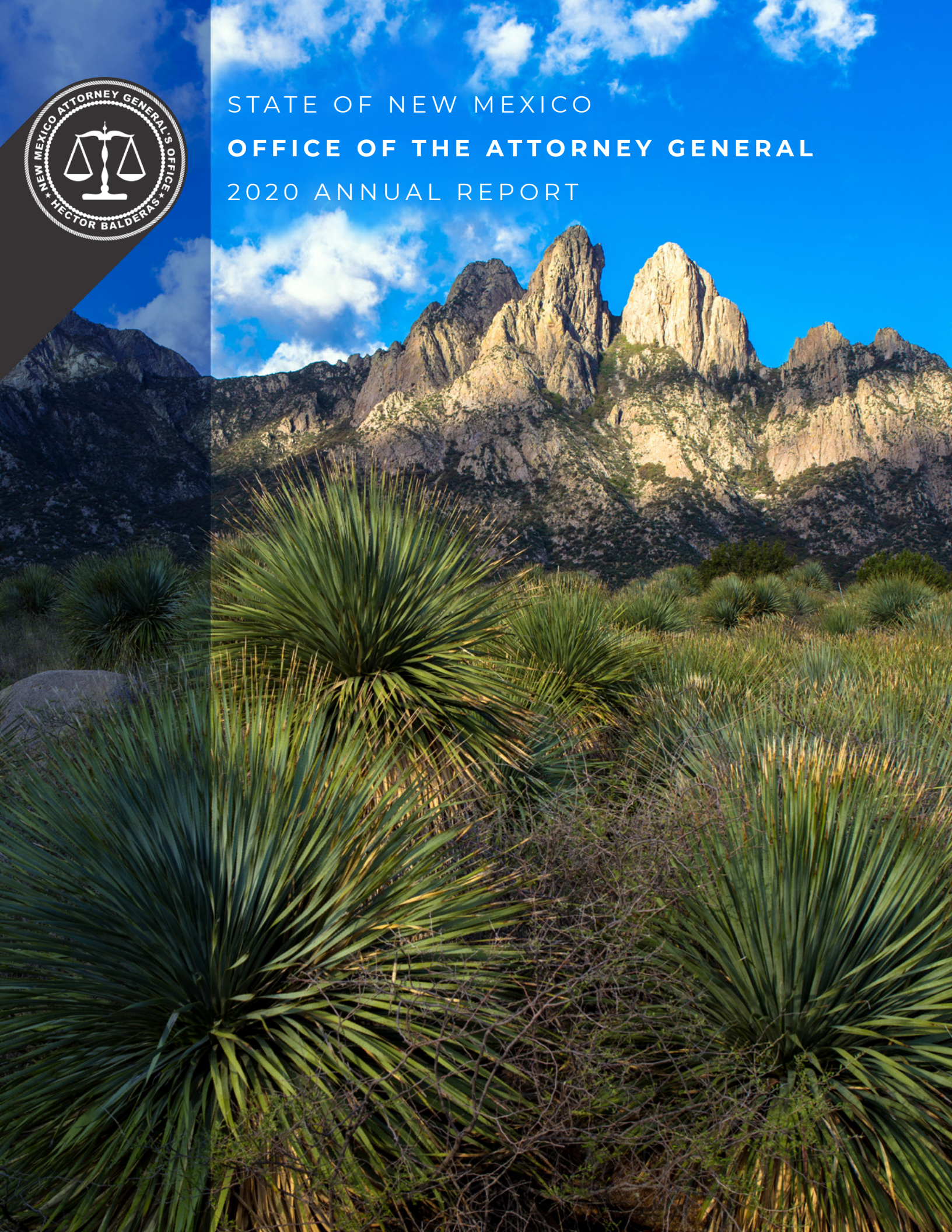




STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL
2020 ANNUAL REPORT





A Message from the Attorney General

To My Fellow New Mexicans,

The number one priority of the Office of the Attorney General is protecting New Mexican families so that they can truly prosper. Over the course of 2020, my office has done this by connecting with constituents across the state, aggressively litigating to protect New Mexico consumers, bringing justice to victims by holding the worst offenders accountable, and prosecuting public corruption to restore New Mexicans' faith in government. I am pleased to present this annual report which highlights some of our significant achievements from the last year.

I am honored to serve as your Attorney General, and I will continue to work diligently to help build safe and prosperous communities in which all New Mexicans can thrive.

Sincerely,

HECTOR BALDERAS
ATTORNEY GENERAL



STATE OF NEW MEXICO

OFFICE OF THE ATTORNEY GENERAL

2020 ANNUAL REPORT

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ON THE COVER: Dawn light illuminates the spiky splendor of native yucca plants at the base of the Organ Mountains, Desert Peaks National Monument.



About the Office of the Attorney General

The Office of the Attorney General works to protect the safety and well-being of all New Mexicans. Many of our greatest successes of 2020 are highlighted in this Annual Report.

Authority

The Office of the Attorney General is the statutorily created Department of Justice for New Mexico, (NMSA 1978 § 8-5-1). The Attorney General's duties include but are not limited to prosecuting and defending all causes in the supreme court and court of appeals in which the state is a party or interested. prosecuting and defending in any other court or tribunal all actions and proceedings, civil or criminal, in

which the state may be a party or interested when, in his judgment, the interest of the state requires such action or when requested to do so by the governor. (NMSA 1978 § 8-5-2)

Mission

Our mission is to protect New Mexicans in order to make our communities safer and more prosperous. We prosecute criminal and civil offenses; advocate for consumers and those without a voice; empower the public with education; connect the public to beneficial resources; and serve as legal counsel for the State and its agents.

Vision

We aspire to be an innovative leader in New Mexico, recognized for proactively finding solutions and responding to evolving needs by leveraging partnerships with individuals, community organizations, government agencies, and businesses.

Focus

During my tenure as Attorney General, I have committed myself and my office to protecting New Mexican families by bringing targeted enforcement on behalf of the State. Since taking office, I have focused on three key areas:

- Protecting children, vulnerable populations and families



- Targeting violent criminals, and
- Fighting public corruption.

The programming of these key areas is undertaken by the various Divisions within my office supporting this vision by focusing efforts on:

- Prevention,
- Prosecution, and
- Public awareness.

The Office of the Attorney General worked diligently to protect the safety and well-being of all New Mexicans throughout 2020, and many of our greatest successes are highlighted in this Annual Report. ■



General Hector Balderas visits with students of Chimayo Elementary about the dangers that may lurk on the internet, and how to spot and avoid them.

About the Attorney General

Hector Balderas

New Mexico Attorney General Hector Balderas serves as the State's 31st Attorney General. Since he took office in January 2015, Attorney General Balderas has been committed to serving as the people's advocate and voice, working to protect New Mexico's families by focusing on economic security and public safety.

Attorney General Balderas was raised in the rural, isolated village of Wagon Mound, New Mexico.



Growing up in a forgotten community, he realized the need to give a voice to underserved, vulnerable New Mexicans. The Attorney General served in the New Mexico House of Representatives, where he introduced the Truthful Interrogation Bill to prevent police misconduct. He then served two terms as State Auditor before serving as Attorney General. When Hector was first elected State Auditor he became the nation's youngest Hispanic statewide elected official, and when he was elected as the Attorney General he received more votes than any other candidate on the statewide ballot.

Hector's work for reform and service to New Mexico has been recognized with numerous awards including the New Frontier Award by the Harvard Institute of Politics and John F. Kennedy Library Foundation. As Attorney General, Hector is focused on protecting families and vulnerable populations, and believes that we need safe communities in order to have a prosperous New Mexico.

TANIA MAESTAS
CHIEF DEPUTY
ATTORNEY GENERAL
FOR CIVIL AFFAIRS



Deputy Attorneys General

Tania Maestas

Tania Maestas serves as Chief Deputy for Attorney General Hector Balderas. Before being appointed to her position, Tania held the position of Assistant Attorney General and Director of the Office's open Government Division. She has dedicated the majority of her career to government practice, also serving as Chief Legal Counsel for the New Mexico

Regulation and Licensing Department. As Chief Legal Counsel, she provided overall direction for the administration of the state's Financial Institutions, Securities, Alcohol and Gaming Divisions. A native of Colorado, Tania received her J.D. from the University Of Denver School Of Law.

ANNE KELLY
CHIEF DEPUTY
ATTORNEY GENERAL
FOR CRIMINAL
AFFAIRS



Anne Kelly

Anne Kelly was appointed as Chief Deputy Attorney General for Criminal Affairs in July 2020. After beginning her legal career at the First Judicial District Attorney's Office and then in a private firm, Anne joined the OAG in 1994 as a staff attorney in the Criminal Appeals Division and became Director of that division in 2015. During her tenure with the OAG, Anne handled hundreds of appeals and also litigated dozens of post-conviction cases in state and

federal court. She has conducted over 75 oral arguments in the New Mexico appellate courts and ten oral arguments in the Tenth Circuit Court of Appeals. Anne received her B.A. from the University of New Mexico and her J.D. from the University of Colorado. In 2020, Anne received a Meritorious Service Award from the National Association of Attorneys General in recognition of her years of committed service to the office of the Attorney General.

CHOLLA KHOURY,
AAG
CONSUMER AND
ENVIRONMENTAL
PROTECTION
DIRECTOR



Consumer and Environmental Protection Division

The Consumer and Environmental Protection Division (CEPD) specializes in complex civil litigation that protect New Mexico's interests.

CEPD initiates actions on behalf of the State of New Mexico and New Mexican consumers against individuals, businesses or other entities that threaten New Mexico families, legitimate businesses, the economy, or our environment or natural resources. The pandemic and remote working did nothing to slow CEPD down. Over the last year, CEPD has continued to bring actions against global companies, like Johnson & Johnson and GlaxoSmithKline, that violate New Mexico's laws and put New Mexicans at risk. The Division continues to file lawsuits seeking to uphold regulations that protect New Mexico's environment and natural resources and continues to pursue companies that pollute our environment. The Division acts as the consumer advocate in utility matters before the Public Regulation Commission, and seeks to protect consumers, our economy and our environment in those matters. The Division has increased its Charitable Organization Registration efforts under the Charitable Solicitations Act, which provides New Mexicans with the resources to make wise charitable giving decisions and ensures that charities are properly regulated. The Division also teams up with other state's Attorneys General to participate in nationwide, multi-state actions in the areas of environmental enforcement, antitrust and consumer protection.

Division Overview

The Division specializes in complex civil plaintiff's work and contains the following specializations:

- **CONSUMER PROTECTION:** CEPD is the main enforcement entity for

prosecuting violations of the Unfair Trade Practices Act (NMSA 1978, §§ 57-12-1 et seq). Many CEPD litigation cases and investigations arise out of consumer complaints submitted to the Advocacy and Intervention Division of the Office.

- **ENVIRONMENTAL PROTECTION:** CEPD helps protect New Mexico's unique environment through participating in the regulatory process and bringing actions to prevent or remedy harm to and destruction of our environment and natural resources, when necessary.
- **CHARITIES:** The New Mexico Attorney General is charged with enforcing the



Over the last year, CEPD has continued to bring actions against global companies, like Johnson & Johnson and GlaxoSmithKline, that violate New Mexico's laws and put New Mexicans at risk.

CEPD filed suit against the manufacturers and marketers of Juul vaping devices. The suit alleges that the company illegally marketed and sold nicotine products to minors, creating a nicotine epidemic among young New Mexicans.



Charitable Solicitations Act (NMSA 1978, §§ 57-22-1 et seq.). As part of these duties, CEPD maintains and services the online charity registration database, COROS. In addition to assisting charities in becoming compliant with registration and maintaining that compliance, the Charities team audits the database regularly to ensure proper compliance with registration.

ENERGY AND UTILITIES:

The New Mexico Attorney General is charged with representing small business and residential consumers in front of the Public Regulation Commission. As part of that representation, CEPD takes a holistic approach aimed at ensuring New Mexicans have access to clean, affordable energy.

- **DATA BREACH NOTIFICATIONS:** When companies experience a breach of consumer information, they are required to notify the Attorney General pursuant to the Data Breach Notification Act (NMSA 1978, §§ 57-12C-1 et seq.). CEPD monitors these breach notifications and pursues investigations of these breaches when warranted.
- **FRAUD AGAINST TAXPAYERS ACT (FATA):** The New Mexico Attorney General is charged with enforcement of the FATA (NMSA 1978, §§ 44-9-1, et seq.). CEPD conducts confidential investigations of sealed lawsuits brought on behalf of the government by private whistleblower plaintiffs, and may decide to intervene in a case or allow the private whistleblower to proceed on behalf of the government. Either way, the FATA provides a powerful tool for recovering public funds lost to fraud committed against the State of New Mexico and its political subdivisions through remedies including attorney fees, treble damages, and substantial civil penalties.

- **BANKRUPTCY:** CEPD handles the State's interest in bankruptcy matters. Our work includes representing the State as a creditor in bankruptcy matters and pursuing the State's enforcement actions against defendants who attempt to evade liability by declaring bankruptcy.
- **MULTISTATE INVESTIGATIONS AND LITIGATIONS:** The Division partners with other states' Attorneys General to investigate nationwide violations of federal and state laws. The Division is currently engaged with other states around issues involving anti-competitive behavior, consumer fraud, data breaches, charities, environmental issues and others.

New in 2020

SELECTED NEW CASES:

Some of the most significant cases filed by CEPD in 2020 include:

- **Juul:** CEPD filed suit against the manufacturers and marketers of Juul vaping devices. The suit alleges that the company illegally marketed and sold nicotine products to minors, creating a nicotine epidemic among young New Mexicans. The suit seeks, among other things, recovery of costs to the State for treating this epidemic.
- **Zantac:** In May 2020, the OAG filed a lawsuit against nearly two dozen pharmaceutical manufacturers and retailers, seeking to hold them accountable for the marketing and sale of heartburn medication Zantac and its various generic variations. Sold in the United States since 1983, these drugs were recalled in early 2020 after lab testing showed extremely high levels of the potent carcinogen N-nitrosodimethylamine (NDMA). Evidence suggests that these companies knew ranitidine could become contaminated with NDMA as early as 1981, but made billions of dollars selling these drugs over the next decades anyway without disclosing the dangers. The suit seeks damages to the State for the public health costs, damages, penalties, and a fund to help the State diagnose and treat the diseases caused by this drug.

- **Talc:** In January 2020 CEPD filed suit against the manufacturers and marketers of certain talcum powders products, including baby powder, alleging that the companies sold the products despite knowing that they contained hazardous and carcinogenic asbestos. The suit seeks penalties and funds to aid the State in treating cancer.

