin pulled the trigger. Haag, who had no personal knowledge of the testing, summarized the testing that had been conducted by the FBI—during which the firearm was beaten with a mallet and destroyed, without preserving any evidence of its condition when the accident occurred. Throughout his testimony, he referred to a video he prepared with the prosecution that depicted a different firearm from the one that was on set.

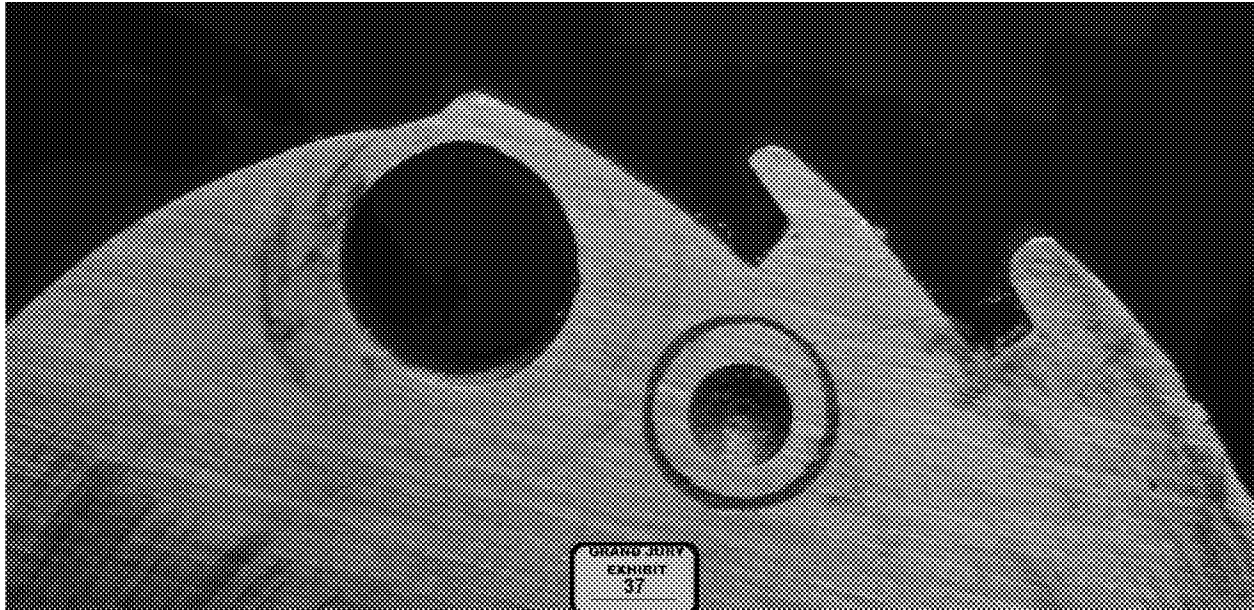
Haag omitted several essential facts regarding that testing, including that the FBI testing established that the gun *did* fire without a trigger pull when the firearm was fully loaded with six rounds, as it was on the day of the incident. Ex. 30 (FBI Laboratory Report) at 18. Notwithstanding this fact, of which both Haag and the prosecution were aware, Haag testified repeatedly that the firearm could not fire without a trigger pull. Further, Haag admitted that the hammer of the firearm that fired the fatal round was “rounded” (which would make it easier to fire). Without any support, however, Haag testified that the hammer had been broken during FBI testing—an impossible conclusion to reach since the FBI did not inspect the parts of the firearm or preserve any evidence about the internal parts of the gun (*e.g.*, no photographs, no videos,

¹² See, *e.g.*, Ex. 20 (Transcript of Second Day of Grand Jury Proceedings) at 28:21-29:16 (Q. “Now, you’ve seen this video . . . is anything about what you’ve seen here problematic from your standpoint?” A. “Yes.” Q. “What is it?” A. “There’s a number of things . . . it appears as though the armorer is putting spent ammo in the same fanny pack or pouch as live ammo -- as she’s pulling live ammo out of. Dave Halls, the first AD, who’s in blue jeans and a black shirt, is not—” Q. “And -- and keep in mind, we’re here for Mr. Baldwin. Point -- point your -- your narrative. What -- what is Mr. Baldwin doing in this scene . . . that was concerning to you?”).

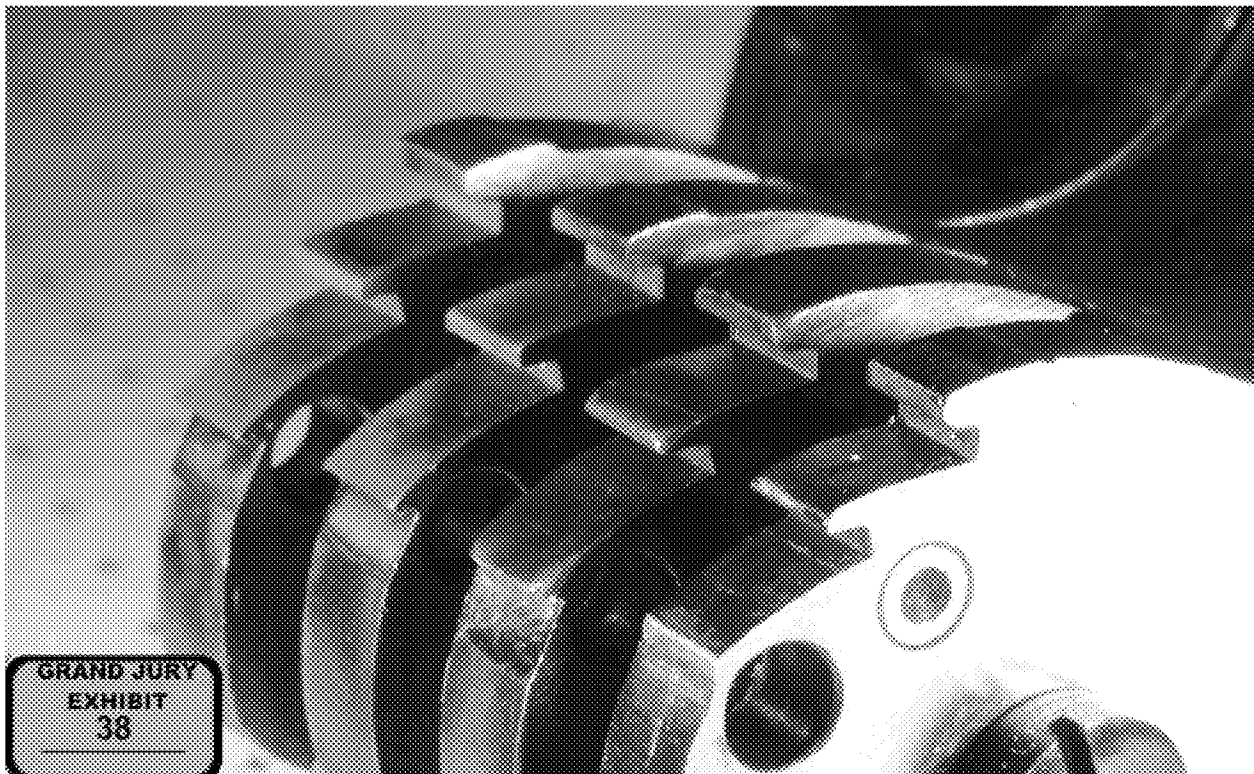
nothing) before it conducted destructive testing. Rather, as the State knew, the gun was new when Seth Kenney provided it to *Rust*, yet the internal components of the gun were inconsistent with stock parts, showed significant signs of aging, and showed clear signs of being modified and filed down. Images of the firearm after testing show filed-down hammer notches that would have made it easier to fire without pulling the trigger—including, most notably, the full-cock hammer notch at the bottom of the hammer that was completely filed off. Compare images of the hammer and other parts from the *Rust* gun below, with the same parts from an unaltered gun. Notice any obvious differences?



