

Official Publication of the State Bar of New Mexico

DIGITAL BAR BULLETIN

January 28, 2026 • Volume 65, No. 2



Liberty in the Distance, by Deborah Gray (see page 5)

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New Mexico
State Bar Foundation

CLE PROGRAMMING from the *Center for Legal Education*

National Speaker *Stuart Teicher*



STUART TEICHER will be presenting a day full of webinars on January 30, 2026, covering ethics, equity in justice, and practical writing courses. Webinars take place at:

9 a.m. <https://bit.ly/CLE-01302026-B>

11:30 a.m. <https://bit.ly/CLE-01302026-D>

2 p.m. <https://bit.ly/CLE-01302026-E>



Our On-Demand/Self-Study Library is growing...

Newly Added On-Demand Courses Include:

2025 Annual Meeting - Justice by Design: Artificial Intelligence, Law, and the Future of Us
<https://cle.sbnm.org/courses/8102/sections/131929>

The Ethics of Asking for Work with Stuart Teicher
<https://cle.sbnm.org/courses/8102/sections/130724>

**2025 Annual Meeting - Navigating the New Frontier:
Ethical Uses of Generative Artificial Intelligence in Legal Practice**
<https://cle.sbnm.org/courses/8102/sections/123884>

2025 Annual Meeting - Practical Advice on Credit Reporting and Debt Collection for Lawyers and their Clients
<https://cle.sbnm.org/courses/8102/sections/131930>

Immigration Hot Topics and Ethical Considerations Under a New Executive Administration
<https://cle.sbnm.org/courses/8102/sections/119528>

Learn by Doing: An Hour of Legal Writing Exercises with Stuart Teicher (2025)
<https://cle.sbnm.org/courses/8102/sections/133633>



New
courses will
be added
frequently!

G General **EP** Ethics/Professionalism **EIJ** Equity in Justice

The Cap on Self-Study Credits is Lifted:

Now all 12 required MCLE credits may be Self-Study, Virtual or In-Person credits. There is no longer a 4.0-credit cap on Self-Study courses; however, only pre-approved Self-Study courses are allowed.

For more details, read Rule 18-204(C) NMRA.

*For Center for Legal Education pre-approved Self-Study courses, visit our
On-Demand/Self-Study library at: <https://cle.sbnm.org/courses/8102>*

Get your last-minute credits for 2025 compliance or get ahead on 2026 credits!

January/February Programs

January 29

Basic Practices for Taking and Defending Depositions (Live Replay)

1.0 G

9-10 am

WEBINAR

<https://bit.ly/CLE-01292026-C>

January 29

Bryan Stevenson: 2025 Annual Meeting Keynote Address (Live Replay)

1.0 EIJ

Noon-1 pm

WEBINAR

<https://bit.ly/CLE-01292026-D>

January 29

Harmony in Justice: Using Classic R&B to Address Bias and Diversity in the Legal Profession (Live Replay)

1.0 EIJ

3-4 pm

WEBINAR

<https://bit.ly/CLE-01292026-E>

January 29

True Crime Ethics: The Alec Baldwin Dismissal and the Karen Read Acquittal

2.0 EP

11 a.m.-1 p.m.

WEBINAR

<https://bit.ly/CLE-01292026-A>

January 29

Trust and Estate Planning for Health Care, Part 1

1.0 G

11 a.m.-Noon

TELESEMINAR

<https://bit.ly/CLE-01292026-B>

January 30

Trust and Estate Planning for Health Care, Part 2

1.0 G

11 a.m.-Noon

TELESEMINAR

<https://bit.ly/CLE-01302026-A>

January 30

Taking Risks and Breaking the Legal Writing Rules

2.0 G

9-11 a.m.

WEBINAR

<https://bit.ly/CLE-01302026-B>

January 30

Killers of the Flower Moon: The Osage Murders and How Attorneys can Combat Bias

1.0 EIJ

11 a.m.-Noon

WEBINAR

<https://bit.ly/CLE-01302026-C>

January 30

What Movie & TV Lawyers Teach About Attorney Ethics

2.0 EP

11:30 a.m.-1:30 p.m.

WEBINAR

<https://bit.ly/CLE-01302026-D>

January 30

What "A Letter from a Birmingham Jail" Teaches about Inclusion in the Law

1.0 EIJ

2-3 p.m.

WEBINAR

<https://bit.ly/CLE-01302026-E>

February 2

Trust in Estate Planning in 2026: Looking Forward

1.0 G

11 a.m.-Noon

TELESEMINAR

<https://bit.ly/CLE-02022026-A>

February 3

2026 AI Update

1.0 G

11 a.m.-Noon

TELESEMINAR

<https://bit.ly/CLE-02032026-A>

February 3

eDiscovery for the Rest of Us: Introduction to Electronically Stored Information (ESI) - Part 4

1.0 G

11 a.m.-Noon

WEBINAR

<https://bit.ly/CLE-02032026-B>

February 5

How Ethics Rules Apply to Lawyers Outside of Law Practice

1.0 EP

11 a.m.-Noon

TELESEMINAR

<https://bit.ly/CLE-02052026-A>

2026 ANNUAL PASS

Save up to 25% over regular prices!

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New Mexico State Bar Foundation
Center for Legal Education

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REGISTER EARLY! Advance registration is recommended. Online registration closes one day ahead of each program. **CLE Cancellations & Refunds:** We understand that plans change. If you find you can no longer attend a program, please contact the Center for Legal Education. We are happy to assist you by transferring your registration to a future CLE event or providing a refund, subject to Center policy. **MCLE Credit Information:** The NM State Bar Foundation's Center for Legal Education is an accredited CLE course provider. **Note:** Programs subject to change without notice.

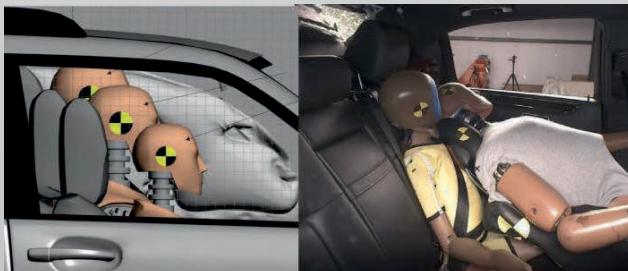
IS YOUR CASE AT A RECOVERY DEAD-END?

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DIGITAL BAR BULLETIN



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CLE COURSE SPOTLIGHT

A DAY IN THE LIFE: PRACTICAL EXAMPLES OF ARTIFICIAL INTELLIGENCE IN LAW FIRMS

DATE
Feb. 20, 2026

TIME
11 AM – NOON (MT)

LOCATION
Virtual



REGISTER AT:
[HTTPS://BIT.LY/CLE-02202026-A](https://bit.ly/CLE-02202026-A)

505-797-6020 cle.sbnm.org

About Cover Image and Artist: Deborah Gray has been a New Mexico licensed attorney since 1991.



A Message from **State Bar of New Mexico** **President**

Allison H. Block-Chavez

Greetings, Friends and Colleagues,

It is an honor to greet you as the 2026 President of the State Bar of New Mexico. I step into this role with deep gratitude, humility and a genuine sense of responsibility not only to our profession but to the communities we serve across this state.

My path to bar leadership was shaped by mentors, colleagues and opportunities to serve - from the Young Lawyers Division to the Board of Bar Commissioners.

Along the way, I learned that the true work of the Bar is often quiet and unseen through careful governance, thoughtful policy, stewardship of resources and steady collaboration that keeps our profession strong, credible and worthy of public trust.

This year is especially meaningful for our organization. In 2026, the State Bar of New Mexico celebrates its 140th anniversary, a milestone that reflects generations of lawyers committed to strengthening justice, professionalism and access to the legal system. From its beginnings as a territorial bar of just twenty attorneys to a vibrant community of more than 10,000 members today, the Bar has continuously evolved to meet the changing needs of New Mexico and the people we serve. I am proud to carry that legacy forward.

I also want to recognize and thank our Immediate Past President, Aja N. Brooks, for her leadership, collaboration and steady hand during a year of meaningful progress. Her work, alongside the Board of Bar Commissioners and our dedicated staff, positioned us well to launch our next chapter. I am grateful for the foundation she helped build and the example she set.

One of the most exciting milestones this year is the launch of the State Bar's 2026-2028 Strategic Plan. The plan reflects thoughtful input and centers on three core priorities: integrating technology and AI, strengthening attorney engagement and partnerships and advancing the Rule of Law.

These priorities are not abstract concepts; they are practical commitments that will shape our programming, investments and outreach over the next three years. We will continue modernizing how we serve our members, supporting emerging lawyers, strengthening leadership pipelines and building meaningful partnerships throughout the legal community.

A cornerstone of this strategic plan, and of my own professional values, is preservation of the Rule of Law. In a time when public trust in institutions is fragile and misinformation travels quickly, lawyers have a unique responsibility to model integrity, professionalism and respect for the legal system.

This year, I am especially excited to expand our Rule of Law work in two complementary directions: outward, serving the public and our communities, and inward, supporting attorneys as stewards of the rule of law.

We intend to strengthen programming that reaches beyond our profession and into the community. This includes public education initiatives, school and youth Constitution-focused programming and partnerships that help demystify the legal system and reinforce why an independent judiciary and fair process matter to everyday New Mexicans. Our goal is to help the public better understand how the legal system protects rights, resolves disputes and sustains democracy, not in theory, but in real life.

Equally important is programming that supports attorneys in their professional responsibilities, while continuing our commitment to being an inclusive Bar that welcomes, respects and supports all members. Lawyers play a vital role in upholding our legal system and supporting a healthy democracy grounded in fairness, independence and the Rule of Law. We will continue developing resources, education and dialogue around ethics, professionalism, emerging technologies and leadership. By investing in attorney competence, engagement and belonging, we strengthen strong institutions and the very foundation that allows the Rule of Law to thrive.

I am also pleased to share that the State Bar of New Mexico's 2026 Annual Meeting will take place August 13-15 at Sky Ute Casino Resort in Ignacio, Colorado, the first out-of-state Annual Meeting since 2015. This year's meeting will feature a refreshed, family-friendly schedule allowing attendees to enjoy the resort and Durango area. I look forward to gathering together for learning, connection and renewal.

As president, my commitment is simple: to lead with intentionality, collaboration and respect for the people who make this organization work: our volunteers, our staff, our judiciary partners and our members across every practice area, stage of career and corner of our state. My focus this year is on supporting and connecting with lawyers across our diverse state and at every stage of practice while expanding meaningful partnership with members and the public to reinforce trust in our legal system and help preserve a healthy democracy.

Thank you for the trust you have placed in me. I am honored to serve alongside you as we continue strengthening our profession, advancing the Rule of Law, and serving New Mexico.

With gratitude and purpose,

A handwritten signature in black ink, appearing to read "Allison H. Block-Chavez".

Allison H. Block-Chavez
President, State Bar of New Mexico

Save the Date!

State Bar of New Mexico

Annual Meeting 2026

Adventure
Awaits!

Learn, Network and Explore
in Colorful Southern Colorado!

Aug. 13-15
Sky Ute Casino Resort
Ignacio, Colorado

Sky Ute CASINO
RESORT
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More information and registration coming soon.
www.sbnm.org/AnnualMeeting2026



State Bar of
New Mexico
Est. 1886



2026 Board of Bar Commissioners

2026 OFFICERS



President

Allison H. Block-Chavez

505-266-8787

ablockchavez@abqlawnm.com

Allison H. Block-Chavez, is passionate about service through the State Bar and advancing a strong, ethical, and inclusive legal profession. She is dedicated to supporting lawyers and strengthening access to justice for communities throughout New Mexico. She is a partner and attorney at Aldridge, Hammar & Wexler, P.A., in Albuquerque, where her practice focuses on estate planning, trust administration, probate matters, real estate, and creditors' rights. She previously served as Chair of the Young Lawyers Division of the State Bar of New Mexico and as the Young Lawyer Delegate to the American Bar Association House of Delegates. Allison is a graduate of the University of New Mexico School of Law and the Anderson School of Management, and she served as a judicial law clerk to Chief Judge Michael E. Vigil of the New Mexico Court of Appeals. In her free time, Allison embraces the joyful chaos of life with twin toddlers, traveling, and indulging her love of trivia.



President-Elect

Lucy H. Sinkular

505-210-7441

lucy@ahm.law

Lucy H. Sinkular is Of Counsel at Horton Mullins PC. Admitted to practice in 1994, Lucy comes from a family of lawyers and loves the law. Lucy is passionate about New Mexicans' access to justice and maintains an active pro bono case load in addition to her regular practice. Lucy enjoys her service on the board of the Family Law Section and the Domestic Relations Rules Committee. Her immediate family includes her husband Scott who is a scientist at NNSA, their daughter who is conducting post-doctoral research and their son who is a CPA. Lucy and Scott are also parents to two very spoiled black labs. Lucy serves as the Senior Warden for her Episcopal Church in Albuquerque. When not practicing law or volunteering for the Bar, Lucy can frequently be found pursuing outdoor hobbies of camping, running, cycling and hiking.

2026 OFFICERS



Secretary-Treasurer

Tomas J. Garcia

505-848-1892
tjg@modrall.com

Tomas J. Garcia is a shareholder at Modrall Sperling in Albuquerque, where he practices commercial, healthcare, torts/personal injury, and transportation litigation. Tomas is a past chair and board member of the State Bar of New Mexico Young Lawyers Division and he is an active leader with the American Bar Association, currently serving as the New Mexico Membership Chair. Tomas also serves on the board of directors for the New Mexico Defense Lawyers Association. An Albuquerque native, Tomas received his law degree from Georgetown University Law Center.



Immediate Past President

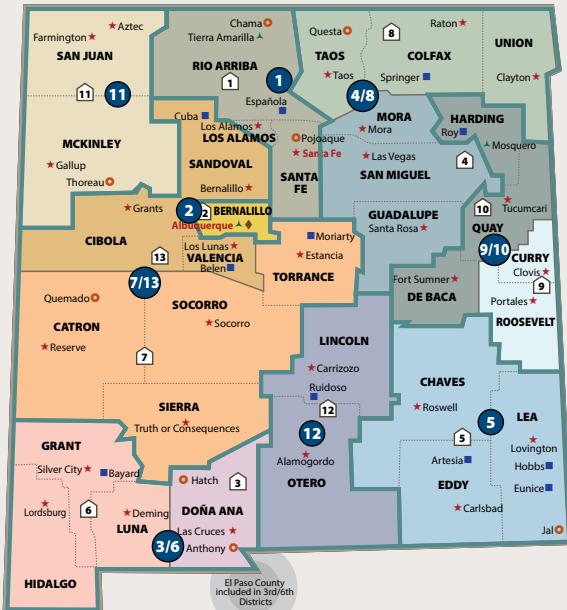
Aja N. Brooks

505-649-3777
aocanb@nmcourts.gov

Aja Nicole Brooks is a native New Mexican, born in Hobbs. She is a graduate of Wake Forest University in Winston-Salem, North Carolina, where she received her Bachelor of Arts in English and Spanish. She attended the University of New Mexico School of Law and graduated with her juris doctorate in 2008. She currently works as the Statewide Rural Justice Program Coordinator for the New Mexico Administrative Office of the Courts, and previously served as the Executive Assistant United States Attorney for the District of New Mexico. Prior to that, she was employed as the Director of the Second Judicial District Court's Center for Self-Help and Dispute Resolution. She is involved in many legal groups and activities, including serving as a mentor in the Bridge the Gap Mentorship Program and as a member of the Committee on Diversity in the Legal Profession. She is a member of the New Mexico Black Lawyers Association, a past President of the State Bar of New Mexico and the Bar Foundation, and a member of the Iota Xi Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated. She enjoys exploring and traveling near and far with her husband, Johnn and her son, Emerson.

Board of Bar Commissioners District Map

-  Judicial District
-  District and Magistrate Courts
-  District Courts Only
-  Metropolitan Courts
-  Magistrate Full Courts
-  Magistrate Circuit Courts



1st JUDICIAL DISTRICT (*Los Alamos, Rio Arriba, and Santa Fe Counties*)



Andréa Salazar

505-827-1261 • asalazar@nmslo.gov

Andréa Salazar is a native New Mexican raised in Santa Fe. She graduated with a Bachelor of Arts in Fine Art from the University of California, Santa Cruz. After working as a photographer for several years, she attended law school at UNM. She is a proud second generation UNM School of Law graduate. She currently works at the New Mexico State Land Office as an Associate General Counsel. She has previously served as the Santa Fe City Clerk and Director of Community Engagement as well as the General Counsel for the State Auditor. In her free time she loves hiking with her husband and dog, camping, photographing, and reading.



Olga Serafimova

505-954-3676 • omserafimova@hollandhart.com

Olga Serafimova is Of Counsel in the Santa Fe office of Holland & Hart, LLP, where she is a member of the Environmental, Energy, and Natural Resources practice group. She previously served as the Senior Civil Counsel to Attorney General Hector Balderas, the General Counsel for the Department of Information Technology, and the Tobacco Bureau Chief at the Attorney General's Office. Ms. Serafimova is the State Bar liaison for the New Mexico Appellate Rules Committee, and the pro bono General Counsel of STEM Santa Fe, a non-profit organization providing free STEM programming to middle and high school aged children in Northern New Mexico. She is licensed to practice law in New Mexico, California, and Massachusetts.



Elizabeth J. Travis (she/her)

505-216-6399 • EJTravislaw@gmail.com

Elizabeth J. Travis is a solo practitioner providing services in the 1st Judicial District as a neutral, settlement facilitator and mediator, and as counsel for various civil clients including small business, nonprofits and boards. In addition to her role on the BBC, Ms. Travis serves on the State Bar Foundation Board (President), the State Bar's Ethics Advisory Committee and ADR Steering Committee, and on the Supreme Court's Disciplinary Board and Client Protection Fund Committee. She is an active member of the ABA, participating in the dispute resolution and professional responsibility sections and the construction industry forum. Liz is licensed to practice in state and federal court in New Mexico and California.

2nd JUDICIAL DISTRICT (Bernalillo County)



Allison H. Block-Chavez

President

See page 9.



Aja N. Brooks

Immediate Past President

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Sean M. FitzPatrick

505-400-0420 ● sfitzpatrick@fitzpatricklawllc.com

A trial lawyer at heart, FitzPatrick started his career trying felony and misdemeanor criminal cases as a prosecutor in Farmington, New Mexico. After about 30 of those trials, FitzPatrick began representing injured New Mexicans through his firm FitzPatrick Law, LLC in 2016. Outside of running his own firm where he primarily represents plaintiffs in insurance and injury cases, FitzPatrick has a history of service in New Mexico including his current positions on the Board of Bar Commissioners, The New Mexico State Bar Foundation, The New Mexico Trial Lawyers Board, The New Mexico Trial Lawyers Foundation, The Uniform Civil Jury Instruction Committee, liaison to the Board of Bar Examiners, and chairing the New Mexico State Bar Well Being Committee. Previously FitzPatrick served on the Young Lawyers Division Board, Cannabis Law Section Board, and the Natural Resources Energy and Environmental Law Section Board. In addition to his love of being a lawyer, FitzPatrick loves being a dad and spending time with his son Liam.



Tomas J. Garcia

Secretary-Treasurer

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Steven S. Scholl

505-244-3890 ● sscholl@dsc-law.com

Steven Scholl is a founding member of Dixon Scholl [Bailey] Carrillo, P.A. He does civil trials, but occasionally helps-out behind the scenes with criminal trials. He is a past president of the UNMSOL Alumni Board and the Albuquerque Bar Association. Serving on the Board of Bar Commissioners is another and different way that Steve serves the members of the Bar. Since graduating from UNMSOL in 1989, he spent a lot of free time “paying it forward” by teaching trial practice, evidence and deposition skills classes and coaching mock trial teams. Steve and Chris raised their two kids here, and they are raising theirs here as well. In addition to doing law stuff, they restored and use two vintage ‘50s camp trailers, drive a 1929 Model A Roadster and boat-camp. Life is Good.



Lucy H. Sinkular

President-Elect

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3rd and 6th JUDICIAL DISTRICTS

(Dona Ana, Grant, Hidalgo, and Luna Counties)



Amy B. Bailey

575-339-2100 • abailey@newmexicolegalgroup.com

Amy B. Bailey is a graduate of the New Mexico School of Law and brings nearly 20 years of experience to the practice of divorce and family law. Amy is a qualified mediator and accomplished litigator. She primarily handles cases in southern New Mexico in the areas of divorce, custody, property division, retirement benefits, alimony and spousal support, and all other areas of divorce and family law. She also serves the 3rd judicial district on their pro bono committee and previously on the Southern New Mexico Bar Association. Amy also serves the court as a Guardian ad Litem in family, probate, guardianship, and mental health proceedings, as well as a special master in various areas of litigation.



Connie J. Flores

575-303-9999 • cflores@floresmendez.com

Connie J. Flores is a partner at Flores Mendez, P.C., specializing in personal injury law, including death cases, semi-truck and automobile accidents, workplace injuries, premises liability, and Dram Shop actions. She is driven by a passion for advocating for clients who have been unjustly treated by insurance companies, ensuring they receive fair representation. Fluent in Spanish, Ms. Flores is particularly focused on assisting clients with language barriers, empowering them to effectively communicate their legal issues.

She graduated from the University of Denver and the University of New Mexico School of Law (UNMSOL) in 2008, gaining admission to practice in New Mexico, Texas, and Arizona in subsequent years. In addition to her legal work, Ms. Flores is committed to community involvement and mentorship. As a teenage mother, she speaks at local high schools about teenage pregnancy, encouraging young parents to continue their education and pursue higher learning. Her community service illustrates her belief in the importance of giving back and uplifting those around her.



Chrystian J. Gonzalez

575-373-6490 • chrystian@cjgonzalezlaw.com

Chrystian J. Gonzalez is a Children's Court Attorney for the New Mexico Children, Youth, and Families Department's Las Cruces office. He previously worked as a mediator, social security disability representative, and Assistant District Attorney, before moving on to private practice as a family and civil law attorney. He also currently serves as Treasurer for the Southern New Mexico Bar Association and has been recognized for his contributions to pro bono work in the southern New Mexico region. Chrystian is a graduate of the Texas Tech University School of Law and the University of Texas at Austin. Prior to his studies, he also served as an enlisted member of the United States Air Force, where he supported various post-9/11 military operations overseas. In his off-time, Chrystian devotes his time to his family, completing DIY home projects, and serving as vice president of his local International Lions Club chapter. Chrystian brings his diligence, determination, and tenacity to every matter, while also striving to uphold the integrity of the legal profession.

4th and 8th JUDICIAL DISTRICT (Guadalupe, Mora, San Miguel, Colfax, Taos, and Union Counties)

Brett Phelps

505-425-5129 ● phelpslawoffice@gmail.com



Brett Phelps became a lawyer to help legalize cannabis and end the drug war, and he is now the owner of the Phelps Law Office in Las Vegas, New Mexico. His practice now focuses primarily on criminal defense. Brett previously served on the Board of the Cannabis Law Section and currently serves as the Secretary of the New Mexico Criminal Defense Lawyer's Association. He also acts as General Counsel for Students for Sensible Drug Policy, where he is fighting the DEA in the scheduling of research chemicals. Outside the courtroom he advocates for criminal justice reform and psychedelic policy. In his spare time, Brett enjoys alpine skiing, backpacking, and tending his organic garden.

5th JUDICIAL DISTRICT (Chaves, Eddy, and Lea Counties)

Parker B. Folsom

575-622-6510 ● pfolsom@hinklelawfirm.com



Parker Folsom is a partner in the Roswell office of Hinkle Shanor LLP. He is a graduate of University of Texas at Dallas, B.A. Political Science, and the University of Oklahoma School of Law, J.D. Parker primarily assists commercial clients in litigation matters in both State and Federal Courts at both the district and appellate levels. Parker was admitted to practice law in New Mexico in 2011 and is a member of the Chaves County Bar Association, the New Mexico Defense Lawyer's Association, and the Defense Research Institute. Parker also serves on the Roswell Museum and Art Center Foundation Board, the Roswell-Chaves County Economic Development Corporation Board, and the Immanuel Lutheran Church Council. He enjoys exploring New Mexico's mountains with his wife, Robin, and daughter, Evelyn.

7th and 13th JUDICIAL DISTRICT (Catron, Cibola, Sandoval, Sierra, Socorro, Torrance, and Valencia Counties)

Joshua Rubin

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Josh Rubin is the Rio Rancho City Attorney. Together with the other members of the City Attorney's Office, he provides legal advice and representation in a variety of legal matters and is part of the city's senior leadership team. Prior to working for the City of Rio Rancho, he was a felony prosecutor at the Second Judicial District Attorney's Office prosecuting a wide range of crimes on behalf of the State. Josh is a graduate of the University of New Mexico, with a B.B.A in finance from the Anderson School of Management and a J.D from the UNM School of Law. Recently, he took on a new challenge becoming an adjunct law professor at the UNMSOL co-teaching a class focused on New Mexico transparency laws and 1st Amendment protected activity. He has served as the president of the New Mexico Municipal Attorneys' Association for the past two years and volunteers as an "attorney coach" for a high school mock trial team. Outside of work, Josh enjoys spending time with his wife (who is also an attorney) and son, traveling, and watching/playing sports.

Simone M. Seiler

505-287-8831 x3112 ● berdSMS@nmcourts.gov



Simone M. Seiler is the special commissioner for the Thirteenth Judicial District Court in Cibola County. She is a 2006 graduate of the University of New Mexico School of Law. In 2007, she passed the patent bar and began representing clients before the United States Patent & Trademark Office. Simone spent the first half of her legal career working for a private civil and intellectual property law firm, and the second half working for the Human Services Department and the Thirteenth Judicial District Court. She is past chair of the State Bar of New Mexico Intellectual Property Section and served on the boards of the Animal Law Section and the New Mexico Women's Bar Association.

9th and 10th JUDICIAL DISTRICT

(Curry, Roosevelt, DeBaca, Harding, and Quay Counties)



Mitchell L. Mender

575-265-5333 ● Mitch@larsenandmender.com

Mitchell L. Mender is a founding partner of The Law Offices of Larsen and Mender P.C., located in Clovis, NM. His practice focuses primarily on criminal law, family law, and personal injury. Mitch is a graduate of Brigham Young University. He graduated from Vermont Law School in their accelerated Juris Doctorate program. He started his career as a prosecutor with the Ninth Judicial District Attorney's Office, where he was awarded prosecutor of the year for the District in 2018 and 2019. Subsequently, he worked at the New Mexico Law Offices of the Public Defender where he represented indigent clients. Additionally, he sits on the Board of Directors for the Hartley House, the local domestic violence shelter. He and his wife, Robyn, enjoy traveling and spending time with their three children.

11th JUDICIAL DISTRICT

(McKinley and San Juan Counties)



Felisha Adams

505-303-0139 ● businesslawpolicy@gmail.com

Felisha Adams is a licensed attorney within New Mexico and the Navajo Nation. Felisha earned her JD from the University of New Mexico School of Law and graduated with honors from Diné College with a BA in Business Administration and Tribal Economic Development. She is a member of the Navajo Nation. Ms. Adams established and manages Business Law & Policy Advisors and I Am The Biz, both dedicated to her passion to help improve the quality of life through business, culture, education, family, and law.

12th JUDICIAL DISTRICT

(Lincoln and Otero Counties)



Sarah Patterson

575-378-3788 ● sarah@truittlegalgroup.com

Sarah Patterson is managing attorney at Lauren E.A. Truitt, P.C. in Ruidoso, New Mexico where she practices family, landlord/tenant, domestic violence, estate planning, probate, criminal (specifically traffic tickets), and contract law. Sarah was born and raised as a fifth-generation cattle rancher before she decided to attend Texas Tech University School of Law. She is a three-time published author for the Progressive Cattle magazine and a previous legal researcher for the National Agricultural Law Center. Outside of the law office Sarah enjoys spending time with her family, working on the ranch, and (in the summer months) tending to her flowers or garden.

OUT-OF-STATE DISTRICT

Dylan O'Reilly

505-898-9614 ● doreilly@mstlaw.com

Dylan O'Reilly is a shareholder/director at Miller Stratvert, P.A. where he handles transactions, real estate matters and commercial litigation. A New Mexico native, Mr. O'Reilly practiced in Farmington and Albuquerque before settling in Santa Fe in 2015. Mr. O'Reilly earned his J.D. from the University of New Mexico School of Law after attending Oberlin College. Mr. O'Reilly is a former chair of the state bar's business law section, and was the section's Business Lawyer of the Year in 2013. In 2021 he was appointed by the Supreme Court to the New Mexico Board of Bar Examiners.

YOUNG LAWYERS DIVISION CHAIR

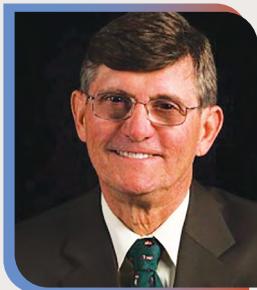


Taylor K. Duffney

505-246-0120 • taylor.duffney@bblc.law

Taylor K. Duffney was born and raised in Albuquerque, New Mexico. She is an Associate Attorney at Briones Business Law Consulting, P.C. Taylor received her undergraduate degree from Arizona State University but chose to return home to attend law school and practice law in New Mexico. While attending law school, Taylor recognized her love for business law early on and joined the student chapter of the Business Law Section of the New Mexico Bar. Taylor joined Briones Business Law Consulting P.C. as a law clerk during her 3L year of law school and joined as an Associate Attorney after passing the New Mexico Bar. She is also licensed to practice in Arizona.

SENIOR LAWYERS DIVISION DELEGATE



Daniel J. Behles

505-238-0208 • djbehles@gmail.com

Dan Behles has been a New Mexico attorney since 1970, and is now semi-retired. He graduated from the University of Notre Dame, and received his J.D. degree from the University of New Mexico. He has practiced in New Mexico for over 50 years, concentrating in bankruptcy. He has represented debtors, creditors, trustees and committees, and has been a Chapter 7 and Chapter 11 Trustee. He is a member of the Subchapter V panel of trustees for small business reorganizations, and currently limits his practice to serving as a trustee. He sits on the board of directors of the Senior Lawyer's Division, and has been a Southwest Superlawyer for over 10 years.

PARALEGAL DIVISION LIAISON



Ellice Goldstein

505-273-3113 • ellice@lpmfamilylaw.com

Ellice Goldstein is a family law paralegal with approximately 28 years of experience as a paralegal. Ellice graduated with Honors from Albuquerque Technical Vocational Institute with an Associate Degree in Legal Assistant Studies in 1998 and Cum Laude from Austin Peay State University with a Bachelor of Science in Political Science. Ellice has been a member in good standing with the NM State Bar Paralegal Division on and off since 1998. In her current role with Larkin Padilla McDougall Family Law, she assists clients with all phases of their domestic relations cases. She is currently the Chair of the NM State Bar Paralegal Division. Ellice enjoys volunteering at community legal fairs like Law-La-Palooza and Peter H. Johnstone Day. When not working, you can find Ellice at the gym, walking her two dachshunds or with her grandchildren.

Get involved with the State Bar of New Mexico!

**Are you looking for a way to be more involved with the
State Bar and gain leadership experience?**

Consider applying for an appointment to serve on one of the many N.M. Supreme Court boards, committees and commissions to which the Board of Bar Commissioners makes appointments. Look for notices regarding vacancies in the *Bar Bulletin* and in *ENews* throughout the year. In the fall, look for information about the commissioner elections. For more information about the Board, contact your district bar commissioner or the State Bar of New Mexico.

bbc@sbnm.org • 505-797-6038

Please email notices desired for publication to notices@sbnm.org.

COURT NEWS

New Mexico Supreme Court

Rule-Making Activity

To view recent Supreme Court rule-making activity, visit the Court's website at <https://supremecourt.nmcourts.gov>. To view all New Mexico Rules Annotated, visit New Mexico OneSource at <https://bit.ly/NM-Rules>.

Supreme Court Law Library

The Supreme Court Law Library is open to the legal community and public at large. The Library has an extensive legal research collection of resources. The Law Library is located in the Supreme Court Building at 237 Don Gaspar in Santa Fe. Building hours: Monday-Friday 8 a.m.-5 p.m. (MT). Library Hours: Monday-Friday 8 a.m.-noon and 1-5 p.m. (MT). For more information call: 505-827-4850, email: libref@nmcourts.gov or visit: <https://lawlibrary.nmcourts.gov>.

First Judicial District Court

Notice of Destruction of Exhibits in Criminal, Sequestered Miscellaneous and Civil Cases

1973 to 2010

Pursuant to the Supreme Court ordered Judicial Records Retention and Disposition Schedules and Rule LR1-113 NMRA, the First Judicial District Court will destroy exhibits filed with the court, in Criminal, Sequestered Miscellaneous and Civil cases within the years 1973 to 2010 included but not limited to cases that have been consolidated. Cases on appeal are excluded. Counsel representing parties with exhibits admitted within the applicable case date range and seeking retrieval prior to final disposition may contact the Court Clerk's Office at 505-455-8274 to verify exhibit information during regular business hours (8 a.m. to 5 p.m. (MT), Monday through Friday) through March 15. Plaintiff exhibits will be released to counsel of record for the plaintiff(s) and defendant(s) exhibits will be released to counsel of record for the defendant(s) by Order of the Court. All exhibits will be released in their entirety. Exhibits not claimed by the specified date

Professionalism Tip

With respect to the public and to other persons involved in the legal system:

I will commit to the goals of the legal profession, and to my responsibilities to public service, improvement of administration of justice, civic influence, and my contribution of voluntary and uncompensated time for those persons who cannot afford adequate legal assistance.

will be considered abandoned and will be destroyed by Order of the Court.

First Judicial District Judicial Nominating Commission

Announcement of Candidates

The First Judicial District Judicial Nominating Commission reconvened on Jan. 16 at the First Judicial District Court, located at 225 Montezuma Avenue, Santa Fe, N.M. to interview and evaluate six (6) applicants for the vacancy on the First Judicial District Court resulting from the retirement of the Hon. Shannon Broderick Bulman, effective Jan. 1. The Commission recommends the following applicants: **Elizabeth K. Allen, Jennifer Jean Burrill, Todd A. Coberly, Scott Fuqua and Michael Alexander Nunez.**

Third Judicial District Court

Notice of Destruction of Exhibits

Pursuant to the New Mexico Judicial Retention and Destruction Schedules, the Third Judicial District Court in Las Cruces, New Mexico will destroy exhibits filed with the Court in civil cases for the years of 1996 to 2024. Cases on appeal are excluded. Parties and their attorneys are advised that exhibits may be retrieved until March 30, 2026. Should you have cases with exhibits, please verify exhibit information with the Court by calling at (575) 528-8357 from 8 a.m. to 4 p.m. (MT), Monday through Friday. All exhibits will be released in their entirety. Exhibits not claimed by March 30 will be considered abandoned and will be destroyed by Order of the Court.

U.S. District Court, District of New Mexico

Notice for Reappointment of Incumbent United States Magistrate Judge

The current term of office of Part-Time United States Magistrate Judge Barbara Smith Evans is due to expire on Sept. 10. The United States District Court is required by law to establish a panel of citizens to consider the reappointment of the magistrate judge to a new four-year term. The duties of a magistrate judge in this court include the following: (1) presiding over most preliminary proceedings in criminal cases, (2) trial and disposition of misdemeanor cases, (3) presiding over various pretrial matters and evidentiary proceedings on delegation from a district judge, (4) taking of felony pleas, and (5) trial and disposition of civil cases upon consent of the litigants. Comments from members of the bar and the public are invited as to whether either incumbent magistrate judge should be recommended by the panel for reappointment by the court. Comments may be submitted by email to:

MJMS@nmcourt.uscourts.gov.

Questions or issues may be directed to Lucy Carruthers at 505-348-2126. Comments must be received by Feb. 27.

Notices

STATE BAR NEWS

License Renewal and MCLE Compliance Due Feb. 2, 2026

State Bar of New Mexico annual license renewal and Minimum Continuing Legal Education requirements are due Feb. 2. For more information, visit www.sbnm.org/compliance. To complete your annual license renewal and verify your MCLE compliance, visit www.sbnm.org/mydashboard. For questions about license renewal and MCLE compliance, email license@sbnm.org. For technical assistance accessing your account, email techsupport@sbnm.org.

New Mexico Lawyer Assistance Program

The Other NM Bar Meeting

The New Mexico Lawyer Assistance Program proudly presents to you The Other NM Bar Meeting, which is a confidential traditional 12-step meeting for legal professionals. Open to all lawyers, law students, judges and other legal professionals, the meeting's purpose is to provide a safe space for people to support one another in their desire to stop drinking and using. The Other NM Bar Meeting meets in person every Thursday evening from 5:30 to 6:30 p.m. (MT) at the First Unitarian Church, located at 3701 Carlisle Blvd. NE, Albuquerque, N.M. 87110. For those unable to make it in person, there will be an option to join telephonically in the future. For more information about The Other NM Bar Meeting, email NMLAP@sbnm.org.

Monday Night Attorney Support Group

The Monday Night Attorney Support Group meets at 5:30 p.m. (MT) on Mondays by Zoom. This group will be meeting every Monday night via Zoom. The intention of this support group is the sharing of anything you are feeling, trying to manage or struggling with. It is intended as a way to connect with colleagues and to know you are not in this alone. Join the meeting via Zoom at <https://bit.ly/attorneysupportgroup>.

UNM SCHOOL OF LAW

Law Library Hours

The Law Library is happy to assist attorneys via chat, email or in person by appointment from 8 a.m. to 6 p.m. (MT) Monday through Friday. Though the Library no longer has community computers for visitors to use, if you bring your own device when you visit, you will be able to access many of our online resources. For more information, please see <https://lawlibrary.unm.edu/>.

OTHER NEWS

Center for Civic Values

Judges Needed for Gene Franchini High School Mock Trial Competition

The Gene Franchini New Mexico High School Mock Trial Competition is seeking volunteer judges for its qualifier rounds Feb. 20 - 21 in Albuquerque, N.M. This hands-on experience builds critical thinking, confidence and a deeper understanding of the justice system. Tentative participants may sign up at:

registration.civicvalues.org/mock-trial/registration. The mock trial requires 100 judges per round. Volunteers may earn CLE credits for their participation in the event. The deadline for registration is Feb. 4. For questions, contact Kristen at the Center for Civic Values at 505-764-9417 or Kristen@civicvalues.org.

N.M. Legislative Council Service Legislative Research Library Hours

The Legislative Research Library at the Legislative Council Service is open to state agency staff, the legal community and the general public. We can assist you with locating documents related to the introduction and passage of legislation as well as reports to the legislature. Hours of operation are Monday through Friday, 8 a.m. to 5 p.m. (MT), with extended hours during legislative sessions. For more information and how to contact library staff, please visit: <https://bit.ly/NMLegisLibrary>.

Featured Member Benefit

LEX Reception

LEX Reception is a 24/7 legal answering service built on one simple belief: people always come before bots. We help attorneys stay accessible around the clock with real, legally dedicated receptionists who answer every call with empathy and consistency. LEX helps these firms improve their responsiveness, capture more leads, and build trust through consistent, 24/7 human availability.

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https://www.lexreception.com/register?offer=8008&utm_source=partnership&utm_medium=sbnm&utm_campaign=directory

Now Announcing:

THE YOUNG ATTORNEY VOICES SERIES!

Tell Your Story - Inspire Your Peers!

*** ARE YOU A NEW ATTORNEY IN NEW MEXICO? DO YOU KNOW ANY NEWCOMERS IN THE PROFESSION?**

Young Attorney Voices is a brand-new series giving new attorneys the opportunity to answer questions pertaining to their experiences as legal professionals and be featured in the *Bar Bulletin* and the State Bar of New Mexico's social media!

*** PARTICIPATING IS EASY!**

Each installment of the Young Attorney Voices series will include a randomized single question about your experiences in the legal field, which will range from the challenges you faced when you first entered law practice to your most rewarding moments as a practicing attorney. Submissions may be sent in writing or as a video.

To participate, visit <https://form.jotform.com/sbnm/young-attorney-voices> and follow the instructions to submit your answer to the question for review.

Written submissions will be featured in the *Bar Bulletin*, and video submissions will be transcribed for the *Bar Bulletin* and posted to the State Bar of New Mexico's Instagram, LinkedIn, Facebook and X profiles.



The State Bar of New Mexico reserves the right to edit submissions for any reason, including for volume and length. All submissions will be reviewed, approved and posted by the State Bar of New Mexico.

For questions regarding this series, please contact notices@sbnm.org.



State Bar of New Mexico
Young Lawyers Division

A Tribute to **Peggy B. Jones, CLAS**

January 11, 1934 – September 21, 2025

By Judge Michael Bustamante



Thirty years ago the New Mexico Supreme Court amended its Rule 24-101 to create the “Legal Assistant Division” of the State Bar. This signal event came about as the result of a sustained six-year effort started by a small group of women who were convinced that the work they were doing for and with lawyers need to be formally folded into the fabric of the Bar.

That small group of women was led by Peggy Jones—a dear friend of mine for over fifty years. Perhaps by cosmic coincidence, Peggy passed away this year. I write to fill out the record of her efforts because—and this is not hyperbole—without her vision and leadership it is likely the Court would not have entered its order in 1995.

Peggy started in 1973 at Ortega, Snead & Dixon working with the firm’s transaction partner. When that partner retired, she stayed to work with Bill Snead in his litigation practice. Keen to learn this new area of practice, Peggy was soon doing much more than clerical work. Ever observant, Peggy also took increasing note of the type of work other firms labelled “legal assistance.” And, she started to meet other legal assistants as she worked on cases. Peggy and her friends became increasingly concerned that the concept of the legal assistant was being diluted to the detriment of the work and the professional status of persons like her and her friends. Peggy had tested for and received certification from a national volunteer association of legal assistants in 1985, but she realized that only an institutional connection with the Bar could adequately address the problem.

By 1989, Peggy had settled on the idea that legal assistants should be allowed membership in the Bar Association—an audacious idea at the time. Peggy gathered a few of her fellow legal assistants to help craft a proposal to the Bar and the Supreme Court for the creation of a new division of the Bar. The original documents are lost to time, but they must have been well done because the Board of Bar Commissioners accepted the proposal. The Supreme Court was not as receptive. Concerned about the lack of details about how the division would be administered, the Supreme Court denied the proposal. Justice Franchini—later a champion of the idea—suggested that the group create a formal entity that would develop the missing design details.

Undaunted, Peggy and her cadre created the New Mexico Alliance of Professional Paralegals [the Alliance]. Peggy was “adamant” that the Alliance be organized such that its structure could be moved seamlessly into the Bar when the division was created. That approach required that the group create all of the governing documents for

an entity that would exist only in the future. They worked many hours to write bylaws, standing rules, ethics canons, applications for membership, CLE requirements, and election procedures. Their work product was eventually used by the Division.

Creating internal procedures was the least of the tasks that lay ahead before Peggy’s idea came to fruition. The four-year period from the creation of the Alliance to the Court’s final acceptance of the proposal was crammed with committee work required by the Bar, including statewide surveys of paralegals and lawyers, studies of activities in other states, internal—sometimes contentious—conversations concerning the education and CLE requirements to be included, and an exploration of the feasibility of regulating legal assistants. The work required a tremendous amount of time, persistence, and attention. Things did not always go smoothly. For example, though the Board of Bar Commissioners had generally been supportive of the project, at one meeting a prominent member asserted that there could never be a legal assistant’s division because they were not lawyers. That event came to be called by Peggy’s cadre as the “Wednesday Night from Hell.” Peggy’s team was discouraged after that meeting, but not Peggy. She propped everyone up and carried on through it all.

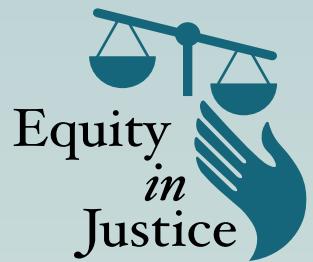
And through it all Peggy’s aim and determination did not waiver. She provided a steady hand and a calming voice, as well as practical, workable suggestions about how to deal with the problem *de jour*. It also helped that Peggy knew when and how to use her dry wit and sense of humor to ease tensions. Peggy’s resolve and ability to inspire people provided a path for people to follow—and follow they did. Shiloh Napier summed it up best in her remarks at the end of Peggy’s term as first Chair of the Division when she said “...because of her vision and her drive, and because of who she is, Peggy has rallied many of us to her side and together we have prevailed.”

“Who she is” is the crux of Shiloh’s statement. Peggy was a quiet person. I never heard her raise her voice. She never demanded that anything of anyone. She never ordered anyone to do anything. She never demanded respect or fealty; she commanded it because of who she was. People followed her because of the strength of her personality and her ideas. She would be the first to give credit to those around her. She would blush at this paean and insist that I also give credit to them. It takes nothing away from those who followed her to say that Peggy was the driving force behind the effort. They would—and do—agree. We all owe Peggy a debt of gratitude. ■

Judge Michael Bustamante served on the New Mexico Court of Appeals from 1994 until his retirement in 2016. Prior to being a judge, he was in private practice for 20 years and advocated for the creation of a division of the State Bar for legal assistants.

*The Supreme Court officially approved a change of the name “Legal Assistants Division” to “Paralegal Division” in 2004 to recognize the evolving distinction between the terms “legal assistant” and “paralegal.” The Division remains one of only a handful of state bar paralegal divisions throughout the country and continues to promote the paralegal profession in cooperation with the State Bar of New Mexico and members of the legal community.

An Inclusive Interview



with Judge Jannette Mondragón



The mission of the State Bar of New Mexico's Equity in Justice Program is to cultivate and grow a legal profession in New Mexico that is representative of and reflective of the people of New Mexico. As part of that mission, we bring you the series "Inclusive Interviews." We call these *inclusive* interviews both as a play on words and as a contrast to the term "Exclusive Interview."

Because legal employers with inclusive hiring and employment practices have a bigger talent pool from which to hire and access to a larger client base, these interviews serve to amplify that growing and cultivating inclusivity and belonging in our profession is beneficial to all legal employers; be they private firms, government entities or nonprofits.

This *Inclusive Interview* is with Judge Jannette Mondragón. Judge Mondragón has been practicing law since 2018 and is currently a Doña Ana County Magistrate Court.

Q: What is your background?

A: Before law school, I worked as a caseworker for Child Protective Services and later as an HIV Specialist with Planned Parenthood in El Paso. After graduating, I joined the 13th Judicial District Attorney's Office

I later transitioned to a nonprofit focused on immigration detention work, where I helped secure the release of approximately 42 individuals with serious medical conditions.

I then served as a case enforcement attorney with the Child Support Services Division, working to ensure New Mexico children received the financial support they were entitled to.

