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MARIYANA T. SPYROPOULOS
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

IN THE CIRCUIT COURT OF COOK COUNTY

CRIMINAL DIVISION

IN RE APPOINTMENT OF A SPECIAL PROSECUTOR	No. ~~2027~~ 2026-MR-00017 Hon. Judge Erica L. Reddick

PETITIONERS' REPLY IN SUPPORT OF THEIR PETITION FOR APPOINTMENT OF A SPECIAL PROSECUTOR

Petitioners respectfully submit this reply in support of their Petition for Appointment of a Special Prosecutor.

INTRODUCTION

The State's Attorney does not deny that serious violations of Illinois criminal law were committed by federal agents during Operation Midway Blitz. Nor does she contest that investigation and prosecution of those crimes is warranted, and that she has taken no action to investigate or prosecute those crimes.

Instead, the State's Attorney's response makes two arguments. First, it claims that it is *illegal* for the State's Attorney to investigate or prosecute these crimes, making unmistakably clear that the State's Attorney does not intend to do so. Second, the response contends, despite the State's Attorney's ironclad commitment to taking no action, the law prohibits the appointment of anyone else who might act in her place. The logical conclusion of the State's Attorney's argument is that there will be no relief for the people of Cook County who are the victims of Operation Midway Blitz. This is an untenable view in a free democracy.

List of Petitioners for an Independent Prosecutor[1]

Government Leaders

1. Delia C. Ramirez, U.S. Representative for the Third Congressional District of Illinois
2. Jesús G. "Chuy" García, U.S. Representative for the Fourth Congressional District of Illinois
3. Robert Peters, Member of the Illinois Senate for the 13th District
4. Celina Villanueva, Member of the Illinois Senate for the 12th District
5. Graciela Guzman, Member of the Illinois State Senate for the 20th District
6. Karina Villa, Member of the Illinois State Senate for the 25th District
7. Rachel Ventura, Member of the Illinois State Senate for the 43rd District
8. Mike Simmons, Member of the Illinois State Senate for the 7th District
9. Lilian Jimenez, Member of the Illinois House of Representatives for the 4th District
10. Abdelnasser Rashid, Member of the Illinois House of Representatives for the 21st District
11. Will Guzzardi, Member of the Illinois House of Representatives for the 39th District
12. Norma Hernandez, Member of the Illinois House of Representatives for the 77th District
13. Theresa Mah, Member of the Illinois House of Representatives for the 24th District
14. Aaron M. Ortiz, Member of the Illinois House of Representatives for the 1st District
15. Kelly Cassidy, Member of the Illinois House of Representatives for the 14th District
16. Edgar Gonzalez, Jr., Member of the Illinois House of Representatives for the 23rd District
17. Alma E. Anaya, Cook County Commissioner
18. Jessica Vasquez, Cook County Commissioner
19. Frank J. Aguilar, Cook County Commissioner
20. Rossana Rodríguez Sanchez, Chicago Alderperson of the 33rd Ward
21. Byron Sigcho Lopez, Chicago Alderperson of the 25th Ward
22. Jessie Fuentes, Chicago Alderperson of the 26th Ward
23. Julia Ramirez, Chicago Alderperson of the 12th Ward
24. Michael D. Rodríguez, Chicago Alderperson of the 22nd Ward
25. Anthony Quezada, Chicago Alderperson of the 35th Ward
26. Jeylu B. Gutierrez, Chicago Alderperson of the 14th Ward
27. Andre Vasquez, Chicago Alderperson of 40th Ward
28. Maria Hadden, Chicago Alderperson of the 49th Ward
29. Clare Kelly, Evanston City Council Member
30. Dion McGill, CCPSA Police District Councilor, 7th District
31. Erin Vogel, CCPSA Police District Councilor, 9th District
32. Leonardo Quintero, CCPSA Chair, 12th District
33. Elianne Bahena, CCPSA Police District Councilor, 10th District
34. Alees Edwards, CCPSA Police District Councilor, 11th District
35. Eira L. Corral Sepúlveda, Commissioner for the Metropolitan Water Reclamation District
36. David Orlikoff, CCPSA Police District Councilor, 14th District
37. Ashley Vargas, CCPSA Police District Councilor, 14th District
38. Maurilio Garcia, CCPSA Chair, 19th District
39. Elizabeth A. Rochford, CCPSA Police District Councilor, 17th District

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[1] Affiliations are listed solely for purposes of identification.

40. Anna Rubin, CCPSA Police District Councilor, 20th District
41. Deirdre O'Connor, CCPSA Police District Councilor, 20th District
42. Veronica I. Arreola, CCPSA Chair, 24th District Council
43. Keo Jean-Joseph, CCPSA Police District Councilor, 24th District
44. Angelica Green, CCPSA Police District Councilor, 25th District
45. Daniel Biss, Mayor of Evanston
46. Michael Rabbitt, Democratic Committeeperson of the 45th Ward
47. Tara Stamps, Cook County Board of Commissioners
48. Norma Rios-Sierra, CPS Board of Education Member District 3A
49. Michilla Blaise, CPS Board Of Education Member
50. Leni Manaa-Hoppenworth, Chicago Alderperson of the 48th Ward
51. Ruth Cruz, Chicago Alderperson of the 30th Ward
52. Daniel La Spata, Chicago Alderperson of the 1st Ward
53. Mary Edly-Allen, Member of the Illinois State Senate for the 31st District
54. Omar Aquino, Member of the Illinois State Senate for the 2nd District
55. Lindsey LaPointe, Member of the Illinois House of Representatives for the 19th District
56. Kevin Olickal, Member of the Illinois House of Representatives for the 16th District
57. Abierre Minor, Commissioner for the Community Commission for Public Safety
58. Karen Zaccor, CPS School Board Member
59. Dr. Angel Luis Velez, Chicago Board of Education Member for District 9A
60. Jitu Brown, Chicago Board of Education Member for District 5A
61. Eva-Dina Delgado, Illinois State Representative, 3rd District
62. Debby Pope, Chicago Board of Education Member for District 2B
63. Aaron Gottlieb, Commissioner (CCPSA)
64. Miguel Alvelo-Rivera, Democratic Party Nominee, IL State House District 40
65. Matthew Martin, Chicago Alderperson of the 47th Ward
66. Jan Schakowsky, U.S. Representative for the Ninth Congressional District of Illinois
67. Walter Redmond Burnett, Chicago Alderperson of the 27th Ward
68. Javier L. Cervantes, Member of the Illinois State Senate for the 1st District
69. Destinee Ortiz, Will County Board Member and Forest Preserve Board Vice President
70. Juan Geracaris, City of Evanston 9th Ward Councilperson
71. Anne Stava, Illinois State Representative for the 81st District
72. Yesenia López, Chicago Board of Education Member for District 7B
73. Maura Hirschauer, Illinois State Representative for the 49th District
74. Josina Morita, Cook County Commissioner
75. Adriane Johnson, Illinois State Senator for the 30th District
76. Mark L Walker, Illinois State Senator for the 27th District
77. Lakesia Collins, Illinois State Senator for the 5th District
78. Melissa Martinez, DuPage County Board Member
79. Lamont Robinson, Chicago Alderperson of the 4th Ward

Organizations

80. Legal Aid Society
81. P.A.S.O. - West Suburban Action Project

82. The Resurrection Project
83. Illinois Coalition for Immigrant and Refugee Rights
84. Beyond Legal Aid
85. Womens All Points Bulletin
86. Chicago Appleseed Center for Fair Courts
87. Palenque LSNA
88. Grassroots Collaborative
89. Alianza Americas
90. Enlace Chicago
91. HANA Center
92. Chicago Council of Lawyers
93. Hispanic Lawyers Association of Illinois
94. Chicago Coalition to End Homelessness
95. Warehouse Workers for Justice
96. Casa Michoacan | FEDECMI
97. Southwest Organizing Project
98. ASI Services
99. Illinois Workers in Action
100. Latino Policy Forum
101. Partners for Our Communities
102. Metropolitan Family Services
103. Erie Neighborhood House
104. The People's Lobby
105. Chinese Mutual Aid Association
106. AnySquared Arts NFP
107. Jewish Council on Urban Affairs (JCUA)
108. Asian Americans Advancing Justice | Chicago
109. Chicago Poetry Center
110. Casa Central
111. Chicago Latino Theater Alliance
112. Hispanic Federation
113. El Valor
114. BUILD Inc
115. Coalition for Immigrant Mental Health
116. The Westside Justice Center
117. Health & Medicine Policy Research Group
118. Latinos Progresando
119. Association of Latinos/as/xs Motivating Action
120. Farmworker and Landscaper Advocacy Project
121. Housing Action Illinois
122. The Sanctuary Working Group
123. Karina Ayala-Bermejo, Instituto del Progreso Latino
124. Mano a Mano Family Resource Center
125. PODER

126. Evanston Latinos
127. Trilogy
128. Increase The Peace Chicago
129. Mujeres Latinas en Acción
130. United African Organization
131. Common Defense
132. Illinois Partners for Human Service
133. Juan Carlos Linares, President and CEO, Association House of Chicago
134. Family Focus
135. Alianza Hispano Americana NFP, Inc.
136. AIDS Foundation Chicago
137. National Coalition for Latinxs with Disabilities
138. Chicago Alliance for Collaborative Effort (CACE)
139. Esperanza Health Centers
140. Nehemiah Trinity Rising
141. Centro de Información
142. Collaborative for Health Equity Cook County
143. Spanish Community Center
144. Bergin Law Office
145. Marni Willenson, Willenson Law, LLC
146. Law Office of Jordan Marsh, Krystal Robledo
147. Silver Law Office PC, Warren Silver, Stacey Rubin Silver
148. MacArthur Justice Center
149. Network 49
150. CAIR-Chicago
151. Community Commission for Public Safety Accountability
152. Law Offices of Johanna J. Raimond Ltd.
153. Indivisible Chicago

Faculty and Educators

154. Professor Sharon R. Fairley, University of Chicago Law School
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156. Professor Emeritus William Ayers, University of Illinois at Chicago
157. Professor Emerita Sylvia Vatuk, Department of Anthropology, University of Illinois at Chicago
158. Dr. Renslow Sherer, University of Chicago Biological Sciences Division
159. Professor Leora Auslander, University of Chicago
160. Dr. Jim Bloyd, University of Illinois Chicago

Media and Journalists

161. Chicago News Guild
162. NABET-CWA Local 54041
163. Invisible Institute

Religious Leaders

164. Reverend Scott Aaseng
165. Rabbi Aryeh Bernstein
166. Reverend Betty Birkhahn-Rommelfanger
167. Reverend David Black of The First Presbyterian Church of Chicago
168. Reverend Erin Coleman Branchaud, Pastor of St. Luke's Lutheran Church of Logan Square
169. Reverend Doctor Beth Brown/Lincoln Park Presbyterian Church
170. Reverend Hope Chernich
171. Father Brendan Curran
172. Reverend Clayton Edwards
173. Rabbi Bruce Elder
174. Piers Fetters, First United Methodist Church of Chicago
175. Rabbi Lizzi Heydemann
176. Reverend Hannah Kardon, United Church of Rogers Park
177. Rabbi Daniel Kirzane
178. Reverend Lindsey Joyce, Grace United Methodist Church of Logan Square
179. Lenore Mass
180. Reverend Michael Pfleger, Faith Community of St. Sabina
181. Rev. Violet Johnicker, Rockford Urban Ministries
182. Sandy Richter, Christ Our Peace
183. Unitarian Church of Hinsdale/UU Advocacy Network of IL
184. Reverend Joseph L. Morrow
185. Reverend Ann-Louise Haak
186. Sarah Zabel, Chaplain
187. Joyce M. Cassel, Clerk, Chicago First Church of the Brethren
188. Reverend Michelle L. Sevig
189. Dr. Sara Conneely

Individuals

190. Jennifer Aguilar
191. Berto Aguayo
192. Musaad Amin
193. Collin Anderson
194. Daniel O. Ash
195. John Barn
196. Amina Barhumi
197. Kelley Baumann
198. David Beale
199. Orlando Beckum II
200. Scott Blackburn
201. Luke Blanco
202. Roger Widman Bottner
203. Maureen Burns
204. Wendy Carson

205. Hon. Ruben Castillo
206. Jean Cate
207. Marcos Ceniceros
208. Kate Condic
209. Jennifer Crespo
210. Tilly Davis
211. Dion Dawson
212. Matt DeMateo
213. Olivia DeRubeis
214. Rochelle Diogenes
215. Teresa Dzieglewicz
216. Vivien Eisenberg
217. Rebecca Elliott
218. Enrique Espinoza
219. Nicole Faust
220. Adam Gonzalez
221. B. Goode
222. Francesca Gossett
223. Ruth Goring
224. Katie Grassle
225. Abby Greaney
226. Molly Gunther
227. Liza Hale
228. Debra L Hammond
229. James Hoover
230. Isabel Hutchison
231. Jennifer Jimenez
232. Julie Justicz, Executive Director of Legal Council for Health
233. Joanne Kalnitz
234. Miguel C. Keberlein Gutiérrez
235. Tracy Kostenbader
236. Kerry Littel
237. Jennifer LoPiccolo
238. Ignacio Lopez
239. Mel Lopez
240. Ernest Lukasik
241. Martha McConnell
242. Dominica McBride
243. Heather McShane
244. B Metzger Sampson
245. Benjamin D. Meyer
246. Natasha Mijares
247. Andrew Miller
248. Sandra Morales

249. Jo-Elle Munchak
250. Juan Munoz
251. Katie Nathenson
252. Dulce Ortiz
253. Madison Parker
254. Geoffrey Paul
255. Salomon Perez
256. Matthew Piers
257. Nick Rabkin
258. John Ramirez
259. Maria Requena
260. Kevin Rooney
261. D. Rosen
262. Heather Ross
263. Dana Rusch
264. Hane Ryu
265. Scott Sakiyama
266. Gail Schechter, Executive Director at Housing Opportunities & Maintenance for the Elderly & Trustee of the Village of Skokie
267. Alex Shapiro
268. Cheyenne Shelby-Petersen
269. Jack Spicer
270. Claire Stamler-Goody
271. Nina Sudhakar
272. Felipe Tendick-Matesanz
273. Melissa Texcahua
274. Timothy Tignor
275. Melanie Tillmanns
276. Nancy Valentin
277. Rudy Villa
278. NaBeela Washington
279. Ally Whiteaker
280. Patrick Wojtak
281. Jeffrey Wolf
282. Anne Yoder
283. Carol Yoken
284. Juan Carlos Zayas
285. Angela Sedeno
286. William Esty
287. Kevin Kuhn
288. Nicholas Breining
289. John Cassel
290. Patricia Cuyatti-Chavez
291. Pooja Khungar

292. Elizabeth Simpson
293. Ola Faleti
294. Timothy J. Deffet
295. Janet Willer
296. Angel Rubi Navarijo
297. Patricia Graham
298. Dave Easterly
299. Mayra Diaz
300. David Sedillo
301. Molly Claire Bunder
302. Kevin Varley
303. Jessica McClure
304. Laura Strudeman
305. Mary Hannah Langhoff
306. Dr. Adi Philpott
307. Ruth M. Abramson
308. Marnelle Curtis
309. Yhelena Hall
310. Jennifer Swaim
311. Kathryn Dittemore
312. Maria Pyra
313. Jeff Radtke
314. Emily Wachowiak
315. Gayle L. Kemp
316. David J. S. Moreno
317. Enid Winters
318. Susan Gries
319. Milinda Schwab
320. Joseph Zefran
321. Lisa Walker
322. Mary Klemundt
323. Alexa Daggett
324. Kathy Lewis
325. Madeline Miley
326. Stephanie Weaver
327. MaryElizabeth Luitjohan
328. Abby Rainer
329. Elaine Luckett
330. Zachariah Claybaugh
331. Bridget Jakubiak
332. John Potamitees
333. Nora E. Rowley
334. Rachel Zummo
335. Jacquelyn Haynes

336. Louie Stallone
337. Diane Houdek
338. Heriberto Leon
339. Robert Baughman
340. Jane Mendoza
341. Rachel Mendoza
342. Christina Woelke
343. Gary Snyderman
344. Marian Evans
345. Sarah Stephens Ramani
346. Carol L. Cohn
347. Kristin Green
348. Terry Johnson
349. Allison Solare
350. Wendy Carranza
351. Patricia Sullivan
352. Alan Brint
353. Debbie Theilig
354. Niki Nash
355. Sarah Mitchell
356. Taylor Burke
357. Mary Ellen Channon
358. Elizabeth Boe
359. Elizabeth Bagby
360. Jennifer Mann
361. Karen Yatsko
362. Marjorie Isaacson
363. Myra Glassman
364. Taylor Moore
365. Amy Scattaglia
366. Wendy Siegel
367. Karen Syverson
368. Maureen Mooney
369. Susan Balaban
370. Lori Birenberg
371. Judy Schneider
372. Maria Taylor
373. Stephanie Fletcher
374. Gene Cox
375. Judy Teibloom-Mishkin
376. Sarah Hendershot
377. Bridget Dziedzic
378. Gretchen Genz Davidson
379. Margaret E. Martin

380. Mary Lenehan
381. Rose Pinnock
382. Liliana Costa
383. Kathleen Long
384. Molly Fivelson
385. Margaret A. McGuire
386. Kathy Richmond
387. Deborah Fenner
388. Rachel Hall
389. Garrick Balk
390. Elizabeth Gutierrez
391. Amanda Jenkins
392. Deborah Bourne
393. Nolan Winkler
394. Joanne Kendall
395. Alicia Davis
396. Lisa Oppenheim
397. Mary Larsen
398. Paige Yungermann
399. Susan Budde
400. Joan Scheeter
401. Roberta Kullen
402. Elisa Helford
403. Emily Feder
404. Brittany Creel
405. Danielle
406. Ribin
407. Barbara Parker
408. Bruno Garcia
409. Dr. Peter Kozak
410. Gerardo Rivera
411. Blake Jurasich
412. Susan Siokos
413. Janet Diaz
414. Nick Uniejewski
415. Terra Powell

The State's Attorney's view is also untenable because it gets law badly wrong, and it is contradicted by all available evidence. To start, the State's Attorney's argument that she is legally prohibited from investigating criminal conduct is incorrect as a matter of Illinois constitutional law, state statutes, and binding precedents. The State's Attorney's view that *People v. Ringland*, 2017 IL 119484, prevents her from investigating and prosecuting the alleged crimes of Operation Midway Blitz is wrong, and her decision to erect a false legal obstacle to justify her inaction leaves no other conclusion than that she intends to ensure an investigation and prosecution of federal agents' crimes never takes place. Moreover, the State's Attorney's contention that she has no authority to investigate is contradicted by her Office's practice of conducting investigations in a wide variety of contexts.

Also legally incorrect is the State's Attorney's position that her inaction and abdication of her duty to the People of Cook County is not an actual conflict of interest that justifies appointment of a special prosecutor. Illinois law allows this Court to exercise its discretion to appoint a special prosecutor because the facts alleged in the petition demonstrate that the State's Attorney cannot zealously represent the People and has abandoned her duty by failing to conduct any investigation of alleged crimes committed in her jurisdiction. Repeatedly courts have appointed special prosecutors when the State's Attorney has refused to act.

Consider the case of Laquan McDonald, whose shooting by Chicago Police officers was caught on video. In that case, the Chicago Police Department did not investigate the shooting by its officers and present a case to the Cook County State's Attorney. Meanwhile, the State's Attorney took no action. Once the video was ordered released by an Illinois court, the State's Attorney filed charges against the officer who had killed McDonald and recused herself so that special prosecutors could be appointed to investigate and prosecute the alleged crimes of the

Chicago police officers. The McDonald case illustrates that each part of the State's Attorney's argument here is incorrect: the State's Attorney and special prosecutors in the McDonald case all exercised the power to investigate crimes; they all took action based on precisely the type of evidence that has already been documented in Operation Midway Blitz; and special prosecutors were appointed, consistent with Illinois law, because of prosecutorial inaction and the real concern that the interests of the People would not be adequately represented. A special prosecutor is appropriate here for the same reasons.

