

transcripts are not court records because they were filed in camera, Resp. ¶ 5, Plaintiff offers no response to Talarico for Texas’s explanation that the transcripts were *not* filed with the court in camera at all, much less “solely for the purposes of obtaining a ruling on the discoverability of such documents.” TEX. R. CIV. P. 76a(2)(a)(1); Plea in Intervention ¶¶ 13–16. They were served on opposing counsel and subsequently filed separately in support of a motion for summary judgment, a motion to designate Paxton as a responsible third party, and a motion to vacate or modify the Court’s protective order governing the deposition. Plea in Intervention ¶ 15. None of those motions sought a ruling on “the discoverability of” the depositions themselves—that issue had already been definitively resolved by the mandamus proceedings that authorized the second deposition to take place. *See In re Cook*, No. 05-19-01283-CV, 2020 WL 2552881, at *1–4 (Tex. App.—Dallas May 20, 2020, orig. proc. [mand. denied]) (mem. op.). And as the Court of Appeals held in *Cortez v. Johnston*, 378 S.W.3d 468, 474 (Tex. App.—Texarkana 2012, pet. denied), when a document was not *in fact* submitted in camera for purposes of a ruling on admissibility, a party cannot later seek to label it as such to avoid public disclosure.

3. Talarico for Texas’s Plea in Intervention explained all of this, yet Plaintiff offers no response. Plaintiff points to *In re Coastal Bend Coll.*, 276 S.W.3d 83, 87 (Tex. App.—San Antonio 2008, no pet.), and *Biederman v. Brown*, 563 S.W.3d 291 (Tex. App.—Houston [1st Dist.] 2018, no pet.), but both cases involved actual in camera filings in pursuit of discoverability rulings. In *Coastal Bend*, a party lodged two DVDs of documents with a court so that the court could appoint a receiver to determine whether they should be released to the public in response to a public records request. 276 S.W.3d at 87. And in *Biederman*, the dispute concerned an unusual deposition of a law firm representative, “conducted under the supervision of the trial court . . . solely on topics relevant to the discoverability of” a separate memorandum. 563 S.W.3d at 303–04. Here, in

contrast, the Paxton testimony was in fact filed on the Court’s docket in support of unrelated motions that did not concern discoverability, so there is no concern about burdens on trial courts from motions seeking “unfiled discovery.” *See id.* at 304.

4. Rather than defend the lawfulness of keeping Paxton’s testimony out of the public view, Plaintiff primarily insists that the Court lacks jurisdiction because the Paxton testimony was never sealed. But the public’s “constitutionally guaranteed” right to access court records cannot be defeated that easily. *In re Dolcefino Commc’ns, LLC*, 2026 WL 199792, at *2. If Paxton’s testimony and the motions it is attached to were indeed never sealed, then under Rule 76a, they must be accessible to the public. Yet the Clerk’s office has refused to provide access to the transcripts. In August 2026, a paralegal working under the direction of counsel for Talarico for Texas requested a copy of the transcripts from the clerk. *See Exhibit A Declaration of Brian Falligant* ¶ 4. The clerk informed the paralegal that Talarico for Texas would need to file a motion to unseal in order to obtain access to the document. *Id.* That response prompted Talarico for Texas to file its Plea in Intervention—the only procedural mechanism available to vindicate its access right.¹

5. Plaintiff insists that the Court previously *ruled* that the transcripts were “considered filed for in camera inspection,” and that “[t]his holding has not been challenged, appealed, or otherwise disturbed.” Resp. ¶ 5. But Talarico for Texas’s Plea in Intervention *is* a challenge to that determination; as explained in the Plea, the transcripts are manifestly “[c]ourt records” because

¹ Having filed the Plea, counsel for Talarico for Texas recently discovered that they now have access to the transcripts at issue, and the filings to which they were attached, on the Court’s electronic docket. *See Declaration of Brian Falligant* ¶ 5. Out of respect for the Court’s protective order and this pending dispute, counsel have not reviewed the transcripts, but their presence and accessibility on the docket confirms that they are indeed court records that—in the absence of a sealing order that all agree does not exist—the public is entitled to access under Rule 76a.

they were “filed with the court” for purposes other than obtaining a ruling on discovery following an in camera review. Plea ¶¶ 13–17. And while Plaintiff argues that the Court lacks jurisdiction under Rule 76a to decide whether the transcripts are “court records” because Rule 76a’s grant of continuing jurisdiction applies only to motions “to seal or unseal court records,” TEX. R. CIV. P. 76(a)(7), the cases Plaintiff cites do not support that conclusion.

