IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO ex rel. RAÚL TORREZ, New Mexico Attorney General,

Petitioner,

v. S-1-SC-_____

BOARD OF COUNTY COMMISSIONERS FOR OTERO COUNTY,

Respondent.

EMERGENCY VERIFIED PETITION FOR WRIT OF MANDAMUS AND REQUEST FOR STAY

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INTRODUCTION

Otero County had agreed to detain people accused of civil immigration violations on behalf of the federal government. In the last legislative session, the New Mexico Legislature banned such agreements. Respondent, in an apparent effort to evade this prohibition, rushed to enter into a new agreement with the federal government before the ban came into effect. But in its haste, Respondent overlooked the law in two ways. Respondent does not have the authority to hold civil immigration detainees yet has entered into an agreement whereby it is responsible for doing so. Without such a power, the agreement is void as ultra vires. Alternatively, if Respondent had the power to hold civil immigration detainees, it entered into a joint powers agreement without first obtaining approval from the Department of Finance and Administration (DFA). This failure also renders the agreement invalid. Either way, this Court should grant a stay and issue a writ of mandamus barring Respondent from executing the void agreement. Respondent cannot detain hundreds of people on the basis of an invalid contract.

REAL PARTIES IN INTEREST

Petitioner Attorney General [redacted] is the chief law enforcement officer of the State of New Mexico and is authorized to represent the State before this Court and to act on behalf of New Mexicans when doing so serves the public interest of the state. NMSA 1978, § 8-5-2(A), (B), (J) (1975); *see also State ex rel. Bingaman v. Valley Sav. & Loan Ass'n*, 1981-NMSC-108, ¶ 6, 97 N.M. 8 (stating that "[i]nherent in the attorney general's duty to 'prosecute' is the power to initiate civil lawsuits when, in his judgment, the interest of the state is in need of protection" and explaining that "the statute grants the attorney general discretion in determining when the public interest requires him to bring a civil action on behalf of the state"); *State ex. rel. Owen v. Van Stone*, 1912-NMSC-003, ¶ 14, 17 N.M. 41 ("Under the provisions of sections 3 and 13 of article 6 of the Constitution, this court and the district courts each has original jurisdiction in quo warranto and mandamus against all state officers, boards, and commissions in all cases, whether the proceeding be instituted by the Attorney General, ex officio, in behalf of the state for some prerogative purpose, or be brought by some private person for the assertion of some private right.").

Respondent, the Board of County Commissioners for Otero County, is the governing body of Otero County. *See* NMSA 1978, § 4-38-1 (1876).

FACTS AND PROCEDURAL HISTORY

For many years, Respondent has operated the Otero County Processing Center (OCPC) pursuant to an Intergovernmental Service Agreement (IGSA) with United States Immigration and Customs Enforcement (ICE). Under the IGSA, Respondent detains people accused of civil immigration violations on behalf of the federal government. Respondent currently detains about 900 people.

The IGSA expired in 2019, but Respondent and ICE agreed to periodic extensions of the agreement. The last extension was set to expire on or around March 15, 2026.

On February 5, 2026, the governor signed House Bill 9 (HB 9) into law.[1] Among other provisions, HB 9 mandates that no public body—including counties—shall "enter into, extend, renew or otherwise agree to be a party to an agreement to detain individuals for federal civil immigration violations, including an intergovernmental services

[1] H.B. 9, 57th Leg. 2nd Sess. (N.M. 2026), https://www.nmlegis.gov/Sessions/26%20Regular/final/HB0009.pdf.

agreement to detain individuals for civil immigration violations." Any public body party to such an agreement must "terminate the agreement upon the earliest date permissible under the terms of the agreement[.]" HB 9 comes into effect on May 20, 2026.

On March 13, 2026, Respondent held an emergency meeting without complying with the usual public notice requirements of the Open Meetings Act, NMSA 1978, §§ 10-15-1 to -4 (1974, as amended through 2013) (OMA). Respondent justified its noncompliance with OMA by claiming that it was unaware that the IGSA was due to expire so soon, could not anticipate that ICE would seek to extend the agreement, and could not service jail bond payments for OCPC without funds from the IGSA. **[*See* Attach. A]** Respondent did not permit public comment at the meeting and adopted a new IGSA.

