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NORMA FAVELA BARCELEAU
District Clerk
El Paso County
20200D02631

NO. 20200D02631

STATE OF TEXAS	)	IN THE DISTRICT COURT
VS.		409TH JUDICIAL DISTRICT
PATRICK WOOD CRUSIUS	)	EL PASO COUNTY, TEXAS

RESPONSE TO STATE'S MOTION TO RECUSE THE HONORABLE JUDGE SAM MEDRANO

TO THE HONORABLE SID L. HARLE, SITTING BY ASSIGNMENT IN THE 409TH JUDICIAL DISTRICT COURT, EL PASO COUNTY, TEXAS:

Four days shy of a scheduled hearing it was plainly desperate to avoid, the El Paso County District Attorney's Office filed a motion to recuse Judge Medrano, claiming that, based on a "sequence of events," the Judge's impartiality might reasonably be questioned in this case. But the truth is that not one of these "events" caused the State to object contemporaneously, and for good reason. Judge Medrano did nothing objectionable. Only now, facing a hearing before Judge Medrano that it did not want heard, does the State complain, by way of a motion to recuse. The State's recusal motion contains no support whatsoever, legal or factual, for its claim that Judge Medrano's impartiality might reasonably be questioned. Unfortunately, simply by filing this meritless motion, the State derailed, temporarily, the hearing scheduled for September 13, 2022. The State's motion to recuse should be denied so the Honorable Sam Medrano can resume the work on a case assigned to him some three years ago.

I.
Relevant Timeline

June 24, 2022

After conferring with counsel for the Government and the Defense, and considering the complexity of the case and timelines suggested by both parties, United States District Judge David C. Guaderrama ordered jury selection to begin on January 8, 2024, and trial to commence immediately after. The Court struck a balance, noting: "In setting the trial date, the Court is guided by the paramount principles of fairness and justice. Those principles require the Court to consider the interests of the victims, the public, and Crusius."[1]

June 26, 2022

Three days after Judge Guaderrama's order, El Paso County District Attorney Yvonne Rosales issued a written press release recognizing the federal trial schedule, and claiming her desire to have the State's case tried before the Federal case, in the summer of 2023.

July 1, 2022

State District Judge Sam Medrano presided over a Status Hearing and questioned DA Rosales's claim that the State would be ready in less than a year to try a case as complex as this, in light of substantial evidence to the contrary. As Judge Medrano

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[1] *United States v. Crusius*, No. EP-20-CR-00389-DCG, 2022 WL 2353366, at *3 (W.D. Tex. June 24, 2022)(ECF No. 236).

pointed out: "The record should reflect that . . . since you took office, not one pleading, not one motion, not one request, not one business record, not one proposed jury questionnaire, not one subpoena duces tecum, not one witness list, not one expert witness list has been filed by your office." DA Rosales also admitted that she was still in the process of hiring additional attorneys to assist her current staff with this case, that she had not conferred with defense counsel about scheduling the trial, and that she had not requested a setting through the Court.[2]

Judge Medrano announced, intent on "mak[ing] it perfectly clear that this case is not going to be tried in the media, but will be tried in a court of law." [3] To ensure this, the Judge issued a three-page written Order Restraining Parties from Making Extrajudicial Statements (Gag Order). This order carefully balanced the Court's duty, on the one hand, to preserve Mr. Crusius's right to a fair trial by an impartial jury and to ensure that potential jurors not be prejudiced by pretrial publicity, while at the same time being mindful of the First Amendment rights of all involved and Texas's constitutional Open Courts Provision.

Several prosecutors were with Ms. Rosales at counsel table. None, including the District Attorney herself, made any objection at all to any question asked by the Court, or to the manner in which the questions were asked, or to the entry of the gag order, or to its

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[2] Status Hearing, pp. 7-8 .

[3] Status Hearing, p. 17.

terms.

August 4, 2022

According to the State's motion "multiple local media outlets received an email originating from an email account linked to Rosa Maria Valdez, mother of the biological children of Walmart shooting victim Alexander Hoffman. . . . The email represented that it had been written by Alexander Hoffman Valdez, one of Alexander Hoffman's children." [4]

August 10, 2022

Judge Medrano presided over a zoom meeting of the parties and advised counsel that recent events had caused him concern about whether everyone understood the terms of the gag order, including the Hoffman family. Accordingly, the Court scheduled a Status Hearing for August 18, 2022, and requested that the parties identify the persons who informed the witnesses of the gag order, and which witnesses were present at the July 1, hearing. The defense complied.

