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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN MATEO**

STATE OF NEW MEXICO ex rel. RAÚL  
TORREZ, District Attorney, Second Judicial  
District,

Petitioner,

v.

FACEBOOK, INC.

Respondent.

Electronically  
**FILED**  
by Superior Court of California, County of San Mateo  
ON 11/15/2021  
By /s/ Anthony Berini  
Deputy Clerk

) Case No.: 21-CIV-06145  
)  
) **MEET AND CONFER DECLARATION OF**  
) **JAMES GRAYSON**  
)  
)  
) *State of New Mexico ex rel. Raúl Torrez,*  
) *District Attorney, Second Judicial District*  
) v.  
) *New Mexico Civil Guard, et al.*  
) State of New Mexico  
) County of Bernalillo  
) Second Judicial District Court  
) Case No. D-202-CV-2020-04051  
)

1 I, James Grayson, upon my personal knowledge, hereby submit this declaration pursuant to  
2 Cal. Civ. Proc. Code § 2016.040 and declare as follows:

3 1. I am the Chief Deputy District Attorney in the Second Judicial District Attorney's  
4 Office in Albuquerque, New Mexico. I am an active member in good standing of the State Bar of  
5 New Mexico and an inactive member of the Washington State Bar Association.

6 2. I am one of the attorneys representing the State of New Mexico in *State of New*  
7 *Mexico ex rel. Raúl Torrez v. New Mexico Civil Guard*, No. D-202-CV-2020-04051 (N.M. Second  
8 Judicial Dist. Ct.), a civil suit seeking a declaratory judgment and an injunction in relation to  
9 unlawful and dangerous paramilitary activity by a self-declared militia.

10 3. On June 15, 2020, through Facebook, Inc.'s online portal, the District Attorney's  
11 Office filed a preservation request for the content and non-content subscriber information for the  
12 user account associated with the New Mexico Civil Guard. Attached as **Exhibit 1** is a true and  
13 correct copy of the automated confirmation email, dated June 15, 2020, reflecting the submission  
14 and receipt of that request.

15 4. On January 19, 2021, the District Attorney's Office served Facebook, Inc., with a  
16 subpoena issued under the authority of the Second Judicial District Court in New Mexico and  
17 pursuant to Rule 1-045 of the New Mexico Rules of Civil Procedure and the Stored  
18 Communications Act, 18 U.S.C. § 2703. Attached as **Exhibit 2** is a true and correct copy of that  
19 subpoena.

20 5. The subpoena sought non-content subscriber information for nine identified user  
21 accounts associated with named defendants in the underlying New Mexico action.

22 6. On February 26, 2021, Facebook, Inc., through counsel, Rachel Dallal of Perkins  
23 Coie, responded to the subpoena by letter and objected on the grounds that the subpoena was not  
24 domesticated in California and was not a recognized means of compelling the disclosure of the  
25 information under the SCA. Facebook's objection letter offered to meet and confer. Attached as  
26 **Exhibit 3** is a true and correct copy of that letter.

1           7.       The District Attorney's Office responded to Facebook's objections by letter on  
2 March 12, 2021, and agreed to meet and confer. Attached as **Exhibit 4** is a true and correct copy of  
3 that letter.

4           8.       Counsel for the State of New Mexico and Facebook met by video conference on  
5 March 19, 2021. Attached as **Exhibit 5** is a true and correct copy of an email dated March 19, 2021,  
6 from Jonathan Backer to Rachel Dallal and Ryan Mrazik, memorializing that conversation. After  
7 discussing each other's positions and different interpretations of case law construing the SCA,  
8 counsel for Facebook agreed to speak to their client about the matter. Attached as **Exhibit 6** is a  
9 true and correct copy of an email dated March 19, 2021, from James Grayson to Rachel Dallal and  
10 Ryan Mrazik, reflecting that exchange.

11          9.       Counsel for the State of New Mexico, having not received any further information,  
12 sought an update from Facebook's counsel on April 26, 2021. Attached as **Exhibit 7** is a true and  
13 correct copy of that email, dated April 26, 2021, from Jonathan Backer to Rachel Dallal and Ryan  
14 Mrazik. Counsel from the State of New Mexico and Facebook participated in a second video  
15 conference on April 29, 2021. During the video conference, counsel for Facebook asked about the  
16 State of New Mexico's plans in relation to enforcement of the subpoena.

17          10.      Counsel for the State of New Mexico provided additional information by e-mail on  
18 May 4, 2021, and informed counsel for Facebook that the State of New Mexico intended to  
19 domesticate the subpoena in California and would be prepared to litigate the validity of the  
20 subpoena. Attached as **Exhibit 8** is a true and correct copy of that email, dated May 4, 2021, from  
21 James Grayson to Rachel Dallal and Ryan Mrazik.

22          11.      Counsel for Facebook responded by e-mail on May 5, 2021, and indicated that they  
23 were in discussions with their client about the subpoena. Attached as **Exhibit 9** is a true and correct  
24 copy of that email, dated May 5, 2021, from Rachel Dallal to James Grayson.

25          12.      Counsel for Facebook and the State of New Mexico participated in a third video  
26 conference on May 17, 2021. During the video conference, counsel for Facebook indicated a  
27 willingness to assist the State of New Mexico in securing information responsive to its request but  
28 represented that Facebook was unable to provide the information for any user account other than

1 bryce.spangler.549 because the non-content subscriber information relating to the other accounts  
2 had been deleted.

3 13. On May 24, 2021, counsel for the State of New Mexico informed counsel for  
4 Facebook that the non-content subscriber information for the user account bryce.spangler.549  
5 would not be of much use to the State's case standing alone. Counsel also requested to speak  
6 informally with an employee of Facebook familiar with the takedown of Facebook pages associated  
7 with the New Mexico Civil Guard and further requested any internal communication or records  
8 documenting the takedown of those pages. Counsel for the State of New Mexico explained that it  
9 would be helpful to discuss directly with a knowledgeable Facebook employee whether the deleted  
10 information could be retrieved, particularly because the accounts were taken down pursuant to  
11 Facebook's "Dangerous Individuals and Organizations" policy. Attached as **Exhibit 10** is a true and  
12 correct copy of that email, dated May 24, 2021, from Jonathan Backer to Rachel Dallal and Ryan  
13 Mrazik.

14 14. Facebook's counsel responded on June 9, 2021, and indicated that, although  
15 Facebook remained interested in being helpful, it would not agree to an informal discussion about  
16 its decision-making. Facebook's counsel requested that the State of New Mexico attempt to secure  
17 an administrative subpoena that would comply with Facebook's interpretation of the SCA. Attached  
18 as **Exhibit 11** is a true and correct copy of that email, dated June 9, 2021, from Rachel Dallal to  
19 Jonathan Backer.

20 15. On July 2, 2021, counsel for the State of New Mexico shared with counsel for  
21 Facebook a draft subpoena prepared for the purpose of domestication in California. Counsel for the  
22 State of New Mexico indicated that the draft subpoena requested information that counsel had  
23 sought to discuss informally with a Facebook employee about its policies and procedures for taking  
24 down accounts that violate its "Dangerous Individuals and Organizations" policy. Counsel  
25 expressed doubts that Facebook would be unable to recover information deleted under that policy,  
26 and, once again, sought to resolve the discovery dispute informally. Attached as **Exhibit 12** is a true  
27 and correct copy of a letter dated July 2, 2021, from James Grayson to Rachel Dallal, enclosing the  
28 referenced draft subpoena.

1           16.     Facebook did not respond to this letter but inquired on August 2, 2021, whether a  
2 subpoena had been domesticated. Counsel for the State of New Mexico responded and ultimately  
3 served Facebook with a domesticated subpoena on August 18, 2021. Attached as **Exhibit 13** is a  
4 true and correct copy of that domesticated subpoena, dated August 18, 2021, and proof of service.

5           17.     Counsel for Facebook responded to the subpoena on September 15, 2021, with an  
6 objection letter listing a host of reasons for failing to provide any information at all responsive to  
7 the subpoena. Among those reasons, counsel for Facebook indicated that the subpoena sought  
8 information that “is not within Facebook’s possession, custody, or control.” Facebook did not offer  
9 to provide an affidavit of absence of records under Cal. Evid. Code § 1561(b). Nor did Facebook  
10 address whether any deleted information could be recovered, despite the State of New Mexico  
11 posing this question since May 24, 2021, just after Facebook’s counsel represented for the first time  
12 at the May 17, 2021, video conference, that the responsive information had been deleted. Attached  
13 as **Exhibit 14** is a true and correct copy of the Facebook objection letter, dated September 15, 2021,  
14 from Rachel Dallal to James Grayson.

15           18.     On September 23, 2021, counsel for the State of New Mexico sent a letter to counsel  
16 for Facebook reiterating its belief that Facebook may still have access to the deleted data and  
17 offering to limit its request to the non-content subscriber information in Item No. 8 in the subpoena  
18 if Facebook produced the information sought in Item No. 8 or confirmed that the information was  
19 still retrievable by September 30, 2021. Attached as **Exhibit 15** is a true and correct copy of that  
20 letter, dated September 23, 2021, from James Grayson to Rachel Dallal.

21           19.     On September 29, 2021, counsel for Facebook responded by e-mail. Counsel stated  
22 that Facebook had performed an additional search and confirmed that responsive records had been  
23 deleted. Counsel indicated that Facebook is unable to recover the records. Attached as **Exhibit 16** is  
24 a true and correct copy of that email, dated September 29, 2021, from Rachel Dallal to James  
25 Grayson.

26           20.     On September 30, 2021, counsel for Facebook indicated by e-mail that Facebook  
27 was conducting “one final search” that “may not be complete by EOD.” Attached as **Exhibit 17** is a  
28

1 true and correct copy of that email, dated September 30, 2021, from Rachel Dallal to James  
2 Grayson.

3 21. After receiving no further information, counsel for the State of New Mexico asked  
4 for an update on October 8, 2021. Attached as **Exhibit 18** is a true and correct copy of that email,  
5 dated October 8, 2021, from James Grayson to Rachel Dallal.

6 22. Counsel for Facebook responded on October 11, 2021, and indicated that there was  
7 no update to the “final search.” Attached as **Exhibit 19** is a true and correct copy of that email,  
8 dated October 11, 2021, from Ryan Mrazik to James Grayson.

9 23. On October 19, 2021, counsel for the State of New Mexico sent a letter noting that  
10 no update on the final search had been provided, reiterating skepticism that Facebook would not be  
11 able to recover non-content subscriber information associated with accounts it took down pursuant  
12 to its “Dangerous Individuals and Organizations” policy, and requesting a declaration from  
13 Facebook’s Chief Technology Officer that the deleted information cannot be retrieved. Attached as  
14 **Exhibit 20** is a true and correct copy of that letter, dated October 19, 2021, from James Grayson to  
15 Rachel Dallal.

16 24. On October 26, 2021, counsel for Facebook responded. Counsel stated that Facebook  
17 confirmed the information had been deleted and offered to provide a declaration of absence of  
18 business records. Attached as **Exhibit 21** is a true and correct copy of that email, dated October 26,  
19 2021, from Ryan Mrazik to James Grayson.

20 25. Counsel for the State of New Mexico responded on November 4, 2021. In an e-mail,  
21 counsel informed Facebook that a declaration of absence of business records would not answer  
22 whether the deleted information can be retrieved and provided a proposed declaration for  
23 Facebook’s CTO that would answer this question. Counsel offered to accept any edits to the  
24 declaration for accuracy and offered to accept an affiant other than Facebook’s CTO with a  
25 sufficient explanation for the substitution. Counsel provided a firm deadline of November 10 to  
26 receive the signed declaration. Attached as **Exhibit 22** is a true and correct copy of that email and  
27 attached draft declaration, dated November 4, 2021, from James Grayson to Ryan Mrazik.  
28


1           26.     On November 9, 2021, counsel for Facebook requested additional time to respond to  
2 the November 4 request and asked to reconvene on November 17, 2021. Attached as **Exhibit 23** is a  
3 true and correct copy of that email, dated November 9, 2021, from Ryan Mrazik to James Grayson.

4           27.     On November 10, 2021, counsel for the State of New Mexico responded and noted  
5 the significant delays in Facebook's responses. Counsel, however, offered to extend the time to  
6 respond if counsel for Facebook agreed to extend the deadline for filing a petition for enforcement  
7 of the subpoena. Attached as **Exhibit 24** is a true and correct copy of that email, dated November  
8 10, 2021, from James Grayson to Ryan Mrazik.

9           28.     On November 10, 2021, counsel for Facebook declined to provide the proposed  
10 declaration and again offered to provide a declaration of absence of records. Counsel did not  
11 reference to the previously requested extension or respond to the State of New Mexico's offer to  
12 extend the time to meet and confer in exchange for Facebook's agreement to extend the deadline to  
13 file an enforcement action. Attached as **Exhibit 25** is a true and correct copy of that email, dated  
14 November 10, 2021, from Ryan Mrazik to James Grayson.

15  
16  
17 I declare under penalty of perjury under the laws of the State of California that the foregoing is true  
18 and correct.

19  
20 DATED: NOVEMBER 12, 2021

  
James Grayson  
Chief Deputy District Attorney  
Second Judicial District Attorney's Office  
Albuquerque, New Mexico

# EXHIBIT 1





Jonathan Backer &lt;jb2845@georgetown.edu&gt;

---

**Revised Facebook Subpoena**

---

**James Grayson** <james.grayson@da2nd.state.nm.us>

Tue, Jun 29, 2021 at 4:32 PM

To: Jonathan Backer &lt;jb2845@georgetown.edu&gt;

Cc: Raul Torrez &lt;raul.torrez@da2nd.state.nm.us&gt;, Mark Baker &lt;mbaker@peiferlaw.com&gt;, "Matthew E. Jackson" &lt;mjackson@peiferlaw.com&gt;, Mary McCord &lt;mbm7@georgetown.edu&gt;, Annie Owens &lt;ao700@georgetown.edu&gt;

Hi Jonathan,

This looks great to me. Below is the confirmation Facebook sent to Kyle when he requested preservation of the Civil Guard page. We are not able to log into Kyle's Facebook portal to type in the case number, so the confirmation email is all we have at this point.

Thanks,

James

From: **Records-noreply** <no-reply@records.facebook.com>

Date: Mon, Jun 15, 2020 at 9:14 PM

Subject: Preservation Request Received [Case #4956751]

To: &lt;kyle.hartsock@da2nd.state.nm.us&gt;

[Re:Civil Guard - Case:4956751]

We have taken reasonable steps to preserve the account(s) you requested. Your case number is 4956751.

Do not submit additional legal process with this preservation request. If you want to follow up with formal legal process, please visit our online request system at <https://www.facebook.com/records> to submit a new records request. Please include the same user information provided in this preservation request (user ID, email, or vanity ID).PLEASE NOTE: This data will expire 90 days from the preservation date. To request a single extension of your preservation request, please visit our online request system at <https://www.facebook.com/records>.

Thank you,

Law Enforcement Response Team

---

NOTICE: This email (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. Unless you are the intended recipient, you may not use, copy, or retransmit the email or its contents.

--

Kyle Hartsock

Special Agent in Charge - Special Investigations Bureau

2nd Judicial District Attorney's Office

[520 Lomas Blvd NW, Albuquerque, NM 87102](#)

505-553-2328

[Quoted text hidden]

--

James Grayson

Chief Deputy District Attorney

Office of the Second Judicial District Attorney

[520 Lomas Blvd. N.W.](#)[Albuquerque, NM 87102](#)

(505) 382-9116

[james.grayson@da2nd.state.nm.us](mailto:james.grayson@da2nd.state.nm.us)

# EXHIBIT 2

**4-505A. Subpoena for production or inspection.**

[District Court Civil Rule 1-045 NMRA]

STATE OF NEW MEXICO

COUNTY OF Bernalillo

No. D-202-CV-202004051

Second JUDICIAL DISTRICT

State ex. rel. Torrez, Second Judicial District Attorney, Plaintiff

v.

N.M. Civil Guard et al., Defendant

**SUBPOENA FOR PRODUCTION OR INSPECTION<sup>1</sup>**

**SUBPOENA FOR**

☒ **DOCUMENTS OR OBJECTS<sup>2</sup>**

☐ **INSPECTION OF PREMISES<sup>2</sup>**

TO:

YOU ARE HEREBY COMMANDED ON:

DATE: February, 18 TIME: 9:00 (a.m.) (p.m.)

TO:

☒ permit inspection of the following described books, papers, documents or tangible things:

See Schedule A

at Second Judicial District Attorney's Office, 520 Lomas Blvd. N.W., Albuquerque, NM(address).

☐ permit the inspection of the premises located at: 87102. Or by overnight mail or electronically to  
james.grayson@da2nd.state.nm.us or kyle.hartsock@  
(address)-da2nd.state.nm.us

ABSENT A COURT ORDER, DO NOT RESPOND TO THIS SUBPOENA UNTIL THE EXPIRATION OF FOURTEEN (14) DAYS AFTER THE DATE OF SERVICE OF THE SUBPOENA.