But there is more. The State's Attorney has actual conflicts of interest that independently justify appointment of a special prosecutor. Crucially, the State's Attorney has an alliance with federal law enforcement that prevents her from taking action against the federal agents alleged to have committed crimes during Operation Midway Blitz. With this reply, Petitioners are filing newly discovered communications from the State's Attorney, sent just before Operation Midway Blitz, in which she explicitly refused to criticize the Trump Administration's threats to send federal agents to Chicago, because she viewed maintaining her "excellent working" relationships with federal officials and agents as her "top priority." Exhibit 1. This is irrefutable evidence showing that the State's Attorney *herself* believes that she has a conflict that will not permit her to act against federal agents—whether by criticism, investigation, or prosecution—and that actual conflict independently justifies a special prosecutor.

For all of these reasons, and for the reasons outlined in the Petition, this Court should exercise its sound discretion, based on the one-sided record evidence, and appoint a special prosecutor to investigate the crimes committed by federal agents during Operation Midway Blitz.

ARGUMENT

I. The State's Attorney Has Abdicated Her Duty to Investigate the Crimes Committed by Federal Agents During Operation Midway Blitz

A. The State's Attorney's Response Concedes That Crimes Were Committed During Operation Midway Blitz and Confirms That She Has Not and Will Not Investigate or Prosecute Those Crimes

Implicit in the State's Attorney's response is an important concession: that federal agents' actions documented during Operation Midway Blitz likely violated Illinois criminal law. Petitioners outlined, in the original petition, the litany of abuses carried out by federal agents during Operation Midway Blitz. The petition carefully detailed that these actions constitute crimes ranging from homicide, attempted homicide, and aggravated battery, to kidnapping, conspiracy, obstruction of justice, and perjury. Petition at 34-41. The State's Attorney leaves these allegations undisputed. Indeed, the State's attorney is "horrified by the thuggish and inappropriate conduct of ICE agents in Chicago and elsewhere." Response at 1. Other than that statement, nothing in the response addresses the criminal nature of federal agents' actions during Operation Midway Blitz. This amounts to a concession of petitioners' argument that federal agents committed state crimes. *People v. Palmer*, 2021 IL 125621, ¶ 73 (where State put on no contrary evidence, it "implicitly concedes" petitioner's argument). Accordingly, all parties agree that there were crimes committed during Operation Midway Blitz.

The State's Attorney's response also concedes that she has not investigated or prosecuted the crimes committed by federal agents during Operation Midway Blitz. In response to petitioners' contention that the State's Attorney has taken no action, the State's Attorney is silent—she does not contend that, in fact, she has taken action—and that silence effectively concedes this point as

well.[1] A State's Attorney who intended to take some action would simply say so.[2] The State's Attorney's concessions that she has taken no action to investigate or prosecute, what she admits are alleged crimes committed by federal agents in her jurisdiction, is enough, as a factual matter, to conclude that the State's Attorney has abdicated her duties and to appoint a special prosecutor.

But the State's Attorney goes much further. In addition to conceding that she has taken no action to investigate or prosecute what all agree is criminal conduct committed during Operation Midway Blitz, the State's Attorney remarkably contends that it would be *unlawful* for her to undertake such an investigation. She first claims that her "horror [at the conduct of federal agents] does not mean that she . . . can *willfully violate the law*." Response at 1 (emphasis added). Following that contention, the State's Attorney repeatedly argues that her Office is prohibited by law from initiating any investigation at all. *See, e.g.*, *id.* at 2, 10. This position is indefensible. *See infra* Part I(b). And, by adopting it, the State's Attorney has left no doubt that she does not intend to investigate the crimes committed during Operation Midway Blitz. Indeed, the State's Attorney takes a view of her own legal authority that is so narrow, and a view of the legal obstacles to

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[1] Although the State's Attorney mentions in passing the confidential nature of ongoing investigations, Response at 2, the State's Attorney would not be disclosing confidential information by simply confirming the existence of an investigation or prosecution. The State's Attorney's silence on this matter means that there is no action, as Petitioners contend.

[2] The State's Attorney's inaction is also confirmed by publicly available records. For instance, the State's Attorney's responses to Freedom of Information Act (FOIA) requests confirm she has taken no action in response to the October 2, 2025, shooting of Silverio Villegas Gonzalez in Franklin Park. *See* Molly DeVore, *ICE Killed a Man Outside Chicago Last Year. Little Has Been Done To Investigate,* BLOCK CLUB CHICAGO, Mar. 23, 2026, https://blockclubchicago.org/2026/03/23/ice-killed-a-man-outside-chicago-last-year-little-has-been-done-to-investigate/ (confirming that the Cook County State's Attorney's Office had no files or reports on the shooting) (hereinafter "DeVore, *ICE Killed a Man*"); *see also* Ex. 2 (Cook County State's Attorney's Office Responses to Block Club Chicago FOIA Requests) (confirming the State's Attorney's Office had no case files or reports regarding the Villegas-Gonzalez shooting, and that her Office's only email correspondence regarding the shooting were "Media Highlights" and a forwarded message from a news station).

prosecutions that is so broad, that there is no room for her to take future action to hold federal agents accountable.[3]

The State's Attorney's response therefore confirms Petitioners' argument and evidence that she has not and will not take action in response to what she concedes are crimes committed during Operation Midway Blitz.

B. The State's Attorney Is Not Prohibited From Investigating Crimes Committed by Federal Officers During Operation Midway Blitz

The State's Attorney's view that she is prohibited from investigating federal agents is legally incorrect. The State's Attorney has the authority, vested in her by common-law and by statute, to investigate the crimes that federal officers committed during Operation Midway Blitz. The Cook County State's Attorney's Office conducts similar investigations on a routine basis, including investigations of law enforcement. The Illinois Supreme Court has never restricted the duty and the authority of the elected State's Attorney to investigate and prosecute known criminal conduct that has occurred in her County. The only conclusion that can be drawn from the State's Attorney's flawed legal arguments to the contrary is that she has abdicated her duty to investigate and prosecute the crimes of Operation Midway Blitz, and the meritless legal arguments are merely an attempt to justify her decision after the fact.

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[3] In addition to arguing that she is legally prohibited from investigating, the State's Attorney vaguely suggests that "supremacy clause considerations in the prosecution of federal agents" limit her ability to prosecute. Response at 14. She does not explain. Nor does she respond to Petitioners' arguments about why the Supremacy Clause does not bar state prosecutions of federal agents in the circumstances presented here. Petition at 41-44. The State's Attorney credits a defense that might be raised in a prosecution without having investigated the facts of any particular case, and then cites that potential defense as a reason not to take action. By not responding to the substance at all, the State's Attorney has conceded Petitioners' point that Supremacy Clause concerns are not a categorical legal bar to prosecution.

Although a reader of the State's Attorney's response might conclude that the State's Attorney is legally barred from investigating crime, that is hardly the case. The responsibility of an Illinois State's Attorney to step in when police fail to conduct adequate investigations and to assist in investigations at the request of police is a bedrock principle of Illinois law, as set forth in the Illinois Counties Code, Section 3-9005(b), 55 ILCS 3-9005(b), and in the common law. *People v. Ringland*, 2017 IL 119484, on which the State's Attorney principally relies, does not abrogate this bedrock principle—it affirms and ratifies it. In the words of our Supreme Court in *Ringland*, "[W]e have recognized that a State's Attorney has an affirmative duty to investigate suspected illegal activity *'when it is not adequately dealt with by other agencies.'*" *Id.* at ¶ 25 (quoting *People v. Williams,* 147 Ill. 2d 173, 256 (1991) (emphasis added in the *Ringland* opinion)). The State's Attorney's position here—that her hands are tied and that she cannot investigate these crimes—does not withstand scrutiny.

1. The State's Attorney Is Empowered to Prosecute *and* to Investigate

The Illinois Constitution established the Office of State's Attorney and it has long been understood that, to discharge the duties of her office, the State's Attorney has broad authority "to direct the legal affairs of the county." *Cnty. of Cook ex rel. Rifkin v. Bear Stearns & Co.*, 215 Ill. 2d 466, 478 (2005); *People ex rel. Kunstman v. Nagano*, 389 Ill. 231, 247–49 (1945) ("[W]e have always viewed a State's Attorney as a constitutional officer with rights and duties analogous to or largely coincident with the Attorney General[.]"); *Rifkin*, 215 Ill. 2d at 475 ("This court has consistently held that the powers of the State's Attorney are derived from the constitution.").

The State's Attorney's broad common-law authority includes the duty and responsibility to *investigate* where necessary and appropriate. *See* 55 ILCS 5/3–9005(b) ("The State's Attorney of each county *shall have authority* to appoint one or more special *investigators* to serve

subpoenas, make return of process and *conduct investigations* which assist the State's Attorney in the performance of the State's Attorney's duties.") (emphasis added); *People v. Nohren*, 283 Ill. App. 3d 753, 758–59 (1996) ("It is the duty of the State's Attorney to investigate facts and determine whether an offense has been committed . . . . The State's Attorney is . . . charged with these duties prior to the filing of formal accusations by the State.") (citing, *inter alia*, *Williams*, 147 Ill.2d at 256, *McDonald v. County Board*, 146 Ill.App.3d 1051, 1055 (1986); *Ware v. Carey*, 75 Ill. App. 3d 906, 913-14 (1979)). "[I]f the State's Attorney did not have such investigative power, it would lead to the perverse result that the State must formally charge an individual prior to investigating the factual basis for the charge." *Nohren*, 283 Ill. App. 3d at 759.

2. *Ringland* Does Not Abrogate the State's Attorney's Power and Duty to Investigate the Alleged Crimes of Federal Agents Here

Ringland does not abrogate these principles. It ratifies and affirms them.

Ringland concerned a "State's Attorney's Felony Enforcement" unit established by the LaSalle County State's Attorney. There, the State's Attorney had instructed the members of his so-called SAFE unit to patrol Interstate 80, to conduct traffic stops, and to employ a "drug-detection canine unit" to search for drugs in the stopped vehicles. 2017 IL 119484, ¶¶ 4-7. Unsurprisingly, the Supreme Court affirmed suppression of the drugs that were seized by State's Attorney employees who were operating in the role of traffic police. The Court was careful to point out that the persons charged in the SAFE operation were not previously known to the police or the State's Attorney; there was no ongoing investigation of any of these subjects. *Id.* ¶ 15. As the Court explained, "[t]he conduct of the SAFE unit stands in stark contrast to cases … where … a State's Attorney special investigator … acted in concert with local law enforcement officials after it was learned that a specific crime had been, or was about to be, committed." *Id.* ¶ 30. The State's

Attorney's formation of what was, in effect, a super-police agency to search out previously undetected crime, exceeded the proper scope of the Office. *Id.* ¶¶ 31-35.

That holding hardly prohibits the Cook County State's Attorney from opening an investigation into the criminal misconduct of federal agents during Operation Midway Blitz. Indeed, a great deal of evidence of those agents' misconduct already exists. As explained in the Petition, federal agents' bodycam footage has been placed into the public record in the federal proceedings in *Chicago Headline Club v. Noem, et al.,* No. 25-cv-12173 (N.D. Ill.). Federal agents have submitted reports regarding their misconduct, which have been publicly disclosed. They have testified about their actions under oath. Witnesses have testified to the harms they suffered, the fear they faced, and have submitted their own video footage of the officers' alleged criminal actions. Other items of evidence in the possession of federal agencies can be obtained by subpoena or other court order.

The State's Attorney's Office's investigation of the federal agents' crimes would consist of reviewing, collecting, and analyzing the known evidence of misconduct already collected, and pursuing additional evidence based on that review—all undertakings that are squarely within the State's Attorney's wheelhouse and responsibility. *See Williams*, 147 Ill. 2d at 256 ("The State's Attorney has the responsibility of evaluating evidence and other pertinent factors and determining what, if any, offense may be charged.") (quoted with approval in *Ringland,* 2017 IL 119484, ¶ 25). This bears no resemblance to SAFE operation in issue in *Ringland*, and, instead, falls squarely within the State's Attorney's "duty to *investigate the facts* and determine whether an offense has been committed." *Ringland*, 2017 IL 119484, ¶ 22 (emphasis added).

Moreover, in the case of the crimes of Operation Midway Blitz, it is perfectly clear that local police are failing to investigate. For example, a FOIA response from the Franklin Park Police

Department inquiring about records into the killing of Villegas Gonzalez resulted in the production of incident reports in which the Franklin Park police provided federal agents' account of the shooting but did not investigate the lawfulness of the shooting.[4] The Chicago Police Department has not investigated either.[5] And this adheres to the State's Attorney's own account that in the months since Operation Midway Blitz, no law enforcement agency has presented a case to her relating to any of the federal agents' crimes. In fact, the underlying premise of her position is exactly that: local police have not done anything, and the State's Attorney cannot force them to.

Ringland re-affirmed that, in this context, when local law enforcement has not investigated adequately, the State's Attorney is empowered and expected to step in and investigate. *See Ringland*, 2017 IL 119484, ¶ 25. The State's Attorney's affirmative duty to conduct appropriate investigation encompasses the necessity for State's Attorney investigation when "police are *unable or unwilling* to undertake" the investigation. *Id.* (quoting ABA Standards for Criminal Justice, 3–

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[4] DeVore, *ICE Killed a Man.* Meanwhile, Petitioners' FOIA requests to Chicago Police Department for documents, records, and files regarding any CPD investigation into potential criminal activity committed by federal Department of Homeland Security (DHS) agents during Operation Midway Blitz is still pending, and the CPD has requested another extension for their search for records until April 22, 2026.

[5] On April 2, 2026, the Community Commission for Public Safety and Accountability (CCPSA) hosted a special meeting to address the Chicago Police interactions with federal agents. Many of the questions were directed at Superintendent Snelling, who had agreed to attend. Several public comments and questions by the CCPSA commissioners demanded answers about why CPD had not referred any investigation to the CCSAO and whether it would in the future. Superintendent Snelling did not dispute that there had been no investigation to date. Explaining his view that the Supremacy Clause prohibits states from interfering with federal agents when they are engaging in their duties, he stated, "When we started talking about what a violation of law is we have to be careful because . . . [i]f we don't know how [they're trained or what their marching orders are], . . . there is due process. So the bottom line is, those federal agents under the Supremacy Clause would be protected." (CCPSA Special Meeting with Superintendent Snelling—April 2026, YouTube (Apr. 2, 2026), *available at* https://www.youtube.com/watch?v=GR6WGuqDS8k, at 53:10 (last visited April 16, 2026). A fair inference is that Superintendent Snelling and the CPD are unwilling and do not intend to investigate the crimes of their brother federal police officers.

2.4, Commentary (3d ed. 1993) (emphasis added)). Crucially, *Ringland* predicted that police inaction "may be because the area of illegal activity in question is not one that attracts law enforcement interest or *where law enforcement officials are themselves involved.*" *Id.* (quoting ABA Standards for Criminal Justice, Standard 3–3.1(a), Commentary (3d ed. 1993) (emphasis added)). That is the case here.

In sum, the State's Attorney's reading of *Ringland* is far off base. That decision does not shield her from the responsibility to investigate the crimes of Operation Midway Blitz. It affirms and supports her responsibility to conduct that investigation.

3. The State's Attorney Consistently and Routinely Conducts Investigations, Belying the Notion that Her Office Must Wait for the Police to Present a Case

If more were more needed to establish the point, it can be found in the fact that the Cook County State's Attorney's Office investigates crimes regularly. For instance, the Special Prosecutions Bureau undertakes "long-term *proactive* investigations that are *supervised by experienced prosecutors* with specialized knowledge and experience[.][6] And the State's Attorney's Consumer Fraud Unit handles consumer complaints by allowing victims of consumer fraud to complete a complaint form and supporting documents, which "will be given a file number and will be screened by an attorney. At this screening level, some cases are declined for

[6] Cook County State's Attorney's Office, *The Final Report: The Kim Foxx Administration*, Nov. 29, 2024, at 10, https://tinyurl.com/msbdzccf (last visited Apr. 10, 2026) (hereinafter "*Foxx Final Report*"); Cook County State's Attorney's Office - Special Prosecutions Bureau, Cook County State's Attorney's Office, https://www.statesattorney.org/cook-county-states-attorneys-office-special-prosecutions-bureau/ (last visited Apr. 16, 2026) ("The Cook County State's Attorney's Office – Special Prosecutions Bureau consists of prosecutors with exemplary experience and extensive knowledge, with emphasis on long-term proactive investigations.") (emphasis added).

prosecution, some cases are referred to other government or law enforcement agencies, and other cases are retained by the Consumer Fraud Unit *for investigation*."[7]

The State's Attorney's Public Corruption and Financial Crimes Unit also conducts criminal investigations.[8] Indeed, the State's Attorney has long investigated public corruption in Cook County alongside federal authorities, the Internal Revenue Service (IRS), and other agencies.[9] For instance, in 2012, the State's Attorney's Office undertook a series of public corruption investigations named "Operation Cookie Jar," which targeted employees stealing from schools and government agencies, resulting in charges including theft, bribery, and forgery.[10] That same year, the State's Attorney's Office also created the Mortgage Fraud Investigations and Prosecution Unit "as a proactive unit to combat mortgage fraud."[11] And most recently, on March 12, 2026, the same day that Petitioners filed their petition, Injustice Watch reported that David Williams, head of the Cook County State's Attorney's Office's fraud and financial crimes unit,

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[7] Consumer Fraud, Cook County State's Attorney's Office, https://www.cookcountystatesattorney.org/consumer-fraud (last visited Apr. 16, 2026) (emphasis added).

[8] *See, e.g.*, *Foxx Final Report*, at 18 (noting that the State's Attorney's Office Public Corruption and Financial Crimes Unit conducted an investigation alongside other entities).

[9] Thomas J. Gradel et al., *Corruption in Cook County: Anti-Corruption Report Number 3*, (Univ. of Ill. at Chi., Dep't of Pol. Sci., Feb. 18, 2010), https://tinyurl.com/bp77affy.

[10] Quinn Ford, *Latest corruption indictments handed down in 'Operation Cookie Jar' probe*, WBEZ CHICAGO, Aug. 22, 2012, https://tinyurl.com/p32tkz68 (State's Attorney Alvarez stating charges resulted from "internal investigations and also tips coming from the public."); *6 educators accused of stealing money from Chicago, suburban schools*, ABC7, Aug. 22, 2012, https://tinyurl.com/v2bk8t94 ("The charges are part of an ongoing investigation called Operation Cookie Jar.")

[11] *Alvarez & Marsal Hires Former Illinois State's Attorney Anita Alvarez as Managing Director in the Disputes and Investigations Practice*, ALVAREZ AND MARSAL, April 30, 2019, https://www.alvarezandmarsal.com/insights/alvarez-marsal-hires-former-illionis-states-attorney-anita-alvarez-managing-director, (last visited Apr. 16, 2026).

directly engaged with researchers from the Cook County Treasurer's Office to investigate a "sophisticated conspiracy to commit millions of dollars of fraud."[12]

The State's Attorney also routinely investigates misconduct committed by law enforcement. Those investigations have been conducted close in time following alleged the misconduct—such as in 2012, when the State's Attorney investigated the police shooting death of Rekia Boyd by Detective Dante Servin[13]—and also years later—such as the investigation of wrongful convictions and past police misconduct conducted by the State's Attorney's Conviction Integrity Unit.[14] For instance, in 2019, the State's Attorney's Conviction Integrity Unit began a "long-term investigation" into the misconduct of former Chicago Police Detective Reynaldo Guevara, who had framed individuals for murder.[15]

Finally, the State's Attorney routinely collaborates with other law enforcement agencies in joint investigations, often alongside federal law enforcement. Created in 2016, the Gun Crimes

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[12] Carlos Ballesteros, *The King of Liens*, INJUSTICE WATCH (Mar. 12, 2026), https://www.injusticewatch.org/project/taken-by-taxes/2026/greg-bingham-king-of-liens/, (last visited Apr. 16, 2026).

[13] Sun-times staff, *Emails raise new questions about handling of Rekia Boyd shooting*, CHICAGO SUN-TIMES, June 24, 2016, https://chicago.suntimes.com/2016/6/24/18451950/emails-raise-new-questions-about-handling-of-rekia-boyd-shooting., (last visited Apr. 16, 2026) ("[i]nvestigators for the state's attorney's office spoke with witnesses" as part of the investigation into law enforcement misconduct). *See also Why Top Prosecutor Said Charges Weren't Filed in 2 Fatal Police Shootings*, NBC CHICAGO, Mar. 15, 2022, https://www.nbcchicago.com/news/local/why-top-prosecutor-said-charges-werent-filed-in-2-fatal-police-shootings/2783688/, (last visited Apr. 16, 2026) (in 2022, the State's Attorney's Office investigated the fatal police shootings of 13-year-old Adam Toledo and 22-year-old Anthony Alvarez before publicly announcing her decision not to file criminal charges).

