

**STATE OF NEW MEXICO  
COUNTY OF VALENCIA  
THIRTEENTH JUDICIAL DISTRICT COURT**

**PATRICIA GABALDON, as *Personal Representative of the Wrongful Death Estate of Michael Gabaldon, and as Parent, Guardian, and Next Best Friend of D.G., a Minor Child,***

**Plaintiff,**

**v.**

**No. D-1314-CV-2025-00588**

**BOARD OF COUNTY COMMISSIONERS OF THE  
COUNTY OF VALENCIA,**

**Defendant.**

**COMPLAINT FOR VIOLATIONS OF THE NEW MEXICO TORT CLAIMS ACT  
AND THE NEW MEXICO CIVIL RIGHTS ACT**

Plaintiff Patricia Gabaldon, as personal representative of the Wrongful Death Estate of Michael Gabaldon, and as Parent, Guardian, and Next Best Friend of D.G., a minor child, through counsel, Ives & Flores, PA (Laura Schauer Ives, Adam C. Flores, and Andrew J. Pavlides), brings this Complaint for damages under the New Mexico Tort Claims Act and the New Mexico Civil Rights Act. In support of this Complaint, Plaintiff alleges as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff Patricia Gabaldon has been duly appointed as the Personal Representative for the Wrongful Death Estate of Michael Gabaldon to investigate and bring claims against those agencies and individuals responsible for the wrongful death of Michael Gabaldon (“Michael”). Plaintiff is the parent, guardian, and next best friend of D.G., her minor son whom she shared with Michael.

2. Michael was a resident of Valencia County, New Mexico. He was killed by Valencia County Sheriff’s Deputies at his home in Valencia County.

3. Defendant Board of Commissioners of the County of Valencia (“Valencia County” or “Board”) is sued pursuant to NMSA 1978, Section 4-46-1 (1953). Valencia County’s principal offices are located within Valencia County, New Mexico. Valencia County is the employer of the public employees named in this Complaint. Valencia County is directly liable and vicariously liable for the acts and omissions of its employees, including law enforcement officers involved in the death of Michael at his home in Valencia County.

4. Defendant Board is a “local public body” within the meaning of the New Mexico Tort Claims Act, NMSA 1978 § 41-4-3(C) (2015), and a “public body” within the meaning of the New Mexico Civil Rights Act, NMSA 1978 § 41-4A-2 (2021).

5. All events alleged in this Complaint occurred in Valencia County, New Mexico.

6. Jurisdiction and venue in this Court are appropriate pursuant to NMSA 1978, Section 41-4-18 (1953) and NMSA 1978, Section 41-4A-3(B) (2021).

7. Plaintiff provided notice of these claims to Valencia County and the Valencia County Sheriff’s Office (“VCSO”).

### **FACTUAL ALLEGATIONS**

8. Michael was a 51-year-old former sheriff’s deputy and military servicemember, who lived in Valencia County with his wife, Patricia, and their youngest son D.G., who is now 16.

9. Michael was proud to have served his community and remained a steadfast supporter of law enforcement. He proudly displayed a thin-blue-line flag in front of his family’s home.

10. In 2022, Thomas Rodriguez moved in with his mother, becoming immediate neighbors with Michael, Patricia, and D.G.

11. Rodriguez is a felon, schizophrenic, and suffered from serious substance abuse disorder.

12. For three years, Rodriguez terrorized the neighborhood.

13. Among other things, Rodriguez intermittently shot at homes and in the air, shattered neighbors' windows and "popped off rounds" through their walls, screamed at neighbors and broke into their homes, shot out the neighborhood electrical transformer twice (a felony and a federal offense), depriving the neighborhood of electricity until fixed, and repeatedly told his mother that he was going to shoot people outside who he could not see.

14. The situation Rodriguez's presence posed to the neighborhood was so dangerous and volatile that parents in the neighborhood instructed their children not to play outside.

15. VCSO was keenly aware that Rodriguez was a dangerous individual engaged in ongoing criminal activity in the neighborhood.