Image of damaged internal parts of Rust gun from FBI Report.



Close up image of Rust gun showing filed-down full-cock notch and filed down notches



Comparison of altered Rust gun hammer (far right) with unaltered hammers (three left), showing diminished full-, half-, and quarter- cock notches on Rust gun

The prosecution failed to explain that the elimination of these notches (which appear filed off and are inconsistent with being broken by the FBI's testing) would have made the gun significantly easier to fire and prone to malfunction. Moreover, the prosecution failed to explain that the hammer showed signs of rough tool marks, including file marks, that are consistent with manipulation.¹³ The prosecution concealed this information from the grand jury and presented only Haag's paid-for, unfounded speculation that (1) the damage occurred during FBI testing (when the FBI made no such observation, and neither Haag nor anyone else inspected the gun before that testing); and (2) the gun would have operated normally on set.¹⁴ The prosecution also hid that Haag was the State's paid witness.

The State's next witness was Bryan Carpenter, who, like Haag, was paid by the State to testify.¹⁵ In media appearances (as well as on LinkedIn and in the CV he provided to the State last spring), Carpenter represents himself as an armorer and weapons expert.¹⁶ But that is not how he

¹³ Lucien Haag would later reference these marks at Gutierrez-Reed's trial. HGR Trial (Day 4), at 2:28-2:30. Counsel for Baldwin is awaiting receipt of the trial videos and does not yet have transcripts. The video from Day 4 of the trial is publicly accessible on YouTube at <https://www.youtube.com/watch?v=0GqV2JvCsiI>.

¹⁴ Lucien Haag also noted at trial that the firearm would not have worked in a "normal fashion" if it were in this modified condition on the set. This was not disclosed to the grand jury either, even though the State's own witness admitted this fact at trial. HGR Trial (Day 4), at 2:29 – 2:30.

¹⁵ Carpenter also assisted the victim's family in litigation in which Baldwin was named as a defendant. *See* Ex. 19 at 155:6-11 (testifying that "shortly" after learning about the incident, he "was contacted by the Hutchins family and asked if I would help them sort out some of what occurred on the movie set by looking into the incident and also give them some direction on responsibilities of armorers slash producers and slash different people that worked on the movie set").

¹⁶ *See, e.g.,* <https://www.hollywoodreporter.com/movies/movie-news/alec-baldwin-shooting-rust-movie-munitions-experts-gun-safety-1235035713/> (describing Carpenter as "an armor and weapons master" and "munitions expert" who has been "working in that space for 30 years"); <https://www.nytimes.com/2023/01/19/arts/alec-baldwin-manslaughter-rust.html> (describing Carpenter as "an armorer"); <https://www.sfreporter.com/news/2024/01/19/grand-jury-indicts-alec-baldwin-in-rust/> (describing Carpenter as "a weapons specialist").

represented himself to the grand jury. Instead, he introduced himself as the “owner” of a “production studio” that “make[s] movies,” as if he “started” as an armorer but has since taken on bigger roles in the industry. Ex. 19 at 153:7-54:3, 184:23-24. That testimony was false, and Morrissey knew it. Carpenter is not an experienced film producer. Carpenter’s studio, 13 South Productions, appears to have been involved in no more than one or two projects that were distributed to the public. The studio’s IMDB page lists four productions, three of which appear never to have been released. *See* <https://www.imdb.com/search/title/?companies=co0759641>.

This misrepresentation allowed Carpenter to testify well beyond his experience with credibility that he didn’t earn. *See, e.g.*, Ex. 19 at 179:9-13, 184:23-185:3. For example, Carpenter told the grand jury that the safety bulletins issued by the Screen Actors Guild (“SAG”) “place . . . responsibility for firearm safety on the actor.” Ex. 19 at 169:23-70:2; *see id.* at 207:10-17 (testifying that once a firearm is put into an actor’s hand, “then [the actor has] taken a responsibility, just like getting behind the wheel of a car, to take care of other people as well as yourself”). In fact, SAG has made the opposite statement. *See SAG-AFTRA Statement on ‘Rust’ Charges*, SAG-AFTRA (Jan. 19, 2023) <https://www.sagaftra.org/sag-aftra-statement-rust-charges> (“An actor’s job is not to be a firearms or weapons expert. Firearms are provided for their use under the guidance of multiple expert professionals directly responsible for the safe and accurate operation of that firearm.”). And the firearms bulletin makes clear that the actor has no obligation to check the gun (only the right to be allowed to witness it, if he or she chooses), that the weapons handler (*i.e.*, not the actor) is the one responsible for checking the gun before use, that the actor may point the gun at the camera with the approval of the First Assistant Director (which Halls gave here), and that the armorer (Gutierrez-Reed) and First Assistant Director (Halls) are *exclusively* responsible for firearm safety. *See* Ex. 25 (Safety Bullet No. 1) at 2 (“If it is absolutely necessary

to [point a firearm at someone] . . . consult the Property Master (or, in his/her absence, the weapons handler . . .) or other safety representative, such as the First A.D./Stage Manager”); *id.* at 3-4 (“The Property Master (or, in his/her absence, a weapons handler . . .) is responsible for . . . *Ensuring the control and distribution of all firearms on the set. . . Ensuring that any actor who is required to stand near the line of fire be allowed to witness the loading of the firearms. . . [and] [c]hecking all firearms before each use.*”) (emphasis added). *Cf.* Ex. 19 at 169:20-171:19 (Carpenter falsely testifying that the SAG safety bulletins bar actors from “point[ing] the weapon at anything you’re not willing to destroy”) and *id.* at 202:1-4 (Carpenter falsely asserting that “[i]t’s the actor’s fault for discharging that weapon. . . because he’s in charge of the firearm.”). Morrissey elicited false testimony from Carpenter about these issues, as well as others, despite knowing that it was false and without presenting the contrary exculpatory evidence.¹⁷

The next witness Morrissey called was Lane Luper, a member of the *Rust* camera crew who quit the production the day before the fatal accident. Despite Luper’s absence from set on the day of the accident and his relatively narrow role as an assistant cameraman, Morrissey treated him as an expert on all things related to film safety. She even asked him to answer specific questions on firearm safety rules about which he had no expertise. *See, e.g.*, Ex. 20 at 12:4-17. Meanwhile, Luper’s bias against *Rust* and its producers arose before the accident even took place: he quit because the production would not pay for hotel rooms for crew members who lived less than an hour away from the set. Within days of Hutchins’ death, Luper began airing his grievances

¹⁷ *See* Ex. 19 at 179:25-180:4 (falsely testifying that Baldwin “actually said he was a firearms expert . . . by his own admission . . . he’s directly said that”); *id.* at 182:7-18 (falsely suggesting that Baldwin demanded, “I’m the lead actor on this movie and I want to have all of my real [guns] with me” during rehearsal); *id.* at 187:12-16 (falsely testifying that Baldwin’s producer agreement gave him “far-reaching and broad” powers without “any limitations”); *id.* at 218:13-14 (falsely testifying that *Rust* “was a union show”).

in the media and publicly challenging Baldwin’s version of events, which Luper was not even there to witness.¹⁸ At several points throughout his testimony, Luper made comments that were stricken as irrelevant and prejudicial. *E.g.*, Ex. 19 at 242:9-10 (claiming that Baldwin “was using my monitor as an ashtray for a cigar he was smoking.”).

Morrissey’s presentation to the grand jury included just a *single* eyewitness to the accident, a crew member named Ross Addiego. Neither Morrissey nor Addiego disclosed to the grand jury, however, that Addiego is suing Baldwin for money damages. *See* No. D-101-CV-2023-00427.

The State’s final witness, Connor Rice, is a paid private investigator and former Albuquerque police officer with a sordid past.¹⁹ Rice has no first-hand knowledge of the incident and was not involved in the initial investigation, yet he testified about both. *See* Ex. 20 at 79:11-80:15.

