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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Petitioner,

v.

S. Ct. No. S-1-SC-39897
Ct. App. No. A-1-CA-40038

DEMESIA PADILLA,

Defendant-Respondent.

DEFENDANT'S ANSWER BRIEF

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ORAL ARGUMENT REQUESTED

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STATEMENT OF COMPLIANCE

This brief complies with Rule 12-318(F)(2) NMRA because its body does not exceed thirty-five (35) pages using 14-point Times New Roman typeface.

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INTRODUCTION

In 2018, five and a half years into a six-year statute of limitations, the State filed embezzlement charges against Defendant-Respondent Demesia Padilla in the First Judicial District Court for acts allegedly committed between December 2011 and January 2013. It knew the acts complained of occurred in Sandoval County, which lies in the Thirteenth Judicial District, but chose to pursue its case in Santa Fe County—a venue it apparently perceived as more favorable. Ms. Padilla repeatedly asserted her constitutional right to venue, beginning at the preliminary hearing in November 2018. *Cf.* N.M. Const. art. II, § 14 ("In all criminal prosecutions, the accused shall have the right to… a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed."); *State v. Wise*, 1977-NMCA-074, ¶ 18, 90 N.M. 659, 567 P.2d 970 ("[A] defendant may insist on this personal right or privilege."). For months, the State fought Ms. Padilla's venue objection rather than refiling in the correct district. *See, e.g.,* [RP 61]; [11-2-18 5 Tr. 1364:25-1365:10]. The First Judicial District Court ultimately granted Ms. Padilla's motion to dismiss based on venue on June 11, 2019. In August 2019, the State refiled in Sandoval County. By that time, undisputedly, more than six years had passed since the alleged period of embezzlement.

The Legislature has created a statute of limitations for second-degree felonies like those at issue here. *See* NMSA 1978, § 30-16-8(F), § 30-45-3(E) (categorizing these charges as second-degree felonies). That limitations period is six years. *See* NMSA 1978, § 30-1-8(A). The Legislature has also carved out narrow exceptions to the criminal statutes of limitations in a statutory provision specifically dedicated to tolling. *See* NMSA 1978, § 30-1-9 ("Tolling of time limitation for prosecution for crimes."). Under the tolling statute, if a timely indictment is dismissed for procedural defects, then "the time elapsing between the preferring of the first indictment, information or complaint and the subsequent indictment, information or complaint shall not be included in computing the period limited for the prosecution" on two conditions: (1) the new charges are "based upon and grow[] out of the same transaction" as did the original charges; and (2) "the subsequent indictment, information or complaint is brought within five years from the date of the alleged commission of the original crime." NMSA 1978, § 30-1-9(B). As the Court of Appeals noted in its opinion: "[T]he parties agree that under no circumstances did Section 30-1-9(B) toll the limitation period because the Indictment was not brought within five years of the last charged event." *State v. Padilla*, 2023-NMCA-047, ¶ 10, 534 P.3d 223.

The State consequently must rely on a nonstatutory theory of tolling, which it has variously called "equitable" or "common law" tolling. The theory depends on the premise that it is inherently unfair to count the time the State spent prosecuting Ms. Padilla in the wrong county toward the limitations period. Put another way, the

State asks the Court to create a precedent that allows it to file time-barred charges in violation of a defendant's substantive rights *on the grounds that* it previously violated that defendant's procedural and constitutional rights. This argument failed in the Court of Appeals. This Court too should decline to set aside the Legislature's explicitly applicable statutory tolling provision for the sole benefit of the State and to the obvious impairment of long-established individual rights.

SUMMARY OF PROCEEDINGS[1]

On June 28, 2018, the State filed a criminal complaint alleging embezzlement and computer access with intent to commit embezzlement in violation of § 30-16-8(F) and § 30-45-3(E), respectively, by Ms. Padilla. Although the complaint was filed in Santa Fe County, it alleged that the embezzlement occurred from December 19, 2011 to January 22, 2013 at Harold's Grading and Trucking in Bernalillo, New Mexico. Ms. Padilla objected to venue in Santa Fe County and sought dismissal of the charges, which motion was granted on June 11, 2019.

On August 1, 2019, the State indicted Ms. Padilla on the same counts, alleging that the conduct occurred "between December 19, 2011 and January 22, 2013, in the County of Sandoval." [RP 1-2] Because this indictment was facially outside the statute of limitations period, Ms. Padilla moved to dismiss. [RP 57-58] The State

[1] A summary of the proceedings is presented here because it is necessary, including to describe for the Court the State's alteration and abandonment of its previous arguments. *Cf.* Rule 12-318(B) NMRA.

persuaded the district court that *State v. Martinez*, 1978-NMCA-095, 92 N.M. 291, 587 P.2d 438, allows for "common law tolling" that "is not explicitly within 30-1-9." [10-10-19 1 Tr. 22:8-19] Ms. Padilla sought an interlocutory appeal (Case No. A-1-CA-38544) but it was denied, after which she was tried and convicted. She renewed her arguments on direct appeal.

Before the Court of Appeals, the State argued: (1) the prior information was never "quashed" or "dismissed because of a variance" with the evidence within the meaning of § 30-1-9(B)(3) or (4), so the tolling statute did not apply, *see* [Ct. App. AB 12]; and (2) in the absence of any applicable tolling statute, "common law tolling operates to prevent the bar of the statute of limitations," based on *Martinez*, *id.* at 11. The defense thus addressed the history and definitions of the words used in § 30-1-9(B) in the briefing before the Court of Appeals, noting that the alleged difference between "quash" and "dismiss" did not account for the amendments to the Rules of Criminal Procedure in 1972 and the subsequent changes in usage adopted by this Court. The Court of Appeals, reviewing this history, agreed that the "motion to dismiss for improper venue fell within the category of circumstances governed by Section 30-1-9(B) and its tolling provisions." *Padilla*, 2023-NMCA-047, ¶¶ 9-10.

