



S-1-SC-40715

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

BRYCE FRANKLIN,

Petitioner,

vs.

RONALD MARTINEZ, Warden

Respondent.

PETITIONER'S BRIEF IN CHIEF
ON CERTIORARI UNDER RULE 12-501 NMRA

ORAL ARGUMENT IS REQUESTED

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July 14, 2025

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Statement Regarding Record Citations

District court proceedings were audio recorded and transcripts are CDs containing FTR files, which counsel reviewed using FTR. Proceedings are cited by date and FTR timestamp, i.e., 09.30.2024/12:34:56. The record proper is cited by page number, i.e., RP 1. Documentary and photographic exhibits are cited by number. State's exhibits are cited as "Exh.," while defense and court exhibits denote "Def.Exh.".

Certification of Compliance

The body of this brief exceeds the page limits (35 pages) set forth in Rule 12-213(F)(2) NMRA. Counsel used Century Schoolbook, a proportionally-spaced type style / type face.

As required by Rule 12-213(F)(3) NMRA, counsel certifies that this brief in chief is proportionally spaced and the body of the brief contains 5,173 words. This brief was prepared using Corel Word Perfect, version X9.

I. Introduction

The New Mexico Constitution gives its citizens greater rights to enjoy and defend property than its federal counterpart. The “Inalienable rights” provision of the State Constitution, Art. II, § 4, declares “all persons” have “certain natural, inherent and inalienable rights . . . which are the rights . . . of acquiring, possessing and protecting property . . .” Conjoined with Art. II, § 18, its citizens cannot be deprived of acquiring property without due process of law. In contrast, the federal constitution’s Fifth Amendment simply protects against a taking of property without due process of law. It does not enshrine the right to acquire property, let alone make it an inalienable right. Given the specificity of New Mexico’s Constitution, it is clear that not only is the number of enumerated property rights higher but the constitutionally protected interests in property are more robust. *See Cordova v. LeMaster*, 2004-NMSC-026, ¶ 8, 136 N.M. 217 (when offered reasons why state constitution affords greater protection than federal constitution, court will interpret claims under state law). Thus, the New Mexico Constitution is a fully independent source of protection of its fundamental rights. Federal law has little to no relevance in deciding Franklin’s claim. His arguments center on the State Constitution and its interpretation by this Court. *See State v. Gomez*, 1997-NMSC-006, ¶¶ 19, 23, 122 N.M. 777 (claim reviewed using state

constitutional principles when New Mexico Constitution “provide[s] more protection than its federal counterpart.”). Franklin asks that the Court review his rights under the Constitution wherein they were ascribed to determine how expansive the rights are.

Franklin is an inmate in New Mexico Corrections Department (NMCD) custody. He submitted a request to acquire certain items from an approved vendor listed in the NMCD “Inmate Property” policy. The policy states inmates can “acquire additional personal property through institutional canteens and [a] list of approved vendors” NMCD Policy CD-150201 (D)(1). NMCD denied Franklin’s request for reasons not included in the policy. It said he was expected to acquire items only from one vendor, Union Supply. If it did not carry a desired item, he could acquire it from another vendor. It claimed the items sought were available through Union Supply and it denied his request to acquire them from Walkenhorst’s.

Franklin asks the Court to hold that a constitutionally protected property interest is embedded in the NMCD Inmate Property policy. As he explains, it is a ruling supported in a variety of ways. First, by patterning the policy’s language after the New Mexico Constitution, NMCD acknowledges the constitutional right to acquire property continues in the prison setting. Indeed, the policy establishes a procedure by which inmates can exercise the