[14] *Foxx Final Report*, at 11.

[15] *Cook County State's Attorney Kimberly Foxx Announces Dismissal of Murder Cases Tied to Former Chicago Police Detective Reynaldo Guevara*, Cook County State's Attorney, Aug. 9, 2022, https://web.archive.org/web/20220901001343/https://www.cookcountystatesattorney.org/news/cook-county-state-s-attorney-kimberly-foxx-announces-dismissal-murder-cases-tied-former-chicago, (last visited Apr. 16, 2026).

Strategies Unit (GCSU) embeds Assistant State's Attorney's in Chicago police districts with high rates of violence, where they "build successful investigations" by "work[ing] closely with CPD, the Federal Bureau of Investigation (FBI), the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and the U.S. Attorney's Office."[16] The Illinois State Police Public Integrity Task Force, "which is comprised of investigators from the Illinois State Police, Cook County Sheriff's Police, and the Cook County State's Attorney's Office," as well as the FBI, investigates police officer-involved shootings outside Chicago.[17] Many of the investigations undertaken by the State's Attorney's Office and referenced above—including the Mortgage Fraud Investigations and Prosecutions Unit and the Public Corruption and Financial Crimes Unit—often involve joint collaboration. This represents a fraction of the State's Attorney's Office's joint investigative efforts with law enforcement.

These examples directly undermine the State's Attorney's claim that her hands are tied, or that she may not address the criminality of Operation Midway Blitz *until some other agency decides to do so.* The State's Attorney has the authority and the responsibility to investigate and prosecute crimes committed by federal officers in Cook County. She conducts investigations routinely, including into law enforcement misconduct.

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The State's Attorney takes the position that she has not abdicated her duty to investigate the crimes of Operation Midway Blitz because she lacks the power to do so. But her argument gets things exactly backwards. Properly understood, the State's Attorney's insistence that she has no

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[16] Cook County State's Attorney's Office, Two Year Report 8 (Mar. 2019), https://www.cookcountystatesattorney.org/sites/g/files/ywwepo351/files/document/file/2024-08/kim_foxx_two-year-report_final.pdf.

[17] Cook County State's Attorney's Office, Policy Memo, https://www.cookcountystatesattorney.org/policy-memo (last visited Apr. 15, 2026).

power to investigate is flatly contradicted by law and practice, and her decision to erect a fictitious legal obstacle to justify her inaction can only be seen as the strongest possible evidence that the State's Attorney has a conflict of interest that prevents her investigating and prosecuting the crimes of Operation Midway Blitz.

II. Where the State's Attorney Abdicates Her Duty, Illinois Law Permits Courts to Appoint Special Prosecutors

After arguing that, in the face of admitted evidence of serious crimes, the State's Attorney cannot and will not do anything in the face of serious crimes committed in her jurisdiction, she pivots and argues strenuously that no one else can do anything either. She asserts that Illinois law does not permit the appointment of a special prosecutor merely because a State's Attorney has abdicated her duty to investigate and prosecute. This argument gets the law wrong as well, and it is plainly contradicted by recent practice. This Court is empowered, in its discretion, to appoint a special prosecutor when a State's Attorney abdicates a duty to investigate and prosecute serious crimes.

A. Illinois Statutes and Binding Authority Support Appointment of a Special Prosecutor

The State's Attorney argues that her abdication of her duty to investigate and prosecute the crimes of Operation Midway Blitz does not qualify as an actual conflict of interest under Illinois law, absent a showing that the State's Attorney has a specific personal interest in the case. Response at 9. But that is far too narrow a reading of Illinois law. Illinois courts have held repeatedly that an actual conflict of interest may exist under Section 3-9008 when the facts alleged in a petition demonstrate that a State's Attorney cannot zealously represent the People, has abandoned her duty to the People, or has conducted an improper or insufficient investigation.[18]

[18] Although the statute has been amended multiple times, Illinois courts have recognized that the cases interpreting the older statutory language "is interested in" apply with equal force to

See *Heidelberg v. People*, 2017 IL App (3d) 160561-U, ¶ 26 ("A petitioner can demonstrate that a State's Attorney has abandoned his duties to the People of the State of Illinois by alleging an impropriety or insufficiency in the State's Attorney's investigation."); *McCall v. Devine*, 334 Ill. App. 3d 192, 204, 777 N.E.2d 405, 416 (2002) (requiring that the petition plead an "actual or specific impropriety or insufficiency in the investigation conduct by the [State's Attorney's] office"); *Baxter v. Peterlin*, 156 Ill. App. 3d 564, 566, 509 N.E.2d 156, 158 (1987) (requiring a petition to present "facts tending to show the State's Attorney would not zealously represent the People of the State of Illinois").[19] The State's Attorney does not cite any case that undermines this proposition.

Instead, the State's Attorney makes repeated references to the Supreme Court's recent decision in *People v. Muhammad*, which simply reaffirms that a petition for a special prosecutor "must identify a specific deficiency in counsel's strategy, tactics, or decision-making that is attributable to the alleged conflict." 2025 IL 130470, ¶ 52 (citing *People v. Yost*, 2021 IL 126187 ¶ 38) (denying a special prosecutor because no such showing had been made). As the State's Attorney argues, it is a longstanding rule that broad allegations of a conflict of interest are insufficient. Response at 7-9 (citing *In re Appointment of Special Prosecutor (Farmer)*, 2019 IL App (1st) 173173 ¶¶ 47-48). But there are no broad or speculative allegations in this case. The State's Attorney does not contest Petitioners' contentions or evidence that numerous alleged

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the current statute's reference to "actual conflict of interest." See *In re Appointment of a Special State's Att'y on Behalf of Haney*, 2020 IL App (2d) 190845, ¶ 17, which is cited with approval in *People v. Muhammad*, 2025 IL 130470, ¶ 51.

[19] The State's Attorney only discusses *Heidelberg* in any detail, attempting to distinguish the case by observing that it involved a personal conflict of interest. Response at 12. But that does not mean that the general legal propositions in the case have no force in other contexts. While a personal relationship may be *sufficient* evidence that a state's attorney has abandoned the duty to investigate, it is not *necessary* evidence to make such a showing.

crimes were committed, that she has taken no action in response, or that she does not intend to take any action in response, and she even presses the view that she is legally prohibited from taking action.

In a typical case, where broad allegations are found insufficient to appoint a special prosecutor, the petitioner alleges an actual conflict, and the State's Attorney responds that they are in fact engaged in the investigation and prosecution of the case at issue. Here, there are specific allegations and concrete evidence of the State's Attorney's abdication, and the State's Attorney has responded by *confirming* that the evidence is correct and that she intends to do nothing. Petitioners have provided a specific affirmative case demonstrating that the State's Attorney has conducted an insufficient investigation (in fact, none), that she has abandoned her duties, and that she cannot zealously represent the People of Cook County. *Heidelberg*, 2017 IL App (3d) 160561-U, ¶ 25; *McCall*, 334 Ill. App. 3d at 204; *Baxter*, 156 Ill. App. 3d at 566.

Finally, the State's Attorney contends that this case is like *Hranka v. Johnson*, in which the Appellate Court found that a "petitioner's only real complaint with the state's attorney's office is its failure to act, but the decision whether to act is the state's attorney's prerogative absent truly exceptional circumstances." 2024 IL App (4th) 231295-U. That case involved allegations of misconduct lodged by a county auditor against other county officials, and the elected state's attorneys sided with the other county officials, not the auditor. *Id.* ¶¶ 4-10. Unlike the situation in *Hranka*, where state prosecutors exercised their discretion and made charging decisions, which were then challenged, Petitioners here are not challenging any charging decision. Instead, they are contending that the State's Attorney has decided not to exercise her prosecutorial discretion *at all*. That abandonment of her official duties requires a special prosecutor.

B. Recent Special Prosecutor Appointments Illustrate the Correct Approach Here

As explained in the petition, recent decisions confirm that appointment of a special prosecutor is warranted where the State's Attorney abdicates her duty to investigate. The State's Attorney's response does not pause to address the conflict alleged in the petition to appoint a special prosecutor in relation to the murder of Laquan McDonald or the circumstances that prompted that appointment. That case is closely analogous to this one and instructive as to the approach that should be taken here.

Laquan McDonald's killing, in October 2014, was recorded on a police dashcam. That video was damning; it showed Chicago Police Officer Jason Van Dyke shooting McDonald multiple times as McDonald walked *away* from Van Dyke, and then showed Van Dyke firing shots into McDonald as he lay on the ground. The Chicago Police Department and the Fraternal Order of Police issued false public statements about the killing saying the shooting was justified because McDonald lunged at Van Dyke with a knife. False police reports tracked that account. The Cook County State's Attorney possessed the incriminating video for many months before it was publicly released pursuant to a Freedom of Information Act request—and did nothing. Then, just before the video was to be released, recognizing that that release would prompt public outrage, the State's Attorney belatedly filed charges against Van Dyke.

As in this case, members of the community petitioned for a Special Prosecutor, contending that the elected State's Attorney had a conflict that would prevent her from zealously and aggressively prosecuting both Van Dyke and the other officers who had prepared false police reports to cover up the murder. Ex. 3 at ¶¶ 34-46 (Am. Petition, In Re Appointment of Special Prosecutor, Case No. 16 MR 00005 (Mar. 2, 2016). The conflict alleged was a political one. The petitioners contended that the State's Attorney was beholden politically to the Fraternal Order of

Police and that her desire not to alienate that important political constituency would stand in the way of her ability to conduct the prosecutions. Id. ¶ 46. A Special Prosecutor was appointed.

The inhibiting effect of political and institutional relationships was also in issue in the petition to appoint a Special Prosecutor to re-investigate David Koschman's death at the hands of Richard J. Vanecko, a nephew of long time Chicago Mayor Richard M. Daley. The Chicago Police had investigated and concluded that no charges were warranted, despite evidence suggesting that Vanecko, who was much larger than David Koschman, had pushed Koschman so violently that Koschman fell backward, striking his head on the pavement. The petitioners contended that a Special Prosecutor was necessary to vindicate the "principle that all persons—regardless of wealth, status or family connection—are equal before the law. Thus, Mr. Vanecko is not entitled to escape prosecution simply because he is the nephew of former Mayor Daley." Ex. 4 at ¶ 9 (Petition, In Re Appointment of Special Prosecutor, Case No. 2011 Misc. 46 (Dec. 14, 2011). In addition, petitioners argued that the possible misconduct of a felony review assistant who participated in the investigation at the police station presented a conflict of interest that disabled a thorough investigation of Vanecko's possible crime and the resulting investigative failures (including those by the felony review assistant state's attorney). *Id.* ¶¶ 34-46. A Special Prosecutor was appointed.

The facts here are closely analogous. The State's Attorney, as in the Laquan McDonald case, has access to video evidence of criminal misconduct by members of law enforcement and has elected, without justification, to do nothing. As in the McDonald case and the Koschman case, there is ample basis for the inference that the State's Attorney's failure to act is because she is beholden to law enforcement and unwilling to risk impairing political and institutional relationships. Just as in those cases, a Special Prosecutor should be appointed here.

III. The State's Attorney's Other Conflicts Are Substantial and Justify Relief

A. The State's Attorney's Conflict Due to Collaboration with Federal Law Enforcement Is Substantial and Also Justifies Relief

In addition to abdicating her duties, the petition explained that an actual conflict exists because of the State's Attorney's political alliance with federal law enforcement agencies. Petition at 48-50. In her response, the State's Attorney contends that her collaboration with federal agencies on unrelated matters does not demonstrate a conflict that would prevent her from investigating federal agents, Response at 14-18, and represents that there is *no factual basis* for the Petitioner's position, calling it otherwise "baseless, illogical, and once again frivolous." *Id.* at 18. But new evidence obtained since the petition was filed directly contradicts the State's Attorney's arguments, establishing that the State's Attorney herself believes that she has such a conflict, and that the conflict prevents her from even criticizing—let alone investigating or prosecuting—federal agents. This is an independent basis for relief.

Petitioners have recently obtained correspondence sent last year by the State's Attorney's Office to other Cook County stakeholders, in which the State's Attorney refused to sign onto a statement of Cook County leaders criticizing the Trump Administration's early threats against Chicago (which escalated into Operation Midway Blitz) because, in her words, "the State's Attorney's top priority remains combating illegal guns, and to continue doing that effectively we need to maintain our excellent working relationships with the local ATF and other federal partners." *See* Ex. 1 (August 12, 2025 Email from McGrath).[20] To repeat the point, in the leadup

[20] On August 11, 2025, President Trump first threatened to send federal troops and agents to Chicago, as he had done in Washington, D.C. shortly before that. See *Trump Calls Out Pritzker, Puts Chicago on Notice for Possible Federal Crime Intervention*, Fox 32 Chicago, https://www.fox32chicago.com/news/trump-pritzker-chicago-president, last accessed April 16, 2026. The same day, the Cook County Office of the Justice Advisory Council ("JAC") emailed all Cook County criminal justice stakeholders, including the State's Attorney herself. Ex. 1. The JAC asked all stakeholders to sign onto a joint statement rebutting the Trump Administration's

to Operation Midway Blitz, the State's Attorney stated explicitly that she felt she could not even criticize the Trump Administration's threats to Chicago because of what she herself described as a conflict arising from her need to coordinate with federal agencies on ongoing criminal investigations. It is alarming that the State's Attorney would take the position before this Court that she has no conflict of interest due to federal collaborations (and that such a suggestion is frivolous), given that she has represented to other Cook County leaders that she has precisely such a conflict.[21]

The State's Attorney's self-proclaimed actual conflict of interest arising from her federal collaborations is independently sufficient to disqualify the State's Attorney and require the appointment of a special prosecutor. If the State's Attorney felt that her conflict arising from federal collaborations prevented her from even opposing the Trump Administration's threats to Chicago, then surely the same conflict prevents her from investigating and prosecuting federal agents who carried out those threats shortly thereafter.

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threats to send federal agents to Chicago. *Id.* The next morning, the email was forwarded (without the State's Attorney's internal discussions on the subject) from the State's Attorney's first deputy to her spokesperson, who responded: "[T]hank you for coordinating this. We obviously share concerns about Trump's actions, rhetoric, and bluster. At the same time the State's Attorney's top priority remains combating illegal guns, and to continue doing that effectively we need to maintain our excellent working relationships with the local ATF and other federal partners. So we will not be able to sign on." *Id.* From that point on, the Trump Administration's threats escalated into action, including the deployment of the National Guard and Operation Midway Blitz.

[21] Litigants and their counsel—especially elected leaders—owe a duty of candor to the Court. *Chicago Bar Ass'n v. McCallum*, 341 Ill. 578, 594, 173 N.E. 827, 833 (1930) ("No principle of law is more elementary than that perfect candor to the court is the first duty of every attorney at law.") The State's Attorney's contradictory positions on this issue were not an oversight. In fact, one of the attorneys representing the State's Attorney in the response to the petition in this case is copied on the email described here, *see* Ex. 1 (copying Yvette Loizon), as are other senior staff.

Illinois law supports appointment of a special prosecutor in these circumstances. Precedents provide that "a political alliance may create sufficient conflict of interest to require appointment of a special prosecutor." *Baxter*, 156 Ill. App. 3d at 566. So long as a petitioner can "plead and prove specific facts regarding the nature of the alliance as well as facts tending to show the State's Attorney would not zealously represent the People of the State of Illinois because of this alliance," appointment of a special prosecutor is appropriate. *Id.*; *Heidelberg*, 2017 IL App (3d) 160561-U, ¶¶ 25-29. Direct evidence *from the State's Attorney herself* of her refusal to criticize the federal officials who threatened to unleash Operation Midway Blitz, because of her political alliance with federal officials and agents, demonstrates the actual conflict of interest preventing her from zealously representing the people of Illinois.[22]

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[22] The State's Attorney points again to *Muhammad* to argue that "an appearance of impropriety *alone* is insufficient" to appoint or remove a special prosecutor. *People v. Muhammad*, 2025 IL 130470, ¶ 52 (emphasis added). The parties do not dispute that proposition. However, that does not mean that appearances of impropriety are irrelevant. Instead, as the Supreme Court explained in *Muhammad*, if an appearance of impropriety is joined with a "specific deficiency in counsel's strategy, tactics, or decision-making that is attributable to the alleged conflict," then appointment of a special prosecutor is warranted. *Id.* Petitioners support specific deficiencies with record evidence—the State's Attorney has not acted and has expressed affirmatively, although privately, that she cannot even speak out in response to federal agents, given her relationship with them. Accordingly, the case law holding that "[t]he appointment of a special prosecutor may also be required if it is necessary to remove the appearance of impropriety in the prosecution of a defendant" is instructive here. *People v. Lang*, 346 Ill. App. 3d 677, 682-83 (Ill. App. Ct. 2004). "[T]he appointment of a special prosecutor in such a situation may be necessary in order to maintain the public's confidence in the impartiality and integrity of our criminal judicial system." *Id.*

For the same reason, the State's Attorney's citation to *McCall*, 334 Ill. App. 3d at 203, is misplaced. In that case, the appellate court decided that the working relationship between the Chicago Police Department and the Cook County State's Attorney's Office alone did not create a conflict sufficient to appoint a special prosecutor. The court observed that accepting the argument would "always require that a special prosecutor be appointed whenever anyone alleges wrongdoing on the part of Chicago police department personnel," 334 Ill. App. 3d at 201, and it emphasized that the problem was that the petitioner had not shown that the State's Attorney "would not zealously represent the People of the State of Illinois in this case of alleged police misconduct." *Id.*; *see also id.* at 203 (noting that the petitioner "failed to allege any specific failure to obtain evidence . . . which would illustrate that [the state's attorney] has abandoned his

The State's Attorney has taken the position before this Court that she has no conflict of interest arising out of her office's collaboration with federal law enforcement, and that any such suggestion is frivolous. At the same time, she has said privately that she cannot even criticize—let alone investigate or prosecute—federal officials with whom she collaborates. This inconsistent position is enough alone to demonstrate a specific deficiency in the State's Attorney's decision making in this case, and it justifies appointment a special prosecutor. In addition, it invites an obvious inference: Not only is the State's Attorney abdicating her duty to the citizens of Cook County by refusing to investigate and prosecute the crimes of Operation Midway Blitz, but she is likely doing so intentionally, given that her "top priority" is her collaborating with federal agents, rather than holding them accountable for misconduct.[23]

B. The State's Attorney's Attempt to Dismiss the Conflict Created by the Threat of Federal Retaliation Fails, Also Justifying Relief

The State's Attorney's attempt to dismiss the conflict created by the threat of federal retaliation is contradicted by the very authority she cites and fails by its own logic. First, the State's Attorney argues that she is not deterred by the threat of federal retaliation because she has already faced the federal government in court in *United States v. Illinois*, 796 F. Supp. 3d 494 (N.D. Ill. 2025). The State's Attorney's reference to this case strengthens Petitioners' position. In that

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duties to the people of the State of Illinois in this particular case). In this case, that showing has been made.

[23] Petitioners set out in the petition how the State's Attorney's approach dramatically differs from that of other local prosecutors around the United States who are responding to alleged crimes by federal agents. *See* Petition at 27-28. Just this week, Hennepin County prosecutors brought charges against federal agents for assault. *See* Tim Sullivan, et al., *County prosecutor charges ICE agent with assault for pointing gun at people on Minneapolis highway*, AP NEWS, Apr. 16, 2026, https://apnews.com/article/immigration-minnesota-federal-officer-assault-charge-3083400c9b7d45fea4170a6abee7d290 (last accessed on April 16, 2026) (hereinafter "Sullivan, *County Prosecutor Charges*"). In addition to the State's Attorney's own statements, these differences between jurisdictions are additional evidence that the State's Attorney's abdication of her duties to the People of Cook County is caused by a conflict arising out of her relationship with federal law enforcement.

February 2025 lawsuit, the Trump administration sued Cook County, the City of Chicago, and the State of Illinois over their sanctuary policies. In particular, it sued Cook County for a 2011 ordinance which declined to affirmatively use County money or resources to assist federal immigration enforcement. *See* Cook County Code of Ordinances § 46-37. That the federal government *already* initiated litigation against Cook County over a passive policy of non-cooperation on immigration makes it more certain, not less, that the federal government would retaliate against the State's Attorney's proactive investigation and potential prosecution of federal immigration agents for criminal conduct.

