



S-1-SC-40715

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

BRYCE FRANKLIN,

Petitioner,

vs.

RONALD MARTINEZ, Warden

Respondent.

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

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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., 04.30.2024/12:34:56. The record proper is cited by page number, i.e., RP 1.

Certification of Compliance

The body of this reply brief exceeds the page limits (15 pages) set forth in Rule 12-318(F)(2) NMRA. Counsel used Century Schoolbook, a proportionally-spaced type style / type face.

As required by Rule 12-318(F)(3) NMRA, counsel certifies that this reply brief is proportionally spaced and the body of the brief contains 3,642 words. This brief was prepared using Corel Word Perfect, version X9.

I. The New Mexico Constitution gives inmates a constitutionally protected property interest to acquire property.

In its answer brief, the state argues that Franklin did not preserve his claim that New Mexico Corrections Department (NMCD) policy creates a protected property interest, which is enforceable by inmates. The record shows that the state's allegation is unfounded.

In the district court, Franklin said the refusal to let him order directly from Walkenhorst's, *as permitted by NMCD policy*, violated his rights under "Article 2, Sections 4 and 18 of the New Mexico Constitution." RP 32. He stressed the two sections' applicability to his claim by quoting from both verbatim. *Id.* He then argued that a protected property interest in acquiring additional property under the terms of NMCD's property policy "arise[s] from both the due process clause itself, and state law." RP 33. He said, "property interests are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law" *Id.* Contrary to the state's contention, the Court expects no more for Franklin to preserve for its consideration whether he, as an inmate, has a protected property interest to acquire property.

In *State v. Gomez*, this Court noted that two elements must be established for it to review a claim that the State's Constitution provides more protection than its federal counterpart. 1997-NMSC-006, ¶ 6, 122 N.M.

777. First, the party must “assert the constitutional principle that provides the protection sought under the New Mexico Constitution.” *Id.* Second, a “factual basis” must have been developed “for the trial court to rule on the issue.” *Id.* Here, the record proves that Franklin did both.

Besides repeatedly invoking New Mexico Constitution Article II, Section 4 in his pleadings, Franklin did so again at the hearing on his petition. There, he said his “first argument [] is that he does have a property interest in obtaining this additional property and that it violates his due process rights not to allow him to purchase from this vendor. The protected property interest arises from both the New Mexico and U.S. Constitution, case law and NMCD policy itself” 04.30.2024/1:34:02-1:42:26. He added that “when an inmate has a protected property interest, due process requires that there be a means to remedy the deprivation of property. NMCD is violating this policy by not allowing him to make purchases from this approved vendor and by providing no means to remedy this deprivation and no opportunity for him to voice his concerns regarding the deprivation of property.” *Id.* He substantiated his claim by providing the court with 23 exhibits. RP 41-167; 187-90; 194-205. The protected property right issue is preserved for the Court to review because “assertion of the legal principle and development of the facts are generally the only requirement to assert a claim

on appeal.” *Gomez*, 1997-NMSC-006, ¶ 6.

The state’s argument against Franklin’s claim shows that it understood the issue. Its written response acknowledged that NMCD’s property policy attempts “to balance an inmate’s right to personal property” with its “safety” concerns. RP 172. It then argued NMCD had not deprived Franklin of any property right and that “none of the authorities” he cited “stand for the proposition that the due process clause incorporates and mandates” selection and pricing options available to those not imprisoned. RP 172-73. Similarly, at the hearing, it disputed Franklin’s claim by contending “the law does not show that inmates have a constitutional property right to order whatever they like from outside vendors.” 04.30.2024/1:52:05-1:55:05. But the legal issue here is the deprivation of the constitutional right to acquire property from an approved prison vendor as per NMCD policy. Thus, on the issue, the state’s response seems to be that “due process and property interests are constrained” in prison. *Id.* With regard to the factual record, it did not object to Franklin’s exhibits and submitted only one of its own: an earlier pleading attached to its response in which it made similar arguments. RP 175-185. *See Gomez*, 1997-NMSC-006, ¶ 8 (finding state’s argument justifying police conduct indicated it believed factual record was sufficient).