B. The Special Prosecutors Intentionally Withhold Exculpatory Evidence, While Deflecting The Grand Jury’s Inquiries About This Evidence.

Other than Hancock, Morrissey did not present *any* of the witnesses identified in Baldwin’s alert letter. And she didn’t ask Hancock proper questions to elicit exculpatory information. Morrissey never contacted Baldwin’s witnesses to ensure they were available to testify—even though the Court ordered the State to make Baldwin’s proposed witnesses “readily available” to

¹⁸ *See, e.g.*, Meg James, *Did Alec Baldwin pull the trigger? ‘Rust’ camera assistant says: ‘Guns don’t just go off.’*, LOS ANGELES TIMES (Dec. 2, 2021), <https://www.latimes.com/entertainment-arts/business/story/2021-12-02/rust-camera-lane-luper-baldwin-claims-didn’t-pull-trigger>.

¹⁹ In 2013, Rice was charged with beating a man as the man was surrendering during an arrest. Video from the arrest shows Rice punching the suspect in the face three times while another officer puts his boot on the suspect’s head. *See, e.g., Albuquerque ex-officer acquitted in beating case*, SANTA FE NEW MEXICAN (Sept. 26, 2013), https://www.santafenewmexican.com/news/local_news/albuquerque-ex-officer-acquitted-in-beating-case/article_7b02dcb0-8d11-5dd3-8649-e07129168720.html.

testify without “scheduling disruptions.” *See* Ex. 11 at ¶ 16. The State knew it was obliged to do so, but it excluded these witnesses from the grand jury proceedings anyway.

The State accomplished this in two ways. *First*, Morrissey did not explain the meaning or purpose of Baldwin’s alert letter to the grand jury. She introduced the letter at the beginning of the proceeding by stating simply, “There is a grand jury alert letter from the target for your consideration.” Ex. 19 at 7:7-8. She then proceeded to read the alert letter into the record verbatim, without explaining its practical significance, why it had been submitted, why it was being read, or what the grand jurors were supposed to do with it. Nor did Morrissey explain that the witnesses identified in the alert letter were *available* to testify and that the grand jury was *obligated* to request the presentation of exculpatory and relevant evidence. *See* 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).

Instead, Morrissey conveyed the exact opposite impression. Before reading the alert letter, she had already dictated who the witnesses would be, informing the grand jury that “[t]his morning I will be presenting to you a case where Alexander Baldwin is the target. The witnesses in this case *will be* Corporal Alexandra Hancock, Marissa Poppell, Michael Haag, Bryan Carpenter, Ross Addiego, Lane Luper, and Connor Rice.” *See* Ex. 19 at 1:21-25 (emphasis added). And after reading the alert letter into the record, Morrissey made *no* effort to explain the letter’s purpose. She simply stated, “That concludes the grand jury evidence alert letter from the target. So there are witnesses ready to testify now. However, if you -- it depends on what you want to do. Do you want to take a break to consider the alert letter, or do you want to just begin hearing witness

testimony?” Ex. 19 at 15:2-7. Morrissey never explained, or even attempted to explain, what it meant for the grand jury to “consider the alert letter”—*i.e.*, that they could ask for any witness or document identified in the letter, and, in fact, were required to “order” exculpatory evidence to be produced. NMSA 1978, § 31-6-11(B). Once again, her statement communicated that the *opposite* was true. Her message was that the grand jury could “consider the alert letter” (*i.e.*, read it themselves), “or . . . just begin hearing witness testimony.” The State never explained that there was a *third* option—the most critical option of all under the governing law: the grand jury could consider the alert letter, hear witnesses the prosecution identified, *and* direct that the witness testimony and documentary evidence identified in the alert letter be presented.

After returning from a short break, the grand jurors asked about a few typos in the letter—making clear that the grand jurors had no idea what New Mexico law required them to “consider” about the alert letter. Ex. 19 at 15:16-16:25. After discussing the typos, Morrissey stated that she “can’t fix the typos on the grand jury evidence alert letter because it’s not ours,” again conveying the impression that reading the letter was merely a formality before she commenced the actual hearing of evidence she wanted to present. *Id.* at 16:22-25. Morrissey then asked the grand jury, “do you have any other questions? Anybody else have any other questions? You want to tell us how you want to proceed?” *Id.* at 17:6-8. In response, the foreman stated, “I think if that’s the end of questions about the letters and warrant letters, we’d probably proceed with witnesses if that’s okay,” again demonstrating the grand jury’s failure to understand the basic purpose of the alert letter or their right and obligation to exercise independent control over the evidence that was presented. *Id.* at 17:9-11.

Second, Morrissey diverted the grand jury from hearing exculpatory evidence, as well as other evidence that would be helpful to Baldwin, by refusing to facilitate the grand jury’s repeated

inquiries into the witnesses and documents identified in Baldwin's alert letter. Instead of giving grand jurors the information they requested from the witness best able to provide it, Morrissey would re-direct such inquiries to her own witnesses and further cement the notion that these were the only witnesses the grand jury had access to. For example, at one point during Hancock's testimony, a grand juror 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?" *Id.* at 66:25-67:2. The truthful answer to that question is "yes." But rather than ask the grand jurors if they wanted to hear from Halls directly (or inform them that this was an option), Morrissey responded, "We are going to have another witness address those issues for you. We have an expert who works on movie sets, and he's going to answer those questions for you if that's okay." *Id.* at 67:3-6. The witness she was referring to was Bryan Carpenter, the State's paid expert whose false answer to that question (blaming the situation on Baldwin) would have been refuted by Halls,²⁰ the relevant industry safety bulletin, and SAG. Ex. 19 at 169:23-170:6, 206:13-207:17.²¹ Notably, at the trial of Hannah Gutierrez-Reed, one of the jurors has publicly stated that the jury's verdict "was [based

²⁰ Carpenter's testimony contradicted prior statements from both Halls and the objective documentary evidence that gun safety is the responsibility of the armorer and first assistant director. Indeed, Halls had previously testified that he feels "some culpability" for Hutchins' death because, as first assistant director, he was the "last line of defense" when it came to firearm safety on set. Ex. 16 at 138:4-14.

²¹ Although the grand jury was provided a copy of the industry safety bulletins, Morrissey glossed over the most exculpatory portion of the most exculpatory bulletin, which contradicts Carpenter's testimony. See Ex. 19 at 210:1-211:6; see also Ex. 25. Although Morrissey, in her own words, "very, very quickly" put the relevant bulletin up on the screen, she never called attention to the exculpatory portion highlighted in Baldwin's alert letter and quickly took it off the screen "just so it's not a distraction" (Ex. 19 at 210:1-211:6). She instead directed the grand jury attention to language in a different bulletin that says "blanks can kill"—even though Baldwin was told the gun was cold by the person in charge of gun safety, and Hutchins' death was not caused by a blank; it was caused by a real bullet that was inexplicably comingled with dummy rounds (*id.* at 207:18-208:13).

on the fact that it was Gutierrez-Reed’s] job to check those rounds and those firearms.”²² Even Morrissey agreed with that view at Gutierrez-Reed’s trial, contradicting the false testimony she elicited for the grand jury: in summation at trial, Morrissey argued that Gutierrez-Reed “is the *autonomous* decision maker with regard to gun safety” and that Gutierrez-Reed was responsible for Hutchins’ death because it was “foreseeable” that Baldwin would not check the gun. *See State v. Hannah Gutierrez*, Trial (“HGR Trial”), Day 10 (YouTube) at 59:50-59:54; 1:11:38-1:12:21.²³

When another grand juror asked, “Shouldn’t somebody have seen the difference before it went into the gun?” (Ex. 19 at 72:6-7), Morrissey again deflected the question away from Halls—who previously testified that he should have checked the gun before handing it to Baldwin (N.B., one of many intervening causes that exculpates Baldwin). Instead, she stated, “Like I said, we’re going to have more testimony on this that hopefully will help with that.” *Id.* at 73:5-7. At no point did Morrissey explain to grand jurors that they could hear from Halls directly if they wanted. Morrissey later introduced testimony that Baldwin could have determined the difference between a dummy and a blank, without any basis for that testimony and contrary to what at least one other person on set told the SFSO. Ex. 19 at 183:6-12 (Carpenter); Ex. 20 at 72:9-23 (Rice); Ex. 31 (Ackles Interview Report at 175 (“he said you wouldn’t be able to tell off a visual inspection if they were dummies or live rounds”).