Before this Court, the State has completely abandoned its arguments about the applicability of § 30-1-9(B)(3) and (4)—i.e., it makes no attempt to contest that a motion to dismiss for improper venue is a motion to "quash" as the Legislature used that word in 1963. It therefore alters the fundamental basis of its argument to say that § 30-1-9(B), whatever its language, should never bar a subsequent indictment when any charges were timely filed, should not apply to dismissals based on venue, and should only apply to "less serious crimes." *See* [BIC 8, 16, 19] The State also denies, in a reversal of its prior arguments, that it seeks "nonstatutory" tolling. *See* [BIC 15 n.2] The State conceded dozens of times before now that its argument necessitates the courts' adoption of "common law" or other "nonstatutory" tolling. *See* [Ct. App. AB 8 ("Principles of common law tolling apply…"), 10 ("Common law principles of tolling suspend the running of the statute of limitations…"), 13 ("[T]he inapplicability of statutory tolling thereby allows the application of common law tolling as applied in *Martinez*.")]; [RP 66 ("Section 30-1-9 is not the exclusive means by which a criminal statute of limitations may be tolled.")]. That was indeed the entire basis for the dissent in the Court of Appeals:

> While there is certainly support for the majority opinion's conclusion that nonstatutory tolling only applies under limited circumstances, *Martinez* can also be read to have adopted nonstatutory tolling as a general principle that coexists with the tolling provided in Section 30-1-9. I would have affirmed the district court's decision to apply that general principle in this case.

Padilla, 2023-NMCA-047, ¶ 18 (Duffy, J., dissenting).

Whether or not the State calls the tolling it seeks "nonstatutory," it does not contest that the tolling statute cannot afford it relief from the limitations period here. Its prosecution of Ms. Padilla is only valid if it has another basis outside the tolling statute, and the Court of Appeals determined that "nonstatutory tolling outside the parameters of Section 30-1-9(B) [cannot] start and stop the limitation period set forth in Section 30-1-8(A) when the statutory tolling set forth in Section 30-1-9(B) applies to the circumstances of the case." *Id.* ¶ 12. Ms. Padilla therefore asks the Court to affirm the Court of Appeals' determination that no tolling applies and the charges against her are time-barred.

ARGUMENT

I. Defendants have a substantive right in the limitations period, which must be liberally construed in favor of repose.

Criminal statutes of limitations are not mere technicalities. They represent a balance between the interests of the public and of the accused.

> The purpose of a statute of limitations is to limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts the legislature has decided to punish by criminal sanctions. Such a limitation is designed to protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past. Such a time limit may also have the salutary effect of encouraging law enforcement officials promptly to investigate suspected criminal activity. For these reasons and others, we have stated before the principle that criminal limitations statutes are to be liberally interpreted in favor of repose[.]

Toussie v. United States, 397 U.S. 112, 114-15 (1970) (quotations omitted). A defendant does not have to make a showing of prejudice to merit these protections; limitations periods do not promote justice because they are specific to a particular case or defendant, but because they reflect "universally accepted notions that prompt investigation and prosecution insures that conviction or acquittal is a reliable result, and not the product of faded memory or unavailable evidence; that ancient wrongs ought not to be resurrected except in some cases of concealment of the offense or identity of the offender; and that community security and economy in allocation of enforcement resources require that most effort be concentrated on recent wrongs." 1 WORKING PAPERS OF THE NATIONAL COMMISSION ON REFORM OF FEDERAL CRIMINAL LAWS 281 (1970). They "provide predictability by specifying a limit beyond which there is *an irrebuttable presumption* that a defendant's right to a fair trial would be prejudiced." *United States v. Marion*, 404 U.S. 307, 322 (1971) (emphasis added).

Specifying these limits for prosecution is a legislative function. *See State v. Morales*, 2010-NMSC-026, ¶ 10, 148 N.M. 305, 236 P.3d 24 (noting that statutes of limitations "are entirely subject to the will of the Legislature"); *see also Doggett v. United States*, 505 U.S. 647, 665-66 (1992) (Thomas, J., dissenting) (observing that "such statutes are fixed by the legislature and not decreed by courts on an *ad hoc* basis"). "Such statutes represent legislative assessments of relative interests of the State and the defendant in administering and receiving justice; they are made for the repose of society and the protection of those who may (during the limitation) have lost their means of defence." *Marion*, 404 U.S. at 322 (quotations and alterations omitted); *see also Stogner v. California*, 539 U.S. 607, 615 (2003) ("[A] statute of limitations reflects a legislative judgment that, after a certain time, no quantum of evidence is sufficient to convict.”).

“In light of the extraordinarily important purpose served by statutes of limitations, i.e., protecting the accused from a situation where his right to a fair trial would be prejudiced, statutes of limitations are construed strictly in favor of the defendant.” 3 Barbara E. Bergman, Nancy Hollander, et al., *Wharton’s Criminal Procedure* § 14:23 (14th ed. 2002); *see also* [BIC 7] (“A statute of limitations is generally liberally construed in favor of a defendant.”). A defendant’s right in the statute of limitations is thus “a substantive right,” as this Court has acknowledged. *State v. Kerby*, 2007-NMSC-014, ¶ 3, 141 N.M. 413, 156 P.3d 704. Even when the Court held that defendants may waive their rights in the limitations period, it did so for the benefit of defendants—not the State. *See State v. Hansen*, 2021-NMCA-048, ¶ 8, 495 P.3d 1173, *cert. denied* (Aug. 27, 2021) (describing that, in *Kerby*, the “Supreme Court struck a balance between the critical policies advanced by the statute of limitations and a recognition that the jurisdictional approach—an unyielding enforcement of the limitations time bar—may work to the detriment of the accused.”).

Of course, a legislature can also create exceptions to the limitations periods. In New Mexico, it has done so in the tolling statutes, NMSA 1978, § 30-1-9, *et seq.* These “carve[] out” classifications “rationally related to [a] legislative purpose,” such as "subjecting those who voluntarily choose to absent themselves from the state to responsibility for their criminal behavior for a longer period of time." *State v. Cawley*, 1990-NMSC-088, ¶ 9, 110 N.M. 705, 799 P.2d 574 (discussing § 30-1-9(A)). But, as with the limitations periods themselves, "exceptions from the benefits of [statutes of limitations] must be construed narrowly or strictly against the state." 21 Am. Jur. 2d Criminal Law § 243. They too are "to be liberally interpreted in favor of repose, and ought not to be extended by construction to embrace" circumstances not specified in their text. *Bridges v. United States*, 346 U.S. 209, 216 (1953). They are thus never left to prosecutorial discretion, nor are they granted on "equitable" grounds. *See, e.g., United States v. Rafoi*, 60 F.4th 982, 1001 (5th Cir. 2023) ("In the federal criminal system, tolling of the statute of limitations must be established 'by law;' there are no common-law or equitable-tolling provisions for the filing of an indictment.").

II. The statute of limitations for embezzlement is six years, and Ms. Padilla was indicted over six years after the alleged conduct.