right. Second, using the procedure to acquire personal property confers a benefit to inmates similar to other benefits the state affords its citizens. Likewise, the fact the procedure's use is now customary signifies the protected property interest found in other state benefits is the same here. Third, the discretion to deny an inmate's request is not limitless. When the procedure in place controls how a right may be curtailed, the policy itself engenders a "constitutionally significant interest" that courts must protect. Here, NMCD gave inmates the right to acquire personal property from approved vendors as long as it was not "contraband" as defined in its policy. By expressly devising a procedure for acquiring personal property that included the bases on which the right might be denied, the policy effectively created "substantive predicates" that dictate which "particular outcome must follow." *State v. Houdobre*, 2025-NMSC-007, ¶ 12, 563 P.3d 890. To safeguard Due Process, the outcome should have been the approval of Franklin's request to acquire items from Walkenhorst's. Franklin asks that the Court remand the case to the district court to equitably remedy the deprivation of his Due Process right. Specifically, this Court should direct the district court to order NMCD to complete the valid Walkenhorst's purchase order and to comply with its policy by allowing future acquisitions from all approved vendors.

II. The relevant factual background.

Petitioner, Bryce Franklin, is in NMCD custody. Walkenhorst's is a private company and prison vendor, specializing in products designed for inmates, specifically those in New Mexico. RP 55-56. Pursuant to NMCD Policy CD-150201(D)(1), inmates can acquire additional personal property through approved vendors, one of which is Walkenhorst's. RP 62-63. Franklin submitted a request to acquire additional property from Walkenhorst's. The list included a tablet, game console, typewriter, hotpot, beard trimmers, toiletries, and food items. RP 54. NMCD initially denied his request on the grounds the warden directed the property officer to only recommend approval of requests for items from Union Supply. RP 43.

After Franklin filed a grievance, NMCD repounded:

Inmates are not to order from Walkenhorst [sic] any longer and this is a directive across the state facilities. Inmates may order from inmate canteen or Union Supply an approve [sic] vendor. Inmates must follow the CD-150202.B Personal Property Matrix except for magazines which are not allowed any long [sic] as per the directive of NMCD.

RP 44-45.

When Franklin appealed the grievance officer's decision, NMCD elaborated:

Union Supply has the contract with NMCD as the primary vendor for inmates to order from. Union Supply was the [sic] considered the best option as price, product availability and delivery access. Policy includes Access, Keefe and Walkenhort's [sic] for the option [sic] to order from, if

Union Supply does not stock a product an inmate is approved to have at their facility. Example, if Union Supply doesn't offer tennis shoes, you can order from one of the other vendors.

RP 48.

Contrary to NMCD's contention that Union Supply was considered the best option in price and product availability, Walkenhorst's catalogue demonstrated that it stocked numerous items Franklin requested at a significantly discounted price. It also offered items that Union Supply did not. RP 77-91 (Excerpts from Walkenhorst's catalogue of items listed in Franklin's request); RP 92-139 (Union Supply's complete catalog). As illustrations of the price difference: Walkenhorst's 8 oz. coffee costs \$6.75, whereas the same amount of coffee costs \$9.50 or \$13.95 at Union Supply. Old Spice 18 oz. 3-in-1 costs \$6.50 from Walkenhorst's but Union Supply charges \$10.95 for the same product. Walkenhorst's carries protein supplements, tablets, battery chargers, typewriters, ketchup, soft drinks, a variety of cereals, large deodorants, outlet converters, or beard trimmers. Union Supply does not.

NMCD entered a contract with Union Supply on May 12, 2022. RP 140-154 (Agreement Between Corrections Industries and Union Supply Group, Inc.). The contract obligates Union Supply to pay NMCD \$240,000 per year in rent and to reimburse NMCD with a 32.5% commission on canteen sales

over four years. RP 141-42. Prior to the contract with Union Supply, NMCD had a contract with Keefe Commissary Network. RP 157-160 (Oct. 24, 2021, Santa Fe New Mexican article, *Longtime Prison Commissary Vendor Protesting Replacement*).