- **Broiler Chicken:** In September 2020 CEPD filed suit against dozens of manufacturers and marketers of broiler chickens alleging the companies had conspired to and over the course of years did fix the price of broiler chickens. The complaint seeks damages and penalties on behalf of the State.

Identity Theft

BE AWARE OF THE FOLLOWING:

- Never give out your information to a person or a company that contacted you first.
- You never can be too cautious when protecting your personal information.
- Know who you are dealing with when shopping or divulging personal information online.
- If something sounds too good to be true it most likely is.

SIGNS THAT YOUR IDENTITY HAS BEEN STOLEN:

- Statements for your financial accounts stop arriving at the normal time without prior notice from your financial institution.
- Bills start coming for things you did not buy, or charges show up on your credit card statement for purchases you did not make.

WHAT DO YOU DO IF YOUR IDENTITY IS STOLEN?

Immediately file a police report and retain a copy. Then contact your creditors, banks, credit bureau, local law enforcement agency and the Federal Trade Commission by phone and in writing. Let them know that you have become the victim of identity theft. Keep a record of all communication you make with these agencies, including everything you send them, each person you talk to, and the date and time of all communication. Request a copy of your credit report and review it carefully for anything suspicious. Close all accounts that have been tampered with or opened without your knowledge or consent.

IF YOUR IDENTITY HAS BEEN STOLEN:

1. File a police report with your local law enforcement agency.
2. Close any accounts that have been tampered with or opened without your authorization.
3. Contact the three major credit reporting bureaus and place a fraud alert on your credit file or place a security freeze on your credit file.
4. Review your credit report for accounts you did not open; debts you did not incur on any accounts; inquiries from companies you do not know; and inaccurate information.
5. File a complaint with the Federal Trade Commission.
6. New Mexico residents may request an Identity Theft Passport.

IDENTITY THEFT PASSPORT

- The Identity Theft Passport database is a statewide system accessed by law enforcement and the New Mexico Motor Vehicle Department (MVD) to identify and document victims of identity theft.
- Once a victim of identity theft files a report with local law enforcement, this report, along with the victim's personal information, becomes stored in the Identity Theft Passport database that is available to statewide law enforcement agencies.
- The victim's information will also be accessible by the Motor Vehicle Department.
- Passports can only be received at an office of the State of New Mexico MVD.
- The passport is a New Mexico identity card. "Victim of Identity Theft" will be printed on the back in the endorsement area and should be carried by the victim to help prevent identity confusion if a crime has been committed in the victim's name.

SELECTED SIGNIFICANT CASE UPDATES

- **Opioids:** After overcoming numerous motions to dismiss and beginning discovery in late 2019, CEPD amended its complaint to add additional allegations against chain pharmacies like CVS, Walgreens, Wal-Mart, and others, alleging that their business practices and focus on profits over safety contributed to the crisis in the state. Unfortunately, due to a COVID-19-related backlog of trials and hearings, and over CEPD's strenuous objection, the state court rescheduled the State's trial from September 2021 to September 2022. On October 13, 2020, defendant Mallinckrodt joined its competitors Purdue Pharma and Insys in bankruptcy court, declaring Chapter 11 and agreeing to suspend opioid marketing activities.
- **Gold King Mine Spill Litigation:** In 2016 CEPD and the New Mexico Environment

Department brought a case against the U.S. EPA and private mining defendants related to the 2015 Gold King Mine disaster. The case has survived motions to dismiss and motions for summary judgment. The case will be tried in three phases: the first phase will cover liability under CERCLA and the FTCA, and economic damage claims; the second phase will address injunctive relief under RCRA and the Clean Water Act; the third phase will address contribution and cost recovery claims among defendants and EPA contractor, Environmental Restoration's counterclaims against the state for cleanup cost recovery. The State has reached an \$11 million settlement with the mining operations that owned the mines, leaving the EPA and its subcontractors still in the case.

- **Air Force PFAs/PFOA:** The State's case against the Air Force for contamination of ground and drinking water surrounding the Cannon and Holloman Air Force Bases was transferred to an MDL court in South Carolina. The MDL is for consolidated actions regarding products liability against the manufacturers of PFAs and PFOA. The Motion for Leave to File for Preliminary Injunction was denied by the MDL court. The State is currently evaluating ways to get the case on a trial track.
- **Federal Environmental Deregulation Challenges:** CEPD represents the State as co-plaintiffs with other state attorneys general in dozens of lawsuits challenging the Trump Administration's reckless attempts to reverse decades of progress in environmental protection. Some of the larger cases include challenges to: weakening of emissions standards for cars and trucks, repeals of EPA and BLM methane standards for the oil and gas industry, removal of protections for migratory birds, drastic reductions in the scope of waters protected by the Clean Water Act, and weakened regulations under the Endangered Species Act and National Environmental Policy Act. The cases have enjoyed a high rate of success such that many of the rollbacks will not survive the change in presidential administrations.

Key Outcomes

- **Vivint Solar:** In March of 2018 CEPD filed a lawsuit against Vivint Solar, a Utah company selling residential purchase power agreements door-to-door in New Mexico. The complaint alleged violations of New Mexico's consumer protection acts and others. The parties successfully settled this matter resulting in a monetary payment, strong injunctive relief and reform of Vivint's sales and business practices as well as an agreement to find a replacement form for the liens placed on New Mexicans' homes.
- **Monsanto:** CEPD brought an action against Monsanto, Inc., Solutia, Inc., and Pharmacia Corp. in 2019 for their roles in the manufacturing, distribution, marketing, promotion and sales of polychlorinated biphenyls (PCBs) and PCB-containing products in New Mexico, harming the state's natural resources and endangering public health. The CEPD settled this case for significant monetary payments and cooperation with its ongoing investigation into further PCB contamination.
- **Takata:** On January 20, 2017, the State of New Mexico filed a lawsuit against Takata Corporation and original equipment manufacturers (the "OEMs") for the manufacturing, selling, use and false advertising of defective and potentially deadly Takata airbags. While CEPD continues to pursue the case, in 2020 CEPD successfully settled with many of the defendants for a significant monetary payments.

Texas v. New Mexico

AG Balderas has been vigorously defending the waters of the Rio Grande. After many years of preliminary litigation, this case has finally reached a point where we are no longer simply responding to claims brought by Texas and the United States, but have now had the opportunity to finally tell New Mexico's story. When Texas sued New Mexico in 2014, Texas claimed New Mexico's actions violate the Rio Grande Compact, which apportions the waters of the Rio Grande among Colorado, New Mexico, and Texas. The United States, which operates the Rio Grande Project, has joined the case as a plaintiff, making similar allegations to Texas. At issue is New Mexico's sovereign control and authority over the waters within its borders. OAG briefings have shown that New Mexico has put together a very strong case that seeks to hold Texas accountable for their role in creating water shortages in southern New Mexico. The OAG also seeks to bring to light the wrongful actions of Texas by entering a water distribution agreement without involving New Mexico that has directly and negatively impacted New Mexican citizens.

The Special Master recently ruled that the trial will be held in Cedar Rapids, Iowa, commencing on September 13, 2021. The case is one of the biggest, most extensive litigations New Mexico has ever seen. In 2020 alone, New Mexico has filed over 300 exhibits. In total there have been tens of thousands of pages of exhibits have been filed with the pleadings. Furthermore, 371,352 documents have been produced by New Mexico in discovery. Collectively, millions of pages of documents and terabytes of data have been exchanged. The trial is expected to potentially last over 75 days. The trial will consist of more than 130 witnesses. New Mexico has listed 21 expert witnesses and over 50 non-expert witnesses. The other parties have listed over 65 witnesses.

While the Supreme Court has set an aggressive litigation schedule, mediation commenced on December 14, 2020. While AG Balderas remains committed to exploring settlement options, the parties recognize

that any settlement framework must take into account the needs of, and risks to, all constituencies in the state, including the Executive and the Legislature. Therefore, we continue to work closely with all of the diverse interests represented, including representatives of farming groups and stakeholders in the Lower Rio Grande. The OAG is also committed to continue working closely with the Office of the State Engineer and the Interstate Stream Commission, with whom we are in communication on a daily basis on technical matters. ■



The case is one of the biggest, most extensive litigations New Mexico has ever seen. Trial will be held in Cedar Rapids, Iowa, commencing on September 13, 2021 and is expected to potentially last over 75 days.

Litigation Division

The division's attorneys provide professional and effective legal representation to state officials, agencies, and judges when sued in their official capacity.

Among its number of important roles, the Litigation Division also serves the state in seeking to protect New Mexico citizens and the state treasury by initiating and defending civil lawsuits on behalf of the state. Finally, the division conducts administrative prosecutions for professional licensing boards and commissions in an effective and ethical manner that helps protect public health and safety while at the same time ensuring due process of licensees.

Civil Litigation

The Litigation Division represents the state in civil law suits, including state agencies, public officials, and the Office of the Attorney General, and appears in all courts, ranging from magistrate court through every state and federal court.

In 2020, the Litigation Division was involved in 107 litigation cases, including 55 new matters opened in 2020. The year also brought a significant influx of litigation related to both the general election as well as the COVID-19 global health pandemic and resulting public health orders issued by the New Mexico Department of Health and Governor. Below is a small snapshot of just a few significant cases the Division was involved in:

- ***Twelfth Judicial District Court et al. v. Board of County Commissioners of Otero County et al.*** – The Litigation Division continues to represent the district court in pursuing a mandamus action against the county to provide an “adequate” courthouse facility as required by state statute.
- ***New Mexico Patriots Advocacy Coalition v. Maggie Toulouse Oliver, New Mexico Secretary of State; Hector Balderas*** – Complaint for Declaratory Judgment and other relief to declare certain election laws adopted by the 2019 legislature as unconstitutional. The Litigation Division was successful in dismissing the complaint but it is currently pending on appeal.
- ***Legacy Church, Inc. v. Kathyleen Kunkel and State of New Mexico*** – Complaint in Federal District Court for Temporary Restraining Order and Preliminary Injunction, claiming a violation for Constitutional rights under the First and Fourteenth Amendments as a result of the restrictions on mass gatherings imposed by a public health order issued in response to the COVID-19 pandemic. The Division represented the State, and was successful in getting dismissed. The decision was appealed to the 10th Circuit, where it is currently pending.
- ***Tobby Anderson, et al v. State of New Mexico, Department of Corrections, et al*** – Complaint filed by several state inmates along with the New Mexico Criminal Defense Lawyers Association and ACLU of New Mexico, alleging that due to the COVID-19 health emergency a large population of inmates in the State’s correctional system are subject to constitutional rights violations, including cruel and unusual punishment. The Division represented the State, the Corrections Department Secretary, and the Director of New Mexico Probation and Parole. The District Court granted the State’s Motion

to Dismiss for lack of subject matter jurisdiction, and the decision has been appealed and is currently pending.

- **Cowboys for Trump, Inc. et al v. Toulouse Oliver** – Federal complaint alleging civil rights violations, including that state law requirement that Plaintiffs register and disclose their members and financial supporters violates the First and Fourteenth Amendments. The Division is representing the Secretary of State and was successful in a Motion to Dismiss, which was granted without prejudice and an opportunity for
- **Madux Hobbs et al v. State of New Mexico / State of New Mexico v. Matthew** – Fourteen separate district court cases seeking compensation under a takings clause argument that the State’s public health emergency orders constitute an unlawful taking by the State. The Division is representing the State in all fourteen cases and with the Governor’s Office has filed a Petition for Writ to consolidate and stay the underlying cases. The Supreme Court has ordered briefing and a hearing is set for early 2021.

Administrative Prosecution

The attorneys of the Litigation Division serve as civil administrative prosecutors for over 30 professional and occupational licensing boards and commissions. Prosecutors present formal charges against applicants or licensees who are alleged to have violated licensing statutes and regulations in order to protect the public and maintain trust in these regulated professions. Our prosecuting attorneys work closely with board or commission staff, investigators, inspectors, complainants, and witnesses to build cases that are persuasive to the licensing board or commission while also able to withstand judicial review if the case is appealed to district court.

In 2020, the Litigation Division continued to implement changes made in 2019 to reduce inefficiencies and build partnerships, and continue to deliver effective and timely prosecutions on behalf of these licensing boards and commissions and the State of New Mexico. At the end of 2020, only a handful of

active cases were older than 6 months from the date of referral. The following statistics highlight the work done on administrative prosecution cases:

- 320 requests for administrative prosecution were received and opened, which included application denials, unlicensed practice, and discipline against licensed individuals
- 212 Notices of Contemplated Action (NCA) were filed
- 91 administrative hearings were set
- 50 settlement agreements negotiated by prosecutors and approved by boards/commissions
- **Board of Psychologist Examiners v. Wilson** – Prescribing psychologist Rick Wilson, who was alleged to have been prescribing high levels of Xanax to over 40 patients per day, resulting in some overdose deaths, signed a Settlement Agreement wherein he agreed to accept formal discipline from the Psychologist Board and surrender his prescriptive certification to both the Pharmacy Board and the Drug Enforcement Administration.
- **Board of Body Art Practitioners v. Marquez** – Revocation of Claire Marquez’s license after fraudulently obtaining hundreds of thousands of dollars from New Mexicans seeking assistance in applying for a license with the board through a misleading offer of sponsorship.

Civil Appeals & Antitrust Litigation

The Litigation Division defends the constitutionality of state laws and brings



The attorneys of the Litigation Division serve as civil administrative prosecutors for over 30 professional and occupational licensing boards and commissions.

Through the office's tobacco project, headed by Project Coordinator Phillip Bachicha, the Litigation Division protects New Mexico's interests by litigating against tobacco manufactures that attempt to evade payments under the MSA.



lawsuits to defend the constitutional rights of New Mexico and New Mexicans. The Division also houses the Office's Civil Appellate practice, overseen by the Civil Appellate Chief, Nicholas Sydow, which works on civil cases on appeal, amicus briefing, and other matters in the appellate courts.

The Litigation Division is currently transferring the remainder of its antitrust litigation to the Consumer and Environmental Protection Division. The work focuses investigation and prosecution of violations of federal and state antitrust laws. These cases include price-fixing, market allocation, bid-rigging, monopolization, and other anticompetitive behavior. Among the antitrust cases handled by the Division was a lawsuit filed alleging a broad conspiracy among manufacturers of generic pharmaceuticals to increase prices of a wide range of drugs and agree not to compete for customers.

Tobacco Master Settlement Agreement Enforcement

The Attorney General is charged with enforcement of the Master Settlement Agreement (MSA), a 1998 agreement between the largest cigarette manufactures and 46 states. Through the office's tobacco project, headed by Project Coordinator Phillip Bachicha, the Litigation Division protects New Mexico's interests by litigating against tobacco manufactures that attempt to evade payments under the MSA. Since 1999 and the inception of the agreement, the Office of the Attorney General has recovered over \$793 million, including \$34,789,028.61 in 2019. The division is currently involved in litigation with both 2004 and 2005-2007 arbitrations.

