

**Cause Number D-1-DC-24-904031**

**THE STATE OF TEXAS**                    §            **IN THE 299<sup>th</sup>**  
   §  
**V.**    §            **DISTRICT COURT OF**  
   §  
**CHANCE BRETCHES**                   §            **TRAVIS COUNTY, TEXAS**

**STATE’S RESPONSE TO THE DEFENDANT’S MOTION TO DISMISS**

**TO THE HONORABLE JUDGE OF THIS COURT:**

Comes now the State of Texas and responds to Defendant’s motion to dismiss. The State denies all claims of misconduct alleged in Defendant’s motion and respectfully requests that this Court deny the Defendant’s motion based on the following:

**Procedural Facts**

Defendant is indicted in the above referenced cause number for six counts, including Aggravated Assault by a Public Servant (Counts I and II), Deadly Conduct (Counts III and V), Assault on Emergency Services Personnel (Count IV) and Assault (VI) against victim Maredith Drake. The matter has been set for trial seven times and is currently set for jury trial docket call on May 20, 2026. The State will proceed to trial on Counts III, V, and VI.

The trial court issued a standing discovery order on August 1, 2023, requiring, among other things, that the State comply with Tex. Code Crim. Proc.

Art. 39.14 and disclose favorable information and material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) as well as any exculpatory, impeachment, or mitigating document, item or information in the State's possession, custody or control that tends to negate the guilt of the defendant or would tend to reduce his punishment. Exhibit A, Standing Discovery Order. The Court's order further requires the State to disclose to the defense the existence of any payment, promise of immunity, leniency, or preferential treatment made to any State's witness. Exhibit A. The State has complied with or exceeded compliance with the Court's order.

### **The Trial Court's Authority to Dismiss an Indictment**

There is no general authority that allows a trial court to dismiss a case without a prosecutor's consent. *State v. Terrazas*, 962 S.W.2d 38, 40 (Tex. Crim. App. 1988). A trial court's limited authority to dismiss an indictment may apply where a defendant has been denied a right to a speedy trial, where there is a defect in the charging instrument, or pursuant to Tex. Code Crim. Proc. Art. 32.01 when a defendant is detained and the State has not properly presented a charging instrument. *State v. Mungia*, 119 S.W.3d 814, 816 (Tex. Crim. App. 2003). None of these circumstances are presented here and Defendant does not claim that they are applicable.

“[I]n this state, responsibility for maintaining or discontinuing criminal prosecutions is vested almost exclusively in the district and county attorneys, and not in the trial judges.” *State v. Salinas*, 976 S.W.2d 870, 871 (Tex. App.—Corpus Christi 1998, no pet.). Though a trial court may, in limited circumstances, dismiss a charging instrument to remedy a constitutional violation, a trial court abuses its discretion in dismissing a charging instrument where there is no constitutional violation or where a violation occurred but dismissal of the indictment was not necessary to neutralize the taint of the alleged unconstitutional action. *Mungia*, 119 S.W.3d at 817. A trial court has no authority to dismiss an indictment based on a theoretical constitutional violation that may occur in the future. *Mungia*, 119 S.W.3d at 17. Here, no constitutional violation has occurred and therefore, the Court is without authority to grant Defendant’s motion to dismiss.

### **The State Did Not Withhold Evidence from Defendant**

Though Defendant alleges he is entitled to a dismissal, Defendant alleges no facts upon which a claim for relief could be granted. Defendant’s allegation of “secret” meetings with an assistant city manager does not constitute evidence of any kind, is not exculpatory, and did not result in any offer of payment, immunity, or leniency to any State’s witness.

An unsworn declaration of Assistant City Manager Bruce Mills indicates that a series of meetings began at *his suggestion* to advocate against criminal

charges for *individual officers* of the Austin Police Department (APD). There is nothing in Defendant's pleadings or exhibits to indicate that any evidence or information came into the State's exclusive possession during any of the meetings that require disclosure. To the contrary, Mr. Mills worked on behalf of and not against the individual officers. Defendant submits no evidence that the City of Austin (COA) was offered, received or accepted any offer of immunity, leniency, or preferential treatment from the State.

An unsworn declaration of Council Member Kelly recalls only that the City Attorney wrote a memo raising the possibility of criminal exposure for the City. If this memo exists, it is not evidence and has never been in the State's possession.