Keefe filed a lawsuit against NMCD challenging “the Corrections Department’s process for awarding the lucrative contract.” *Id.* In a separate lawsuit, inmates accused “state corrections officials of violating state and federal antitrust laws by allowing Keefe to overcharge inmates and prohibiting them from purchasing products from other vendors.” Their complaint asked the court “to abolish long-term contracts that lead to monopolies on the inmate commissary market.” *Id.* They also alleged that NMCD was aware the company charged prices exorbitantly higher than market rates on some products but allowed it to continue because “the state gets a portion of commissary profits.” *Id.* In 2021, the 32% commission on Keefe’s sales garnered NMCD approximately \$1 million. The article made clear that Keefe’s prices were similar to Union Supply’s. For instance, Keefe charged \$14.27 for an 8 oz. jar of Folgers coffee. *Id.* Such pricing taxed inmates’ funds as they earned as little as 25 cents an hour. *Id.*

Besides telling Franklin he was expected to order only from Union Supply, NMCD further limited his acquisitions to property listed in NMCD’s

Personal Property Matrix. RP 161. Although the Property Matrix does not specifically list tablet, game console, or typewriter, inmates in other facilities have acquired the items as has Franklin. RP 157-58, 163-67. In the past, Franklin has been permitted to order, or has possessed, an alarm clock, hot pot, board games, cards, battery charger, MP3 player, tablet, and a game console even though the items are not listed on the Matrix. *Id.* In other words, the Property Matrix is not a comprehensive list of the items inmates can acquire.

The district court held a hearing in which the parties summarized their written arguments. 04.30.2024/1:31:48-2:03:06. Afterward, the court denied Franklin's petition. It ruled that NMCD's policy for acquiring additional personal property did "not rise to the level of a protected property or liberty interest." RP 232. The policy did not give Franklin "an automatic right to purchase any item from an approved vendor." *Id.* It said NMCD had the discretion to designate an item as contraband even if it was offered in an approved vendor's catalogue. How it designated contraband was wholly within its discretion. RP 232-33.

Franklin filed a petition for a writ of certiorari with this Court. Franklin's petition alleges that the district court erred by finding NMCD's policy does not create a property interest that inmates can enforce and courts

must protect. This Court granted his petition and ordered the parties to brief the issue.

III. Argument

A. The standard of review.

Citing the New Mexico Constitution, Art. II, secs. 4 and 18, Franklin's petition for a writ of habeas corpus contends that he had a legitimate property interest in acquiring additional personal property. RP 28, 32. He argued that NMCD unjustly curtailed the right by not following its own policy. By acting arbitrarily, NMCD violated Due Process under the New Mexico Constitution. *Id.* The district court ruled that NMCD Policy CD-150201 did not "rise to the level of a protected property interest." RP 232-33. In its view, NMCD had discretion to decide what items may be considered contraband. *Any* denial of a request to acquire property came within its broad discretion and, therefore, could not be arbitrary. *Id.*

New Mexico's Rules of Criminal Procedure provide that a prisoner's petition for a writ of habeas corpus should be granted only if the "custody or restraint is, or will be, in violation of the constitution or laws of the State of New Mexico or of the United States." Rule 5-802(A) NMRA. As he did in the district court, Franklin argues here that the NMCD inmate property policy gave him a protected property right. When NMCD arbitrarily denied his

request to acquire personal property as a protected right, it also failed to afford him any procedural due process protections. “Claims involving the denial of procedural due process are legal questions” that this Court reviews de novo.” *Houidobre*, 2025-NMSC-007, ¶ 7 (quotation marks, citation omitted). When, like here, “a due process analysis requires [the Court] to determine the nature and scope of a state-created [property] interest through statutory interpretation,” its review is likewise de novo. *Id.* (citation omitted).

B. New Mexico citizens have an inalienable right to acquire property that is not wholly expunged by imprisonment and remains protected from arbitrary infringement.