Today, I serve as a magistrate court judge in Doña Ana County. I've heard thousands of cases—magistrate court is truly the people's court, handling roughly 90% of the public's first contact with the judiciary. I preside over jury trials, bench trials, and preliminary hearings in felony cases, along with landlord-tenant matters, general civil disputes involving \$10,000 or less, traffic cases, code-enforcement violations, and lower-level misdemeanors.

Q: What made you want to become a judge?

A: I always knew I wanted to work in the legal system—as a lawyer and eventually as a judge. A personal experience ultimately set that path in motion. I was hit by a vehicle as a pedestrian, and when I testified in court, I felt ignored until I mentioned that I was an attorney. That moment stayed with me. No one should be treated that way, and no one should need a title to be heard or respected.

I wanted to create a courtroom where every person—regardless of background—is treated with dignity, heard fully, and guided fairly through the process. I draw on my lived experiences as an enrolled member of the Chickasaw Nation, a first-generation Mexican-American woman, a mother, a former caseworker, and someone who grew up in difficult circumstances. Those experiences help me foster a courtroom environment that is inclusive, respectful, and grounded in fairness.



Q: What has been your greatest accomplishment in your legal career or of what in your legal career are you the most proud?

A: I am incredibly proud to be the first Native American judge to serve in the Third Judicial District. Native American attorneys make up less than 1% of the Bar, so bringing that representation and perspective to the bench is meaningful to me and to the communities I serve.

I am also proud of creating space for Indigenous culture within the judiciary. At my second swearing-in, members of the Pueblo of Tortugas offered a blessing, and my sister sang an honor song—traditions rarely seen in judicial spaces. Bringing cultural visibility and honoring those traditions in the courtroom is something that means a great deal to me.

Q: Who is one of your heroes in the legal profession?

A: Barbara Romo is one of my greatest role models. She is a veteran, was a caregiver to a disabled veteran, and a leader who exemplified compassion and balance. She made it clear that family responsibilities would never jeopardize our jobs, and she taught that justice isn't always prosecution—sometimes justice is mercy.

When I raised concerns about inappropriate law-enforcement behavior toward Native Americans in a DWI case, she listened, validated my concerns, and turned it into a teaching moment for the entire office. She modeled accountability, professionalism, integrity, and what true justice looks like in practice.

Q: What advice do you have for new lawyers from diverse backgrounds?

A: First, stay grounded in your community. Those are the people who will support you through difficult moments—whether you need to vent, seek advice, or navigate challenging situations.

Early in my career, a defense attorney grabbed me by the hips and moved me aside in the courtroom. I was stunned and didn't know how to respond. Talking it through with attorneys from my community helped me decide how to address it appropriately. Community support is essential—make sure you have it.

Second, stay open to opportunities. Don't box yourself in. Be flexible, take risks, and don't fear failure or being told "no." Growth often comes from trying again.

Finally, make space for others. Stick your elbows out and create room at the table for more diverse voices.

Q: What can the legal profession in New Mexico do to be more inclusive?

A: New Mexico is more intentional and welcoming than many jurisdictions, and I believe we do a strong job overall. That said, there is always room for improvement.

One major challenge is language access. We do not have enough interpreters statewide, which leads to delays, longer case timelines, and barriers to meaningful participation for non-English speakers.

We must also continue addressing hidden barriers in our system and work toward courts that are equitable, accessible, and ensure full and meaningful participation for everyone.

Q: If you could have one superpower, what would it be and why?

A: Teleportation. Flying would be nice, but teleportation would let me instantly be where I need to be. If my kid has a cross-country meet, I could finish work, take care of things at home, and appear there right on time—no rushing, no traffic, no stress.

Of course, the deeper answer would be the ability to create a perfect legal system—one that delivers true justice for all.

Interested in being the subject of an Inclusive Interview?

Contact SBNM Equity in Justice Attorney Abby Lewis at abby.lewis@sbnm.org.



Help Us Reach Our Goal!

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In Donations This Year

During License Renewal Season

Donating to the New Mexico State Bar Foundation is **EASY!** State Bar of New Mexico licensees can donate during license renewal by visiting www.sbnm.org/licensing



★ **100% of your donation to the New Mexico State Bar Foundation,**
a 501(c)(3) nonprofit organization, is tax deductible and supports Bar Foundation programs
that provide and promote access to civil legal services to underserved New Mexicans:

- ★ Each of the Bar Foundation's two legal helplines/referral programs have assisted in **over 3,400 cases** in fiscal year 2025, for a grand total of **over 6,800 cases** where assistance was provided! The two helplines are the **Modest Means Helpline** (MMH) for New Mexicans of limited financial means and the **Legal Resources for the Elderly Program** (LREP) for senior citizens in New Mexico.
- ★ **FREE Divorce Options** and **Consumer Debt/Bankruptcy Workshops** are monthly virtual legal workshops open to the public and presented by volunteer attorneys.

Have you met your pro bono obligation for the year?

Sign up to volunteer for MMH and LREP at <https://bit.ly/AttorneyVolunteerSignUp> or contact caitlin.cacerano@sbnm.org. Alternatively, donating to the State Bar Foundation will help you fulfill your pro bono obligation.

Other ways to support the New Mexico State Bar Foundation's programs:

- ★ Attend New Mexico State Bar Foundation Center for Legal Education's high quality, affordable educational programs for the legal community at cle.sbnm.org
- ★ Donations to the New Mexico State Bar Foundation are gratefully accepted year-round at www.sbnm.org/donate

For more information about donating to the New Mexico State Bar Foundation, contact nmsbfdevelopment@sbnm.org.



New Mexico State Bar Foundation

DIGITAL RESOURCE DESKBOOK 2026-2027

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State Bar of
New Mexico
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Legal Education Calendar

January

29	Basic Practices for Taking and Defending Depositions (LIVE REPLAY) 1.0 G Webinar NMSBF Center for Legal Education https://bit.ly/CLE-01292026-C	29	Trust and Estate Planning for Health Care, Part 1 1.0 G Teleseminar NMSBF Center for Legal Education https://bit.ly/CLE-01292026-B	30	Killers of the Flower Moon: The Osage Murders and How Attorneys Can Combat Bias 1.0 EIJ Webinar NMSBF Center for Legal Education https://bit.ly/CLE-01302026-B
29	Bryan Stevenson: 2025 Annual Meeting Keynote Address (Live Replay) 1.0 EIJ Webinar NMSBF Center for Legal Education https://bit.ly/CLE-01292026-D	30	Taking Risks and Breaking the Legal Writing Rules 2.0 G Webinar NMSBF Center for Legal Education https://bit.ly/CLE-01302026-B	30	What "A Letter from a Birmingham Jail" Teaches about Inclusion in the Law 1.0 EIJ Webinar NMSBF Center for Legal Education https://bit.ly/CLE-01302026-E
		30	What Movie & TV Lawyers Teach About Attorney Ethics 2.0 EP Webinar NMSBF Center for Legal Education https://bit.ly/CLE-01302026-D	30	Trust and Estate Planning for Health Care, Part 2 1.0 G Teleseminar NMSBF Center for Legal Education https://bit.ly/CLE-01302026-A

February

2	Trust in Estate Planning in 2026: Looking Forward 1.0 G Teleseminar NMSBF Center for Legal Education https://bit.ly/CLE-02022026-A	5	How Ethics Rules Apply to Lawyers Outside of Law Practice 1.0 EP Teleseminar NMSBF Center for Legal Education https://bit.ly/CLE-02052026-A	6	Collaborative Family Law 10.0 G, 0.5 EP Live Program University of New Mexico School of Law https://lawschool.unm.edu
3	eDiscovery for the Rest of Us: Introduction to Electronically Stored Information (ESI) - Part 4 1.0 G Webinar NMSBF Center for Legal Education https://bit.ly/CLE-02032026-B	5	2026 Fundamentals of Federal Criminal Defense Seminar 9.0 G Live Program Administrative Office of the US Courts https://www.uscourts.gov	9	2026 Ethics Update Part 1 1.0 EP Teleseminar NMSBF Center for Legal Education https://bit.ly/CLE-02092026-A
3	2026 AI Update 1.0 G Teleseminar NMSBF Center for Legal Education https://bit.ly/CLE-02032026-C	5	2026 Winning Strategies Seminar 13.0 G Live Program Administrative Office of the US Courts https://www.uscourts.gov	10	2026 Ethics Update Part 2 1.0 EP Teleseminar NMSBF Center for Legal Education https://bit.ly/CLE-02102026-A

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Disciplinary Quarterly Report

► Report By Disciplinary Counsel

<https://nmdisboard.org>

Reporting Period: September 30, 2025 – December 31, 2025

Final Decisions

Final Decisions of the NM Supreme Court 3

In the Matter of Henry Castillo, (No. S-1-SC-41080). The New Mexico Supreme Court entered a deferred suspension pursuant to Rule 17-206(A)(2) NMRA, effective November 17, 2025, for a period of twelve (12) months.

In the Matter of Anna M. Aragon, (No. S-1-SC-41166). The New Mexico Supreme Court entered a deferred suspension pursuant to Rule 17-206(A)(3) NMRA, effective November 25, 2025, for a period of no less than one year.

In the Matter of Sandra Gallagher, (No. S-1-SC-41094). The New Mexico Supreme Court entered a suspension pursuant to Rule 17-206(G) and 17-207(B)(4) NMRA, effective December 10, 2025.

Summary Suspensions

Total number of attorneys summarily suspended 0

Total number of attorneys summarily suspended (reciprocal) 0

Administrative Suspensions

Total number of attorneys administratively suspended 0

Disability Inactive Status

Total number of attorneys removed from disability inactive status 0

Charges Filed

Charges were filed against an attorney for allegedly bringing a claim the lawyer knows to be without merit, engaging in conduct that is prejudicial to the administration of justice.

Injunctive Relief

Total number of injunctions prohibiting the unauthorized practice of law 0

Reciprocal Discipline

Total number of reciprocal discipline filed 0

Reinstatement from Probation

Petitions for reinstatement filed 0

Public Censure

Total number of public censures 0

Formal Reprimands

Total number of attorneys formally reprimanded 0

Informal Admonitions

Total number of attorneys admonished 4

Letters of Caution

Total number of attorneys cautioned 7

Attorneys were cautioned for the following conduct: (2) lack of competence, (1) lack of diligence, (2) failure to communicate, (2) dishonesty, deceit, fraud misrepresentation, (1) improper means.

Complaints Received

Allegations No. of Complaints

Trust Account Violations	5
Discrimination	2
Conflict of Interest	8
Dishonesty, fraud, misrepresentation	29
Specifically prohibited conflicts	0
Neglect and/or Incompetence	78
Failure to Follow Client Instructions	1
Misrepresentation or Fraud	0
Improper Withdrawal	0
Breach of Confidentiality	1
Improper supervision	2
Fees	8
Improper Communications	0
Failure to Communicate	3
Improper statements about judge's integrity	0
Prosecutorial Misconduct	4
Improper Statements about Judge	3

Improper Means 6

Improper conduct with represented party 0

Criminal Conduct 1

UPL 0

Improper Trial Publicity 0

Lack of Fairness to Opposing Party/Counsel 13

Contact with Represented Party 2

Meritless Claims or Defenses 1

Lack of Diligence 0

Engaged in conduct prejudicial to admin of justice 1

Other 9

Disruption of Tribunal 3

Unauthorized practice of law 0

Total number of complaints received 250

*Denotes total number of complaints received through 12/31/2025. May differ from the total number reflected in allegations due to reporting timing.

Formal Reprimand

► From the Disciplinary Board of the New Mexico Supreme Court <https://hmdisboard.org>

Before the Disciplinary Board of the New Mexico Supreme Court

Disciplinary No. 2025-01-4588

**IN THE MATTER OF
Kevin J. Sanders, Esq.**

An Attorney Licensed to Practice Law
before the Courts of the State of New Mexico

FORMAL REPRIMAND

You are being issued this formal reprimand pursuant to the *Disciplinary Board Panel's Decision and Order* of November 17, 2025, after a hearing was held on the merits in this matter before a Disciplinary Board Hearing Committee on September 11, 2025.

You violated the following Rules of Professional Conduct:

- 16-101, by failing to provide competent representation to a client;
- 16-103, by failing to act with reasonable diligence and promptness in representing a client;
- 16-104(A)(4), by failing to promptly comply with reasonable requests for information;
- 16-302, by failing to make reasonable efforts to expedite litigation consistent with the interests of the client;
- 16-801(B), by knowingly failing to respond to a lawful demand for information from a disciplinary authority; and
- 16-803, by failing to give full cooperation and assistance to disciplinary counsel in discharging the lawyer's respective functions and duties with respect to discipline, and disciplinary procedures.

You have been licensed to practice law in New Mexico since 2016. At all relevant times hereto, you lived in Albuquerque but maintained an office in Tucumcari, where your practice included representing defendants in criminal cases pending in Quay County. Between July

of 2023 and April of 2024, you failed to appear at four scheduled hearings in three cases where you were counsel for the defendants. In each instance, the Court emailed proper notices of hearing to you, and you failed to give notice to the Court that you would not appear. You claimed you did not receive the notices for these four hearings because you changed your business email address and failed to advise the Court of your changed email address.

In November of 2024, the Court emailed you a notice of hearing in a case where you were counsel for the defendant. You failed to appear at this hearing and failed to advise the Court that you would not be attending. You claimed that you did not attend this hearing because both you and your son were ill.

A disciplinary hearing before a Disciplinary Board Hearing Committee was held on September 11, 2025, beginning at 9:00 a.m. You also had two hearings set in Quay counsel for cases wherein you were counsel, one set to begin at 10:00 a.m., and the other set to begin at 11:00 a.m. Although you should have known the disciplinary hearing, which had four people identified as potential witnesses, might have made it impossible for you to attend the Quay County hearings, you failed to arrange for coverage for those hearings or seek continuances. You stated to the Disciplinary Board Hearing Committee that if the disciplinary hearing continued past 10:00 a.m., you would simply miss the Quay County hearings.

You were also found to have acted negligently, but not intentionally, by your failure to properly notify the court of changes to your business email and by failing to discuss hearing coverage with your Succession Plan designee to cover hearings in the event you were unavailable.

With respect to investigation of the disciplinary complaint against you, by your lack of a timely response and failure to comply with reasonable requests for information, including producing relevant fee agreements, you failed to cooperate with disciplinary counsel.

In addition to ordering a Formal Reprimand, the Disciplinary Board Panel imposed supervised probation for one year, during which the supervising attorney will coach and counsel you on both office management and obligations to the courts and disciplinary process. Also, you must pay the costs of this proceeding; take the State Bar's mandatory trust accounting and succession planning training; and submit quarterly progress reports regarding your supervised probation to the Disciplinary Board.

While mitigating factors in your practice were considered, you are reminded that as an attorney your law license requires that, despite whatever challenging circumstances might be present, you must comport yourself professionally and within the confines of the Rules of Professional Conduct. You are hereby formally reprimanded for these acts of misconduct pursuant to Rule 17-206(A)(5) of the Rules Governing

Formal Reprimand

► From the Disciplinary Board of the New Mexico Supreme Court

<https://nmdisboard.org>

Discipline. This formal reprimand will be filed with the Supreme Court in accordance with Rule 17-206(D) and will remain part of your permanent records with the Disciplinary Board, where it may be revealed upon any inquiry to

the Disciplinary Board concerning any discipline ever imposed against you. In addition, in accordance with Rule 17-206(D), the entire text of this formal reprimand will be published in the State Bar of New Mexico *Bar Bulletin*.

Dated January 9, 2026

The Disciplinary Board of the New Mexico Supreme Court

By

David J. Stout, Esq.
Board Chair

Formal Reprimand

► From the Disciplinary Board of the New Mexico Supreme Court <https://hmdisboard.org>

Before the Disciplinary Board of the New Mexico Supreme Court

Supreme Court No. S-1-SC-41094

Disciplinary No. 2024-10-4583

**IN THE MATTER OF
Sandra E. Gallagher, Esq.**

An Attorney Suspended

Before the Courts of the State of New Mexico

FORMAL REPRIMAND

You are being issued this formal reprimand pursuant to a *Conditional Agreement Admitting the Allegations and Consent to Discipline*, which was approved by a Disciplinary Board Hearing Committee and a Disciplinary Board Panel, and pursuant to a December 10, 2025, *Order* of the New Mexico Supreme Court revoking the deferral of this formal reprimand.

You have agreed that the facts, as pleaded in the Specification of Charges demonstrate violations of the following Rules of Professional Conduct:

- Rule 16-803(D) – by failing to give full cooperation and assistance to the disciplinary board and disciplinary counsel in discharging the lawyer's respective functions and duties with respect to discipline and disciplinary procedures.

This disciplinary matter arose out of two (2) complaints from two (2) incarcerated clients you represented under contract with the Public Defender's Office. In order to comply with its mandated obligation to conduct a full investigation under the Rules Governing Discipline, disciplinary counsel must have a sufficient basis to conclude that no misconduct occurred. Disciplinary counsel was obligated to do a full investigation of both complaints filed against you, and was conducting that investigation in full accordance with the Rules Governing Discipline, and without evidence of any improper motive on

the part of either of the complainants. During the investigation of the two (2) complaints against you, disciplinary counsel repeatedly asked you for your responses to the complaints, and you failed to respond, which subsequently led to the filing of the Specification of Charges against you on October 10, 2024, for violating Rule 16-803(D), NMRA.

You subsequently entered into a *Conditional Agreement Admitting the Allegations and Consent to Discipline* wherein, on March 17, 2025, the Disciplinary Board deferred this formal reprimand and you were placed on supervised probation for one year, with conditions including: (observing and complying with the Rules of Professional Conduct and the Rules Governing Discipline, (2) payment of costs of the disciplinary proceeding within fifteen (15) days of receipt of the statement of costs, and (3) meeting with your supervising attorney and providing monthly reports to disciplinary counsel.

Following the Disciplinary Board's March 17, 2025, order, four (4) complaints were filed with the Office of Disciplinary Counsel against you, which you again failed to respond to for months, despite multiple requests from disciplinary counsel for your responses. In addition, you failed to timely pay the costs of the disciplinary proceeding and failed to submit the required monthly reports to disciplinary counsel. The Supreme Court ultimately ordered that the deferral this

formal reprimand be revoked and that your supervised probation be lifted, and you were suspended, effective December 8, 2025, for a period of no less than six (6) months.

While mitigating factors in your practice were considered, you are reminded that as an attorney your law license requires that, despite whatever challenging circumstances might be present, you must comport yourself professionally and within the confines of the Rules of Professional Conduct. You are hereby formally reprimanded for these acts of misconduct pursuant to Rule 17-206(A)(5) of the Rules Governing Discipline. This formal reprimand will be filed with the Supreme Court in accordance with 17-206(D) and will remain part of your permanent records with the Disciplinary Board, where it may be revealed upon any inquiry to the Disciplinary Board concerning any discipline ever imposed against you. In addition, in accordance with Rule 17-206(D), the entire text of this formal reprimand will be published in the State Bar of New Mexico *Bar Bulletin*.

Dated: January 9, 2026

The Disciplinary Board of the New Mexico Supreme Court

By
David J. Stout, Esq.
Disciplinary Board Chair

► From the New Mexico Supreme Court

From the New Mexico Supreme Court

Opinion Number: 2025-NMSC-021
No. S-1-SC-39841 (filed April 7, 2025)

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
MAWU EKON REVELS,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY

Grace B. Duran, District Judge

Bennett J. Baur, Chief Public Defender

Kimberly Chavez Cook,

Appellate Defender

Santa Fe, NM

for Appellant

Raúl Torrez, Attorney General

Van Snow, Assistant Solicitor General

Santa Fe, NM

for Appellee

OPINION

BACON, Justice.

I. INTRODUCTION

{1} In this capital appeal, Defendant-Appellant Mawu Ekon Revels (Defendant) challenges his first-degree felony murder conviction that was based on the predicate felony of aggravated assault. Defendant argues, as a matter of law, aggravated assault can never serve as the predicate felony for felony murder and therefore urges us to vacate his felony murder conviction. If the Court vacates his conviction, Defendant argues resentencing on second-degree murder is improper and retrial is barred by double jeopardy and the direct remand rule.

{2} Defendant also challenges the sufficiency of the evidence for his convictions for conspiracy and shooting at a motor vehicle; raises a double jeopardy challenge to his convictions for aggravated assault and shooting at a motor vehicle; challenges the legality of the district court's imposition of a four-year firearm enhancement; and argues he should be given a new trial because the

prosecutor improperly struck a Black juror from the venire.

{3} We hold Defendant's first-degree felony murder conviction must be vacated because it was predicated on an aggravated assault, which is a noncollateral felony that can never be the basis of a felony murder conviction. However, we also hold double jeopardy does not bar retrial when a defendant is convicted of a nonexistent crime, such as felony murder that is predicated on a non-collateral felony. We further clarify that the direct remand rule does not apply to such cases because it only applies to acquittals.

{4} We further hold one of Defendant's two conspiracy convictions was unsupported by substantial evidence. Accordingly, we vacate that conviction. We reverse the district court's imposition of a four-year firearm enhancement because the district court lacked statutory authority to enhance the sentence by four years. Finding no merit in Defendant's other claims, we affirm Defendant's remaining convictions and remand for proceedings consistent with this opinion.

II. BACKGROUND

{5} This case arises out of a deadly shoot-

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ing at a house party in Las Cruces. A fight involving many partygoers broke out in the early morning hours of July 31, 2021, culminating with multiple gunshots. Some of the bullets hit the car of a young woman named Jayissa Borrunda (Borrunda) while she was driving away, shattering her windshield. One of the bullets pierced the lung of Nicodemus Gonzales (Victim), who died at the scene.

{6} Bullet casings from a .45 caliber handgun and a 9mm handgun were found on the ground nearby. Police picked up the casings instead of leaving them in place, which limited the evidentiary value of the casings. Forensic analysts could not determine what caliber of bullet caused the fatal injury.

{7} Although eyewitnesses gave conflicting testimony about the chaotic scene, two witnesses testified they saw Defendant and his cousin Isaiah Taylor (Taylor) brandishing guns with laser sights. Borrunda testified Defendant's laser sight was red and Taylor's laser sight was green. Another witness corroborated the fact that Defendant's laser sight was red. Borrunda testified she saw a green laser moving around the inside of her car before hearing the gunshots that shattered her windshield.

{8} When police searched Defendant's house and car, they found 9mm bullets, a handgun magazine, and an instruction manual for a laser sight. Defendant denied having or touching a gun. However, he also texted his mother from jail that he could "tell [police] the exact guns used and what happened to them all." No gun was ever recovered.

{9} Defendant, who was seventeen years old at the time of the crime, was charged as a Serious Youthful Offender with first-degree (willful and deliberate) murder and other offenses. Shortly before trial, a new prosecutor for the State took over the case and moved to amend the indictment to add a charge of first-degree felony murder, but the prosecutor did not identify a predicate felony. The district court allowed the State to proceed on that undefined alternative theory because defense counsel did not want to delay trial to resolve the issue.

{10} After the State rested its case, the district court directed a verdict of acquittal

► From the New Mexico Supreme Court

as to the first-degree (willful and deliberate) murder charge, leaving the jury to decide the first-degree felony murder as the highest offense in the case, based on the predicate felony of accessory to aggravated assault. {11} The jury convicted Defendant of first-degree felony murder (as an accomplice to aggravated assault); aggravated assault as a principal for brandishing a weapon and frightening Borrunda; two counts of conspiracy (to commit aggravated assault and to commit shooting at a motor vehicle); and shooting at a motor vehicle (for shooting at Borrunda's car). The jury also found a firearm was used in the aggravated assault. {12} The district court sentenced Defendant to thirty years (with ten years suspended) for the first-degree felony murder; eighteen months for the aggravated assault "to be enhanced by 4 years for Firearm," which was to be served consecutively to the sentence imposed for murder; and eighteen months each for the two conspiracy convictions and the shooting at a motor vehicle conviction, all of which were to run concurrently with the sentence for the aggravated assault.

{13} Other relevant facts will be developed as necessary within the discussion below.

III. DISCUSSION

A. Aggravated Assault Cannot Serve as the Predicate Felony for Felony Murder; Therefore, Defendant's Felony Murder Conviction Must Be Vacated

{14} This Court has long recognized a valid felony murder conviction must be predicated on a felony that is "collateral" to the homicide (a doctrine known as the "collateral-felony doctrine"). *See Campos v. Bravo*, 2007-NMSC-021, ¶¶ 9-12, 141 N.M. 801, 161 P.3d 846 (tracing the origins of and principles behind the doctrine). "The collateral-felony doctrine derived from our concern that the prosecution may be able to elevate improperly the vast majority of second-degree murders to first-degree murders by charging the underlying assaultive act as a predicate felony for felony murder." *Id.* ¶ 10 (internal quotation marks and citation omitted). To prevent such a workaround,

the collateral-felony doctrine "requires the . . . felony murder (the predicate felony) to have a felonious purpose different from that of endangering the physical health of the victim." *State v. Groves*, 2021-NMSC-003, ¶ 1, 478 P.3d 915 (internal quotation marks and citation omitted). While the collateral-felony doctrine "has generated the most confusion" among the limitations we have placed on felony murder, *State v. Marquez*, 2016-NMSC-025, ¶ 14, 376 P.3d 815, there is no room for confusion in this case. In this case, the application of the doctrine is crystal clear: the predicate felony of aggravated assault is noncollateral and, therefore, may not serve as the predicate felony for first-degree felony murder.

{15} We have long held aggravated assault—the predicate felony for Defendant's felony murder conviction—"may never be used as [the] predicate felon[y] to felony murder" because "it is clearly not possible to commit second-degree murder without also committing *some form* of aggravated assault." *Bravo*, 2007-NMSC-021, ¶ 10. To remove any trace of doubt, this Court emphasized, "[w]e meant what we said in [*State v. Campos*, 1996-NMSC-043, ¶ 23, 122 N.M. 148, 921 P.2d 1266]: all forms of aggravated assault and aggravated battery will 'always be deemed to be noncollateral.'" *Bravo*, 2007-NMSC-021, ¶ 12.

{16} "Because a conviction violating the collateral-felony doctrine is a legal nullity, it would be fundamental error to uphold such a conviction." *Id.* ¶ 19. Therefore, whenever a felony murder conviction is predicated on an aggravated assault, the felony murder conviction must be vacated. *See id.* ¶ 11 ("[W]hen the collateral-felony doctrine is violated, the defendant's felony murder conviction is vacated."). Because Defendant's felony murder conviction was predicated on an aggravated assault, his felony murder conviction is null. Accordingly, we vacate the conviction.

B. Retrial Is Permitted on First-Degree Felony Murder and Any Lesser Included Offense Thereof

{17} Because the State appropriately conceded the felony murder conviction

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must be vacated as a nonexistent crime, the most contentious issue in this case is the remedy on remand. Defendant argues retrial or resentencing is prohibited by double jeopardy because a reversal on the basis of a nonexistent crime—such as our reversal here based on a violation of the collateral-felony doctrine—is tantamount to an acquittal.

{18} Defendant further argues the direct remand rule prohibits reprocsecution on lesser included offenses because the State followed an all-or-nothing trial strategy, resulting in the jury not receiving an instruction on any lesser included offense of felony murder. The State argues, *inter alia*, resentencing on the lesser included offense of second-degree murder is an available remedy because this Court can always remand for entry of judgment on second-degree murder in every case in which we vacate a felony murder conviction. We reject these arguments and clarify the law.

1. Double jeopardy bars retrial after acquittal but permits retrial after a conviction is reversed for trial error

{19} Double jeopardy law governs the circumstances under which the state can prosecute a defendant a second time. Double jeopardy "law attaches particular significance to an acquittal[. . .] however mistaken the acquittal may have been." *United States v. Scott*, 437 U.S. 82, 91 (1978). "Perhaps the most fundamental rule in the history of double jeopardy jurisprudence has been that a verdict of acquittal cannot be reviewed, on error or otherwise, without putting a defendant twice in jeopardy, and thereby violating the Constitution." *State v. Lizzol*, 2007-NMSC-024, ¶ 7, 141 N.M. 705, 160 P.3d 886 (text only)¹ (quoting *United States v. Martin Linen Supply Co.*, 430 U.S. 564, 571 (1977)).

{20} An acquittal is "a resolution in the defendant's favor, correct or not, of some or all of the factual elements of the offense charged," *Scott*, 437 U.S. at 97 (text only) (citation omitted), whether that resolution occurs at trial or on appeal. An acquittal occurs on appeal when an appellate court reverses for insufficient evidence, because

¹ "(Text only)" indicates the omission of nonessential punctuation marks—including internal quotation marks, ellipses, and brackets—that are present in the text of the quoted source, leaving the quoted text otherwise unchanged.

► From the New Mexico Supreme Court

that is tantamount to a finding that the State's evidence failed to establish beyond a reasonable doubt the factual elements of the offense charged. *See Burks v. United States*, 437 U.S. 1, 17-18 (1978) (holding reversal on appeal for insufficient evidence is an acquittal). Therefore, "a defendant may not be retried after the conviction is set aside because of insufficient evidence." *Lizzol*, 2007-NMSC-024, ¶ 15; *see also State v. Gonzales*, 2013-NMSC-016, ¶ 17, 301 P.3d 380 ("It is settled law that if a conviction is overturned for insufficient evidence, the reversal is treated as an acquittal for double jeopardy purposes. . . . The [s]tate does not get a second chance to amass additional evidence of guilt.").

{21} In contrast, "when a defendant challenges his or her conviction on grounds other than sufficiency of the evidence, the Double Jeopardy Clause does not bar a retrial." *Lizzol*, 2007-NMSC-024, ¶ 10 (emphasis omitted). Appellate reversal on any grounds other than evidentiary insufficiency is considered reversal for trial error and is not "a decision to the effect that the government has failed to prove its case. As such, it implies nothing with respect to the guilt or innocence of the defendant. Rather, it is a determination that a defendant has been convicted through a judicial process which is defective." *Burks*, 437 U.S. at 15. Examples of these defects include "incorrect receipt or rejection of evidence, incorrect instructions, or prosecutorial misconduct." *Id.* When the judicial process is defective, "the accused has a strong interest in obtaining a fair readjudication of his guilt free from error, just as society maintains a valid concern for insuring that the guilty are punished." *Id.* {22} These societal interests are paramount when a conviction is reversed for trial error. *United States v. Tateo*, 377 U.S. 463, 466 (1964). As the United States Supreme Court noted in *Tateo*:

It would be a high price indeed for society to pay were every accused granted immunity from punishment because of any defect sufficient to constitute reversible error in the proceedings leading to conviction. From the standpoint of a defendant, it is at least doubtful that appellate courts

would be as zealous as they now are in protecting against the effects of improprieties at the trial . . . if they knew that reversal of a conviction would put the accused irrevocably beyond the reach of further prosecution. In reality, therefore, the practice of retrial serves defendants' rights as well as society's interest.

Id.

{23} This Court has incorporated that federal analysis into our own jurisprudence. We have recognized when the state fails to prove some or all of the factual elements of the offense charged, "[t]he policy against allowing . . . retrial of the accused . . . is so strong that it simply will brook no relaxation Once an accused is actually, and in express terms, acquitted by a court, the finality of that judgment will not yield to any attempts to dilute it." *Cnty. of Los Alamos v. Tapia*, 1990-NMSC-038, ¶ 14, 109 N.M. 736, 790 P.2d 1017, *overruled on other grounds by City of Santa Fe v. Marquez*, 2012-NMSC-031, ¶ 25, 285 P.3d 637. However, "[a]t the opposite end of the spectrum is the case in which the defendant is convicted and his conviction is set aside on appeal on a ground other than insufficiency of the evidence." *Id.* ¶ 21. When we reverse on a ground other than insufficiency of the evidence, "no one doubts that society's interest in administering its laws completely overrides the defendant's interest in freedom from [the] hardships [of reprocsecution]." *Id.*

{24} Since *Tapia*, we have continually reaffirmed the double jeopardy distinction between insufficient evidence and trial error. *See, e.g., Gonzales*, 2013-NMSC-016, ¶ 23 (noting when a reversal is "based on grounds other than insufficient evidence, . . . that reversal does not bar retrial"); *Marquez*, 2012-NMSC-031, ¶ 15 (recognizing "a defendant may not be retried after the conviction is set aside because of insufficient evidence" but "a defendant may be retried if the conviction was set aside because of trial error" (quoting *Lizzol*, 2007-NMSC-024, ¶ 15)); *State v. Lynch*, 2003-NMSC-020, ¶ 18, 134 N.M. 139, 74 P.3d 73 (recognizing "the right to be free from double jeopardy is not an absolute right" and "the public's strong interest in seeing the guilty punished after a

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fair trial . . . allows the [s]tate to reprocsecute a defendant who has successfully appealed his or her conviction on the basis of trial error").

2. Reversal for "nonexistent crime" is reversal for trial error

{25} Reversals on the basis of "nonexistent crime" involve a pure question of law rather than a matter of fact, thus reversals on that basis "fall[] squarely within the rule that retrial is permissible after a conviction is reversed on appeal." *Montana v. Hall*, 481 U.S. 400, 402, 404 (1987); *see also Gonzales*, 2013-NMSC-016, ¶¶ 21-23 (discussing *Hall* with approval). As the United States Supreme Court explained, conviction for a nonexistent crime is treated as a defect in the charging document and does not have to do with the defendant's guilt. *See Hall*, 481 U.S. at 403-04 (noting that a reversal for nonexistent crime is "unrelated to guilt or innocence" but rather "is reversed because of a defect in the charging instrument"). When reversal is on the basis of a defective charging document, retrial is permitted. *See Ball v. United States*, 163 U.S. 662, 672 (1896) ("[I]t is quite clear that a defendant who procures a judgment against him upon an indictment to be set aside may be tried anew upon the same indictment, or upon another indictment, for the same offense of which he had been convicted."). In other words, where the prosecution "simply relied on the wrong statute in its . . . information[, i]t is clear that the Constitution permits retrial." *Hall*, 481 U.S. at 404.

{26} Contrary to this clear statement of law, Defendant argues the reversal of his felony murder conviction as a nonexistent crime is the equivalent of an acquittal because it is tantamount to a finding that the evidence was legally insufficient. We reject Defendant's argument and clarify that reversal for nonexistent crime is reversal for trial error.

a. Defendant's conviction for felony murder was supported by sufficient evidence

{27} The test for whether a reversal is for insufficient evidence—and therefore an acquittal for double jeopardy purposes—is whether the state's evidence failed to establish beyond a reasonable doubt "some or all of the factual elements of the offense

► From the New Mexico Supreme Court

charged.” *Scott*, 437 U.S. at 97. This is the same inquiry we conduct in any sufficiency review, where we compare the evidence in the record to the jury instructions given, even when the jury instruction is defective. *See, e.g., State v. Holt*, 2016-NMSC-011, ¶ 20, 368 P.3d 409 (“The jury instructions become the law of the case against which the sufficiency of the evidence is to be measured.” (text only) (quoting *State v. Arrendondo*, 2012-NMSC-013, ¶ 18, 278 P.3d 517)). When conducting this review, it is clear we are not reversing Defendant’s felony murder conviction for insufficient evidence.

{28} Under the jury instructions given in this case, the State’s evidence established beyond a reasonable doubt all of the factual elements of felony murder presented to the jury. The jury determined that: (1) Defendant “intended that another person commit the felony of aggravated assault” and “helped, encouraged, or caused” that felony to be committed; (2) “[a]nother person committed the felony of aggravated assault . . . under circumstances or in a manner dangerous to human life”; (3) “[d]uring the commission of [that] felony [Victim] was killed”; and (4) Defendant “helped, encouraged, or caused the killing to be committed” and “intended the killing to occur or knew that [he] was helping to create a strong probability of death or great bodily harm.”

{29} Here, evidence was presented that Defendant and Taylor engaged in an altercation at the house party; pulled guns on partygoers; shined laser sights around; made comments indicating they were searching for a specific individual; and began firing towards partygoers and strafing² Borrunda’s vehicle, which culminated in Victim’s death. Based on the foregoing, the jury could have found all of the elements of felony murder beyond a reasonable doubt as presented in the jury instruction on that crime. Notably, Defendant does not attempt to challenge the sufficiency of the evidence to support any of those factual elements.

{30} Instead, Defendant urges us to hold that the evidence was “legally insufficient” because the State failed to prove the predi-

cate felony was collateral to the murder. However, as the State correctly points out, application of the collateral-felony doctrine requires a legal analysis, not a factual finding made by the jury. Stated differently, the jury instruction on felony murder does not contain as a substantive element that the predicate felony be collateral to the murder, *see UJI 14-202 NMRA*, nor could it contain such an element. That determination is not a factual one. Thus, reversal on the basis of the legal determination that a felony is noncollateral to the murder is not an acquittal, which requires a failure of proof of “the factual elements of the offense charged.” *Scott*, 437 U.S. at 97 (emphasis added).

b. As a matter of law, reversal for nonexistent crime is not an acquittal

{31} Defendant’s argument has been made by defendants in other jurisdictions and, as we do here, courts have rejected it. For example, in *State v. Wright*, 127 P.3d 742, 743-44 (Wash. Ct. App. 2006), the Washington Court of Appeals held double jeopardy did not bar reprocution after a defendant’s conviction for felony murder was reversed. Like Defendant in this case, the defendant in *Wright* argued “that the appellate reversal of his murder conviction was equivalent to an acquittal” because “felony murder convictions predicated on assault . . . are . . . based on legally insufficient evidence.” *Id.* at 745. The *Wright* Court rejected the argument, noting that when the Washington Supreme Court held that assault could not serve as the predicate felony for felony murder, it did not make that determination based on sufficiency of the evidence. *Id.* “Rather, the Court engaged in statutory construction and concluded that [the defendant] had been convicted of a nonexistent crime. The problem of conviction for a nonexistent crime is not a failure of proof.” *Id.* (citation omitted).

{32} The Washington Supreme Court affirmed, adding reversal on the basis of a noncollateral predicate felony “ha[s] nothing to do with evidentiary sufficiency. . . . Thus, reversal of a second degree felony murder conviction predicated on assault falls squarely within the rule announced in

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Hall” that reversal for nonexistent crime is a charging defect that results in retrial. *State v. Wright*, 203 P.3d 1027, 1032 (Wash. 2009) (en banc). The Washington Supreme Court interpreted *Hall* to

“at least mean[] this: If the state convicts a defendant under the wrong statute (that is, a statute that does not encompass the defendant’s otherwise criminal conduct), and that conviction is overturned on appeal, the Double Jeopardy Clause does not forbid retrial under the correct statute (that is, the statute that makes such conduct criminal), so long as there is sufficient evidence to convict under that statute.”

Id. (quoting *Parker v. Lockhart*, 797 F. Supp. 718, 725 (E.D. Ark. 1992)). Therefore, the Court held, “[b]ecause the defendants’ convictions were reversed due to the invalidity of the charge, not insufficient evidence, they may be retried for the same offense.” *Id.*

{33} This approach is followed by courts around the country, which overwhelmingly hold reversal for nonexistent crime based on the collateral-felony doctrine is reversal for trial error and not evidentiary insufficiency. *See, e.g., Parker v. State*, 779 S.W.2d 156, 157-58 (Ark. 1989) (holding double jeopardy did not bar retrial where a felony murder conviction was reversed for non-collateral predicate felony because reversal was not based on evidentiary insufficiency); *Lockhart*, 797 F. Supp. at 718-19, 722, 725 (affirming the Arkansas Supreme Court’s analysis in *Parker*, 779 S.W.2d 156); *State v. Wilson*, 680 So. 2d 411, 413 (Fla. 1996) (holding double jeopardy did not bar retrial where the attempted felony murder conviction was reversed as a nonexistent crime because “[t]here was no acquittal—explicit or implicit—for either the attempted felony murder charge or any lesser offenses”); *Delgado v. Fla. Dep’t Corr.*, 659 F.3d 1311, 1325-29 (11th Cir. 2011) (affirming the Florida Supreme Court’s analysis that the reversal of a felony murder conviction for noncollateral predicate felony was a reversal

² “[T]o rake (as ground troops) with fire at close range and esp. with machine-gun fire from low-flying aircraft.” *Strafe*, Merriam-Webster’s Collegiate Dictionary (11th ed. 2005).

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for trial error, not evidentiary insufficiency). {34} The Seventh Circuit explained the distinction between reversal for trial error in the context of a nonexistent crime and reversal for evidentiary insufficiency in *United States v. Lanzotti*, 90 F.3d 1217 (7th Cir. 1996). In *Lanzotti*, the district court overturned a conviction and granted a new trial after finding the statute under which the defendants had been charged “could not directly cover the conduct of the gambling business in [that] case.” *Id.* at 1221. The Seventh Circuit held the district court’s ruling was not an acquittal, and “the prosecution’s oversight regarding the applicability of a law, without more, will not bar a retrial for the same conduct under a correct legal theory.” *Id.* at 1224.

{35} We share the view of these courts. At bottom, a conviction for a nonexistent crime is a charging defect. *State v. Baca*, 1997-NMSC-059, ¶ 51, 124 N.M. 333, 950 P.2d 776 (noting conspiracy to commit depraved-mind murder is a nonexistent crime and therefore “the charge of conspiracy to commit depraved-mind murder was not valid”). As such, “[t]he problem of conviction for a nonexistent crime is not a failure of proof.” *Wright*, 127 P.3d at 745. Instead, it is a “legal error of the prosecution” that results in a conviction by means of a “flawed judicial process.” *Lanzotti*, 90 F.3d at 1223. In *Hall*, the United States Supreme Court made “clear that the Constitution permits retrial after a conviction is reversed because of a defect in the charging instrument.” 481 U.S. at 404. In such cases, jeopardy continues and the defendant “may be tried anew upon the same indictment, or upon another indictment, for the same offense of which he had been convicted.” *Ball*, 163 U.S. at 672.

{36} In accordance with this framework, New Mexico cases that reverse on the basis

of a nonexistent crime have generally permitted retrial. *See, e.g., State v. Figueroa*, 2020-NMCA-007, ¶¶ 13-18, 457 P.3d 983 (allowing retrial even though the defendant was convicted of a nonexistent crime because sufficient evidence supported the convictions on the jury instructions given); *Arrendondo*, 2012-NMSC-013, ¶¶ 21-22 (allowing retrial because sufficient evidence existed under the erroneous jury instructions given even though the defendant may have been convicted of a nonexistent crime); *Bravo*, 2007-NMSC-021, ¶¶ 19, 21 (allowing retrial where the defendant might have been convicted of a nonexistent form of felony murder); *State v. Mascarenas*, 2000-NMSC-017, ¶¶ 13, 31-33, 129 N.M. 230, 4 P.3d 1221 (allowing retrial where sufficient evidence supported conviction on the jury instructions given even though there was “a distinct possibility” the defendant was convicted of a crime that “does not exist in New Mexico”).

{37} However, some New Mexico cases have precluded retrial of a nonexistent crime, apparently without analysis of *Hall* or double jeopardy considerations. *See State v. Johnson*, 1985-NMCA-074, ¶ 24, 103 N.M. 364, 707 P.2d 1174 (remanding for a new trial on a lesser-included offense of second-degree murder after holding the crime of attempted depraved-mind murder, for which the defendant was originally convicted, does not exist); *Baca*, 1997-NMSC-059, ¶¶ 2, 51-53, 56 (barring retrial for nonexistent crime of conspiracy to commit depraved-mind murder). Therefore, we abrogate those cases in so far as their result conflicts with our holding today.

{38} Applying this general rule to the facts of this case leads to one result. Both parties agree that Defendant’s felony murder conviction should be vacated as a nonex-

istent crime. Defendant does not challenge the sufficiency of the evidence under the jury instructions given. Because we vacate Defendant’s felony murder conviction as a nonexistent crime, we reverse on the basis of a charging defect rather than lack of evidence. Double jeopardy principles therefore allow retrial on the same or lesser charge.³

3. Because Defendant has not been acquitted, the direct remand rule does not apply, and he may be retried on the same and lesser-included offenses

{39} Defendant argues the direct remand rule precludes retrial or resentencing on the lesser-included offense of second-degree murder. The State argues the direct remand rule always allows remand for entry of judgment on second-degree murder after a felony murder conviction is vacated. Neither is correct.

{40} We clarify the direct remand rule applies only to cases that are reversed on appeal for insufficient evidence—in other words, cases where the defendant has been acquitted—and its application depends on the evidence and the jury instructions given in each case. In this case, because we vacate Defendant’s felony murder conviction based on trial error rather than insufficient evidence, Defendant has not been acquitted, and the direct-remand rule does not apply.⁴ We nevertheless take this opportunity to explain the origins and proper application of the direct-remand rule, as it seems to be the source of some confusion.

{41} The direct-remand rule stems from *State v. Haynie*, 1994-NMSC-001, ¶¶ 4-5, 116 N.M. 746, 867 P.2d 416, where we remanded for resentencing on second-degree murder after vacating the defendant’s first-degree murder conviction for insufficient evidence. The question in *Haynie*

³ We reject Defendant’s assertion that retrial on second-degree murder “would most certainly constitute double jeopardy with [Defendant’s] conviction for shooting at a motor vehicle.” The homicide and the shooting at a motor vehicle in this case involve separate victims. Therefore, Defendant’s reliance on *State v. Montoya*, 2013-NMSC-020, ¶ 2, 306 P.3d 426, is inapposite because that case involved “the theoretically separate offenses of causing great bodily harm to a person by shooting at a motor vehicle and the homicide resulting from the penetration of the same bullet into the same person.” (Emphasis added.)

⁴ We note Defendant also asserts that the compulsory joinder rule bars retrial. This argument does not avail. Reprosecution after reversal for trial error is a continuing prosecution—part of one continual jeopardy. Thus, amendment to the charging document would not result in “piecemeal prosecution.” Cf. *State v. Gallegos*, 2007-NMSC-007, ¶ 14, 141 N.M. 185, 152 P.3d 828 (stating compulsory joinder reflects “our distaste for ‘piecemeal prosecution’” (citations omitted)); *Gonzales*, 2013-NMSC-016, ¶ 34 (barring reprosecution based on insufficient evidence, not trial error).

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was whether the defendant was entitled to choose between retrial or remand. *Id.* ¶ 2. We held that he was not. Instead, because “[t]he evidence show[ed] that Haynie participated in the murder of the first victim by beating and stabbing the victim and show[ed] that Haynie shot the second victim and slit his throat,” and there was no evidence of provocation, “the interests of justice would not be served by remanding [the] case for a new trial.” *Id.* ¶ 3.