DO NOT RESPOND TO THIS SUBPOENA FOR PRODUCTION OR INSPECTION IF YOU ARE SERVED WITH WRITTEN OBJECTIONS OR A MOTION TO QUASH UNTIL YOU RECEIVE A COURT ORDER REQUIRING A RESPONSE.

You may comply with this subpoena for production or inspection by providing legible copies of the items requested to be produced by mail or delivery to the attorney whose name appears on this subpoena. You may condition the preparation of the copies upon the payment in advance of the reasonable cost of inspection and copying. You have the right to object to the production pursuant to this subpoena as provided below.

**READ THE SECTION "DUTIES IN RESPONDING TO SUBPOENA".**

IF YOU DO NOT COMPLY WITH THIS SUBPOENA you may be held in contempt of court and punished by fine or imprisonment.

January 19, 2021.

/s/ James Grayson, Deputy District Attorney

Judge, clerk or attorney

**RETURN FOR COMPLETION BY SHERIFF OR DEPUTY**

I certify that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in \_\_\_\_\_ County, I served this subpoena on \_\_\_\_\_ by delivering to the person named a copy of the subpoena and a fee of \$\_\_\_\_\_ (insert the amount of fee tendered or, if no fee is tendered, "none")<sup>3</sup>.

\_\_\_\_\_  
Deputy sheriff

**RETURN FOR COMPLETION BY OTHER PERSON  
MAKING SERVICE**

I, being duly sworn, on oath say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in \_\_\_\_\_ County, I served this subpoena on \_\_\_\_\_ by delivering to the person named a copy of the subpoena and a fee of \$\_\_\_\_\_ (insert the amount of fee tendered or, if no fee is tendered, "none")<sup>3</sup>.

\_\_\_\_\_  
Person making service

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (date).

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths

THIS SUBPOENA issued by or at request of:

\_\_\_\_\_  
Name of attorney of party

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

**CERTIFICATE OF SERVICE BY ATTORNEY**

I certify that I caused a copy of this subpoena to be served on the following persons or entities by (delivery) (mail) on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(1) \_\_\_\_\_  
(Name of party)

\_\_\_\_\_  
(Address)

(2)

\_\_\_\_\_  
(Name of party)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date of signature

### **TO BE PRINTED ON EACH SUBPOENA**

1. This subpoena must be served on each party in the manner provided by Rule 1-005 NMRA. If service is by a party, an affidavit of service must be used instead of a certificate of service.
2. A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.
3. If a person's attendance is commanded, one full day's per diem must be tendered with the subpoena, unless the subpoena is issued on behalf of the state or an officer or agency thereof. Mileage must also be tendered at the time of service of the subpoena as provided by the Per Diem and Mileage Act. *See* Section 38-6-4 NMSA 1978 for per diem and mileage for witnesses. *See* Paragraph A of Section 10-8-4 NMSA 1978 for per diem and mileage rates for nonsalaried public officers. Payment of per diem and mileage for subpoenas issued by the state is made pursuant to regulations of the Administrative Office of the Courts. *See* Section 34-9-11 NMSA 1978 for payments from the jury and witness fee fund.

### **PROTECTION OF PERSONS SUBJECT TO SUBPOENAS**

A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

Subject to Subparagraph (2) of Paragraph D below, a person commanded to produce and permit inspection and copying may, within fourteen (14) days after service of the subpoena

or before the time specified for compliance if such time is less than fourteen (14) days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises or within fourteen (14) days after service of the subpoena may file a motion to quash the subpoena and serve the motion on all parties to the action. If an objection is served or a motion to quash is filed and served on the parties, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

- (1) fails to allow reasonable time for compliance,
- (2) requires a person who is not a party or an officer of a party to travel to a place more than one hundred miles from the place where that person resides, is employed or regularly transacts business in person, except as provided below, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
- (3) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (4) subjects a person to undue burden.

If a subpoena:

- (1) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (2) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (3) requires a person who is not a party or an officer of a party to incur substantial expense to travel,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

#### **DUTIES IN RESPONDING TO SUBPOENA**

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient

to enable the demanding party to contest the claim.

- (3) A person commanded to produce documents or material or to permit the inspection of premises shall not produce the documents or materials or permit the inspection of the premises if a written objection is served or a motion to quash has been filed with the court until a court order requires their production or inspection.

[As amended, effective November 1, 2002; as amended by Supreme Court Order No. 08-8300-002, effective March 15, 2008; by Supreme Court Order No. 09-8300-030, effective October 12, 2009.]

## **Schedule A**

This subpoena is issued pursuant to Rule 1-045 NMRA and pursuant to the Stored Communications Act, 18 U.S.C. § 2703(c)(2).

### **DEFINITIONS**

“Communication” means the transmittal of information, in the form of facts, ideas, and inquiries or otherwise, by any means whatsoever, including but not limited to, letter, email, text, voicemail, posts and direct messages on social media, or other means.

The term “document” means all documents and tangible things in the broadest sense allowed under the scope of discovery set forth in Rule 1-026 NMRA to include, but not limited to, any written, typed, or printed matter and all magnetic, electronic, or other records or documentation of any kind or description (including, without limitation: email, letters, correspondence, posts and direct messages on social media, telegrams, memoranda, notes, records, minutes, contracts, agreements, records or notations of telephone or personal conversations, conferences, interoffice communications, microfilm, bulletins, circulars, pamphlets, photographs, facsimiles, invoices, tape recordings, computer printouts, and work sheets), including drafts and copies not identical to the originals, all photographs, and graphic matter, however produced or reproduced, all compilations of data from which information can be obtained, and any and all writings or recordings of any type or nature, within your possession, custody, or control or that is within your possession, custody or control, whether prepared by you or any other person, that constitute or contain matters relevant to the subject matter of the action. The term “document” specifically includes electronically stored information (“ESI”). Please produce the documents in electronic form to the extent possible.

“Person” means the singular as well as the plural, and masculine as well as the feminine, and includes any natural person or business, legal or governmental entity or association.

The terms “and,” “or,” and “and/or” shall be construed in the conjunctive or the disjunctive, whichever makes the request more inclusive. The disjunctive includes the conjunctive, and vice versa.

The terms “any” and “each” shall be construed as “all,” “each and every,” or “any one,” whichever makes the request more inclusive.

The term “all” shall include and encompass “any” or “each,” whichever makes the request more inclusive.

The use of the word “the” shall not be construed as limiting the scope of any request. The terms “including” and “include” means “specifically including but not limited to.” Each gender of any word includes the other genders.



The use of the singular form of any word includes the plural, and vice versa, as necessary to bring within the scope of the following requests all information which might otherwise be construed to be outside its scope.

The use of any form of any verb shall be considered to include within its meaning all of the forms of the verb so used.

## **INSTRUCTIONS**

All grounds for an objection to a request shall be stated with specificity.

A Document is deemed to be in your custody or control if you have possession of the Document, or have the right to secure such Document from another Person having possession thereof.

You shall produce the requested Documents either as they are kept in the ordinary course of business, or as they are organized and labeled in a manner such that they are grouped separately for each of the following requests. To the extent such produced Documents include electronically stored information, such information shall be produced in the form in which it is ordinarily maintained or in a reasonably usable form, including metadata.

Each of these requests shall be construed independently and shall not be limited by any other request.

If, in answering these requests, you claim that any request, or a definition or instruction applicable thereto, is ambiguous or objectionable, do not use such claim as a basis for refusing to respond, but rather set forth as part of the response the language you claim is ambiguous or objectionable and the interpretation you have used to respond to the individual request.

Plaintiffs do not seek documents that are privileged. With respect to any Document requested, or parts of any Document requested, that you claim to be privileged, immune, or that is withheld for any other reason, please provide a statement setting forth as to each such request:

- (a) the name of the author;
- (b) the name of the participants (in the case of Communications or meetings);
- (c) the date of the Document, Communication, or meeting;
- (d) the name of the individual that currently has possession, custody or control of the Document requested;
- (e) a brief description of the nature and subject matter of the Document withheld; and
- (f) the basis on which it is being withheld.

With respect to any Document requested that you claim to be privileged, immune, or is withheld for any other reason, please produce, or permit the inspection of, parts of such a Document falling within the scope of the request that are not privileged or immune.

File folders with labels, tables or directories of files identifying a Document must also be produced with such Document.

Documents attached to each other shall not be separated.

**The information sought for preservation and or production is in relation to the User(s) of and/or subscriber to your products and services listed herein below (hereinafter “Users”):**

1. **Username:** NMCIVILGUARD  
**User ID:** 110703723882801
2. **Username:** New-Mexico-Civil-Guard-Curry-County  
**User ID:** 114690286917913
3. **Username:** New-Mexico-Civil-Guard-San-Juan-County  
**User ID:** 107557564304719
4. **Username:** New-Mexico-Civil-Guard-Eddy-County  
**User ID:** 109043210821100
5. **Username:** New-Mexico-Civil-Guard-Sandoval-County  
**User ID:** 100935324975786
6. **Username:** New-Mexico-Civil-Guard-Bernalillo-County  
**User ID:** 100318378372061
7. **Username:** New-Mexico-Civil-Guard-Dona-Ana-County  
**User ID:** 100318378372061
8. **Username:** Jason-P-Bjorn  
**User ID:** 100015675451132
9. **Username:** bryce.spangler.549

**User ID:** 100055249230466

Please produce the following records in person, by mail, or electronically to [james.grayson@da2nd.state.nm.us](mailto:james.grayson@da2nd.state.nm.us) or kyle.hartsock@da2nd.state.nm.us by February 18, 2021, at 9:00 AM MST:

1. Name and address(es);
2. All Users' contact information, including e-mail addresses and alternate e-mail addresses used for verification, activated phone numbers and all phone numbers or e-mail addresses used for password recovery, etc.;
3. Length of service (including creation date of Users' Facebook accounts);
4. IP Address Access Log Information (**please do not send only the last IP address to access the User's Facebook account, send entire history for every access session from January 1, 2020, through the date on which the search is completed**). The IP Address Access Log Information includes:
  - a. Any connections to the Users' Facebook account since January 1, 2020, through the date on which the search is completed;
  - b. The date, time and time zone for each connection or login to Facebook by the Users;
  - c. The date, time and time zone for each disconnection or logoff for each connection/session;
  - d. The originating IP address for each connection/session to the Users' Facebook account from January 1, 2020, through the date on which the search is completed; and
  - e. If available, the user agent details for each access, including browser and version, operating system and version, and any other logged information for each connection/session.
5. Any additional relevant information in your possession to assist in identifying Users.

# EXHIBIT 3

February 26, 2021

Rachel Dallal  
RDallal@perkinscoie.com  
D. +1.206.359.3766  
F. +1.206.359.4766

**VIA CERTIFIED MAIL**

James Grayson  
Second Judicial District Attorney's Office  
520 Lomas Blvd. N.W.  
Albuquerque, NM 87102  
[James.grayson@da2nd.state.nm.us](mailto:James.grayson@da2nd.state.nm.us)

**Re: Civil Subpoena, *State v. New Mexico Civil Guard*, Case No. D-202-CV-2020-04051  
(2nd Judicial District Court, Bernalillo County, NM)**

Dear Mr. Grayson,

We represent non-party Facebook, Inc. ("Facebook"), the operator of the Facebook and Instagram services, and write in response to your subpoena of January 19, 2021, which seeks basic subscriber information for nine Facebook accounts. Facebook objects to the subpoena for the reasons explained below.

First, state court discovery demands to Facebook must issue from a California state court or be properly domesticated under California law and personally served on Facebook. *See* CAL. CIV. PROC. CODE § 2029.300; *id.* § 2029.400 ("A subpoena issued under this article shall be personally served in compliance with the law of this state."). California makes this process quite simple and inexpensive as there is not even a requirement to engage local counsel to domesticate a subpoena in California. *See* Cal. Civ. Proc. Code §§ 2029.300, 2029.350, 2008 Law Revision Commission Comments ("This section does not make retention of local counsel mandatory."). Without domestication, a New Mexico state subpoena cannot compel data from Facebook.<sup>1</sup>

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<sup>1</sup> Further, although subpoena power and personal jurisdiction are different concepts, the New Mexico Second Judicial District Court does not have personal jurisdiction over Facebook. *See Daimler AG v. Bauman*, 571 U.S. 117, 136 (2014) (holding that a corporation is subject to general personal jurisdiction only in its "place of incorporation and principal place of business"). Facebook is a Delaware corporation with its headquarters in Menlo Park, California. Accordingly, it is not subject to personal jurisdiction in New Mexico state courts. The fact that Facebook does business in New Mexico and that its services are available in the state is not sufficient to provide New Mexico courts with personal jurisdiction over Facebook. *See Bird v. Parsons*, 289 F.3d 865, 874 (6th Cir. 2002) ("maintain[ing] a website that is accessible to anyone over the Internet is insufficient to justify general jurisdiction"); *see also Ralls v. Facebook*, No. C16-0007JLR, 2016 WL 6459842, at \*4 (W.D. Wash. Oct. 20, 2016) ("personal jurisdiction over Facebook may not exist simply because a user avails himself of Facebook's services in a state other than the states in which Facebook is incorporated and has its principal place of business.").

James Grayson  
February 26, 2021  
Page 2

Second, in any event and even if you were to domesticate, the Stored Communications Act (“SCA”) prohibits Facebook from producing non-content records to a governmental entity, see 18 U.S.C. § 2702(a)(3), except in response to “an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena”, *id.* §§ 2702(c)(1), 2703(c)(2); *Thayer v. Chiczewski*, No. 07 C 1290, 2009 WL 2957317, at \*5 n.5 (N.D. Ill. Sept. 11, 2009) (“The SCA . . . prohibits [providers] from divulging . . . subscriber or customer information or records to governmental entities.”). Civil discovery subpoenas from governmental entities do not fall within these exceptions. *See Doe v. City of San Diego*, Civil No. 12-cv-0689-MMA (DHB), 2013 WL 2338713, at \*4 (S.D. Cal. May 28, 2013) (“the SCA prohibits Verizon from disclosing Plaintiff’s ‘subscriber information’ to the City’s counsel of record.”); *In re Subpoena Duces Tecum to AOL, LLC*, 550 F. Supp. 2d 606, 611 (E.D. Va. 2008) (“governmental entities are prohibited from using Rule 45 civil discovery subpoenas to circumvent the [SCA]’s protections.”); *F.T.C. v. Netscape Communications Corp.*, 196 F.R.D. 559, 561 (N.D. Cal. 2000) (denying FTC’s motion to compel compliance with a discovery subpoena).

If you have questions regarding the above, please feel free to contact me to meet and confer.

Facebook preserves and does not waive any available rights or objections.

Sincerely,



Rachel Dallal

cc: Kyle Hartsock  
kyle.hartsock@da2nd.state.nm.us

# EXHIBIT 4



**Date: March 12, 2021**

**VIA EMAIL/CERTIFIED MAIL**

Rachel Dallal  
Perkins Coie LLP  
1201 Third Avenue, Suite 4900  
Seattle, WA 98101-3099  
RDallal@perkinscoie.com

**Re: Civil Subpoena, *State v. New Mexico Civil Guard*, Case No. D-202-CV-2020-04051  
(2nd Judicial District Court, Bernalillo County, NM)**

Dear Ms. Dallal:

Thank you for your correspondence regarding my office's third-party subpoena issued in connection with the above-captioned case. We disagree that the Stored Communications Act (SCA), 18 U.S.C. §§ 2701–12, prohibits Facebook from disclosing the non-content information sought by the State in this case and would like to meet and confer with you concerning this matter.<sup>1</sup>

As an initial matter, New Mexico law entitles the State to the non-content information it seeks in its subpoena. The New Mexico Electronic Communications Privacy Act (ECPA) implements the SCA at the state level. That statute specifically authorizes a “government entity” to obtain “subscriber information” from “a service provider” pursuant to a “trial *or civil discovery* subpoena.” NMSA 1978 § 10-16F-3(M)(3) (emphasis added). Accordingly, the New Mexico ECPA authorizes the State's subpoena, and Facebook is required to comply with it.

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<sup>1</sup> The State is willing to domesticate its subpoena under California law if doing so will enable Facebook to comply with the subpoena without resort to litigation.



The cases cited in your letter are inapposite. Of those cases, *FTC v. Netscape Communications Corp.*, 196 F.R.D. 559 (N.D. Cal. 2000), is the most on point because it concerns a subpoena issued by a governmental entity for non-content information pursuant to 18 U.S.C. § 2703(c)(2), like the State's subpoena here.<sup>2</sup> *Id.* at 559. *Netscape* held that the term "trial subpoena" as used in § 2703(c)(2) does not encompass civil discovery subpoenas issued under Rule 45 of the Federal Rules of Civil Procedure. But, as explained above, the State's subpoena is made under the New Mexico ECPA, not Rule 45.