Defendant cannot reasonably allege that he has only recently become aware of the possibility of criminal exposure for the COA or of the possibility that the Travis County District Attorney (TCDA) and the City discussed a mutual request to the Department of Justice (DOJ). TCDA issued a press release on December 4, 2023 announcing a joint letter to the (DOJ) inviting a review of the Austin Police Department's conduct during the relevant time period of May 2020. Exhibit B.

Through the public press release and public request to DOJ, TCDA was transparent that it had discussed with the City an independent review in order to "help provide transparent closure for the community, to ensure that justice is done, and that any response to similar protests in the future will not result in unnecessary or unlawful

use of force.” Exhibit B. Defense counsel then issued various press statements regarding the letter to the DOJ and engaged with the media on this topic.<sup>1</sup>

### **Charging Decisions of a Prosecutor are a Matter of Prosecutorial Discretion and Therefore Work Product**

It is well settled that the State of Texas has “only one, indivisible interest in a criminal prosecution: to see that justice is done.” *Ex parte Taylor*, 36 S.W.3d 883, 887 (Tex. Crim. App. 2001); Tex. Code Crim. Proc. Art. 2A.101(a). Key to a prosecutor’s pursuit of justice is a broad grant of prosecutorial discretion. *See Tope v. State*, 429 S.W.3d 75, 80 (Tex. App.—Houston [1<sup>st</sup> Dist.] 2014, no pet.)(finding authority of a district attorney’s office to initiate a pretrial diversion program “flows from the broad discretion of prosecutors to decide which cases to prosecute and what charges, if any, to file or bring before a grand jury.”); *Neal v. State*, 150 S.W.3d 169, 173 (Tex. Crim. App. 2004)(“[I]f the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether to prosecute and what charge to file generally rests entirely within his or her discretion.”).

“An obvious corollary to a district or county attorney’s duty to prosecute criminal cases is the utilization of his own discretion in the preparation of those cases for trial.” *Meshell v. State*, 739 S.W.2d 246, 254 (Tex. Crim. App. 1987).

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<sup>1</sup> <https://www.statesman.com/story/news/local/2023/12/04/community-reacts-district-attorney-jose-garza-indictments-austin-police-officers-2020-protests/71802162007/>(last visited March 26, 2026).

Prosecutorial decisions include consideration of “the strength of the case, the case’s deterrent value, and the government’s enforcement priorities.” Tex. Att’y Gen. Op. No GA-0765 (2010). Courts must presume that a criminal prosecution is “undertaken in good faith and in nondiscriminatory fashion to fulfill the State’s duty to bring violators to justice.” *Neal*, 150 S.W.3d at 173.

Similarly, the work product doctrine allows a prosecutor to use his prosecutorial discretion effectively and fairly and serves to “stimulate the production of information for trials” and “rewards an attorney’s creative efforts by giving his work product a qualified privilege from being shared with others.” *Pope v. State*, 207 S.W.3d 352, 357-58 (Tex. Crim. App. 2006). Whether TCDA contemplated seeking indictments against individual officers or the COA and how TCDA weighed the strength of any evidence that could support such indictments is work product of the State, not discoverable to the defense, and certainly not evidence. Defendant cites no authority and no order from this court to support his assertion that the TCDA’s thought process, charging decisions, litigation strategy, or opinions about evidence must be disclosed to him. No violation has occurred.

### **Even if the Court Finds a Violation, Dismissal is Not a Remedy**

A defendant asserting a due process violation must “show an entitlement” and the interest at issue must “amount to more than a ‘unilateral hope.’” *Ex parte Montgomery*, 894 S.W.2d 324, 327 (Tex. Crim. App. 1995). “There is no general

constitutional right to discovery in a criminal case,” and “the Due Process Clause has little to say regarding the amount of discovery which the parties must be afforded.”” *In re State ex rel. Best*, 616 S.W.3d 594, 600 (Tex. Crim. App. 2021). An allegation of prosecutorial misconduct rises to the level of a due process violation “only if the misconduct significantly compromises the fundamental fairness of the proceedings. *State v. Terrazas*, 970 S.W.2d 157, 160 (Tex. App.—El Paso 1998), *aff’d*, 4 S.W.3d 720 (Tex. Crim. App. 1999).

Given TCDA’s press release and letter to the DOJ from 2023, Defendant’s claim that secret meetings with the COA occurred are not credible. Even if true, such allegations do not rise to the level of a due process violation. Defendant fails to establish any violation of his due process rights.