{42} The direct-remand rule, as articulated by *Haynie*, is that “a court may order resentencing on an adequately proven lesser included offense when reversing the defendant’s conviction of a greater offense *for insufficient evidence*.” *Id.* ¶ 2 (emphasis added) (citing *Dickenson v. Israel*, 482 F. Supp. 1223, 1225-26 (E.D. Wis. 1980)). This is because “there is no need to retry a defendant for a lesser included offense when the elements of the lesser offense necessarily were proven to a jury beyond a reasonable doubt.” *Id.* ¶ 4.

{43} *Haynie* also demonstrates that appellate courts have significant latitude in directing the disposition of a case after remand because the ultimate inquiry is whether retrial or resentencing is in the interests of justice. The *Haynie* Court contrasted the facts of that case with those of *State v. Garcia*, 1992-NMSC-048, ¶ 37, 114 N.M. 269, 837 P.2d 862, in which we held “that the interests of justice will be better served in this case by remanding for a new trial on the offenses of second degree murder and voluntary manslaughter” after vacating a first-degree murder conviction for insufficient evidence. *See Haynie*, 1994-NMSC-001, ¶¶ 2-3. The *Haynie* Court reasoned that the interests of justice were served by retrial in *Garcia* rather than direct remand for entry of judgment on second-degree murder because the defendant in *Garcia* had persuaded this Court on rehearing that there was sufficient evidence of provocation such that a jury should determine whether the homicide constituted second-degree murder or voluntary manslaughter. *Haynie*, 1994-NMSC-001, ¶ 2. Together, *Haynie* and *Garcia* indicate when there is a genuine factual question for the jury to resolve on remand, retrial serves the interests of justice, *see Garcia*, 1992-NMSC-048, ¶¶ 35-37, but

when the jury has already found the elements of a lesser included offense beyond a reasonable doubt, the interests of justice are better served by direct remand for entry of judgment on the lesser included offense, *see Haynie*, 1994-NMSC-001, ¶ 3.

{44} We subsequently honed the direct-remand rule from *Haynie* in *State v. Villa*, 2004-NMSC-031, ¶¶ 12-15, 136 N.M. 367, 98 P.3d 1017, wherein we held an appellate court may not remand for resentencing on a lesser-included offense unless the jury was instructed on that lesser offense at trial. Once again, *Villa* considered the broader interests of justice in reaching its ultimate conclusion. *Id.* (reasoning that entry of judgment on a lesser-included offense when the jury had not been instructed on that offense would result in unfairness to the defendant on multiple axes). We note *Villa* was explicitly a case involving remand after a conviction was vacated for insufficient evidence—i.e., after acquittal of a greater offense—thus, to the extent it modified *Haynie*, it did not expand *Haynie* beyond the context of acquittals. *See id.* ¶ 1 (noting the defendant’s convictions were vacated for insufficient evidence); *id.* ¶ 8 (“The question presented is whether, *following reversal of a conviction due to insufficient evidence*, an appellate court may remand for entry of judgment of conviction and resentencing for a lesser-included offense, where the jury had not been instructed on that lesser offense at trial.”) (emphasis added)).

{45} Finally, we applied the direct-remand rule in *State v. Tafoya*, 2012-NMSC-030, ¶ 34, 285 P.3d 604, wherein we vacated the defendant’s felony murder conviction and directly remanded for entry of judgment on second-degree murder. At issue in *Tafoya* was whether “shooting entirely *within* a motor vehicle” constituted “shooting at or from a vehicle” within the meaning of NMSA 1978, Section 30-3-8(B) (1993). *Tafoya*, 2012-NMSC-030, ¶ 2. Crucially, we declined to “reach [the defendant’s] second argument, that shooting at or from a motor vehicle cannot serve as the requisite collateral felony for a felony murder conviction.” *Id.*

{46} Thus, in *Tafoya*, our inquiry was a factual one: whether the state met its burden to prove the element of “shooting at

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or from” with evidence that the defendant shot “within” a vehicle. *See id.* ¶¶ 9-32. In other words, we vacated the defendant’s felony murder conviction *not* because we determined that shooting at or from can never serve as a predicate felony for felony murder, but rather because under the facts of that case, it could not serve as the predicate felony because the state had not sufficiently proven the defendant shot “at or from” a motor vehicle. Therefore, when we vacated the defendant’s felony murder conviction, we vacated for insufficient evidence rather than nonexistent crime. As such, double jeopardy barred retrial on the greater offense, and the direct-remand rule applied to any lesser-included offense on which the jury had been instructed. Accordingly, after determining that the jury had found all of the elements of second-degree murder within the jury instruction given on felony murder, we concluded that direct remand for entry of judgment on second-degree murder was in the interests of justice. *Id.* ¶ 34.

{47} We derive several principles from these cases, none of which apply to reversals for trial error. As a threshold matter, the direct-remand rule in New Mexico applies solely to cases involving an appellate reversal for insufficient evidence. Normally, double jeopardy bars retrial in such cases. *Burks*, 437 U.S. at 18. However, if the jury has been instructed on a lesser-included offense and the record demonstrates that sufficient evidence supports that offense, then the appellate court has the discretion to remand for resentencing or retrial on the lesser-included offense. *See Villa*, 2004-NMSC-031, ¶¶ 1, 9. The appellate court must exercise that discretion by considering whether retrial or resentencing would better serve the interests of justice, in view of the facts and jury instructions given in each particular case. Thus, contrary to Defendant’s argument, our direct-remand rule is not a rule of general applicability to all reversals, but specifically applies to reversals for insufficiency of the evidence where the jury has been instructed on a lesser-included offense. And because application of the direct-remand rule requires a case-by-case analysis, it cannot be said that all reversals of a felony murder conviction

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will warrant direct remand for entry of judgment on second-degree murder, contrary to the argument of the State. Instead, reviewing courts must exercise their judgment in applying these principles.

4. The State may not retry Defendant for first-degree willful and deliberate murder, but it may retry on a valid theory of first-degree felony murder

{48} After we vacate Defendant's felony murder conviction on appeal, the State's ability to re prosecute Defendant for Victim's death is governed by double jeopardy principles. Because the district court acquitted Defendant of first-degree willful and deliberate murder through a directed verdict at trial, re prosecution on that charge is barred by double jeopardy. *Lizzol*, 2007-NMSC-024, ¶ 15. However, because we vacate Defendant's conviction of first-degree felony murder as a nonexistent crime, the State may elect to re prosecute him on that charge if the State determines it can proceed on the basis of a legally adequate predicate felony. The State may also elect to re prosecute Defendant for any lesser-included offense of felony murder. Because we reverse Defendant's conviction for trial error, the direct-remand rule does not apply. Accordingly, we do not directly remand for resentencing on any lesser-included offense of felony murder.

C. Only One Conspiracy Conviction Was Supported by the Evidence

{49} Under *State v. Gallegos*, 2011-NMSC-027, ¶ 55, 149 N.M. 704, 254 P.3d 655, this Court employs a "rebuttable presumption that multiple crimes are the object of only one, overarching, conspiratorial agreement subject to one, severe punishment set at the highest crime conspired to be committed." The State has not attempted to rebut this presumption. Instead, the State concedes the prosecution "did not establish that Defendant entered into multiple conspiracies" because it did not meet its "heavy burden" under *Gallegos* to prove the existence of separate agreements to brandish handguns and then to shoot at Borrunda's car. This

concession is appropriate.

{50} As Defendant correctly points out, "[t]he only evidence of any conspiracy in this case was the fact that [Defendant] and [Taylor] appeared to act in concert." To support the agreement constituting the alleged first conspiracy, the prosecutor argued Defendant and Taylor were "on a team. They, by their actions together, agree to pull out those weapons during this fight." To support the agreement for the second alleged conspiracy, the prosecutor argued, "Count seven is just basically like aggravated assault. Agreed to commit that same crime. 'He's in there. He's in there.' We're agreeing, we're shooting at the vehicle."

{51} These two actions—"pull[ing] out those weapons" and "shooting at the vehicle"—do not overcome the high bar to rebut the presumption of a single conspiracy. There is no evidence that there were different victims, different types of harm, different co-conspirators, or even a break in time that might indicate these actions were anything other than unitary conduct supporting a single conspiracy charge. See *Gallegos*, 2011-NMSC-027, ¶¶ 56-64 (applying a totality of the circumstances test to determine whether their presumption of singularity had been overcome). We therefore vacate one of Defendant's conspiracy convictions.

D. The Four-Year Firearm Enhancement Was Illegal

{52} The jury found Defendant used a firearm in the commission of aggravated assault (by brandishing a firearm). At sentencing, the district court stated the jury's finding "require[d]" and "obligated" the court to enhance Defendant's sentence by four years. The relevant sentencing enhancement statute in effect at the time of the crime, NMSA 1978, § 31-18-16(B) (2020), provided in relevant part:

When a separate finding of fact by the court or jury shows that a firearm was brandished in the commission of a noncapital felony, the basic sentence . . . shall be increased by three years, except

that when the offender is a serious youthful offender or a youthful offender that received an adult sentence, the sentence imposed by this subsection may be increased by one year.

(Emphasis added.)⁵

{53} Therefore, as Defendant argues and the State correctly concedes, the district court only had statutory authority to enhance Defendant's sentence by one year, and doing so was discretionary rather than mandatory. The district court's imposition of a four-year sentencing enhancement was therefore illegal. See *State v. Martinez*, 1998-NMSC-023, ¶ 12, 126 N.M. 39, 966 P.2d 747 ("A trial court's power to sentence is derived exclusively from statute."). We reverse.

E. Defendant's Conviction for Shooting at a Motor Vehicle Was Proper

1. There was substantial evidence that Defendant committed shooting at a motor vehicle

{54} Defendant argues there was insufficient evidence he committed the crime of shooting at a motor vehicle because "the evidence only supports a finding that [Taylor] shot at [Borrunda's] car; not [Defendant]." Defendant points to the uncontradicted testimony that Defendant's laser sight was red, but Borrunda saw a green laser light—associated with Taylor's gun—inside her car before the shots were fired. No direct eyewitness testimony established Defendant shot Borrunda's car.

{55} Defendant argues the physical evidence cannot establish that Defendant shot Borrunda's car either, because linking the physical evidence to Defendant's acts requires "pil[ing] inference upon inference." Defendant challenges the following inferences: first, that the casings collected were from the bullets fired during the incident; second, that the casings collected were "the total number of bullets fired" during the incident; third, that "[o]nly two of the [four] holes in [Borrunda's] car could have come from .45 caliber bullets"; fourth, that Defendant had a 9mm gun because of

⁵ Section 31-18-16 was amended in 2022, but the district court's power to enhance the sentence of a serious youthful offender is unchanged from the 2020 version. See § 31-18-16(B) (2022) ("[W]hen the offender is a serious youthful offender or a youthful offender that received an adult sentence, the sentence imposed by this subsection may be increased by one year.").

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the 9mm ammunition found in his home; and finally, that at least one of the bullets fired into Borrunda's car must have been Defendant's.

{56} The State argues the jury's chain of inferences was reasonable. The State relies on the following facts: of ten casings recovered from the scene, eight were from 9mm bullets, while only two were from .45 caliber bullets; Borrunda's car was struck by four or five bullets; and 9mm bullets were found in Defendant's home. Thus, the only true inferences needed to conclude that Defendant fired at Borrunda's car are: (1) that the bullet casings were from the incident and not a different incident; and (2) that Defendant's possession of 9mm ammunition indicated that he had a 9mm gun. Both of these inferences are supported by the evidence, according to the State. We agree with the State.

{57} Under the standard of review for sufficiency of the evidence, this Court "views the evidence in the light most favorable to the guilty verdict, indulging all reasonable inferences and resolving all conflicts in the evidence in favor of the verdict." *State v. Montoya*, 2015-NMSC-010, ¶ 52, 345 P.3d 1056 (text only) (citation omitted). "A reasonable inference is a conclusion arrived at by a process of reasoning which is a rational and logical deduction from facts admitted or established by the evidence." *State v. Slade*, 2014-NMCA-088, ¶ 14, 331 P.3d 930 (text only) (citation omitted).

{58} As the State asserts, "[e]ach step in the chain of reasoning was either premised on admitted evidence or a rational and logical deduction from those facts." The inference that the bullet casings collected on July 31 were fired during the incident on July 31 is a rational inference. It does not require speculation, guess, or conjecture. Defendant points out that these casings could have been from bullets fired during earlier incidents, and "there could have been other casings fired July 31 that were *not* collected," but those alternative explanations are irrelevant under the standard of review. "We do not evaluate the evidence to determine whether some hypothesis could be designed which is consistent with a finding of innocence, and we do not weigh the evidence or substitute our judgment for that of

the fact finder." *Montoya*, 2015-NMSC-010, ¶ 52 (text only) (citation omitted).

{59} Similarly, it was reasonable for the jury to infer that Defendant shot a 9mm handgun from the evidentiary facts that he possessed 9mm ammunition and was seen brandishing a handgun on the night of the incident. Those facts can rationally lead to the conclusion that Defendant brandished a 9mm handgun on the night of the incident. *Cf. id.* ¶ 53 ("Just because the evidence supporting the conviction was circumstantial does not mean it was not substantial evidence." (text only) (citation omitted)). In short, although the jury could have interpreted the evidence in a different way, it was not "impermissibly unreasonable" for the jury to draw these inferences from the evidence presented. *Id.* ¶ 52 (internal quotation marks and citation omitted).

{60} Because it was rational to infer from the evidence that (1) the bullet casings collected were from bullets fired during the incident, and (2) Defendant fired a 9mm handgun, then it takes no further speculation to reach the conclusion that Taylor fired two .45 rounds and Defendant fired eight 9mm rounds during the incident. Because Borrunda's car was shot with more than two bullets and Taylor only fired two rounds, it was reasonable for the jury to conclude Defendant fired the bullets that caused the other bullet holes; ergo, Defendant shot at a motor vehicle.

2. Double jeopardy is not violated by Defendant's convictions for shooting at a motor vehicle and aggravated assault

{61} The jury found Defendant guilty of aggravated assault based on a jury instruction that provided, in relevant part:

1. . . . Defendant brandished a handgun;
2. . . . Defendant's conduct caused . . . Borrunda to believe . . . Defendant was about to intrude on . . . Borrunda's bodily integrity . . . ;
3. A reasonable person in the same circumstances as . . . Borrunda would have had the same belief.

{62} The jury also found Defendant guilty of shooting at a motor vehicle based on a jury instruction that provided, in relevant part, "Defendant willfully shot a firearm at

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a motor vehicle with reckless disregard for another person."

{63} Defendant contends these two convictions violate double jeopardy by imposing multiple punishments for unitary conduct under two separate statutes, thus posing a "double description" question. Double description questions are analyzed through a two-part test: (1) "whether the conduct underlying the two convictions was unitary"; and, if it is, then (2) "whether it was the Legislature's intent to punish the two crimes separately." *State v. Swick*, 2012-NMSC-018, ¶ 11, 279 P.3d 747 (discussing *Swafford v. State*, 1991-NMSC-043, ¶ 25, 112 N.M. 3, 810 P.2d 1223).

{64} In this case, the State argues the conduct is not unitary. Both parties rely on this Court's opinion in *State v. Porter*, which held aggravated assault and shooting from a motor vehicle were not separately punishable offenses where the underlying conduct was a single gunshot from a motor vehicle towards a single victim. 2020-NMSC-020, ¶¶ 3-4, 43, 476 P.3d 1201.

{65} In *Porter*, we expressly acknowledged our holding was based on the facts of that case, and we did not intend to create a blanket rule for all cases in which a defendant is convicted for both aggravated assault and shooting at or from a motor vehicle. *See id.* ¶ 14 ("If the [s]tate had prosecuted a charge of aggravated assault . . . based on [the victim's] reasonable apprehension of danger from [the d]efendant pointing the gun prior to shooting, or argued for sufficient indicia of distinctness to support that charge, a different analysis would be required."); *see also id.* ¶ 43 ("Although double jeopardy protects [the d]efendant from being punished for both aggravated assault . . . and shooting from a motor vehicle in this case, we note that it is possible for a defendant to violate both statutes without committing the same offense. Whether a defendant is protected will depend on which alternative was prosecuted based on the state's legal theory of the offense and the alternative for which the defendant is convicted."). Therefore, *Porter* provides an entry point for the analysis of the facts of this case but it does not control the result here.

{66} The first step under *Porter*, as with every double description question, is de-

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termining whether the conduct was unitary. “Conduct is unitary when not sufficiently separated by time or place, and the object and result or quality and nature of the acts cannot be distinguished. The conduct question depends to a large degree on the elements of the charged offenses and the facts presented at trial.” *Id.* ¶ 12 (text only) (citations omitted). *Porter* recognized one way that courts have characterized the question of unitary conduct is to ask whether one criminal act was completed before the other criminal act began. *See id.* ¶ 14 (discussing *State v. Jacobs*, 2000-NMSC-026, ¶ 25, 129 N.M. 448, 10 P.3d 127, *overruled on other grounds by State v. Martinez*, 2021-NMSC-002, 478 P.3d 880).

{67} In this case, the acts comprising aggravated assault were completed before the act of shooting at a motor vehicle began. Under the jury instructions given in this case, Defendant completed the crime of aggravated assault when he “brandished a handgun” and caused Borrunda to reasonably fear for her safety. The State presented evidence that Borrunda saw Defendant brandishing his weapon with the red laser while she was outside, away from her vehicle. The sight of Defendant and Taylor brandishing guns caused Borrunda to “freak[] out” and feel certain that she “had to get out of there,” at which point she ran for the shelter of her car to try to escape from the danger.

{68} At that moment, the crime of aggravated assault was complete. Defendant’s brandishing of a gun caused Borrunda to reasonably fear for her safety, to the point where Borrunda took affirmative steps to protect herself from that danger. Even though this latter element is not required to prove aggravated assault, it is confirmation that Borrunda, in fact, perceived extreme danger and responded accordingly. This action (brandishing) and consequence (reasonable fear) constitute the entire crime of aggravated assault. Stated differently, if Defendant had put away his gun and walked away from the scene at the moment Borrunda ran to her car, he could have been criminally liable for aggravated assault based solely on the acts that already

occurred. Notably, no shots had been fired by the time Borrunda ran for her car, thus the crime of shooting at a motor vehicle had not yet begun at the time the aggravated assault was already completed.

{69} Thus, contrary to Defendant’s contention that “[t]here is no rational way of dividing the conduct into a separate assault and shooting,” the clear dividing line is the point at which Defendant had completed the assault by brandishing a gun and causing Borrunda to reasonably fear for her safety, sending her fleeing to her car. Defendant even acknowledges that Borrunda “ran to her car in response to seeing guns,” thus implicitly acknowledging that Borrunda was placed in fear by Defendant’s brandishing a gun—the only elements required for aggravated assault.

{70} For the foregoing reasons, the conduct underlying Defendant’s aggravated assault conviction is not unitary with the conduct underlying the shooting at a motor vehicle conviction. “If the conduct is not unitary, then there is no double jeopardy violation.” *State v. Torres*, 2018-NMSC-013, ¶ 18, 413 P.3d 467.

F. The Prosecutor Did Not Violate *Batson*⁶ by Using a Peremptory Challenge to Strike a Black Juror

{71} *Batson* challenges proceed in three parts. *State v. Salas*, 2010-NMSC-028, ¶¶ 31-32, 148 N.M. 313, 236 P.3d 32. “First, the opponent of a peremptory challenge bears the burden to establish a prima facie case indicating that the peremptory challenge has been exercised in a discriminatory way.” *Id.* ¶ 31. A prima facie case is made when the opponent can show the peremptory challenge was used against “a member of a protected group” and “the facts and other related circumstances raise an inference that the individual was excluded solely on the basis of his or her membership in a protected group.” *Id.*

{72} If the opponent makes that prima facie showing, then the proponent bears the burden of proffering “a race or gender-neutral explanation.” *Id.* ¶ 32. “The second step of this process does not demand an explanation that is persuasive, or even plausible. At this second step . . . , the issue

is the facial validity of the prosecutor’s explanation. Unless a discriminatory intent is inherent in the prosecutor’s explanation, the reason offered will be deemed race neutral.” *Purkett v. Elem*, 514 U.S. 765, 767-68 (1995) (per curiam) (text only) (citations omitted). {73} Finally, if the proponent proffers a race-neutral explanation, “the trial court must then decide (step three) whether the opponent of the strike has proved purposeful racial . . . discrimination.” *Salas*, 2010-NMSC-028, ¶ 32 (quoting *Purkett*, 514 U.S. at 767). “[T]he ultimate burden of persuasion . . . rests with, and never shifts from, the opponent of the strike.” *Id.* (quoting *Purkett*, 514 U.S. at 768) (brackets in original).

{74} In response to a question on the juror questionnaire asking whether he or any of his immediate family members had been a defendant in a criminal case, Juror 22 wrote, “Yes . . . too much to explain.” During voir dire, Juror 22 disclosed he thought that he knew Defendant, but was not sure, and he was not sure how he might know Defendant. Based on those responses, the State initially moved to strike Juror 22 for cause. The district court denied the for-cause challenge because Juror 22 had stated he could be fair and impartial despite his possible familiarity with Defendant.

{75} The State then used a peremptory strike against Juror 22. Defendant challenged the strike under *Batson* on the basis that both Defendant and Juror 22 were Black. The prosecutor offered the following reasons for exercising the peremptory strike: (1) Juror 22 might know Defendant; (2) Juror 22 answered “Yes . . . too much to explain” on the juror questionnaire; and (3) he answered “smothered burritos” on the juror questionnaire in response to a question about any special accommodations that the juror might need. Defendant responded that the State should have developed these issues during voir dire, which prompted the district court to ask, “alright, but what about your racial challenge?” Defense counsel stated, “I don’t think that the State has provided a sufficient answer to overcome the *Batson* challenge.” The district court denied the challenge without comment.

⁶ *Batson v. Kentucky*, 476 U.S. 79 (1986).

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{76} Defendant did not make a *prima facie* showing of racial discrimination because he only asserted the first part of the two prong test: that is, he only asserted Juror 22 was Black, thus a member of a protected group. He did not offer any “facts and other related circumstances [that] raise an inference that the individual was excluded solely on the basis of his or her membership in a protected group.” *Salas*, 2010-NMSC-028, ¶ 31. As the State points out, Defendant made no showing at trial and makes no claim on appeal that Juror 22 was the only Black juror or that the prosecutor engaged in a pattern of striking Black jurors on the venire.

{77} Even if Defendant made a *prima facie* showing, the State offered multiple legally valid, nondiscriminatory reasons for the peremptory strike. *See id.* ¶ 38 (holding the state’s explanations for striking jurors were not inherently discriminatory or pretextual). “[A] prosecutor ordinarily is entitled to exercise permitted peremptory challenges for any reason at all, as long as that reason is related to his view concerning the outcome of the case to be tried.” *Batson v. Kentucky*, 476 U.S. 79, 89 (1986) (internal

quotation marks and citation omitted). And when asserting a race-neutral reason for a peremptory strike, “the prosecutor’s explanation need not rise to the level justifying exercise of a challenge for cause.” *Id.* at 97. {78} Defendant did not meet his burden of proving the peremptory strike was discriminatory, *see Salas*, 2010-NMSC-028, ¶¶ 31-32, therefore the district court properly denied Defendant’s *Batson* challenge.

IV. CONCLUSION

{79} Defendant’s conviction for felony murder is legally invalid because it is based on the predicate felony of aggravated assault. Therefore, we vacate that conviction as a nonexistent crime. Double jeopardy does not preclude retrial on that charge because double jeopardy only bars retrial after an acquittal, whereas reversal on the basis of nonexistent crime is a correction of trial error. Because we reverse on the basis for trial error and not for insufficient evidence, the direct remand rule does not apply. Therefore, retrial on felony murder or a lesser included offense is permissible. On the other hand, because Defendant was

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acquitted of willful and deliberate first-degree murder, double jeopardy bars retrial on that theory.

{80} Because the State presented insufficient evidence to support a second conspiracy conviction, we vacate one of Defendant’s two conspiracy convictions without the possibility of retrial.

{81} Because the district court imposed a four-year firearm enhancement when it only had the statutory authority to impose a one-year firearm enhancement, we vacate the illegal sentence and remand for resentencing according to statute.

{82} Finding no merit in Defendant’s other arguments, we affirm Defendant’s remaining convictions and remand to the district court for proceedings consistent with this opinion.

{83} **IT IS SO ORDERED.**

C. SHANNON BACON, Justice

WE CONCUR:

DAVID K. THOMSON, Chief Justice

MICHAEL E. VIGIL, Justice

JULIE J. VARGAS, Justice

BRIANA H. ZAMORA, Justice

From the New Mexico Supreme Court

<https://www.nmcompcomm.us>

From the New Mexico Supreme Court

Opinion Number: 2025-NMSC-022

No. S-1-SC-39689 (filed April 10, 2025)

SHOOK, HARDY & BACON LLP,

Petitioner,

v.

HON. MATTHEW J. WILSON, District Court Judge,

First Judicial District Court,

Respondent,

and

HENRY TRUJILLO, SHAMIE SPENCE, SAMUEL MONTOYA,

THERESA MONTOYA, and MICHAEL BARR,

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No. S-1-SC-39706

WOMBLE BOND DICKINSON (US) LLP,

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v.

HON. MATTHEW J. WILSON and HON. MARIA SANCHEZ-GAGNE,

District Court Judges, First Judicial District Court,

Respondents,

and

HENRY TRUJILLO; SHAMIE SPENCE; SAMUEL MONTOYA; THERESA MONTOYA;

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Advance Opinions

From the New Mexico Supreme Court

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No. S-1-SC-39725

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District Court Judges, First Judicial District Court,

Respondents,
and

HENRY TRUJILLO; SHAMIE SPENCE; SAMUEL MONTOYA; THERESA MONTOYA;
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OPINION VIGIL, Justice.

I. INTRODUCTION

{1} Before a state may render an enforceable judgment against a defendant, that defendant must possess certain "minimum contacts"

with the state "such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316-17 (1945) (internal quotation marks and citation omitted). This personal jurisdiction requirement can be satisfied in one of two ways: (1) through general personal

jurisdiction which extends to all claims against the defendant, or (2) through specific personal jurisdiction which "extends only to claims that arise out of or relate to the defendant's contacts with the forum" state. *Chavez v. Bridgestone Ams. Tire Operations, LLC*, 2022-NMSC-006, ¶ 23, 503 P.3d 332 (internal quotation marks and citation

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omitted). A state may exercise general personal jurisdiction over a defendant if the defendant is “essentially at home in the forum State.” *Id.* ¶¶ 3, 24 (emphasis omitted) (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 139 (2014)). In contrast, a state may exercise specific personal jurisdiction over a nonresident defendant if the defendant has purposefully directed its activities towards the forum state such that it can reasonably foresee being brought into court there. *Fed. Deposit Ins. Co. v. Hiatt*, 1994-NMSC-044, ¶¶ 8-9, 117 N.M. 461, 872 P.2d 879. With the narrow basis for general personal jurisdiction, specific personal jurisdiction has become the primary means of ensuring that a nonresident defendant remains answerable for the damages it causes in a state.

{2} In this extraordinary writ proceeding, we consider a theory of specific personal jurisdiction premised on a defendant’s participation in a civil conspiracy. For ease of reference, we refer to this theory as “conspiracy jurisdiction.” Conspiracy jurisdiction permits a state to exercise specific personal jurisdiction over a nonresident defendant who participates in a civil conspiracy if the acts that the defendant’s co-conspirators take in furtherance of the civil conspiracy create minimum contacts with the state. In *Santa Fe Technologies v. Argus Networks, Inc.*, our Court of Appeals held that conspiracy jurisdiction is constitutionally permissible and may serve as a basis for asserting specific personal jurisdiction in New Mexico. 2002-NMCA-030, ¶¶ 31-39, 131 N.M. 772, 42 P.3d 1221. We now consider three petitions for writ of prohibition challenging that holding.

{3} The petitioners here—Shook, Hardy & Bacon LLP (Shook), Covington & Burling LLP (Covington), and Womble Bond Dickinson (US) LLP (Womble) (collectively, the Law Firms)—are alleged to have conspired with cigarette manufacturers and other tobacco industry organizations to defraud the public about the dangers of cigarette smoking. In two underlying lawsuits, the First Judicial District Court cited *Santa Fe Technologies* and asserted jurisdiction over the Law Firms on the basis of their involvement in the alleged

civil conspiracy. The Law Firms now ask us to disavow conspiracy jurisdiction, arguing that it violates due process. The Law Firms further argue that, even if conspiracy jurisdiction satisfies due process, Plaintiffs in the underlying lawsuits (Real Parties in Interest here) have not made a *prima facie* case of conspiracy jurisdiction. The Law Firms thus seek an extraordinary writ prohibiting the district court from asserting personal jurisdiction over them.

{4} We conclude that conspiracy jurisdiction satisfies due process if tailored to focus on those aspects of the defendant’s conduct that evidence the defendant’s purposeful availment of the forum state through participation in the civil conspiracy. Specifically, we conclude that conspiracy jurisdiction satisfies due process if tailored to focus on the defendant’s conduct in joining a civil conspiracy targeting the forum state. We confirm that specific personal jurisdiction may be exercised over a defendant who participates in a civil conspiracy that the defendant knows will include acts creating minimum contacts with our state. Applying this standard to the record of the underlying proceedings, we conclude that Plaintiffs have failed to show grounds for specific personal jurisdiction over the Law Firms. The Law Firms must be dismissed.

II. BACKGROUND

{5} This proceeding has its origins in two lawsuits that Plaintiffs filed against cigarette manufacturer Philip Morris USA, Inc. (Philip Morris), the Law Firms, and several local cigarette retailers and distributors. *Sandoval v. Philip Morris USA, Inc.*, D-101-CV-2022-00794 (1st Jud. Dist. Ct. filed May 5, 2022); *Trujillo v. Philip Morris USA, Inc.*, D-101-CV-2022-00798 (1st Jud. Dist. Ct. filed May 5, 2022). Plaintiffs allege that the Law Firms conspired with Philip Morris and other tobacco industry organizations to misrepresent the dangers of cigarette smoking, leading to Plaintiffs’ personal injuries. Only the Law Firms, Philip Morris, and the tobacco industry organizations are alleged to have participated in this conspiracy; Plaintiffs do not claim the local distributors and retailers took part.

{6} Plaintiffs are all New Mexico residents. The Law Firms are all nonresidents: Shook

is established in and principally operates out of Missouri; Covington is organized and primarily does business in the District of Columbia; and Womble is based in North Carolina. None of the Law Firms have significant ties, contacts, or relations in New Mexico. Plaintiffs concede that New Mexico lacks general personal jurisdiction over the Law Firms. Plaintiffs instead allege that specific personal jurisdiction is proper, in part, because the Law Firms joined with Philip Morris and other tobacco organizations in a nationwide civil conspiracy to commit fraudulent misrepresentation and that this nationwide civil conspiracy included New Mexico.

{7} The Law Firms filed motions to dismiss for lack of personal jurisdiction, asserting that Plaintiffs could not show that they took any actions related to the suit that specifically occurred in or were aimed at New Mexico. The Law Firms also argued that conspiracy jurisdiction is unconstitutional. Plaintiffs responded that jurisdiction is appropriate over the Law Firms under both conspiracy jurisdiction and traditional due process principles, and attached several hundred pages of exhibits in support of their responses.

{8} Plaintiffs proffered the exhibits to show that the Law Firms served on the “Committee of Counsel,” an association of lawyers representing cigarette manufacturers and tobacco industry organizations whose goal was to coordinate a public relations campaign to defraud the public about the adverse health impacts of smoking. The exhibits, which are not accompanied by an affidavit, appear to be documents pulled from publicly available online archives about the tobacco industry. The exhibits mostly describe out-of-state conduct. But interspersed within the exhibits are a few references to New Mexico. For example, Plaintiffs attached a few tobacco advertisements and pamphlets distributed in New Mexico. Other exhibits include various letters and memoranda citing New Mexico laws or regulations, identifying smoking-related state court litigation, discussing studies conducted by New Mexico research institutions, or documenting campaign contributions to local officials. We discuss Plaintiffs’ exhibits

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in more detail below.

{9} The district court denied the Law Firms' motions to dismiss. The district court specifically cited *Santa Fe Technologies*, 2002-NMCA-030, as the basis for asserting personal jurisdiction over the Law Firms, explaining that Plaintiffs had shown that the Law Firms actively participated in a civil conspiracy that "reached into New Mexico." The district court also refused to certify the matter for interlocutory appeal. *See* NMSA 1978, § 39-3-4 (1999).

{10} Each of the Law Firms separately petitioned this Court for a writ of prohibition to restrain the district court from exercising personal jurisdiction over them. We initially denied Covington's petition but later withdrew the order and consolidated the three petitions. After oral argument, we granted the petitions and issued an extraordinary writ instructing the district court to dismiss the Law Firms from the underlying lawsuits. We held that conspiracy jurisdiction is constitutional but determined that the district court lacked jurisdiction over the Law Firms on the record presented. We now write to explain our reasoning.

III. STANDARD FOR A PETITION FOR WRIT OF PROHIBITION

{11} The Law Firms seek to invoke the Court's original jurisdiction in prohibition. N.M. Const. art. VI, § 3. The writ of prohibition is "an extraordinary writ, issued by a superior court to an inferior court to prevent the latter from exceeding its jurisdiction, either by prohibiting it from assuming jurisdiction in a matter over which it has no control, or from going beyond its legitimate powers in a matter of which it has jurisdiction." *State ex rel. Harvey v. Medler*, 1914-NMSC-055, ¶ 17, 19 N.M. 252, 142 P. 376. In assessing the propriety of a writ of prohibition, "this Court is concerned with whether the district court had jurisdiction over the subject matter of the dispute and over each of the parties to the dispute." *In re Extradition of Martinez*, 2001-NMSC-009, ¶ 7, 130 N.M. 144, 20 P.3d 126. The relevant question is "not whether the court had a right to decide

the issue in a particular way, but did it have the right to decide it at all." *Id.* (quoting *State ex rel. Kermac Nuclear Fuels Corp. v. Larrazolo*, 1962-NMSC-134, ¶ 23, 70 N.M. 475, 375 P.2d 118).

{12} A writ of prohibition "is never allowed to serve the purpose of appeal, writ of error, or certiorari, or any other process known to the common law by which the action of an inferior court may be reviewed." *Lincoln-Lucky & Lee Mining Co. v. Dist. Ct.*, 1894-NMSC-006, ¶ 14, 7 N.M. 486, 38 P. 580 (Freeman, J., dissenting); *accord State v. Valerio*, 2012-NMCA-022, ¶ 23, 273 P.3d 12 ("It is well established that the extraordinary writ of prohibition is generally available only in cases where there is no adequate remedy at law."). This Court may issue a writ of prohibition as a matter of "sound judicial discretion, to be granted or withheld according to the circumstances of each particular case, to be used with great caution for the furtherance of justice when none of the ordinary remedies provided by law are applicable." *Medler*, 1914-NMSC-055, ¶ 23.

{13} This is one of those extraordinary occasions in which we will consider a writ of prohibition based on an asserted lack of personal jurisdiction. The Law Firms' petitions present a novel question of law addressing a unique theory of specific personal jurisdiction. That question is of substantial public concern and implicates the Law Firms' fundamental due process rights. This Court first alluded to conspiracy as a basis for asserting personal jurisdiction in *Sanchez v. Church of Scientology of Orange Cnty.*, 1993-NMSC-034, ¶¶ 11-12, 115 N.M. 660, 857 P.2d 771, but had no occasion to consider whether to adopt the theory under the facts presented in that matter. Based partly on *Sanchez*, our Court of Appeals adopted conspiracy jurisdiction in 2002. *Santa Fe Techs.*, 2002-NMCA-030, ¶¶ 32, 34. This Court has not had an opportunity to review the theory since then. Judicial economy is promoted by considering the issues now rather than on any possible appeal. We, therefore, exercise our discretion to entertain the Law Firms' petitions due to the novelty and importance

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of the questions involved.

IV. DISCUSSION

{14} The Law Firms advance two main arguments against the district court's assertion of personal jurisdiction: (1) conspiracy jurisdiction violates due process because it relies on contacts created by the unilateral conduct of a third party and not by the defendant itself, and (2) even if conspiracy jurisdiction does not violate due process, Plaintiffs have failed to show that jurisdiction may be exercised over them. We address each argument in turn.

A. Conspiracy Jurisdiction Satisfies Due Process

1. Overview of personal jurisdiction requirements

{15} "The Due Process Clause of the Fourteenth Amendment [to the United States Constitution] limits the power of a state court to render a valid personal judgment against a nonresident defendant." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980); *Ins. Corp. of Ir., Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 n.10 (1982) (explaining that personal jurisdiction limitations "must be seen as ultimately a function of the individual liberty interest preserved by the Due Process Clause"). Specifically, the Due Process Clause "does not contemplate that a state may make binding a judgment in personam against an individual or corporate defendant with which the state has no contacts, ties, or relations." *Int'l Shoe*, 326 U.S. at 319. Personal jurisdiction limitations also promote comity and federalism by "ensur[ing] that States with little legitimate interest in a suit do not encroach on States more affected by the controversy." *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 360 (2021) (internal quotation marks and citation omitted).

{16} Under the Due Process Clause, a state may exercise personal jurisdiction over a defendant if the defendant possesses "certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe*, 326 U.S. at 316 (quoting *Milliken v. Meyer*, 311

¹ See Univ. of Cal. S.F., Truth Tobacco Industry Documents, <https://www.industrydocuments.ucsf.edu/tobacco> (last visited Apr. 2, 2025).

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U.S. 457, 463 (1940)). The United States Supreme Court recognizes two types of personal jurisdiction, specific and general. *Chavez*, 2022-NMSC-006, ¶ 23. General personal jurisdiction extends to all claims against a defendant; specific personal jurisdiction extends only to claims arising out of or related to the defendant's contacts with the forum state. *Id.*; *Helicopteros Nacionales de Colom.*, S.A. v. *Hall*, 466 U.S. 408, 414 nn.8 & 9 (1984).

{17} Conspiracy jurisdiction is a type of specific personal jurisdiction. *Santa Fe Techs.*, 2002-NMCA-030, ¶ 31. New Mexico courts may exercise specific personal jurisdiction over a nonresident defendant when (1) the defendant committed an act enumerated in our long-arm statute, NMSA 1978, § 38-1-16 (1971); (2) the plaintiff's cause of action arises from or relates to the defendant's acts; and (3) the defendant has minimum contacts with New Mexico necessary to satisfy due process. *Sanchez*, 1993-NMSC-034, ¶ 8. We have construed our long-arm statute as extending personal jurisdiction as far as constitutionally permissible, and thus, the first and third steps of this test "collapse[] into a single search for the outer limits of what due process permits." *Hiatt*, 1994-NMSC-044, ¶ 7 (internal quotation marks and citation omitted). While the overall inquiry into specific personal jurisdiction considers whether the defendant has sufficient minimum contacts with the forum state to render the exercise of jurisdiction fair, in practice, courts evaluating personal jurisdiction often separate the inquiry into a "contacts" prong and a "reasonableness" prong. *Daimler*, 571 U.S. at 144 (Sotomayor, J., concurring).

{18} In analyzing the sufficiency of contacts with the forum state, we "focus[] on the relationship among the defendant, the forum, and the litigation." *Calder v. Jones*, 465 U.S. 783, 788 (1984) (internal quotation marks and citation omitted). To exercise specific personal jurisdiction over a nonresident defendant, the defendant must have sufficient contacts with a forum state such that it "should reasonably anticipate being haled into court there"; however, the foreseeability of litigation

"has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause." *World-Wide Volkswagen*, 444 U.S. at 295, 297. Rather, "it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

{19} We have explained, "the purposeful availment test of *Hanson* is the 'key focus' in analyzing minimum contacts questions." *Hiatt*, 1994-NMSC-044, ¶ 9 (emphasis omitted) (citation omitted). This "purposeful availment requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts, or of the unilateral activity of another party or a third person." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985) (internal quotation marks and citations omitted); *accord Hanson*, 357 U.S. at 253 ("The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State."). The defendant's contacts with the forum state "must be the defendant's own choice and . . . show that the defendant deliberately reached out beyond its home—by, for example, exploiting a market in the forum State or entering a contractual relationship centered there." *Ford Motor*, 592 U.S. at 359 (brackets, internal quotation marks, and citation omitted).

{20} Even if the party asserting jurisdiction meets its burden regarding the contacts prong, the exercise of personal jurisdiction must still be reasonable. *Burger King*, 471 U.S. at 476-78. "This determination is made by balancing five factors: the burden on the defendant, New Mexico's interest, the plaintiff's interest, the interest in an efficient judicial system, and the interest in promoting public policy." *Zavala v. El Paso Cnty. Hosp. Dist.*, 2007-NMCA-149, ¶ 12, 143 N.M. 36, 172 P.3d 173 (citing *Burger King*, 471 U.S. at 476-77). Of these factors, the burden on the defendant is of "primary" importance. *Bristol-Myers Squibb Co. v. Superior Ct.*, 582 U.S. 255, 263 (2017).

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2. *Santa Fe Technologies* and conspiracy jurisdiction

{21} In *Santa Fe Technologies*, our Court of Appeals held that specific personal jurisdiction could be exercised over a nonresident defendant on the basis of the defendant's participation in a civil conspiracy. 2002-NMCA-030, ¶¶ 31-36. The plaintiff in *Santa Fe Technologies* was a New Mexico corporation that had entered into an agreement with several nonresident defendants to pursue a bid on a federal government contract. *Id.* ¶¶ 4-5. The plaintiff alleged that the defendants later conspired to replace it with another corporation on the bid. *Id.* ¶¶ 9-11. The plaintiff sued under intentional tort theories, and the defendants moved to dismiss for lack of personal jurisdiction. *Id.* ¶ 11. The district court denied the motions to dismiss. *Id.*

{22} On appeal, the Court of Appeals affirmed that personal jurisdiction was proper over the defendants who had either acted in New Mexico or who had sent agents to New Mexico to act on their behalf. *Id.* ¶¶ 23, 27-29. However, one defendant, DeNino, had neither come to New Mexico nor sent an agent here. *Id.* ¶¶ 6, 8, 30, 37. Yet DeNino knew of and had agreed to the other defendants' in-state acts. *Id.* ¶¶ 6, 8, 37. The Court of Appeals, therefore, considered whether jurisdiction could be asserted over DeNino on the basis of his participation in a civil conspiracy with the other defendants. *Id.* ¶ 30.

{23} The *Santa Fe Technologies* Court explained, "[p]ersonal jurisdiction based on conspiracy is premised on the concepts that jurisdictional contacts of one in-state conspirator may be imputed to a nonresident co-conspirator." *Id.* ¶ 31. The Court of Appeals acknowledged a split on the constitutionality of conspiracy jurisdiction, noting that some courts hold that it violates due process because it relies on contacts created by a co-conspirator rather than contacts created by the defendant itself. *Id.* ¶¶ 32-33. The Court of Appeals nevertheless adhered to precedent approving of an "appropriately limited" view of conspiracy jurisdiction. *Id.* ¶¶ 33-34. The Court reasoned that conspiracy jurisdiction satisfies due process because it "is based on the principles of agency," as under

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the substantive law of civil conspiracy, the actions of one co-conspirator may be attributed to the other co-conspirators. *Id.* ¶ 34. The Court of Appeals further reasoned that a defendant who voluntarily participated in a civil conspiracy with knowledge of its acts or effects in the forum state could be said to have purposefully availed itself of the privilege of conducting activities there. *Id.* ¶¶ 32, 34.

{24} The *Santa Fe Technologies* Court explained that DeNino had participated in a civil conspiracy with the other defendants and had approved the other defendants' in-state efforts to remove the plaintiff from the bid. *Id.* ¶ 37. The Court reasoned that DeNino's "activities were directed toward New Mexico because he knew or should have known that [a co-conspirator], upon his agreement, would perform in New Mexico the actions in furtherance of the conspiracy of which he had approved." *Id.* ¶ 38. Because DeNino "gave his approval" to the tortious in-state acts, the Court of Appeals concluded "personal jurisdiction of the state's courts over DeNino as a co-conspirator . . . [was] sound." *Id.* ¶ 39.

3. Conspiracy jurisdiction satisfies due process if limited to focus on the defendant's conduct in joining a conspiracy targeting the forum state

{25} The Law Firms ask this Court to limit *Santa Fe Technologies* to the extent that the opinion adopts conspiracy jurisdiction as a basis to assert specific personal jurisdiction. The Law Firms argue that conspiracy jurisdiction contravenes due process because the theory relies on forum contacts unilaterally made by a third party instead of contacts made by the defendant itself. The Law Firms suggest that two recent United States Supreme Court opinions, *Walden v. Fiore*, 571 U.S. 277 (2014), and *Bristol-Myers*, 582 U.S. 255, demonstrate that conspiracy jurisdiction is incompatible with due process. Plaintiffs respond that neither *Walden* nor *Bristol-Myers* addressed conspiracy jurisdiction and that *Santa Fe Technologies* remains good law.

{26} Plaintiffs correctly note that neither *Walden* nor *Bristol-Myers* addressed conspiracy jurisdiction; however, both opinions shed light on the validity of the theory by clarifying that specific personal

jurisdiction may be exercised by the forum state only when the claim-related contacts of the *defendant* are sufficient. In *Walden*, the Supreme Court considered whether Nevada courts could exercise jurisdiction over a nonresident defendant for claims arising from the defendant's seizure of the plaintiff's property in Georgia. 571 U.S. at 279. The defendant, a federal agent working at the Hartsfield-Jackson Atlanta International Airport, seized the plaintiff's property during a flight layover. *Id.* at 280. The plaintiffs traveled home to Nevada and brought suit there for intentional tort. *Id.* at 281.

{27} The *Walden* Court held that jurisdiction was not properly exercised over the defendant in Nevada, explaining: "The proper focus of the 'minimum contacts' inquiry in intentional-tort cases is 'the relationship among the defendant, the forum, and the litigation.' And it is the defendant, not the plaintiff or third parties, who must create contacts with the forum State." *Id.* at 291 (internal quotation marks and citation omitted). The Court explained that Nevada lacked personal jurisdiction because all of the relevant conduct took place in Georgia; the fact that the defendant knew the plaintiffs would be injured in Nevada was insufficient to confer jurisdiction. *Id.* "The proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way." *Id.* at 290.

{28} In *Bristol-Myers*, a large group of plaintiffs, including residents and nonresidents, filed suit in California against a nonresident drug manufacturer for injuries allegedly sustained from a medication. 582 U.S. at 258. The California Supreme Court analyzed whether to assert jurisdiction over the manufacturer using a sliding scale approach, reasoning that the plaintiffs' claims could have less of a connection with the forum state when the defendant possessed extensive contacts with the state. *Id.* at 260. On review, the United States Supreme Court rejected this sliding-scale approach, affirming that specific personal jurisdiction extends only to claims connected to the defendant's contacts with the forum state. *Id.* at 263-64. "When there

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is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." *Id.* at 264.

