Official Publication of the State Bar of New Mexico

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BAR BULLETIN

June 10, 2026 • Volume 65, No. 11

Inside This Issue

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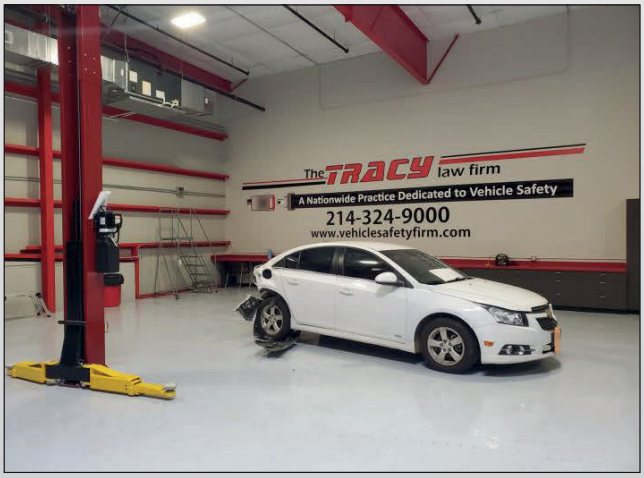
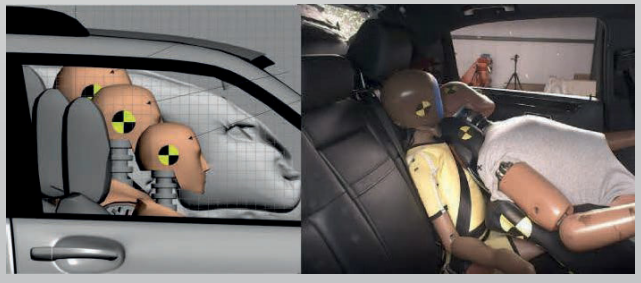
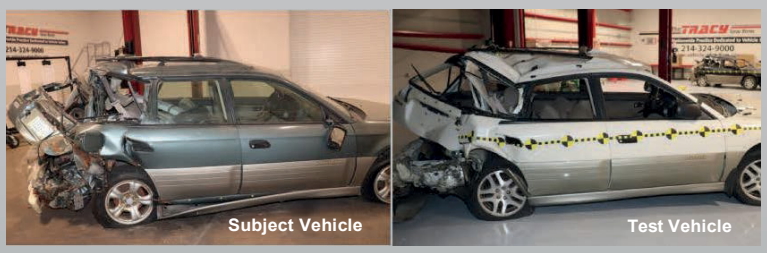


Crashworthiness focuses on how the vehicle's safety systems performed, not who caused the accident. At my firm's Crash Lab, we continually study vehicle safety through engineering, biomechanics, physics, testing and innovation.



If you have any questions about a potential case, please call Todd Tracy. Vehicle safety system defects may have caused your client's injury or death.



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New Mexico State Bar Foundation

CLE PROGRAMMING from the *Center for Legal Education*

Upcoming Courses

June 12
The Practical Roadmap to Cannabis Rescheduling: Navigating Schedule III Transition for New Mexico
Noon–1 p.m.
1.0 G
WEBINAR
https://bit.ly/CLE-061226-A

June 17
True Crime Ethics & Trial Practice: Jeffrey Dahmer and Wild Bill Cody: Lies, Deceit and the Ethical Rules, Can Attorneys Practice Deception
1-3 p.m.
1.0 G, 1.0 EP
WEBINAR
https://bit.ly/CLE-061726-A

June 18
Discovering Implicit Biases in Jury Selection
11 a.m.-Noon
1.0 EIJ
WEBINAR
https://bit.ly/CLE-061826-A

June 19
Legally Blonde: Bend, Snap, and Ethical Traps - Elle Woods Teaches Legal Ethics & Bias
1-2 p.m.
1.0 EIJ
IN-PERSON AND WEBINAR
https://bit.ly/CLE-061926-A

June 23
Hidden Hurdles: How Bias and Life Transitions Shape Women's Paths to Leadership in the Law
Noon-1 p.m.
1.0 EIJ
IN-PERSON AND WEBINAR
https://bit.ly/CLE-062326-A

June 23
Identifying Gender Bias in the Legal Profession the Sequel: Examining the Roles of Women Attorneys in Hollywood in the Last Five Years
11 a.m.-Noon
1.0 EIJ
WEBINAR
https://bit.ly/CLE-062326-B

June 24
Effective Contract Drafting: Fundamentals, Negotiation Strategies & Key Provisions
11 a.m.–Noon
1.0 G
TELESEMINAR
https://bit.ly/CLE-062426-A

June 24
Getting People Out of ICE Detention: Habeas Petitions in the District of New Mexico
Noon-1 p.m.
1.0 G
WEBINAR
https://bit.ly/CLE-062426-B

June 26
Evaluating the Evaluator: Strengthening Family Law Cases with High-Quality Assessments of Parents and Children
Noon–1 p.m.
1.0 G
IN-PERSON AND WEBINAR
https://bit.ly/CLE-062626-A

July 9
Naturalization Under the Current Executive Administration
Noon–1 p.m.
1.0 G
WEBINAR
https://bit.ly/CLE-070926-A

July 10
Bad Review? Bad Response? Bad Idea! - Ethically Managing Your Online Reputation
11 a.m.-Noon
1.0 EP
WEBINAR
https://bit.ly/CLE-071026-A

July 14
Estate Planning 101
11:30 a.m.-1 p.m.
1.0 G
WEBINAR
https://bit.ly/CLE-071426-A

July 17
eDiscovery for the Rest of Us: Collection - Part 3 of 5
11 a.m.-Noon
1.0 G
WEBINAR
https://bit.ly/CLE-071726-A

July 20
From Reconstruction to Redistricting: Voting Rights in America
Noon-1 p.m.
1.0 EIJ
IN-PERSON AND WEBINAR
https://bit.ly/CLE-072026-A

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State Bar of New Mexico
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June 10, 2026 • Volume 65, No. 11

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Table of Contents

The New Mexico Black Judicial Council's Incorporation: A Historic Chapter for Representation, Mentorship and Judicial Leadership in New Mexico

The incorporation of the New Mexico Black Judicial Council ("NMBJC") marks a significant milestone in the continued evolution of New Mexico's judiciary, representing both an institutional achievement and a broader statement about representation, continuity and leadership within the legal profession.

The organization formally celebrated its incorporation on Feb. 27 in the ceremonial courtroom of the Bernalillo County Metropolitan Court, bringing together current, retired and former Black judges, legal professionals and community members to commemorate the occasion.

For the NMBJC, the moment represented more than the establishment of a new organization. It signaled the formal institutionalization of an effort centered on supporting Black judges in New Mexico while creating pathways for future judicial leadership.

According to the Council, the NMBJC represents a natural progression in the broader organization of Black legal professionals in New Mexico, following the incorporation of the New Mexico Black Lawyers Association in 1982 as the state's first affinity bar association. The Council describes its own creation as a similarly historic development: the first affinity judicial organization of its kind in New Mexico.

That distinction carries weight not merely as a matter of organizational history, but because of what the Council believes such institutions can accomplish.

"Creating professional organizations that support the needs of underrepresented groups has proven to not only benefit those groups, but the legal profession," the organization shared.

The Council's stated mission centers on three interconnected priorities: recruiting, retaining and sustaining Black judges in New Mexico; addressing challenges faced in judicial service; and serving as a catalyst for broader recognition of the importance of Black judicial representation within systems of justice.

At its core, the effort is both practical and aspirational.

> *"It's important to us to ensure we aren't the first and the last, but just the beginning."*

The Council notes that its broader aim is to help qualified Black legal professionals envision judicial service as an attainable calling, while ensuring those who do ascend to the bench are equipped with mentorship, support and resources to succeed.

Members of the New Mexico Black Judicial Council gather in celebration of the organization's formal incorporation on Feb. 27.

The creation of the NMBJC also exists within a larger historical continuum.

Black judges have served across multiple New Mexico courts, including the Court of Appeals, District Court, Metropolitan Court, Magistrate Court, Municipal Court, Tribal Court and Probate Court, according to the Council. That legacy, while meaningful, is one the organization characterizes as both important and fragile.

"It's important to us to ensure we aren't the first and the last, but just the beginning," the Council explained.

The organization points to continued underrepresentation in certain judicial spaces, including the New Mexico Supreme Court and federal courts serving New Mexico, as evidence that meaningful progress remains ahead.

In that context, the incorporation celebration itself was intentionally symbolic.

According to the Council, the event was designed to accomplish three objectives: formally introduce the organization to the public, celebrate the contributions of Black judges throughout New Mexico's judicial history and inspire future generations to consider judicial service.

That inspiration, the Council says, may already be taking hold.

Several attendees reportedly reached out after the event to express serious interest in pursuing judicial service themselves.

The Council also drew inspiration from national counterparts, including the National Bar Association Judicial Council and similar Black judicial organizations around the country. Those organizations, according to the NMBJC, have long provided opportunities for mentorship, professional development, networking and judicial education.

The NMBJC envisions a comparable role in New Mexico.

In addition to fostering mentorship and community among Black judges, the Council intends to create programming that helps prepare prospective future judges while working with partners throughout the state to expand judicial representation.

Beyond individual mentorship, the Council sees itself as a vehicle for systemic continuity and institutional memory.

"The Council will be the repository of our history and the purveyors of positive change to our system," the organization stated.

Looking ahead, the Council's ambitions are clear. Among its long-term goals are increasing the number of Black judges serving statewide and expanding representation to judicial positions where Black judges have historically been absent, including the New Mexico Supreme Court and certain federal benches.

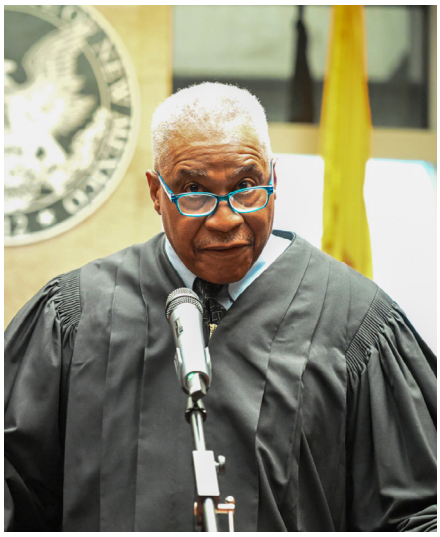
Yet the Council frames its mission as broader than representation alone.

By advocating for a judiciary more reflective of the communities it serves, the organization views its work as contributing to a stronger and more inclusive legal system overall.

"Diversity on the bench ensures justice is not just a concept but is a reality," the Council shared.

As New Mexico's legal profession continues to evolve, the incorporation of the New Mexico Black Judicial Council stands as both a recognition of progress already made and a declaration that the work of building a more representative judiciary continues. ■

Artificial intelligence was used to assist in organizing source materials and supporting the composition of this article, followed by State Bar staff review.



Speakers address attendees during the New Mexico Black Judicial Council's incorporation celebration.

The Beatles Said it Best: "Help." Why Don't Judges and Lawyers Get It???

By Briggs Cheney

The lyrics from the Beatles' song "Help!" from their 1965 album of the same name say it all and are worth a read or a **listen**. *Why* is it so hard for our profession to ask for help?

The problem — I know from my own personal story that asking for help was not going to happen until being a drunk brought me to my knees. A different story, but not really. The focus of this article is not about *what* a person's specific struggle is, but rather about *the act* of asking for help. For me, it was more *surrender* than asking for *help*. It didn't have to be that way. I just could not ask for *help*.

In years of representing lawyers, I have seen it repeated countless times in other lawyers' lives — not being able to "let go" and ask for *help*. We have gotten better at walking down the hall or calling a colleague and saying, "Can I run this by you?" But often, just that simple act of reaching out is so difficult. I don't want to be "Briggsy downer," but those simple acts are huge and deserve kudos and high-fives. But that is the problem I am addressing — *why* is it so hard for lawyers to reach out for *help*? Is asking for *help* inconsistent with who we think we're supposed to be, or who we wish we were, or who we wish we could be?

The possible Why's — There is a long list of overlapping *Why's*. The "helper paradox" is often labeled a syndrome. Lawyers spend their days solving (judges, deciding) other people's problems, which creates the implicit belief that because we are problem-solvers (or deciders), it would be a weakness if we cannot solve our own problems: if I am an expert who fixes things, how can I simultaneously be someone who needs fixing?

There is the "ego" *why,* but that is too obvious, and it is more interesting to look at some of the *why's* behind our lawyer egos. The Socratic method at the heart of law school legal culture — answering one question with another question — teaches students, and later lawyers, to never show uncertainty. There are, of course, billable hours, grinding it out, partnership-track competition where perceived weakness is a liability, or the fear that transparency or vulnerability to opposing counsel might harm a client or be taboo in the eyes of a client, which consciously or subconsciously hypnotizes us to don a façade or persona of a superhero. Admittedly, lawyers and judges deal with high-stakes and important situations, and it is just assumed we are equipped to handle anything, and we are expected to be the steady hand in crisis. The *Preamble* to our Rules of Professional Conduct reminds us, "a lawyer can be a *zealous advocate* on behalf of a client and at the same time assume that justice is being done." That sounds pretty "superhero-ish," but we all dress up in our lawyer costumes and try to convince our clients, opposing parties, counsel, juries and judges that we are. We even try to fool ourselves into believing it.

Asking for *help* is too often associated with taking time out, taking a break in the action, engaging in some self-care and such ideas provide another *why*. The resistance to well-being activities is frequently rooted in economics. Taking the *foot off the pedal* is viewed as lost revenue, and taking some time for a lawyer's well-being is considered a luxury.

Interestingly, in the last number of years, firms have seen the wisdom in the firm's lawyers engaging in self-care and have promoted such activities without the lawyer having to ask for *help*. A tip of the hat to those firms. The clichés are many: "firms that penalize self-care are quietly cannibalizing their own talent"; "What looks like lost revenue on Tuesday becomes malpractice, turnover, or collapse on Friday"; and "The firm that begrudges a lawyer's recovery is borrowing against a loan it cannot repay."

The solo or small firm practitioner is a harder case than the firm. Lost revenue means not paying rent, not making payroll, not paying themselves or their line of credit. That is fear, which is immediate and visceral. But the solo who side-steps self-care in the name of generating income is making a short-term judgment with long-term consequences.

The last *why*, and it probably does not matter if you are a big firm lawyer or a solo, is what I call the "A student syndrome." I cannot claim this as my discovery, but I have promoted it for years. I was not an "A student," and I

hope it is not sour grapes on my part, but our profession attracts those who derive self-worth from their report card and it can start as early as elementary school, carry on through college and law school, and into the practice of law where productivity (hours billed) and achievement become their report card. Self-care — often viewed as "doing nothing" — does not get high grades.

Do the Why's have it? Do they win? The practice of law is a special profession. It is very hard to define — kind of like describing in words the taste of chocolate. The *why's* offer a start at explaining the profession — why it is a special profession. People bring their problems to lawyers to be solved. Some problems cannot be solved no matter how hard the lawyer tries, even when the client is deserving. Some clients do not deserve to have their problems solved, but the lawyer is duty-bound to do their best to try. Some clients are afraid and want a lawyer who is not. I could go on, but it is not my intention to make the why's the problem — the *why's* are who we are and what we signed up to be. But the *why's* can get in the way of being the lawyer we want to be.

Two ideas — The State Bar's director of Legal Well-Being, Pam Moore, is fond of reminding us that our mission is to improve the culture of our profession. "Improve" means change, change is hard and scary, but nothing changes if nothing changes. But where do you start? The best way is to start small. Something easy. Something that works. Here are two ideas, admittedly unconventional, that can provide a lawyer some *help.* I personally guarantee them. When they work, my hope is you will let yourself seek other *help.*

Help without even having to ask. Have you ever actively stopped thinking about a case, only to have the answer appear when you are doing something totally unrelated? We all have. It seems mystical. It is not, but it does require trusting that the answer will come when we give ourselves a break. It requires putting faith in process over control.

Elite athletes talk about "trusting their training" and getting out of their own way. "All plans disappear with the enemy's first shot" is part of military strategists' reality and the importance of comfortable uncertainty. In the world of business, tolerance for ambiguity in complex decision-making, also framed as strategically letting go of the illusion of control in order to access better outcomes — tactical surrender — is well known.

Brain science shows that *insight* — those occasions when you let go and the answer to your case mystically pops into your mind — is not magic but rather the result of releasing executive control and creating space in your brain for non-conscious processing.

I am personally fond of Gilda Radner's "Delicious Ambiguity" (Google it), but that is not asking a lawyer to abandon reason. It is asking them to recognize perfect information and total control are fantasies, and the pursuit of the fantasy of control is making them miserable and less effective.

As they say in the recovery world, "let go, or be dragged." All a lawyer must do is trust and have faith that taking care of themselves pays off. You don't have to ask for *help* — you just let go.

Help that can be your secret — We are a helping profession, and clients come to us not just for answers and guidance. Often they are scared and frightened and they want someone to stand up for them and get them through the chaos in their lives. As hard as we try or make ourselves believe we control outcomes, we know better. The complex systems at play (including the human mind) produce outcomes that are not linearly predictable from the inputs. How does a lawyer deal with that reality?

I have heard it said, "There are no atheists in a foxhole." I am not selling anything, but this lawyer has learned that sometimes I have to stop, close my eyes and say, "I am scared, help." No one hears me say it.

There is a Lakota Prayer attributed to Chief Yellow Lark (1887) that says in part, "I seek strength, not to be superior to my brother, but to fight my greatest enemy — myself."

- Briggs Cheney

Not by design but happenstance, Briggs' career in the law has been that of being a lawyer's lawyer. Following graduation from law school at UNM and for the better part of his 54 years of practice, Briggs has had the honor of helping lawyers throughout New Mexico - defending them in the civil arena and guiding them through the disciplinary process. Briggs has been recognized for his legal skills in representing lawyers and he has been a leader in local, state and national bars. He has tirelessly helped the struggling and suffering lawyer as others helped him.

Notices

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.**

State Bar News

2026 Annual Meeting Resolutions and Motions

Resolutions and motions will be heard at 1 p.m. (MT) on Aug. 14 at the opening of the State Bar of New Mexico 2026 Annual Meeting, in-person at Sky Ute Casino Resort. For consideration, resolutions or motions must be submitted in writing by August 7th to Executive Director Richard Spinello, PO Box 92860, Albuquerque, N.M. 87199 or emailed to **Richard.spinello@ sbnm.org**.