The reference to this litigation also demonstrates the State's Attorney's failure to account for the key distinction between *defensive* and *offensive* prosecutorial action. Defending the 2011 ordinance only required that the State's Attorney maintain an existing legal position. On the other hand, initiating a criminal investigation of federal agents would require her to act *against* personnel of a federal administration that has already demonstrated its willingness to retaliate against state officials who challenge its immigration agenda. It is reasonable to anticipate that a federal government willing to sue over passive non-cooperation would present a real threat of retaliation over an active investigation or prosecution of its own agents. Here, the Court has actual evidence that the State's Attorney is vulnerable to this threat in her expressed unwillingness to take positions against the federal government in order to support her own agenda. *See* Ex. 1.

The State's Attorney's argument that a special prosecutor would be equally vulnerable to retaliation, and therefore no better positioned to act, should also be rejected. It bears emphasis that an independent special prosecutor would only be appointed by this Court if they were willing to take on the investigation and, if warranted, the eventual prosecution of these alleged crimes. The notion that *no* prosecutor could be found willing to act notwithstanding the risk of federal

retaliation is contradicted by the record before this Court, including the fact that, this week, the Hennepin County prosecutors brought charges against federal agents for assault.[24] As evidenced in the Petition, prosecutors in other jurisdictions facing the same federal environment have already acted in the face of alleged criminal conduct in their jurisdiction—as the State's Attorney here has failed to do.

IV. The State's Attorney's Intemperate Attacks on Petitioners Illustrate Why She Should Be Disqualified and A Special Prosecutor Appointed In Her Stead

The State's Attorney's arguments throughout her response are infused with inflammatory, *ad hominem* attacks on Petitioners. She does not merely oppose Petitioners' arguments, she goes out of her way to characterize them as "baseless," "frivolous," "not made in good faith"—and more. *See, e.g.*, Response 2, 8, 9, 18. The preceding sections of this reply memorandum have demonstrated that those characterizations are far wide of the mark. They also have no place in a legal brief.

The State's Attorney observes, Response at 24, that the present moment calls "for serious people." Petitioners agree. The waves of violence unleashed throughout Cook County over the course of Operation Midway Blitz was an existential challenge to the very identity of Chicago. Judge Sara L. Ellis, who presided over the *Chicago Headline Club* litigation, made that point with these words:

> This case ultimately turns on whether the Chicagoland area, and Chicago specifically, is the City of Big Shoulders or Chipocalypse Now. The Chicagoland this Court sees from Aurora to Cicero, from Chicago to Waukegan, and all points in between is a vibrant place, brimming with life and hope, constantly rebuilding itself to create a more just society, striving to move forward from its complicated history of segregation, police brutality, and gun violence, and expressing the joy of community in block parties, street festivals, and Sunday jazz shows on the lawn of a high school. Neighbors from every community show up for each other whether by filling little free libraries in parkways, offering free meals to those facing cuts in food benefits, guarding intersections to help trick-or-treaters safely cross the street, standing on the sidewalk to document law

[24] *See* Sullivan, *County Prosecutor Charges.*

> enforcement activities and protest against immigration enforcement activities they believe to be unjust, or simply praying the Rosary to provide comfort and bear witness to those detained at the Broadview detention facility who are facing fear and uncertainty.
>
> In contrast, Defendants would have people believe instead that the Chicagoland area is in a vise hold of violence, ransacked by rioters, and attacked by agitators – which justifies the unprecedented swath of indiscriminate uses of force unleashed on journalists, peaceful protestors, and religious practitioners. That narrative simply is untrue.

Chicago Headline Club, et al. v. Noem, et al., No. 25-cv-12173, ECF No. 281 at 1-2 (N.D. Ill. November 20, 2025), *vacated by Chicago Headline Club v. Noem,* No. 25-3023, 2026 U.S. App. LEXIS 6598 (7th Cir. March 5, 2026).[25]

Petitioners and their counsel have endeavored to meet this moment by all lawful means available. Petitioners are among those who, during Operation Midway Blitz, stood on the sidewalk to document law enforcement activities and protest immigration enforcement activities they believe to be unjust. Petitioners include those who prayed at the Broadview ICE facility to bear witness and provide comfort to those detained there. Petitioners include some of the victims of the federal enforcers' crimes. They include elected leaders who put themselves physically in harm's way to resist injury to their communities, and who have worked throughout the ordeal to ensure that federal agents are held accountable. They are leaders in their communities not because they

[25] It is unclear when the State's Attorney talks about people who run "at the first sign of trouble" who the State's Attorney is talking about. Response at 23-24. The State's Attorney quotes a line of the Seventh Circuit's opinion in *Chicago Headline Club* here, but that quotation was one criticizing U.S. District Judge Sara Ellis for *sua sponte* "decertify[ing] [a class] at the first sign of trouble," *Chicago Headline Club v. Noem*, 168 F.4th 1033, 1042 (7th Cir. 2026). No public official could credibly charge Judge Ellis with running at the first sign of trouble—on the contrary, Judge Ellis exhibited great courage holding federal agents accountable during Operation Midway Blitz. So, perhaps the State's Attorney is misquoting the Seventh Circuit's opinion intentionally to make it appear that the Seventh Circuit was saying something that it was not. Either way, the State's Attorney's approach illustrates the problem with substituting *ad hominem* attacks for considered legal analysis.

ran at the first sign of trouble, but because they held the line in a moment that tested our democracy. These Petitioners should be celebrated by the State's Attorney, not denigrated.

Though it is strange that the State's Attorney also focuses on Petitioners' counsel, it is worth mentioning that Petitioners' counsel in this case and their colleagues in the Cook County legal community have donated many thousands of *pro bono* hours to assembling cataloguing and presenting video and documentary evidence showing that Cook County citizens faced assault, battery, aggravated battery and more perpetrated by federal law enforcement officers during Operation Midway Blitz. However, the Cook County State's Attorney decides to characterize the decisions of plaintiff's counsel in the *Chicago Headline Club* litigation, *see* Response at 23-24, the fact remains that that vast body of evidence exists in substantial part because of the efforts of Petitioners and their counsel before and after the preliminary injunction hearing in *Chicago Headline Club.* Though the preliminary injunction was stayed and then vacated, and the case voluntary dismissed as federal agents exited Chicago, the evidence placed in the public record as a result of the litigation can never be erased.[26]

Serious people must determine what to do with that evidence. The State's Attorney's response makes abundantly clear that her intention is to continue doing nothing at all. Worse, she will attack the character and the *bona fides* of anyone who would dare to question her inaction. If further evidence were needed that the State's Attorney labors under a conflict of interest that

---

[26] During her detour into the *Chicago Headline Club* litigation at the end of the response, the State's Attorney apparently and alarmingly appears to argue that the plaintiffs in that case (some of whom are Petitioners here) did not have standing at all to bring claims that their constitutional rights were being violated during Operation Midway Blitz. *See* Response at 22 (remarking about a "failure to take seriously a cornerstone principle of federal law"). To be clear, the State's Attorney advocates here for a view that individuals who we subjected to serious abuse by federal officials while engaged in protected First Amendment activities had no right to sue to protect their rights. It is no wonder that, holding such a viewpoint, that the State's Attorney has decided to take no action herself.

renders her unable to fairly and objectively evaluate the evidence of federal officers' crimes during Midway Blitz, the State's Attorney's intemperate response has provided it.

This Court can insist that a fully independent prosecutor—without the baggage that impairs the State's Attorney's ability to proceed—evaluate the evidence, assemble additional evidence as appropriate, and proceed as warranted. The times demand no less.[27]

CONCLUSION

For the foregoing reasons and for the reasons stated in the Petition, Petitioners respectfully request that this Court exercise its discretion to find that the elected State's Attorney of Cook County has a conflict of interest that renders her incapable of fairly and objectively evaluating the evidence of crimes that may have been committed by federal officers against the citizens of Cook County, and that the Court appoint an independent, special prosecutor to undertake that investigation and to initiate and conduct prosecutions as appropriate.

Dated: April 16, 2026

RESPECTFULLY SUBMITTED,

By: /s/ *Steve Art*

One of Counsel for Petitioners

Steve Art
Meg Gould*
Clara Presler *
Loevy & Loevy
311 N. Aberdeen St., 3rd Fl.

[27] At the end of their Petition, Petitioners requested that they be permitted to have input into the selection process for a special prosecutor, should that relief be granted. Petitioners did not attempt to circumvent 55 ILCS 5/3-9008 as the State's Attorney accuses, nor is such a request without precedent, as other petitions cited herein demonstrate. See Ex. 3 (McDonald Petition) at 25-26 (requesting input into the process). Should the Court grant the Petition and ultimately determine that a private attorney appointment is necessary if no public prosecutor is available and willing to accept the appointment, as permitted pursuant to 55 ILCS 5/3-9008, Petitioners' respectful request to have input into the selection process stands.

Chicago, IL 60607
(312) 243-5900
* *Admitted Pro Hac Vice*

By: /s/ *Daniel Massoglia*

Daniel Massoglia
Hannah Marion
Brittany J. Shaw
Benjamin Postone
First Defense Legal Aid
601 S. California Ave.
Chicago, IL 60612
E: daniel@first-defense.org
P: (708) 797-3066

By: */s/ Sheryl Weikal*

Sheryl Weikal (formerly Ring), Esq.
518 South Route 31, Suite 113
McHenry, Illinois 60050
(847) 975-2643

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that he served the foregoing Petitioners' Reply in Support of their Petition for Appointment of a Special Prosecutor to all counsel of record by electronic mail.

/s/ Steve Art

EXHIBIT 1

From:	Matthew McGrath
To:	Ali Abid (Justice Advisory Council)
Cc:	Anna Demacopoulos; Yvette Loizon; Garvin Ambrose; Donald Black
Subject:	Re: URGENT REQUEST to sign on to Cook County statement in response to Trump"s attack on Cook County Public Safety work
Date:	Tuesday, August 12, 2025 8:47:38 AM
Attachments:	Outlook-241uwpld.png

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Hey Ali - thank you for coordinating this. We obviously share concerns about Trump's actions, rhetoric, and bluster. At the same time the State's Attorney's top priority remains combating illegal guns, and to continue doing that effectively we need to maintain our excellent working relationships with the local ATF and other federal partners. So we will not be able to sign on. Thank you,

Matt

Get Outlook for iOS

From: Anna Demacopoulos <anna.Demacopoulos@cookcountysao.org>
Sent: Tuesday, August 12, 2025 8:09 AM
To: Matthew McGrath <Matthew.McGrath@cookcountysao.org>
Subject: Fw: URGENT REQUEST to sign on to Cook County statement in response to Trump's attack on Cook County Public Safety work

Get Outlook for iOS

From: Ali Abid (Justice Advisory Council) <Ali.Abid@cookcountyil.gov>
Sent: Monday, August 11, 2025 5:38:34 PM
To: Eileen O'Neill Burke <Eileen.Burke@cookcountysao.org>; Timothy Evans (Judiciary) <timothy.evans@cookcountyil.gov>; Thomas Dart (Sheriff) <Thomas.Dart@ccsheriff.org>; Mariyana T. Spyropoulos (Circuit Court) <mtspyropoulos@cookcountycourt.com>; Sharone Mitchell (Public Defender) <sharone.mitchell@cookcountyil.gov>; Jason Hernandez (Sheriff) <Jason.Hernandez@ccsheriff.org>; Daniel W. Rude (Circuit Court) <dwrude@cookcountycourt.com>; Bradley Curry (Sheriff) <Bradley.Curry@ccsheriff.org>; Eileen Heisler (Chief Judge's Office) <eileen.heisler@cookcountyil.gov>; Kathleen Hosty <Kathleen.Hosty@cookcountysao.org>; Yvette Loizon <Yvette.Loizon@cookcountysao.org>; Aaron Goldstein (Public Defender) <Aaron.Goldstein@cookcountyil.gov>; Avik Das (Justice Advisory Council)

<Avik.Das2@cookcountyil.gov>; Sharlyn Grace (Public Defender)
<Sharlyn.Grace@cookcountyil.gov>; Michael P. Ciaccio (Circuit Court)
<mpciaccio@cookcountycourt.com>; Kristina Kaupa (Justice Advisory Council)
<kristina.kaupa2@cookcountyil.gov>; Renee Z. Banks (Circuit Court)
<rzbanks@cookcountycourt.com>; Craig K. Wimberly (Circuit Court)
<ckwimberly@cookcountycourt.com>; Anna Demacopoulos
<anna.Demacopoulos@cookcountysao.org>; Tom Lyons (Chief Judge's Office)
<Tom.Lyons@cookcountyil.gov>; Criminal Justice Communication - Justice Advisory Council
<criminaljusticecommunication-JusticeAdvisoryCouncil@cookcounty.onmicrosoft.com>; Matthew Walberg (Sheriff) <Matthew.Walberg@ccsheriff.org>
Cc: Lanetta HaynesTurner (Presidents Office) <Lanetta.HaynesTurner@cookcountyil.gov>; Pamela Cummings (Presidents Office) <Pamela.Cummings@cookcountyil.gov>; Nick Shields (Presidents Office) <Nick.Shields@cookcountyil.gov>; Cara Yi (Presidents Office) <Cara.Yi@cookcountyil.gov>; Laura Grossman (Justice Advisory Council) <Laura.Grossman@cookcountyil.gov>
Subject: URGENT REQUEST to sign on to Cook County statement in response to Trump's attack on Cook County Public Safety work

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Cook County Pretrial Stakeholders + Communications Teams,

The County Board President's Office is requesting each agency lead sign on to this joint statement responding to the recent actions and rhetoric coming out of the Trump administration. This response will push back on the admin's attack on Chicago specifically (in the context of their citing Chicago while deploying new federal law enforcement initiatives in D.C.). The letter focuses on how crime rates are at historic lows mirroring national trends and following our collective work, immense investments in community-based approaches to safety and pretrial reform work.

This response is intended to have full Cook County CJ agency support, so we are looking to have all CJ principals join the President in signing the letter if possible. Our teams has already alerted your comms teams this morning that a draft was forthcoming and we are looking to get your sign off by 10:30am tomorrow (August 12).

The draft is now attached. Please indicate that you're willing to sign on in writing via email; this can come from the principals themselves, exec assistants, comms staff, or any other delegated representative. Your name will then be added to the letter, which will be put on Cook County letterhead and distributed to either a newspaper as a letter to the editor, or released as a press release (venues are still being sorted through right now).

Thank you for your swift consideration and all the work you do for our community.

Best regards,

Ali Abid

P.S. For Context:

Trump admin live updates: Trump declares 'emergency,' threatens to send in military - ABC News - Flagging:

- "said he would work to change no-cash-bail policies and railed against Democrat-led cities that have implemented bail reforms like New York and Chicago."
- & is deploying the National Guard in DC, "putting the police department under federal control" "I'm announcing a historic action to rescue our nation's capital from crime, bloodshed, bedlam and squalor," President Trump said at a news conference on Monday morning.
- "Washington, D.C. will be LIBERATED today! Crime, Savagery, Filth, and Scum will DISAPPEAR. I will, MAKE OUR CAPITAL GREAT AGAIN! The days of ruthlessly killing, or hurting, innocent people, are OVER!," Trump wrote on his social media platform.

COOK COUNTY
OFFICE OF THE
Justice Advisory
Council

Ali Abid
He/Him
Deputy Director
Justice Advisory Council
O: (312) 603-1153

Promoting equitable, human-centered, community-driven justice system innovation and practice

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EXHIBIT 2

OFFICE OF THE STATE'S ATTORNEY
COOK COUNTY, ILLINOIS

EILEEN O'NEILL BURKE
STATE'S ATTORNEY

CHARITA CALLAWAY
FOIA OFFICER

50 W. WASHINGTON STREET
CHICAGO, ILLINOIS 60602

October 2, 2025

VIA RECORDS PORTAL

Mick Dumke
Block Club Chicago
333 N. Michigan Avenue
Chicago, Illinois 60601
Mick@BlockClubChi.org

Re: FOIA Request R004367-100225 dated October 2, 2025

Dear Mick Dumke:

I am responding to the request for documents under the Illinois Freedom of Information Act ("FOIA") statute that was received by the Cook County State's Attorney's Office (the "SAO") on October 2, 2025 via the records portal for the following records:

> *Under the Illinois FOIA, please provide copies of case files and reports in the possession of the Cook County State's Attorney's Office related to the fatal shooting of Silverio Villegas-Gonzalez in Franklin Park, IL, on Sept. 12, 2025. He was reportedly killed during an attempted traffic stop.*
>
> *Thank you.*

After discussions with SAO personnel who are most knowledgeable about the existence and location of any records responsive to your request, it has been concluded that the SAO does not maintain the requested records.

Please note that each department of government entities is a public body under Section 2 of FOIA, 5 ILCS 140/2(a). See Duncan Publishing, Inc. v. City of Chicago, 1281, 1286 (1ST Dist. 1999) (Clearly, each of the individual departments are subsidiary bodies of the County and are public bodies as defined by the FOIA.) A FOIA request must be directed to the department that maintains the records you are seeking.

Because your FOIA request has been denied, you have the right to have a denial reviewed by the Public Access Counselor (PAC) at the Office of the Illinois Attorney General, 500 S. Second Street, Springfield, Illinois 62706, 877.299.3642. You also have the right to seek judicial review of your denial by filing a lawsuit in Cook County Circuit Court.

Sincerely,

/s/Charita Callaway
Charita Callaway
FOIA Officer
50 W. Washington Street
Chicago, Illinois 60602

OFFICE OF THE STATE'S ATTORNEY
COOK COUNTY, ILLINOIS

EILEEN O'NEILL BURKE
STATE'S ATTORNEY

C. CALLAWAY
FOIA OFFICER

50 W. WASHINGTON STREET
CHICAGO, ILLINOIS 60602

November 25, 2025

VIA RECORDS PORTAL

Mick Dumke
Block Club Chicago
333 N. Michigan Avenue
Chicago, Illinois 60601
Mick@BlockClubChi.org

Re: Narrowed FOIA Request R004369-100225 dated October 28, 2025

Dear Mick Dumke:

I am responding to the narrowed request for documents under the Illinois Freedom of Information Act ("FOIA") statute that was received by the Cook County State's Attorney's Office (the "SAO") on October 28, 2025 via the records portal for the following records:

> *Please provide a log of emails to or from Eileen O'Neill Burke, Garvin Ambrose, and / or Craig Engebretson from Sept. 12, 2025, through Oct. 1, 2025, that include at least one of the following terms: Franklin Park, Villegas, Gonzalez.*

We have enclosed the records responsive to your request.

Sincerely,

/s/C. Callaway
C. Callaway
FOIA Officer
50 W. Washington Street
Chicago, Illinois 60602

Received	From	To	Cc	Subject
9/15/2025	Elyssa Cherney	Anastasia Harper; Anne McCord Rodgers; Cathy McNeil Stein; Charles Stelnicki; Craig Engebretson; Cristin K. Duffy; Darren Ganir; David Williams; Dionne Alexander; Donald Black; Donyelle Gray; Eileen O'Neill Burke; Elyssa Cherney; Enrique Abraham; Ethan M.		Media Highlights 9.15.25
9/16/2025	Elyssa Cherney	Anastasia Harper; Anne McCord Rodgers; Cathy McNeil Stein; Charles Stelnicki; Craig Engebretson; Cristin K. Duffy; Darren Ganir; David Williams; Dionne Alexander; Donald Black; Donyelle Gray; Eileen O'Neill Burke; Elyssa Cherney; Enrique Abraham; Ethan M.		Media Highlights 9.16.25
9/17/2025	Elyssa Cherney	Anastasia Harper; Anne McCord Rodgers; Cathy McNeil Stein; Charles Stelnicki; Craig Engebretson; Cristin K. Duffy; Darren Ganir; David Williams; Dionne Alexander; Donald Black; Donyelle Gray; Eileen O'Neill Burke; Elyssa Cherney; Enrique Abraham; Ethan M.		Media Highlights 9.17.25
9/24/2025	Elyssa Cherney	Anastasia Harper; Anne McCord Rodgers; Cathy McNeil Stein; Charles Stelnicki; Craig Engebretson; Cristin K. Duffy; Darren Ganir; David Williams; Dionne Alexander; Donald Black; Donyelle Gray; Eileen O'Neill Burke; Elyssa Cherney; Enrique Abraham; Ethan M.		Media Highlights 9.24.25
9/27/2025	Matthew McGrath	Craig Engebretson; Garvin Ambrose; Donald Black; Yvette Loizon	Tandra R. Simonton; Elyssa Cherney	Fw: WBBM Newsradio: SA response to protest?
9/29/2025	Elyssa Cherney	Anastasia Harper; Anne McCord Rodgers; Cathy McNeil Stein; Charles Stelnicki; Craig Engebretson; Cristin K. Duffy; Darren Ganir; David Williams; Dionne Alexander; Donald Black; Donyelle Gray; Eileen O'Neill Burke; Elyssa Cherney; Enrique Abraham; Ethan M.		Media Highlights 9.29.25
10/1/2025	Elyssa Cherney	Anastasia Harper; Anne McCord Rodgers; Cathy McNeil Stein; Charles Stelnicki; Craig Engebretson; Cristin K. Duffy; Darren Ganir; David Williams; Dionne Alexander; Donald Black; Donyelle Gray; Eileen O'Neill Burke; Elyssa Cherney; Enrique Abraham; Ethan M.		Media Highlights 10.01.25

EXHIBIT 3

FILED
2016 MAR -2 AM 12: 12
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION

IN RE APPOINTMENT OF SPECIAL PROSECUTOR	)	No. 16 MR 00005
	)	The Hon. LeRoy K. Martin, Jr.

