IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 34,447

JOSE LUIS LOYA,

Plaintiff,

vs.

GLEN GUTIERREZ, Commissioned Officer Of Santa Fe County,

Defendant/Third-Party-Plaintiff-Petitioner,

vs.

COUNTY OF SANTA FE,

Third-Party-Defendant-Respondent.

PETITIONER GLEN GUTIERREZ' REPLY BRIEF

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INTRODUCTION TO ARGUMENT

Officer Gutierrez has been sued under 42 U.S.C. §1983 for acts he took to arrest, charge, jail and prosecute Jose Luis Loya in 2009. Those acts were taken on behalf of the County of Santa Fe in Officer Gutierrez' capacity as a Santa Fe County Sheriff's deputy and only involved the enforcement of state law. Some of those acts occurred within and some of those acts occurred outside of the exterior boundaries of the Pueblo of Pojoaque Grant. (R.26-27, 111, 143-144). Because those actions involved the exercise of state law enforcement authority, they were taken "under color of state law" under of 42 U.S.C. §1983. (R.13, ¶2; 19, ¶2).

Officer Gutierrez was a "public employee" of the County entitled to have the County defend and indemnify him from such §1983 claims based on NMSA 1978 §41-4-3F(3) of the New Mexico Tort Claims Act ("TCA"), and that this is true notwithstanding that he did not satisfy the "law enforcement officer" definition of the TCA (§41-4-3D). This is so because he was a person "acting on behalf of or in service of a governmental entity in any official capacity, whether with or without compensation" within the meaning of §41-4-3F(3). That "governmental entity" was the County of Santa Fe (Ans.Br., p.1) and his "official capacity" was as a Deputy Sheriff for the County. (*Id.;* R.168, ¶¶10-13; 171).

The Santa Fe County Sheriff revoked the commissions issued to tribal police officers in 2011 (NMAC Amicus Br., p.8), except for those executed pursuant to

MOUs; and, the NMAC amicus brief shows that deputy commissions issued to tribal police officers without MOUs constitute only a tiny fraction of commissions issued. (Am.Br., pp.7-13). Thus, the instant case should be one of the last to present the TCA questions here at issue. *See,* Br-in-C, p.41, fn.12.

ARGUMENT

A. Officer Gutierrez is a Public Employee Under the TCA

The Court of Appeals ruled that the County had no duty to defend or indemnify Officer Gutierrez. As explained in his opening brief (Br-in-C, pp.8-19), that ruling rests upon an interpretation of the statute which is irreconcilable with both the statute's plain language and the tri-partite public policy concerns which the statute addresses: **(a)** to protect persons who qualify as "public employees" under any sub-category of §41-4-3(F), including those who are empowered to act "on behalf of or in service of a governmental entity in any official capacity, whether with or without compensation" (§41-4-3(F)(3)); **(b)** to give the public a viable remedy for harms caused by the actions or inactions of such persons actionable under §1983 (and for certain tort claims) while acting in their capacity as "public employees;" and, **(c)** to limit the County's defense and indemnity obligations derivative of §1983 claims (and for certain tort claims) to claims pled in suits arising from the actions or inactions of those "public employees" while

acting within the scope of their duties. *See,* NMSA §41-4-2A. *Niederstadt v. Town of Carrizozo,* 2008-NMCA-53, 143 N.M. 786, 182 P.3d 769.

The County's arguments only consider the latter concern—ignoring the interests of persons in Officer Gutierrez' situation who are exposed to the costs and risks of litigation for actions they take on behalf of the County, and ignoring the interests of the public for whom the legislature clearly intended to provide a viable remedy respecting §1983 claims arising from their official actions.

The TCA does not distinguish between the various classes of public employees who are given these TCA protections—whether they are an ordinary "officer, employee or servant of a governmental entity" (here the County) as referenced in the first clause of §41-4-3F or are persons otherwise given the status of "public employees" under any of the 18 subcategories[1] set out in §41-4-3F. All are entitled to exactly the same degree of TCA protection. Thus, the cases cited in the County's brief at pp. 17-18—all of which affirm that the County's defense and indemnity obligations extend to all acts of the County's public employees (including its sheriffs' deputies) for their acts taken within the scope of their employment—apply with equal force to compel the conclusion that the County owes the same duties to Officer Gutierrez.

