IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,
Plaintiff-Petitioner,
v. **No. S-1-SC-40964**

ANDREW HUERTA,
Defendant-Respondent.

and

STATE OF NEW MEXICO,
Plaintiff-Petitioner,
v. **No. S-1-SC-41075**

VON MARQUEZ,
Defendant-Respondent.

MOTION OF THE AMERICAN CIVIL LIBERTIES UNION OF NEW MEXICO AND THE AMERICAN CIVIL LIBERTIES UNION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE*

María Martínez Sánchez
Lalita Moskowitz
American Civil Liberties Union of New Mexico
P.O. Box 566
Albuquerque, NM 87103
(505) 460-0513
msanchez@aclu-nm.org
lmoskowitz@aclu-nm.org

Lillian Moore-Eissenberg*
American Civil Liberties Union Foundation
425 California St., Ste. 700
San Francisco, CA 94104
(415) 343-0762
lmoore-eissenberg@aclu.org

Julie A. Murray*
American Civil Liberties Union Foundation
915 15th Street NW
Washington, DC 20005
(202) 675-2326
jmurray@aclu.org

Counsel for Amici Curiae

**pro hac vice admissions pending*

Proposed *amici curiae* the American Civil Liberties Union of New Mexico and the national American Civil Liberties Union respectfully move under Rule 12-320(A) NMRA for leave to file their conditionally filed *amici curiae* brief. In support of this motion, *amici* state as follows:

1. *Amici* are nonprofit organizations that advocate for the rights of criminal defendants and, more generally, robust protections for individual rights under state constitutions.

2. *Amici* have a well-established interest in the independent development of state constitutional law. *Amici* pursue that interest here by encouraging this Court to replace the interstitial approach with an independent approach to state constitutional interpretation that will "ensure the people of New Mexico the protections promised by their constitution." *Grisham v. Van Soelen*, 2023-NMSC-027, ¶ 19 n.7, 539 P.3d 272.

3. In addition, *amici* have a related interest in ensuring that criminal defendants can vindicate their state constitutional rights against unreasonable searches and seizures. Here, *amici* pursue that interest by urging this Court to adopt a test for inventory searches that fully accounts for individual privacy rights and honors New Mexico's long-established strong preference for warrants. *See State v. Rivera*, 2010-NMSC-046, ¶ 25, 148 N.M. 659.

4. *Amici* notified the parties by email on March 4, 2026, that they intended to file an *amici curiae* brief and requested their positions on this motion. Defendants-Respondents Andrew Huerta and Von Marquez do not oppose, and the State takes no position.

WHEREFORE, *amici* respectfully ask this Court to grant them leave to file the conditionally filed *amici curiae* brief, attached as **Exhibit A**.

Respectfully submitted,

/s/ Maria Martinez Sanchez
María Martínez Sánchez
Lalita Moskowitz
American Civil Liberties Union of
New Mexico
P.O. Box 566
Albuquerque, NM 87103
(505) 266-5915
msanchez@aclu-nm.org
lmoskowitz@aclu-nm.org

Lillian Moore-Eissenberg*
American Civil Liberties Union Foundation
425 California Street, Suite 700
San Francisco, CA 94104
(415) 343-0762
lmoore-eissenberg@aclu.org

Julie A. Murray*
American Civil Liberties Union Foundation
915 15th Street NW
Washington, DC 20005
(202) 675-2326
jmurray@aclu.org

Counsel for Amici Curiae

**pro hac vice admissions pending*

CERTIFICATE OF SERVICE

Undersigned counsel certifies that a true copy of the foregoing Motion for Leave to File Brief of *Amici Curiae* was filed electronically and served to all counsel of record this 30th day of March 2026 via the Odyssey e-filing/service system.

/s/ Maria Martinez Sanchez
María Martínez Sánchez
American Civil Liberties Union of New Mexico
P.O. Box 566
Albuquerque, NM 87103
(505) 266-5915
msanchez@aclu-nm.org

EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,
Plaintiff-Petitioner,
v. **No. S-1-SC-40964**

ANDREW HUERTA,
Defendant-Respondent.

and

STATE OF NEW MEXICO,
Plaintiff-Petitioner,
v. **No. S-1-SC-41075**

VON MARQUEZ,
Defendant-Respondent.

BRIEF OF *AMICI CURIAE* THE AMERICAN CIVIL LIBERTIES UNION OF NEW MEXICO AND THE AMERICAN CIVIL LIBERTIES UNION IN SUPPORT OF DEFENDANTS-RESPONDENTS

María Martínez Sánchez
Lalita Moskowitz
American Civil Liberties Union of New Mexico
P.O. Box 566
Albuquerque, NM 87103
(505) 460-0513
msanchez@aclu-nm.org
lmoskowitz@aclu-nm.org

Counsel for Amici Curiae

**pro hac vice admissions pending*

Lillian Moore-Eissenberg*
American Civil Liberties Union Foundation
425 California St., Ste. 700
San Francisco, CA 94104
(415) 343-0762
lmoore-eissenberg@aclu.org

Julie A. Murray*
American Civil Liberties Union Foundation
915 15th Street NW
Washington, DC 20005
(202) 675-2326
jmurray@aclu.org

STATEMENT OF COMPLIANCE

Pursuant to Rule 12-320(D)(3) NMRA, this Amicus brief complies with the limitations set forth under Rule 12-318(F), (G) NMRA:

1. This Amicus brief was prepared using Times New Roman typeface set at a 14-point font size.
2. This Amicus brief does not exceed the thirty-five-page limitation.
3. This Amicus brief contains a total of 6,364 words.
4. The word count was obtained using Microsoft Word for Microsoft 365 MSO's word-count feature.