August 11, 2022

After receiving a reminder from the Court that its response was late, the State sent an email to Judge Medrano and the defense with the information requested, stating that Rosa Maria Valdez Garcia, Alexander Wilheim Hoffman, and Thomas Hoffman were all present at the July 1, Status Hearing; that ADA John Briggs was the person who spoke to

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[4] State's motion, p. 13.

them about the gag order; and that Mr. Briggs was assisted by two named victim advocates, Martha Gaytan and Lorena Garcia.

August 17, 2022

The State advised the Court that it had been unable to contact the Hoffmans. Judge Medrano appointed El Paso attorney Justin B. Underwood "to represent the Hoffman family in any future proceeding that may arise in this cause." [5] Citing its inability to contact the Hoffmans, the State filed a motion for continuance that was granted by the Court.

August 30, 2022

Judge Medrano rescheduled for September 13, 2022, the Status Hearing that had been originally scheduled for August 18, and continued on the State's motion.

September 6, 2022

According to the State, attorney Underwood caused three subpoenas to be issued on this date for DA Rosales, former ADA John Briggs, and Roger Rodriguez to appear at the Status Hearing on September 13.

September 7, 2022

The State moved to quash Mr. Underwood's subpoenas, but failed to request that Judge Medrano hear the motion.[6]

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[5] The Court's Order is attached to the State's motion to recuse.

[6] The State attached a copy of its motion to quash to its recusal motion.

September 9, 2022

The State's Motion To Recuse The Honorable Judge Sam Medrano was filed.

September 12, 2022

The Honorable Stephen B. Ables, Presiding Judge of the Sixth Administrative Judicial Region, assigned Judge Sid L. Harle to preside in the 409th Judicial District Court of El Paso in the motion to recuse Judge Medrano. The Status Hearing scheduled for September 13, 2022 was stayed pending resolution of the recusal motion.

II.
Judges Are Presumed Impartial, And A High Threshold Must Necessarily Be Met Before Recusal Is Warranted

"Courts enjoy a 'presumption of judicial impartiality.'" *Abdygapparova v. State*, 243 S.W.3d 191, 198 (Tex. App.—San Antonio 2007, pet. ref'd). The burden of proving that recusal is warranted is on the movant, who must provide "sufficient evidence to establish that a reasonable person, knowing all the circumstances involved, would harbor doubts as to the impartiality of the judge. . . . As such, the proponent must show a "deep-seated favoritism or antagonism that would make fair judgment impossible." *Id.* at 198. "[A] high threshold must necessarily be met before a judge may be recused from a case" and to prevent the possibility of an unwarranted recusal, decisions "must be made in light of all the circumstances and not on isolated facts divorced from the larger context in which they occurred." *Ex parte Ellis*, 275 S.W.3d 109, 113 (Tex. App.–Austin 2008). "Conclusory statements, conjecture, or mere assertions of bias will not satisfy the burden

or overcome the presumption of impartiality." *Id.* at117.

III.
The State's Motion Has Alleged Nothing To Justify The Recusal Of Judge Medrano

A. The State must prove that Judge Medrano's impartiality might reasonably be questioned.

The State alleges only a single ground for recusal — that Judge Medrano's "impartiality might reasonably be questioned." [7] The State's motion to recuse does not even allege – must less meet – the "high threshold" required to establish that a reasonable person would doubt Judge Medrano's impartiality.

B. The "sequence of the aforesaid events" in fact proves nothing.

The "Background" portion of the State's motion devotes some 17 pages to certain events beginning shortly after Yvonne Rosales assumed the office of the District Attorney on January 1, 2021.[8] The "Argument" portion that follows then alleges that the "sequence of the aforesaid events" establishes the following "reasonable inferences": that Judge Medrano developed a personal animus against the District Attorney at some prior time; that the Judge felt provoked by her press release; and that he "then proceeded to devise methods by which he sought to impugn her in the public's perception." [9]

In fact, – and inexplicably – some of "aforesaid events" do not even arguably

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[7] TEX. R. CIV. P. 18b(b)(1); *see* State's motion, p. 1.