AMENDED PETITION TO APPOINT A SPECIAL PROSECUTOR TO INVESTIGATE AND PROSECUTE POLICE WRONGDOING IN THE DEATH OF LAQUAN MCDONALD

Petitioners For An Independent Prosecutor, by their undersigned attorneys, respectfully petition this Court for entry of an order pursuant to 55 ILCS 5/3-9008 finding that Cook County State's Attorney Anita Alvarez is disqualified from representing the People in connection with the prosecution of Chicago Police Officer Jason Van Dyke as well as any ongoing or future investigation and prosecution of the Chicago Police officers who participated in the falsification of reports, the destruction of evidence, the manipulation and coercion of witnesses and other possible misconduct in the aftermath of the fatal shooting of Laquan McDonald. In support, Petitioners state:

INTRODUCTION

1. A videotape of the fatal shooting of Laquan McDonald has gone viral. The video unambiguously shows Mr. McDonald being shot as he walks away from police officers and then shot again and again as he lies motionless on the ground. The video's anticipated release appears to have caused Cook County State's Attorney Anita Alvarez to charge Chicago Police Officer Jason Van Dyke with murder. Although the State's Attorney had access to the video from day

one of her investigation, she allowed over 400 days to pass before initiating the murder charges. Hours before the public release of the video (per the order of a Cook County judge), the State's Attorney finally charged Van Dyke.

2. This timing has produced an unprecedented crisis of confidence in the State's Attorney and her office. As this Petition explains, it appears that officers of the Chicago Police Department intimidated witnesses, manufactured witness statements, destroyed evidence, prepared false police reports, and may have provided false grand jury testimony as part of a concerted effort to portray Mr. McDonald's shooting not as it was, but as an act of heroic self-defense in response to Mr. McDonald's aggression toward Van Dyke and the other officers.

3. Many in the public believe that the State's Attorney was willing to adopt this false narrative; that she would have declined to file charges against Mr. Van Dyke if authorities had not been forced by court order to release the video; and that she only reversed course to avoid the certainty of public outrage after the video became available.

4. One thing is certain: but for the fortuity that Mr. McDonald's shooting was captured on videotape, there would be no charges against Officer Van Dyke. The false account of Mr. McDonald's death in the police records would be held up as "truth." Van Dyke would be portrayed as a hero. Mr. McDonald's shooting would be deemed a justified response to the fiction of his crazed attack on the officers. All of this—but for the video—would have been enabled by the lies in the police officers' official reports.

5. With the horror of Mr. McDonald's shooting apparent for the world to see, it is vitally important that the murder charges against Officer Van Dyke be prosecuted with the utmost zeal and independence. The shooting has become emblematic of broken relations between the

City's African American community and the Chicago Police. Particularly in that community, this prosecution is being watched with deep concern.

6. It is also of immense importance to prosecute any members of the Chicago Police Department who can be shown to have engaged in obstruction of justice or official misconduct by attempting to cover up the truth about what happened to Mr. McDonald. Until police officers recognize that they will face certain prosecution for falsifying evidence and concealing official misconduct, there will be no repair of the broken relations between the CPD and the community.

7. This State's Attorney cannot be relied upon to zealously pursue such prosecutions, as is demonstrated not only by the McDonald case, but also by her record in other police misconduct cases. It is therefore a matter of great urgency to appoint an independent special prosecutor to act in her stead with respect to this matter. Petitioners are not alone in this view. *See, e.g.*, Ex. A, Tribune Editorial.

IINTEREST OF PETITIONERS

8. Illinois law provides that "an interested person in a cause or proceeding" may file a petition requesting the appointment of a special prosecutor. 55 ILCS 5/3-9008. Petitioners For An Independent Prosecutor, who are described in paragraphs 9-10 below, are 27 persons who are interested in this cause.

9. **Pastor Marvin Hunter** is the great uncle of Laquan McDonald. Pastor Hunter, who joins this petition on behalf of Mr. McDonald's extended family, has an interest in this case because his family has lost a loved one and earnestly desires not only that the shooter, Jason Van Dyke, be zealously prosecuted but that any and all police officers who participated in concealing the facts of how Mr. McDonald was killed also be brought to justice.

10. Pastor Hunter is joined by the following elected officials, bar associations, community organizations, and prominent attorneys and community activists who all share an interest in the integrity of the Cook County criminal justice system. Particularly, Petitioners share an interest in ensuring that a person's status as a police officer has no effect on whether that person is prosecuted and the zealousness on which the prosecution is pursued in circumstances where there is clear probable cause that the person committed criminal acts in violation of Illinois law.

(a) Elected officials:

i. **Howard B. Brookins** is the Alderman of the 21st Ward of the City of Chicago, and former Chair of the City Council's Black Caucus.

ii. **Danny K. Davis** has been the U.S. Representative for Illinois's 7th congressional district on the West side of Chicago for 20 years, was previously a Chicago Alderman, and has been a champion for the victims of police brutality and torture in numerous local cases.

iii. **Jesús "Chuy" Garcia** is a Commissioner on the Cook County Board of Commissioners, and previously was a Chicago Alderman and an Illinois State Senator.

iv. **Proco Joe Moreno** is the Alderman of the 1st Ward and a member of the City Council's Latino Caucus.

v. **Ricardo Muñoz** has been the Alderman of the 22nd Ward for 23 years and is a member of the City Council's Latino Caucus.

vi. **Kwame Raoul** has been the Illinois State Senator for the 13th Illinois state senate district for 11 years and among his legislative accomplishments, he has championed legislation to end the death penalty in Illinois and to establish the Torture Inquiry and Relief Commission.

vii. **Roderick T. Sawyer** is the Alderman of the 6th Ward and the present Chair of the City Council's Black Caucus.

viii. **Bobby Rush** has been the U.S. Representative for Illinois's 1st congressional district on the South side of Chicago for 23 years, and was previously a Chicago Alderman.

ix. **Ed Smith** is the Ward Committeeman for the 28th Ward and was previously the long time Alderman from that Ward.

x. **Gilbert Villegas** is Alderman of the 36th Ward and a member of the City Council's Latino Caucus.

xi. The **Chicago Aldermanic Black Caucus** is composed of 18 African-American members of the Chicago City Council.

(b) Bar associations:

i. The **Cook County Bar Association** ("CCBA") is the oldest African American bar association in America and has been at the forefront of legal issues of concern to the black community. The CCBA has aggressively supported the civil, political, and economic rights of the black community and its members.

ii. The **National Conference of Black Lawyers** ("NCBL") is the legal arm of the movement for black liberation. NCBL is dedicated to protecting human rights, to achieving self-determination of Africa and African communities in the diaspora, and to working in coalition to assist in ending oppression of all peoples.

(c) Community organizations:

i. The **Chicago Urban League** works for economic, educational, and social progress for African Americans and promotes strong, sustainable communities through advocacy, collaboration, and innovation.

ii. **Enlace Chicago** is dedicated to making a positive difference in the lives of the residents of the Little Village community in Chicago by fostering a physically safe and healthy environment in which to live and by championing opportunities for educational advancement and economic development.

iii. **Precious Blood Ministry of Reconciliation** is a not-for-profit organization that works with youth and family in the Back of the Yards/Englewood community in Chicago, in particular those who are impacted by incarceration, violence, and crime. PBMR strives to be a resource to the community to find restorative ways to heal and rebuild after violence and conflict.

iv. **Rainbow PUSH Coalition** ("RPC") is a multi-racial, multi-issue, progressive, international membership organization that has been fighting for social change for the past 50 years. RPC's mission is to protect, defend,

and gain civil rights by leveling the economic and educational playing fields, and to promote peace and justice around the world.

(d) Prominent attorneys and community activists:

i. **Susan A. Bandes** is a Centennial Distinguished Professor at DePaul University College of Law. Before joining the faculty at DePaul, Professor Bandes worked as a civil rights attorney at the Illinois A.C.L.U. and as a State Appellate Defender. She is widely known as a scholar in the areas of federal jurisdiction, criminal procedure and civil rights, and more recently, as a pioneer in the emerging study of the role of emotion in law.

ii. **Leonard L. Cavise** is an Emeritus Professor of Law at DePaul University College of Law. Professor Cavise was a member of the DePaul faculty for 31 years, during which time he founded several programs including the Center for Public Interest Law, the Lawyering Skills Program, and the Chiapas Human Rights Practicum. His scholarly work focused on international criminal procedure and trial rights of U.S. criminal defendants.

iii. **Alan Mills** is the Legal Director at the Uptown People's Law Center ("UPLC"). Mr. Mills has dedicated his career to fighting for the rights of prisoners, tenants, and disabled people in Illinois. He and the UPLC are committed to improving people's quality of life through sound, community-oriented lawyering and by leveraging the law to affect social change.

iv. **Jeffrey J. Neslund** is the attorney for the family of Laquan McDonald. Mr. Neslund represented the McDonald family in their civil rights case against the City of Chicago in which the family received a settlement of $5 million.

v. **Matthew J. Piers** is a partner at Hughes Socol Piers Resnick & Dym, Ltd. Mr. Piers is a nationally-recognized trial attorney with over 40 years of experience in commercial, tort, and class action litigation. He has handled a number of high-profile constitutional, civil liberties, and employment discrimination cases throughout his career, and served as Deputy Corporation Counsel of the City of Chicago during the Harold Washington administration.

vi. **Mary Powers** is the former president of Citizens Alert, a police-accountability activist group founded in 1967. Ms. Powers has been directly involved in policy changes within the CPD for more than 40 years. She fought to make the Chicago Police Board monthly meetings public, spearheaded an accountability campaign in the Cook County Medical Examiner's Office, fought to expose police torture by Jon Burge and his

associates and to mandate videotaping of police interrogations, and advocated for formal training for CPD officers on LGBT issues.

vii. **Howard Saffold** is the former president of the Afro-American Patrolmen's League, an organization founded in 1968 whose mission was to build greater trust between the police department and black communities. In 1969, Mr. Saffold was one of the first leaders to publicly brand the slaying of Black Panther leaders Fred Hampton and Mark Clark as murder. Mr. Saffold, a 25-year veteran of the CPD, organized his colleagues to confront and stop police brutality and discrimination in the CPD.

viii. **Randolph N. Stone** is a Clinical Professor of Law and Director of the Criminal & Juvenile Justice Project Clinic at the University of Chicago Law School. Professor Stone has been a Clinical Professor of Law at the University of Chicago Law School for over 15 years and is a leading expert in criminal and juvenile justice. He is presently on a Commission appointed by Mayor Emanuel to examine police practices in light of the Laquan McDonald case. Prior to his work at the university, he served as the Public Defender of Cook County.

ix. **Rob Warden** is the co-founder and Executive Director Emeritus of the Center on Wrongful Convictions at Northwestern University School of Law. Mr. Warden is an award winning legal affairs journalist whose investigative work over the past 50 years helped bring the issues of wrongful convictions, police torture, police brutality, and the death penalty into the public consciousness. As editor and publisher of *Chicago Lawyer* magazine during the 1980s, he exposed more than a score of wrongful convictions in Illinois, including cases in which six innocent men had been sentenced to death. Most recently he has founded an on-line investigative journalism website called "Injustice Watch."

THE AUTHORITIES ATTEMPTED TO COVER UP AN UNJUSTIFIED POLICE SHOOTING

Chicago Police Officer Jason Van Dyke Shot Laquan McDonald without Justification

11. In the evening of October 20, 2014, near the intersection of 4100 S. Pulaski Road in the City of Chicago, 17-year-old Laquan McDonald was shot and killed by Chicago Police Officer Jason D. Van Dyke. Officer Van Dyke shot Mr. McDonald 16 times. Nine of the 16 bullets entered the back side of Mr. McDonald's body. Mr. McDonald was taken to Mount Sinai Hospital, where he was pronounced dead at 10:42 p.m.

12. The dashboard camera video of the shooting was publicly released by court order 13 months later. That video unambiguously shows Mr. McDonald walking away from the police officers as he is shot, execution style, by Officer Van Dyke. Officer Van Dyke fires his first shot about six seconds after he gets out of the squad car. The bullet hits Mr. McDonald as he is walking away and Mr. McDonald spins and falls to the ground within about two seconds. At that point, Mr. McDonald's body jerks repeatedly as Officer Van Dyke continues to shoot him. Officer Van Dyke fires at Mr. McDonald for another 13 seconds while Mr. McDonald is lying helpless on the ground. The video does not show anyone at the scene providing aid to Mr. McDonald.

The Fraternal Order of Police and the Chicago Police Department Disseminate a False Narrative of McDonald's Shooting

13. Immediately following the shooting, Fraternal Order of Police ("FOP") spokesman Pat Camden gave a statement to the assembled media at the scene of the incident that was dramatically at odds with what is apparent on the video. According to Camden, Mr. McDonald, with a "crazed" look, lunged at police, causing one of the officers to open fire and shoot Mr. McDonald in the chest. Camden stated that the officers who responded were trying to detain Mr. McDonald long enough for a Taser to be brought to the scene. But because Mr. McDonald was "a very serious threat to the officers," the officers were forced to defend themselves. *See* Ex. B, Initial Media Reports.

14. The following day, on October 21, 2014, the Chicago Police Department ("CPD") issued a statement that tersely—and falsely—described the shooting, essentially tracking Camden's account. The CPD statement said that officers "confronted the armed offender who refused to comply with orders to drop [a] knife and continued to approach the officers. As a

result of this action, the officer discharged his weapon striking the offender." *See* Ex. C, Preliminary CPD Statement.

Officers Wrote False Police Reports

15. The on-scene officers' accounts of the shooting, which are detailed in police reports that were released to the public on December 4, 2015, mirror the false FOP and CPD statements. *See* Ex. D, Police Reports.

16. Ten officers were on the scene the night Mr. McDonald was killed. Two officers initially responded to the 911 call that a male was breaking into trucks: Officer Thomas J. Gaffney (Beat Car 815R driver) and Officer Joseph P. McElligott (Beat Car 815R passenger). Eight officers then responded to the responding officers' request for assistance: Jason D. Van Dyke (Beat Car 845R passenger) and Joseph J. Walsh (Beat Car 845R driver); Daphne L. Sebastian (Beat Car 813R passenger) and Janet Mondragon (Beat Car 813R driver); Arturo Bacerra (Beat Car 822 driver) and Leticia Velez (Beat Car 822 passenger); and Dora Fontaine (Beat Car 814R passenger) and Ricardo Viramontes (Beat Car 814R driver).

17. Officer Van Dyke stated that when he got out of his squad car, Mr. McDonald was holding a knife in his right hand and was swinging it "in an aggressive, exaggerated manner." Officer Van Dyke, with his handgun drawn, ordered Mr. McDonald to drop the knife multiple times. Mr. McDonald ignored his direction and continued to advance toward Officer Van Dyke. When Mr. McDonald got to within 10 to 15 feet of him, Mr. McDonald looked at Officer Van Dyke and "raised the knife across his chest and over his shoulder, pointing the knife at Van Dyke." Officer Van Dyke believed Mr. McDonald was attacking him with the knife and attempting to kill him. In defense of his life, Officer Van Dyke backpedaled and fired his gun at Mr. McDonald. Mr. McDonald fell to the ground, but continued to move and grasp the knife,

refusing to let it go. Officer Van Dyke continued to fire his gun at Mr. McDonald while Mr. McDonald was on the ground, as Mr. McDonald "appeared to be attempting to get up, all the while continuing to point the knife at Van Dyke." The slide of Officer Van Dyke's pistol locked in the rearward position, indicating the weapon was empty. Officer Van Dyke performed a tactical reload of his pistol with a new magazine and then assessed the situation. Mr. McDonald was no longer moving, so "the threat had been mitigated." *See id.* at 9-10, 132-34.

18. Five of the other officers admitted that they witnessed either all or part of the shooting: Officer Walsh, Officer Sebastian, Officer Mondragon, Officer Fontaine, and Officer Viramontes. All five officers supported Officer Van Dyke's false account that Mr. McDonald moved or turned threateningly toward him with the knife. Three officers—Walsh, Sebastian, and Viramontes—also vouched for the falsehood that Mr. McDonald continued to move once he fell on the ground. *See id.* at 10-15, 135-46. Specifically, the officers make the following false statements that are recorded in official police reports:

(a) Officer Walsh asserted that Mr. McDonald ignored the officers' direction to drop the knife and continued to advance toward them. When Mr. McDonald got to within 12 to 15 feet of the officers, he "swung the knife toward the officers in an aggressive manner." According to Walsh, Officer Van Dyke continued firing his gun at Mr. McDonald while he was on the ground because Mr. McDonald "continued moving on the ground, attempting to get up, while still armed with the knife." Officer Walsh reported that Mr. McDonald was attempting to kill the officers when the shots were fired. *See id.* at 11, 135-36.

(b) Officer Sebastian and Officer Mondragon were in the squad car from which the dashboard camera video was recovered. According to Officer Sebastian, Mr.

McDonald turned toward Officer Van Dyke and Officer Walsh, waiving his knife. Officer Sebastian heard the two officers repeatedly order Mr. McDonald to drop the knife. Mr. McDonald ignored the orders and "continued to advance on the officers, waiving the knife." Officer Sebastian heard multiple gunshots and saw Mr. McDonald fall to the ground, "where he continued to move." *See id.* at 13-14, 141.

(c) Officer Mondragon claimed that Officer Van Dyke and Officer Walsh repeatedly ordered Mr. McDonald to drop the knife as he "got closer and closer to the two officers, continuing to wave the knife." *See id.* at 14, 142.

(d) Officer Fontaine claimed that Mr. McDonald "ignored the verbal direction [to drop the knife] and instead, raised his right arm toward Officer Van Dyke, as if attacking Van Dyke." *See id.* at 15, 145.

(e) Officer Viramontes claimed that Mr. McDonald "ignored the verbal direction [to drop the knife] and turned toward Van Dyke and his partner, Officer Joseph Walsh." Viramontes asserted that after Officer Van Dyke fired multiple shots, Mr. McDonald "fell to the ground but continued to move, attempting to get back up, with the knife still in his hand." *See id.* at 15, 146.

19. The day after the shooting on October 21, 2014, Lieutenant David R. McNaughton, the incident commander on the night of the shooting, completed a critical response report. In this police report, Lieutenant McNaughton made a "preliminary determination" that Officer Van Dyke's actions "were in compliance with Department procedures and directives." *See id.* at 204.

20. A March 16, 2015 case supplementary report authored by CPD Investigator David March officially closed the investigation by the Department, concluding that Officer Van Dyke's use of deadly force "was within the bounds of the Chicago Police Department's use of force guidelines, and in conformity with local ordinances and state law." In this report, Investigator March noted that the dashboard camera video was viewed and falsely stated that the video was consistent with the accounts of all of the officers. *See id.* at 19, 22.