The State does not have a duty of disclosure if the defendant was actually aware of the exculpatory evidence or could have accessed it from other sources. *Harm v. State*, 183 S.W.3d 403, 407 (Tex. Crim. App. 2006). Given the State’s public statements regarding a joint effort to ask for the DOJ’s review, defense counsel’s public responses to them, and Mr. Mills’s admission that he advocated for individual officers in meetings with TCDA, Defendant’s assertion that he could not have known about the existence or substance of the meetings is not credible.

Even if the Court finds Defendant was unaware of meetings between TCDA and COA, Defendant fails to establish the content of such meetings was evidence

or that it was material to his case. Evidence is material if it has “some logical connection to a fact of consequence.” *Watkins v. State*, 619 S.W.3d 265, 269 (Tex. Crim. App. 2021). Mr. Mills’s attempts to advocate against charges for the City or any individual officers could not reasonably have been a secret to Defendant, nor would it be relevant to the Defendant’s alleged trial strategy of asking the jury to assign blame to the City rather than himself for his own actions. The existence of said meetings would not prevent Defendant from using cross examination of the State’s witnesses, his own expert testimony, or any evidence to suggest Defendant is not responsible for shooting his weapon at Meredith Drake.

To establish that requested evidence is material, a defendant must provide more than a possibility that it would help the defense or affect the trial. *Branum v. State*, 535 S.W.3d 217, 224-25 (Tex. App. – Fort Worth 2017, no pet.).

Defendant’s speculative assertions raise even less than a mere possibility that the alleged information about said meetings would help the defense; these assertions are insufficient to trigger the State’s disclosure duty under Art. 39.14(a). *Branum*, 535 S.W.3d at 225, citing *United States v. Agurs*, 427 U.S. 97, 109-10 (1976)(“The mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish ‘materiality’ in the constitutional sense.”)

Defendant further fails to establish how any alleged failure to disclose the existence of any meetings with COA will prejudice his defense at trial. The parties are two months away from jury trial and Defendant fails to articulate how any allegedly concealed evidence prevents him from preparing for trial or from pursuing his theory of the case. A defendant must still “carry his burden to show he was prejudiced” in order to establish a constitutional violation. *Burton v. State*, 694 S.W.3d 892, 899 (Tex. App.—Fort Worth 2024, pet. ref’d)(finding no prejudice when appellant received surveillance videos in time to review prior to trial); *Jackson v. State*, 17 S.W.3d 664, 673 (Tex. Crim. App. 2000)(no prejudice where State revealed DNA evidence in time for defense to use it on cross examination and defense failed to demonstrate harm); *see also Hallman v. State*, 721 S.W.3d 307, 324 (Tex. Crim. App. 2025)(State’s failure to disclose was *de minimis* at best and did not amount to a “substantial and injurious effect or influence in determining the jury’s verdict” and thus did not constitute constitutional error requiring reversal under Tex. R. App. P. 44.2).

Dismissal of an indictment is a “drastic measure only to be used in the most extraordinary circumstances.” *State v. Fry*, 897 S.W.2d 324, 330 (Tex. Crim. App. 1995). Defendant has alleged no circumstances which are extraordinary and fails to establish any wrongdoing or violation on the part of the State.

## PRAYER

WHEREFORE, premises considered, the State respectfully submits that the Defendant's motion to dismiss should be denied and respectfully submits a proposed order with this response.

Respectfully submitted,  
**José Garza**  
District Attorney  
Travis County, Texas

*/s/ Dexter Gilford*  
Dexter Gilford  
Assistant District Attorney  
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*/s/ Nancy Nicolas*  
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### State's Exhibits

- Exhibit A, Standing Discovery Order
- Exhibit B, TCDA Press Release and Joint Letter to DOJ

# **Exhibit A**

Filed In The District Court  
of Travis County, Texas

on 8/1/23  
at 4:00 P.M.  
Velva L. Price, District Clerk

CAUSE NO. D-1-DL-23-900065

THE STATE OF TEXAS

§

IN TH 299 JUDICIAL

VS.

