

Cynthia A. Hernandez Madrid
Acting Chief Clerk

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

JOHN DOE,

Plaintiff-Appellant,

v.

No. A-1-CA-42329

**NEW MEXICO LAW OFFICES OF
THE PUBLIC DEFENDER and
NEW MEXICO PUBLIC DEFENDER
COMMISSION,**

Defendants-Appellees.

**PLAINTIFF-APPELLANT JOHN DOE'S
BRIEF IN CHIEF**

Appeal from the Order of the Honorable Francis J. Mathew
of the First Judicial District Court of New Mexico

ORAL ARGUMENT REQUESTED

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CITATIONS TO RECORD PROPER AND TRANSCRIPTS

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STATEMENT OF COMPLIANCE

Pursuant to Rule 12-318(G) NMRA, undersigned counsel certifies that this brief complies with the limits of Rule 12-318(F)(3) NMRA, as it is in a proportionally spaced typeface (Century Schoolbook) and contains 7,830 words, as obtained from Microsoft Word 365.

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I. INTRODUCTION

Until recently, the New Mexico Constitution was, in the words of a former Chief Judge of this Court, “[a]ll [s]hield and [n]o [s]word.” The Honorable Linda M. Vanzi, Andrew G. Schultz & Melanie B. Stambaugh, *State Constitutional Litigation in New Mexico: All Shield and No Sword*, 48 N.M. L. Rev. 302, 302 (2018). Although on paper it established a host of civil rights, no mechanism existed to vindicate those rights.

New Mexico’s indigent-defense system is failing. And this fact is no secret: in 2018, the system’s own leadership issued a report expressing “serious doubt [as to] whether most [indigent] defendants are receiving constitutionally adequate representation.” New Mexico Public Defender Department, *The Law Offices of the Public Defender Strategic Plan, Fiscal Year 2019* (2018), at 10, <https://perma.cc/R7DR-R5Q7>. And in a 2024 report, the leadership again acknowledged that the system is failing, stating that “caseload numbers remain too high to provide effective assistance of counsel in all cases.” Law Offices of the Public Defender, *FY 2026 Annual Report and Strategic Plan* (Aug. 20, 2024) at 28, <https://perma.cc/YG5S-6YXG>.

But because New Mexico law provided no sword with which to vindicate the constitution, these admissions have amounted to a scandal without consequences. Because indigent criminal defendants lacked a constitutional cause of action, those who suffered even the gravest violations of their right to counsel had nowhere to turn for accountability: the Legislature has long immunized most individual indigent defense providers from civil claims, and the State and its public-defense entities were shielded by sovereign immunity. Federal civil rights law, moreover, offered little recourse, as the U.S. Supreme Court held decades ago that individual public defenders are not state actors for the purposes of 42 U.S.C. § 1983. For New Mexico’s indigent criminal defendants, then, the right to counsel was functionally illusory: “expressly guaranteed by the New Mexico Constitution” but lacking any “means by which [it] c[ould] be effectuated.” *Vanzi et al.*, 48 N.M. L. Rev. at 306.

This changed in 2021, when the Legislature passed the New Mexico Civil Rights Act (CRA). The CRA, the result of a rigorous and high-profile legislative process, allows New Mexicans, for the first time, to sue to vindicate the deprivation of their rights enshrined in the New Mexico Constitution, including the right to counsel. It does so by expressly

waiving sovereign immunity for the State and its entities and by making the State both directly and vicariously liable for violations of state constitutional rights. The statute's entire purpose is the vindication of constitutional rights that previously went unenforced.

Plaintiff John Doe is thus exactly the kind of New Mexican whom the Legislature intended to benefit with the passage of the CRA.¹ Doe was an indigent juvenile defendant when he pleaded guilty to an offense that entitled him to be sentenced as a child, be provided appropriate rehabilitative care, and be released from custody and parole by his twenty-first birthday. But Doe's first state-appointed attorney ignored these guarantees and failed to intervene when Doe instead received an illegal, lengthy *adult* sentence of prison and parole. When Doe later received state-appointed habeas counsel, his lawyers again failed to rectify this illegal sentence—even after identifying the discrepancy. The

¹ Doe wishes to proceed under a pseudonym rather than his true name because the documents from the underlying criminal case that gave rise to his complaint have been sealed pursuant to the Children's Code. See NMSA 1978, § 32A-2-26. Doe will provide his full name to Defendants when necessary, subject to an agreed-upon protective order that ensures his confidentiality throughout the entirety of this case. Defendants have not objected to this course of action, and his identity is not at issue in this appeal.

consequences of these errors were devastating: Doe spent the majority of his twenties and the beginning of his thirties in adult prison before his illegal sentence was finally—with the help of pro bono counsel—corrected by a judge in 2023. Doe, in other words, repeatedly received ineffective assistance of counsel.

The CRA creates a straightforward structure of liability to remedy this constitutional harm. Plaintiffs may sue only public bodies, not individuals, and those public bodies “shall be held liable” for both their own conduct and the “conduct of individuals acting” on their “behalf.” NMSA 1978, § 41-4A-3(C). The CRA explicitly waives the sovereign immunity that would otherwise shield these public bodies from suit and also provides that this waiver “shall not abrogate . . . any other . . . statutory or common law immunity.” NMSA 1978, § 41-4A-10.

Doe has followed this statute to a tee. Doe’s unlawful sentence and its consequences were due to the acts and omissions of Doe’s state-appointed attorneys—all of whom worked on behalf of and were supervised by Defendants, the Law Offices of the Public Defender (LOPD) and the New Mexico Public Defender Commission (the Commission)—and to the administrative decisions of Defendants

themselves. These two public bodies are the only Defendants here; Doe has not sued any of his former state-appointed attorneys.

