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DISTRICT COURT, EL PASO COUNTY, COLORADO 30 East Pikes Peak Avenue, Suite 200 Colorado Springs, Colorado 80903	DATE FILED: November 22, 2022 9:21 AM
PEOPLE OF THE STATE OF COLORADO, Plaintiff v.  <b>ANDERSON ALDRICH,</b> Defendant	<input type="checkbox"/> COURT USE ONLY <input type="checkbox"/>
Megan Ring, Colorado State Public Defender Joseph Archambault #41216 Chief Trial Deputy Michael Bowman #48652 Deputy State Public Defender 30 East Pikes Peak Avenue, Suite 200 Colorado Springs, Colorado 80903 Phone: (719) 475-1235 Fax: (719) 475-1476 Email: <a href="mailto:springs.pubdef@coloradodefenders.us">springs.pubdef@coloradodefenders.us</a>	Case No. <b>22CR6008</b>  Division <b>21</b>
<p style="text-align: center;"><b>MOTION FOR THE COURT TO PROHIBIT LAW ENFORCEMENT FROM OBTAINING ANY EX PARTE SEARCH WARRANTS</b></p> <p style="text-align: center;"><b>[D-08]</b></p>	

Mx. Anderson Aldrich<sup>1</sup>, by and through counsel, moves this Court to prohibit the District Attorney's Office and other members of law enforcement investigating this case, from seeking *ex parte* search warrants and/or Orders for the Production of Records ("POR") pursuant to C.R.S. § 16-3-301.1. In support Mx. Aldrich states the following:

1. The prosecution has filed charges against Mx. Aldrich.
2. The prosecution and other members of law enforcement use *ex parte* search warrants and/or *ex parte* order for PORs in most homicide cases. Counsel believes potential witnesses in this case may have already been served with *ex parte* search warrants and/or PORs. Counsel has been given no discovery in this case.
3. Most of the time that these *ex parte* search warrants and/or PORs are sought they are sought from a magistrate or judge who is not involved in the case. That makes zero sense, to have a judicial official that no knows nothing about this case making

<sup>1</sup> Anderson Aldrich is non-binary. They use they/them pronouns, and for the purposes of all formal filings, will be addressed as Mx. Aldrich.

reasonableness determination about Mx. Aldrich's constitution rights; when this Court is the assigned Court and will have to make these determinations on the exact same searches as well. U.S. Amends, IV, V, VI, XIV; Colo. Const. Art. II, §§ 16, 25. Counsel is at a complete loss to understand the reasoning for why any search warrants and PORs would be sought *ex parte* in secret from another judicial officer instead of this Court and without giving notice to Mx. Aldrich so that they can be heard before such a potential unconstitutional search warrant and POR is issued; and which will have to be addressed by this Court and counsel in the future. This is judicially inefficient and increases the risk of unconstitutional unreasonable searches occurring. *See Id.*

4. *Ex parte* communications between the court and the prosecution are generally forbidden. C.J.C. 2.9 (A); *Haller v. Robbins*, 409 F.2d 857, 859 (1st Cir. 1969); *Key v. People*, 865 P.2d 822 (Colo. 1994); *see* U.S. Amends, V, XIV; Colo. Const. Art. II, § 25. The Colorado Code Of Judicial specifies that a judge "shall not initiate, permit, or consider *ex parte* communications," except "[w]hen circumstances require it . . . for emergency purposes, *which does not address substantive matters* . . . [and] "the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the *ex parte* communications; and the judge makes provision promptly to notify all other parties of the substance of the *ex parte* communication, and gives the parties an opportunity to respond." C.J.C. 2.9(A)(1) (emphasis added); *see also* Colo. RPC 3.5(b), cmt. [2].
5. *Ex parte* search warrants are permitted only in narrow circumstances where they are justified by exigency and the need to preserve incriminating evidence. *See e.g., Tattered Cover, Inc. v. City of Thornton*, 44 P.3d 1044, 1060-61 (Colo. 2002). When the subject of a search is a third party not accused of a crime, there is no such justification. *Id.* *Ex parte* filings cannot be justified by exigencies created by the moving party. *See Mission Power Eng. Co. v. Continental Cas. Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995).
6. No exigency exists in this case. Mx. Aldrich is in-custody, is incarcerated, but currently being treated in the hospital locally. They have no ability to destroy or manipulate available evidence. This includes any physical evidence such as cell phones, or other items of tangible evidence which are not within their possession. Moreover, PORs are often sought by law enforcement in this jurisdiction, to access electronic evidence held by cell phone companies and technological companies; powerful multinational companies such as Verizon, Google, and Facebook. Mx. Aldrich, as an incarcerated individual, has neither the means, nor the ability to infiltrate by hacking or some other methods of getting into the digital storage of these billion dollar multinational corporations. Therefore the idea that *ex parte* search warrants or PORs are required due to the risk that Mx. Aldrich could somehow tamper or alter the evidence being sought by law enforcement defies logic, and it is very curious that law enforcement continues to engage

in such a frowned upon practice as *ex parte* communications with judicial officers with that as the justification.

7. Mx. Aldrich requests this issue be addressed at the next appearance in this case.
8. Therefore, Mx. Aldrich respectfully requests that the prosecution be precluded from seeking *ex parte* search warrants and/or POR orders going forward or, alternatively, the prosecution be ordered to provide undersigned notice of any warrant or orders sought **in this case**. See U.S. Const. amends. VI, VIII, XIV; Colo. Const. art. II, 16, 20, 25.

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**Certificate of Service**

I certify that on November 22, 2022, I served the foregoing document electronically through Colorado Courts E-Filing to all opposing counsel of record.  
s/skoslosky

Dated: November 22, 2022