Moreover, *Netscape* is a nonbinding decision and does not reflect a consistent position of the Northern District of California. That court has twice denied motions to quash civil discovery subpoenas seeking non-content records pursuant to 18 U.S.C. § 2702(c)(1), which authorizes the disclosure of the non-content records covered by § 2703. *Obadai v. Indeed, Inc.*, No. 13-80027-MISC EMC (KAW), 2013 WL 1191267, at \*3 (N.D. Cal. Mar. 21, 2013); *Chevron Corp. v. Donziger*, No. 12-mc-80237, 2013 WL 4536808, at \*6 (N.D. Cal. Aug. 22, 2013). Although both *Obadai* and *Donziger* involved subpoenas issued by private litigants, the reasoning of those decisions necessarily implies that a civil discovery subpoena issued by a governmental entity would entitle it to the non-content information identified in § 2703(c)(2). Accordingly, *Netscape* is not a persuasive basis for Facebook to refrain from complying with the State's subpoena.

Finally, the State brought the underlying civil action in a quasi-prosecutorial role. The suit seeks to enjoin the New Mexico Civil Guard and its members from attempting to exercise military and law-enforcement functions as a private paramilitary group without official sanction. The activities alleged in the complaint violate criminal statutes proscribing the false assumption of law-enforcement functions and nuisance, and the New Mexico Criminal Code permits the district attorney to bring a civil action to abate a criminal nuisance. *See* NMSA 1978, 30-8-8(B) (1963). Under these circumstances, the State's use of a civil discovery subpoena under New Mexico law is equivalent to the use of an administrative subpoena and thus falls squarely within the scope and purpose of § 2703(c)(2). At a time when there is a national urgency to quell private paramilitary activity that threatens public safety and governmental institutions, the State's important interest in obtaining this information is clear. The subscriber, meanwhile, has no right to privacy in the subscriber information sought in the subpoena. *See United States v. Perrine*, 518 F.3d 1196, 1204–05 (10th Cir. 2008) (collecting cases).

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<sup>2</sup> The other cases cited in your letter are not on point. *In re Subpoena Duces Tecum to AOL, LLC* addressed a subpoena issued by a private litigant. 550 F. Supp. 2d 606, 612 (E.D. Va. 2008) (holding that the SCA barred State Farm from obtaining a customer's emails through a civil discovery subpoena). The other two cases concerned subpoenas issued by governmental entities seeking the *content* of customers' communications under 18 U.S.C. § 2702, not the non-content information specified by § 2703(c)(2) that the State seeks here. *Doe v. City of San Diego*, No. 12-cv-0689, 2013 WL 2338713, at \*1, 4 & n.5 (May 28, 2013) (analyzing a city's subpoena seeking "any and all records" concerning customers' cell phone numbers under § 2702 and concluding that § 2703 was "not applicable" to the court's analysis, given the subpoena's breadth); *Thayer v. Chiczewski*, No. 07 C 1290, 2009 WL 2957317, at \*6–7 (N.D. Ill. Sept. 11, 2009) (holding that a customer's emails could be disclosed under 18 U.S.C. § 2702(b)(3) in response to a civil subpoena because the customer had consented to their release).

We welcome an opportunity to meet and confer about this topic. Please let me know some dates and times when you are available to meet.

Sincerely,

/s/ James Grayson\_\_\_\_\_

James Grayson  
Deputy District Attorney  
Second Judicial District  
520 Lomas Blvd. N.W.  
Albuquerque, NM 87102  
james.grayson@da2nd.state.nm.us

# EXHIBIT 5



Jonathan Backer &lt;jb2845@georgetown.edu&gt;

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## Follow-Up re NMCG

1 message

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**Jonathan Backer** <jb2845@georgetown.edu>

Fri, Mar 19, 2021 at 3:29 PM

To: rdallal@perkinscoie.com, rmrazik@perkinscoie.com

Cc: James Grayson <james.grayson@da2nd.state.nm.us>, Annie Owens <ao700@georgetown.edu>

Hi Rachel and Ryan,

Thanks again for taking the time to speak with us today. It was a productive conversation.

To follow up on your request for more precise information about when the accounts referenced in our subpoena were taken down, that [occured](#) on [August 19, 2020](#). That is consistent with Facebook's [announcement](#) on that date that it had taken down pages associated with "US-based militia organizations."

Let us know if there's additional information that would be helpful to facilitate your conversation with your client about this matter.

All the best,

Jonathan

--

Jonathan Backer

Counsel

Institute for Constitutional Advocacy and Protection

Georgetown University Law Center

(202) 662-9835

[jb2845@georgetown.edu](mailto:jb2845@georgetown.edu)

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# EXHIBIT 6



Jonathan Backer &lt;jb2845@georgetown.edu&gt;

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**State of NM v. NM Civil Guard Facebook subpoena; additional authorities**

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James Grayson &lt;james.grayson@da2nd.state.nm.us&gt;

Fri, Mar 19, 2021 at 4:40 PM

To: "Dallal, Rachel (Perkins Coie)" &lt;RDallal@perkinscoie.com&gt;, "Mrazik, Ryan T. (Perkins Coie)" &lt;RMrazik@perkinscoie.com&gt;

Cc: Jonathan Backer &lt;jb2845@georgetown.edu&gt;, Annie Owens &lt;ao700@georgetown.edu&gt;

Hello Rachel and Ryan,

As Jonathan said, we're grateful to you for taking the time to meet with us today and for being willing to consider our position. I'm providing below the authorities that I mentioned during the meeting and some other relevant cases. We think it's also worth noting that the reasoning in *FTC v. Netscape Communications Corp.*, 196 F.R.D. 559 (N.D. Cal. 2000) rests principally on a distinction in Rule 45 that no longer exists. The court in *Netscape* relied on the fact that, under the former version of the rule, a discovery subpoena would be issued by the court for the district in which the deposition or production was to occur while a trial subpoena would be issued by the court for the district in which the trial was held. *Id.* at 560. No such distinction exists under the current rule: "A subpoena must issue from the court where the action is pending." Fed. R. Civ. P. 45(a)(2). The current rule does not distinguish between "discovery" and "trial" subpoenas; instead, it authorizes testimonial subpoenas for any hearing, deposition, or trial, Rule 45(c)(1), and subpoenas for "other discovery," which would include the production of documents either before trial or at trial, Rule 45(c)(2), and provides that these two types of subpoenas may be issued in combination or separately, Rule 45(a)(1)(c). This change in the rule may explain why *Netscape* appears to stand alone in its restrictive interpretation of the phrase "trial subpoena" in § 2703(c)(2).

I hope these authorities are helpful in your consideration of the issue, and we look forward to hearing from you.

Best regards,  
James

For reliance on state law in construing § 2703's reference to subpoenas, see *Brown v. Sprint Corp. Security Specialist*, 17-CV-2561, 2019 U.S. Dist. LEXIS 16641, at \*12 n.3 (E.D.N.Y. Jan. 31, 2019) ("Under the New York State Criminal Procedure Law, a "subpoena" includes a "subpoena duces tecum." A subpoena duces tecum is a subpoena requiring the witness to bring with him and produce specified physical evidence.' N.Y. Crim. Proc. Law § 610.10(3)."), and *State ex rel. Koster v. Charter Communications, Inc.*, 461 S.W.3d 851, 855-56 (Mo. Ct. App. 2015) (evaluating Missouri law to determine whether a civil investigative demand qualifies as an administrative subpoena and referring to federal authorities because Missouri's CID procedure is patterned on federal law).

For good-faith reliance on a state-issued subpoena, see *Sams v. Yahoo! Inc.*, 713 F.3d 1175, 1181-1182 (9th Cir. 2013).

For the rejection of an argument that a Customs Summons is not permitted by § 2703(c)(2) because it is not specifically listed in the statute, see *United States v. Cray*, No. CR 110-075, 2010 U.S. Dist. LEXIS 73351, at \*28-29 (S.D. Ga. May 25, 2010).

For the general authority of state courts to issue civil discovery subpoenas for information under the SCA, see *Facebook, Inc. v. Superior Court*, 417 P.3d 725, 751 (Cal. 2018) ("Insofar as the Act permits a given disclosure, it permits a court to compel that disclosure under state law.").

For the consideration of the government's need for information as part of a legitimate investigation, see *Doe v. United States SEC*, No. 3: 11-mc-80184, 2011 U.S. Dist. LEXIS 114384, at \*8 (N.D. Cal. Oct. 4, 2011) ("Congress recognizes the need for government agencies to investigate wrongdoing and accordingly has granted these agencies investigatory powers that are not available to civil parties. The ECPA, for example, allows government agencies like the SEC to issue administrative subpoenas requesting information from ISPs or to obtain court orders compelling disclosure of subscriber information.").

--

James Grayson  
Deputy District Attorney  
Office of the Second Judicial District Attorney

11/10/21, 11:40 AM

Georgetown University Mail - State of NM v. NM Civil Guard Facebook subpoena; additional authorities

520 Lomas Blvd. N.W.  
Albuquerque, NM 87102  
(505) 222-1320  
[james.grayson@da2nd.state.nm.us](mailto:james.grayson@da2nd.state.nm.us)



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# EXHIBIT 7





Jonathan Backer <jb2845@georgetown.edu>

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## State of NM v. NM Civil Guard Facebook subpoena; additional authorities

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Jonathan Backer <jb2845@georgetown.edu>

Mon, Apr 26, 2021 at 2:31 PM

To: "Dallal, Rachel (Perkins Coie)" <RDallal@perkinscoie.com>

Cc: James Grayson <james.grayson@da2nd.state.nm.us>, "Mrazik, Ryan T. (Perkins Coie)" <RMrazik@perkinscoie.com>, Annie Owens <ao700@georgetown.edu>

Hi Rachel and Ryan,

Sorry to nudge you, but could you please provide us an update about this? We're trying to map out next steps in discovery for this case and would appreciate knowing where things stand on our subpoena.

Thanks,

Jonathan

[Quoted text hidden]

# EXHIBIT 8



Jonathan Backer &lt;jb2845@georgetown.edu&gt;

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**State of NM v. NM Civil Guard Facebook subpoena; additional authorities**

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**James Grayson** <james.grayson@da2nd.state.nm.us>

Tue, May 4, 2021 at 9:34 AM

To: "Dallal, Rachel (Perkins Coie)" &lt;RDallal@perkinscoie.com&gt;

Cc: Jonathan Backer &lt;jb2845@georgetown.edu&gt;, "Mrazik, Ryan T. (Perkins Coie)" &lt;RMrazik@perkinscoie.com&gt;, Annie Owens &lt;ao700@georgetown.edu&gt;

Good morning Rachel and Ryan,

In our last meeting, you asked about our anticipated next steps in light of the apparent impasse on the subpoena language in the SCA. We met as a group, and the consensus is that our next step would be to litigate the validity of the subpoena. We would likely begin that process relatively soon by domesticating the subpoena in California. Please let us know at your earliest convenience if your client's position on this issue changes. Thank you again for your willingness to engage in a cordial and thoughtful discussion of the legal issues surrounding the subpoena.

Best regards,

James

[Quoted text hidden]

# EXHIBIT 9



Jonathan Backer <jb2845@georgetown.edu>

---

## State of NM v. NM Civil Guard Facebook subpoena; additional authorities

---

Dallal, Rachel (Perkins Coie) <RDallal@perkinscoie.com>

Wed, May 5, 2021 at 3:53 PM

To: James Grayson <james.grayson@da2nd.state.nm.us>

Cc: Jonathan Backer <jb2845@georgetown.edu>, "Mrazik, Ryan T. (Perkins Coie)" <RMrazik@perkinscoie.com>, Annie Owens <ao700@georgetown.edu>

Hi James,

Thank you for this update. We are engaged in discussion with our client and will circle back to you soon regarding their position.

Best,

[Quoted text hidden]

[Quoted text hidden]

# EXHIBIT 10



Jonathan Backer &lt;jb2845@georgetown.edu&gt;

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## NMCG Next Steps

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Jonathan Backer <jb2845@georgetown.edu>

Mon, May 24, 2021 at 5:39 PM

To: "Dallal, Rachel (Perkins Coie)" <rdallal@perkinscoie.com>, "Mrazik, Ryan T. (Perkins Coie)" <rmrazik@perkinscoie.com>  
Cc: Raul Torrez <raul.torrez@da2nd.state.nm.us>, James Grayson <james.grayson@da2nd.state.nm.us>, Mark Baker <mbaker@peiferlaw.com>, "Matthew E. Jackson" <mjackson@peiferlaw.com>, Mary McCord <mbm7@georgetown.edu>, Annie Owens <ao700@georgetown.edu>

Hi Rachel,

Thanks for taking the time to meet with Annie, James, and me last week. We were glad to hear that Facebook wants to be helpful with what we are trying to accomplish in our lawsuit against the New Mexico Civil Guard.

We took a fresh look at Bryce Spangler's new Facebook account (bryce.spangler.549) and can confirm that all of the content on the page postdates the events at issue in the lawsuit. So, unfortunately, we do not think that the non-content subscriber information associated with that account will be of much use to us standing alone.

In terms of next steps, as we discussed last week, we think that it would be helpful to speak with someone at Facebook who is familiar with the takedown of the Facebook pages associated with the New Mexico Civil Guard and its members on August 19, 2020. If Facebook has any records or communications memorializing its decision to take down pages associated with the New Mexico Civil Guard, that would be especially helpful for us to know.

In addition, although you represented that the content associated with the other accounts was deleted, it would be helpful to hear from Facebook whether there is any means of recovering the deleted information. Given that Facebook took down the pages as part of its "Dangerous Individuals and Organizations" [policy](#), we were surprised to hear that Facebook took no steps to preserve content given its clear relevance to potential law-enforcement investigations. We'd really appreciate an opportunity to speak informally with someone who is knowledgeable about the takedown.

Please let us know if someone from Facebook would be willing to have an informal conversation with us about this matter so that we can get a better understanding of the August 19 takedown.

All the best,

Jonathan

--

Jonathan Backer  
Counsel  
Institute for Constitutional Advocacy and Protection  
Georgetown University Law Center  
(202) 662-9835  
[jb2845@georgetown.edu](mailto:jb2845@georgetown.edu)

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# EXHIBIT 11





Jonathan Backer &lt;jb2845@georgetown.edu&gt;

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## NMCG Next Steps

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**Dallal, Rachel (Perkins Coie)** <RDallal@perkinscoie.com>

Wed, Jun 9, 2021 at 2:25 PM

To: Jonathan Backer &lt;jb2845@georgetown.edu&gt;, "Mrazik, Ryan T. (Perkins Coie)" &lt;RMrazik@perkinscoie.com&gt;

Cc: Raul Torrez &lt;raul.torrez@da2nd.state.nm.us&gt;, James Grayson &lt;james.grayson@da2nd.state.nm.us&gt;, Mark Baker &lt;mbaker@peiferlaw.com&gt;, "Matthew E. Jackson" &lt;mjackson@peiferlaw.com&gt;, Mary McCord &lt;mbm7@georgetown.edu&gt;, Annie Owens &lt;ao700@georgetown.edu&gt;

Hi Jonathan,

Thanks for following up and for your patience as we checked in with Facebook about this. While Facebook remains interested in being helpful, it is not willing to make someone available for an informal conversation about its internal decision-making. To the extent that you would like to pursue additional information about the target accounts, we will need new legal process, ideally issued from an administrative agency in order to avoid the SCA concerns we've discussed with respect to your original subpoena.

Please let us know if you intend to pursue new legal process, and if so, whether you think it will be possible to partner with an agency to secure an administrative subpoena. In the meantime, Facebook does not waive and expressly preserves all available rights and objections.

Best,

Rachel

**Rachel Dallal | Perkins Coie LLP****ASSOCIATE**

1201 Third Avenue, Ste. 4900

Seattle, WA 98101-3099

D. +1.206.359.3766

F. +1.206.359.4766

E. [RDallal@perkinscoie.com](mailto:RDallal@perkinscoie.com)

[Quoted text hidden]

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# EXHIBIT 12



July 2, 2021

Rachel Dallal, Esq.  
Perkin Coie LLP  
1201 Third Ave., Suite 4900  
Seattle, WA 98101-3099  
rdallal@perkincoie.com

SENT VIA E-MAIL

Dear Ms. Dallal:

Thank you for your June 9 email regarding the efforts of the Bernalillo County District Attorney's Office to obtain data and records responsive to its civil-enforcement action against the New Mexico Civil Guard, *State of New Mexico ex rel. Raúl Torrez v. New Mexico Civil Guard*, No. D-202-CV-2020-04051 (N.M. Second Judicial Dist. Ct.), and our apologies for the delay in getting back to you.

After discussing this matter further, the litigation team intends to issue and domesticate in California a new subpoena. We plan to issue it as a civil-discovery subpoena, not as an administrative subpoena.

A draft of the subpoena is attached. We are sharing this draft with you for the limited purpose of attempting to facilitate informal discovery and do not by sharing the draft waive work-product protection, and we expressly preserve the right to assert all relevant privileges and protections in the future.

You will see that the draft subpoena includes several requests along the lines of the issues that we suggested discussing informally with a Facebook representative. In addition, you will see that the subpoena includes a modified version of our original request for non-content subscriber information. We understand that Facebook's position is that all data and records responsive to that request have been deleted (apart from data and records related to the bryce.spangler.549

account). But we find it perplexing that Facebook would have permanently deleted data and records related to accounts taken down pursuant to its “Dangerous Individuals and Organizations” policy. We are further puzzled by Facebook’s representation given that the Bernalillo County District Attorney’s Office specifically requested on June 15, 2020, through Facebook’s law-enforcement portal, that data and records related to the NMCIVILGUARD account be preserved (case 4956751).