When this Court reviews whether an individual was denied due process, it first examines whether State law created a “constitutionally significant interest” that the Court must protect. *Houidobre*, 2025-NMSC-007, ¶¶ 8-9. In this first section, Franklin describes the numerous legal grounds by which this Court may rule that NMCD Policy CD-150201 creates a protected property interest for inmates. In the next section, Franklin explains how NMCD acted arbitrarily, in contravention of its own policy, when it denied his request to acquire personal property from a known approved vendor.

The State Constitution establishes an inherent and inalienable right for every person to acquire, protect, and possess property. N.M. Const. Art. II, § 4. As with all constitutional rights, the right continues in prison and is to be protected by the courts. *See Turner v. Safley*, 482 U.S. 78, 84, 95 (1987) (courts will “protect” inmates’ constitutional rights when “prison regulation or practice offend a fundamental constitutional guarantee”) (quotation marks, citation omitted). Thus, an inmate retains a right to acquire property though it can be circumscribed by “legitimate penological objectives.” *Id.* at 95.

NMCD policy on personal property acknowledges these legal principles.

C. The NMCD policy establishing guidelines for an inmate to “acquire additional personal property” recognizes acquisition as an inalienable right that gives inmates a constitutionally protected property interest.

By its plain language, which mirrors that used in the Constitution, the policy intends to give inmates a protected interest in acquiring property. Using the same wording from the “Inalienable rights” provision, the policy states “inmates may *acquire* additional personal property through institutional canteens and the following list of approved vendors” (emphasis added). Although NMCD could have used the verb “purchase,” as money is generally paid to obtain items from the canteen and vendors, it instead chose to use, “acquire.” The common understanding of “acquire” and the context in which the policy was developed show the phrasing was

deliberate.

When analyzing the meaning of words in a statute or regulation, the court “must adhere to the plain meaning of the language.” *State v. Maestas*, 2007-NMSC-001, ¶ 14, 140 N.M. 836. “Acquire” means “to gain possession of.” The Merriam-Webster Dictionary (2004); Black’s Law Dictionary (12th ed. 2024) (same). “Possession” implies ownership, which is the crux of this “fundamental constitutional right.” *State v. Nunez*, 2000 -NMSC- 013, ¶ 64, 129 N.M. 63; *see also State v. Montano*, 1979 -NMCA- 101, ¶ 32, 93 N.M. 436 (legal ownership comprised of “possession, right of possession, and right of property.”); *Slaughter-House Cases*, 83 U.S. 36, 97 (1872) (Field, J., dissenting) (“the right to acquire and possess property of every kind” is a “fundamental privilege” that state may not “abridge”). Here, “acquire,” as in the Constitution, is one of the indispensable elements that collectively comprise constitutional property rights; namely, “possession, control, and disposition.” *Phillips v. Washington Legal Foundation*, 524 U.S. 156, 170 (1998); *see also Bryant v. Barbara*, 11 Kan.App.2d 165, 170 (Ct. App. 1986) (“defining ownership rights to property” by directing how property may be “lawfully obtained” and requiring that property be registered). The plain meaning of “acquire” shows NMCD used that verb knowing its constitutional significance.

The context in which the policy was promulgated also conveys the constitutional significance of the word, “acquire.” *See Maestas*, 2007-NMSC-001, ¶ 19 (court considers context in which law or policy was promulgated). Context may be derived from the laws or other precedent in effect when the new law or policy is drafted. *Id.* ¶¶ 20-21. The court “presumes” drafters are “aware” of existing laws and court precedent. *Id.* ¶ 21. Here, the context in which the property policy was drafted demonstrates NMCD intended for the policy to conform to the Constitution. *See generally, Kentucky Dept. of Corrections v. Thompson*, 490 U.S. 454, 462 (1989) (state law created liberty interests when statutes set standards or criteria that decisionmakers must follow before denying sanctioned privilege); *Houidobre*, 2025-NMSC-007, ¶¶ 6, 10-11 (same); *see also id.* ¶ 26 (“mirrored” language “ensures” same rights protected).

