

STATE OF NEW MEXICO  
COUNTY OF TAOS  
EIGHTH JUDICIAL DISTRICT COURT

PRESIDING JUDGE: Jeff McElroy

NO. D-820-CR-201800167

STATE OF NEW MEXICO

Plaintiff,

vs.

SIRAJ IBN WAHHAJ

Defendant.

FILED IN MY OFFICE  
8TH JUDICIAL DIST. COURT  
TAOS COUNTY, NM 101

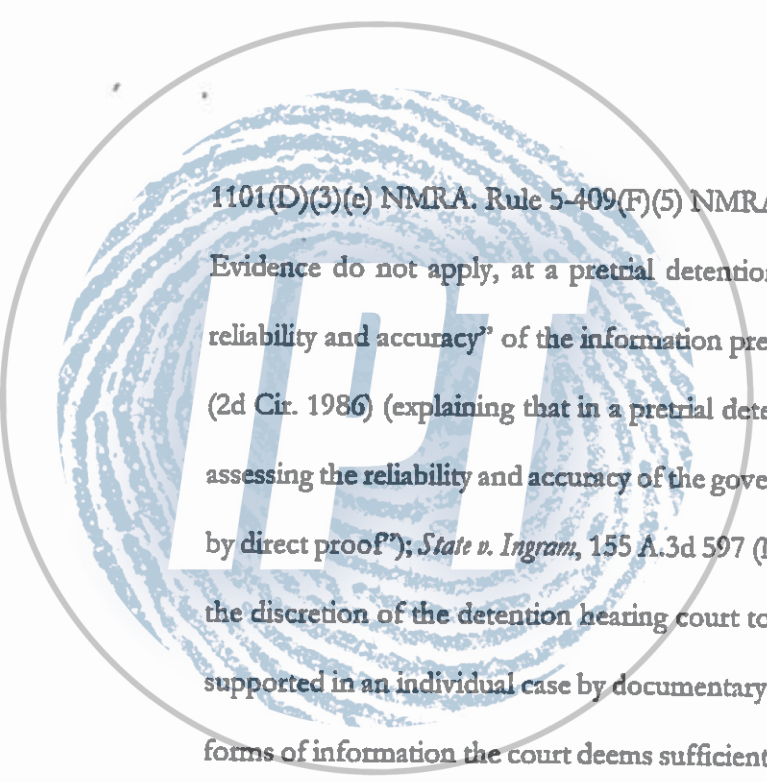
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BERHABE P. STRUCK  
CLERK OF THE  
DISTRICT COURT

**STATE'S EXPEDITED MOTION  
FOR PRETRIAL DETENTION/NO BOND HOLD**

COMES NOW the State of New Mexico, Donald Gallegos, District Attorney for the Eighth Judicial District, by Timothy R. Hasson, Deputy District Attorney, and moves this Court for an order detaining the Defendant under Article II, §13 of the New Mexico Constitution while trial in this case is pending. Such an order is appropriate because no release conditions for this Defendant will protect the safety of others or the community itself.

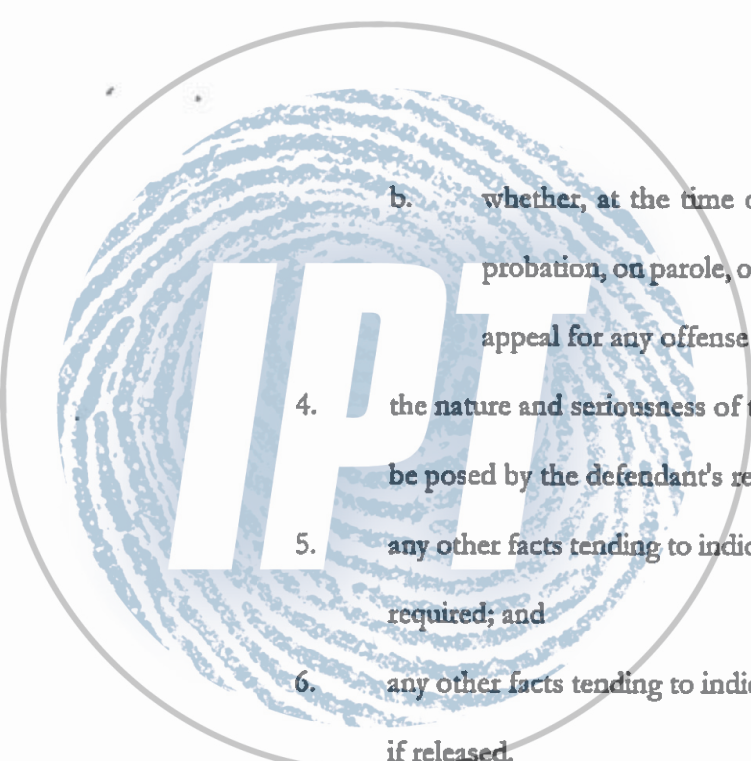
NMRA Rule 5-409 provides that the district court may order the detention pending trial of a defendant charged with a felony offense if the prosecutor files a written motion titled Expedited Motion for Pretrial Detention and proves by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community. Once filed, the district court shall hold a hearing on the motion for pretrial detention to determine whether any release condition or combination of conditions set forth in Rule 5-401 NMRA will reasonably protect the safety of any other person or the community. Rule 5-409(F) NMRA. The New Mexico Rules of Evidence shall not apply to the presentation and consideration of information at the hearing, consistent with Rule 11-