With the 2004 arbitration, the state received an unfavorable ruling this year when the New Mexico Supreme Court denied a petition to appeal the district court's order to compel New Mexico into the 2004 arbitration. New Mexico is the final remaining state completing its arbitration for 2004, and the OAG has retained outside counsel based in New York to assist with defending the state. This year, the office was heavily involved in document production and discovery as well as working with its outside counsel to develop its case and identify and prepare fact witnesses as well as 30b6 witnesses with the OAG and New Mexico Tax and Revenue Department. A number of depositions took place at the end of 2020 and the hearing for the 2004 panel is set for the last week in June, 2021.

The 2005 arbitration has continued with the arbitrating states, including New Mexico, having continued to meet virtually during the pandemic. A consensus and decision was made to combine the 2005 arbitration with years 2006 and 2007, which will help save resources and catch up with the backlog of subsequent arbitrations that will inevitably occur.

In July 2019, the district court issued an order denying Grand River Enterprises appeal and upholding a 2018 decision by the Office of the Attorney General to deny Grand River from being able to place their cigarettes on New Mexico's tobacco directory for failure to satisfy the state's requirements. The appeal has been assigned to the general calendar and Grand River's opening brief is due in January 2021.

The Litigation Division added a Tobacco Bureau with a plan to add another attorney and staff before the COVID-19 crisis stalled these efforts. However, during the second half of 2020, two attorneys were brought into the fold on tobacco work and an administrative assistant is currently being cross-trained to help with file management in anticipation of document production and discovery picking up in 2021 with the upcoming 2005-2007 arbitration now underway.

Bankruptcy

Longtime OAG bankruptcy attorney Jim Jacobsen retired in the second half of 2020. With his retirement, the bankruptcy work of the OAG was transferred to the Consumer and Environmental Protection Division. This was done because the bankruptcy court is located in Albuquerque and Litigation Division does not have any support staff in the Albuquerque office. Now, with the staff support of CEPD, the bankruptcy attorney will have more resources. Before this transition and change in record keeping, the Litigation Division appeared on behalf of the State of New Mexico in 99 new bankruptcy cases filed in the District of New Mexico during 2020.

Extraordinary Writs

The Litigation Division provides legal representation to judges and public officials in extraordinary writs, most of which are filed in the New Mexico Supreme Court. Representing the judiciary is a distinct role for the Office of the Attorney General and offers its attorneys a unique opportunity to engage with the bench.

In 2020, the Litigation Division defended 40 extraordinary writs, and continued to build positive relationships with the judiciary and the Administrative Office of the Courts. ■

Updates In The Office

The Litigation Division faced difficult challenges during 2020, just like the rest of the state. However, despite the uncertainty of the year, the division was remarkably resilient and adapted quickly to a remote work schedule and transition to virtual meetings, hearings, and record keeping. The high level of client service provided to judges and other public officials was maintained seamlessly throughout the year and the division's attorneys and staff didn't miss a step in providing reliable, capable legal service.

Updates in the Office

The Litigation Division faced difficult challenges during 2020, just like the rest of the state. However, despite the uncertainty of the year, the division was remarkably resilient and adapted quickly to a remote work schedule and transition to virtual meetings, hearings, and record keeping. The high level of client service provided to judges and other public officials was maintained seamlessly throughout the year and the division's attorneys and staff didn't miss a step in providing reliable, capable legal service.

In the following year, the Litigation Division will focus on developing its capabilities as a civil litigation resource for the OAG and State of New Mexico. Continuing to cross train both attorneys and staff will be priority, particularly for the Tobacco Bureau and appellate work of the division.

The following individuals were a part of the Litigation Division during the 2020 calendar year, and are recognized for their contribution to the success of the office:

ASSISTANT ATTORNEYS GENERAL:

Victoria Amada
Neil Bell
Gregory Chakalian
Joseph Dworak
Gary Genovese
Amye Green
Kaythee Hlaing
James Jacobsen
Erin Lecocq
Nicholas McDonald
Olga Serafimova
Mark Swanson
Nicholas Sydow

STAFF

Jessica Romero
Carol Ann Ortiz
Loretta Baca
Phillip Bachicha
Ellen Parker
Maria Oropeza

Civil Rights Bureau

The Civil Rights Bureau spent the year 2020 highlighting New Mexico's stake in civil rights controversies that spread throughout the country.

The Civil Rights Bureau focuses on actions that threaten the interests of New Mexico's people as the Attorney General joined in more than 100 multi-state lawsuits. The full docket is available at www.nmag.gov.

Attorney General Balderas advocated for New Mexico's uniquely diverse population and its persistent economic and environmental preservation needs on a host of issues that raised constitutional and statutory violations in courtrooms throughout the country. In addition, he joined his peers across the country in protesting the imposition of new regulations that failed to follow even basic notice and hearing requirements prior to radical changes. The lawsuits filed included more than a dozen advocating for voters, several protesting increasingly strict limits on immigration and immigrants, and a wide range of activities in opposition to regulations that weakened protections for New Mexico's people and environment. Among the weakened protections the Civil Rights Bureau challenged were regulations that allowed for discrimination on the basis of sexual orientation and identity, made sexual harassment claims at universities and secondary schools more difficult to win, narrowed the numbers and types of foreign students allowed to study in-state, and allowed for less nutritious meals to be served in public schools.

The 2020 Census

The conduct of the 2020 census was necessarily a major focus of the division, as the Census

Bureau of the Department of Commerce continued its efforts to discourage participation by non-citizens in the decennial count of all the people in the country. Attorney General Balderas joined other states beginning in 2017 to block the addition of a citizenship question to the census query, and pointed out that New Mexico is already one of the most undercounted states in the country and, therefore, stood to lose millions of federal dollars if noncitizens were intimidated enough not to respond to the census survey. The U.S. Supreme Court found the census bureau's rationale for adding a citizenship question failed to establish a reasonable basis for the change and, upon that finding, the administration dropped its plans to require that non-citizens identify themselves and, therefore, risk deportation.

However, in the summer of 2020, the president issued an executive order with the potential to affect immigrant response by forbidding the census bureau from counting non-citizens in its constitutionally required enumeration of the population. Attorney General Balderas went back to court, arguing that the plain language of the U.S. Constitution requires a count of the "whole number" of residents—not of a cherry-picked few. The new case was argued before the U.S. Supreme Court November 30, 2020 and, on December 18, 2020 the court dismissed the case for a lack of standing and because it was not "ripe" for adjudication. In doing so, the Court noted that the record did not prove that the new policy could be implemented and that the "aliens" had administrative records that would allow the census bureau to exclude such residents.

As the litigation was moving forward, the Civil Rights Bureau worked closely with county commissions that expressed concerns about the census bureau's poor communications with local governments, and attempted to maximize response to the census from New Mexico's rural and "frontier" communities—particularly those with spotty internet access that made responding difficult during a year when door-to-door surveys by the census bureau were cut short.

Election Law and Voter Access

The Attorney General vigorously opposed changes to U.S. Postal Service (USPS) policies that could have led to disenfranchisement of voters during the 2020 presidential election. The litigation challenged last-minute changes to procedures implemented without approval of the postal service commission. The changes muddled schedules delaying delivery of mail—and, more particularly, mail-in ballots—and included removal of neighborhood drop boxes some voters relied upon. Because of the successful attorneys general multistate challenge, the impact of the USPS change was minimal.

Throughout the period from the primary through to the counting of electoral college votes, the Attorney General worked closely with law enforcement, county clerks and the New Mexico Secretary of State to ensure a smooth process for the record turnout of New Mexico voters. Because of the Attorney General's alliance with all law enforcement, the threats of violence at polling places other states faced was minimal in New Mexico.

Elsewhere across the country, however, voters faced enormous difficulties in simply getting their ballots counted. Attorneys General across the country advocated for increasing rather than limiting access to polling especially during the pandemic. They argued that allowing only one drop-box per county for local voters unfairly disadvantaged the 4.5 million voters in Texas' Harris County (Houston) trying to use the county's single drop box as against the 169 voters in Loving County. They supported Alabama's curbside voting process,

North Carolina's consent decree extending the absentee ballot deadline, Vermont's expanded mail-in voting process, and challenged South Carolina's affirmation requirement for absentee voters and Mississippi's requirement that two people affirm the authenticity of an absentee ballot. The pro-voter work was a natural outgrowth of the Civil Rights Bureau's focus on ballot access that led the Attorney General to support simplified voting procedures for New Mexico's during the first 2020 special legislative session.

Immigration and Immigrants

Ever mindful of the significant role undocumented persons have played-- and continue to play-- in New Mexico's families, businesses and culture, Attorney General Balderas has been involved in a plethora of significant multistate lawsuits advocating for a coherent immigration policy, humane treatment of refugees and asylees, and for the human right of families to be kept intact. Specifically, he has argued against "public charge" policies that penalize undocumented people for using public benefits in their quest for citizenship, noting that undocumented parents may avoid seeking medical attention for their U.S.-born children in order to avoid later citizenship disqualification. In 2020, he also argued against the "Migrant Protection Protocols" authorizing deserving asylum-seekers to be forced to wait in Mexico for a U.S. hearing; against the "Safe Third Country" arrangement requiring asylum-seekers to apply first in a country they traverse before seeking U.S. residence, and for recognition of various state



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The Civil Rights Division joined in numerous multi-state state cases against Immigration and Customs Enforcement (ICE) officers' arrest of undocumented persons in courthouses.



law accommodations for the immigrant community such as special driver licenses that promote public safety.

Attorney General Balderas has been a strong opponent of the construction of the U.S. Mexico border wall on grounds that it destroys plant and animal habitat, it is ineffective (especially in comparison with the cross-border law-enforcement initiatives currently in place in the OAG) and is illegitimately funded through emergency declarations diverting dollars Congress appropriated for actual military defense. New Mexico's case with California against using military dollars for wall construction was set for argument before the U.S. Supreme Court in 2020, but both sides have agreed to an extension of time, which may allow for a change of policy that could moot the issue. New Mexico's harms have been documented by declarations submitted by the State Commissioner of Public Lands, traditional hunters along the border, and environmentalists concerned about the destruction of habitat.

The Civil Rights Bureau joined in numerous multi-state state cases against Immigration and Customs Enforcement (ICE) officers' arrest of undocumented persons in courthouses. In New Mexico, the Attorney General led a case filed in the New Mexico federal district court July 23, 2020 on behalf of the First Judicial District Attorney's office, the Law Offices of the Public Defender, the American Civil Liberties Union, the New Mexico Faith Coalition for Immigrant Justice, Enlacio Comunitario and Del Centro de Igualdad y Derechos opposing ICE agents who arrested undocumented persons in New Mexico courthouses. All the cases affirm

the importance of keeping law enforcement local in order to encourage compliance with subpoenas and encourage reporting of legal problems— whether or not the person reporting has obtained formal status.

Discrimination

Rules related to administration of federal Title X funds were radically altered in 2020—a change challenged by New Mexico Attorney General Hector Balderas and other attorneys general across the country. One change would allow organizations that provide housing for homeless persons to ban transgendered persons from entry. Another caused providers of women's health services to ensure that any discussion of abortion did not occur in a facility receiving federal funding.

Education, Campus Policies and Students

In 2020, only a month before the beginning of the fall term, the federal administration changed Title IX sexual harassment complaint-hearing rules so that only on-campus incidents—not incidents that occur during travel, for instance—could be addressed, and requiring that universities provide free counsel to persons accused of harassment as well as to alleged victims. The Attorneys General challenged the policy changes, and are likely to appeal. Meantime, schools across the country are lobbying the incoming Biden administration to return the process to the one that encouraged greater campus safety.

Other litigation related to the higher education environment included: protesting the relaxation of rules for private colleges that once required such for-profit entities to report the successes and failures of their graduates in employment post-graduation; opposing the proposal from Secretary Betsy DeVos that pandemic relief be afforded private colleges; overseeing consumer challenges to student loan servicer implementation of federal loans.

Universities throughout the State stood to lose significant funding through the restrictions

on immigrant visas imposed by the 2020 presidential administration, as foreign students studying at New Mexico universities pay full tuition and regularly live in campus housing. Attorney General Balderas joined with 22 other Attorneys General to challenge the regulations, having gathered data from UNM and New Mexico Tech on the significant loss of tuition funding triggered by the regulatory change.

Hunger

Rules for benefits calculations for “Able Bodied Adults Without Dependents” (ABAWD) seeking food assistance were changed in 2020, eliminating the waivers by which New Mexico has been allowed to modify the job search requirements for persons who receive benefits. New Mexico’s unemployment rate and overall lack of employment opportunity particularly in remote areas of the State regularly caused it to receive a federal waiver from strict work search requirements—a waiver jeopardized by the proposed rule change. When Attorney General Balderas joined with 18 other Attorneys General to challenge the regulatory changes and, later, noted that the job search requirements were especially onerous during the pandemic, the rule change was abandoned and the case was dismissed as moot.

New Mexico’s school children, almost all of whom rely meals served in school cafeterias and administered through the U.S. Department of Agriculture, were protected by a challenge waged by Attorneys General across the country. USDA proposed relaxing the nutritional standards for school meals to allow for more salt in student diets and a return to fewer meals with whole wheat included. After the protest mounted by the Attorneys General, the department abandoned the plan to relax the standards.

Pandemic-Related Policies

The Civil Rights Bureau ensured that Attorney General Balderas was aware of and could join in supporting issues such as extending the

deadline for governments to spend CARES Act funding into 2021—a measure included in the final version of the COVID-19 relief package passed December 20, 2020. The Attorneys General also urged Congress to ensure that standards for CARES Act funding were consistently applied, that airlines be required to consider their employees’ needs throughout the pandemic. Attorney General Balderas also opposed the president’s directive changing how COVID-19 rates were and are reported. ■



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Open Government Division

The Open Government Division has three primary areas of responsibility for outreach to the citizens of New Mexico.

First, it provides legal representation to eighty boards, commissions and state agencies, including nearly three dozen professional licensing and environmental permitting boards. Second, the Division researches and drafts Attorney General opinions in response to requests by state legislators, state officers and district attorneys. Third, it promotes public transparency by reviewing and responding to complaints alleging violations of the Open Meetings Act (OMA) and Inspection of Public Records Act (IPRA) and by providing state-wide training to governmental bodies, media organizations and the public regarding their rights and responsibilities under the Acts.