Finally, it is necessary to consider the general rules that necessarily inform the crafting of NMCD policy. First, court precedent expects state agencies to respect state laws when issuing policy statements. In *Princeton Place*, the Court held “an administrative agency has no power to create a rule or regulation that is not in harmony with its statutory authority.” *Princeton Place v. New Mexico Human Services Department*, 2022-NMSC-005, ¶ 29, 503 P.3d 319 (cleaned up). Indeed, the very statutes delineating the purpose and

duties of NMCD require it to abide by state laws. For example, the Secretary and NMCD are forbidden from generating regulations that are “inconsistent with the law.” *See* NMSA § 9-3-5(B)(5) (corrections secretary “shall . . . take administrative action by issuing orders and instructions not inconsistent with the law . . .”). Statutes, then, place substantive limitations on NMCD policy writing. *See* NMSA § 33-2-10 (NMCD “shall make such rules and regulations” for governing and policing prisons “not inconsistent with the law . . .”).

Second, as both the Constitution and NMCD policy address “the same subject matter” – acquiring property – they must be “construed together.” *State v. Davis*, 2003-NMSC-022, ¶ 12, 134 N.M. 172. Since the court presumes the policy drafters were informed by the Constitution’s “Inalienable rights” provision, it may conclude they deliberately chose the word “acquire” to reflect that the inalienable right to property extends to prison. Put simply, the NMCD policy incorporated the drafters’ interpretation of state law. Their interpretation, coupled with meaning and context, shows the policy meant to afford inmates the right, or the privilege, to acquire property. Moreover, the right afforded was a protected right. *McCrae v. Harkins*, 720 F.2d 863, 869 (5th Cir. 1983), *abrogated on other grounds by Augustine v. Doe*, 740 F.2d 322 (5th Cir. 1984).

D. Because NMCD Policy CD-150201 describes a procedure that inmates routinely use to acquire property, it created a property interest that carries constitutional protection.

As Franklin has explained, New Mexico's Constitution grants him the inalienable right to acquire property. NMCD's personal property policy honors the right by detailing how it is to occur in prison. That the policy does not simply ban the acquisition of personal property reveals NMCD's accord with the Constitution. Nevertheless, "reasonable restrictions may be imposed on the type and amount of personal property inmates are allowed to possess in prison." *Bryant*, 11 Kan.App.2d at 167. Therefore, the policy classifies certain items as contraband and restricts quantity by the availability of space and electrical outlets. RP 62 (§ B(5)); RP 64 (§ F). Franklin and other inmates routinely have followed the policy, including its restrictions, to pursue their right to acquire property. RP 163, 165-67. Whether acquisition occurs through the canteen or one of four approved vendors, the policy is a mechanism devised by NMCD that benefits inmates. Franklin's acquired game console is tangible proof of the benefit. RP 188-90, 199, 201; 04.30.2024/2:10:50-2:18:00. More importantly, it also represents the constitutionally protected interest attached to the benefit. This Court has said as much in similar circumstances.

In *New Mexico Dept. of Workforce Solutions v. Garduño*, Garduño received unemployment insurance payments from the state that were later terminated. 2016-NMSC-002, ¶¶ 2-8, 363 P.3d 1176. Before deciding if termination violated due process, the Court considered whether Garduño had a protected interest in the payments. *Id.* ¶ 8. The Court found when a prescribed process results in a benefit from the state, there is a “constitutionally protected property interest” in the benefit. *Id.* ¶¶ 12-13. Relying on *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972), the Court explained “it is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined.” 2016-NMSC-002, ¶ 13.