1101(D)(3)(e) NMRA. Rule 5-409(F)(5) NMRA. Like other types of proceedings where the Rules of Evidence do not apply, at a pretrial detention hearing the court is responsible “for assessing the reliability and accuracy” of the information presented. See *United States v. Martir*, 782 F.2d 1141, 1145 (2d Cir. 1986) (explaining that in a pretrial detention hearing the judge “retains the responsibility for assessing the reliability and accuracy of the government’s information, whether presented by proffer or by direct proof”); *State v. Ingram*, 155 A.3d 597 (N.J. Super. Ct. App. Div. 2017) (holding that it is within the discretion of the detention hearing court to determine whether a pretrial detention order may be supported in an individual case by documentary evidence, proffer, one or more live witnesses, or other forms of information the court deems sufficient); see also *United States v. Marshall*, 519 F. Supp. 751, 754 (E.D. Wis. 1981) (“So long as the information which the sentencing judge considers has sufficient indicia of reliability to support its probable accuracy, the information may properly be taken into account in passing sentence.”), aff’d 719 F.2d 887 (7th Cir.1983); *State v. Guthrie*, 2011-NMSC-014, ¶¶ 36-39, 43, 150 N.M. 84, 257 P.3d 904 (explaining that in a probation revocation hearing, the court should focus on the reliability of the evidence).

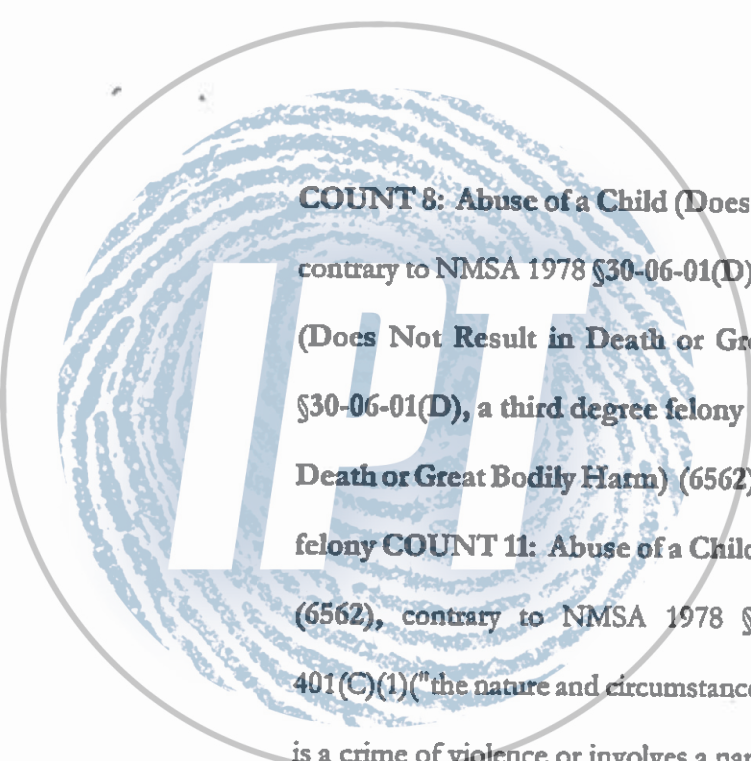
Rule 5-401(C) NMRA provides factors to be considered by the court include the financial resources of the defendant, and the available information concerning:

1. the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves alcohol or drugs;
2. the weight of the evidence against the defendant;
3. the history and characteristics of the defendant, including:
  - a. the defendant’s character, physical and medical conditions, family ties, employment, past and present residences, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

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- b. whether, at the time of the current offense or arrest, the defendant was on probation, on parole, or on other release conditions pending trial, sentencing or appeal for any offense under federal, state or local law;
  4. the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release;
  5. any other facts tending to indicate the defendant may or may not be likely to appear as required; and
  6. any other facts tending to indicate the defendant may or may not commit new crimes if released.