Year in Review

In 2020, attorneys in the Division attended over 406 proceedings, including regular board meetings, disciplinary and rulemaking hearings.*

Notably, Assistant Attorney General Marah deMeule assisted the Insurance Nominating Commission as it selected the next Superintendent of Insurance, who began his term in January 2020. Since March, the Division has assisted its clients, as well as state agencies and local political subdivisions, navigate changes in the emergency public health orders issued by the Department of Health and adapt to technology for virtual meetings

* This number represents only a 13% decrease from the previous year's total and includes virtual meetings since the governor and secretary of health declared a state of public health emergency on March 11, 2020.

as well as virtual disciplinary, adjudicatory, and rulemaking hearings. In particular, lawyers in the Divisions responded to an untold number of nuanced and unusual questions regarding various types of licensure (new, renewal, reciprocity, etc.) and discipline that arose due to the pandemic across all boards and commissions. Assistant Attorney General Robert F. Sanchez responded to questions and concerns of the Funeral Services Board relating to the disposition of human remains during the COVID-19 pandemic in New Mexico.

The Division currently is handling 31 judicial appeals and similar court proceedings on behalf of state agencies, boards and commissions.

The Office of the Attorney General issued thirteen advisory opinions in 2020 on a variety of topics, including (1) the constitutionality of certain provisions in Senate Bill 668, passed during the 2019 legislative session; (2) an interpretation of the Arrest Record Information Act in the context of individuals accused but not charged with a criminal offense; (3) the question of additional compensation to county assessors OAG Rules governing the advertising and sale of motor vehicles; (4) the application of the Liquor Control Act to private events where liquor is served; and (5) the governor's authority to regulate the activities of private businesses during a public health emergency.

The Division supervised the production of 51 OMA/IPRA determinations and answered countless telephone calls from public officials and members of the public regarding OMA, IPRA and other aspects of government

practice. It provided 5 statewide trainings on OMA/IPRA compliance, 5 of which were held virtually. To date, almost 500 people have participated in our trainings.

The Division houses the records custodian for the OAG, who in 2020 received and responded to 131 requests to inspect public records held by the OAG.

The Division reviewed and approved 42 bond transcripts were received totaling \$199,725,000.00. It reviewed 154 contracts (including 45 in which the OAG was a party) for various state agencies totaling \$11,819,520.02. The Division also approved 3 Closing Agreements negotiated by the Taxation and Revenue Department.

During the 2020 regular and special legislative sessions, the Division received, routed and administered 238 requests for bill analysis from the New Mexico Legislative Council Service. ■



The Division houses the records custodian for the OAG, who in 2020 received and responded to 131 requests to inspect public records held by the OAG.

Assistant Attorney General John Kreienkamp training on Open Meetings Act



Advocacy and Intervention Division

The Advocacy and Intervention Division (AAI) provides rapid assistance to all New Mexicans with concerns of various types such as identity theft, car buying, payday and student loans, ADA compliance and scams of all varieties.

Through direct constituent engagement, Advocacy and Intervention endeavors to serve as a resource for quick, accurate information and advocacy, as well as excellent service. Advocates frequently work to informally assist in mediating issues between businesses and consumers across the state with a goal of resolving cases within 60 days. Advocates successfully mediated hundreds of cases in 2020 recovering over \$300,000 for consumers. AAI serves as a functional link between the Office of the Attorney General, constituents and communities throughout New Mexico by providing educational outreach, training and resource referrals promoting safe and resilient communities.

The Advocacy and Intervention Division is also committed to offering resources and support to victims of crime and their families. The Office of the Attorney General recognizes the importance of victims' rights and is committed to working proactively to ensure that those rights are upheld throughout the legal process. The goal of the Victim Advocates within the Division is to provide comprehensive services in a competent, sensitive, and professional manner. In order to ensure the quality of services being offered, all members of the Division are either certified victim advocates or are in the process of becoming fully certified. The Office of the Attorney General recognizes the value of preventing victimization and decreasing criminal behaviors through a holistic approach that includes education, outreach, harm reduction, and access to services. Victim Advocates also respond to mass casualty incidents throughout the state

and assist local law enforcement and victim service providers with knowledge, experience and training in crisis situations.

This Division also investigates and enforces actions under the Governmental Conduct Act. The Office of the Attorney General ensures that public officers and public employees uphold the public's trust, and that they do not utilize their powers and resources to pursue private interests or for personal benefit.

Advocacy and Intervention Services

Advocates with the AAI Division are on the front line helping everyday New Mexicans get through some of the toughest issues and times we face as a State. During the COVID-19 pandemic, advocates assisted numerous constituents by providing information, resources and assistance. Time and time again, Advocates heard from everyday New Mexicans about how grateful they were to receive a call and get assistance from our office.

2020 KEY ACCOMPLISHMENTS AND OUTCOMES:

- AAI received **1,016 more** complaints via our Electronic Complaint System (ECS) in 2020 than it did in 2019
- A total of 5,845 consumer & constituent complaints were opened in the Division.
- 1,088 of the complaints received were related to scams. A huge decrease from 2019, where the division received 2,134.

A positive indication that educational outreach efforts are working.

- 553 of the complaints were related to the COVID-19 pandemic, including 311 price gouging complaints
- AAI Advocates were able to assist consumers, constituents and businesses throughout the State of New Mexico in 2020 and recovered \$382,896.69 in restitution.

Victim Services

AAI Victim Advocates work diligently to assist victims of crimes and/or their families as they navigate the criminal legal process. Due to the COVID-19 pandemic, the majority of trials scheduled between March and December 2020 were reset to early 2021. However, AAI Victim Advocates were still able to play an integral role in successful prosecutions by providing vital assistance and support to the victims and/or their families.

2020 KEY ACCOMPLISHMENTS AND OUTCOMES:

- Received 187 inquiries from victims and/or constituents who were seeking information, referrals, and/or services regarding criminal matters not being handled by our office
- Mailed 110 notifications to victims related to cases in the New Mexico Court of Appeals and New Mexico Supreme Court, and attended 3 oral arguments at the New Mexico Court of Appeals and/or the New Mexico Supreme Court on behalf of victims and/or their families
- AAI Victim Advocates successfully collaborated with Lincoln, Hidalgo and Santa Fe counties to provide crucial resources, training and information to aid in combatting Human Trafficking.
- Victim Services was honored to co-present with the US Attorney's Office and the FBI at the 2020 Human Trafficking Conference. We were able to share with law enforcement and fellow advocates our experiences, successes and lessons learned working with human trafficking survivors.

Disability Advocacy

The AAI Division continued to make tremendous strides in the area of disability advocacy and awareness, despite the limitations of the current pandemic. AAI has engaged in and addressed multiple issues concerning the disability community. Our advocates offer resources and support to constituents with disabilities. This support includes making appropriate referrals or providing guidance for submitting formal complaints and/or concerns to our office. Since the onset of the pandemic, our office has worked diligently to address the increasing number of COVID-19 related issues and concerns.

2020 KEY ACCOMPLISHMENTS AND OUTCOMES:

- Participated in Disability Rights Awareness Day
- Presented at the University of New Mexico's Center for Developmental Disabilities Partners and Policy Making
- Participated in the Advisory Committee on Quality for Supports for Persons with Disabilities (ACQ), Mi Via Advisory Committee, Community and Employment Subcommittee, New Mexico Allies Board, HB 12 Task Force, Developmental Disability Planning Council Disability Advocacy Summit by presenting, the ACQ DD Waiver Steering Committee, the ACQ Subcommittees and Board, the ACQ Bylaws Task force, and the New Mexico Disability Access and



Our advocates offer resources and support to constituents with disabilities. This support includes making appropriate referrals or providing guidance for submitting formal complaints and/or concerns to our office.

Virtual school presentations were in high demand with distance learning in place for most New Mexico schools.



Functional Needs COVID-19 Coalition, Partners and Advocacy COVID-19 Subcommittee.

Community Outreach

As a result of the COVID-19 pandemic, the AAI Division became creative and implemented outreach and training virtually due to closures and other public health protocols. Virtual school presentations were in high demand with distance learning in place for most New Mexico schools.

- Presented to 46 schools
- 26 in person presentations
- 20 virtual presentations
- Participated in the New Mexico Public Education Department's Safe and Healthy Schools Virtual meetings to support school safety and stop school violence.
- Participated in the New Mexico Digital Learning Conference. Our office presented both days on cyberbullying and cyber safety to help create a positive digital citizenship in schools. ■

2020 KEY ACCOMPLISHMENTS AND OUTCOMES:

- Our office still Participated in the annual Law Enforcement Torch Run and was honored with our own Agency Torch by the Special Olympics of NM. The New Mexico Office of the Attorney General received a Silver Participating Agency Award at the Regional Special Olympics Conference.
- The Division has provided information and resources through community outreach to 10,327 community members in 2020.

Signs of Common Scams

- Empty promises (You have to pay up front without receiving anything in exchange)
- Threatening phone calls (Real legal notices are sent in writing, not over the phone)
- Demands for personal/financial information
- Accepting only wire or gift card payment
- Refusing to give you return contact information

BENJAMIN BAKER
SPECIAL
INVESTIGATIONS
DIVISION DIRECTOR



Special Investigations Division

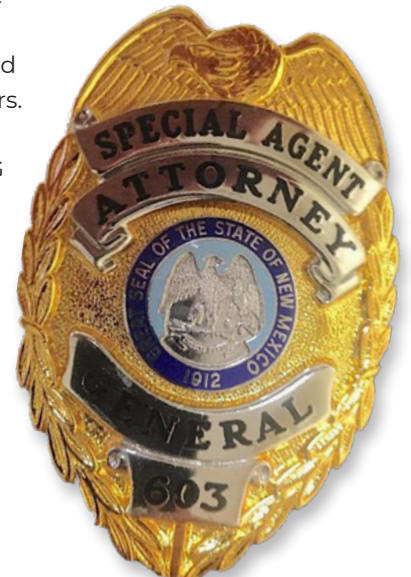
The Special Investigations Division works to provide a safe environment for New Mexico's most vulnerable populations, including children and the elderly.

The Division is responsible for reviewing and investigating crimes that are referred to the New Mexico Office of the Attorney General (OAG), which often results in the arrest and incarceration of dangerous and corrupt criminal offenders. Additionally, the Division regularly supports efforts to secure restitution for victims of financial crimes and fraud.

The Division is comprised of separate units, each handling investigations in its own specialty area; these units include Special Investigations; Internet Crimes Against Children; Human Trafficking; Anti-Money Laundering Unit; Guardianship Unit and the Social Security CDI Unit. The Special Investigations Unit conducts the widest breadth of criminal investigations within the office ranging from violent crimes to violations of the Governmental Conduct Act, along with complex financial crime cases and is staffed by subject matter experts who regularly bridge gaps which exist in law enforcement resources, particularly in rural New Mexico. Our Guardianship Unit focuses on crimes by guardians who are appointed to make decisions for people incapacitated and unable to manage their finances, property, health care or living arrangements. The Internet Crimes Against Children Unit (ICAC) investigates the production, distribution and possession of child sexual abuse material (CSAM) within the state of New Mexico. ICAC also leads the statewide effort and is the task force Commander for all 89 state, local, federal, tribal and military affiliate law enforcement agencies. This unit also provides technical assistance, training and side-by-side assistance in search warrants with personnel, a mobile

forensic laboratory, and electronic detection K-9 throughout the state. The Human Trafficking Unit focuses on the investigation of sex and labor trafficking within New Mexico. This unit also leads as the statewide task force commander for the 64 state, local, federal and tribal affiliate law enforcement, regulatory agencies and non-profit affiliates. The increase of outreach, awareness and education about human trafficking are important unit objectives met by training via a multidisciplinary approach. The Social Security CDI Unit works in partnership with the federal government, Social Security Administration, to investigate potential fraudulent disability applications or other criminal activity related to social security funding.

In 2020, the Special Investigations Division (SID) had a busy year, which included initiating investigations into COVID-19 related crimes, public corruption, law enforcement misconduct, financial abuse of vulnerable populations and sexual predators. During the lockdown, OAG received an increase in complaints and tips alleging internet crimes.



Key Outcomes

2020 SPECIAL INVESTIGATIONS DIVISION ACCOMPLISHMENTS

- On December 8, 2020, Attorney General Balderas announced the arrests and filing of charges against Leo Martinez and Robbie Proffitt for embezzlement and the defrauding of Pareo Farms, a family dairy farm in Valencia County. Martinez and Proffitt were each arrested and charged with five felony counts for stealing approximately \$500,000 worth of bulk hay that they were supposed to have delivered to the farm, selling that stolen hay to another business, and fraudulently billing Pareo Farms for delivery of the hay that was never delivered. This case is pending in the court system.
- On January 27, 2020 Attorney General Hector Balderas announced that Gary Gregor, former teacher in the Española School District, was sentenced to six years of incarceration for his sexual assault of a second grade student at Fairview Elementary School during the 2006-07

school year. A jury found him guilty of 3rd-Degree Felony Criminal Sexual Contact of a Minor under 13 years old. As a result of this sentencing, Gregor will serve 6 additional years of incarceration on top of a 108 year prison sentence already ordered in a prior case investigated by SID where he was convicted of kidnapping and multiple counts of sexual abuse against children.

- On August 23, 2020 the OAG charged 36-year-old Zachary Christensen, who resigned from the Farmington Police Department about a month after an August 27, 2019 encounter with a child at a Farmington middle school. The lapel video shows Christensen throwing a 6th-grade student on the ground after accusing her of taking more pints of milk than allowed from the cafeteria. The video also shows school employees pleading with Christensen not to use excessive force. The student had a mild concussion, along with some bruises and scrapes. Christensen pleaded no contest to Abuse of Child and Battery charges and was sentenced to probation.
- On July 27, 2020 the OAG charged three individuals related to conspiracy and the criminal mismanagement of funds that occurred while the three were associated with the Dora Consolidated School District. Steve Barron, Steven Butler and Amy Butler were indicted on fraud, embezzlement and creating false public vouchers, along with other charges. These matters are currently pending in the jurisdictional district court.
- In July 2020, the OAG announced it would work with local retailers in an effort to combat organized crime, creating a new OAG unit, named the Organized Retail Theft Unit. Since forming this specialized unit the OAG has reviewed and is actively investigating and prosecuting several cases in multiple jurisdictions.
- During 2020, SID received and is investigating several allegations related to COVID-19 fraud. These frauds schemes include loan application fraud / theft of identity. Many of these cases involve the infiltration, or attempted infiltration of State of New Mexico systems and fiduciaries.