Petitioner informed Respondent by letter that it had violated OMA. It also cautioned Respondent that, under the Joint Powers Agreements Act (JPAA), NMSA 1978, §§ 11-1-1 to -7 (1961, as amended through 2009), DFA needed to approve the terms of the agreement for it to be valid. Without admitting fault, Respondent later ratified its emergency

action at a properly noticed hearing. But it did not submit the new IGSA to DFA for approval.

Under the new IGSA, Respondent agreed to detain people "not charged with criminal violations" for the sole purpose of "ensur[ing] their presence throughout the administrative hearing process and to assure their presence for removal from the US pursuant to a lawful final order by the Immigration Court, the Board of Immigration Appeals, or other federal judicial bodies." **[Attach. B Art. 1(A)]** Although Respondent contracted in turn with a private company, Management & Training Corporation (MTC), to staff OCPC, Respondent is responsible for providing ICE with "the necessary physical structure, equipment, facilities, personnel, and services" to detain 1,000 people. **[*Id.*]** The IGSA would last five years unless terminated by ICE; under the IGSA, Respondent has no right to terminate the agreement. **[*Id.* Art. 14]**

ARGUMENT

This Petition is not about whether Respondent violated OMA or whether the IGSA violates HB 9. Those are questions for another day. Instead, this Petition seeks simple relief for clear violations of state law.

As a political subdivision of the State, Respondent has only the powers that the Legislature has expressly or impliedly granted to it. The Legislature has never granted counties the power to hold civil immigration detainees. The authority that Respondent has identified authorizes only the detention of federal prisoners subject to the supervision of federal court. Because civil immigration detainees are not prisoners subject to federal court supervision, Respondent has no power to hold them in its jail, and its agreement to do so is void as ultra vires.

Alternatively, even if the county has the power to hold civil immigration detainees, it violated the JPAA. Under the JPAA, a county cannot enter into a joint powers agreement "without the approval of the secretary of finance and administration as to the terms and conditions thereof." Section 11-1-3. It is undisputed that Respondent did not obtain the Secretary's approval of the IGSA. This failure renders the IGSA invalid.

Under either alternative, the contract cannot be enforced, so this Court should issue a stay and a writ of mandamus prohibiting Respondent from enforcing the agreement.

I. Standard For a Writ of Mandamus.

This Court has "the power to issue writs of mandamus . . . and all other writs necessary or proper for the complete exercise of its jurisdiction and to hear and determine the same." N.M. Const. art. VI, § 3; *see also State ex. rel. Clark v. Johnson*, 1995-NMSC-048, ¶¶ 16-17, 120 N.M. 562 (holding that, notwithstanding NMSA 1978, Section 44-2-3 (1884), this Court has original jurisdiction in mandamus proceedings).

"Mandamus is a common law writ to compel an inferior tribunal, body or person to perform a public duty when that duty results from operation of law or from the office, trust or official position of the party to whom the command is directed." *State ex rel. Riddle v. Oliver*, 2021-NMSC-018, ¶ 22 (alteration, internal quotation marks, and citation omitted). "Mandamus may be used . . . to compel the performance of an affirmative act where the duty to perform the act is clearly enjoined by law." *Id.* ¶ 23 (alteration, internal quotation marks, and citation omitted).

> [M]andamus is a drastic remedy to be invoked only in extraordinary circumstances and will lie only to force a clear legal right against one having a clear legal duty to perform an act and where there is no other plain, speedy and adequate remedy in the ordinary course of law.

Id. (internal quotations marks and citation omitted).

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

Id. ¶ 24 (citing *State ex rel. Sandel v. N.M. Pub. Util. Comm'n*, 1999-NMSC-019, ¶ 11, 127 N.M. 272) (internal quotation marks omitted). "Yet mandamus is a discretionary writ and flexible by nature, and thus we do not apply those factors in an overly formalistic way." *Id.* ¶ 25. "This Court has never insisted upon a technical approach to the application of mandamus where there is involved a question of great public import and where other remedies might be inadequate to address that question." *Id.* (internal quotation marks and citation omitted).

Mandamus may also be used to prohibit government entities from taking unlawful action. *See, e.g.*, *Kiddy v. Bd. of Cnty. Comm'rs*, 1953-NMSC-023, ¶ 13, 57 N.M. 145 ("Public functionaries may be restrained by mandamus from doing what they know is an illegal act."); *State ex rel. Sugg v. Oliver*, 2020-NMSC-002, ¶ 10 (holding that prohibitory mandamus was a proper mechanism to order the Secretary of State to

refrain from implementing unconstitutional laws); *State ex rel. Torrez v. Bd. of Cnty. Comm'rs*, 2025-NMSC-011, ¶ 61 (granting mandamus and prohibiting local governments from enforcing unlawful ordinances).