16. Rodriguez's neighbors repeatedly called VCSO seeking assistance and protection from the danger posed by him.

17. For example, since 2023, neighbors called VCSO to report: that Rodriguez was trespassing on their property and refusing to leave; that Rodriguez was driving recklessly through the neighborhood, endangering lives; that Rodriguez was outside displaying a rifle and pounding on neighbors' doors; that Rodriguez was firing shots into the neighborhood, where children lived; that Rodriguez was throwing rocks at Michael's dogs; that Rodriguez was shooting into a neighbor's home; that Rodriguez was shooting into the street; that Rodriguez shot out a neighbor's window with a BB gun; that Rodriguez was firing his gun at a neighbor while she hid behind her chicken coop; that Rodriguez was firing shots at a neighbor's propane tank; that Rodriguez broke into a neighbor's house; that Rodriguez was frightening a neighbor, banging on her door and

screaming about a baby inside her home; that Rodriguez was firing his gun at the neighborhood's electrical transformer, shutting off power to the neighborhood; that Rodriguez was involved in a shootout with his brother in his own home; and that Rodriguez was behaving erratically, outside, apparently on drugs.

18. VCSO, though aware of the danger posed by Rodriguez, shirked its responsibility to Rodriguez, his neighbors, and the residents of Valencia County.

19. Because of VCSO's apathy and inaction, Rodriguez was emboldened to terrorize his neighbors, and he did so without being subject to criminal charges, mental health assessment or treatment.

20. Some of Rodriguez's neighbors, frustrated and dispirited by VCSO's non-response, did not bother to call VCSO anymore, resigned to the fact that they had to live in fear that Rodriguez might engage in dangerous activity at any time without consequence.

21. On the weekend beginning September 27, 2024, Michael and Patricia still had some faith in law enforcement to address Rodriguez's dangerous criminal behavior.

22. Noting the telltale signs Rodriguez was using drugs and experiencing active psychosis, Patricia called 911 on September 27, 2024, reporting that Rodriguez was unwell and driving dangerously back and forth down their shared dirt road that ran along the neighbors' properties.

23. Nobody from VCSO responded to the neighborhood, though a sheriff's deputy called Patricia back.

24. Patricia described her frustration to the sheriff's deputy, advising him that she, Michael, and their neighbors had called 911 about Rodriguez more times than she could count.

25. The sheriff's deputy told Patricia that VCSO knew Rodriguez had access to an arsenal and that they were going to take action to take his weapons.

26. The sheriff's deputy also told Patricia that she and Michael had every right to do what they needed to do to protect their family.

27. In the early morning on September 29, 2024, a neighbor called 911 to report hearing gunshots from Rodriguez's house. This was only the beginning.

28. For the rest of that day, Rodriguez committed crimes throughout the neighborhood while neighbors cowered in their homes and sheriff's deputies failed to uphold their statutory duties to apprehend him.

29. Patricia called 911 eleven times on September 29, 2024, starting at 3:10 p.m., prompting three separate responses by VCSO.

30. Michael called 911 once on that day, as did other neighbors, including Rodriguez's mother, for a total of at least sixteen desperate calls for help from the neighborhood.

31. Neighbors reported a volatile situation and described hearing and seeing shooting from Rodriguez's yard.

32. One neighbor collected a bullet that Rodriguez fired into her home.

33. In her first calls, Patricia reported that Rodriguez was outside, shooting weapons.

34. Emergency dispatch immediately relayed that Rodriguez was the offender, he was mentally unstable, had access to weapons, was known to discharge those weapons, and that no fewer than two officers should respond to the call.

35. During the first response and while sheriff's deputies were talking to another neighbor, VCSO observed Rodriguez with a gun in hand, running into his house.

