

**THIRD JUDICIAL DISTRICT COURT
COUNTY OF DOÑA ANA
STATE OF NEW MEXICO**

**BOARD OF COUNTY COMMISSIONERS
OF DOÑA ANA COUNTY,**

Petitioner,
vs.

**No.: D-307-CV-2015-02534
Judge:**

**ENRIQUE VIGIL,
Doña Ana County Sheriff,
In his official capacity,**

Respondent.

**PETITION FOR DECLARATORY JUDGMENT AND
REQUEST FOR IMMEDIATE INJUNCTIVE RELIEF
IN THE FORM OF A TEMPORARY RESTRAINING ORDER**

COMES NOW, the Board of County Commissioners of Doña Ana County (hereinafter “Board”), by and through its County Attorney Nelson Goodin, requests this Court declare Sheriff Enrique Vigil (hereinafter “Respondent”) has exceeded his lawful authority by claiming control and supervision of the Doña Ana County Detention Center (hereinafter “jail”), and—under Respondent’s orders—his staff’s refusal to vacate the premises contrary to the express direction of the County Manager, and as grounds therefore, the Board hereby alleges:

1. All the events described herein occurred in Doña Ana County. The Court has jurisdiction over the parties and the subject matter in this action, and venue is proper in this county.
2. On December 21, 1989, Board, in its capacity as the governing body of Doña Ana County, took formal action to remove administration of the Doña Ana Detention Center from the Sheriff’s Department to a jail administrator, pursuant to NMSA 1978 §33-3-1. *See Exhibit A (Minutes of Special Meeting of the Board).*

3. On December 8, 2015, Respondent arrested Christopher Barela, the director of the Doña Ana Detention Center.
4. Upon the arrest of Mr. Barela, Respondent then issued a purported “Executive Order” claiming executive authority despite the limitations of his department head status, and claiming to assume “command and operation of the Doña Ana County Detention Center”, as shown in Exhibit B, attached and incorporated herein.
5. Respondent, through the actions of uniformed law enforcement staff of the Doña Ana Sheriff’s Department, immediately seized control of the jail.
6. There has been no suggestion that the situation at the jail has devolved into any sort of disturbance whatsoever—and certainly not anything that the regular jail staff cannot handle or that requires any Sheriff’s department staff.
7. Consequently, there has been no request by the jail staff or County management for any assistance from the Sheriff’s Department.
8. The Sheriff and his staff are not needed nor even wanted at the jail.
9. Upon receiving a copy of Exhibit B, County Manager Julia T. Brown, Esq. notified Major Brent Barlow, the Sheriff’s Department officer in charge on the scene, that the Sheriff did not have any authority to operate the detention center and directed the Major and all Sheriff’s personnel to relinquish control of and leave the facility. Major Barlow refused the County Manager’s directive, claiming he and the Sheriff’s Department personnel under his control were acting under the Sheriff’s orders. *See attached Affidavit of Julia T. Brown, attached and incorporated herein as exhibit C.*
10. Regardless of Mr. Barela’s temporary absence at the jail or his status as an arrestee, the Board of County Commissioners retains authority to operate the jail through its County

Manager and the professional staff of the jail that has been hired for that purpose.

Indeed, that is how the jail is run whenever Mr. Barela is out of town on County business or on leave; the current circumstances of his arrest do not change that standard protocol.

11. “No person shall willfully refuse or fail to leave the property of any building or other facility owned, operated or controlled by the state or any of its political subdivisions when requested to do so by a lawful custodian of the building, facility or property if the person is committing, threatens to commit or incites others to commit any act which would disrupt, impair, interfere with or obstruct the lawful mission , processes, procedures or functions of the property, building or facility.” NMSA 1978 §30-20-13(C).

12. “Wrongful use of public property consists of:

(1) Knowingly entering any public property without permission of the lawful custodian or his representative when the public property is not open to the public;

(2) Remaining in or occupying any public property after having been requested to leave by the lawful custodian, or his representative, who has determined that the public property is being used or occupied contrary to its intended or customary use....” NMSA 1978 §30-14-4.

13. By claiming control of the jail, not only has Respondent engaged in an outrageous and illegal usurpation of power, he and his staff are committing a criminal act in the process.

14. Respondent’s illegal and continuing occupation of the jail undermines the authority of the Board and County management, and without any training in the standard procedures specific to modern jail operations, the situation creates a continuing and irreparable harm to the County government.

15. Where there is no adequate remedy at law, the Court has inherent power to provide equitable relief, and the circumstances described herein require the exercise of such power.