II. Mandamus is Proper Because Respondent Does Not Have the Power to Enforce the IGSA.

Respondent is "but a political subdivision of the [s]tate, and it possesses only such powers as are expressly granted to it by the Legislature, together with those necessarily implied to implement those express powers." *Torrez*, 2025-NMSC-011, ¶ 31 (quoting *El Dorado at Santa Fe, Inc. v. Bd. of Cnty. Comm'rs*, 1976-NMSC-029, ¶ 6, 89 N.M. 313). No statute expressly grants Respondent the authority to detain individuals accused of civil immigration violations. And detaining suspected civil immigration violators is not a "necessarily implied" adjunct to any other express power, either. *See, e.g.*, NMSA 1978, § 4-37-1 (1975) (granting to counties the "powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of any county or its inhabitants"). Certainly, counties have the general power to contract and dispose of their property. *See, e.g.*, NMSA 1978, § 4-38-13 (1876) (permitting county boards of commissioners to "make such orders

concerning the property belonging to the county as they may deem expedient"). But such contracts for the use of property must themselves be lawful.

The power to hold people not accused of any crime is an unusual and extraordinary one in the American legal tradition. If the Legislature meant to give counties that uncommon authority it would have spoken clearly. *See Whitman v. Am. Trucking Assocs.*, 531 U.S. 457, 909-10 (2001) ("Congress, we have held, does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes."). The Legislature has only authorized the detention of people not convicted of a criminal violation in narrow circumstances attended with elaborate procedural protections. *See* NMSA 1978, §§ 31-9-1 to -2 (1988, as amended through 2025) (regulating the process by which incompetent defendants may be confined before an adjudication of guilt); NMSA 1978, §§ 43-1-1 to -25 (1976, as amended through 2024) (authorizing civil commitment); NMSA 1978, § 43-2-2(E) (2019) (authorizing the use of jails for temporary protective custody for the purpose of detoxification). These provisions

show that the Legislature addresses civil detention authority expressly and does not confer such authority by implication.

There is good reason why the State has never authorized its counties to detain people accused of civil immigration violations: states generally cannot unilaterally detain such people. *See Arizona v. United States*, 567 U.S. 387, 407-10 (2012) (holding that an Arizona statute authorizing the detention of individuals suspected of civil immigration violations was preempted by federal law).

There is no statute expressly authorizing counties to hold civil immigration detainees. In its contract with MTC, Respondent identified NMSA 1978, § 33-3-16 (1984) as the authority permitting it to hold federal prisoners. **[Attach. C Art. III(W)]** But that statute does not provide counties the authority to hold individuals suspected merely of civil immigration violations.

The title of Section 33-3-16 is "United States *prisoners*." (Emphasis added.) This Court considers the title of a statute "when construing the Legislature's intent" if, as with Section 33-3-16, the title is part of the enrolled and engrossed bill enacted by the Legislature. *Nash v. Bd. of Cnty. Comm'rs*, 2021-NMSC-005, ¶ 31; *see* 1984 N.M. Laws ch. 22, § 13

(amending Section 33-3-16 to read: "UNITED STATES PRISONERS.—It shall be the duty . . ."). Although the statute's text uses the more general term of "person," both the title of Section 33-3-16 and its sister statute that was enacted at the same time, NMSA 1978, Section 33-3-17 (1865-66), confirm that Section 33-3-16 authorizes only the detention of individuals remitted to state jails from federal courts for suspected criminal violations. Section 33-3-17 provides that county sheriffs "whenever they shall have under their charge *any prisoner as set forth in*" Section 33-3-16 must submit a list "of all the prisoners under their charge by authority of the United States" to the federal district court. (Emphasis added.) Further, Section 33-3-17 requires the sheriff to identify "for what offense" the person is imprisoned. Section 33-3-17 confirms that Section 33-3-16 authorizes the detention only of "prisoners" under the supervision of a federal district court.