/s/ Maria Martinez Sanchez
María Martínez Sánchez
American Civil Liberties Union of New Mexico
P.O. Box 566
Albuquerque, NM 87103
(505) 460-0513
msanchez@aclu-nm.org

TABLE OF CONTENTS

TABLE OF AUTHORITIES

New Mexico Cases

Outside Jurisdiction Cases

Rules

Statutes

New Mexico Constitutional Provisions

Outside Jurisdiction Constitutional Provisions

Other Authorities

INTEREST OF *AMICI*

The American Civil Liberties Union ("ACLU") is a nationwide, non-profit, non-partisan organization dedicated to defending the civil liberties and civil rights guaranteed by the federal and state constitutions. The ACLU of New Mexico is its New Mexico affiliate.

Amici have an interest in and expertise on issues central to this case. They regularly advocate for the privacy rights of criminal defendants and privacy rights more generally. *See, e.g.*, Br. of *Amici Curiae* ACLU and ACLU of North Carolina, *State v. Wright*, No. 258PA23 (Sup. Ct. N.C. Nov. 4, 2024); Br. of *Amici Curiae* ACLU and ACLU of Michigan, *People v. Serges*, No. 167154 (Sup. Ct. Mich. Nov. 4, 2025); Press Release, ACLU of N.M., *New Mexicans Lack Essential Data Privacy Protection* (Jan. 28, 2026).[1] And they have argued for robust protections for individual rights under state constitutions. *See, e.g.*, Op. & Order Granting Pls.' Mot. for Prelim. Inj., *Perkins v. State*, No. DV-25-282 (Fourth Jud. Dist. Ct. Mont. May 16, 2025); Br. of *Amici Curiae* ACLU and ACLU of Pennsylvania, *Commonwealth v. Shivers*, No. 50 EAP 2024 (Sup. Ct. Pa. Sept. 26, 2024); *ACLU of N.M. v. City of Albuquerque*, 2006-NMCA-078, 139 N.M. 761.

[1] Available at: https://www.aclu-nm.org/press-releases/new-mexicans-lack-essential-data-privacy-protection.

Moreover, *amici* have a particular interest in New Mexico courts' method for interpreting the state constitution. As set out more fully below, and as *amici* have argued in *Atencio v. State*, No. S-1-SC-40980, *amici* urge this Court to replace the "interstitial" approach with one that allows state courts to interpret the New Mexico Constitution independently based on New Mexico law, history, and values.

INTRODUCTION AND SUMMARY OF ARGUMENT[2]

Police arrested Von Marquez at his apartment complex on an outstanding warrant after receiving an anonymous tip of his whereabouts and description, including that he was carrying a backpack. After finding Mr. Marquez, handcuffing him, and escorting him out of his neighbor's apartment, an officer went back to that apartment to look for the backpack described by the tip. Upon entering the apartment, the officer went straight to the zipped backpack and brought it to the police car. Police searched the backpack in the car and found pills that formed the basis for Mr. Marquez's later conviction on drug charges.

Police stopped Andrew Huerta while he was exiting a Whataburger drive-through, also on an outstanding arrest warrant. They impounded and searched his car based on its expired registration and a traffic warrant. During the search, they found a closed Fritos canister. They removed the lid, cut through a cellophane seal, dumped out the chips, noticed a false bottom, tore the canister to pieces, found a white plastic container, unscrewed the lid of that container, and discovered pills that formed the basis for drug charges brought against Mr. Huerta.

In both cases, police invoked the inventory search exception to the warrant requirement. And in both cases, the Court of Appeals held the searches

[2] Under Rule 12-320(C) NMRA, *amici* affirm that no person or entity beyond *amici* paid for or authored any part of this brief.

unconstitutional under Article II, Section 10 of the New Mexico Constitution. The Court of Appeals applied the standard set forth in *State v. Jim*, 2022-NMCA-022, 508 P.3d 937, which requires courts to determine whether inventory searches are reasonable by balancing the need for the search in a particular case against the intrusion upon an individual's privacy interest. The Court of Appeals here determined the searches were unreasonable: Mr. Marquez and Mr. Huerta had privacy interests at stake that were not outweighed by any asserted government interests that purportedly justify inventory searches, such as protecting property, avoiding liability for property damage, or preventing harm to police.

The Court of Appeals struck the right balance between individual privacy and governmental need—one that differs from federal constitutional doctrine. *Amici* submit this brief to make two key points.

First, although *amici* believe the Court of Appeals' decisions are faithful to this Court's precedent, this consolidated case presents a proper vehicle for the Court to reconsider—and retire—the interstitial approach to state constitutional interpretation that permeates the Court of Appeals' opinion and the parties' briefing. In doing so, the Court should endorse an independent approach to interpreting the New Mexico Constitution. This Court's interstitial approach no longer serves the values it was meant to advance, and as evidenced by this case, it results in unnecessary litigation of ancillary federal issues.

Second, this Court should interpret Article II, Section 10 independently in the inventory search context and adopt the Court of Appeals' state constitutional standard for the reasonableness of an inventory search, which reflects bedrock principles of New Mexico law and is consistent with persuasive precedent from other states. Adopting federal doctrine instead, as the State urges, would substantially defang New Mexico's warrant requirement by disregarding individual privacy interests and granting undue deference to police, opening the door to abuse. This Court should shut that door by adopting the test applied below.