[8] State's motion, pp. 3-19.

[9] State's motion, pp. 19-20.

involve actions of Judge Medrano, and therefore say nothing at all about his impartiality. Our response addresses only those "events" that purport to relate to Judge Medrano, and will demonstrate that none – either singly, or in combination – would cause any reasonable person to question the impartiality of this Judge in any way whatsoever.

1. ADA Cox's opinion that Judge Medrano was dissatisfied with the prosecutors DA Rosales assigned to his Court, and his perception that the Judge felt disrespected, proves nothing relevant to impartiality.

Assistant District Attorney Curtis Cox signed the motion to recuse, and all of the events he relies on are, according to him, based on his personal knowledge or his information and belief. According to ADA Cox, "almost immediately" after the District Attorney took office, Judge Medrano "expressed dissatisfaction with Ms. Rosales' personnel assignments to his court," which ultimately resulted in new prosecutors being assigned. ADA Cox based his opinions on conversations he says he had with Judge Medrano, and his perceptions from those conversations: "The tone of these conversations left the undersigned with the perception that Judge Medrano felt disrespected by District Attorney Rosales in regard to the assignment of prosecutors to his court." [10]

Rule 18a(a)(4)(B) requires that a recusal motion "state with detail and particularity facts that . . . would be admissible in evidence." No rule of evidence would permit a witness to offer an opinion that another person felt disrespected, based on that witness's "perception" drawn from the "tone" of conversations the two persons had.

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[10] State's motion, p. 4.

More importantly, even if Mr. Cox's wholly speculative opinion did constitute admissible evidence (and it does not), the idea that a Judge might become dissatisfied with the prosecutors in his Court and then request that the District Attorney assign competent replacements, is nothing extraordinary in any courthouse as large as El Paso's. Such a non-event does not even hint at animus against the District Attorney, and says nothing about a Judge's impartiality. Far from subjecting himself to recusal, any Judge who thought his prosecutors were not discharging their duties would be derelict if he ignored this problem and pretended it did not exist.

2. Nothing Judge Medrano said or did at the hearing on July 1, 2022 would cause a reasonable person to question his impartiality.

Now – and for the very first time in its recusal motion – the State lodges several complaints about the way Judge Medrano conducted the hearing on July 1, 2022. It is telling, though, that none of the several prosecutors who represented the State on that date – including DA Rosales – raised these objections, or any other objections, during that hearing. And for good reason. Judge Medrano did nothing to merit objections then, much less recusal now.

a. The Judge has never prevented the prosecutors from complaining about the gag order.

The State's recusal motion complains that, by entering the gag order minutes before taking the bench, the Judge deprived the prosecution of any chance of being heard

beforehand.[11] What the State fails to mention, though, is that the Judge did not prevent the State from objecting to the contents of the gag order or to not having the opportunity for input, before court was adjourned, or for asking for time to read it and then to object. It is axiomatic in Texas that a party need not object to evidence until it has the opportunity to do so. It is equally well-established, however, that the failure to make a timely and specific objection to a ruling once that objection is apparent, constitutes a forfeiture of the right to complain later. And the contemporaneous objection rule is one that applies to the State the same way it applies to the defense.

Furthermore, nothing prevented the State from requesting the Court to reconsider its gag order at some later time, if it truly believed that there are "clear deficiencies in the procedure and substance of the" order, as it now claims, for the first time, in its motion to recuse. But the State was silent, and the reason is obvious. The prosecutors made no contemporaneous objections to the court's gag order because they saw nothing wrong with it then. Nor did they complain later, for the same reason. And still to this day, two and a half months later, they still have not challenged its legality. They have only concocted this false grievance now, in an effort to prop up their meritless motion to recuse a fair jurist.

b. Ensuring the public's access to the courts is a constitutional mandate.

The State calls it a "highly irregular deviation from standard practice in the course

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[11] State's motion, p. 6.

of this 'Status Hearing' . . . that a large collection of local journalists were positioned, not only inside the courtroom, but actually in the jury box itself." Then, with no proof, ADA Cox, who did not attend the hearing,[12] calls it a reasonable inference that this "occurred with the permission of, if not at the invitation of the Court, given that the Court controls access to the courtroom." [13]

Initially, it is ironic (an understatement) that Mr. Cox complains about media presence when it was his boss's decision to distribute to the media a press release that necessitated the hearing.