The statute of limitations for second-degree felonies states that "[a] person shall not be prosecuted, tried or punished in any court of this state unless the indictment is found… within six years from the time the crime was committed[.]" NMSA 1978, § 30-1-8(A). The simple fact that undergirds all the argument before the Court is this: the State indicted Ms. Padilla on August 1, 2019 for alleged second-degree felonies that occurred "between December 19, 2011 and January 22, 2013," [RP 1-2], i.e., more than six years before. That limitations period must be "construed strictly in favor of the defendant," *Wharton's Criminal Procedure*, *supra*, at § 14:23, as the Court of Appeals observed in this case, *see Padilla*, 2023-NMCA-047, ¶ 6.

Unlike civil limitations periods—which can begin when injuries develop or a claim is otherwise discovered—criminal statutes of limitations start to run on "the date when the offense occurred." *Statute of Limitations*, BLACK'S LAW DICTIONARY (11th ed. 2019); *see also* NMSA 1978, § 30-1-8(A). The end date is the when "the indictment is found or information or complaint is filed[.]" NMSA 1978, § 30-1-8. When "charges are filed and then dismissed," the date of subsequent *re*-filing is used to determine the end date of the limitations period. *See State v. Hill*, 2008-NMCA-117, ¶ 8, 144 N.M. 775, 192 P.3d 770; *cf.* NMSA 1978, § 30-1-9(B) (accounting for circumstances in which timely-filed charges have been dismissed and a subsequent charging document may be time-barred).[2] That is, after a dismissal, "[t]he slate [i]s clean. A subsequent indictment would be valid and also timely *if brought within the statute of limitations*." *State v. Peavler*, 1975-NMSC-035, ¶ 8, 88 N.M. 125, 537 P.2d 1387 (emphasis added). "Dismissal without prejudice is not a toothless sanction: it forces the Government to obtain a new indictment if it decides to reprosecute, and it exposes the prosecution to dismissal on statute of limitations

[2] These precedents nowhere suggest that barring refiling after a dismissal without prejudice amounts to an impermissible "retroactive application of a statute of limitations." *See* [BIC 19] By its nature, a statute of limitations only bars prosecution if the limitations period is already closed.

grounds." *United States v. Taylor*, 487 U.S. 326, 342 (1988).

Our case law demonstrates the use of these basic counting rules. In *Hill*, for example, the charges against the defendant were first filed July 3, 1989, dismissed, and refiled in 2002. *See* 2008-NMCA-117, ¶ 2. The Court of Appeals held: "The 2002 charges against Defendant were filed on December 9, 2002, and those charges were based on events that took place between September 1988 and January 1989. As a result, the 2002 charges were filed within the applicable statute of limitations period of fifteen years." *Id.* ¶ 8. At no point did the Court of Appeals propose that July 3, 1989 was the proper end date by which to measure the State's compliance. *See id.* In *State v. Shawan*, 1967-NMSC-013, ¶¶ 1-3, 77 N.M. 354, 423 P.2d 39, as another example, a felony count for discharging a firearm on September 22, 1961 "was barred by the Statute of Limitations" (then three years) when the defendant was prosecuted on an information filed on November 3, 1965—even though the State had filed its first complaint within three days of the incident. *See also, e.g.*, *State v. Madrid*, No. S-1-SC-37567, 2021 WL 5882099, ¶¶ 65-67 (N.M. Dec. 13, 2021) (unpublished) (declining to consider double-jeopardy arguments after a mistrial on second-degree felony charges because "[t]he underlying events of the crimes charged took place on June 26, 2015, and thus potential reprosecution on [the charges] expired on June 26, 2021"); *State v. Judd*, No. A-1-CA-29460, 2009 WL 6634165, at *1 (N.M. Ct. App. Nov. 2, 2009) (unpublished) (holding that a defendant "was not aggrieved by" the dismissal of charges against him without prejudice because "any further prosecution on these charges is time-barred.").

Like any other strict deadline, criminal statutes of limitations can appear to "operate harshly and arbitrarily with respect to individuals who fall just on the other side of them," *United States v. Locke*, 471 U.S. 84, 100-01 (1985); but courts do not abandon "the general rule of strict adherence to statutes of limitation" on that basis, *see United States v. Meador*, 138 F.3d 986, 994 (5th Cir. 1998). If "a cascade of exceptions… engulf the rule," *Locke*, 471 U.S. at 101, statutes of limitations could never "provide predictability" to either defendants or to the public, *Marion*, 404 U.S. at 322. Here, therefore, the August 2019 indictment is presumptively time-barred because it fell outside the limitations period—so "[t]he question in the present case is whether a limitation period like that contained in Section 30-1-8(A) can be 'tolled.'" *Padilla*, 2023-NMCA-047, ¶ 6.

III. Section 30-1-9 applies and does not allow for tolling.

A. Tolling a criminal statute of limitations requires a statutory basis, which § 30-1-9 exclusively provides.

It is "the general rule that in the absence of a statute expressly so providing, the finding or return of an indictment or the filing of an information on which no valid conviction or judgment could be had did not operate to stop the running of the statute of limitations pending the finding, filing, or return of another indictment or information." 18 A.L.R.4th 1202 (2023); *see also, e.g.,* 21 Am. Jur. 2d Criminal Law

§ 265 ("Generally, the return of an indictment or the filing of an information on which no valid conviction or judgment can be had will not, in the absence of a statute expressly so providing, operate to stop the running of the statute of limitations pending the return or filing of another indictment or information."); 22A C.J.S. Criminal Procedure and Rights of Accused § 598 ("As a general rule, exceptions will not be implied to statutes of limitations for criminal offenses, and ordinarily the running of such a statute is not interrupted unless it contains an exception or condition that will toll its operation."); *State v. Silver*, 398 P.2d 178, 179 (Or. 1965) (collecting cases on this "general rule"). The Iowa Supreme Court explained the rule as follows:

> It seems to us a reasonable and just proposition that, in the absence of any statute saving such right to the state, the running of the statute of limitations ought not to be interrupted or suspended by the return and pendency of an indictment upon which no valid conviction or judgment can be founded. Such an indictment is no indictment.