ARGUMENT

I. This Court should adopt an independent approach to state constitutional interpretation.

In resolving this case, the Court of Appeals relied on its prior decision in *Jim*, in which the Court of Appeals interpreted Article II, Section 10 of the New Mexico Constitution to provide greater protection than the federal inventory search standard. 2022-NMCA-022, ¶¶ 15–21. *Jim* reached that conclusion only after applying New Mexico's "interstitial approach" to state constitutional interpretation. *Id.* ¶¶ 7–21. Adopted in *State v. Gomez*, the interstitial approach requires courts to look first to federal law—here, the federal Fourth Amendment—when reviewing state constitutional claims, and permits them to diverge from federal interpretations of parallel provisions only if they identify "a flawed federal analysis, structural differences between state and federal government, or distinctive state

characteristics." 1997-NMSC-006, ¶ 19, 122 N.M. 777. This Court recently signaled that, in a proper case, it might revisit whether to continue adhering to the interstitial approach. *Grisham v. Van Soelen*, 2023-NMSC-027, ¶ 19 n.7, 539 P.3d 272.

This case presents a proper vehicle for that reconsideration. While *amici* hold, *contra* the State (at 29, 37), that the Court of Appeals' interstitial analysis was sound, it should not matter. The interstitial analysis was always meant to serve as a bridge, never a destination, on the road to state constitutional independence. *See State v. Garcia*, 2009-NMSC-046, ¶ 56, 147 N.M. 134 (Bosson, J., specially concurring). And it no longer serves the values it was meant to advance—cogency, efficiency, and federalism. *Amici* thus urge the Court to replace the interstitial approach with an independent one that will "ensure the people of New Mexico the protections promised by their constitution." *Grisham*, 2023-NMSC-027, ¶ 19 n.7.

A. Interstitial analysis no longer promotes cogency.

As originally conceived, the interstitial approach was supposed to promote cogency by encouraging "a reasoned reaction to the federal view." *Gomez*, 1997-NMSC-006, ¶ 21 (quoting *Developments in the Law—The Interpretation of State Constitutional Rights*, 95 Harv. L. Rev. 1324, 1357 (1982)). But in practice, it is often applied inconsistently, and federal doctrine has become a moving target, undermining courts' efforts to produce a cogent body of state constitutional law.

Perhaps because this approach is itself unclear and unnecessarily complex, it has been applied differently in different contexts, or not at all. *Compare State v. Adame*, 2020-NMSC-015, ¶¶ 21–28, 476 P.3d 872 (holding that distinctive state characteristics were present but did not justify departure), *with Griego v. Oliver*, 2014-NMSC-003, ¶¶ 39, 53, 316 P.3d 865 (interpreting the New Mexico Constitution independently without citing *Gomez*), *and Grisham*, 2023-NMSC-027, ¶ 15 (declining to apply *Gomez* because the relevant federal law was "undetermined"). This inconsistency in the use of the interstitial approach is not surprising, since applying interstitial analysis is no straightforward task. As the State's arguments illustrate (at 29–38), litigants applying interstitial analysis must address not simply whether New Mexico's characteristics justify the rule at issue, but—more circuitously—whether New Mexico's characteristics are distinctive and important enough, and whether federal analysis is flawed enough, to justify departing from federal law, within the meaning of *Gomez*.

What is more, the "federal view" that was meant to elicit a "reasoned reaction" from state courts has proven more volatile than it might have seemed in 1997, when *Gomez* was decided. *See, e.g.*, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 231 (2022) (overruling longstanding precedent on abortion); *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 19 (2022) (establishing a novel test for firearm regulations). When federal precedent is in flux or otherwise unclear, it is less capable

of anchoring state constitutional analysis, and the interstitial approach's "utility is significantly diminished." *Grisham*, 2023-NMSC-027, ¶ 15; *cf. State v. Barrow*, 989 N.W.2d 682, 689–90 (Minn. 2023) (noting that Minnesota's search-and-seizure protections may no longer be coextensive with federal law due in part to "[t]he creeping expansion of the [federal] automobile exception").

B. Interstitial analysis is increasingly inefficient.

Interstitial analysis was also supposed to promote efficiency by asking state courts to consider "extensive and well-articulated" federal protections. *Gomez*, 1997-NMSC-006, ¶ 21 (quoting *Developments*, *supra*, at 1357). But interstitial analysis undermines efficiency by requiring courts to embark on extended forays into federal law even when a case could be resolved more straightforwardly under state law. In *State v. Garcia*, for example, this Court announced at the outset its intention to review the defendant's state constitutional claim, and it ultimately ruled for the defendant on that basis. 2009-NMSC-046, ¶¶ 12, 47. But because the "interstitial approach . . . mandate[d] that [the Court] consider whether [the] [d]efendant was protected under the federal constitution," the Court first analyzed federal precedents, despite "serious uncertainty" caused by a recent "shift" in federal search-and-seizure law. *Id.* ¶¶ 13–15.

In addition, the interstitial approach undermines judicial economy—especially where federal doctrine does not clearly resolve the case—by necessitating

complex mini-appeals on whether litigants have done enough to preserve their state constitutional claims within the meaning of *Gomez*. *Cf. Gomez*, 1997-NMSC-006, ¶¶ 22–23 (setting forth preservation rules for state constitutional claims when broader independent protection has already been established in prior precedent and when it has not). Here, for instance, the parties disagree on whether Mr. Marquez properly preserved his state constitutional claim. *See* State Br. in Chief 51–55; Marquez Answer Br. 28–31. While Mr. Marquez is correct that his claim is preserved, interstitial analysis creates confusion. *Cf. Garcia*, 2009-NMSC-046, ¶ 56 (Bosson, J., specially concurring) (noting that *Gomez* "is capable of more than one meaning" as to preservation).

C. An independent approach would better serve principles of federalism.

Finally, the interstitial approach was supposed to promote "a truly effective federalist system" by preserving "national uniformity" with respect to fundamental rights. *Gomez*, 1997-NMSC-006, ¶ 21 (quoting *State v. Hunt*, 450 A.2d 952, 964 (N.J. 1982) (Handler, J., concurring)). But as explained below, state high courts have increasingly concluded in the years since *Gomez* that national uniformity across federal and state courts is not necessarily desirable, and in fact uniformity as a goal is inconsistent with the design of our federal system.