We intend to issue and domesticate this subpoena on July 9, 2021. Please let us know before then if Facebook is willing to participate in informal discovery regarding the records we plan to request or any subset thereof. Otherwise, we will proceed with formal legal process.

Sincerely,

/s/ James Grayson

James Grayson  
Chief Deputy District Attorney  
james.grayson@da2nd.state.nm.us

/s/ Jonathan Backer

Jonathan Backer  
Counsel  
Institute for Constitutional Advocacy and Protection  
Georgetown University Law Center  
(202) 662-9835  
jb2845@georgetown.edu

## **Schedule A**

### **DEFINITIONS**

“Communication” means the transmittal of information, in the form of facts, ideas, and inquiries or otherwise, by any means whatsoever, including but not limited to letter, email, text, voicemail, or other means.

The term “document” means all documents and tangible things in the broadest sense allowed under the scope of discovery set forth in Rule 1-026 NMRA to include, but not limited to, any written, typed, or printed matter and all magnetic, electronic, or other records or documentation of any kind or description (including, without limitation: email, letters, correspondence, telegrams, memoranda, notes, records, minutes, contracts, agreements, records or notations of telephone or personal conversations, conferences, interoffice communications, microfilm, bulletins, circulars, pamphlets, photographs, facsimiles, invoices, tape recordings, computer printouts, and work sheets), including drafts and copies not identical to the originals; all photographs and graphic matter, however produced or reproduced; all compilations of data from which information can be obtained; and any and all writings or recordings of any type or nature, within your possession, custody, or control, whether prepared by you or any other person, that constitute or contain matters relevant to the subject matter of the action. The term “document” specifically includes electronically stored information (“ESI”). Please produce the documents in electronic form to the extent possible.

“Person” includes any natural person or business, legal or governmental entity, or association.

The terms “and,” “or,” and “and/or” shall be construed in the conjunctive or the disjunctive, whichever makes the request more inclusive. The disjunctive includes the conjunctive, and vice versa.

The terms “any” and “each” shall be construed as “all,” “each and every,” or “any one,” whichever makes the request more inclusive.

The term “all” shall include and encompass “any” or “each,” whichever makes the request more inclusive.

The use of the word “the” shall not be construed as limiting the scope of any request. The terms “including” and “include” means “specifically including but not limited to.” Each gender of any word includes the other genders.

The use of the singular form of any word includes the plural, and vice versa, as necessary to bring within the scope of the following requests all information which might otherwise be construed to be outside its scope.

The use of any form of any verb shall be considered to include within its meaning all of the forms of the verb so used.

## INSTRUCTIONS

All grounds for an objection to a request shall be stated with specificity.

A Document is deemed to be in your custody or control if you have possession of the Document, or have the right to secure such Document from another Person having possession thereof.

You shall produce the requested Documents either as they are kept in the ordinary course of business, or as they are organized and labeled in a manner such that they are grouped separately for each of the following requests. To the extent such produced Documents include electronically stored information, such information shall be produced in the form in which it is ordinarily maintained or in a reasonably usable form, including metadata.

Each of these requests shall be construed independently and shall not be limited by any other request.

If, in answering these requests, you claim that any request, or a definition or instruction applicable thereto, is ambiguous or objectionable, do not use such claim as a basis for refusing to respond, but rather set forth as part of the response the language you claim is ambiguous or objectionable and the interpretation you have used to respond to the individual request.

Plaintiffs do not seek documents that are privileged. With respect to any Document requested, or parts of any Document requested, that you claim to be privileged or immune, or that is withheld for any other reason, please provide a statement setting forth as to each such request:

- (a) the name of the author;
- (b) the name of the participants (in the case of Communications or meetings);
- (c) the date of the Document, Communication, or meeting;
- (d) the name of the individual that currently has possession, custody or control of the Document requested;
- (e) a brief description of the nature and subject matter of the Document withheld; and
- (f) the basis on which it is being withheld.

With respect to any Document requested that you claim to be privileged or immune, or that is withheld for any other reason, please produce, or permit the inspection of, parts of such Document falling within the scope of the request that are not privileged or immune.

File folders with labels, tables, or directories of files identifying a Document must also be produced with such Document.

**YOU ARE COMMANDED** to produce at the time, date, and place set forth in the Subpoena<sup>1</sup> the following documents, electronically stored information, or objects and permit their inspection or copying:

1. All documents and communications concerning Facebook's decision to take down, suspend, deactivate, delete, or otherwise restrict subscriber and public access to the following accounts on or around August 19, 2020:<sup>2</sup>
  - a. **Username:** NMCIVILGUARD  
**User ID:** 110703723882801
  - b. **Username:** New-Mexico-Civil-Guard-Curry-County  
**User ID:** 114690286917913
  - c. **Username:** New-Mexico-Civil-Guard-San-Juan-County  
**User ID:** 107557564304719
  - d. **Username:** New-Mexico-Civil-Guard-Eddy-County  
**User ID:** 109043210821100
  - e. **Username:** New-Mexico-Civil-Guard-Sandoval-County  
**User ID:** 100935324975786
  - f. **Username:** New-Mexico-Civil-Guard-Bernalillo-County  
**User ID:** 100318378372061
  - g. **Username:** New-Mexico-Civil-Guard-Dona-Ana-County  
**User ID:** 100318378372061
  - h. **Username:** Jason-P-Bjorn  
**User ID:** 100015675451132
  - i. **Username:** bryce.spangler.549  
**User ID:** 100220708496237

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<sup>1</sup> Your personal appearance is not required provided that the responsive documents are provided on or before [REDACTED] by U.S. Mail to James Grayson, Chief Deputy District Attorney, 520 Lomas Blvd., N.W. Albuquerque, NM 87102 or by email to james.grayson@da2nd.state.nm.us.

<sup>2</sup> For Request Nos. 1 through 7, the State does not seek any content or non-content subscriber information associated with the enumerated accounts or any other Facebook accounts. *See* 18 U.S.C. § 2703(b), (c). To the extent that any documents or communications responsive to Request Nos. 1 through 5 contain content or non-content subscriber information, the State does not object to you redacting such information in your production, so long as you document the basis for such redactions in a privilege log as described above.

- j. Any other account associated with the New Mexico Civil Guard or any entities with which it appears to be affiliated.
2. All communications with law-enforcement agencies concerning the accounts enumerated in Request No. 1 or the subscribers who own those accounts.
3. All documents reflecting any policies or procedures associated with Facebook’s “Dangerous Individuals and Organizations” policy.<sup>3</sup>
4. All documents reflecting any policies or procedures governing Facebook’s retention and preservation of data or records associated with accounts taken down, suspended, deactivated, deleted, or otherwise restricted in connection with Facebook’s “Dangerous Individuals and Organizations” policy.
5. All documents and communications concerning the development and implementation of Facebook’s “Dangerous Individuals and Organizations” policy.
6. All documents or communications related to the retention, preservation, or deletion of records associated with the preservation request submitted by the Bernalillo County District Attorney’s office on or around June 15, 2020, through Facebook’s law-enforcement portal (case 4956751).
7. All documents reflecting any policies or procedures governing Facebook’s retention, preservation, or deletion of data or records associated with preservation requests made by law-enforcement agencies.
8. The following non-content subscriber information for the subscribers whose accounts are enumerated in Request No. 1:<sup>4</sup>
  - a. Name and address(es);

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<sup>3</sup> *An Update on How We Address Movements and Organizations Tied to Violence*, FB.com, <https://about.fb.com/news/2020/08/addressing-movements-and-organizations-tied-to-violence/> (last updated Jan. 19, 2021).

<sup>4</sup> The State makes Request No. 8 pursuant to the Stored Communications Act through this trial subpoena. 28 U.S.C. § 2703(c)(2) (permitting governmental entities to obtain the information requested in Request No. 6 through a “State . . . trial subpoena”); *see also* NMSA 1978 § 10-16F-3(M)(3) (implementing § 2703(c)(2) at the state level and permitting a government entity to obtain the information requested in Request No. 6 through a “trial or civil discovery subpoena”); *Brown v. Sprint Corporate Sec. Specialist*, No. 17-CV-2561(JS)(ARL), 2019 WL 418100, at \*5 n.3 (noting that New York’s statutory definition of term “subpoena” encompasses subpoenas duces tecum in reviewing a request for telephone records). Request No. 6 does not request production of any of the subscribers’ content under 28 U.S.C. § 2703(b), but the State does renew its request pursuant to 28 U.S.C. § 2703(f) that you preserve all such documents and communications related to the subscribers’ accounts.



- b. All subscribers' contact information, including e-mail addresses and alternate e-mail addresses used for verification, activated phone numbers and all phone numbers or e-mail addresses used for password recovery, etc.;
- c. Length of service (including creation date of subscribers' Facebook accounts);
- d. IP Address Access Log Information (please do not send only the last IP address to access the subscribers' Facebook account, send entire history for *every* access session from January 1, 2020, through the date on which the search is completed). The IP Address Access Log Information includes:
  - i. Any connections to the subscribers' Facebook account since January 1, 2020, through the date on which the search is completed;
  - ii. The date, time and time zone for each connection or login to Facebook by the subscribers;
  - iii. The date, time and time zone for each disconnection or logoff for each connection/session;
  - iv. The originating IP address for each connection/session to the subscribers' Facebook account from January 1, 2020, through the date on which the search is completed; and
  - v. If available, the user agent details for each access, including browser and version, operating system and version, and any other logged information for each connection/session.
- e. Any additional relevant information in your possession to assist in identifying subscribers.

# EXHIBIT 13

**4-505A. Subpoena for production or inspection.**  
[For use with District Court Civil Rule 1-045 NMRA]

STATE OF NEW MEXICO

COUNTY OF Bernalillo

Second JUDICIAL DISTRICT

State ex rel. Raul Torrez, District Atty. , Plaintiff,

v.

No. D-202-CV-2020-04051

New Mexico Civil Guard et al. , Defendant.

**SUBPOENA FOR PRODUCTION OR INSPECTION<sup>1</sup>**

**SUBPOENA FOR**

☒ **DOCUMENTS OR OBJECTS<sup>2</sup>**

☐ **INSPECTION OF PREMISES<sup>2</sup>**

TO: Facebook, Inc., 1601 Willow Road, Menlo Park, CA 94025

YOU ARE HEREBY COMMANDED ON:

DATE: September 15 , 2021 TIME: 9:00 (a.m.) (p.m.)

TO:

☐ permit inspection of the following described books, papers, documents or tangible things:  
See Schedule A

at Advanced Attorney Service, 3500 Fifth Avenue, Suite 202, San Diego, CA 92103 (address).

☐ permit the inspection of the premises located at:  
(address).

ABSENT A COURT ORDER, DO NOT RESPOND TO THIS SUBPOENA UNTIL THE EXPIRATION OF FOURTEEN (14) DAYS AFTER THE DATE OF SERVICE OF THE SUBPOENA.

DO NOT RESPOND TO THIS SUBPOENA FOR PRODUCTION OR INSPECTION IF YOU ARE SERVED WITH WRITTEN OBJECTIONS OR A MOTION TO QUASH UNTIL YOU RECEIVE A COURT ORDER REQUIRING A RESPONSE.

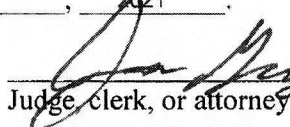
You may comply with this subpoena for production or inspection by providing legible copies of the items requested to be produced by mail or delivery to the attorney whose name appears on this subpoena. You may condition the preparation of the copies upon the payment in advance of the reasonable cost of inspection and copying. You have the right to object to the production under this subpoena as provided below.

**READ THE SECTION "DUTIES IN RESPONDING TO SUBPOENA."**

IF YOU DO NOT COMPLY WITH THIS SUBPOENA you may be held in contempt of court and punished by fine or imprisonment.

August 18

2021

  
\_\_\_\_\_  
Judge, clerk, or attorney

#### USE NOTES

#### TO BE PRINTED ON EACH SUBPOENA

1. This subpoena must be served on each party in the manner provided by Rule 1-005 NMRA. If service is by a party, an affidavit of service must be used instead of a certificate of service.
2. A person commanded to produce and permit inspection and copying of designated books, papers, documents, or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.
3. If a person's attendance is commanded, one full day's per diem must be tendered with the subpoena, unless the subpoena is issued on behalf of the state or an officer or agency thereof. Mileage must also be tendered at the time of service of the subpoena as provided by the Per Diem and Mileage Act. *See* NMSA 1978, Section 38-6-4 (1983) for per diem and mileage for witnesses. *See* NMSA 1978, Section 10-8-4(A) (2009) for per diem and mileage rates for nonsalaried public officers. Payment of per diem and mileage for subpoenas issued by the state is made pursuant to regulations of the Administrative Office of the Courts. *See* NMSA 1978, Section 34-9-11 (2017) for payments from the jury and witness fee fund.
4. A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose on the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney fees.

#### RETURN FOR COMPLETION BY SHERIFF OR DEPUTY

I certify that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in \_\_\_\_\_ County, I served this subpoena on \_\_\_\_\_ by delivering to the person named a copy of the subpoena and a fee of \$ \_\_\_\_\_ (*insert the amount of fee tendered or, if no fee is tendered, "none"*).<sup>3</sup>

\_\_\_\_\_  
Deputy sheriff

### RETURN FOR COMPLETION BY OTHER PERSON MAKING SERVICE

I, being duly sworn, on oath say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that on the \_\_\_\_\_ day of \_\_\_\_\_, in \_\_\_\_\_ County, I served this subpoena on \_\_\_\_\_ by delivering to the person named a copy of the subpoena and a fee of \$ \_\_\_\_\_ (*insert the amount of fee tendered or, if no fee is tendered, "none"*).<sup>3</sup>

\_\_\_\_\_  
Person making service

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_ (*date*).

\_\_\_\_\_  
Judge, notary, or other officer  
authorized to administer oaths

THIS SUBPOENA issued by or at request of:

\_\_\_\_\_  
Name of attorney or party

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

### CERTIFICATE OF SERVICE BY ATTORNEY

I certify that I caused a copy of this subpoena to be served on the following persons or entities by (*delivery*) (*mail*) on this \_\_\_\_\_ day of \_\_\_\_\_.

(1) \_\_\_\_\_  
(*Name of party*)

\_\_\_\_\_  
(*Address*)

(2) \_\_\_\_\_  
(*Name of party*)

\_\_\_\_\_  
(*Address*)

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date of signature

## INFORMATION FOR PERSONS RECEIVING SUBPOENA

A person commanded to produce and permit inspection and copying of designated books, papers, documents, or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.

Subject to Rule 1-045(D)(2) NMRA, a person commanded to produce and permit inspection and copying may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if that time is less than fourteen (14) days after service, serve upon the party or attorney designated in the subpoena and all parties to the lawsuit identified in the certificate of service by attorney written objection to inspection or copying of any or all of the designated materials or of the premises or within fourteen (14) days after service of the subpoena may file and serve on all parties a motion to quash the subpoena. If an objection is served or a motion to quash is filed and served on the parties and the person responding to the subpoena, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except under an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. The order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded. The court may award costs and attorney fees against a party or person for serving written objections or filing a motion to quash that lacks substantial merit.

On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (1) fails to allow reasonable time for compliance,
- (2) requires a person who is not a party or an officer of a party to travel to a place more than one hundred (100) miles from the place where that person resides, is employed or regularly transacts business in person, except as provided below, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held,
- (3) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (4) subjects a person to undue burden.

If a subpoena

- (1) requires disclosure of a trade secret or other confidential research, development, or commercial information,
- (2) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (3) requires a person who is not a party or an officer of a party to incur substantial expense to travel,

the court may quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

#### **DUTIES IN RESPONDING TO SUBPOENA**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(3) A person commanded to produce documents or material or to permit the inspection of premises shall not produce the documents or materials or permit the inspection of the premises if a written objection is served or a motion to quash has been filed with the court until a court order requires their production or inspection.

[As amended, effective November 1, 2002; as amended by Supreme Court Order No. 08-8300-002, effective March 15, 2008; by Supreme Court Order No. 09-8300-030, effective October 12, 2009; as amended by Supreme Court Order No. 20-8300-005, effective for all cases pending or filed on or after December 31, 2020.]

