

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT**

**JEFFERSON CENTRAL LLC
AND GILLAM KERLEY,**

Appellants,

No. D-202-CV-2025-04970

v.

**THE CITY OF ALBUQUERQUE and
THE CITY OF ALBUQUERQUE
OFFICE OF ADMINISTRATIVE HEARINGS**

Appellees.

MOTION FOR CERTIFICATION

Respondents-Appellants Jefferson Central LLC and Gillam Kerley (together Kerley) file this Motion for Certification pursuant to Rule 1-074(S) NMRA. Appellees oppose this Motion.

Kerley asks the Court to certify this appeal to the Court of Appeals because it raises “novel . . . constitutional question[s] . . . of state-wide impact . . . [and] imperative public importance.” Rule 1-074(S) NMRA. In a nutshell, Kerley owns a used bookstore in Albuquerque (the Property). As an act of compassion, he has allowed a handful of homeless people to erect their tents in his parking lot. That, of course, is not a long-term “solution” for homelessness, but it is far safer—especially for homeless women—than a back alley or underpass. The need for a refuge on private property is even greater now that Albuquerque has made it a crime to sleep on public property. IDO §§ 9-25-4, -3. If there is no shelter space, if it is a crime to sleep on public property, if it is considered trespass to sleep on private property without permission, then the only place homeless

people can lawfully exist is on private property with permission. That is what Kerley has provided. His permission to be on his private property.

This case asks whether the New Mexico and United States constitutions allow the City of Albuquerque to make Kerley’s simple act of compassion illegal. Must he turn the most desperate and most vulnerable people back to the streets to face fear, violence, and arrest because the municipal zoning code, as enforced by the City, outlaws camping on Kerley’s Property and treats the meager possessions of the homeless as “litter”? The City cited Kerley for three types of violations in the Property’s parking lot: (1) tents, (2) litter, and (3) outdoor storage. [NOA Ex. 1, 1–3.] Kerley and the City presented evidence and argument at an administrative hearing, after which the City of Albuquerque City Administrative Hearing Office issued an Opinion and Order dated May 1, 2025. [NOA Ex. 1, 1.] The hearing officer rejected the City’s claims about litter and outdoor storage, concluding that the Property “appears to have been well-maintained.” [NOA Ex. 1, 2–3.] As for the tents, the hearing officer deemed Kerley “to be a very credible witness” who was “just trying to help people by creating a space where the homeless and their property would be safe.” [NOA Ex. 1, 4.] Nevertheless, the presence of tents, the hearing officer concluded, transformed the Property into a camp site in violation of Albuquerque’s Integrated Development Ordinance. [NOA Ex. 1, 3–6.] For this, the hearing officer assessed a \$1,500 fine. [NOA Ex. 1, 6.] The hearing officer declined to address Kerley’s constitutional arguments, which he deemed “to be outside the scope of [his] review.” [NOA Ex. 1, 1.] Kerley appealed to this Court on May 29, 2025. [NOA 1.]

This administrative appeal presents important questions of first impression that justify immediate certification to the Court of Appeals. Specifically, Kerley intends to argue that the May 1, 2025 Order violates his right to use the Property to provide a few homeless New Mexicans a safe place to go, as protected by the right to seek and obtain safety in the inherent rights clause and the

due process guarantees of the New Mexico Constitution. N.M. Const. art. II, §§ 4, 18. Although New Mexico courts have addressed some aspects of the inherent rights clause, its full scope has not been defined. *See Morris v. Brandenburg*, 2016-NMSC-027, ¶ 51, 376 P.3d 836. Indeed, the New Mexico Supreme Court has held that it contains a “more expansive guarantee of obtaining safety” than the United States Constitution. *Reed v. State ex rel. Ortiz*, 1997-NMSC-055, ¶ 105, 124 N.M. 129, *rev’d*, *New Mexico ex rel. Ortiz v. Reed*, 524 U.S. 151 (1998); *see also Morris*, 2016-NMSC-027, ¶ 47 (noting that, despite the United States Supreme Court’s decision reversing the New Mexico Supreme Court’s ruling, the case’s “discussion of Article II, Section 4 remains instructive because the United States Supreme Court opinion did not affect our interpretation of that provision”). The right to seek and obtain safety is especially relevant to homeless New Mexicans who face extreme danger when contemplating where to lay their heads at night. Kerley possesses the corollary right to help New Mexicans in need by not forcing them off the Property.