On another occasion, a grand juror asked, “when Alec Baldwin refused to look at the gun that was handed, that was allegedly cleared, and they gave it to him to reinspect it . . . how would he inspect the gun? Would he -- would he take all the bullets out into his hand and -- and start

²² See Julia Jacobs, ‘Rust’ Armorer Convicted of Manslaughter in Alec Baldwin Shooting (Mar. 3, 2024), <https://www.nytimes.com/2024/03/06/arts/rust-armorer-convicted-alec-baldwin-shooting.html>.

²³ The video from Day 10 of the trial is publicly accessible on YouTube at <https://www.youtube.com/watch?v=Sj2SJ-DCEck>.

shaking them or would he just open the chamber and look at the top, make sure that it was kind of seated all the same and no inconsistencies?” Ex. 19 at 73:8-15. The question itself is troubling because it reflects at least three material misunderstandings: (1) that Baldwin “refused” to look at the gun, (2) that he was required to “reinspect it” once it was handed to him, and (3) that there is a protocol for actors on how to check weapons. These misunderstandings are the direct result of false testimony from Morrissey’s witnesses, and Morrissey had a duty to elicit truthful evidence to rebut them. For example, had the grand jury been able to question Halls, or been referred to affidavits about the accident, the correct safety bulletin, or SAG’s official views, the grand jury would have understood that Baldwin didn’t “refuse” to check or reinspect the gun. Rather, he had no obligation to check it in the first place and, therefore, was *never* asked or told to check the gun or given a protocol for doing so. *See, e.g., supra* at 25; Ex. 16 at 49:7-51-4; Ex. 17 (Halls Interview Report) at 163; Ex. 18 (Souza Interview Report) at 125. But Morrissey diverted the inquiry, stating, “Is it okay with you if we addressed that question to a different witness?” Ex. 19 at 73:18-19. Again, she was referring to Carpenter, whose false testimony would compound the grand juror’s misunderstandings. In fact, Carpenter testified at Gutierrez-Reed’s trial that Gutierrez-Reed and Halls—*not* the actor—have the obligation to check and clear the gun, which is the *opposite* of what he falsely told the Baldwin grand jury. HGR Trial, Day 6 (YouTube) at 29:53-30:22 (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.”).²⁴ Morrissey did not present that critical, exculpatory evidence to the grand jury. And she was so determined to keep Halls out of the picture that she cut off her own witnesses if their testimony focused on issues where Halls’ statements or conduct would exculpate Baldwin:

MORRISSEY: Now, you’ve seen this video . . . is anything about what you’ve seen here problematic from your standpoint?

ADDIEGO: Yes.

MORRISSEY: What is it?

ADDIEGO: There’s a number of things. First of all, as soon as the -- Mr. Baldwin emptied that firearm and we had to reload, Dave Hall [sic] should’ve called cut to give everybody that moment to safely reset. I -- it appears as though the armorer is putting spent ammo in the same fanny pack or pouch as live ammo -- as she’s pulling live ammo out of. Dave Halls, the first AD, who’s in blue jeans and a black shirt, is not—

MORRISSEY: [*interrupting*] And -- and keep in mind, we’re here for Mr. Baldwin. Point -- point your -- your narrative. What -- what is Mr. Baldwin doing in this scene . . . that was concerning to you?

Ex. 20 at 28:21-29:16.²⁵

²⁴ The video from Day 6 of the trial is publicly accessible on YouTube at <https://www.youtube.com/watch?v=mwtR-L6fHcI>.

²⁵ Morrissey also failed to elicit other exculpatory testimony from Addiego. *See, e.g.*, Ex. 27 at 110 (interview affidavit saying that “Ross said he recalls hearing the Armorer (Hannah Gutierrez) saying the weapon was clear when speaking to the 1st Assistant Director (Dave Halls). Ross indicated he overheard Hannah say that she hadn’t checked the gun since lunch, but it was in the safe and on the truck during lunch.”).

Morrissey also steered grand jurors away from other critical witnesses identified in Baldwin's alert letter. While Rice, Morrissey's paid private investigator, was testifying, a juror made a direct inquiry about Sarah Zachry's responsibility. *See* Ex. 20 at 86:3-7 ("Looking back at the alert letter, there's a notation that Sarah Zachry, the prop master for the film, was also the supervisor for Hannah Reed. But nobody's talking about her play in this. So you know where I'm going."). In response, Morrissey indicated that Rice may not be "familiar enough" with "the relationship between the prop master and the armorer to answer that question." *Id.* at 86:8-10. "But," Morrissey stated, "we have a witness sitting out there who may be able to answer it." *Id.* at 86:10-12. The witness should have been Zachry, who made exculpatory statements on this topic. *See* Ex. 21 (Zachry Interview Report) at 98. Instead, it was Lane Luper, whom Morrissey offered to "bring back" to answer the grand juror's questions about *Zachry's* role. Ex. 20 at 86:12-13. When the same grand juror asked an even more specific question about Zachry, Morrissey redirected the question to Rice, and then peppered Rice with questions about Zachry that Zachry herself was in the best position to answer and that Rice had no foundation to answer. Ex. 20 at 86:18-20 ("Do you have any information about the firearms training or firearm familiarity that Sarah Zachry has?"), 87:6-7 ("Do you know whether or not Ms. Zachry has ever shot a gun?"), 87:18-22 ("what is your understanding of where she procured the . . . prop guns. . .?"), 87:25-88:1 ("did Ms. Zachry bring dummy rounds onto the set of Rust?"). At no point during this exchange did Morrissey explain that *Zachry herself* was available to testify, that other witnesses who had communicated with Zachry about this issue could testify, that Morrissey was obligated to present these witnesses if the grand jury wished to hear from them, or that the grand jury had an obligation to request evidence that might be exculpatory or favorable to Baldwin.

As a result of Morrissey's diversions, the grand jury never heard from the film's director, Joel Souza; its producer, Ryan Smith; its first assistant director, Dave Halls; or its prop master, Sarah Zachry—even though each of these witnesses had exculpatory testimony that would have satisfied the grand jury's inquiries in ways that Morrissey's paid and attenuated witnesses could not. But rather than “facilitate” the grand jury's inquiry into Baldwin's witnesses, Morrissey did everything in her power to ensure that the grand jury never heard from them. Morrissey also withheld over a dozen exculpatory documents that were relevant to the grand jurors' inquiries and contained specific answers to many of their questions. Ex. 20 at 100:2-7.

C. The Special Prosecutors Issue An Improper, Prejudicial Instruction To The Grand Jury

Morrissey supercharged these failures by issuing an improper instruction on a critical element of the charging statute. Specifically, on three separate occasions, Morrissey instructed the grand jury that to return a true bill under NM 14-231, it must find probable cause as to each of the following elements: (1) “The target 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*,” (2) “the target should have known the danger involved from the target's actions,” (3) “the target acted with a willful disregard for the safety of others,” and (4) “the target's act caused the death of Halyna Hutchins.” Ex. 19 at 2:11-4:3; Ex. 20 at 3:14-4:2.