Officers Threatened and Intimidated Witnesses and Falsified Witness Statements

21. Witnesses were interviewed the night of the shooting. Two of the witnesses taken from the scene to the Area Central Office for interviewing were Alma Benitez and an unnamed male truck driver. The CPD reports of these interviews assert that Alma Benitez was in the Burger King parking lot when she saw Mr. McDonald running southbound on Pulaski Road and many police officers on the street. She allegedly told police that she was trying to get her cell phone to work to record video. She heard eight gunshots fired continuously, but did not see who fired the shots. The truck driver allegedly told police that he was in his truck in the Burger King parking lot when he observed the police pursing Mr. McDonald; he heard approximately three gunshots but did not see who fired the shots. *See id.* at 18-19, 178-79.

22. There is evidence that some or all of the witness statements recorded in the police reports are false; that the witnesses were in fact taken to the police station, held against their will, interrogated for hours, and harassed and pressured by police to change their stories; and that, after the witnesses repeatedly refused to change their statements, the police resorted to falsifying their accounts in the police reports. Specifically:

(a) Alma Benitez told news reporters that night that the shooting was unnecessary:

"It was super exaggerated. You didn't need that many cops to begin with.

They didn't need to shoot him. They didn't. They basically had him face-to-face. There was no purpose why they had to shoot him." *See* Ex. A, Initial Media Reports. Benitez later told the McDonald family that she was held at the police station "against her will and intensively questioned for over six hours." During the questioning, detectives repeatedly attempted to get her to change her statement, saying that her story did not match the video, which they refused to show her. One of the officers told her he was "going to get [her]." She was released around 4:00 a.m., after she demanded a lawyer. Since then, she has been threatened and harassed on multiple occasions. *See* Ex. E, Letters to City Attorneys at 4.

(b) The truck driver, who police allege did not see the shooting, insists that he told multiple police officers at the station that he saw the shooting and that it was "like an execution." The police officers argued with him and became angry when he would not change his story. *See* Ex. F, Media Reports on Witnesses.

23. Moreover, there is evidence that the police officers on scene ordered some witnesses to leave the scene under threat of arrest without ever interviewing them. A motorist, who witnessed the shooting with his son, reported that a uniformed officer told him to leave the scene immediately or be arrested. *See id.*

Officers May Have Tampered with Video Evidence

24. On the night of the shooting, Mr. McDonald was trailed by police officers through a Burger King parking lot and was shot just south of the restaurant, fewer than 100 yards away. There is evidence that police officers tampered with and deleted video footage from the Burger King security cameras that night. According to Jay Darshane, the district manager for the Burger

King, four to five police officers went inside the restaurant after the shooting and demanded access to the surveillance video. The officers stayed at the restaurant until almost midnight and brought in an information technology specialist when it appeared they were having trouble operating the surveillance system. The next day, when an investigator from the Independent Police Review Authority ("IPRA") asked to view the security footage, it was discovered that 86 minutes of the video was missing from all cameras—including the critical minutes when Mr. McDonald was being trailed and shot by police. *See* Ex. G, Media Reports on BK Video.

25. According to Mr. Darshane, the cameras and video recorder were all on and working properly that night. Employees at the Burger King did not have the capability to delete or remove any video files from the security system. Thus, there are only two possible explanations for the missing footage: (1) inadvertent moving of the data, rather than copying the data; or (2) intentional deletion. *See* Ex. H, Affidavits.

26. The security cameras, which were running while the officers were inside the Burger King that night, captured footage of officers appearing to tamper with the video. *See* Ex. G, Media Reports on BK Video.

27. The Cook County State's Attorney has claimed that forensic testing of the Burger King surveillance system shows that the video was not tampered with. But neither the State's Attorney's Office nor the CPD have responded to specific questions about how the footage vanished or where it might have gone. *See id.*

28. Additionally, it has recently been revealed that the publicly released dashcam video had no audio (which would have documented, *inter alia*, the sequence of shots, whether a warning was given, and whether any of the officers attempted to intervene to stop Van Dyke)

because the batteries had been inserted upside down in the recording device. *See* Ex. I, Media Report on Missing Audio.

Van Dyke is Belatedly Charged; the Other Officers Face No State Criminal Consequences for Their Cover-Up

29. On November 24, 2015, a full 13 months following the McDonald shooting—and just a few hours before the court-ordered public release of the dashboard camera video—Officer Van Dyke was charged with first-degree murder for shooting Mr. McDonald. The timing of this charge has produced a public outcry, with many members of the public convinced that Van Dyke was only charged because the State's Attorney's hand was forced by the imminent public release of the dashcam video.

30. Despite the false police reports and evidence of egregious police misconduct, no other officer connected to the McDonald case has been charged with any crime. Van Dyke himself has not been charged with criminal wrongdoing for falsifying his own report of the shooting.

31. The FOP continues to steadfastly back Van Dyke and the other officers involved in the McDonald case. After the release of the false police reports, Dean Angelo, president of the FOP, said that it was a mistake to rely on the video for what happened: "The video does not show what the officers on the scene were able to see." In a TV interview about Chicago Police culture, Mr. Angelo stated that he "[doesn't] think today in the year 2015 there's an officer on this department that knowingly engages in covering up for a fellow officer." *See* Ex. J, Media Reports on Angelo.

32. The Cook County State's Attorney has stated that there is an ongoing investigation of the McDonald shooting and has declined comment on whether the other officers will be charged. *See* Ex. K, Alvarez 12/01/15 Interview. This State's Attorney virtually never charges

officers of the Chicago Police Department with perjury, obstruction of justice, or official misconduct when they lie on the witness stand, prepare provably false reports, fabricate evidence, destroy or conceal evidence, or coerce witnesses—despite the unfortunate regularity with which such misconduct occurs. There is, in other words, no reason to believe that our State's Attorney will act on the evidence of cover-up in relation to the McDonald shooting.

33. Media reports indicate that there is an ongoing federal investigation into possible civil rights violations by officers at the scene of Mr. McDonald's death. *See* Ex. L, Media Reports on Federal Investigation. The federal authorities, however, have no jurisdiction to investigate or to charge violations by the officers of any state criminal statutes.

I. CONFLICTS OF INTEREST WITHIN THE STATE'S ATTORNEY'S OFFICE NECESSITATE THE APPOINTMENT OF A SPECIAL PROSECUTOR TO INVESTIGATE POSSIBLE CRIMINAL WRONGDOING OF THE OFFICERS INVOLVED IN THE MCDONALD SHOOTING.

34. Illinois law provides for the appointment of a special prosecutor in cases where the elected State's Attorney for the County "has an actual conflict of interest in the cause or proceeding." 55 ILCS 5/3-9008. The appointment of a special prosecutor can occur at any stage in a case, even before formal charges are filed. *Baxter v. Peterlin*, 156 Ill. App. 3d 564, 566 (3d Dist. 1987). Thus, special prosecutors have frequently been appointed to investigate allegations of criminal wrongdoing. *See, e.g.*, *People v. Pawlaczyk*, 189 Ill. 2d 177 (2000); *Matter of Special Prosecutor*, 164 Ill. App. 3d 183 (5th Dist. 1987) (judgment later vacated on unrelated grounds); *People v. Sears*, 49 Ill. 2d 14 (1971).

35. The court's jurisdiction under the special prosecutor statute may be invoked by the court, by the State's Attorney's Office, or, as here, by a private citizen or group of citizens. *See In re Appointment of Special State's Attorney*, 305 Ill. App. 3d 749, 758 (2d Dist. 1999); *Baxter*, 156 Ill. App. 3d at 566. Though the Circuit Court hearing the petition maintains discretion in

determining whether the State's Attorney's "interest" in the case warrants the appointment of a special prosecutor, it is the duty of the court to ensure that such judicial discretion is "exercised to promote the underlying policy of a just, fair and impartial hearing." *People v. Lanigan*, 353 Ill. App. 3d 422, 430 (1st Dist. 2004) (citation omitted).

A. The State's Attorney Has a Conflict of Interest that Disqualifies Her from Investigating and Prosecuting Officers Who Attempted to Cover Up the Truth about the McDonald Shooting.

36. There is evidence that officers at the scene may be criminally liable for covering up the truth about the McDonald shooting.

37. *First*, there is probable cause to believe that police officers may have committed obstruction of justice. The obstruction of justice statute, 720 ILCS 5/31-4, criminalizes, among other things, "furnishing of false information" in a criminal investigation. There is reason to believe that the police reports documenting the McDonald shooting "furnished false information"—specifically by falsifying the officers' own accounts of the shooting and by falsifying eyewitness accounts of the shooting. The obstruction of justice statute also criminalizes the destruction, altercation, concealment, or disguise of physical evidence in a criminal investigation. There is reason to believe that officers tampered with the Burger King surveillance video and deleted footage that captured the officers' pursuit of Mr. McDonald and the aftermath of the shooting. The obstruction of justice statute additionally criminalizes inducing "a witness having knowledge material to the subject at issue to leave the State or conceal himself or herself." There is reason to believe that officers told material witnesses to leave the scene before taking their statements, and also that officers intimidated witnesses to get them to change their statements.

38. *Second*, there is probable cause to believe that the officers could have conspired to commit official misconduct in violation of 720 ILCS 5/33-3.[1] A police officer's duty is to conserve the peace and enforce the criminal law. *See* 65 ILCS 5/11-1-2(a); Chicago, Ill. Code § 2-84-220 *et seq*. If the police officers involved in the shooting acted together to protect Officer Van Dyke over the fair administration of the state's criminal justice system then, under 720 ILCS 5/33-3, the officers may be indicted for intentionally or recklessly failing to perform their mandatory duties as required by law.

39. *Third*, while Petitioners do not have access to the State's Attorney's investigation, it is reasonable to conclude that some or all of the police officers in question have testified before a Cook County Grand Jury, and that their testimony was perjurious in violation of 720 ILCS 5/32-2.

40. This Cook County State's Attorney does not prosecute police officers who cover up official wrongdoing. Perjurious testimony on the part of police is so common in the Cook County criminal court that the police casually and cynically refer to their sworn testimony as "testilying." Despite available evidence in numerous cases that Chicago Police detectives have lied under oath in suppression hearings and in trials, have falsified evidence in cases that have ultimately resulted in exonerations of the accused, or have otherwise covered up official misconduct, the involved detectives virtually never face criminal charges.[2]

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[1] Section 33-3 states in part that a "public officer or employee or special government agent commits misconduct when, in his official capacity or capacity as a special government agent, he . . . [i]ntentionally or recklessly fails to perform any mandatory duty as required by law; or knowingly performs an act which he knows he is forbidden by law to perform[.]"

[2] Recently, for example, a Cook County Circuit Court judge described as "garbage" the testimony of Chicago Police detectives who claimed to have gotten a statement from an individual who, by medical testimony, was sedated and incapable of communicating at the time.

41. For example, in February 2014, the State's Attorney overruled her subordinates and instructed them not to file charges against Chicago Police Officer Allyson Bogdalek, even though Bogdalek admitted that she committed perjury and that multiple superiors, police detectives, and her partner had encouraged her to lie. Officer Bogdalek's false testimony occurred at an April 2011 hearing in the case of a man accused of robbing a liquor store and shooting the owner. Bogdalek denied that the victim had been shown photographs of possible suspects prior to the defendant's arrest. That testimony was false; the victim had in fact been shown photos and failed to identify the defendant. *See* Ex. N, Tribune Article on Bogdalek.

42. It is axiomatic under Illinois law that "an attorney cannot represent conflicting interests or undertake to discharge inconsistent duties.'" *People v. Courtney*, 288 Ill. App. 3d 1025, 1031-32 (3d Dist. 1997) (citation omitted). It follows from this that the political alliances of a State's Attorney "may create sufficient conflict of interest to require the appointment of a special prosecutor." *Baxter*, 156 Ill. App. 3d at 566 ("[A] political alliance may create sufficient conflict of interest to require appointment of a special prosecutor.").

43. This Cook County State's Attorney is dependent upon a political alliance with the FOP and its members. The FOP has shown itself to be committed to the energetic defense of police officers accused of wrongdoing—whatever the facts. As it did in the McDonald case, the FOP works to favorably "spin" the facts of officer involved shootings. *See, e.g.*, Ex. O, Chicago Reader Article on FOP. Similarly, the FOP steadfastly insisted that Jon Burge (who routinely tortured suspects and was ultimately convicted in federal court of lying about the torture) was the victim of a smear campaign. In the same vein, the FOP has been engaged in a decades-long battle

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See Ex. M, Tribune Article on Williamson Case. Consistent with long-established custom, no one expects that the detectives will face prosecution for their perjury.

to conceal from public scrutiny the disciplinary records of Chicago Police officers. The FOP often provides lawyers and pays their fees when an officer is brought before the Police Board or criminally prosecuted. They did so for Burge and are now doing so for Van Dyke.

44. This State's Attorney has a political alliance with the FOP and its members that has been of immeasurable value to her. The FOP's endorsement and campaign donations helped Alvarez get elected State's Attorney in 2008 and re-elected in 2012. When Alvarez received the FOP's endorsement in 2012, she publicly declared that she was "thrilled and humbled" to have their endorsement. *See* Ex. P, Alvarez's FB post. The FOP has not endorsed a candidate in the upcoming election, but the State's Attorney has made clear that she would like it, telling an interviewer that she would be "proud" to get that endorsement. *See* Ex. K, Alvarez 12/01/15 Interview.

45. It is common knowledge that the FOP and its membership are a powerful force in Chicago politics. In the 2015 mayoral election, both incumbent Rahm Emmanuel and progressive challenger Chuy Garcia sought the FOP's endorsement. Neither got it. In the aldermanic elections that same year, the FOP endorsed Republican Anthony Napolitano for a city council seat in the 41st Ward at a time when there were no Republicans on the city council. Napolitano won. (Since 1991, only one other Republican has been elected to the City Council.) In the same election, CPD Sergeant Chris Taliaferro, endorsed by the FOP, beat the incumbent, Deborah Graham, and 26-year-CPD veteran Willie Cochran, also endorsed by the FOP, won re-election in the 20th Ward. Twenty-four of the 50 members of the Chicago City Council carry the endorsement of the FOP, including Ed Burke, a former police officer and widely considered to be the most powerful politician in the city after the mayor. *See* Ex. Q, Media Reports on FOP.

46. The current State's Attorney has cast her lot with the FOP. She currently faces a barrage of criticism for her handling of the McDonald homicide and is engaged in a hotly contested battle for reelection. In this political environment, the FOP and its membership are an absolutely vital base of support—one she can ill afford to alienate. For this reason, the State's Attorney must be found to be "beholden" to the FOP for political reasons. Her political alliance with the FOP and its members destroys her independence and makes it impossible for her to "zealously represent the People of the State of Illinois" in any investigation or prosecution of the police officers who were involved in the official cover-up that followed the homicide of Laquan McDonald. She must be disqualified and replaced by an independent special prosecutor. *See Baxter,* 156 Ill. App. 3d at 566.

B. The Same Conflict of Interest Disqualifies the State's Attorney from Prosecuting the Pending Murder Case against Jason Van Dyke.

47. It is widely believed that the current State's Attorney would have preferred not to charge Van Dyke for killing Mr. McDonald and that she did so only because a Cook County judge had ordered the public release of the dashboard camera video—which rendered untenable the proposition that Mr. McDonald's shooting was justifiable self-defense.

48. The State's Attorney has attempted to justify not charging Van Dyke until the day of the release of the dashboard camera video (13 months after Mr. McDonald was killed) by claiming that investigations of police shootings "are highly complex matters" and that she had to wait until the FBI and U.S. Attorney's Office completed their part of a joint investigation. That explanation rings hollow.

49. This State's Attorney typically does not charge police who kill citizens under questionable circumstances. For example, none of the following incidents resulted in any

criminal charges filed against the police officers involved. *See* Ex. R, Materials on Fatal Police Shootings.

(a) **Jamaal Moore**: 23-year-old Moore was shot and killed by an on-duty officer on December 15, 2012. IPRA found the shooting to be justified, though Moore was not found to have a weapon, and though he was shot at close range after the officer had already run him over in the parking lot. The autopsy report revealed that Moore sustained a gunshot wound to the left side of his back and the left side of his hip. The case was eventually settled by the City for $1.25 million, after the district court judge noted that the dashcam video from the incident "does not comport fully with [the officers'] versions of events." That video, according to the court, showed the officer shooting Moore at "point blank range in the left lateral hip" as he tried to run away. *Moore v. City of Chicago*, No. 13 C 483, 2014 WL 2457630, at *3 (N.D. Ill. May 30, 2014).

(b) **Divonte Young**: 20-year-old Young was shot in the back and killed by an on-duty officer in plainclothes on August 9, 2012, after he allegedly shot at civilians and pointed a gun at the involved officer. No weapon was ever located on or near Young. The autopsy report states that he sustained a gunshot wound that "entered through the right side of his back." No residual gun discharge was found on Young's hands. There is currently a lawsuit pending against the City of Chicago stemming from Young's death. *See Young v. City of Chicago*, No. 13 C 5651, 2014 WL 7205585 (N.D. Ill. Dec. 18, 2014).

(c) **Derrick Suttle**: 47-year-old Suttle was repeatedly shot and then killed by an off-duty police officer in the police officer's back alley on February 11, 2012. The involved officer reported to IPRA that he feared for his life when Suttle, maneuvering a vehicle in the alley, ran into the officer. However, an anonymous witness reported that the police officer shot into the van Suttle was driving as he attempted to back up the car in the alley. No video of the incident was recorded.

(d) **Flint Farmer**: 29-year-old Farmer, who was unarmed, was shot and killed by Chicago Police Officer Gildardo Sierra, leaving Farmer's 3-year-old daughter without a father. Despite video showing Sierra fire three shots into Farmer's back as he lay bleeding on a parkway on June 7, 2011, the City found the shooting was justified. Investigators in the Farmer shooting delayed giving Sierra, who was involved in two other shootings within six months of executing Farmer, a breathalyzer for more than five hours, even though Sierra drank "multiple beers" shortly before he repeatedly shot Farmer in the back. The City paid $4.1 million to settle the civil rights case brought by Farmer's family.

(e) **Calvin Cross**: 19-year-old Cross was shot and killed by three on-duty police officers on May 31, 2011, after he allegedly fired shots at the officers as he ran away. The officers fired 45 rounds of ammunition from four weapons including an assault rifle. Bullets hit Cross in his chest, arm, back, face, and little finger on his right hand. Investigators found an old revolver several hundred feet from Cross's path, but tests later showed definitively that the gun was inoperable and did not have Cross's fingerprints; no gun residue was found on Cross's hands. The City paid $2 million to settle the civil rights lawsuit brought by Cross's family.

(f) **Cedrick Chapman**: 17-year-old Chapman was shot and killed by an on-duty police officer on January 7, 2013. The officer, who fired four shots, thought Chapman's iPhone box was a gun and claims he saw Chapman turn toward him. Lorenzo Davis, an IPRA investigator, concluded that the shooting was unnecessary because Chapman was running away. A lawsuit is pending against the City stemming from Chapman's death. A video of the shooting from a surveillance camera was released by order of a federal judge on January 14, 2016. The video shows Chapman running away; he never turned toward the officer.

(g) **Philip Coleman**: 38-year-old Coleman experienced severe trauma at the hands of six police officers in a lockup who repeatedly used a Taser on him and dragged him out of his cell and down a hall by his handcuffs in December 2012; Coleman later died at a hospital after a reaction to an antipsychotic drug. A video showing the officers using brutal force against Coleman was released to the public in December 2015. On December 14, 2015, U.S. District Judge Matthew Kennelly, the federal judge presiding over the Coleman family's civil rights lawsuit against the City, ruled that Officer Keith Kirkland is liable for using excessive force. Judge Kennelly stated: "Officer Kirkland chose to use brutal force when it was no longer necessary. Sergeant Walker conceded during his deposition that the officers could have stood Mr. Coleman up and told him to walk. . . . Officer Kirkland unquestionably used excessive force in pulling Mr. Coleman's hands over his head and dragging him from the cell. No reasonable jury could find otherwise." *Coleman v. City of Chicago*, No. 12 C 10061, 2015 WL 8601702, at *3-4 (N.D. Ill. Dec. 14, 2015).

50. In the rare instances in which this State's Attorney has charged a Chicago Police officer with killing or abusing a citizen, the State's Attorney's Office has failed to win a conviction. For example, after waiting two years, this State's Attorney charged Chicago Police Detective Dante Servin with involuntary manslaughter for intentionally firing his weapon from his moving car at a group of pedestrians and killing one of them. Following the prosecution's

case in chief, the judge presiding over the trial dismissed the case—pointedly finding that the State's evidence supported a charge of murder (the charge that unquestionably would have been filed if Servin were not a police officer) but did not support the lesser offense that the State's Attorney had chosen to bring. *See* Ex. S, Media Reports on Servin and Evans.