The purpose of preservation is to ensure the trial court had the facts necessary to rule on the issue and that the opposing party was able to challenge the claim. *Gomez*, 1997-NMSC-006, ¶ 9-10. Here, the conditions for preservation were achieved. It is clear that the district court had the facts it needed. Likewise, that it considered Franklin’s claim and the state’s challenge. The district court’s order shows that it ruled on the constitutional property right under the state constitution. Yet, it found that NMCD policy CD-150200 did not give Franklin a protected property interest to acquire property. RP 232. More specifically, it determined the policy did “not guarantee” Franklin “an automatic right to purchase any item from an approved vendor.” *Id.* Even if no argument below stated the property rights granted New Mexico citizens in Art. II, Sec. 4 are more expansive than those in the federal constitution, the state was not prejudiced in any way. *Gomez*, 1997-NMSC-006, ¶ 9; *see also id.* ¶ 14 n. 2 (preservation rule “places limitations on parties, but not on courts.”). This Court pointed out in *Gomez* that “the trial court is charged with knowing and correctly applying established New Mexico precedent interpreting the state constitution.” The party’s only task is to “assert[] the principle recognized in the cases” and to “develop[] the facts adequately” so the “opposing party” had an “opportunity to respond and . . . the court [had] an opportunity to rule.” *Id.* Like *Gomez*,

Franklin “invoked a principle recognized under the New Mexico Constitution” and presented pertinent facts from which the court could meaningfully rule on the issue. This Court should review and decide the protected property right issue on which it granted Franklin’s petition for a writ of certiorari. *See Gomez*, 1997-NMSC-006, ¶ 31 n. 4 (even if petitioner fails to preserve state constitutional claim in district court, this Court can consider it if it concerns “a fundamental right.”).

The state claims because the brief in chief did not specifically raise fundamental error, the Court should not use the standard in its review.

AB 11. Franklin had no reason to argue fundamental error in the brief in chief because he believes the record shows the issue was abundantly preserved. If the Court believes otherwise, then the infringement by NMCD of Franklin’s constitutionally protected right to acquire property is itself a fundamental error. *State v. Harrison*, 2010-NMSC-038, ¶ 10, 148 N.M. 500.

The argument is not one now newly raised but one asserted in direct response to the state’s claim in its answer. Accordingly, the “failure” to assert fundamental error earlier does not prevent its use in evaluating whether NMCD’s deprivation of Franklin’s constitutional rights requires this Court to reverse the district court and grant his petition for a writ of habeas corpus.

See Mitchell-Carr v. McLendon, 1999-NMSC-025, ¶ 29, 127 N.M. 282 (general

rule that Court does not address issues raised for the first time in reply brief does not apply when arguments are “directed only to new arguments or authorities presented in the answer brief.”) (quotation marks, citation omitted); *Brashear v. Packers*, 1994-NMSC-108, ¶ 7, 118 N.M. 581 (appellate procedure rule “expressly allows” appellant’s reply brief to address arguments not raised in brief in chief but asserted in answer brief); *cf. Huckins v. Ritter*, 1983-NMSC-033, ¶ 3, 99 N.M. 560 (although technical violation of rules allows court to refuse to address claim, refusal not required if “transcripts and briefs are sufficient to present the essential question for review on the merits”); *accord State v. Martinez*, 1996-NMCA-109, ¶ 13, 122 N.M. 476 (court not required by appellate rules to disregard an issue when appellant does not comply with preservation provisions, especially when reply brief describes how issue was preserved).

Defining the property rights that New Mexico’s citizens can enforce under Art. II, Sec. 4 is also an issue of important public interest. This Court has repeatedly decided unpreserved constitutional questions, especially those involving fundamental rights “available to everyone.” *See Harrison*, 2010-NMSC-038, ¶ 12 (whether state has authority in Indian country is an issue of “important public interest”); *State v. Pacheco*, 2007-NMSC-009, ¶ 11, 141 N.M. 340 (addressing issue under “general public interest exception” because

not speaking English affects citizen’s state constitutional right to serve as juror and accused’s right to fair and impartial trial by jury); *see also Atencio v. State*, __-NMCA-__, ¶ 48, __ P.3d __ (2025) (A-1-CA-42006) (enforceable fundamental rights are those “available to everyone.”) (quoting *Morris v. Brandenburg*, 2016-NMSC-027, ¶ 34, 376 P.3d 836)). It is proper for the Court to do so again here.

II. New Mexico Constitution Article II, Section 4 specifically grants all New Mexicans the fundamental right to acquire property.