§

DISTRICT COURT OF

Chance Bretches

§

TRAVIS COUNTY, TEXAS

**STANDING DISCOVERY ORDER**

**THE COURT HEREBY ORDERS**, that the parties confer and accomplish the following as soon as practicable, or in the event that this case is set on the jury docket, 21 days before trial with a continuing duty to supplement:

1. The State shall produce and permit the inspection of and the electronic, duplication, copying and photographing, by or on behalf of the defendant, of any offense reports, and any designated documents, papers, written or recorded statements of the defendant or a witness, including witness statements of law enforcement officers, but not including the work product of counsel for the state in the case and their investigators and their notes or report, or any designated books, accounts, letters, photographs, or objects or other tangible things not otherwise privileged that constitute or contain evidence material to any matter involved in the action that are in the possession, custody or control of the state or any person under contract with the state. Production of said items by the State to the defense must be in compliance with the Texas Code of Criminal Procedure Article 39.14 and must be accomplished as soon as practicable or within 30 days before trial.
2. The State shall reveal to the Defendant and permit inspection by the Defendant of all information and material known to the State that may be favorable to the Defendant on the issues of guilt or punishment within the scope of Brady v. Maryland, 373 U.S. 83 (1963). Pursuant to Texas Code of Criminal Procedure Article 39.14 the State shall produce any exculpatory, impeachment, or mitigating document, item or information in the possession, custody, or control of the State that tends to negate the guilt of the defendant or would tend to reduce the punishment for the offense charged.
3. The State shall disclose to the Defendant the existence and substance of any payment, promise of immunity, leniency, or preferential treatment made to any prospective State witness within the scope of United States v. Giglio, 405 U.S. 150 (1972).
4. Pursuant to Texas Rules of Evidence 609 the State shall disclose to the Defendant the existence and nature of any conviction for a felony or crime of moral turpitude, or any pending case, of any State's witness as soon as practicable.

5. The State shall permit the Defendant to inspect the Defendant's NCIC, TCIC and Travis County arrest record.
6. The State shall provide to the Defendant a list of all witnesses the State may present during its case-in-chief.
7. The State shall provide to the Defendant notice pursuant to Texas Rules of Evidence Rule 404(b) of its intent to introduce in the State's case-in-chief evidence of other crimes, wrongs or acts, other than that arising in the same transaction.
8. Pursuant to Texas Code of Criminal Procedure Article 39.14 the State and the Defense shall, upon request of the opposing party, disclose to the opposing party the name and address of each person that said party may use at trial to present evidence as an expert, pursuant to Texas Rules of Evidence 702, 703 and 705. Such disclosure shall be made in writing not later than the 20<sup>th</sup> day before the date the trial begins.

**THE COURT HEREBY ORDERS** that, prior to trial, the State cause to be transcribed the grand jury testimony of all witnesses who may testify for the State at the trial of this cause.

**THE COURT HEREBY ORDERS** that the State is hereby placed under a continuing duty to reveal to the Defendant, as soon as practicable, all newly discovered information or material within the scope of this standing order.

**THE COURT HEREBY ORDERS** the Defense and Defense Team to comply with Texas Code of Criminal Procedure Article 34.19(f).

The Court may at any time, upon motion properly filed, order that the discovery or inspection provided for by this standing order be modified, denied, restricted, or deferred, or make such other order as is appropriate under the Texas Code of Criminal Procedure or Texas Rules of Evidence.

Any dispute between the State and the Defendant relating to discovery matters in general, or to compliance with this standing order, should be brought to the Court's attention as soon as possible.

**ORDERED AND ENTERED** this 1 day of, August 2023.

  
DISTRICT COURT

# **Exhibit B**



**December 4, 2023**

### **Travis County District Attorney and City of Austin Request Review of the Austin Police Department's Response to 2020 Protests; 17 indictments Dismissed**

**Travis County, TX** — On Monday, December 4, 2023, the Travis County District Attorney's Office (TCDAO) and the City of Austin (COA) announced that they have submitted a joint letter to the [Department of Justice's Civil Rights Division](#) (DOJ) inviting a review of the Austin Police Department's actions during the protests of 2020. It was also announced that, based on the original felony indictments that stemmed from the May 2020 protests, the District Attorney's Office will be moving forward with the prosecution of four APD officers. Seventeen indictments will be dismissed, and those officers will be able to return to their full duties.

On May 30 and 31, 2020, APD officers used "less lethal" bean bag rounds to control crowds and protect property. In doing so, numerous protestors reported injuries. Following an investigation of actions taken during that time, a Travis County grand jury returned felony indictments against more than 20 APD officers in connection with their uses of force.

"This has been a difficult chapter for Austin. I look forward to turning the page. These announcements will allow police officers, whose lives were upended by the indictments, to return to their services to our community," said Kirk Watson, Mayor, City of Austin. "And the request for a targeted third-party performance review is meant to enhance transparency for our community and inform future actions as we continue our focus on building respect and trust for our police."