51. More recently, this State's Attorney fumbled the prosecution of Chicago Police Commander Glenn Evans for shoving the barrel of his service revolver down the throat of a young African American man, while simultaneously pressing a Taser to the man's groin and threatening to kill him. This prosecution was supported by damning evidence: the victim's DNA was found on the barrel of the defendant's gun. A Cook County Circuit Court judge acquitted the defendant, however—a loss that can be traced, in part, to the State's Attorney failure to allocate resources to the case and to present critical expert testimony to refute the defense theory that the DNA evidence was the result of the victim's incidental "touch" of the defendant's weapon. *Id.*

52. The State's Attorney's political alliance with the FOP and its members creates a conflict of interest and disqualifies her from prosecuting the pending murder charges against Jason Van Dyke. The State's Attorney's track record in officer involved shooting cases, summarized above, clearly shows that this State's Attorney lacks the independence and the prosecutorial zeal to effectively represent the People.

53. Moreover, the State's Attorney's track record has undermined her credibility, created a crisis of confidence in her and her office, and created the appearance that this State's Attorney cannot be trusted to zealously and effectively prosecute Officer Van Dyke. *See People v. Lang*, 346 Ill. App. 3d 677, 683 (2d Dist. 2004) (The appointment of a special prosecutor "may be necessary in order to maintain the public's confidence in the impartiality and integrity of our criminal judicial system."). Thus, many politicians and activists have called for the appointment

of a special prosecutor in the Van Dyke prosecution, including: a coalition of 100 black pastors; Illinois Congressman Bobby Rush; Jesse Jackson; Alderman Scott Waguespack; former Assistant U.S. Attorney Andrea Zopp, and the Cook County Commissioners. These prominent members of our community have been openly skeptical that this State's Attorney will aggressively and effectively pursue the case against Officer Van Dyke. *See* Ex. T, Media Reports on Groups Calling for a Special Prosecutor.

54. All of these factors require a finding that the State's Attorney is disqualified by personal interest from the Van Dyke prosecution.

The Appointment of a Special Prosecutor Will Ensure That These Conflicts Do Not Prevent the Fair Administration of Justice

55. It is vital to the administration of justice in this County to have a fair and impartial investigation of whether officers at the scene were, individually or in conspiracy, engaged in a cover-up designed to portray the shooting in a light favorable to the police. It is equally vital to the administration of justice that Van Dyke be prosecuted aggressively and effectively for his actions in the death of Laquan McDonald and for his role in the cover-up conspiracy. The public interest demands that a special prosecutor apply the necessary resources and prosecute Van Dyke and any police officer found to have engaged in an attempt to cover up the truth about the killing of Laquan McDonald.

WHEREFORE, Petitioners respectfully request this Court to appoint a special prosecutor to investigate whether employees of the Chicago Police Department acted intentionally to suppress and conceal evidence, furnish false evidence, coerce witnesses, and generally impede the investigation into the fatal police shooting of Laquan McDonald in October of 2014; to determine whether criminal charges should be brought against any officer who engaged in such conduct in connection with Mr. McDonald's death; and to prosecute Jason Van Dyke on the pending murder

charges. Petitioners further respectfully request that they be permitted to present a list of candidates before the appointment is made, or to otherwise have input into the selection process.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that she served the foregoing Amended Petition to Appoint a Special Prosecutor to Investigate and Prosecute Police Wrongdoing in the Death of Laquan McDonald by electronic mail before the hour of 5:00 p.m. on Wednesday, March 2, 2016 upon:

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FILED
DEC 14 2011
DOROTHY BROWN
CLERK OF CIRCUIT COURT

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION

IN RE APPOINTMENT OF SPECIAL PROSECUTOR	)	No. 2011 Misc. 46
	)	The Hon. Paul P. Biebel

PETITION TO APPOINT A SPECIAL PROSECUTOR
IN THE MATTER OF THE DEATH OF DAVID KOSCHMAN

Petitioners NANCI KOSCHMAN, SUSAN PAZDERSKI, and RICHARD PAZDERSKI, by their undersigned attorneys, respectfully petition this Court pursuant to 55 ILCS 5/3-9008 for entry of an order appointing a special prosecutor to investigate whether criminal charges should be brought against any person in connection with the homicide of David Koschman in the spring of 2004 and whether, from 2004 to the present, employees of the Chicago Police Department and the Cook County State's Attorney Office (CCSAO) acted intentionally to suppress and conceal evidence, furnish false evidence, and generally impede the investigation into whether criminal charges should be filed in connection with Mr. Koschman's death. In support, Petitioners state:

INTRODUCTION

1. In the early hours of April 25, 2004 near the intersection of Division and Dearborn Streets in the City of Chicago, David Koschman, a slightly built young man from Mount Prospect, Illinois who had recently celebrated his 21st birthday, was punched in the face by one Richard J. ("R.J.") Vanecko, a former college football player who was 6'3" tall and weighed approximately 230 pounds. Vanecko was a nephew of then-Chicago Mayor Richard M. Daley as well as William Daley (now President Obama's Chief of Staff) and a grandson of former Mayor

EXHIBIT 4

Richard J. Daley (for whom he is named). Koschman fell to the ground, striking his head on the pavement, and was immediately rendered unconscious. He died two weeks later, on May 6th, from complications from blunt head trauma. The Cook County Medical Examiner ruled Koschman's death a homicide.

2. The Chicago Police investigated. Although Vanecko and one of his companions (Craig Denham) fled the scene immediately after the assault, Vanecko's identity was ascertained no later than May 13th when another companion (Bridget McCarthy) admitted that she and her husband (Kevin McCarthy) were with Vanecko and Denham on the night in question and provided police with Vanecko's name. Vanecko was the only person in the vicinity of the confrontation who matched the description of Koschman's assailant.

3. Nonetheless, the Police closed the investigation without charging anyone because, incredibly, they claimed to be unable to determine who punched Koschman. Equally surprising, the Police also found that whoever had thrown the punch had done so in self-defense because Koschman—though he was only 5'5" tall and weighed just 140 pounds—"was clearly the aggressor as corroborated by all of the witnesses interviewed." Supp. Police Report, November 10, 2004, at 13.[1] The Police statement that all interviewed witnesses identified Koschman as "the aggressor" is false. In fact, Koschman's companions and at least one independent witness at the scene told Police that Koschman was not being physically aggressive before Vanecko punched him. These four witnesses have since stated publicly that any statements in police reports to the effect that they identified Koschman as the aggressor misstate what they told the Police.

4. The Police resolution of the Koschman investigation was approved by Assistant State's Attorney Darren O'Brien, then head of the Cook County State's Attorney's Felony

[1] Redacted copies of the November 10, 2004 report and all other publicly available police records of the Koschman investigation (printed from the *Chicago Sun-Times* website) are attached as Ex. A to this Petition.

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Review Unit. According to Police records (the State's Attorney's file is inexplicably missing), O'Brien consulted with Police investigators, interviewed "all available witnesses," and concurred in the decision not to press charges. Supp. Police Report, November 10, 2004, at 13.

5. Earlier this year, in the wake of *Chicago Sun-Times* reporting on various irregularities in the Koschman investigation,[2] the Chicago Police re-opened the case. In late February 2011, after two months of investigation, the Police acknowledged for the first time that Vanecko was in fact the person who punched Koschman. Nonetheless, the Police again declined to press charges, finding once more that Koschman "was clearly the assailant in this incident" and that Vanecko had acted in self-defense. Supp. Police Report, February 28, 2011, at 8 (9 pages).

6. Cook County State's Attorney Anita Alvarez endorsed the outcome of the re-opened Chicago Police investigation, assuring *Sun-Times* reporters earlier this year that there was insufficient evidence to support criminal charges against Vanecko. Tim Novak, Chris Fusco, and Carol Marin, *Alvarez: Not Enough Evidence to Charge Daley's Nephew*, Chicago Sun-Times, March 20, 2011, at 11A.

7. This Petition is being filed because of Petitioners' concern that the investigation of David Koschman's death was influenced by R.J. Vanecko's membership in the most powerful political family in Cook County. Petitioners believe that had Vanecko not been a member of the powerful Daley family he would have been charged with the homicide. The handling of this matter by the Chicago Police and the Cook County State's Attorney's Office raises questions that cry out for objective, unbiased investigation, including: (a) whether Police investigators prepared false official reports; (b) whether Police investigators, ASA O'Brien, and/or other employees of the Cook County State's Attorney's Office conspired to cover up Mr. Vanecko's criminal

[2] The *Sun-Times* published approximately 20 news articles concerning its independent investigation into Koschman's death and the Police and State's Attorney's investigation. The full set of *Sun-Times* stories is attached as Ex. B.

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responsibility for Koschman's death; and (c) whether Mr. Vanecko should be charged in connection with that death.

8. Cook County State's Attorney Anita Alvarez is "interested" in the outcome of such an investigation. *See* 55 ILCS 5/3-9008. O'Brien, who continues to be employed in the State's Attorney's Office, is necessarily a subject of and/or a witness in the investigation. And Alvarez has, in any event, already publicly committed herself and her office to the position that the Koschman investigation reached the proper result. An independent Special Prosecutor must therefore be appointed to undertake an unbiased, disinterested investigation of the Koschman homicide and the official actions taken in response to it.

9. All persons are entitled to the protections of our Bill of Rights, including the presumption of innocence. Petitioners believe that the question of Mr. Vanecko's possible criminal responsibility must not be rushed or pre-judged. Just as important, though, is the principle that all persons—regardless of wealth, status or family connection—are equal before the law. Thus, Mr. Vanecko is not entitled to escape prosecution simply because he is the nephew of former Mayor Daley.

THE PETITIONERS

10. Nanci Koschman is the mother of David Koschman. Susan Pazderski is Nanci Koschman's sister and David Koschman's maternal aunt. Richard Pazderski, Susan's husband, is David Koschman's uncle. Ms. Koschman, Ms. Pazderski, and Mr. Pazderski seek nothing more and nothing less than a just, unbiased investigation into David's homicide.

IRREGULARITIES IN THE KOSCHMAN INVESTIGATION

11. The Chicago Police and Cook County State's Attorney's investigation of the Koschman homicide in 2004 and the reinvestigation of the homicide earlier this year were

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plagued with inexplicable lapses, false official records, and procedural irregularities. These irregularities suggest the possibility that, in violation of the criminal law of this state, officials in the Police Department and the State's Attorney's Office may have been led by favoritism or other improper motives to obstruct the investigation so that Mayor Daley's nephew did not face criminal charges.

Incompetence or Worse: Chicago Police Fail to Identify Vanecko as the Assailant in 2004

12. Koschman's death followed an altercation involving two groups who passed each other on a crowded Division Street sidewalk in the early morning hours of April 25, 2004. Koschman's group included, in addition to the victim, four high school friends of Koschman's who had accompanied Koschman downtown. Vanecko's group included two other men, Craig Denham and Kevin McCarthy, and a woman, Bridget McCarthy, who was Kevin's wife. As the two groups passed each other, Koschman bumped into Denham and angry, obscene words were exchanged. The argument between the two groups became heated, but all witnesses agree that only a single blow was struck—the punch that knocked out Koschman and eventually killed him.

13. Vanecko's identity was not immediately known, since he and Denham fled the scene immediately after Koschman fell to the ground and Kevin McCarthy falsely told officers that he did not know the identities of the two men who had fled. *See* Supp. Police Report, May 20, 2004, at 5. On May 13th, however, Bridget McCarthy admitted that she and her husband Kevin had been at a party with Vanecko and Denham prior to the assault and she provided Vanecko's name to the police. Supp. Police Report, November 10, 2004, at 8-9.

14. Moreover, the police reports contain descriptions of Vanecko and his three companions, provided by the Koschman group and independent bystanders. Vanecko was by far the largest male in his group, described as between 6'0" and 6'2" tall and weighing between 190

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and 230 pounds. *See* Supp. Police Report, May 13, 2004, at 3-4. The other two men were much smaller; neither was even close to six feet or two hundred pounds. *Id.* According to the reports, Koschman's companions described the person who punched Koschman as "the larger white male" and "the largest of the male whites" in the other group. Supp. Police Report, November 10, 2004, at 6, 7.

15. Despite these witness statements, the 2004 Chicago Police investigation was closed without charges, in part because the police claimed to be unable to determine the identity of the person who had thrown the fatal punch. Supp. Police Report, November 10, 2004, at 13 ("[T]he actual identity of the subject who either pushed or punched David Koschman could not positively be determined."). Such a blatant failure to connect the dots has the hallmarks of an investigation governed by politics, not professionalism.

False Police Reports: Koschman is Falsely Identified as "the Aggressor" in the Attack that Led to his Death.

16. Koschman, who was just 5'5" tall and weighed only 140 pounds, was vastly smaller than Vanecko, a former college football player who, as stated above, weighed over 200 pounds and was more than six feet tall. Undisputedly, Vanecko's punch was the only physical blow in the altercation between Vanecko and Koschman. Nonetheless, the Chicago Police investigation was terminated in 2004 without charging Vanecko partly because, in the words of a Chicago Police investigative report written at that time, Koschman "was clearly the aggressor" during the interactions that led to his death. Supp. Police Report, November 10, 2004, at 13. That report further asserts that this finding was "corroborated by all of the witnesses interviewed." *Id.*

17. The Koschman homicide investigation was re-opened earlier this year in the wake of extensive reporting about the incident by the *Chicago Sun-Times.* But after reexamining the

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evidence and re-interviewing the witnesses, the Chicago Police again declined to press charges in Koschman's death based on the renewed finding that Koschman "was clearly the assailant in this incident" and that the taller, heavier Vanecko had acted in self-defense when he punched Koschman. Supp. Police Report, February 28, 2011 (9 pages), at 8.

18. Four witnesses (three of Koschman's friends and Michael Connolly, an independent bystander to the assault) have all stated publicly that the 2004 and 2011 police reports are false. The three Koschman friends told the *Sun-Times* that they informed police that Koschman was *not* being physically aggressive and that Koschman was "sucker punched." Tim Novak, Chris Fusco, and Carol Marin, *Self-Defense or a 'Sucker Punch?'*, Chicago Sun-Times, Feb. 28, 2011, at 14. They have each stated that they are willing to take polygraph examinations to confirm their veracity. Tim Novak, Chris Fusco, Carol Marin, *Alvarez: Not Enough Evidence to Charge Daley Nephew*, Chicago Sun-Times, March 20, 2011, at 11A. Connolly, the independent bystander, responded to a statement from the State's Attorney's Office that Koschman initiated the physical confrontation, calling it a "flat-out lie" and insisting that Koschman was not the aggressor. Chris Fusco, Tim Novak, and Carol Marin, *Witness: Prosecutors' Statement a 'Flat-Out Lie'*, March 3, 2011, at 2.

19. Based on these public statements, there is probable cause to believe that the 2004 and 2011 police reports, which state that "all witnesses" identified Koschman as the aggressor, may have been deliberate falsehoods.

Procedural Irregularities Abound: Missing Documents and Inexplicable Lapses

20. A series of procedural irregularities casts further suspicion upon the integrity of the Koschman homicide investigation. Among these irregularities are the following:

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a. There is no recorded police investigative activity in this matter from the immediate aftermath of the assault (when detectives interviewed only Kevin McCarthy and Michael Connolly) until May 10, 2004—more than two weeks following the attack and four days after Koschman had passed away and the Cook County Medical Examiner had classified his death as a homicide. *See* Supp. Police Report, May 20, 2004; Supp. Police Report, November 10, 2004.

b. When the police investigation did resume on May 10th, a completely new team of detectives had been assigned to the case, including Chicago Police Detective Ronald Yawger. *See* Supp. Police Report, November 10, 2004, at 4.

c. The new detectives made no attempt to question Vanecko prior to May 20th, despite the fact that they had learned his name no later than May 13th, a full week earlier. *Id.* at 13.

d. The police claim to have made the decision not to charge Vanecko on May 20th, but the reports documenting the reasons for that decision (*i.e.*, Vanecko couldn't be identified as the assailant and Koschman was "the aggressor") were not filed until nearly six months later, in November 2004. *Id.* at 1, 13.

e. The file of Assistant State's Attorney Darren O'Brien, who also interviewed the witnesses to the assault and concurred that charges should not be filed, is missing. Carol Marin, Time Novak, Chris Fusco, and Don Moseley, *Self-Defense or a 'Sucker Punch?'*, Chicago Sun-Times, February 28, 2011, at 12. State's Attorney Anita Alvarez has confirmed that she has been unable to locate any of the files prepared by Mr. O'Brien during the Koschman

investigation. Tim Novak and Chris Fusco, *More Missing Files in Koschman Case*, Chicago Sun-Times, July 25, 2011, at 18-19.

f. In July of this year, four months after the termination of the investigation, officers in Area 3 discovered a second set of "missing files" from the Koschman case that had not been turned over to the detectives in charge of the 2011 investigation. *Id.* at 18. Police turned over those files to reporters as well as previously undisclosed handwritten notes of Detective Yawger, including notes from a witness interview in which—in contrast to what is contained in the previously released reports—the witness tells Yawger that on the night of the incident, when "arguing became more heated," the "larger of the three guys [*i.e.*, Vanecko] becomes very aggressive." Tim Novak and Chris Fusco, *Missing Police File Says Daley Nephew was 'Very Aggressive'*, Chicago Sun-Times, September 12, 2011, at 6.

g. Also among the newly released documents is a notation on the back of a Chicago Police General Progress Report, confirming that the Police knew Vanecko was Daley's nephew. *Id.* ("V Dailey [sic] sister son").

h. Despite the discovery of this evidence, a representative from the Police has stated "that none of the new information would have changed the outcome of the investigation." *Id.* The Department has refused to re-open the case.

Members of the Cook County State's Attorney's Office May Have Participated in Investigative Misconduct

21. A Chicago Police report states that, on May 20, 2004, Assistant State's Attorney Darren O'Brien—who was then the head of the Felony Review unit—personally traveled to Area 3 police headquarters and interviewed the investigating detectives and the witnesses to the

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Koschman homicide. Supp. Police Report, November 10, 2004, at 13. Though these witnesses have since asserted that they informed law enforcement that Koschman was not the aggressor in the incident, Mr. O'Brien concluded that there was insufficient evidence to charge or further investigate Vanecko.

22. In addition, evidence gathered thus far suggests that witnesses may have told O'Brien directly that Koschman was *not* the aggressor in the altercation with Vanecko; that O'Brien may have known that the police reports regarding this matter were false; that O'Brien may have disregarded incriminating evidence; that O'Brien's files are no longer available; and that persons within the Cook County State's Attorney's Office, including O'Brien, may have concealed information that Vanecko is criminally responsible for Koschman's death.

CONFLICTS OF INTEREST WITHIN THE STATE'S ATTORNEY'S OFFICE NECESSITATE THE APPOINTMENT OF A SPECIAL PROSECUTOR TO INVESTIGATE POSSIBLE CRIMINAL WRONGDOING DURING THE KOSCHMAN HOMICIDE INVESTIGATION

23. Illinois law provides for the appointment of a special prosecutor in cases where the elected State's Attorney for the County "is interested in any cause or proceedings ... which it is or may be his duty to prosecute or defend[.]" 55 ILCS 5/3-9008. The appointment of a special prosecutor can occur at any stage in a case, even before formal charges are filed. *See Baxter v. Peterlin*, 156 Ill. App. 3d 564, 566 (3d Dist. 1987). Thus, special prosecutors have frequently been appointed to investigate allegations of criminal wrongdoing. *See, e.g., People v. Pawlaczyk*, 189 Ill. 2d 177 (2000); *Matter of Special Prosecutor*, 164 Ill. App. 3d 183 (5th Dist. 1987) (judgment later vacated on unrelated grounds); *People v. Sears*, 49 Ill. 2d 14 (1971).

24. The court's jurisdiction under the special prosecutor statute may be invoked by the court, by the State's Attorney's Office or, as here, by a private citizen or group of citizens. *See Baxter*, 156 Ill. App. 3d at 566; *In re Appointment of Special State's Attorney*, 305 Ill. App. 3d

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749, 758 (2d Dist. 1999). Though the Circuit Court hearing the petition maintains discretion in determining whether the State's Attorney's "interest" in the case warrants the appointment of a special prosecutor, it is the duty of the court to ensure that such judicial discretion is "exercised to promote the underlying policy of a just, fair and impartial hearing." *People v. Lanigan*, 353 Ill. App. 3d 422, 430 (1st Dist. 2004) (quotation omitted).