6. In particular, both *Biederman* and *Coastal Bend* held *on the merits in Rule 76a interventions* that the records sought were not “court records” and therefore were exempt from disclosure. *See Coastal Bend*, 276 S.W.3d at 88; *Biederman*, 563 S.W.3d at 304. They therefore confirm that such an analysis is appropriate in response to a Rule 76a intervention—as *Biederman* put it, in response to such a motion, the court must “make [a] threshold determination of whether particular documents are court records subject to rule” to “determine whether it ha[s] jurisdiction to take the actions requested by” a Rule 76a motion. 563 S.W.3d at 302–03. The same is true here: the Court necessarily has jurisdiction to determine whether the transcripts are “[c]ourt records” or not. Based on the undisputed facts presented in Texas for Talarico’s Plea, they plainly are, in fact, court records.

7. This is not a run-of-the-mill motion to unseal. Paxton, the deponent in the transcripts at issue, is running for U.S. Senate. In just over a month, Texans must decide whether to vote for him. The transcripts, which appear to raise significant ethical concerns about Paxton’s conduct, are therefore of immense public interest. To keep these documents locked away—or to functionally hide them by delaying a decision on this matter—would make a mockery of the public’s “fundamental,” “constitutionally guaranteed” “right of access to judicial proceedings,” *In re Dolcefino Commc’ns, LLC*, 2026 WL 199792, at *2.

8. Therefore, the Court should grant Talarico for Texas's request for an oral hearing at the first possible opportunity, grant its Plea in Intervention, and immediately issue an order holding that Paxton's deposition transcripts taken on August 19, 2019, and November 28, 2022, as well as the accompanying motions and any other exhibits attached to them, are unsealed court records that must be made publicly available.

Dated: September 23, 2026

Respectfully submitted,

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ATTORNEYS FOR TALARICO FOR TEXAS

CERTIFICATE OF SERVICE

This is to certify that I have on this the 23rd day of September, 2026, served a true and correct copy of the foregoing document on all counsel and/or parties of record in accordance with TRCP 21 and 21a.

/s/ Mimi Marziani
Mimi Marziani

EXHIBIT A

**CALCO LAND DEVELOPMENT,
L.L.C.,**

V.

Defendants.

417TH JUDICIAL DISTRICT

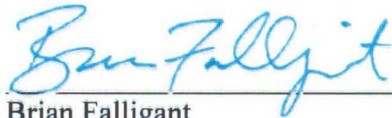
I, Brian Falligant, declare and state as follows:

3. On August 20, 2026, I contacted the Collin County District Clerk's office by telephone to make an inquiry about numerous case documents on file in Cause No. 417-04885-2016 which were marked in the online case search application as "document is hidden." I asked if she could identify why these documents might be marked that way. She replied that it was likely that they were sealed. I indicated that there were orders denying several motions to seal and asked if she could point me to which order caused the documents to become sealed. She then placed the call on hold for a few minutes. When she returned, she stated that she was told these documents

were sealed and the only way to access them would be to file a motion to unseal. She said she did not know why and repeated that I would need to file a motion to unseal to gain access to the documents.

4. On September 23, 2026, I again accessed the clerk's case file via <https://research.txcourts.gov/CourtRecordsSearch> and found that I was able to access and view nearly all of the documents which had been previously marked as "document is hidden" with the exception of a single document which was the subject of a sealing order.

Executed on this 23rd day of September in Denver, Denver County, Colorado



Brian Falligant