Board of Bar Commissioners

Appointment to NM Risk Management Advisory Board Vacancy

Pursuant to Section 15-7-4 NMSA 1978, the President of the Board of Bar Commissioners makes one appointment to the Risk Management Advisory Board. The appointment is for a four-year term, which starts on July 1, 2026. The Advisory Board is charged with, among other duties, reviewing insurance policies to be purchased by the Risk Management Division, professional services and consulting contracts and agreements, companies and agents that submit proposals, rules and regulations promulgated by the division, certificates of coverage to be issued by the division, and investments to be made by the division. Applicants must be licensed to practice law in New Mexico. Members who wish to apply to serve on the Board should send a letter of interest and brief resume to **bbc@sbnm.org** by June 24.

Professionalism Tip

With respect to parties, lawyers, jurors and witnesses:

I will be considerate of the time constraints and pressures imposed on lawyers by the demands of trial practice.

Meeting Summary

The Board of Bar Commissioners of the State Bar of New Mexico met on May 8, 2026 at the State Bar Center in Albuquerque, N.M. Action taken at the meeting follows:

- Approved the Feb. 27, 2026 Meeting Minutes;
- Reviewed and discussed Rule 24-101(A) NMRA, Rules Governing the NM Bar, Objective #7, Foster and Maintain High Ideals of Integrity, Learning, Competence, and Public Service;
- Reviewed the State Bar's 2026-2028 Strategic Plan, which includes three priority areas, including AI and technology, attorney engagement and developing partnerships, and the Rule of Law; the staffing and timeline were added to the document;
- Held an executive session;
- Reappointed H. Nicole Werkmeister to the ABA House of Delegates for an additional two-year term;
- Reappointed Nancy R. Long to the Judicial Standards Commission for an additional four-year term;
- Appointed Commissioner Aja Brooks to the Advisory Committee for the New Mexico Internet Portal to Expand Access to Justice;
- Appointed Brittany Dutton-Leyda to the vacancy on the Committee on Women and the Legal Profession;
- Discussed a request from the Senior Lawyers Division for a free CLE program in July and approved allowing the Division to reallocate funds identified in their budget to provide scholarships for the CLE;
- Reported that the Executive Committee met on April 27 regarding the following: 1) reviewed and approved licensing late fee waiver requests; 2) reviewed and approved the agendas for the Finance Committee and Board meetings; and 3) approved forwarding the Policy and Bylaws Committee's revisions to Rule 24-108(b) NMRA to the Code of Professional Conduct Subcommittee for their review and comments prior to the Board meeting;
- Received a report from the Finance Committee, which included: 1) approval of the Feb. 27th meeting minutes; 2) acceptance of the March 2026 financials; 3) acceptance of the 2025 Combined Financial Audit; and 4) the 2026 licensing renewals;
- Received a report from the Policy and Bylaws Committee, which included: 1) reviewed and recommended edits to the proposed revisions to Rule 24-108(b) NMRA regarding pro bono contributions and approved sending them to the Code of Professional Conduct Committee; and 2) discussed and recommended an edit to Rule 15-601 NMRA regarding the Board of Bar Commissioners appointment to the Board of Bar Examiners for the Court's consideration;
- Received a preview of the Bar Bulletin Commemorative Edition for the Nation's 250th Anniversary, which will be published in July along with a special limited print edition;
- Received reports from the State Bar President and Executive Director;
- Received reports on the ABA Bar Leadership Institute in Chicago and the ATJ Commission

- Received the Annual Report for the Client Protection Fund and a report on the CPF Commission;
- Received reports from the Senior Lawyers, Young Lawyers, and Paralegal Divisions, and Bar Commissioner Districts;
- Received a report on the ABA House of Delegates Midyear Meeting the approved reimbursement for the delegate due to reduced funding by the ABA;
- Received a sponsorship request from the YMCA Youth & Government Program for their National Judicial Competition and approved a sponsorship in the amount of $1,000; and
- Received a sponsorship request from UNM for their Law Scholarship Golf Classic and approved a sponsorship in the amount of $800.

Note: The minutes in their entirety will be available on the State Bar's website following approval by the Board at the Aug. 13 meeting.

Historical Committee

Presentation on Teddy Roosevelt and the Rough Riders

The Historical Committee of the State Bar of New Mexico will host a presentation on Teddy Roosevelt, the Rough Riders, and New Mexico statehood by Paul Hutton, Distinguished Professor Emeritus, Dept. of history, University of New Mexico, on July 15 from noon to 1 p.m. (MT). The presentation is available in-person at the State Bar Center or virtually, via Zoom (link to be sent the day prior to event). Lunch will be provided to those attending in-person. RSVP required.

https://bit.ly/SBNMHistoricalCommittee61726

Legal Well-Being

New Mexico Lawyer Assistance Program (NM LAP)

Started in 1987, the New Mexico Lawyer Assistance Program focuses on confidential, professional and peer assistance to help individuals identify and address concerns related to alcohol and other drugs, depression, and other mental health or emotional challenges. NM LAP endeavors to improve the well-being of judges, lawyers, law students, paralegals, law clerks and other legal staff through support, education and early intervention, with the goal of ensuring every legal professional is healthy and fit to practice.

Contact Us:
Phone/Text: **505-228-1948 | 505-420-8179**
Email: **nmlap@sbnm.org**

NM LAP Committee Meetings

The NM LAP Committee's intention is to assist lawyers and judges who experience addiction and mental health issues that interfere with their personal lives and/or their ability to serve professionally in the legal field. Struggles include substance use/abuse, depression, anxiety and other mental and emotional issues. This committee is a network of over 30 diverse state-wide New Mexico judges, attorneys, and law students. The NM LAP Committee has regular quarterly meetings to discuss the improvement of current efforts and initiatives and the expansion of well-being education, resources and services. The hybrid meeting schedule (in-person in Albuquerque and via Zoom online) is below.

2026/2027 NM LAP Committee Meetings:

- **July 9, 3:30 to 5 p.m. (MT)**
- **Oct. 1, 3:30 to 5 p.m. (MT)**
- **Jan. 7, 2027, 3:30 to 5 pm. (MT)**

NM LAP Support Groups

Off the Record Support Group

The Off the Record Support Group meets at 5:30 p.m. (MT) on Mondays by 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**.

The Other NM Bar Meeting

The Other NM Bar Meeting is a CONFIDENTIAL traditional 12-step meeting for legal professionals who want to stop drinking and/or using other drugs. The meeting is open to all lawyers, law students, judges and others who work in the legal profession. All who are struggling with alcohol or drugs – whether you presently identify as being "in recovery" or not – are welcome to attend. The purpose of the meeting is to provide a safe and confidential space for people to support one another in our desire to stop drinking and using. We meet every Thursday night from 5:30 to 6:30 p.m. (MT) at the First Unitarian Church on

the SW corner of Comanche and Carlisle (3701 Carlisle Blvd NE, Albuquerque, N.M., 87110). The Other NM Bar Meeting is sponsored by the State Bar of New Mexico's Lawyer Assistance Program and the Judicial Wellness Program. The meeting is in person and Zoom audio. For more information, please email **NMLAP@sbnm.org**.

EAP/Solutions Group

Brought to you by the New Mexico Lawyer Assistance Program, the Employee Assistance Program's services include up to four FREE counseling sessions/issue/year for ANY mental or behavioral health struggle. Counseling sessions are with a professionally licensed therapist. Other FREE services include management consultation, stress management education, critical incident stress debriefing, video counseling and 24x7 call center. Providers are located throughout the state and via tele-therapy. Upon calling, identify with NM LAP for access to EAP's services. Please note that all calls are confidential.
Contact: **505-254-3555**
www.solutionsbiz.com

New Mexico Well-Being Committee Meetings

The NM Well-Being Committee (WBC) was established in 2020 by the State Bar of New Mexico's Board of Bar Commissioners. The NM WBC is a standing committee of key stakeholders that encompass different areas of the legal community and cover state-wide location. All members have a well-being focus and concern with respect to the NM legal community. It is this committee's goal to examine and create initiatives centered around wellness. This includes mental, emotional, physical and spiritual health and wellness within the New Mexico legal community. The WBC continues to follow the recommendations laid out in the 2017 National Task Force on Lawyer Well-Being.

2026 WBC Meeting Dates/Times:

- **June 30, 10 a.m. (MT)**
- **July 28, 10 a.m. (MT)**
- **Aug. 25, 10 a.m. (MT)**
- **Sept. 29, 10 a.m. (MT)**
- **Oct. 27, 10 a.m. (MT)**
- **Nov. 24, 10 a.m. (MT)**

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

Albuquerque City Council

Notice of Recruitment of Applicants

The Albuquerque City Council is recruiting applicants for the Civilian Police Oversight Advisory Board (CPOAB), a five-member group that reviews investigations into complaints involving Albuquerque Police Department (APD) personnel, makes policy recommendations, and hears public comment at monthly meetings. Board members are appointed by the City Council for three-year terms. This is a meaningful way to contribute to public safety policy at the local level. Residents from all backgrounds who are interested in public safety, accountability, and who want to serve our City are encouraged to apply. For more information on the CPOA board and to apply, visit: **https://www.cabq.gov/cpoa/police-oversight-board.**

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.

New Episode!

Season 6, Episode 3: *Trauma-Informed Care for the Legal Profession – Part 2*

In Part 2 of this episode, the conversation deepens as Scott Patterson-Alatorre, Judge Mateo Page, and Tenessa Eakins examine further how routine exposure to traumatic material can impact legal professionals' decision-making, emotional well-being, and overall performance. The discussion continues to examine how trauma-informed principles can be meaningfully integrated into everyday legal practices and as human beings. Building on the foundation from Part 1, the discussion emphasizes the importance of shifting from reactive coping to intentional strategies that support individual well-being.

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Notice of Publication for Comment

Proposed Amendments to Supreme Court Rules of Practice and Procedure

May 15, 2026

In accordance with the Supreme Court's out-of-cycle rulemaking process under Rule 23-106.1 NMRA, which includes publication of proposed rule amendments for public comment, the following proposed rule amendments are recommended to the rules of practice and procedure as summarized below. To view the text of the proposals, you may click on the corresponding proposal number on the Supreme Court's website at **https://supremecourt.nmcourts.gov/rules-forms-files/rules-forms/open-for-comment/**. To comment on the proposed rule amendments before they are submitted to the Court for final consideration, you may submit your comment electronically through the Supreme Court's website at **https://supremecourt.nmcourts.gov/rules-forms-files/rules-forms/open-for-comment/**, by email to **rules.supremecourt@nmcourts.gov**, by fax to 505-827-4837, or by mail to:

Elizabeth A. Garcia, Chief Clerk of Court
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848

Your comments must be received by the Clerk's Office on or before June 14, 2026, to be considered by the Court. Please note that submitted comments may be posted on the Supreme Court's website for public viewing.

Children's Court Rules Committee

Proposal 2026-042 - *Joinder and Parents as Parties in Delinquency Cases*
[Amended Rule 10-121 NMRA]

The Children's Court Rules Committee recommends amending Rule 10-121 NMRA to allow the state to name a child's parent, legal guardian, or custodian as a party in a delinquency proceeding. The amendments also allow the court to join or remove parties in delinquency proceedings when it is in the best interest of the child. The Committee also recommends amendments to Rule 10-121 that reflect Rule 1-019(A)(1) NMRA's standard for joinder, in accordance with State ex. rel Children, Youth & Families Dep't. v. Calvin T., 2025-NMSC-052, 580 P.3d 794.

Uniform Jury Instructions (UJI)–Criminal Committee

Proposal 2026-043 - *Physical Force or Violence*
[New UJI 14-986 NMRA]

The UJI-Criminal Committee recommends the adoption of new UJI 14-986 NMRA. The proposed new instruction provides a definition for the "physical force or physical violence" alternative for sexual offenses contained in NMSA 1978, Sections 30-9-10 to -16 (1975, as amended through 2009), in accordance with State v. Apodaca, 2025-NMSC-015, ¶ 37, 572 P.3d 913.

THE RULE AMENDMENTS SUMMARIZED ABOVE CAN BE VIEWED IN THEIR ENTIRETY AT THE NEW MEXICO SUPREME COURT WEBSITE

https://supremecourt.nmcourts.gov/rules-forms-files/rules-forms/open-for-comment/

Legal Education Calendar

June

12 **The Practical Roadmap to Cannabis Rescheduling: Navigating Schedule III Transition for New Mexico**
1.0 G
Webinar
NMSBF Center for Legal Education
https://bit.ly/CLE-061226-A

16 **A Broader Sense of Justice: Respecting Victim Autonomy While Pursuing Offender Accountability**
1.5 G
Web Cast (Live Credits)
New Mexico Coalition of Sexual Assault
https://nmcsap.org

16 **How Would You Decide? The O.K. Corral Shootout Trial of Wyatt Earp and Doc Holiday**
1.0 G
Web Cast (Live Credits)
Third Judicial District Court
https://thirddistrict.nmcourts.gov

19 **Verdict Just In: Negligence & UPA in Long-Term Litigation**
1.0 G
Web Cast (Live Credits)
New Mexico Trial Lawyers Association & Foundation
https://www.nmtla.org

17 **True Crime Ethics & Trial Practice: Jeffrey Dahmer and Wild Bill Cody: Lies, Deceit and the Ethical Rules, Can Attorneys Practice Deception**
1.0 G, 1.0 EP
Webinar
NMSBF Center for Legal Education
https://bit.ly/CLE-061726-A

18 **Discovering Implicit Biases in Jury Selection**
1.0 EIJ
Webinar
NMSBF Center for Legal Education
https://bit.ly/CLE-061826-A

19 **Legally Blonde: Bend, Snap, and Ethical Traps - Elle Woods Teaches Legal Ethics & Bias**
1.0 EIJ
In-Person and Webinar
NMSBF Center for Legal Education
https://bit.ly/CLE-061926-A

23 **Hidden Hurdles: How Bias and Life Transitions Shape Women's Paths to Leadership in the Law**
1.0 EIJ
In-Person and Webinar
NMSBF Center for Legal Education
https://bit.ly/CLE-062326-A

24 **Effective Contract Drafting: Fundamentals, Negotiation Strategies & Key Provisions**
1.0 G
Webinar
NMSBF Center for Legal Education
https://bit.ly/CLE-062426-A

24 **Getting People Out of ICE Detention: Habeas Petitions in the District of New Mexico**
1.0 G
Webinar
NMSBF Center for Legal Education
https://bit.ly/CLE-062426-B

26 **Evaluating the Evaluator: Strengthening Family Law Cases with High-Quality Assessments of Parents and Children**
1.0 G
In-Person and Webinar
NMSBF Center for Legal Education
https://bit.ly/CLE-062626-A

July

9 **Naturalization Under the Current Executive Administration**
1.0 G
Webinar
NMSBF Center for Legal Education
https://bit.ly/CLE-070926-A

10 **Bad Review? Bad Response? Bad Idea! - Ethically Managing Your Online Reputation**
1.0 EP
Webinar
NMSBF Center for Legal Education
https://bit.ly/CLE-071026-A

14 **Estate Planning 101**
1.0 G
Webinar
NMSBF Center for Legal Education
https://bit.ly/CLE-071426-A

17 **Estate Planning 101eDiscovery for the Rest of Us: Collection - Part 3 of 5**
1.0 G
Webinar
NMSBF Center for Legal Education
https://bit.ly/CLE-071726-A

20 **From Reconstruction to Redistricting: Voting Rights in America**
1.0 EIJ
In-Person and Webinar
NMSBF Center for Legal Education
https://bit.ly/CLE-071726-A

Listings in the *Bar Bulletin* Legal Education Calendar are derived from course provider submissions and from New Mexico Minimum Continuing Legal Education. All MCLE approved continuing legal education courses can be listed free of charge. Send submissions to notices@sbnm.org. Include course title, credits, location/course type, course provider and registration instructions. For a full list of MCLE-approved courses, visit https://www.sbnm.org/Search-For-Courses.

The Inaugural Pre-Law Night: Building New Pathways Into New Mexico's Legal Profession

UNM Law Advisory Council and the State Bar of New Mexico Young Lawyers Division Launch New Mentorship Initiative

The inaugural Pre-Law Night hosted April 28 at the University of New Mexico Student Union Building marked more than the close of an academic semester for aspiring legal professionals. It represented the launch of a new partnership between the University of New Mexico's Law Advisory Council and the State Bar of New Mexico Young Lawyers Division centered on mentorship, professional access and the cultivation of future members of New Mexico's legal community.

Bringing together pre-law students, legal professionals and State Bar leadership in an informal networking environment, the evening was designed to provide students with an early, candid look at the legal profession while creating direct connections with attorneys and emerging leaders already navigating the field.

At its core, the event reflected a broader recognition that meaningful pathways into the profession often begin well before law school.

"The inclusion of pre-law students into YLD's mentorship program was positively received and also makes a lot of sense," said Aja Brooks, Past President of the State Bar of New Mexico. "If we truly want to create a pipeline into the legal profession, we have to start earlier than law school."

That philosophy shaped the evening's broader purpose. In addition to serving as a semester-end celebration for pre-law students, the event introduced a new mentorship initiative

Pre-Law Night's speakers included Young Lawyers Division Past Chair Lauren E. Riley, State Bar President Allison H. Block-Chavez and Dr. Jami Nelson-Nuñez, an Assistant Professor at the University of New Mexico.

Students participate during the inaugural Pre-Law Night on April 28 at the University of New Mexico.

connecting UNM pre-law students with members of the State Bar's Young Lawyers Division, creating what organizers described as a practical support system for students exploring careers in law.

For students, the opportunity to engage directly with attorneys helped transform what can often feel like an abstract or distant profession into something more tangible.

"What most stood out to me was the student response," said Dr. Jami Nelson-Nunez, chair of the UNM Law Advisory Council within the Department of Political Science. "Every student I talked with was so excited to have the opportunity to meet with people from the State Bar of New Mexico and the YLD."

She noted that the event served students at varying stages of exploration.

"Some students are very future-focused and planning-oriented," she said. "Others are just starting to think about careers and mentorship beyond their coursework. For them, this opportunity was an incredible first step to build confidence and make connections."

That accessibility was central to the event's design.

Rather than positioning the legal profession as something to be encountered only through formal admissions processes or distant institutional channels, Pre-Law Night offered students a low-pressure environment in which questions could be asked openly and honest experiences shared directly.

"I hope the students left understanding that the legal profession includes many different practice areas, backgrounds, personalities and life experiences," said Allison Block-Chavez, president of the State Bar of New Mexico. "Those diverse perspectives are valuable and needed."

She added that the event also served a broader purpose of affirmation.

"Just as importantly, I think they gained the confidence to ask questions openly, hear honest experiences about the profession and begin to picture themselves as future lawyers and leaders in their communities."

The timing of the event also carried symbolic resonance.