Garduño made clear that when state law creates a property interest, it is “protected.” *Id.* ¶ 14. Like the unemployment claim in *Garduño*, a state agency devised a “scheme” or process by which inmates acquire property. *Id.* ¶ 16. Once the acquisition process begins and its benefit is received, the inmate “acquire[s] a constitutionally protected property interest” in the benefit. *Id.* ¶¶ 12, 16. Here, the acquisition policy designed by NMCD is forthright in both the benefit and how it is obtained. The policy identifies the specific vendors by whom NMCD profits through contracts and from whom inmates may acquire personal property. The protected property interest is

inherent in the policy's language and design.

E. Policy limits on official discretion is further proof that Franklin's right to acquire property is protected.

The policy's limits on what items may be officially prohibited also indicates a protected property interest. The Michigan Court of Appeals explained its reasoning in *Spruytte v. Department of Corrections*, 184 Mich.App. 423 (1990). There, inmates requested permission to keep personal computers in their cells. Corrections denied their requests without a hearing, citing a directive that allowed typewriters but not personal computers. *Id.* at 426. Before deciding what recourse the inmates might have, the court first had to know if a protected constitutional interest was at risk. *Id.* The court explained such an interest could emanate from directives that place “substantive limitations on official discretion.” *Id.* at 427 (cleaned up). “Particularized standards or criteria” that “guide” decisions on what property prisoners may keep fit the court's meaning of limits on discretion. The court held the inmates had a protected interest in personal property because the directive limited officials' discretion in deciding what property could be withheld. *Id.* at 428. Inmates had a right to keep personal property that was “subject to reasonable regulations to safeguard the public health and the security and housekeeping of the facility.” *Id.* (cleaned up). Officials could not “prohibit receipt of personal property unless they determine the property

poses” the type of threat described in the regulation. *Id.* The court concluded “such a finding is a specific substantive predicate to withholding personal property.” *Id.* By restricting official discretion with conditions, the directive created a protected interest for the inmates. *Id.*; accord *Houdobre*, 2025-NMSC-003, ¶ 9 (statute creates “constitutionally significant interest” by “placing substantive limitations on official discretion.”) (quotation marks, citation omitted).

Although *Spruytte* was considered in the federal context, its analysis still is instructive here. NMCD’s policy, like the one in Michigan, only restricts the acquisition of items designated as contraband. RP 58, ¶ C. “Contraband” and “dangerous contraband” are explicitly defined. Contraband is described as items “prohibited” by law or regulation. It includes items that “can reasonably be expected to cause physical injury or adversely affect the security and safety of the institution.” RP 58, ¶ C. “Dangerous contraband” is specified as an item that “poses a serious threat” to the institution’s security “*and* which ordinarily is not approved for possession by an inmate or for admission into the institution.” *Id.* ¶C(a) (emphasis added). The policy goes on to list obvious examples of “dangerous contraband.”¹ *Id.* Once an

¹Specifically mentioned are weapons, intoxicants, currency, tools used to escape, ammunition, explosives, combustibles, or flammable liquids and hazardous or poisonous chemicals. RP 58, ¶ C(a).

inmate asks to acquire property through the institution's canteen or an approved vendor, the property officer's discretion to deny the acquisition is limited by the criteria set forth in the policy.

Including specific criteria in the policy restrains an officer from denying a request by capriciously declaring an item "contraband." Instead, the officer is expected to assess the item against the criteria before denying the request. In other words, if the item does not adversely affect security and safety or pose a serious threat *and* is not one that inmates ordinarily cannot possess, the officer is expected to approve the request. As *Spruytte* explained, such a finding is a "specific substantive predicate" to denying the request.

The Court used the "substantive predicate" analysis in *Houdobre* and its relevance here is obvious. There, it had to decide if Houdobre's due process rights were violated when NMCD declared him ineligible for a 30 day lump sum meritorious deduction in time and denied him a chance to appeal. 2025-NMSC-007, ¶ 1. To be eligible for the deduction, the statute requires an inmate to successfully complete an approved program. An officer then makes an award recommendation based on the inmate's level of participation in the program. In turn, the recommendation must be approved by the warden. *Id.* ¶ 1. NMCD denied Houdobre's deduction request because it said he had already received a deduction for an earlier program that was the same as the

one just completed. There “was no rule or policy that [the programs] could not both count towards separate awards.” *Id.* ¶ 29.