{29} The *Bristol-Myers* Court held that California could not exercise jurisdiction over the manufacturer because the nonresidents' claims were not connected to the state. *Id.* at 264-65. This lack of connection between the forum and the nonresident plaintiffs' claims defeated jurisdiction in spite of the fact that California could exercise jurisdiction over identical claims raised by the plaintiffs who were residents of the forum. *Id.* "As we have explained, a defendant's relationship with a third party, standing alone, is an insufficient basis for jurisdiction. This remains true even when third parties (here, the plaintiffs who reside in California) can bring claims similar to those brought by the nonresidents." *Id.* at 265 (ellipsis, internal quotation marks, and citation omitted).

{30} Neither *Walden* nor *Bristol-Myers* addressed the question presented here, namely, whether specific personal jurisdiction may be asserted over a nonresident defendant based on the defendant's participation in a civil conspiracy. However, both opinions emphasize that the defendant itself must make the relevant forum contacts and that the defendant's relationship with others, standing alone, is insufficient to confer jurisdiction. *Walden*, 571 U.S. at 291; *Bristol-Myers*, 582 U.S. at 264-65. Thus, *Walden* and *Bristol-Myers* seemingly undermine conspiracy jurisdiction to the extent that the theory attributes contacts to a defendant based on its relationship with its co-conspirators. Indeed, several courts have rejected conspiracy jurisdiction because the theory arguably shifts the focus of the jurisdictional inquiry away from "the relationship among the defendant, the forum, and the litigation" and commingles the jurisdictional inquiry with the potential merits of a civil conspiracy claim. *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 775 (1984) (internal quotation marks and citation omitted); *see, e.g., Ashby v. State*, 779 N.W.2d 343, 361 (Neb. 2010) ("The difficulty with establishing personal jurisdiction based on an alleged conspiracy is that it merges the

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jurisdiction issue with the merits of the case."); *Nat'l Indus. Sand Ass'n v. Gibson*, 897 S.W.2d 769, 773 (Tex. 1995) ("Conspiracy as an independent basis for jurisdiction has been criticized as distracting from the ultimate due process inquiry: whether the out-of-state defendant's contact with the forum was such that it should reasonably anticipate being haled into a court in the forum state.").

{31} Yet *Walden* and *Bristol-Myers* do not foreclose conspiracy jurisdiction. And other jurisdictions have recognized that conspiracy jurisdiction is constitutionally permissible after *Walden* and *Bristol-Myers* because the law of civil conspiracy is closely related to principles of agency. See, e.g., *Womble Bond Dickinson (US) LLP v. Kim*, 537 P.3d 1154, 1162 (Haw. 2023) ("*Walden* recognized that an agent's in-state acts operate as a 'relevant contact' for due process purposes. . . . While conspiracy and agency relationships are not exactly the same, they are closely related."); *Raser Techs., Inc. v. Morgan Stanley & Co., LLC*, 2019 UT 44, ¶ 79, 449 P.3d 150 ("[B]ecause a conspiracy is a type of agency relationship, an act taken during the course of a conspiracy relationship may lead to specific personal jurisdiction over a defendant."); *Tricarichi v. Coop. Rabobank, U.A.*, 440 P.3d 645, 652-53 (Nev. 2019) ("[B]ecause co-conspirators are deemed to be each other's agents, the contacts that one co-conspirator made with a forum while acting in furtherance of the conspiracy may be attributed for jurisdictional purposes to the other co-conspirators." (internal quotation marks and citation omitted))). And there are sound policy reasons for recognizing the theory, as a state has an interest in providing an accessible forum for plaintiffs to sue defendants for conduct that bears a substantial connection with the state. *Burger King*, 471 U.S. at 473.

{32} We accept this policy justification and agree with the underlying rationale that conspiracy jurisdiction is constitutionally sound because it is aligned with principles of agency. As noted by our Court of Appeals, under a claim for civil conspiracy, the acts of one co-conspirator in furtherance of the civil conspiracy become the acts of all co-conspirators. *Santa Fe Techs.*, 2002-

NMCA-030, ¶ 34. Indeed, a substantive claim for civil conspiracy is not a separately actionable tort, *Armijo v. Nat'l Sur. Corp.*, 1954-NMSC-024, ¶¶ 28-29, 58 N.M. 166, 268 P.2d 339, but is instead a means "to impute liability to make members of the conspiracy jointly and severally liable for the torts of any of its members." *Ettenson v. Burke*, 2001-NMCA-003, ¶ 12, 130 N.M. 67, 17 P.3d 440. Accordingly, the acts that a co-conspirator takes in furtherance of a civil conspiracy "are not unilateral because conspiratorial acts have at their foundation an agreement and the involvement of other co-conspirators." *Santa Fe Techs.*, 2002-NMCA-030, ¶ 34.

{33} In this regard, conspiracy jurisdiction merely recognizes that a defendant can purposefully direct its activities towards a forum state by agreeing that a co-conspirator may perform acts targeted at the state in furtherance of their joint objective. Our long-arm statute permits a court to exercise specific personal jurisdiction based on the acts of an agent. See § 38-1-16(A) ("Any person, whether or not a citizen or resident of this state, who in person or through an agent does any of the acts enumerated in this subsection thereby submits himself or his personal representative to the jurisdiction of the courts of this state." (emphasis added)). And, despite emphasizing the importance of basing jurisdiction on a defendant's own conduct, *Walden* recognizes that a defendant may make relevant forum contacts through indirect or vicarious means, such as through the acts of an agent. 571 U.S. at 285. We agree that such vicariously created contacts encompass contacts created by a defendant's co-conspirator when acting in furtherance of a joint civil conspiracy.

{34} The Law Firms nevertheless contend that there is one crucial difference between an agent and a co-conspirator: control. The Law Firms reason "[a]gency relationships are premised on control," and thus "[i]t follows that in the jurisdictional context, an in-state agent's contacts are imputed to an out-of-state principal only when the principal controls the agent and consents to the agent's acts." We disagree.

{35} Under the substantive law of agency, the requirement of control is essential to a finding of respondeat superior liability.

See, e.g., Restatement (Third) of Agency § 1.01, at 17 (2005) ("Agency is the fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf and *subject to the principal's control*, and the agent manifests assent or otherwise consents so to act." (emphasis added)); UJI 13-402 NMRA (providing that for a principal to be liable for acts of its agent, the principal must have "had the right to control the manner in which the details of the work were to be performed at the time of the occurrence, even though the right of control may not have been exercised"). But all that due process requires for an assertion of specific personal jurisdiction is that the defendant "deliberately reached out" to the forum state, *Ford Motor*, 592 U.S. at 359 (internal quotation marks and citation omitted), such that it can be said to have fairly "invok[ed] the benefits and protections of its laws." *Hanson*, 357 U.S. at 253. We assess that a defendant can deliberately reach out to a forum state by participating in a civil conspiracy directed at the state even if the defendant does not control the details of its co-conspirator's acts for purposes of respondeat superior.

{36} The United States Supreme Court has previously held that an intentional tortfeasor may be held to account for out-of-state conduct that is aimed at and foreseeably causes injuries in a forum state. *Calder*, 465 U.S. at 788-91. This is true even if the intentional tortfeasor does not control the entities or instrumentalities that carry out the effects of the defendant's intentional conduct in the state. *Id.* at 789-90 (permitting jurisdiction over a defendant for an allegedly libelous article targeted at the forum state even though the defendant was not responsible for distributing the article in the forum state). A defendant's control over its co-conspirators is therefore irrelevant to the question of specific personal jurisdiction. See *Schwab Short-Term Bond Mkt. Fund v. Lloyds Banking Grp. PLC*, 22 F.4th 103, 124-25 (2d Cir. 2021) (rejecting a requirement of the defendant's direction, supervision, or control of a co-conspirator for conspiracy jurisdiction). Nevertheless, we discern that the purposeful availment

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requirement demands that a defendant have intentionally targeted the forum state for specific personal jurisdiction to apply. For jurisdiction to lie based on intentionally tortious conduct, the United States Supreme Court has emphasized that a “forum State’s exercise of jurisdiction over an out-of-state intentional tortfeasor must be based on intentional conduct by the defendant that creates the necessary contacts *with the forum*.” *Walden*, 571 U.S. at 286 (emphasis added). Due process requires that the defendant committed an intentional act that is directed at the forum state, not just at the plaintiff. *Calder*, 465 U.S. at 789-90.

{37} Thus, even though a defendant does not need to control its co-conspirator, we conclude that a defendant, in participating in a civil conspiracy, must have intentionally targeted the forum state for specific personal jurisdiction to apply. We concur with *Santa Fe Technologies* that a defendant’s intent to target a forum state can be shown through the defendant’s active participation in a civil conspiracy and knowledge that, on its agreement, a co-conspirator will perform acts in furtherance of the civil conspiracy that are targeted at the forum state. *Santa Fe Techs.*, 2002-NMCA-030, ¶¶ 32, 36. With this knowledge requirement, conspiracy jurisdiction focuses on the defendant’s own conduct in knowingly joining a conspiracy targeted at the forum state and not merely on the defendant’s relationship with its co-conspirators.

{38} We, therefore, endorse the following limited standard for evaluating an assertion of specific personal jurisdiction on the basis of the defendant’s participation in a civil conspiracy. A plaintiff seeking to establish personal jurisdiction over a defendant on the basis of a civil conspiracy must allege with particularity or, on challenge, show that: (1) the defendant actively and voluntarily participated in a civil conspiracy, (2) the defendant knew of a co-conspirator’s acts in furtherance of the civil conspiracy that occurred in or were aimed at New Mexico, and (3) these acts created minimum contacts with New Mexico such that the defendant could reasonably foresee being brought into court here. As with other exercises of specific personal jurisdiction, the plaintiff’s claims must arise from

or relate to the contacts imputed to the defendant on the basis of its participation in the civil conspiracy. *Ford Motor*, 592 U.S. at 361-62. The defendant’s contacts must also “be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with fair play and substantial justice.” *Burger King*, 471 U.S. at 476 (internal quotation marks and citation omitted).

4. We limit *Santa Fe Technologies* to the extent it conflicts with our holding

{39} We thus agree with *Santa Fe Technologies* that conspiracy jurisdiction satisfies due process. 2002-NMCA-030, ¶ 36. We also agree that the facts of *Santa Fe Technologies* supported an assertion of conspiracy jurisdiction over the nonresident defendant in that case. In *Santa Fe Technologies*, DeNino knew that his co-conspirators, on his agreement, would take tortious actions in New Mexico, which foreseeably caused injuries here. *Id.* ¶¶ 8, 44. DeNino was, therefore, properly brought into our courts based on his conduct in participating in a civil conspiracy that he knew would involve acts creating minimum contacts with our state. *Id.* ¶¶ 37-39.

{40} Although we approve of the result in *Santa Fe Technologies*, we nevertheless must correct and limit that opinion to the extent that its analysis of conspiracy jurisdiction conflicts with our own.

{41} First, we disapprove of *Santa Fe Technologies*’ suggestion that a defendant’s knowledge of a conspiracy’s *effects* in a forum state is sufficient to satisfy due process. *Id.* ¶¶ 32, 34. It is not enough that a defendant anticipated that a civil conspiracy would have effects in the forum state. *Walden*, 571 U.S. at 286. Rather, the defendant’s conduct in participating in the civil conspiracy must demonstrate an intent to target the forum, which may be shown by the defendant’s knowledge of conspiratorial acts directed towards the forum state.

{42} Second, *Santa Fe Technologies* improperly injected an objective knowledge inquiry into the analysis of conspiracy jurisdiction. The Court of Appeals stated, “DeNino’s activities were directed toward New Mexico because he knew *or should have known* that [a co-conspirator], upon

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his agreement, would perform in New Mexico the actions in furtherance of the conspiracy of which he had approved.” *Santa Fe Techs.*, 2002-NMCA-030, ¶ 38 (emphasis added). Due process demands that a defendant purposefully direct its activities at a forum, *Hanson*, 357 U.S. at 253, so the defendant must actually know about a co-conspirator’s in-state or forum-targeted acts. We, therefore, limit *Santa Fe Technologies* to the extent it suggests that personal jurisdiction may be exercised over a defendant who “should have known” of a co-conspirator’s acts in or aimed at our state. As we have explained, conspiracy jurisdiction will lie only when the defendant has actual knowledge of the relevant conspiratorial acts.

{43} Third, we clarify that conspiracy jurisdiction does not require the in-state presence of a co-conspirator. In *Santa Fe Technologies*, our Court of Appeals suggested that a co-conspirator must have a “physical, in-state presence,” or have committed acts inside the state for conspiracy jurisdiction to apply. 2002-NMCA-030, ¶¶ 32, 36. Other jurisdictions have similarly required that a plaintiff show that the defendant knew of the acts a co-conspirator took inside the state. See *EIG Energy Fund XIV, L.P. v. Petróleo Brasileiro, S.A.*, 246 F. Supp. 3d 52, 91 (D.D.C. 2017) (“[F]ollowing *Walden*, a plaintiff who seeks to establish jurisdiction over a defendant based on a co-conspirator’s contacts must plead, at a minimum, that the defendant knew his co-conspirator was carrying out acts in furtherance of the conspiracy in the forum.” (emphasis omitted)); *Kim*, 537 P.3d at 1163 (adopting conspiracy jurisdiction with a standard requiring the plaintiff to show that “the defendant knew of the co-conspirator’s acts in the forum”). However, *Calder* recognizes that a defendant may be subject to jurisdiction for out-of-state conduct intentionally aimed at a forum state. *Calder*, 465 U.S. at 789. Thus, we disagree that a co-conspirator’s in-state presence is required. A defendant can be subjected to personal jurisdiction based on its knowledge of a co-conspirator’s acts expressly aimed at a forum state, as well as a co-conspirator’s acts occurring in the forum state. We, therefore, limit

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Santa Fe Technologies to the extent that the opinion may have required an in-state co-conspirator.

B. The District Court Lacks Jurisdiction Over the Law Firms

{44} We now consider whether jurisdiction may be exercised over the Law Firms in the two civil lawsuits underlying this writ proceeding. The Law Firms argue that the district court exceeded its jurisdiction in denying each of their motions to dismiss Plaintiffs' lawsuits. The district court concluded that Plaintiffs had shown a civil conspiracy that "reached into New Mexico" but did not make any specific findings of fact. In the absence of any specific findings, we review the record de novo to determine whether Plaintiffs have shown personal jurisdiction over the Law Firms. *Tercero v. Roman Cath. Diocese of Norwich*, 2002-NMSC-018, ¶ 5, 132 N.M. 312, 48 P.3d 50. {45} Because no evidentiary hearing was held in the underlying suits, Plaintiffs bear the burden to make a *prima facie* showing that jurisdiction may be properly exercised over the Law Firms. *Doe v. Roman Cath. Diocese of Boise, Inc.*, 1996-NMCA-057, ¶ 9, 121 N.M. 738, 918 P.2d 17. With respect to conspiracy jurisdiction, a "*prima facie* showing consists of specific facts that, if proven, would allow a factfinder to find the existence of a conspiracy" that the defendant knew involved acts occurring in or directly aimed at our state. *Santa Fe Techs.*, 2002-NMCA-030, ¶ 41. "Mere allegations are not sufficient, but all factual disputes are resolved in [the plaintiff's] favor." *Id.* (citation omitted). Notwithstanding the holding today and its procedural posture, we acknowledge that a plaintiff's burden of showing a *prima facie* case of conspiracy jurisdiction may not be best suited in all cases for a decision by the court on a motion to dismiss. It might require, in most circumstances, jurisdiction discovery so the court can properly apply the test set forth in this opinion, and the parties have the opportunity to gather the facts necessary to advance their arguments.

{46} A civil conspiracy is "a combination by two or more persons to accomplish an unlawful purpose or to accomplish a lawful purpose by unlawful means." *Las Luminarias of the N.M. Council of the*

Blind v. Isengard, 1978-NMCA-117, ¶ 5, 92 N.M. 297, 587 P.2d 444. A claim for "civil conspiracy unlike criminal conspiracy, is not of itself actionable; the gist of the action is the damage arising from the acts done pursuant to the conspiracy." *Armijo*, 1954-NMSC-024, ¶ 28. Thus, "[w]ithout an actionable civil case against one of the conspirators, . . . an agreement, no matter how conspiratorial in nature, is not a separate, actionable offense." *Ettenson*, 2001-NMCA-003, ¶ 12.

{47} Plaintiffs allege that the Law Firms conspired with Philip Morris and other tobacco industry organizations to commit fraudulent misrepresentation. Plaintiffs describe a civil conspiracy starting in the early 1950s wherein Philip Morris and other tobacco industry organizations combined together to engage in a public relations campaign designed to downplay and create controversy about growing scientific research into the adverse health effects of smoking. Plaintiffs' complaints describe the acts of tobacco industry executives in some detail. However, Plaintiffs' allegations against the Law Firms are not supported by particularized facts.

{48} Instead, Plaintiffs broadly allege that the Law Firms participated in the civil conspiracy by screening and directing scientific studies favorable to the tobacco industry, carrying out document destruction policies protecting tobacco organizations, sheltering behind baseless assertions of attorney-client privilege, overseeing public positions and statements, clearing advertisements, providing false and misleading testimony and submissions to governmental agencies, and hiding the source of money for special projects. Plaintiffs proffer that, as members of the Committee of Counsel, the Law Firms served as the "supreme authority" of the alleged conspiracy and set the "high policy of the industry on *all* smoking and health matters." But, in the absence of specific allegations of fact showing the Law Firms' conduct, Plaintiffs have failed to *prima facie* show the Law Firms' active participation in a civil conspiracy to fraudulently misrepresent the health effects of tobacco use.

{49} Plaintiffs have also failed to demonstrate the Law Firms knew of acts in furtherance of the alleged civil conspiracy, which create minimum contacts with our state. In an effort to demonstrate a connection between the alleged civil conspiracy and New Mexico, Plaintiffs submitted hundreds of pages of exhibits, including a few advertisements published in New Mexico promoting filtered or low-tar cigarettes, the transcript of a national television interview of a Philip Morris executive that aired in New Mexico, a "Tobacco Facts" pamphlet distributed by the New Mexico Tobacco & Candy Distributors organization, and a list of tobacco industry members in the region. Plaintiffs, in particular, suggest that the publication of a full-page advertisement titled *A Frank Statement to Cigarette Smokers* in the *Albuquerque Journal* on January 4, 1954, "was the first of many messages to the New Mexican public intended to create doubt about whether smoking is linked to disease or death."

{50} While these exhibits show that the alleged conspiracy reached into New Mexico, none of these exhibits mention the Law Firms. Nor do the exhibits show that the Law Firms knew of any co-conspirator's acts in or aimed at New Mexico. Plaintiffs broadly allege that the Law Firms, as members of the Committee of Counsel, "vetted" documents such as these exhibits. But the referenced exhibits do not substantiate these allegations. And Plaintiffs' mere allegations are insufficient to demonstrate the Law Firms' participation and knowledge in a conspiracy targeting our state.

{51} As additional support for an assertion of jurisdiction, Plaintiffs proffer several exhibits that can fairly be described as the Law Firms' attorney work product. Some of these documents mention New Mexico alongside numerous other states. For example, Plaintiffs submitted a report distributed by Shook on regulatory developments relating to cigarette smoking, including developments in New Mexico. Similarly, Plaintiffs identify several documents prepared by Womble that mention New Mexico, including an "R&D Weekly Highlights" memo which mentions

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a Santa Fe study on burn rate control, a memo noting another New Mexico study on tobacco effects on a small Hispanic population, an agenda for a meeting held in Womble's offices which briefly mentions New Mexico, and a memo listing New Mexico as a state with employment discrimination laws related to smoking. Other exhibits include the minutes from a Tobacco Institute meeting showing that a Covington attorney attended the meeting. The agenda for the meeting lists a smoking restriction initiative in Los Alamos, New Mexico. And yet another exhibit from Covington includes a legislative summary that referenced proposed indoor smoking ordinances in Carlsbad and Mesilla, New Mexico.

{52} When viewed in Plaintiffs' favor, these attorney work product documents suggest that the Law Firms participated in discussions with their clients about state laws and regulations or studies occurring in New Mexico. However, these documents do not reveal an agreement to defraud between the Law Firms and their clients. The documents also do not mention any actions in furtherance of the alleged civil conspiracy that occurred in or were aimed at New Mexico. Nor do these documents reveal the Law Firms' knowledge of any in-state or forum-targeted conspiratorial acts. {53} In the absence of this targeted conduct, we cannot attribute any forum contacts to the Law Firms from these documents. Simply "[r]epresenting a client is not enough." *Kim*, 537 P.3d at 1165-66. Due process demands that Plaintiffs show the Law Firms participated in some act purposefully directed towards New Mexico. *Hiatt*, 1994-NMSC-044, ¶¶ 8-9. The Law Firms are not subject to our courts' jurisdiction simply because they may have advised their clients about our state's laws and regulations or kept track of scientific studies being conducted in our state.

{54} Plaintiffs also proffered a few exhibits that mention the Law Firms and acts occurring in or aimed at New Mexico. But even these exhibits fail to show that the Law Firms knew of overt acts in furtherance of the alleged civil conspiracy such that they

could reasonably foresee being haled into court here. For example, Plaintiffs suggest that one exhibit shows that Covington advised a client regarding New Mexico lobbying laws, while another exhibit later indicates that an alleged co-conspirator made campaign contributions to New Mexico regulators. Another exhibit shows that Covington retained local counsel for a New Mexico resident's smoking-related lawsuit against her employer and monitored the progress of the litigation. Viewing these exhibits in Plaintiffs' favor, these documents suggest that Covington was aware of some actions that an alleged co-conspirator may have taken in New Mexico and perhaps directly participated in another forum-related act. But these few exhibits are isolated among the hundreds of pages proffered against Covington, and personal jurisdiction cannot be based on "random, isolated, or fortuitous" contacts. *Keeton*, 465 U.S. at 774. These exhibits simply do not connect the alleged conspiracy with New Mexico in a meaningful way. *See Walden*, 571 U.S. at 290 ("The proper question is . . . whether the defendant's conduct connects him to the forum in a meaningful way"). {55} Similarly, Plaintiffs proffered several documents about a grant application for a research study at the University of New Mexico Hospital and a letter addressed to a Shook lawyer commenting on the grant application. Plaintiffs also submitted a letter written by a New Mexico resident quoting a Shook lawyer's advice about not putting anything in writing. Viewing these exhibits in Plaintiffs' favor, these documents suggest that Shook knew that a tobacco industry organization vetted and sponsored a scientific study in New Mexico and that a Shook lawyer spoke with a New Mexico resident. But these isolated acts do not demonstrate a substantial connection between the alleged conspiracy and New Mexico such that Shook could reasonably foresee being brought into court here.

{56} In sum, Plaintiffs' allegations and exhibits do not show that the Law Firms participated in a civil conspiracy to commit fraudulent misrepresentation or that the Law Firms knew of acts in furtherance

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of this alleged civil conspiracy creating minimum contacts with this state. The record, therefore, does not support a *prima facie* case of personal jurisdiction over the Law Firms on the basis of civil conspiracy. Additionally, even though the district court did not consider whether jurisdiction was appropriate under a traditional analysis, on *de novo* review, we determine that Plaintiffs' allegations and exhibits do not support any traditionally recognized basis for asserting personal jurisdiction over the Law Firms. Therefore, Plaintiffs have not established that the Law Firms had "minimum contacts" with New Mexico "such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe*, 326 U.S. at 316 (internal quotation marks and citation omitted). We do not reach the reasonableness prong of the due process analysis, *Burger King*, 471 U.S. at 476-77, because the minimum contacts prong is not satisfied and the parties have not briefed the issue.

{57} A writ of prohibition is warranted. Thus, in the interests of justice, we previously ordered the district court to dismiss the Law Firms from the underlying suits.

V. CONCLUSION

{58} We hold that conspiracy jurisdiction comports with due process if properly limited to focus on the defendant's conduct in actively participating in a civil conspiracy that the defendant knows will target a forum state. We endorse conspiracy jurisdiction under the limited standard articulated herein. We additionally limit *Santa Fe Technologies* as discussed in this opinion. On review of the record, we determine that Plaintiffs have not shown that specific personal jurisdiction may be properly exercised over the Law Firms. We, therefore, direct that the Law Firms be dismissed.

{59} IT IS SO ORDERED.

MICHAEL E. VIGIL, Justice

WE CONCUR:

DAVID K. THOMSON, Chief Justice

C. SHANNON BACON, Justice

JULIE J. VARGAS, Justice

BRIANA H. ZAMORA, Justice

► From the New Mexico Supreme Court

From the New Mexico Supreme Court

Opinion Number: 2025-NMSC-023
No. S-1-SC-39283 (filed April 21, 2025)

STATE OF NEW MEXICO,
Plaintiff-Appellant,
v.
DEBORAH GREEN,
Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF CIBOLA COUNTY

James Lawrence Sanchez, District Judge

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OPINION

BACON, Justice.

{1} The State appeals from a decision of the district court granting Defendant Deborah Green's petition for habeas corpus pursuant to Rule 5-802 NMRA. *See also* Rule 12-501 NMRA. In *Montoya v. Ulibarri*, we held the protections afforded by the New Mexico Constitution allow a defendant to obtain habeas relief based on a freestanding claim of actual innocence, independent of any constitutional violation at trial. 2007-NMSC-035, ¶ 1, 142 N.M. 89, 163 P.3d 476. This case presents the issue of whether such protections apply when a prisoner is convicted by way of a plea agreement. With *Montoya* as our touchstone, we hold Defendant was entitled to assert a freestanding claim of actual innocence following her conviction by plea. However, we also hold the district court's finding of actual innocence was not supported by substantial evidence. Accordingly, we reverse the district court's grant of Defendant's petition for writ of

habeas corpus and remand for proceedings consistent with this opinion.

I. FACTUAL BACKGROUND

{2} The grisly facts developed at the habeas hearing are disquieting, to say the least. Defendant was the co-leader of a religious organization known as the Aggressive Christian Missionary Training Corps (Corps). Considered by the Corps's members to be a "prophetess" and an "Oracle of God," Defendant had nearly complete control over her disciples' lives, including driving, finances, and the authority to make all manner of decisions affecting the children who lived at the compound in a remote and rural area of Cibola County, New Mexico. Defendant also required members to cut off ties with their families. The children at the compound did not have birth certificates, were not immunized, and were not permitted to attend outside schools. Under Defendant's close watch, medical treatments at the compound were generally confined solely to those permitted by Defendant, with access to outside professional medical care rigidly controlled.

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{3} The genesis of the tragic events that gave rise to the charges in this case dates back to sometime in late 2013 when most of the compound's residents came down with the flu. One of those residents, and the victim in this case, was a twelve-year-old child, E.M., who lived at the compound with his mother. Although the other residents recovered from their ailments in due course, E.M.'s symptoms persisted and worsened, becoming more severe when Defendant prohibited E.M. from eating for several days as punishment for his illness-related absences from the Corps's regularly scheduled communal meals. The right side of E.M.'s body eventually became paralyzed, he went blind in his right eye, he lost the ability to speak or swallow, and he experienced seizures—all before he succumbed to his illness in mid-January 2014.

{4} Neither Defendant nor anyone else timely reported E.M.'s death to the proper authorities. Police first came to learn of his passing some two years later, in January 2016, when two other Corps members informed the police of E.M.'s death and sought help to "escape" from the Corps's compound. Police secured a warrant to exhume E.M.'s body and the ensuing autopsy determined that the child's cause of death was a "probable infectious disease." However, the autopsy report stopped short of identifying "the exact cause of [E.M.'s] infection" due to the "advanced decomposition" of the soft tissues of his body.

{5} We end our factual summary of the case by recognizing the aphorism that "[a] cult is a religion with no political power." James D. Tabor & Eugene V. Gallagher, *Epigraph to Why Waco? Cults and the Battle for Religious Freedom in America* vii (1995). Whatever truth lies in this saying, the habeas hearing evidence below showed that the Corps as headed by Defendant was decidedly less a religion and more of a cult in the sense it was "a deviant, fanatical group led by a charismatic person who postures as a religious leader but who is in fact a self-serving individual who beguiles people into following him or her, and who manipulates and uses them for his or her own purposes." Scott M. Lenhart, *Hammering Down Nails*:

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The Freedom of Fringe Religious Groups in Japan and the United States—Aum Shinrikyō and the Branch Davidians, 29 Ga. J. Int'l & Compar. L. 491, 495 (2001) (internal quotation marks and citation omitted). Either way, the Corps clearly was not the wholesome, “disciplined, prayer-focused commun[ity]” Defendant portrayed it to have been in her habeas petition.

II. PROCEDURAL BACKGROUND

{6} The facts relating to E.M.’s suffering and demise were by no means the only source of potential criminal liability faced by Defendant in the underlying indictment. Also included in the indictment were a series of kidnappings, criminal sexual penetration of a minor, and child abuse counts relating to a young girl referred to in the record as M.G., who had lived in the Corps’s compound until she was removed by state authorities based on concerns that she “was malnourished and suffered from rickets.”¹ After the charges relating to M.G. were severed from those relating to E.M., a jury convicted Defendant of seven of the M.G.-related charges. Defendant was sentenced to a 72-year prison term in relation to those crimes in September 2018. Three weeks later, Defendant entered into a plea agreement for the case at hand, and pled no contest to, among other charges, one count of child abuse resulting in great bodily harm to E.M. Pursuant to the plea, she was sentenced to a prison term of 18 years, to run concurrent with the 72-year sentence from the M.G.-related conviction.

{7} More than two years later, in November 2020, Defendant’s convictions for the M.G.-related crimes were set aside as a result of a *Brady* violation by the State, *see Brady v. Maryland*, 373 U.S. 83 (1963), and a new trial on those charges was ordered. In lieu of retrial, the State dismissed the M.G.-related charges outright, “due to [the] unavailability of essential witnesses.”

{8} On the heels of the *Brady*-based dismissal of the M.G. charges, Defendant filed the underlying habeas petition arguing, first and foremost, that the taint of the *Brady* violation found in connection with

the charges related to M.G. somehow extended to the previously severed E.M.-related charges as well. The district court rejected that argument—properly it would appear—concluding as a matter of law that the *Brady* violation that tainted the prosecution related to M.G. provided no basis to invalidate the plea deal reached in E.M.’s case because the two matters involved “a different alleged victim, different witnesses, different theories, different evidence, and the evidence underlying the *Brady* violation on the [M.G.] case was not probative of any of the issues related to the plea in [the E.M.] case.” The district court’s *Brady*-related habeas ruling, aside from its importance as a historical fact, is not otherwise implicated in this appeal.

{9} Defendant’s habeas petition sought to vacate her E.M.-related plea on three additional grounds: (1) that “the bare-bones factual basis” for the child abuse charge set out in Defendant’s underlying plea colloquy was “inadequate as a matter of law”; (2) that Defendant was “actually innocent” of any child abuse crime because her conduct did “not meet [the operative] statutory elements”; and (3) that Defendant received ineffective assistance of trial counsel (IAC). The district court rejected Defendant’s challenge to the sufficiency of the plea colloquy and her IAC claim, and those issues are not implicated in this appeal.

{10} But Defendant’s actual innocence claim secured a foothold in the district court despite the absence of any proffer of new factual evidence to support her habeas claim. Following a four-day hearing in January 2022 that showcased competing expert testimony on the issues of medical neglect and causation, the district court granted Defendant’s habeas petition based on her legal assertion of actual innocence. In doing so, the district court found as fact that Defendant, who served as E.M.’s “custodian” and “exercised extreme control over the child’s life and welfare, . . . failed to seek medical attention for the child in a timely manner, and [thus] cause[d] the child’s condition to worsen.” (Emphasis added.)

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Despite this explicit factual finding, the district court granted Defendant full habeas relief, concluding—without analysis or citation to authority—that conduct causing a child’s medical condition to worsen does not constitute “great bodily harm justifying a first degree felony charge, as a matter of law.” As a result, the district court set aside Defendant’s plea, dismissed the E.M.-related child abuse charge covered in the plea agreement, and released Defendant from custody.

{11} The State now appeals to this Court as of right. *See Rule 5-802(N)(1)* (authorizing the state to appeal an order granting a writ of habeas corpus); Rule 12-102(A)(3) NMRA (requiring that “appeals from the granting of writs of habeas corpus” be taken to this Court).

III. DISCUSSION

{12} When reviewing the propriety of a district court’s grant or denial of a writ of habeas corpus, we review questions of law and questions of mixed fact and law *de novo*, thus “assur[ing] that this Court maintains its role as arbiter of the law.” *State v. Cates*, 2023-NMSC-001, ¶ 12, 523 P.3d 570 (citation omitted). However, questions relating to a district court’s habeas-based findings of fact are subject to substantial evidence review. *Lukens v. Franco*, 2019-NMSC-002, ¶ 15, 433 P.3d 288. “Substantial evidence is evidence that a reasonable mind would regard as adequate to support a conclusion.” *Id.* (internal quotation marks and citation omitted).

A. A Freestanding Claim of Actual Innocence Is Properly Applied in the Context of Plea Bargains

{13} First, we determine whether the freestanding claim of actual innocence recognized by this Court in *Montoya*, 2007-NMSC-035, ¶ 24—a habeas appeal involving a conviction rendered after trial—is equally applicable in circumstances where, as here, the conviction under collateral attack is the product of a plea bargain. In *Montoya*, we held that a freestanding claim of actual innocence must be predicated upon discovery of new evidence. We further

¹ A state investigation revealed that M.G., although held out as Defendant’s granddaughter, was not in fact related to Defendant and was brought out of Uganda by Defendant’s adult daughter.

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concluded that the petitioner making such a claim “must convince the court by clear and convincing evidence that no reasonable juror would have convicted him in light of the new evidence.” *Id.* ¶ 30.

{14} The State urges this Court to exclude from the reach of an actual innocence claim all plea convictions, pointing to its concern for finality that is a hallmark of the plea process.

{15} Instructive in addressing this issue is *People v. Reed*, in which our colleagues on the Illinois Supreme Court determined that similar prosecution concerns over “the interests of finality and certainty involving guilty pleas” were insufficient to foreclose a defendant from advancing a freestanding claim of actual innocence. 2020 IL 124940, ¶¶ 41-42, 182 N.E.3d 64 (refusing “to turn a blind eye to the manifest injustice and failure of our criminal justice system that would result from the continued incarceration of a demonstrably innocent person, even where a defendant pleads guilty”). Though not unsympathetic to the state’s position, the *Reed* Court ultimately concluded that the “[s]tate’s interests and policy concerns [were] more appropriately accounted for and protected by [adopting a stringent review] standard applicable to actual innocence claims involving defendants who plead guilty.” *Id.* ¶¶ 42, 48. To that end, the *Reed* Court adopted its own variant of the clear and convincing standard that we employed in *Montoya* for evaluating “a successful actual innocence claim” in the plea context. *Reed*, 2020 IL 124940, ¶ 49. Through this measured approach, the *Reed* Court struck what it characterized as “an equitable balance between the defendant’s constitutional liberty interest in remaining free of undeserved punishment and the [s]tate’s interest in maintaining the finality and certainty of plea agreements, while vindicating the purpose of the criminal justice system to punish only the guilty.” *Id.* ¶ 50.

{16} Following the lead of the Illinois Supreme Court in *Reed*, we also conclude the application of *Montoya*’s clear and convincing standard (like the “stringent” standard in *Reed*) in adjudging the merits of a defendant’s actual innocence claim successfully threads the needle in

accommodating all the competing and legitimate policy objectives identified above. {17} Further, and in accord with the *Reed* Court, we are not inclined to impose a legal barrier that prevents a defendant from advancing a freestanding claim of actual innocence when convicted by plea agreement. Two factors contribute to our reluctance to do so. First, nothing in *Montoya*—or the scant few cases that, along with *Montoya*, comprise our slowly developing actual innocence jurisprudence—affirmatively calls into question the prudence or propriety of applying the freestanding actual innocence doctrine in the realm of plea bargains. Viewed in this vacuum, the lofty constitutional considerations that informed the *Montoya* Court’s adoption of the actual innocence doctrine in the trial context compel the application of the doctrine in the plea bargain setting as well. 2007-NMSC-035, ¶ 23 (“We conclude that the conviction, incarceration, or execution of an innocent person violates all notions of fundamental fairness implicit within the due process provision of our state constitution.”); *id.* ¶ 24 (“[T]he incarceration of an innocent person [does not] advance[] any goal of punishment, and if a prisoner is actually innocent of the crime for which he is incarcerated, the punishment is indeed grossly out of proportion to the severity of the crime.”). Aside from the finality concerns discussed above, the State has offered no sound basis to withhold from those defendants convicted by way of a plea the self-same constitutional protections *Montoya* appropriately made available to defendants convicted after trial—and we perceive none.

{18} A contrary holding would needlessly depart from the sound view adopted by several state jurisdictions that have considered the issue. See, e.g., *Schmidt v. State*, 909 N.W.2d 778, 783, 793-95 (Iowa 2018) (citing *Montoya* for the proposition that “actually innocent people should have an opportunity to prove their actual innocence,” and extending that opportunity equally to Iowa defendants “regardless of whether [they] pled guilty or went to trial”); *Reed*, 2020 IL 124940, ¶¶ 33, 41 (pointing primarily to two characteristics

of plea agreements—that they are neither “structured to weed out the innocent or guarantee the factual validity of the conviction” nor “more foolproof than full trials”—in concluding that “defendants who plead guilty may assert an actual innocence claim” (internal quotation marks and citations omitted)); *see also People v. Schneider*, 25 P.3d 755, 760 (Colo. 2001) (en banc) (pointing to the common practice of defendants to “choose to enter guilty pleas for reasons other than clear guilt” in rejecting the prosecution’s argument “that a defendant who has entered a plea should not be entitled to postconviction relief in the face of newly discovered evidence,” and branding that argument as one that fails to foster a “just and fair outcome”).

{19} In all, the principal policy objective underlying a freestanding claim of actual innocence—to honor the constitutional imperative “prohibit[ing] the imprisonment of one who is innocent of the crime for which he was convicted” in order to further “the central purpose of [our] system of criminal justice[,] . . . to convict the guilty and free the innocent,” *Herrera v. Collins*, 506 U.S. 390, 398 (1993)—applies with equal force to convictions obtained through plea agreements as it does to convictions after trial.

B. Defendant’s Actual Innocence Claim Lacks Merit and the District Court Erred in Concluding Otherwise

{20} Now that it has been established that a defendant who enters into a plea agreement is entitled to raise a defense of actual innocence, we look at the merits of Defendant’s actual innocence claim. Defendant’s actual innocence claim advances no new factual evidence. Instead, Defendant relies exclusively on a misguided legal argument to support her habeas claim, asserting that the *but-for* causation standard articulated by this Court in *State v. Garcia*, 2021-NMSC-019, ¶¶ 29-47, 488 P.3d 585—an opinion issued after Defendant’s entry of her plea—“marks a sea change in medical-neglect causation law” that jettisons the lesser *significant cause* standard previously set out by this Court in *State v. Nichols*. *See* 2016-NMSC-001, ¶ 40, 363 P.3d 1187 (indicating that the state, in order to prevail on a theory of medical-neglect child abuse,

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must “put forth substantial evidence that . . . medical neglect was at least a significant cause of [the child’s] death or great bodily injury”). As Defendant frames the claim in her habeas petition, this supposed change in the law precludes the State from “adduc[ing] legally sufficient evidence—let alone a case that has any chance of actually *persuading* any juror—to prove any conceivable theory charged.”

{21} Unfortunately for Defendant, the *Garcia* Court—by its own account—did not announce a new rule of medical-neglect causation law and instead merely honed and refined this Court’s existing precedent in *Nichols*. This is made evident in several passages of the majority opinion in *Garcia*. See 2021-NMSC-019, ¶ 39 (emphasizing that the Court was merely “confirm[ing] . . . that causation in a criminal medical neglect case must include but-for causation and no less,” and thus “adher[ing] to our long-established [but-for] standard,” a “foundational criminal principle” that *Nichols* “did not abandon”); *id.* ¶ 40 (clarifying “that proof of causation under *Nichols* requires that the medical neglect be a factual, but-for cause of the child’s death”); *id.* ¶ 43 (explaining that, in *Nichols*, “we affirmed the but-for causation requirement in cases of child abuse causing death, holding that evidence of possible causation is insufficient,” and, in having done so, “are bound by the precedent established in *Nichols* and . . . follow that standard in this case” (citation omitted)).

{22} The observations made and the actions taken by the *Garcia* Court—*confirming*, *clarifying*, and *following* the precepts and holding of *Nichols*—hardly bespeak the announcement of a new potentially retroactive rule of law. See

Rudolfo v. Steward, 2023-NMSC-013, ¶ 9, 533 P.3d 728 (reiterating that an appellate “opinion announces a new rule [only] if it breaks new ground, imposes new obligations on the government, or was not dictated by precedent” (internal quotation marks and citation omitted)). That being so, *Garcia* does not represent an intervening change in the law that theoretically might provide a foundation for Defendant’s actual innocence claim. See *Santillanes v. State*, 1993-NMSC-012, ¶ 36, 115 N.M. 215, 849 P.2d 358 (“It is within the inherent power of this Court to give its decision prospective or retroactive application without offending constitutional principles.” (citation omitted)). In light of our conclusion that *Garcia* did not announce a new rule, Defendant is hard-pressed to explain how or why enforcement of the plea agreement as written would offend her due process rights or right to be free from cruel and unusual punishment as a result of her actual innocence.²

{23} In a separate but related vein, we emphasize that out-of-state jurisdictions that recognize freestanding actual innocence claims generally equate the concept of actual innocence with “factual innocence, not mere legal insufficiency of evidence of guilt.” *People v. Fraser*, 84 N.Y.S.3d 553, 556 (N.Y. App. Div. 2018) (internal quotation marks and citation omitted); *accord Gould v. Comm’r of Corr.*, 22 A.3d 1196, 1206 (Conn. 2011) (“Actual innocence is not demonstrated merely by showing that there was insufficient evidence to prove guilt beyond a reasonable doubt. . . . Rather, actual innocence is demonstrated by affirmative proof that the petitioner did not commit the crime.”); *Turner v. Commonwealth*, 694 S.E.2d 251, 261 (Va.

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Ct. App. 2010) (stating that relief based on actual innocence is available “only to those individuals who can establish that they did not, as a matter of fact, commit the crime for which they were convicted and not those who merely produce evidence contrary to the evidence presented at their criminal trial” (internal quotation marks and citation omitted)); *see also Jardine v. State*, 556 P.3d 406, 419-21 (Haw. 2024) (interpreting the term *actual innocence*, as used in Hawaii’s wrongful conviction compensation statute, to mean *factual innocence*). Reflecting this purely factual focus, the “prototypical example” of *actual innocence* offered by the United States Supreme Court is one “where the [s]tate has convicted the wrong person of the crime.” *Sawyer v. Whitley*, 505 U.S. 333, 340 (1992), *superseded by statute on other grounds as stated in Atwood v. Shinn*, 36 F.4th 834, 837 (9th Cir. 2022).

{24} Weighed against the narrow factual contours of the actual innocence doctrine, it is clear the district court’s grant of habeas relief was error. From a procedural perspective, given Defendant’s choice to confine her actual innocence claim to the *legal* assertion that her conduct as it related to E.M. did “not meet [the operative] statutory elements” of the charged child abuse crimes, it is questionable whether a *factual* hearing was warranted in the first instance. And substantively, the district court’s express finding that Defendant’s “fail[ure] to seek medical attention for [E.M.] in a timely manner . . . cause[d] the child’s condition to worsen”—and, by logical extension, resulted in the great bodily injuries that E.M. undisputedly endured—was incompatible with a finding of actual innocence. Far from exonerative in nature, the district court’s unchallenged causation

² In the procedural posture of this case and considering the fact that Defendant has not demonstrated a change in the law, we need not and do not decide the broader issue hinted at by the State’s briefing: whether a change in law, standing alone and without newly presented evidence, ever can provide a valid basis for a freestanding claim of actual innocence in New Mexico. For our purposes, it is enough to acknowledge the dearth of state court case law supporting that premise. Indeed, research reveals only one reported state decision that has recognized the validity of a freestanding actual innocence claim in the absence of new evidence. We refer to *In re Lester*, 602 S.W.3d 469 (Tex. 2020), a wrongful-imprisonment compensation case. In *Lester*, the Texas Supreme Court concluded that the “outrageous” scenario there presented—“involving a criminal defendant who pled guilty to conduct that did not constitute ‘a crime [when committed or] at any time during his criminal proceedings’ because the charging statute had previously been declared unconstitutional—could only be viewed as involving a person who was ‘actually innocent in the same way that someone taking a stroll in the park is actually innocent of the crime of walking on a sidewalk. No such crime exists.’” *Id.* at 471-73.

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finding directly implicated Defendant in the commission of the crime. *Montoya* requires a defendant to present new affirmative evidence of innocence, and further requires the defendant to persuade the district court by clear and convincing evidence that no reasonable juror would have convicted them in light of the new evidence—a “rigorous” and “demanding” standard. 2007-NMSC-035, ¶ 29. Given the total lack of new affirmative evidence of innocence in this case, we hold substantial evidence does not support the district court’s determination that Defendant satisfied *Montoya*’s actual innocence standard.

IV. CONCLUSION

{25} For the foregoing reasons, we reverse the district court’s grant of Defendant’s petition for writ of habeas corpus and remand for proceedings consistent with this opinion.

{26} IT IS SO ORDERED.

C. SHANNON BACON, Justice

WE CONCUR:

MICHAEL E. VIGIL, Justice

JULIE J. VARGAS, Justice

BRIANA H. ZAMORA, Justice

DAVID K. THOMSON, Chief Justice,
specially concurring

THOMSON, Chief Justice (specially concurring).

{27} There should be no surprise in the argument advanced by Defendant in this habeas proceeding when, in my view, this Court created a different standard for causation for medical neglect claims in *State v. Garcia*, 2021-NMSC-019, ¶ 98, 488 P.3d 585 (Thomson, J., dissenting in part and concurring in part). While I concur in the reasoning and conclusion in this case, I had hoped the Court would revisit its departure from precedent in *Garcia*, specifically from the standard articulated in *State v. Nichols*, 2016-NMSC-001, ¶ 40, 363 P.3d 1187 (“[T]he State was required to put forth substantial evidence that [the defendant’s] neglect resulted in [his son’s] death or great bodily harm, meaning that medical neglect was at least a significant cause of his death or great bodily injury.” (internal quotation marks and citation omitted)).