Held just days before Law Day on May 1, the program offered a practical extension of the broader values the legal profession seeks to uphold: civic engagement, access to justice and public service.

"The mixer gave students a relaxed, low-pressure way to get a first look at the legal profession, which is something that can otherwise feel a bit distant or intimidating," said Taylor Duffney, chair of the State Bar of New Mexico Young Lawyers Division. "By tying it to Law Day, it helped show that the rule of law isn't just an abstract idea; it's something real people in their own community work to uphold every day."

That message appeared to resonate beyond formal programming.

Charlie Doyle, a current UNM pre-law student and student representative to the Law Advisory Council, recalled a particularly meaningful exchange with a student who arrived uncertain about both the event and her own academic direction.

The two connected over being out-of-state students from the same area, leading to a broader conversation about belonging, mentorship and opportunity at UNM.

"I told her I would love to serve as an unofficial mentor for her," Doyle shared, describing the interaction as a moment that reinforced the value of creating spaces where students can find both professional guidance and personal encouragement.

"By tying it to Law Day, it helped show that the rule of law isn't just an abstract idea; it's something real people in their own community work to uphold every day."

– Taylor Duffney, Young Lawyers Division Chair

Looking ahead, organizers envision the event as the beginning of an ongoing partnership rather than a standalone gathering. The newly announced mentorship initiative offers a concrete next step, with organizers hoping to encourage broader student participation while strengthening early connections between aspiring legal professionals, law students and practicing attorneys.

As New Mexico's legal profession continues to examine how best to cultivate future talent, the inaugural Pre-Law Night offered a straightforward but meaningful proposition: that mentorship, access and belonging should begin early—and that the future of the profession is stronger when students are invited into the conversation before they ever step into a law school classroom. ■

Artificial intelligence was used to assist in organizing source materials and supporting the composition of this article, followed by State Bar staff review.

Pre-Law Night gives students the opportunity to connect with leaders in New Mexico's legal community.

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Her own journey from Ivy League lawyer and Wall Street deal maker to serving time in federal prison revealed the cost of ignoring blind spots and following unexamined rules. That experience became the blueprint for her work today. Rashmi has spoken to leaders at Coca-Cola, Comcast, Merck, Cardinal Health, Sotheby's and Hershey's, and her story has been featured by ABC, PBS, The Washington Post and The Wall Street Journal.

Beyond the stage, she is a proud mother of two college students, a community leader and an adventurer who believes that breaking free from both external and internal prisons opens the door to possibility.

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From the New Mexico Supreme Court

Opinion Number: 2025-NMSC-049
No. S-1-SC-39949 (filed July 15, 2025)

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
JOSEPH MATTHEW GREGORY JONES,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY
T. Glenn Ellington, District Judge

Bennett J. Baur, Chief Public Defender
Thomas J. Lewis,
Assistant Appellate Defender
Santa Fe, NM

for Appellant

Raúl Torrez, Attorney General
Peter James O'Connor, Assistant
Solicitor General
Santa Fe, NM

for Appellee

OPINION

VARGAS, Justice.

{1} The primary question presented by this case is one of statutory interpretation examining whether a portal is a prohibited space under New Mexico's aggravated burglary statute, NMSA 1978, Section 30-16-4 (1963). This Section provides in relevant part that "[a]ggravated burglary consists of the unauthorized entry of any . . . dwelling or other structure, movable or immovable, with intent to commit any felony or theft therein." *Id.* The portal[1] at issue is a covered porch in the backyard of a house that is open to the elements on two sides. The circumstances giving rise to this question arose when Robert Romero (Victim) caught Defendant Joseph Matthew Gregory Jones in his backyard in the middle of the night, allegedly attempting to burglarize Victim's home. A struggle ensued, culminating in Defendant shooting Victim in the backyard.

{2} Defendant was charged in relevant part with aggravated burglary and felony murder. At trial, Defendant did not contest that he was the intruder, instead filing a motion for directed verdict on the grounds that he never entered a prohibited space that would support the underlying aggravated burglary charge under Section 30-16-4. The district court denied Defendant's motion, and Defendant was ultimately convicted of aggravated burglary and felony murder. After receiving a life sentence, Defendant exercised his right to appeal directly to this Court. *See* N.M. Const. art. VI, § 2 ("Appeals from a judgment of the district court imposing a sentence of death or life imprisonment shall be taken directly to the supreme court.").

{3} He raises three issues on appeal: (1) whether the unenclosed portal is a structure under the aggravated burglary statute;[2] (2) whether the district court erred in inserting the word "portal" into the aggravated burglary jury instruction; and (3) whether the district court erred in admitting evidence of guns, ammunition, and other accessories unconnected to the murder weapon or the shooting that were recovered in Defendant's possession nearly two years later.

{4} For the reasons that follow, we conclude the district court erred in denying Defendant's motion for directed verdict because the portal is not a prohibited space under the aggravated burglary statute. Accordingly, we vacate Defendant's convictions for felony murder and aggravated burglary. As we explain, however, the State may elect to reprosecute Defendant on the same or lesser charges without violating double jeopardy. Defendant's second issue with respect to the jury instructions is rendered moot by our conclusion that the portal is not a protected structure under Section 30-16-4, and we need not address it. Finally, addressing the evidentiary issue to provide guidance in the event it arises on remand, we conclude the district court erred in admitting evidence of Defendant's possession of guns, ammunition, and accessories unconnected to the shooting, as this evidence was irrelevant.

I. BACKGROUND

A. Facts

{5} Shortly before 2:00 a.m. on the night of July 30, 2018, Victim's wife awoke to a crash, and heard Victim frantically call her name from the backyard of their home. When Victim's wife opened the door to their backyard, she saw her husband struggling with an intruder. The intruder was wearing a gray hoodie that was cinched, revealing

[1] We use portal throughout to refer to the architectural feature common in New Mexico, defined as "[a] covered entryway or porch-like structure leading into a home, a church, or a public building—sometimes quite elaborate. Also may refer to a covered patio attached to a home." The Guide to New Mexico Architecture, available at https://nmarchitectureguide.org/glossary/ (last visited July 9, 2025).

[2] Defendant at times refers to the burglary statute, NMSA 1978, Section 30-16-3 (1971), rather than the aggravated burglary statute, Section 30-16-4. Because Defendant was convicted of aggravated burglary and the language at issue is identical in both statutes, we refer hereinafter to the aggravated burglary statute.

only dark eyes and eyebrows. After Victim yelled for his wife to get help, she ran back in the house to call the police. Shortly before Victim's wife attempted to call the police, she heard a gunshot. After hearing the gunshot, she rushed back outside to find Victim slumped over a small retaining wall just beyond the portal.

{6} Police arrived shortly thereafter but were unable to locate the suspect. A number of relevant items, however, were left at the scene of the crime. These items—in addition to testimony by the Victim's wife—would ultimately serve as the primary evidence tying Defendant to the crime. Police found a trash can turned upside-down pushed up against the gate on the side of the yard, which Defendant concedes "was presumably the means by which the intruder gained access to [Victim's] back yard." A bullet casing was recovered in the gravel between the retaining wall and the portal. Expert testimony would later tie this casing to the murder weapon that killed Victim. Police found a flashlight left by Defendant further out in the yard near a gas grill. Victim's wife also found a pair of prescription eyeglasses, picked them up and took them inside the house, and later gave them to police. The exact location where the glasses were found is unclear. Upon examination of the doors, windows, and other areas, police discovered no evidence that Defendant attempted to enter the home itself.

{7} Nearly two years later, utilizing DNA recovered from the eyeglasses and the flashlight, police found a match in a genealogy database. During a subsequent search of Defendant's apartment, police found a bag that contained three handguns, ammunition, and a myriad of gun accessories and magazines. One of the guns in the bag, a Glock .357 (the murder weapon), was connected via ballistic analysis to the bullet that killed Victim. The other two guns were also pistols: a Ruger .9 millimeter and a Browning .380. Police also found a gray hoodie that Defendant had modified to fit snugly around his face and an eyeglass prescription Defendant concedes matched the eyeglasses recovered from the scene of the crime.

B. Procedural History

{8} Defendant was charged with aggravated burglary and felony murder. Defendant filed a motion for directed verdict, contending that he never entered a prohibited space that would support the underlying aggravated burglary charge under Section 30-16-4. The district court orally denied Defendant's motion, first reasoning that the back portal was "visually" part of the dwelling; that the stucco was the same color as the house; and that the portal was covered and had a hard surface floor with entrances to the interior of the home from the portal. Later in its ruling, the district court noted that the portal "does not have a set physical barrier," and the facts could be viewed in such a manner to support "that, although not completely confined, the occupants have an expectation of privacy and quiet enjoyment in the use of their portal."

{9} A closer examination of the district court's ruling reveals uncertainty with respect to the scope of the prohibited space under the aggravated burglary statute. At one point, the district court appeared to indicate that the portal was the outer boundary of the space protected under the statute. Immediately thereafter, however, the district court stated that "the portal—that space—does not have a set physical barrier, the visible barrier is the retaining wall *immediately behind the portal* made up of what appears to be moss rock, and then there is a small gravel path or area off of the hard surface slab" between the retaining wall and the covered portion of the portal. This second statement suggests that the district court viewed the prohibited space under the statute to extend *beyond* the portal itself, up to the point of the retaining wall. This ambiguity resulted in an unclear ruling as to what precisely constituted a prohibited space as contemplated by the aggravated burglary statute in a case where the homicide took place somewhere between the retaining wall that was just beyond the portal and the home itself.

{10} Ultimately, after the district court denied the motion for a directed verdict, Defendant was convicted of aggravated burglary and felony murder. The district court sentenced Defendant to life imprisonment, and Defendant appealed. *See* N.M. Const. art. VI, § 2.

II. DISCUSSION

A. The Portal Is Not a Structure Under the Aggravated Burglary Statute

{11} While Defendant provides a framework for both insufficiency of the evidence and statutory interpretation for legal error, it is uncontested Defendant does not develop any argument that his conviction must be reversed for insufficient evidence—i.e., that "the state's evidence failed to establish beyond a reasonable doubt some or all of the factual elements of the offense charged." *State v. Revels*, 2025-NMSC-021, ¶ 27, 572 P.3d 974 (text only)[3] (citation omitted). Indeed, the State acknowledges that "Defendant does not contest any of the evidence presented—neither at trial nor on appeal." Instead, Defendant's challenge focuses on the construction of New Mexico's aggravated burglary statute, alleging that a portal is not a structure as that term is used in Section 30-16-4.

1. Standard of review

{12} Statutory construction is a question of law subject to de novo review. *State v. Off. of Pub. Def. ex rel. Muqqddin*, 2012-NMSC-029, ¶ 13, 285 P.3d 622 (explaining that construing New Mexico's burglary statute is a matter of statutory construction that this Court reviews de novo); *see also State v. Mestas*, 2016-NMCA-047, ¶ 8, 370 P.3d 805 ("In considering [the d]efendant's argument that his conduct is outside the scope of that described to be burglary . . . , we review the district court's denial of [the d]efendant's motion for a directed verdict de novo.").

2. History of burglary in New Mexico: *Foulenfont* and *Muqqddin*

{13} Both the State and Defendant rely almost exclusively upon *State v. Foulenfont*, 1995-NMCA-028, 119 N.M. 788, 895 P.2d 1329, and *Muqqddin*, 2012-NMSC-029. We, therefore, provide a brief overview of each case to contextualize the parties' arguments.

[3] The parenthetical "(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} In *Foulenfont*, the defendants climbed a chain-link fence surrounding a business that sold mobile homes. 1995-NMCA-028, ¶ 2. The Court of Appeals was required to consider whether a fence "constitute[d] a 'structure' under our burglary statute." *Id.* ¶ 1 (citation omitted). In affirming the district court's dismissal of the charges, the Court of Appeals concluded that the fenced area was not a structure under New Mexico's burglary statute. *Id.* ¶¶ 1, 10. It reasoned that, "unlike a fence, all of the enumerated objects in the statute are capable of completely confining people and their property." *Id.* ¶ 11. Finally, it rejected the state's contention that the mobile home business was receiving disparate treatment due to the fact that it "operate[d] in an outdoor setting." *Id.* ¶ 12. Rather, the Court of Appeals explained, "[t]he burglary statute would be applicable if [the d]efendants had made an unauthorized entry into an office or a mobile home." *Id.* But "[w]here the unauthorized entry merely consists of climbing over a fence, businesses and other open property are protected under our criminal trespass statute." *Id.*

{15} In *Muqqddin*, the Court addressed whether puncturing the gas tank of a van in one case or removing the rear wheels of a car in another fell under the burglary statute. 2012-NMSC-029, ¶¶ 7, 11. More broadly, *Muqqddin* served as a vessel for the Court to convey serious concern regarding the unprecedented judicial expansion of the outer limits of what amounts to protected space under the burglary statute—"an expansion that has occurred without any parallel change in the statute." *Id.* ¶ 1. After a thorough examination of New Mexico's burglary jurisprudence, common-law origins, and legislative intent, we concluded "that our case law has gone astray, and that we must alter our course." *Id.* In reversing the convictions in that case, *id.*, we provided a roadmap of principles to consider when examining whether a particular space is prohibited under New Mexico's burglary statute. We consider these principles while remaining mindful that, "[f]irst and foremost, what is being punished as a felony under Section 30-16-3 is a harmful entry." *Muqqddin*, 2012-NMSC-029, ¶ 60.

{16} Of particular relevance here is the requirement that a space be enclosed to qualify as a structure. *Muqqddin* explained that, "in order for an area to be considered prohibited space under Section 30-16-3, it must have some sort of enclosure" because "[i]t is the nature of the enclosure that creates the expectation of privacy. Enclosure puts the public on notice." *Id.* ¶¶ 44-45. In other words, courts examine the physical nature of the space at issue to discern whether it qualifies as a structure under the burglary or aggravated burglary statutes. *See Mestas*, 2016-NMCA-047, ¶ 27 ("The crucial question in determining whether an area is protected is whether or not its physical characteristics create an '[e]nclosure [that] puts the public on notice.'" (quoting *Muqqddin*, 2012-NMSC-029, ¶ 45 (alterations in original))). *Muqqddin* relied upon *Foulenfont* in reaching its conclusion, reasoning that "[e]ach of the enumerated structures in Section 30-16-3 either inherently has, or has been interpreted to require, some sort of enclosure. Accordingly, we believe it is this enclosed space that the Legislature intended to protect." *Muqqddin*, 2012-NMSC-029, ¶ 44.

{17} Crucially, in considering the outer boundaries of a structure, *Muqqddin* also rejected the imaginary plane theory, which "allow[s] a burglary charge to stand whenever a defendant 'breaks the close' of a structure, meaning the defendant crosses some imaginary plane created by some portion of a structure that is by its nature open to the elements." *Id.* ¶ 46 (citation omitted). We rejected the theory in part because, in addition to a lack of notice, "the concept of an imaginary plane is ambiguous, creating more questions than it answers and [is] subject to prosecutorial abuse." *Id.* ¶ 47. We provided an example highlighting such ambiguity by applying the invisible plane theory to a house—"Would the close of a house extend from the eaves to the foundation, such that stealing a shutter, obviously attached to the outside requiring no entry of the house itself, becomes a burglary?" *Id.* In contrast with the ambiguity that comes with an open structure that is "by its nature open to the elements," we clarified that our "reasoning does not apply to such things as an open window" because "[a] window . . . creates an opening in an enclosure . . . . As such, a burglary can be committed through an open window." *Id.* ¶¶ 46, 48.

{18} Finally, in *Muqqddin*, we cautioned against relying upon burglary jurisprudence from other jurisdictions without examining whether a statute in another jurisdiction "differs so greatly from ours that it serves a different purpose." *Id.* ¶ 28. We provided one case—*State v. Gonzales*, 2008-NMCA-146, 145 N.M. 110, 194 P.3d 725—as an example of such a flawed analysis. *Muqqddin*, 2012-NMSC-029, ¶ 28. The structure in *Gonzales*, which *Muqqddin* described as an open-air porch attached to a commercial building with a concrete floor and a roof that is open on three sides, is sufficiently similar to the portal here that it is necessary to clarify *Muqqddin*'s treatment of *Gonzales*. *Id.* ¶¶ 22, 28. The *Muqqddin* Court explained that *Gonzales* was flawed because it relied upon a case from Georgia, even though the "Georgia statute indicat[es] that a structure or *a part of a structure* can be burglarized, an addition that is absent from New Mexico's statute." *Id.* (referring to *Gonzales*'s reliance on *Garrett v. State*, 578 S.E.2d 460 (Ga. Ct. App. 2002)).

{19} For the reasons that follow, we clarify that, even though *Muqqddin* did not explicitly overrule *Gonzales*, it has little, if any, remaining precedential value. The Court of Appeals' holding in *Gonzales* that the open-air porch constituted a structure conflicts with *Muqqddin*, which explains that entering "some portion of a structure that is by its nature open to the elements" is not burglary in New Mexico. *Muqqddin*, 2012-NMSC-029, ¶ 46. Further, the *Gonzales* Court relied upon *State v. Rodriguez*, 1984-NMCA-034, ¶¶ 4-7, 101 N.M. 192, 679 P.2d 1290, *abrogated by Muqqddin*, 2012-NMSC-029, ¶ 38—a case that endorsed the imaginary plane theory in holding that the open bed of a pickup truck was a prohibited space under the burglary statute. *See Gonzales*, 2008-NMCA-146, ¶ 8 (discussing these facts of, and relying upon, *Rodriguez*). We concluded in *Muqqddin* that *Rodriguez* is no longer good law. *See* 2012-NMSC-029, ¶ 38. Ultimately, the *Muqqddin* Court identified *Gonzales* as one of the cases in which the Court of Appeals significantly expanded the reach of the burglary statute without legislative authorization, which, in turn, supported this Court's conclusion that

our precedent had "gone astray" such that a course correction was necessary. *Id.* ¶¶ 1, 22. As a result, we do not rely upon the faulty analysis applied in *Gonzales*.[4]

3. Post-*Muqqddin* precedent

{20} We have not had occasion to provide guidance squarely addressing the outer limits of what qualifies as protected space under the burglary or aggravated burglary statutes since *Muqqddin*. Nevertheless, in *State v. Holt*, 2016-NMSC-011, 368 P.3d 409, we relied upon *Muqqddin* in the context of breaking and entering. Precedent from our Court of Appeals, though not binding on this Court, likewise supports and is consistent with our mandate set forth in *Muqqddin* establishing that first and foremost courts must examine the physical characteristics of a space to discern whether it qualifies as a structure. *See, e.g.*, *Mestas*, 2016-NMCA-047, ¶ 27.