[1] Officer Gutierrez (at Br-in-C, p.11-12) mistakenly stated that there were 14 subcategories of §41-4-3F(3).

The County's counter argument—that the TCA provision which controls respecting these defense and indemnity questions is the "law enforcement officer" definition of §41-4-3D—simply assumes that to be the case and argues from there. The county's "specific" over "general" argument (Ans.Br., pp.10-11) does not answer Officer Gutierrez' counter interpretation which shows that §41-4-3D must be read together with §41-4-12, and serves an entirely different purpose—a purpose wholly unrelated to the question whether the County's defense and indemnity obligations are invoked. That separate purpose is to identify for which "public employees" (those who meet the "law enforcement officer" definition) there is a waiver of immunity for certain intentional torts. (Br-in-C, pp.8-19). Since there is no conflict in any of these provisions, the factual predicate required to invoke that "specific" over "general" interpretative rule does not exist. (Br-in-C, pp.26-27).

In defending its interpretation, the County has no answer to the ruling in *Dunn v. State ex rel Tax and Revenue Department,* 116 N.M. 1, 859 P.2d 469 (N.M.App.,1993). There the Court ruled that a state employee who was not a "law enforcement officer" under §41-1-3D, but who possessed law enforcement authority, was nonetheless a public employee protected by the TCA. The state's only response to *Dunn* is that "*Dunn* would be pertinent if Officer Gutierrez was a state employee, rather than a tribal employee." (Ans.Br., p.22). But, as noted

above, §41-4-3F does not distinguish between ordinary state or county employees (addressed in the opening clause of the provision) and other persons who satisfy any of the "public employee" categories—in terms of the County's duty to defend and indemnify them from §1983 or tort claims. *Dunn* is thus pertinent precisely because Office Gutierrez *is a public employee of the County*, though not a "law enforcement officer," under the TCA, yet is still entitled to TCA defense and indemnity protection—just like the Motor Vehicle Department Director in *Dunn.*

Moreover, no tort claims were pled against Officer Gutierrez in this case. Plaintiff only pled §1983 claims. (R.13-17). Thus, the intentional tort distinction in §41-4-12 is not applicable to the claims filed in this suit or indeed to any §1983 claims. The question before this Court is whether the County has a duty to defend and indemnify Officer Gutierrez from those §1983 claims. *See,* Ans.Br., p.7, Sec. I, first sentence. The answer to that question does not turn on any issue respecting the County's immunity[2] or regarding the effect of §41-4-12 in re intentional tort claims. Instead, the TCA obligates the County to defend and indemnify "public employees" such as Officer Gutierrez to protect them from personal liability as to tort and §1983 claims arising from actions they take within the scope of their duties for the County. §§41-4-4D(1) and (2)—all as a sort of a "statutory insurance

[2] As shown in Br-in-C, p.21,fn.7, the County and its employees (including those sued in their individual capacities), do not have sovereign immunity as against actions brought under 42 U.S.C. §1983.

policy" for public employees. *Risk Mgt. Div. v. McBrayer,* 2000-NMCA-104, 129 N.M. 778, 14 P.3d 792.

Significantly, the County now concedes (Ans.Br., p.20, fn.10,) that a county deputy who "would not fit under the statutory definition of 'law enforcement officer' such as officers employed part time by a governmental entity who are not yet certified might properly be construed to be public employees protected by the TCA." (Emphasis added). This concession coupled with the *Dunn* case eviscerates the County's argument that only public employees having law enforcement roles—and who meet the law enforcement officer definition—are entitled to county defense and indemnity under the TCA.

B. Officer Gutierrez' Actions Were Taken "on Behalf of or in Service of" the County

Seeking to evade the plain meaning of the TCA, the County argues that Officer Gutierrez "in using a deputy commission to enforce a state traffic or criminal statute against a perpetrator who commits an offense within the reservation,...was [not] 'work[ing]...for the County' and 'act[ing] in the line of duty for the County.'" (Emphasis and insert added) (Ans.Br., p.16). The County repeats this contention at page 15 (Officer Gutierrez "was not serving the County of Santa Fe")—and again at page 16 (Officer Gutierrez "was in no way 'acting on behalf of or in service of' the County of Santa Fe")—when he arrested, charged, jailed and prosecuted the Plaintiff under state law.