By the Numbers

2020 SPECIAL INVESTIGATIONS DIVISION ACCOMPLISHMENTS

TOTALS FOR SPECIAL INVESTIGATIONS; INTERNET CRIMES AGAINST CHILDREN; HUMAN TRAFFICKING; ANTI-MONEY LAUNDERING; GUARDIANSHIP UNIT; SSA CDI UNIT

- **991** Open Cases (*includes prior year cases)
- **1,377** Cases Opened
- **1,318** Closed Cases (*includes prior year cases)
- **382** CPS reviewed cases
- **1,933** Cybertips reviewed
- **14** Arrests
- **325** Search Warrants
- **16** Subpoenas
- **46** Victim Interviews

- In 2019, the Guardianship Unit conducted an investigation after receiving a referral identifying a Representative Payee service provider in Albuquerque, alleging that its owner was stealing funds from over 200 of its clients. Multiple search warrants and interviews were conducted. In all, 247 individual victims were exploited and nearly \$50,000 was stolen from the victims by the owner of the business. Ultimately, Pamela Crumpler was charged and in March 2020, pleaded no contest to Embezzlement (over \$20,000) and Tampering with Evidence (3rd degree). She has been sentenced to five years supervised probation and ordered to pay restitution to her victims.

- A law enforcement referral was made to the OAG about an Albuquerque attorney downloading child sexual abuse material (CSAM) onto his laptop. Through OAG's investigation, it was determined that the attorney, Matthew J. O'Neill was, at the time, a partner at an Albuquerque based law firm. The OAG developed probable cause and executed a search warrant at the law firm where Special Agents found child sexual abuse and exploitation material stored on O'Neill's computer. O'Neill was charged with possessing and manufacturing child pornography and on September 16, 2020, he was sentenced to 22 years, with three years being served in prison, followed by parole and 5-20 years supervised probation. Prosecutors read the victims' sentencing statements to the court which detailed how the continued propagation of the video and photographic depictions of them being sexually abused has impacted their lives and continues to haunt them.

- On December 30, 2020, the OAG received a priority 1 cyber tip from the National Center for Missing and Exploited Children (NCMEC). They reported that an unknown subject was uploading child sexual abuse material (CSAM) with a android smartphone through GOOGLE. NCMEC determined from the phone number and IP address the upload occurred in New Mexico. The OAG initiated an investigation and determined that the suspect was living in Artesia, NM and contacted NM

ICAC Task Force affiliate, the Eddy County Sheriff's Office and provided suspect information. Detectives responded to the suspect's residence and contacted his roommate, who stated that she has grandchildren under the age of 10 who often stay with her. Once inside the residence, the suspect locked himself in a bathroom. Detectives communicated with the suspect through the bathroom door, but he refused to come-out of the bathroom, after which time detectives heard a gunshot. When the detectives made entry, they found that the suspect had taken his own life and was armed with a "tactical shotgun" and handgun. Detectives found the android smartphone used to upload CSAM, in addition to other electronic devices. Forensics will be completed by a certified computer forensic examiner with the OAG. From the time of notification to law enforcement intervention, it was a matter of hours, not days or weeks. This incident highlights the OAG's ability to lead and leverage resources statewide in furtherance of the protection of children.

- In January 2020, the OAG received a call from a person indicating that a subject had child sexual abuse material (CSAM) on an electronic device. Special Agents conducted an investigation and subsequently executed a search warrant at the residence of the suspect, identified as Jordan Padilla. During execution of search warrants, Special Agents observed child sexual abuse material leading to Padilla's arrest and charging him with 14-felony counts



The lapel video shows Christensen throwing a 6th-grade student on the ground after accusing her of taking more pints of milk than allowed from the cafeteria.

After his death, it was discovered that a man traveling with the victim presented a forged Durable Power of Attorney to the victims' financial institutions, allowing [him] to conduct financial transactions.



of crimes against children. Special Agents are working with the National Center for Missing and Exploited Children (NCMEC) to identify children possibly related to this case. This case is currently pending in District Court in Bernalillo County.

- OAG initiated an investigation after receiving information about possible embezzlement involving an individual who died while at the University of New Mexico Hospital. This individual was previously listed as a missing person from Mesquite, Nevada. After his death, it was discovered that a man traveling with the victim, Daniel Mathews, presented a forged Durable Power of Attorney to the victims' financial institutions, allowing Mathews to conduct financial transactions. OAG found that Mathews syphoned over \$200,000 from the victims accounts. In June 2020, OAG charged Mathews with 13 felony charges for larceny, fraud, forgery, money laundering, theft of a credit card, unauthorized use or theft of credit card, receipt of property obtained by fraudulent use of a credit card, conspiracy to commit embezzlement of a motor vehicle, and identity theft. This matter is still pending in the judicial system.
- On January 17, 2020, in a one-day conference, the OAG Human Trafficking unit brought together over 350 representatives of social service agencies, state, federal, and local government agencies, criminal justice agencies, researchers, faith-based organizations, and business leaders, to lay the groundwork for future collaborative projects, advocacy, and program development for human trafficking in New Mexico. The purpose of our annual conferences is to educate social service, health care, and

criminal justice professionals on human trafficking and the needs and risks of those victimized by the commercial sex industry and labor slavery.

- The OAG Human Trafficking unit responded to reports of human trafficking throughout the state of New Mexico. Solidifying partnerships and leveraging resources.
- The OAG Human Trafficking unit facilitated and assisted in several incall and outcall operations with federal and state agencies that are affiliates of the OAG Human Trafficking task force.
- In 2020, as a result of OAG SSA CDI investigations, numerous fraudulent applicants were identified and suspects denied disability benefits, preventing potential fraudulent social security funds totaling \$1,019,599.

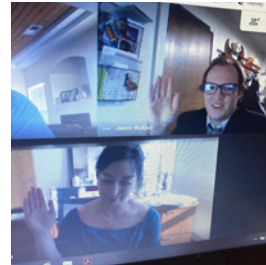
Looking to the future, the Special Investigations Division intends to continue to conduct comprehensive criminal investigations in a wide variety of specialty areas throughout the State of New Mexico. The Division strives to take a leadership role in developing subject matter specialization and expertise. The Division prides itself on its ability to leverage collaborative partnerships and resources to provide services to victims and agencies in rural communities where they otherwise might not exist. ■

**COLLIN
BRENNAN, AAG**
SPECIAL
PROSECUTIONS
DIVISION DIRECTOR

Special Prosecutions Division

The Office of the Attorney General's Special Prosecutions Division (SPD) prosecutes complex criminal cases throughout New Mexico.

SPD handles a wide variety of cases, but specializes in internet crimes against children, child sexual abuse, human trafficking, public corruption, international extraditions, and financial crimes. SPD also provides training, education, and trial support to prosecutors and law enforcement around New Mexico.



A year of Zoom, Google Meets, and Polycom Hearings for SPD.

Notable Cases Resolved in 2020

Despite the COVID-19 pandemic, SPD attorneys still resolved a number of cases in 2020, both by trial and plea agreement. While every criminal case is important in its own right, SPD wishes to highlight the following notable prosecutions.

Zachary Christensen – Former Farmington Police Department Officer Christensen pled to crimes including felony child abuse for his actions in forcibly arresting a young female middle-school student. Prosecutors assumed this prosecution after it was declined for prosecution by the Eleventh Judicial District Attorney.

Peter Sisneros – Sisneros was convicted following a bench trial in Albuquerque of child solicitation for requesting illicit images during a MeetMe.com chat with an individual in Oregon. Sisneros is currently serving his prison term in the Department of Corrections (DOC).

Christopher Trujillo – Trujillo pled to both possessing and manufacturing child pornography. In the course of preparing for sentencing, prosecutors uncovered other alleged hands-on victims of Trujillo's sexual abuse, which led an Albuquerque judge to impose the maximum sentence of 10 years in prison.

Sabine Griego – Former Catholic priest Griego faced multiple counts of child molestation for incidents occurring in the 1990s at Queen of Heaven School in Albuquerque. After extensive litigation, Griego died just prior to docket call. Prosecutors still motioned to allow the victim to address the trial court consistent with the spirit of the Victims of Crime Act, as was done federally in the criminal prosecution of Jeffrey Epstein; however, the court denied this request.

Matthew Romero – Romero was convicted in Albuquerque of possessing child pornography following an investigation that uncovered child pornography in his possession, as well as evidence of peer-to-peer sharing of the same. Romero was sentenced to three years in the DOC.

Donald Qualls – Qualls was convicted in Albuquerque of possessing child pornography. At sentencing, held in-person even during COVID-19 restrictions, Qualls was sentenced to three years in DOC.

Praneeth Gudoor – Gudoor, a UNM student, pled to distributing and possessing child pornography following an investigation in which UNM's IT (*continues*)

Notable Cases *(continued)*

department determined him to be sharing and downloading child pornography at his off-campus apartment. At sentencing, currently scheduled for March 2021, Defendant faces up to 21 years in DOC.

Richard Fayard – Fayard in 2020 pled guilty to three counts of manufacturing child pornography. He was the subject of an undercover operation in which he believed he was communicating with a mother who was willing to let him have sex with her young daughter. At sentencing, set for April 2021, Fayard faces up to 36 years in prison.

Joshua Bolles – Bolles entered an early plea agreement to possessing child pornography, and was granted five years of supervised probation by an Albuquerque judge, despite the prosecutor's request for a prison sentence. This case highlights SPD's policy of refusing to allow ICAC defendants to argue for a conditional discharge, which thereby requires these offenders to register as a sex offender for life.

Socorro Ivan Lerma Proano – The Office of the Attorney General teamed up with the Fifth Judicial District Attorney to prosecute a young man who struck an elderly woman in Hobbs in 2018 during a street race, causing great bodily injury to the woman. Lerma Proano entered a plea agreement as to the felony offense of causing great bodily injury by vehicle and was sentenced to a mixed term of incarceration and supervised probation.

Aaron Sheridan & Paul Skersick – Sheridan and Skersick, co-owners of an Albuquerque pawn shop on east Central, were charged with various crimes following an investigation that revealed their shop was regularly purchasing stolen property. Both Sheridan and Skersick entered guilty pleas to felony offenses and were sentenced by the trial court to supervised probation.

Tomas Trujillo – Trujillo, a former investigator trained by the ICAC Task Force who was identified by the ICAC Task Force as an individual who was distributing child pornography, faces up to 10 years in prison at sentencing in May 2021 after pleading to crimes in Taos.

Key Cases Headed to Trial in 2021 (and

With COVID-19 finally subsiding, SPD as a whole looks forward to physically returning to work and resuming in-person jury trials all around New Mexico in 2021. The following matters are presently set for trial in 2021 and beyond. SPD reminds readers that all of these defendants are innocent until proven guilty, and the facts listed below are allegations until proven otherwise.

Christopher Smelser – Former Las Cruces Police Department Officer Smelser was charged in 2020 with second-degree murder relating to an unlawful chokehold on an arrestee who was face down and being actively controlled by other officers. Smelser is one of the first defendants in New Mexico history to be charged with murder relating to his unlawful use of force as a peace officer. Smelser's multi-day preliminary hearing was also held in person, an unusual circumstance during the pandemic. This case was referred for prosecution by the Third Judicial District Attorney.

Priscilla Bueno – Prosecutors allege Farmington resident Bueno molested her young son over the span of 2.5 years. Prosecutors charged Bueno with over 10 sex crimes ranging from criminal sexual penetration of a child under 13 to contributing to the delinquency of a minor, which were bound over following a preliminary hearing in Aztec Municipal Court in December 2020. This case was declined for prosecution by the Eleventh Judicial District Attorney.

Pablo Griego – Griego faces trial in Albuquerque later this year on 30 child-pornography counts, including 28 counts of manufacturing child pornography.

Steve Barron, Steven Butler, & Amy Butler – Defendants are the former superintendent, former maintenance director, and a former employee of Dora Schools District, respectively. Steven Butler allegedly used his position as maintenance director to fraudulently obtain multiple contracts for cleaning supplies and services. Barron allegedly knowingly permitted one of the false vouchers involved, and Amy Butler allegedly kept a school-issued iPad beyond her term of employment. The cases are all set to proceed to trial in 2021. The case is being co-prosecuted with the Ninth Judicial District Attorney.

Victor Gonzales – Gonzales, already a convicted sex offender, was charged in 2020 as a result of the recent effort to clear Albuquerque’s rape-kit backlog. Gonzales stands accused of abducting a woman and raping her near Ned’s Bar and Grill in Albuquerque in 2010. Gonzales was detained pretrial after being found to be a danger to women.

Tonita Gurule-Giron & Marvin Salazar – Former Las Vegas Mayor Gurule-Giron is alleged to have used her position of public trust to make sure city contracts went to her boyfriend’s (Marvin Salazar) construction company in exchange for illegal kickbacks. The two face multiple white-collar and public-corruption offenses in Las Vegas.

Castulo Aragon – SPD has partnered with the Fifth Judicial District Attorney to prosecute Aragon for the first-degree murder of his wife, Maria Aragon, whose body was found dumped behind a rock pile along Highway 285. Prosecutors succeeded on a motion to preventatively detain Aragon until trial.

Jeremy Barnes – Former Rio Arriba County Sheriffs’ Office deputy and school-resource officer Barnes faces prosecution for tasing a special-needs student at Española Valley High School. Barnes’ charges include child abuse and false imprisonment.

James Stewart, Sr. – Stewart, Sr. (already sentenced to 20 years in prison for trafficking his own children) faces two additional jury trials in 2021 for human trafficking and sex offenses related to the same young children.

Gary Gregor – Gregor (already sentenced to 114 years in prison after trial convictions in two different cases) faces an additional jury trial in 2020 for sexual batteries committed against yet another former student while he was a teacher in northern New Mexico.

Paul Krebs – Former UNM Athletic Director Krebs faces various felony white-collar charges stemming from a golf trip to Scotland he allegedly funded with public money, as well as for subsequent efforts he took to cover up the illegality of the trip and obtain his yearly salary bonus.

Cody Hopkins – Hopkins, a former UNM men’s basketball staff member, faces trial in 2021 for felony

embezzlement and fraud, for actions he allegedly took in withdrawing tens of thousands of dollars in cash from ATMs using his UNM-issued debit card. This case was declined for prosecution by the Second Judicial District Attorney.

John Dickman – John Dickman is set for trial in Albuquerque in 2021 for charges including child exploitation and child rape. The Dickmans (husband and wife) allegedly uploaded images of child pornography, which NMAG investigators subsequently discovered to be pictures and video of sexual abuse of their own children. Dickman’s wife already pled guilty in regards to her efforts and was sentenced to 18 years in prison. Dickman is preventatively detained pending trial.

Brian & Tammy Casaus – The Casaus (husband and wife) face criminal charges in Roswell for using their respective positions of trust within Cattle Baron Restaurant to steal over \$1,000,000 between 2012 and 2016. Brian allegedly used his position as Cattle Baron’s controller and office manager to transfer funds from Cattle Baron’s bank account to personal accounts belonging to he and Tammy, the restaurant’s payroll coordinator.