**YOU ARE COMMANDED** to produce at the time, date, and place set forth in the Subpoena<sup>1</sup> the following documents, electronically stored information, or objects and permit their inspection or copying:

1. All documents and communications concerning Facebook's decision to take down, suspend, deactivate, delete, or otherwise restrict subscriber and public access to the following accounts on or around August 19, 2020:<sup>2</sup>

- a. **Username:** NMCIVILGUARD  
**User ID:** 110703723882801
- b. **Username:** New-Mexico-Civil-Guard-Curry-County  
**User ID:** 114690286917913
- c. **Username:** New-Mexico-Civil-Guard-San-Juan-County  
**User ID:** 107557564304719
- d. **Username:** New-Mexico-Civil-Guard-Eddy-County  
**User ID:** 109043210821100
- e. **Username:** New-Mexico-Civil-Guard-Sandoval-County  
**User ID:** 100935324975786
- f. **Username:** New-Mexico-Civil-Guard-Bernalillo-County  
**User ID:** 100318378372061
- g. **Username:** New-Mexico-Civil-Guard-Dona-Ana-County  
**User ID:** 100318378372061
- h. **Username:** Jason-P-Bjorn  
**User ID:** 100015675451132
- i. **Username:** bryce.spangler.549  
**User ID:** 100220708496237

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<sup>1</sup> Your personal appearance is not required provided that the responsive documents are provided on or before September 15, 2021, by U.S. Mail to James Grayson, Chief Deputy District Attorney, 520 Lomas Blvd., N.W. Albuquerque, NM 87102 or by email to james.grayson@da2nd.state.nm.us.

<sup>2</sup> For Request Nos. 1 through 7, the State does not seek any content or non-content subscriber information associated with the enumerated accounts or any other Facebook accounts. *See* 18 U.S.C. § 2703(b), (c). To the extent that any documents or communications responsive to Request Nos. 1 through 5 contain content or non-content subscriber information, the State does not object to you redacting such information in your production, so long as you document the basis for such redactions in a privilege log as described above.



- j. Any other account associated with the New Mexico Civil Guard or any entities with which it appears to be affiliated.
2. All communications with law-enforcement agencies concerning the accounts enumerated in Request No. 1 or the subscribers who own those accounts.
3. All documents reflecting any policies or procedures associated with Facebook's "Dangerous Individuals and Organizations" policy.<sup>3</sup>
4. All documents reflecting any policies or procedures governing Facebook's retention and preservation of data or records associated with accounts taken down, suspended, deactivated, deleted, or otherwise restricted in connection with Facebook's "Dangerous Individuals and Organizations" policy.
5. All documents and communications concerning the development and implementation of Facebook's "Dangerous Individuals and Organizations" policy.
6. All documents or communications related to the retention, preservation, or deletion of records associated with the preservation request submitted by the Bernalillo County District Attorney's office on or around June 15, 2020, through Facebook's law-enforcement portal (case 4956751).
7. All documents reflecting any policies or procedures governing Facebook's retention, preservation, or deletion of data or records associated with preservation requests made by law-enforcement agencies.
8. The following non-content subscriber information for the subscribers whose accounts are enumerated in Request No. 1:<sup>4</sup>
  - a. Name and address(es);

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<sup>3</sup> *An Update on How We Address Movements and Organizations Tied to Violence*, FB.com, <https://about.fb.com/news/2020/08/addressing-movements-and-organizations-tied-to-violence/> (last updated Jan. 19, 2021).

<sup>4</sup> The State makes Request No. 8 pursuant to the Stored Communications Act through this trial subpoena. 28 U.S.C. § 2703(c)(2) (permitting governmental entities to obtain the information requested in Request No. 6 through a "State . . . trial subpoena"); *see also* NMSA 1978 § 10-16F-3(M)(3) (implementing § 2703(c)(2) at the state level and permitting a government entity to obtain the information requested in Request No. 8 through a "trial or civil discovery subpoena"); *Brown v. Sprint Corporate Sec. Specialist*, No. 17-CV-2561(JS)(ARL), 2019 WL 418100, at \*5 n.3 (noting that New York's statutory definition of term "subpoena" encompasses subpoenas duces tecum in reviewing a request for telephone records). Request No. 8 does not request production of any of the subscribers' content under 28 U.S.C. § 2703(b), but the State does renew its request pursuant to 28 U.S.C. § 2703(f) that you preserve all such documents and communications related to the subscribers' accounts.

- b. All subscribers' contact information, including e-mail addresses and alternate e-mail addresses used for verification, activated phone numbers and all phone numbers or e-mail addresses used for password recovery, etc.;
- c. Length of service (including creation date of subscribers' Facebook accounts);
- d. IP Address Access Log Information (please do not send only the last IP address to access the subscribers' Facebook account, send entire history for *every* access session from January 1, 2020, through the date on which the search is completed). The IP Address Access Log Information includes:
  - i. Any connections to the subscribers' Facebook account since January 1, 2020, through the date on which the search is completed;
  - ii. The date, time and time zone for each connection or login to Facebook by the subscribers;
  - iii. The date, time and time zone for each disconnection or logoff for each connection/session;
  - iv. The originating IP address for each connection/session to the subscribers' Facebook account from January 1, 2020, through the date on which the search is completed; and
  - v. If available, the user agent details for each access, including browser and version, operating system and version, and any other logged information for each connection/session.
- e. Any additional relevant information in your possession to assist in identifying subscribers.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address) <b>Andrew Botros SBN 265697</b> <b>Bickford Blado &amp; Botros</b> <b>12348 High Bluff Drive Suite 220</b> <b>San Diego, CA 92130</b> ATTORNEY FOR <b>Plaintiff</b>		TELEPHONE NUMBER <b>(858) 793-8884</b>	FOR COURT USE ONLY
DISTRICT COURT OF NEW MEXICO, COUNTY OF BERNALILLO 400 Lomas Blvd NW Albuquerque, NM 87102			
SHORT TITLE OF CASE: State of new Mexico v. New Mexico Civil Guard; et al.			
DATE: 09/15/2021	TIME: 9:00 AM	DEP./DIV.:	CASE NUMBER: D-202-cv-2020-04051
<b>Proof of Service Civil Subpoena</b>			Ref. No. or File No:

1. I served this **Subpoena For Production of Business Records in Action Pending Outside California** by personally delivering a copy to the person served as follows:

a. Person served (name): **Facebook Inc. -**

b. Address where served: **2710 Gateway Oaks Dr, #150N, Sacramento, CA 95833**

c. Date of delivery: **8/18/2021**

d. Time of delivery: **01:30 PM**

e. Witness fees (check one):

(1) ☐ were offered or demanded  
and paid, Amount: ..... **\$ 0.00**

(2) ☒ were not demanded or paid.

f. Fee for service: ..... **\$ 45.00**

2. Person attempting service:

a. Name: **Demian Ross**

b. Address: **5425 Palm Ave., Sacramento, CA 95841**

c. Telephone number: **916-373-9065**

d. I am:

(i) ☒ Employee

(ii) Registration No.: **2011-66**

(iii) County: **Sacramento**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Demian Ross

Date: 08/18/2021

# EXHIBIT 14

September 15, 2021

Rachel Dallal  
RDallal@perkinscoie.com  
D. +1.206.359.3766  
F. +1.206.359.4766

**VIA EMAIL**

James Grayson  
Second Judicial District Attorney's Office  
520 Lomas Blvd. N.W.  
Albuquerque, NM 87102  
[James.grayson@da2nd.state.nm.us](mailto:James.grayson@da2nd.state.nm.us)

**Re: Civil Subpoena, *State v. New Mexico Civil Guard*, Case No. D-202-CV-2020-04051  
(2nd Judicial District Court, Bernalillo County, NM)**

Dear Mr. Grayson,

As you know, we represent non-party Facebook, Inc. ("Facebook"), the operator of the Facebook and Instagram services, and write in response to your subpoena of August 18, 2021 (the "Subpoena"). The Subpoena seeks eight categories of documents (with sub-categories), for example, "[a]ll" documents and communications pertaining to Facebook's decision to remove certain accounts and pages, as well as "[a]ll" documents concerning certain of Facebook's policies and procedures. The Subpoena also requests basic subscriber information for the target accounts and pages. Facebook objects to the Subpoena for the reasons explained below.

First, Facebook objects to the Subpoena to the extent it seeks documents or information that are not proportionate to the needs of the case or not relevant to any party's claims or defenses. *See, e.g.,* Cal. Civ. Proc. Code § 2017.010 (a party may obtain discovery regarding a matter that is relevant, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence). Facebook is not a party to this litigation, and for example, Facebook's internal documents, including its assessments, communications, manuals, guidelines, policies, procedures, or similar documents, have no bearing on the litigation. *See, e.g.,* Request Nos. 1-7 (seeking, among other things and without restriction, "[a]ll documents and communications" concerning certain internal policies and procedures, and communications with law enforcement). Further, to the extent that you need information on Facebook's "Dangerous Individuals and Organizations Policy" or other similar policies, that information is publicly available and need not be obtained from Facebook. *See, e.g.,* Facebook Community Standards, [https://m.facebook.com/communitystandards/dangerous\\_individuals\\_organizations/](https://m.facebook.com/communitystandards/dangerous_individuals_organizations/).

Second, Facebook objects to your subpoena because it appears to be an improper fishing expedition designed to delve into Facebook's confidential information. *See* Cal. Civ. Proc. Code

§ 2017.020(a) (“The court shall limit the scope of the delivery if it determines that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence”); *see also Calcor Space Facility, Inc. v. Super. Ct.*, 53 Cal. App. 4th 216, 225 (1997) (criticizing fishing expeditions that place “undue burdens” on a nonparty); *Digital Shape Techs., Inc. v. Glassdoor, Inc.*, No. 16-mc-80150-JSC, 2016 WL 5930275, at \*4 (N.D. Cal. Oct. 12, 2016) (“Requests are unduly intrusive and burdensome where they . . . request confidential information[] and appear to be a broad fishing expedition for irrelevant information”) (internal quotation marks and citation omitted); *Edwards v. California Dairies, Inc.*, No. 1:14-MC-00007-SAB, 2014 WL 2465934, at \*2 (E.D. Cal. June 2, 2014) (“While discovery should not be unnecessarily restricted, discovery is more limited to protect third parties from harassment, inconvenience, or *disclosure of confidential documents.*”), *reconsideration denied*, No. 1:14-MC-00007-SAB, 2014 WL 3420991 (E.D. Cal. July 14, 2014) (emphasis added). For example, Requests 1, 4, 5, 6, and 7, seek only Facebook internal records, which may be confidential or privileged, and do not bear on your litigation

Third, Facebook objects to the Subpoena on the grounds that it is unduly burdensome to the extent its requests are not reasonably tailored in scope or seek information that is not reasonably available to Facebook, such as deleted records. *See, e.g.*, Request Nos. 3-7 (seeking, without limitation, “all documents” or “all documents and communications” concerning various Facebook policies and procedures); Request No. 8 (seeking basic subscriber information for the target accounts and pages). Litigants have an obligation to avoid burdening nonparties, such as Facebook, with the demands of civil discovery, and this subpoena does not meet that obligation. *See, e.g., Monarch Healthcare v. Super. Ct.*, 78 Cal. App. 4th 1282, 1290 (2000) (“[N]onparty witnesses should be somewhat protected from the burdensome demands of litigation.”); *Bd. of Registered Nursing v. Super. Ct. of Orange Cty.*, 59 Cal. App. 5th 1011, 1033 (2021) (same), *reh’g denied* (Feb. 3, 2021), *review denied* (Apr. 21, 2021); *Calcor*, 53 Cal. App. 4th at 225 (“[T]he burden of discovery should be placed on [nonparties] only if the [parties] do not possess the material sought to be discovered.”); *see also Intermarine LLC v. Spliethoff Bevrachtungskantoor, B.V.*, 123 F. Supp. 3d 1215, 1218-19 (N.D. Cal. 2015) (“[N]onparties subject to discovery requests deserve extra protection from the courts.”).

Fourth, Facebook objects to the Subpoena to the extent it seeks documents or information that are confidential or protected by any privilege, including the attorney-client privilege, work product immunity doctrine, common interest privilege, or any other applicable privilege, immunity, or restriction on discovery. For example, the Subpoena seeks information about law enforcement requests or legal process, which may be confidential, as well as documents regarding internal procedures for detecting and enforcing policy violations, the disclosure of which could impede Facebook’s ability to protect its platform. *See, e.g., Bd. of Registered Nursing*, 59 Cal. App. 5th at 1038 (holding that the trial court abused discretion in ordering production where the party had “not shown that these broad categories are reasonably calculated

to lead to the discovery of admissible evidence” and “their probative value is vastly outweighed by the privileged and private nature” of the records).

Fifth, Facebook objects to the Subpoena to the extent it imposes any obligations with respect to the production of electronically stored information that are different from or in addition to those imposed by the California Code of Civil Procedure. Facebook further objects to the extent that the requests include electronically stored information that is (1) not reasonably accessible by Facebook because of undue burden or expense; (2) obtainable from another source that is less burdensome, expensive or more convenient; and/or (3) unreasonably cumulative or duplicative, or where the likely burden or expense of producing the electronically stored information outweighs the likely benefit. For example, to the extent that any information is public, you can obtain it yourself; if any information is available from the parties, it must come from them.

Sixth, Facebook objects to the Subpoena to the extent it fails to provide information sufficient to enable Facebook to conduct a reasonable search for documents responsive to the Subpoena, if any. For example, the Subpoena requests “all documents and communications” regarding the deactivation, suspension, or deletion of “[a]ny other account associated with the New Mexico Civil Guard or any entities with which it appears to be affiliated.” *See* Request No. 1. In addition to being overly broad, this request purports to require Facebook to perform a search—in the absence of any account identifiers or other specific information—for accounts and pages that may or may not exist, or that cannot be determined to be connected to your underlying lawsuit. Facebook has over two billion monthly account holders and cannot be expected to sift through its billions of account records in order to make independent determinations as to whether certain accounts, pages, or associated documents might be relevant in litigation to which Facebook is not a party. Without further information, the Subpoena would subject Facebook to an unreasonable burden of conducting an overbroad inquiry and search for documents or information that may or may not exist and may or may not be relevant to the underlying case.

Seventh, Facebook objects to the Subpoena to the extent it seeks information that is not within Facebook’s, possession, custody, or control.

Eighth, Facebook objects to the Subpoena to the extent it seeks to impose obligations beyond what is permissible under the California Code of Civil Procedure or other applicable law.

Ninth, as we previously discussed, the Stored Communications Act (“SCA”) prohibits Facebook from producing records to a governmental entity such as the Second Judicial District Attorney’s Office, *see* 18 U.S.C. § 2702(a)(3), except in response to “an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena,” *id.* §§ 2702(c)(1), 2703(c)(2); *Thayer v. Chiczewski*, No. 07 C 1290, 2009 WL 2957317, at \*5 n.5 (N.D. Ill. Sept. 11, 2009) (“The SCA . . . prohibits [providers] from divulging . . . subscriber or customer information or records to governmental entities.”). Civil discovery subpoenas from

governmental entities do not fall within these exceptions. *See Doe v. City of San Diego*, Civil No. 12-cv-0689-MMA (DHB), 2013 WL 2338713, at \*4 (S.D. Cal. May 28, 2013) (“[T]he SCA prohibits Verizon from disclosing Plaintiff’s ‘subscriber information’ to the City’s counsel of record.”); *In re Subpoena Duces Tecum to AOL, LLC*, 550 F. Supp. 2d 606, 611 (E.D. Va. 2008) (“[G]overnmental entities are prohibited from using Rule 45 civil discovery subpoenas to circumvent the [SCA]’s protections.”); *F.T.C. v. Netscape Communications Corp.*, 196 F.R.D. 559, 561 (N.D. Cal. 2000) (denying FTC’s motion to compel compliance with a discovery subpoena). Facebook disagrees with your characterization of the Subpoena as a “trial subpoena,” given that it seeks the production of documents in advance of trial for purposes of discovery. Courts recognize a clear distinction between pre-trial discovery subpoenas and trial subpoenas. *See, e.g., O’Grady v. Super. Ct.*, 139 Cal. App. 4th 1423, 1444 (2006) (citing favorably the “well-recognized distinctions between trial and discovery subpoenas”), *as modified* (June 23, 2006); *Madrigal v. Allstate Indem. Co.*, No. CV 14-4242 SS, 2015 WL 12750443, at \*2 (C.D. Cal. Nov. 12, 2015) (“California federal courts hold that, aside from narrow circumstances such as ensuring the availability of originals at trial or memory refreshment, requests for production of documents under Rule 45 constitute pre-trial discovery.”); *Liu v. Win Woo Trading, LLC*, No. 14-CV-02639-KAW, 2016 WL 661029, at \*1 (N.D. Cal. Feb. 18, 2016) (Trial subpoenas “include requests for attendance at a hearing or trial” or, “in narrow circumstances,” requests for documents that may be used for “memory refreshment” or similar purposes.); *Price v. Wiese*, No. 3:16-CV-1174-CAB-AHG, 2019 WL 6918201, at \*2 (S.D. Cal. Dec. 19, 2019) (“Where, as here, a party wants to request production of books, documents, and other tangible items, such a request falls under the umbrella of pre-trial discovery subpoenas.”). Because your Subpoena is a civil discovery subpoena issued by a government entity, the SCA does not authorize it to compel the production of even basic subscriber information. *See* Request 8; 18 U.S.C. § 2703(c)(1)(C).

