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UTAH COUNTY PUBLIC DEFENDER ASSOCIATION

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| IN THE FOURTH JUDICIAL DISTRICT COURT  UTAH COUNTY, STATE OF UTAH | |
| STATE OF UTAH,  Plaintiff,  v.  JOHN DOE,  Defendant. | MOTION FOR COURT ORDER TO OBTAIN POLICE REPORT(S) AND OTHER RECORDS PURSUANT TO  THE GOVERNMENT RECORDS ACCESS MANAGEMENT ACT  Case No. 000000000  Judge XXXXX |

Defendant JOHN DOE (“Mr. Doe”), by and through his attorney of record, BENJAMIN R. ALDANA, hereby moves this Court pursuant to Rule 12 of the Utah Rules of Criminal Procedure and Utah Code § 63G-2-202, to order the Utah Attorney General’s Office and the Utah Department of Workforce Services, to release the following records to his attorney:

Any and all police/initial contact reports, or other documents, records, or information pertaining to the investigation, arrest, and/or citation of Jane Doe (DOB 01-01-0000), which relate to Utah Department of Workforce Services case number 000000, that was subsequently filed in the Third District Court under case number 000000000.

**FACTS**

1. In this matter, Mr. Doe has been accused of committing domestic violence offenses against Jane Doe.
2. On or about April 2, 2019, Ms. Doe was charged with committing public assistance fraud as a second-degree felony in the Third District Court. *See Exhibit A*, *Docket for Third District Court case 000000000*, at 1–2; *see Exhibit B*, *Original Information from case 000000000*.
3. The Utah Department of Workforce Services was the investigating agency for case 000000000, and the Utah Attorney General’s Office was the prosecuting agency for case 000000000. *See Exhibit A*, *Docket for Third District Court case 000000000*, at 1 (listing both agencies).
4. Utah Department of Workforce Services case number 000000 was the law enforcement agency case number related to Third District Court case 000000000. *See Exhibit B*, *Original Information from case 000000000*, at 1.
5. As the final resolution of Third District Court case 000000000, Ms. Doe entered a guilty plea to an amended charge of class A misdemeanor public assistance fraud, amended from the second-degree felony. *See Exhibit C, Statement of Defendant in Support of Guilty Plea in Abeyance and Certificate of Counsel from case 000000000*.
6. On certain conditions, including that Ms. Doe “[v]iolate no laws,” her guilty plea to the amended charge of class A misdemeanor public assistance fraud was held in abeyance for a period of 36 months. *See Exhibit D*, *Signed* *September 27, 2019 Minute Entry from case 000000000*.

**ARGUMENT**

**THE RECORDS IDENTIFIED AND REQUESTED IN THiS MOTION**

**ARE IMPEACHMENT MATERIAL THAT MR. DOE**

**HAS THE RIGHT TO OBTAIN FOR uSe in THE**

**PREPARATION OF HIS DEFENSE**

The United States and Utah Constitutions protect Mr. Doe’s right to meaningfully present a *complete* defense and to confront the witnesses against him. *Crane v. Kentucky*, 476 U.S. 683 (1986) (“Whether rooted in the Due Process Clause . . . or the Sixth Amendment . . . the Constitution guarantees criminal defendants ‘a meaningful opportunity to present a complete defense.’”); *see, e.g.*, *State v. Fulton*, 742 P.2d 1208 (Utah 1987), cert. denied, 484 U.S. 1044 (1988) (recognizing right to a fair trial under state and federal due process provisions); *see also* *State v. Kendrick*, 538 P.2d 313 (Utah 1975) (recognizing the right to confrontation under Utah Const. Art. I § 12); *see* Utah Const. Art. I § 7 (“No person shall be deprived of life, liberty or property, without due process of law.”).

Additionally, in *Brady v. Maryland*, the Supreme Court held that “the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment.” 373 U.S. 83, 87 (1963). The United States Supreme Court later extended its holding in *Brady v. Maryland* to include evidence that affects the credibility and/or reliability of a government witness stating, “[w]hen the ‘reliability of a given witness may well be determinative of guilt or innocence,’ nondisclosure of evidence affecting [that] credibility falls within this general rule.” *Giglio v. United States*, 405 U.S. 150, 154 (1972) (quoting *Napue v. Illinois*, 360 U.S. 264, 269 (1959)). This principle of required disclosure was reaffirmed in *United States v. Bagley*, where the Supreme Court further explained that the *Brady* rule extends to “[i]impeachment evidence . . . as well as exculpatory evidence . . . [because] if disclosed and used effectively, [impeachment evidence] may make the difference between conviction and acquittal.” 473 U.S. 667, 676 (1985).

