

<p>DISTRICT COURT, ALAMOSA COUNTY, COLORADO, 8955 Independence Way Alamosa, CO 81101</p> <hr/> <p>THE PEOPLE OF THE STATE OF COLORADO Plaintiff,</p> <p>v.</p> <p>BARRY LEE MORPHEW, Defendant.</p>	<p>DATE FILED April 13, 2026 11:57 PM</p> <p>▲ COURT USE ONLY ▲</p>
<p>JANE FISHER-BYRIALSEN, #49133 FISHER &amp; BYRIALSEN, PLLC 4600 S. Syracuse Street, 9<sup>th</sup> Floor Denver, CO 80237 (202)256-5664 <a href="mailto:Jane@fblaw.org">Jane@fblaw.org</a></p> <p>DAVID BELLER, #35767 RECHT KORNFELD, P.C. 1600 Stout Street, Suite 1400 Denver, CO 80202 (303)573-1900 Fax: (303) 446-9400 <a href="mailto:david@rklawpc.com">david@rklawpc.com</a></p>	<p>Case Number: 25 CR 128</p>
<p><b>[D-041] NOTICE THE DEFENSE WILL REQUIRE ADDITIONAL TIME IN WHICH TO FILE MOTIONS</b></p>	

Mr. Barry Morpew, through undersigned counsel, notifies this Court and counsel that the defense requires additional time to receive and review discovery, conduct an investigation, and research, write, and file appropriate motions. Mr. Morpew states:

1. Mr. Morpew acknowledges that this Court rescinded its requirement that all motions be filed by April 13, 2026. In an abundance of caution, defense counsel provides notice that Mr. Morpew's work is ongoing and the defense intends to file motions on a rolling basis as they become necessary, responding in a prompt manner to the developing discovery, investigation, and government's filings.
2. This notice is filed pursuant to the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Mr. Morpew's constitutional right to have the prosecutor disclose exculpatory information in sufficient time for Mr. Morpew to make meaningful use of

it and the right to the effective assistance of counsel and to conduct a meaningful investigation. See *Strickland v. Washington*, 466 U.S. 668 (1984); *People v. Rodriguez*, 914 P.2d 230, 294 (Colo. 1996); *Kimmelman v. Morrison*, 477 U.S. 365, 384 (1986). See also *Brady v. Maryland*, 373 U.S. 83 (1963).

3. Mr. Morpew does not make any intentional or knowing waivers or forfeitures of the right to object or file additional motions. If this court at some point denies a motion because it was not filed by the court's deadline, that will create prejudice from deficient performance by counsel or from prosecutorial misconduct or failure to make discovery. It should not be regarded as strategic or voluntary on Mr. Morpew's part. See e.g. *People v. Rediger*, 2018 CO 32, 46, 416 P.3d 893 (courts indulge "every reasonable presumption against waiver."). Waiver may be explicit, such as "when a party expressly abandons an existing right or privilege," or implied, such as "when a party engages in conduct that manifests an intent to relinquish a right or privilege or acts inconsistently with its assertion." *Forgette v. People*, 2023 CO 4, 28. To find a waiver that is not express, the conduct upon which the implied waiver is based must be unequivocal, and it must clearly manifest an intent to relinquish the claim. *Phillips v. People*, 2019 CO 72, 21; *Dep't of Health v. Donahue*, 690 P.2d 243, 247 (Colo. 1984).

4. Mr. Morpew disavows any intention to relinquish any claims. An inability to get any particular motion done by the deadline, in the face of Mr. Morpew's disavowal of any intent to waive, cannot be regarded as an unequivocal waiver.

5. Mr. Morpew provides this notice, and all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, as a continuing objection based upon (in addition to the above authority) the following grounds and authorities: the due process, trial by jury, right to counsel, equal protection, equal access to and administration of justice, right to defend life, cruel and unusual punishment, confrontation, compulsory process, right to remain silent, and right to appeal clauses of the federal and Colorado Constitutions, and the first, fourth, sixth, eighth, ninth, tenth, and fourteenth amendments to the United States Constitution, and article II, sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25, and 28 of the Colorado Constitution, Crim. P. 16, and RPC 3.8. Mr. Morpew cross-references and incorporates by reference all pleadings filed or to be filed in this case, and caselaw cited therein and at oral argument.

WHEREFORE, in an abundance of caution to ensure sufficient time to review and respond to discovery and continue investigations that are still outstanding, Mr. Morpew acknowledges this Court's revision of the motions deadline and disavows any knowing waivers.

Respectfully submitted this 13th day of April, 2026.

**FISHER & BYRIALSEN, PLLC**

/s/ Jane Fisher-Byrialsen  
Jane Fisher-Byrialsen, #49133

**RECHT KORNFELD, P.C.**

/s/ David Beller  
David Beller, #35767

**Certificate of Service**

I hereby certify that on April 13, 2026, I caused the foregoing to be filed with the Alamosa County District Court and a copy of the same to be served on the Alamosa County District Attorney's office via CCE-File Service.

/s/ Abby Clement  
Paralegal at Fisher & Byrialsen PLLC