Tenth, the SCA, 18 U.S.C. §§ 2701, *et seq.*, also does not permit private parties to compel production of the content of an account holder’s electronic communications from service providers such as Facebook by service of a subpoena or court order. 18 U.S.C. § 2702(a)(1), (2); 18 U.S.C. § 2702(b)(1)-(9). There is no exception under the SCA for civil discovery demands, and courts have therefore held that the SCA does not permit civil litigants to compel service providers such as Facebook to produce the content of electronic communications in response to civil discovery demands. *See, e.g., Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011) (Non-governmental entities may not obtain the content of communications with a civil discovery demand because it would “invade[] the specific interests that the [SCA] seeks to protect.”); *Theofel v. Farey-Jones*, 359 F.3d 1066, 1073-74 (9th Cir. 2004) (Civil discovery demand for content is not valid legal process under the SCA.). Request Nos. 1-7 of your subpoena—which seek various documents and communications relating to Facebook’s content moderation decisions pertaining to the accounts and pages at issue—necessarily implicate the content of user-generated communications. Thus, federal law prohibits you from compelling Facebook to produce content pursuant to a civil discovery subpoena.



James Grayson  
September 15, 2021  
Page 5

If you have questions regarding the above, please feel free to contact me to meet and confer.

Facebook preserves and does not waive any available rights or objections.

Sincerely,

A handwritten signature in blue ink that reads "Rachel Dallal". The signature is written in a cursive, flowing style.

Rachel Dallal

cc: Jonathan Backer  
[jb2845@georgetown.edu](mailto:jb2845@georgetown.edu)

Annie Owens  
[ao700@georgetown.edu](mailto:ao700@georgetown.edu)

# EXHIBIT 15



September 23, 2021

**VIA EMAIL**

Rachel Dallal  
Perkins Coie LLP  
1201 Third Avenue  
Suite 4900  
Seattle, WA 98101  
RDallal@perkinscoie.com

**Re: Civil Subpoena, *State v. New Mexico Civil Guard*, Case No. D-202-CV-2020-04051 (2nd Judicial District Court, Bernalillo County, NM)**

Dear Ms. Dallal:

This letter responds to your letter of September 15, 2021, objecting to the subpoena issued to Facebook on August 18, 2021, for information related to specific accounts associated with the New Mexico Civil Guard, which is an unlawful private militia group, and several individuals affiliated with that organization.

As you know from our previous communications, my office is interested primarily in specific non-content subscriber information for accounts affiliated with the New Mexico Civil Guard, as enumerated in item 8 of the August 18 subpoena. When you indicated that such information had been deleted after the accounts had been removed pursuant to Facebook's Dangerous Individuals and Organizations Policy, my office decided to seek the additional information listed in items 1–7 of the subpoena to determine whether and how such information might be recovered.

In particular, we have reason to believe that Facebook may still have access to the subscriber information in question given that my office submitted a litigation preservation request through Facebook's online law-enforcement portal on or around June 15, 2020. Facebook's own policy states, "[w]hen we receive a preservation request, we will preserve a temporary snapshot of the relevant account information" pending service of a subpoena.<sup>1</sup> Moreover, Facebook has instituted an appeals process for accounts that have been

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<sup>1</sup> Facebook Transparency Center, *Preservation Requests* (last visited Sept. 21, 2021), <https://transparency.fb.com/data/government-data-requests/preservation-requests/>.

disabled or removed<sup>2</sup> and compiles regular reports with statistics reflecting Facebook's enforcement of its community standards policies, including action taken on accounts "engaging in terrorist activity or organized hate."<sup>3</sup> The existence of these policies suggests that Facebook retains subscriber information in some format even after the accounts have been deleted, and items 1-7 of the subpoena are reasonably calculated to lead to additional information regarding the continued existence of that data.

Accordingly, my office is willing to limit its request to the non-content subscriber information enumerated in item 8 of the subpoena if Facebook will confirm that the information is still retrievable and will be produced pursuant to a valid subpoena. Furthermore, Facebook can obviate the need for litigation altogether by producing the information requested in item 8 by September 30, 2021. Otherwise, my office will have no choice but to pursue an enforcement action in California state court.

Sincerely,



James Grayson  
Chief Deputy District Attorney  
Second Judicial District  
520 Lomas Blvd. N.W.  
Albuquerque, NM 87102  
james.grayson@da2nd.state.nm.us

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<sup>2</sup> Facebook Oversight Board, *Appealing Content Decisions on Facebook and Instagram* (last visited Sept. 21, 2021), <https://oversightboard.com/appeals-process/>.

<sup>3</sup> Facebook Transparency Center, *Community Standards Enforcement Report, Dangerous Organizations: Terrorism and Organized Hate* (last visited Sept. 21, 2021), <https://transparency.fb.com/data/community-standards-enforcement/dangerous-organizations/facebook/>.

# EXHIBIT 16



Jonathan Backer &lt;jb2845@georgetown.edu&gt;

---

**Fwd: DAO Letter re Civil Subpoena SNM v NM Civil Guard**

---

**James Grayson** <james.grayson@da2nd.state.nm.us>

Wed, Sep 29, 2021 at 4:16 PM

To: Annie Owens <ao700@georgetown.edu>, Mary McCord <mbm7@georgetown.edu>, Raul Torrez <raul.torrez@da2nd.state.nm.us>, Mark Baker <mbaker@peiferlaw.com>, "Matthew E. Jackson" <mjackson@peiferlaw.com>, Jonathan Backer <jb2845@georgetown.edu>, Shelby Calambokidis <sc2053@georgetown.edu>

Here's the response from Facebook.

----- Forwarded message -----

From: **Dallal, Rachel (Perkins Coie)** <RDallal@perkinscoie.com>

Date: Wed, Sep 29, 2021 at 2:10 PM

Subject: RE: DAO Letter re Civil Subpoena SNM v NM Civil Guard

To: Ronda Crollett <ronda.crollett@da2nd.state.nm.us>, James Grayson <james.grayson@da2nd.state.nm.us>

Cc: Mrazik, Ryan T. (Perkins Coie) <RMrazik@perkinscoie.com>

Thank you, Ronda. And James, thank you for this additional context; we appreciate it. Unfortunately, Facebook has not retained BSI for the deleted accounts, and is unable to recover any responsive records. To clarify, preservation requests submitted through the law enforcement portal remain in effect for 90 days after submission, at which point they can be renewed by the requestor for an additional 90 days (and so on until preservation is no longer necessary). Your office should have received notice from Facebook prior to expiration of the 90-day preservation period, explaining how to request a renewal of the preservation period. But because Facebook did not receive a renewal request from you, records associated with the target accounts were automatically deleted after the preservation period expired in September 2020. Facebook no longer retains them in any form.

We further note that the preservation request you submitted involved only one of the accounts targeted by the subpoena (ID 110703723882801), so while the BSI associated with that account was deleted after expiration of the preservation request, data for the other accounts would not have been preserved for any length of time.

We want to clarify that Facebook did perform an additional search after we received your amended subpoena, but confirmed that any responsive records that may have previously existed have been deleted.

Again, we regret that Facebook is unable to produce the requested information, but there are no responsive records available other than for the bryce.spangler.549 account (ID 100015675451132), which we understood from previous correspondence that you do not wish to pursue. If you have decided that you would like BSI for the Bryce Spangler account, please let us know.

Let us know how you would like to proceed, or if it would be helpful to get on a call.

Best,

Rachel

**Rachel Dallal | Perkins Coie LLP**

**ASSOCIATE**

1201 Third Avenue, Ste. 4900

Seattle, WA 98101-3099

D. +1.206.359.3766

F. +1.206.359.4766

E. [RDallal@perkinscoie.com](mailto:RDallal@perkinscoie.com)

---

**From:** Ronda Crollett <[ronda.crollett@da2nd.state.nm.us](mailto:ronda.crollett@da2nd.state.nm.us)>  
**Sent:** Thursday, September 23, 2021 10:33 AM  
**To:** Dallal, Rachel (SEA) <[RDallal@perkinscoie.com](mailto:RDallal@perkinscoie.com)>  
**Cc:** James Grayson <[james.grayson@da2nd.state.nm.us](mailto:james.grayson@da2nd.state.nm.us)>  
**Subject:** DAO Letter re Civil Subpoena SNM v NM Civil Guard

Ms. Dallal,

Attached please find correspondence from Chief Deputy District Attorney James Grayson regarding Civil Subpoena, State of New Mexico v. NM Civil Guard, Case No. D-202-CV-2020-04051 (2nd Judicial District Court, Bernalillo County, NM)

Thank you,

**Ronda J. Crollett**

Executive Assistant to District Attorney Raúl Torrez  
Office of the Second Judicial District Attorney  
520 Lomas Blvd NW  
Albuquerque, NM 87102  
(505) 222-1301



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James Grayson  
Chief Deputy District Attorney  
Office of the Second Judicial District Attorney  
[520 Lomas Blvd. N.W.](#)  
[Albuquerque, NM 87102](#)  
(505) 382-9116  
[james.grayson@da2nd.state.nm.us](mailto:james.grayson@da2nd.state.nm.us)



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# EXHIBIT 17



Jonathan Backer &lt;jb2845@georgetown.edu&gt;

---

**Fwd: DAO Letter re Civil Subpoena SNM v NM Civil Guard**

---

Annie Owens <ao700@georgetown.edu>  
To: Jonathan Backer <jb2845@georgetown.edu>

Mon, Oct 18, 2021 at 10:48 AM

----- Forwarded message -----

From: **James Grayson** <james.grayson@da2nd.state.nm.us>  
Date: Fri, Oct 1, 2021 at 12:42 PM  
Subject: Fwd: DAO Letter re Civil Subpoena SNM v NM Civil Guard  
To: Raul Torrez <raul.torrez@da2nd.state.nm.us>, Mary McCord <mbm7@georgetown.edu>, Mark Baker <mbaker@peiferlaw.com>, Annie Owens <ao700@georgetown.edu>, Matthew E. Jackson <mjackson@peiferlaw.com>, Shelby Calambokidis <sc2053@georgetown.edu>

FYI for today's meeting.

----- Forwarded message -----

From: **Dallal, Rachel (Perkins Coie)** <RDallal@perkinscoie.com>  
Date: Thu, Sep 30, 2021 at 12:11 PM  
Subject: RE: DAO Letter re Civil Subpoena SNM v NM Civil Guard  
To: James Grayson <james.grayson@da2nd.state.nm.us>  
Cc: Mrzlik, Ryan T. (Perkins Coie) <RMrazik@perkinscoie.com>

James,

As a quick update on the below, we just heard from Facebook that they are performing one final search. We have been cautioned that the search may not be complete by EOD and is highly unlikely to locate responsive information, given that all relevant account data has already been deleted, but we wanted to let you know that Facebook is making a good-faith effort to pursue all possible leads. We will be in touch as soon as possible with any further updates.

Best,

Rachel

**Rachel Dallal | Perkins Coie LLP****ASSOCIATE**

1201 Third Avenue, Ste. 4900

Seattle, WA 98101-3099

D. +1.206.359.3766

F. +1.206.359.4766

E. [RDallal@perkinscoie.com](mailto:RDallal@perkinscoie.com)

**From:** Dallal, Rachel (SEA)

**Sent:** Wednesday, September 29, 2021 1:11 PM

**To:** 'Ronda Crollett' <[ronda.crollett@da2nd.state.nm.us](mailto:ronda.crollett@da2nd.state.nm.us)>; James Grayson <[james.grayson@da2nd.state.nm.us](mailto:james.grayson@da2nd.state.nm.us)>

**Cc:** Mrazik, Ryan T. (SEA) <[RMrazik@perkinscoie.com](mailto:RMrazik@perkinscoie.com)>

**Subject:** RE: DAO Letter re Civil Subpoena SNM v NM Civil Guard

Thank you, Ronda. And James, thank you for this additional context; we appreciate it. Unfortunately, Facebook has not retained BSI for the deleted accounts, and is unable to recover any responsive records. To clarify, preservation requests submitted through the law enforcement portal remain in effect for 90 days after submission, at which point they can be renewed by the requestor for an additional 90 days (and so on until preservation is no longer necessary). Your office should have received notice from Facebook prior to expiration of the 90-day preservation period, explaining how to request a renewal of the preservation period. But because Facebook did not receive a renewal request from you, records associated with the target accounts were automatically deleted after the preservation period expired in September 2020. Facebook no longer retains them in any form.

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[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

# EXHIBIT 18



Annie Owens &lt;ao700@georgetown.edu&gt;

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**Fwd: DAO Letter re Civil Subpoena SNM v NM Civil Guard**

1 message

**James Grayson** <james.grayson@da2nd.state.nm.us>

Thu, Nov 11, 2021 at 4:23 PM

To: Jonathan Backer &lt;jb2845@georgetown.edu&gt;, Annie Owens &lt;ao700@georgetown.edu&gt;

----- Forwarded message -----

From: **James Grayson** <james.grayson@da2nd.state.nm.us>

Date: Fri, Oct 8, 2021 at 11:00 AM

Subject: Re: DAO Letter re Civil Subpoena SNM v NM Civil Guard

To: Dallal, Rachel (Perkins Coie) &lt;RDallal@perkinscoie.com&gt;

Cc: Mrazik, Ryan T. (Perkins Coie) &lt;RMrazik@perkinscoie.com&gt;

Good morning Rachel,

I hope you are well. I'll be out of the office on Monday, so I thought I would get in touch before the holiday weekend to see if you have any update on Facebook's final search. Thank you.

Best regards,

James

On Thu, Sep 30, 2021 at 12:11 PM Dallal, Rachel (Perkins Coie) &lt;RDallal@perkinscoie.com&gt; wrote:

James,

As a quick update on the below, we just heard from Facebook that they are performing one final search. We have been cautioned that the search may not be complete by EOD and is highly unlikely to locate responsive information, given that all relevant account data has already been deleted, but we wanted to let you know that Facebook is making a good-faith effort to pursue all possible leads. We will be in touch as soon as possible with any further updates.

Best,

Rachel

**Rachel Dallal | Perkins Coie LLP**

ASSOCIATE

1201 Third Avenue, Ste. 4900

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F. +1.206.359.4766

E. [RDallal@perkinscoie.com](mailto:RDallal@perkinscoie.com)

---

**From:** Dallal, Rachel (SEA)

**Sent:** Wednesday, September 29, 2021 1:11 PM

**To:** 'Ronda Crollett' <[ronda.crollett@da2nd.state.nm.us](mailto:ronda.crollett@da2nd.state.nm.us)>; James Grayson <[james.grayson@da2nd.state.nm.us](mailto:james.grayson@da2nd.state.nm.us)>

**Cc:** Mrazik, Ryan T. (SEA) <[RMrazik@perkinscoie.com](mailto:RMrazik@perkinscoie.com)>

**Subject:** RE: DAO Letter re Civil Subpoena SNM v NM Civil Guard

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Let us know how you would like to proceed, or if it would be helpful to get on a call.

Best,

Rachel

**Rachel Dallal** | **Perkins Coie LLP**

**ASSOCIATE**

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D. +1.206.359.3766

F. +1.206.359.4766

E. [RDallal@perkinscoie.com](mailto:RDallal@perkinscoie.com)

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**From:** Ronda Crollett <[ronda.crollett@da2nd.state.nm.us](mailto:ronda.crollett@da2nd.state.nm.us)>  
**Sent:** Thursday, September 23, 2021 10:33 AM  
**To:** Dallal, Rachel (SEA) <[RDallal@perkinscoie.com](mailto:RDallal@perkinscoie.com)>  
**Cc:** James Grayson <[james.grayson@da2nd.state.nm.us](mailto:james.grayson@da2nd.state.nm.us)>  
**Subject:** DAO Letter re Civil Subpoena SNM v NM Civil Guard

Ms. Dallal,

Attached please find correspondence from Chief Deputy District Attorney James Grayson regarding Civil Subpoena, State of New Mexico v. NM Civil Guard, Case No. D-202-CV-2020-04051 (2nd Judicial District Court, Bernalillo County, NM)

Thank you,

**Ronda J. Crollett**

Executive Assistant to District Attorney Raúl Torrez  
Office of the Second Judicial District Attorney  
[520 Lomas Blvd NW](#)  
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(505) 222-1301



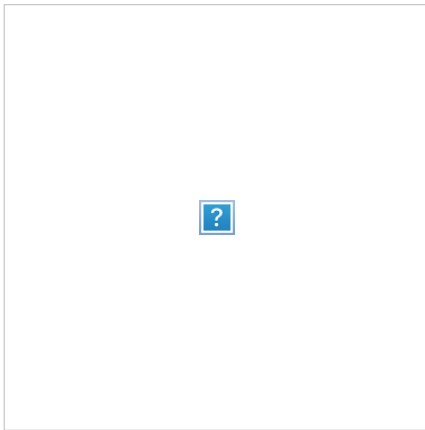
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(505) 382-9116  
[james.grayson@da2nd.state.nm.us](mailto:james.grayson@da2nd.state.nm.us)

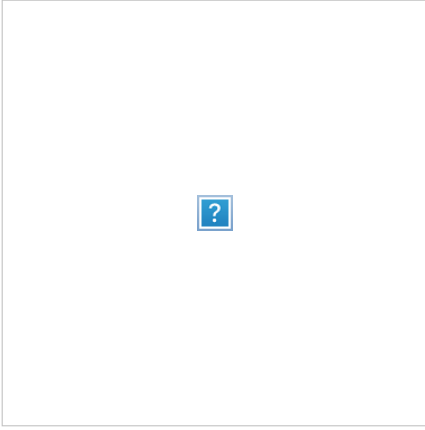


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--

James Grayson  
Chief Deputy District Attorney  
Office of the Second Judicial District Attorney  
520 Lomas Blvd. N.W.  
Albuquerque, NM 87102  
(505) 382-9116  
[james.grayson@da2nd.state.nm.us](mailto:james.grayson@da2nd.state.nm.us)





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# EXHIBIT 19



Annie Owens &lt;ao700@georgetown.edu&gt;

---

**Fwd: DAO Letter re Civil Subpoena SNM v NM Civil Guard**

1 message

**James Grayson** <james.grayson@da2nd.state.nm.us>

Thu, Nov 11, 2021 at 4:23 PM

To: Jonathan Backer &lt;jb2845@georgetown.edu&gt;, Annie Owens &lt;ao700@georgetown.edu&gt;

----- Forwarded message -----

From: **Mrazik, Ryan T. (Perkins Coie)** <[RMrazik@perkinscoie.com](mailto:RMrazik@perkinscoie.com)>

Date: Mon, Oct 11, 2021 at 11:23 AM

Subject: RE: DAO Letter re Civil Subpoena SNM v NM Civil Guard

To: James Grayson <[james.grayson@da2nd.state.nm.us](mailto:james.grayson@da2nd.state.nm.us)>Cc: Dallal, Rachel (Perkins Coie) <[RDallal@perkinscoie.com](mailto:RDallal@perkinscoie.com)>

Hi James,

I suspect you received an out of office from Rachel. I'm handling this matter in her absence. I checked with Facebook for any update but do not have one yet. I will check in again tomorrow.