This is a truly indefensible argument. The indisputable reality is that the only sovereign whose law enforcement authority existed and was exercised in the incident giving rise to this suit was the County's. It is state law that was enforced (not Pueblo law) and that state law came into play and was enforced only because Officer Gutierrez had been given state law enforcement authority per his Deputy Sheriff's commission. It is the possession and exercise of that authority that made his actions "under color of state law" and made him subject to suit under §1983. *Giron v. Correctional Corporation of America*, 15 F.Supp.2d 1245 (A.N.M. 1998). Officer Gutierrez had no authority (because the Pueblo had no jurisdiction to give him authority) to arrest, charge, jail and prosecute Mr. Loya (a non-Indian) for violations of state law, or indeed, of any criminal law. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 98 S.Ct. 1011 (1978); Pub.L. 109-133, 119 Stat. 2573, Act of December 20, 2005, amending the Pueblo Land Act of 1924 ("Pub.L. 109-133") (§20(b))[3]. Officer Gutierrez was deputized by the Sheriff to enforce state law and did so in this instance.

[3] Section 20(b) provides: "The Pueblo has jurisdiction...over any offense committed by a member of the Pueblo or an Indian..." This applies within the exterior boundaries of the Pueblo's grant lands as addressed in the Act of June 7, 1924, 43 Stat. 636.

Commissioning these officers enhanced the County's law enforcement presence and effectiveness both on and off the Indian reservation[4] areas north of the City of Santa Fe and on U.S. Highway 84/285. (R.163, ¶¶ 4-10; R.177. ¶12). Enforcing state law against non-Indians on those reservations where such state jurisdiction exists, is just as important a governmental function of the County as doing so off the reservations.

Indian reservations (and Pueblo grant lands) in New Mexico fall under the state's ordinary criminal jurisdiction for crimes committed by non-Indians against non-Indians or as regards victimless crimes committed by non-Indians, as involved here. Section 20(d), Pub.L. 109-133: (§20(d) "JURISDICTION OF THE STATE OF NEW MEXICO.—The State of New Mexico shall have jurisdiction over any offense committed by a person who is not a member of a Pueblo or an Indian as defined in title 25, sections 1301(2) and 1301(4), which offense is not subject to the jurisdiction of the United States."; *U.S. v. McBratney,* 104 U.S. 621 (1882) (States have ordinary criminal jurisdiction over crimes committed by non-Indians against non-Indians on Indian reservations. *United States v. Langford,* 641 F.3d 1195, 1197 (10th Cir.2011)(There is no "federal jurisdiction for a victimless crime

[4] The Pueblo of Pojoaque "Indian Country" consists of all lands within the Pueblo's original Pueblo Grant lands and certain other (reservation) lands later acquired in trust for the Pueblo. The County refers to all such lands as "reservation" lands. Officer Gutierrez will do the same with the understanding that the Pueblo's "Indian Country" is defined by the exterior boundaries of its Pueblo Grant and reservation lands as defined at 18 U.S.C. §1151.

perpetrated by a non-Indian in Indian Country...The states possess exclusive criminal jurisdiction over crimes occurring in Indian Country if there is neither an Indian victim nor an Indian perpetrator.").

While enforcement of state law within the Pueblo's lands benefit the Pueblo, it also benefitted the State of New Mexico and the County of Santa Fe within which the Pueblo's lands are located.

The distinction the County has sought to draw between on-reservation and off-reservation state law enforcement activities of the County Sheriff (acting through his deputies—including Officer Gutierrez) as to crimes over which the County has jurisdiction, and the County's suggestion that enforcing state law on Indian reservations where applicable is not law enforcement activity *undertaken for the benefit of the County,* is indefensible. Officer Gutierrez was in fact and in law "wor[king]...for the county" and "act[ing] in the line of duty for the County" and "acting on behalf of or in service of" the County when he made the arrest of Mr. Loya and otherwise engaged in the conduct giving rise to this suit. It matters not whether those actions occurred on or off-reservation lands.[5] The County

[5] The initial arrest in this case occurred within the Pueblo of Pojoaque "reservation boundaries" (R.111). However, it is undisputed that nothing in the commission issued to Officer Gutierrez restricted his county deputy authority to "on the reservation" crimes. (R.170-171). Likewise, it is undisputed that the transport, jailing and prosecution of Mr. Loya occurred off-reservation. (R.143, ¶8). Moreover, the County has admitted that the state law enforcement power conferred by that commission also extended to off-reservation crimes, when the Sheriff

Sheriff's duty to enforce state law where state jurisdiction exists applies with equal force both on and off-reservation lands. The "equal protection of the laws"—including the right to benefit from the enhanced safety that results from enforcement of traffic laws—is a right enjoyed equally by those located on or off Indian reservations in New Mexico, and the County's law enforcement obligations as to such crimes apply with equal force in both locations. *See*, U.S. Const. Amend. XIV, §IV, §1.A. Moreover, if the County's assertions in this regard were correct, there would be no basis for finding that Officer Gutierrez acted "under color of state law" and this Court should *sua sponte* dismiss the entire action.