Morrissey included the italicized language even though she had successfully argued to the Court that Baldwin's requested instruction concerning subjective knowledge was improper because it “assumes that the factual basis of negligent act [sic] was failing to check the firearm for live rounds,” and that any deviation from the UJI by inserting such language was unwarranted. Ex. 8 at 6-7. The instruction Morrissey gave to the grand jury deviates from the UJI and violates the Court's order (Ex. 12 ¶¶ 8, 10). It also places an affirmative duty on Baldwin to check the gun

for live bullets and, therefore, obtain subjective knowledge about the very thing that Morrissey told the grand jury Court has “nothing to do” with the ways in which the State intends to prove Baldwin’s negligence. Ex. 8 at 7. And which the State’s expert at Gutierrez-Reed’s trial, Carpenter, testified was *not* the actor’s responsibility.

* * * * *

On January 19, 2024, the grand jury returned an indictment. Ex. 22 (Grand Jury Indictment). The indictment states that it “is based” upon the testimony of “Alexandria Hancock, Bryan Carpenter, Lane Luper, Ross Addeigo [sic], Michael Haag, Marissa Poppell, and Connor Rice.” The grand jury did not receive the favorable or exculpatory testimony and documents that the State had an obligation to present. Nor was the grand jury told it had the right to review and the obligation to request this information.

ARGUMENT

I. THE STATE’S INTENTIONAL WITHHOLDING OF EXCULPATORY EVIDENCE SUBJECTS THE INDICTMENT TO JUDICIAL REVIEW

A court may review the sufficiency of the evidence underlying an indictment upon a showing of “prosecutorial bad faith.” *Herrera*, 2014-NMSC-018, ¶ 13 (citing NMSA 1978, § 31-6-11(A)). “[T]he best way to give effect to this purpose is by giving the phrase ‘bad faith’ its ordinary meaning: ‘[d]ishonesty of belief, purpose, or motive[.]’” *State v. Deignan*, 2016-NMCA-065, ¶ 6, 377 P.3d 471, 473. The State’s conduct throughout the grand jury process demonstrates its dishonest “belief, purpose, or motive,” and therefore subjects the indictment to judicial review.

From the moment this prosecution began, Morrissey has sought to prejudice Baldwin. The list of misconduct leading up to the grand jury proceeding is both long and disturbing:

- Morrissey publicly announced her decision to pursue an indictment, in violation of the rules governing the grand jury process. *See, e.g., State v. Hill*, 1975-NMCA-093, ¶ 7, 88 N.M. 216, 218 (citations omitted) (“Secrecy is the vital

requisite of grand jury procedure”). The grand jury Court chastised this conduct.²⁶ *Supra* at 11.

- Morrissey made public statements commenting on Baldwin’s purported guilt, in violation of the rules governing prosecutor’s statements to the press. *Supra* at 3-4, 7-8; *see also* N.D.A.A. Nat’l Prosecution Standard 2-14.2 (“The prosecutor should refrain from making extrajudicial comments before or during trial that promote no legitimate law enforcement purpose and that serve solely to heighten public condemnation of the accused.”); *id.* at 2-14.4 (“Prior to and during a criminal trial the prosecutor should not make any public, extrajudicial statement that has a substantial likelihood of materially prejudicing a judicial proceeding.”).
- Morrissey sent Baldwin a target notice that violated New Mexico law by excluding the 48-hour deadline, even though she simultaneously acknowledged that she had *never* seen this done before and had served a target notice on Gutierrez-Reed that *contained* the 48-hour deadline. *Supra* at 3-4, 8-10; *see also* Ex. 2 at 1; Ex. 4 at Exs. 4, 5. The grand jury Court chastised this position and denied the State’s request.
- Morrissey filed an unprecedented motion to conduct a one-sided voir dire of the grand jury venire to improperly influence the grand jury. *Supra* at 3, 11; *see also* Ex. 13. The grand jury Court chastised this position and denied the State’s request.
- Morrissey *twice* violated the Court’s order to refrain from disclosing information about the grand jury hearings to the public, even after the Court explained that this could be highly prejudicial to the target and gave an *actual* example of the prejudice that was occurring as a result of Morrissey’s disclosures. *Supra* at 4-5, 15-16.
- Morrissey rejected almost the entirety of Baldwin’s alert letter by seeking to preclude nearly *all* of Baldwin’s exculpatory and favorable evidence. The grand jury Court chastised this position, which the State had supported by citing law that had been overruled by the New Mexico legislature and the New Mexico Supreme Court in *Jones*, and denied the State’s request.
- Morrissey refused to contact nearly all of the witnesses that Baldwin identified in the alert letter, despite the Court’s order that she make the witnesses available for the grand jury. Ex. 11 ¶ 16.

²⁶ The State previously objected to Baldwin’s request to obtain the recording of the hearing (at which defense counsel was present), and, accordingly, the defense is unable to provide a transcript at this time. As of this week, the State is now willing to consent to the release of the transcript to Baldwin, but the State wants to place restrictions on Baldwin’s ability to publicly file the transcript with this and other motions. The bottom line is that the State has no legitimate interest in imposing these restrictions—it is Baldwin’s privacy that’s at stake, and Baldwin’s position is that the State’s misconduct in the grand jury proceedings should receive the public scrutiny it deserves. Baldwin will therefore be moving to request the release of the transcripts, without conditions, but does not wish to delay this motion to dismiss for that issue to be resolved.

- Morrissey told the media that the State was motivated to pursue this prosecution to “humble” Baldwin, because the Special Prosecutors find him “arrogant” and want to give him a “teachable moment.” *Supra* at 16.
- The grand jury term was set to expire just one day after Morrissey intended to begin her presentation of the case, yet Morrissey refused to adjourn the grand jury date to ensure that she had adequate time to present all exculpatory evidence and witnesses. *See* Ex. 15. It was clear from Morrissey’s questions to the grand jury Court that she knew she could not present all the necessary evidence in that short time frame.
- All of this misconduct occurred on the heels of the State’s initial prosecution, a bad-faith debacle in which the prior prosecutors resigned after violating the U.S. and New Mexico Constitutions, New Mexico law, and the ethical rules governing prosecutors. *Supra* at 1-2; *see also* Ex. 1 at 4-7.

Morrissey doubled down on this extraordinary misconduct by violating the standards governing her presentation to the grand jury. The Court rejected nearly every argument the State presented leading up to the grand jury proceeding and explained the legal standards that govern the presentation of evidence to a grand jury. As described in detail above, however, the State violated those standards, over and over. Morrissey ensured that the grand jury had no understanding of its obligation to request exculpatory and relevant evidence or the purpose of Baldwin’s alert letter. Morrissey then excluded all of the exculpatory and favorable evidence: the witnesses who would have given favorable testimony about Baldwin were kept from the grand jury, every favorable or exculpatory document was concealed or only partially presented, every favorable fact was hidden, and all of the grand jury’s inquiries about exculpatory information were redirected to witnesses who misrepresented the facts or had no foundation for giving the answers.

The State had one goal—indict Baldwin, no matter the truth, no matter the rules or Court rulings, and no matter what it took to do so. If the State’s conduct here does not demonstrate the level of bad faith necessary to subject an indictment to judicial review, it is all but impossible to imagine a set of facts that would. *See supra* at 3-37; *see also* *Deignan*, 2016-NMCA-065, ¶ 11 (quoting *Herrera*, 2014-NMSC-018, ¶ 24) (courts must assess “the prosecutor’s actions, viewed

under the totality of the circumstances, in order to determine whether they prevented the jury from ‘mak[ing] an independent inquiry into the evidence supporting a determination of probable cause.’”).

