

Chief Justice Nakamura  
c/o Deborah Dungan  
New Mexico Supreme Court  
P O Box 848  
Santa Fe, New Mexico 87504

April 27, 2020

**RE: Request to Cease Judgments and Stay Issuance of Writs of Garnishment and Execution in Consumer Debt Collection Cases**

Dear Chief Justice Nakamura and Justices of the Supreme Court,

We, the undersigned attorneys and organizations, write to request that the New Mexico Supreme Court use its authority to temporarily cease issuing judgments in consumer debt collection cases, including default judgments, and to stay the issuance of all writs of garnishment and execution in those cases.<sup>1</sup> On March 11, 2020, Governor Lujan Grisham declared a public health emergency in New Mexico that required businesses across the state to close. Though this unprecedented action is necessary, it has put enormous financial strain on our communities. As you know, many New Mexicans were already struggling to meet their basic needs before the pandemic. Over 90,000 Unemployment claims have been filed since the beginning of March, which represents only a fraction of the New Mexicans who have lost employment.<sup>2</sup> According to data from NM Voices for Children, over 30,000 additional workers do not qualify for unemployment or a stimulus payment.<sup>3</sup>

Unless the Court takes the immediate action described above, many New Mexicans will not have access to direct financial relief created by federal law. To combat the extreme economic hardships many Americans are facing, the federal government recently began issuing economic impact payments (stimulus checks) of up to \$1200 per individual and an additional \$500 per child, pursuant to the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act. The CARES Act provides different forms of relief for businesses and workers, but the stimulus checks are the only emergency assistance provided directly to families. For many New Mexicans, these stimulus checks will be their primary source of income to pay for housing, food, medical care, and other vital expenses.

Prior to the COVID-19 global pandemic, approximately 40% of New Mexicans had a debt in collections.<sup>4</sup> Many of these collections are from medical debts and payday loans. When New Mexicans are unable to pay unaffordable medical debts or predatory loans, they face lawsuits by

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<sup>1</sup> Nothing in this recommendation should be construed to apply to domestic support obligations, including child support and spousal maintenance obligations.

<sup>2</sup> U.S. Department of Labor, Unemployment Insurance Weekly Claims Data <https://oui.doleta.gov/unemploy/claims.asp> (last accessed April 27, 2020).

<sup>3</sup> On file with NM Voices for Children.

<sup>4</sup> The Urban Institute, “Debt in America: An Interactive Map” [https://apps.urban.org/features/debt-interactive-map/?type=overall&variable=pct\\_debt\\_collections&state=35](https://apps.urban.org/features/debt-interactive-map/?type=overall&variable=pct_debt_collections&state=35) (last updated December 17, 2019).

financial institutions, debt buyers, and debt collectors. These lawsuits frequently result in wage garnishments and bank levies, which make it even harder for families to make ends meet.

The Court should temporarily cease issuing judgments and stay all writs of execution and garnishment because the pandemic and shelter-in-place order make it significantly more difficult for many New Mexicans to appear in court and access representation or self-help resources. While court filings can be made electronically, at the very least this requires access to the internet and likely also an attorney. Under these conditions and without a reasonable opportunity to respond, default judgments will be issued even when valid defenses exist.

New Mexico law recognizes the importance of protecting certain assets that provide a minimum standard of living from the reach of creditors.<sup>5</sup> These protections help ensure that satisfying a debt judgment does not leave families destitute. This was also the intent of the federal stimulus payments - to ensure that families receive a minimum level of income to meet basic needs. While New Mexico law sets forth general garnishment exemptions, these exemptions are not self-executing. Writs of garnishment and execution are often issued *ex parte*, which means that families might not even be aware that they are unable to access limited assets in their bank accounts until they are at the register trying to pay for groceries. Allowing judgment creditors to seize the stimulus payments and other very limited income when the recipients are unable to access the courts to assert their state rights to protect those assets would deny them due process.<sup>6</sup>

The New Mexico Supreme Court has the constitutional authority to protect New Mexicans from property seizure during this time. The Court has the power to regulate pleading, practice and procedure in the courts. N.M. Const. art. VI, § 3 (conferring on the Supreme Court “superintending control” over the courts); *In re Subpoena Duces Tecum*, 1980- NMSC-010 ¶ 5, 94 N.M. 1, 606 P.2d 539; *Ammerman v. Hubbard Broadcasting*, 1976 NMSC031, ¶ 10, 89 N.M. 307, 551 P.2d 1354. New Mexico Courts also have the inherent authority to stay proceedings. *Belser v. O’Cleireachain*, 2005-NMCA-073, ¶ 3, 137 N.M. 623, 114 P.3d 303; *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (stating that “the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort”). The Court has the authority to act in equity by exercising its power of superintending control to stay judgments and writs of execution and garnishment during this public health and economic crisis.

As the stimulus payments continue to reach families, courts across the country are using their authority to protect stimulus payments by keeping the payments out of creditors’ reach. The Justice Court in Las Vegas, Nevada suspended issuance of default judgments and the issuance of writs of execution. [Exhibit A](#). Massachusetts issued a ninety-day moratorium on

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<sup>5</sup> See *In re Portal*, 2002-NMSC-011, ¶ 5, 132 N.M. 171, 172, 45 P.3d 891, 892, “Liberal construction [of exemption statutes] is necessary to promote the “ ‘humane policy [of preventing] families from becoming destitute as the result of misfortune through common debts which generally are unforeseen.’”

<sup>6</sup> The 10th Circuit has held that when a creditor seeks to seize funds in a bank account, due process requires that consumers be given notice of exemptions, as well as the opportunity for a prompt hearing to claim exemption. *Aacen v. San Juan County Sheriff’s Dept.*, 944 F.2d 691 (10th Cir. 1991).

garnishments, seizures and attachments to a debtor's wages or property. [Exhibit B](#). The Texas Supreme Court stayed post-judgment collections from bank accounts and has stayed the entry of default judgments. [Exhibit C](#). The Governor of Illinois exercised emergency power to suspend the laws that permit service of a garnishment summons, a wage deduction summons, or a citation to discover assets. [Exhibit D](#).

In light of the current public health crisis, we respectfully ask the Supreme Court to temporarily suspend issuance of consumer debt judgments and stay writs of garnishment and execution in those cases. We ask that this Order continue for 120 days after the State of Emergency is lifted. The stimulus payments were provided to keep families healthy, fed, and housed, not to pay past debts. Action by the Court is necessary to ensure that creditors do not seize stimulus payments and other minimal forms of assistance intended to go directly to help New Mexicans during this public health emergency and economic crisis. Thank you for your attention to this important matter.

Respectfully submitted,

Lindsay Cutler  
New Mexico Center on Law &  
Poverty  
(505) 255-2840  
lindsay@nmpovertylaw.org

New Mexico Trial Lawyers  
Association

Navajo Nation Human Rights  
Commission

Ellen Leizter, Executive Director  
Senior Citizens' Law Office, Inc.

Nicholas H. Mattison  
Feferman, Warren & Mattison

Karen J. Meyers  
Attorney at Law

Mari Kempton  
New Mexico Legal Aid, Inc.  
(505) 521-6105  
ext. 1033  
marik@nmpovertylaw.org

Ona Porter, Founder Emeritus  
Prosperity Works!

Rob Treinen  
Treinen Law Office, PC

Nathalie Martin  
UNM School of Law

Serge Martinez  
UNM School of Law