State v. Disbrow, 106 N.W. 263, 266 (Iowa 1906). This rule was well established in 1963, when the New Mexico Legislature enacted § 30-1-8 and § 30-1-9.[3] Indeed, it applies even in civil cases, as plaintiffs must rely on the "savings statute" (NMSA 1978, § 37-1-14 (1880)) if a timely-filed suit "fail[s] therein for any cause"; "*[t]his statute* has the effect of preventing a statute of limitations from barring a suit where

[3] In 1963, these were codified as NMSA 1978, § 40A-1-8 and § 40A-1-9, respectively.

the original suit was brought in a timely fashion but the statute ran before the second suit was filed," *Amica Mut. Ins. Co. v. McRostie*, 2006-NMCA-046, ¶ 1, 139 N.M. 486, 134 P.3d 773 (emphasis added).

The Legislature has adopted a statute to provide for tolling "when, because of procedural problems, the prosecution cannot proceed." *Martinez*, 1978-NMCA-095, ¶ 16 (summarizing the purpose of § 40A-1-9, now § 30-1-9). That statute is § 30-1-9(B). Such cases are distinguishable from those in which "the first indictment is still validly pending," *United States v. Grady*, 544 F.2d 598, 601-02 (2d Cir. 1976); *see also Padilla*, 2023-NMCA-047, ¶ 12 (distinguishing the instant case from others that "involved an original and a superseding charging document without any lapse between the two"); this form of tolling applies if, e.g., "the indictment, information or complaint is quashed, for any defect or reason," "the prosecution is dismissed because of variance between the allegations of the indictment, information or complaint and the evidence," or the case is otherwise unable to proceed because of procedural defects, NMSA 1978, § 30-1-9(B). However, the statute imposes two conditions on the availability of this tolling: (1) "the crime last charged [must be] based upon and grow[] out of the same transaction," and (2) "the subsequent indictment, information or complaint [must be] brought within five years from the date of the alleged commission of the original crime." *Id.* There is no dispute that the State did not meet the latter condition in this case. [RP 1-2]

The State now argues that "[t]he plain language and purpose of Section 30-1-8 show that the filing of the information tolled the statute of limitations while the first action was pending." [BIC 6] That is, the State claims that § 30-1-8(A)'s statute of limitations is automatically tolled *by its own terms* whenever charges are filed, irrespective of whether those charges are dismissed, and without regard to any of the requirements of § 30-1-9. *See* [BIC 21 (arguing that "Section 30-1-9 is simply beside the point…")] That theory does not comport with our case law, and it would render the Legislature's adoption of a separate tolling statute addressing these matters a nullity; if the Legislature intended that the "plain language" of § 30-1-8 would always toll a case while a defective information is pending, it would have no reason to enact a statute explaining that some tolling applies during "the preferring of the first indictment, information or complaint [that has been dismissed or quashed] and the subsequent indictment, information or complaint" (much less to state limiting conditions on that tolling). NMSA 1978, § 30-1-9(B).

Statutes of limitations and tolling statutes serve distinct purposes. The Court of Appeals addressed the difference between the two in *Hill*, explaining in part:

> After considering the distinction between a tolling statute and a statute of limitations, it becomes apparent that the legislature intended for Section 30-1-9 to operate as a tolling statute. A "statute of limitations" is defined as "a law that bars claims after a specified period," and a "tolling statute" is "a law that interrupts the running of a statute of limitations in certain situations."

2008-NMCA-117, ¶ 9 (alterations, citations omitted). To be clear, then, § 30-1-8 is a statute of limitations, which does not speak to tolling. The statute created solely for that purpose is § 30-1-9: "Tolling of time limitation for prosecution of crimes." The latter is not, as the State argues, a "supplementary tolling benefit." [BIC 6] It is the only statute in the Criminal Code expressly providing for the manner in which "the return of an indictment or the filing of an information on which no valid conviction or judgment can be had" may "operate to stop the running of the statute of limitations," without which such tolling does not apply. 21 Am. Jur. 2d Criminal Law § 265.

B. The tolling statute does not save this time-barred indictment.

Section 30-1-9(B)'s tolling provision states:

> When… the indictment, information or complaint is quashed, for any defect or reason; [or] the prosecution is dismissed because of variance between the allegations of the indictment, information or complaint and the evidence… the time elapsing between the preferring of the first indictment, information or complaint and the subsequent indictment, information or complaint shall not be included in computing the period limited for the prosecution of the crime last charged; *provided that* the crime last charged is based upon and grows out of the same transaction upon which the original indictment, information or complaint was founded, and *the subsequent indictment, information or complaint is brought within five years from the date of the alleged commission of the original crime*.

NMSA 1978, § 30-1-9(B)(3)-(4) (emphases added). In this case, it is undisputed that the tolling provided for in § 30-1-9 does not apply to any part of the period between the filing of the complaint or information in Santa Fe County and the subsequent indictment in Sandoval County, because the subsequent indictment was not "brought within five years from the date of the alleged commission of the original crime." *Id.*; *see also Padilla*, 2023-NMCA-047, ¶ 10 ("[T]he parties agree that under no circumstances did Section 30-1-9(B) toll the limitation period because the Indictment was not brought within five years of the last charged event.").

At one point, the State contested the application of § 30-1-9(B) to this case on the grounds that "the Complaint was not 'quashed' under Section 30-1-9(B)(3), nor was any variance the cause of the dismissal under Section 30-1-9(B)(4)." *Id.* ¶ 8. In Black's Law Dictionary, "quash" is defined in part as "to terminate," as in "quash an indictment." *Quash*, BLACK'S LAW DICTIONARY (11th ed. 2019). When the tolling statute (then compiled as § 40A-1-9) was enacted, this Court's precedents stated that indictments may be "quashed" when "defects or irregularities [are] apparent upon the face of the record," *State v. McKinley*, 1924-NMSC-052, ¶ 5, 30 N.M. 54, 227 P. 757; but both "[t]he old common law motion[s] to quash" and "pleas in abatement" were superseded by the adoption of the Rules of Criminal Procedure in 1972, *State v. Dunlap*, 1977-NMCA-083, ¶¶ 6-7, 90 N.M. 732, 568 P.2d 258. If "a motion to quash" succeeds under the current Rules of Criminal Procedure, "the court shall order the complaint, indictment or information dismissed." *State v. Elam*, 1974-NMCA-075, ¶ 7, 86 N.M. 595, 526 P.2d 189. The "quashing" language in the statute has therefore been replaced in other contexts by the language of "dismissal" "based on defects." *Id.*; *Dunlap*, 1977-NMCA-083, ¶ 7; *see also* Rule 5-601 NMRA comm.

cmt. (noting that Rule 5-601(D)(2) and (H) superseded older precedents about "motions to quash"); *State v. Cruz*, 2010-NMCA-011, ¶ 17, 147 N.M. 753, 228 P.3d 1173 (holding that Rule 5-601(D) applies to "objection[s] to improper venue"), *rev'd on other grounds by* 2011-NMSC-038, 150 N.M. 548, 263 P.3d 890. As explained in the Court of Appeals' opinion, its case precedents have "implicitly recognized that motions to dismiss for improper venue are… those that the 1972 rule-amendment intended to include within the prior categorization of motions to quash." *Padilla*, 2023-NMCA-047, ¶ 9. The State no longer disputes that this case involves the "quash[ing]" of an information or complaint as described in § 30-1-9(B)(3). *See generally* [BIC (omitting this argument)].