{28} In the dissent in *Garcia*, I expressed concerns that the “would have lived” standard adopted by the majority requires that the state produce medical expert testimony that, “to a reasonable degree of

medical certainty[, the victim] would have lived with earlier medical intervention.” *Garcia*, 2021-NMSC-019, ¶ 14; *id.* ¶ 60 (Thomson, J., dissenting in part and concurring in part). By requiring a showing that the victim “would have lived” if medical care was provided, the majority created a standard that the neglect must be the sole cause of death. “This elevated causation requirement overrules prior case law, announces a new standard, and retroactively applies it.” *Id.* ¶ 98 (Thomson, J., dissenting in part and concurring in part).

{29} The majority rebuts Defendant’s arguments by asserting that “the *Garcia* Court—by its own account—did not announce a new rule of medical-neglect causation law and instead merely honed and refined this Court’s existing precedent in *Nichols*.” *Maj. op.* ¶ 21. Despite the majority’s rhetorical self-assurance that the *Garcia* Court did nothing to change the but for standard in *Nichols*, this Defendant’s position in the tragic death of E.M. belies another conclusion.

DAVID K. THOMSON, Chief Justice

Advance Opinions

From the New Mexico Supreme Court

From the New Mexico Supreme Court

Opinion Number: 2025-NMSC-024

No. S-1-SC-40105 (filed March 6, 2025)

DAWN AMDOR, STEPHANIE SEDILLO, JEREE TOMASI, RETIRED LAW ENFORCEMENT OFFICERS GARY AINSWORTH, SHAWN BLAS, RUBEN CHAVEZ, GRAIG MARTIN, and JOE POLISAR, HOUSE MINORITY FLOOR LEADER T. RYAN LANE and REPRESENTATIVES GAIL ARMSTRONG, BRIAN BACA, JOHN BLOCK, CATHRYNN BROWN, JACK CHATFIELD, MARK DUNCAN, CANDY SPENCE EZZELL, JASON HARPER, JOSHUA HERNANDEZ, JENIFER JONES, STEPHANI LORD, ALAN MARTINEZ, JIMMY MASON, TANYA MOYA, ROD MONTOYA, GREG NIBERT, RANDALL PETTIGREW, ANDREA REEB, WILLIAM REHM, LARRY SCOTT, LUIS TERRAZAS, JIM TOWNSEND, HARLAN VINCENT, and MARTIN ZAMORA, SENATE MINORITY FLOOR LEADER GREGORY BACA and SENATORS GRAIG BRANDT, WILLIAM BURT, CRYSTAL DIAMOND BRANTLEY, DAVID GALLEGOS, RON GRIGGS, STUART INGLE, MARK MOORES, STEVEN NEVILLE, CLIFF PIRTLE, JOSHUA SANCHEZ, GREGG SCHMEDES, WILLIAM SHARER, and PAT WOODS, THE REPUBLICAN PARTY OF NEW MEXICO, THE LIBERTARIAN PARTY OF NEW MEXICO, and THE NATIONAL RIFLE ASSOCIATION OF AMERICA,

Petitioners,

v.

MICHELLE LUJAN GRISHAM, in her official capacity as Governor of New Mexico, and PATRICK ALLEN, in his official capacity as Secretary of the Department of Health,

Respondents.

ORIGINAL PROCEEDING

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OPINION

BACON, Justice.

{1} The petition before the Court requires us to further consider the scope of the Governor's authority to declare and address a public health emergency.

{2} The petition challenges three executive orders (the emergency orders) declaring or addressing gun violence and drug abuse as public health emergencies pursuant to the Public Health Emergency Response Act (the PHERA), NMSA 1978, §§ 12-10A-1 to -19 (2003, as amended through 2015), among other things. *See State of N.M., Exec. Ord. 2023-135 (EO 2023-135) (Oct. 5, 2023) (renewing the Governor's declaration of a public health emergency "due to gun violence"); State of N.M., Exec. Ord. 2023-136 (EO 2023-136) (Oct. 5, 2023) (renewing the Governor's declaration of a public health emergency "due to drug abuse");¹ N.M. Dep't of Health Amended Public Health Emergency Order Imposing Temporary Firearm Restrictions, Drug Monitoring[,] and Other Public Safety Measures (first Amended PHEO) (Sept. 15, 2023).² Petitioners—New Mexico Legislators, Bernalillo County gun and gun shop owners, two political parties (Republican and Libertarian Parties of New Mexico), retired law enforcement officers, and a national advocacy group—argue this Court should issue a writ of mandamus striking down the emergency orders as exceeding the proper scope of the PHERA, the proper scope of the police power, and the separation-of-powers doctrine. Pursuant to these claims, Petitioners assert that the emergency orders issued by Respondents Governor Michelle Lujan Grisham (Governor) and Department of Health (DOH) Secretary Patrick Allen (Secretary) "implicate[] fundamental constitutional questions of great public importance." *State ex rel. Sandel v. N.M. Pub. Util. Comm'n*, 1999-NMSC-019, ¶ 11, 127 N.M. 272, 980 P.2d 55.*

{3} We hold that Petitioners do not meet their burden to show the emergency orders violate either the challenged scope of the PHERA or the separation-of-powers doctrine. However, we grant the petition as

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to the emergency orders' suspension of the Juvenile Detention Alternatives Initiative (JDAI) program, an action that exceeds the limits of the police power.

I. BACKGROUND

{4} The first iterations of the emergency orders challenged here were issued on September 7-8, 2023: State of N.M., Exec. Ord. 2023-130 (EO 2023-130) (Sept. 7, 2023), declaring a public health emergency due to gun violence; State of N.M., Exec. Ord. 2023-132 (EO 2023-132) (Sept. 8, 2023), declaring a public health emergency due to drug abuse; and the original "Public Health Emergency Order Imposing Temporary Firearm Restrictions, Drug Monitoring[,] and Other Public Safety Measures" (original PHEO) (Sept. 8, 2023).

{5} EO 2023-130 cited numerous statistics on gun violence in New Mexico, recent incidents³ of gun violence, and the deleterious social effects⁴ of gun violence as the basis for declaring a public health emergency "of unknown duration." The information cited in EO 2023-130 implicitly asserted the need for emergency response, including that "New Mexico has recently experienced an increasing amount of mass shootings"; "New Mexico consistently has some of the highest rates of gun violence in the nation"; "the rate of gun deaths in New Mexico increased 43% from 2009 to 2018, compared to an 18% increase over this same time period nationwide"; "guns are the leading cause of death among children and teens in New Mexico"; "New Mexico has recently experienced an increasing amount

of mass shootings"; and "the increasing number of gunshot victims strains our already over-burdened healthcare system and places undue pressure on medical professionals and resources." EO 2023-130 invoked the Governor's authority to declare an emergency under the PHERA and declared that gun violence "also constitutes a man-made disaster causing or threatening widespread physical or economic harm that is beyond local control and requiring the resources of the State pursuant to the All Hazard Emergency Management Act[, NMSA 1978, §§ 12-10-1 to -10 (1959, as amended through 2007)]." EO 2023-130 also directed several state agencies to collaborate with the Governor's office to provide a coordinated response to the gun violence emergency.

{6} EO 2023-132 was similar but designed to combat what the Governor declared to be "a state of public emergency . . . throughout the State due to drug abuse."⁵ The information cited in EO 2023-132 implicitly asserted the need for emergency response, including "a growing and alarming trend of drug abuse, including the misuse of prescription opioids, fentanyl, heroin, and other illicit substances," the consequences of which trend include "a significant increase in drug-related deaths, with 1,501 fatal overdoses reported in the state in 2021—the fifth highest overdose rate in the nation"; "escalat[ion of] [associated] risks . . . , contributing to a surge in overdose incidents" due to "the accessibility and prevalence of potent synthetic opioids";

"unprecedented challenges due to [related] demands" on the state's healthcare system; "the rising number of cases involving parental substance abuse and its subsequent effect on child welfare"; and that "the State's existing efforts to combat drug abuse . . . require immediate reinforcement and coordination to effectively address this public health crisis."

{7} Under the authorities of EOs 2023-130 and 2023-132, the Secretary issued the original PHEO, finding that "temporary firearm restrictions, drug monitoring, and other public safety measures are necessary to address the current public health emergencies." The provisions of the original PHEO included broad restrictions on firearm possession in certain cities and counties,⁶ subject to numerous exceptions; firearms-related regulatory duties imposed on certain state agencies; public safety duties imposed on certain law enforcement agencies; and drug-related regulation.

{8} Litigation in federal court began shortly thereafter seeking to enjoin enforcement of the firearms restrictions in Sections 1 and 4 of the original PHEO. *We the Patriots, Inc. v. Grisham*, 697 F. Supp. 3d 1222, 1228 (D.N.M. 2023). This litigation resulted in a temporary restraining order issued on September 13, 2023, specifically enjoining New Mexico officials "from applying, enforcing, or attempting to enforce, either criminally or civilly," the restrictions on gun possession set forth in the original PHEO.⁷

{9} On September 14, 2023, Petitioners filed their Verified Petition for Extraordinary

¹ See State of N.M., Exec. Ord. 2023-135 and State of N.M., Exec. Ord. 2023-136, <https://www.governor.state.nm.us/about-the-governor/executive-orders/executive-orders-archive> (last visited Feb. 6, 2025).

² See N.M. Dep't of Health Amended Public Health Emergency Order Imposing Temporary Firearm Restrictions, Drug Monitoring[,] and Other Public Safety Measures, <https://www.governor.state.nm.us/wp-content/uploads/2023/09/091523-PHO-amended-guns-and-drug-abuse.pdf> (last visited Feb. 6, 2025).

³ EO 2023-130 cites the deaths of three children in as many months and recent mass shootings in Farmington and Red River.

⁴ EO 2023-130 declares that "gun-related deaths and injuries have resulted in devastating physical and emotional consequences for individuals, families, and communities throughout the State" as well as "emotional trauma, economic burdens, and long-lasting consequences for those affected individuals and their families."

⁵ EO 2023-132 additionally asserts "communities across New Mexico are grappling with the social and economic burdens of drug addiction, including the strain on healthcare resources, increased crime rates, homelessness, and disrupted family structures."

⁶ It is uncontested that the affected communities are the City of Albuquerque and Bernalillo County, defined as in the original PHEO as "cities or counties averaging 1,000 or more violent crimes per 100,000 residents per year since 2021 according to [the] Federal Bureau of Investigation's Uniform Crime Reporting Program AND more than 90 firearm-related emergency department visits per 100,000 residents from July 2022 to June 2023 according to the New Mexico Department of Public Health."

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Writ and Request for Stay in this Court.

{10} On September 15, 2023, the Secretary issued the first Amended PHEO, which continued most of the provisions of the original PHEO but drastically reduced the gun restrictions in seeming acknowledgment of the federal district court temporary restraining order. The first Amended PHEO mirrored its predecessor in asserting that “temporary firearm restrictions, drug monitoring, and other public safety measures are necessary to address the current public health emergencies.”

{11} Because the first Amended PHEO is central to the instant case—being the focus of Petitioners’ revised arguments in their subsequent reply and in oral argument—we summarize its ten emergency measures in greater detail:

(1) prohibiting gun possession “either openly or concealed in public parks or playgrounds, or other public area[s] provided for children to play in, within cities or counties averaging 1,000 or more violent crimes per 100,000 residents per year since 2021 according to [the] Federal Bureau of Investigation’s Uniform Crime Reporting Program AND more than 90 firearm-related emergency department visits per 100,000 residents from July 2022 to June 2023 according to the New Mexico Department of Public Health, except”:

A. “While traveling to or from a location listed in Paragraph (B) of this section; provided that the firearm is in a locked container or locked with a firearm safety device that renders the firearm inoperable, such as a trigger lock.”

B. “In areas designated as a state park within the state parks system and owned or managed by the New Mexico Energy, Minerals and Natural

Resources Department State Parks Division, or the State Land Office.”

(2) requiring the Regulation and Licensing Department to “conduct monthly inspections of licensed firearms dealers . . . to ensure compliance with all sales and storage laws”;

(3) requiring DOH to “compile and issue a comprehensive report on gunshot victims presenting at hospitals in New Mexico”;

(4) requiring DOH and the Environment[] Department to “develop a program to conduct wastewater testing for illicit substances, such as fentanyl, at all public schools”;

(5) directing the Children, Youth and Families Department (CYFD) to “immediately suspend the [JDAI] and evaluate juvenile probation protocols”;

(6) directing the Department of Public Safety (DPS) to “dispatch additional officers and resources to Bernalillo County and work with the Albuquerque Police Department and Bernalillo County Sheriff to determine the best use of those resources”;

(7) directing DPS to “coordinate with local law enforcement agencies and the district attorneys’ offices and assist in apprehension of individuals with outstanding arrest warrants”;

(8) directing Managed Care Organizations (MCOs) to “immediately ensure that individuals who need drug or alcohol treatment have received a permanent, adequate treatment placement within 24 hours of the request”;

(9) directing the Human Services Department to require MCOs “to provide their plans to achieve continual behavioral health network adequacy”;

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(10) directing the Department of Corrections [(DOC)] and the Department of Homeland Security [(DHS)] to “provide assistance to the Bernalillo County Metropolitan Detention Center [(MDC)] and its contractors to ensure adequate staffing, space, and screening for arrested and incarcerated individuals.”

We note that provisions 8, 9, and 10 were new directives not included in the original PHEO.

{12} As in the original PHEO, the first Amended PHEO cited the following legal authorities for the above emergency measures:

the Public Health Act, NMSA 1978, Sections 24-1-1 to -40 [1973, as amended through 2022], [the PHERA, enumerated above], the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18 [1977, as amended through 2019], and *inherent constitutional police powers* of the New Mexico state government to preserve and promote public health and safety, to maintain and enforce rules for the control of a condition of public health importance.

(Emphasis added.) As Petitioners note, these are the same authorities relied upon for executive action related to the COVID-19 public health emergency. *Accord Grisham v. Reeb*, 2021-NMSC-006, ¶ 3, 480 P.3d. 852.

{13} On October 5, 2023, the Governor renewed EO 2023-130 and EO 2023-132 by means of EO 2023-135 and EO 2023-136, respectively. We note that these renewals are substantively identical to the original EOs in their supporting content and directives. We also note that the EOs were consistently renewed, effective through October 13, 2024, with some supporting content added. See State of N.M., Exec. Ord. 2024-141 (EO

⁷ Specifically, the temporary restraining order enjoined Section 1 of the original PHEO in its entirety and enjoined Section 4 “to the extent it imposes additional restrictions on the carrying or possession of firearms that were not already in place prior to its issuance.” Nat’l Ass’n for Gun Rts. v. Grisham, 1:23-CV-00771-DHU-LF, at *4-5 (D.N.M. Sept. 13, 2023).

⁸ See State of N.M. Exec. Ord. 2024-140, <https://www.governor.state.nm.us/wp-content/uploads/2024/09/Executive-Order-2024-142.pdf>; State of N.M. Exec. Ord. 2024-141, <https://www.governor.state.nm.us/wp-content/uploads/2024/09/Executive-Order-2024-141.pdf> (last visited Feb. 7, 2025).

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2024-141) (Sept. 13, 2024); State of N.M., Exec. Ord. 2024-140 (EO 2024-140) (Sept. 13, 2024)⁸ (renewing the declarations of public health emergencies of gun violence and drug abuse, respectively).

{14} A second Amended PHEO⁹ (second Amended PHEO) was subsequently issued by the Secretary on October 6, 2023, which in relevant part removed “or other public area[s] provided for children to play in” from the firearm restrictions in Section 1; removed the provision requiring a comprehensive report on gunshot victims; and added a requirement that DPS organize safe surrender events in designated cities. We note, however, that Petitioners’ reply in support of their petition, filed on October 31, 2023, does not cite this second Amended PHEO, instead challenging only the first Amended PHEO of September 15, 2023.¹⁰ Accordingly, we analyze the claims before us without regard to the second Amended PHEO.

{15} We also note that Petitioners’ arguments have changed from their petition to their reply, presumably in response to the concurrent federal litigation and to Respondents’ amendments to the original PHEO. Notably, we construe Petitioners’ revised arguments as abandoning their claims regarding the right to bear arms under the Second Amendment of the United States Constitution and Article II, Section 6 of the New Mexico Constitution. Whereas the Petition expressly invoked those

provisions, the reply concedes that “because the firearm-regulation components of the original PHEO have now been altered so dramatically, this Petition is no longer the appropriate vehicle to adjudicate such a claim.” Our conclusion is bolstered by Petitioners’ lack of argument on this issue in their reply and oral argument¹¹ and their “concur[rence] with the Respondents” therein that the Court should not reach it.¹² Accordingly, we do not analyze Petitioners’ challenges under the Second Amendment or Article II, Section 6 of the New Mexico Constitution.

II. DISCUSSION

{16} Before reaching the merits of Petitioners’ claims, we first consider three preliminary matters: whether Petitioners have standing, whether a writ of mandamus would be the proper form of relief, and whether this case is now moot.

A. Standing

{17} Petitioners assert three bases for their standing to bring these claims. First, “a party’s standing is determined at the time the lawsuit was filed,” thus certain Petitioners have standing regarding their challenges to firearm restrictions despite changes to the original PHEO and to Petitioners’ arguments, as discussed above. *Deutsche Bank Nat’l Tr. Co. v. Johnston*, 2016-NMSC-013, ¶ 23, 369 P.3d 1046 (internal quotation marks and citation omitted). Here, Petitioners cite Respondents’ concession that “the

Bernalillo County gun owners could have demonstrated standing regarding the (now moot) issue of the [original] PHEO’s *rescinded* restrictions.” Second, Petitioners present presumptive bases for standing for each class of Petitioners “even if the case were filed today.” Third, Petitioners argue that clarifying the scope of Respondents’ emergency authority warrants application of the great-public-importance exception to traditional standing, regarding the scope of Respondents’ emergency authority.

{18} “This Court has long recognized that we may, in our discretion, grant standing to private parties to vindicate the public interest in cases presenting issues of great public importance.” *State ex rel. Candelaria v. Grisham*, 2023-NMSC-031, ¶ 7, 539 P.3d 690 (internal quotation marks and citation omitted); *see State ex rel. Coll v. Johnson*, 1999-NMSC-036, ¶ 21, 128 N.M. 154, 990 P.2d 1277 (noting cases in which standing under the great-public-importance doctrine was granted pursuant to separation-of-powers challenges under N.M. Const. art. III, § 1). We conclude this case presents matters of great public importance, including as a challenge under the separation-of-powers doctrine to the scope of any governor’s statutory and constitutional authority to act in a purported public health emergency. *See State ex rel. Taylor v. Johnson*, 1998-NMSC-015, ¶ 17, 125 N.M. 343, 961 P.2d 768 (“The balance and maintenance of governmental

⁹ See N.M. Dept’ of Health Amended Public Health Emergency Order Imposing Temporary Firearm Restrictions, Drug Monitoring[,] and Other Public Safety Measures, <https://cv.nmhealth.org/wp-content/uploads/2023/10/NMAC-PHO-20231006-Amended.pdf> (last visited Feb. 6, 2025).

¹⁰ We note that Petitioners’ reply makes no mention of the second Amended PHEO’s added safe surrender provision or the amendment of Section 1, thereby reinforcing that their challenge to the PHEOs is limited to the first Amended PHEO. In addition, the reply cites Petitioners’ notification to “the Court of these amendments on September 18, 2023,” in their Notice of Supplemental Authority, which notice concerned the first Amended PHEO.

¹¹ This lack of argument is significant, as Petitioners otherwise allude in the reply to the “capable of repetition yet evading review” exception to mootness and to “the moving target put up by the evolving PHEOs.” However, in the absence of actual argument we will not “promulgate case law based on our own speculation rather than the parties’ carefully considered arguments.” *Elane Photography, LLC v. Willock*, 2013-NMSC-040, ¶ 70, 309 P.3d 53.

¹² In their mootness argument, Respondents also bolster our conclusion by attesting in briefing that “neither the Governor nor the Secretary of Health ha[s] any intention o[f] reimposing these broad restrictions” on firearm possession, citing *Rio Grande Silvery Minnow v. Bureau of Reclamation*, 601 F.3d 1096, 1116 n.15 (10th Cir. 2010) (citing cases ruled moot based on governmental officials’ voluntary cessation of challenged practices). However, we do not rely on this proffer, as no such statement appears in the orders of which we have taken judicial notice. See *Wall v. Pate*, 1986-NMSC-014, ¶ 5, 104 N.M. 1, 715 P.2d 449 (“Argument of counsel is not evidence.” (citation omitted)), overruled on other grounds by *Sunnyland Farms, Inc. v Cent. N.M. Elec. Coop.*, 2013-NMSC-017, 301 P.3d 387.

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power is of great public concern.”). Under that conclusion, we confer standing.

{19} Having determined that Petitioners have standing, we next consider whether a writ of mandamus is the proper method of relief.

B. Mandamus

{20} “Mandamus may be used either to compel the performance of an affirmative act where the duty to perform the act is clearly enjoined by law, or it may be used in a prohibitory manner to prohibit unconstitutional official action.” *Candelaria*, 2023-NMSC-031, ¶ 8 (internal quotation marks and citation omitted). This Court has original jurisdiction in mandamus for petitions seeking “to restrain one branch of government from unduly encroaching or interfering with the authority of another branch in violation of Article III, Section 1 of our state constitution.” *Unite N.M. v. Oliver*, 2019-NMSC-009, ¶ 2, 438 P.3d 343 (internal quotation marks and citation omitted). Under the test articulated in *Sandel*, mandamus will lie

when the petitioner presents a purely legal issue concerning the non-discretionary duty of a government official that (1) implicates fundamental constitutional questions of great public importance, (2) can be answered on the basis of virtually undisputed facts, and (3) calls for an expeditious resolution that cannot be obtained through other channels such as a direct appeal.

Sandel, 1999-NMSC-019, ¶ 11.

{21} In this case, Petitioners claim *inter alia* separation-of-powers violations and request a writ striking the emergency orders and prohibiting Respondents from exercising their claimed authority. Applying the *Sandel* factors to the instant case, (1) the relief requested implicates fundamental constitutional questions of great public importance, as discussed above pursuant to standing; (2) the parties do not debate the facts; and (3) the public interest is served by an expeditious resolution to these issues. For these reasons, mandamus is a proper vehicle for Petitioners’ claims.

{22} Citing Article IV, Section 6 of the New Mexico Constitution, Respondents

argue mandamus is improper here as the Legislature could simply call itself into an extraordinary session to repeal or modify its emergency powers legislation, and thus this case does not present “a clear threat to the essential nature of state government.” However, Respondents do not refute that this case abides under the *Sandel* factors. In addition, we have “exercise[d] jurisdiction [through mandamus] as a matter of controlling necessity” where “the conduct at issue affects, in a fundamental way, the sovereignty of the state, its franchises or prerogatives, or the liberties of its people.” *Coll*, 1999-NMSC-036, ¶¶ 21, 24 (internal quotation marks and citations omitted). As above, the issues here regarding separation of executive and legislative powers rise to such a level. Finally, Respondents present no authority supporting that the Legislature calling itself into an extraordinary session is analogous to a “channel[] such as a direct appeal” for expeditious resolution as envisioned in *Sandel*. 1999-NMSC-019, ¶ 11.

C. Mootness

{23} During the pendency of this case, the Governor elected not to renew both Executive Orders beyond October 13, 2024. See EO 2024-141 and EO 2024-140. As a consequence, the second Amended PHEO in effect at that time lost its requisite authority and the challenges to its provisions were effectively rendered moot.

{24} “As a general rule, this Court does not decide moot cases.” *Cobb v. State Canvassing Bd.*, 2006-NMSC-034, ¶ 23, 140 N.M. 77, 140 P.3d 498 (quoting *Gunaji v. Macias*, 2001-NMSC-028, ¶ 9, 130 N.M. 734, 31 P.3d 1008). “However, this Court may review moot cases that present issues of substantial public interest or which are capable of repetition yet evade review.” *Gunaji*, 2001-NMSC-028, ¶ 10 (citations omitted). While either would suffice as a basis to decide this case, we conclude that both mootness exceptions apply.

{25} As discussed pursuant to standing and mandamus, the issues here are of substantial public interest, including involvement of constitutional questions. *Cf. Republican Party of N.M. v. N.M. Tax’n and Revenue Dep’t.*, 2012-NMSC-026, ¶ 10, 283 P.3d 853 (“A case presents an issue

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of substantial public interest if it involves a constitutional question or affects a fundamental right such as voting.”).

{26} The issues here are also capable of repetition yet otherwise would evade review under the lapse of the EO. Certainly, a governor in the future may declare a public health emergency under the PHERA that raises analogous questions. Because a governor may change emergency orders at any time during the course of a declared public health emergency, review of a future challenged provision may similarly be evaded. Here, the original PHEO has been amended twice, and Petitioners reasonably refer to “the moving target put up by the evolving PHEOs.” While a governor may have entirely legitimate reasons for amending emergency orders pursuant to a public health emergency, the context of amendment and lapse in this case supports the applicability of this mootness exception.

{27} As a result, we reach and turn now to the merits of Petitioners’ claims: that Respondents’ emergency orders exceed the scope of the PHERA and the police power and violate separation-of-powers principles.

D. Standard of Review and Principles of Statutory Construction

{28} “[W]e review questions of constitutional and statutory interpretation *de novoGrisham v. Romero*, 2021-NMSC-009, ¶ 23, 483 P.3d 545 (citation omitted).

{29} In construing a statute, our “central concern is to determine and give effect to the intent of the [L]egislature.” *Cobb*, 2006-NMSC-034, ¶ 34 (internal quotation marks and citation omitted). We begin with the plain language of the challenged statute, and when it “is clear and unambiguous, we must give effect to that language and refrain from further statutory interpretation.” *San Juan Agric. Water Users Ass’n. v. KNME-TV*, 2011-NMSC-011, ¶ 17, 150 N.M. 64, 257 P.3d 884 (internal quotation marks and citation omitted). “We generally give the statutory language its ordinary and plain meaning unless the Legislature indicates a different interpretation is necessary.” *State v. Wilson*, 2021-NMSC-022, ¶ 16, 489 P.3d 925 (text only)¹³ (citation omitted).

{30} “However, we will not be bound by a literal interpretation of the words if such strict interpretation would defeat

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the intended object of the Legislature.” *Romero*, 2021-NMSC-009, ¶ 23 (text only) (citation omitted). “If statutory language is doubtful, ambiguous, or an adherence to the literal use of the words would lead to injustice, absurdity, or contradiction, the court should reject the plain meaning rule in favor of construing the statute according to its obvious spirit or reason.” *State v. Vest*, 2021-NMSC-020, ¶ 21, 488 P.3d 626 (internal quotation marks and citation omitted). “In ascertaining a statute’s spirit or reason, we consider its history and background, and we read the provisions at issue in the context of the statute as a whole, including its purposes and consequences. All parts of a statute must be read together to ascertain legislative intent, and we are to read the statute in its entirety and construe each part in connection with every other part to produce a harmonious whole,” thereby rendering “no part of the statute . . . superfluous or superfluous.” *Romero*, 2021-NMSC-009, ¶ 23, 27 (text only) (citations omitted).

{31} “Questions of constitutional construction are governed by the same rules that apply to statutory construction, with courts often using the dictionary for guidance in ascertaining the ordinary meaning of the words at issue.” *Pirtle v. Legis. Council Comm. of N.M. Legislature*, 2021-NMSC-026, ¶ 34, 492 P.3d 586 (internal quotation marks and citation omitted).

E. Whether the Emergency Orders Exceed Respondents’ Authority Under the PHERA

{32} Petitioners assert that the emergency orders exceed Petitioners’ statutory authority to act, as gun violence and drug abuse are not public health emergencies under the PHERA. Citing *Reeb*, *Romero*, and *Legacy Church*, Petitioners distinguish gun violence and drug abuse from COVID-19, both in the latter’s nature as an infectious disease and in the “scientific consensus” supporting its qualification as a public

health emergency. See *Reeb*, 2021-NMSC-006, ¶¶ 22-23 (taking judicial notice of facts related to COVID-19 being “a highly contagious and potentially fatal disease” (internal quotation marks and citation omitted)); *Romero*, 2021-NMSC-009, ¶¶ 2-7 (same); *Legacy Church, Inc. v. Kunkel*, 472 F. Supp. 3d 926, 1066 (D.N.M. July 13, 2020), *aff’d sub nom. Legacy Church, Inc. v. Collins*, 853 F. App’x 316 (10th Cir. 2021) (noting that “[c]ourts presiding over similar cases have taken judicial notice of Public Health Orders and scientific consensus regarding the coronavirus”). Additionally, Petitioners propose that judicial review under the PHERA’s definition should require that a declared public health emergency must be “sudden” or “unforeseen,” a requirement that Petitioners imply is not met by either gun violence or drug abuse.

{33} At the outset, we note that Petitioners offer no clear argument that gun violence and drug abuse cannot satisfy the plain language of the PHERA’s definition of “public health emergency.” Section 12-10A-3(G). Instead, as discussed further below, Petitioners appear to claim that policy considerations counsel against Respondents’ broad reading of Section 12-10A-3(G), which reading “would [overly] extend the Governor’s power” and allow “a state of perpetual emergency.” Petitioners relatedly raise the concern that “everything” could become a public health emergency under the PHERA, based on the Governor’s public statements that “[e]verything is a public health issue,” including poverty and environmental problems. To assess their position, we first analyze the plain statutory language of the PHERA provisions cited by Petitioners, then analyze legislative intent to determine whether Petitioners’ policy claims prevail thereunder. See *Vest*, 2021-NMSC-020, ¶ 20 (“[T]his analysis need go no further [than plain language,] . . . [h]owever, as a matter of thoroughness, we review the purpose, background, and history of the statute to ensure that our plain-meaning

interpretation does not lead to injustice, absurdity, or contradiction.” (internal quotation marks and citation omitted)).

1. The emergency orders are consistent with the plain language of the PHERA

{34} Section 12-10A-3(G) of the PHERA defines “public health emergency” as “the occurrence or imminent threat of exposure to an extremely dangerous condition or a highly infectious or toxic agent, including a threatening communicable disease, that poses an imminent threat of substantial harm to the population of New Mexico or any portion thereof.” Petitioners also point to relevant requirements in Section 12-10A-5 for a governor’s declaration: “A state of public health emergency shall be declared in an executive order that specifies: (1) the nature of the public health emergency; . . . [and] (3) the conditions that caused the public health emergency.” Section 12-10A-5(B)(1), (3).

{35} The plain language of Section 12-10A-3(G) makes clear that the Legislature enacted a broad definition of *public health emergency*.¹⁴ First, we note the definition’s temporal terms: “occurrence,” which is disjunctive from “imminent threat of exposure to.” “Occurrence” is commonly defined as “something that occurs,” and “occur” relevantly means “to come into existence” or “happen.” *Occurrence* and *Occur*, Merriam-Webster’s Collegiate Dictionary (11th ed. 2005); *see State v. Farish*, 2021-NMSC-030, ¶ 12, 499 P.3d 622 (“The plain meaning of statutory language is informed by dictionary definitions.” (citation omitted)). “Imminent” is commonly defined as “ready to take place.” *Imminent*, Merriam-Webster’s Collegiate Dictionary (11th ed. 2005). “Imminent” has also been defined as “happening soon,” or “menacingly near.” *Imminent*, Merriam-Webster.com, <http://merriam-webster.com/dictionary/imminent?src=search-dict-box> (last visited Feb. 21, 2025). The inclusion of “occurrence” clearly indicates that the

¹³ “(Text only)” indicates the omission of nonessential punctuation marks—including internal quotation marks, ellipses, and brackets—that are present in the text of the quoted source, leaving the quoted text otherwise unchanged.

¹⁴ Such breadth does not equate to an enactment being improper. See *U.S. v. Yoshida Int’l., Inc.*, 526 F.2d 560, 573 (C.C.P.A. 1975) (“The express delegation [of emergency authority to the President by Congress] is broad indeed” in Section 5(b) of the Trading With the Enemy Act, but nonetheless

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Legislature did not intend to limit public health emergencies to events that are “imminent”; by the disjunctive use of those terms, a public health emergency may be either *happening currently* or *happening soon*. We recognize “imminent” occurs twice in Section 12-10A-3(G), but the second use modifies “threat of substantial harm.” In other words, the Legislature’s pairing of “occurrence” and “imminent” provides little limitation as to the timing of a public health emergency: a public health emergency can be an *ongoing event* that gives rise to an imminent threat of substantial harm or an *event that is happening soon* that gives rise to an imminent threat of substantial harm. {36} We need not construe “imminent threat of exposure to” further in this context, as the parties do not contest that gun violence and drug abuse were happening at the time of their declaration as public health emergencies. Nonetheless, we note the absence of clarifying language for *how soon* a threat of exposure would have to materialize to qualify as *imminent*. The Legislature employed the temporal phrase “imminent threat of exposure to” in Section 12-10A-3(G) without obvious restriction on a governor’s discretion to determine that a threat is *happening soon or menacingly near*. {37} Second, “condition” and “agent” are broad terms in their ordinary and plain meaning, such that many risks of harm to the public could qualify as “extremely dangerous condition[s] or [] highly infectious or toxic agent[s].” Section 12-10(A)-3(G). Applying dictionary definitions relevant to their usage, *condition* commonly means “a state of being,” and *agent* commonly means “something that produces or is capable of producing an effect: an active or efficient cause.”¹⁵ *Condition and Agent*, Merriam-Webster’s Collegiate Dictionary (11th ed. 2005). Again, the Legislature elected to use broad terms for the *cause or basis* of a

public health emergency without adding clarifying or narrowing language. While “extremely” and “highly” are qualifiers that offer some clarity as to the requisite *degree of seriousness* of a threat, the statute does not further clarify the *kind or form* of a qualifying threat.

{38} Importantly, the Legislature did clarify that qualifying conditions or agents “includ[e] a threatening communicable disease.” Section 12-10(A)-3(G). This phrase makes clear that public health emergencies are not limited in kind or form to communicable diseases. *Cf. Wichita Ctr. for Graduate Med. Educ., Inc. v. United States*, 917 F.3d 1221, 1224 (10th Cir. 2019) (“The word ‘includes’ indicates that the enumerated entities are not exclusive but only illustrative of a broader application.”); *see also Wilson*, 2021-NMSC-022, ¶ 67 (“A statute must be construed so that no part of the statute is rendered surplusage or superfluous.” (text only) (citation omitted)). {39} Third, an “imminent threat of substantial harm” under Section 12-10A-3(G) need only threaten “any portion” of “the population of New Mexico.” (Emphasis added.) In the absence of clarification by the Legislature, this plain language supports that the number of persons threatened by an imminent threat could be quite limited and still qualify as a public health emergency under the PHERA. {40} Turning to the plain language of Section 12-10A-5(B)(1) and (3), the statute requires that a governor’s declaration merely “specifies . . . the nature of the public health emergency” and “the conditions that caused” it. “Nature” is relevantly defined as “the inherent character or basic constitution of a person or thing.” *Nature*, Merriam-Webster’s Collegiate Dictionary (11th ed. 2005). Thus, these PHERA provisions require some explanation to the public as to the *character or basic*

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constitution of the occurrence or imminent threat and the circumstances that lead to it. However, in the absence of more stringent requirements, this statutory language establishes a relatively low bar for a governor to sufficiently justify or explain the initiation of a declared public health emergency.

{41} In sum, the plain language of Section 12-10A-3(G) and Section 12-10A-5(B)(1) and (3) supports that the Legislature intended for the PHERA to be a broad statute under which the executive can declare and address crises of different form and scope as public health emergencies. *See Romero*, 2021-NMSC-009, ¶ 34 (“[I]t was appropriate for the Legislature to grant the executive branch ample authority to immediately and flexibly respond to a public health emergency.”).

{42} Applied here, the declarations in EO 2023-130 and EO 2023-132 satisfy the plain language of Section 12-10A-3(G) and Section 12-10A-5(B)(1) and (3). Pursuant to Section 12-10A-3(G), the EOs establish that gun violence and drug abuse are currently occurring, which the parties do not contest; provide statistics of death and other serious effects supporting gun violence as an “extremely dangerous condition” and drug abuse as a “highly infectious or toxic agent”; and cite recent cases, statistical trends, and national rates of death and other effects supporting that gun violence and drug abuse each “pose[] an imminent threat of substantial harm to [portions of] the population of New Mexico” warranting immediate response. Pursuant to Section 12-10A-5(B)(1), both EOs certainly specify the *nature* of the purported public health emergencies: as related above, EO 2023-130 includes statistical trends, recent cases, and collateral effects of “gun-related deaths and injuries” warranting emergency response, while EO 2023-132 includes similar information

¹⁵ We note that the Legislature has used the term “condition” to cover a wide variety of circumstances. These include dangerous conditions created by “large amounts of forest undergrowth” which pose a risk “of catastrophic fires,” NMSA 1978, § 4-36-11 (2001); highway conditions that “present[] a substantial danger to vehicular travel by reason of storm, fire, accident, spillage of hazardous materials or other unusual or dangerous conditions,” NMSA 1978, § 66-7-11 (2007); “conditions within a food service establishment [that] present a substantial danger of illness, serious physical harm or death to consumers,” NMSA 1978, § 25-1-9 (1977); the “dangerous condition” of an elevator or other conveyance as determined by an inspector, NMSA 1978, § 60-13B-11(E) (2023, effective July 1, 2025); and the “dangerous condition” of “any mine or portion of a mine or machine, device, apparatus or equipment pertaining to a mine” which is created “from any cause,” NMSA 1978, § 69-5-14 (2007).

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about the nature of drug abuse. Notably, both EO's specify that these problems have a particular impact on young New Mexicans. *See* EO 2023-130 ("[G]uns are the leading cause of death among children and teens in New Mexico."); EO 2023-132 ("[C]hildren and youth of New Mexico are particularly vulnerable to the negative impacts of drug abuse."). Regarding Section 12-10A-5(B)(3), the causes of the purported public health emergencies are inherent throughout the EO's: the prevalence of guns and drugs.

{43} In sum, the emergency orders are consistent with the plain language of the PHERA regarding declaration of a public health emergency.

2. The emergency orders are consistent with legislative intent underlying the PHERA

{44} As discussed above, while Petitioners expressly assert that gun violence and drug abuse are not statutory public health emergencies, they do not articulate a plain language challenge under the PHERA. Instead, we understand Petitioners' argument here to be rooted in policy, asserting that the Court should not adopt a reading of Section 12-10A-3(G) which would allow a governor "to predicate the arrogation of emergency powers on such an open-ended conception of 'public health [emergency]'." Therefore, Petitioners appear to argue that this Court should require every public health emergency (1) to meet the same level of evidentiary support we noted in *Reeb* and *Romero* regarding COVID-19, that scientific consensus establishes the threat is highly contagious and potentially fatal, and (2) to be sudden or unforeseen. Since neither is a requirement within the plain language of Section 12-10A-3(G), Petitioners' statutory argument can only avail under a further analysis of legislative intent.

{45} Under our canons of construction, we analyze legislative intent only "[i]f statutory language is doubtful, ambiguous, or an adherence to the literal use of the words would lead to injustice, absurdity, or contradiction." *Vest*, 2021-NMSC-020, ¶ 21 (internal quotation marks and citation omitted). Nothing in Petitioners' petition or reply points to the statutory language itself being doubtful or ambiguous. Applying

Vest, we construe Petitioners' policy-based argument to suggest that legislative intent would be violated if this Court does not apply Petitioners' proposed requirements to gun violence and drug abuse, resulting in injustice, absurdity, or contradiction. *Cf. State v. Montano*, 2024-NMSC-019, ¶ 20, 557 P.3d 86 ("[T]he absurdity doctrine applies when the literal application of a statute results in an absurdity that the Legislature could not have intended." (internal quotation marks and citation omitted)). Without such a showing, Petitioners' proposed requirements for reading Section 12-10A-3(G) have no basis in law.

a. Petitioners do not show that requiring a public health emergency to meet the evidentiary standard in *Reeb* and *Romero* is necessary for the emergency orders to abide with legislative intent underlying the PHERA

{46} Regarding their first proposed requirement, Petitioners point to the evidence in *Reeb* and *Romero* as including "scientific consensus" that COVID-19 is a "highly contagious and potentially fatal disease" which had resulted in millions of cases and hundreds of thousands of deaths across the United States. *Romero*, 2021-NMSC-009, ¶¶ 2-7 (internal quotation marks and citation omitted); *Reeb*, 2021-NMSC-006, ¶¶ 22-23 (internal quotation marks and citation omitted). Petitioners argue that gun violence and drug abuse have "no comparable 'scientific consensus,' and none is proposed in either [executive] order." In contrast to our judicial notice in *Reeb* and *Romero* of COVID-19's contemporaneous and specific threat to the public health, Petitioners point in EO 2023-130 to "five-year-old statistics about 'the rate of gun deaths' . . . and five instances of gun violence in 2023"; and in EO 2023-132 to "a 'trend of drug abuse,' including an 'increase in drug-related deaths,' as well as the 'social and economic burdens of drug addiction.'" Petitioners suggest that the factual support in EO 2023-130 and EO 2023-132 is insufficient compared to the *Reeb-Romero* standard, as "[n]either [EO] involves 'address[ing] the spread of an infectious disease through vaccination, isolation and

quarantine of persons'" and gun violence and drug abuse "are easily distinguishable from the growing infection and mortality figures of the 'highly contagious and potentially fatal' COVID-19 pandemic." *See Romero*, 2021-NMSC-009, ¶¶ 2-7 (internal quotation marks and citation omitted); *Reeb*, 2021-NMSC-006, ¶¶ 22-23, 26 (internal quotation marks and citation omitted).

In short, Petitioners suggest that the evidentiary support required by the PHERA must include a high degree of specificity of threatened harm and scientific consensus based on contemporaneous data.

{47} Petitioners succeed in distinguishing the evidence in the challenged executive orders from that in *Reeb* and *Romero*, but they do not establish that the executive orders as an evidentiary basis for a public health emergency violate the intent of the Legislature. Nothing in *Reeb* or *Romero* announced a new standard for Section 12-10A-3(G) for all future purported public health emergencies, and Petitioners cite no authority suggesting that the evidence in EO 2023-130 and EO 2023-132 would offend legislative intent for declaration of a public health emergency.

{48} To the contrary, indicators of legislative intent behind the PHERA support the conclusion that the Legislature meant to delegate considerable authority and discretion to the executive branch to declare a public health emergency. First, our precedent interpreting legislative intent has consistently interpreted the PHERA liberally as a statute "enacted for the protection of public health during an emergency." *Reeb*, 2021-NMSC-006, ¶ 27; *see also id.* (citing 3 Norman J. Singer and J.D. Shambie Singer, *Sutherland Statutes & Statutory Construction*, § 73:2 at 856 (7th ed.) ("Courts have been committed for over a century to giving statutes enacted for the protection and preservation of public health an extremely liberal construction to accomplish and maximize their beneficent objectives.")), and § 73:6 at 909 ("Legislation enacted to alleviate grave conditions which result from . . . public calamity deserves a generous interpretation so its remedial purposes may be accomplished."); *id.* ("[W]e liberally construe Petitioners'

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authority under the PHERA to enable the Secretary of Health and others to manage and coordinate a response to a public health emergency such as the COVID-19 pandemic."); *Romero*, 2021-NMSC-009, ¶ 30 (reaffirming *Reeb*'s principle of liberal construction); *Wilson*, 2021-NMSC-022, ¶ 41 (same).

{49} Additionally, we relevantly approved in *Romero* that "agencies and individuals with important responsibilities must have *considerable* discretion in order to fulfill their responsibilities effectively. Inadequate discretion probably is a larger problem than excessive discretion." 2021-NMSC-009, ¶ 30 (text only) (citation omitted). Under this principle, the Legislature presumably intended to grant a governor the authority to determine when an occurring or imminent event gives rise to an imminent threat of substantial harm that warrants declaration of a public health emergency. Significantly, this reading also harmonizes with the stated purposes of the PHERA, to:

- A. provide the state of New Mexico with the ability to manage public health emergencies in a manner that protects civil rights and the liberties of individual persons;
- B. prepare for a public health emergency; and
- C. provide access to appropriate care, if needed, for an indefinite number of infected, exposed or endangered people in the event of a public health emergency.

Section 12-10A-2.

{50} These indicators of legislative intent generally support a broad reading of the PHERA rather than a restrictive bar for sufficient evidence of a public health emergency. Petitioners point only to our analysis of COVID-19 in *Reeb* and *Romero*, without demonstrating those cases set an evidentiary standard that must be matched in order to abide with the intent of the Legislature. Thus, Petitioners fail to show that this Court should hold gun violence and drug abuse to their proposed evidentiary requirement for public health emergencies under the PHERA.

b. Petitioners do not show that requiring a public health emergency to be sudden or unforeseen is necessary for the emergency orders to abide with legislative intent for the PHERA

{51} Regarding their second proposed requirement, Petitioners rely on legal definitions of "emergency" to argue that a "public health emergency" must be either "sudden" or "unforeseen." Petitioners also point to *Romero* for the proposition that "an emergency order is 'appropriate' when legislative action is 'facially unworkable.'" See *Romero*, 2021-NMSC-009, ¶ 34. Under these propositions, Petitioners reject Respondents' reading of Section 12-10A-3(G) as "not requir[ing] that the prompting threat was either sudden or unforeseen; more significantly, it would extend the Governor's power to include even those circumstances that *do* present time for full deliberation by the Legislature and in which statutory solutions would thus be workable." (internal quotation marks and citations omitted). As above, Petitioners contend that adopting Respondents' reading "is to presume a state of perpetual emergency."

{52} As cited by Petitioners, we recognize the relevance here of the general concept of *emergency*, as the PHERA exists within the larger statutory context of the Emergency Powers Code (the Code). See *Key v. Chrysler Motors Corp.*, 1996-NMSC-038, ¶ 14, 121 N.M. 764, 918 P.2d 350 ("[A]ll parts of a statute must be read together to ascertain legislative intent[,] and "[w]e are to read the statute in its entirety and construe each part in connection with every other part to produce a harmonious whole." (citations omitted)); *see also* § 12-9B-1 ("Chapter 12, Articles 10, 10A, 11[,] and 12 NMSA 1978 may be cited as the 'Emergency Powers Code.'"); Chap. 12, Art. 10 ("All Hazard Emergency Management"); Chap. 12, Art. 10A-1 to -19 (the PHERA); Chap. 12, Art. 11 ("Disaster Acts"); Chap. 12, Art. 12 ("Hazardous Materials Emergency Response"). However, the Code does not provide a statutory definition of *emergency*, nor does the Code set relevant requirements to be applied across its varied statutory sections. Further, common dictionary definitions of "emergency" do not present

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a consensus that "sudden" and "unforeseen" are elemental requirements for that general term. See *Emergency*, Merriam-Webster Collegiate Dictionary (11th ed. 2005) ("(1) an unforeseen combination of circumstances or the resulting state that calls for immediate action; (2) an urgent need for assistance or relief").