Indeed, as contemplated by the framers of the U.S. Constitution, state courts can best advance federalism principles by declining to reflexively follow federal

doctrine. State courts, after all, have a "constitutional duty," *State v. Gutierrez*, 1993-NMSC-062, ¶ 16, 116 N.M. 431, to provide what James Madison called a "double security" for liberty, *State ex rel. Cincinnati Enquirer v. Bloom*, 177 Ohio St. 3d 174, ¶ 19, 2024-Ohio-5029, 251 N.E.3d 79 (quoting James Madison, *The Federalist No. 51*, at 323 (Clinton Rossiter ed. 1961)). Unlike the U.S. Supreme Court, state supreme courts need not worry that their rulings will suppress experimentation nationwide or prove poor fits for some parts of the country. Thus, while "[f]ederalism considerations may lead the U.S. Supreme Court to underenforce (or at least not to overenforce) constitutional guarantees," state courts need not "apply a 'federalism discount.'" Jeffrey S. Sutton, 51 IMPERFECT SOLUTIONS: STATES AND THE MAKING OF AMERICAN CONSTITUTIONAL LAW 175 (Oxford Univ. Press 2018). Instead, they can tailor state constitutional rights to state circumstances.

This double security for individual rights becomes especially vital when, as now, federal law is in flux. *See supra* Part I.A. The words of state constitutions are not "balloons to be blown up or [be] deflated every time, and precisely in accord with the interpretation of the U.S. Supreme Court, following some tortuous trail." *State v. Ingram*, 914 N.W.2d 794, 797 (Iowa 2018) (quoting *Penick v. State*, 440 So. 2d 547, 552 (Miss. 1983)). "Real federalism means that state constitutions are not mere shadows cast by their federal counterparts, always subject to change at the hand of a federal court's new interpretation of the federal constitution." *Olevik v. State*,

806 S.E.2d 505, 512 n.3 (Ga. 2017). At a minimum, if the people of New Mexico wanted their courts to tether state constitutional analysis to federal law, they surely would have said so. But they did not. *Cf.* Fla. Const. art. I, § 12 (providing that the state search-and-seizure right "shall be construed in conformity with" the federal Fourth Amendment, "as interpreted by the United States Supreme Court"); Cal. Const. art. I, § 28(f)(2) (foreclosing any state-law grounds for evidence suppression other than statutes passed by a legislative supermajority).

Principles of New Mexico law support this view. The framers of the New Mexico Constitution created a unique regime of rights, and they "made it imperative upon the judiciary to give meaning to those rights" and preserve their "sanctity." *Gutierrez*, 1993-NMSC-062, ¶¶ 32, 55. Despite its formal frameworks for interpretation, this Court has long been "willing[] to undertake independent analysis of our state constitutional guarantees," *id.* ¶ 32, recognizing that it is "not bound" to follow federal precedents, *State ex rel. Serna v. Hodges*, 1976-NMSC-033, ¶ 22, 89 N.M. 351, *overruled on other grounds by State v. Rondeau*, 1976-NMSC-044, ¶ 9, 89 N.M. 408.

Further, this Court has already emphasized that it interprets the New Mexico Constitution "as a harmonious whole" rather than reading provisions in isolation. *Block v. Vigil-Giron*, 2004-NMSC-003, ¶ 9, 135 N.M. 24 (citing *State ex rel. N.M. Jud. Standards Comm'n v. Espinosa,* 2003-NMSC-017, ¶ 23, 134 N.M. 59). This

means that a unique provision in the New Mexico Constitution can serve as a "prism" through which other provisions, including those with federal analogues, are viewed. *Grisham*, 2023-NMSC-027, ¶ 25; *cf.* Robert F. Williams, *Enhanced State Constitutional Rights: Interpreting Two or More Provisions Together*, 2021 Wis. L. Rev. 1001 (2021) (describing how joint interpretation of state constitutional provisions can give rise to stronger protection). Accordingly, New Mexico constitutional provisions should be read, first and foremost, in their organic context: the New Mexico Constitution as a whole, not federal law.

In light of these principles, and consistent with the practices of sister states,[3] *amici* urge this Court to retire interstitial analysis and instead focus on the following

[3] *See, e.g.*, *Traylor v. State*, 596 So.2d 957, 962 (Fla. 1992) (setting forth factors "that inhere in [Florida's] own unique state experience, such as the express language of the constitutional provision, its formative history, both preexisting and developing state law, evolving customs, traditions and attitudes within the state, the state's own general history, and finally any external influences that may have shaped state law"); *Dupuis v. Roman Catholic Bishop of Portland*, 2025 ME 6, ¶ 11 n.8, 331 A.3d 294 ("[W]e first examine our own precedent; our own common law; our own statutes and values; and our own sociological and economic context."); *State v. Misch*, 2021 VT 10, ¶ 9 ("[W]e begin with the text of the provision, understood in its historical context, and we consider our own case law, the construction of similar provisions in other state constitutions, and empirical evidence if relevant."); *Commonwealth v. Molina*, 104 A.3d 430, 441 (Pa. 2014) ("[T]he Court should consider: the text of the relevant Pennsylvania Constitutional provision; its history, including Pennsylvania case law; policy considerations, including unique issues of state and local concern and the impact on Pennsylvania jurisprudence; and relevant cases, if any, from other jurisdictions.").

state-centric factors in interpreting the New Mexico Constitution, regardless of whether the provision at issue has a federal analogue or is entirely unique:

(a) State constitutional text, structure, and history. *See, e.g.*, *N.M. Right to Choose/NARAL v. Johnson*, 1999-NMSC-005, ¶¶ 29–30, 126 N.M. 788 (describing the addition of the Equal Rights Amendment and comparing it to the text of New Mexico's preexisting equality provision, as well as the federal Equal Protection Clause); *Grisham*, 2023-NMSC-027, ¶¶ 23–26 (jointly interpreting New Mexico's Popular Sovereignty Clause, Right of Self-Government Clause, Freedom of Elections Clause, and Equal Protection Clause); *Gutierrez*, 1993-NMSC-062, ¶ 34–43 (considering the history of search-and-seizure law, from "British abuses of individual liberty" to the specific historical "milieu from which the New Mexico search and seizure provision emerged").