If, as is now apparently conceded, § 30-1-9(B)'s terms encompass dismissals for improper venue, then its conditions likewise apply. By unambiguous language, the statute does not allow tolling for an untimely subsequent indictment more than five years after the alleged commission of the crime. To apply tolling despite this explicit limitation amounts to striking a line through the final clause of the text. The August 2019 indictment therefore cannot benefit from statutory tolling based on a prior complaint or information that was quashed, because the 2019 charges were not "brought within five years from the date of the alleged commission of the original crime." NMSA 1978, § 30-1-9(B).

C. The five-year limitation on refiling in the tolling statute is a clear expression of legislative intent.

When interpreting a statute of limitations, the Court's "primary goal is to ascertain and give effect to the intent of the Legislature." *Morales*, 2010-NMSC-026, ¶ 6 (quotations omitted); *see also* [BIC 7 (admitting this)]. Both the dissent and the State's briefing raise doubts that the Legislature could have intended to limit the availability of tolling when the State refiles procedurally defective charges regarding felonies more than five years old. The plain language of § 30-1-9 undermines those assumptions, *cf. State v. Whittington*, 2008-NMCA-063, ¶ 11, 144 N.M. 85, 183 P.3d 970 ("The primary indicator of legislative intent is the plain language of the statute."), but the legislative history answers them even more strongly—especially when construed, as such statutes must be, "in favor of repose," *Toussie*, 397 U.S. at 115.

In 1953, the criminal statute of limitations and tolling statutes were codified in Article 9 ("Limitation of Actions"). Section 41-9-1 set forth limitations periods, and 41-9-3 described tolling for "[s]uccessive charges for [the] same offense." *See* NMSA 1953, § 41-9-1, -3 (1953). At that time, the relevant tolling statute stated:

> When… the indictment [is] quashed, for any defect therein… and a new indictment is thereafter presented, the time elapsing between the preferring of the first charge or indictment and the subsequent indictment shall not be included in computing the period limited for the prosecution of the offense last charged, provided that the offense last charged is based upon, or grows out of, the same transaction upon which the first indictment was founded.

NMSA 1953, § 41-9-3 (1953). This statute differed from the statute since codified in § 30-1-9(B) in one conspicuous respect: it contained no time limit on its tolling.

Then, in 1957, the Legislature formed the Criminal Law Study Committee to overhaul the Criminal Code completely. The amendments to the article on criminal procedure were "the product of three years' careful labor," which was submitted for adoption with a proposed effective date in April 1963. *See* Henry Weihofen, *The Proposed New Mexico Criminal Code*, 1 NAT. RES. J. 123, 124 (1961). In drafting the new Criminal Code, specifically including what would become Section 1-9, the committee consulted "the Model Penal Code being prepared under the aegis of the American Law Institute (so far as that code has been drafted), and the Wisconsin Code, adopted in 1955." *Id.* at 125.

The Model Penal Code—finalized in 1962—and the Wisconsin Code shared certain overlapping characteristics in their tolling provisions.[4] First, both contained a 'discovery rule' for some fraud offenses. *See* Model Penal Code § 1.06(3) (1962) (allowing otherwise time-barred prosecutions for fraud or breach of fiduciary duty "within one year after discovery by an aggrieved party," "but in no case shall this provision extend the period of limitation otherwise applicable by more than three

[4] These provisions were incorporated into each code's "Time limitations" section rather than codified separately. *See* Model Penal Code § 1.06(3), (6) (1962); Wis. Stat. Ann. § 939.74(2), (3) (1955).

years"); Wis. Stat. Ann. § 939.74(2)(b) (1955) (allowing otherwise time-barred prosecutions "for theft against one who obtained possession of the property lawfully and subsequently misappropriated it… within one year after discovery of the loss by the aggrieved party, but in no case shall this provision extend [the applicable time limitation] by more than 5 years."). Second, both tolled the limitations period if the accused had left the state. *See* Model Penal Code § 1.06(6)(a) (1962); Wis. Stat. Ann. § 939.74(3) (1955). And third, both tolled the limitations period "during any time when a prosecution against the accused for the same conduct is pending in this State." Model Penal Code § 1.06(6)(b) (1962); *see also* Wis. Stat. Ann. § 939.74(3) (1955) ("In computing the time limited by this section, the time… during which a prosecution against him for the same act was pending shall not be included.").

The New Mexico Legislature did not embrace these provisions wholesale. It kept its comparable tolling provision for "when the party charged with any crime is not usually and publicly a resident within the state," consolidating it with the other tolling provisions. *Compare* NMSA 1953, § 40A-1-9(A) (1963 Pocket Supp.), *with* NMSA 1953, § 41-9-2 (1953). But it did not adopt a 'discovery rule.' *Cf.* NMSA 1953, § 40A-1-9 (1963 Supp.). It also did not adopt the other codes' broad policy of tolling during pending prosecutions. *Compare* NMSA 1953, § 40A-1-9(B) (1963 Supp.), *with* Model Penal Code § 1.06(6)(b) (1962); Wis. Stat. Ann. § 939.74(3) (1955). On the contrary, it added a new time restriction entirely absent from either those codes or the 1953 Code: the five-year tolling limit now at issue in this case. *See* NMSA 1953, § 40A-1-9(B) (1963 Supp.) (adding the following to the 1953 text: "and the subsequent indictment, information or complaint is brought within five (5) years from the date of the alleged commission of the original crime.").