II. THE INDICTMENT MUST BE DISMISSED

Under New Mexico law, “[t]he 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 Ulibarri*, 1999-NMCA-142, ¶ 10 (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.”). But the grand jury method cannot function when prosecutors “conflate [their role] as an aide to the grand jury with the role of the grand jury itself.” *Jones v. Murdoch*, 2009-NMSC-002, ¶ 12(citing *United States v. Fisher*, 455 F.2d 1101, 1105 (2d Cir. 1972) (“[T]he grand jury is not meant to be the private tool of a prosecutor.”); *State v. Haberski*, 449 A.2d 373, 378 (Me. 1982) (“The grand jury does not function as an arm of the prosecution.”)). *See also* 4 Crim. Proc. § 15.2(b) (4th ed.) (stating that limitations on the State’s presentation to the grand jury “stem from the independence of the grand jury, the supervisory authority of the court, and the general responsibility of the prosecutor to seek justice rather than simply victory”). That is exactly what happened here: the State deprived the grand jury of its “ability to accurately and independently assess the government’s evidence of probable cause,” *Jones*, 2009-NMSC-002, ¶ 2, and instead used the grand jury as a “private tool” to obtain Baldwin’s indictment.

The indictment must be dismissed for two independent reasons: first, the State unlawfully deprived the grand jury of critical evidence that disproves the charges or makes an indictment

unjustified; and second, the State conducted the grand jury process in an unlawful manner, including by providing an improper charging instruction regarding a critical element of the offense.

A. The State Unlawfully Deprived The Grand Jury Of Exculpatory Evidence And Evidence That Was Favorable To Baldwin's Position

“Unless the grand jury is empowered to consider all lawful, relevant, and competent evidence bearing on the issue of probable cause, the grand jury cannot perform its historical role of determining whether those accused of wrongdoing by the government should suffer the burdens of a criminal prosecution.” *Herrera*, 2014-NMSC-018, ¶ 24 (citing *Jones*, 2009-NMSC-002, ¶ 2). Thus, 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.” Ex. 11 at ¶¶ 5, 6 (citing *Herrera*, 2014-NMSC-018; *Cruz*, 1983-NMSC-045, ¶ 7). Morrissey’s intentional violation of that duty and “withholding of potentially exculpatory evidence strikes at the very heart of the grand jury’s assessment of probable cause to indict.” *Jones*, 2009-NMSC-002, ¶ 2. The indictment must be dismissed because the State withheld exculpatory and favorable evidence.

As described above, Baldwin’s alert letter described piles of documents and more than a half-dozen witnesses who had information favorable to his defense. There are witnesses who saw Baldwin’s conduct on set and had said he handled guns safely. *See* Ex. 23 at 7; Ex. 18 at 126; Ex. 6 at 21-22. A witness who said that he, not Baldwin, was responsible for checking the firearm and that Baldwin was not at fault. Ex. 16 at 50:10-51:4, 137:9-18, 138:4-14. There are documents corroborating Baldwin’s statements that he had no control over the production of the movie, other than the right to give limited creative input about co-stars and the script. Ex. 24 ¶ 10. Guidelines and industry statements that make clear Baldwin had no obligation to check the gun. *See supra* at 25. There are also documents and testimony showing that the set was safe. Ex. 18 at 126; Ex. 6 at

24. The list of favorable evidence goes on and on. *See* Ex. 6 at 2-24; Exs. 15-18. And on. *See* Exs. 21, 23-25.

For example, Souza was standing behind Hutchins when the gun went off and was struck by the same bullet that killed Hutchins. His statements to law enforcement following the incident support Baldwin's case. *See* Ex. 18 at 126. Similarly, Halls is the only witness (other than Gutierrez-Reed) with first-hand knowledge of the condition of the gun before it was given to Baldwin. He is also the only person (other than Gutierrez-Reed) who was required to inspect the gun before it was handed to Baldwin, and he admitted that he failed to properly do so. *See, e.g.* Ex. 16 at 36:19-38:5; *see also* Ex. 17 at 163; HGR Trial, Day 6 (YouTube) at 5:17:20-5:18:36 (testifying that he was "negligent in checking the gun properly" because "even though the cylinder wasn't fully rotated . . . [he] let that safety check sort of pass").²⁷

Morrissey was required to elicit this exculpatory testimony from Halls and Souza; she was also required to provide the grand jury with specific documents, identified in Baldwin's alert letter, that reflect these and similar exculpatory statements from both witnesses. *Supra* at 25, 29-34; NMSA 1978, § 31-6-11(B) (stating grand jury's obligation to "order" exculpatory evidence to be "produced"); *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); *cf. 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

²⁷ The video from Day 6 of the trial is publicly accessible on YouTube at <https://www.youtube.com/watch?v=mwtR-L6fHcI>.

evidence supporting a determination of probable cause.”).²⁸ For example, in the same interview where Halls told the State that he failed to properly inspect the gun before it was handed to Baldwin, he told the State that he feels “some culpability” for Hutchins’ death since he—*not* Baldwin—was the “last line of defense” when it came to the inspection of firearms on set. Ex. 16 at 138:10-14; *see also id.* at 95:7-13.²⁹ He also said he didn’t think Baldwin should be criminally prosecuted. Ex. 6 at 6; *see also* Ex. 16 at 94:20-95:13, 137:9-18.

Sarah Zachry, the film’s prop master, supervised Gutierrez-Reed and is the only person who claimed to have witnessed Gutierrez-Reed load the gun before it was brought into the church. Immediately after the accident, Zachry told Detective Joel Cano that based on what she witnessed, she believed Gutierrez-Reed might have “messed up” by shaking two rounds at once while checking for dummy rounds as she loaded the gun.³⁰ The grand jurors needed to hear these facts from Zachry, and they repeatedly asked about her. But Morrissey prevented that from happening,

²⁸ Although the *Lampman* decision was putatively overruled by *Buzbee v. Donnelly*, 1981-NMSC-097, ¶ 3, 96 N.M. 692, 634 P.2d 1244, the grounds for that decision have since been overruled by statute, reviving *Lampman*’s authority. *Compare Buzbee*, 1981-NMSC-097, ¶ 46 (stating that Section 31-6-11(B), prior to its amendment, only requires the prosecutor to present “direct” exculpatory evidence), *with* Ex. 11 ¶¶ 9-10 (rejecting Morrissey’s argument, which was based on overruled law, that the State “is required to present to the grand jury only exculpatory evidence that directly negates defendant’s guilt,” and holding that “the target-offered evidence need not be directly exculpatory to compel the State to alert the grand jury to its existence”) (citing *Herrera*, 2014-NMSC-018 ¶ 21; *Jones*, 2009-NMSC-002, ¶ 28).

²⁹ On February 29, 2024, at the trial of Gutierrez-Reed, Halls testified that he entered a “no contest” plea to “negligent use of a firearm” because he “was negligent in checking the gun properly.” HGR Trial, Day 6 (YouTube) at 5:17:20-5:18:36. Specifically, Halls testified that he “[didn’t] recall” Gutierrez-Reed “fully rotating the cylinder” when she showed him the gun for a final safety check before it was given to Baldwin, but that he “let that safety check sort of pass” anyway. *Id.*

³⁰ Zachry’s exculpatory statements were also documented in the Sheriff’s report, excerpts of which were included in Baldwin’s alert letter. *See* Ex. 21. Morrissey never provided grand jurors with those documents. Nor did she present Detective Cano, who was identified in Baldwin’s alert letter, to elicit his testimony about Zachry’s exculpatory statements.

instead calling back witnesses who had no personal knowledge about the grand jurors' inquiries. *Supra* at 21-34; *Lampman*, 1980-NMCA-166, ¶ 5 (prosecutor may not “juggle witnesses in order to keep out relevant testimony” in grand jury proceedings). Zachry's testimony likely would have established that Gutierrez-Reed was an intervening cause in the chain of events that led to Hutchins' death, yet Morrissey concealed that evidence from the grand jury.