The New Mexico Constitution’s Due Process Clause ensures that “[n]o person shall be deprived of life, liberty or property without due process of law.” N.M. Const. art. II, § 18; *see also* U.S. Const. amend. XIV. Substantive property rights comprise both the right to exclude unwanted people from private property, *see, e.g., Cedar Point Nursery v. Hassid*, 594 U.S. 139, 149–50 (2021), along with the corollary right to include wanted guests on private property. This novel question implicates core property rights under the New Mexico and United States constitutions in a context in which Kerley’s property interest is significant—he seeks to shelter some of Albuquerque’s most vulnerable population—as examined against the City’s interest in having the same people sleep illegally elsewhere rather than in the parking lot of a commercial property with the owner’s consent. The City should not, then, punish Kerley for attempting to use his private

property to further both of those interests—and it cannot do so consistent with the New Mexico and United States constitutions.

Homelessness is a state-wide issue, and one both government officials and New Mexicans are paying attention to. The City has expended various resources in addressing homelessness, yet there remains insufficient space for the homeless population of Albuquerque, leaving many with nowhere to go. Indeed, in the 2024 Point-In-Time Count, nearly half of the homeless people counted in Albuquerque were unsheltered. *See* New Mexico Coalition to End Homelessness, 2024 Point-In-Time Count, at 7.¹ At the same time, the City has criminalized sleeping in a public space. IDO §§ 9-25-4, -3. This leaves people who are destitute in a quandary: There aren't enough shelter beds, but they can't sleep in public. So where do they go? The City has taken the position that they cannot go to the bookstore, despite Kerley's willingness to allow a few people to come. Instead, the City is targeting them, insisting that they leave the Property, and fining Kerley for their presence. Whether, and to what extent, the New Mexico Constitution protects Kerley's activities here, and what limits the City may place on property owners seeking to help others, are important questions of first impression that will impact Kerley, the people he helps, the people of Albuquerque, and other property owners in the state. Moreover, Kerley hopes that the New Mexico Supreme Court will weigh in on the meaning of the state constitution and its unique history, and he will seek appellate review if he faces another adverse decision.

Certification under these circumstances is routine and a sensible way to conserve judicial resources and avoid delay. *See, e.g., Butkus v. Pub. Emps. Ret. Ass'n*, 2024-NMCA-041, ¶ 4, 547

¹ Available at <https://www.nmceh.org/pitreports>. Of the 2,740 people counted in Albuquerque on January 29, 2024, 1,289 were in emergency shelters, 220 were in transitional housing, and 1,231 were unsheltered. *Id.* Outside of Albuquerque, there were 1,909 homeless people counted in New Mexico on January 29, 2024, with 746 in emergency shelters, 152 in transitional housing, and 1,011 unsheltered. *Id.* at 24.

P.3d 758; *Martinez v. N.M. Tax'n & Rev. Dep't*, 2023-NMCA-049, ¶ 10, 534 P.3d 248; *Lea Power Partners, LLC v. N.M. Tax'n & Rev. Dep't*, A-1-CA-37707, mem. op. ¶ 5 (N.M. Ct. App. Jan. 6, 2021) (nonprecedential); *Landau v. N.M. Att'y Gen. Off.*, 2019-NMCA-041, ¶ 3 n.1, 446 P.3d 1229.

Accordingly, Kerley respectfully requests that this Court certify the case to the Court of Appeals.

Dated: June 27, 2025

Respectfully submitted,

BARDACKE ALLISON MILLER LLP

/s/ Billy Trabaudo

Benjamin Allison

Justin Miller

Billy Trabaudo

141 East Palace Avenue

Santa Fe, NM 87504-1808

(505) 995-8000

ben@bardackeallison.com

justin@bardackeallison.com

billy@bardackeallison.com

INSTITUTE FOR JUSTICE

Diana Simpson*

Bobbi Taylor*

An Altik*

901 North Glebe Road, Suite 900

Arlington, VA 22203

(703) 682-9320

diana.simpson@ij.org

btaylor@ij.org

aaltik@ij.org

Jeff Rowes*

816 Congress Avenue, Suite 970

Austin, TX 78701

(512) 480-5936

jrowes@ij.org

* *Pro hac vice*

*Counsel for Appellants Jefferson Central LLC and
Gillam Kerley*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused the foregoing to be served via email to counsel and/or parties entitled to notice as listed below.

Lauren Keefe
Andrew Coon
City of Albuquerque
One Civic Plaza NW
Albuquerque, NM 87103
lkeefe@cabq.gov
acon@cabq.gov

Office of Administrative Hearing
600 2nd Street NW, Suite 720
Albuquerque, NM 87102
summonsandappeals@cabq.gov

BARDACKE ALLISON MILLER LLP

By: /s/ Billy Trabaudo
Billy Trabaudo