**The State intends to prove the following facts which warrant, by clear and convincing evidence, that pretrial detention is necessary:**

1. This defendant is charged with eleven (11) counts of Abuse of a Child, each charge is a third degree felony. The maximum exposure time for the Defendant on this matter is thirty-three (33) years. **COUNT 1: Abuse of a Child (Does Not Result in Death or Great Bodily Harm) (6562), contrary to NMSA 1978 §30-06-01(D), a third degree felony** **COUNT 2: Abuse of a Child (Does Not Result in Death or Great Bodily Harm) (6562), contrary to NMSA 1978 §30-06-01(D), a third degree felony** **COUNT 3: Abuse of a Child (Does Not Result in Death or Great Bodily Harm) (6562), contrary to NMSA 1978 §30-06-01(D), a third degree felony** **COUNT 4: Abuse of a Child (Does Not Result in Death or Great Bodily Harm) (6562), contrary to NMSA 1978 §30-06-01(D), a third degree felony** **COUNT 5: Abuse of a Child (Does Not Result in Death or Great Bodily Harm) (6562), contrary to NMSA 1978 §30-06-01(D), a third degree felony** **COUNT 6: Abuse of a Child (Does Not Result in Death or Great Bodily Harm) (6562), contrary to NMSA 1978 §30-06-01(D), a third degree felony** **COUNT 7: Abuse of a Child (Does Not Result in Death or Great Bodily Harm) (6562), contrary to NMSA 1978 §30-06-01(D), a third degree felony**



**COUNT 8: Abuse of a Child (Does Not Result in Death or Great Bodily Harm) (6562),** contrary to NMSA 1978 §30-06-01(D), **a third degree felony** **COUNT 9: Abuse of a Child (Does Not Result in Death or Great Bodily Harm) (6562),** contrary to NMSA 1978 §30-06-01(D), **a third degree felony** **COUNT 10: Abuse of a Child (Does Not Result in Death or Great Bodily Harm) (6562),** contrary to NMSA 1978 §30-06-01(D), **a third degree felony** **COUNT 11: Abuse of a Child (Does Not Result in Death or Great Bodily Harm) (6562),** contrary to NMSA 1978 §30-06-01(D), **a third degree felony.** *See* Rule 5-401(C)(1) ("the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug").

2. The weight against the defendant is very strong. The Defendant was found by Sheriff Hogrefe to be in control of a property, upon which eleven (11) children resided. Trip hazards, woods with nails sticking up, broken glass, bottles, and open trenches littered the property. Sheriff Hogrefe found trash scattered around the property, no clean water, no electricity, no indoor plumbing and the children were clothed in rags, appeared to have not eaten in days and loaded firearms were found by law enforcement within easy reach of the eleven children. *See* Rule 5-401(C)(2) ("the weight of the evidence against the person".)
3. Based on the current pending charge(s) the defendant has proven to be a danger to the community. Not only were the living conditions of the compound barren, law enforcement found loaded firearms on the premise. Further, law enforcement found a twelfth (12) child, deceased and in a state of decomposition on the property. Additionally, a foster parent of one of the eleven children stated the Defendant had trained the child in the use of an assault rifle in preparation for future school shootings. Upon information and belief, the Defendant is under investigation for the death of the twelfth child and under investigation for violation of NMSA 30-20A-3, based upon the training of children with weapons in furtherance of a conspiracy to


commit school shootings. Should the defendant be released from custody he poses a great danger to the children found on the property as well as a threat to the community as a whole due to the presence of firearms and his intent to use these firearms in a violent and illegal manner. *See* Rule 5-401(C)(1) ("the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug.")

4. Should the defendant be released from custody the defendant is a flight risk as the defendant does not have family in New Mexico and does not have strong ties to the community. The majority of the defendant's family appear to be from Georgia, New York or other States along the Eastern Coast of the United States. *See* Rule 5-401(C)(3)(b) ("the person's family ties) and Rule 5-401(C)(3)(f) ("any facts tending to indicate that the person has strong ties to the community").
5. Should the defendant be released from custody, there is a substantial likelihood defendant may commit new crimes due to his planning and preparation for future school shootings.

#### **Conclusion**

For these reasons, the State requests that this Court order the defendant to be held in State custody while awaiting a pretrial detention hearing. Further, the State requests this matter be set for a detention hearing wherein the State will prove by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community pending trial in this matter.

RESPECTFULLY SUBMITTED  
DONALD GALLEGOS  
DISTRICT ATTORNEY

By:   
Timothy R. Hasson  
Deputy District Attorney  
105 Albright Street, Suite L  
Taos, New Mexico 87571  
575.758.8683

CERTIFICATE OF SERVICE: I hereby certify that I delivered by bin drop\fax\mail\hand-delivery\electronic discovery a true and correct copy of the foregoing pleading to: Taos Public Defender Office, 105 Sipapu St. Taos, NM 87571.

For the State of New Mexico:

*[Handwritten signature]*

Dated: 8/8/16 /jal