The state likens Section 4 of the State Constitution to the preamble to the Declaration of Independence. As such, it is not a “source for a fundamental or important constitutional right.” AB 21. Indeed, in its view, the express language of Section 4 on the “right[] . . . of acquiring, possessing and protecting property” may simply be read out of the text because, like the Declaration’s preamble, it is not “legally binding” and thus, unenforceable. *Id.* Any other interpretation is “a baseless and impractical stretch.” *Id.*

The State Constitution cannot be interpreted in such a way that parts of it are “rendered surplusage or superfluous.” *Hannett v. Jones*, 1986-NMSC-047, ¶ 13, 104 N.M. 392. The Constitution’s framers included the right “of acquiring property” in the enumeration of rights guaranteed as “inherent,” which implicated the concomitant ability to “defend” the right

against unconstitutional interference by the government. *Griego v. Oliver*, 2014-NMSC-003, ¶ 1, 316 P.3d 865. The founders used word choice and word placement to enshrine citizens’ property rights as inalienable. *See State v. Vest*, 2021-NMSC-020, ¶ 18, 488 P.3d 626 (error to ignore meaning of full phrase used by legislature); *see also Kennedy v. Braidwood Management, Inc.*, 606 U.S. ___, 145 S.Ct. 2427, 2468 (2025) (Thomas, J., dissenting) (recognizing the need to be explicit, “Congress’ choice of words matters.”). Thus, in Section 4, “acquiring property” is an inherent right “to gain possession” of property in a manner that does not injure others. *State v. Brooken*, 1914-NMSC-075, ¶ 13, 19 N.M. 404. Contrary to the state’s efforts to paint the language as that of a preamble, Section 4 “involves a great deal more than a vague reference to ‘safety and happiness.’” *Morris v. Brandenburg*, 2015-NMCA-100, ¶ 112, 356 P.3d 564 (Vanzi, J., dissenting), *aff’d*, 2016-NMSC-027, 376 P.3d 836. Indeed, like the clauses of the Fifth Amendment, each part of Section 4 is distinct and clear.

Two years after the state constitution became law, this Court held in *Brooken* that “the Legislature cannot deny the right to acquire, possess, and protect property” 1914-NMSC-075, ¶ 13 (citing art. II, sec. 4). The Court found the state may regulate property rights but the regulations must be “reasonable” and necessitated by the “public welfare, so that others may not

be injured.” *Id.* Ultimately, it went on to rule the statute being challenged was not unconstitutional because it was reasonable and still allowed “the exercise and enjoyment of the constitutional guaranties” *Id.* The Court’s express acknowledgment of the inviolability of inherent rights there is echoed later in *Griego*: “When government is alleged to have threatened any of these rights, it is the responsibility of the courts to interpret and apply the protections of the Constitution.” 2014-NMSC-003, ¶ 1.

Now, the state contends the ability to reasonably regulate an inalienable right implies the right is not a fundamental one. Unsurprisingly, its proposition is unsupported by any authority. Instead, in articulating two parameters for regulating the exercise of property rights, *Brooken* simply set an early and uncontroversial example for future court surveys of statutes or regulations challenged on due process or equal protection grounds. *See e.g. Breen v. Carlsbad Municipal Schools*, 2005-NMSC-028, ¶ 8, 138 N.M. 331 (depending on right affected by challenged ordinance, one of three levels of review applied); *Marrujo v. N.M. State Highway Transp. Dep’t.*, 1994-NMC-116, ¶ 10, 118 N.M. 753 (state must demonstrate compelling state interest accomplished by least restrictive means when fundamental right, such as “the deprivation of . . . property,” is purportedly affected); *Futrell v. Ahrens*, 1975-NMSC-044, ¶¶ 10, 16, 88 N.M. 284 (imposition of “reasonable” regulation on

exercise of First Amendment right constitutional as right “is not absolute.”). In other words, courts understood what the state does not: regulating the exercise of a right did not make the right less fundamental.