Those detained for suspected civil immigration violations are not prisoners and are not supervised by a federal district court. For one, "as a general rule, it is not a crime for a removable alien to remain in the United States." *Arizona*, 567 U.S. at 408. ICE has the authority to, on the basis of an administrative warrant, detain a person "pending a decision

on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Removal proceedings "are civil, not criminal," and courts "assume that they are nonpunitive in purpose and effect." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 211 (3d Cir. 2020) ("Removal proceedings are civil, not criminal."). Removal proceedings go before Article II immigration judges, not Article III courts, *see* 8 U.S.C. § 1229a(a)(1), and appeals from removal proceedings go to the Board of Immigration Appeals, not a federal circuit court of appeal, *see* 8 C.F.R. § 1240.15.

Immigration detainees do not count as prisoners for the purposes of other laws. *See Ojo v. INS*, 106 F.3d 680, 682 (5th Cir. 1997) (holding that an INS detainee was not a prisoner for purposes of the Prisoner Litigation Reform Act); *Villegas-Alen v. State*, 797 So. 2d 1 (Fla. Dist. Ct. App. 2000) (holding that a civil INS detainee was not a prisoner for purposes of state law proscribing escape by a prisoner). People who allegedly committed civil violations and face a civil legal process are generally not characterized as prisoners, even if they are temporarily held to "ensure their presence throughout the administrative hearing

process and to assure their presence for removal from the US pursuant to a lawful final order by the Immigration Court, the Board of Immigration Appeals, or other federal judicial bodies." **[Attach. B Art. 1(A)]** ICE and Respondent's choice of language in the IGSA is revealing. They chose to use the term "noncitizen" as opposed to "prisoner" or "inmate" when describing the class of people Respondent would hold.

There are no cases interpreting Section 33-3-16. All of the Attorney General Opinions concerning the statute dealt with the detention of federal prisoners. *See* N.M. Att'y Gen. No. 38-2034 (Aug. 25, 1938) (discussing prisoners from the Federal Bureau of Prisons); N.M. Att'y Gen. No. 57-234 (Sept. 20, 1957) (federal prisoners); N.M. Att'y Gen. No. 94-08 (Nov. 19, 1994) (concerning "a federal prisoner who is lawfully charged with a federal offense"). Although Attorney General Opinions are not binding on this Court, those opinions further suggest that jailers have interpreted Section 33-3-16 as authorizing the detention of federal prisoners.

The noncitizens that Respondent holds are not prisoners being detained on the authority of a federal court order, so Section 33-3-16 does not give Respondent the power to enter into the IGSA. Because the

Legislature has not expressly or impliedly given counties the authority to hold civil immigration detainees, they do not have such power. *See Torrez*, 2025-NMSC-011, ¶ 31. Without that power, the IGSA is void as ultra vires. *See Fancher v. Bd. of Comm'rs of Grant Cnty.*, 1921-NMSC-039, 28 N.M. 179 (holding that a contract that a county did not have the power to enter into was "ultra vires and void"). As the contract is void based on a purely legal issue with virtually undisputed facts, mandamus is proper. There is no "other plain, speedy and adequate remedy in the ordinary course of law." *Oliver*, 2021-NMSC-018, ¶ 23 (quoting *State ex rel. Richardson v. Fifth Jud. Dist. Nominating Comm'n*, 2007-NMSC-023, ¶ 9, 141 N.M. 657). Because Respondent is currently detaining hundreds of people on the basis of an invalid contract, it is critical to resolve the issue as soon as possible. Following the ordinary path of litigation and appeal would not grant the State or those detainees a speedy, adequate, and definitive remedy. Finally, this case implicates a fundamental constitutional question of great public importance: may a county exercise an extraordinary power without Legislative authorization?

III. Mandamus is Proper Because Respondent Failed to Comply with the JPAA.

Even if this Court were to conclude that Respondent has some implicit power to hold civil immigration detainees, the IGSA would fare no better. The IGSA counts as a joint powers agreement for the purposes of the JPAA. Under the JPAA, Respondent could not enter into the IGSA without the approval of the Secretary of DFA. Because Respondent did not obtain this approval, the contract is void, and Respondent cannot enforce it. This purely legal issue may also be decided on the basis of undisputed facts and implicates the profound constitutional question of whether local governments may circumvent black letter law.

