

**STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT COURT**

**HAROLD MEYERS, LAURA SIAS, and  
DUKE RODRIGUEZ,**

**Petitioners,**

**v.**

**No. D-101-CV-2019-01967**

**KENNY VIGIL, in his official capacity as  
Medical Cannabis Program Manager of the  
New Mexico Department of Health,**

**Respondent,**

**and**

**MICHELLE LUJAN GRISHAM,  
Governor of the State of New Mexico, and  
STATE OF NEW MEXICO,**

**Respondent-Intervenors.**

**AFFIDAVIT OF CABINET SECRETARY KATHYLEEN KUNKEL**

BEFORE ME, the undersigned authority, personally appeared Kathyleen M. Kunkel, Cabinet Secretary of the New Mexico Department of Health, who, being duly sworn, deposed as follows:

1. I am the Cabinet Secretary of the New Mexico Department of Health ("Department").
2. In that position, I oversee all of the operations of the Department, including the operations of the New Mexico Medical Cannabis Program, which is operated as a division of the Department.
3. The facts stated in this affidavit are based on my own personal knowledge and experience.

4. Pursuant to the writ of mandamus issued by the First Judicial District Court, the Respondent Kenny Vigil, Medical Cannabis Program Director, is compelled to permit nonresidents to enroll as qualified patients in the New Mexico Medical Cannabis Program.
5. In the event that all nonresident applicants are permitted to participate in the New Mexico Medical Cannabis Program, the Department of Health anticipates that there will be a significant influx of nonresident applicants to the Program.
6. The Department anticipates that nonresident applications to the Program will be driven in large part by efforts of medical cannabis producers to expand their market and thereby increase sales.
7. The Petitioner Duke Rodriguez is the Chief Executive Officer of New Mexico Top Organics – Ultra Health, a licensed medical cannabis producer in the NM Medical Cannabis Program.
8. Mr. Rodriguez is also the sole shareholder of Ultra Health, LLC, an Arizona-based corporation that operates as the management company for New Mexico Top Organics – Ultra Health.
9. Upon information and belief, New Mexico Top Organics – Ultra Health has advertised in the state of Texas, on billboards and on the radio, to encourage Texas residents to enroll in the NM Medical Cannabis Program.
10. New Mexico Top Organics – Ultra Health has also issued advertising on the internet in which it announced the ability of nonresidents to enroll in the NM Medical Cannabis Program.

11. Upon information and belief, Ultra Health has advertised in the state of Texas in order to increase demand for Ultra Health's medical cannabis products.
12. Upon information and belief, Ultra Health has affiliated with certifying practitioners for the purpose of increasing patient enrollment in the New Mexico Medical Cannabis Program and increasing Ultra Health sales.
13. The state of Texas does not have a medical cannabis program nor a recreational cannabis program, and it is currently illegal to possess or consume marijuana (cannabis with a THC content of greater than 0.3% on a dry-weight basis) within the state of Texas.
14. Upon information and belief, there are approximately 28 million people who reside in the state of Texas, and over two million of those Texas residents reside within two hours of the Texas-New Mexico border.
15. As previously attested by the Respondent, Kenny Vigil: if only five percent of two million Texas residents were to enroll in the New Mexico Medical Cannabis Program, enrollment in the Program would increase by 100,000, more than doubling the current enrollment of approximately 77,000 qualified patients.
16. Particularly in consideration of the efforts of commercial medical cannabis producers such as Ultra Health to market to Texas residents, the Department anticipates that enrollment by nonresidents will significantly and rapidly increase the total number of persons enrolled as qualified patients in the NM Medical Cannabis Program.
17. This District Court case has resulted in widespread publicity in Texas, Arizona, and elsewhere regarding the potential for nonresidents to enroll in the New Mexico Medical Cannabis Program. See Exhibit 1 (Articles from Texas and Arizona News Outlets).

18. A sudden, significant increase in enrollment from nonresidents will result in delays for resident patients and resident patient-applicants, and could create shortages in the availability of cannabis within the New Mexico medical cannabis market.
19. The state of Texas does not have a medical cannabis or recreational cannabis program, and the Department is especially concerned that allowing Texas residents to access the New Mexico Medical Cannabis market will result in significant interstate trafficking of marijuana across the New Mexico-Texas border, in contravention of both state and federal law.
20. Federal law identifies marijuana as a Schedule I substance, the use and possession of which is prohibited. 21 U.S.C.A. § 812.
21. Particularly in consideration of the current state of federal law regarding marijuana, increased interstate trafficking of medical cannabis poses the risk of generating increased federal scrutiny of the New Mexico Medical Cannabis Program and therefore creates risks of disruption to the Program.
22. According to a report of the U.S. Sentencing Commission, the top five districts for marijuana trafficking offenders in the United States in 2018 were 1) the Western District of Texas (613); 2) the District of Arizona (375); 3) the Southern District of Texas (336); 4) District of New Mexico (107); and the Eastern District of California (51). *See Exhibit 2 (U.S. Sentencing Commission "Quick Facts: Marijuana Trafficking Offenses")*.
23. The Department anticipates that allowing nonresidents to enroll in the NM Medical Cannabis Program will encourage drugged driving across the state's borders, especially

with respect to nonresidents who could not lawfully possess or consume marijuana in a home state such as Texas.

24. Increases in drugged driving present a significant threat to the public health and safety, and drugged driving is a significant cause of morbidity and mortality.

25. The Department of Health is charged by statute with promoting the public health and abating causes of morbidity and mortality, and in seeking a stay of the Court's ruling, the Department seeks to further these statutory purposes. See NMSA 1978, § 24-1-3 (N.M. Public Health Act specifies powers and duties of the NM Department of Health that include "supervis[ing] the health and hygiene of the people of the state and identify[ing] ways to evaluate and address community health problems", and "investigat[ing], control[ing] and abat[ing] the causes of disease, especially epidemics, sources of mortality and other conditions of public health").

FURTHER AFFIDANT SAYETH NAUGHT.

*Kathleen M Kunkel*  
Kathleen M. Kunkel, Affiant

State of New Mexico  
County of Santa Fe

SWORN TO and SUBSCRIBED before me on the 12<sup>th</sup> day of September 2019, by  
Kathleen M. Kunkel

*[Signature]*  
Notary Public

3/30/2020  
My commission expires