(b) Preexisting and developing state law. *See, e.g.*, *Griego*, 2014-NMSC-003, ¶ 42 (considering preexisting statutory protections for sexual orientation); *State v. Martinez*, 2021-NMSC-002, ¶ 67, 478 P.3d 880 (considering statutory reforms related to eyewitness-identification evidence).

(c) Contemporary state experience and values. *See, e.g.*, *State v. Cordova*, 1989-NMSC-083, ¶¶ 15–16 & n.8, 109 N.M. 211 (invoking "the New Mexico experience"); *NARAL*, 1999-NMSC-005, ¶ 31 (describing the "evolving concept of gender equality in this state"); *Breen v. Carlsbad Mun. Schs.*, 2005-NMSC-028, ¶ 27,

138 N.M. 331 (noting that "New Mexico has continually shown a concern for protecting the mentally disabled").

Focusing on these factors—and looking to other jurisdictions' precedents only to the extent they are persuasive—would help New Mexico courts avoid the pitfalls of interstitial analysis, uphold principles of federalism, and, above all, "give vitality" to the New Mexico Constitution. *Gutierrez*, 1993-NMSC-062, ¶ 55.

II. The Court of Appeals' test for the reasonableness of an inventory search should govern.

The Court of Appeals' approach to inventory searches—which requires courts to assess reasonableness by "balancing the need for the search in a particular case against the intrusion upon an individual's privacy interest"—properly weighs individual privacy rights against actual government need and should be upheld as applied here. *State v. Marquez*, 2026-NMCA-020, ¶ 13, __P.3d __ (quoting *Jim*, 2022-NMCA-022, ¶ 14); *see also State v. Huerta*, 2025-NMCA-032, ¶ 19, 577 P.3d 237 ("[W]e must weigh 'the governmental and societal interests advanced to justify the intrusion against the constitutionally protected interest of the individual citizen in the privacy of [their] effects.'" (quoting *Jim*, 2022-NMCA-022, ¶ 22)).

By way of background: Under federal constitutional precedent, inventory searches are an established "exception to the warrant requirement of the Fourth Amendment." *Colorado v. Bertine*, 479 U.S. 367, 371 (1987). The U.S. Supreme Court has held that inventory searches of property in lawful police custody are

reasonable where the officers followed departmental protocol designed to produce an inventory in conducting the search, and the officers are not shown to have acted in bad faith or for the "sole purpose" of investigation. *Bertine*, 479 U.S. at 372; *see also, e.g.*, *United States v. Ulibarri*, 149 F.4th 1193, 1201 (10th Cir. 2025).

In applying federal law, this Court, too, has recognized these general parameters for inventory searches and reiterated their purpose: to protect the owner's property, to protect police from false claims of property loss or damage, and to protect police from potential danger. *See, e.g.*, *State v. Ruffino*, 1980-NMSC-072, ¶ 5, 94 N.M. 500.

In contrast, this Court has not squarely addressed the appropriate standard under Article II, Section 10 of the New Mexico Constitution for determining the constitutionality of warrantless inventory searches. Rather, this Court's precedent on inventory searches has exclusively involved federal Fourth Amendment claims. *See Ruffino*, 1980-NMSC-072; *State v. Ontiveros*, 2024-NMSC-001, 543 P.3d 1191; *State v. Davis*, 2018-NMSC-001, 408 P.3d 576; *State v. Boswell*, 1991-NMSC-004, 111 N.M. 240; *State v. Wilson*, 1994-NMSC-009, 116 N.M. 793; *State v. Williams*, 1982-NMSC-041, 97 N.M. 634.[4]

[4] The Court in *Davis* quoted *State v. Shaw*, where the Court of Appeals aligned state and federal standards. *See Davis*, 2018-NMSC-001, ¶¶ 11, 16, 22 (citing *State v. Shaw*, 1993-NMCA-016, 115 N.M. 174). But the Court did not rely on *Shaw*'s holding as to the relevant reasonableness standard, besides a general statement about

Now presented with the question, the Court should balance "the need for the search in a particular case against the intrusion upon an individual's privacy interest" and hold that the searches at issue violated Article II, Section 10. *Jim*, 2022-NMCA-022, ¶ 14; *see State v. Sanders*, 2024-NMCA-030, ¶¶ 18–23, 545 P.3d 1176 (applying that approach). Because these searches were unconstitutional under the balancing test set out in *Jim*, this Court need not decide whether an even more stringent standard, such as a bright-line rule in certain contexts, should apply in future cases.

Far from "upend[ing]" any doctrine, State Br. in Chief 27, the standard set out in *Jim* and applied in the instant cases is consistent with this Court's longstanding use of balancing tests in the criminal procedure realm. *See Jim*, 2022-NMCA-022, ¶ 19 (collecting cases). *Jim*'s approach is workable and flexible, not a "blanket ban," *contra* State Br. in Chief at 38, and it provides sorely needed deterrence against police opportunism. Most importantly, by giving due regard to individual privacy interests, the Court of Appeals' test helps ensure that the word "inventory" will not become a "talisman to overcome the requirements" of the New Mexico Constitution. *Bertine*, 479 U.S. at 387 (Marshall, J., dissenting).

