

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

STATE OF NEW MEXICO,

Plaintiff,

v.

D-101-CR-2023-00040

HANNAH GUTIERREZ-REED,

Defendant.

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**SUPPLEMENT TO MOTION TO DISMISS SECOND AMENDED INFORMATION AND  
MOTION TO DISMISS THIRD AMENDED INFORMATION**

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Defendant Hannah Gutierrez-Reed, by and through her counsel of record, Jason Bowles of Bowles Law Firm, and Todd J. Bullion of Bullion Law Office, hereby submits her supplement to her Motion to Dismiss Second Amended Information and Motion to Dismiss Third Amended Information and states that this supplement and the motion to dismiss the second amended information is now directed at the governing third amended information, and in support states as follows:

In the first motion to dismiss, Ms. Gutierrez Reed raised a number of areas of constitutional infirmity related to the underlying investigation and failures by the State to disclose exculpatory information. Ms. Reed also argued that the continuing involvement in the prosecution by DA Carmack Altweis, after appointment of special prosecutor Andi Reeb, was unauthorized and prejudicially tainted numerous aspects of the investigation and ongoing prosecution. The reason for this is that, consistent with this Court's ruling under the special prosecutor appointment statute, once that appointment was made, DA Carmack Altweis lacked authority to continue, to make decisions, to enter into plea deals and to steer the prosecution.

In its response, the State indicated that it was complying with its obligations under Brady v. Maryland, and its progeny. The state further appeared to concede the jurisdictional issue regarding the district attorney, and it filed a new second amended information attempting to cure any prejudice.

Following completion of briefing on this first motion, counsel was very recently copied on an email from the State's lead investigator. This email was sent by the investigator to DA Mary Carmack Altweis and to special prosecutor Kari Morrissey.

The email is attached. Exhibit A. In that email, the lead investigator, Mr. Shilling, indicates that he has been asked to do no further work on the case. He then acknowledges that the contents of the email are "probably" subject to IPRA, but states that he felt compelled to say anyway:

The current special prosecutor has directed that I conduct no further investigation into this matter. ... The conduct of the Santa Fe County Sheriff's Office during and after their initial investigation is reprehensible and unprofessional to a degree I still have no words for. Not I or 200 more proficient investigators than I can/could clean up the mess delivered to your office in October 2022 (1 year since the initial incident...inexcusable).

Following this send, the special prosecutor emailed and asked counsel for Ms. Gutierrez Reed to delete the email and apparently act as if it never happened, because it was "inadvertently" sent to undersigned counsel. Attached as Exhibit B. Apparently, the special prosecutor misbelieved that counsel for Ms. Gutierrez Reed would have no obligation to follow up.

Counsel then emailed the special prosecutor back and asked why DA Carmack Altweis was still involved in these matters. Special Prosecutor Morrissey then emailed that the contracts were with the district attorney's office, but that Morrissey decided who was hired and fired.

Following this exchange, and media IPRA request of Mr. Shilling's emails, Mr. Shilling messaged to counsel that this IPRA request didn't give him great confidence, and that he was under

an NDA, apparently not to talk about either his being told to stop working, the reasons surrounding that, or anything about the case.

This whole exchange is beyond troubling on many fronts. First, it appears beyond doubt now that the State is attempting to sweep exculpatory information “under the rug.” But for the fortuitousness of this “inadvertent” send, defense counsel would likely have never known about Shilling’s information and extremely negative views on the investigation. Ms. Gutierrez Reed has an expert witness regarding the severe problems in the investigation. The fact that the State’s lead investigator shares those views, or some of those views, is highly exculpatory.

Second, and even more problematic is the apparent existence of an NDA. It appears that the State has actually tried to suppress the statements and testimony of its now former lead investigator. This attempted suppression includes and encompasses what are obviously exculpatory statements by the investigator. Counsel will have to interview Mr. Shilling, and he has long been listed as a witness for the preliminary hearing, and indeed he was the author of the statement of probable cause supporting the charges against Ms. Gutierrez Reed. The fact that he wrote the charges in the manner that he did, but now professes great concern with the quality of the investigation, is a very important and exculpatory matter.

In thirty years of practicing law, both as a prosecutor and defense attorney, undersigned counsel has never seen an instance where a prosecutor attempted to silence a lead investigator, with potentially exculpatory information, through the use of an NDA. There is currently a national movement to ban NDA’s, especially in respect to cases involving sexual harassment or assault, so that powerful political and social figures cannot escape scrutiny and quietly make things disappear. Likewise, Ms. Gutierrez Reed has a constitutional due process right to have exculpatory information timely disclosed to her and for her to pursue investigation of that information. This is

supposed to be a search for the truth, not a game of hide the ball to obtain a conviction. Indeed, an NDA in a state context is also completely inconsistent with the Inspection of Public Records Act and it likely violates that law.