The district court incorrectly dismissed Doe's suit on the grounds that Defendants were immune under Section 10 of the Indigent Defense Act (IDA). This was error because Section 10 of the IDA confers only *individual* immunity, not governmental immunity. The statute reads, in full, that "[n]o attorney assigned or contracted with to perform services under the Indigent Defense Act shall be held liable in any civil action respecting his performance or nonperformance of such services." NMSA 1978, § 31-16-10. Because "attorney" means a person with a law license, not a public body like LOPD or the Commission, it does not confer immunity here. And even if IDA immunity applies to claims arising from the conduct of individual attorneys, which it does not, only one claim of Doe's complaint should have been dismissed, because Doe's second claim arises solely from the administrative decisions of Defendants themselves.

The CRA exists to remedy constitutional harms that previously went unaddressed. Before the passage of the CRA, Doe would have had no redress. Now, however, he is entitled to his day in court. This Court

should reverse and permit Doe to proceed in his pursuit of damages and, just as importantly, transparency and accountability.

II. SUMMARY OF PROCEEDINGS

Because this is an appeal from the grant of a motion to dismiss, the facts described here are taken from the complaint **[RP 1-19]**, which are taken as true for purposes of this appeal. *See Mendoza v. Tamaya Enters., Inc.*, 2011-NMSC-030, ¶ 11, 150 N.M. 258.

A. Nature of the Case and Underlying Facts

In 2011, Doe was arrested in Torrance County, New Mexico for a crime he was alleged to have committed as a minor. **[RP 3]**. He was deemed indigent and assigned an attorney by LOPD. **[RP 4]**. Although Doe maintained his innocence throughout the subsequent plea negotiations, he eventually pleaded guilty to a charge less serious than the one initially sought by prosecutors. **[RP 7]**.

The difference between these two charges—the one which Doe initially faced and the one to which he actually pleaded guilty—is enormous. **[RP 7]**. Under the Children’s Code, a conviction on Doe’s initial charge would have led to his being classified as a “youthful offender.” *See* NMSA 1978, § 32A-2-3(J). **[RP 7-8]**. “Youthful offender[s]” can be sentenced either as children or adults, depending on the result of

a “hearing” at which the court determines whether the child is “amenable to treatment or rehabilitation as a child.” *See* NMSA 1978, § 32A-2-20. The charge to which Doe pleaded guilty, however, was a “delinquent act” and entitled him to classification as a “delinquent offender.” **[RP 9]**. *See* NMSA 1978, § 32A-2-3(A)–(C). This is the least serious of the three classifications given to children who commit crimes, and “delinquent offenders” are afforded significant protections. **[RP 8]**. Doe’s plea to this reduced charge required, under black letter law, that he be adjudicated and sentenced as a juvenile (not as an adult); that he not be subject to an amenability hearing; that he be released from custody and supervision by his twenty-first birthday; and that he serve any confinement in a juvenile facility rather than an adult prison. **[RP 10-11]**.

None of this happened. Instead, Doe’s conviction was—with the full assent of his state-appointed attorney—repeatedly and inexplicably mischaracterized. **[RP 9-10]**. Following his guilty plea, Doe was subject to an amenability hearing—precisely the kind of hearing to which “delinquent offender[s]” may not be subject. **[RP 9]**. Neither Doe’s attorney nor anyone else at LOPD or the Commission intervened; in fact, Doe’s attorney stipulated to the entry of a “Stipulated Order for

Amenability Assessment.” **[RP 9]**. And neither Doe’s attorney nor anyone else at LOPD or the Commission intervened when Doe was found not amenable to rehabilitation as a child, meaning that he would be illegally sentenced as an adult. **[RP 9]**. Following this error, Doe’s attorney stipulated to the form of a judgment and sentence that misstated Doe’s plea deal as encompassing the initial, more severe charges, and later acquiesced again when Doe’s amended sentence contained the same error. **[RP 9-10]**.

Doe was eventually sentenced to three years in adult prison and a parole term of five years to life. **[RP 10]**. Had Doe received the sentence to which he was entitled, he would have been placed not in adult prison, but rather in the custody of the Children, Youth and Families Department (CYFD). **[RP 10]**. While in CYFD care, Doe would have been housed in a facility “for the care and rehabilitation of delinquent children,” *see* NMSA 1978, § 32A-2-19(B); would have received individualized educational programs and services, *see* 8.14.3.8 NMAC; and would have been released from both custody and supervision no later than his twenty-first birthday. **[RP 10-11]**. Instead, Doe spent that birthday—and, ultimately, virtually all of his twenties—in adult prison.

[RP 11]. During this time, Doe was beaten, on multiple occasions, by some of the adults with whom he was housed. [RP 11].

Doe's unlawful sentence also included onerous parole requirements, including a prohibition on living within 1,000 feet of "an area where children may frequent." [RP 11]. When Doe, once on parole, was unable to find housing that met this requirement, he was forced to remain in prison on so-called "in-house parole." [RP 11]. Between 2014 and 2023, Doe spent the vast majority of his days on "in-house parole." [RP 11-12]. Although he occasionally lived in the outside world during this time, Doe was repeatedly sent back to prison because he could not find suitable housing or because of minor alleged violations of his other parole conditions—conditions to which Doe was subject *solely* because of his illegal sentence. [RP 11-12].

Doe's illegal sentence and all of its attendant harm were the result of not just the acts and omissions of Doe's attorneys, but also of the administrative decisions made by Defendants. Some indigent defendants are appointed a public defender, a salaried state employee who represents only indigent defendants. [RP 4]. Others are appointed an attorney who works under contract with LOPD and is subject to the

oversight of the Commission. **[RP 4]**. This latter group of attorneys is often referred to as “contract counsel.”² **[RP 4]**. This two-tiered system is the creation of LOPD and the Commission; no federal or New Mexico law mandates either the creation of this system or the use of contract counsel for public defense. **[RP 4]**.