And contrary to the State's assertion, it is certainly *not* reasonable to infer that any media person who was in the jury box was there at Judge Medrano's "invitation." And there is no evidence that they were. Although Mr. Cox did not attend the hearing, presumably those unnamed witnesses he talked to told him that the small courtroom was crowded with spectators, many of whom had been invited by the District Attorney's Office.

To be sure, the Judge has the ability to control access to the courtroom. The Constitution, however, does not give him the right, except under extraordinary circumstances, to exclude either the press or the public. "[T]he right to attend criminal

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[12] Mr. Cox writes that the basis of his information and belief about what happened at the hearing comes from reading the transcript of the hearing, reviewing media reports, and interviewing unnamed people who – unlike Mr. Cox himself – were in attendance. State's motion, p. 7.

[13] State's motion, p. 6.

trials is implicit in the guarantees of the First Amendment; without the freedom to attend such trials, which people have exercised for centuries, important aspects of freedom of speech and "of the press could be eviscerated. . . . Absent an overriding interest articulated in findings, the trial of a criminal case must be open to the public." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580-81 (1980); *see also Presley v. Georgia*, 558 U.S. 209, 209 (2010)(the trial court violated defendant's Sixth and Fourteenth Amendment right to a public trial by excluding the public from the voir dire of prospective jurors). A Judge who ensures to the public and the press the access guaranteed by the Constitution does not subject himself to recusal. That the El Paso District Attorney says otherwise shows just how weak its position is.

c. District Attorney Rosales was the best person to answer questions about her own press release.

The recusal motion says that Judge Medrano commenced the July 1 hearing and "immediately began to direct questions at District Attorney Rosales, who was seated at counsel table for the State", and that the questions explored the State's readiness for trial. Apparently, the State believes that this somehow showed the Court's animus. But who would have been a more appropriate person to question than Ms. Rosales herself? She is the elected District Attorney. She issued the press release that precipitated the hearing.

The State's motion says that Judge Medrano should have asked ADA Briggs who "was charged with such knowledge." Surely the District Attorney herself was charged with at least as much knowledge as her subordinate, since it was her press release, not

Briggs, that declared her office's readiness for trial in 2023.

But – says the State's motion – other questions by the Court "were directed solely at her, even though Judge Medrano likely had an awareness that *DA Rosales had never worked on a death penalty case*." This, to the prosecutors, permits a reasonable inference that Judge Medrano's intent was to embarrass the DA.[14] We suggest that the only real embarrassment associated with that event is that Ms. Rosales's assistant would argue in a public pleading that a Judge should be recused because the El Paso District Attorney was too inexperienced to answer pertinent questions about a death penalty case she claimed she wanted prosecuted in less than a year.

The State's motion goes on to say that DA Rosales "was clearly at a disadvantage" since she had no warning about the subject matter of the hearing.[15] And that the Judge "berated" Ms. Rosales with the intent to embarrass her.[16] But no reasonable reading of the record of this short hearing supports the inferences that ADA Cox's motion depends upon.[17] More importantly, even if the allegations were supported and could be proven,

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[14] State's motion, pp. 8-9.

[15] State's motion, p. 11.

[16] State's motion, p. 26.

[17] Indeed, it is notable that the State's recusal motion is almost entirely dependent on the so-called "reasonable inferences" suggested by the Curtis Cox, an employee of the District Attorney's Office, who, as we have pointed out, was himself not present at the July 1 hearing, and whose allegations are repeatedly limited to a "basis and knowledge" acquired from hearsay accounts of others. This wholesale reliance on evidence that would not be admissible in Court is disallowed by Rule 18a(a)(4)(B)(requiring that, among other things, a motion for recusal "must state with detail and particularity facts that . . . would be admissible in court."

they would not be sufficient to justify recusal under Rule 18a(a)(4)(C). As the Texas Court of Criminal Appeals has noted, rulings, remarks, or actions, of a trial judge

> almost never constitute a valid basis for a bias or partiality motion. In and of themselves . . . , they cannot possibly show reliance upon an extrajudicial source; and can only in the rarest circumstances evidence the degree of favoritism or antagonism required . . . when no extrajudicial source is involved. Almost invariably, they are proper grounds for appeal, not for recusal. Second, opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.