Randy & Pamela Smith – The Smiths face trial in Truth or Consequences in 2021. It is alleged that Pamela used her dual positions as probate judge and deputy field investigator with the Office of the Medical Investigator to appoint her husband Randy as special administrator to the estate of a recently deceased person whom she investigated. Randy then stole nearly \$300,000 from the deceased person’s accounts.

Demesia Padilla – Padilla, the former Secretary of the Taxation and Revenue Department, faces trial in Sandoval County based upon charges that while serving as Cabinet Secretary, she embezzled over \$25,000 from a former accounting client and local business.

Greg Smith – Smith, the former Executive Director of the Miss New Mexico pageant, faces trial in Roosevelt County for 18 white-collar charges arising from actions he took from 2015 to 2017 to steal from the organization and pageant contestants. (*continues*)

Headed to Trial *(continued)*

Eli Kronenanker – In this case (previously rejected by the Second Judicial District Attorney), prosecutors allege Kronenanker menaced a young female by taking her to his home, raping her, and then threatening her life if she reported his crimes.

Laura Seeds – Seeds faces a second trial in 2021, after the NMAG convicted her in her first trial on charges related to voter fraud. In the upcoming trial, the State is alleging Seeds attempted to intimidate a voter at a polling location during her husband's election for mayor.

Brandy Aragon, Michael Stevens, Bennie Wabington, & Casey Stallings – These Farmington-area defendants face a litany of first-degree felonies in connection with multiple rapes of Aragon's six-year-old daughter occurring around 2008. Prosecutors allege Aragon allowed her boyfriends (Wabington and Stallings) to molest her daughter with Aragon. The survivor's older stepbrother (Stevens) also allegedly raped the young woman.

David Wiegand – NMAG prosecutors charged Wiegand with the felony offense of extreme cruelty to animals in Albuquerque after Wiegand was observed on his neighbor's surveillance camera shooting the neighbor's dog with a pellet gun.

Ricardo Soto – NMAG prosecutors have teamed up with the Twelfth Judicial District Attorney to prosecute this case in which Soto allegedly beat his child to death in Ruidoso. Soto tried to flee to Mexico after killing his son and committed perjury (for which he has been convicted and sentenced) during the pendency of this case.

Joshua Vigil – Vigil abused his position of trust over a six-year-old child to repeatedly rape the child and upload video depictions of that rape to online accounts. Vigil is preventatively detained until trial, where he faces 17 charges. This prosecution is unique in that the State prevailed at the preliminary hearing without having to subject the child to re-traumatizing live courtroom testimony.

Andre Perez – In 2013 in Las Cruces, Perez killed David

Villegas by shooting him twice with a shotgun. The matter was previously indicted by the Third Judicial District Attorney, but was dismissed in 2015. SPD prosecutors assumed this case in 2020, after Villegas' family contacted the NMAG. This matter had complex litigation dealing with speedy trial and alleged bad faith by the District Attorney's office, but after prevailing on those matters this case is set for trial in May 2021.

James Brandon Henz – Henz is accused of sexually molesting seven of his young cousins over the course of about 15 years. Henz was preventatively detained on over 100 sex crimes, which were bound over following a three-day preliminary hearing involving testimony from each of the seven victims and their parents. He faces over 1,000 years of jurisdiction if convicted of all charges.

Nathan Ebbesen – Ebbesen allegedly hid a camera in his step-daughter's bathroom to capture over 40 videos of her in various states of undress, without her knowledge. SPD conducted an in-person preliminary hearing in Albuquerque, where the footage was shown to the court. Ebbesen was charged with 14 counts, including manufacturing and possession of child pornography. Ebbesen is preventatively detained.

Abran Ulibarri – Ulibarri, a former security guard at West Las Vegas Middle School, used his position of authority to allegedly sexually abuse a 14-year-old student nearly every day in his school office. Ulibarri also exchanged thousands of text messages with the child at all hours of the day and late into the night while he continued the abuse.

Bernadette Etsitty – NMAG prosecutors partnered with the Second Judicial District Attorney to prosecute Etsitty for striking and killing a recent graduate of Del Norte High School in Albuquerque while under the influence of alcohol. Etsitty is charged with vehicular homicide. Prosecutors prevailed on a motion to detain Etsitty until trial. *(continues)*

Cameron Mahooty – Mahooty, a former UNM student, is accused of falsely imprisoning and battering a student at UNM on St. Patrick's Day, attacking her from behind and pushing her into a room; however, she was able to fight him off and call police. *(continues)*

Headed to Trial *(continued)*

Mahooty is currently pending a referral to Young Adult Court for rehabilitation and appropriate treatment.

Sergei Von Hoyningen-Huene – Von Hoyningen-Huene, a former medical student at the UNM School of Medicine with an interest in pediatrics, was charged in Albuquerque with a litany of child-pornography offenses for possessing and distributing a relatively large amount of contraband. His apprehension led to the arrest of another individual in South Carolina who was actively chatting and sharing images of his own children being sexually abused. Von Hoyningen-Huene is currently preventatively detained.

Rollie Bruvold – In 2015, Bruvold was convicted by State prosecutors of sexually abusing one of his three daughters and was sentenced to 108 years in DOC. In 2019, the Court of Appeals reversed all but one of Bruvold's convictions. SPD subsequently stepped in to assist the Second Judicial District Attorney with the dismissed cases for the other two daughters. Moreover, SPD prosecutors are also pursuing similar criminal charges in Sandoval County due to additional disclosures of abuse. Bruvold is preventatively detained pending trial.

Daniel Mathews & Tommie Register – Mathews and Register are accused in Truth or Consequences of using a fraudulent power of attorney to access their victim's financial accounts after his death, and

thereafter attempting to launder the money through various means.

Javier Manzanares – Manzanares, a convicted murderer and member of the notorious prison gang Sindicato de Nuevo Mexico (SNM), is currently facing charges that stem from a brutal attack on his girlfriend at their Santa Fe apartment. After an argument broke out, Manzanares became so enraged that he dragged his girlfriend from their apartment into the parking lot while she was naked and proceeded to beat, strangle, and put a gun in her mouth in broad daylight.

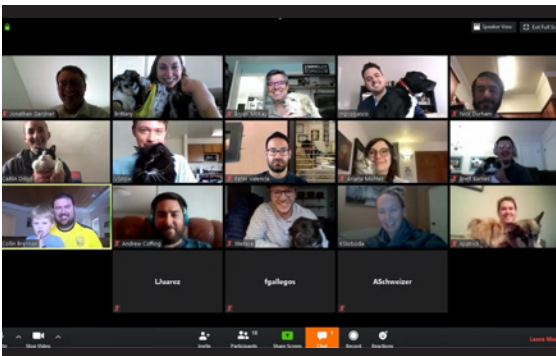
Jordan Padilla – Padilla is accused of repeatedly raping an unknown child in 2015 and then recording these depictions and saving the videos on various devices. His conduct was discovered when a friend viewed his tablet. Padilla is preventatively detained until trial. His case is currently on interlocutory appeal after the State prevailed at a motion hearing on a search-warrant issue.

Stephanie Carbajal – Carbajal, a Las Cruces Police Department detective at the time of her arrest, faces trial in Las Cruces for DWI.

Mathew Vargas – Vargas allegedly struck and killed a Gallup resident while under the influence of Xanax. Vargas is pending trial in McKinley County for vehicular homicide.



Prosecutors Brittany DuChaussee and Caitlin Dillon in February 2020 with experts Thomas Doyle and Dr. Shalon Nienow during the Marvin Archuleta trial. Also pictured is the named victim's counsel, Merit Bennet, one of those on the forefront of holding the Catholic Church responsible for abuse against children by priests.



SPD Division Meeting April 2020 via Zoom (pets and kids welcome!).



Outside Roosevelt County Courthouse after obtaining 90 ICAC grand jury subpoenas, Portales, June 19, 2020.

Additional SPD Happenings

While the bulk of SPD's efforts are devoted to criminal prosecutions, SPD attorneys and staff often devote efforts to non-case-related work, such as conducting training sessions and assisting with international extraditions.

- **TRAININGS** – In 2020, SPD attorneys were involved in approximately 40 trainings to hundreds of people both inside and outside the NMAG. These trainings were conducted both online and in person, when appropriate.
- **GRAND JURY SUBPOENAS** – SPD continued its support of the ICAC Task Force by presenting grand jury subpoenas for CyberTip investigations to connect child pornography offenses occurring in cyberspace to physical addresses in real space. As the COVID-19 pandemic and pandemic responses heated up, grand jury in Bernalillo County was canceled, requiring SPD to partner with other jurisdictions to continue these ICAC investigations to detect and prosecute those who exploit children

online. SPD partnered with DA's offices and the courts in Los Lunas, Taos, Portales, and Alamogordo to present hundreds of grand jury subpoenas and keep the wheels of justice turning.

- **NEW MEXICO ADULT PROBATION & PAROLE BOARD** – SPD prosecutors continued to assist the Adult Probation and Parole Board with parole determinations in sex-offender proceedings.
- **ELECTION DAY MONITORING** – The Secretary of State and the NMAG partnered for 2020 Election Day as NMAG volunteers participated throughout the state as election monitors.
- **INTERNATIONAL EXTRADITIONS** – SPD continued to support local district attorneys seeking extradition of criminal defendants from Mexico. SPD currently has eight cases in which SPD seeks the return of a criminal defendant from Mexico to face charges in New Mexico. This includes former Roswell resident Jorge Rico-Ruvira, who strangled his partner in January 2020 and took their three-year-old son to Mexico. SPD worked with the Fifth Judicial District Attorney and Roswell law enforcement to prepare

an extradition packet and execute it in Roswell in May, despite the pandemic.

- **CONSTITUTION DAY** – Every year, the New Mexico Bar Association sponsors presentations in New Mexico elementary schools through its Constitution Day program, which recruits lawyers to give presentations to elementary school students on the U.S. Constitution. In 2020, this program was sent online. Jonathan Gardner represented SPD in 2020, delivering an online presentation to an Ames Elementary school class.

Traffic Safety Resource Prosecution Unit

The NMAG houses a grant project funded by the New Mexico Department of Transportation to facilitate a coordinated, multidisciplinary approach to the prosecution of impaired driving and other traffic crimes.

This Traffic Safety Resource Prosecution Unit (TSRP) currently boasts two full-time attorneys and a program coordinator, who beyond criminal prosecutions also devote significant time to conducting training sessions for attorneys and law-enforcement officers, participating in community outreach events, and assisting police in administrative license-revocation hearings. ■



The NMAG houses a grant project funded by the New Mexico Department of Transportation to facilitate a coordinated, multidisciplinary approach to the prosecution of impaired driving and other traffic crimes.

In Roswell district Court, May 29, 2020, following execution of affidavits for extradition request for Jorge Rico-Ruvira.



**CONSTANCE
TATHAM**
MEDICAID FRAUD
CONTROL UNIT
DIRECTOR



Medicaid Fraud Control Unit

The Medicaid Fraud Control Unit (MFCU) prosecutes violations of the laws regarding the provision or administration of medical assistance.

The Medicaid Fraud Control Unit (MFCU) for the State of New Mexico is part of the Office of the State Attorney General, which has statewide authority to prosecute individuals for violations of criminal laws with respect to fraud in the provision or administration of medical assistance under a State plan implementing Title XIX of the United States Social Security Act. The MFCU employs attorneys, auditors, investigators, and other necessary personnel and is organized to effectively and efficiently conduct the Unit's legally mandated responsibilities. Currently, the MFCU consists of 25 full-time positions, of which 16 are located in Albuquerque, four are in Santa Fe, and five are in Las Cruces. As of December 31, 2020 the MFCU's current employee numbers and job specialties were:

- 4 Attorneys (including the Director and Deputy Director)
- 3 Forensic Auditors
- 2 IS Investigator Specialists
- 2 Medical Care Investigators
- 6 Special Agents (including 2 Special Agents in Charge)
- 3 Support Staff Members (Admin and Legal Assistants)
- 1 Medicaid Specialist/Outreach Coordinator

Primary Services Provided

Pursuant to Section 42 U.S.C. 1396b(q) of the Social Security Act, the MFCU is vested with the responsibility for the investigation and prosecution of all applicable state laws regarding any aspect of fraud in connection with the provision of medical assistance, and for reviewing and acting upon all complaints regarding abuse, mistreatment or neglect of patients of health care facilities that receive payments under public medical assistance programs. Overpayments made under the Medicaid program to health care facilities are returned by the MFCU to the Human Services Department in order to ensure that all funds collected are credited exclusively to, and available for expenditure under, the Medicaid program.

The MFCU works to ensure the fiscal integrity of the New Mexico Medicaid program and the well-being of the state's Medicaid recipients by investigating and prosecuting those who attempt to abuse, neglect or exploit its recipients or defraud the program. MFCU strives to assure the programmatic integrity of the Medicaid Program in accordance with federal requirements and to protect residents in facilities or those receiving Medicaid-funded in-home services in the community. The division establishes collaborative relationships in these areas with state and federal agencies through presentations, task forces and meetings. The MFCU also seeks recoupment from pharmaceutical companies that intentionally violate Medicaid regulations. It further participates in multistate and qui tam litigation to recover funds owed to the New

Mexico Medicaid Program due to fraudulent billing and practices.

Major Issues, Accomplishments, Changes

To accomplish its mission to protect the vulnerable and to enforce provider accountability, the MFCU allocates its resources to address a combination of long standing fraud and neglect issues and emerging areas of fraud. It takes a tremendous amount of coordinated work to screen referrals, conduct investigations, and prosecute and litigate cases. The MFCU is unique in that it houses both investigative and prosecutorial functions.

The MFCU conducts criminal investigations into two general areas of criminal conduct: allegations of fraud committed by Medicaid providers and the alleged physical and psychological abuse, neglect and exploitation of residents housed in care facilities such as nursing homes and rehabilitation facilities. Beginning in 2020 and thereafter, the Medicaid fraud focus of the Unit had been on: (1) overprescribing by physicians and the filling of prescriptions by pharmacists of dangerous drugs including opioids, which has led to serious injury or death, (2) improper billing by Medicaid transportation providers, (3) improper billing of lab testing and physician services, and (4) improper billing by home health care providers.

Pursuit of these types of Medicaid fraud is critical for two reasons. First, these perpetrators are collectively draining significant funds from the Medicaid system. Prosecution of these cases provides a deterrent effect for the conduct in general, but also has consequences on a federal level that specifically affect the individual. A criminal conviction triggers a federal exclusion process whereby the convicted individual may not bill Medicaid for a certain amount of time, usually five years. Second, elderly and other vulnerable Medicaid clients are not receiving the services they actually need. Such individuals are both more in need of assistance and more easily preyed upon than the general population, making them ideal targets for this type of fraud. In

prosecuting these types of cases, MFCU is not only protecting the Medicaid system, but also its vulnerable clients.