C. Officer Gutierrez' Employment as a Pueblo of Pojoaque Police Officer Does Not Deprive Him of Public Employee Status Under the TCA

The County also seeks to misdirect the Court from the plain language of the TCA by emphasizing (a) that Officer Gutierrez was employed by the Pueblo of Pojoaque as a Pueblo Police Officer while at the same time possessing and exercising county law enforcement authority per his Sheriff's deputy commission; and, (b) that the Pueblo is a sovereign, federally recognized Indian tribe possessing its own jurisdiction and sovereign immunity.[6] (Ans.Br., pp.2, 4-5, 9, 15, 19).

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requests such help off-reservation. (Ans.Br., pp.19-20). *See, Allender v. Scott,* 379 F.Supp.2d 1206 (D.N.M.2005) (sheriff's issuance of deputy commission to tribal police officer without more constitutes a "county request for law enforcement assistance" off-reservation within the meaning of 25 U.S.C. §2803(8)).

[6] The Pueblo of Pojoaque, like all Indian tribes, does possess sovereign immunity as an attribute of its inherent sovereignty. *Kiowa Tribe v. Manufacturing*

But these factors do not change anything about the meaning of the TCA; and, there is nothing about treating such officers as public employees that is "anomalous" or "absurd" as suggested by the County. (Ans.Br., p.9). To the contrary, it would be anomalous, absurd and indeed discriminatory on its face to deny TCA coverage to such officers solely because they were employed by an Indian Tribe or Pueblo. Nothing in the TCA distinguishes between or discriminates against Pueblo police officers who are issued deputy commissions as compared to other persons who receive such commissions; and, nothing in the TCA says that a person employed by another entity which is not subject to the TCA (including an Indian tribe) is excluded from TCA coverage where they otherwise qualify as a "public employee" of the county under §41-4-3(F)(3). *See, Starko, Inc. v. Presbyterian Health Plans, Inc.,* 2012-NMCA-53, ¶49, 276 P.3d 252 (noting that if the legislature wished to create a precondition for eligibility for a government benefit otherwise authorized, it would have included those words in the statute). No such exclusionary language exists. Commissioned deputies employed by other TCA-covered entities already have such coverage. B-in-C, p.18, n.5.

Technologies, 523 U.S. 751 (1998); *Michigan v. Bay Mills Indian Community,* 134 S.Ct. 2004, 2028 (2014). But that sovereignty (and, hence, that sovereign immunity) does not extend to immunize the Pueblo or its officers for actions taken in their exercise of state law enforcement authority conferred upon them by county deputy sheriff commissions. The Pueblo has no sovereign authority to arrest and prosecute non-Indians for state law crimes, or even Pueblo law crimes. Section 20(a) and (b), Pub.L. 109-133; *Oliphant, supra.*

The controlling factors here are that the County of Santa Fe is a "governmental entity" under §41-4-3F(3) and Officer Gutierrez' actions taken in his capacity as a county deputy were in fact and in law actions taken "on behalf of or in service of" the County as a "governmental entity in any official capacity"—here in his capacity as a county sheriff's deputy; and, this is true irrespective of whether he was or was not paid by the County or was paid by the Pueblo. Section 41-4-3F(3) makes the question of whether or by whom he was paid to serve as a County Deputy utterly irrelevant. This is made clear by the final phrase of the provision: "with or without compensation."

Thus, Officer Gutierrez is clearly a public employee as defined at §41-4-3(F)(3). Neither his status as a tribal police officer nor the fact that the arrest here involved occurred on the reservation alter his status as a public employee under the TCA.