Gaal v. State, 332 S.W.3d 448, 454 (Tex. Crim. App. 2011), *quoting Liteky v. United States*, 510 U.S. 540, 555 (1994).

The Texas Court of Criminal Appeals has set a high standard for recusal, and this provides trial judges with broad discretion to express themselves, and their opinions. Judges can be "critical, disapproving and even hostile . . . but [e]xpressions of impatience, dissatisfaction, annoyance, and even anger in the ordinary conduct of courtroom administration do not establish bias." *Abdygapparova v. State*, 243 S.W.3d at 199.

Finally, and as previously noted with regard to the gag order that they now so vigorously complain of, none of the several prosecutors at counsel table raised any objection to the questions posed of Ms. Rosales, or the manner in which they were posed. Not even the District Attorney herself. That the State brings these complaints months after the hearing, but not contemporaneously, is further proof that the State has another motive for filing this recusal motion when it did.

3. None of the State's cases are on point factually, and, more importantly, none concern recusal.

The State's motion accuses Judge Medrano of being aware of the "clear deficiencies" in the gag order, but using it nonetheless, not for its stated purpose, but "rather that it be used as a tool to impugn DA Rosales instead." [18] This frivolous accusation is outrageous. And it fundamentally misstates the governing law to the facts of this case. The State devotes some eight pages in its recusal motion to the gag order, but nothing in its generalized presentation justifies its attack on the gag order, or on Judge Medrano himself.

The State notes that gag orders "must make 'specific findings supported by evidence", and complains that Judge Medrano's order fails this requirement.[19] The truth, though, is otherwise. Interestingly, one of cases the State's motion cites is *In re Houston Chron. Pub. Co.*, 64 S.W.3d 103, 110 (Tex. App.–Houston [14th Dist.] 2001, no pet.). [20] There, in the highly-publicized capital murder case against Andrea Yates, the newspaper sought mandamus relief, asserting that the trial judge had abused her discretion when it imposed a gag order. The court of appeals disagreed, and denied relief. *Id.* at 105. To reach its decision, the court of appeals conducted a "careful review of Judge Hill's finding and order," and recited that order verbatim in its opinion. *Id.* at 108.

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[18] State's motion, p. 26.

[19] State's motion, p. 21.

[20] State's motion, pp. 21-22.

Judge Medrano's order is identically worded to the order approved in *Houston Chronicle*, except that Judge Medrano's order adds further protection by including language consistent with Rule 3.07 of the Texas Disciplinary Rules of Professional Conduct. Most of the cases cited by the State concern temporary injunctions granted against commercial entities in civil cases. Except for *Houston Chron.*, which upheld an identically worded order, none of the cited cases address an order remotely like the one issued in our case. *See e.g., Davenport v. Graves*, 834 S.W. 2d 4, 6 (Tex. 1992)(prohibiting all discussion outside the courtroom and any discussion of the litigation with anyone not involved); *In re Graves*, 217 S.W. 3d 744, 746-77 (Tex. App.–Waco 2007)(reviewing a much broader order, that was not supported by necessary evidence); *San Antonio-Express News v. Roman*, 861 S.W. 2d 265, 266 (Tex. App.–San Antonio 1993, no pet.)(prohibiting the news media from reporting the names of two minor witnesses).

Contrary to what the State argues, Judge Medrano's order contains specific findings supported by evidence properly, judicially noticed, and the order is narrowly tailored to a legitimate, indeed, an essential goal — ensuring the Defendant's right to a fair trial by an impartial jury, and, to the extent possible, ensuring potential jurors will not be prejudiced by pretrial publicity.

More importantly, none of the cases the State cites have anything to do with the real issue in our case, namely, recusal. The State's complaints made almost three months

after the fact constitute an improper collateral attack. If the State truly believed the arguments that it now makes for the first time in its recusal motion are meritorious, it would have objected in Court. It did not, though, and the fact that the prosecutors now, belatedly express a disagreement with a ruling made by the Court cannot serve as grounds for recusal.