Same song, different verse for Baldwin's other witnesses: Morrissey did not facilitate the grand jury's access to them—even when the grand jury's inquiries implicated important aspects of their expertise, previous testimony, or roles on set. For example, Morrissey knew that Ryan Smith, one of the film's producers, would have contradicted testimony by several of Morrissey's witnesses that Baldwin was “in charge” as a producer. *See* Ex. 6 at 11-12. As Smith would have testified, Baldwin's role as a producer was limited to making creative decisions, and Baldwin was not responsible for hiring crew members, enforcing safety protocols, setting the budget, or managing day-to-day operations—contrary to false testimony from Morrissey's witnesses. The OHSB Report, another piece of evidence the State failed to present to the grand jury, corroborates this account. *See* Ex. 24 ¶¶ 9-10. Nor did Morrissey facilitate the grand jury's access to Robert Shilling, a former investigator involved in the case who described the State's investigation as “reprehensible and unprofessional to a degree I still have no words for.” *See* Ex. 32 (*State v. Gutierrez*, D-101-CR-2023-00040, “Supplement To Motion To Dismiss Second Amended Information And Motion To Dismiss Third Amended Information” (June 22, 2023)) at Ex. A.

Morrissey did not make any of these witnesses available to the grand jury, or even inform the grand jury they were available. She did not present the exculpatory or favorable evidence described in more detail in Sections III.B and IV.B of the Factual Background section above. *Supra* at 11-14, 27-34. And she punted the grand jury's inquiries to the State's hand-picked

witnesses whose testimony was biased, inaccurate, and in most cases, flat out untrue. *Supra* at 20-34. If the State had conducted the grand jury process consistent with New Mexico law, the outcome should and almost certainly would have been different. In short, the State concealed substantial exculpatory and favorable evidence from the grand jury. The Court should therefore dismiss the indictment. *See Lampman*, 1980-NMCA-166, ¶ 3 (dismissing indictment where prosecutor failed to elicit exculpatory testimony that contradicted testimony from prosecution’s law enforcement witness); *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”).

B. The State Manipulated the Grand Jury Process, and Gave an Improper Jury Instruction, in Violation of the Court’s Orders and New Mexico Law

The State’s bad-faith withholding of exculpatory evidence alone requires dismissal. *See, e.g., Herrera*, 2014-NMSC-018, ¶ 26 (“The grand jury’s ability to obtain evidence beyond that presented by the State is critical to the structural integrity of our grand jury system.”) (citing *Ulibarri*, 1999-NMCA-142, ¶ 11). Judicial review of an indictment is also permitted, *without* a showing of prosecutorial bad faith, where the target “claim[s] that the grand jury proceedings have been conducted in violation of the laws governing the grand jury process.” *Herrera*, 2014-NMSC-018, ¶ 14. Moreover, in such cases, “the target is entitled to dismissal of the indictment and is not required to demonstrate prejudice.” *Id.* ¶ 17 (“Our courts presume prejudice in such cases because the structural protections of the grand jury statutes preserve the integrity of the grand jury system and because, as a practical matter, evaluating actual prejudice would require a speculative inquiry and impose a difficult burden on the target and the courts.”). The indictment should be dismissed on this separate basis.

New Mexico law “provide[s] structural protections that safeguard the grand jury’s ability to perform its constitutional function.” *Herrera*, 2014-NMSC-018, ¶ 14 (citation omitted). “If the prosecutor does not strictly adhere to the grand jury statutes and procedural rules designed to protect the target’s rights and ensure the fundamental fairness of the proceeding, the structural integrity of the grand jury process is compromised, along with the grand jury’s determination of probable cause.” *Id.* at ¶ 15. Thus, to “preserve the integrity and independence of the grand jury process,” prosecutors must “conduct [themselves] in a fair and impartial manner at all times when assisting the grand jury.” *Ulibarri*, 1999-NMCA-142, ¶ 11 (quoting NMSA 1978, § 31-6-7(D)).

The smallest prosecutorial error can have severe consequences for a target. *See, e.g., Jones*, 2009-NMSC-002, ¶¶ 18-19 (noting that “the mere issuance of an unjustified indictment” can inflict “undeniable damage,” including because “[t]he stigma cannot be easily erased”). Therefore, New Mexico courts recognize that the target’s right to a fair and lawful process “should be ‘rigorously protected.’” *Ulibarri*, 1999-NMCA-142, ¶ 17 (citing *Baird*, 1977-NMSC-067, ¶ 9). From day one, however, the State violated these obligations. For example:

The State provided an inaccurate jury instruction regarding a critical element of the charged offense. The State instructed the grand jury that it must decide whether there was probable cause to support the allegation that Baldwin “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.” Ex. 19 at 3:21-24; Ex. 20 at 97:7-10. Morrissey effectively instructed the grand jury that Baldwin had a duty to check the firearm for live ammunition and to refrain from pointing the gun at anyone—contrary to her prior arguments to the Court and without any support from the Uniform Jury Instructions or New Mexico law. *See*

Ex. 8 at 7; Ex. 9 at 1-3.³¹ In fact, this instruction violated the grand jury Court’s order, which rejected previous attempts by the parties to provide any instructions that were “materially different” from the Uniform Jury Instructions. Ex. 12 at ¶ 8; *see also id.* at ¶ 10 (“By adhering to instructions modeled on the Uniform Jury Instructions . . . the prosecuting attorney can avoid improper statements and fulfill the dual obligations of protecting not only the public interest but also the rights of the accused.” (quoting *Herrera*, 2014-NMSC-018, ¶ 28)).³²

Morrissey’s refusal to present Dave Halls’ testimony to the grand jury compounded the impropriety of this instruction because Halls would have testified, unequivocally, that it is *not* the actor’s duty to check whether a prop gun has been loaded with live rounds or to refrain from pointing it at the camera after being told it was safe to do so. *Supra* at 29-34; *see also* Ex. 16 at 50:10-51:4, 137:9-18. Both the applicable industry safety bulletin and SAG’s public statements also confirm this fact. *Supra* at 25. And Morrissey’s *own* expert, Carpenter, testified at 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 29:53-30:22 (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

³¹ *See also* Eugene Volokh (UCLA Law Professor), *What Exactly Is “Manslaughter” in the Alec Baldwin Case?*, REASON (Jan. 19, 2023), <https://reason.com/volokh/2023/01/19/what-exactly-is-manslaughter-in-the-alec-baldwin-case/> (“The prosecution would have to prove, beyond a reasonable doubt, that he was subjectively aware of the danger: that he actually thought about the possibility that the gun might be loaded, and proceeded to point it and pull the trigger despite that.”); Alan Dershowitz, *Why Charging Alec Baldwin with Manslaughter Is Wrong*, NEWSWEEK (Jan. 19, 2023), <https://www.newsweek.com/why-charging-alec-baldwin-manslaughter-wrongopinion-1775163> (“In this case, Baldwin claims that he was explicitly told the gun did not contain live ammunition. Even if prosecutors can cast doubt on this self-serving statement, it will be impossible for them to prove beyond a reasonable doubt that Baldwin believed he was risking Hutchins’ life by pulling the trigger or cocking the gun.”).

³² As explained above, in a complete about-face, Morrissey included the improper italicized language after previously arguing that any deviation from the UJI would be unwarranted and that an instruction concerning Baldwin’s subjective knowledge was improper because it “assumes that the factual basis of negligent act [sic] was failing to check the firearm for live rounds.” Ex. 8 at 7.

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.”).³³ Carpenter also acknowledged that the actor has *no* obligation to even *watch* the gun be cleared. *Id.* Yet Morrissey never presented any of that evidence to the grand jury and read an instruction to the grand jury that improperly imposed this non-existent obligation. *See supra* at 20-34. Morrissey’s inaccurate jury instruction is an independent cause for dismissal. *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; *Ulibarri*, 1999-NMCA-142, ¶ 17 (the target’s right to a fair and lawful process “should be ‘rigorously protected.’”) (citing *Baird v. State*, 1977-NMSC-067, ¶ 9).!