36. A sheriff's deputy told Rodriguez to stop before he went inside.

37. Rodriguez did not comply with the order but later emerged without a weapon.
38. VCSO sheriff's deputies spoke to Rodriguez, who was clearly delusional.
39. Sheriff's deputies also spoke with Rodriguez's mother, who confirmed that Rodriguez was extremely mentally ill, had been awake and on drugs for days, that he shoots his guns while in this state outside the home, and that he had been doing so that day.
40. Rodriguez's mother informed VCSO that Rodriguez's guns had previously been "taken away," but that officers had given the guns to Rodriguez's wife who gave them back to Rodriguez.
41. Rodriguez's mother showed deputies where Rodriguez had been shooting and alerted them that Rodriguez had several guns and was wielding an AR-style rifle.
42. A sheriff's deputy discussed New Mexico's red flag law with Rodriguez's mother and removed her and Rodriguez's brother from the house.
43. Thereafter, VCSO learned that Rodriguez had two warrants for "Invalid Suspended" out of Bosque Farms, New Mexico.
44. VCSO established a perimeter around Rodriguez's mother's home and did call outs for an hour, but Rodriguez ignored all police commands.
45. Deputies requested the SWAT team, and when their request was inexplicably denied, they left the scene without making contact with Rodriguez.
46. Shortly after VCSO left, Patricia called 911 again and reported that Rodriguez was back outside, shooting into the air.
47. Rodriguez's mother confirmed over the phone with another individual that Rodriguez was outside shooting again.
48. VCSO then learned that Rodriguez had left the property in a grey truck.

49. Dispatch issued an alert to other agencies that, if they saw the truck and Rodriguez, they should hold him for VCSO.

50. Most significantly, safe and having been taken from her home to a grocery store parking lot, Rodriguez's mother signed an affidavit for an emergency petition to seize Rodriguez's many weapons from him.

51. Deputy Noah Odell expressed hope that Rodriguez "gets his guns taken away for good."

52. Deputy Craig Meo agreed that "he needs to not have guns."

53. Upon information and belief, no one bothered to take any additional steps to enforce New Mexico's red flag law that day.

54. VCSO returned to the neighborhood for the second time that day between 7:00 and 8:00 p.m. in response to 911 calls reporting that Rodriguez had returned and was pointing a gun at neighbors.

55. Michael reported that Rodriguez had sped toward him in the truck and tried to run him over until Michael fired a gun into the air.

56. Patricia also called 911 in a panic because "this man is threatening my husband" and "he's pointing a gun at us!"

57. When sheriff's deputies arrived and Rodriguez again retreated into his home, VCSO Sergeant Porfie Baca discussed SWAT activation with Sheriff's Lieutenant Gary Hall.

58. However, Baca relayed misinformation to Hall, incorrectly stating that Rodriguez may not meet the requirements for a SWAT callout because nobody had reported anything about firearms, no firearms had actually been used, and Rodriguez did not have a violent history.

59. At around 9:30 p.m., sheriff's deputies were given orders to leave the scene for the second time that day.

60. One sheriff's deputy told Patricia that they had requested SWAT twice that day "and been shot down both times."

61. Less than an hour after VSCO refused SWAT and abandoned Michael and his family a second time that day, Patricia called dispatch to report that Rodriguez was shooting his gun, again.

62. A few minutes later, she called 911 to advise that Rodriguez was firing his gun at Michael, who had armed himself to defend his home and family: "Please, please, please get out here now!" Patricia pleaded as gunfire rang out in the background during the call, "He's firing shots at my husband again!" Patricia stated that Rodriguez had fired three shots directly at her husband and that her husband was armed but not shooting back.

63. Sheriff's deputies returned to the neighborhood for the third time that day a few moments later.

64. Two sheriff's deputies reported that Michael and Rodriguez were "exchanging gunfire" and that Michael was defending his property when deputies arrived.

65. Deputy Chavez ordered Michael to drop his weapon, but Michael was standing on his own property near the fence line, actively defending himself from Rodriguez at the time.

66. At no point did Michael present a threat to sheriff's deputies.

67. Michael's actions were reasonable and consistent with self-defense during an exchange of gunfire with the volatile Rodriguez.

68. Deputy Chavez fired a single shot into Michael's back.

69. Deputy Chavez shot Michael approximately 30 seconds after Patricia's final call to 911 ended and approximately one minute after she initiated the call.

