

Exhibit

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**Court Order: Finding El Paso DA's Office Guilty of
Evidentiary Manipulation**

CAUSE NUMBERS IDENTIFIED HEREINBELOW

Tina Urias

STATE OF TEXAS	§	IN THE 394TH
	§	
V.	§	JUDICIAL DISTRICT COURT
	§	
VARIOUS FELONY DEFENDANTS	§	CULBERSON COUNTY, TEXAS

ORDER ON MOTION TO DISMISS FOR PROSECUTORIAL MISCONDUCT

Defendants' Motions to Dismiss for Prosecutorial Misconduct were presented to the Court beginning on November 18, 2024, and reconvened on November 25 and December 4. The motions were consolidated by agreement for purposes of unified presentation and consideration by the Court. Having considered the evidence and arguments of counsel, the Court finds as follows:

1. Assistant District Attorney Kevin Marcantel and the 34th District Attorney's office (together, "the prosecution") systemically and systematically failed to comply with their obligations under Texas Code of Criminal Procedure 39.14 for cases in Culberson and Hudspeth Counties.
2. The "portal system" utilized in Culberson and Hudspeth Counties by the prosecution to make evidence available to the defense (in lieu of physically producing the evidence to the defense) systemically fails to produce to the defense evidence that had been possessed by the state and the prosecution prior to indictment, until manually overridden, which the prosecution routinely did not do unless so ordered by the court, specific items were identified and demanded by the defense, or the defendant rejected the plea offer and both parties announced ready for trial.
3. The prosecution routinely and systematically failed to ensure that evidence in the case that was in the prosecution's possession was timely produced or made available to the defense in the portal as soon as practicable.
4. The prosecution routinely and systematically failed to seek, obtain, and timely produce or promptly supplement to the defense material, relevant, and possibly exculpatory evidence possessed by the state.
5. As a result, defendants were forced to unwittingly evaluate plea offers, accept or reject plea agreements, and announce ready for trial without ever seeing material and potentially exculpatory evidence possessed by the state.
6. The prosecution routinely announced ready for trial in cases where they had not made a diligent effort to obtain relevant and material evidence within the state's possession or produce such evidence to the defense.
7. The prosecution's violations were caused not by inadvertence or mere negligence, but by systematic conduct rising to the level of gross negligence.
8. These systematic and systemic failures and widespread violations were only discovered as a direct result of the filing and prosecution by the defense of their Motions to Dismiss for Prosecutorial Misconduct.
9. The Court takes judicial notice of the court filings of record and settings in each case.
10. The violations of 39.14 in these cases caused actual prejudice and harm to defendants, and violated defendants' constitutional rights.

11. In Cause No. 1944, State. v. Hagan, the Court finds that the State intentionally failed to comply with 39.14 and this Court’s discovery orders. The Court notes that on December 12, 2022, the prosecution appeared and announced that all evidence had been produced and discovery was complete. The Court further finds that the prosecution had actual possession of records specifically requested by the defense that they did not timely produce as required by law. The Court notes that an order compelling production was signed on March 22, 2024, and that the prosecution failed to produce the evidence until after the Motion to Dismiss was filed more than six months later. The Court takes judicial notice of the State’s August 24, 2023 Response, in which the prosecution took the following legal position on behalf of the 34th District Attorneys’ Office:

“The scope of Discovery under 39.14 is limited to what is in the possession of the District Attorney’s Office. [...] It is the position of the District Attorney’s Office that the defendant is not entitled to have the Court order the District Attorney’s Office to obtain records that it does not have within its possession and that the defense has equal ability to obtain.”

Accordingly, IT IS ORDERED that in the following cases, Defendants’ Motions are granted in part, as follows:

<u>Cause No</u>	<u>Defendant’s Name</u>	<u>Relief Granted</u>
1944	Brandon Hagan	Exclusion from use at trial by the state of all evidence produced to the defense after August 31, 2023.
2000	Jorge Antonio Nunez-Chavez	Exclusion from use by the state of all evidence produced to the defense after April 4, 2023.
2084	Irene Valenzuela	Suppression and exclusion from use at trial by the State of the two interview videos uploaded by the State on 11/14/2024, being identified in the portal by file numbers ending 21788456 and 21788457. The Court further excludes and prohibits any witness testimony offered or elicited by the State related to the events or statements captured by the videos.
2044	Jesus Alfredo Rodriguez	Suppression and exclusion from use at trial by the State of the interview identified in the November 18, 2024, disclosure, being “Amaris Fernandez Interview (03-12-21).mp3”. The Court further excludes and prohibits any witness testimony offered or elicited by the State related to the events or statements.
2057	Jesus Manuel Olivas	The Court orders the State to obtain and produce the EMS reports and recordings, and body cam videos of Troopers Morales and Lujan. The Court further suppresses and excludes these items and prohibits the use by the State of the above items at trial in this case. The Court further excludes any testimony of Troopers Morales and Lujan regarding events or statements captured on the body cam recordings.

IT IS FURTHER ORDERED that all relief requested in the following cases is DENIED:

1966	Pablo Galaviz-Lopez
2078	Jarrod Niko Xavier Engelhardt
2079	Savanah Carrillo
2081	Julio Baeza
2085	Shayde Sinclair
2087	Eric Guillory
2090	Gerardo Nunez
2088	Ramon Almaguer
2094	Jesus Urias
2097	Desiree Fodge

The Court clarifies that none of its orders preclude the Defense from use at trial of the excluded evidence. None of these Court's Orders excuse the 34th District Attorney's office from their continuing duties under Tex. Code Crim. Pro. § 39.14, *Brady v. Maryland*, or any other law with regards to disclosure of evidence. Further or additionally discovered violations will result in escalating sanctions up to and including dismissal of charges.

The State's request for sanctions against the Public Defender Office, Attorney James G. McDermott, and Attorney Paul F. Chambers, related to the filing of the Motions is DENIED.

Signed on the 9th day of December, 2024.



JUDGE PRESIDING

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