25. Accordingly, this Court must undertake two inquiries to determine whether to appoint a special prosecutor: (a) whether it may be the Cook County State's Attorney's "duty" to investigate whether crimes occurred in the handling of the Koschman matter and to prosecute those crimes; and (b) whether State's Attorney Alvarez has an "interest" that disqualifies her and her office from undertaking the necessary investigation and prosecution. Since both inquiries are satisfied, a special prosecutor must be appointed here.

Vanecko May Be Criminally Responsible for Koschman's Death And There May Have Been Criminal Misconduct in the Investigation

26. The recently reported statements of David Koschman's friends and of an independent bystander suggest that R.J. Vanecko may be criminally liable for causing Koschman's death by punching Koschman in the head. Vanecko could be criminally responsible either because Vanecko knew that his acts created a strong probability of death or great bodily harm (*see* 720 ILCS 5/9-1(a)(2)) or because Vanecko's actions, though not intended to cause Koschman's death, were reckless and were "such as are likely to cause death or great bodily harm to some individual" (*see* 720 ILCS 5/9-3).

27. It is indefensible, on this record, for law enforcement to turn a blind eye to a homicide perpetrated on the streets of Chicago. *First*, contrary to the assertions in the police reports, the bystanders to Vanecko's assault are, at best, divided on whether Koschman was "the aggressor" prior to his death. *Second*, whether Koschman was or was not "the aggressor" is not

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dispositive of Vanecko's criminal responsibility—an obvious proposition that the police and ASA O'Brien apparently did not appreciate.

28. Self-defense justifies the use of deadly force only where the perpetrator is himself threatened with force that "will cause death or great bodily harm" or that constitutes "a forcible felony." *People v. Lee*, 243 Ill. App. 3d 1038, 1043 (1st Dist. 1993). Thus, objective, unbiased investigators must determine whether Koschman threatened Vanecko with great bodily harm. If Koschman did not, Vanecko may be chargeable with first- or second-degree murder. *Cf. U.S. ex rel Baker v. Acevedo*, No. 08 C 918, 2008 WL 1943218, at *6 (N.D. Ill. May 1, 2008) (denying prejudice prong of habeas petitioner's *Strickland* claim since evidence overwhelmingly showed that the petitioner's actions "were disproportionate to any evidence of provocation"); *U.S. ex rel Gilford v. Carter*, No. 98 C 3665, 1999 WL 543188, at *7-*8 (N.D. Ill. July 22, 1999) (denying habeas petition since evidence presented at trial supported conclusion that defendant's self-defense theory was unwarranted).

29. Moreover, objective, unbiased investigation could determine that Vanecko acted recklessly and that he committed the offense of involuntary manslaughter. *See* 720 ILCS 5/9-3. On that theory of prosecution, the defense of self-defense would be unavailable. *See People v. DeMumbree*, 98 Ill. App. 3d 22, 25 (1st Dist. 1981) ("Because the theories of self-defense or defense of a third party presuppose an intention to kill or cause great bodily harm, these theories are inconsistent with the crime of involuntary manslaughter which, by definition, is evidenced by the mental state of recklessness, not intent.").

30. At this stage, none of these questions is free of doubt. Nor should any of them be pre-judged. But what is abundantly clear is that the evidence demands a thorough examination

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and additional investigation to determine whether Vanecko was justified in his actions or whether he should be indicted for Koschman's homicide.

31. The evidence also demands an objective, unbiased investigation of whether there was criminal misconduct by the law enforcement personnel responsible for the prior investigation of Koschman's death. *First*, there is probable cause to believe that police investigators and persons within the Cook County State's Attorney's Office, including ASA O'Brien, may have committed obstruction of justice. The obstruction of justice statute, 720 ILCS 5/31-4, criminalizes, among other things, "furnishing of false information" in a criminal investigation. There is reason to believe that the police reports documenting the Koschman investigation "furnished false information"—specifically by falsifying eyewitness accounts of Koschman's actions prior to his death. Those reports may also implicate O'Brien in the misconduct, since they state that O'Brien interviewed "all available witnesses" and concurred with the police findings. These discrepancies, in conjunction with the missing Felony Review files and the recently discovered General Progress Notes, suggest that O'Brien and/or others in the Cook County State's Attorney's Office, in conspiracy with Chicago Police Detectives, may have obstructed Vanecko's prosecution in violation of 720 ILCS 5/31-4.

32. *Second*, and on these same facts, there is also probable cause to believe Chicago Police Detectives and others within the Cook County State's Attorney's Office, including ASA O'Brien, could have conspired to commit official misconduct in violation of 720 ILCS 5/33-3.[3] A police officer's duty is to conserve the peace and enforce the criminal law. *See* 65 ILCS 5/11-1-2(a); Chicago, Ill. Code § 2-84-220 *et seq*. A State's Attorney's foremost responsibility is to

[3] Section 33-3 states in part that a "public officer or employee or special government agent commits misconduct when, in his official capacity or capacity as a special government agent, he … [i]ntentionally or recklessly fails to perform any mandatory duty as required by law; or knowingly performs an act which he knows he is forbidden by law to perform[.]"

"commence and prosecute all actions, suits, indictments and prosecutions, civil and criminal, in the circuit court for his county, in which the people of the State or county may be concerned." 720 ILCS 5/3-9005. If O'Brien and/or others in the Cook County State's Attorney's Office acted with Chicago Police to protect Vanecko and the Daley family over the fair administration of the state's criminal justice system then, under 720 ILCS 5/33-3, prosecutors and police may be indicted for intentionally or recklessly failing to perform their mandatory duties as required by law.[4]

33. Like Vanecko, the police and prosecutors are entitled to the presumption of innocence. The question of their criminal responsibility should likewise not be rushed or prejudged. But, just as clearly, their responsibility in this matter must be decided by an objective investigator, free of conflict or loyalty.

State's Attorney Alvarez Is "Interested" In This Investigation

34. The continuing failure of the Chicago Police and the CCSAO to thoroughly and fairly investigate R.J. Vanecko for assaulting David Koschman may be attributable to conflicts of

[4] It is unlikely that anyone implicated here could assert the statute of limitations as a defense to these crimes. Any overt actions taken in furtherance of the objective of preventing Vanecko's prosecution, including suppressing evidence during the 2011 re-investigation, are sufficient to establish a "continuing" conspiracy for purpose of tolling the statute of limitations. *See, e.g., Fiswick v. U.S.*, 329 U.S. 211, 216 (1946) ("The statute of limitations, unless suspended, runs from the last overt act during the existence of the conspiracy."); *People v. Link*, 365 Ill. 266, 280-81 (1937) ("In prosecutions for conspiracy the statute of limitations does not begin to run from the time the conspiracy was entered into, but, on the other hand, from the commission of the last overt act in furtherance of the conspiracy."). O'Brien and the original detectives may have participated in a conspiracy to conceal evidence—not just in 2004, but thereafter, including during the 2011 re-investigation. *See Grunewald v. U.S.*, 353 U.S. 391, 405 (1957) (an act of concealment that promotes a conspiracy's criminal objective constitutes an overt act in furtherance of the conspiracy). In particular, they made continuing assertions that Vanecko acted in self-defense (despite evidence to the contrary), and may have failed to turn over important documents when the investigation resumed in 2011. These actions could constitute "overt acts" in continuation of the conspiracy, and render them criminally liable. *See U.S. v. Maloney*, 71 F.3d 645, 659 (7th Cir. 1995) (finding obstruction of justice charge against county judge was timely because "the main criminal objective, to fix cases whenever feasible, was neither accomplished nor abandoned as long as Judge Maloney remained on the bench.... Concealment ... was an overt act in furtherance of the conspiracy's main objectives."). Under this theory, the prosecution of law enforcement personnel for obstruction of justice and/or official misconduct would be timely.

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interest within the Cook County State's Attorney's Office. These conflicts compel this Court to appoint a special prosecutor who can implement an unbiased investigation into both David Koschman's homicide and possible ongoing obstruction of justice and official misconduct by the Chicago Police and individuals within the Cook County State's Attorney's Office. At the heart of this imperative is the well-established maxim under Illinois law that "an attorney cannot represent conflicting interests or undertake to discharge inconsistent duties.'" *People v. Courtney*, 288 Ill. App. 3d 1025, 1031–32 (3d Dist. 1997) (quotation omitted).

35. A State's Attorney is "interested" for the purposes of appointing a special prosecutor in three situations: "(1) where the attorney is interested as a private individual in the litigation, (2) where the attorney is an actual party to the litigation, and (3) where the attorney's continued participation would create the appearance of impropriety in the prosecution of a defendant." *People v. Bickerstaff*, 403 Ill. App. 3d 347, 352 (2d Dist. 2010) (citing *People v. Lang*, 346 Ill. App. 3d 677, 680-81 (2d Dist. 2004)). Here, there is clear and specific evidence[5] demonstrating that the participation of the Cook County State's Attorney's Office in an investigation into Koschman's death and potential official misconduct during the prior investigations would exacerbate the appearance of impropriety and prevent the fair administration of justice. *See People v. Courtney*, 288 Ill. App. 3d 1025, 1032 (3d Dist. 1997) (the "rigid rule" prohibiting an attorney from representing conflicting interests "is designed to protect against an actual conflict of interest and the *appearance* of such a conflict.") (emphasis in original). The specific conflicts that mandate the appointment of a special prosecutor here are twofold.

36. *First*, the CCSAO faces an institutional conflict of interest arising from the fact that one of its employees, ASA O'Brien, is both (a) a key witness in the investigation into how

[5] The "[a]ppointment of a special prosecutor … will only be warranted based upon specific factual allegations of 'interest' within the meaning of section 3-9008 of the Counties Code." *McCall v. Devine*, 334 Ill. App. 3d 192, 205 (1st Dist. 2002).

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law enforcement handled the Koschman case and (b) a potential subject of an investigation into whether obstruction of justice and official misconduct was committed in the course of that investigation. In either circumstance, O'Brien's close connection to the case raises the inexorable specter of impropriety and requires the appointment of a special prosecutor.

37. Illinois courts have frequently found a conflict of interest where a State's Attorney served as both the prosecutor and a key eyewitness in a case. *See, e.g., Sommer v. Goetze*, 102 Ill. App. 3d 117, 120 (3d 1981) (finding trial judge abused discretion by not appointing special prosecutor where an assistant State's Attorney was the complainant and the key eyewitness); *People v. Moretti*, 349 Ill. App. 67, 76 (1st Dist. 1952) ("The basis for the state's attorney's disqualifying himself was that he was a prospective witness and might be called to give evidence. Courts have so often condemned lawyers for appearing as witnesses in a cause which they represent, that it was clearly the duty of the prosecutor to disqualify himself when it appeared to him that there was a prospect of his being a witness. That is a sufficient interest within the meaning of the statute.").

38. As the head of Felony Review and as the Assistant State's Attorney assigned to the case (and assuming usual procedure was followed), O'Brien was in charge of determining whether to prosecute Vanecko for Koschman's homicide. If usual practice was followed, O'Brien would have reviewed each of the police reports, consulted with the investigating detectives, and interviewed the key witnesses to the incident. He has stated it was on the basis of this evidence—or lack thereof—that he chose not to press charges in the case. *See* Chris Fusco, Tim Novak, and Carol Marin, *Witness: Prosecutors' Statement a 'Flat-Out Lie'*, March 3, 2011, at 2. It was also O'Brien who would have, in the ordinary course, filled out the Felony Review paperwork that is now missing from the State's Attorneys' Office. The importance of O'Brien's testimony in any

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future legal proceedings is plain, and compels the conclusion that the Cook County State's Attorney's Office should not be permitted to further investigate Koschman's homicide or official misconduct committed in the course of previous investigations of that matter.

39. Furthermore, if persons within the Cook County State's Attorney's Office were to be indicted for obstructing justice or committing official misconduct, there can be no question that the involvement of the Cook County State's Attorney in any forthcoming investigation would create an appearance of impropriety sufficient to warrant the appointment of neutral counsel. *Cf. In re Appointment of Special Prosecutor*, 388 Ill. App. 3d 220, 223-24 (3d Dist. 2009) (citing without criticism the trial court's holding that the State's Attorney's office was "interested" in the proceedings because of allegations that assistant State's Attorneys were suspected of committing civil and criminal misconduct within the scope of their employment).

40. Moreover, the personal disqualification of O'Brien or other direct participants in the investigation would not be not sufficient to overcome the appearance of impropriety in this case. The entire Cook County State's Attorney's Office must be barred from further investigating and prosecuting the case.

41. In determining whether the State's Attorney's office should be disqualified in its entirety from prosecuting a case, a court must weigh countervailing considerations, including the burden on the prosecutor's office if the entire office is disqualified; the remoteness of the connection between the State's Attorney's office and the alleged conflict of interest; and the extent to which the public is aware of the alleged conflict of interest. *See People v. Lang*, 346 Ill. App. 3d 677, 683 (2d Dist. 2004). In *Lang*, the Appellate Court disqualified the State's Attorney's office from prosecuting a criminal case in which an assistant State's Attorney served as a key eyewitness, finding that the assistant's participation created the "improper appearance

that the State was too involved with the underlying case to be fair in its prosecution of the defendant." *Id.* at 684. The court also held that the relationship between the alleged conflict of interest and the State's Attorney's office was not overly remote, because it directly involved the conduct of an assistant State's Attorney, and that the disqualification of the office would not be overly burdensome since it was "a rare case" in which a State's Attorney is named as a testifying witness. *Id.* at 685.

42. The reasoning in *Lang* is equally pertinent here. The detailed (and incongruous) facts that have emerged thus far suggest that the State's Attorney's Office has a decided interest in preventing Vanecko's prosecution, an untoward perception for an office charged with ensuring the assiduous investigation and prosecution of criminal offenders.

43. As in *Lang*, the relationship of the State's Attorney's Office to this case is far from remote. Even if any employee of the State's Attorney's Office were warranted, O'Brien, at a minimum, would be a witness in any prosecution of other law enforcement officials. Thus, if the Cook County State's Attorney remains the prosecuting authority in the Koschman case, it will only further solidify the public's perception that the investigation is biased and its results unreliable.

44. In addition, the circumstances at issue here—in which multiple law enforcement agencies are subject to investigation for failing to investigate and prosecute a member of a powerful political family—are unusual. There is little risk that the appointment of a special prosecutor in a case involving such potentially widespread conspiratorial action to avert the prosecution of a single high-profile suspect could lead to the disqualification of the CCSAO in future, wholly unrelated cases. *Contrast McCall v. Devine*, 334 Ill. App. 3d 192, 205 (1st Dist. 2002) (finding the appointment of a special prosecutor was unwarranted where the petitioner

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alleged that the State's Attorney and the Chicago Police Department were so intertwined as to prohibit an impartial investigation into a fatal suspect shooting, since "well over 90% of the cases prosecuted by the Cook County State's Attorney's office are … investigated and brought by the Chicago police department" so that granting the petition "would open the door to requiring a special prosecutor to be appointed any time a police officer is suspected of wrongdoing"). Thus, even though "the importance of maintaining the public's esteem for the State's Attorney's office and the integrity of the criminal justice system outweighs the resulting inconvenience to that State's Attorney's office[,]" *Lang*, 346 Ill. App. 3d at 685, the appointment of a special prosecutor in this case is unlikely to unduly burden the Cook County State's Attorney's Office.

45. Finally, there is no question that the Koschman case was and continues to be a hot button issue in Chicago, particularly following the *Sun-Times*' extensive coverage of the investigation in 2011. As a result of the widespread news coverage, much of which has appeared on the front page (*see* Ex. B), the public is well-apprised of the conflicts of interest at issue here. *See Lang*, 346 Ill. App. 3d at 683. Public awareness has been further broadened by articles specifically calling for the appointment of an independent prosecutor in light of the CCSAO's interest in the case. *See* Carol Marin, *Why Won't Alvarez Answer Questions*, Chicago Sun-Times, March 23, 2011, at 26. Even State's Attorney Alvarez has gone on record in the past to voice her support for the appointment of an independent investigator. *See* Tim Novak and Carol Marin, *Alvarez Wants Investigation of Police*, Chicago Sun-Times, March 25, 2011, at 7. This case is unlikely to disappear without a full and fair investigation into the circumstances of David Koschman's death.

46. *Second,* State's Attorney Anita Alvarez retains a clear political—and personal—interest in the case. *See Baxter*, 156 Ill. App. 3d at 567 ("[A] political alliance may create

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sufficient conflict of interest to require appointment of a special prosecutor."). Despite the suspicious circumstances surrounding the Koschman investigation, Alvarez has publicly defended the work of the Chicago Police and the Cook County State's Attorney's Felony Review unit, insisting to *Sun-Times* reporters that there was insufficient evidence to charge Vanecko. *See* Tim Novak, Chris Fusco, Carol Marin, *Alvarez: Not Enough Evidence to Charge Daley's Nephew*, Chicago Sun-Times, March 20, 2011, at 11A. Though O'Brien is a witness in and potential subject of an investigation into official misconduct and obstruction of justice in the Koschman matter, Alvarez has already committed herself and her office to the position that employees within the State's Attorney's Office and the police are innocent of wrongdoing. Obviously, Alvarez is in no position now to conduct the kind of probing and objective "fresh look" that this matter so urgently requires.

The Appointment of a Special Prosecutor Will Ensure That These Conflicts Do Not Prevent the Fair Administration of Justice

47. The public and David Koschman's family deserve a fair investigation into the suspicious circumstances surrounding this homicide on the streets of Chicago. Thus far, calls for the appointment of an unbiased investigator have gone unheeded.[6] This case, which has now

[6] Over the past year, various attempts have been made to initiate an independent investigation into the Koschman case. On March 25, 2011, in response to a request from State's Attorney Alvarez, the Illinois State Police (ISP) agreed to review how the Chicago Police Department handled the investigation. However, weeks later the ISP did an about-face and refused to conduct the investigation. Tim Novak and Chris Fusco, *State Police Flip, Won't Probe Koschman Death*, Chicago Sun-Times, April 5, 2011, at 8. During this same time period, Chicago City Inspector General (IG) Joseph Ferguson commenced his own investigation into the Koschman case. Tim Novak and Chris Fusco, *New Investigation of Koschman Case, Chicago Sun-Times*, March 30, 2011, at 5. But Ferguson's jurisdiction is limited to the conduct of current city government employees. He does not have the authority to investigate former City employees or individuals employed by the County or State. Chicago, Ill. Code § 2-56-50. Thus, Ferguson is unable to investigate how ASA O'Brien, State's Attorney Alvarez, or the CCSAO in general managed the Koschman case. Alvarez has also blocked efforts by the County IG, Patrick Blanchard—who does have the authority to investigate the CCSAO—to examine the case. Tim Novak and Chris Fusco, *Anita Alvarez Blocks Probe of her Office on David Koschman Case*, Chicago Sun-Times, May 5, 2011. Moreover, even if Blanchard and Ferguson were granted full access to the government entities implicated in this case, the Inspector General only has the power to issue investigative reports into allegations of official misconduct;

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been closed for over eight months, cannot be swept under the rug by officials who might prefer not to have to face inconvenient facts.

48. The appointment of a special prosecutor will serve the public interest. By appointing independent counsel, this Court will ensure that necessary resources will be applied to an objective and unstinting investigation into whether R.J. Vanecko is criminally liable for David Koschman's death and whether employees with the Chicago Police Department and the Cook County State's Attorney's Office committed misconduct in the course of investigating the Koschman case, both in 2004 and over the past year. This extraordinary remedy is essential not only to safeguard public trust in the State's legal system, but also to ensure that the administration of justice is not subverted by those who wield political power.

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the offices lack the authority to convene a grand jury or to initiate a prosecution upon a finding of illegal activity. Chicago, Ill. Code § 2-56-60; Cook County, Ill. Code § 2-284.

CONCLUSION

For the foregoing reasons, Petitioners request that this Court appoint a special prosecutor to investigate whether criminal charges should be brought against any person in connection with the homicide of David Koschman in the spring of 2004 and whether, from 2004 to the present, employees of the Chicago Police Department and the Cook County State's Attorney Office acted intentionally to suppress and conceal evidence, furnish false evidence, and generally impede the investigation into Mr. Koschman's death.

Respectfully submitted,

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