{21} In *Holt*, the question at issue was whether there was an unauthorized entry, *not* whether the home was a structure. *See* 2016-NMSC-011, ¶ 1. *Holt* is therefore of limited value here. *See Dominguez v. State*, 2015-NMSC-014, ¶ 16, 348 P.3d 183 ("[T]he general rule is that cases are not authority for propositions not considered." (internal quotation marks and citation omitted)). Nevertheless, we briefly address *Holt* to highlight that it defined the boundary of the home in a manner consistent with the structural mandates set forth in *Foulenfont* and *Muqqddin*. *Contra dissent* ¶ 81 (suggesting that *Holt* embraced an abandonment of portions of *Foulenfont*). In discerning whether the entry in *Holt* was unauthorized, we relied upon *Muqqddin* to reiterate that courts examine the physical nature of the structure to define the outer boundary of an enclosure. *Holt*, 2016-NMSC-011, ¶¶ 14, 17. Based on this approach, we concluded that "putting one's fingers behind a window screen affixed to a residential dwelling is an intrusion into an enclosed, private, prohibited space" because a window screen provides protection against unauthorized intrusion. *Id.* ¶ 18. Put simply, the window screen, along with the rest of the secured home, was capable of completely confining people and their property; the screen formed a sufficiently sealed-off enclosure that put the public on notice.

{22} Mestas is likewise consistent with *Muqqddin* and the principles we set forth today. In *Mestas*, the Court of Appeals considered whether a clerk's office in a hotel was an enclosure under the burglary statute. 2016-NMCA-047, ¶¶ 2, 3, 24. Quoting *Muqqddin*, it reiterated that "[t]he crucial question in determining whether an area is protected is whether or not its physical characteristics create an '[e]nclosure [that] puts the public on notice.'" *Mestas*, 2016-NMCA-047, ¶ 27 (quoting *Muqqddin*, 2012-NMSC-029, ¶ 45 (alterations in original)). It relied upon *Foulenfont* to support that in order for a space to be enclosed under *Muqqddin*, it "must be 'capable of completely confining people and their property.'" *Mestas*, 2016-NMCA-047, ¶ 24 (quoting *Foulenfont*, 1995-NMCA-028, ¶ 11). The *Mestas* Court called upon this language throughout the opinion, from start to finish. *See, e.g.*, *id.* ¶ 2 (stating that "[a] mechanized 'shutter' or 'shield' was built into a recess in the ceiling above the counter, allowing employees to *completely enclose* the desk area (thereby preventing any access from the lobby)" (emphasis added)); *id.* ¶ 22 ("The clerk's office was designed to remain separate from the public lobby area: the only way to enter was through a locked door or over a chest-high counter that could *be completely shut with a retractable barrier*." (emphasis added)); *id.* ¶ 25 ("Here, the clerk's office was capable of *completely confining* the motel clerk, his desk, and the locked drawer containing cash: a locked door prevented access from the lobby, and the opening above the chest-high counter could be closed and secured. In short, the enclosure's *physical characteristics* were such that a reasonable person would expect some protection from unauthorized intrusions." (emphasis added) (internal quotation marks and citation omitted)). If any confusion remained as to what the *Mestas* Court meant when it stated that the office in that case was capable of completely confining people and their property, it used different terms to reiterate that "[t]he chest-high counter separating the public hotel lobby from the otherwise *sealed-off* clerk's area was sufficient to create such an enclosure and put the public on notice that it was off-limits." *Id.* ¶ 27 (alteration in original) (emphasis added).

{23} In *State v. Shelby*, 2021-NMCA-064, 499 P.3d 671, the defendant did not contest whether the home was a structure. Instead, the defendant contended that (1) the home was not a dwelling because the interior of the home was under construction, (2) it did not have electricity or running water, and (3) the house was not sufficiently used as living quarters to qualify as a dwelling. *See id.* ¶ 1. *Shelby*, like *Holt*, is therefore of limited value here. *See Dominguez*, 2015-NMSC-014, ¶ 16 ("[T]he general rule is that cases are not authority for propositions not considered." (internal quotation marks and citation omitted)); *contra dissent* ¶¶ 71, 81 (relying upon *Shelby* and suggesting that it abandoned *Foulenfont*). Nevertheless, *Shelby* abided by the principle that a structure must be fully enclosed or sealed-off in a manner consistent with our opinion today. *Shelby* cited *Mestas* to support its view that, "under *Muqqddin*, we must examine

[4] The dissent, in ¶ 85, contends that Muqqddin critiqued Gonzales, but ultimately endorsed its result. We disagree. Nothing in the Muqqddin opinion suggests the Muqqddin Court endorsed the result in Gonzales, and we will not read language into Muqqddin that does not exist. Indeed, if Muqqddin intended to critique the approach of Gonzales while endorsing the result, it certainly could have done so, as it did with a different Gonzales case in the same opinion. See 2012-NMSC-029, ¶¶ 30-31. The dissent further contends that "Gonzales is sufficiently analogous . . . to support that the portal here is a structure." Dissent ¶ 83. But the dissent offers nothing from our jurisprudence supporting the result reached in Gonzales, a case that is not binding on this Court. Importantly, we note that the State did not rely upon Gonzales, 2008-NMCA-146, in its briefing before the Court. Indeed, at oral argument, the State asserted that Gonzales "doesn't seem to make a difference" in this case. It is not our practice to promulgate law without argument from the parties, and we decline to do so here. See generally Elane Photography, LLC v. Willock, 2013-NMSC-040, ¶ 70, 309 P.3d 53.

the physical characteristics of an area to determine whether the space is private, enclosed, or *sealed-off* from public entry and protected by the burglary statute." *Shelby*, 2021-NMCA-064, ¶ 8 (emphasis added) (citing *Mestas*, 2016-NMCA-047, ¶ 27). It described the home in that case as having a "fully finished and secure exterior," *id.* ¶ 16, as having "a screened-in porch, enclosed with a roof, walls, doors, windows, and locks," *id.* ¶ 12. Put simply, the home was enclosed—sealed-off in a way that put the public on notice that it was a prohibited space. While the dissent highlights the interior furnishing of the space, *dissent* ¶ 72, the *Shelby* Court concluded that "the degree to which [the v]ictim moved his possessions into the house or the degree to which the interior of the house is finished are not necessarily the most significant considerations in this case because the house had a *fully finished and secure exterior* and it was actually used as living quarters." 2021-NMCA-064, ¶ 16 (emphasis added). Indeed, the common thread apparent in *Muqqddin* and subsequent precedent is not how the space was being used but the requirement that the space be enclosed. *See enclose*, *Merriam-Webster's Collegiate Dictionary* (11th ed. 2020) ("to close in: surround (enclose a porch with glass)").

{24} While the dissent suggests that these post-*Muqqddin* cases and indeed *Muqqddin* itself establish an attempt to somehow "reinterpret" *Foulenfont* or abandon *Foulenfont*'s inquiry that a structure must be capable of completely confining people and their property, we believe our analysis sufficiently explains why that is not the case. *See dissent* ¶ 81 (suggesting that *Holt* recognized a "reinterpretation of *Foulenfont*"); *id.* ¶¶ 79-81 (suggesting that post-*Muqqddin* precedent largely abandoned the *Foulenfont* requirement that a space must be "'capable of completely confining people and their property'" in order to qualify as a structure (quoting *Foulenfont*, 1995-NMCA-028, ¶ 11)). Indeed, *Mestas* alone disproves this point, explicitly relying upon *Foulenfont* and stating no less than four separate times that the space there was either capable of being completely confined or was sealed-off. *See Mestas*, 2016-NMCA-047, ¶¶ 2, 22, 24, 25, 27. *Contra dissent* ¶ 81. The result is that post-*Muqqddin* precedent remains consistent in requiring that a space be fully enclosed to qualify as a structure and, in contrast with each of these cases and the dictionary definition, the dissent does not explain how a portal that is, as here, completely open on two sides could qualify as being fully enclosed or "sealed-off" like the clerk's office in *Mestas* or either of the homes in *Shelby* and *Holt*.

4. The portal is not a structure

{25} Here, the portal does not qualify as a prohibited space under New Mexico's aggravated burglary statute because it plainly is not "capable of completely confining people and their property." *Foulenfont*, 1995-NMCA-028, ¶ 11. Therefore, whether we analyze the portal under the statute's "dwelling" or its "other structure," the portal would not qualify as a prohibited space under even the broadest reading of the statute; it is not a structure. *See* § 30-16-4 (listing certain structures, including a "dwelling," and providing a catchall for "other structure[s]"); *see also* UJI 14-1631 NMRA (defining a "dwelling house" as "any *structure*, any part of which is customarily used as living quarters" (emphasis added)). Rather, the portal is more like "some portion of a structure that is by its nature open to the elements," which is not a prohibited space under our case law. *See Muqqddin*, 2012-NMSC-029, ¶¶ 46-47. Even under a generous interpretation of the facts, as the State construes them, a portal with two open sides would not qualify as a structure because, again, those two sides cannot be enclosed or sealed-off in any way. *See Foulenfont*, 1995-NMCA-028, ¶ 11 ("[U]nlike a fence, *all of the enumerated objects* in the statute are capable of completely confining people and their property." (emphasis added)); *accord Mestas*, 2016-NMCA-047, ¶¶ 22, 25 (concluding that an office in a motel was a structure under the burglary statute because "the only way to enter was through a locked door or over a chest-high counter that could be completely shut with a retractable barrier").

{26} In other words, under the facts of this case, there was simply no way to close off the two sides of the portal that were open to the elements in a way that would provide any meaningful distinction between (1) trespass by jumping the fence into the backyard and (2) crossing the imaginary plane into the portal that, if we were to affirm the district court, would constitute aggravated burglary. *See Muqqddin*, 2012-NMSC-029, ¶ 46 (rejecting the imaginary plane theory that would "allow a burglary charge to stand whenever a defendant . . . crosses some imaginary plane created by some portion of a structure that is by its nature open to the elements"); *Foulenfont*, 1995-NMCA-028, ¶ 12 (explaining that the criminal trespass statute rather than burglary applies "[w]here the unauthorized entry merely consists of climbing over a fence"). Accordingly, a conclusion that the portal itself is a structure would contradict our rejection of the invisible plane theory in *Muqqddin*. As the district court itself stated, the portal "does not have a set physical barrier," and it is "not completely confined." Therefore, the portal does not satisfy the requirements set forth in *Foulenfont* and *Muqqddin* because Defendant necessarily is being punished for crossing an invisible plane when the portal is plainly open to the elements on two sides with no physical barrier.

{27} To shore up its conclusion that the portal is a protected space under the aggravated burglary statute, the district court noted that the facts could be viewed to support that "the occupants have an expectation of privacy and quiet enjoyment in the use of their portal." But that is not the test. The Legislature defines aggravated burglary, in relevant part, as "the unauthorized entry of any . . . dwelling or other structure"—not of every space where an occupant has an expectation of privacy. Section 30-16-4. Therefore, contrary to the district court's reasoning, we clarify that an expectation of privacy alone does not transform a space into one that is protected under the aggravated burglary statute. "[B]urglary's original purpose, the protection of the security of habitation," remains relevant, *Muqqddin*, 2012-NMSC-029, ¶ 34, but "burglary has a greater purpose than merely protecting property," *id.* ¶ 39. Instead, our burglary statutes "aim to protect against the feeling of violation and vulnerability that occurs when a burglar invades one's personal space." *Id.* ¶ 43. We recognized in *Muqqddin* that "[o]ne does not have the same feeling of personal violation when gas has been siphoned from

our vehicle or when someone steals a wheel as we do when an intruder has been in our home or office rifling through our most intimate and treasured belongings." *Id.* While more intrusive than siphoning gas, similarly, here, we recognize that the intrusion into a portal, like an intrusion into any unenclosed porch, stoop, or other space adjacent to one's home, does not invoke the same degree of violation or fear as that which occurs when a burglar invades the interior of one's home such as the living room or bedroom—the "most intimate" of spaces. *Id.* And we emphasize that unauthorized entry of a portal is punishable under other statutes. *See id.* ¶ 40 ("The law [against burglary] was not designed solely to deter trespass and theft, as those are prohibited by other laws."). Our conclusion is consistent with the Legislature's authority to define crimes as it sees fit and accordingly honors its choice not to include one's unenclosed backyard as a space that can be burglarized. *See id.* ¶¶ 37, 50 (concluding that "[i]t is for the Legislature alone to define statutory criminal acts" and explaining that it is a significant factor in our analysis if the criminal acts charged are punished as "lesser crimes").

{28} Put simply, it is the physical barrier of the structure that creates the expectation of privacy, not the other way around. *Id.* ¶¶ 44-45 (explaining that "it is th[e] enclosed space that the Legislature intended to protect[;] . . . [i]t is the nature of the enclosure that creates the expectation of privacy"); *see also Holt*, 2016-NMSC-011, ¶¶ 17-18 (concluding that "putting one's fingers behind a window screen affixed to a residential dwelling is an intrusion into an enclosed, private, prohibited space . . . [because i]t is reasonable for the citizens of New Mexico to expect that their window screens afford them protection from unauthorized intrusions"). Accordingly, we hold that the unauthorized entry of the portal is not within the scope of "unauthorized entry of any . . . dwelling or other structure" as defined in Section 30-16-4, and we reaffirm that the focus is whether the physical nature of the structure is sufficiently enclosed such that a reasonable person would expect protection from unauthorized entry. *See Muqqddin*, 2012-NMSC-029, ¶ 45. The portal contained no screen, door, or other barrier that a reasonable person would expect to provide some level of protection from unauthorized intrusion or communicate to another person that the space is prohibited for purposes of the aggravated burglary statute.

{29} Instead, the district court's difficulty in defining the structure serves as an example of the ambiguity this Court warned of in *Muqqddin*. At times, the district court appeared to rule that the portal was the outer limit of the structure under the statute, and at other times it ruled that the structure extended beyond the portal itself, at least to the retaining wall beyond the portal. *See Muqqddin*, 2012-NMSC-029, ¶ 47 (explaining that "the concept of an imaginary plane is ambiguous, creating more questions than it answers and [encouraging] prosecutorial abuse"). This ambiguity and uncertainty as to where the structure begins and ends—especially in a case where the homicide took place somewhere between the retaining wall and the home—highlights the precise concerns expressed in *Muqqddin*.

{30} As a point of illustration, the district court concluded that—although it had no physical barrier, was not a confined space, and was "an extra room *outside*" of the house—the portal was nonetheless a structure because it had outdoor patio furniture and the district court heard testimony that it was an extension of the living space. If we were to define a statutorily prohibited space by a victim's furnishings or subjective testimony with respect to the use of the space, as the district court did here, victims who spend most of their time outside but who cannot afford to purchase patio furniture may only receive the protection of trespass, whereas victims who have the means to furnish their patio but may not spend any time on the patio would receive the protection of the burglary statute. This uncertainty would likely result in a fact-intensive inquiry based upon testimony from each victim, as opposed to the approach outlined under *Muqqddin*, which objectively examines whether the structure is an enclosure capable of protecting from intrusion. *See Muqqddin*, 2012-NMSC-029, ¶ 45 (explaining that "[t]he proper question is whether the nature of a structure's composition is such that a reasonable person would expect some protection from unauthorized intrusions" (internal quotation marks and citation omitted)). We decline to follow such an inequitable and uncertain approach. *See id.* ¶ 47.

{31} *Muqqddin* also teaches that "courts must be cognizant of the disparity in potential penalties that can stem from a burglary charge due to its unique place in our jurisprudence." *Id.* ¶ 62. There, the Court examined the potential disparity between the burglary of a commercial building or the passenger space of a vehicle and attempting to steal gasoline by puncturing a hole in the tank of a car. *Id.* ¶¶ 62-63. Here, a disparity would result if we interpreted the statute to punish entering the most intimate of spaces, such as a living room or bedroom, the same as climbing over a gate in a backyard, the entry the State contends constitutes aggravated burglary in this case. Accordingly, this disparity likewise counsels in favor of a conclusion that the portal is not a prohibited space.

{32} Nonetheless, even if we were to view the portal as an "other structure" that is not specifically enumerated in the aggravated burglary statute—as the district court appeared to do at times—the rule of ejusdem generis also supports our conclusion that the portal is not a prohibited space. *See* § 30-16-4 ("Aggravated burglary consists of the unauthorized entry of any vehicle, watercraft, aircraft, *dwelling* or *other structure*." (emphasis added)). Ejusdem generis provides "that where general words follow an enumeration of persons or things of a particular and specific meaning, the general words are not construed in their widest extent but are instead construed as applying to persons or things of the same kind or class as those specifically mentioned." *Muqqddin*, 2012-NMSC-029, ¶ 29 (text only) (citation omitted). That is, any other structure that is not specifically enumerated must contain "an enclosure similar to a vehicle, watercraft, aircraft, or dwelling, and not just a fenced-in area." *Id.* (text only) (citation omitted). Here, the portal itself does not include a gate, screen, door, or other feature that would aid in fully enclosing the space. Therefore, to conclude that the portal is a structure under the aggravated burglary statute would require us to construe the portal in such a broad manner that it would contradict the

statutory class of items because "all of the enumerated objects in the statute are capable of completely confining people and their property." *See Foulenfont*, 1995-NMCA-028, ¶ 11. As the portal is not capable of completely confining people or property, we cannot reach such a conclusion.

{33} Finally, it is a bedrock precept of the law that a crime "must be defined with appropriate definiteness." *State v. Bybee*, 1989-NMCA-071, ¶ 12, 109 N.M. 44, 781 P.2d 316 (quoting *Pierce v. United States*, 314 U.S. 306, 311 (1941)). As a result, even if we were uncertain as to whether the portal constituted a structure under the aggravated burglary statute, such uncertainty clearly raises "serious doubts as to whether the Legislature intended to punish [Defendant's] actions as [aggravated] burglary. Under the rule of lenity, that ambiguity must be resolved in" Defendant's favor. *Muqqddin*, 2012-NMSC-029, ¶ 58. We reaffirm that, "[i]f the Legislature wants to expand burglary, blur the lines between crimes, and create overlaps, then it should be left to the Legislature to do so. But in the absence of such legislative action, trial courts and prosecutors should exercise caution in the use of *judicial* power to act as surrogates for that which the Legislature has not done." *Id.* ¶ 63.