As already argued, Section 4 of the Constitution’s Bill of Rights undeniably gives New Mexicans a fundamental right to acquire, possess and protect property. Moreover, the right is a “more expansive guarantee” than any “guarantee under the United States Constitution.” *Morris v. Brandenburg*, 2016-NMSC-027, ¶ 48, 376 P.3d 836 (cleaned up). In *State v. Nunez*, the question before the Court was whether the phrasing of Section 4 intended the enumerated property rights to be a “fundamental right” of all New Mexicans. *State v. Nunez*, 2000-NMSC-013, ¶ 64, 129 N.M. 63. The Court concluded Section 4 viewed property rights as fundamental. It said that state forfeiture of an individual’s property constituted a deprivation “of the fundamental constitutional right of ‘acquiring, possessing and protecting property.’” *Id.* (quoting N.M. Const. art. II, sec. 4). Despite what the state now espouses, the property rights afforded in Section 4 are fundamental rights that this Court must protect. *See Griego*, 2014-NMSC-003, ¶ 1. In addition, the government’s ability to “reasonably regulate” certain rights does not change their status as fundamental. *Brooken*, 1914-NMSC-075, ¶ 13.

III. Because the State Constitution’s Bill of Rights grants Franklin the protected right to acquire property, albeit subject to reasonable regulation, federal case law is not relevant to the Court’s resolution of the issue.

As Franklin explained early in his brief in chief, New Mexico’s Constitution gives him greater protection than its federal counterpart. BIC 1-3. Federal law applies only if “the right asserted is protected under the federal constitution.” *Gomez*, 1997-NMSC-006, ¶ 19. In Art. II, Sec. 4 (Bill of Rights), the State Constitution affords him, and every other citizen of New Mexico, the specific right “of acquiring” property, which is not found anywhere in the federal constitution. *See Griego*, 2014-NMSC-003, ¶ 1 (finding the right is “enjoyed by all New Mexicans”). As the right to “acquire” property is not a specific right conferred by the federal constitution, the Court examines only the State Constitution. *Gomez*, 1997-NMSC-006, ¶ 19; *see also NARAL v. Johnson*, 1999-NMSC-005, ¶¶ 28-29, 126 N.M. 788 (federal constitutional analysis “inapposite” when it has “no counterpart” to New Mexico’s Bill of Rights provision). Both the textual differences and the case law are clear. Yet, the state invokes federal case precedents by misrepresenting Franklin’s argument. It insists that Franklin believes he is “guaranteed” by NMCD policy to make “purchases from all approved vendors.” AB 12. It then says he is “advanc[ing] a procedural due process claim” governed by federal law. AB 12-19. As the basis for its premise is

incorrect so too is its bid to apply federal law.

Franklin never argued he is “guaranteed purchases from all approved vendors” by NMCD policy. The state’s citation to his brief at 2 and 24 is proof. In the pages cited, Franklin explained that by using the term “acquire” from Art. II, Sec. 4, NMCD Policy CD-150201(D)(1) acknowledged the constitutional right to acquire property continued in the prison setting.¹ BIC 2. By ignoring a “constitutionally significant interest” found in Art. II, Sec. 4, *State v. Houdobre*, 2025-NMSC-007, ¶¶ 8-9, 563 P.3d 890, the state seeks to jump directly to a due process argument grounded in federal law. That is not how an analysis of a possible constitutionally protected interest works. *See Arizona v. Evans*, 514 U.S. 1, 8 (1995) (“[S]tate courts are absolutely free to interpret state constitutional provisions to accord greater protection to individual rights than do similar provisions of the United States Constitution.”).

Whether the due process clause of Art. II, Sec. 18 is violated by acts of

¹Rather than refute Franklin’s explanation, the state flatly claims “NMCD neither patterned its policy after the constitution nor intended to embed in it a constitutionally protected property interest.” AB 24. Its claim is unsupported. Franklin notes NMCD used phrasing from the Bill of Rights in its “Acquisition of Personal Property” policy, which describes how inmates “acquire additional personal property.” Given the plain meaning of “acquire” and the statutory command that NMCD regulations be consistent with the law, NMSA §§ 9-3-5(B)(6), 33-2-10, suggests NMCD used the verb knowing its constitutional significance. The state’s de minimis response is not a persuasive counter to Franklin’s argument.