The 1963 revisions that included this new five-year tolling limitation arose from years of committee work, multiple bills in both the House and the Senate, and substantial debate and floor amendments. *See, e.g.*, 1963 N.M. Laws, ch. 303, § 1. Under these circumstances, we cannot assume that the textual changes to the tolling statute were undertaken lightly or lacked significance. *See, e.g.*, *In re Cox Estate*, 1953-NMSC-077, ¶ 10, 57 N.M. 543, 260 P.2d 909 ("We must assume that the legislature means just what the words it uses mean, and that it chose its words advisedly to express its meaning, until the contrary clearly appears."); *Bettini v. City of Las Cruces*, 1971-NMSC-054, ¶ 13, 82 N.M. 633, 485 P.2d 967 ("[W]e must presume that the legislature, in enacting a statute, intended to change the law as it had theretofore existed."). Nor can we assume that the Legislature did not know that, at the very same time it added a five-year tolling limitation, it was extending the limitations periods on second-degree felony prosecutions to six years. *See Michaels v. Anglo Am. Auto Auctions, Inc.*, 1994-NMSC-015, ¶ 13, 117 N.M. 91, 869 P.2d 279 ("We assume that the legislature is well informed as to the existing statutory and common law, and that it does not intend to enact useless statutes.").

The context of these revisions sheds light on the tolling restriction in another way, too. The Model Penal Code gives a limitations period of three years for second-degree felonies, *see* Model Penal Code § 1.06(2)(b) (1962), which was identical to the limitations period on felonies other than "murder," "manslaughter, or any other killing of a human being" already contained in the 1953 New Mexico statute, *see* NMSA 1953, § 41-9-1 (1953). The Wisconsin Criminal Code, however, allowed six years for such prosecutions. *See* Wis. Stat. Ann. § 939.74(1) (1955). The Legislature chose to adopt a six-year limitations period in the 1963 revisions, giving New Mexico one of the longest limitations periods on such crimes in the nation—literally twice as long as the ALI suggested. *See* NMSA 1978, § 40A-1-8(C) (1963). It would not be unreasonable for the Legislature, having doubled the time in which second-degree felonies could be prosecuted, to seek to restore balance between the "relative interests of the State and the defendant in administering and receiving justice" by restricting the tolling applicable to those lengthened limitations periods, *see Marion*, 404 U.S. at 322; by specifically targeting tolling in cases of procedural fault by the State, the Legislature could simultaneously further one of the fundamental purposes of statutes of limitations, i.e., motivating prompt and effective investigations and prosecutions by state officials. *See Toussie*, 397 U.S. at 114-15.

New Mexico is not the only jurisdiction to impose time limits on the tolling available after the quashing or dismissal of prior charges. As one pertinent example, when federal felony charges are "dismissed for any reason after the period prescribed by the applicable statute of limitations has expired," prosecutors must refile "within six calendar months of the date of the dismissal." 18 U.S.C. § 3288. This is a time-limited "savings clause," intended to allow prosecutors some leeway to correct their errors while not subjecting the defendant to "an indefinite threat of prosecution." *United States v. Grace*, 504 F.3d 745, 751, 754 (9th Cir. 2007). "A court's dismissal of an indictment near the end of the statute-of-limitations period can defeat a reprosecution. In balancing the considerations, § 3288 provides the government additional time to reindict a defendant, even if the original limitations period has run." *United States v. Koerber*, 10 F.4th 1083, 1111 (10th Cir. 2021), *cert. denied,* 143 S. Ct. 326, 214 L. Ed. 2d 145 (2022). The time limitation in § 30-1-9(B) accomplishes a similar balancing when a defective charging document is dismissed, except that the Legislature chose to use the date of the original conduct as the triggering date rather than the date of a dismissal. That decision was the Legislature's to make. *See Morales*, 2010-NMSC-026, ¶ 10; *see also State v. Outen*, 764 S.E.2d 848, 853 (Ga. 2014) ("[T]his Court has no authority to substitute its own notions of optimal public policy for the policy clearly delineated in [the savings statute].").

D. These statutes do not have an extratextual "seriousness" test.

The State argues that § 30-1-9(B) "applies only to less serious crimes and, for those crimes, supplements—rather than replaces—tolling while a case is pending."

[BIC 6] More specifically, the State claims that § 30-1-9 applies "in the context of misdemeanor offenses," not felonies. [BIC 21] The statute's text does not support that interpretation. *See* NMSA 1978, § 30-1-9 (using the word "crime," without any distinction between misdemeanors and felonies); *cf.* NMSA 1978, § 30-1-8 (using "crime" to refer to all offenses, from capital felonies to petty misdemeanors). The legislative history, as noted above, demonstrates that second-degree felonies had a six-year statute of limitations when the Legislature adopted the five-year limitation on tolling in § 30-1-9(B). There is no basis in that history to conclude that, in the years that the Criminal Code took to draft, study, and pass, the Legislature failed to notice that the number in the tolling statute was smaller than that in the statute immediately preceding it.

Second-degree felonies are not too "serious" to have strictly-enforced statutes of limitations. *See, e.g., Madrid*, 2021 WL 5882099, ¶¶ 7, 66-67 (concluding that the statute of limitations ran on second-degree felonies for shooting at a dwelling, shooting from a motor vehicle, and conspiracy to commit homicide). Our precedents do not indicate that a "seriousness" analysis applies to the tolling statute, either, or that courts hesitate to deny tolling based on principled statutory interpretation—including when felony charges are involved. *See Kerby*, 2007-NMSC-014, ¶ 21 (declining to apply tolling to charges of criminal sexual contact with a minor, a felony); *State v. Oliver*, 1963-NMSC-015, ¶¶ 2-6, 71 N.M. 317, 378 P.2d 135 (declining to apply tolling when the defendant escaped from prison, a felony); *State v. Costillo*, 2020-NMCA-051, ¶ 24, 475 P.3d 803 (declining to extend the tolling applicable to the counts of criminal sexual penetration of a minor to counts of witness intimidation, a felony, even though the witness was a minor and a rape victim).

The State does not appear to dispute that the tolling provisions in § 30-1-9 do apply to second-degree felonies under certain circumstances. Most obviously, § 30-1-9 allows for indefinite tolling when the defendant, not the State, is to blame for the delay because he has concealed himself or fled the state. *See* NMSA 1978, § 30-1-9(A). But when *the State* is to blame for the delay, as here, the Legislature heightened the requirements for tolling, mandating that the State's first attempt to prosecute be timely, that the subsequent charges arise out of the same transaction as the first, and that the "subsequent indictment, information or complaint is brought within five years from the date of the alleged commission of the original crime." NMSA 1978, § 30-1-9(B).