Thanks,

Ryan

**Ryan Mrazik** | **Perkins Coie LLP**206.359.8098 | [RMrazik@perkinscoie.com](mailto:RMrazik@perkinscoie.com)

---

**From:** James Grayson <[james.grayson@da2nd.state.nm.us](mailto:james.grayson@da2nd.state.nm.us)>**Sent:** Friday, October 8, 2021 10:00 AM**To:** Dallal, Rachel (SEA) <[RDallal@perkinscoie.com](mailto:RDallal@perkinscoie.com)>**Cc:** Mrazik, Ryan T. (SEA) <[RMrazik@perkinscoie.com](mailto:RMrazik@perkinscoie.com)>**Subject:** Re: DAO Letter re Civil Subpoena SNM v NM Civil Guard

Good morning Rachel,

I hope you are well. I'll be out of the office on Monday, so I thought I would get in touch before the holiday weekend to

see if you have any update on Facebook's final search. Thank you.

Best regards,

James

On Thu, Sep 30, 2021 at 12:11 PM Dallal, Rachel (Perkins Coie) <[RDallal@perkinscoie.com](mailto:RDallal@perkinscoie.com)> wrote:

James,

As a quick update on the below, we just heard from Facebook that they are performing one final search. We have been cautioned that the search may not be complete by EOD and is highly unlikely to locate responsive information, given that all relevant account data has already been deleted, but we wanted to let you know that Facebook is making a good-faith effort to pursue all possible leads. We will be in touch as soon as possible with any further updates.

Best,

Rachel

**Rachel Dallal | Perkins Coie LLP**

**ASSOCIATE**

1201 Third Avenue, Ste. 4900

Seattle, WA 98101-3099

D. +1.206.359.3766

F. +1.206.359.4766

E. [RDallal@perkinscoie.com](mailto:RDallal@perkinscoie.com)

---

**From:** Dallal, Rachel (SEA)

**Sent:** Wednesday, September 29, 2021 1:11 PM

**To:** 'Ronda Crollett' <[ronda.crollett@da2nd.state.nm.us](mailto:ronda.crollett@da2nd.state.nm.us)>; James Grayson <[james.grayson@da2nd.state.nm.us](mailto:james.grayson@da2nd.state.nm.us)>

**Cc:** Mrazik, Ryan T. (SEA) <[RMrazik@perkinscoie.com](mailto:RMrazik@perkinscoie.com)>

**Subject:** RE: DAO Letter re Civil Subpoena SNM v NM Civil Guard

Thank you, Ronda. And James, thank you for this additional context; we appreciate it. Unfortunately, Facebook has not retained BSI for the deleted accounts, and is unable to recover any responsive records. To clarify, preservation requests submitted through the law enforcement portal remain in effect for 90 days after submission, at which point they can be renewed by the requestor for an additional 90 days (and so on until preservation is no longer necessary). Your office should have received notice from Facebook prior to expiration of the 90-day

preservation period, explaining how to request a renewal of the preservation period. But because Facebook did not receive a renewal request from you, records associated with the target accounts were automatically deleted after the preservation period expired in September 2020. Facebook no longer retains them in any form.

We further note that the preservation request you submitted involved only one of the accounts targeted by the subpoena (ID 110703723882801), so while the BSI associated with that account was deleted after expiration of the preservation request, data for the other accounts would not have been preserved for any length of time.

We want to clarify that Facebook did perform an additional search after we received your amended subpoena, but confirmed that any responsive records that may have previously existed have been deleted.

Again, we regret that Facebook is unable to produce the requested information, but there are no responsive records available other than for the bryce.spangler.549 account (ID 100015675451132), which we understood from previous correspondence that you do not wish to pursue. If you have decided that you would like BSI for the Bryce Spangler account, please let us know.

Let us know how you would like to proceed, or if it would be helpful to get on a call.

Best,

Rachel

**Rachel Dallal | Perkins Coie LLP**

ASSOCIATE

1201 Third Avenue, Ste. 4900

Seattle, WA 98101-3099

D. +1.206.359.3766

F. +1.206.359.4766

E. [RDallal@perkinscoie.com](mailto:RDallal@perkinscoie.com)

---

**From:** Ronda Crollett <[ronda.crollett@da2nd.state.nm.us](mailto:ronda.crollett@da2nd.state.nm.us)>  
**Sent:** Thursday, September 23, 2021 10:33 AM  
**To:** Dallal, Rachel (SEA) <[RDallal@perkinscoie.com](mailto:RDallal@perkinscoie.com)>  
**Cc:** James Grayson <[james.grayson@da2nd.state.nm.us](mailto:james.grayson@da2nd.state.nm.us)>  
**Subject:** DAO Letter re Civil Subpoena SNM v NM Civil Guard

Ms. Dallal,

Attached please find correspondence from Chief Deputy District Attorney James Grayson regarding Civil Subpoena, State of New Mexico v. NM Civil Guard, Case No. D-202-CV-2020-04051 (2nd Judicial District Court, Bernalillo County, NM)

Thank you,

**Ronda J. Crollett**

Executive Assistant to District Attorney Raúl Torrez  
Office of the Second Judicial District Attorney  
520 Lomas Blvd NW  
Albuquerque, NM 87102  
(505) 222-1301

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--

James Grayson

Chief Deputy District Attorney

Office of the Second Judicial District Attorney

520 Lomas Blvd. N.W.

Albuquerque, NM 87102

(505) 382-9116

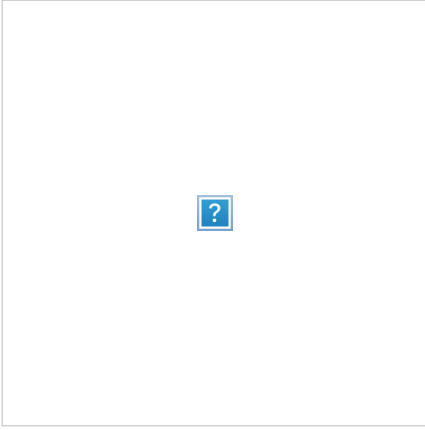
[james.grayson@da2nd.state.nm.us](mailto:james.grayson@da2nd.state.nm.us)

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---

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--  
James Grayson  
Chief Deputy District Attorney  
Office of the Second Judicial District Attorney  
520 Lomas Blvd. N.W.  
Albuquerque, NM 87102  
(505) 382-9116  
[james.grayson@da2nd.state.nm.us](mailto:james.grayson@da2nd.state.nm.us)



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# EXHIBIT 20



October 19, 2021

Rachel Dallal, Esq.  
Perkins Coie LLP  
1201 Third Ave., Suite 4900  
Seattle, WA 98101-3099  
rdallal@perkinscoie.com

SENT VIA E-MAIL

Dear Ms. Dallal:

As you know, the Bernalillo County District Attorney's Office (DA's Office) has been attempting since February 2021 to obtain documents from your client, Facebook, Inc., relevant to the DA's Office's civil-enforcement action against the New Mexico Civil Guard, State of New Mexico ex rel. Raúl Torrez v. New Mexico Civil Guard, No. D-202-CV-2020-04051 (N.M. Second Judicial Dist. Ct.). After several months of unsuccessfully attempting to informally narrow or resolve the issues in dispute, the DA's Office on August 18, 2021, domesticated and served on Facebook a subpoena for production or inspection.

On September 15, 2021, you responded to the subpoena and objected on several grounds, among them that Facebook is allegedly prohibited from producing some or all of the requested documents under the Stored Communications Act (SCA), 18 U.S.C. §§ 2701 et seq., a position with which the DA's Office disagrees. Despite Facebook's interpretation of the SCA, you have represented that Facebook is "interested in being helpful" to the DA's Office in litigating its civil-enforcement action against the New Mexico Civil Guard. To that end, you have stated that Facebook is willing to produce non-content subscriber information associated with the account bryce.spangler.549. But you also have represented that Facebook has deleted all non-content subscriber information associated with the other accounts enumerated in the DA's Office's subpoena and that those records cannot be recovered. Although the DA's Office appreciates Facebook's willingness to produce non-content subscriber information associated with the bryce.spangler.549 account, we have explained that that information is of limited value if unaccompanied by non-content subscriber information associated with the other enumerated accounts.

Notwithstanding your representations that the non-content subscriber information associated with the enumerated accounts (other than bryce.spangler.549) has been deleted and cannot be recovered, you emailed the DA's Office on September 30, 2021, stating that Facebook is "performing one final search" for responsive records and that although the search was unlikely to be completed by the end of that business day and was "highly unlikely to locate responsive information" you would be in touch as soon as possible with any updates. More than two weeks have elapsed since your September 30 email, and the DA's Office has received no update.

The DA's Office remains skeptical that Facebook would permanently delete and be unable to recover non-content subscriber information associated with accounts that it took down in connection with its "Dangerous Individuals and Organizations" policy. That skepticism has been magnified by the recent disclosure that Facebook—correctly—classifies the New Mexico Civil Guard as a "Militarized Social Movement" and an "Armed Militia Movement."<sup>1</sup> The DA's Office is troubled by the notion that Facebook would permanently delete information associated with accounts that it deems too dangerous to be hosted on its platform, given the obvious relevance that such accounts would have to current or future law-enforcement investigations.

Please respond on or before October 26, 2021, with any updates concerning Facebook's search for non-content subscriber information responsive to the DA's Office's subpoena. If Facebook maintains that some or all of the requested non-content subscriber information has been deleted and cannot be recovered, please provide the DA's Office with an affidavit signed by the company's Chief Technology Officer, Mike Schroepfer, attesting to that fact and setting forth the steps taken to attempt to recover the information in question.

If Facebook is unable to provide an update concerning the requested non-content subscriber information by October 26 and, if necessary, to provide the requested affidavit, the DA's Office will have no choice but to petition for enforcement of its subpoena.

Sincerely,

/s/ James Grayson  
James Grayson  
Chief Deputy District Attorney  
520 Lomas Blvd. NW  
Albuquerque, NM 87102  
james.grayson@da2nd.state.nm.us

---

<sup>1</sup> *Facebook Dangerous Individuals and Organizations List*, The Intercept (Oct. 12, 2021), <https://theintercept.com/document/2021/10/12/facebook-dangerous-individuals-and-organizations-list-reproduced-snapshot/>

# EXHIBIT 21



Jonathan Backer &lt;jb2845@georgetown.edu&gt;

---

## DAO Facebook Follow-Up Letter

---

**Mrazik, Ryan T. (Perkins Coie)** <RMrazik@perkinscoie.com>

Tue, Oct 26, 2021 at 1:31 PM

To: Ronda Crollett &lt;ronda.crollett@da2nd.state.nm.us&gt;, James Grayson &lt;james.grayson@da2nd.state.nm.us&gt;

Cc: "jb2845@georgetown.edu" &lt;jb2845@georgetown.edu&gt;, "ao700@georgetown.edu" &lt;ao700@georgetown.edu&gt;

James and Ronda,

Facebook has confirmed that it does not have basic subscriber information for the accounts identified in your subpoena. It remains the case that it was deleted. As provided by California law, Facebook is amenable to providing a declaration of absence of business records to document this fact. Please let us know if you would like us to prepare that declaration and provide it to you.

Facebook preserves and does not waive any available rights or objections.

Best,

Ryan

**Ryan Mrazik | Perkins Coie LLP**

206.359.8098 | [RMrazik@perkinscoie.com](mailto:RMrazik@perkinscoie.com)

---

**From:** Mrazik, Ryan T. (SEA)

**Sent:** Monday, October 25, 2021 11:55 AM

**To:** 'Ronda Crollett' <ronda.crollett@da2nd.state.nm.us>; Dallal, Rachel (SEA) <RDallal@perkinscoie.com>

**Cc:** jb2845@georgetown.edu; ao700@georgetown.edu; James Grayson <james.grayson@da2nd.state.nm.us>

**Subject:** RE: DAO Facebook Follow-Up Letter

Ronda and James,

Ms. Dallal is on personal leave. You should have received an out of office message from her. I am handling this matter going forward so please direct future correspondence to my attention.

I am talking with Facebook about this. I realize you have asked for a response by tomorrow. I will let you know where we are tomorrow.

Best,

Ryan

**Ryan Mrazik | Perkins Coie LLP**

206.359.8098 | [RMrazik@perkinscoie.com](mailto:RMrazik@perkinscoie.com)

---

**From:** Ronda Crollett <[ronda.crollett@da2nd.state.nm.us](mailto:ronda.crollett@da2nd.state.nm.us)>  
**Sent:** Tuesday, October 19, 2021 2:30 PM  
**To:** Dallal, Rachel (SEA) <[RDallal@perkinscoie.com](mailto:RDallal@perkinscoie.com)>  
**Cc:** Mrazik, Ryan T. (SEA) <[RMrazik@perkinscoie.com](mailto:RMrazik@perkinscoie.com)>; [jb2845@georgetown.edu](mailto:jb2845@georgetown.edu); [ao700@georgetown.edu](mailto:ao700@georgetown.edu); James Grayson <[james.grayson@da2nd.state.nm.us](mailto:james.grayson@da2nd.state.nm.us)>  
**Subject:** DAO Facebook Follow-Up Letter

Ms. Dallal,

Attached please find DAO Facebook follow-up letter from Chief Deputy District Attorney James Grayson.

~Best

**Ronda J. Crollett**

Executive Assistant to District Attorney Raúl Torrez  
Office of the Second Judicial District Attorney  
[520 Lomas Blvd NW](#)  
[Albuquerque, NM 87102](#)  
(505) 222-1301

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# EXHIBIT 22



Jonathan Backer &lt;jb2845@georgetown.edu&gt;

---

## DAO Facebook Follow-Up Letter

---

**James Grayson** <james.grayson@da2nd.state.nm.us>

Thu, Nov 4, 2021 at 5:37 PM

To: "Mrazik, Ryan T. (Perkins Coie)" &lt;RMrazik@perkinscoie.com&gt;

Cc: "jb2845@georgetown.edu" &lt;jb2845@georgetown.edu&gt;, "ao700@georgetown.edu" &lt;ao700@georgetown.edu&gt;

Good afternoon Ryan,

Thank you for your response. As you know, however, my office requested an update on whether Meta maintained that "some or all of the requested non-content subscriber information has been deleted and cannot be recovered." Your response conspicuously failed to address whether the purportedly deleted subscriber information can be recovered. Moreover, the declaration that you describe Meta as being amenable to providing is not what we requested in our letter, as it does not appear that it would be either (a) signed by Mr. Schroepfer or (b) address whether the purportedly deleted subscriber information can be recovered.

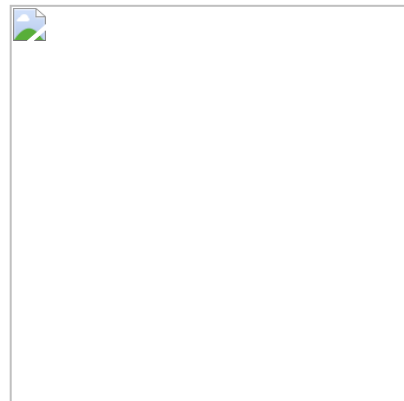
Based on your response, my office is preparing to file a petition to enforce its subpoena. That said, we still would like to avoid litigating this issue. If Meta shares my office's desire to avoid litigation, please return a signed copy of the attached draft declaration by close of business on November 10, 2021. We of course welcome any suggested edits that would make the contents of the declaration more accurate. In addition, we would consider accepting a declaration signed by a declarant other than Mr. Schroepfer if you can explain why an alternative would be more appropriate. If you wish to propose any changes to the draft declaration, please do so in advance of November 10. If we have not been able to agree on a declaration by the close of business on November 10, my office will have to proceed with the filing of a petition.