Unlike public defenders, who are paid a salary to represent indigent criminal defendants exclusively, contract counsel are paid a flat, per-case fee and are permitted to maintain a private law practice alongside their work for LOPD. **[RP 5]**. The current rate for contract counsel representing an indigent juvenile defendant on any charge other than murder is \$360 *per case*.³ **[RP 5]**. Defendants have thus created a system in which the most financially successful contract attorneys will be those who take on as many public-defense cases as possible and work as little as possible on each indigent client’s behalf. **[RP 5-6]**.

² In many of New Mexico’s judicial districts, LOPD provides indigent defense services through a combination of public defenders and contract counsel. In some judicial districts, however—including the Seventh Judicial District, which encompasses Tarrant County—contract counsel, working on behalf of LOPD, are the exclusive providers of indigent defense services.

³ At the time of Doe’s representation, the rate was \$300; in 2023, the rate was raised to \$360.

Doe's first attorney was a contract attorney. **[RP 7]**. In 2010, the year before he accepted Doe as a client, this attorney took on more than 200 new cases. **[RP 7]**. Later, however, when Doe was in prison, LOPD assigned to Doe a public defender from its "Habeas Corpus/Post-Conviction Unit." **[RP 12]**. In June of 2020, this attorney filed a petition for a writ of habeas corpus on Doe's behalf in which she argued that Doe was entitled to a parole review hearing. **[RP 12-13]**. But Doe's habeas counsel did not argue that Doe's entire adult sentence was unlawful and that Doe was therefore entitled to immediate release from prison and parole. **[RP 12-13]**.

This attorney, however, had indeed noticed that Doe was serving a sentence for a crime to which he had not pleaded guilty. **[RP 13]**. Her June 2020 petition noted, correctly, that Doe's "sentence does not accurately reflect the plea agreement." **[RP 13]**. But Doe's public defender did not ask the court to take any action in response to this discrepancy, let alone demand the immediate release to which Doe was entitled. **[RP 13]**. Nor did she, or any other LOPD attorney, demand Doe's release when, the following year, in January of 2021, the court

amended Doe’s sentence to “accurately reflect [his] plea and disposition agreement reached on October 20, 2011.” **[RP 13]**.

Two and a half years into their representation, Doe’s habeas counsel (there were now multiple public defenders on his case) finally recognized that their client was serving an illegal sentence. **[RP 13]**. In November of 2022, habeas counsel notified the court that Doe had been erroneously classified as a “youthful offender” and asked to submit briefing on whether Doe’s adult sentence was lawful. **[RP 13]**. But Doe’s habeas counsel never got around to doing so. **[RP 14]**. Instead, in January of 2023, Doe submitted that petition *pro se*, and he was subsequently represented by pro bono counsel from the American Civil Liberties Union of New Mexico and (De)Serving Life. **[RP 14]**. On September 25, 2023, the district court vacated Doe’s sentence. **[RP 14]**. Specifically, the district court found that:

[Doe’s] adult sentence is illegal . . . and the maximum consequence he [should] have faced was a long-term commitment to CYFD custody. As the Court lacked jurisdiction to sentence [Doe], a child, as an adult when he admitted to a “delinquent act,” he was ineligible for an adult sentence under the Children’s Code.

[RP 14].

Doe was finally released from prison on October 19, 2023. **[RP 14]**. At a hearing that day, a judge of the district court remarked that she was troubled that the unlawful nature of Doe’s sentence had not been caught earlier. **[RP 14]**. All told, between 2012 and 2023, Doe spent 3,842 days—around ten and a half years—in adult prison, and an additional 414 days on non-custodial parole. Each day of this sentence was illegal. **[RP 12]**.

B. Course of Proceedings

On June 27, 2024, Doe sued Defendants under the CRA to redress their violation of his rights under the bill of rights of the Constitution of New Mexico. **[RP 1-19]**. The two-claim complaint alleges that Doe’s attorneys, working on behalf of LOPD and under the supervision of the Commission, violated Doe’s constitutional right to counsel by acquiescing to and failing to correct Doe’s incorrect, unlawful sentence, and that Defendants caused the deprivation of this same right both by failing to adequately train and supervise Doe’s attorneys and by their design and maintenance of the contract counsel system. **[RP 15-18]**.

Defendants moved to dismiss. **[RP 35-44]**. Defendants argued, among other things, that they are immune from Doe’s CRA suit because of Section 10 of the IDA. **[RP 39-40]**. That section provides, in full, that

“[n]o attorney assigned or contracted with to perform services under the Indigent Defense Act shall be held liable in any civil action respecting his performance or nonperformance of such services.” NMSA 1978, § 31-16-10.

In their motion, Defendants acknowledged that the CRA contains an explicit waiver of sovereign immunity for the state “or any public body within the state for claims brought pursuant to the [CRA].” **[RP 39]**. *See* NMSA 1978, § 41-4A-9. Instead, Defendants argued that because the CRA provides that its “waiver of sovereign immunity . . . shall not abrogate . . . any other . . . statutory or common law immunity,” *see* NMSA 1978, § 41-4A-10, and because the IDA is a statute that immunizes “attorney[s] assigned or contracted with to perform [public defense] services,” NMSA 1978, § 31-16-10, Defendants were wholly immune from suit under the CRA. **[RP 39-40]**.

On October 29, 2024, the district court held a hearing on Defendants’ motion to dismiss. **[RP 67]**. During the hearing, the parties reprised their arguments regarding whether Defendants were immune from suit because of the IDA. **[10/29/24 CD]**. At the conclusion of the hearing, the district court announced its intention to dismiss Doe’s

complaint, and in an order dated October 30, 2024, the district court stated that it was granting the motion solely “on grounds that the claims are barred by the immunity provided by the Indigent Defense Act, NMSA 1978, § 31-16-10.” **[RP 69]**. The district court provided no additional explanation for its decision. **[RP 69]**.