Several principles emerge from case law, in New Mexico and other states, that should guide this Court's adoption of *Jim*'s approach. First, balancing the relevant

---

the breadth of inventory searches, so its invocation of *Shaw* does not bear on this case.

interests is critical, since mere compliance with police inventory procedures and good faith should not save an illegal search from unconstitutionality. Second, asserted state interests, even legitimate ones, should not automatically trump individual privacy rights. Third, courts should evaluate state interests in light of the facts of the case rather than focus on the theoretical benefits of general precautionary policies. And fourth, as Mr. Marquez proposes (at 45–46), property owners should be allowed to make alternative arrangements for care of their possessions. If they are denied that option, the familiar reasons for searching closed containers are even less persuasive.

A. The text, structure, and history of the New Mexico Constitution require giving substantial weight to individual privacy interests when applying Article II, Section 10.

Article II, Section 10 of the New Mexico Constitution, adopted in 1912 and remaining without amendment, provides that:

> The people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures, and no warrant to search any place, or seize any person or thing, shall issue without describing the place to be searched, or the persons or things to be seized, nor without a written showing of probable cause, supported by oath or affirmation.

Notably, the search-and-seizure clause is not framed in mere prohibitory terms; rather, it grants an affirmative right of the "people [to] be secure" from unreasonable intrusions on their privacy. N.M. Const. art. II, § 10; *compare*, *e.g.*, U.S. Const.

amend. IV ("The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated . . . .").

Because it is not framed solely as a limit on state authority, New Mexico's provision thus suggests an intent to confer on New Mexicans unusually "broad" protection in the search-and-seizure context, *Gutierrez*, 1993-NMSC-062, ¶ 46, consistent with numerous other precedents from this Court holding that Article II, Section 10 provides stronger privacy rights than the federal Fourth Amendment.[5] In this respect, the provision is similar, for example, to state free speech provisions that provide that "[e]very person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right." Cal. Const. art. I, § 2; *e.g.*, N.J. Const. art. I, § 6 (similar). Some courts analyzing these guarantees have ascribed meaning to this affirmative language. *Golden Gateway Ctr. v. Golden Gateway Tenants Ass'n*, 29 P.3d 797, 1019 (Cal. 2001) (recognizing that California's free speech clause sweeps more broadly than the First Amendment because it guarantees "an affirmative right to free speech"); *State v. Schmid*, 423 A.2d 615, 626 (N.J. 1980) (tracing the "exceptional vitality" of New Jersey's

[5] *See, e.g.*, *State v. Cordova*, 1989-NMSC-083, ¶¶ 15–16, 109 N.M. 211 (retaining two-pronged test for probable cause); *State v. Gutierrez*, 1993-NMSC-062, ¶¶ 1, 33–56, 116 N.M. 431 (rejecting good-faith exception to exclusionary rule); *Campos v. State*, 1994-NMSC-012, ¶ 10, 117 N.M. 155 (ruling that a warrantless public arrest of a felon can be unreasonable); *State v. Garcia*, 2009-NMSC-046, ¶¶ 15, 35, 147 N.M. 134 (retaining a "free-to-leave" test for seizures).

constitutional speech protections in part to "more sweeping," "affirmative[]" language).

The structure of the New Mexico Constitution likewise supports protections for both privacy and property that are uniquely robust. In addition to including due-process protections for property, *see* N.M. Const. art. II, § 18, Article II, Section 4 of the New Mexico Constitution protects the "natural, inherent, and inalienable rights" of "possessing" and "protecting property." N.M. Const. art. II, § 4. Article II, Section 4's highly specific guarantees bolster New Mexicans' reasonable expectation of privacy in their property and notably do not appear in the federal Due Process Clause. U.S. Const. amend. XIV, § 1; *cf. Ingram*, 914 N.W.2d at 817 (linking the Iowa framers' view of the "the sanctity of private property" to reasonable expectations of privacy under the Iowa Constitution). Considered together, these provisions demand a privacy-protective test for inventory searches that is more stringent than the federal baseline. *Cf. supra* Part I.C (on joint interpretation of state constitutional provisions).

Constitutional history is sparse, but what exists supports this reading as well. The period in which the New Mexico Constitution was adopted "saw increasing legal challenges to the admissibility of evidence seized in violation of either state or federal constitutions," suggesting the issue "loomed large" for the framers.

Gutierrez, 1993-NMSC-062, ¶ 42. Though this history is not alone determinative, it supports reading the search-and-seizure guarantee broadly.

B. Longstanding law in New Mexico and other states supports the Court of Appeals' standard.

The Court of Appeals' approach is consistent with longstanding legal principles in New Mexico. As a general matter, the fact that inventory searches have been described as a community caretaking function does not make expectations of privacy any less relevant, *contra* the State (at 30–31). This Court has made clear that privacy interests are implicated even when law enforcement acts as a community caretaker: "As the privacy expectation increases, the caretaker functions that justify an intrusion by police must be judged by a different standard." *State v. Ryon*, 2005-NMSC-005, ¶ 25, 137 N.M. 174.

As applicable to Mr. Huerta's case, New Mexico has long recognized an expectation of privacy in automobiles that exceeds the federal baseline. *State v. Cardenas-Alvarez*, 2001-NMSC-017, ¶ 15, 130 N.M. 386 (citing *Gomez*, 1997-NMSC-006, ¶ 37). The State's attempt to explain this away by distinguishing between investigative and non-investigative searches and noting that inventory searches do not require probable cause (at 29–31) is circular and unavailing. Only *valid* inventory searches require no showing of probable cause, but the question here is what constitutes a valid inventory search. In determining the proper test for any

exception to the probable cause requirement, the Court should account for the well-established expectation of privacy in cars.