"No parent should fear that if their child chooses to voice their First Amendment right to assemble peacefully, they will walk away with serious bodily injury caused by the very person called upon to protect them," said Travis County District Attorney José Garza. "We expect the Department of Justice will take our request seriously, and we look forward to working with Mayor Watson, Interim APD Chief Robin Henderson, and City Council to ensure full cooperation with the DOJ investigation. We will also continue to hold law enforcement who break the law accountable."

"I believe it important to note that since the time of the 2020 protests, the City has implemented numerous policy and procedure changes," said Interim City Manager Jesus Garza. "We welcome a review by the DOJ in that regard to ensure we are moving forward as a community and as a Police Department in the right direction."

Among the numerous policy and procedure changes APD has implemented:

- Discontinued the use of 12 gauge “bean bag” less lethal shotgun munitions on patrol and for crowd management.
- Applied consistent enforcement during large crowd events to maintain crowd safety and management during challenging situations.
- Increased the emphasis and training for de-escalation in all situations.
- Prioritized community engagement efforts with a focus on active engagement and problem solving.

[ A copy of the letter is below]

###

Assistant Attorney General Kristen Clarke  
U.S. Department of Justice  
Civil Rights Division  
950 Pennsylvania Avenue, N.W.  
Office of the Assistant Attorney General, Main  
Washington, D.C. 20530

[Kristen.clarke@usdoj.gov](mailto:Kristen.clarke@usdoj.gov)

Dear Assistant Attorney General Clarke,

On behalf of the City of Austin and the Travis County District Attorney's Office, we write to request the Department of Justice conduct a "pattern-or-practice" investigation into the Austin Police Department policies, practices, and procedures related to use of force for crowd-control purposes during the protests in Austin from May 29 to May 31, 2020.

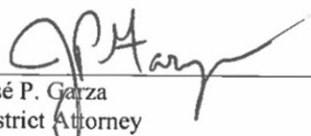
The parties seek a review by the Department of Justice (DOJ) because following the 2020 murder of George Floyd in Minneapolis and the death of Michael Ramos in Austin, the City experienced large-scale demonstrations and protests. During the protests on May 30 and 31, 2020, Austin Police Department (APD) officers used "less lethal" bean bag rounds to control crowds and protect property. In doing so, the APD officers caused serious injury to numerous protestors and community members.

A Travis County grand jury returned felony indictments against APD officers in connection with uses of force against protestors. As of today, criminal cases are pending against four officers. Additionally, the city has paid more than \$18 million to resolve civil lawsuits brought by injured protestors. Eight civil suits remain pending.

The parties seek DOJ review to help provide transparent closure for the community, to ensure that justice is done, and that any response to similar protests in the future will not result in unnecessary or unlawful use of force.

  
\_\_\_\_\_  
Kirk Watson  
Mayor

  
\_\_\_\_\_  
Jesús Garza  
City Manager

  
\_\_\_\_\_  
José P. Garza  
District Attorney

December 4, 2023

## CERTIFICATE OF SERVICE

This is to certify that this State's response has been served on Defendant by electronic service to his attorney Mr. Doug O'Connell, doug@oconnellwest.com, on this the 27<sup>th</sup> day of March, 2026.

/s/ Dexter Gilford

Dexter Gilford

Assistant District Attorney

**Cause Number D-1-DC-24-904031**

<b>THE STATE OF TEXAS</b>	<b>§</b>	<b>IN THE 299<sup>th</sup></b>
<b>V.</b>	<b>§</b>	<b>DISTRICT COURT OF</b>
<b>CHANCE BRETCHES</b>	<b>§</b>	<b>TRAVIS COUNTY, TEXAS</b>

**STATE’S PROPOSED ORDER**

This Court, having reviewed the Defendant’s Motion to Dismiss Due to Prosecutorial Misconduct and Due Process Violations and the State’s Response to said motion, and having considered the pleadings and arguments of the parties, determines the Defendant’s motion is without merit and is therefore DENIED.

Signed and issued this the \_\_\_\_\_ day of \_\_\_\_\_, 2026.

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The Honorable Judge Karen Sage  
299<sup>th</sup> Judicial District Court  
Travis County, Texas

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Lance Giessinger on behalf of Ramanjeet Gill

Bar No. 796629

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Envelope ID: 112977487

Filing Code Description: Answer/Response

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Status as of 3/30/2026 9:15 AM CST

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