

**PROPOSED REVISIONS TO THE RULES OF EVIDENCE
PROPOSAL 2026-023**

March 6, 2026

The Rules of Evidence Committee has recommended adoption of new Rule 11-415 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed new rule set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's website at <https://supremecourt.nmcourts.gov/rules-forms-files/rules-forms/open-for-comment/> or sending your written comments by mail, email, or fax to:

Elizabeth A. Garcia, Chief Clerk of Court
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
rules.supremecourt@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 5, 2026, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's website for public viewing.

[NEW MATERIAL]

11-415. Evidence of immigration status.

A. **Criminal or delinquency matters; evidence generally inadmissible.** In any criminal or delinquency matter, evidence of a party's or a witness's immigration status shall not be admissible unless immigration status is an essential fact to prove an element of, or a defense to, the offense, to show motive, or to show bias or prejudice of a witness pursuant to Rule 11-607. This paragraph shall not be construed to exclude evidence that would result in the violation of a defendant's or a juvenile's constitutional rights.

B. **Civil matters; evidence generally inadmissible.** In any civil matter, evidence of a party's or a witness's immigration status shall not be admissible unless immigration status is an essential fact to prove an element of, or a defense to, the action, or to show bias or prejudice of a witness pursuant to Rule 11-607.

C. **Procedure.** Unless a party did not know, and with due diligence could not have known, that evidence of immigration status would be necessary, the following procedure shall apply prior to any such proposed use of immigration status evidence:

- (1) The proponent shall file under seal and serve a written pretrial motion containing an offer of proof of the relevancy of the proposed evidence supported by an affidavit.
- (2) If the court finds that the offer of proof is sufficient, the court shall order an in camera hearing.

(3) The court may admit evidence of immigration status pursuant to paragraph A or paragraph B if it finds the evidence is reliable and relevant, and that its probative value outweighs the prejudicial nature of evidence of immigration status.

D. **Voluntary revelation.** This rule shall not prohibit a person, or the person's attorney, from voluntarily revealing his or her immigration status to the court.

[Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. – This rule is modeled after Pennsylvania Rule of Evidence 413.

[Adopted by Supreme Court Order No. _____.]



New Mexico
Courts

Alyssa Segura <supams@nmcourts.gov>

[rules.supremecourt-grp] Open for Comment Form submitted on Supreme Court

Supreme Court <noreply@nmcourts.gov>
Reply-To: noreply@nmcourts.gov
To: rules.supremecourt@nmcourts.gov

Sun, Mar 15, 2026 at 2:47 PM

Name Justin

Rodriguez

Phone Number 5057648111

Email JRodriguez@abrfirm.com

Proposal Number Proposal 2026-023 – Exclusion of Immigration Status

Comment Evidence of immigration status is often important in civil cases involving claims for past or future lost wages or loss of earning capacity. For example, an expert opining on future loss of earning capacity can be properly cross-examined and impeached by inability to work lawfully in the United States. In addition, current case law provides that the cost of future medical care is only reasonable at the location it would ordinarily be rendered. The rule should exclude any limitation on evidence in situations where immigration status has been put at issue by presenting evidence of seeking damages for lost wages or future medical care. When lost wages and future medical care are not at issue, immigration status should be excluded. However, when a Plaintiff in civil litigation voluntarily chooses to place future earning potential or medical future treatment at issue, evidence should be allowed to impeach such contention including that Plaintiff has no lawful ability to work in the US or would be required to seek future medical treatment or care outside the US.



New Mexico Courts

Kateri Eisenberg <supkhe@nmcourts.gov>

[rules.supremecourt-grp] Open for Comment Form submitted on Supreme Court

Supreme Court <noreply@nmcourts.gov>
Reply-To: noreply@nmcourts.gov
To: rules.supremecourt@nmcourts.gov

Fri, Apr 3, 2026 at 8:38 AM

Name Ben

Davis

Phone Number 5052327200

Email bdavis@daviskelin.com

Proposal Number 2026-026

Comment Immigration status is almost never relevant to any type of case. The only relevance is to create prejudice against a witness or a party. That type of bias and prejudice has no place in courts. This will save judicial resources because the courts will not have to deal with numerous motions on the subject.