This appeal follows.

III. ARGUMENT

The CRA explicitly waives sovereign immunity and authorizes suits against public bodies. Accordingly, Doe’s complaint should be dismissed only if another immunity applies. But none does, and the district court’s finding that IDA immunity cancels out the CRA’s waiver of sovereign immunity was error.

At the threshold, the word “attorney” in the IDA cannot refer to public bodies for at least three reasons. *First*, in the IDA, the plain meaning of “attorney” is an individual person licensed to practice law, not an abstract entity like a public body. *Second*, in the IDA and its companion statute, the Public Defense Act, the Legislature repeatedly and exclusively used “attorney” to refer to individual lawyers—often in direct contrast or relation to LOPD and the Commission. *Third*, the

binding precedent of this Court makes clear that “attorney,” as used in the immunity provision of the IDA, refers only to individual lawyers serving as contract counsel—not even to salaried public defenders, let alone to LOPD or the Commission.

Given that the IDA pertains to individual attorneys only, it cannot be used to shield public bodies from suit. The text of the CRA could hardly be clearer: under the statute, plaintiffs may sue only public bodies, and an individual’s conduct *binds*, not shields, public-body defendants. In addition, the purpose of the CRA was to meaningfully expand government liability for state constitutional violations. Absent any legislative indication that individual immunity also shields public bodies—and here there is indeed none—the CRA should be interpreted in light of that broad remedial purpose. Indeed, this Court and the New Mexico Supreme Court both recently concluded that public bodies sued under the CRA are shielded only by immunities available to public bodies themselves. The reasoning of the district court below directly contradicts this.

Finally, the district court erred in an additional, distinct way: by dismissing both of Doe’s claims when only one relates to the acts and

omissions of his individual attorneys. Doe’s second claim—which is based on the administrative decisions made by Defendants *themselves*, rather than in the conduct of attorneys working on Defendants’ behalf—does not implicate IDA immunity, and it should proceed to trial regardless of how this Court rules on Doe’s first claim.

A. Standard of Review

When “reviewing a motion to dismiss,” this Court “must accept as true all well-pleaded factual allegations in the complaint and resolve all doubts in favor of the complaint’s sufficiency.” *Montaño v. Frezza*, 2017-NMSC-015, ¶ 2, 393 P.3d 700, 702 (internal quotations omitted). And when the district court dismisses a “case solely as a matter of law,” this Court reviews that dismissal “de novo.” *Fitzjerrell v. City of Gallup ex rel. Gallup Police Dep’t*, 2003-NMCA-125, ¶ 8, 134 N.M. 492, 495. Further, this Court reviews de novo all issues of statutory interpretation. *See Barreras v. Archibeque*, 2024-NMCA-053, ¶ 4, 552 P.3d 711, 713. Finally, remedial statutes like the CRA “must be liberally construed,” *Herald v. Bd. of Regents of Univ. of New Mexico*, 2015-NMCA-104, ¶ 25, 357 P.3d 438, 444, while statutes “in derogation of [one’s] common law rights to

sue” must be “strictly construed,” *Methola v. Eddy Cnty.*, 1980-NMSC-145, ¶ 23, 95 N.M. 329, 332.

B. In Section 10 of the IDA, “Attorney” Refers Exclusively to an Individual Human Lawyer

1. *The Ordinary Meaning of “Attorney” is an Individual Human Lawyer*

When interpreting a statute, this Court “begin[s] with the plain meaning of the statute’s words and construe[s] its provisions together to produce a harmonious whole.” *Process Equip. & Serv. Co., Inc. v. New Mexico Tax’n Revenue Dep’t*, 2023-NMCA-060, ¶ 11, 534 P.3d 1043, 1048 (quoting *Rivera v. Flint Energy*, 2011-NMCA-119, ¶ 4, 268 P.3d 525, 526). “[T]he plain meaning rule” dictates that “[w]hen a statute contains language which is clear and unambiguous, [this Court] must give effect to that language and refrain from further statutory interpretation.” *United Rentals Nw., Inc. v. Yearout Mech., Inc.*, 2010-NMSC-030, ¶ 9, 148 N.M. 426, 430 (quoting *Truong v. Allstate Ins. Co.*, 2010–NMSC–009, ¶ 37, 147 N.M. 583, 593 (internal quotations omitted)); see also *Elite Well Serv., LLC v. New Mexico Tax’n & Revenue Dep’t*, 2023-NMCA-041, ¶ 19, 531 P.3d 635, 641 (“only where the literal meaning of a statute would be absurd, unreasonable, or otherwise inappropriate in application” does

this Court “go beyond the mere text of the statute” (citations and quotations omitted)).

Where, as here, the relevant term is not defined by the statute itself, this court gives the term its “ordinary meaning absent clear and express legislative intention to the contrary.” *State v. Johnson*, 2009-NMSC-049, ¶ 10, 147 N.M. 177, 179–80 (citations and quotations omitted). “[D]ictionary definitions may provide guidance about the ordinary meaning of the words at issue.” *Process Equip. & Serv. Co., Inc.*, 2023-NMCA-060, ¶ 11.