70. Deputies failed to provide immediate CPR after Rodriguez retreated into his home.

71. Patricia and D.G. cried out in agony as Michael bled out on the ground in front of them.

72. Michael died from his injuries.

**COUNT I – VIOLATIONS OF ARTICLE II, SECTION 10 OF  
THE NEW MEXICO CONSTITUTION**

73. All previous paragraphs are incorporated by reference as if set forth fully herein.

74. The New Mexico Civil Rights Act provides that “no public body or person acting on behalf of, under color of or within the course and scope of the authority of a public body shall enjoy the defense of qualified immunity for causing the deprivation of any rights, privileges or immunities secured by the bill of rights of the constitution of New Mexico.” § 41-4A-4.

75. Article II, Section 10 of the New Mexico Constitution provides for individuals' security in their persons and protection against unreasonable seizure.

76. The New Mexico Constitution provides greater protections against unreasonable seizures than does its federal counterpart. *State v. Leyva*, 2011-NMSC-009, ¶ 3, 250 P.3d 861.

77. In the Fourth Amendment excessive-force context, in situations where the police create the dangerous situation that precedes their use of force, they are liable for the resulting harm. *See Allen v. Muskogee*, 119 F.3d 837, 840 (10th Cir. 1997).

78. VCSO Deputies created the situation that preceded the use of force against Michael, including when they:

- (a) repeatedly refused to take action against Rodriguez, including through arrest and/or involuntary mental health commitment, though they had

knowledge over the course of years of his dangerous criminal behavior and the threat of harm he posed to his neighbors and the broader community, including Michael;

(b) took no action to confiscate Rodriguez's guns under New Mexico's red flag law, including after his mother signed an affidavit supporting an emergency petition for removal;

(c) repeatedly abandoned the dangerous scene created by Rodriguez on September 29, 2024, emboldening Rodriguez and leaving Michael and his neighbors at risk of harm from Rodriguez; and

(d) informed Patricia and Michael that they could do anything they needed to do to protect their home and their family.

79. As a result of these actions, Michael was left without choice but to arm himself against Rodriguez, who was actively shooting at him, to protect himself, his family, and his home.

80. These actions, considered separately and in tandem, created the situation that led to Deputy Chavez fatally shooting Michael in the back while Michael was defending himself and others and posed no threat to sheriff's deputies on scene.

81. The acts and omissions of VCSO caused Michael to suffer injuries, including death.

**COUNT II – VIOLATIONS OF ARTICLE II, SECTION 18 OF  
THE NEW MEXICO CONSTITUTION**

82. All previous paragraphs are incorporated by reference as if set forth fully herein.

83. Article II, Section 18 of the New Mexico Constitution provides that individuals may not be deprived of life, liberty or property without due process of law.

84. The New Mexico Constitution also provides greater due process protections than does its federal counterpart. *Montoya v. Ulibarri*, 2007-NMSC-035, ¶ 22, 142 N.M. 89.

85. While the Fourteenth Amendment's due process clause does not impose an affirmative duty on the state to aid citizens, an exception exists when government actors create the danger to which the citizen is exposed. *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 196 (1989); *Armijo v. Wagon Mound Pub. Schs.*, 159 F.3d 1253, 1260 (10th Cir. 1998).

86. Danger is created by state actors when they force citizens to take a law enforcement function into their own hands, because such is an affirmative act. *See Okin v. Village of Cornwall-On-Hudson Police Dep't*, 577 F.3d 415, 429 (2d Cir. 2009) ("The affirmative conduct of a government official may give rise to an actionable due process violation if it communicates, explicitly or implicitly, official sanction of private violence.").