This Court has also recognized that under New Mexico law, a person's expectation of privacy does not evaporate when they visit another person's home. *State v. Crocco*, 2014-NMSC-016, ¶ 18, 327 P.3d 1068. The State's related suggestion that any standard for inventory searches more stringent than federal law should be cabined to property found in cars, and thus not apply to the search of Mr. Marquez's backpack found in an apartment, is misplaced. This Court has simply recognized that an individual does not "*lower*[] his expectation of privacy when he enters an automobile." *Cardenas-Alvarez*, 2001-NMSC-017, ¶ 15 (emphasis added). That recognition is not grounds to cabin the approach used in *Jim* to property found in cars, and to treat an individual's privacy interest in all other property less favorably. *See also* Marquez Answer Br. 43 (noting the heightened expectation of privacy in private homes); *cf. Caniglia v. Strom*, 593 U.S. 194, 199 (2021) (unanimous decision declining to expand federal doctrine allowing an inventory search of a car to a warrantless search of a home).

Case law from other states likewise supports the Court of Appeals' test. For example, in *State v. Ingram*, the Iowa Supreme Court addressed a police search involving a black cloth bag found inside the defendant's impounded car following a traffic stop. 914 N.W.2d at 798. Balancing individual privacy interests against the

state's asserted interests, the Iowa Supreme Court held that the search violated the Iowa Constitution. *Id.* at 816–21. The Court emphasized that Iowa—like New Mexico—has a "strong warrant preference," *id.* at 816; that Iowa courts generally apply reasonableness standards "more stringently" than federal courts do, *id.*; that containers in cars "may contain all manner of private materials," *id.* at 817; and that the asserted state interests in conducting the search without a warrant were minimal, *id.* at 817–20. On the last point, the Court determined that "the State's interest in protecting itself from false claims" from damage or loss was "at best insubstantial" given the "minimal risk" of theft, the "limited effectiveness" of written inventories, the availability of "equally effective but less intrusive" alternatives to a search, and the "limited exposure of gratuitous bailees" under Iowa law. *Id.* at 819. The Court also "decline[d] to put much weight in the alleged safety rationale"—that is, that the inventory search was necessary to protect officers from harm—because impounded cars are remote from their drivers, creating "little risk." *Id.* Further, the Court noted that the "benign purpose" of assisting the owner cannot justify an inventory search when the owner would prefer to "opt out of the state's beneficence" and make alternative arrangements for securing their property. *Id.* at 819–20.

Oregon, too, has long applied a test for inventory searches that accounts for privacy interests and realistically assesses governmental need. Oregon courts consider the totality of the circumstances, including "the purposes of the [applicable

departmental] policy, the source of authority for why the individual, or the object, came into police custody, and the privacy rights indicated." *State v. Wilcox*, 580 P.3d 860, 862 (Or. 2025) (en banc). In doing so, Oregon courts accord little deference to police, requiring the state to provide "a concrete basis in specific circumstances" for a safety rationale, rather than simply assuming risk "as a basis of a general precautionary practice." *State v. Atkinson*, 688 P.2d 832, 836 (Or. 1984).

Other states interpreting their own constitutions have adopted similar privacy-protective approaches, in recognition of the "judicial commitment to limiting unwarranted governmental infringement, well-intentioned or otherwise, of privacy interests." *State v. Mangold*, 414 A.2d 1312, 1318 (N.J. 1980). As these courts recognize, situational factors beyond the scope of the federal test are relevant in determining whether a "true inventory search" occurred, *State v. Sims*, 426 So.2d 148, 153 (La. 1983), potentially including whether the arrestee was asked for consent, whether they were asked about the presence of valuables, and whether the items searched were in plain view. *See id.* (considering whether the arrestee was asked for consent and about valuables); *Mangold*, 414 A.2d at 1318 (requiring police to give the owner "the option of either consenting to the inventory or making his own arrangements"); *State v. Sawyer*, 571 P.2d 1131, 1134 (Mont. 1977) (limiting warrantless inventory searches to "articles in plain view from outside the vehicle"), *overruled on other grounds by State v. Long*, 700 P.2d 153, 155–56 (Mont. 1985);

State v. Goff, 272 S.E.2d 457, 461–62 (W. Va. 1980) (similar). Even "legitimate government interests . . . are not limitless," *State v. White*, 958 P.2d 982, 987 (Wash. 1998), and "[t]he fact that the inventory is undertaken in whole or in part for the benevolent purpose of protecting the property . . . does not change the activity into something other than a search," *State v. Daniel*, 589 P.2d 408, 417 (Alaska 1979). Thus, inventory searches "should be no more intrusive than reasonably necessary" to serve their purported "protective functions." *Mangold*, 414 A.2d at 1318.

These cases are consistent with the Court of Appeals' non-formalistic conclusion in *Huerta* and *Marquez*, based on *Jim* and *Sanders*, that closed containers "generally may not be searched without a warrant." *Huerta*, 2025-NMCA-032, ¶ 26; *Marquez*, 2026-NMCA-020, ¶ 16 (quoting *Huerta*). *Huerta* reflects careful analysis of specific scenarios—the kind of analysis that state courts regularly conduct, and that does not lead inexorably to suppression. *See, e.g.*, *Sims*, 426 So.2d at 153 (applying a multi-factor test to uphold an inventory search). Where facts differ meaningfully—for example, where they suggest that a closed container holds rotting food or could otherwise pose a genuine health or safety risk—nothing in the Court of Appeals' decisions forecloses a different outcome.

The case law of sister states thus demonstrates that if this Court charts an independent path for inventory searches, it need not do so alone. Other states' doctrine confirms the soundness and practicality of the Court of Appeals' approach.