NMCD depends on whether Franklin has a property interest conferred by Art. II, Sec. 4 that the Court is bound to protect. *Houidobre*, 2025-NMSC-007, ¶¶ 8-9. In other words, due process rights are viewed “through the lens of his right [to acquire property] under Article II, Section 4.” *Morris*, 2016-NMSC-027, ¶ 48. The accepted analytical process seems lost on the state. It complains Franklin is impermissibly “conjoining” the property and due process clauses to “find broader protection in the state constitution. AB 19-22. The Court has “said numerous times” that the first step of procedural due process analysis is to “determine whether the individual has been deprived of a constitutionally significant interest.” *Aragon v. Martinez*, __-NMSC-__, ¶ 26, __ P.3d __ (2025) (S-1-SC-40112) (cleaned up); *see also Houidobre*, 2025-NMSC-007, ¶ 9 (court must first define the “nature and scope” of the constitutional “interest created,” which “may arise” from “the laws of the state”) (cleaned up). Section 4 of the Bill of Rights gives Franklin the fundamental right to acquire property. NMCD’s personal property policy protects the right by detailing how it can be exercised in prison. When, like here, the state has deprived the individual of a protected right, the Court *then* determines whether the actions used to do so comport with due process. *Aragon*, __-NMSC-__, ¶ 26 (citing *Houidobre*, 2025-NMSC-007, ¶ 8). Franklin’s analysis aligns with the Court’s precedents.

The state fundamentally misunderstands the “substantive” analysis from *Houdobre* on which Franklin relies. BIC 17-19. The focus of the analysis is the “substantive limitations on official discretion” imposed and the effect of such limits. *Houdobre*, 2025-NMSC-007, ¶ 9; see *Aragon*, __-NMSC-__, ¶ 30 (placing substantive limits on official discretion created a protected liberty interest). Again, rather than engage with the substance, the state dismisses the whole argument by repeating it rests on a belief that NMCD policy “guaranteed inmate purchases with unfettered disregard for official discretion.” AB 25, 27. Not only does the state misconstrue yet another argument but by doing so it misses that a critical component of Franklin’s argument rests on determining the scope of official discretion.

NMCD policy does not uniformly forbid inmates from acquiring non-contraband property. Nor does it give its officials “inherent discretion,” AB 26, to decide what property inmates may acquire. Instead, its “property policy establishes an acquisition procedure and criteria for how ‘a significant property interest’ - namely, the right to acquire - may be curtailed” through reasonable restrictions. BIC 19. Here, when an inmate makes a request to acquire property from an approved vendor, the “Acquisition of Personal Property” policy requires the property officer to make a recommendation on the request. CD-150201(D)(1), (E)(2). The officer does not have unlimited

discretion to deny the request. CD-150201(E)(2) (“the Property Officer shall ensure that the purchase is in accordance with this policy and procedure.”); CD-150200(C) (defining contraband). Official discretion is limited to determining whether the inmate complied with acquisition rules and whether the items fit the definition of contraband. As *Aragon* and *Houdobre* make clear, the limitations a policy places on official discretion is evidence that the policy recognizes a protected property interest. *Aragon*, __-NMSC-__, ¶ 30; *Houdobre*, 2025-NMSC-007, ¶ 9. Accordingly, once an inmate has scrupulously followed the NMCD rules of acquisition, any interest in requested property outside the definition of contraband is protected. Conversely, if NMCD policy gave officials unfettered discretion over property requests, no property interest would be protected. *Id.* As it is, to deny a proper request for property, NMCD officials must follow the procedures set forth in the policy or risk infringing inmates’ due process rights. *Id.*

As Franklin explained in his brief in chief, the decision to deny his request “contravened a policy that had been in effect for at least the last five years.” BIC 21. The long-standing policy did not designate Union Supply as the only vendor from which inmates could acquire property. It did not give wardens license to unilaterally change policy or allow officials to exercise “inherent discretion.” AB 26. In short, NMCD’s arbitrary decision to deny

Franklin's request was not based on its published policy. Franklin received no notice of any policy change. Nor was he given a way to enforce the procedure upon which every inmate relied to exercise their constitutional right to acquire non-contraband property. NMCD violated Franklin's due process rights. Its actions being unconstitutional, Franklin asks the Court to reverse the district court's denial of his habeas petition.

Conclusion

Based on the arguments Franklin presents here and in his brief in chief, he asks the Court to reverse the district court's denial of his habeas petition and hold that he has a constitutionally 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 in all future requests to acquire personal property from approved vendors.

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Certificate of Service

I hereby certify that upon acceptance by Odyssey File & Serve, a copy of this brief, e-filed this 28th day of August, 2025, will be served electronically upon Sarah Karni, at Skarni@nm DOJ.gov, counsel with the NMDOJ Criminal Appeals Division.

s/Kurt Mayer
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