



## Administrative Office of the Courts

Jan. 11, 2018

### Summary of Supreme Court Ruling in *Torrez v. Whitaker*

In the case, Second Judicial District Attorney Raúl Torrez asked the state Supreme Court to order new pretrial detention hearings for two defendants with separate cases in Bernalillo County: Paul Salas, who was charged with 47 armed robberies, and Muralon Harper, who was charged with attempted murder, aggravated battery with a deadly weapon, shooting at a vehicle resulting in great bodily harm, and tampering with evidence.

In April 2017 after hearing oral arguments from attorneys, the Supreme Court sent both cases back to the trial court for new detention hearings in compliance with an immediate ruling from the bench providing guidance on the broad range of information a court may consider in ruling on a prosecutor's motion for pretrial detention under the new constitutional authority to detain defendants shown to be dangerous (p.10).

The 51-page precedential opinion issued Thursday more thoroughly explicates "the nature of evidentiary presentation required by this new detention authority" (p.1). In evaluating evidence offered by a prosecutor seeking pretrial detention of a defendant the "probative value of the information, rather than the technical form, is the proper focus of the inquiry at a pretrial detention hearing" (p1).

- "In most cases, credible proffers" [statements by the prosecutor of what a witness would say if called to testify at the hearing] "and other summaries of evidence, law enforcement and court records, or other nontestimonial information should be sufficient support for an informed decision that the state either has or has not met its constitutional burden" to prove that no available release conditions would reasonably protect others (p.2).

The *Torrez* opinion recognizes that New Mexico courts have long made pretrial release and bail decisions "based on recorded materials, proffers, and other nontestimonial information with no appellate decision ever suggesting constitutional infirmity in this process" (pp.41-42). The opinion recognizes that the similarity between the language in the New Mexico Constitution and federal detention statutes means that "the interpretation of our constitutional requirements can also be informed by how federal courts have analyzed the same issue" (p.42).

- “Federal courts have consistently rejected the notion that due process categorically requires live witnesses at detention hearings. The federal law is both clear and persuasive, and we recognize no need to create a different constitutional standard for due process in New Mexico detention hearings” (p.43).

The opinion agrees with other state and federal courts that a judge in an individual case may find information offered in support of detention either sufficient or insufficient to meet the clear and convincing evidence standard required by the constitution to justify pretrial detention. (p.44). In making a determination about whether the information is sufficient to justify detention,

- “A court can consider, for example, whether the information is internally consistent; whether it is credibly contested; whether it originates from or is conveyed by suspect sources; and whether it is corroborated or supported by accounts of independent observers, tangible evidence, a defendant’s statements or actions, their sources, or other information” (p.44).
- “[A] defendant’s past actions and statements can provide a sound basis for justifiable evidentiary inference of likely future actions, which is the proper focus for the court and the parties under the new constitutional detention authority” (p.45).
- “[T]he particular facts and circumstances in currently charged cases, as well as a defendant’s prior conduct, charged or uncharged, can be helpful in making reasoned predictions of future dangerousness” (p.45).
- “In determining the adequacy of release conditions to protect public safety, it may be particularly helpful to consider whether a defendant has engaged in dangerous behavior while on supervised release or has refused to follow court-ordered conditions of release in the past” (p.47).

The opinion acknowledges the holdings of past federal and state precedents holding both that money bond posted by a defendant cannot protect public safety and that an attempt to set a money bond so high a defendant who is constitutionally entitled to release will not be able to afford the bond and so will stay in jail would violate both the United States and New Mexico constitutions. (pp.47-49).

The opinion concludes by emphasizing that:

- “neither the United States Constitution nor the New Mexico Constitution categorically requires live witness testimony at pretrial detention hearings”; and
- “judges may consider all reasonably reliable information, without regard to strictures of formal rules of evidence, in considering whether any pretrial release conditions will reasonably protect the safety of any other person or the community” (p.51).