C. The Court of Appeals' standard best accords with New Mexico's contemporary experience and values.

The people and courts of New Mexico have demonstrated a strong, continuing commitment to upholding, and even expanding, individual privacy rights and the rights of criminal defendants. This factor, too, supports concluding that the balancing approach in *Jim* is, at minimum, necessary to enforce Article II, Section 10.

First, New Mexico has a "strong preference for warrants." *State v. Crane*, 2014-NMSC-026, ¶ 16, 329 P.3d 689 (quoting *Gomez*, 1997-NMSC-006, ¶ 36 (collecting cases)). The State's argument that this is irrelevant because inventory searches are non-investigative and do not require warrants (at 33–35) only begs the question at issue, as before. *See supra* Part II.B (on privacy interests in automobiles). The key question here is what qualifies as a "true" inventory search in the first place, *Sims*, 426 So.2d at 153, such that the warrant requirement would not apply.

Moreover, the people of New Mexico have a deep concern for government accountability and ensuring the deterrence of rights violations. In 2021, for example, the Legislature adopted the New Mexico Civil Rights Act, allowing residents to sue government entities for violations of the state constitution and banning the application of qualified immunity. NMSA 1978, §§ 41-4A-1 to -13 (2021). And in 2019, the Legislature enacted a comprehensive criminal justice reform bill that has since informed this Court's approach to state constitutional issues. NMSA 1978, §§ 29-3B-1 to -4 (2019); *see Martinez*, 2021-NMSC-002, ¶ 67 (invoking the New

Mexico Accurate Eyewitness Identification Act in adopting a more stringent exclusionary rule under the state constitution).

As courts and scholars have recognized, privacy-protective standards for inventory searches likewise provide sorely needed deterrence. This is particularly true given the deferential backdrop of federal law, which deems "reasonable" inventory searches that follow standardized procedures and are not performed in bad faith or for the "sole purpose" of investigation—a difficult point for defendants to prove. *Bertine*, 479 U.S. at 372–76. Commentators have cautioned that inventory searches under federal law can become "lawful dragnets" as police engage "in the often competitive enterprise of ferreting out crime." Tonja Jacobi & Elliot Louthen, *The Corrosive Effect of Inevitable Discovery on the Fourth Amendment*, 171 U. Pa. L. Rev. 1, 44, 46 (2022). This "possibility for abuse" is why the scope of inventory searches should "be limited to protecting against substantial risks to property and not enlarged on the basis of remote risks." *State v. Houser*, 622 P.2d 1218, 1226 (Wash. 1980) (en banc). Such limits help ensure that inventory searches do not become, under state law, "a law enforcement weapon" that is "essentially unregulated" and "anathema to search and seizure law." *Ingram*, 914 N.W.2d at 815.

Here, the search of Mr. Huerta's property bears the hallmarks of an investigation. From the start, the officers suspected that Mr. Huerta was a member of a gang and that his backpack contained contraband. Huerta Answer Br. 4. Upon

opening the chip canister, they were "immediately suspicious of the container and its contents," so they "tore it apart," despite supposedly believing it contained valuables. *Huerta*, 2025-NMCA-032, ¶¶ 5–6. Far from safeguarding Mr. Huerta's property from damage or loss—core purposes of an inventory search—the officers intentionally destroyed his belongings themselves. And it strains credulity to think that the virtual nesting doll of the chip container, including its false bottom, could have obscured a dangerous weapon.

In Mr. Marquez's case, the officers initially characterized their actions as a search incident to arrest, suggesting that the distinct justifications for inventory searches did not actually motivate the search in the first place. *See Marquez*, 2026-NMCA-020, ¶ 4. The officers retrieved the backpack from a private home that Mr. Marquez was visiting, in sharp contrast to inventory searches performed to secure a person's property when an arrest is made in public. And the officers performed the search after handcuffing Mr. Marquez and locking him in their cruiser, where he posed no threat to the occupants of the apartment. Marquez Answer Brief 3–4. Notably, the occupants apparently did not welcome the police in as purported caretakers in the first place: the tenant who answered the door initially refused to let police in, and she acquiesced only after they said they would obtain a search warrant. *Marquez*, 2026-NMCA-020, ¶ 2. Thus, little support exists for the officers' claim

that safety justified the initial seizure of the backpack, casting further doubt on their stated reasons for searching its contents.

These facts demonstrate the need for a test that will help deter the opportunistic use of inventory searches to investigate suspected crime.

CONCLUSION

Amici respectfully urge the Court to adopt an independent approach to interpreting the New Mexico Constitution and to uphold the Court of Appeals' test for the reasonableness of an inventory search under Article II, Section 10.

Respectfully submitted,

/s/ Maria Martinez Sanchez
María Martínez Sánchez
Lalita Moskowitz
American Civil Liberties Union of New Mexico
P.O. Box 566
Albuquerque, NM 87103
(505) 266-5915
msanchez@aclu-nm.org
lmoskowitz@aclu-nm.org

Lillian Moore-Eissenberg*
American Civil Liberties Union Foundation
425 California Street, Ste. 700
San Francisco, CA 94104
(415) 343-0762
lmoore-eissenberg@aclu.org

Julie A. Murray*
American Civil Liberties Union Foundation
915 15th Street NW
Washington, DC 20005
(202) 675-2326
jmurray@aclu.org

Counsel for Amici Curiae
**pro hac vice admissions pending*

CERTIFICATE OF SERVICE

Undersigned counsel certifies that a true copy of the foregoing Brief of *Amici Curiae* the American Civil Liberties Union of New Mexico and the American Civil Liberties Union was filed electronically and served to all counsel of record this 30th day of March 2026 via the Odyssey e-filing/service system.

/s/ Maria Martinez Sanchez
María Martínez Sánchez
American Civil Liberties Union of New Mexico
P.O. Box 566
Albuquerque, NM 87103
(505) 266-5915
msanchez@aclu-nm.org