16. Pursuant to NMSA 1978 §44-6-9, the Court may grant further relief whenever necessary or proper.

WHEREFORE, the Board requests this Court declare Respondent has exceeded his lawful authority and encroached on the Board's authority to operate the jail in accordance with its own statutory grant of authority.

FURTHERMORE, the Board requests this Court provide immediate injunctive relief in the form of a temporary restraining order directing the Sheriff and his staff vacate the premises without further delay.

Respectfully submitted,



Nelson J. Goodin
County Attorney
845 N. Motel Blvd.
Las Cruces, NM 88007
575-647-7225

DONA ANA COUNTY BOARD OF COUNTY COMMISSIONERS
SPECIAL MEETING
DECEMBER 21, 1989

Chairman Jamie Stull called the Special Meeting of the Dona Ana County Board of County Commissioners to order at 5:00 p.m., Thursday, December 21, 1989 in the Commission Chambers of the Dona Ana County Courthouse building at 251 W. Amador Ave., Las Cruces, New Mexico.

MEMBERS PRESENT

Jamie A. Stull, Chairman
Everardo L. Chavez, Vice-Chairman
Ray B. Luchini, Member
William H. Spaulding, Member
Enrique S. Gonzalez, Jr., Member

COMMISSION CONVENES AS THE BOARD OF COUNTY COMMISSIONERS

1. Setting of deadlines to close the registration of voters for the Santa Teresa Incorporation and to close absentee balloting.

Chairman Stull announced this matter would not be heard since the Supreme Court re-imposed the stay.

2. Designation of Colonias in Dona Ana County

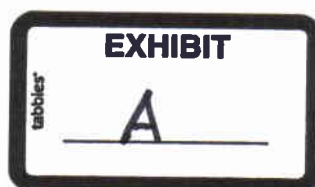
Chairman Stull recognized Mark Rivera, Planning Director, who began by stating he had made contact with most of the unincorporated communities in the County and has received responses in favor of the Colonia Designation from the following:

Anthony	Berino
Rincon	Dona Ana
Sunland Park	

Mr. Rivera stated although he has not received written letters to date, he is also expecting positive responses from the following groups:

La Union	La Mesa
Vado	Salem
Placitas	Mesquite

He further commented that he was unable to contact groups representing Chamberino, Picacho or Rodey and was still waiting to hear from San Miguel and Chaparral. Also, Hatch was the only community to object. After discussion on a procedure for designating communities wishing to be considered colonias, Ms. Peticolas, County Manager, suggested the communities that submitted a written response be identified as colonias and the others to be contingent upon staff's receipt of a letter asking for approval by December 31. A discussion ensued as to the definition of a colonia and approving the communities who have submitted a written response requesting approval and the others to be contingent upon submitting a letter to Staff. Vice-Chairman Chavez MOVED to approve the Communities wishing to be designated as colonias and the others to be deleted, if necessary. Commissioner Gonzalez SECONDED. Motion CARRIED unanimously.



3. Request to move jail administration to the County Manager's Office

Ms. Peticolas stated it was the consensus of the Commission at a previous work session to target January 1, 1990 as the transition date to move the jail's administration to the County Manager. She advised that Captain Molina and his staff have been organizing themselves for a smooth transition and inquired if it was still their desire to do this on that date. Vice-Chairman Chavez felt this has been discussed extensively by everyone concerned and that the transition should take place January 1, 1990. Commissioners Luchini and Spaulding were in agreement. Vice-Chairman Chavez MOVED to approve the move of the jail administration to the County Manager's office. Commissioner Gonzalez SECONDED. Motion CARRIED unanimously.

4. Request for partial release of a letter of credit for improvements to the Oaks Subdivision, Phase One.

Chairman Stull recognized Greg White, County Planner, who began by stating this was a request for partial release of a letter of credit for improvements to phase one of the Oaks Subdivision. The release request is for \$44,107.19 and has been reviewed by the Planning Division and Engineering. Staff is recommending approval. Vice-Chairman Chavez MOVED to approve the request for partial release of a letter of credit for improvements to phase one of the Oaks Subdivision. Commissioner Gonzalez SECONDED. Motion CARRIED unanimously.

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STATE OF NEW MEXICO

DOÑA ANA COUNTY

EXECUTIVE ORDER OF THE SHERIFF

TO: ALL DOÑA ANA COUNTY DETENTION CENTER STAFF
FROM: Enrique "Kiki" Vigil, Sheriff of Doña Ana County
DATE: December 8, 2015
RE: *Executive Order- DASD 2015-12-01*

BY AUTHORITY OF THIS EXECUTIVE ORDER, the Doña Ana County Detention Center is placed under the direct control and supervision of the Doña Ana County Sheriff's Department, effective immediately.