D. Officer Gutierrez Was Not an Independent Contractor

For the reasons shown in Br-in-C, §C, Officer Gutierrez was not an independent contractor. It is true (Ans.Br., p.19) that the County Sheriff has no authority to compel a Pueblo police officer to accept a county deputy commission and no authority to compel the Pueblo to agree to permit its officers to receive and use such commissions.

It is also true that the Sheriff had control over whether and to whom to issue deputies' commissions, and on what conditions, and to revoke those commissions if he was not satisfied that his conditions were being honored. The Sheriff at all times had the right, power and duty to control how those commissions were used—and how the law enforcement authority they conferred was exercised, and had the right to impose such background check, reporting, monitoring, oversight, training[7] or operational rules and procedures as he saw fit—exactly as he has the right to do for other deputies he employs to enforce state law. (Br-in-C, p.32-38). If the Pueblo or the officers would not agree to honor (or later failed to honor) those conditions to the satisfaction of the Sheriff, he at all times had the right to refuse to issue or to revoke those commissions, as he has in fact done. This gave the Sheriff the same practical opportunity to exercise control over deputies who constitute public employees under §41-4-3F(3)—as he has over deputies on his payroll. (Br-in-C, p. 34).

Significantly, this Court in *Celaya v. Hall,* 2004-NMSC-5, 135 N.M. 115, 85 P.3d 239, recognized that a county sheriff's right to control the activities of persons on whom he confers public authority is implicit in their appointment. That right to control exists as a matter of law. Indeed, in *Celaya* this Court ruled that a police

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The Sheriff imposed definite training and background requirements for issuance of deputy commissions and Officer Gutierrez satisfied those requirements. (R.198, ¶8).

chaplain was subject to the sheriff's right to control sufficient to take him out of the "independent contractor" category even through an uncontradicted affidavit had been submitted by a (former) deputy sheriff in the same department swearing that the sheriff's office "does not control the manner in which details of [chaplain's] work was performed." *Celaya v. Hall,* 2003-NMCA-86, 134 N.M. 19, 71 P.3d 1281, 1283. Where public authority is conferred and public liability attaches, the appointing authority's right to control is implicit in the appointment. Officer Gutierrez was not a plumber hired by the County to provide mechanical services that could be performed by any private citizen possessing the requisite training and licensing.[8] He was a deputized county sheriff empowered to use deadly force in the enforcement of state law. This kind of governmental authority cannot lawfully be delegated free of the appointing authorities right to control. This distinction is also implicit in the structure of the TCA and the cases affirming county defense and indemnity obligations for persons empowered to exercise county law enforcement authority who qualify as public employees under the TCA. *See, Karr v. Dow,* 84 N.M. 708, 507 P.2d 455, 457 (N.M. App. 1973) (agency principles alone do not determine sheriff's liability for actions of his

[8] There is nothing in the TCA that suggests that the legislature intended the "independent contractor" exception to apply to persons empowered to exercise core governmental powers—in contrast to persons hired by contract to perform professional or other services for which no governmental authority is otherwise required.

deputies; sheriff is liable because he gave his deputies law enforcement authority); *see,* authorities cited at Ans.Br., pp.16-18. *Giron, supra* (Ans.Br., p.18) holding that employees of a private correctional contractor were not "public employees" under the TCA does not support the County because a separate statute excludes them from TCA coverage. Id. at 1252. No such exclusion applies here.

In this context, as held in *Celaya,* whether a right to control exists is a question of law, not of fact. Hence, the sheriff's affidavit that he did not exercise such control over Officer Gutierrez (Ans.Br., pp.2-3) is not determinative and no factual submission to the contrary was required for Officer Gutierrez to preserve and prevail on this issue. *See,* R.145, ¶21; Ans.Br., pp.2-3.

As pointed out in Officer Gutierrez' opening brief—there are ample statutorily authorized means by which the Sheriff could have exercised his right to control how his deputized officers (no matter who or if anyone pays them) exercise his law enforcement authority. (Br-in-C, pp.32-33). Neither the officers nor the public lose their TCA protections simply because the Sheriff was derelict in failing to impose and enforce such conditions governing these deputies' exercise of his law enforcement authority as he deemed appropriate.

For the reasons set out at Br-in-C, pp.36-37, *Segura v. Colombe,* 895 F.Supp.2d 1141 (D.N.M. 2012) is not good authority to the contrary.