The ordinary meaning of “attorney” is an individual human lawyer. Merriam-Webster's Collegiate Dictionary, Eleventh Edition, defines attorney as “one who is legally appointed to transact business on another’s behalf.” *Attorney*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/attorney> (last viewed June 10, 2025); *see also Hum. Servs. Dep’t, Child Support Enf’t Div. v. Toney*, 2019-NMCA-035, ¶ 19, 444 P.3d 1074, 1079 (relying on Merriam-Webster’s Eleventh Edition, available online, for plain-meaning analysis). Similarly, Black’s Law Dictionary defines “attorney” as “one who is designated to transact business for another” or “[s]omeone who practices law.” *Attorney*, BLACK’S

LAW DICTIONARY (12th ed. 2024); *see also Johnson v. Bd. of Educ. for Albuquerque Pub. Sch.*, ___-NMSC-___, ¶ 12, ___ P.3d ___ (S-1-SC-39961, Jan. 23, 2025) (approving the use of legal dictionaries in general, and Black’s Law Dictionary in particular, as legitimate sources for deriving plain meaning). Notably, each of these definitions includes the word “who”—rather than “that” or “which”—indicating that an attorney is a person, not an abstract entity like a public body.

This definition of “attorney” also aligns with the rest of the section in which it appears. Section 10 of the IDA provides that no “attorney” can be “held liable in any civil action respecting *his* performance or nonperformance” of indigent defense services. NMSA 1978, § 31-16-10 (emphasis added). The Legislature’s use of “his,” rather than “its,” further underscores that the word “attorney” refers only to a human lawyer: individual people can have a gender identity, and so can be referred to with a gendered pronoun like “his,” while public bodies, of course, cannot, and so would typically be referred to using the pronoun “its.” *Compare* NMSA 1978, § 74-10-27(D) (referring to the Solid Waste Authority and “its board, its officers, agents or employees”) with

19.25.2.7(N) NMAC (defining a “[p]ro se party” as “an individual who appears on his or her own behalf . . .”).

Finally, other provisions of the New Mexico statutes clearly define “attorney” to mean an individual human. *See* NMSA 1978, § 36-2-13.1(D) (“As used in this section, ‘attorney’ means a person engaged in the practice of law”); NMSA 1978, § 36-3-4(A)(1) (“‘attorney’ means any person who is a member in good standing of the bar . . .”). And appellate courts from other jurisdictions, undertaking similar plain meaning analysis, have also interpreted “attorney” to mean an individual human lawyer. *See State v. Milliman*, 802 N.W.2d 776, 780 (Minn. Ct. App. 2011) (defining attorney as “a lawyer who is licensed to practice law”).

2. *The Relevant Statutory Schemes Also Make Clear That “Attorney” Means an Individual Human Lawyer*

“Under the plain meaning rule, when a statute’s language is clear and unambiguous, [courts] will give effect to the language and refrain from further statutory interpretation.” *State v. Hubble*, 2009–NMSC–014, ¶ 10, 146 N.M. 70, 74 (internal quotations and citations omitted). But when courts do venture beyond plain-meaning analysis, they “consider the statutory subsection in reference to the statute as a whole and read the several sections together so that all parts are given effect.”

Bishop v. Evangelical Good Samaritan Soc., 2009-NMSC-036, ¶ 11, 146 N.M. 473, 476–77. In this instance, courts also consider the statute’s “purpose or object.” *Id.* ¶ 10.

Here, this Court need not undertake these additional considerations, because the plain meaning of “attorney” is entirely clear. Nevertheless, this further analysis cuts in the same direction as the plain-meaning analysis. The IDA and the Public Defender Act—which, as discussed below, are read in *pari materia* and so construed as essentially one law—repeatedly distinguish between individual attorneys, LOPD, and the Commission.

The IDA, NMSA 1978, § 31-16-1 to -10, and the Public Defender Act, NMSA 1978, § 31-15-1 to -12, “together provide a statutory scheme for providing counsel to indigent criminal defendants.” *Herrera v. Sedillo*, 1987-NMCA-098, ¶ 6, 106 N.M. 206, 206. And these two statutes repeatedly distinguish between “attorneys,” the Commission, and LOPD. Indeed, without these distinctions, much of the statutory scheme would be incoherent.

For example, the scheme provides that the chief public defender “is responsible to the commission for the operation of the department,” and

that among the chief's duties are to "formulate a fee schedule for attorneys who are not employees of the department who serve as counsel for indigent persons under the Public Defender Act." NMSA 1978, § 31-15-7(A)–(B).⁴ If "attorneys" here meant anything besides individual lawyers, this provision would make no sense; it is individual lawyers, not LOPD or the Commission, who are paid a "fee" for "serv[ing] as counsel for indigent persons." So too for the subsection that outlines the powers of the Commission, which provides that "the commission shall develop fair and consistent standards for the operation of the department"—including "standards relating to" the "minimum experience, training and qualifications for appointed, contract and staff attorneys." NMSA 1978, § 31-15-2.4(B)(1).

These provisions are just two of many instances in which the statutory scheme makes clear that an "attorney" is an individual human lawyer. *See, e.g.*, NMSA 1978, § 31-15-11(D) ("[a]ttorneys who serve as counsel for indigent persons under contract with the department may

⁴ LOPD is the current name of the entity referred to as the "department" or "public defender department" in the Indigent Defense Act and the Public Defender Act.

engage in the private practice of law”); NMSA 1978, § 31-15-4(B) (chief public defender must be, among other things, “an attorney licensed to practice law in New Mexico or who will be so licensed within one year of appointment” and “an attorney who has clearly demonstrated management or executive experience”); NMSA 1978, § 31-16-4(C) (“[i]f the district court determines that the person is entitled to be represented by an attorney at public expense, it shall promptly assign an attorney who shall represent the person in accordance with the terms of his assignment”). Moreover, the IDA was enacted in 1968, well before the New Mexico Supreme Court abolished common-law sovereign immunity in the 1975 case *Hicks v. State*, 1975-NMSC-056, 88 N.M. 588.⁵ Given this, the Legislature could not possibly have meant for Section 10 of the IDA to also immunize public bodies, as public bodies were already immune from suit under the common law doctrine of sovereign immunity.