The Court held that the completion of an approved program made the inmate eligible for, but not entitled to, a deduction in time. Eligibility created a liberty interest in the deduction. *Id.* ¶ 6. NMCD did not have “unbridled discretion” to deny an inmate’s application for a deduction. *Id.* ¶ 24. The Court explained, when the “substantive predicate” is satisfied (program completion), a “particular outcome must follow” (recommendation). *Id.* ¶ 14 (quotation marks, citation omitted). Put differently, unless the inmate is ineligible to receive a deduction, which is determined by statutory criteria, he is entitled to “further consideration” for it. *Id.* ¶¶ 24-25. The Court said NMCD’s reason for declaring Houdobre ineligible was arbitrary because by “its own rules,” he was eligible. *Id.* ¶ 29. Its deprivation of Houdobre’s “constitutionally significant eligibility interest” violated his right to Due Process under the Fourteenth Amendment. *Id.* ¶ 14.

Houdobre dictates a similar outcome here. NMCD’s property policy establishes an acquisition procedure and criteria for how a “significant property interest” - namely, the right to acquire - may be curtailed. *Id.* ¶¶ 9-10, 14. If the substantive predicate is satisfied (requested acquisition from an approved vendor), a particular outcome must follow (recommendation).

Under the policy's procedure, an inmate is free to acquire property from the catalogue of the approved vendor he chooses. The policy's criteria for contraband allows the property officer to curtail a recommendation. But absent a request to acquire contraband, NMCD does not have "unbridled discretion" to deny the request. Like the recommendation for eligibility in *Houdobre*, the property officer's recommendation, here, centers on whether Franklin complied with acquisition rules and whether the item requested fit the policy's definition of contraband. Like in *Houdobre*, Franklin followed the procedural rules and did not offend the criteria for contraband. Accordingly, NMCD is bound to the particular outcome described in its policy. RP 63 (¶E(2)).

Instead, once Franklin had dutifully followed the policy's acquisition procedure, NMCD decided to arbitrarily deny his request. No policy or regulation limited his acquisition to only Union Supply, except when it did not carry a certain item. *Compare*, RP 62-63 (¶¶ D(1), (E)), *with* RP 43-45, 48. More importantly, his compliance had afforded him a constitutionally protected property interest. NMCD's decision to deny his request was completely detached from its policy. *See Houdobre*, 2025-NMSC-007, ¶ 26 ("arbitrary deprivations" of "constitutionally significant interest" violate due process). The "Due Process Clause is an essential guarantee of fairness that

protects against arbitrary governmental acts that deprive a prisoner of a . . . constitutionally significant interest.” ¶¶ 9, 29. NMCD violated Franklin’s Due Process rights when its decision to deny him a protected right arbitrarily abandoned its own rules. 2025-NMSC-007, ¶ 29.

F. NMCD deprived Franklin of a constitutional interest in acquiring property without a meaningful process commensurate to the deprivation.

Franklin has established that NMCD deprived him of a protected property interest. He also can show that NMCD did not “afford adequate process for the circumstances when [it] deprived him” of this “constitutionally significant interest.” *Houidobre*, 2025-NMSC-007, ¶ 26. Indeed, NMCD’s actions here were the equivalent of disallowing “any opportunity to be heard in any form.” *Id.* ¶ 27. Its decision to deny Franklin’s request directly contravened a policy that had been in effect for at least the last five years. Nowhere did the policy say Union Supply was the only vendor from which inmates could acquire property. Nor were inmates told any warden could change the policy on a whim. When Franklin first complained, he was told the warden had directed the property officer to approve only Union Supply requests. RP 43. Later, he was told NMCD’s contract with Union Supply required inmates to order from that vendor only. RP 48. Only if Union Supply did not stock a certain item could the inmate order from the other