{34} At its core, the dissent suggests that a structure for purposes of the burglary and aggravated burglary statutes should be governed by an individual's subjective expectation of privacy rather than the physical nature of the space, upon which an objectively reasonable person would expect protection from unauthorized intrusion. *Dissent* ¶¶ 55, 58. We find this approach unworkable and unsupported by precedent. Notably, the dissent's interpretation of the burglary statue represents an expansion without legislative authorization to include any space that an individual subjectively believes to be private. This interpretation ignores the requirement that crimes must be sufficiently defined such that a person receives notice of what is illegal, and what is not. *See Pierce*, 314 U.S. at 311 ("[J]udicial enlargement of a criminal act by interpretation is at war with a fundamental concept of the common law that crimes must be defined with appropriate definiteness."); *accord Muqqddin*, 2012-NMSC-029, ¶¶ 47-49 ("Without . . . legislative guidance, the courts should not be placed in the position of inventing fictions to expand the definition of criminal activity. . . . This is not the first time our courts have cautioned against the continued expansion of the crime of burglary without legislative license."). Indeed, "[i]f the Fourteenth Amendment is violated when a person is required to speculate as to the meaning of penal statutes . . . or to guess at (the statute's) meaning and differ as to its application, . . . the violation is that much greater when, because the uncertainty as to the statute's meaning is itself not revealed until the court's decision, a person is not even afforded an opportunity to engage in such speculation before committing the act in question." *Bouie v. City of Columbia*, 378 U.S. 347, 352 (1964) (internal quotation marks and citations omitted).

{35} Under the dissent's view, a person would have no opportunity to even engage in speculation as to a victim's subjective expectation of privacy before committing the act in question, which the dissent suggests governs whether entering a particular space is a crime. *Dissent* ¶¶ 55, 58-59, 70 ("[T]he expectation of privacy and the security of the inhabitant should govern this analysis" rather than the nature of the structure, which the dissent relegates to a mere "architectural tool"). Applying the dissent's rationale, the meaning of the "structure" requirement contained within the aggravated burglary statute would not be revealed until a victim testifies at trial and expresses their view of privacy, which inevitably varies person to person, city to city. Furthermore, in the unfortunate circumstance where a victim has been killed or otherwise incapacitated and no one else is available to testify, it is unclear how the state would establish the inhabitant's subjective expectation of privacy. Such a standard is not only unworkable—it raises constitutional concerns that cannot be overcome. *See Bouie*, 378 U.S. at 351. ("'[A] statute which either forbids or requires the doing of an act in terms so vague that [people] of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law[.]' . . . 'No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.'" (citation omitted)). Under this same analysis, we disagree with the dissent's view that whether a space is a structure prohibited by the burglary statute is a question for the jury. *See dissent* ¶ 89.

{36} As a final but important note, none of the cases upon which the dissent relies support that an individual's subjective expectation of privacy governs the analysis. For example, in *Holt*, we did not focus on whether the victim thought the space at issue was private in order to discern whether it was a structure that could be entered. *See generally* 2016-NMSC-011, ¶¶ 17-19. Nor did the Court in *Muqqddin* examine whether there was sufficient testimony to support the subjective expectation of privacy with respect to the gas tank or tires. In *Mestas*, a case the dissent heavily relies upon, the Court of Appeals engaged in no discernable analysis as to whether the hotel clerk subjectively believed the space was a structure. Instead, it focused on the physical characteristics of the space to discern whether it was a structure within the scope of the burglary statute. *See* 2016-NMCA-047, ¶ 27 ("The crucial question in determining whether an area is protected is whether or not its *physical characteristics* create an enclosure that puts the public on notice." (emphasis added) (text only) (citation omitted)); *id.* ¶ 25 ("[T]he enclosure's *physical characteristics* were such 'that a reasonable person would expect some protection from unauthorized intrusions.'" (emphasis added) (quoting *Muqqddin*, 2012-NMSC-029, ¶ 45)); *id.* ¶ 29 (relying upon "the *physical attributes* of the clerk's area" in upholding the defendant's convictions (emphasis added)). Put simply, the test is whether the physical composition of the structure is such that an objectively "'reasonable person would expect some protection from unauthorized intrusions,'" rather than the subjective expectations of the individual. *Muqqddin*, 2012-NMSC-029, ¶ 45 (citation omitted); *accord Holt*, 2016-NMSC-011, ¶ 16 (explaining that the relevant expectation of "'privacy and the victim's feeling of being personally violated'" under the modern burglary statute "extends to all *enclosed*, private, prohibited spaces." (emphasis added) (citation omitted)). With

this perspective in mind, we proceed to address the State's arguments to support that the portal is a structure under the aggravated burglary statute.

5. The State's arguments are unpersuasive

{37} *Foulenfont*, according to the State, is distinguishable on two grounds: (1) the space at issue in *Foulenfont* was a commercial property, and (2) unlike the portal, a fence "surrounding an open air storage yard is not" an enclosure under the burglary statute. First, the Court of Appeals in *Foulenfont* did not distinguish between commercial and residential property. Instead, as discussed above, it distinguished between enclosed and open-air spaces, reasoning that, "unlike a fence, all of the enumerated objects in the statute are capable of completely confining people and their property." *Foulenfont*, 1995-NMCA-028, ¶ 11. And, in contrast with the State's second contention that the nature of the property as an "open air storage yard" controlled the *Foulenfont* Court's analysis, the Court rejected the notion that the mobile home business was receiving disparate treatment due to the fact that it "operate[d] in an outdoor setting." *Id.* ¶ 12. Rather, the Court of Appeals explained, "The burglary statute would be applicable if [the d]efendants had made an unauthorized entry into an office or a mobile home." *Id.*

{38} As to *Muqqddin*, the State largely avoids grappling with the legal principles established by this Court, instead contending that the case is factually distinguishable because "here the portal is not an open-air space or property left in the open to public purview." In further attempting to distinguish *Foulenfont* and *Muqqddin*, it is clear that the State either misunderstands or misconstrues the facts before this Court. For example, as a distinguishing characteristic, the State contends that "there was no artificial plane that required breaking to enter, rather Defendant entered the portal when he climbed over the *portal gate*" (emphasis added). The State further characterizes the portal as an "enclosed secluded portal with a locked gate." However, while the backyard was gated-in, it is clear upon review of the evidence that the portal itself does not include a gate, nor was it enclosed under our case law. Rather, photographic evidence establishes that the portal was completely open on two sides. The district court recognized as much, stating that the portal did "not have a set physical barrier," and that it was "not completely confined." Therefore, the State's conclusion that the portal was enclosed or that Defendant committed burglary when he jumped into the backyard is inconsistent with the facts and our case law.

{39} Finally, the State quotes *State v. Lara*, 1978-NMCA-112, ¶ 5, 92 N.M. 274, 587 P.2d 52, to support that the portal "was burglarized by Defendant because it 'was part of the structure used as living quarters.'" *Lara* is of limited value here because it addressed whether a garage was part of the house when it was attached to and shared an interior wall with the house but "there was no direct access to the interior of the house." *Id.* ¶ 6. Therefore, the *Lara* Court addressed whether the lack of a direct entry into the home meant that the garage failed to qualify as a structure, *not* whether the garage was sufficiently enclosed to constitute a prohibited space under the burglary statute. Indeed, there is no dispute here that the portal contained two doors leading directly into the house. Accordingly, *Lara* provides little guidance as the question here—whether the portal was sufficiently enclosed—was not present in *Lara*.

{40} Unpersuaded by the State's arguments, we conclude that the portal is not a structure. Accordingly, we must vacate Defendant's aggravated burglary and felony murder convictions.

6. Retrial is permitted on felony murder and any legally adequate predicate felony

{41} In light of our conclusion that Defendant's convictions for aggravated burglary and felony murder must be vacated, we must consider whether double jeopardy bars retrial. "Double jeopardy law governs the circumstances under which the state can prosecute a defendant a second time." *Revels*, 2025-NMSC-021, ¶ 19. When a defendant is acquitted, retrial is barred. *Id.* ¶¶ 19, 23. "An acquittal occurs on appeal when an appellate court reverses for insufficient evidence, because that is tantamount to a finding that the [s]tate's evidence failed to establish beyond a reasonable doubt the factual elements of the offense charged." *Id.* ¶ 20. As the State acknowledged in its briefing before the Court, however, Defendant does not contest any of the evidence presented to support the offenses.

{42} Instead, Defendant's sole argument is that the portal is not a structure under the aggravated burglary statute as a matter of law. "Appellate reversal on any grounds other than evidentiary insufficiency is considered reversal for trial error," which does not bar a retrial because "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." *Id.* ¶ 21 (internal quotation marks and citation omitted). Under such a circumstance, "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.* (internal quotation marks and citation omitted). Indeed, Defendant conceded at oral argument that remand for a new trial is a viable remedy and requested such relief in his briefing before this Court. Because we vacate Defendant's convictions for aggravated burglary and felony murder on the basis of trial error, the direct-remand rule[5] does not apply, and "the State may elect to reprosecute him on th[ose] charge[s] if the State determines it can proceed on the basis of a legally adequate predicate felony." *Id.* ¶ 48; *accord id.* ¶ 38 (concluding that reversal for trial error permits "retrial on the same or lesser charge").

[5] Defendant asserts that "this Court has authority to remand for an entry of judgment on [a] lesser included offense," thus invoking the direct-remand rule. But, as we clarified in Revels, the direct-remand rule only allows an appellate court to "'order resentencing on an adequately proven lesser included offense'" when it reverses on the basis of insufficient evidence, not trial error. ¶¶ 42, 48 (citation omitted).

B. Defendant's Jury Instruction Argument Is Moot

{43} Next, Defendant contends that the district court committed reversible error when it inserted the word "portal" into the jury instruction for aggravated burglary. The substance of Defendant's argument is the same as what he presented under the first issue—that a portal is not a structure under the aggravated burglary statute. For example, Defendant argues that "the district court's addition of 'portal' to the burglary instruction resulted in impermissibly broadening the reach of the burglary statute beyond what the [L]egislature intended." He similarly argues that the district court "amended the UJI in a way contrary to this Court's emphasis on enclosure in its analysis of burglary in *Muqqddin*." Given our conclusion that the portal in this case is not a structure under the aggravated burglary statute, the issue is rendered moot; thus, we need not address it further. *City of Las Cruces v. El Paso Elec. Co.*, 1998-NMSC-006, ¶ 18, 124 N.M. 640, 954 P.2d 72 (explaining that, as a general matter, we do not decide moot issues and we will not render advisory opinions).

C. Evidentiary Error

{44} Finally, Defendant alleges that the district court erred under Rule 11-403 NMRA and 11-404(B)(2) NMRA in admitting the guns unrelated to the shooting as well as evidence of boxes of ammunition, accessories, and other items unconnected to the murder weapon or the shooting. Even though we vacate Defendant's convictions on other grounds, we "address this issue to provide guidance" in the event "the issue arises on remand." *State v. Alvarez-Lopez*, 2004-NMSC-030, ¶ 37, 136 N.M. 309, 98 P.3d 699; *accord State v. Samora*, 2016-NMSC-031, ¶ 36, 387 P.3d 230.

1. Preservation and standard of review

{45} Defendant preserved the alleged error through (1) filing a motion in limine and (2) objecting to the State's proffered evidence under Rule 11-404(B). Defendant objected to the introduction of the unrelated firearms and other ammunition because the evidence only connected the murder weapon to the crime—thus, the other items "are not relevant to the current incident and would be highly prejudicial to [D]efendant." Defendant made largely the same argument at a pretrial hearing on the motion, reiterating that the evidence was unrelated propensity evidence that should not be admitted. The standard of review for a preserved challenge to the admission of evidence under Rules 11-403 and 11-404(B) is an abuse of discretion. *See State v. Romero*, 2019-NMSC-007, ¶ 26, 435 P.3d 1231. The district court's decision to admit or exclude evidence is generally "within the sound discretion of the trial court, and its determination will not be disturbed on appeal in the absence of an abuse of discretion." *Id.* "In testing the balance between the relevant probative value and prejudicial effect of evidence under Rule 11-403, an abuse of discretion results when the trial court's decision is contrary to logic and reason." *Id.* (text only) (citation omitted).

2. The district court's ruling and trial

{46} The district court ruled:

> With respect to relevance, the court finds that the [murder weapon] that was recovered . . . is relevant. The court finds that the circumstances under which it was found is also relevant and material, that it was located in an inner bag, which was within an outer bag, and that there was ammunition. . . . The court finds also relevant the existence of a second barrel for the .9 millimeter [gun] as well as a second barrel for the .357 [murder weapon]. It looks like the .380 [gun], other than that it was found there [at the apartment] is . . . nothing to indicate that it had been modified, as the argument I understand the State's argument that the .357 [murder weapon] was [modified], and that the capacity to also modify the .9 millimeter as he also had those components, so other than mention that it was found with the two other firearms, I don't think there is anything else relevant about that firearm, but . . . the court will allow the testimony as to the circumstance under which the search warrant was executed, and the firearms were located, how they were packaged . . . but the court over objection would allow the 404(B) evidence with respect to those objects.

By contrast, the district court excluded evidence of any flashlights recovered from the search, concluding that it was "propensity-type evidence." It excluded portable tool kits, reasoning that there was no evidence that any tool was used to gain entry. It excluded gloves because "there is nothing that ties it to the crime." Finally, it excluded a notebook that contained a handwritten list of addresses (that did not include Victim's address) because "it takes a leap, which is based on innuendo or propensity as to what the other addresses meant."

{47} At trial, the State admitted physical evidence in addition to many dozens of photos of the other guns and accessories, as well as hours of witness testimony discussing the evidence—evidence that it never connected to the crime.

3. The State's argument on appeal

{48} Before this Court, the State's response to Defendant's claim of error focuses largely upon Rule 11-404(B)—the same rule on which the State at the district court appeared to concede. At the pretrial hearing on the State's notice of intent to introduce 11-404(B) evidence, the State "concede[d] [the guns other than the murder weapon] are not appropriate for purposes of 404(B)." On appeal, by contrast, the State argues that "[t]he weapons and accessories showed Defendant's access to, possession of, and knowledge of the Glock .357 murder weapon, its specialized ammunition, the other weapons and their accessories." The State's argument is circular, seeming to suggest that the other two guns and accessories somehow showed access to, possession of, and knowledge of the murder weapon itself. The State does not persuasively explain how possession of one gun shows possession or knowledge of another, unrelated gun. The State outlines the required elements of the aggravated burglary and felony murder instructions, but again does not explain how the evidence goes to prove any of the elements of those crimes. Nevertheless, we

need not affirmatively address the State's Rule 404(B) arguments in light of our conclusion that the evidence is irrelevant, which we explain below. But even if the evidence were relevant, we further conclude that the probative value of the evidence is substantially outweighed by the danger of unfairly prejudicing Defendant.

4. Admission of the other guns and accessories was error

a. Relevance

{49} Evidence is only admissible if it is relevant. "Evidence is relevant if . . . it has any tendency to make a fact more or less probable than it would be without the evidence, and . . . the fact is of consequence in determining the action." Rule 11-401 NMRA. In its brief, the State contends that "there is no question as to" the relevance of the evidence if "the prior act evidence goes directly to prove an element of the crime" under Rule 11-402 NMRA and that "the evidence proffered by the State was probative on . . . essential elements of the charged crime" (omission in original) (internal quotation marks and citation omitted). But the State fails to identify a prior act or provide any analysis as to what element of a crime the evidence supports, so we cannot discern how the State believes the other weapons and accessories are relevant. And without any evidence tying the other guns or accessories to the crime, it does not make any consequential fact more or less probable under Rule 11-401.

{50} On this point Defendant cites two out-of-state cases. Defendant first relies on a provision from *Agatheas v. State*, 77 So. 3d 1232, 1236 (Fla. 2011), in asserting that "in order for evidence of a firearm to be admissible as relevant in a criminal trial, the State must show a sufficient link between the weapon and the crime" (text only) (citation omitted). *Agatheas* goes on to explain that the general rule applied by appellate courts in Florida "is that if there was no evidence linking any of these firearms to the charged crime, evidence of the firearms would be *irrelevant*, and should have been excluded upon proper objection." *Id.* (internal quotation marks and citation omitted). Defendant also relies upon *Alanis v. State*, 891 S.W.2d 737, 741 (Tex. App. 1994), which similarly provides that "possession of a firearm is admissible only if necessary to understand the facts and circumstances of the present offense of murder." Defendant relies upon these cases to conclude that "[t]he other guns and accessories had no relationship to the offense other than" for purposes of propensity.

{51} We agree with the reasoning provided in these out-of-state cases. Put simply, the two guns and accompanying ammunition introduced in this case—in contrast with the murder weapon and accessories connected to it—are not relevant because they do not make any consequential fact more or less probable under Rule 11-401. There is no evidence that Defendant had more than one firearm on the date of the shooting. Victim was shot a single time, and there was only one casing recovered from the scene. That casing matched the Glock .357 murder weapon—not the .9 millimeter or the .380. Further, there is no evidence whatsoever that the other two guns or accessories found in the backpack were in Defendant's possession on the night in question. The State cites no evidence that Defendant was carrying a backpack or tactical bag, which is where the majority of the items were located in the apartment. The State fails to refer the Court to any evidence on appeal establishing that Defendant even *owned* any of the other guns or accessories on the date of the crime, rather than obtaining them sometime in the two years between the shooting and the subsequent search of Defendant's apartment. We conclude that the evidence is irrelevant.

b. Probative value

{52} But even if the State were to establish on remand that the evidence were relevant and otherwise admissible, it may nevertheless be excluded "if its probative value is substantially outweighed by a danger of . . . unfair prejudice." Rule 11-403. Thus, "[i]f the evidence is probative of something other than propensity," a court still "balance[s] the prejudicial effect of the evidence against its probative value." *State v. Lovett*, 2012-NMSC-036, ¶ 32, 286 P.3d 265 (internal quotation marks and citation omitted). Despite acknowledging that Rule 11-403 is pertinent to our admissibility framework, the State on appeal engages in no discernable analysis to assist the Court in determining whether the probative value of the gun evidence was substantially outweighed by its prejudicial effect to Defendant. Defendant takes a similar approach, first noting that he objected at trial under Rule 11-403 and proceeding to briefly argue before this Court that (1) the gun evidence is irrelevant as well as more prejudicial than probative and (2) the evidence was inadmissible propensity evidence under Rule 11-404. Nevertheless, we have no trouble concluding under our precedent that any limited probative value of introducing two unrelated guns and a plethora of unrelated accessories is substantially outweighed by the danger of unfairly prejudicing Defendant. In *Casaus v. State*, for example, this Court concluded that the prejudicial impact of admitting a gun into evidence, where the record suggested that the gun was *not* the one used in the crimes charged, outweighed its probative value requiring reversal. *See* 1980-NMSC-017, ¶¶ 3, 8-9, 94 N.M. 58, 607 P.2d 596. *Casaus* is consistent with this Court's more recent Rule 11-403 precedent. *Compare, e.g.*, *State v. Chavez*, 2024-NMSC-023, ¶ 35, 562 P.3d 521 (concluding that the limited probative value of a single statement in a jail phone call made by defendant was "undoubtedly substantially more prejudicial than probative" because the remainder of the statements in the call were pure propensity evidence), *with State v. Casillas*, S-1-SC-32911, dec. ¶¶ 17, 19, 45 (N.M. May 9, 2013) (nonprecedential) (concluding the district court did not err in allowing evidence of the defendant's prior possession of a gun because it was offered along with fingerprint evidence to establish that the gun itself was the murder weapon, in contrast with, as here, offering the weapon as mere propensity evidence).[6] Accordingly, the district court erred in admitting the irrelevant and highly prejudicial evidence of the other guns, ammunition, and accessories.