Primarily through the MFCU's participation in the National Association of Medicaid Fraud Control Units, the MFCU has a significant number of qui tam, or whistleblower cases, requiring a varying amount of resources. The MFCU has employees who serve on the national qui tam teams that investigate and prosecute these large multistate cases. The MFCU is also experiencing an increase in locally filed qui tam cases, which require significantly more resources, but have the potential to resolve with significant recoveries for the New Mexico Medicaid Program.

The MFCU focus on abuse, neglect and financial exploitation of those residing in care facilities is on the investigation and prosecution of nursing facilities, in-facility medical and personal care providers, and family members. An issue the MFCU experiences is the receipt of abuse, neglect and exploitation referrals that do not fall within its jurisdiction. The resident, the subject of the abuse charge, must reside in a care facility. Most abuse referrals are for non-care facility residents. Presently there is an effort to expand the MFCU jurisdiction to allow the Unit to look at allegations of abuse perpetrated against elders and the vulnerable residing in their own homes.

Finally, the MFCU implemented a new data management system that has greatly improved in-office communications on case work and the ability to quickly generate necessary reports.



The MFCU conducts criminal investigations into ...the alleged physical and psychological abuse, neglect and exploitation of residents housed in care facilities such as nursing homes and rehabilitation facilities.

Data Mining Initiative

On August 11, 2020, as provided under Federal regulations at 45 CFR § 1007.20(a), the Department of Health and Human Services Office of the Inspector General renewed the Medicaid Fraud Control Unit's application to conduct data mining. The renewal signifies a significant expansion of the Unit's authority thereby permitting the Units to conduct proactive investigations in a manner that was previously prohibited. The Office anticipates that this will allow investigators to identify Program vulnerabilities and detect large-scale fraud. As part of this initiative, the Unit has developed various algorithmic tools that

allow for the combing of claims data in-house, providing for quick and direct analysis of claims data to support investigations of Medicaid Fraud. The MFCU has engaged the expertise of a data science consultant in order to develop machine learning algorithms in order to automate the detection of some forms of fraud. The MFCU is also examining potential algorithms aimed at identifying potential cases of skilled nursing facility neglect.

Prescription Drug Initiative

The MFCU has focused investigative and prosecution efforts to address the prescription drug epidemic in New Mexico. For the MFCU,

Civil Case Highlights

The MFCU was involved in numerous civil cases and recovered 5.32 million in Medicaid funds.

REPRESENTATIVE CASES:

Katsanos v. Progenity

In August 2020, the Unit was part of a multistate qui tam litigation team that resulted in a settlement payment of \$1,162,766 to the New Mexico Human Services Department. The company settled the case based on allegations that it had miscoded claims and offered payments to practitioners for referrals of the company's DNA prenatal tests.

Nursing Home Litigation

In late 2019, the Unit concluded litigation in conjunction with outside counsel with a series of nursing home facilities that resulted in a settlement payment of \$285,000 to the New Mexico Human Services Department. The companies settled the case based on allegations that they were not providing required services and were understaffing facilities.

Res-Med cases

In January 2020, the Unit was part of a multistate qui tam litigation team covering 5 consolidated cases that resulted in a settlement payment of \$43,925 to the New Mexico Human Services Department. The company settled the case based on allegations that it had filed

false Medicaid claims when it offered free sleep apnea equipment in exchange for practitioners writing referrals for use of the equipment.

Hernandez-Gil v. Dental Dreams

In April 2020, the Unit was part of a multistate qui tam litigation team that resulted in a settlement payment of \$45,414 to the New Mexico Human Services Department. The company settled the case based on allegations that it had filed false Medicaid claims for services that were not performed or for services that were not medically necessary.

Jain v. Universal Health

In July 2020, the Unit was part of a multistate qui tam litigation team that resulted in a settlement payment of \$52,480 to the New Mexico Human Services Department. The company settled the case based on allegations that it had filed false Medicaid claims for medically unnecessary patient admissions at behavioral health facilities.

Bilotta v. Novartis Pharmaceuticals

In August 2020, the Unit was part of a multistate qui tam litigation team that resulted in a settlement payment of \$74,898 to the New Mexico Human Services Department. The company settled the case based on allegations that it offered payments to practitioners for referrals of the company's prescriptive drugs.

Criminal Case Highlights

Summary: In 2020, nine criminal cases were indicted. Eight criminal cases were resolved with guilty pleas and court-imposed sentencing. An additional three defendants pleaded guilty and are currently awaiting sentencing. \$32,565.10 was ordered to be repaid as criminal and victim restitution. The Unit also had seven cases in on-going litigation.

REPRESENTATIVE CASES:

CONVICTIONS

Opioid- Related Convictions:

Stephanie Dropinski and Kyle Dropinski
The DEA referred two cases to the MFCU for investigation concerning an inordinate amount of pharmaceuticals prescribed to Stephanie Dropinski and her son, Kyle Dropinski. Ultimately, Stephanie Dropinski admitted to fraudulently submitting prescriptions to pharmacies for narcotics and anti-anxiety medications for herself and her son. On May 26, 2020, Stephanie Dropinski pleaded guilty to Medicaid Fraud, Falsification of Medicaid Documents, Forgery, Theft of Identity, Conspiracy to Commit Distribution of a Controlled Substance; and Conspiracy to Commit Acquisition/Attempt to Acquire a Controlled Substance by Misrepresentation. She was sentenced to a 36 month conditional discharge, and the repayment of \$682.00 in restitution. On September 10, 2020, Kyle Dropinski pleaded guilty to one count of Conspiracy to Commit Falsification of Medicaid Documents (failing to include material fact) and Acquisition or Attempt to Acquire a Controlled Substance by Misrepresentation. He was sentenced to a conditional discharge for 36 months.

Resident Abuse Conviction:

Troy Garringer

The Defendant was the POA for his mother, Donna Garringer. Donna Garringer was ultimately admitted as a resident at Sandia Ridge, a long term care facility. The Defendant used Donna Garringer's debit card at various ATMs, mostly from casinos, withdrawing over \$10,020.00 from her account. On July 17, 2020, the Defendant pleaded guilty to Exploitation of a Resident's Property and two counts of Unlawful Use or Theft of an ATM or Debit Card. He received a 6 year sentence with 364 days of incarceration through the Community Corrections Program, followed by 5 years of supervised probation, a condition of which is to repay \$10,020.00 restitution in full.

Personal Care Agency Owner, Second Degree Felony Fraud Conviction:

Lolita Begay-Yazzie

Lolita Begay Yazzie, was the registered owner of Advanticare Home Health which was a personal care company that operated in Bernalillo and McKinley Counties. Our investigation focused on three different theories of fraud: billing for more services than 24 hours in a day, billing for services beyond what was approved by Medicaid, and failing to retain documentation for services. The case was charged and the Defendant agreed to plead guilty to Second Degree Fraud and Failure to Retain Records, a fourth degree felony. She also agreed to pay restitution and to future exclusion from providing Medicaid services.

CRIMINAL CASES CHARGED BUT
NOT YET CONVICTED

Exploitation of a Resident / Identity Theft:

Evelyn Kingston

Evelyn Kingston is charged with financially exploiting a nursing home resident. The exploitation exceeds \$84,000.00. The Defendant obtained power of attorney for the highly vulnerable victim, gained control of the victim's finances, and submitted forged bank statements to the Income Support Division at HSD to make it appear as if the Defendant were placing the funds into a trust on behalf of the victim. The trial has been delayed as a result of COVID-19.

INVESTIGATED IN 2020, MEDICAID FRAUD
RESULTING IN DEATH

John Flores, M.D.

In 2020, the Unit investigated John Flores, M.D., once an internal medicine physician in Silver City, New Mexico. Flores, M.D. had been listed by the DEA as one of the top five prescribers of controlled substances in the State of New Mexico. Flores, M.D. had a high percentage of Medicaid recipients that he was prescribing to and several of his patients died of drug overdoses within days of being prescribed medication by him. The investigation led to a decision to file a Criminal Complaint charging him with Second-Degree Medicaid Fraud, Medicaid Fraud Resulting in Death, and Second Degree Murder.

Drug overdose deaths as a leading cause of death has surpassed motor vehicle crash deaths in New Mexico. In 2015, New Mexico had the eighth highest drug overdose death rate in the nation.



these types of matters take several forms: over-prescribing resulting in false claims, harm to a patient, and even death of a patient.

Drug overdose deaths as a leading cause of death has surpassed motor vehicle crash deaths in New Mexico. In 2015, New Mexico had the eighth highest drug overdose death rate in the nation. The consequences of drug use continue to burden New Mexico communities. The most common drugs causing overdose death are prescription opioids (i.e., methadone, oxycodone, morphine; 49%), heroin (33%), benzodiazepines (25%), cocaine (13%), and methamphetamine (21%) (not mutually exclusive). In New Mexico and nationally, overdose death from opioids is an issue of enormous concern as these potent drugs are widely available. <https://www.nmhealth.org/data/view/substance/2067/>

Community Outreach Initiative

The MFCU is focused on expanding outreach to all parts of the state. The Unit provides training and presentations to seniors, nursing students, law enforcement and senior citizen service providers. By providing these workshops to the community, the New Mexico MFCU is informing the community about the existence of Medicaid fraud, and abuse, neglect and exploitation, and inviting referrals to the unit for investigation.

The Unit's outreach program is a team effort and relies upon each MFCU employee to participate in outreach activities. The team strives to strengthen and enforce programmatic partnerships between MFCU and community organizations, government agencies, academic institutions and law enforcement personnel.

Conclusion

Despite working virtually from home due to the COVID-19 restrictions, the MFCU was very productive! We experienced many changes and significant growth in 2020. A MFCU attorney was promoted to Deputy Director. A Director, two additional attorneys and a Medicaid Specialist/Outreach Coordinator were hired. The Las Cruces and Santa Fe offices were expanded. The focus changed to include more drug overprescribing, excessive and unnecessary laboratory testing and unscrupulous Medicaid air and ground transportation services cases. The Unit, through its new Director and Medicaid Specialist, both of whom came from the New Mexico Human Services Department which administers the Medicaid program, worked to improve the interagency relationship. This work paid off to make document and information exchange between the two agencies more efficient and productive. Relations with the New Mexico Department of Health and the US Attorneys' Office also improved. This has allowed for better case coordination and information flow. Court restrictions due to COVID-19 drastically delayed our prosecuted cases. Yet, the Unit filed 9 criminal cases, obtained 8 convictions, and secured \$12,525.10 in criminal restitution to Medicaid as well as \$10,020.00 in restitution to a victim. The Unit also executed 8 civil settlements and judgments resulting in over 5 million in Medicaid funds recovered. Overall, it was an exciting and productive year. ■

Criminal Appeals Division

The Criminal Appeals Division represents the State in every criminal appeal filed in New Mexico.

In addition, the Criminal Appeals Division represents wardens in state and federal habeas corpus cases and represents the State's interest in extraordinary writ cases. Each year members of the Criminal Appeals Division file briefs in the New Mexico Court of Appeals, the New Mexico Supreme Court, the United States District Court for the District of New Mexico, the Tenth Circuit Court of Appeals, and, on occasion, the United States Supreme Court. The Division also routinely handles informal inquiries from district attorneys around the state about potential appellate issues and general questions on criminal law.

In 2020, the Criminal Appeals Division successfully defended 17 lawful first-degree murder convictions in the New Mexico Supreme Court. In post-conviction litigation, the Division also successfully defended first-degree murder and rape convictions on two defendants from a 1982 case.

Trainings Conducted in 2020

Former Division Director Anne Kelly presented a two-hour update on New Mexico appellate decisions and law at the Spring 2020 AODA conference and at the Fall 2020 AODA conference.

Key Case Outcomes

HUMAN TRAFFICKING

State v. Wallace Carson, in which the Court of Appeals upheld all but one human trafficking

2020 Criminal Appeals Accomplishments

- Filed 161 briefs in the New Mexico Court of Appeals and New Mexico Supreme Court
- Filed 26 memoranda in opposition to the Court of Appeals' summary calendar
- Conducted 12 oral arguments in the New Mexico Supreme Court
- Filed 61 petitions for writ of certiorari or responses thereto in the New Mexico Supreme Court
- Reviewed eight DNA expungement requests from defendants
- Filed 65 other substantive motions, writs, and responses to writs in the appellate courts, including litigation on post-conviction relief
- Filed 15 pretrial detention appeal responses in the appellate courts
- Conducted 63 hearings in state district court on habeas corpus litigation
- Filed 65 responses, motions, and briefs in state district court on habeas corpus litigation
- Filed 22 answers and six miscellaneous motions in federal district court on habeas corpus litigation
- Filed one brief and one response in the Tenth Circuit Court of Appeals on habeas corpus litigation

The [Supreme] Court ruled that multiple instances of the defendant's abuse and isolation of the victim supported the inference that he intended to keep her from seeking help from the judicial system.



conviction in a case prosecuted by NMOAG attorneys. Defendant was a pimp who physically and sexually abused his victims, got them hooked on drugs, and forced them to perform sexual acts for money. The Court held that (1) evidence of defendant's illegal activities in Texas was admissible to show his plan and scheme to recruit victims in New Mexico, and (2) the State did not have the burden to prove that defendant knew one of his victims was under the age of 18. In 2020, the New Mexico Supreme Court denied Carson's petition to reconsider this decision.

DOMESTIC VIOLENCE

State v. Bradley Farrington, in which the Supreme Court upheld the defendant's first-degree murder conviction of his estranged wife. The Court discussed and applied the "forfeiture by wrongdoing" exception to the hearsay rule in which a person cannot benefit from a witness's absence caused by that person. Here, t

State v. Joshua Jackson, in which the Court of Appeals rejected defendant's argument that the mandatory joinder rule was violated and allowed the State conduct two trials against the defendant for violent domestic actions taken against his girlfriend in two separate incidents separated by six days. The Court held for the first time that joinder can be waived by a defendant.

State v. James Edward Barela, in which the Supreme Court upheld the sentencing enhancement of a serial domestic batterer. Defendant was convicted of battering his girlfriend and had two prior convictions which led to a felony conviction under Section 30-3-17(A). His sentence was also enhanced under Section 31-18-17 as an habitual offender for a separate prior felony conviction. The Court

upheld this as a lawful sentencing scheme although the defendant claimed it was double punishment.