87. Danger is created by state actors when they contribute to the vulnerability of the injured party. *Id.* at 428.

88. VCSO Deputies created the dangerous situation to which Michael (and his neighbors) were exposed, including when they:

- (a) repeatedly refused to take action against Rodriguez, including through arrest and/or involuntary mental health commitment, though they had knowledge over the course of years of his dangerous criminal behavior and the threat of harm he posed to his neighbors and the broader community, including Michael;

- (b) took no action to confiscate Rodriguez's guns under New Mexico's red flag law, including after his mother signed an affidavit supporting an emergency petition for removal;

(c) repeatedly abandoned the dangerous scene created by Rodriguez on September 29, 2024, emboldening Rodriguez and leaving Michael and his neighbors at risk of harm from Rodriguez; and

(d) informed Patricia and Michael that they could do anything they needed to do to protect their home and their family.

89. As a result of these actions, Michael was left without a choice but to arm himself against Rodriguez, who was actively shooting at him, to protect himself, his family, and his home.

90. These conscience-shocking actions, considered separately and in tandem, created the dangerous situation that led to Deputy Chavez fatally shooting Michael.

91. The acts and omissions of VCSO caused Michael to suffer injuries, including death.

**COUNT III – VIOLATIONS OF ARTICLE II, SECTION 6 OF  
THE NEW MEXICO CONSITUTION**

92. All previous paragraphs are incorporated by reference as if set forth fully herein.

93. Article II, Section 6 of the New Mexico Constitution provides: “No law shall abridge the right of the citizen to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes. . . . No municipality or county shall regulate, in any way, an incident of the right to keep and bear arms.”

94. The New Mexico Constitution offers a stronger guarantee than does its Second Amendment counterpart. *State v. Gutierrez*, 2004-NMCA-081, ¶ 13, 136 N.M. 18.

95. The Second Amendment “elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home.” *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008).

96. The Second Amendment “guarantee[s] the individual right to possess and carry weapons in case of confrontation.” *Id.* at 592.

97. The New Mexico Constitution guarantees a right to “defend life,” and a “right to safety,” which our Supreme Court has treated as an overarching basis for expanding other state constitutional guarantees beyond their federal limits. *See* N.M. Const., Art. II § 4; *Morris v. Brandenburg*, 2016-NMSC-027, ¶ 49, 376 P.3d 836.

98. In New Mexico, “a person has the right to use lethal force against an intruder when such force is necessary to prevent the commission of a felony in his or her home.” *State v. Boyett*, 2008-NMSC-030, ¶ 15, 185 P.3d 355.

99. Entry into an individual’s home is not required to justify the use of lethal force; lethal force is justified against an intruder who is outside an individual’s home. *Id.* ¶ 16.

100. “The home is one of the most important institutions of the state, and has ever been regarded as a place where a person has a right to stand his or her ground and repel, force by force, to the extent necessary for its protection.” *Id.* ¶ 15 (alteration, internal quotation marks, and citation omitted).

101. At the time he was shot by Deputy Chavez, Michael was lawfully in possession of a firearm.

102. At the time he was shot by Deputy Chavez, Michael was exercising his constitutional and lawful guarantees, including the right to defend himself, his home, and his family with a firearm, and to use lethal force, if necessary, against Rodriguez, an intruder firing bullets, outside Michael’s home.

103. VCSO deputies violated Michael’s constitutional right to protect himself, his home, and his family with a firearm, secured by Article II, Section 6 of the New Mexico Constitution, including when Deputy Chavez fatally shot Michael, who was legally armed with a firearm and engaged in defense of hearth and home.

104. The actions of VCSO deputies, including Deputy Chavez, prevented Michael from exercising his constitutional right to protect himself, his home, and his family.

105. The actions of VCSO deputies, including Deputy Chavez, caused Michael to suffer injuries, including death.

**COUNT IV – VIOLATIONS OF THE NEW MEXICO TORT CLAIMS ACT:  
NEGLIGENCE RESULTING IN ASSAULT AND BATTERY**

106. All preceding paragraphs are incorporated by reference as if set forth fully herein.

107. The New Mexico Tort Claims Act waives immunity for personal injury and bodily injury “resulting from assault [and] battery . . . when caused by law enforcement officers while acting in the scope of their duties.” § 41-4-12.