New Mexico Courts

Kateri Eisenberg <supkhe@nmcourts.gov>

[rules.supremecourt-grp] Open for Comment Form submitted on Supreme Court

Supreme Court <noreply@nmcourts.gov>
Reply-To: noreply@nmcourts.gov
To: rules.supremecourt@nmcourts.gov

Fri, Apr 3, 2026 at 8:48 AM

Name Samuel

Walker

Phone Number 5055084640

Email sam@atkinswalker.com

Proposal Number 2026-023

Comment I fully support this rule. On the civil side of the law, there is no reason that immigration status should be admissible at trial. The only purpose is often only to intimidate and scare parties and witnesses.



**New Mexico
Courts**

Alyssa Segura <supams@nmcourts.gov>

[rules.supremecourt-grp] Support for Proposed Evidence Rule 2026-023 - Excluding Evidence of Immigration Status

F. Michael Hart <mikeh@osolawfirm.com>

Sun, Apr 5, 2026 at 3:07 PM

Reply-To: mikeh@osolawfirm.com

To: "rules.supremecourt@nmcourts.gov" <rules.supremecourt@nmcourts.gov>

Ms. Garcia:

Please accept the enclosed letter in support of the Proposed Rule of Evidence Excluding Immigration Status. I trust you will let me know if you have any questions.

F. Michael Hart

MARTINEZ, HART, SANCHEZ & ROMERO, P.C.

1801 Rio Grande Blvd. NW

Albuquerque, NM 87104

505-343-1776

mikeh@osolawfirm.com



Support for Proposed Evidence Rule 2026-023 Excluding Evidence of Immigration Status.pdf

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April 5, 2026

Elizabeth Garcia
New Mexico Supreme Court
P. O. Box 848
Santa Fe, NM 87504-0848

RE: Evidence Rules Committee Proposal 2026-023 – **Exclusion of Immigration Status**

Dear Ms. Garcia and the New Mexico Supreme Court:

Please accept this letter in support of the Evidence Rules Committee Proposal 2026-023 – **Exclusion of Immigration Status**. The Proposed Rule embodies well-settled New Mexico law and explicitly removes from trials the unfair and illegal prejudice that can poison the proper administration of justice. Judges repeatedly instruct juries throughout the trial that their decision cannot be affected or influenced by prejudice for or against any party. Proposal 2026-023 codifies the balance the court already undertakes with regard to immigration status under Rules 11-401 and 11-404 - excluding all evidence that does not have “any tendency to make a fact more or less probable...” and poses a danger of “unfair prejudice, confusing the issues, misleading the jury ...”. The Proposed Rule instructs judges and parties on an issue that from the first days of statehood has been the law of New Mexico.

Fifty years ago, the New Mexico Court of Appeals held in *Torres v. Sierra*, 1976-NMCA-064 that the immigration status of a plaintiff was irrelevant. “The rule is established that an alien, who is a citizen of a friendly country, and who entered the United States illegally, is entitled to maintain an action for personal injuries.” Id. ¶ 14.

In 2013, in *Gonzalez v. Performance Painting, Inc.*, 2013-NMSC-021 the New Mexico Supreme Court recognized the New Mexico legislature’s clear intent to extend the guarantees of the New Mexico Workers Compensation Act to undocumented workers.

A crime victim’s immigration status is irrelevant under all New Mexico criminal law and procedure, and indeed an undocumented crime victim and her/his family may be entitled to special U-visas allowing continued residence, a green card and eventual citizenship. 8 CFR § 214.14.