⁵ The New Mexico Tort Claims Act, NMSA 1978, § 41-4-1 to -30, was enacted in 1976, shortly after *Hicks* was decided. *See, e.g. Cole v. City of Las Cruces*, 1983-NMSC-007, ¶ 4, 99 N.M. 302, 303 (describing this development).

This Court applies the “absurdity doctrine” to deviate from a statutory term whose plain meaning “results in an absurdity that the Legislature ‘could not have intended.’” *State v. Montano*, 2024-NMSC-019, ¶ 20, 557 P.3d 86, 93 (quoting *State v. Bennett*, 2003-NMCA-147, ¶ 10, 134 N.M. 705, 708). Here, of course, it is Defendants’ preferred definition of “attorney,” not that word’s plain meaning, which would create an absurd result. If this Court must *deviate* from plain meaning to avoid absurdity, it of course must *adhere* to plain meaning when the proposed alternative would lead to absurd results. This is especially true here, given that Section 10 of the IDA is “in derogation of [one’s] common law rights to sue . . . for negligence” and so must be “strictly construed.” *Methola*, 1980-NMSC-145, ¶ 23.

3. *This Court’s Precedent Establishes that in Section 10 of the IDA “Attorney” Means not Just Any Individual Lawyer But Specifically a Contract Attorney*

Finally, and crucially, this Court has already explicitly held that the immunity provision of the IDA—the very provision at issue in this case—applies specifically and exclusively to *contract counsel*, not even to salaried public defenders and certainly not to public bodies. In *Coyazo v. State*, this Court considered a malpractice suit brought by a former

indigent criminal defendant. 1995-NMCA-056, 120 N.M. 47. Coyazo, the malpractice plaintiff, appeared *pro se*, and his complaint did not specify whether his state-appointed defense lawyer had been a public defender or a contract attorney. Although this Court “considered remanding for clarification of this one point,” it ultimately decided that remanding was unnecessary because Coyazo’s claim was barred by statutory immunity either way. *Id.* ¶ 20.

This Court’s reasoning in *Coyazo* bears directly on this case. Specifically, this Court concluded that “[i]f Coyazo’s attorney was a regular employee of the public defender’s office, he would be a ‘public employee’ and come within the ambit of the Tort Claims Act,” which contains “no waiver provision” that “would allow a professional malpractice claim against a public defender attorney when representing a client.” *Id.* ¶ 21. So too, this Court reasoned, for a malpractice suit against the public defender department (now known as LOPD), which this Court noted at the time was “clearly” a “state agency’ within the meaning of the Tort Claims Act” and thus shielded by sovereign immunity. *Id.* ¶ 30.

But, this Court asserted, “[i]f Coyazo’s attorney was a contractor with the public defender’s office, he would nonetheless be protected, but under the provisions of the Indigent Defense Act[,] NMSA 1978, § 31-16-10”—the very provision at issue here. *Id.* ¶ 22. Put simply, this Court in *Coyazo* concluded that the immunity provision of the IDA applies *only* to contract counsel, not even to salaried public defenders and certainly not to public bodies like LOPD and the Commission. And since *Coyazo*, the Legislature has passed the CRA, waiving sovereign immunity for public bodies like LOPD and the Commission for constitutional claims.⁶ The immunity provision of the IDA, therefore, does not effect—let alone bar—Doe’s CRA claims.

The district court addressed none of these arguments directly, as its order dismissing the case contains no substantive reasoning. But these arguments are dispositive. LOPD and the Commission are not immune from claims under the CRA. The district court erred.

⁶ The Commission was created in 2012, well after *Coyazo* was decided. *See* N.M. Const. art. VI, § 39(B).

C. The Individual Immunity of the IDA Does Not Shield Public Body Defendants Under the CRA

Because “attorney” in Section 10 of the IDA means only an individual lawyer, the district court erred when it interpreted that word to also encompass public bodies like LOPD and the Commission. But perhaps the district court thought that even if Defendants are not themselves “attorneys” under the IDA, the immunity conferred by that statute to some individual attorneys somehow also shields *Defendants* from suit under the CRA. If so, that would be error too, for at least two reasons. *First*, the text of the CRA makes clear that, under the statute, individuals *bind*, not shield, public bodies. Indeed, this Court has already stated, in a recent case, that public bodies sued under the CRA are shielded only by immunities available to public bodies themselves. *Second*, Defendants’ preferred construction of the CRA undermines the statute’s entire purpose, which is to expand, not limit, public bodies’ liability for violations of state constitutional rights.

1. The Text of the CRA Makes Clear That Individual Conduct Binds, not Shields, Public-Body Defendants

Nothing in the text of the CRA supports the migration of individual attorney immunity to public bodies like Defendants. The statute, in fact, provides the opposite. The CRA forbids both public bodies and “person[s]

acting on behalf of, under color of or within the course and scope of the authority of a public body” from violating “any rights . . . secured pursuant to the bill of rights of the constitution of New Mexico.” NMSA 1978, § 41-4A-3(A). But although the conduct of individual “person[s]” can give rise to a CRA claim, those persons can never be themselves liable under the statute: “[a]ny public body named in an action filed pursuant to the [CRA] *shall be held liable for conduct of individuals acting on*” a public body’s behalf, and CRA claims “shall be brought *exclusively against a public body.*” NMSA 1978, § 41-4A-3(C) (emphasis added).⁷ Here, then, the Legislature has struck a calculated balance, protecting both those whose rights have been violated and the individuals who violate those rights. It has done so by allowing suits against public bodies only, creating a mechanism for redress that protects individual wrongdoers from the significant liability provided by the CRA. *See* NMSA

⁷ The CRA draft bill produced by the New Mexico Civil Rights Commission would have allowed for suits against both public bodies *and* those “acting on behalf of, under color of, or within the course and scope of the authority of a public body.” *See New Mexico Civil Rights Commission Report* (November 20, 2020) at 6–8, <https://perma.cc/QQX2-MJGN>. The Legislature later narrowed the statute to allow for suits against public bodies only.