III. Conclusion

{53} For the foregoing reasons, we conclude the district court erred in determining that the portal is a prohibited space under the aggravated burglary statute. We, therefore, vacate Defendant's convictions for aggravated burglary and felony murder on the basis of such trial error. The State, however, may elect to

reprosecute Defendant on the same or lesser charges without violating double jeopardy.

{54} IT IS SO ORDERED.

Julie J. Vargas, Justice

WE CONCUR:

Michael E. Vigil, Justice

C. Shannon Bacon, Justice

Briana H. Zamora, Justice

DAVID K. THOMSON, Chief Justice, dissenting

THOMSON, Chief Justice (dissenting).

{55} Our burglary law, first and foremost, requires us to respect an individual's expectation of privacy and to protect "against the feeling of violation and vulnerability that occurs when a burglar invades one's personal space." *State v. Off. of Pub. Def. ex rel. Muqqddin*, 2012-NMSC-029, ¶¶ 42-43, 285 P.3d 622. Victim was roused shortly before two o'clock in the morning, lying on his couch in his living room, by a suspicious noise. He walked through his back door onto his portal, which was surrounded by his yard and enclosed by a wooden fence, to investigate. There he found Defendant, resulting in Victim's death and Defendant's conviction for felony murder that was based on Defendant's conviction for aggravated burglary. I respectfully dissent because the expectation of privacy and the security of the inhabitant should govern this analysis—not the architecture of a space, which the majority relied upon to vacate this conviction.[7]

I. Development of our Burglary Jurisprudence

{56} "Burglary consists of the unauthorized entry of any vehicle, watercraft, aircraft, dwelling or other structure." NMSA 1978, § 30-16-3 (1971); *see also* NMSA 1978, § 30-16-4 (1963) (defining aggravated burglary, the offense at issue in this case, identically in pertinent part). New Mexico courts have struggled to determine which structures can be burglarized. To contextualize the analysis that follows, I summarize several of those key cases.

A. Pre-2012: Courts Viewed Burglary as a Crime Against Property and Developed an Architectural Tool to Reign in the Spaces That Could Be Burglarized

{57} At common law, burglary "was an offense against the security of habitation or occupancy." *Muqqddin*, 2012-NMSC-029, ¶ 16 (internal quotation marks and citation omitted). Our early burglary jurisprudence interpreted the expansion of spaces that could be burglarized beyond the "dwelling" as a shift in legislative intent from protecting the security of habitation to the security of property, identifying new spaces as structures that could be burglarized in the process. *See State v. Rodriguez*, 1984-NMCA-034, ¶¶ 4, 7, 101 N.M. 192, 679 P.2d 1290 (explaining that "[a]t common law, burglary was an offense against the security of habitation or occupancy" but "the statutory offense [was] one against the security of property which is entered" and holding that an uncovered pick-up truck bed was "a part of a vehicle" and thus could be burglarized (internal quotation marks and citations omitted)), *abrogated by Muqqddin*, 2012-NMSC-029, ¶¶ 38, 40; *State v. Gonzales*, 1967-NMSC-168, ¶¶ 5-6, 78 N.M. 218, 430 P.2d 376 (declining to apply ejusdem generis in interpreting "other structure" to permit the statute to apply to commercial structures, including the food store at issue (internal quotation marks and citation omitted)), *abrogated by Muqqddin*, 2012-NMSC-029, ¶¶ 30-31.

{58} In 1995, the Court of Appeals delineated the outer boundaries of this expanding list of spaces by deciding a fence was not a structure. *See State v. Foulenfont*, 1995-NMCA-028, ¶ 1, 119 N.M. 788, 895 P.2d 1329. The *Foulenfont* Court's architectural analysis was presented as a tool to help answer the primary question: whether the fence before the Court satisfied the perceived legislative intent behind the burglary statute at that time. *See id.* ¶ 7. In answering this question, the Court clarified the role of ejusdem generis in our burglary law a structure must be "of the same kind or class as those specifically mentioned" *architecturally* but not in *use*. *Id.* ¶¶ 9, 11. Thus, the appropriate inquiry was whether a space had "one or more walls and a roof" to be "capable of completely confining people and their property." *See id.* ¶ 11.

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[6] In light of our conclusion here (1) that the gun evidence was irrelevant, and (2) that, even if it were not, the probative value of the evidence is substantially outweighed by the danger of unfairly prejudicing Defendant, we need not address the State's assertion that the evidence qualifies as a crime, wrong, or other act under Rule 404(B)(2). And even if we were to assume that the evidence were relevant, the State on appeal has presented no evidence of a prior act, only presenting evidence obtained after the crime without tying it to any of Defendant's prior actions. This is insufficient. We are likewise unpersuaded by the State's remaining Rule 404 arguments.

[7] In an effort to discredit the dissent, the majority writes, "[T]he dissent suggests that a structure for purposes of the burglary and aggravated burglary statutes should be governed by an individual's subjective expectation of privacy rather than the physical nature of the space," extending statutory protection to "any space that an individual subjectively believes to be private." See maj. op. ¶ 34. That is incorrect. A careful and considered reading of the dissent makes clear that the inquiry should turn on whether a space invokes the privacy interest the Legislature intended to protect. The dissent endorses several tools to determine whether this privacy interest is invoked: the use of a space, both customarily and by the victim, and the space's architecture. The dissent does not suggest that any one of these considerations is dispositive. Moreover, in writing "none of the cases upon which the dissent relies support that an individual's subjective expectation of privacy governs the analysis," maj. op. ¶ 36, the majority ignores State v. Shelby, 2021-NMCA-064, 499 P.3d 671, which makes clear that an individual's actual use of a space is a valid consideration, see paragraphs 66 and 72, *infra*.

B. 2012: This Court in *Muqqddin* Brought the Burglary Statute Back to Its Purpose of "Protecting Against the Feeling of Violation and Vulnerability When a Burglar Invades One's Personal Space," Relaxing the Architectural Tool Used to Aid This Inquiry

{59} In *Muqqddin*, this Court held that a vehicle's gas tank and wheels were not structures that could be burglarized. 2012-NMSC-029, ¶¶ 5, 9, 12. In doing so, the Court "undert[ook] a review of our burglary jurisprudence" which had "expanded significantly." *Id.* ¶ 1.[8]

{60} The *Muqqddin* Court made three points relevant to the analysis of the present case: (1) The core purpose of our burglary statute is "to protect against the feeling of violation and vulnerability that occurs when a burglar invades one's personal space," not to protect property, thus redefining the primary inquiry in evaluating whether a space is a structure, (2) architecturally, an individual has an expectation of privacy in a space if it has "some sort of enclosure" but not necessarily more, and (3) burglarizing the vehicle-related spaces at issue would require crossing "an imaginary plane," a theory the Court declined to adopt. *Id.* ¶¶ 43-44, 46-47. I explain each of these points in turn.

{61} First, the *Muqqddin* Court explicitly departed from the purpose of the burglary statute as articulated in *Rodriguez*, 1984-NMCA-034, ¶ 6, and quoted with approval in *Foulenfont*, 1995-NMCA-028, ¶ 7: "'to protect possessory rights with respect to structures and conveyances, and to define prohibited space.'" *Muqqddin*, 2012-NMSC-029, ¶ 40 (quoting *Rodriguez*, 1984-NMCA-034, ¶ 6). The Court explained that the rights protected by burglary "go beyond the mere right to physical possession of an object," with the primary focus being "the right to exclude" and the related "privacy interest." *Id.* ¶¶ 40-42. The Court wrote that "[i]t is the invasion of privacy and the victim's feeling of being personally violated that is the harm caused by the modern burglar," explaining that "[t]he privacy interest . . . protect[ed] is related to, though broader than, the security of habitation." *Id.* ¶¶ 42-43.[9] This privacy interest was not implicated by the facts before the Court. *Id.* ¶ 43.

{62} Second, the *Muqqddin* Court cited *Foulenfont* to explain, architecturally, that prohibited space "must have some sort of enclosure" which "creates the expectation of privacy" and "puts the public on notice." *Id.* ¶¶ 44-45. Thus, the Court explained that "the proper question is whether the nature of a structure's composition is such that a reasonable person would expect some protection from unauthorized intrusions." *Id.* ¶ 45 (internal quotation marks and citation omitted). Again, the facts before the Court did not meet this requirement. *See id.* ¶ 46.

{63} Third, the *Muqqddin* Court rejected "any penetration of a vehicle's perimeter [as] a penetration of the vehicle itself" because this "imaginary plane" does not put intruders on notice and is inherently ambiguous. 2012-NMSC-029, ¶¶ 46-47. The Court referenced a flat-bed pickup truck and the undulating surface of a vehicle as examples of the nonworkability of an imaginary plane. *Id.* ¶ 47. The only nonvehicle related example the Court gave to illustrate the faulty theory was enumerated as such: "Would the close of a house extend from the eaves to the foundation, such that stealing a shutter, obviously attached to the outside requiring no entry of the house itself, becomes a burglary?" *Id.* The Court clarified that this reasoning would not apply to "a window, [which] by its nature, creates an opening in an enclosure." *Id.* ¶ 48.

C. Post-2012: The Court of Appeals and This Court Follow the *Muqqddin* Court's Guidance

{64} Since 2012, the Court of Appeals and this Court have both defined structures that can be burglarized based on the redefined purpose of our burglary statutes from *Muqqddin*. These Courts' analyses make clear that the architectural inquiry helps a court decide if this privacy interest is implicated, rather than imposing strict structural requirements.

{65} In 2016, the Court of Appeals held that a private clerk's area in a public hotel lobby, secured by a locked back door, a chest-high counter, and a retractable barrier that could be pulled down to enclose the space, was a structure that could be burglarized. *State v. Mestas*, 2016-NMCA-047, ¶¶ 2, 6, 27, 370 P.3d 805. The *Mestas* Court interpreted *Muqqddin* as distinguishing between the *conduct* that qualifies as burglary ("unauthorized entries") and the *structures* that can be burglarized: "[O]ur reading of the word 'vehicle' to include everything within the *exterior perimeter* of the vehicle as a whole (*including objects which could not be occupied by humans, such as the gas tank*) expanded the scope of the phrase 'unauthorized entry' beyond its common law conception." *Id.* ¶¶ 14, 16 (emphasis added). In short, the Court made clear that whether a space can be burglarized is inextricably linked to whether an entry would fit the common law understanding of "unauthorized," or implicate the privacy interest emphasized in *Muqqddin*. This inextricable connection is mirrored in the *Mestas* Court's analysis. The Court held that an "unauthorized entry" had been committed and that the clerk's area was a structure based on the same inquiry: whether it was "reasonable to expect some protection from unauthorized intrusions." *Id.* ¶ 22 (quot-

[8] Pre-2012 burglary jurisprudence was consistent with the idea that structures with one or more walls and a roof could be burglarized, with the exception of vehicle-related cases such as Rodriguez, 1984-NMCA-034. Muqqddin specifically reevaluated this outlier in our burglary law.

[9] This is supported by the fact that our burglary statutes classify unauthorized entry into a "dwelling house" as a more serious crime than unauthorized entry into any other structure. Compare § 30-16-3(A) (burglary of a "dwelling house" is a third degree felony), with § 30-16-3(B) (burglary of any other structure is a fourth degree felony); see also State v. Shelby, 2021-NMCA-064, ¶ 8, 499 P.3d 671 ("The plain language and structure of the New Mexico burglary statute makes clear that the Legislature separated the unauthorized entry into a dwelling house from the unauthorized entry into all other structures as a more serious crime subject to greater punishment.").

ing *Muqqddin*, 2012-NMSC-029, ¶ 45, in holding that an "unauthorized entry" was committed) (internal quotation marks omitted); *see also id.* ¶ 25 (quoting the same language in reasoning that the clerk's area was a structure).

{66} In 2021, the Court of Appeals concluded that a house under construction was a "dwelling" under the burglary statute. *State v. Shelby*, 2021-NMCA-064, ¶ 1, 499 P.3d 671. The *Shelby* Court explicitly stated that the architectural inquiry is not alone dispositive: "The focus of our Supreme Court's analysis in *Muqqddin* was on the possessory and privacy interests the burglary statute seeks to protect, and the Court's discussion of both the physical characteristics of the structure and the use of a structure entered shows these are *interrelated considerations* when identifying the interest protected and the type of entry the Legislature seeks to deter." *Id.* ¶ 10 (emphasis added). Because of the *Muqqddin* Court's emphasis on the *use* of a structure and the definition of a "'dwelling house'" as "'any structure, any part of which is customarily *used* as living quarters,'" the *Shelby* Court undertook a lengthy analysis of the use of the house under construction, concluding that it qualified as a "dwelling." *Id.* ¶¶ 9-10, 12-23 (quoting UJI 14-1631 NMRA). Contrary to the majority's assertion that *Shelby* "is . . . of limited value here . . . [because] the defendant did not contest whether the home was a structure," *maj. op.* ¶ 23, the *Shelby* Court explicitly concluded the home was a structure, *Shelby*, 2021-NMCA-064, ¶ 12. I note that a "dwelling" is a type of "structure." *See* UJI 14-1631; § 30-16-3, -4.[10]

{67} There have been no burglary cases before this Court since *Muqqddin*, but the Court considered unauthorized entry under the breaking and entering statute in 2016. *State v. Holt*, 2016-NMSC-011, 368 P.3d 409. The *Holt* Court reasoned that breaking and entering is rooted in common law burglary and relied on burglary jurisprudence in reaching its conclusion. *Id.* ¶ 15.

{68} The Court considered whether placing one's fingers behind a window screen constituted an unauthorized entry into a home. *Id.* ¶ 1. In doing so, the Court acknowledged that the entry and structure inquiries are inextricably linked. *See id.* ¶ 16 ("Thus, an 'entry,' for purposes of the breaking-and-entering statute, occurs whenever there is an invasion into an enclosed, private, prohibited space. But still we must ask how do we define the boundaries of these spaces." (citation omitted)); *contra maj. op.* ¶ 21 (stating that *Holt* "is . . . of limited value here . . . [because] the question at issue was whether there was an unauthorized entry, *not* whether the home was a structure"). The Court then stated that *Muqqddin* "embraced the following test: [T]he proper question is whether the nature of a structure's composition is such that *a reasonable person would expect some protection from unauthorized intrusions*." *Holt*, 2016-NMSC-011, ¶ 17 (emphasis added) (internal quotation marks and citation omitted). The Court held it was reasonable for New Mexicans to expect that window screens met this test. *Id.* ¶ 18.

{69} With this background in mind, I turn to the analysis.

II. ANALYSIS

A. The Portal Invokes the Privacy Interest the Legislature Intended to Protect

{70} The majority errs in vacating Defendant's conviction based on the application of an architectural tool without sufficient consideration of the central inquiry emphasized in *Muqqddin*: whether a space invokes the privacy interest the Legislature intended to protect. Victim had an expectation of privacy in his portal. Further, correct application of the architectural tools our courts have used to aid in defining prohibited space leads to the same result. The portal is a "dwelling" under our burglary statutes.

{71} As clarified in *Muqqddin*, the key inquiry in defining prohibited space is whether a space invokes the right to exclude and the privacy interest the Legislature intended to protect. 2012-NMSC-029, ¶¶ 42, 43. Courts consider the use of a space to draw this conclusion. *Contra maj. op.* ¶ 30 (cautioning against "defin[ing] a statutorily prohibited space by a victim's furnishings or subjective testimony"); *see Shelby*, 2021-NMCA-064, ¶ 10 ("The focus of our Supreme Court's analysis in *Muqqddin* was on the possessory and privacy interests the burglary statute seeks to protect, and the Court's discussion of both the physical characteristics of the structure and the

[10] The majority writes, "Shelby cited Mestas to support its view that, 'under Muqqddin, we must examine the physical characteristics of an area to determine whether the space is private, enclosed, or sealed-off from public entry and protected by the burglary statute.'" Maj. op. ¶ 23 (quoting Shelby, 2021-NMCA-064, ¶ 8 (citation omitted)). The majority does not acknowledge that this phrase is disjunctive. "[T]he word 'or' should be given its normal disjunctive meaning unless the context . . . demands otherwise." Hale v. Basin Motor Co., 1990-NMSC-068, ¶ 9, 110 N.M. 314, 795 P.2d 1006. Thus, as the portal here is both private and enclosed, it need not be sealed-off.

The majority also writes, "While the dissent highlights the interior furnishing of the space, the Shelby Court concluded that 'the degree to which [the v]ictim moved his possessions into the house or the degree to which the interior of the house is finished are not necessarily the most significant considerations in this case because the house had a fully finished and secure exterior and it was actually used as living quarters.'" Maj. op. ¶ 23 (citing paragraph 72, infra) (quoting Shelby, 2021-NMCA-064, ¶ 16). This selective quotation of Shelby is undermined by the text directly preceding the quotation: "We believe the state of the interior of the house in the current case, though relevant, is of even less significance because it was actually being used for habitation. Giving more weight to the actual use of a house as living quarters than to the state of completeness of the interior and conventional comforts of a home more closely aligns with the purpose of the residential burglary statute, that is, to protect the security of the occupant and the possessory and privacy rights of habitation." Shelby, 2021-NMCA-064, ¶ 16 (emphasis added). The majority's selective focus on a "secure exterior" avoids dealing with the Shelby Court's emphasis on both the victim's actual use of the space and the privacy interest the Legislature intends to protect via the burglary statutes.

use of a structure entered shows these are *interrelated considerations* when identifying the interest protected and the type of entry the Legislature seeks to deter." (emphasis added)).