4. The gag order was neutral on its face and applied equally to all parties.

The State's motion devotes a page-and-a half, complaining that Judge Medrano did not impose a gag order on others. Of course, every situation is different. DA Jaime Esparza left office some 18 months ago. Most of his remarks were made near the time of the offenses alleged in the indictment, and long before any trial was possible. Trial has now been set in Federal Court, and DA Rosales claims to be ready for trial next year. Judge Medrano was reasonable to believe that, whatever has been done in the past, it is now time to stop further commenting in the media. Indeed, his order specifically addresses, not only future commentary, but that in the past, taking judicial notice that "the various and numerous media interviews with counsel for the parties have been published and broadcast by local and national media." The Court further noted that "Counsels' willingness to give interviews to the media would only serve to increase the volume of pre-trial publicity. . . [and] if Counsel for the parties continue to grant interviews to the media, the pre-trial publicity will interfere with the Defendant's right to a fair trial by an

impartial jury." [21] It is key to note that Judge Medrano's order is entirely party-neutral on its face, and applies equally to both the State and the Defense. Nothing about the order singled out the State, or DA Rosales. Do the prosecutors disagree with the obvious truths stated in the order, or the factual findings made? Do they believe that more press releases should issue, or would serve any legitimate purpose?

5. Judge Medrano was lawfully authorized to appoint Attorney Justin Underwood and nothing about that appointment bears on recusal.

On August 17, 2022, Judge Medrano appointed El Paso attorney Justin B. Underwood "to represent the Hoffman family in any future proceeding that may arise in this cause."[22] According to the State, on September 6, 2022, attorney Underwood caused three subpoenas to be issued on this date for DA Rosales, former ADA John Briggs, and Roger Rodriguez, to appear at the Status Hearing on September 13.

On September 7, 2022, the State moved to quash Mr. Underwood's subpoenas, but failed to request that Judge Medrano hear the motion.[23] Absent a request for a hearing, it is only reasonable to assume that ADA Cox wanted his motion to be heard at the September 13 Status Hearing. But before that hearing could take place, Mr. Cox moved to recuse Judge Medrano, which caused the Status Hearing to be continued.

The State's motion asserts that the "purpose of the hearing [rescheduled from

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21 Gag order, p. 1.

22 A copy of this order is attached to the State's motion.

23 The State attached a copy of its motion to quash to its recusal motion.

August 18 to September 13] is undiscernible from the title of the hearing" [24] This claim is puzzling since, as noted above, the previous Status Hearing had been continued at the request of the State, so that it could locate the Hoffman family. What purpose did the State think Judge Medrano had in mind, other than accomplishing the work that had been intended to be done at the August 18 hearing? And if the State really was uncertain about the purpose of the Status Hearing, surely it would have sought clarification. But it did not. Furthermore, on September 12, 2022, Curtis Cox, the ADA who signed the motion to recuse, requested a subpoena for Mr. Underwood, *duces tecum*, to bring a long and detailed list of specific materials to the hearing on September 13. In that subpoena request, Mr. Cox called Mr. Underwood a "Witness whose testimony is material to the State in a criminal action pending on September 13, 2022 in the 409th District Court." Surely Mr. Cox would not have represented that Mr. Underwood had material testimony to give at the September 13 hearing, if he had really been unable to discern the purpose of that hearing, as he now claims in his motion to recuse.

On September 14, 2022, the prosecutors filed State's Motion To Vacate As Impermissibly Vague The Order Appointing Attorney Justin Underwood, despite the pendency of its motion to recuse, which, as the State well knows, prevents any ruling on its latest motion, until the recusal has been resolved. Nonetheless, the State asks that it "be heard and resolved by a Judge authorized to preside over the matter following

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[24] State's motion, p. 19.

resolution of the State's recusal motion." Clearly, the El Paso District Attorney's Office can hardly wait to argue for Mr. Underwood's removal.

IV.
Just Some Of The Evidence That Would Have Been Presented At The Hearing On September 13

A. Pertinent facts.

Immediately after Judge Medrano concluded the hearing on July 1, victims and family members of victims left the courtroom and went to the large conference room within the El Paso County District Attorney's Office, where they met with several members of that office, including DA Yvonne Rosales, ADA Michelle Hill, and (then) ADA John Briggs. Also present at that meeting in the DA's office were Roger Rodriguez and his wife, who entered the meeting room with DA Rosales. Mr. Briggs spoke first and informed those present of the gag order, and that they were subject to it. He told them they could not talk about the case, and if they do, they could possibly be jailed for contempt.