The JPAA "provides the fiscal and administrative framework for the creation and management of the contractual agreements between public agencies by which they can 'jointly exercise any power common to the contracting parties.'" *Gebler v. Valencia Reg'l Emergency Commc'ns Ctr.*, 2023-NMCA-070, ¶ 10 (quoting § 11-1-3). A public agency means, among other things, "the federal government or a federal department, agency, or instrumentality," as well as "a county[.]" Section 11-1-2(A). A joint powers agreement is "a written contractual agreement entered into between two or more public agencies subject to a constitutional or

legislative restriction imposed upon any of the contracting public agencies," with certain exceptions not relevant here. Section 11-1-2(B). If authorized by their respective legislative bodies, two public agencies may enter into an agreement to exercise their joint authorities "even though one or more of the contracting parties may be located outside this state." Section 11-1-3.

Before entering into an agreement, a county must obtain "the approval of the secretary of finance and administration as to the terms and conditions thereof." *Id.* The secretary must then in turn report approved agreements to the State Board of Finance. *See id.*[2]

Both Respondent and ICE are public agencies. *See* § 11-1-2(A) (defining the term). Both ICE and Respondent are subject to constitutional and statutory limitations on their powers. *See* § 11-1-2(B). ICE must comply with federal law and is barred by the Tenth Amendment from simply commandeering state actors into enforcing federal immigration law. *See New York v. United States*, 505 U.S. 144, 188 (1992); *Printz v. United States*, 521 U.S. 898, 935 (1997). Similarly,

[2] *See* NMSA 1978, §§ 6-1-1 to -13 (1923, as amended through 2005) (defining the board's membership and powers).

As discussed above, Respondent has "only such powers as are expressly granted to it by the Legislature, together with those necessarily implied to implement those express powers." *Torrez*, 2025-NMSC-011, ¶ 31 (quoting *El Dorado at Santa Fe, Inc.*, 1976-NMSC-029, ¶ 6). So, Respondent and ICE were public agencies that entered into agreements for the purposes of the JPAA.

The IGSA allows the parties to "jointly exercise any power common to the contracting parties." *See* § 11-1-3. On the basis of an administrative warrant, ICE may detain a person "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). The Attorney General of the United States has the authority "to arrange for appropriate places of detention for aliens detained pending removal or a decision on removal," *id.* § 1231(g)(1), and ICE may enter into up to 15-year contracts for detention facilities, 8 C.F.R. § 3017.204-90. It must actively ensure that its contractors comply with a variety of requirements. *See, e.g.*, 6 C.F.R. § 115.12 (requiring ICE to require its contractors to comply with extensive standards to combat sexual abuse).

If this Court concludes that respondent has the implicit authority to hold civil immigration detainees in its jail, then both have the common

authority to hold ICE detainees. The ISGA allows Respondent as the "service provider" **[Attach. B, p.1]** the authority to exercise this common power. Accordingly, the ISGA would fall squarely within the JPAA. *See* § 11-1-3; *see also* N.M. Att'y Gen. No. 64-138 (Nov. 10, 1964) (opining that the State Agency for Surplus Property had the authority to contract with the federal government under the JPAA to acquire, warehouse, and distribute federal surplus property).

This interpretation matches that followed by California courts in interpreting the Joint Exercise of Powers Act, Cal. Gov't Code §§ 6500 to 6539.9.1 (1949, as amended through 2025). Like the JPAA, the California Act authorizes public agencies to, by agreement, "jointly exercise any power common to the contracting parties[.]" *Id.* § 6502. To determine whether the parties are exercising a common power, California courts ask whether each party had the power to engage in a challenged action. *See Beckwith v. Stanislaus Cnty.*, 345 P.2d 363, 367 (Cal. Ct. App. 1959) ("We believe that since both the county and the district had the power to construct the bridges here involved the parties could contract between themselves for the exercise of this common power[.]"); *see also Robings v. Santa Monica Mountains Conservancy,* 115 Cal. Rptr. 3d 828, 834 (Ct.

App. 2010) (describing the common powers rule as "the rule that the powers that may be exercised by a joint powers agency can be no greater than the powers shared by each of the agency's constituent member").

If the IGSA did not exist, ICE could still unilaterally exercise its power to detain individuals, and Respondent could separately exercise its authority to detain federal prisoners from another agency. *See Crawley v. Alameda Cnty. Waste Mgmt. Auth.,* 196 Cal. Rptr. 3d 365, 376 (Ct. App. 2015) ("The test for compliance with the common powers rule is whether each of the agency's members had the power to perform the contested acts–whether each had the power 'to do unilaterally what was actually done.'").