The above cases and others have furthered principles that are central to the people of New Mexico. Our law has never retreated from the basic principle that all persons are equal under the law, regardless of immigration status. Indeed, as argued in a law review article I co-wrote with Nicholas Davis and George Quesada in 2015, a core assumption of the

framers of the New Mexico constitution was the equality of all “persons” regardless of citizenship:

More than sixty years passed from the time that New Mexico became a territory of the United States until it passed a constitution and became a state. In those 60 years, the Civil War erupted, the first railway crossed the country, and sixteen other states joined the union. New Mexico had time to study the language of constitutions. New Mexico’s adoption of the term “person” throughout its constitution, instead of “citizen,” is informative. The difference in language is specific, intentional, and key in understanding the framers’ choice to depart from the language used by other states and in the U.S. Constitution, in order to demonstrate broader acceptance of non-citizens in New Mexico.

The New Mexico Bill of Rights uses the term “citizen” exactly, and only twice. According to the New Mexico Constitution, only citizens have the right to bear arms and the right to serve on a grand jury. Curiously, the term is absent from the federal counterparts. In fact, the federal Bill of Rights does not use the term “citizen” at all. This fact, in and of itself, may not reveal a great deal, but when it is coupled with other significant differences between the two documents, the word choices show that the adoption of the New Mexico Constitution was not merely an adoption of the U.S. Constitution, and the two documents should be interpreted differently.

The fact that both “person” and “citizen” are used in New Mexico’s Bill of Rights shows that the frequent use of the terms “person” or “people” is purposeful. The framers of the New Mexico Constitution obviously knew how to narrow the application of specific provisions. Again, this is evidenced by the narrowed application of the right to bear arms, as it only applies to citizens. The absence of such narrowing of other provisions suggests a much broader application of those other provisions.

Further, the fact that both terms are used shows that they have, and are meant to have, quite different meanings. This is most evident in the grand jury provision of the New Mexico Constitution. The grand jury clause uses both terms. The provision requires persons to be indicted by grand juries but limits participation on them to citizens. This shows that the two different terms have intentionally distinct meanings within the New Mexico Constitution. The specificity of the use of each term also shows that the term person or people is meant to be a broader term, with broader application than “citizen”. The requirement that one must be indicted by a grand jury is a protection from the arbitrary abuses of government.

All people are afforded this protection regardless of their citizenship status. In contrast, the right to serve on a grand jury is a right to participate in the mechanics of government. Under no circumstances in a representative democracy would the right to participate in government be available to more people than the right to be

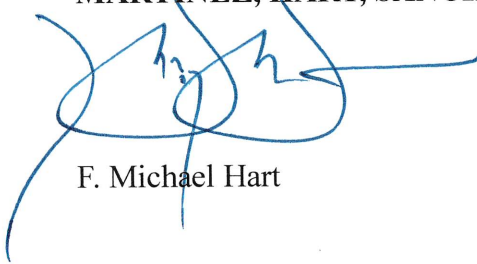
protected from that government. Therefore, the term person is shown to have broader application than the term citizen.

The grand jury provision is evidence that the framers of the New Mexico Constitution knew the word "citizen," sought a specific usage of that word, and deliberately chose not to use it through most of the document.

As noted above, New Mexicans were initially reluctant to be claimed by the United States, and acceptance came with a refusal to relinquish old traditions. When looked at through the lens of its historical context, one realizes that not only did the framers of the New Mexico Constitution want a greater application of that constitution; a greater application was necessary for the continued peace and prosperity of this new state¹.

The proposed Rule excluding evidence of immigration status is in line with the bedrock tradition of New Mexicans, as well as our law. I ask the New Mexico Supreme Court to adopt it as a Rule of Evidence.

MARTINEZ, HART, SANCHEZ & ROMERO, P.C.



F. Michael Hart

¹Davis, N.; Hart; FM.; Quesada, G.; *A Question of Excluding Immigration Status in Civil Court: Why Torres Got it Right*, NMLR Vol. 45, No.3, (2015) pp. 714-716