The Legislature's tolling policy does not create the absurdity that the State suggests with respect to felonies. First, no tolling can apply to first-degree felonies because the Legislature removed any statute of limitations on those crimes in 1997. *See* NMSA 1978, § 30-1-8(I) (1997); *Morales*, 2010-NMSC-026, ¶ 7. It revisited the statute again last year, eliminating the statute of limitations on second-degree murder as well. *See* NMSA 1978, § 30-1-8(I) (2022). Although the time limitations for second- and third-degree felonies have exceeded five years for decades, through several amendments, the Legislature did not modify the tolling statute when it made any of these amendments; it chose to change the limitations periods themselves rather than relax the tolling requirements. *See* NMSA 1978, § 30-1-8 (1963, 1979, 1980, 1997, 2005). There is no basis for assuming it had no reason or right to do so.

The Legislature has simultaneously continued to add new tolling provisions, allowing for more forgiving tolling in cases of "[o]ffenses against children," NMSA 1978, § 30-1-9.1, and in some criminal sexual penetration cases, NMSA 1978, § 30-1-9.2. When the Legislature revisited § 30-1-9 and decided to enact these additional tolling provisions—once in 1987 and again in 2003—it engaged with exactly the same issue as here: second-degree felonies with six-year statutes of limitations that were not tolled under the existing statute. *See* NMSA 1978, § 30-1-9.1 (allowing special tolling for second-degree felonies under § 30-6-1(E), § 30-9-11(E), and § 30-9-13(B) in cases with child victims); NMSA 1978, § 30-1-9.2 (allowing special tolling for second-degree felonies under § 30-9-11(E) in cases with DNA evidence). But it did not modify § 30-1-9 to extend tolling for *all* second-degree felonies; it made these very specific exceptions. We cannot assume that the Legislature failed to notice that § 30-1-9(B) did not toll six-year statutes of limitations when it enacted § 30-1-9.1 and § 30-1-9.2, both of which allow for additional tolling for specific second-degree felonies.

Section 30-1-9 limits tolling in this case not because it is a blanket prohibition on tolling all felonies, but because these are not first-degree or capital felonies; the case does not involve murder, child victims, or criminal sexual penetration; Ms. Padilla did not cause the delay by concealing herself or fleeing the state; the State made such serious errors in the prosecution that its case had to be involuntarily dismissed and refiled; and the State waited well over five years before it brought the first indictment, so involuntary dismissal fell outside the limitations period. It is not "absurd" that the Legislature balanced defendants' fundamental rights with the State's interest in prosecuting financial crimes over six years old and that, under these circumstances, it did not intend to extend broader tolling to the State than is expressly provided for in § 30-1-9(B). These statutes arguably reflect the legislative expectation that the longer limitations periods themselves should be sufficient for the State to adequately prepare its case without tolling.

The Legislature has had many opportunities to amend the statute and could easily have made a subsequent indictment's timeliness key off, e.g., the dismissal of the first indictment or the end of the limitations period, not the original commission of the crime. This would have addressed the State's concern about felonies with limitations periods over five years, if that was a legislative priority. Given all the other requirements and exceptions that the Legislature has created or altered since

1963 while keeping this language, the Court cannot assume that it intended to remove "within five years from the date of the alleged commission of the original crime" from its tolling requirements for felonies. NMSA 1978, § 30-1-9(B).

IV. The State is not entitled to "common law," "equitable," or other "nonstatutory" tolling outside § 30-1-9.

The dissent opens by stating its reliance on *Martinez*, 1978-NMCA-095, to justify tolling beyond the text of § 30-1-9: "*Martinez* opened the door to nonstatutory tolling in criminal cases nearly fifty years ago.… *Martinez* can also be read to have adopted nonstatutory tolling as a general principle that coexists with the tolling provided in Section 30-1-9." *Padilla*, 2023-NMCA-047, ¶ 18 (Duffy, J., dissenting). The State pursues this argument, claiming that § 30-1-9 "supplements the tolling recognized in *Martinez*" rather than reflecting legislative intent to set forth binding rules for tolling in criminal cases. [BIC 21] But as the majority notes, "[t]he *Martinez* Court, in addition to considering facts that are notably distinct from the present case, explicitly stated that Section 30-1-9 did not apply and therefore turned to other tolling mechanisms." *Padilla*, 2023-NMCA-047, ¶ 11. In this case, § 30-1-9 does apply, and no "nonstatutory" tolling is necessary or permissible.

Factually, *Martinez* involved a timely-filed criminal complaint in magistrate court, which was superseded by an indictment in the district court; the first complaint was then voluntarily dismissed, per the rules. *See* 1978-NMCA-095, ¶¶ 2-8. "As the *Martinez* Court explained, 'Although a felony charge may be initiated by the filing of a complaint, the felony must be prosecuted by indictment or information' and '[a]t some point the complaint is superseded by an indictment or information.'" *Padilla*, 2023-NMCA-047, ¶ 12.

> [T]he narrow question in *Martinez* was distinct from that in the instant case: Whether the timely criminal complaint that initiated the felony charges in magistrate court satisfied the statute of limitation even though the superseding felony indictment was filed in district court after the limitation period expired.

Id. (citations omitted). Unlike in this case, the charges were pending against that defendant at all times, *see Martinez*, 1978-NMCA-095, ¶¶ 9-10, and the complaint was never involuntarily dismissed or quashed based on "procedural problems," *id.* ¶¶ 17-18. The tolling statute (now § 30-1-9) did not address voluntary dismissal of a superseded complaint, but the *Martinez* Court concluded that the Legislature intended tolling to apply. *See id.* ¶¶ 15-18. As the majority in this case observed, all the authority in *Martinez* "involved an original and a superseding charging document without any lapse between the two, and the courts held that the original indictment was sufficient to satisfy the statute of limitations." *Padilla*, 2023-NMCA-047, ¶ 12. The Court of Appeals therefore denied "that *Martinez* implicitly acknowledged a form of nonstatutory tolling that it did not apply." *Id.* ¶ 12 n.7.