DOUBLE JEOPARDY

State v. Richard Sena, in which the Supreme Court reversed the Court of Appeals' determination that double jeopardy prohibited convictions for both burglary and criminal sexual penetration in a case where the defendant broke into an elderly woman's house and sexually violated her. However, the Court reversed all convictions and remanded for a new trial on a separate ground of prosecutorial misconduct.

FOURTH AMENDMENT

State v. Ismael and Angela Adame, in which the Supreme Court applied the third-party doctrine to bank records and held that the defendants did not have a reasonable expectation of privacy in such records. Therefore, they may be seized without a warrant supported by probable cause.

State v. Jaycob Michael Price, in which the Supreme Court reversed the district court's decision that the cell phone records of the victim could not be searched. Victim was found shot dead in parking lot 30 minutes after leaving a relative's apartment where he asked for money. There was no physical evidence at the scene but the defendant's phone number was called during that 30 minutes. The police obtained a search warrant for the basic subscriber information, the cell-site location information (CSLI), and the calls and text messages to defendant's phone. The Supreme Court held that "the totality of the circumstances described in the Affidavit establishes reasonable grounds for the judge issuing the search warrant to find probable cause that the unknown person talking to Victim was in the vicinity of the parking lot when the conversations took place before Victim was shot."

State v. Gabriel Sanchez, in which the Supreme Court reversed the district court's ruling in a first-degree murder case that the evidence from defendant's cell phone should be suppressed. The phone was seized within

ten days of the issuance of the warrant but police were unable to extract its contents until 11 months later. The Court held the extraction was lawful because the phone was seized within ten days of the warrant's issuance and discussed the "practical realities" of searching electronic devices which can be delayed for many months due to the need for specialized software to deal with encryption or other impediments.

DEFENSES

State v. Crystal Ortiz, in which the Supreme Court held that a defendant cannot assert the duress defense unless he/she actually admits doing the criminal act.

FIFTH AMENDMENT

State v. Ronald Widmer, in which the Supreme Court held that although the defendant was subject to Miranda warnings when stopped, the officer's question of "[i]s there anything on your person I should know about?" and defendant's response of "I have meth" were admissible under the public safety exception elucidated in *New York v. Quarles*, 467 U.S. 649 (1984). Justice Nakamura dissented on the majority's conclusion that the officer's question constituted interrogation at all but agreed that the response was admissible.

EVIDENTIARY ISSUES

State v. Joe David Chavez, Sr., in which the Supreme Court affirmed the defendant's first-degree murder conviction. Defendant was a member of a drug trafficking organization known as the "AZ Boys." The Court upheld the admission of evidence regarding the defendant's role in the AZ Boys because it "established there was a motive to conspire to kill Victim" that was so intertwined with evidence of the "[organization's] existence that it could not be reasonably excised by the trial court."

State v. John Eric Ochoa, in which the Court affirmed the district court's determination to bar the defense expert from testifying in a criminal sexual contact of a minor case. The

expert was to testify regarding the Safehouse technique used to interview the children victims. However, the district court determined that the expert – despite having a Ph.D in clinical and forensic psychology and having conducted over 400 interviews of children who were allegedly sexually abused – did not have sufficient knowledge of the particular interview technique used in this case. ■



The [Supreme] Court upheld the admission of evidence regarding the defendant's role in the AZ Boys because it "established there was a motive to conspire to kill Victim" ... that ... could not be reasonably excised by the trial court."

Executive Staff



MATT BACA
CHIEF LEGAL
COUNSEL



**MALAQUIAS (JR)
RAEL**
CHIEF
ADMINISTRATIVE
OFFICER



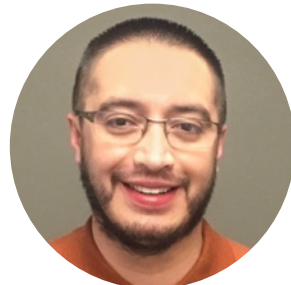
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BRANSFORD**
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PROTECTION UNIT

THERESA STOREY
FINANCIAL CONTROL
DIVISION DIRECTOR,
CHIEF FINANCIAL
OFFICER

Financial Control Division

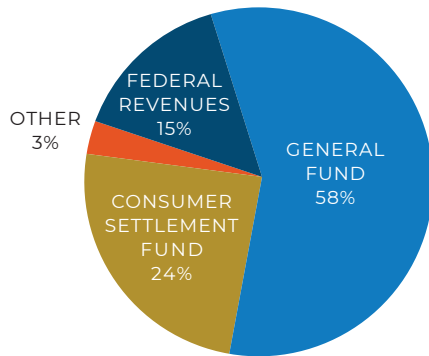
The Financial Control Division (FCD) provides accountability for the Office of the Attorney General's (OAG) financial and budgetary functions.

The division oversees all financial transactions including budget preparation, monitoring, general ledger, purchasing, accounts payable/receivable, fixed assets, financial reporting, contracts, and grant management. The division is also responsible for implementing and maintaining proper internal controls.

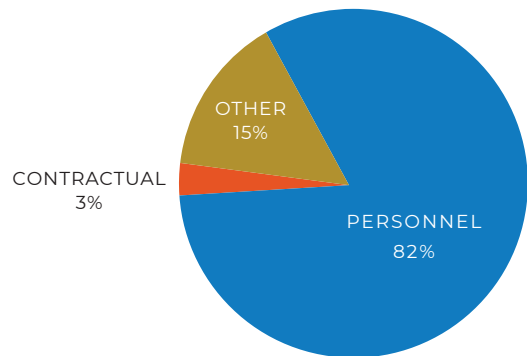
Funding for the OAG is appropriated by the NM State Legislature. In fiscal year 2020 (FY20), the operating budget appropriated to the OAG was \$25.2 million dollars. Approximately 58% of the budget was funded with state general funds and 24% was funded out of the agency's internal consumer settlement fund. ■



FY20 SOURCES



FY20 USES



Overview

BUDGET: The Office of the Attorney General's budget structure includes the Legal Services program and the Medicaid Fraud program. In June, as a result of the 2020 Special Session, the Office of the Attorney General received a 4% (approx. \$600K) reduction to the general fund portion of its FY21 budget.

FEDERAL AWARDS: Direct programs include: Medicaid Fraud, Human Trafficking, Internet Crimes Against Children, and STOP School Violence. Passed through awards include: Traffic Safety, VOCA- NM Crime Victims Reparation Commission, and National Identity Theft Victims Assistance Network.

PROCUREMENT: The Office of the Attorney General utilizes SHARE Financials (FIN) for all financial transactions and as the official book of record. In October of 2017, SHARE FIN underwent a major upgrade standardizing processes and incorporating digital attachments. Although this upgrade took place in 2017, it allowed for a seamless transition to working remotely, as the FCD staff did from their home offices around the state.

AUDIT: The OAG's external audit for FY20 was performed completely virtually. The office received an unmodified (clean) opinion, with no material weaknesses, no significant deficiencies, and no findings.

VALERIE
GALLEGOS
HUMAN RESOURCES
DIRECTOR

Human Resources Division

The Human Resource Division supports the needs of 192 employees of the Attorney General's office and is staffed with three full-time human resource professionals.

VALERIE GALLEGOS, SHRM-CP, PHR - As the Director of the Human Resources Division I am entrusted with the operations and execution of projects and programs of the division. I operate closely with the Attorney General, his executive team and the directors of the divisions housed in our Criminal, Civil & Administrative branch to recruit and retain the employees while providing support in all other areas.

JAMIE BAIR, PHR is the Human Resources Manager and manages the day-to-day operations. She is dedicated and devoted to helping employees with their needs and partners with other agencies to reach a shared goal. Jamie is passionate about her work and exemplifies the virtues of a great human resource professional.

ALICIA ARMIJO is the Human Resource Administrative Assistant who supports the

needs of the HR division. The work she performs is of the utmost importance and is the foundation to the success and mission of the office.

Employees are one of the Office of the Attorney General's most valuable and valued resources.

In an atmosphere where we serve and protect New Mexicans, OAG employees are responsible for honorably carrying out the constitutional and statutory responsibilities of the Attorney General. We are proud of our employees, all of whom maintain the highest level of integrity as they perform their job duties.

We are committed to attracting and retaining the best and brightest in the workforce in order to support our mission of excellence.

In 2020 we were confronted with navigating a virtual model of doing business due to the unprecedented world-wide COVID-19 pandemic. One year later, as we reflect back on the challenges, we learned how resilient we can be. We continued our recruitment and on-boarding efforts, identifying promotion and salary decisions, understanding attrition and increasing retention while continuing to serve our employees with an unwavering commitment.

We will continue to foster an all-inclusive organization while supporting the initiatives of the Attorney General and the leadership team. ■





Training and Professional Development Division

The Training and Professional Development Division is responsible for the development, implementation and monitoring of training programs within a diverse organization.

The Division is responsible for building solid cross-functional relationships within the agency. The Division provides leadership development education, logistical support, course development, delivery, evaluation, process measurement, cost management. Assists in development of strategic plans, facilitates activities and events. Also, responsible for providing the agency with classroom training, demonstrations, on-the-job training, meetings, conferences and workshops. Also serves on the Advisory Board for National Attorneys General Training and Research Institute, known as NAGTRI which serves as the research arm of the National Association of Attorney's General (NAAG). NAGTRI provides high quality, responsive, and innovative training to state and attorney's general offices on a scholarship basis.

- CLE for office general and ethics for yearly credits certified through NM State Bar held virtually for all legal staff
- 2 Virtual Training for Advocates from the Federal Trade Commission specific to national Consumer Protection matters
- Worked with NAGTRI on training and content decisions moving forward during online specific training
- Worked with GSD on the Online Mediation program and conducted two online mediations ■

Training and Development 2020 Accomplishments:

- AGO-IMS Training-Staff training AGO-IMS is a database application used to store information regarding matters and parties for which the Office of the Attorney General is involved
- Civil Rights Training-Mandatory Training for all employees
- Westlaw Demonstration and CLE credits
- CLE for all yearly credits for Special Prosecutions specific to Prosecutions subject matter, certified through NM State Bar held virtually

Project OPEN Training

(OPIOID PREVENTION AND EDUCATION NETWORK)

Attorney General Balderas formed a statewide partnership with the District Attorneys and law enforcement agencies to target prevention, education, and awareness of the opioid abuse problem. The program enhances the participants' knowledge and understanding of opioid addiction and the complex issues involved. The primary goal is to afford participants the opportunity to explore program materials and solutions to addressing the opioid epidemic. The Training Division identified counties with the highest rates of overdose and provided training, education, and effective strategies for reversing the epidemic.

Information Technology Division

The Information Technology (IT) Division safeguards and manages mission critical Information Systems, IT infrastructure and provides service to all employees of the Office of the Attorney General (OAG).

The OAG IT Division goals are to:

- Support the mission and vision of the Office of the Attorney General;
- To protect the confidentiality, integrity, availability and cyber-resiliency of the Office of the Attorney General's information systems and local area network.
- To lead innovatively through technology by proactively finding solutions and responding to the evolving technological needs of the agency.

Investments in Information Technology are driven by the desire to improve IT infrastructure, including cyber security, hardware, software, people and facilities; to adhere to various laws, regulations, standards and policies; and to help the agency manage its risks.

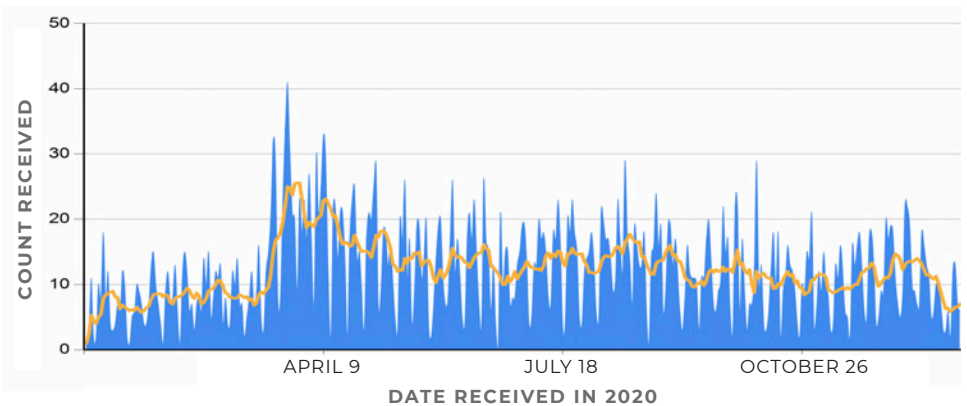
In 2020, faced with the Covid-19 pandemic the Information Technology (IT) Division quickly developed, implemented, and improved processes by deploying hardware, software and support service solutions to continue to carry out the mission and vision of the Attorney General's office in a remote work environment. Commitments by this administration to

improve IT infrastructure over the last 6 years were critical to effectively implementing home work environments. Mobilization of IT hardware, software and support gave all employees the ability to work remotely within 3 days of the stay at home order.

Enhancements to the Charitable Organization Registration Online System (COROS) made in 2019 that included the implementation of an automated payment system, continued to make a significant impact in 2020. There were 8,825 tax year registrations submitted in 2020 with over 1,926 delinquent tax years resolved. Fees collected due to delinquency totaled over \$150,000.00. With reminder notifications and ease of use updates, goal is to reduce the number of organizations becoming delinquent with annual reporting.

In 2020 the OAG received 4,487 complaints via our Electronic Complaint System (ECS) was 1,000 more than 2019. ECS ensured the office was available to the public and the utilization increased at the time of the initial stay at home order. ■

INCOMING ECS COMPLAINTS BY DATE



KARLO CANTU
FLEET AND
FACILITIES
DIRECTOR



Fleet and Facilities Division

The Fleet and Facilities Division is focused on providing NMOAG employees with the proper access to tools necessary to achieve agency goals/objectives.

Additionally we provide support for all of our Fleet and building needs coupled with the goal of continuing to provide a safe work environment, whether in a vehicle or in your office. The Fleet and Facility team maintains a mantra of excellent customer service in everything we do, which includes:

- Ensuring Fleet compliance with all TSD rules and regulations
- Proper vehicle maintenance and maximizing utilization
- Parking pass management
- Supply chain management, supply inventory management and distribution
- Providing prompt services to agency staff via Fleet and Facility work order system.
- Constant building surveillance to address safety concerns or issues as they arise with appropriate government agencies/vendors
- Timely mail services to all agency staff
- Building leases
- Agency asset tracking, management, and procurement ■

Fleet and Facility Team

JUSTIN DEUBEL – Fleet and Facility Manager

DONALD GARCIA – Fleet and Facility Coordinator (Santa Fe Office)

DAVID MARTINEZ-FLORES – Fleet and Facility Coordinator (Albuquerque and Las Cruces Office)



STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL

For more information on the
New Mexico Office of the Attorney General
please visit www.NMAG.gov