E. Section 29-1-11(G) Has No Bearing on this Case

The County also posits (with no basis beyond speculation) that in enacting §29-1-11(G) NMSA 1978[9] "The legislature was aware that tribally-employed police officers were being commissioned by County Sheriffs to enforce state criminal and traffic laws against non-Indians on the reservations yet...repeatedly has failed to include such commissioned but tribally-employed law enforcement officers within the definition of law enforcement officer, so as to require the state and local public bodies to defend and indemnify them." (Ans.Br., p.13). This is not an argument. It is a tautology. The County again simply assumes that its interpretation of the statute is correct, then reasons from there.

The statutory history set out by the County equally supports the opposite conclusion: that the legislature did not amend the statute to include deputized tribal police officers in the law enforcement officer definition because the legislature recognized that a) they were already covered in the "public employee" definition at §41-4-3F(3); (b) the statute already barred county liability as to their intentional torts because they were not included in that law enforcement definition (just like other persons who are given law enforcement authority but do not meet the law

[9] Sections 29-1-11A-F address the authority and circumstances in which the New Mexico State Police "may issue commissions as New Mexico peace officers to members of the [tribal police departments]." The legislature left undisturbed the preexisting authority of County Sheriffs to issue deputy sheriff commissions to tribal police officers per §41-4-5 NMSA 1978, and did not make applicable to such deputy commissions any of the restrictions or requirements set out in §29-1-11A-F.

enforcement officer definition, *Dunn, supra;* (c) that misconduct of persons exercising governmental powers for the county may give rise to §1983 liability whether or not they meet the law enforcement officer definition; and, (d) that the officers (and the pubic) involved in such §1983 claims already have the same rights and benefits of the TCA (defense and indemnity for the officers; a solvent party to pay damages for the plaintiff), as persons who meet the law enforcement officer definition. There was no need to amend the statute to achieve the results which Officer Gutierrez contends are already required by the statute.

F. The Sheriff's 2005 Letter Does Not change County's TCA Obligation

Turning to the Santa Fe County Sheriff's 2005 letter (R.135-136), there is no evidence in this record that the letter was ever received by the Pueblo of Pojoaque Police Chief, and it is undisputed that the letter was never seen or approved by the Pueblo's Governing Body or by Officer Gutierrez or by the County Commission or by the State's Governor (R.136, ¶¶23-25; Br-in-C, pp.6-7, 30-31). Hence, that letter despite what the Sheriff now says he thought, (Ans.Br., p.4) does not constitute an MOU by which the County was relieved of its defense and indemnity obligations under the TCA, nor could it have formed a part of any contract with Officer Gutierrez, since he never saw it. (R.146).

Nonetheless, the letter evidences the Sheriff's belief that he had the right to instruct the Pueblo's police officers holding deputy commissions to assist the

Sheriff's Office in responding to off-reservation crimes and to require them to prosecute traffic crimes off-reservation in the County Magistrate Court. The County also admits that the Sheriff could have "requested [Officer Gutierrez] as a commissioned deputy to leave the reservation and assist the Sheriff's Department in crowd control during Zozobra, or in manning a DWI checkpoint." (Ans.Br., pp.19-20). This further evidences the Sheriff's belief that he had a right to control how, when and where these officers exercised the authority conferred upon them by their deputy commissions.

CONCLUSION

This Court should reverse the rulings of the District Court and the Court of Appeals and remand with instructions that the County provide the same TCA defense and indemnity protections to Officer Gutierrez as it would to any other public employee.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of 12-213(F)(3) NMRA because the body of the brief contains 4393 words. The software used to obtain the word count is Microsoft Word 2007.The brief has been prepared in proportionally spaced typeface using Microsoft Word 2007 in 14 point font size and Times New Roman type style.

Dated: July 8, 2014.

C. Bryant Rogers

C. BRYANT ROGERS

CERTIFICATE OF SERVICE

I hereby certify that I did, on the 8the day of July, 2014, serve by First Class U.S. Mail, postage prepaid a true and correct copy of the foregoing to:

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SUPPLEMENTAL CERTIFICATE OF SERVICE

I hereby certify that I did, on the 8th day of July, 2014, serve by first class U.S. Mail, postage prepaid a true and correct copy of Petitioner Glen Gutierrez' Reply Brief on Frank T. Apodaca and Luis Robles, 500 Marquette Ave., NW, Suite 700, Albuquerque, NM 87102, counsel for *amicus curia*, New Mexico Association of Counties.

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