108. VCSO deputies acted negligently, including when they:

(a) developed policies and training practices that conflicted with law enforcement duties to apprehend violent suspects and foreseeably put the public at risk;

(b) repeatedly refused to take action against Rodriguez, including through arrest and/or involuntary mental health commitment, though they had knowledge over the course of years of his dangerous criminal behavior and the threat of harm he posed to his neighbors and the broader community, including Michael;

(c) took no action to confiscate Rodriguez’s guns under New Mexico’s red flag law, including after his mother signed an affidavit supporting an emergency petition for removal;

(d) repeatedly abandoned the dangerous scene created by Rodriguez on September 29, 2024, emboldening Rodriguez and leaving Michael and his neighbors at risk of harm from Rodriguez ; and

(e) informed Patricia and Michael that they could do anything they needed to do to protect their home and their family.

109. These negligent acts and omissions necessitated Michael's use of a firearm to protect himself, his home, and his family.

110. These negligent acts and omissions left Michael vulnerable to personal and bodily injury, including assault battery.

111. Deputy Chavez assaulted and battered Michael when he pointed a firearm at Michael and shot and killed him.

**COUNT V – VIOLATIONS OF THE NEW MEXICO TORT CLAIMS ACT:  
FAILURE TO COMPLY WITH STATUTORY DUTIES RESULTING IN PERSONAL  
INJURIES AND WRONGFUL DEATH**

112. All previous paragraphs are incorporated by reference as if set forth fully herein.

113. NMSA 1978 § 29-1-1 (1979) states that it is “the duty of every sheriff, deputy sheriff, constable and every other peace officer to investigate all violations of the criminal laws of the state which are called to the attention of any such officer or of which he is aware, and it is also declared the duty of every such officer to diligently file a complaint or information, if the circumstances are such as to indicate to a reasonably prudent person that such action should be taken.”

114. NMSA 1978 § 41-4-3(D) (2015) states that law enforcement officers’ “principal duties under law are to hold in custody any person accused of a criminal offense, to maintain public order or to make arrests for crimes.”

115. Failure to comply with these statutes creates a cause of action under Section 41-4-12. *Blea v. City of Espanola*, 1994-NMCA-008, ¶¶ 17-18, 117 N.M. 217.

116. VCSO deputies failed to comply with these statutes, including when they:

(a) developed policies and training practices that conflicted with law enforcement duties to apprehend violent suspects and foreseeably put the public at risk;

(b) repeatedly refused to take action against Rodriguez, including through arrest and/or involuntary mental health commitment, though they had knowledge over the course of years of his dangerous criminal behavior and the threat of harm he posed to his neighbors and the broader community, including Michael;

(c) took no action to confiscate Rodriguez's guns under New Mexico's red flag law, including after his mother signed an affidavit supporting an emergency petition for removal; and

(d) repeatedly abandoned the dangerous scene created by Rodriguez on September 29, 2024, emboldening Rodriguez and leaving Michael and his neighbors at risk of harm from Rodriguez.

117. The failure of VCSO deputies to comply with their statutory duties caused Michael to suffer personal and bodily injuries, including death.

### **LOSS OF CONSORTIUM ALLEGATIONS**

118. All previous paragraphs are incorporated by reference as if set forth fully herein.

119. Michael and his youngest son, D.G., who was 16 years old at the time of Michael's death, had a mutually dependent relationship while Michael was alive.

120. Michael and D.G. relied on this relationship, and D.G. cannot enjoy life in the same way after Michael's untimely death.

121. As a result of the acts and omissions of VCSO, D.G. is now forced to continue without the companionship, guidance, love, enjoyment, and support of his father.

122. It was foreseeable that D.G. would be harmed by the injuries sustained and by the death of his father.

123. As a direct and proximate result of the acts and omissions stated herein, D.G. has suffered damages.

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests the Court:

- A. Award damages to make Plaintiff whole;
- B. Award attorneys' fees as permitted by law;
- C. Award costs for maintaining this suit;
- D. Award interest as permitted by law; and
- E. Award all other relief the Court deems just and proper.

Respectfully submitted,

**IVES & FLORES, PA**

**/s/ Laura Schauer Ives**

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