The requested records are sought for the purpose of impeaching a key government witness in the matter currently before this Court. But they are non-public records, the release of which is controlled by the Government Records Access Management Act (“GRAMA”), found in Utah Code §§ 63G-2-101, *et seq*. Police/initial contact reports are defined in § 63G-2-103(14), and they are classified as protected records under § 63G-2-305. *See* § 63G-2-305(10)-(12), (51)(a)-(b), (68) (describing various records/information often found in police/initial contact reports). The other records/information sought are also likely classified as protected records because the content is similar in nature to that of police/initial contact reports. Because of this classification, GRAMA requires that a court order be obtained before access to the records requested in this Motion may be granted. § 63G-2-207(7) states that “[a] governmental entity shall disclose a record pursuant to a court order signed by a judge from a court of competent jurisdiction, provided that:

1. the record deals with a matter in controversy over which the court has

jurisdiction;

(b) the court has considered the merits of the request for access to the record;

(c) the court has considered and, where appropriate, limited the requester’s use and further disclosure of the record in order to protect:

(i) privacy interests in the case of private or controlled records;

(ii) business confidentiality interests in the case . . .; and

(iii) privacy interests or the public interest in the case of other protected

records;

(d) to the extent the record is properly classified private, controlled, or protected, *the interests favoring access, considering limitations thereon, are greater than or equal to the interests favoring restriction of access*; and

(e) where access is restricted by a rule, statute, or regulation referred to in § 63G-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

§ 63G-2-202(7) (emphasis added).

Here, there is a matter in controversy before the Court; Mr. Doe has been accused of engaging in criminal behavior, and multiple serious charges are pending against him in this case.

The merits of the request made in this Motion weigh heavily in favor of the Court ordering disclosure of the record(s) because if the Court does not order disclosure, Mr. Doe will be deprived of his right to a fair trial since without the records his attorney will be unable to fully cross-examine the government’s most important witness—Ms. Doe. The allegations in this case are based on Ms. Doe’s accusation that Mr. Doe committed various acts of domestic violence against her. The records requested in this Motion pertain to Ms. Doe having been convicted of committing fraud against the State of Utah to obtain public assistance. Obtaining the records sought in this Motion is critical to Mr. Doe’s ability to present a complete defense because they affect Ms. Doe’s credibility and/or reliability. Additionally, because the abeyance period is still open in case 000000000 and one of the conditions is that Ms. Doe have no new law violations, they show a motive to fabricate allegations against Mr. Doe; Mr. Doe adamantly denies that he was the aggressor in this case or that he engaged in any of the behavior that he has been accused of in this matter. Mr. Doe asserts that Ms. Doe was the aggressor in this case, and that her version of events from December 5, 2020 is not an accurate characterization of what occurred.

The Court can also order any limitations that it deems appropriate regarding any further dissemination of the records, consistent with § 63G-2-202(7)(c), in order to prevent any use of the requested records beyond the use that Mr. Doe is requesting in this Motion, which is to exercise his right to have a constitutionally adequate defense.

And the interests favoring Mr. Doe’s access to the records identified in this Motion are more than equal to, and in fact substantially outweigh, any interests favoring restriction of access. The records requested in this Motion pertain to an investigation that has concluded and a court case which has been adjudicated. The court record in case 000000000 is publicly available information, and much of the other information pertaining to the case was public, including any statement of facts or probable cause statement that may have been read aloud during court proceedings. Thus, any harm to State of Utah, or to Ms. Doe, from the requested disclosure is negligible, especially considering the limitations that this Court can impose as to further dissemination. Compared against Mr. Doe’s *current* state and federal constitutional right to a fair trial, the Court should allow access.

**CONCLUSION**

Mr. Doe has the right to have his attorney fully and fairly cross-examine all government witnesses. Being given access to the requested records is the only way in which full cross-examination of Ms. Doe can occur. Therefore, Mr. Doe asks that the Court order the Utah Attorney General’s Office and the Utah Department of Workforce Services to disclose the requested records directly to his attorney. In the alternative, the Court should construe this Motion as a Specific Discovery Request and order the State of Utah to disclose the requested records to Mr. Doe’s attorney pursuant to *Brady* and *Gigilio*, wherein the United States Supreme Court has found that the government must disclose and provide potential impeachment records to the defense.

DATED this 13th day of June, 2021.

*/s/ Benjamin R. Aldana*

Benjamin R. Aldana

Attorney for Mr. Doe

CERTIFICATE OF SERVICE

Via the court’s electronic filing system a copy of the foregoing was sent to the Utah County Attorney’s Office, this 13th day of June, 2021.

Additionally, the following individuals were served by email:

Assistant Attorney General

Investigator from Workforce Services

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|  |  | */s/ Benjamin R. Aldana* |