{53} Regardless, within the PHERA the Legislature has provided a more specific term and definition of *public health emergency*, which counsels for that term's prevailing importance. See *State v. Santillanes*, 2001-NMSC-018, ¶ 7, 130 N.M. 464, 27 P.3d 456 ("Under [the general/specific rule of statutory construction], if two statutes dealing with the same subject conflict, the more specific statute will prevail over the more general statute absent a clear expression of legislative intent to the contrary." (citation omitted)). In sum, Petitioners' cited definitions of *emergency* do not create a basis for adding language to the Legislature's definition of *public health emergency*.

{54} Petitioners do not otherwise carry their burden to show that requiring a public health emergency to be sudden or unforeseen is necessary to abide with legislative intent. First, the Legislature has provided a statutory definition of "public health emergency," and we are bound by it. See, e.g., *Morris v. Brandenburg*, 2016-NMSC-027, ¶ 15, 376 P.3d 836 ("Unless it would lead to an unreasonable result, we regard a statute's definition of a term as the Legislature's intended meaning." (citation omitted)). Second, *sudden* and *unforeseen* are retrospective terms, looking backwards into the circumstances giving rise to the threat, whereas the Legislature has defined a public health emergency in terms of an "imminent threat," a prospective definition that looks ahead to the nature of the impending danger. This further erodes any claim that a *sudden or unforeseen* requirement would reflect legislative intent. Third, Petitioners do not explain why a *preexisting* condition or agent that rises to an extremely dangerous or highly infectious level—that is, a serious threat to the public health requiring immediate response but not necessarily sudden or unforeseen in nature—would be less deserving as a

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public health emergency in the view of the Legislature than a *novel* or *unexpected* condition or agent. Stated differently, Petitioners offer no argument that the Legislature intended for a governor *not* to be able to declare and address a public health emergency when a proper crisis arises *gradually and foreseeably*, such as substantial harm to the public from persistent drought or flu. Fourth, Petitioners offer no argument showing a *sudden or unforeseen* requirement would not itself constitute an unclear test for a public health emergency.

{55} Additionally, Petitioners misrepresent our proposition in *Romero*: in recognizing that use of special sessions of the Legislature in lieu of executive emergency orders is facially unworkable, we did not suggest that such orders are *only* appropriate when government faces a sudden or unforeseen circumstance. Petitioners relatedly argue “it is the Legislature’s inability to address a threat quickly enough that justifies the[] temporary delegations” of emergency police powers. For support, Petitioners cite a comparison of Article IV, Section 2 of the New Mexico Constitution ([Legislative] Powers generally; disaster emergency procedure) with Article V, Section 4 (Governor’s executive power; commander of militia), but Petitioners offer no construction of these constitutional provisions supporting their argument.

{56} Finally, we address Petitioners’ legitimate concern that a governor could abuse the PHERA to declare “a state of perpetual emergency” in the absence of a sudden or unforeseen requirement. Critically, however, Petitioners conflate the issue of a public health emergency’s *initiation or declaration* with its *termination or duration*. Our discussion thus far establishes by analysis of plain language and legislative intent that the Legislature granted considerable authority and discretion to a governor to determine and declare in the first instance that a public health emergency exists. Petitioners’ sudden-and-unforeseen requirement would restrict that authority and discretion but would have doubtful relevance to when a declared public health emergency ends. Logically, any public health emergency could be challenged as to whether the conditions

justifying its declaration remained in existence, regardless of whether those initiating conditions manifested suddenly or gradually, foreseeably or otherwise. Accordingly, Petitioners’ argument as to the potential abuse of the PHERA does not establish a policy need for their proposed requirement that would support a violation of legislative intent.

{57} For the foregoing reasons, Petitioners do not show that the emergency orders declaring and addressing gun violence and drug abuse as public health emergencies exceed the scope of Section 12-10A-3(G).

{58} Before we turn to Petitioners’ next argument, we briefly address the statutory concerns raised by the dissents, which overlap substantially with Petitioners’ arguments already discussed. Respectfully, the dissents do not demonstrate our statutory construction of “public health emergency” misconstrues either the plain language or underlying intent of Section 12-10A-3(G). They similarly do not explain how the EO’s here would not qualify even under their construction, where the emergency orders implicitly assert *changed circumstances* regarding gun violence and drug abuse *warranting immediate response*. Given the mandamus posture of this case, the dissents’ rejection of the purported public health emergencies here must account for those uncontested facts, given our deferential review of “executive orders issued for the protection of public health during a public health crisis.” *Romero*, 2021-NMSC-009, ¶¶ 30, 39-40. Finally, the dissents set requirements for definition and declaration of a public health emergency that do not reside in either statutory language or demonstrated legislative intent.

F. Whether the Emergency Orders Constitute an Improper Exercise of the Police Power

{59} Having determined that the emergency orders abide under the PHERA, we next consider Petitioners’ challenge to those orders as an improper exercise of the police power.

{60} Petitioners pose such a challenge in multiple portions of their briefing. Pointing to the first Amended PHEO provisions regarding firearm possession, public-school-wastewater testing, and juvenile

detention, Petitioners ask us to determine, consistent with *Wilson*, “whether [the first Amended PHEO’s] exercise of the police power ‘to protect the public health has no real or substantial relation to its stated objects.’” 2021-NMSC-022, ¶ 42 (brackets and ellipsis omitted) (quoting *Jacobson v. Massachusetts*, 197 U.S. 11, 25 (1905)). Petitioners challenge the same three provisions in the first Amended PHEO as improper exercises of the police power in the context of their separation-of-powers challenge and, citing *Jacobson*, challenge the original PHEO’s firearm provisions as a “plain, palpable invasion of rights” under the state and federal constitutions. *Jacobson*, 197 U.S. at 31 (internal quotation marks and citations omitted).

{61} While we deem their challenge under the Second Amendment and Article II, Section 6 of the New Mexico Constitution abandoned, as discussed above, Petitioners have not expressly abandoned their police power assertions regarding the firearm restrictions. Further, the Petition expressly urges that we “decide these issues on the merits regardless of whether the current PHEO is put back into full effect, is voluntarily withdrawn, or is superseded by another order, as the deeper legal issues involved are of paramount importance and are ‘capable of repetition yet evading review.’” (quoting *Cobb*, 2006-NMSC-034, ¶¶ 29-32). For these reasons, we do not exclude the first Amended PHEO’s firearm possession provision from consideration here.

{62} Petitioners’ various challenges summarized above share a common argument that we resolve before considering their separation-of-powers challenge: an assertion that the specified provisions in the emergency orders are an improper exercise of the police power. We address this as a preliminary issue because, as *Jacobson* and other cases make clear, an exercise of the police power is subject to judicial review regardless of whether the wielder of the power is the legislative or executive branch. See *Jacobson*, 197 U.S. at 25, 27, 31 (holding that the Massachusetts legislature was permitted to entrust to local boards of health the decision whether to require the inhabitants of a city or town to be vaccinated

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against smallpox as “necessary for the public health or the public safety”); *Reeb*, 2021-NMSC-006, ¶ 14-16 (examining both legislative and executive actions under the police power). If challenged executive action is determined to be a proper exercise of the police power generally, then the remaining analysis would include whether the exercise of that power was nonetheless improper under separation-of-powers principles. Thus, analysis of whether the emergency orders abide as a proper exercise of the police power should not be conflated with whether they violate the separation-of-powers doctrine. A threshold determination that those orders exceed the limits of the police power would be dispositive, without the need to address whether the executive’s exercise of the police power violates separation of powers.

{63} We have discussed the contours of the police power in *Reeb*, *Romero*, and *Wilson* in the context of a public health emergency. The Legislature’s constitutional police power is “the broadest power possessed by governments, to protect public health and welfare,” which encompasses “[l]aws providing for preservation of the public peace, health and safety.” *Reeb*, 2021-NMSC-006, ¶ 14 (internal quotation marks and citations omitted). “Th[is] power[] must, of course, be delegated or enforced consistent with other constitutional requirements.” *Id.*; see *Romero*, 2021-NMSC-009, ¶ 30. Though not defined precisely “beyond a standard of reasonableness,” the police power has two essential elements for its proper exercise: “First, that the interests of the public require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals.” *Wilson*, 2021-NMSC-022, ¶ 22 (ellipsis omitted) (quoting *Goldblatt v. Town of Hempstead*, N.Y., 369 U.S. 590, 594-

95 (1962)). Stated differently as applicable here, we must assess “whether the crisis or emergency upon which the executive bases its exercise of police power is legitimate and whether the executive action is reasonably related to the response to the asserted crisis or emergency.” *Romero*, 2021-NMSC-009, ¶ 55 (Thomson, J., specially concurring) (citing *Mitchell v. City of Roswell*, 1941-NMSC-007, ¶ 13, 45 N.M. 92, 111 P.2d 41; *Jacobson*, 197 U.S. at 31), as well as whether that action constitutes “beyond all question, a plain, palpable invasion of rights secured by the fundamental law,” *Jacobson*, 197 U.S. at 31.

{64} We consider first whether gun violence and drug abuse are legitimate crises or emergencies upon which to base the Governor’s exercise of the police power. Our precedent makes clear that any subject may be a legitimate focus for use of the police power so long as that subject relates to the public health, safety, or welfare. *E.g.*, *Colinas Dev. Council v. Rhino Env’t. Servs., Inc.*, 2005-NMSC-024, ¶ 15, 138 N.M. 133, 117 P.3d 939 (recognizing the purposes of the Solid Waste Act, NMSA 1978, § 74-9-2(C) (1990), include “protect[ing] the public health, safety[,] and welfare”); *Santa Fe Cnty. Sch. v. State Bd. of Educ.*, 1974-NMSC-005, ¶ 7, 85 N.M. 783, 518 P.2d 272 (recognizing that supervision and control of private schools may be conferred to the Board of Education under the police power); *State ex rel. N.M. Dry Cleaning Bd. v. Cauthen*, 1944-NMSC-047, ¶ 18, 48 N.M. 436, 152 P.2d 255 (upholding dry cleaning as a proper subject of regulation under the police power); *Arnold v. Bd. of Barber Exam’rs*, 1941-NMSC-003, ¶ 37-42, 45 N.M. 57, 109 P.2d 779 (upholding regulation of minimum pricing in the barber trade under the police power).

{65} Considering the undisputed facts in the emergency orders against this backdrop,

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the effects of gun violence and drug abuse on New Mexicans involve obvious public health, safety, and welfare implications. For example, as discussed above, EO 2023-135 states “the rate of gun deaths in New Mexico increased 43% from 2009 to 2018, compared to an 18% increase over this same time period nationwide.” EO 2023-136 cites “a significant increase in drug-related deaths, with 1,501 fatal overdoses reported in the state in 2021—the fifth highest overdose rate in the nation.” Petitioners relevantly concede that “substance abuse or firearm deaths are [] serious issues” and present no argument that these serious issues do not comport with the scope of the police power. Thus, we conclude that gun violence and drug abuse are legitimate subjects for exercise of the police power.

{66} We consider next whether the emergency measures in the first Amended PHEO relating to firearm possession, public-school wastewater testing, and suspension of JDAI are reasonably related to those legitimate subjects. Our jurisprudence makes two relevant propositions clear: our reasonableness standard is deferential to measures intended to protect the public health, and a petitioner in this posture bears the burden to show the absence of a reasonable relationship between means and ends. See *Mitchell*, 1941-NMSC-007, ¶ 13-14 (“It is the policy of the courts to uphold regulations intended to protect the public health, unless it is plain that they have no real relation to the object for which ostensibly they were enacted, and *prima facie* they are reasonable. . . . The[] findings [of the city governing board] and the enactment of the [nuisance] ordinance, established *prima facie* that it was reasonable, and burdened plaintiffs with the necessity of disproving it.” (citations omitted)); *Cauthen*, 1944-NMSC-047, ¶ 18 (holding that, absent a claimant’s proof otherwise, an act in the

¹⁶ As we discussed in *Romero* and *Pirtle*, *Jacobson* remains good law in defining the scope of judicial scrutiny of emergency public health laws, though we also noted an unsettled question as to how *Jacobson*’s deferential review of state action for the protection of the public health abides with the subsequent development of tiered levels of scrutiny. See *Romero*, 2021-NMSC-009, ¶ 40 (“Undoubtedly, given that *Jacobson* was decided well before the development of modern American constitutional jurisprudence, some would give its holding a narrow application.”); *Pirtle*, 2021-NMSC-026, ¶ 37 (*Jacobson*’s “deferential police power review standard remains relevant today, save arguably in the context of free-exercise-of-religion cases.”). However, because we need not scrutinize this case under the Second Amendment or other fundamental law, as we discuss further below, “this case does not require us to decide *Jacobson*’s outer limits.” *Romero*, 2021-NMSC-009, ¶ 40 n.23.

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interest of the public health and safety will be sustained under “the presumption of constitutionality”; *cf. State v. 44 Gunny Sacks of Grain*, 1972-NMSC-033, ¶ 9, 83 N.M. 755, 497 P.2d 966 (“The right to seize and destroy unfit or impure foods is a reasonable exercise of the right and duty of the State to protect the public health and is predicated upon the police power.” (citation omitted)).

{67} Petitioners argue briefly and generally that the emergency orders do not explain how the relevant measures reasonably relate to their stated ends. Regarding wastewater testing and suspension of JDAI, Petitioners also argue the absence of a reasonable relationship where the relevant EO’s only statement on children and youth is that they “are particularly vulnerable to the negative impacts of drug abuse, as evidenced by the rising number of cases involving *parental* substance abuse and its subsequent effect on child welfare.” EO 2023-132 (emphasis added). Petitioners note that “parental conduct is not addressed by the measures proposed.”

{68} Section 1 of the first Amended PHEO relevantly prohibits firearm possession in Bernalillo County “either openly or concealed in public parks or playgrounds, or other public area[s] provided for children to play in.” To be reasonably related to addressing gun violence, this emergency measure “must have some fair tendency to accomplish, or aid in the accomplishment of,” that legitimate police power purpose. *Welch v. Swasey*, 214 U.S. 91, 105 (1909). As above, EO 2023-135 states “guns are the leading cause of death among children and teens in New Mexico” and cites relevant deaths of thirteen-, five-, and eleven-year-old victims. Against this factual backdrop, we conclude that prohibiting firearm possession from areas frequented by children has some fair tendency to aid in the accomplishment of fewer gunshot-related deaths among children and thus is reasonably related to addressing gun violence as declared and explained in the emergency orders. Our reading of the caselaw above assessing a reasonable relationship of means and ends under

the police power requires no more, and Petitioners offer no meaningful argument otherwise.

{69} Because Petitioners do not challenge Section 1 of the first Amended PHEO under the state or federal right to bear arms, we need not consider whether heightened scrutiny should apply due to a purported invasion of “fundamental law.” *Jacobson*, 197 U.S. at 31. For completeness, we note that the federal district court rejected a motion for a temporary restraining order against the first Amended PHEO, declaring (1) “this Court [already] enjoined enforcement of the order as it applied to public parks” such that further restraint of amended Section 1 “would be superfluous and unnecessary” and (2) under *Bruen*, the plaintiffs there failed to show a likelihood of success on the merits regarding playgrounds and other areas where children play. *We the Patriots, Inc. v. Grisham*, 1:23-CV-00773-DHU-LF at *2-3 (D.N.M. Sept. 29, 2023); *see We the Patriots, Inc.*, 697 F. Supp. 3d 1222, 1237 (D.N.M. Oct. 11, 2023) (“[U]nder *Bruen*, the [c]ourt ‘can assume it settled’ that playgrounds are a ‘sensitive place.’” (citing *New York State Rifle and Pistol Ass’n v. Bruen*, 597 U.S. 1, 30 (2022))). We read the federal district court’s ruling as supporting that the firearm restrictions in the first Amended PHEO are not unreasonable.

{70} Section 4 of the first Amended PHEO relevantly requires the DOH and the New Mexico Environment Department to “develop a program to conduct wastewater testing for illicit substances, such as fentanyl, at all public schools.” To be reasonably related to its end under *Welch*, this emergency measure “must have some fair tendency to accomplish, or aid in the accomplishment of,” addressing drug abuse. 214 U.S. at 105. As above, EO 2023-136 cited “a significant increase in drug-related deaths, with 1,501 fatal overdoses reported in the state in 2021—the fifth highest overdose rate in the nation.” EO 2023-136 also cites “the accessibility and prevalence of potent synthetic opioids, such as fentanyl, [which] have escalated the risks associated with drug abuse, contributing to a surge in overdose incidents.” Nothing in EO 2023-136 suggests that school-age New Mexicans are excluded from these

effects. In combination with EO 2023-136’s factual assertion that “the children and youth of New Mexico are particularly vulnerable to the negative impacts of drug abuse,” it is a reasonable inference that testing wastewater from schools could provide relevant information as to just how *accessible* and *prevalent* certain substances are among school-age New Mexicans. Logically, acquiring such information could be useful to the executive branch in coordinating a response to drug abuse, at least as it relates to that age classification. Consequently, the facts in the emergency orders support that wastewater testing for illicit substances at all public schools is reasonably related to addressing drug abuse.

{71} Petitioners here simply argue that the emergency orders fail to explain how testing “public-school sewage” relates to reducing drug abuse when the particular vulnerability of children and youth cited in EO 2023-136 regards *parental* substance abuse and its subsequent effect on child welfare. However, as above, the factual explanation in EO 2023-136 includes information relating to the nature of drug abuse in New Mexico generally, and Petitioners provide no evidence establishing that school-age New Mexicans are excluded. Importantly here, Petitioners bear the burden to show the *absence* of a reasonable relationship between wastewater testing of public schools and addressing drug abuse, and our reasonableness standard is deferential so long as we have sufficient information to logically arrive at the *presence* of such.

{72} Section 5 of the first Amended PHEO relevantly requires CYFD to “immediately suspend [JDAI] and evaluate juvenile probation protocols.” To be reasonably related to its end under *Welch*, this emergency measure “must have some fair tendency to accomplish, or aid in the accomplishment of,” addressing gun violence or drug abuse. 214 U.S. at 105. Petitioners argue that the emergency orders fail to explain how “suspending alternatives to locked detention for children relates *either* to reducing gun violence *or* drug abuse.” We agree.

{73} We take judicial notice that, prior to the emergency orders, JDAI has been a juvenile justice reform initiative within

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CYFD that includes risk assessment for youth referred to detention. See “New Mexico Juvenile Justice Services Fiscal Year 2022” at 29-30¹⁷; *see also* “Juvenile Detention Alternatives Initiatives (JDAI) in New Mexico,”¹⁸ (“JDAI was designed to support the [Annie E.] Casey Foundation’s vision that all youth involved in the juvenile justice system have opportunities to develop into healthy, productive adults.”); *Romero*, 2021-NMSC-009, ¶ 7 (“This Court may, on its own, ‘judicially notice a fact that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.’” (quoting Rule 11-201(B), (C) NMRA)). CYFD has described the objectives of JDAI to include reducing the juvenile population in New Mexico’s detention facilities. *See* “Juvenile Detention Alternatives Initiatives (JDAI) in New Mexico” at 3.

{74} The emergency orders offer no explanation as to which declared public health emergency—gun violence or drug abuse—is meant to be addressed by the suspension of JDAI or CYFD’s evaluation of juvenile probation protocols, nor do the emergency orders explain what results are expected. Without resorting to conjecture, we have no basis from which to infer that Section 5 has some fair tendency to accomplish, or aid in the accomplishment of, remedying either of the declared public health emergencies. Even with the deference our precedent demands, we cannot conclude Section 5 of the first Amended PHEO is reasonably related to a legitimate end under the police power. Accordingly, we will issue the writ as regards the analogous provision in the current PHEO: Section 4 of the second Amended PHEO is identically worded.

{75} We emphasize our determination

does not create an affirmative duty on the executive branch to issue explanations of emergency orders to a specified standard. Our precedents above establish that we will infer a reasonable relationship between means and ends in this context where the facts before us so support. In this instance, the Secretary may possess a valid rationale for the relevant provision which would demonstrate a reasonable relationship between the measure and either or both of the declared public health emergencies, but that support is not currently before us. {76} We also note without deciding that suspension of JDAI may not require emergency action. The underlying premise to Petitioners’ police power challenge is that the emergency measures require exercise of that power, but we find no evidence JDAI’s status extends beyond an initiative within CYFD subject to executive discretion.¹⁹

{77} In summary, we hold Sections (1) and (4) of the first Amended PHEO are valid exercises of the police power, and so we consider below whether those sections violate separation of powers. Section (5), however, fails as an exercise of the police power under the reasonable relationship prong, and we will issue the writ to bar its enforcement pursuant to the emergency orders.

G. Whether the Emergency Orders Violate Separation-of-Powers Principles

{78} Next, we address whether the emergency orders constitute a violation of separation of powers under Article III, Section 1 of the New Mexico Constitution, which provides:

The powers of the government of this state are divided into three distinct departments, the legislative, executive[,] and judicial, and no person or collection of

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persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others, except as in this constitution otherwise expressly directed or permitted.

{79} Petitioners present three arguments supporting their claim that the emergency orders constitute a separation-of-powers violation. First, citing *Romero*, they argue that “the orders encroach on areas reserved to the Legislature.” Second, they argue that the Legislature could not delegate to the Governor legislative powers “even if it wished to.” Third, they argue that “[t]he Governor’s lawmaking infringes on existent statutory schemes in the furtherance of long-term policy goals.” Because their first and third arguments relate to the same statutory schemes, we address Petitioners’ encroachment and infringement assertions in turn, then consider Petitioners’ nondelegation argument.

1. Applicable law for Petitioners’ separation-of-powers challenges

{80} “The doctrine of separation of powers rests on the notion that the accumulation of too much power in one governmental entity presents a threat to liberty.” *State ex rel. Clark v. Johnson*, 1995-NMSC-048, ¶ 31, 120 N.M. 562, 904 P.2d 11; *see also Bd. of Educ. of Carlsbad Mun. Schs. v. Harrell*, 1994-NMSC-096, ¶ 42, 118 N.M. 470, 882 P.2d 511 (“The accumulation of all powers, legislative, executive, and judiciary, in the same hands . . . may justly be pronounced the very definition of tyranny.” (quoting *The Federalist* No. 47 (James Madison))). Accordingly, we will not hesitate to give effect to Article III, Section 1 of the New Mexico Constitution by “interven[ing] when one branch of government unduly

¹⁷ See New Mexico Juvenile Justice Services Fiscal Year 2022, https://www.cyfd.nm.gov/wp-content/uploads/2024/01/SFY-2022-Annual-Report_Melissa-Gomez.pdf (last visited Feb. 6, 2025).

¹⁸ See Juvenile Detention Alternatives Initiatives (JDAI) in New Mexico, <https://www.nmlegis.gov/handouts/CCJ%20092514%20Item%205%20Juvenile%20Detention%20Alternatives.pdf> (last visited Feb. 6, 2025).

¹⁹ Relatedly, we are not convinced that other provisions of the first Amended PHEO challenged within Petitioners’ separation-of-powers arguments require authorization under PHERA, including Section 2 (monthly inspections of licensed firearms dealers), Section 3 (comprehensive report on gunshot victims (omitted in the second Amended PHEO)), and Section 4 (public-school wastewater testing). As with suspension of JDAI, whether a public health emergency is a prerequisite for such executive action is not before us.

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interfere[s] with or encroache[s] on the authority or within the province of a coordinate branch of government.” *Clark*, 1995-NMSC-048, ¶ 32 (internal quotation marks and citation omitted).

{81} Notwithstanding the importance of this bedrock principle in our democratic system, we have also recognized that “the constitutional doctrine of separation of powers allows some overlap in the exercise of governmental function.” *Id.* (text only) (citation omitted). “[N]either desirable nor realistic,” *id.*, the “[t]otal compartmentalization and separation of functions between the executive and legislative branches would result in a state of dysfunction.” *Candelaria*, 2023-NMSC-031, ¶ 14. “Our approach is one of practicality and common sense, which recognizes that although the executive, legislative, and judicial powers set out in our Constitution are not hermetically sealed, they are nonetheless functionally identifiable one from another.” *Id.* (text only) (citation omitted).

{82} “Within our constitutional system, each branch of government maintains its independent and distinct function.” *Taylor*, 1998-NMSC-015, ¶ 21. We have recognized the distinct and proper roles of the legislative and executive branches, respectively, as making law and executing law. *See Clark*, 1995-NMSC-048, ¶ 33; *see also Unite New Mexico*, 2019-NMSC-009, ¶ 8 (“[T]he right to determine what the law shall be. . . . is a function which the Legislature alone is authorized under the Constitution to exercise.” (internal quotation marks and citation omitted)); *Taylor*, 1998-NMSC-015, ¶ 21 (“[O]nly the legislative branch is constitutionally established to create substantive law.”). “It is the particular domain of the [L]egislature, as the voice of the people, to make public policy. Elected executive officials and executive agencies also make policy, but to a lesser extent, and only as authorized by the constitution or [L]egislature.” *Id.* (text only) (internal quotation marks omitted). {83} “In determining whether [a government action] disrupts the proper balance between the coordinate branches, the proper inquiry focuses on the extent to which the action by one branch prevents

another branch from accomplishing its constitutionally assigned functions.” *Clark*, 1995-NMSC-048, ¶ 34 (quoting *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 443 (1977)). “If a governor’s actions infringe upon the essence of legislative authority—the making of laws—then the governor has exceeded [their] authority.” *Taylor*, 1998-NMSC-015, ¶ 24 (internal quotation marks and citation omitted); *cf. State ex rel. Schwartz v. Johnson*, 1995-NMSC-080, ¶ 16, 120 N.M. 820, 907 P.2d 1001 (“The legislative responsibility to set fiscal priorities through appropriations is totally abandoned when the power to reduce, nullify, or change those priorities is given over to the total discretion of another branch of government.” (internal quotation marks and citation omitted)).

{84} As the parties here agree and we discuss further below, “[t]he operative question is whether the [emergency orders] disrupt[] the proper balance between the executive and legislative branches and infringe[] on the legislative branch by, for instance, imposing through executive order substantive policy changes in an area of law reserved to the Legislature.” *Romero*, 2021-NMSC-009, ¶ 34 (internal quotation marks and citation omitted). For the reasons that follow, we determine that Petitioners have not shown that the emergency orders disrupt that proper balance of power.

2. Petitioners do not show that the emergency orders either unconstitutionally encroach on areas of law reserved to the Legislature or constitute “lawmaking” to infringe the Legislature’s role and function

{85} To support their encroachment and infringement arguments, Petitioners point to statutory schemes which they assert have been improperly “contradict[ed]” and “overrid[den]” by the emergency measures in the first Amended PHEO.

{86} Petitioners first point to the first Amended PHEO’s restrictions on firearm possession in specified public areas. Petitioners suggest these restrictions encroach on the Legislature’s exercises of the police power regarding the Concealed Handgun Carry Act, NMSA 1978, §§ 29-19-1 to -15 (2003, as amended through

2015), and regulation of carrying a deadly weapon, NMSA 1978, §§ 30-7-1 to -16 (1963, as amended through 2024). Where Respondents analogize playgrounds to schools, Petitioners also suggest the first Amended PHEO’s restrictions infringe on the Legislature’s definition of “school premises” in Section 30-7-2.1(B)(1)-(2).

{87} Next, Petitioners point to the first Amended PHEO’s provision requiring “a program to conduct wastewater testing for illicit substances, such as fentanyl, at all public schools.” Petitioners suggest this provision encroaches on the Legislature’s function to regulate controlled substances and determine whether a drug is *illicit*, citing portions of the Controlled Substances Act, §§ 30-31-1 to -41 (1972, as amended through 2022). Petitioners also suggest the first Amended PHEO’s wastewater testing provision infringes on the Legislature’s policy choice in Section 30-31-40(B), which protects “the names and other identifying characteristics of individuals who are subjects of [controlled substances] research.”

{88} Next, Petitioners point to the first Amended PHEO’s suspension of JDAI. Petitioners suggest this suspension encroaches on the Legislature’s establishment in NMSA 1978, § 9-2A-14.1 (2007) of the juvenile continuum grant fund and contradicts the Legislature’s purpose in NMSA 1978, § 32A-2-2(H) (2007) of the Delinquency Act “to develop community-based alternatives to detention.” Petitioners also cite Section 32A-2-2(H) to suggest the suspension of JDAI infringes the Legislature’s lawmaking power.

{89} Lastly, Petitioners point to the first Amended PHEO’s requirement that DOC and DHS “provide assistance” to MDC “to ensure adequate staffing, space, and screening for arrested and incarcerated individuals.” Petitioners suggest this requirement encroaches on the Legislature’s exercise of the police power to regulate jails in NMSA 1978, §§ 33-3-1 to -28 (1959, as amended through 2023), including by “effectively mandat[ing] an agreement between MDC and other agencies . . . while sidestepping the requirements and checks” in Section 33-3-2(A), (D). Petitioners also cite Section 33-3-2(A), (D) to suggest

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the first Amended PHEO's requirement infringes on the Legislature's lawmaking power.

{90} We next discuss Petitioners' relevant encroachment and infringement positions regarding these statutes.

a. Petitioners do not show that the emergency orders unconstitutionally encroach on or interfere with areas of law reserved to the Legislature

{91} Quoting *Romero*, Petitioners attempt to characterize all areas of law in which the Legislature has enacted under the police power, including the statutory schemes above, as "area[s] of law reserved to the Legislature." *Romero*, 2021-NMSC-009, ¶ 34 (citation omitted). Under this characterization, Petitioners appear to presume that any action taken by the Governor pursuant to the PHERA "disrupts the proper balance between the executive and legislative branches" if that action at all intersects with existing statutes. *Id.* (internal quotation marks omitted). As we explain below, this characterization misapprehends *Romero* and serves as a false premise for finding that the emergency measures violate Article III, Section 1 of the New Mexico Constitution. Under a proper reading of *Romero*, *Taylor*, and *Clark*, which we provide next, Petitioners fail to show that the emergency orders improperly encroach on areas of law reserved to the Legislature.

{92} In providing the "operative question" embraced by the parties, *Romero* illustrated how a public health order pursuant to the PHERA might unconstitutionally infringe on the legislative branch "by, for instance, imposing through executive order substantive policy changes in an area of law reserved to the Legislature." 2021-NMSC-009, ¶ 34 (citing *Taylor*, 1998-NMSC-015, ¶¶ 24-25). This statement concluded our analysis in *Romero* of whether the Secretary's public health emergency order banning indoor dining—issued pursuant to the PHERA and the police power—was *ultra vires*. *Romero*, 2021-NMSC-009, ¶¶ 4-5, 34. We held it was not, stating that the public health order in question reflected "a collaboration among executive officials, including the Governor, to respond to the [public health emergency],

as contemplated under the PHERA." *Id.* ¶ 33. In concluding that the challenged order "d[id] not work a fundamental disruption of the balance of powers between the branches of government," we also noted that "New Mexico ha[d] not entered a 'new normal,' nor d[id] the temporary emergency orders constitute 'long-term policy' decisions." *Id.* ¶ 34. In other words, the Legislature properly retained all of its power to make law in the area affected by the temporary emergency order, and no separation-of-powers violation resulted. Clearly, the Executive's order challenged in *Romero* did not "impos[e] . . . substantive policy changes in an area of law reserved to the Legislature." *Id.* ¶ 34.

{93} *Taylor* relevantly illuminates the meaning of "reserved to the Legislature." 1998-NMSC-015, ¶¶ 24-25. In *Romero*, this Court cited *Taylor* as a contrasting case in which the proper balance of powers was disrupted by an executive order which "substantially altered, modified, and extended existing law." *Romero*, 2021-NMSC-009, ¶ 34 (quoting *Taylor*, 1998-NMSC-015, ¶ 25). In *Taylor*, the governor's order "effect[ed] an extensive overhaul of the state's public assistance system without legislative participation," and we concluded that his "program implement[ed] the type of substantive policy changes reserved to the Legislature." 1998-NMSC-015, ¶¶ 2, 25. *Taylor* did not suggest that the governor could not exercise lawful discretion in the area of public assistance law, but this Court held the governor's program to be "executive creation of substantive law, and as such, [wa]s an unconstitutional encroachment upon the Legislature's role of declaring public policy." *Id.* ¶ 25. This discussion in *Taylor* reinforces that the constitutional responsibility for creating substantive law and declaring public policy is reserved to the Legislature. *Id.* ¶¶ 24-25.

{94} Also relevant to the meaning of *Romero*, the *Taylor* Court noted that "by refusing to permit legislative participation in fashioning public assistance policy changes, [r]espondents attempt[ed] to foreclose legislative action *in an area where legislative authority is undisputed*." *Taylor*, 1998-NMSC-015, ¶ 25 (emphasis added) (brackets omitted) (citing *Clark*, 1995-NMSC-048, ¶

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34); *see id.* ¶ 24 ("A [separation of powers] violation occurs when the Executive, rather than the Legislature, determines how, when, and for what purpose the public funds shall be applied in carrying on the government." (internal quotation marks and citation omitted)). Again, the Court did not suggest that the Legislature's authority in this area of law precluded executive discretion in all forms, rather that creation of substantive policy changes in that area was the Legislature's constitutional prerogative and thus "[the governor's] plan required legislative participation." *Taylor*, 1998-NMSC-015, ¶ 49.

{95} Importantly, *Taylor* rejected the respondents' proposed remedy of corrective legislation in the ensuing session: that is, our rejection was based on such a future Legislature needing a veto-override majority of two-thirds vote to amend the governor's unilaterally implemented public assistance policies. *Id.* ¶¶ 44-48. Stated differently, this scenario of further legislative action to remedy the governor's improper accumulation of power would "turn[] our constitutional system of checks and balances on its head, . . . plac[ing] the Legislature in a position of responding to, rather than initiating, core public policy choices." *Id.* ¶ 48.

{96} As cited by *Taylor*, *Clark* offers further assistance in understanding *Romero*. In *Clark*, this Court determined that the governor's unilateral entry into tribal gaming compacts and revenue-sharing agreements violated the separation-of-powers doctrine by "contraven[ing] the [L]egislature's expressed aversion to commercial gambling and exceed[ing] his [executive] authority." 1995-NMSC-048, ¶ 37. The *Clark* Court declared "it is undisputed that New Mexico's [L]egislature possesses the authority to prohibit or regulate all aspects of gambling on non-Indian lands." *Id.* ¶ 37. In that context, we recognized that attempting to foreclose legislative action "in areas where legislative authority is undisputed" would constitute a "mark of undue disruption" of the separation of powers, a disruption whereby "one branch prevents another branch from accomplishing its constitutionally assigned functions." *Id.* ¶ 34 (internal quotation

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marks and citation omitted). Whereas the executive may act in this area of law in accordance with expressed legislative intent, the governor's actions in *Clark* "occurred in the absence of *any* action on the part of the [L]egislature." *Id.* ¶ 36 ("While the [L]egislature might authorize the [g]overnor to enter into a gaming compact or ratify his actions with respect to a compact he has negotiated, the [g]overnor cannot enter into such a compact solely on his own authority"). As in *Taylor*, *Clark* supports that the constitutional role of creating substantive law and public policy belongs to the Legislature, not that the Executive cannot exercise delegated discretion in areas wherein the Legislature has spoken.

{97} In sum, *Clark* counsels that legislative action cannot be foreclosed by the executive in areas of law wherein legislative authority is undisputed; *Taylor* counsels that executive implementation of substantive policy changes without legislative participation can constitute improper executive creation of substantive law; and, notwithstanding, *Romero* counsels that even in an area of law reserved to the Legislature such as exercise of the police power, an overlapping executive order can abide with the separation-of-powers doctrine. *See Clark*, 1995-NMSC-048, ¶ 32 ("[T]he constitutional doctrine of separation of powers allows some overlap in the exercise of governmental function." (internal quotation marks and citation omitted)). Importantly in *Romero*, the executive order there abided with legislative intent in the PHERA and did not impose substantive policy changes, notwithstanding that the order affected an area of law reserved to the Legislature to declare law and policy. Relevantly, regarding acceptable overlap of powers, *Romero* also cited Justice Jackson's oft-cited concurrence in *Youngstown*:

While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity.

Romero, 2021-NMSC-009, ¶ 34 (quoting *Youngstown Sheet & Tube Co. v. Sawyer*,

343 U.S. 579, 635 (1952) (Jackson, J., concurring) (describing the balance of powers among the branches of the federal government)). In short, *Romero* should not be read to categorically foreclose executive action "in areas where legislative authority is undisputed." *Clark*, 1995-NMSC-048, ¶ 34.

{98} In part, *Romero* should also be read as recognizing the significance of the temporary nature of the executive actions, in contrast to the long-term policy-based objectives of the governors in *Taylor* and *Clark*. In addition, *Romero* should be read as recognizing that the executive actions there were taken pursuant to the Legislature's enactment—the PHERA—rather than in the absence of statute or adverse to the known legislative will. *See Romero*, 2021-NMSC-009, ¶¶ 24-34.

{99} In the instant case, Petitioners present statutory examples enacted under the police power that overlap or share some intersection in the same area of law as provisions within the first Amended PHEO, but they neither show a clear conflict between the statute and the emergency measures nor otherwise demonstrate a violation of the legislative will. For example, Petitioners point to enacted laws regulating controlled substances and setting forth penalties relating to their abuse. *E.g.*, § 30-31-7(A)(2)(f) (defining fentanyl as a Schedule II drug); § 30-31-21 (stating the penalties for distributing Schedule II drugs to a minor). They then point to a purported distinction between Section 30-31-40(B) of the Controlled Substances Act and the relevant emergency measure regarding public-school wastewater testing: "Unlike the [first] Amended PHEO, however, [Section 30-31-40(B), (D)] prohibits any compelled testimony by persons engaged in either research or medical practice, and protects the identifying information of the subjects of the research." Petitioners also point to the Legislature's 2009 failure to enact a legislative proposal for drug testing of individual students, suggesting by citation of a Legislative Education Study Report that legislative will was weighed for student privacy concerns. Beyond these suggestions of dissonance between the governmental branches, Petitioners merely

conclude "that the Legislature intended to exercise its police power on this issue[,] as well."

{100} Under our above reading of *Romero*, it is not enough that Petitioners show that the emergency measures share some intersection with the Legislature's statutory schemes: they bear the burden to show either that the emergency orders have the effect of preventing the Legislature from accomplishing its constitutionally assigned function of making law or that the orders effectuate substantive policy changes beyond their posture as temporary emergency orders. Their argument fails on both counts, as the Legislature retains all of its power to make law in the areas affected by the temporary emergency orders, and Petitioners show no example of clear conflict between the emergency measures and existing statute.

{101} In concluding their encroachment argument, Petitioners cite *Youngstown* for the proposition that, like the Governor, the President of the United States could not invoke an emergency to cleanse an improper executive action. Where the President by executive order directed the Secretary of Commerce during wartime to take possession of most of the nation's steel mills and keep them operating, the United States Supreme Court determined that he acted improperly in a lawmaking capacity: "The President's order does not direct that a congressional policy be executed in a manner prescribed by Congress—it directs that a presidential policy be executed in a manner prescribed by the President." *Youngstown*, 343 U.S. at 588. Petitioners assert that "[a]s in *Youngstown*, the Governor's orders act 'like a statute' to direct the execution of her own policy preferences—but the lawmaking authority to address societal 'crises' of the type at issue here remains with the Legislature."

{102} However, Petitioners do not acknowledge the critical distinction between the instant case and *Youngstown*: in our case the Executive acted pursuant to a statute, the PHERA, whereas the President issued his executive order without any Congressional authorization. *See* 343 U.S. at 585-86 ("Indeed, we do not understand the Government to rely on

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statutory authorization for this seizure.”). Accordingly, *Youngstown* does not advance Petitioners’ argument.

b. Petitioners do not show that the emergency orders constitute “lawmaking” to infringe or usurp the Legislature’s role and function

{103} Petitioners argue the emergency orders “overrid[e]” existing statutory schemes by executive lawmaking, thereby “usurp[ing] the Legislature’s role and function.” For support, Petitioners point to the purported examples above of the emergency measures infringing statutes, claiming that “the Governor’s orders reflect a divergence in opinion [from the Legislature] about policy and priorities—sometimes stark and sometimes subtle.” Petitioners assert “the circumstances here are . . . as the Court described in [*Taylor*]: an ‘infringement . . . where the executive does not execute existing New Mexico statutory or case law and rather attempts to create new law.’” (quoting 1998-NMSC-015, ¶ 24). Petitioners further assert that the emergency orders “implement long-term policy goals, not temporary emergency measures.”

{104} At the core of Petitioners’ argument is the meaning of *lawmaking*, the essence of legislative power. As we have already discussed, the Legislature’s constitutional power and prerogative includes “the right to determine what the law shall be,” “to create substantive law,” and “to make public policy.” See *Clark*, 1995-NMSC-048, ¶¶ 33-34; *Unite New Mexico*, 2019-NMSC-009, ¶ 8; *Taylor*, 1998-NMSC-015, ¶¶ 21, 24-25, 49. As also discussed, for a separation-of-powers challenge to an executive order pursuant to the PHERA, “[t]he operative question is whether the . . . [o]rder disrupts the proper balance between the executive and legislative branches and infringes on the legislative branch,” *Romero*, 2021-NMSC-009, ¶ 34 (internal quotation marks and citation omitted), and “the proper inquiry [for such a disruption] focuses on the extent to which the action by one branch prevents another branch from accomplishing its constitutionally assigned functions,” *Clark*, 1995-NMSC-048, ¶ 34 (brackets, internal quotation marks, and citation omitted).

{105} We draw further principles regarding

the nature of lawmaking from *Taylor* and *Schwartz*. In *Taylor*, the executive respondents’ substantive policy changes “substantially altered, modified, and extended existing law.” 1998-NMSC-015, ¶ 25 (emphasis added). In *Schwartz*, we recognized that “legislative responsibility” in the relevant area of law was “totally abandoned when the power to reduce, nullify, or change [] priorities [wa]s given over to the total discretion of another branch of government.” 1995-NMSC-080, ¶ 16 (emphasis added) (internal quotation marks and citation omitted). These cases support the proposition that the power to create, change, and nullify the law is central to the Legislature’s constitutional lawmaking power.

{106} Under these principles, Petitioners do not show that the emergency orders constitute “lawmaking” nor usurp the Legislature’s role and function. We discuss three primary reasons that Petitioners’ arguments here do not avail.

{107} First, Petitioners do not show that the emergency orders remove any degree of the Legislature’s power to establish the law. Petitioners offer no example supporting that the emergency orders have affected the Legislature’s power to alter, modify, extend, reduce, nullify, change, or otherwise flex its power over existing law. Importantly, the reach of this legislative power remains undiminished as regards both the substantive areas of law intersected by the emergency orders and the PHERA itself. In other words, the Legislature retains all lawmaking power over the areas of law encompassing gun violence and drug abuse, as well as over the statutes under which the emergency orders were issued and on which those orders depend for continued existence. In this regard, the instant case differs importantly from both *Taylor*, wherein the Legislature would have had “to garner a veto-override majority of two-thirds” to modify the governor’s unilateral public assistance regulations, and *Clark*, wherein the gaming compacts entered by the governor were “binding on the State of New Mexico for fifteen years” and threatened to “foreclose[] inconsistent legislative action or preclude[] the application of such legislation to the

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agreement.” *Taylor*, 1998-NMSC-015, ¶ 47; *Clark*, 1995-NMSC-048, ¶¶ 34-35. In sum, Petitioners do not show that the emergency orders “prevent[] [the Legislature] from accomplishing its constitutionally assigned function[]” of lawmaking. *Clark*, 1995-NMSC-048, ¶ 34 (internal quotation marks and citation omitted).

{108} Second, Petitioners do not show that the emergency orders conflict with existing statutory schemes to a level that “usurps the Legislature’s role and function.” Petitioners cite *Riddle* for the proposition that the Executive and the Judiciary cannot disregard detailed statutory schemes and their procedures without violating separation of powers. See *State ex rel. Riddle v. Toulouse Oliver*, 2021-NMSC-018, ¶¶ 38-40, 487 P.3d 815 (holding that, notwithstanding the COVID-19 pandemic, the Secretary of State “had a nondiscretionary duty to follow the primary election procedures set forth in the Election Code, and we cannot order relief that deviates from those procedures”). However, *Riddle* considered whether the Secretary could deviate from a nondiscretionary statutory duty, whereas Petitioners do not show any examples in the emergency orders of deviation from statute that warrant further analysis under *Riddle*. {109} We have already discussed Petitioners’ assertions that the emergency provision regarding wastewater testing in public schools departs from relevant statutes or contradicts the legislative will. In sum, Petitioners provide no on-point analysis to support that privacy provisions in the Controlled Substances Act bar the testing of wastewater generally as required in the first Amended PHEO.

{110} As for suspension of JDAI, the two statutes cited by Petitioners do not support their claim that JDAI is “a program authorized by the *Legislature*” nor their suggestion that the program cannot be suspended by the *Executive*. Section 9-2A-14.1 establishes the Juvenile Continuum Grant Fund, which provides avenues of grant funding for CYFD to award “to juvenile justice continuums for the provision of cost-effective services and temporary, nonsecure alternatives to detention for juveniles arrested or referred to juvenile probation and parole or at a risk of such

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referral.” Section 9-2A-14.1(B). While JDAI fits within this statutory description, Section 9-2A-14.1 does not mention JDAI by name nor require any specific program to exist as a grant candidate or recipient. Section 32A-2-2 enumerates the eleven purposes of the Delinquency Act, the last eight of which constitute the JDAI core strategies from the Annie E. Casey Foundation added to the statute in 2007. See Section 32A-2-2 annot. Petitioners point to Subsection (H), which provides that the purpose of the Delinquency Act includes “to develop community-based alternatives to detention,” but nothing in Section 32A-2-2 identifies or requires JDAI specifically. Because Petitioners do not show that the legislative will requires JDAI, suspension of that program does not demonstrate infringement or usurpation of the Legislature’s role or function.

{111} As for DOC and DHS providing assistance to MDC, Petitioners argue that Section 10 of “[t]he [first] Amended PHEO effectively mandates an agreement between MDC and other agencies to address ‘lack of staffing[and] space’ while sidestepping the requirements and checks that the Legislature sought to impose.” However, the only requirements and checks Petitioners cite concern a district court order requirement for *inmate transfers* under Section 33-3-15, and an agency approval requirement for agreements with *other counties and municipalities*, Section 33-3-2. Petitioners offer no explanation as to how these requirements could pertain to DOC and DHS.