Even assuming that *Martinez* permits *any* "nonstatutory tolling," it cannot be construed to do so here. The *Martinez* Court stated that it employed its interpretive methods due to the absence of explicit statutory language on point, with the aim of divining legislative intent. *See* 1978-NMCA-095, ¶¶ 16-17. But § 30-1-9 applies to complaints that have been dismissed for defects, as concededly happened here. *See* NMSA 1978, § 30-1-9(B)(3), (4). "Under the rules of statutory construction, when a statute contains language which is clear and unambiguous, we must give effect to that language and refrain from further statutory interpretation." *Bank of New York v. Romero*, 2014-NMSC-007, ¶ 40, 320 P.3d 1 (quotations, alterations omitted); *see also State v. Benally*, 2016-NMSC-010, ¶ 10, 368 P.3d 403 (stating that "this Court first looks to the text"). If any ambiguity does appear in the text, it must be "liberally construed in favor of [the] defendant." *Kerby*, 2007-NMSC-014, ¶ 13; *see also State v. DeGraff*, 2006-NMSC-011, ¶ 32, 139 N.M. 211, 131 P.3d 61 ("Finally, if we have not found a clear indication of legislative intent, we apply the 'rule of lenity'…"). The rules of construction are not met by expanding the *Martinez* Court's suggestions about "nonstatutory tolling" past the express limits of its holding and overriding lawfully-enacted legislation intended to safeguard defendants' rights, all in order to obtain broader permissiveness for untimely prosecutions.

For these reasons, the Court should reject the State's proposed application of civil case precedents in support of criminal tolling. *See* [BIC 18-19 (citing civil cases for the proposition that "the ends of justice" are served by tolling the criminal statute of limitations based on "the good-faith, but mistaken, filing of charges in the wrong venue")] This Court has acknowledged before that "the criminal limitations statute is only partially similar in form and purpose to its civil counterpart and is clearly different in its overall place and function in the law." *Kerby*, 2007-NMSC-014, ¶ 13 (quotations omitted). In civil cases, the "limitation is procedural, not substantive in nature." *Gaston v. Hartzell*, 1976-NMCA-041, ¶ 22, 89 N.M. 217, 549 P.2d 632. In criminal cases, the defendants do have "substantive" rights in the limitations period. *Kerby*, 2007-NMSC-014, ¶ 3; *Marion*, 404 U.S. at 322. As a general proposition, then, the value of importing civil case law here is minimal. *See, e.g.*, *Padilla*, 2023-NMCA-047, ¶ 11 n.5 ("Because the criminal statute of limitations is Defendant's substantive right, we expressly do not consider civil statutes of limitation or any related tolling statutes.").

Procedural rights like venue, although sometimes waivable by the defendant, find even less meaningful parallel in civil cases. A criminal defendant's right to "a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed" has been enshrined in the Bill of Rights since 1910. *See Proceedings of the Constitutional Convention of the Proposed State of New Mexico* at 82 (Oct. 3 to Nov. 21, 1910); N.M. Const. art. II, § 14. Even the Legislature is constrained by the constitutional protections on this right. *See* N.M. Const. art. IV, § 24 (prohibiting "local or special laws" regarding "the change of venue"). Although the State is quick to point out that venue "does not go to the guilt or innocence of the defendant," [BIC 16-17 (citations omitted)], the same is true of many other privileges and rights arising under the New Mexico Constitution—like the right not to have one's person or belongings illegally searched or seized, *see* N.M. Const. art. II, § 10. This Court has never sacrificed such constitutional rights based on what it gleans of "the guilt or innocence of the defendant." Nor should the Court accept "a desire on the part of the [State] to begin [its] case" as sufficient to warrant tolling in criminal cases as it did with a civil plaintiff who filed in the wrong venue in *Bracken v. Yates Petroleum Corporation*. [BIC 18 (citing *Bracken*, 1988-NMSC-072, ¶ 10, 107 N.M. 463)] Other jurisdictions have declined to apply any tolling when criminal charges are filed in improper venues, again underlining the civil-criminal distinction. *See People v. Kase*, 76 A.D.2d 532, 536 (1980), *aff'd by* 424 N.E.2d 558 (N.Y. 1981) (holding that an indictment in the wrong county "was never 'lawfully' commenced," and therefore "the time during which that proceeding was pending cannot be excluded… These two counts are, therefore, time-barred and must be dismissed."); *State v. Smith*, 7 So. 2d 368, 370 (La. 1942) ("It seems to me preposterous to say that there could be such a thing as an indictment that is worthless for all other purposes, yet good to interrupt the running of prescription.").

Many of the State's arguments invoke concepts of "equity" more appropriate to the civil context. The parties in a criminal case are not equally situated with equal rights in the proceedings. The State wields a power that defendants obviously do not, including the power to take from them everything from their material possessions to their liberty and their lives. It is to address this imbalance that the Legislature and the courts intervene with protections (like statutes of limitations) that are intended to shelter defendants from abuses and incompetence. And yet, in addition to relying on assertions of its own "good faith," [BIC 18], the State has frequently claimed that enforcing the text of the tolling statute as written would allow for "gamesmanship" by defendants, e.g.: "If filing a timely charging document does not toll the limitation period, defendants would have an incentive to wait to raise such issues until the limitation period expired, confident that, if successful, they would be forever immune from re-indictment." [RP 69] Such arguments fail to convey the realities of a criminal defendant's decision-making; a defendant has little discretion to wait for such strategic purposes, because the rules require her to file any motions to dismiss based on procedural defects within ninety days of arraignment. *See* Rule 5-601(E)(1) NMRA. Objections to venue cannot be (and were not in this case) hidden from the State, because those objections can be waived if not raised at the preliminary hearing. *Cf. State v. Shroyer*, 1945-NMSC-014, ¶ 17, 49 N.M. 196, 160 P.2d 444 (holding that the defendant's right "to object on venue grounds was waived by his appearance and participation in the preliminary without raising the point.").

On the other hand, were the rules of statutory construction to be set aside and case-by-case "nonstatutory tolling" adopted, it would permit the State to subvert the very purpose of the statute of limitations by waiting until the final days without preparing its case, filing a manifestly defective complaint as a placeholder, and then building its true charging instrument in the months it takes the defendant to obtain an involuntary dismissal. It is not unreasonable for a legislative body to take the position that such a defective charging document deserves no special deference under the law. The State in this case had six years full of opportunities to file in Sandoval County. It had months of direct warnings that failing to do so could result in dismissal. But keeping venue in Santa Fe County mattered enough to the State that it chose not to do so, even knowing it would violate Ms. Padilla's procedural and constitutional rights to force her prosecution in an improper venue. No court should now reward those tactics by resurrecting a prosecution that should, by every right and expectation of any criminal defendant, be time-barred.

CONCLUSION

For the reasons stated above, Ms. Padilla respectfully requests that the Court affirm the Court of Appeals' dismissals of the State's criminal charges against her on the grounds that they are barred by the statute of limitations.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Answer Brief was electronically served on October 13, 2023 to the following:

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