three approved vendors. *Id.* Franklin had no notice that NMCD’s personal property policy had been unilaterally changed by the warden. A complaint became meaningless because the change, at least in regard to him, had already occurred. *See* Garduño, 2016-NMSC-002, ¶ 24 (right to be heard of little value when one not apprised of pending change). According to *Houdobre*, in these circumstances, the three factor test from *Mathews v. Elridge*, 424 U.S. 319, 332-33, 335 (1976), that is typically used to decide whether procedures comport with the Fourteenth Amendment is inapplicable. ¶ 27. Instead, the Court must craft an equitable remedy. *Id.* ¶¶ 30-31.

Even if *Mathews* did apply, Franklin can show its balancing test moves in favor of this Court finding that the manner in which NMCD deprived him of his property right did not afford him due process. First, the “private interest” affected by NMCD is a constitutionally protected right to acquire property. Second, there was an immense risk that Franklin would be impermissibly deprived of the right when it was denied in a completely arbitrary manner. Third, the state would not have incurred any fiscal or administrative burden by simply following its own policy guidelines.² NMCD has not been unduly burdened by adhering to its policy for many years. On

²The policy has been in effect since 1997 and was last updated in 2017.

the contrary, it profits from it. NMCD's capricious denial not only compromised Franklin's right to acquire property, it offered him no viable way to enforce the policy as written. Its actions were wholly unconstitutional.

"Traditionally," a habeas corpus petition's claims could be remedied equitably. *Perry v. Moya*, 2012-NMSC-040, ¶ 15, 289 P.3d 1247. In this way, "the court has some flexibility in fashioning an appropriate disposition for the circumstances of a particular case." *Id.* (cleaned up). For constitutional violations, the Court prefers that the remedy be "narrowly tailored and take into account competing interests." *Houidobre*, 2025-NMSC-007, ¶ 30 (quotation marks, citations omitted). A new hearing on remand is the usual remedy but if NMCD cannot provide a fair hearing or its conduct is so troubling, an equitable remedy is a fitting alternative. *Id.* ¶ 31. Here, there is no need for a new hearing. NMCD's policy dictates what must be done. Franklin submitted a request to acquire property from an approved vendor, Walkenhorst's. The property he requested is not contraband and it is less expensive, if available, from Union Supply. *Compare* RP 77-91 (Walkenhorst's) *with* RP 92-139 (Union Supply). As Franklin has a protected property interest in his commissary account, NMCD cannot compel him to spend more so that it may profit. *See Calhoun v. Collier*, 78 F.4th 846, 852 (5th Cir. 2023) (inmates have protected property interest in prison trust fund

accounts, “entitling them to due process with respect to any deprivation of the use of those funds.”). The meaningful process due to Franklin is satisfied by an order directing NMCD to complete Franklin’s Walkenhorst’s order and an order ensuring its future compliance with its policy allowing acquisition from all approved vendors.

Conclusion

For the reasons described in this brief, Franklin asks the Court to reverse the district court’s denial of his habeas petition and hold that Franklin has a protected property interest in acquiring property through NMCD’s personal property policy. He also asks the Court to direct the district court to order NMCD to complete his valid Walkenhorst’s purchase order and to comply with its own policy by allowing future acquisitions from all approved vendors.

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Request for Oral Argument

Franklin requests oral argument. Oral argument is necessary in order to clarify the facts and the parties' positions with respect to the important issues raised in this case.

s/Kurt Mayer

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Appellate Counsel for Bryce Franklin

Certificate of Service

I hereby certify that upon acceptance by Odyssey File & Serve, a copy of this brief, e-filed this 14th day of July, 2025, will be served electronically upon Sarah Karni, at Skarni@nm DOJ.gov, counsel with the NMDOJ Criminal Appeals Division.

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