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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

March 07, 2022

NO. S-1-SC-39072

**MICHELLE LUJAN GRISHAM,
Governor of the State of New Mexico,**

Petitioner,

v.

**HON. JAMES M. HUDSON,
HON. LISA B. RILEY, and
HON. MICHAEL H. STONE,
District Court Judges,
Fifth Judicial District Court,**

Respondents,

and

**LARRY MARKER, DAVID GALLEGOS,
and STACEY TURNER,**

Real Parties in Interest.

ORDER

WHEREAS, this matter came on for consideration by the Court upon petition for writ of superintending control and responses thereto; the November 22, 2021, motion to reconsider and clarify this Court's order issued November 16, 2021, and response thereto; and the request for oral argument;

WHEREAS, this Court previously has held that a district court judge must

1 examine a citizen-initiated grand jury petition to determine whether the petition,
2 “on its face,” presents “an area of inquiry that colorably lies within the permissible
3 scope of grand jury inquiry” and “may consider matters beyond the face of the
4 petition if necessary to determine the petition’s legal validity,” *see Dist. Ct. of*
5 *Second Jud. Dist. v. McKenna*, 1994-NMSC-102, ¶¶ 13-14, 118 N.M. 402, 881
6 P.2d 1387 (emphasis, internal quotation marks, and citation omitted); *see also*
7 *Convisser v. EcoVersity*, 2013-NMSC-039, ¶ 14, 308 P.3d 125 (describing the
8 district court’s “judicial duty . . . to ensure the actual validity of a grand jury
9 petition”); *Pino v. Rich*, 1994-NMSC-105, ¶ 7, 118 N.M. 426, 882 P.2d 17 (“If a
10 petition to convene a grand jury is legally valid, the judge must convene the grand
11 jury; if a petition is not legally valid, the judge cannot convene the grand jury. In
12 essence, the ruling is mandated by the law and the judge has no discretion to
13 ignore that mandate.”);

14 WHEREAS, this Court previously has held that Petitioner acted lawfully
15 and within the scope of her executive authority when she declared a public health
16 emergency due to the COVID-19 pandemic and delegated power to the Secretary
17 of Health to issue further emergency orders to protect public health and safety, *see,*
18 *e.g., Grisham v. Reeb*, 2021-NMSC-006, ¶¶ 29-30, 480 P.3d 852; *see also State v.*
19 *Wilson*, 2021-NMSC-022, ¶¶ 37-39, 489 P.3d 925 (holding that the public health
20 orders issued under Petitioner’s declaration of a public health emergency are a

1 reasonable exercise of the police power to protect public health);

2 WHEREAS, this Court having considered the foregoing and being
3 sufficiently advised, Chief Justice Michael E. Vigil, Justice C. Shannon Bacon,
4 Justice David K. Thomson, Justice Julie J. Vargas, and Justice Briana H. Zamora
5 concurring;

6 NOW, THEREFORE, IT IS ORDERED that this case presents an issue of
7 great public importance;

8 IT IS FURTHER ORDERED that the citizen-initiated grand jury petitions in
9 causes numbered D-503-GJ-2021-00001, D-504-GJ-2021-00001, and D-506-GJ-
10 2021-00001 and any other cases based on substantially similar petitions should be
11 denied as facially invalid because they describe only lawful, noncriminal activity,
12 which does not “colorably lie[] within the permissible scope of grand jury
13 inquiry,” *McKenna*, 1994-NMSC-102, ¶ 13;

14 IT IS FURTHER ORDERED that the petition is GRANTED and a writ of
15 superintending control shall issue directing Hon. James M. Hudson, Hon. Lisa B.
16 Riley, and Hon. Michael H. Stone to DENY the citizen-initiated grand jury
17 proceedings in causes numbered D-504-GJ-2021-00001, D-503-GJ-2021-00001,
18 and D-506-GJ-2021-00001 as facially invalid;

19 IT IS FURTHER ORDERED that substantially similar citizen-initiated
20 grand jury petitions filed in the district courts of New Mexico should likewise be

1 DENIED as facially invalid;

2 IT IS FURTHER ORDERED that the motion to reconsider and clarify this
3 Court's order issued November 16, 2021, and the request for oral argument are
4 DENIED;

5 IT IS FURTHER ORDERED that the stay issued November 16, 2021, is
6 LIFTED; and

7 IT IS FURTHER ORDERED that this matter is referred to the Rules of
8 Criminal Procedure for State Courts Committee for a recommendation regarding
9 whether Rule 5-302B NMRA should be amended to provide an identified target of
10 a citizen grand jury petition with notice and an opportunity to intervene, and
11 whether Rule 5-302B NMRA should be amended to explicitly require the district
12 court to rule on the legal validity of a citizen grand jury petition.

13 IT IS SO ORDERED.



WITNESS, the Honorable Michael E. Vigil, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 7th day of March, 2022.

Jennifer L. Scott, Clerk of Court
Supreme Court of New Mexico

A handwritten signature in black ink that reads "Sally A. Paez".

Sally A. Paez, Acting Chief Clerk of the Supreme Court
of the State of New Mexico

I CERTIFY AND ATTEST.
A true copy was served on all parties
or their counsel of record on date filed.

Sally A. Paez

Chief Clerk of the Supreme Court
of the State of New Mexico 4



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**HON. JAMES M. HUDSON,
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Fifth Judicial District Court,**

Respondents,

and

**LARRY MARKER, DAVID GALLEGOS
and STACEY TURNER,**

Real Parties in Interest.

WRIT OF SUPERINTENDING CONTROL

TO: Hon. James M. Hudson
Fifth Judicial District Court
P.O. Box 1776
Roswell, NM 88202

Hon. Lisa B. Riley
Fifth Judicial District Court
102 N. Canal, Suite 240
Carlsbad, NM 88220

Hon. Michael H. Stone
Fifth Judicial District Court
100 N. Love St., Box 1A
Lovington, NM 88260

1 GREETINGS:

2 WHEREAS, a petition for writ of superintending control having been
3 granted by this Court on March 2, 2022, and the Court being sufficiently informed
4 and good cause appearing for the issuance of a writ of superintending control;

5 NOW, THEREFORE, you, Hon. James M. Hudson, are ordered to deny the
6 citizen-initiated grand jury petition in cause numbered D-504-GJ-2021-00001 as
7 facially invalid; you, Hon. Lisa B. Riley, are ordered to deny the citizen-initiated
8 grand jury petition in cause numbered D-503-GJ-2021-00001 as facially invalid;
9 and you, Hon. Michael H. Stone, are ordered to deny the citizen-initiated grand
10 jury petition in cause numbered D-506-GJ-2021-00001 as facially invalid.

11 IT IS SO ORDERED.



WITNESS, the Honorable Michael E. Vigil, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 7th day of March, 2022.

Jennifer L. Scott, Clerk of Court
Supreme Court of New Mexico

I CERTIFY AND ATTEST:

A true copy was served on all parties
or their counsel of record on date filed.

Sally A. Paez

Chief Clerk of the Supreme Court
of the State of New Mexico

Sally A. Paez
Sally A. Paez, Acting Chief Clerk of the Supreme Court
of the State of New Mexico