The State knowingly failed to advise the grand jury of its authority. A grand jury “may order that evidence be produced over and above that initially presented by the State,” *Ulibarri*, 1999-NMCA-142, ¶ 11 (citing UJI 14-8001), and has a duty “to weigh all the evidence submitted

³³ The video from Day 6 of the trial is publicly accessible on YouTube at <https://www.youtube.com/watch?v=mwtR-L6fHcI>.

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.” NMSA 1978, § 31-6-11(B) (emphasis added). *Accord Herrera*, 2014-NMSC-018, ¶ 21 (citing *Jones*, 2009-NMSC-002, ¶¶ 27–28; NMRA Rule 5-302A(B)(3)). Morrissey communicated the exact *opposite* message to the grand jury. For example, Morrissey never explained the meaning or practical significance of Baldwin’s alert letter, why it was being read into the record, or what the grand jurors were supposed to do with it. Ex. 19 at 7:7-17:12. Nor did she explain that the witnesses identified in the alert letter were *available* to testify. *See* Ex. 11 at ¶ 16 (instructing the State “to make readily available the proposed tangible evidence and potential witnesses to avoid scheduling disruptions if the grand jury wishes to hear the evidence once alerted”). Instead, she conveyed that the grand jury would hear from only *her* selection of witnesses, telling the grand jury only one minute into the proceeding that the “witnesses in this case *will be* Corporal Alexandra Hancock, Marissa Poppell, Michael Haag, Bryan Carpenter, Ross Addiego, Lane Luper, and Connor Rice.” Ex. 19 at 1:23-25 (emphasis added).

Morrissey then doubled down by directing the grand jury’s inquiries about exculpatory evidence to one of her seven witnesses, whom she narrowly questioned and even cut off mid-testimony to ensure they didn’t disclose any information that was favorable to Baldwin’s position. *Supra* at 32. In these important moments, Morrissey made sure that none of the grand jurors understood that they “may order that evidence be produced over and above that initially presented by the State,” *Ulibarri*, 1999-NMCA-142, ¶ 11 (citing UJI 14-8001), let alone that they were *required* to do so. *See* NMSA 1978, § 31-6-11(B). Therefore, Morrissey “interfere[d] with the grand jury’s fact-finding function” in a way that “threaten[ed] the structural integrity of the grand

jury process by undermining the grand jury's ability to accurately and independently assess the government's evidence of probable cause.” *Jones*, 2009-NMSC-002, ¶ 2; *see also Herrera*, 2014-NMSC-018, ¶ 1 (dismissing indictment where “the prosecutor prevented the grand jury from inquiring into the facts demonstrating probable cause”).

The State's grand jury process was structurally flawed from start to finish. The structural integrity of the process has also been destroyed by the cumulative impact of the State's misconduct.

From the moment this prosecution began, Morrissey has sought to undermine Baldwin's rights and eliminate the possibility of a fair playing field. She improperly disclosed confidential grand jury information to the public, including the existence and date of the grand jury. *Supra* at 3-4, 7-8. Then she tried to jam through an indictment in a three-week period, while simultaneously trying to limit Baldwin's time to submit an alert letter. *Supra* at 4-5, 8-10. She requested permission to conduct a one-sided voir dire of the grand jury venire in an attempt to influence the composition of the grand jury. *Supra* at 3, 11. She sought to preclude virtually *all* of Baldwin's exculpatory and favorable evidence, taking the extreme position that none of Baldwin's witnesses—including Halls, who told Morrissey he feels responsible for Hutchins' death because he failed to check the gun and was the “last line of defense”—had anything exculpatory to say. *Supra* at 12-15, 29-34. The Court ordered the parties not to disclose the contents of the grand jury hearings and explained that disclosing the grand jury date was highly disturbing because sitting grand jurors had read the press and had *asked* the Court to sit on the Baldwin grand jury. Morrissey violated the Court's order that *same evening* and disclosed information about the grand jury and the next grand jury date, twice, even *after* receiving that stern warning and order from the Court. *See Ex. 1* at 9-10.

The madness didn't stop there: after the Court rejected the State's arguments and ruled that Baldwin's witnesses must be made available to the grand jury, Morrissey refused to adjourn the grand jury date to allow enough time to comply with the Court's order and New Mexico law. When Baldwin asked Morrissey to adjourn the grand jury date so that she had more than two days to present the case, which was not enough time for Morrissey to comply with her obligations, Morrissey ignored Baldwin's letter, plowed ahead, presented her seven biased witnesses (several of which have conflicts that the State concealed from the grand jury),³⁴ refused to provide the grand jury access to any of the witnesses or documents that grand jurors were obligated to consider, issued an improper jury instruction on a critical element of the offense, and, after barely more than one day, obtained an indictment. Morrissey's conduct has been malicious and vindictive from start to finish—consistent with her troubling confession to the media that the prosecution's motive is to “humble” Baldwin through a “teachable moment.” *See supra* at 16.

The State's repeated violations of the U.S. and New Mexico Constitutions, New Mexico law, and the ethical rules further undermined the structural integrity of the grand jury process.

The State's misconduct throughout this prosecution occurred on the heels of an equally bad-faith prosecution brought by Morrissey's predecessors, District Attorney Carmack-Altwies and former Special Prosecutor Reeb, whose constant disparagement of Baldwin in the media annihilated any chance of a fair prosecution. Ex. 1 at 4-7; Ex. 14 at 3-5. Like Morrissey, Carmack-Altwies and Reeb could not hide their disdain for Baldwin—which is why they cut every corner imaginable to

³⁴ Carpenter's conflict—that he advised the victim's family before he was retained by the State—is especially troubling and disqualifying. *See* Ex. 19 at 155:6-11; *see also, e.g., State v. Hill*, 1975-NMCA-093, ¶¶ 13, 17, 88 N.M. 216, 219 (dismissing indictment based on presentation of facts by private attorney who “had been retained for a fee paid by the father-in-law of the deceased” because attorney's “conflict of interest . . . compromised the impartiality of the grand jury proceedings”).

push their vindictive agenda: charging Baldwin under a law that didn't exist when the accident occurred; appointing a special prosecutor (Reeb) who was simultaneously campaigning for State Legislature; and disparaging Baldwin and his lawyers in the media when he asserted constitutional challenges to these mistakes, even as they privately conceded that his lawyers were correct. Ex. 1 at 4-5. Meanwhile, Carmack-Altwies and Reeb were *laughing* at Baldwin's expense, literally writing "lol," at the idea that prosecuting Baldwin could help Reeb get elected. Ex. 1 at 7.

* * * *

It is the grand jury's "duty 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." *Ulibarri*, 1999-NMCA-142, ¶ 10. The State made sure, in every way possible, that the grand jurors would be unable to fulfill that duty. They botched the investigation; they destroyed the gun at issue; they violated the U.S. and New Mexico Constitutions, New Mexico law, the Court's orders, and the ethical rules; they conducted an improper press campaign designed to destroy Baldwin and taint the grand jury; they violated the grand jury secrecy rules even when the Court explicitly described the prejudice of doing so; they misled the grand jury about its independent role in the process and the purpose of Baldwin's alert letter; they kept exculpatory and highly favorable witnesses and documents from the grand jury; they both elicited and failed to correct testimony from witnesses that they knew to be false; they read an improper jury instruction about a critical element of the charged offense, which also contradicted their own expert's testimony and summation at Gutierrez-Reed's trial; and then they conducted the entire grand jury presentation in barely more than one day. In these circumstances, New Mexico law requires that the indictment be dismissed. *See Herrera*, 2014-NMSC-018, ¶ 32 (dismissing indictment where the state "conducted the grand jury proceedings in a manner that violated grand

jury statutes designed to protect the structural integrity of our grand jury system, rendering the proceedings fundamentally unfair and warranting a presumption of prejudice to Petitioner”).

CONCLUSION

For the above reasons, Baldwin respectfully requests that the Court dismiss the indictment.

Date: March 14, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2024, a true and correct copy of the foregoing notice was emailed to opposing counsel.

/s/ Heather M. LeBlanc
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