Ms. Gutierrez Reed now requests that this Court order production of all communications and emails in and between Mr. Shilling, DA Carmack Altweis, and the special prosecutors, to review in camera. This request is made because counsel has lost faith that the State will voluntarily comply with its Brady obligations. This request is also made because it appears that DA Carmack Altweis is still having involvement in the case, despite this Court's unequivocal prior order.

Respectfully submitted,

/s/ Jason Bowles

Jason Bowles

Bowles Law Firm

4811 Hardware Drive, N.E., Bldg D, Suite 5

Albuquerque, N.M. 87109

Telephone: (505) 217-2680

Email: jason@bowles-lawfirm.com

-and-

Todd J. Bullion

4811 Hardware Drive, N.E., Bldg D, Suite 5

Albuquerque, N.M. 87109

Telephone: (505) 494-4656

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing pleading was sent through the ESF system, which caused the following parties to be served by electronic means, as reflected on the Notice of Electronic Filing this 22<sup>nd</sup> day of June, 2023, to the counsel listed below:

Kari Morrisey  
Jason Lewis  
Special Prosecutors

/s/ Jason Bowles

Jason Bowles

Bowles Law Firm

## EXHIBIT A

### Rust

Robert Shilling <shilling.robert@gmail.com>

Tue 6/20/2023 4:00 PM

To: Mary Carmack-Altwies <MCarmack-Altwies@da.state.nm.us>

Cc: Jennifer Padgett <jpadgett@da.state.nm.us>; Kari Morrissey <ktm@morrisseylewis.com>; Jason Bowles <jason@bowles-lawfirm.com>

DA Carmack-Altwies -

In accordance with the 'agreement' entered into between your office and myself, specifically item numbered '6', please accept this notice as termination of our 'agreement', effective July 5, 2023 (14 days excluding federal holiday).

The current special prosecutor has directed that I conduct no further investigation into this matter. On that note, it is extremely reasonable that the current special prosecutor have staff/investigator(s) of her choosing as this case moves forward and comes closer to court date(s) and/or dates of import.

All time/hours from this point forward will be focused on a smooth transition to the directed point of contact; including but not limited to:

- Summarizing all interviews and/or contacts into a single report
- Summarizing all diagrams, in draft form, for ready transfer
- Documentation and transfer of any/all photographs/evidence in this matter;
- Binder transfer to the directed point of contact

Knowing full well the probability that this email may be subject to IPRA, I am still compelled to respectfully offer the following:

- The conduct of the Santa Fe County Sheriff's Office during and after their initial investigation is reprehensible and unprofessional to a degree I still have no words for. Not 1 or 200 more proficient investigators than I can/could clean up the mess delivered to your office in October 2022 (1 year since the initial incident...inexcusable).

It was an honor to be considered and selected to assist in this investigation...an investigation of the preventable, recklessly caused and untimely death of Ms. Hutchins.

Respectfully,

Robert Shilling

**Fwd: Rust**

Kari Morrissey <ktm@morrisseylewis.com>

Tue 6/20/2023 4:39 PM

To: Jason Bowles <jason@bowles-lawfirm.com>

Jason

Rob's email to you was intended for Jason Lewis. It was an inadvertent disclosure. Please delete it. Thank you.

Kari Morrissey

----- Original Message -----

From: Robert Shilling <shilling.robert@gmail.com>

To: Mary Carmack-Altwhies <MCarmack-Altwhies@da.state.nm.us>

Cc: Jennifer Padgett <jpadgett@da.state.nm.us>, Kari Morrissey <ktm@morrisseylewis.com>, jason@bowles-lawfirm.com

Date: 06/20/2023 3:59 PM MDT

Subject: Rust

DA Carmack-Altwhies -

In accordance with the 'agreement' entered into between your office and myself, specifically item numbered '6', please accept this notice as termination of our 'agreement', effective July 5, 2023 (14 days excluding federal holiday).

The current special prosecutor has directed that I conduct no further investigation into this matter. On that note, it is extremely reasonable that the current special prosecutor have staff/investigator(s) of her choosing as this case moves forward and comes closer to court date(s) and/or dates of import.

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EXHIBIT B

It was an honor to be considered and selected to assist in this investigation...an investigation of the preventable, recklessly caused and untimely death of Ms. Hutchins.

Respectfully,

Robert Shilling