Pursuant to Sections 4-41-2 NMSA (1978) and any other related New Mexico laws and statutes, and pursuant to the authority vested in me as the duly elected Sheriff of Doña Ana County, New Mexico, I am hereby acting in my official elected capacities and powers to assume command and operation of the Doña Ana County Detention Center as a matter of public safety and security until further notice.

All custody and civilian staff assigned to the Detention Center will report directly to me and/or my designees. The Detention Center will go into lock-down status upon issuance of this Executive Order and until such time as I am able to fully secure the operation and command of the facility. I expect and require full cooperation from all Detention Center personnel.

There will be an ongoing criminal investigation conducted on the premises of the Detention Center. Any lack of cooperation or resistance to this Order may result in removal from the premises and/or possible criminal prosecution for **Resisting, evading or obstructing an officer** pursuant to Section 30-22-1(D) NMSA (1978).

Your immediate attention and cooperation is anticipated and appreciated.

BY:


Enrique "Kiki" Vigil
Sheriff, Doña Ana County


DATE

CC: Doña Ana Board of County Commissioners
Mr. Mark D'Antonio, District Attorney, 3rd Judicial District of New Mexico
Ms. Julia Brown, Doña Ana County Manager

EXHIBIT


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**AFFIDAVIT OF JULIA T. BROWN
AS COUNTY MANAGER OF DOÑA ANA COUNTY**

STATE OF NEW MEXICO }
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DOÑA ANA COUNTY }

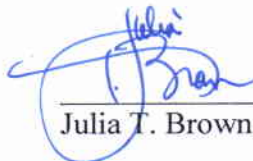
Before me, the undersigned notary, on this day personally appeared Julia T. Brown, the affiant, a person whose identity is known to me. After administering an oath to affiant, affiant testified:

1. I am over the age of eighteen (18) years of age and provide this Affidavit testimony from personal knowledge.
2. I am the County Manager of Doña Ana County and, as such, am the chief administrative officer of the County charged with the management of the County's affairs and functions, to include administration and supervision of the County's Detention Center, its staffing and its policies and procedures.
3. The County's Detention Center is organized, administered and operated by County administrators and staff totally separate from and independent of the Doña Ana County Sheriff and/or his staff. The County Detention Center policies and procedures are developed and administrated by that separate and independent County staff.
4. Early this morning (December 8, 2015) the Sheriff issued an "Executive Order of the Sheriff" (See Exhibit B to the Petition) and took, under force, direct control and supervision of the Detention Center.
5. I, as County Manager, personally travelled to the Detention Center and informed the Sheriff's officer (Major Barlow) in command at the time, that the Sheriff's Executive Order was without authority and infringed upon County authority and policy. I directed Major Barlow to remove himself and all other Sheriff personnel from the Detention Center.



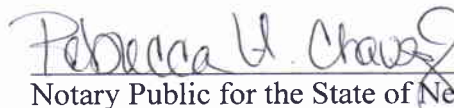
6. Major Barlow refused and told me he was acting under the Sheriff's Orders.
7. The actions of the Sheriff are without and in conflict with state and/or local government authority.
8. In 1990, over 25 years ago, the control of, management of and responsibility for the Detention Center and its operations was vested by the County Board of Commissioners in the office of the County Manager. (See Board of County Commission Minutes of December 21, 1989, minutes attached to the Petition as Exhibit A).
9. At the time he seized control of the Detention Center, the Sheriff arrested Detention Center Director Chris Barela on charges involving white collar crime. The arrest by the Sheriff of the County Detention Center Director is not relevant on this question of control. The County Detention Center is organized and staffed to operate safely and efficiently in any event. Captain Vickie Hooser is the second in command at the Detention Center and is authorized to act in the absence Administrator Chris Barela.
10. The Sheriff's unlawful seizure and assumption of control of the Detention Center is causing and will continue to cause irreparable harm to the County's lawful and proper Detention Center operations. The Sheriff's lack of knowledge, skills and experience in Detention Center operations will have a negative impact on the jail population and could negatively impact the County's relationship and contracts with state and federal agencies and officials.

AFFIANT SAYETH FURTHER NAUGHT.



Julia T. Brown

SWORN TO and SUBSCRIBED before me by Julia T. Brown on December 8, 2015.



Notary Public for the State of New Mexico

11/22/19
My Commission Expires