1978, § 41-4A-6 (successful CRA plaintiffs can recover up to \$2,000,000 “per occurrence,” adjusted annually for the cost of living).

It is through this structure which Section 10 of the CRA must be read. *See State v. Rivera*, 2004-NMSC-001, ¶ 13, 134 N.M. 768, 771 (courts “closely examine the overall structure of the statute [they] are interpreting”). This section provides that the CRA’s prohibition on the defense of qualified immunity and its explicit waiver of sovereign immunity “shall not abrogate judicial immunity, legislative immunity or any other constitutional, statutory or common law immunity.” NMSA 1978, § 41-4A-10. In light of the CRA’s broad liability provisions, this section means simply that a public body sued under the CRA can claim any immunity—other than sovereign or qualified immunity—that was previously available to it, but not an immunity to which it has never been entitled.

This Court reached the same conclusion in a recent case. In *Bolen v. New Mexico Racing Comm’n*, a public body was sued under the CRA and argued that it was shielded by the doctrine of judicial immunity. 2024-NMCA-056, 553 P.3d 492. This Court agreed and held that “a public body that is sued under the CRA may raise judicial immunity, as well as

quasi-judicial immunity, as a defense.” *Id.* ¶ 12. Central to this Court’s reasoning was that “[a]lthough much of the language in our case law discusses judicial immunity in the context of individuals, rather than an agency or other type of public body, there is *no indication that judicial immunity is a defense limited only to individuals.*” *Id.* ¶ 14 (emphasis added).

The New Mexico Supreme Court recently affirmed this reasoning. *See Bolen v. New Mexico Racing Comm’n*, ___-NMSC-___, ___ P.3d ___ (S-1-SC-40427, June 2, 2025).⁸ Specifically, the Court concluded that a public body sued under the CRA can claim judicial immunity in large part because some public bodies had been shielded by judicial immunity *prior to* the passage of the CRA. The Court noted that it had “previously extended judicial immunity from actions for damages to *courts of either limited or general jurisdiction . . . while acting within their jurisdiction.*” *Id.* ¶ 23 (cleaned up) (emphasis added). The Court later reiterated this

⁸ The Supreme Court “affirm[ed] the Court of Appeals insofar as it . . . held that judicial immunity is available to a public body in defense of a CRA claim” but “reverse[d] the Court of Appeals insofar as it determined that the [New Mexico Racing Commission] is immune to [the plaintiff’s] CRA claim” on the facts available in the record. *Id.* ¶ 48.

point, noting that allowing public bodies to claim judicial immunity in CRA suits comported with the CRA’s purposes because the Court’s precedent “extend[s] [judicial] immunity to individuals *and entities*.” *Id.* ¶ 35 (emphasis added).

Bolen, then, establishes that a public body sued under the CRA cannot claim an immunity—like Section 10 of the IDA—that is “limited only to individuals.” Here, as discussed above, there is overwhelming indication that Section 10 of the IDA is limited in precisely that way. Defendants cannot use this immunity to avoid CRA liability.

2. *The Purpose of the CRA is to Meaningfully Expand Liability for State Constitutional Violations*

This interpretation of the CRA aligns not only with its text but also with its purpose and function. *See Rivera*, 2004-NMSC-001, ¶ 13 (courts consider the “particular statute’s function” when undertaking statutory interpretation). In 2020, the Legislature created the New Mexico Civil Rights Commission. *See* 2020 N.M. Laws, 1st Spec. Sess., ch. 1, § 1. This commission, in drafting the CRA, concluded that a statute “providing victims of official misconduct a remedy under the state Constitution [was] long overdue.” *See New Mexico Civil Rights Commission Report at* 1.

The commission’s concerns were well founded. “Prior to the enactment of the CRA [in 2021], a person seeking damages for deprivation of constitutional rights by an entity or official of the State of New Mexico had few means of redress.” *Bolen*, ___-NMSC-___, ¶ 12. “The Legislature enacted the CRA to address this gap by creating a private cause of action for a person deprived of state constitutional rights by the acts or omissions of New Mexico governmental entities and officials.” *Id.* ¶ 13. As discussed above, it did so by waiving sovereign immunity and by providing, in broad causal language, for both direct and vicariously liability for public bodies. The CRA, which the New Mexico Supreme Court has deemed “landmark legislation,” *see id.* ¶ 11, has been hailed as “enormously promising” in large part because it “may allow people to vindicate their rights under the [state’s] Bill of Rights” and “because it will foster the development of case law on the New Mexico Constitution.” Matthew R. Segal, *The Promise and Perils of State Civil Rights Legislation*, 54 N.M. L. Rev. 355, 356 (2024). Because the CRA’s waiver of sovereign immunity is central to the statute’s purpose and function, this Court should decline to erode it in the absence of explicit legislative direction.

Federal precedent is instructive here. *See Wills v. Bd. of Regents of Univ. of New Mexico*, 2015-NMCA-105, ¶ 19, 357 P.3d 453, 457 (courts may “look for guidance in analogous law” in “federal system”). The Federal Tort Claims Act (FTCA) waives the United States’ sovereign immunity for tort harm

caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

28 U.S.C. § 1346(b)(1). The FTCA, then, provides for more narrow liability than the CRA, which, as discussed above, simply provides that public bodies are bound by the conduct of those who act on their behalf. *See* NMSA 1978, § 41-4A-3(C). But even under this more restrictive standard, courts—including the majority of federal appeals courts that have addressed the issue—have repeatedly held that the United States can be liable under the FTCA even when the government employee directly responsible for the relevant harm is immunized by state law. *See Villafranca v. United States*, 587 F.3d 257, 263 (5th Cir. 2009) (state law “immunity defenses” for individuals not available to United States as defendant in FTCA suit); *Castro v. United States*, 34 F.3d 106, 111 (2d

Cir. 1994) (“In a suit against the United States under the FTCA, the United States is not entitled to defend on the basis of any official immunity that its executive employees individually might possess.”); *see also Liggion v. United States*, 696 F. Supp. 3d 1257, 1270–72 (N.D. Ga. 2023) (collecting cases and agreeing with majority of federal appeals courts that individual immunities are unavailable to the United States in FTCA suits).