{72} Analyzing the use of a space can be very fact-intensive. The *Shelby* Court analyzed the use of a home under construction to conclude it qualified as a "dwelling," including discussion of the homeowner's "unconventional" and "temporary" furnishing of the space, his eating and sleeping habits, and his receipt of deliveries at the home. 2021-NMCA-064, ¶¶ 12-23. The majority makes the following example: "If we were to define a statutorily prohibited space by a victim's furnishings or subjective testimony with respect to the use of the space, as the district court did here, victims who spend most of their time outside but who cannot afford to purchase patio furniture may only receive the protection of trespass, whereas victims who have the means to furnish their patio but may not spend any time on the patio would receive the protection of the burglary statute." *Maj. op.* ¶ 30. I respectfully suggest that the majority's example is self-contradictory: the "subjective testimony" the majority mentions could make clear that a victim had an expectation of privacy in a "dwelling" space, no matter how it was furnished. My (and the Court of Appeals') reading of the law recognizes and prioritizes this "subjective testimony" as key to understanding when a victim has an expectation of privacy in a personal space, necessitating protection under our burglary statutes. The majority's approach would deny protection to an unhoused person, living the most intimate parts of private life alongside their personal possessions in public, simply because the person could not afford four walls and a roof.

{73} A court considering the use of a portal generally could find it is a "dwelling" under our burglary statutes. An "adobe house in 1880 was essentially the same as it had been in 1780 and 1680. . . . The simplest early New Mexican house was one room deep[.] . . . An open porch, *portal*, provided communication between rooms." Agnesa Lufkin Reeve, *From Hacienda to Bungalow* 8 (1st ed. 1988); *see also* Eileen Vanessa Rojas, *Cultural Intersections and Historic Preservation: A Study of Las Vegas, New Mexico* 2 (1998), http://repository.upenn.edu/hp_theses/435, then follow "Files" hyperlink, *culturalintersec00roja.pdf (13.18 MB)* (last visited July 8, 2025) ("Frequently, the exterior *portal* or an enclosed courtyard served as the sole connection between interior spaces."). Portals are still very common in New Mexican residential architecture. They are a typical feature of building facades in Santa Fe's Downtown and Eastside Historic District and are proactively "encouraged" in the Westside-Guadalupe Historic District. Santa Fe, N.M., Code of Ordinances § 14-5.2(E)(1)(a) (Downtown and Eastside Design Standards), (I)(1)(i) (Westside-Guadalupe Design Standards) (Mar. 14, 2025). Of note, existing portals in all Santa Fe Historic Districts "shall not be enclosed." Section 14-5.2(D)(4).

{74} A court considering uses of Victim's portal specifically could conclude similarly. The portal at issue was furnished with seating, a table, a hutch, and a chandelier, undoubtedly signs of a "dwelling" space. Victim's wife testified the portal "was kind of a living area for us." The district court explained that "the testimony is that this was an extension of the living space of the home."

{75} The majority disagrees, stating that "intrusion into a portal . . . does not invoke the same degree of violation or fear as that which occurs when a burglar invades the interior of one's home." *Maj. op.* ¶ 27. I cannot agree with this characterization.

B. Applying the Architectural Tool That Aids Courts in Defining Prohibited Space, as Articulated Both Before and After *Muqqddin*, the Portal Is a Structure

{76} Our Courts developed the architectural inquiry as a tool to effectuate the Legislature's intent, not to alone define prohibited space. *Contra maj. op.* ¶ 30 (explaining that under *Muqqddin*, the proper inquiry "objectively examines whether the structure is an enclosure capable of protecting from intrusion"); *see, e.g.*, *Foulenfont*, 1995-NMCA-028, ¶ 7 ("We must therefore examine Section 30-16-3 to see if a fence is the type of 'structure' that creates a prohibited space."). The majority misinterprets this architectural *tool* as articulated in *Foulenfont* and misconstrues it as a *test* that must be satisfied, without acknowledging that *Muqqddin* replaced that architectural inquiry with one that better serves burglary's purpose. However, applying the tool as explained in both cases, the portal here is a structure. Importantly, *State v. Gonzales*, is still good law and supports that the portal here can be burglarized. 2008-NMCA-146, 145 N.M. 110, 194 P.3d 725.

1. The portal has two walls and a roof so is "capable of completely confining people and their property" under *Foulenfont*

{77} The portal comports with the architectural tool as articulated in *Foulenfont*. The *Foulenfont* Court wrote:

> We therefore interpret the phrase "other structure" in Section 30-16-3 to require an enclosure similar to a vehicle, watercraft, aircraft, or dwelling. *See State v. Gamble*, [56 N.C. App. 55, 286 S.E.2d 804, 805 (1982)] (definition of "building" which included the phrase "dwelling . . . *and any other structure designed to house or secure within it any activity or property*" historically required the structure to have one or more walls and a roof). Our interpretation is supported by the fact that, unlike a fence, all of the enumerated objects in the statute are capable of completely confining people and their property.

1995-NMCA-028, ¶ 11.

{78} Thus, the fence before the Court was not an "other structure" because it did not have "one or more walls and a roof," so was not "capable of completely confining people and their property." This logically follows if one reads this paragraph sentence by sentence. Reading the first sentence in tandem with the parenthetical, the *Foulenfont* Court explains that an "other structure" that is "similar to a vehicle, watercraft, aircraft, or dwelling," in as much as it is designed to house or secure within it any activity or property, must have "one or more walls and a roof." Reading the second sentence, the Court explains that a fence is distinguishable from the enumerated spaces because it is not "capable of completely confining people and their property."

{79} The majority, however, reads this paragraph to require a structure to be fully "enclosed" or "sealed-off," *maj. op.* ¶¶ 21-26, or in the present case, to require "a gate, screen, door, or other feature that would aid in fully enclosing the space," *maj. op.* ¶¶ 28, 32. This reading is not supported by the text of *Foulenfont*. The portal here has two walls and a roof. Thus, it is "capable of completely confining people and their property."

2. The portal has "some sort of enclosure" so "is such that a reasonable person would expect some protection from unauthorized intrusions" under *Muqqddin*

{80} In addition to misconstruing *Foulenfont*, the majority does not acknowledge that its strict architectural analysis was replaced in *Muqqddin* by an inquiry which better serves burglary's purpose to protect the expectation of privacy. The *Muqqddin* Court wrote:

> Moreover, we agree with *Foulenfont* that in order for an area to be considered prohibited space under Section 30-16-3, it must have *some sort of enclosure*. Each of the enumerated structures in Section 30-16-3 either inherently has, or has been interpreted to require, some sort of enclosure. Accordingly, we believe it is this enclosed space that the Legislature intended to protect.
>
> Prohibited space is private space. It is the nature of the enclosure that creates the expectation of privacy. Enclosure puts the public on notice. As the California Court of Appeals stated, "[*T*]*he proper question is whether the nature of a structure's composition is such that a reasonable person would expect some protection from unauthorized intrusions*."

2012-NMSC-029, ¶¶ 44-45 (emphasis added) (citation omitted).

{81} Thus, these paragraphs replace the idea that a structure must have "one or more walls and a roof," *see Foulenfont*, 1995-NMCA-028, ¶ 11, with an inquiry of whether a structure has "some sort of enclosure" that by nature of its composition causes "a reasonable person [to] expect some protection from unauthorized intrusions," *Muqqddin*, 2012-NMSC-029, ¶¶ 44-45 (internal quotation marks and citation omitted). This is borne out in the caselaw: post-2012 Courts have largely abandoned *Foulenfont*'s strict architectural analysis, instead relying on the inquiry established in *Muqqddin*. *See maj. op.* ¶ 15 (*Muqqddin* "provided a roadmap of principles to consider when examining whether a particular space is prohibited under New Mexico's burglary statute."); *Muqqddin*, 2012-NMSC-029, ¶ 44 (citing *Foulenfont* as having called for "some sort of enclosure"); *Shelby*, 2021-NMCA-064, ¶ 8 (citing "an enclosure" requirement, *Muqqddin*, 2012-NMSC-029, ¶¶ 42-44, without any citation to *Foulenfont*); *Holt*, 2016-NMSC-011, ¶ 17 (characterizing *Muqqddin*'s reinterpretation of *Foulenfont* articulated above as having "embraced [a] . . . test"); *Mestas*, 2016-NMCA-047, ¶ 24 (relying on "'completely confining people and their property'" (quoting *Foulenfont*, 1995-NMCA-028, ¶ 11) only once).

{82} It is beyond question that a reasonable person would expect some protection from unauthorized intrusions in the portal at issue, which is open on two sides, attached to the back of a home, and surrounded by a yard enclosed by a wooden fence. Here, Victim's wife opened the door to the portal and saw Victim struggling with Defendant and soon after found Victim's body "slumped over a small retaining wall just beyond the portal." *See maj. op.* ¶ 5. The majority, however, disagrees, citing *Holt*, *Mestas*, and *Shelby*, which reasoned respectively that (1) a window screen, (2) a clerk's area in a hotel lobby secured by a locked back door, a chest-high counter, and a retractable barrier, and (3) an enclosed house met this standard. *See maj. op.* ¶¶ 21-25, 28. Importantly, neither the window screen, the retractable barrier, nor the enclosed house was *necessary* to meet the architectural inquiry articulated in *Foulenfont*, let alone under *Muqqddin*. *See Shelby*, 2012-NMCA-064, ¶ 12 ("Although not necessarily required of a 'dwelling house,' these characteristics supply ample evidence of an enclosure and the exercise of possessory and privacy rights that would put the public on notice of a private space."). Here, the portal's two walls and a roof are sufficient under our caselaw.

3. *Muqqddin* did not overrule *Gonzales*, which is architecturally analogous to the portal here

{83} *Gonzales* is sufficiently analogous to the case before us to support that the portal here is a structure. 2008-NMCA-146. The *Gonzales* Court held that a covered storage area open on three sides, attached to the side of a hardware store, accessible from a door that connected the two spaces, and surrounded by a yard enclosed by a chain link fence topped with barbed wire was a structure under the statute. *Id.* ¶ 8. Here, the portal is a covered area open on two sides, attached to the back of a home and accessible from two doors that connect the portal to the home, and surrounded by a yard enclosed by a wooden fence.

{84} However, the majority concludes "that—even though the *Muqqddin* Court did not explicitly overrule *Gonzales*—it has little, if any, remaining precedential value" because (1) *Gonzales* relied on burglary jurisprudence from another jurisdiction that has a statute that differs from ours and (2) *Gonzales* relied on *Rodriguez*, which *Muqqddin* clarified is no longer good law. *See maj. op.* ¶¶ 18-19.[11] I

[11] The majority also states that "[u]ltimately, the Muqqddin Court identified Gonzales as one of the cases in which the Court of Appeals significantly expanded the reach of the burglary statute without legislative authorization, which, in turn, supported this Court's conclusion that our precedent had 'gone astray' such that a course correction was necessary. Id. ¶¶ 1, 22." Maj. op. ¶ 19. This assertion rests on the assumption that the Court of Appeals opinions referenced generally in paragraph 1 of Muqqddin as those that have "gone astray" are identical to those cited in paragraph 22 as expanding the structures that could be burglarized, although paragraph 22 does not mention "legislative authorization." Further, this assertion is at odds with the majority opinion, which plainly admits that Gonzales was not explicitly disavowed in Muqqddin. Maj. op. ¶ 19.

disagree, but also question why we would overrule *Gonzales* if the *Muqqddin* Court declined to do so.

{85} First, *Muqqddin* did caution courts against relying on out-of-jurisdiction burglary jurisprudence based on a statute different than New Mexico's but did not do so in a way that undermined the *Gonzales* Court's holding. Here is the entirety of the portion of *Muqqddin* citing *Gonzales*:

> This is not to say that burglary jurisprudence and statutes from other jurisdictions are never relevant or helpful when interpreting our own. However, when relying on such authority we must ensure that another court is not relying on language that is absent from our statute or that the language of the statute differs so greatly from ours that it serves a different purpose. *But see Gonzales*, 2008-NMCA-146, 145 N.M. 110, 194 P.3d 725 (relying on *Garrett v. State*, [259 Ga. App. 870, 578 S.E.2d 460 (2002)], to conclude that an open-air porch attached to a commercial structure can be burglarized in New Mexico, while the *Garrett* court relied specifically on language in the Georgia statute indicating that a structure or *a part of a structure* can be burglarized, an addition that is absent from New Mexico's statute).

2012-NMSC-029, ¶ 28 (footnote omitted). The *Muqqddin* Court identified *Gonzales* as an example of an instance in which the Court strayed analytically *but still reached a sound result*. *See The Bluebook: A Uniform System of Citation* R. 1.2(c), at 63 (Columbia L. Rev. Ass'n et al. eds., 21st ed. 2020) (A *but see* signal "indicate[s] . . . [c]ited authority clearly supports a proposition contrary to the main proposition. *But see* is used where *see* would be used for support." (internal quotation marks omitted)).

{86} Second, while *Muqqddin*, 2012-NMSC-029, ¶¶ 38, 40, held that *Rodriguez* is no longer good law, that does not invalidate *Gonzales*'s holding. *Gonzales* cites *Rodriguez* as follows:

> Accordingly, as the court did in *Garrett*, we conclude that the covered area is an example of the kind of "prohibited space" within a "structure" that the [L]egislature intended to protect when it enacted our burglary statute. *See Foulenfont*, [1995-NMCA-028, ¶ 7] (explaining that "the type of harm or evil the legislature intended to prevent" when it enacted our burglary statute was to prevent the intrusion of one into the "prohibited space" of another); *cf.* [*Rodriguez*, 1984-NMCA-034, ¶ 7] (holding that the bed of a pickup truck, because it was part of the vehicle, fell within the protection provided by our burglary statute).

2008-NMCA-146, ¶ 8. Thus, the *Gonzales* Court cited *Rodriguez* to support the idea that a "part" of a structure can be burglarized, not for its use of the imaginary plane theory, as the majority suggests. *Maj. op.* ¶ 19. The *Muqqddin* Court rejected *Rodriguez* under the rationale that our burglary statutes do not explicitly include "parts" of enumerated structures. *Muqqddin*, 2012-NMSC-029, ¶¶ 37-38. However, there is no need to see the covered storage area in *Gonzales* as a "part" of a structure–it is itself a structure. And even if one did, the Court of Appeals has since made clear that the inverse is not true: *Muqqddin* does not exclude *any* space that could be construed as a "part" of a structure from qualifying as such under our burglary statutes. *Mestas*, 2016-NMCA-047, ¶ 24. This may explain why *Muqqddin* did not overrule *Gonzales*, but instead used it as an example of inappropriate reliance on an out-of-jurisdiction statute which differed from New Mexico's statute.

4. Holding the portal to be a structure, even though it is by its nature "open to the elements," does not necessitate adoption of the "imaginary plane" theory rejected by *Muqqddin*

{87} Holding the portal a structure does not necessitate adopting the imaginary plane theory. *Contra maj. op.* ¶ 26 ("Defendant necessarily is being punished for crossing an [imaginary] plane."). The *Muqqddin* Court rejected the theory as allowing waving a hand over a flat-bed truck or stealing a shutter from the exterior of a home to constitute burglary, but stated that the theory did not apply to "a window, [which] by its nature, creates an opening in an enclosure." *Id.* ¶¶ 47-48. As these examples make clear, the Court rejected the theory because of a concern that it incorporated spaces *external* to a structure, not because it *imposed* an imaginary plane on openings in a structure without a barrier. *See Mestas*, 2016-NMCA-047, ¶ 16 (interpreting *Muqqddin* to have criticized the Court of Appeals' "reading of the word 'vehicle' to include everything within the *exterior perimeter* of the vehicle as a whole" as "expand[ing] the scope of the phrase 'unauthorized entry' beyond its common law conception" (emphasis added)).

{88} Entering the open side of a portal does not require breaking some sort of imaginary plane akin to stealing of a shutter on the exterior of a home. Instead, it is more like entering a window, which by its nature creates an opening in the portal's enclosure. The *Mestas* Court did not apply the imaginary plane theory to the facts before it, instead analogizing the open area above the counter of a clerk's area in a hotel lobby to an open window. *See* 2016-NMCA-047, ¶ 28; *see also id.* ¶ 26 (explaining that the Court in *State v. Holt*, 2015-NMCA-073, 352 P.3d 702, reasoned that the imaginary plane theory did not apply in holding "that the space between a window screen and a closed window on a home was a protected space under *Muqqddin*"); *Holt*, 2016-NMSC-011, ¶ 18 (holding that an entry occurred without mention of the imaginary plane theory). The same logic applies here.

{89} Thus, to determine whether Defendant entered the portal, we need not rely on the concept of an imaginary plane, but on the judgment of the jury. While it seems that the district court struggled to describe the boundary of the portal, the jury found that Defendant entered it. Further, Defendant abandoned appeal of this factual issue, instead focusing on the purely legal question of whether a portal is a structure.

{90} In conclusion, the majority's overreliance on an architectural tool reverses the *Muqqddin* Court's work to bring burglary

back to its purpose of "protect[ing] against the feeling of violation and vulnerability that occurs when a burglar invades one's personal space." 2012-NMSC-029, ¶ 43. I am unable to concur that Victim's portal in this case is not a structure, specifically a "dwelling," under our burglary statutes. Thus, I respectfully dissent.

THOMSON, Chief Justice

In Memoriam

Mariposa Padilla Sivage, a distinguished New Mexico lawyer, passed away peacefully on May 9, 2026, after a hard-fought battle with cancer, surrounded by her loving family. Mariposa was 50 years old and lived her life with love and faith for the Lord. She carried herself with unparalleled strength, profound compassion, and unwavering dedication to Christ, her family and friends. Her departure leaves a profound void in the hearts of all who were touched by her remarkable spirit. Mariposa is survived by her loving husband Kelly Sivage, her two children Mariella and James, her sisters Vanessa Szantos and Alegra Bishop, her soul dogs Rosco and Lulu, and a wide circle of family, friends, and colleagues who will miss her dearly. Mariposa was the heart of her family. As a supportive mother and devoted wife, she gave endlessly of herself, always offering her encouragement, wisdom, and unconditional love. Her generosity touched countless lives and her warm spirit made everyone feel welcomed and cared for. Mariposa's life was full of accomplishments, including the practice of law for 23 years. She began her legal career with the law fi rm of Keleher & Mcleod PA; and was there for seven years. In 2010 she joined Sutin Thayer and Browne, where she served as Co-Vice-president of the Board of the Directors and took time to train several attorneys. She dedicated herself to the practice of law with fierce determination, integrity, and intelligence. She was sharp-minded, hardworking, and deeply committed to her clients. She approached every challenge with courage and purpose, earning the admiration and trust of all who had the privilege of knowing her. Mariposa represented clients in a broad range of civil and commercial litigation matters throughout New Mexico. She possessed extensive experience representing governmental entities and public employees. She practiced extensively in both New Mexico federal and state courts, as well as before administrative tribunals, and she brought extensive fi rst-chair jury and non-jury trial experience to her work. Before entering the legal profession, Mariposa worked in marketing and public relations, experiences that reflected her natural ability to connect with others and advocate effectively on behalf of those she served. Throughout her distinguished career, Mariposa earned numerous honors and recognition for her excellence, leadership, and commitment to the legal profession. She was recognized by Best Lawyers in America®, held the prestigious Martindale-Hubbell AV Preeminent rating, and was named among Benchmark Litigation's 40 & Under Hot List and Southwest Super Lawyers. In 2019, she was honored as one of Albuquerque Business First's New Mexico Women of Influence. Her many academic achievements included graduating magna cum laude from the University of New Mexico School of Law, membership in the Order of the Coif, and receiving the Irwin Stern Moise Award for legal and judicial ethics. Mariposa was also deeply committed to her community and professional service. She contributed her time and leadership to numerous organizations, including the Federal Bar Association, the American Bar Association, the New Mexico Community Foundation, Women United, Leadership New Mexico, and Leadership Albuquerque. Her dedication to public service and mentorship left a lasting impact on countless individuals and institutions throughout the state. Mariposa's light will forever shine in the hearts of those who knew her. A Celebration of Life will be held on July 1, 2026, at 5:30 p.m. at the State Bar of New Mexico.