{112} As for restrictions on firearm possession in specified areas, Petitioners in fact highlight the *similarity* between the prohibited spaces defined in Section 1 of the first Amended PHEO and in Section 30-7-2.1(B)(1)-(2). The first Amended

PHEO regulates firearm possession “in public parks or playgrounds, or other public area[s] provided for children to play in,” while the statute prohibits possession of a deadly weapon on “school premises,” which include “the buildings and grounds, including playgrounds, playing fields and parking areas.” By Petitioners’ own characterizations, no meaningful divergence from statute is apparent by the relevant emergency measure, and Petitioners do not support this argument with further evidence of the emergency orders contradicting legislative schemes.

{113} Given that “the constitutional doctrine of separation of powers allows some overlap in the exercise of governmental function,” Petitioners must show more than *de minimis* dissonance or conflict between the emergency orders and existing statutes to support their usurpation argument. *Clark*, 1995-NMSC-048, ¶ 32 (text only) (citation omitted). They have not carried this burden.

{114} Third, Petitioners assert but do not establish that the emergency orders “implement long-term policy goals, not temporary emergency measures.” Petitioners point to EO 2023-135 which declares “a statewide public health emergency of unknown duration,” and to the first Amended PHEO requiring “monthly inspections of licensed firearms dealers.” However, they offer no analysis to explain how these discrete facts support a conclusion that the emergency orders usurp the Legislature’s policy-making role or are not temporary. As Respondents cite, in *Romero* we recognized in the context of the COVID-19 state of emergency that “the temporary emergency orders [there did not] constitute long-term policy decisions.” 2021-NMSC-009, ¶ 34 (internal quotation marks omitted). *Romero* supports that

the presumptively temporary nature of emergency measures cannot insulate them from a separation-of-powers challenge, but that temporary nature is relevant to such an analysis. Here, Petitioners present no basis for further inquiry against that presumption.

{115} Petitioners assert that “[t]he many policy considerations and ramifications attendant on” gun violence and drug abuse “are worth more than [Respondents’] two days’ hasty drafting” of the first Amended PHEO, further suggesting the emergency orders diverge from the legislative will. However, given the limited evidence that the emergency orders diverge from existing statutes, as just discussed, we have no clear basis to know if the Legislature would deem the emergency orders as abiding with or departing from its policy positions. We do recognize, though, that the Legislature has thus far chosen not to modify the PHERA or enact legislative oversight for declarations of public health emergencies under Section 12-10A-5—but could do so at any time.²⁰

3. Petitioners do not show that nondelegation requirements are relevant to their challenge

{116} Petitioners’ reply includes a section with the following header: “The Legislature could not delegate these powers to the Governor even if it wished to.” Couched in nondelegation citations and hypotheticals, the text that follows offers no clear argument or analysis. Petitioners seem to suggest that the Legislature in the PHERA may have “vest[ed] unbridled or arbitrary power” in the Governor, but they do not advance a concrete, relevant position. *City of Santa Fe v. Gamble-Skogmo, Inc.*, 1964-NMSC-016, ¶ 19, 73 N.M. 410, 389 P.2d 13. Instead, Petitioners advise that this Court “must ask whether, if [the] PHERA is read as the Governor proposes, the statute

²⁰ We concur with Respondents that “the Legislature has the authority [under Article IV, § 6] to resolve this issue by calling itself into an extraordinary session to repeal or modify that legislation.” The same legislative power could obviously be exercised in a regular session. These feasible options to exercise legislative power to rescind or modify a legislative delegation of authority through an extraordinary or regular session stand in marked contrast to the argument we rejected in *Romero* as facially unworkable that “special sessions of the Legislature should be used in lieu of [the Executive’s] emergency orders” to address a public health emergency. 2021-NMSC-009, ¶ 34. See *id.* ¶ 30 (recognizing the “long history in the United States” of legislative “delegation of substantial discretion and authority to the executive branch . . . to respond to health emergencies”). See also Section II(E)(1), paragraph 41, *supra* (“[T]he Legislature intended for the PHERA to be a broad statute under which the executive can declare and address crises of different form and scope as public health emergencies.”).

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impermissibly gives the Governor ‘the power to determine what the law will be,’ a lawmaking claim we have just addressed above. (quoting *Madrid v. St. Joseph Hosp.*, 1996-NMSC-064, ¶ 13, 122 N.M. 524, 928 P.2d 250).

{117} Importantly, while their citations are tethered to nondelegation or over-delegation requirements, Petitioners have not raised or articulated such a challenge to the PHERA. To the contrary, Petitioners’ arguments in briefing and oral argument have been otherwise consistently trained on the emergency orders as the focus of this mandamus action, not on the Legislature’s enactment of that statute. Accordingly, Petitioners’ purpose in this portion of their reply is unclear.

{118} Our precedent makes clear the serious consideration we apply to issues concerning delegation of legislative power. *See State ex rel. State Park & Recreation Comm’n v. N.M. State Auth.*, 1966-NMSC-033, ¶ 9, 76 N.M. 1, 411 P.2d 984 (“The true distinction, therefore, is, between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law. The

first cannot be done; to the latter no valid objection can be made.” (internal quotation marks and citation omitted)).²¹ Nonetheless, framed in such hypothetical terms and without clear argument, we will not guess at how Petitioners view the relevance of their over-delegation position to their separation-of-powers claim. *Dominguez v. State*, 2015-NMSC-014, ¶ 15, 348 P.3d 183 (“New Mexico courts will not review unclear arguments, or guess at what litigants’ arguments might be.” (text only) (citation omitted)).

{119} Given the foregoing, we hold that Petitioners have not shown under any of their separation-of-powers arguments that the emergency orders “disrupt[] the proper balance between the executive and legislative branches,” *Romero*, 2021-NMSC-009, ¶ 34, or constitute either an improper “accumulation of too much power in one governmental entity” or an action by the Governor “prevent[ing the Legislature] from accomplishing its constitutionally assigned function[]” of determining what the law shall be, *Clark*, 1995-NMSC-048, ¶¶ 31, 34. Accordingly, Petitioners have not met their burden to show a violation of Article III, Section 1 of the New Mexico Constitution.

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{120} Beyond the parties’ arguments, Justice Zamora’s dissent asserts a separation-of-powers issue arises from our interpretation of the PHERA’s definition of a public health emergency. The dissent approves our rejection of Petitioners’ executive lawmaking claims but then asserts under *Cobb* that “it is equally violative of the separation of powers principle when the Legislature delegates too much discretionary authority to the executive.” *Dissent* ¶ 163 (citing *Cobb*, 2006-NMSC-034, ¶ 41). Respectfully, this argument overlooks that *Cobb* expressly recognized the nondelegation doctrine “does not completely prevent[] the Legislature from vesting a large measure of discretionary authority in administrative officers and bodies.” 2006-NMSC-034, ¶ 41 (“There are many powers so far legislative that they may properly be exercised by the [L]egislature, but which may nevertheless be delegated, since the [L]egislature may delegate any technically nonlegislative power which it may itself lawfully exercise.” (internal quotation marks and citation omitted)). As established above, the Legislature by way of the PHERA has delegated nonlegislative power to the Executive.

²¹ See also *State ex rel. State Park & Recreation Comm’n*, 1966-NMSC-033, ¶ 10 (“Where a statute defines the general outlines for its operation, and therein provides that stated persons, officers, or tribunals shall, within designated limitations, perform acts or ascertain facts upon which the statute by its own force will operate to accomplish the lawmaking intent, the action by the persons, officers, or tribunals within the stated limitations may be administrative and not exclusively legislative, executive, or judicial in its nature and essence[, in which case] the statute does not delegate legislative power or confer executive or judicial power and authority.” (internal quotation marks and citation omitted)); *Schwartz*, 1995-NMSC-080, ¶ 16 (“The legislative responsibility to set fiscal priorities through appropriations is totally abandoned when the power to reduce, nullify, or change those priorities is given over to the total discretion of another branch of government.” (internal quotation marks and citation omitted)); *Gamble-Skogmo*, 1964-NMSC-016, ¶ 19 (“Standards required to support a delegation of power by the local legislative body need not be specific. Most decisions hold that broad general standards are permissible so long as they are capable of a reasonable application and are sufficient to limit and define the Board’s discretionary powers.” (internal quotation marks and citations omitted)); *Cobb*, 2006-NMSC-034, ¶ 41 (“[T]he [L]egislature may delegate any technically nonlegislative power which it may itself lawfully exercise[, but] may not vest unbridled or arbitrary authority in an administrative body, however, and must provide reasonable standards to guide it. . . . The essential inquiry is whether the specified guidance sufficiently marks the field within which the administrator is to act so that it may be known whether [the administrator] has kept within it in compliance with the legislative will.” (internal quotation marks and citations omitted)); *Unite New Mexico*, 2019-NMSC-009, ¶ 8 (stating in the administrative law context, “what the Legislature cannot do is delegate the right to determine, in the first instance and wholesale, what that [legislative] scheme, policy, or purpose will be. Only if we could say that there is an absence of standards for the guidance of the Administrator’s action, so that it would be impossible in a proper proceeding to ascertain whether the will of [a legislature] has been obeyed, would we be justified in overriding its choice of means for effecting its declared purpose.” (internal quotation marks and citation omitted)); *Madrid*, 1996-NMSC-064, ¶ 13 (“If the regulations or actions of an official or board authorized by statute do not in effect determine what the law shall be . . . such regulation or action is administrative, and not legislative, in its nature and effect.” (omission in original) (internal quotation marks and citation omitted)).

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{121} Importantly, *Cobb* had no occasion to consider, as we recognized in *Romero*, the “long history” of “delegation[s] of substantial discretion and authority to the executive branch . . . to respond to health emergencies” and courts’ “liberal[] constru[ction] [of such] grants of authority.” *Romero*, 2021-NMSC-009, ¶ 30 (citing *Reeb*, 2021-NMSC-006, ¶ 27). To the contrary, the *Cobb* line of overdelegation cases discussing “reasonable standards to guide” executive discretion focused on delegations of fiscal discretion in nonemergency situations. See *Cobb*, 2006-NMSC-034, ¶¶ 1, 15, 41 (determining the 2001 version of Section 1-14-15(B) granted the State Canvassing Board “unfettered discretion” in charging applicants for recount and recheck procedures); *Schwartz*, 1995-NMSC-080, ¶ 21 (determining Section 6-3-6 did “not alone supply standards sufficient to authorize executive department regulation of the state fisc”); *State ex rel. Holmes v. State Bd. of Fin.*, 1961-NMSC-172, ¶ 30, 69 N.M. 430, 367 P.2d 925 (determining 24, Chap. 254, N.M. S.L.1961 is unconstitutional in granting the state board of finance authority to reduce all annual operating budgets). Highlighting the distinction between executive authority and discretion in emergency and non-emergency scenarios, the *Holmes* Court distinguished the need for “detailed standards to guide an administrative officer” in that case from “situations where it is difficult or impracticable to lay down a definite, comprehensive rule, or the discretion relates to the administration of a police [power] regulation and is necessary to protect the public morals, health, safety, and general welfare.” 1961-NMSC-172, ¶ 36 (internal quotation marks omitted); compare *Romero*, 2021-NMSC-009, ¶ 30 (“[W]hen the discretion to be exercised by an executive officer or board relates to a police regulation for the protection of the public morals, health, safety, or general welfare, and it is impossible or impracticable to provide strict standards, and to do so would defeat the legislative object sought to be accomplished, legislation conferring such discretion may be valid and constitutional without such restrictions and limitations.” (text only) (citation omitted)).

{122} Ignoring these distinctions, Justice

Zamora’s dissent asserts our “interpretation of the PHERA . . . is devoid of any standards or guidance constraining a governor’s discretion to determine when and under what circumstances a public health emergency may be declared or how long it may last.” *Dissent* ¶ 166. We disagree. As discussed, the relevant constraints on a governor’s discretion include:

- Section 12-10A-3(G)’s requirement of “an extremely dangerous condition or a highly infectious or toxic agent, including a threatening communicable disease, that poses an imminent threat of substantial harm”;
- Section 12-10A-5’s requirement for a declaration to specify “the nature of the public health emergency” and “the conditions that caused the public health emergency”;
- our requirement under caselaw for a reasonable relationship of means and ends for police power measures intended to protect the public health;
- the Legislature’s undiminished lawmaking power over delegated authority, including to alter the PHERA; and
- judicial challenges pursuant to these constraints.

We are confident these guardrails properly delimit the Legislature’s delegation of authority to the Governor for declaring and addressing a public health emergency.

III. CONCLUSION

{123} Though moot, we hold this case presents issues of substantial public interest and which are capable of repetition yet evade review. We grant the petition as to the emergency orders’ suspension of the JDAI program, an action that exceeds the limits of the police power. Otherwise, we deny the petition as to all other issues raised and hold Petitioners do not meet their burden to show the emergency orders violate either the challenged scope of the PHERA or the separation-of-powers doctrine.

{124} IT IS SO ORDERED.

C. SHANNON BACON, Justice

WE CONCUR:

DAVID K. THOMSON, Chief Justice

JULIE J. VARGAS, Justice

MICHAEL E. VIGIL, Justice, dissenting, concurring in dissent

BRIANA H. ZAMORA, Justice, dissenting, concurring in dissent

VIGIL, Justice (dissenting).

{125} I agree that the case is not moot. However, I am unable to join the majority opinion because it takes the word “emergency” out of the definition of “public health emergency” in the Public Health Emergency Response Act (the PHERA), NMSA 1978, §§ 12-10A-1 to -19 (2003, as amended through 2015). Through the language of the PHERA, the Legislature has expressed its intent that the definition of a “public health emergency” be construed in the context of an “emergency.” The PHERA is but one component of the Emergency Powers Code, which also includes the All Hazards Emergency Management Act, NMSA 1978, §§ 12-10-1 to -10 (1959, as amended through 2007); the Disaster Succession Act, NMSA 1978, §§ 12-11-1 to -10 (1959); and the Energy Emergency Powers Act, NMSA 1978, §§ 12-12-1 to -9 (1980). See NMSA 1978, § 12-9B-1 (2005). The definition of an “emergency” is “an unforeseen combination of circumstances or the resulting state that calls for immediate action.” *Emergency*, *Webster’s Third New Int’l Dictionary of the English Language, Unabridged* (2002). This common meaning and understanding of what constitutes an emergency is contained within the PHERA’s definition of a “public health emergency” set forth in Section 12-10A-3(G).

{126} In pertinent part, as related to this case, a “public health emergency” is “the occurrence or imminent threat of exposure to an extremely dangerous condition . . . that poses an imminent threat of substantial harm to the population of New Mexico or any portion thereof.” Section 12-10A-3(G). I agree with the standard of review set forth by the majority for construing statutes. *Maj. op.* ¶¶ 28-30. Applying those rules, I come to the following conclusions. Consistent with the common meaning of an emergency, an “occurrence” is “something that takes place; esp: something that happens unexpectedly and without design[,]” such as “a disastrous occurrence.” *Occurrence*, *Webster’s Third New Int’l Dictionary of the English Language*,

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Unabridged (2002). But that is not all. To qualify as a “public health emergency”, the PHERA requires that the “occurrence” consist of an “extremely dangerous condition” or the “imminent threat” of an “extremely dangerous condition.” Section 12-10A-3(G). A condition is “dangerous” when it is “able or likely to inflict injury,” and it is “extremely” dangerous if the danger is of “a condition of extreme urgency or necessity.” *Dangerous*, Webster’s *Third New Int’l Dictionary of the English Language, Unabridged* (2002). The “imminent threat” of a “dangerous condition” requires that it be “menacingly near.” *Imminent*, *id.* Finally, the PHERA requires that the extremely dangerous condition or its imminent threat “poses an imminent threat of substantial harm to the population of New Mexico or any portion thereof” § 12-10A-3, which is to say that the “threat of substantial harm” must be “menacingly near.”

{127} The Legislature has therefore made it clear that there must be a true “emergency” for a “public health emergency” to exist. The majority comes to a different conclusion, based on what I believe to be a flawed reading of Section 12-10A-3(G). I explain. {128} Returning to the definition of “public health emergency,” it “means the occurrence or imminent threat of exposure to an extremely dangerous condition or a highly infectious or toxic agent.” Section 12-10A-3(G). The majority opinion separates the word “occurrence” from the rest of the statutory language, leading to its conclusion that an “occurrence” is a stand-alone circumstance which “may be either *happening currently* or *happening soon*.” *Maj. op.* ¶ 35. This is fatal because it takes away from what the Legislature clearly meant an “emergency” to be. The phrase “an extremely dangerous condition” in context must be interpreted to modify “occurrence”—that is, there must be “the occurrence . . . of . . . an extremely dangerous condition” for an emergency to exist. Section 12-10A-3(G). The majority says it recognizes that the word “imminent” appears twice in the definition, *maj. op.* ¶ 35, but it effectively ignores where it first appears, leaving the meaning of a “public health emergency” to nothing more than an “event.” *Maj. op.* ¶ 35. Moreover, even if drug abuse is included in the term

“toxic agent” the threat of exposure must be “imminent” and not merely an “occurrence.” {129} The majority further concludes, in its discussion of “imminent” that the Legislature did not impose any “obvious restriction on a governor’s discretion to determine that a threat is *happening soon* or *menacingly near*.” *Maj. op.* ¶ 36. This result is untenable and clearly beyond what the Legislature intended. The majority’s statement and its conclusion that a public health emergency may consist of an occurrence leaves it totally in the discretion of any governor to assume sweeping emergency powers for any reason the governor chooses. I cannot agree that the Legislature intended this result, and the language it uses belies any such intent. {130} To summarize, a “public health emergency” consists of an unexpected or immediately impending extremely dangerous condition that inflicts, or is likely to inflict, substantial injury or harm to such an extreme manner or to such an extreme extent that immediate action is required to protect the population of New Mexico or any portion thereof. Simply stated, there must be an emergency in order for a “public health emergency” to exist. I now turn to the statutory requirements for the Governor to declare a public health emergency.

{131} The declaration of a public emergency serves two purposes. First, it requires the Governor to specify the facts relied upon for declaring the existence of a public health emergency. The statute requires more than the Governor being able to say, “There is a public health emergency because I said so.” Second, it limits what emergency police powers are appropriate to manage the public health emergency—that is to say, there must be a link between the emergency that actually exists and a necessity to use the police powers that are invoked to combat that emergency. I briefly address each in turn.

{132} The PHERA requires that the executive order must specify, among other matters: “(1) the nature of the public health emergency; (2) the political subdivisions or geographic areas affected by the public health emergency; [and] (3) the conditions that caused the public health emergency.” Section 12-10A-5(B)(1)-(3). If the facts

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relied on by the Governor do not satisfy the statutory requirements of a “public health emergency,” the declaration is invalid. With all due respect, the executive orders at issue fail to set forth facts describing an unexpected or immediately impending extremely dangerous condition that inflicts, or is likely to inflict, substantial injury or harm to such an extreme manner or to such an extreme extent that immediate action is required to protect the population of New Mexico or any portion thereof.

{133} The original executive order declaring a public health emergency based on gun violence, State of N.M., Exec. Ord. 2023-130 (EO 130), was issued on September 7, 2023, and the original executive order based on drug abuse, State of N.M., Exec. Ord. 2023-132 (EO 132), was issued the following day, September 8, 2023. *Maj. op.* ¶ 4. The majority accurately captures the asserted bases for declaring a public health emergency. *Maj. op.* ¶¶ 5-6. Again, with all due respect, the declarations fail to demonstrate that emergency powers must be employed to combat and eradicate gun violence and drug abuse. At best, they merely describe a condition that is happening and totally fail to describe an “emergency” as it is commonly understood, or as required by the Legislature in its definition of a “public health emergency.”

{134} Turning to the police powers that are invoked in the Public Health Emergency Orders (PHEOs), the majority again correctly describes their content and evolution. *Maj. op.* ¶¶ 7, 10-13. Once again, I respectfully submit that banning guns from public parks or playgrounds in the City of Albuquerque and Bernalillo County, testing wastewater for illicit substances at all public schools, and immediately suspending the Juvenile Detention Alternative Initiative (JDAI) are not emergency actions that must be immediately taken against gun violence or drug abuse to protect New Mexicans. In fact, the logic used by the majority opinion to uphold the banning of guns in public parks or playgrounds in the City of Albuquerque and Bernalillo County and the testing of wastewater for illicit substances at all public schools as valid exercises of police power could likewise be employed to justify the immediate suspension of JDAI.

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Conversely, the majority's reasoning used to exclude the immediate suspension of JDAI as a proper exercise of police power also applies to exclude banning guns from public parks or playgrounds in Albuquerque and Bernalillo County, as well as the testing of wastewater for illicit substances in public schools as necessary to eradicate a public health emergency.

{135} Finally, as the majority points out, the executive orders were initially issued on September 7 and 8, 2023, and subsequently regularly renewed through October 13, 2024. Are we to now conclude that there is no longer a public health emergency caused by either gun violence or drug abuse? There is nothing in the record showing that anything between September 7 and 8, 2023, and October 13, 2024 has materially changed.

{136} Extraordinary powers are given to the Governor to be exercised in extraordinary circumstances. *See Grisham v. Reeb*, 2021-NMSC-006, ¶¶ 13-21, 480 P.3d 852. The majority opinion sets the bar far below what the Legislature requires for the exercise of those extraordinary powers, and therefore, I must dissent.

MICHAEL E. VIGIL, Justice

I CONCUR:

BRIANA H. ZAMORA, Justice

ZAMORA, Justice (dissenting)

{137} “[A]n emergency power of necessity must at least be limited by the emergency.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 552 (2004) (Souter, J., concurring in part, dissenting in part, and concurring in the judgment). According to the majority's interpretation of the Public Health Emergency Response Act (PHERA), there is no such limitation, and the Governor's Executive Orders (EOs) are therefore valid exercises of executive authority under the PHERA. In my view, the PHERA authorizes executive action only to address public health problems that constitute emergencies. While substance abuse and gun violence are terrible and tragic public health issues, the EO's fail to establish that they are emergencies under the PHERA. I would hold that the EO's and the Amended Public Health Emergency Order (PHEO) predicated upon the EO's were invalid exercises of the Governor's authority under the PHERA and were

without legal effect.

I. THE PHERA'S PLAIN LANGUAGE LIMITS THE GOVERNOR'S AUTHORITY BY REQUIRING THAT A PUBLIC HEALTH EMERGENCY BE DECLARED ONLY TO ADDRESS A SUDDEN OR UNFORESEEN OCCURRENCE THAT REQUIRES IMMEDIATE ACTION TO PREVENT SUBSTANTIAL HARM

{138} I disagree with the majority because its interpretation of the PHERA fails to impose any limitation on the Governor's power to declare, act upon, and determine the end of a public health emergency. The majority's reading of the PHERA is not commanded by its plain language, nor is it consistent with the Legislature's intent in enacting the PHERA as part of the Emergency Powers Code, *see* NMSA 1978, § 12-9B-1 (2005). I believe the plain language of the PHERA unambiguously provides that a public health emergency arises only when a sudden or unforeseen public health occurrence or threat emerges that requires immediate action to prevent substantial harm.

{139} “In construing the language of a statute, our goal and guiding principle is to give effect to the intent of the Legislature.” *Grisham v. Reeb*, 2021-NMSC-006, ¶ 12, 480 P.3d 852. In determining intent, we look to the language used by the Legislature and “generally give the statutory language its ordinary and plain meaning unless the Legislature indicates a different interpretation is necessary.” *Id.* (internal quotation marks and citation omitted). However, we do not construe statutory provisions in a vacuum but instead read them in the context of the entire statute. *Chavez v. Bridgestone Americas Tire Operations, LLC*, 2022-NMSC-006, ¶ 40, 503 P.3d 332.

{140} The PHERA defines a *public health emergency* as “the *occurrence or imminent threat of exposure to an extremely dangerous condition or a highly infectious or toxic agent, including a threatening communicable disease, that poses an imminent threat of substantial harm to the population of New Mexico or any portion thereof.*” Section 12-10A-3(G) (emphasis added). This Court must construe a statute so that no part of it is rendered superfluous. *State v. Javier M.*, 2001-NMSC-030, ¶ 32, 131 N.M. 1, 33 P.3d 1. We must presume that the

(emphasis added). We frequently turn to dictionary definitions to ascertain the plain meaning of statutory language. *State v. Boyse*, 2013-NMSC-024, ¶ 9, 303 P.3d 830. While dictionary definitions are helpful—and sometimes necessary—in identifying the meaning of individual words in a statute, we do not read statutory language formalistically or mechanically. *State v. Davis*, 2003-NMSC-022, ¶ 6, 134 N.M. 172, 74 P.3d 1064. “Enactments of the legislature are to be interpreted to accord with common sense and reason.” *Lopez v. Emp. Sec. Div.*, 1990-NMSC-102, ¶ 9, 111 N.M. 104, 802 P.2d 9.

{141} I believe the majority failed to read the words comprising the definition of *public health emergency* in the PHERA as they appear in relation to one another and in light of the statute's title and therefore misses the common-sense meaning of the definition as a whole. The majority reasons that, as long as the public health problem used to justify the emergency declaration was *happening* at the time of the declaration, the statutory requirement has been met. *Maj. op.* ¶ 36 (“We need not construe ‘imminent threat of exposure to’ further in this context, as the parties do not contest that gun violence and drug abuse were happening at the time of their declaration as public health emergencies.”). In my view, this interpretation fails to accord with a common-sense reading of the phrase *occurrence or imminent threat*, which indicates a problem that is emergent (coming into existence) or is about to emerge (imminent)—that is, a problem that is time-specific.

{142} Moreover, the majority has largely ignored the second half of the definition of *public health emergency* in Section 12-10A-3(G). *See maj. op.* ¶¶ 35-36. The occurrence or imminent threat of relevance in defining a public health emergency must be one “*that poses an imminent threat of substantial harm to the population of New Mexico or any portion thereof.*” Section 12-10A-3(G) (emphasis added). This Court must construe a statute so that no part of it is rendered superfluous. *State v. Javier M.*, 2001-NMSC-030, ¶ 32, 131 N.M. 1, 33 P.3d 1. We must presume that the

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Legislature “say[s] what it means and mean[s] what it says.” *State v. Rael*, 2024-NMSC-010, ¶ 41, 548 P.3d 66. *Merriam-Webster’s Collegiate Dictionary* provides that *imminent* means “ready to take place” and suggests that something is “hanging threateningly over one’s head.” *Imminent*, *Merriam-Webster’s Collegiate Dictionary* (11th ed. 2005). Similarly, *Black’s Law Dictionary* defines *imminent* as “(Of a danger or calamity) threatening to occur *immediately*; dangerously impending,” citing “imminent peril” as an example, and alternatively defining *immediate* as “[a]bout to take place.” *Imminent*, *Black’s Law Dictionary* (12th ed. 2024) (emphasis added). Thus, an occurrence or threat must not only be emergent, it must also pose an *immediate* threat of substantial harm to the people of New Mexico. ¶ 143} Finally, the majority’s reading minimizes the importance of the word *emergency* in the title of the PHERA. A statute’s “title is quite properly to be considered a part of an act, particularly where it is a constitutional requirement that every act have a title, as is true in this state.” *State v. Gutierrez*, 2023-NMSC-002, ¶ 42, 523 P.3d 560 (internal quotation marks and citation omitted). *Emergency* is defined as a “sudden and serious event or an unforeseen change in circumstances that calls for immediate action to avert, control, or remedy harm” or an “urgent need for relief or help; an exigent circumstance in which immediate assistance is needed to protect property, public health, or safety, or to lessen or avert the threat of disaster.” *Emergency*, *Black’s Law Dictionary* (12th ed. 2024). Accordingly, the use of the word *emergency* in the statute’s title further constrains the PHERA, requiring that it be used to address only “sudden,” “serious,” “unforeseen,” “urgent” or “exigent” occurrences or threats that “call[] for immediate action” or “immediate assistance.” *See id.* ¶ 144} Read as a whole, I believe a common-sense interpretation of the PHERA unambiguously establishes that a public health emergency exists only when there emerges a sudden or unforeseen occurrence exposing New Mexicans to,

or threatening to immediately expose them to, a dangerous condition or toxic agent, thereby requiring immediate action to prevent substantial harm.

II. EVEN IF THE LANGUAGE OF THE PHERA IS AMBIGUOUS, THE LEGISLATURE HAS EXPRESSED ITS INTENTION THAT THE PHERA APPLY ONLY IN TRUE EMERGENCIES

{145} However, even if the language of the statute is ambiguous, the Legislature’s placement of the PHERA within the Emergency Powers Code evinces its intention that the PHERA apply only in extraordinary circumstances. “Legislative intent is this Court’s touchstone when interpreting a statute.” *State v. Vest*, 2021-NMSC-020, ¶ 21, 488 P.3d 626 (text only) (citation omitted). If the language of a statute is ambiguous, we interpret it in light of “its obvious spirit or reason.” *Id.* (internal quotation marks and citation omitted). In doing so, we read individual provisions “in conjunction with statutes addressing the same subject matter, ensuring a harmonious, common-sense reading.” *Chatterjee v. King*, 2012-NMSC-019, ¶ 12, 280 P.3d 283; *see also United Rentals Nw., Inc. v. Yearout Mech., Inc.*, 2010-NMSC-030, ¶ 22, 148 N.M. 426, 237 P.3d 728 (“[W]e can look to other statutes in pari materia in order to determine legislative intent.” (internal quotation marks and citation omitted)).

{146} The PHERA is part of a “concurrent and complimentary” legislative scheme “compiled within a suite of statutes known as the Emergency Powers Code.” *Reeb*, 2021-NMSC-006, ¶ 15; *see* § 12-9B-1 (“Chapter 12, Articles 10, 10A, 11 and 12 NMSA 1978 may be cited as the ‘Emergency Powers Code.’”). In addition to the PHERA, NMSA 1978, §§ 12-10A-1 to -19 (2003, as amended through 2015), the Emergency Powers Code includes the All Hazard Emergency Management Act (AHEMA), NMSA 1978, §§ 12-10-1 to -10 (1959, as amended through 2007), and the Disaster Acts, *see* NMSA 1978 §§ 12-11-1 to -25 (1955, as amended through 2005), among others. By including the PHERA within the Emergency Powers Code, the Legislature expressed its intention that the

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definition of a *public health emergency* be construed in the context of an “emergency.” ¶ 147} The majority largely dismisses the significance of the PHERA’s placement within the Emergency Powers Code, reasoning, in part, that “within the PHERA the Legislature has provided a more specific term and definition of *public health emergency*, which counsels for that term’s prevailing importance.” *Maj. op.* ¶ 53. The majority cites *State v. Santillanes*, 2001-NMSC-018, ¶ 7, 130 N.M. 464, 27 P.3d 456, to support its reasoning, quoting the statement that “if two statutes dealing with the same subject conflict, the more specific statute will prevail over the more general statute absent a clear expression of legislative intent to the contrary.” *Maj. op.* ¶ 53. But the majority has pointed to no conflict between the language in the PHERA and the common-sense understanding of the word *emergency*. To the contrary, in my view, the majority has improperly construed the PHERA as devoid of any requirement that the need for action in a public health emergency be urgent, as would be expected in an emergency.

{148} The interconnectedness of the Emergency Power Code’s provisions is evident from the facts of this case. “The New Mexico Constitution vests the power to appropriate money *exclusively* with the Legislature.” *State ex rel. Candelaria v. Grisham*, 2023-NMSC-031, ¶ 34, 539 P.3d 690 (internal quotation marks and citation omitted). Because the Legislature did not include a funding mechanism in the PHERA, a governor declaring a public health emergency under the PHERA must rely on the emergency funding provisions found elsewhere in the Emergency Powers Code. Here, the EO and the PHEO invoked emergency powers arising under the AHEMA and Sections 12-11-23 to -25 to fund the Governor’s measures. *See* EO 2023-130, at 2; EO 2023-132, at 2-3. It is beyond question that these emergency funding provisions may only be invoked under extraordinary circumstances. Section 12-11-25 states that an appropriation under Sections 12-11-23 and 12-11-24²² of up to \$750,000 “shall be expended for disaster relief for any disaster declared by the governor *to be of such magnitude as to*

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be beyond local control and requiring the resources of the state" and authorizes "state agenc[ies] to provide those resources and services *necessary* to avoid or minimize economic or physical harm *until a situation becomes stabilized and again under local self-support and control.*" (Emphasis added.) The AHEMA repeats this language. In the case of a natural or man-made disaster, Section 12-10-4(B)(3) authorizes the Governor to "provide those resources and services *necessary* to avoid or minimize economic or physical harm *until a situation becomes stabilized and again under local self-support and control.*" (Emphasis added.)

{149} These express limitations, which ensure that the Governor may not expend the designated funds unless a genuine emergency exists, offer further support for my view that the PHERA may only be invoked under extraordinary circumstances. Indeed, by relying on Section 12-11-25, the EO and PHEO authorize the funding of the Governor's gun violence and drug abuse measures only to the extent that the gun violence and drug abuse problems identified in the orders constitute conditions causing widespread, destabilizing harm that require an immediate response to bring them back under local control. To read the PHERA as lacking any requirement that a public health emergency arise only upon the emergence of a sudden or unforeseen occurrence or threat requiring immediate action to prevent substantial harm would be to ignore the Legislature's decision to include the PHERA with other provisions of the Emergency Powers Code.

{150} In ascertaining the Legislature's intent in enacting the PHERA, we must also consider provisions other than the definitional one. "All of the provisions of a statute, together with other statutes in pari materia, must be read together to ascertain legislative intent." *State v. Davis*, 2003-NMSC-022, ¶ 12, 134 N.M. 172, 74 P.3d 1064. Importantly, the PHERA includes an express immunity provision applicable to "the state, its political subdivisions, the governor, the secretary of health, the secretary of public safety... [and] any other

state or local officials or personnel who assist during [a] public health emergency." Section 12-10A-14. It limits their liability for death, personal injury, or property damage for "*complying with the provisions of the Public Health Emergency Response Act or any rule adopted pursuant to the PHERA.*" *Id.* (emphasis added). If the onset of a public health emergency need not be sudden or unforeseen, it is hard to fathom why the Legislature would have felt compelled to enact a special immunity provision. Sudden or unforeseen problems may present unanticipated challenges to governance and require flexible and rapid responses by state officials that may expose them to greater liability. Long-standing, chronic, and anticipated public health problems present no such concerns since officials would be adequately protected under existing governmental immunity law.

{151} The Legislature titled the PHERA the "Public Health Emergency Response Act," included the words "occurrence" and "imminent" in its definition of a *public health emergency*, placed the PHERA within the Emergency Powers Code, and included an immunity clause specifically shielding government officials from liability for carrying out actions pursuant to the PHERA. Each of these actions indicates that the Legislature intended to limit the powers it has delegated to the executive branch under the PHERA to genuine emergencies. I would interpret the PHERA as establishing that a public health emergency exists only when there emerges a sudden or unforeseen occurrence or threat exposing New Mexicans to, or threatening to immediately expose them to, a dangerous condition or toxic agent which requires immediate action to prevent substantial harm.

{152} Our previous opinions interpreting the PHERA, especially *Reeb* and *Romero*, were not called upon to seriously contend with the scope of the statutory scheme because the public health threat giving rise to the Governor's emergency orders in those cases (COVID-19) was so sudden and of such immediate danger to the people of New Mexico that the existence of a public health

emergency was not reasonably subject to dispute. *See Reeb*, 2021-NMSC-006, ¶ 23; *Grisham v. Romero*, 2021-NMSC-009, ¶ 7, 483 P.3d 545. Here, the public health threats posed by gun violence and drug abuse, while extremely serious, are notably different from the public health threat addressed in *Reeb* and *Romero*.

{153} The gun violence and drug abuse problems identified as the rationales for the Governor's EO's existed well before 2023. These are chronic public health problems in New Mexico demanding long-term policy solutions. A 2019 analysis of epidemiological data conducted by the New Mexico Department of Health noted that "[t]rends over the past two decades reveal persistent annual increases in the rates and numbers of firearm deaths in New Mexico." Mathew Christensen & Michael Landen, *Firearm Injury Deaths in New Mexico*, N.M. Epidemiology (N.M. Dep't of Health), Jan. 18, 2019, at 1, 1. And as early as 2004, the state's epidemiologists identified increasing drug overdose and non-fatal drug-related hospitalization rates over the preceding decade. *See Off. of Epidemiology, N.M. Dep't of Health, Drug Abuse Patterns and Trends in New Mexico* 10-11, 22 (Jan. 2005), <https://www.nmhealth.org/data/view/substance/262/> (last visited Jan. 28, 2025). A 2016 report told a similar dispiriting story. *See Substance Abuse Epidemiology Section, N.M. Dep't of Health, New Mexico Substance Abuse Epidemiology Profile* 31 (Jan. 2016), <https://www.nmhealth.org/data/view/substance/1862/> (last visited Jan. 28, 2025) (showing that drug overdose death rates increased between 2001 and 2014).

{154} The EO's and PHEO cite increasing gun violence and drug abuse in the state but fail to establish any alarming departure from longer-term trends or the emergence of sudden or unforeseen threats. EO 2023-130, which declares a gun violence emergency, begins with the recitation that "New Mexico *consistently* has some of the highest rates of gun violence in the nation." (Emphasis added.) A problem that has "consistently" been in existence can hardly be said to be either sudden or unforeseen or to have

²² Section 12-11-25 references "money appropriated by Sections 6-7-1 and 6-7-2 NMSA 1978." In 2005, Sections 6-7-1 and 6-7-2 were recompiled as Sections 12-11-23 and 12-11-24, respectively. See 2005 N.M. Laws, ch. 22, § 4.

► From the New Mexico Supreme Court

just emerged so as to justify an *emergency* response.

{155} Nor does EO 2023-130 declare that the problem of gun violence in the state has emerged in some sudden or unforeseen form. The order recites an increase in “the rate of gun deaths” of 43% from 2009 to 2018 in New Mexico; the fact that “guns are the leading cause of death among children and teens”; that “New Mexico has recently experienced an increasing amount of mass shootings, including mass shootings in Farmington and Red River this year”; and that “the increasing number of gunshot victims strains our already over-burdened healthcare system and places undue pressure on medical professionals and resources.” EO 2023-130, at 1. None of these findings describe sudden or unforeseen threats emerging from gun violence. The first finding describes data ending in 2018 and describes a trend occurring more than five years prior to the issuance of the order. In using non-specific language such as “increasing” and “recently” (in the latter two recitations) and providing no temporal or other context to the assertion that guns are the leading cause of death among children and teens in New Mexico, EO 2023-130 fails to indicate how these tragic facts indicate the emergence of the kind of sudden or unforeseen threats

contemplated by the PHERA.²³

{156} Similarly, EO 2023-132, declaring drug abuse to be a public health emergency, describes a “growing and alarming trend” (of unspecified magnitude or duration) and “a significant increase in drug-related deaths, with 1,501 fatal overdoses reported in the state in 2021,” a data point two years prior to the issuance of the order. EO 2023-132, at 1. Notably, fatal overdoses declined in 2022 and 2023. *Overdose Deaths Declined in New Mexico Again*, N.M. Dep’t of Health: News (Jan. 7, 2025), <https://www.nmhealth.org/news/awareness/2025/1/?view=2169> (last visited Jan. 28, 2025).

{157} The recitations in the EOs also fail to describe a basis for finding that *immediate* action is required. The measures undertaken pursuant to the PHEO demonstrate this. Most of the measures imposed pursuant to the Secretary of Health’s Amended PHEO consist of long-term policies—monthly inspections of firearms dealers, wastewater testing for illicit substances, resources for law enforcement, agency coordination to assist in the apprehension of people with outstanding warrants, planning to improve behavioral health networks, and assistance to “ensure adequate staffing, space, and screening for arrested and incarcerated individuals.” See PHEO at 2-3. Only one of the PHEO’s measures sounds in immediacy:

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the direction that “New Mexico Managed Care Organizations shall immediately ensure that individuals who need drug or alcohol treatment have received a permanent, adequate treatment placement within 24 hours of the request.” *Id.* at 2. However, because the measure is not tied to a sudden or unforeseen threat, its inclusion alone fails to satisfy the requirements of the PHERA. Moreover, it is not clear that any of the measures undertaken pursuant to the PHEO could not have been undertaken without an emergency order pursuant to the Governor’s existing authority to enforce statutory law.

{158} Finally, the duration and repeated renewal of the EOs belies the claim that they were emergency measures rather than long-term policy efforts. In her response to the petition, the Governor asserted the orders were not long-term policy decisions because “the state of public health emergency has not lasted months and months, as it did with the COVID-19 pandemic.” While this litigation has been pending, the gun violence²⁴ and drug abuse²⁵ EOs were each renewed thirteen times until they were permitted to expire in October 2024, over one year after they were first issued.

{159} I do not mean to underestimate the gravity of either the gun violence or drug abuse problems in New Mexico.

²³ Empirical data also suggest the trends and facts identified in EO 2023-130 are neither suddenly emergent nor unforeseen. Like the order’s recitation that the rate of gun deaths has increased, its assertion that “guns are the leading cause of death among children and teens,” EO 2023-130, at 1, is consistent with long-term trends in New Mexico. See State Data: New Mexico, Johns Hopkins Bloomberg Sch. of Pub. Health, <https://publichealth.jhu.edu/center-for-gun-violence-solutions/new-mexico> (last visited Jan. 28, 2025) (noting that “[f]irearms were the leading cause of death among children and teens ages 1-17 from 2018 to 2022”). Additionally, the number of emergency room visits due to firearm injuries declined slightly between 2022 and 2023. See Gun Violence in New Mexico, Firearm Injury Emergency Department (ED) Visits (all ages) in New Mexico by Year, 2019-2023, <https://www.governor.state.nm.us/gun-violence-dashboard/#GV-Metric0> (last visited Jan. 28, 2025) (showing that firearm injury emergency department visits decreased from 1510 in 2022 to 1484 in 2023).

²⁴ See State of N.M., Exec. Ord. No. 2023-135 (Oct. 5, 2023); State of N.M., Exec. Ord. No. 2023-140 (Nov. 3, 2023); State of N.M., Exec. Ord. No. 2023-144 (Dec. 1, 2023); State of N.M., Exec. Ord. No. 2023-146 (Dec. 29, 2023); State of N.M., Exec. Ord. No. 2024-001 (Jan. 26, 2024); State of N.M., Exec. Ord. No. 2024-004 (Feb. 23, 2024); State of N.M., Exec. Ord. No. 2024-008 (Mar. 22, 2024); State of N.M., Exec. Ord. No. 2024-012 (Apr. 19, 2024); State of N.M., Exec. Ord. No. 2024-017 (May 17, 2024); State of N.M., Exec. Ord. No. 2024-030 (June 14, 2024); State of N.M., Exec. Ord. No. 2024-112 (July 15, 2024); State of N.M., Exec. Ord. No. 2024-125 (Aug. 14, 2024); State of N.M., Exec. Ord. No. 2024-141 (Sept. 13, 2024) (remaining in effect until Oct. 13, 2024).

²⁵ See State of N.M., Exec. Ord. No. 2023-136 (Oct. 5, 2023); State of N.M., Exec. Ord. No. 2023-141 (Nov. 3, 2023); State of N.M., Exec. Ord. No. 2023-145 (Dec. 1, 2023); State of N.M., Exec. Ord. No. 2023-147 (Dec. 29, 2023); State of N.M., Exec. Ord. No. 2024-002 (Jan. 26, 2024); State of N.M., Exec. Ord. No. 2024-005 (Feb. 23, 2024); State of N.M., Exec. Ord. No. 2024-009 (Mar. 22, 2024); State of N.M., Exec. Ord. No. 2024-013 (Apr. 19, 2024); State of N.M., Exec. Ord. No. 2024-018 (May 17, 2024); State of N.M., Exec. Ord. No. 2024-031 (June 14, 2024); State of N.M., Exec. Ord. No. 2024-113 (July 15, 2024); State of N.M., Exec. Ord. No. 2024-126 (Aug. 14, 2024); State of N.M., Exec. Ord. No. 2024-140 (Sept. 13, 2024) (remaining in effect until Oct. 13, 2024).

► From the New Mexico Supreme Court

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Both constitute grave, persistent public health challenges, that demand long-term, thoughtful responses. But the Governor's emergency powers under the PHERA exist as an exception to the Legislature's sole purview over policymaking. See *Reeb*, 2021-NMSC-006, ¶ 14 (discussing the Legislature's ability to delegate its policymaking powers to protect the public health and welfare "consistent with other constitutional requirements"). They are intended to afford the Governor the power to act quickly when study and deliberation are foreclosed by the exigency of the moment. See *Romero*, 2021-NMSC-009, ¶ 52 (Thomson, J., specially concurring) (observing that, in an emergency, "the need to immediately address a life-threatening situation does not necessarily allow for a full, open debate concerning all of the possibilities to arrive at a best and clearly constitutional response"). In my opinion, the EO's omission of any indication of why the drug abuse and gun violence problems identified in the orders constitute sudden or unforeseen emergent threats, why immediate action is required, or the conditions under which the emergencies might end are fatal to the Governor's contention that they were lawfully issued pursuant to the PHERA.

III. THE MAJORITY'S INTERPRETATION OF THE PHERA RAISES CONSTITUTIONAL CONCERNs

{160} "We should avoid an interpretation of a statute that engenders constitutional issues if a reasonable alternative interpretation poses no constitutional question." *Adobe Whitewater Club of N.M. v. N.M. State Game Comm'n*, 2022-NMSC-020, ¶ 36, 519 P.3d 46 (text only) (citation omitted). Thus, even if the majority's reading of the statute is as reasonable as the interpretation I have offered, our rules of construction counsel us to adopt the construction that avoids constitutional concerns. See *Chavez*,

2022-NMSC-006, ¶ 40. In my view, the majority's interpretation of the PHERA raises concerns under our separation of powers jurisprudence²⁶

{161} Article III, Section 1 of the New Mexico Constitution provides that "[t]he powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others, except as in this constitution otherwise expressly directed or permitted." While we have long held that "the executive, legislative, and judicial powers are not hermetically sealed," we have also stated that "they are nonetheless functionally identifiable one from another." *State ex rel. Clark v. Johnson*, 1995-NMSC-048, ¶ 33, 120 N.M. 562, 904 P.2d 11 (internal quotation marks and citation omitted). It is the Legislature's role to make policy through the creation of law and the executive branch's role to execute the law. *Id.* And it is the sole province of the Legislature to appropriate funds. *Candelaria*, 2023-NMSC-031, ¶ 34. {162} These functional distinctions are important because legislative power cannot be delegated. *Unite N.M. v. Oliver*, 2019-NMSC-009, ¶ 9, 438 P.3d 343. At the same time, most courts (including this one) regularly approve delegations of authority from the legislative to the executive branch based on the common-sense rationale that there must be some overlap between the legislative and executive branches in carrying out the work of the government. See *Candelaria*, 2023-NMSC-031, ¶ 14 (observing that "[t]otal compartmentalization and separation of functions between the executive and legislative branches would result in a state of dysfunction"). "The separation-of-powers principle, and the nondelegation doctrine in particular, do not prevent [the legislative

branch] from obtaining the assistance of its coordinate Branches." *Mistretta v. United States*, 488 U.S. 361, 372 (1989). But the United States Supreme Court has also noted that "[i]n determining what [one branch] may do in seeking assistance from another branch, the extent and character of that assistance must be fixed according to common sense and the inherent necessities of the government co-ordination." *Id.* (internal quotation marks and citation omitted).