Roger Rodriguez then addressed those in attendance, including DA Rosales and Mr. Briggs. Rodriguez began stoking the crowd, getting them angry, wanting them to turn on the Court. Rodriguez said he was a judge, and that what Judge Medrano did was wrong and unethical. Rodriguez said, "we are going to get the Judge recused," and that he had recused at least a dozen Judges. He told the family members that they should file grievances against the Judge for what he had just done in the courtroom.

Mr. Briggs protested, and Mr. Rodriguez disagreed with him in front of everyone. It was Mr. Briggs opinion that Mr. Rodriguez had apparent authority. DA Rosales was standing there when this was all happening and, according to Mr. Briggs, agreed by her silence.

B. The significance of these facts.

Minutes after the Judge entered his gag order, Roger Rodriguez and his wife entered the District Attorney's conference room with the DA, and while she stood by, Rodriguez told the victims and families that he was a judge; that Judge Medrano was wrong and unethical to issue the gag order; that they should all file grievances against Judge Medrano; and that "we are going to get the judge recused." This evidence would have come out at the September 13 hearing through the three witnesses subpoenaed by attorney Underwood – John Briggs, Roger Rodriguez, and Yvonne Rosales – and, would have been impossible for the District Attorney to justify. And it would contradict the State's motion to recuse in several respects, including its representation that the "triggering event" for the decision to file the motion to recuse happened on September 6, when Mr. Underwood filed his subpoenas.

It is clear why the El Paso County District Attorney did not want this evidence – and additional damaging evidence that is known to exist about the activities of Roger Rodriguez – to come out on September 13. And it did not come out on that day for one reason: The State's meritless recusal motion forced the proceedings to be stayed.

V.
Conclusion

The State has failed to carry its burden of proving that a reasonable person would doubt the impartiality of Judge Sam Medrano. The State's Motion To Recuse The Honorable Judge Sam Medrano should be denied, the stay should be dissolved, and the case should be returned to be presided over by the impartial and duly elected Judge of that Court.

/s/ Mark Stevens
MARK STEVENS
310 S. St. Mary's Street
Tower Life Building, Suite 1920
San Antonio, TX 78205
(210) 226-1433
State Bar No. 1918420
mark@markstevenslaw.com

/s/ Joe Aureliano Spencer, Jr.
JOE AURELIANO SPENCER JR.
1009 Montana Ave
El Paso, TX 79902-5411
(915) 532-5562
State Bar No. 18921800
joe@joespencerlaw.com

/s/ Felix Valenzuela
FELIX VALENZUELA
221 N. Kansas, Ste. 1200
El Paso, Texas 79901
(915) 209-2719
State Bar No. 24076745
felix@valenzuela-law.com

Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that this Response to State's Motion to Recuse The Honorable Judge Sam Medrano has been electronically served on Assistant District Attorney Curtis Cox on September 19, 2022.

/s/ Mark Stevens
MARK STEVENS

NO. 20200D02631

STATE OF TEXAS	)	IN THE DISTRICT COURT
VS.		409TH JUDICIAL DISTRICT
PATRICK WOOD CRUSIUS	)	EL PASO COUNTY, TEXAS

ORDER

On this the ____ day of _____, 2022 came on to be considered Defendant's Response to State's Motion to Recuse The Honorable Judge Sam Medrano and the Court agrees with its conclusion. Accordingly, the State's Motion To Recuse The Honorable Judge Sam Medrano is denied.

_____
JUDGE PRESIDING

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Felix Valenzuela
Bar No. 24076745
felix@valenzuela-law.com
Envelope ID: 68369112
Status as of 9/19/2022 8:22 AM MST
Associated Case Party: PATRICKWOODCRUSIUS

Name	BarNumber	Email	TimestampSubmitted	Status
Mark Steven		mark@markstevenslaw.com	9/19/2022 8:03:46 AM	SENT
FELIX VALENZUELA		felix@valenzuela-law.com	9/19/2022 8:03:46 AM	SENT
Joe A.Spencer		Joe@joespencerlaw.com	9/19/2022 8:03:46 AM	SENT