Rex Benjamin Titus (Ben), 39-years-old, passed away at home on Thursday, March 13, 2025 after bravely battling the effects and treatment of brain cancer. Ben was born Feb. 21, 1986 on Shaw Air Force Base in Sumter, S.C. He graduated high school from Alamogordo High School, N.M. in 2004. In May 2008, he earned a bachelor of arts degree in political science from the University of Arizona. Ben was a proud United States Army veteran serving his country as an Intelligence Analyst while deployed to Afghanistan in support of Operation Enduring Freedom. He earned an Honorable Discharge in March 2014 and continued his dream of a career in law. That dream became reality in May of 2022 when Ben graduated from the University of Iowa, earning a Juris Doctorate Law degree. At the time of his passing, he was becoming an accomplished Trial Attorney serving the 2nd Judicial District of Bernalillo County, N.M. Ben is survived by his mother, Beverly DeLashmit (Rose); step-father, Doug; and sister, Sara; grandparents, Dan and Vivian Kieffer (Rose) of Cherokee, N.C.; along with numerous Aunts, Uncles and Cousins. He is preceded in death by his father, Rex Ellis Titus of Poplar Bluff, Mo. and paternal grandparents Gerald and Wyzetta Titus.

It is with great sadness that I inform you of the death of **Carolyn Glick**. She passed away suddenly on April 29th 2025, 58 years young, of cardiac arrest. She matriculated from the University of Kansas and earned her law degree from the University of Minnesota. She moved to New Mexico and clerked for justice Seth D. Montgomery of the New Mexico Supreme Court. Carolyn eventually became an unsurpassed lawyer working relentlessly for the New Mexico Public Regulation Commission and continued to do so after retirement. Her love of life was hiking in the mountains of New Mexico, Colorado and elsewhere with her dogs at her side and vacationing at the beach. She was also an avid Jayhawks basketball fan - "Rock Chalk Jayhawk KU, bigger TV Please." I found that being married to someone with OCD had its advantages both at work and at home. The refuse got taken out before I think about it, the bills got paid on time, and other things that made my day, every day. On the other hand, her hatred of olives, artichokes, and mushrooms was always a crimp in my culinary side. Her strength met my weakness and my strength hers. We were happy together. Now Carolyn, finally, is at rest, and I hold her close within me. Please hold her close, as I do, in your mind and your spirit. Carolyn is survived by her loving husband, David Harradine, of 25 plus years, and her siblings Mary (Chris) Depner of Wellsville, NY, Barbara Hyatt of Catawba, NC, John (Eileen) Glick of San Diego, CA, and Bill (Monica) Glick of Lancaster, PA and their loving families, and of course our loving puppy "Buffy the Vampire Slayer." A Celebration of her life is being planned. Memorial contributions may be made to the Santa Fe Animal Shelter & Human Society (**https://sfhumanesociety.org/**).

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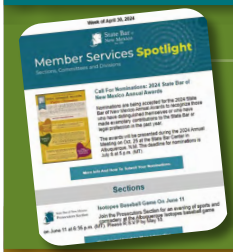

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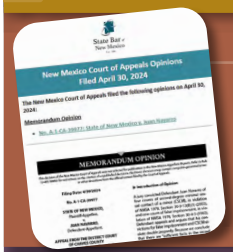

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and performs other duties as assigned by the Executive Director and the BBC. Due to the close legal relationship between the State Bar and the New Mexico State Bar Foundation (Bar Foundation), the General Counsel also performs general counsel functions for the Bar Foundation to the extent that these functions can be performed without creating a conflict of interest for the General Counsel. Salary: $135,000/year-145,000/year, depending on experience and qualifications. Generous benefits package included. This position qualifies for partial telecommuting. Qualified applicants should submit a cover letter and resume to HR@sbnm.org. Visit www.sbnm.org/SBNMjobs for full details and application instructions.

Assistant Federal Public Defender – Trial Attorney (Albuquerque)

The Office of the Federal Public Defender for the District of New Mexico is accepting applications for the position of Assistant Federal Public Defender (Trial Attorney) in our Albuquerque office. The mission of our office is to provide high quality, client–centered representation to people charged with federal crimes in New Mexico. As a Trial Attorney, you will represent clients in all stages of federal criminal proceedings, including trial, and sentencing. The role involves managing a diverse caseload with complex legal and factual issues, developing litigation strategies, and preparing motions, pleadings, and briefs. You will appear in court to advocate on behalf of clients, conduct legal research and investigations, and maintain regular communication with clients, experts, family members, and witnesses. Required Qualifications: J.D. from an accredited law school. Admission and good standing before the highest court of a state. License to practice in the U.S. District Court for the District of New Mexico (or ability to obtain it promptly upon hire). Become a member of the New Mexico State Bar within one year of start date. Excellent oral and written advocacy skills. Strong interpersonal and organizational abilities. Demonstrated commitment to the defense of under–served and marginalized communities. Valid driver's license and ability to travel as needed for casework, training, and investigations. Preferred Qualifications: These qualifications are not required to be considered for this role but are highly valued. Minimum of three years of criminal defense trial experience. Spanish language proficiency. Experience working with people from diverse backgrounds and lived experiences. Salary and Benefits: This is a full–time, at–will position within the federal judiciary. The salary range is $76,748 to $197,100, based on years of professional attorney experience after graduating from law school. Actual starting salary is calculated once your AO78 application is received and years of experience verified. The position includes a comprehensive benefits package, featuring health, dental, vision, and life insurance; earned annual and sick leave; paid federal holidays, 12 weeks of paid parental leave after one year of service. Participation in the Federal Employees Retirement System and Thrift Savings Plans. This position is eligible for Public Service Loan Forgiveness (PSLF) and regular continuing legal education opportunities. Please submit a single pdf document with cover letter, resume, and three references via email to: Margaret Katze, Federal Public Defender FDNM–HR@fd.org Subject: 2026–09 Assistant Federal Public Defender—Trial Attorney Application Deadline: Sunday, June 28, 2026. Position subject to funding availability. More than one position may be filled from this posting. Employment subject to a successful background check, including fingerprinting. U.S. citizenship or authorization to work in the U.S. and receive compensation as a federal employee via direct deposit is required. For more information about our office, please visit: https://nm.fd.org/

Attorney

Madison, Mroz, Steinman, Kenny & Olexy, P.A., an AV–rated civil litigationfirm, seeks an attorney with 2+ years' experience to join our practice. We offer a collegial environment with mentorship and opportunity to grow within the profession. Salary is competitive and commensurate with experience, along with excellent benefits. All inquiries are kept confidential. Please forward CVs to: hiring@madisonlaw.com. Please include "Associate Attorney Position" in the subject line. CVs can also be mailed to: Hiring Director, P.O. Box 25467, Albuquerque, NM 87125–5467.

Associate Attorney

Small, established New Mexico workers' compensation defense firm seeking an Associate Attorney to join our growing practice. This is an excellent opportunity for a motivated attorney looking to develop litigation skills in a collaborative, client–focused environment. New Mexico licensure required. 1 year of litigation experience is a plus. new.hire.northstarattorneys@gmail.com.

Legal Assistant

The Law Office of Benjamin Hancock. P.C. is seeking a professional, full–time legal assistant. Practice is limited to probate, elder law, guardianships, and an occasional plaintiff's personal injury case. The ideal candidate will have experience with Microsoft Office, QuickBooks, Odyssey, SOPA, and legal billing software. The ideal candidate will possess above–average writing and speaking skills. Duties will include reception, answering multiple telephone lines, scheduling appointments, opening and maintaining files, client billing, and general office administrative duties. Position offers a very pleasant working environment in a high–minded office. Experience preferred, but willing to train the right well–qualified candidate. Salary commensurate with experience. Please send a cover letter and resume to ben@benhancocklaw.com.

Attorney Positions

The Thirteenth Judicial District Attorney's Office is seeking both entry level and experienced attorneys. Positions available in Sandoval County which is in Bernalillo, Valencia in Belen and Cibola in Grants. Enjoy the convenience of working near a metropolitan area while gaining valuable trial experience in a smaller office, providing the opportunity to advance more quickly than is afforded in larger offices. District offers flex schedules in a family friendly environment. Competitive salary starting @ 83,000+ depending on experience. Contact Krissy Fajardo @ kfajardo@da.state.nm.us or visit our website for an application @ https://www.13th.nmdas.com/ Apply as soon as possible. These positions fill fast!

Paralegal
PNM Resources has an opening for a Paralegal. Supports attorneys by reviewing, drafting, and managing a variety of contracts and legal documents. Conducts legal research, prepares summaries or memoranda, and assists with regulatory, administrative, and litigation matters. Provides support with discovery, case preparation, and the organization of litigation files. Interact professionally with internal stakeholders and external parties. Five or more years of relevant paralegal experience required, with strong emphasis on contract review. Experience in regulatory and administrative proceedings, as well as litigation, is strongly preferred. Bachelor's degree or Paralegal Certificate preferred. To apply, please submit your resume and cover letter. PNM Resources and affiliates are Equal Opportunity/ Affirmative Action employers. Women, minorities, disabled individuals, and veterans are encouraged to apply.

Associate Attorney
Serpe Andrews, PLLC is a growing regional civil defense firm currently seeking associate attorneys with up to 2+ years of experience or more to work in one of our offices in New Mexico (Albuquerque, Santa Fe, and Las Cruces). Serpe Andrews provides civil defense in a range of areas, including medical malpractice, employment, personal injury, and government liability. The candidate must be licensed in New Mexico. Prior litigation experience is highly preferred. A successful candidate will have a strong interest in practicing throughout all stages of litigation, from preliminary investigations to jury trials. Remote work options are available. Competitive salary and benefits packages include quarterly bonuses, 401K plan, medical/dental/vision plan, and tech stipends. Interested candidates should send cover letter and resume to Cameron LaFleur (clafleur@serpeandrews.com) with "Serpe Andrews NM Attorney Position" in the subject line.

Associate Attorney
YLAW, P.C. is a local, AV–rated firm fortunate to defend quality clients in high stakes litigation. We are looking for associate attorneys with 0 — 5+ years of experience (including current 3Ls and recent graduates) to join our dynamic team. You will touch every aspect of a including rapid response, investigation, discovery, depositions, hearings, mediation, and trial. Communication, loyalty, reliability, and initiative are the cornerstones of the job. Newer attorneys will benefit from mentorship, while simultaneously afforded the opportunity to take initiative on proactively defending cases. We offer a competitive salary and benefits package and have committed to a firm culture that embraces collaboration, collegiality, diversity, and respect. We work hard. We play hard. We are YLAW. For more information and to submit a resume, please contact Ryan Adragna, radragna@ylawfirm.com, and Megan Martin, mmartin@ylawfirm.com
Inquiries will be kept confidential.

Litigation Attorney
Cordell & Cordell, P.C., a domestic litigation firm with over 100 offices across 33 states, is currently seeking an experienced litigation attorney for an immediate partner opening in its office in Albuquerque, NM. The candidate must be licensed to practice law in the state of New Mexico, have minimum of 8 years of family law litigation experience. Candidate would start with firm as a partner on day one. 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

Trial Attorneys
Two Assistant Trial Attorneys wanted for immediate employment with the Seventh Judicial District Attorney's Office, which includes Catron, Sierra, Socorro and Torrance counties. One position will be based primarily in Socorro County (Socorro, NM) and one position will be based in Torrance County (Estancia, NM). Both Socorro and Estancia are approximately a one hour commute from Albuquerque. Must be admitted to the New Mexico State Bar. Salary range will be $75,193 – $82,000 and commensurate with experience and budget availability. Will also have full benefits and one of the best retirement plans (NM State PERA) in the country. Send resume to: Seventh District Attorney's Office, Attention: J.B. Mauldin, P.O. Box 1099, 302 Park Street, Socorro, New Mexico 87801. Or email to: jbmauldin@da.state.nm.us

Contract Counsel
The New Mexico Law Offices of the Public Defender (LOPD) provides legal services to qualified adult and juvenile criminal clients in a professional and skilled manner in accordance with the Sixth Amendment to United States Constitution, Art. II., Section 14 of the New Mexico State Constitution, Gideon v. Wainright, 372 U.S. 335 (1963), the LOPD Performance Standards for Criminal Defense Representation, the NM Rules of Professional Conduct, and the applicable case law. Contract Counsel Legal Services (CCLS) is seeking qualified applicants to represent indigent clients throughout New Mexico, as Contract Counsel. The LOPD, by and through CCLS, will be accepting Proposals for the November 1, 2026 — October 31, 2029, contract period. All interested attorneys must submit a Proposal before July 6, 2026, at 4:00 p.m. (MDT) to be considered. For additional information, attorneys are encouraged to search the LOPD website (http://www.lopdnm.us) to download the Request for Proposals, as well as other required documents. Confirmation of receipt of the Request for Proposals must be received by email (ccls_RFP_mail@ccls.lopdnm.us) no later than midnight (MDT) on June 8, 2026.

Attorneys
Experience the charm of Northern New Mexico and discover the natural beauty and welcoming spirit that only a small rural town can offer. The Fourth Judicial DistrictAttorney's Office has immediate openings for new and/or experienced attorneys. Weare seeking motivated, professional candidates to fill the following positions Chief Deputy District Attorney, Deputy District Attorney and Trial Attorney. Salary is basedupon the New Mexico District Attorney's Salary Schedule and commensurate Attorneys These positions offer the opportunity to gain valuable courtroom experiencewhile handling a broad range of criminal

prosecutions in a dynamic and supportiveenvironment. Please send resume to Cleo Gonzales, District Office Manager, P.O. Box 2025, Las Vegas, NM 87701 or email to cgonzales2@da.state.nm.us.

Licensed Attorneys
The New Mexico Public Regulation Commission has openings for licensed attorneys in two of our three attorney divisions: the Office of General Counsel (OGC) and the Hearing Examiners Division. 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 to 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 offer hybrid work arrangements and other benefits not common in State service. To learn more about the PRC or these positions, please visit the website at https://www.prc.nm.gov/prc–job–opportunities/

Estate Planning Attorneys
Are you tired of billable hours? Zia Trust is seeking Trust Officers. For more information, please contact Gabriel Holguin at gholguin@ziatrust.com

Associate Attorney
Ahr Law Offices, P.C. is seeking an associate attorney to join the team. This is an entry level, immediate opening (including recent graduates) with minimum 35 hours a week and options for dental and 401(k) plan. Ahr Law Offices covers a diverse range of law practice, including estate planning, tax advising, business law, and cannabis law. The associate needs to have an interest in estate planning, business law, drafting documents, and working closely with the principal attorney on a variety of matters. Excellent communication and organizational skills are a must, and the applicant must be barred in New Mexico. Applicants should submit a resume and cover letter to lawoffices@aqtaxlaw.com and may call the office at 505–821–5122 for more information.

Professional Services and Other

City of Albuquerque — Request for Letter of Interest
Notice is hereby given that the City of Albuquerque, The Legal Department calls for Proposals for Request for Letters of Interest for a Tax Increment Development District Board Attorney. Interested parties may secure a copy of the Proposal Packet, by accessing the City's website at https://www.cabq.gov/legal/documents/rfli–legal–services.pdf.

Incorporated County of Los Alamos Seeking Hearing Officers
The County has enacted a Speed Camera ordinance and is seeking at least two licensed New Mexico attorneys to hear appeals of the fine notifications received by owners of offending vehicles. Interested attorneys must submit a proposal providing their qualifications and a proposed hourly rate for this contracted work to the County Attorney's Office, 1000 Central Avenue, Suite 340, Los Alamos, NM 87544, or via ~attorney@losalamosnm.gov by July 3, 2026. Hearings may be conducted remotely or in–person. The selected contractor(s) will provide hearing officer services on the terms and conditions of a negotiated contract that will become effective upon approval by the presiding judge of the Civil Division of the First Judicial District Court. The County contemplates a multi–term contract which may be up to seven (7) years. Proposers must include pricing for each potential year of the contract. The County contemplates a multiple source award. A multiple source award is an award of a contract to more than one Offeror.

Police Practices Expert
Police Practices Consulting, LLC is dedicated to helping attorneys succeed in their respective cases through effective evidence–based analysis. Mr. Paul Skotchdopole is a retired professional law enforcement manager with over 43 years of experience in various small and large municipal police organizations. Former Chief of Police in a small municipal agency and a Deputy Commander of Internal Affairs in a large agency. Considerable knowledge and expertise in police procedures, law enforcement training; police pursuit tactics, use of force policies, electronic control weapons, recruiting, employee selection, assignment, supervision, evaluation, and retention; curriculum development; and policies and procedures design and implementation. Mr. Skotchdopole is a Certified New Mexico Law Enforcement Officer with a BA (Sociology with an emphasis in Criminology) and a Paralegal Certificate. Mr. Skotchdopole is a Certified Practitioner of Police Oversight. We offer personalized, results–driven legal consulting on your case and expert witness testimony. Initial phone call is free. Contact us for a Fee Schedule. (505) 480–2460. www.policepracticesconsulting.com

Gated parking adjacent to First Judicial District Court, Santa Fe
$15.00: 1/2 day; $20.00: full day. Code provided upon payment. 505 982–3993

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 GuestServices@sbnm.org or 505–797–6070.

Beautiful Downtown Office Space For Rent
8 Office Spaces for Rent: 925 Luna Circle NW. Downtown surrounded by grass and trees. Hard wood/brick floors, big windows/great light throughout space. Rent includes use of a conference room, kitchen, restrooms, reception area, parking, alarm system, utilities, and landscaping. Separate building and large basement for storage. Each office space is unique and sized from small, med, to large as such rent is dependent on which office space is selected. Contact owner at 505–507–3687 for more information and to arrange tour.

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