This outcome comports with the guidance of the U.S. Supreme Court, which has noted that although generally “a waiver of the Government’s sovereign immunity will be strictly construed, in terms of its scope, in favor of the sovereign . . . this principle is unhelpful in the FTCA context, where unduly generous interpretations of the exceptions run the risk of defeating the central purpose of the statute, which waives the Government’s immunity from suit in sweeping language.” *Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 491–92 (2006) (cleaned up).

So too here. The CRA provides its remedial mechanisms in “sweeping” terms, explicitly waiving sovereign immunity and authorizing both direct and vicarious liability for violations of state constitutional rights. As discussed above, it does so even more strongly

than the FTCA. The district court's decision disregards the CRA's text and purpose, as well as this Court's own recent precedent, and writes into the statute a significant and unwarranted erosion of public body liability. Indeed, if the Court affirms, Doe will be left without any remedy for the more than ten years of harm he suffered as a result of a concededly illegal sentence. That result is the opposite of what the Legislature meant to achieve just a few years ago by enacting the CRA. This Court should reverse.

D. IDA Immunity Has No Bearing on Doe's Second Claim, Which Arises from the Conduct of Defendants Themselves

Finally, even if IDA immunity migrated in some instances from individual attorneys to public bodies (which it does not), this would be insufficient to warrant the dismissal of *both* of Doe's claims. In fact, the second claim of the two-claim complaint does not even arguably implicate the IDA, and the district court's failure to distinguish the two claims on this point was error justifying reversal.

As discussed above, at 13, Doe's complaint made two distinct claims: one against Defendants for violations occasioned by the acts and omissions of those who represented Doe "on behalf of, under color of or

within the course and scope of the authority of” Defendants, and a second, also against Defendants, for *Defendants’ own conduct*. Specifically, Doe’s second claim is against Defendants for their “failure to adequately train and supervise” both public defenders and contract counsel, and for their “design[] and implement[ation]” of a system that incentivized Doe’s contract attorney “to spend as little time as possible on Doe’s case.” This second theory, then, has nothing to do with the acts or omissions of any individual attorney. Instead, it is grounded exclusively in the acts or omissions of Defendants themselves.⁹ And the CRA explicitly allows for both kinds of claims. *See* NMSA 1978, § 41-4A-3(A) (making actionable the conduct of both a “public body” *or* a “person acting on behalf of, under color of or within the course and scope of the authority of a public body”).

Doe’s second claim would, in fact, be cognizable even under the much more restrictive standard for suits to redress similar violations of *federal* constitutional rights. *See* The Honorable Linda M. Vanzi & Rheba

⁹ In moving to dismiss Doe’s complaint, Defendants essentially focused entirely on Count 1 and ignored Count 2. Specifically, they argued, without meaningful support, that it would be “an absurd result” if providers of indigent defense services could “bind the entities that assign or contract with them.” **[RP 59]**. But this is precisely what the CRA allows. *See* NMSA 1978, § 41-4A-3(C).

Rutkowski, *The New Mexico Civil Rights Act: Look Before You Leap*, 54 N.M. L. Rev. 363, 375 (2024) (comparing the CRA and 42 U.S.C. § 1983 and noting that the “numerous significant textual differences between the two statutes” would “seem to render inapplicable [to the CRA] many doctrines, requirements, and limitations developed in Section 1983 litigation”). Although individual public defenders are not liable for damages under § 1983, this protection does not extend to public bodies making administrative decisions about the provision of indigent defense services. *See, e.g., Polk County v. Dodson*, 454 U.S. 312, 324–325 (1981); *Powers v. Hamilton County Pub. Def. Comm’n*, 501 F.3d 592, 611–613 (6th Cir. 2007); *Miranda v. Clark County, Nevada*, 319 F.3d 465, 469 (9th Cir. 2003).

Therefore, even if individual attorney immunity somehow warranted the dismissal of Doe’s first claim—which, again, it does not—no possible interpretation of the IDA even implicates, let alone bars, Doe’s second claim, which pertains solely to the conduct of Defendants themselves, not to the conduct of any individual attorney. That the district court failed to distinguish between Doe’s two claims—and offered

a rationale for dismissing both that can conceivably apply to only one—
is thus a distinct error that itself warrants reversal by this Court.

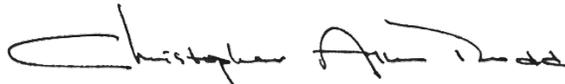
IV. STATEMENT OF COUNSEL AS TO ORAL ARGUMENT

Considering the importance of the issue presented by this appeal, undersigned counsel believes that oral argument would assist the Court in the disposition of this matter.

V. CONCLUSION

For the foregoing reasons, Plaintiff John Doe respectfully asks this Court to reverse the district court's dismissal of his complaint and remand the case to the district court for further proceedings.

Respectfully submitted,



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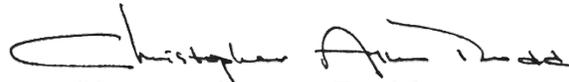
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Brief in Chief was electronically filed through the New Mexico E-File and Serve system, which caused all counsel of record to be served through electronic transmission.



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