Because the IGSA would fall under the JPAA, Respondent, assuming it had the power to contract with ICE in the first instance, was required to obtain approval from DFA before entering into the agreement: "nothing contained in [the JPAA] shall authorize any . . . county . . . *to make any agreement without the approval* of the secretary of finance and administration as to the terms and conditions thereof." Section 11-1-3 (emphasis added). Here, Respondent failed to submit, and

DFA did not approve, the IGSA. So, Respondent was without authority to enter into the IGSA.

DFA must approve all joint powers agreement in advance for a reason. Without a centralized check, public agencies from around the state could create conflicting financial and political obligations. For example, parties to a joint powers agreement may create an entirely new public entity to exercise the common authority of the parties. *See* § 11-1-5 (providing for separate agencies, commissions, and boards). Those independent entities may, among other powers, issue their own bonds and acquire assets. *See* § 11-1-7. Without a central coordinator, local governments from around New Mexico would be free to set up overlapping and conflicting public entities with out-of-state public agencies.

Because Respondent failed to comply with state law in entering into the IGSA and, therefore, has no power to act under an invalid IGSA, this Court should grant a writ of mandamus to prohibit Respondent from attempting to implement the purported agreement.

IV. An Emergency Stay is Necessary to Prevent a Gross Injustice.

The State further asks the Court to stay Respondent's enforcement of the IGSA and Respondent's attempt to extend the IGSA while this Petition is pending. *See* Rule 12-504(D)(2)(a) NMRA (stating that a stay is proper when "irreparable injury, loss, or damage will result to the petition before the respondent . . . can be heard in opposition"). This Court has previously stayed governmental action while it resolves a mandamus petition. *See, e.g.*, *State ex rel. King v. Lyons*, 2011-NMSC-004, ¶ 20, 149 N.M. 330 (stating that the Court granted the Attorney General's request to stay land exchanges contemplated by the Commissioner of Public Lands); *Torrez*, 2025-NMSC-011, ¶ 12 (same for the enforcement of local government ordinances).

If Respondent is able to enforce the IGSA while this matter is pending, it will detain hundreds of people on the basis of an illegal agreement. The harm suffered by individuals detained in New Mexico without legal authority would be irreparable. Moreover, it would allow Respondent to exercise a power that the Legislature has not given it or, alternatively, to enforce a joint powers agreement without the approval of DFA. This would defeat the State's strong interest in ensuring that

local governments comply with the Legislature's mandates. Money damages would not remedy these harms.

> This Court evaluates requests to stay with four factors:
>
> (1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting a stay.

Segal v. Goodman, 1993-NMSC-018, ¶ 29 n.5, 115 N.M. 349. All four factors weigh in favor of a stay. As discussed above, Respondent violated black letter law and the State will be irreparably harmed absent a stay. The balance of equities also favors the State. In its emergency declaration, Respondent claimed that it had to quickly enter into the IGSA because that was the only way to service the bond payments used to construct OCPC. **[Attach. A, pp.1-2]** But this was a problem of Respondent's own making. Although Respondent planned to service the debt solely through payments from the federal government, it has the power to raise taxes to pay bondholders. *See* NMSA 1978, § 4-49-17 (1891). Respondent chose to pursue the risky strategy of relying on the IGSA to fund bond payments when it knew that the IGSA could be invalid. The public does not have to bear the consequences of

Respondent's gamble. For these reasons, the public interest strongly favors a stay.

CONCLUSION

The State respectfully requests that this Court immediately stay Respondent's enforcement of the IGSA and issue a writ of mandamus to prevent the execution of an invalid agreement.

Respectfully submitted,

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/s/ IRW
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VERIFICATION

As required by Rule 12-504(B)(1), I have read the petition and verify that the statements contained in this Petition are true and correct to the best of my knowledge, information, and belief.

IRW

Deputy Solicitor General

STATEMENT OF COMPLIANCE

In accordance with Rule 12-504(G)(1), (3), (H), the body of this petition contains 4,597 words as calculated by Microsoft Word 365.

CERTIFICATE OF SERVICE

I certify that, on April 1, 2026, I sent a true and correct copy of the foregoing Petition through electronic mail from IRW as well as U.S. Mail to the following parties:

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The transmission to each address was successful.

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