{163} We have a well-established jurisprudence that sets the outer limits of this principle. The majority correctly observes that the separation of powers is violated when the action of one branch "prevents another branch from accomplishing its constitutionally assigned functions." *Maj. op.* ¶ 83. The majority focuses nearly all of its separation of powers analysis on this issue, *maj. op.* ¶¶ 83-115, concluding that Petitioners have failed to demonstrate that the emergency orders "constitute 'lawmaking' [or] usurp the Legislature's role and function." *Maj. op.* ¶ 106. But it is equally violative of the separation of powers principle when the Legislature delegates too much discretionary authority to the executive branch. See *Cobb v. State Canvassing Bd.*, 2006-NMSC-034, ¶ 41, 140 N.M. 77, 140 P.3d 498. Put simply, "[t]he Legislature may not vest unbridled or arbitrary authority in an administrative body . . . and must provide reasonable standards to guide it." *Id.* When faced with two alternative interpretations of a challenged statute—one that vests the Governor with unbridled discretion and one that imposes meaningful standards to guide the Governor's discretion—we are compelled to adopt the latter. See *State ex rel. Schwartz v. Johnson*, 1995-NMSC-080, ¶¶ 21-22, 120 N.M. 820, 907 P.2d 1001; *Adobe Whitewater Club of N.M.*, 2022-NMSC-020, ¶ 36.

²⁶ The majority declines to address whether the PHERA violates the nondelegation doctrine of our separation of powers jurisprudence on the grounds that Petitioners failed to adequately brief it. *Maj. op.* ¶¶ 116-19. In my view, the failure of Petitioners to properly brief whether the Governor's actions violate the nondelegation doctrine does not relieve us of our duty to interpret the PHERA constitutionally—which includes rejecting an interpretation of the statute that raises separation of powers concerns. See *Lovelace Med. Ctr. v. Mendez*, 1991-NMSC-002, ¶ 12, 111 N.M. 336, 805 P.2d 603 (rejecting a construction of the statute that would "intrude directly into the separation of powers" and adopting a reasonable alternative interpretation instead).

► From the New Mexico Supreme Court

{164} Under my interpretation of the PHERA, the Governor's discretion to declare and act upon a public health emergency would be constrained by the requirement that the public health problem at issue be emergent and require immediate action to forestall substantial harm. By contrast, the majority's interpretation of the statute establishes no discernible limitation on the Governor's discretion to declare a public health problem an "emergency" at any time, to formulate and impose measures having the force of law whether or not necessary to immediately address the declared emergency, and to take these measures for as long as the Governor deems necessary. *Maj. op.* ¶¶ 35-49, 56. According to the majority, a threat may be ongoing (having occurred for any unspecified period of time), or it may occur at some unspecified time in the future that the Governor alone defines as "soon" to qualify as a public health emergency. *Maj. op.* ¶¶ 35-36. The majority similarly reads the PHERA as imposing no limitation as to when an ongoing or imminent condition gives rise to an "imminent threat of substantial harm" or when a public health emergency comes to an end. *Maj. op.* ¶¶ 49, 56.

{165} Importantly, unlike public health emergency statutes in other jurisdictions, the PHERA imposes no express statutory limit on the length of time a public health emergency order may remain in effect or how often it may be renewed—something other courts have recognized as important in ensuring the proper separation of powers. *See, e.g., Beshear v. Acree*, 615 S.W.3d 780, 811-12 (Ky. 2020) (stating that "[t]he duration of the state of emergency, at least the one at issue in this case, is also limited by [a statute enacted to address the

COVID emergency] which requires the Governor to state when the emergency has ceased but, in any event, allows the General Assembly to make the determination itself if the Governor has not declared an end to the emergency before the first day of the next regular session of the General Assembly" (internal quotation marks and citation omitted)); *Snell v. Walz*, 6 N.W.3d 458, 463, 471 (Minn. 2024) (noting that the Minnesota national security or peacetime emergency statute, which limits a peacetime emergency to no "longer than 5 days unless extended by resolution of the Executive Council up to 30 days" and allows both houses of the legislature to terminate the state of emergency if the governor extends it beyond 30 days, "places durational limits" on the power of the governor, thereby easing separation of powers concerns (internal quotation marks and citation omitted)); *cf. In re Certified Questions*, 958 N.W.2d 1, 20-21, 24 (Mich. 2020) (striking down Michigan's public health emergency statute in part because it allowed the governor to decide when the emergency ended, rendering the governor's powers under the statute "of indefinite duration"). While the majority states there is "little limitation as to the timing of a public health emergency," *maj. op.* ¶ 35, it is more accurate to say that, under the majority's interpretation, there is *no* temporal limitation on when a threat must appear to constitute a public health emergency.

{166} I agree that emergency orders under the PHERA raise no separation of powers concerns so long as they are *temporary*, do not address *normal* public health challenges, and do not undertake to institute *long-term* policy initiatives. *See Romero*, 2021-NMSC-

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009, ¶ 34 (upholding the Governor's use of emergency powers during the COVID-19 epidemic because "New Mexico ha[d] not entered a 'new normal,' [and] the temporary emergency orders [did not] constitute 'long-term policy' decisions"). However, in my view, the majority's interpretation of the PHERA, which is devoid of any standards or guidance constraining a governor's discretion to determine when and under what circumstances a public health emergency may be declared or how long it may last, fails to impose such constitutional limits. Our prior authority counsels us to avoid a construction where, as here, a reasonable alternative presents itself.

IV. CONCLUSION

{167} In departing from the majority's judgment in this matter, I am guided by my apprehension that the unconstrained exercise of emergency executive powers the majority has approved in this instance could readily be misused. While the Governor's desire to combat gun violence and drug abuse appears to be well-intended, there is nothing in the majority's opinion that would restrict a future governor from taking actions that would be substantively more troubling. This is not a hypothetical concern; emergency powers can and have been used elsewhere and at other times to accomplish what could not have been accomplished through the democratic process. Because the majority's opinion approves of an interpretation of the PHERA that confers unlimited emergency powers to the Governor, I must respectfully dissent.

BRIANA H. ZAMORA, Justice

I CONCUR:

MICHAEL E. VIGIL, Justice

FORMAL OPINION

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Filing Date: 12/3/2025

No. A-1-CA-41859

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

BEN NOVERTO MARTINEZ,

Defendant-Appellant.

**APPEAL FROM THE DISTRICT COURT
OF SANTA FE COUNTY**

T. Glenn Ellington, District Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM

Charles J. Gutierrez, Supervising Assistant Solicitor
General Albuquerque, NM

for Appellee

Aarons Law PC
Stephen D. Aarons
Hugh W. Dangler
Santa Fe, NM

for Appellant

► Introduction of Opinion

Defendant Ben Martinez appeals his convictions for second-degree murder, contrary to NMSA 1978, Section 30-2-1(B) (1994), and tampering with evidence, contrary to NMSA 1978, Section 30-22-5(A) (2003). On appeal, Defendant argues that (1) the State violated his due process rights by improperly commenting on his pretrial silence; (2) the district court erred in excluding evidence concerning Defendant's truthfulness and honesty under Rule 11-404(A)(2)(a) NMRA and Rule 11-608 NMRA; and (3) the district court erred by prohibiting Defendant from recalling a witness in his case in chief to impeach a State's witness. We agree that the State impermissibly commented on Defendant's right to silence, and we conclude that the State has not carried its burden of proving, under a constitutional harmless error standard, that the error was harmless beyond a reasonable doubt. We therefore reverse Defendant's convictions and remand for a new trial. Because we reverse Defendant's convictions on his first claim of error, we do not address the remaining issues raised in Defendant's appeal.

Gerald E. Baca, Judge
WE CONCUR:
Zachary A. Ives, Judge
Katherine A. Wray, Judge

To read the entire opinion, please visit
the following link: <https://bit.ly/A-1-CA-41859>

FORMAL OPINION

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Filing Date: 12/4/2025

No. A-1-CA-41980

**IN THE MATTER OF THE
GUARDIANSHIP AND
CONSERVATORSHIP PROCEEDINGS
FOR LINDA D., a person in need
of protection.**

LINDA D.,
Respondent-Appellant,
v.
SHARON M. OTERO,
Petitioner-Appellee.

**APPEAL FROM THE DISTRICT COURT
OF BERNALILLO COUNTY**

Erin B. O'Connell, District Court Judge

Disability Rights of New Mexico
Caitlin M. Palencia
Albuquerque, NM

for Appellant

Law Office of Benjamin Hancock, P.C.
Benjamin Hancock
Albuquerque, NM

for Appellee

► **Introduction of Opinion**

The opinion filed August 18, 2025, is hereby withdrawn, and this opinion is substituted in its place. Respondent Linda D. appeals the district court's order appointing a limited conservator pursuant to Article 5 of the Uniform Probate Code. See NMSA 1978, §§ 45-5-101 to -7-612 (1975 as amended through 2024). Respondent primarily argues, among other things, that the district court's decision to appoint a conservator is not supported by substantial evidence. We agree and reverse. As such, we do not address Respondent's other arguments.

J. Miles Hanisee, Judge

WE CONCUR:

Megan P. Duffy, Judge

Shammara H. Henderson, Judge

To read the entire opinion, please visit
the following link: <https://bit.ly/A-1-CA-41980>

FORMAL OPINION

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Filing Date: 12/16/2025

No. A-1-CA-41845

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

ALFORD T. JOHNSON III,

Defendant-Appellant.

**APPEAL FROM THE DISTRICT COURT
OF SAN JUAN COUNTY**

Daylene A. Marsh, District Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM

Meryl E. Swanson, Assistant Solicitor General
Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Kimberly Chavez Cook, Appellate Defender
Santa Fe, NM

for Appellant

► Introduction of Opinion

Following a jury trial, Defendant Alford T. Johnson III was convicted of shooting at a dwelling, contrary to NMSA 1978, Section 30-3-8(A) (1993); aggravated assault with a deadly weapon, contrary to NMSA 1978, Section 30-3-2(A) (1963); abandonment of a child, contrary to NMSA 1978, Section 30-6-1(B)(2009); and criminal trespass, contrary to NMSA 1978, Section 30-14-1(B) (1995). On appeal, Defendant argues that (1) the evidence of child abandonment presented by the State was insufficient as a matter of law; (2) the State failed to prove that Defendant shot at a dwelling; (3) Defendant's convictions for shooting at a dwelling and aggravated assault violate principles of double jeopardy; and (4) evidentiary error and prosecutorial misconduct cumulatively deprived Defendant of a fair trial. For the reasons discussed below, we affirm.

J. Miles Hanisee, Judge

WE CONCUR:

Jacqueline R. Medina, Chief Judge

Kristopher N. Houghton, Judge

To read the entire opinion, please visit
the following link: <https://bit.ly/A-1-CA-41845>

FORMAL OPINION

Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 12/18/2025

No. A-1-CA-42334

**INTERINSURANCE EXCHANGE OF THE
AUTOMOBILE CLUB,**

Plaintiff,

v.

GIBRALTAR INDUSTRIES, INC.,

Defendant,

and

AIR VENT, INC.,

Defendant/Cross-Claimant-Appellant,

v.

POWERMAX ELECTRIC CO., LTD, GUANGDONG,

Cross-Defendant-Appellee,

and

KING OF FANS, INC.; DM (ASIA) LIMITED; and

DOES 1 TO 10,

Cross-Defendants.

**APPEAL FROM THE DISTRICT COURT
OF BERNALILLO COUNTY**

Beatrice J. Brickhouse, District Court Judge

Conklin, Woodcock, Ziegler & Hazlett, P.C.

John K. Ziegler

Taylor F. Hartstein

Albuquerque, NM

for Appellant

Wilson, Elser, Moskowitz, Edelman & Dicker LLP

Judy C. Selmeci

New York, NY

Coleman Proctor

Dallas, TX

for Appellee

► Introduction of Opinion

Appellant Air Vent, Inc. (AVI) appeals the district court's dismissal of their cross-claims against Appellee Powermax Electric Co., Ltd., Guangdong (Powermax). Both AVI and Powermax are defendants in a products liability lawsuit regarding a defective fan motor that allegedly led to a house fire in Albuquerque, New Mexico. AVI argues that Powermax, a Chinese company, established sufficient minimum contacts with New Mexico to allow the district court to exercise specific personal jurisdiction. Agreeing, we reverse and remand.

J. Miles Hanisee, Judge

WE CONCUR:

Zachary A. Ives, Judge

Jane B. Yohalem, Judge

To read the entire opinion, please visit
the following link: <https://bit.ly/A-1-CA-42334>

FORMAL OPINION

Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 12/22/2025

No. A-1-CA-42000

CITY OF SANTA FE,
Petitioner-Appellee,

v.

**ALBERT CATANACH; INFINITE
INTERESTS ENT., LLC; and
CNSP, INC. d/b/a NMSURF,**
Respondents-Appellants.

**APPEAL FROM THE DISTRICT COURT
OF SANTA FE COUNTY**

Bryan Biedscheid, District Court Judge

Erin K. McSherry, City Attorney
Marcos D. Martinez, Senior Assistant City Attorney
Santa Fe, NM

for Appellee

Catron, Catron & Glassman, P.A.
Richard S. Glassman
Santa Fe, NM

for Appellants

► Introduction of Opinion

In this second appeal, we consider whether the City of Santa Fe (the City) complied with 47 U.S.C. § 332, 1 4 a federal law that imposes substantive and procedural limitations on the authority of state and local governments (localities) to regulate telecommunications facilities. See Preferred Sites, LLC v. Troup Cnty., 296 F.3d 1210, 1214-15 (11th Cir. 2002). In the first appeal, this Court determined that the City adequately informed Albert Catanach, Infinite Interests ENT., LLC, and CNSP, Inc., d/b/a NMSURF (collectively, Applicant) that the submitted telecommunications facility request would not be considered on an expedited basis under a different federal provision, 47 U.S.C. § 1455 (referred to as Section 6409). See City of Santa Fe v. Catanach, 2023-NMCA-017, ¶ 26, 525 P.3d 419. Because the district court had not determined whether the City complied with the requirements of Section 332, we remanded for that question to be decided in the first instance. See Catanach, 2023-NMCA-017, ¶ 32. The district court determined that the City complied with Section 332, and Applicant appeals. We affirm.

Katherine A. Wray, Judge

WE CONCUR:

Megan P. Duffy, Judge

Jane B. Yohalem, Judge

To read the entire opinion, please visit
the following link: <https://bit.ly/A-1-CA-42000>

FORMAL OPINION

Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 12/22/2025

No. A-1-CA-41635

**BILLY FRANK WARMUTH
and JENNY WARMUTH,**

Plaintiffs-Appellants/Cross-Appellees,
v.

**PACCAR INC. and INLAND
KENWORTH (US), INC.,**

Defendants-Appellees/Cross-Appellants.

**APPEAL FROM THE DISTRICT COURT
OF ROOSEVELT COUNTY**

Donna J. Mowrer, District Court Judge

Durham, Pittard & Spalding, LLP

Caren I. Friedman

Justin R. Kaufman

Philip M. Kovnat

Santa Fe, NM

The Tracy Firm

E. Todd Tracy

Garrett D. Rogers

Dallas, TX

for Appellants

Hartline Barger LLP

Angela S. Gordon

Matthew J. Armijo

Santa Fe, NM

Mary E. Jones

Albuquerque, NM

David H. Estes

Dallas, TX

for Appellees

► Introduction of Opinion

Plaintiffs Billy Frank Warmuth and Jenny Warmuth brought suit against Defendants Paccar Inc., and Inland Kenworth (US), Inc., among others, under theories of strict products liability and negligence after Mr. Warmuth was injured while working for the New Mexico Department of Transportation (NMDOT). After the jury found in favor of Defendants, Plaintiffs moved for a new trial and argued that the jury had received prejudicial extraneous information because Defendants' exhibit binders included an index (the Index) that listed, by name, exhibits that the parties had agreed would not be—and were not—submitted to the jury. The district court denied Plaintiffs' motion as well as Defendants' request for \$486,875.85 in costs. Both parties appeal. We affirm, because the district court did not abuse its discretion in determining that (1) Plaintiffs did not establish a reasonable probability that the Index affected the jury's verdict; and (2) Plaintiffs were unable to pay Defendants' cost bill.

Katherine A. Wray, Judge

WE CONCUR:

Jacqueline R. Medina, Chief Judge

Zachary A. Ives, Judge

To read the entire opinion, please visit
the following link: <https://bit.ly/A-1-CA-41635>

FORMAL OPINION

Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 1/15/2026

No. A-1-CA-41802

STATE OF NEW MEXICO,

Plaintiff-Appellant,

v.

JONATHAN ROBLES,

Defendant-Appellee.

**APPEAL FROM THE DISTRICT COURT
OF SOCORRO COUNTY**

Roscoe A. Woods, District Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM

Tyler Sciara, Assistant Solicitor General
Albuquerque, NM

for Appellant

Bennett J. Baur, Chief Public Defender
Maria A. Pomorski
Assistant Appellate Defender
Santa Fe, NM

for Appellee

► Introduction of Opinion

The State appeals the district court's order suppressing evidence obtained following a traffic stop of Defendant Jonathan Robles, after the court determined the officer lacked reasonable suspicion to pull Defendant over. The State argues that the district court erred in finding that law enforcement lacked reasonable suspicion based upon the officer's belief that Defendant's name was on an active warrant list. Alternatively, the State argues that, even if law enforcement lacked reasonable suspicion to search Defendant, under the attenuation doctrine the officer did not need reasonable suspicion because Defendant's active arrest warrant cured the stop. For the following reasons, we affirm.

Shammara H. Henderson, Judge

WE CONCUR:

Gerald E. Baca, Judge

Megan P. Duffy, Judge (Concurring In Part And Dissenting In Part).

To read the entire opinion, please visit
the following link: <https://bit.ly/A-1-CA-41802>

FORMAL OPINION

Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

Filing Date: 12/24/2025

No. A-1-CA-41817

STATE OF NEW MEXICO,

Plaintiff-Appellant,

v.

GABRIEL ASHLEY,

Defendant-Appellee.

**APPEAL FROM THE DISTRICT COURT
OF MCKINLEY COUNTY**

Louis E. DePauli, Jr., District Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM

Walter Hart, Assistant Solicitor General
Albuquerque, NM

for Appellant

Bennett J. Baur, Chief Public Defender
Santa Fe, NM

Luz C. Velarde, Assistant Appellate Defender
Albuquerque, NM

for Appellee

► Introduction of Opinion

This appeal concerns the procedure that the district court is required to follow when the State files a motion to revoke the probation of a sex offender who has served nine years of supervised probation without having been provided the duration review hearings mandated by NMSA 1978, Section 31-20-5.2(B) (2003). The State contends on appeal that the district court erred in summarily discharging Defendant from probation and dismissing the State's motion to revoke probation. We agree with the State that summarily discharging Defendant from probation and summarily dismissing the State's motion to revoke probation was error. We, therefore, reverse and remand for further proceedings. On remand, the district court must hold the post-12 deprivation due process hearing required by the due process clauses of both the New Mexico and United States Constitutions. The due process hearing must be consistent with the procedures adopted by this Court in *State v. Cooley*, 2023-NMCA-089, ¶ 42, 538 P.3d 491, as clarified by our Supreme Court in its recent decision in *Aragon v. Martinez*, 2025-NMSC-046, ¶ 44, __ P.3d __, in the context of parolees' right to duration review hearings under NMSA 1978, Section 31-21-10.1(C) (2007). **[View full PDF online.](#)**

Jane B. Yohalem, Judge

WE CONCUR:

Jennifer L. Attrep, Judge

Shammara H. Henderson, Judge

To read the entire opinion, please visit
the following link: <https://bit.ly/A-1-CA-41817>



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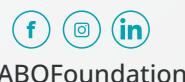
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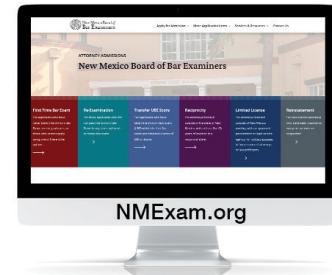


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John W.L. Bower

We are pleased to announce that John W.L. Bower has joined Sutin, Thayer & Browne APC as an Associate. Mr. Bower brings a broad range of expertise to the firm, with a practice that spans several key areas, including business and corporate law, mergers and acquisitions, public finance, and tax law. We are thrilled to welcome him as the newest member of the Sutin, Thayer & Browne team and look forward to the valuable contributions he will make.

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Rebekah S. Taylor

We are pleased to announce that Rebekah S. Taylor has joined Sutin, Thayer & Browne APC as an Associate. Ms. Taylor brings a diverse range of experience to the firm, with expertise spanning commercial litigation, family law, cannabis law, and real estate law. We are excited to welcome her to the team and look forward to the valuable contributions she will make to the firm.



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DNA-People's Legal Services, a non-profit civil legal aid law firm, is seeking to hire an individual for our open New Mexico Senior Attorney position located in our Farmington, New Mexico Office. Requirements: Senior Attorney must be a graduate of an accredited law school and a member of the New Mexico bar, or if licensed in another jurisdiction, able to gain admission to the New Mexico Bar within one year by motion or reciprocity. Admission to the Arizona or Utah bar is a plus, as is admission to the Navajo, Hopi, or Jicarilla Tribal Court bar. Must have at least five (5) years of experience as an attorney in a legal aid organization or similar non-profit law firm with strong litigation skills; strong oral and written communication skills; the ability to travel and work throughout the DNA service area; competence in working with diverse individuals and communities, especially with Native Americans, persons of color, and other marginalized communities; a commitment to providing legal services to the poor; the ability to identify and successfully pursue strategic, systemic, and affirmative advocacy; good judgment, the ability to handle stress, take initiative, and have a willingness to work as a team; and the ability to manage and supervise others, including the ability to mentor other staff and law students. Senior Attorneys are supervised by the Director of Litigation and the Executive Director. SALARY RANGE (depending on experience): \$89,610 - \$100,425. BENEFITS: The position we are offering comes with benefits, including paid federal and Navajo Nation holidays, 10 sick days per year, two weeks paid vacation per year (which increases over time), low-cost health insurance for you and your dependents, no-cost dental and vision insurance for you, and a fully paid \$60,000 life insurance policy. You may also opt to join our 401(k)-retirement savings plan with its 3% employer non-match contribution. For our attorneys, we also pay for continuing legal education courses and Bar dues, and offer a generous reimbursable educational loan forgiveness program. DNA is a qualified employer under the Federal Public Service Loan Forgiveness Program. For more information, please call Human Resources at 928.245.4575 or 928.871.4151 ext. 5640, email your resume and cover letter to HResources@dnalegalservices.org or you may obtain additional details and copies of the job description and employment application on the Join the DNA Legal Team webpage at <https://dnalegalservices.org>. Preference is given to qualified Navajo and other Native American applicants.

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Staff Attorney (State Licensed)

Job Announcement

DNA-People's Legal Services, a non-profit civil legal aid law firm, is seeking to hire an individual for our open Staff Attorney (State Licensed) - NM VOCA Project Director position located in our Farmington, New Mexico Office. REQUIREMENTS: Attorneys must be a graduate of an accredited law school and a member of the Arizona, New Mexico, or Utah bar association, or if licensed in another jurisdiction, able to gain admission by motion or reciprocity. Must have strong oral and written communication skills; the ability to travel and work throughout the DNA service area; competence in working with diverse individuals and communities, especially with Native Americans, persons of color, other marginalized communities; and a commitment to providing legal services to the poor. SALARY RANGE (depending on experience): \$59,328 - \$78,795. BENEFITS: The position we are offering comes with benefits, including paid federal and Navajo Nation holidays, 10 sick days per year, two weeks paid vacation per year (which increases over time), low-cost health insurance for you and your dependents, no-cost dental and vision insurance for you, and a fully paid \$60,000 life insurance policy. You may also opt to join our 401(k)-retirement savings plan with its 3% employer non-match contribution. For our attorneys, we also pay for continuing legal education courses and Bar dues, and offer a generous reimbursable educational loan forgiveness program. DNA is a qualified employer under the Federal Public Service Loan Forgiveness Program. For more information, please call Human Resources at 928.245.4575 or 928.871.4151 ext. 5640, email your resume and cover letter to HResources@dnalegalservices.org or you may obtain additional details and copies of the job description and employment application on the Join the DNA Legal Team webpage at <https://dnalegalservices.org>. Preference is given to qualified Navajo and other Native American applicants.

Attorney Associate**#10115519****Foreclosure Settlement Program**

The Second Judicial District Court is accepting applications for a Full Time At-Will Attorney. Associate in the Foreclosure Settlement Program (FSP) and will operate under the direction of the Chief Judge, the Presiding Civil Judge, Managing Attorney, and/or Supervising Attorney. The Attorney Associate will facilitate settlement conferences between lenders and borrowers in residential foreclosure cases pending before the Court and will be responsible for conducting status conferences, settlement facilitations and reporting of statistical data to Court administration. Communications occur telephonically, by email, by video conference and in-person. The Attorney Associate is independent and impartial and shall be governed by the Rules of Professional Conduct, Mediation Procedures Act, NMSA 1978 §44-7B-1 to 44-7B-6, and Mediation Ethics and Standards of Practice. The Attorney Associate will coordinate with program administrative staff to support the FSP. Qualifications: Must be a graduate of a law school meeting the standards of accreditation of the American Bar Association; possess and maintain a license to practice law in the State of New Mexico and have three (3) years of experience in the practice of applicable law. Experience in settlement facilitation/mediation and residential mortgage foreclosure matters and loss mitigation is strongly encouraged. Target Pay: \$52.629 hourly, plus benefits. Send application or resume supplemental form with proof of education and one (1) writing sample to 2ndjobapply@nmcourts.gov or to Second Judicial District Court, Human Resource Office, 400 Lomas Blvd. NW, Albuquerque, NM, 87102. Applications without copies of information requested will be rejected. Application and resume supplemental form may be obtained on the New Mexico Judicial Branch web page at www.nmcourts.gov/careers. CLOSES: Wednesday, February 4, 2026 at 5:00 P.M.

Domestic Relations Hearing Officer**#00000518****Family Court**

The Second Judicial District Court is accepting applications for a full-time, term at-will Domestic Relations Hearing Officer in Family Court (position #00000518). Under the supervision of the Presiding Family Court Judge, the hearing officer will be assigned a domestic relations and domestic violence caseload. Consistent with Rules 1-053.1 and 1.053.2, duties may include: (1) review petitions for indigency; (2) conduct hearings on all petitions and motions, both before and after entry of the decree; (3) in child support enforcement division case, carry out the statutory duties of a child support hearing officer; (4) carry out the statutory duties of a domestic violence special commissioner and utilize the procedures as set for in Rule 1-053.1 NMRA; (5) assist the court in carrying out the purposes of the Domestic Relations Mediation Act; and (6) prepare recommendations for review and final approval by the court. Qualifications: J.D. from an accredited law school, New Mexico licensed attorney in good standing, minimum of (5) years of experience in the practice of law with at least 20% of practice having been in family law or domestic relations matters. Skills: able to establish effective working relationships with judges, the legal community, and staff; able to communicate complex rules clearly and concisely be professional and courteous; have a strong working knowledge of New Mexico and federal case law, constitution and statutes, court rules, and policies and procedures; legal research and analysis; be dependable; detail-oriented, accurate, maintain confidentiality, and have effective organizational skills. SALARY: \$77.838000 hourly (\$161,903.04 annually), plus benefits. Send a New Mexico Judicial Branch Application or a Resume and a New Mexico Judicial Branch Resume Supplemental form, along with proof of education and a writing sample to the Second Judicial District Court, Human Resources Office, P.O. Box 488 (400 Lomas Blvd. NW), Albuquerque, NM 87102, or by email to 2ndjobapply@nmcourts.gov. Incomplete applications will be rejected. The NMJB Application and the NMJB Resume Supplemental form may be obtained on the NM Judicial Branch web page at www.nmcourts.gov. This position is open until filled.

Attorney Senior**#00044836****Civil Court**

The Second Judicial District Court is accepting applications for a full time, At-Will Attorney Senior assigned to the Civil Division. The Attorney Senior acts under the direction of the Civil Division Managing Attorney. The successful candidate will perform legal research and analysis, make recommendations to the court or Judicial Entity, and must possess excellent writing skills. The Senior Attorney may act as a team leader reviewing and coordinating the work of staff attorneys. Qualifications: Must be a graduate of a law school meeting the standards of accreditation of the American Bar Association; possess and maintain a license to practice law in the State of New Mexico. Five (5) years of experience in the practice of applicable law. SALARY: \$56.576 hourly, plus benefits. Send application or resume supplemental form with proof of education and writing sample to the Second Judicial District Court, Human Resource Office, P.O. Box 488 (400 Lomas Blvd. NW), Albuquerque, NM, 87102. Applications without copies of information requested on the employment application will be rejected. Application and resume supplemental form may be obtained on the Judicial Branch web page at www.nmcourts.gov/careers. CLOSES: Wednesday, February 4, 2025 at 5:00PM.

Experienced Litigation Attorney

Cordell & Cordell, P.C., a domestic litigation firm with over 100 offices across 35 states, is currently seeking an experienced litigation attorney for an immediate opening in its office in Albuquerque, NM. The candidate must be licensed to practice law in the state of New Mexico, have minimum of 3 years of litigation experience with 1st chair family law preferred. The firm offers competitive starting base salaries, multiple bonus opportunities, long term career growth, 100% employer paid premiums including medical, dental, short-term disability, long-term disability, and life insurance, as well as 401K and wellness plan. This is a wonderful opportunity to be part of a growing firm with offices throughout the United States. To be considered for this opportunity please email your resume to Hamilton Hinton at hhinton@cordelllaw.com

Sixth Judicial District Attorney Luna, Grant & Hidalgo Counties

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UNM Law School seeks a motivated individual for a full-time Manager of Career Services, School of Law (UNM job title is Manager, Employer Outreach). This position qualifies for a hiring incentive; details provided upon offer. Best consideration date, February 13, 2026. General duties: Manages promotion and execution of employer outreach services in the legal community and other employment markets, including employer liaison, on/off campus recruitment, career fairs, and other initiatives; advises students and graduates regarding employment options. Develops, administers, and manages the externship program, including teaching related externship courses. Requires: ability to create/deliver presentations on legal career/employer development topics; knowledge of legal career outreach methods, programs, services, resources. Must be able to interact professionally with diverse constituencies. Occasional evening/weekend work required. Applicants possessing a J.D degree from ABA accredited law school strongly preferred. To apply: <http://unmjobs.unm.edu>

Attorney

Opening for Associate Attorney in Silver City, New Mexico. No experience necessary. Thriving practice with partnership opportunities with focus on criminal defense, civil litigation, family law, and transactional work. Call (575) 538-2925 or send resume to Lopez, Dietzel & Perkins, P. C., david@ldplawfirm.com, Fax (575) 388-9228, P.O. Box 1289, Silver City, New Mexico 88062.

Now Hiring: Senior Trial Attorney (New Mexico) Allstate

Join the legal frontline defending insured clients and the Company in bodily injury, property damage, and related cases. Lead trials, hearings, arbitrations, and mediations while providing daily legal counsel and collaborating across teams. Stay ahead of evolving laws to keep our strategies sharp. Candidates must hold a JD, be an active member of the New Mexico Bar, and bring 5+ years of litigation experience with the ability to manage a heavy caseload, insurance defense and jury trial experience. Remote role with statewide travel required. Interested? Email the recruiter Sara at smiv6@allstate.com

Licensed Attorneys

The New Mexico Public Regulation Commission has openings for licensed attorneys in three divisions: the Legal Division, the Office of General Counsel, and the Hearing Examiners Division. Our Legal Division represents staff in matters before the Commission, and also provide IPRA responses through the Records Bureau. OGC serves as attorneys for the Commission itself. Hearing Examiners serve as administrative law judges in complex utility proceedings to which they are designated by the Commissioners and in which they serve as Commissioner proxies. The PRC offers 11 paid holidays, no billable hours, Federal loan repayment program eligibility, fitness and wellness leave, and flexible work schedules. The official post of duty is in Santa Fe, New Mexico, and we also have a satellite office in Albuquerque. We also offer hybrid work schedules and other benefits not common in state service. To learn more about these positions, please visit the State Personnel website at <https://www.spo.state.nm.us/>

Full-Time Associate Attorney

Quiñones Law Firm LLC is a well-established civil defense firm in Santa Fe, NM in search of a full-time associate attorney with minimum 5 years legal experience or 2-3 years background in civil defense work. Must be willing to work a minimum of 35 billable hours per week. Generous compensation and health benefits. Please send resume and writing sample to quinoneslaw@cybermesa.com

Legal Assistance Attorney Pueblo of Laguna, New Mexico

The Pueblo of Laguna is seeking a dedicated and community-focused full-time Family Legal Assistance Attorney to provide legal advice and representation to Laguna tribal members across a broad range of civil legal matters. The Family Legal Assistance Attorney provides direct legal services to eligible Laguna members, helping individuals and families navigate complex civil legal issues while promoting stability, fairness, and access to justice. Minimum Qualifications: Juris Doctor (JD) from an accredited law school; Admission to the New Mexico State Bar; Experience in civil legal services, family law, or public-interest law strongly preferred; Strong communication, organizational, and client-advocacy skills; Ability to work effectively with diverse populations and maintain confidentiality. Go to www.lagunapueblo-nsn.gov and click on Employment Opportunities for application instructions and application form.

Attorney Senior

The Thirteenth Judicial District Court is recruiting for an Attorney Senior (U) in Bernalillo, Grants or Los Lunas. Summary: Acting under administrative direction of the Judge, Court Executive officer, or a supervising attorney provides legal advice, performs legal research and analysis, and makes recommendations to the court or Judicial Entity. To apply: please visit www.nmcourts.gov/careers

Attorney Associate

The Third Judicial District Court in Las Cruces is accepting applications for a permanent, full-time Attorney Associate. Requirements include admission to the NM State Bar plus a minimum of three years' experience in the practice of applicable law, or as a law clerk. Under general direction, as assigned by a judge or supervising attorney, review cases, analyze legal issues, perform legal research and writing, and make recommendations concerning the work of the Court. For a detailed job description, requirements and application/resume procedure please refer to [https://www.nmcourts.gov/careers.aspx](http://www.nmcourts.gov/careers.aspx) or contact the Human Resources Division at lcrdhr@nmcourts.gov.

Job Posting for Licensed New Mexico Attorney

Jay Goodman and Associates, Law Firm PC is dedicated to assisting clients in the areas of family law, divorce, legal separations, paternity, parental rights, adoptions, guardianships, custody issues, domestic violence, child support, spousal support, qualified domestic relations orders, estate planning and probate. Our mission is to timely and effectively respond to our clients' goals and concerns with creative consideration and seek results designed to minimize or resolve future legal problems. This includes timely court filings, attention to details, and comprehensive representation. In serving our clients, we also provide special attention to the relationships within the family dynamic, and to the best interest of our clients within the larger context of the life they are leading and the life they wish to pursue. We are in the process of hiring a Full Time Attorney licensed and in good standing in New Mexico with 2 years' experience in Family Law, and/or Probate Law. Successful applicants should have court room experience and have provided client relations with empathy and compassion. We offer excellent compensation and a comfortable team working environment with flexible hours. Please send your resume with a cover letter to: es@jaygoodman.com. Please feel welcome to visit our website at www.jaygoodman.com to find out more about us. All inquiries are maintained confidentially. Thank you for your interest.

Assistant District Attorney

The Fifth Judicial District Attorney's office has immediate positions open for new and/or experienced attorneys. Salary will be based upon the New Mexico District Attorney's Salary Schedule with salary range of an Assistant Trial Attorney (\$ 80,218.00) to a Senior Trial Attorney (\$100,272.00), based upon experience. Must be licensed in the United States. This position is located in the Lovington, NM office. The office will pay for your New Mexico Bar Dues as well as the National District Attorney's Association membership. Please send resume to Dianna Luce, District Attorney, 102 N. Canal, Suite 200, Carlsbad, NM 88220 or email to nshreve@da.state.nm.us

Associate

NM Probate & Estate Lawyers seeks an associate (2-10 years) for probate and estate litigation, with accelerated partnership potential. Litigation experience preferred. Flexible compensation and schedules, including part-time. We prioritize high-quality client work and quality of life. Please email eric@nmprobatelaw.com

Prosecutor

Pueblo of Laguna, NM

The Pueblo of Laguna is seeking a Prosecutor to represent the Pueblo in criminal and civil ordinance enforcement matters in Pueblo Court. This position exercises prosecutorial discretion, prepares and prosecutes cases, advises law enforcement, supervises staff, and collaborates with service providers and justice partners while upholding Pueblo core values and customary practices. Minimum Qualifications: Juris Doctor from an accredited law school; 5 years criminal law experience; 3 years supervisory experience; Member in good standing with the New Mexico State Bar; Laguna language fluency preferred. Go to www.lagunapueblo-nsn.gov and click on Employment Opportunities for application instructions and application form.

In-House Attorney

Pueblo of Laguna, NM

The Pueblo of Laguna is seeking an experienced full-time In-House Attorney to provide legal counsel and representation to the Pueblo government. This position advises on a wide range of matters including federal Indian law, contracts, governance, economic development, litigation, and regulatory compliance, while supporting and protecting tribal sovereignty. Qualifications: Juris Doctor; minimum 5 years' experience in federal Indian law or tribal government matters; member in good standing with the NM State Bar (or ability to obtain); Laguna language fluency preferred. Tribal member preference applies. Go to www.lagunapueblo-nsn.gov and click on Employment Opportunities for application instructions and application form

Development Program Director

The New Mexico State Bar Foundation seeks qualified applicants to join our team as a full-time (40 hours/week) Development Program Director. The successful incumbent will be responsible for leading fundraising efforts for the New Mexico State Bar Foundation, creating and managing a comprehensive fundraising strategy, building relationships with stakeholders, cultivating donors and sponsors, securing grant funding, and organizing Foundation fundraising events. Salary: \$68,000-\$78,000/year, depending on experience and qualifications. Generous benefits package included. Qualified applicants should submit a cover letter and resume to HR@sbnm.org. Visit www.sbnm.org/SBNMjobs for full details and application instructions.

Legal Assistant – Disciplinary Board of the New Mexico Supreme Court

The Disciplinary Board of the New Mexico Supreme Court seeks a detail-oriented Legal Assistant to support attorneys and staff in attorney discipline proceedings. Duties include preparing and proofreading legal documents; maintaining confidential case files and electronic records; tracking deadlines; coordinating hearings and meetings; filing documents; and communicating professionally with attorneys, complainants, respondents, courts, and the public in accordance with Supreme Court rules. Qualifications: High school diploma or GED and at least one year of legal or administrative support experience. Strong organizational skills, attention to detail, proficiency with Microsoft Office, and the ability to handle sensitive information with discretion are required. Experience in a court or regulatory setting is preferred. Spanish speaking preferred. Salary: \$55,000-\$63,000 plus comprehensive benefits. To apply, submit a letter of interest, resume and 3 references to info@nmdisboard.org. EOE

Experienced Litigation Paralegal

Paralegal for civil litigation department. Five plus years of experience in litigation (commercial, defense litigation preferred). Paralegal certificate a plus. Extensive knowledge of litigation procedures in New Mexico, proficient in office applications and software, attention to detail and deadlines, proficient in word processing and grammar skills, motivated and able to assist and support busy litigation team in large and complex litigation cases, multi-attorney docket and calendar system, and trial. Competitive benefits package. Salary is commensurate with experience. Additional info: Full time, indefinite; Competitive salaries based on experience. Contact: Paula palvarez@raylaw.com

Office Space

State Bar Center Office Suite for Rent

Perfect for a solo professional or small business. Includes two private offices, reception area, building security and access control. Convenient location and professional setting. For more information about the office suite, please visit <https://www.sbnm.org/About-Us/Office-Suite-Rental> or contact Jazmin Velazquez, Guest Services & Facilities Manager at the State Bar of New Mexico at Jazmin.Velazquez@sbnm.org or 505-797-6070.

Office Space Available

Law Offices at 2014 Central Ave Southwest Albuquerque Downtown/Old Town. Two private furnished offices available in a beautiful law building, \$1,000/month per office, including utilities. Conference room, kitchen. Internet. High Speed Color Copier. Rent one or both offices. Inquiries: Vigil Law Firm 505-243-1706 or caroline@zlaws.com

Office For Rent

Two Santa Fe Offices Available. Two adjacent offices in a six-office professional suite. Centrally located in The Saint Francis Professional Center, the suite has a large reception area, kitchenette, and ample parking for clients. Rent includes alarm, utilities, and janitorial services. Basement storage included. 505-795-0077

620 Roma NW

The building is located a few blocks from the federal, state and metropolitan courts. Monthly rent of \$550 includes utilities (except phones), internet access, fax, copiers, front desk receptionist and janitorial service. You will have access to a law library, four conference rooms, a waiting area, and off-street parking. Several office spaces are available. Call (505) 2433751 for an appointment.

DIGITAL BAR BULLETIN

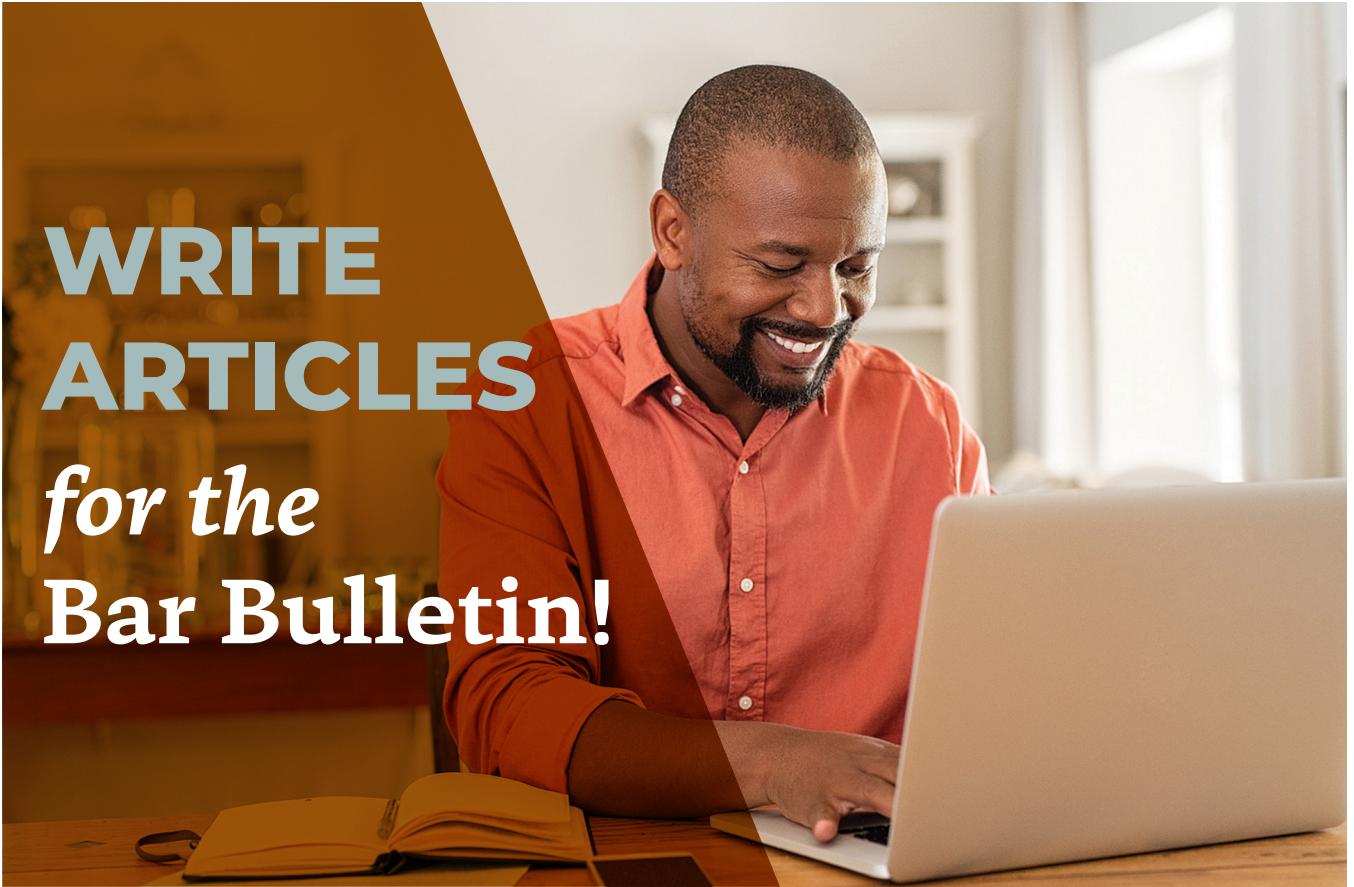
Advertising Submission Schedule

The Bar Bulletin publishes twice a month on the second and fourth Wednesday. Advertising submission deadlines are also on Wednesdays, three weeks prior to publishing by 4 pm.

Advertising will be accepted for publication in the Bar Bulletin in accordance with standards and ad rates set by publisher and subject to the availability of space. No guarantees can be given as to advertising publication dates or placement although every effort will be made to comply with publication request. The publisher reserves the right to review and edit ads, to request that an ad be revised prior to publication or to reject any ad. **Cancellations must be received via email by 5 p.m. (MT) 13 business days prior to the issue publication date.**

**For more advertising information, contact Tom Ende:
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The publication schedule can be found at www.sbnm.org.



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The *Bar Bulletin* isn't just a place for information; it's a hub for discourse and perspectives on timely and relevant legal topics and cases! From A.I. and technology to family law and pro bono representation, we welcome you to send in articles on a variety of issues pertaining to New Mexico's legal community and beyond!

By publishing your work in the Bar Bulletin, you will:



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