Best regards,  
James

[Quoted text hidden]

--

James Grayson  
Chief Deputy District Attorney  
Office of the Second Judicial District Attorney  
520 Lomas Blvd. N.W.  
Albuquerque, NM 87102  
(505) 382-9116  
[james.grayson@da2nd.state.nm.us](mailto:james.grayson@da2nd.state.nm.us)



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**Meta Declaration 11.03.21.pdf**  
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1           8.       Accordingly, with one exception, Meta possesses no records that are responsive to  
2 the subpoena's request that pertains to non-content subscriber information. Meta does possess non-  
3 content subscriber information associated with one account enumerated in the DA's Office's  
4 subpoena, but the DA's Office has represented to Meta that the non-content subscriber information  
5 associated with that account is of no use to the DA's Office in the absence of non-content subscriber  
6 information associated with other accounts for which Meta possesses no responsive records.

7  
8 I declare under penalty of perjury under the laws of the State of California that the foregoing is true  
9 and correct.

10  
11 DATED: \_\_\_\_\_

\_\_\_\_\_  
Mike Schroepfer  
Chief Technology Officer  
Meta

# EXHIBIT 23



Jonathan Backer &lt;jb2845@georgetown.edu&gt;

---

## DAO Facebook Follow-Up Letter

---

**Mrazik, Ryan T. (Perkins Coie)** <RMrazik@perkinscoie.com>

Tue, Nov 9, 2021 at 2:45 PM

To: James Grayson &lt;james.grayson@da2nd.state.nm.us&gt;

Cc: "jb2845@georgetown.edu" &lt;jb2845@georgetown.edu&gt;, "ao700@georgetown.edu" &lt;ao700@georgetown.edu&gt;

James,

I need more time to discuss this with my client and will not have a final response to you tomorrow. I also don't know if we will be able to avoid motions practice, but need more time to prepare a response to you regardless. Can we please agree to have another week, until November 17<sup>th</sup>, to reconvene on this issue?

Best,

Ryan

**Ryan Mrazik | Perkins Coie LLP**206.359.8098 | [RMrazik@perkinscoie.com](mailto:RMrazik@perkinscoie.com)

[Quoted text hidden]

[Quoted text hidden]

# EXHIBIT 24



Annie Owens &lt;ao700@georgetown.edu&gt;

---

**Re: DAO Facebook Follow-Up Letter**

1 message

**James Grayson** <james.grayson@da2nd.state.nm.us>

Wed, Nov 10, 2021 at 5:40 PM

To: "Mrazik, Ryan T. (Perkins Coie)" &lt;RMrazik@perkinscoie.com&gt;

Cc: "jb2845@georgetown.edu" &lt;jb2845@georgetown.edu&gt;, "ao700@georgetown.edu" &lt;ao700@georgetown.edu&gt;

Good afternoon Ryan,

Thank you for your response. For months, we have worked in good faith to meet and confer and to resolve this matter without litigation. On October 19, we made an initial request for an affidavit attesting that the information sought has been deleted and cannot be recovered, and we reiterated this request on November 4. We have encountered significant delays in receiving responses to our requests, and we do not understand the need for more delay on this simple issue. Either Facebook can retrieve the deleted information, or Facebook cannot retrieve it, in which case there should be no issue in providing the requested affidavit. Nonetheless, we will give you the benefit of the doubt that your request for additional time is made in good faith. We are willing to reconvene on November 17 if you agree to extend the deadline for us to file a petition to enforce the subpoena to December 1. If we are unable to resolve this matter on November 17, we plan to file the petition without any further delay. Please let me know by the close of business on November 11 if you are willing to agree to extend the filing deadline.

Best regards,

James

On Tue, Nov 9, 2021 at 12:45 PM Mrazik, Ryan T. (Perkins Coie) <RMrazik@perkinscoie.com> wrote:

James,

I need more time to discuss this with my client and will not have a final response to you tomorrow. I also don't know if we will be able to avoid motions practice, but need more time to prepare a response to you regardless. Can we please agree to have another week, until November 17<sup>th</sup>, to reconvene on this issue?

Best,

Ryan

**Ryan Mrazik | Perkins Coie LLP**206.359.8098 | [RMrazik@perkinscoie.com](mailto:RMrazik@perkinscoie.com)

---

**From:** James Grayson <james.grayson@da2nd.state.nm.us>**Sent:** Thursday, November 4, 2021 2:38 PM

**To:** Mrazik, Ryan T. (SEA) <[RMrazik@perkinscoie.com](mailto:RMrazik@perkinscoie.com)>  
**Cc:** [jb2845@georgetown.edu](mailto:jb2845@georgetown.edu); [ao700@georgetown.edu](mailto:ao700@georgetown.edu)  
**Subject:** Re: DAO Facebook Follow-Up Letter

Good afternoon Ryan,

Thank you for your response. As you know, however, my office requested an update on whether Meta maintained that "some or all of the requested non-content subscriber information has been deleted and cannot be recovered." Your response conspicuously failed to address whether the purportedly deleted subscriber information can be recovered. Moreover, the declaration that you describe Meta as being amenable to providing is not what we requested in our letter, as it does not appear that it would be either (a) signed by Mr. Schroeffer or (b) address whether the purportedly deleted subscriber information can be recovered.

Based on your response, my office is preparing to file a petition to enforce its subpoena. That said, we still would like to avoid litigating this issue. If Meta shares my office's desire to avoid litigation, please return a signed copy of the attached draft declaration by close of business on November 10, 2021. We of course welcome any suggested edits that would make the contents of the declaration more accurate. In addition, we would consider accepting a declaration signed by a declarant other than Mr. Schroeffer if you can explain why an alternative would be more appropriate. If you wish to propose any changes to the draft declaration, please do so in advance of November 10. If we have not been able to agree on a declaration by the close of business on November 10, my office will have to proceed with the filing of a petition.

Best regards,

James

On Tue, Oct 26, 2021 at 11:31 AM Mrazik, Ryan T. (Perkins Coie) <[RMrazik@perkinscoie.com](mailto:RMrazik@perkinscoie.com)> wrote:

James and Ronda,

Facebook has confirmed that it does not have basic subscriber information for the accounts identified in your subpoena. It remains the case that it was deleted. As provided by California law, Facebook is amenable to providing a declaration of absence of business records to document this fact. Please let us know if you would like us to prepare that declaration and provide it to you.

Facebook preserves and does not waive any available rights or objections.

Best,

Ryan

**Ryan Mrazik** | **Perkins Coie LLP**

206.359.8098 | [RMrazik@perkinscoie.com](mailto:RMrazik@perkinscoie.com)

---

**From:** Mrazik, Ryan T. (SEA)  
**Sent:** Monday, October 25, 2021 11:55 AM  
**To:** 'Ronda Crollett' <[ronda.crollett@da2nd.state.nm.us](mailto:ronda.crollett@da2nd.state.nm.us)>; Dallal, Rachel (SEA) <[RDallal@perkinscoie.com](mailto:RDallal@perkinscoie.com)>  
**Cc:** [jb2845@georgetown.edu](mailto:jb2845@georgetown.edu); [ao700@georgetown.edu](mailto:ao700@georgetown.edu); James Grayson <[james.grayson@da2nd.state.nm.us](mailto:james.grayson@da2nd.state.nm.us)>  
**Subject:** RE: DAO Facebook Follow-Up Letter

Ronda and James,

Ms. Dallal is on personal leave. You should have received an out of office message from her. I am handling this matter going forward so please direct future correspondence to my attention.

I am talking with Facebook about this. I realize you have asked for a response by tomorrow. I will let you know where we are tomorrow.

Best,

Ryan

**Ryan Mrazik** | **Perkins Coie LLP**

206.359.8098 | [RMrazik@perkinscoie.com](mailto:RMrazik@perkinscoie.com)

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**From:** Ronda Crollett <[ronda.crollett@da2nd.state.nm.us](mailto:ronda.crollett@da2nd.state.nm.us)>  
**Sent:** Tuesday, October 19, 2021 2:30 PM  
**To:** Dallal, Rachel (SEA) <[RDallal@perkinscoie.com](mailto:RDallal@perkinscoie.com)>  
**Cc:** Mrazik, Ryan T. (SEA) <[RMrazik@perkinscoie.com](mailto:RMrazik@perkinscoie.com)>; [jb2845@georgetown.edu](mailto:jb2845@georgetown.edu); [ao700@georgetown.edu](mailto:ao700@georgetown.edu); James Grayson <[james.grayson@da2nd.state.nm.us](mailto:james.grayson@da2nd.state.nm.us)>  
**Subject:** DAO Facebook Follow-Up Letter

Ms. Dallal,



Attached please find DAO Facebook follow-up letter from Chief Deputy District Attorney James Grayson.

~Best

**Ronda J. Crollett**

Executive Assistant to District Attorney Raúl Torrez  
Office of the Second Judicial District Attorney  
[520 Lomas Blvd NW](#)  
[Albuquerque, NM 87102](#)  
(505) 222-1301

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--

James Grayson  
Chief Deputy District Attorney  
Office of the Second Judicial District Attorney  
[520 Lomas Blvd. N.W.](#)  
[Albuquerque, NM 87102](#)  
(505) 382-9116

[james.grayson@da2nd.state.nm.us](mailto:james.grayson@da2nd.state.nm.us)

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# EXHIBIT 25



Annie Owens &lt;ao700@georgetown.edu&gt;

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**RE: DAO Facebook Follow-Up Letter**

1 message

**Mrazik, Ryan T. (Perkins Coie)** <RMrazik@perkinscoie.com>

Wed, Nov 10, 2021 at 5:56 PM

To: James Grayson &lt;james.grayson@da2nd.state.nm.us&gt;

Cc: "jb2845@georgetown.edu" &lt;jb2845@georgetown.edu&gt;, "ao700@georgetown.edu" &lt;ao700@georgetown.edu&gt;

James,

Thank you for the response. Facebook will provide a declaration of absence of business records from a records custodian in short order. That is what California law (specifically Cal. Evid. Code 1561(b)) requires when it comes to declaring the absence of records responsive to your subpoena as narrowed to basic subscriber information for the accounts of Pages in question. Facebook declines to execute the declaration that you proposed, or something similar to it. It goes beyond what is required by the law, and a motion to compel Facebook to execute something like it would be an abuse of the discovery process.

I am out of the office for the next two days but will follow-up with the declaration of absence of business records next week.

Best,

Ryan

**Ryan Mrazik | Perkins Coie LLP**206.359.8098 | [RMrazik@perkinscoie.com](mailto:RMrazik@perkinscoie.com)

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**From:** James Grayson <[james.grayson@da2nd.state.nm.us](mailto:james.grayson@da2nd.state.nm.us)>**Sent:** Wednesday, November 10, 2021 2:40 PM**To:** Mrazik, Ryan T. (SEA) <[RMrazik@perkinscoie.com](mailto:RMrazik@perkinscoie.com)>**Cc:** [jb2845@georgetown.edu](mailto:jb2845@georgetown.edu); [ao700@georgetown.edu](mailto:ao700@georgetown.edu)**Subject:** Re: DAO Facebook Follow-Up Letter

Good afternoon Ryan,

Thank you for your response. For months, we have worked in good faith to meet and confer and to resolve this matter without litigation. On October 19, we made an initial request for an affidavit attesting that the information sought has been deleted and cannot be recovered, and we reiterated this request on November 4. We have encountered significant delays in receiving responses to our requests, and we do not understand the need for more delay on this simple issue. Either Facebook can retrieve the deleted information, or Facebook cannot retrieve it, in which case there should be no issue in providing the requested affidavit. Nonetheless, we will give you the benefit of the doubt that your request for additional time is made in good faith. We are willing to reconvene on November 17 if you agree to extend the deadline for us to file a petition to enforce the subpoena to December 1. If we are unable to resolve this matter on November 17, we plan to file the petition without any further delay. Please let me know by the close of business on November 11 if you are willing to agree to extend the filing deadline.

Best regards,

James

On Tue, Nov 9, 2021 at 12:45 PM Mrazik, Ryan T. (Perkins Coie) <[RMrazik@perkinscoie.com](mailto:RMrazik@perkinscoie.com)> wrote:

James,

I need more time to discuss this with my client and will not have a final response to you tomorrow. I also don't know if we will be able to avoid motions practice, but need more time to prepare a response to you regardless. Can we please agree to have another week, until November 17<sup>th</sup>, to reconvene on this issue?

Best,

Ryan

**Ryan Mrazik | Perkins Coie LLP**

206.359.8098 | [RMrazik@perkinscoie.com](mailto:RMrazik@perkinscoie.com)

---

**From:** James Grayson <[james.grayson@da2nd.state.nm.us](mailto:james.grayson@da2nd.state.nm.us)>

**Sent:** Thursday, November 4, 2021 2:38 PM

**To:** Mrazik, Ryan T. (SEA) <[RMrazik@perkinscoie.com](mailto:RMrazik@perkinscoie.com)>

**Cc:** [jb2845@georgetown.edu](mailto:jb2845@georgetown.edu); [ao700@georgetown.edu](mailto:ao700@georgetown.edu)

**Subject:** Re: DAO Facebook Follow-Up Letter

Good afternoon Ryan,

Thank you for your response. As you know, however, my office requested an update on whether Meta maintained

that "some or all of the requested non-content subscriber information has been deleted and cannot be recovered." Your response conspicuously failed to address whether the purportedly deleted subscriber information can be recovered. Moreover, the declaration that you describe Meta as being amenable to providing is not what we requested in our letter, as it does not appear that it would be either (a) signed by Mr. Schroepfer or (b) address whether the purportedly deleted subscriber information can be recovered.

Based on your response, my office is preparing to file a petition to enforce its subpoena. That said, we still would like to avoid litigating this issue. If Meta shares my office's desire to avoid litigation, please return a signed copy of the attached draft declaration by close of business on November 10, 2021. We of course welcome any suggested edits that would make the contents of the declaration more accurate. In addition, we would consider accepting a declaration signed by a declarant other than Mr. Schroepfer if you can explain why an alternative would be more appropriate. If you wish to propose any changes to the draft declaration, please do so in advance of November 10. If we have not been able to agree on a declaration by the close of business on November 10, my office will have to proceed with the filing of a petition.

Best regards,

James

On Tue, Oct 26, 2021 at 11:31 AM Mrazik, Ryan T. (Perkins Coie) <[RMrazik@perkinscoie.com](mailto:RMrazik@perkinscoie.com)> wrote:

James and Ronda,

Facebook has confirmed that it does not have basic subscriber information for the accounts identified in your subpoena. It remains the case that it was deleted. As provided by California law, Facebook is amenable to providing a declaration of absence of business records to document this fact. Please let us know if you would like us to prepare that declaration and provide it to you.

Facebook preserves and does not waive any available rights or objections.

Best,

Ryan

**Ryan Mrazik | Perkins Coie LLP**

206.359.8098 | [RMrazik@perkinscoie.com](mailto:RMrazik@perkinscoie.com)

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**From:** Mrazik, Ryan T. (SEA)

**Sent:** Monday, October 25, 2021 11:55 AM

**To:** 'Ronda Crollett' <[ronda.crollett@da2nd.state.nm.us](mailto:ronda.crollett@da2nd.state.nm.us)>; Dallal, Rachel (SEA) <[RDallal@perkinscoie.com](mailto:RDallal@perkinscoie.com)>  
**Cc:** [jb2845@georgetown.edu](mailto:jb2845@georgetown.edu); [ao700@georgetown.edu](mailto:ao700@georgetown.edu); James Grayson <[james.grayson@da2nd.state.nm.us](mailto:james.grayson@da2nd.state.nm.us)>  
**Subject:** RE: DAO Facebook Follow-Up Letter

Ronda and James,

Ms. Dallal is on personal leave. You should have received an out of office message from her. I am handling this matter going forward so please direct future correspondence to my attention.

I am talking with Facebook about this. I realize you have asked for a response by tomorrow. I will let you know where we are tomorrow.

Best,

Ryan

**Ryan Mrazik** | **Perkins Coie LLP**

206.359.8098 | [RMrazik@perkinscoie.com](mailto:RMrazik@perkinscoie.com)

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**From:** Ronda Crollett <[ronda.crollett@da2nd.state.nm.us](mailto:ronda.crollett@da2nd.state.nm.us)>  
**Sent:** Tuesday, October 19, 2021 2:30 PM  
**To:** Dallal, Rachel (SEA) <[RDallal@perkinscoie.com](mailto:RDallal@perkinscoie.com)>  
**Cc:** Mrazik, Ryan T. (SEA) <[RMrazik@perkinscoie.com](mailto:RMrazik@perkinscoie.com)>; [jb2845@georgetown.edu](mailto:jb2845@georgetown.edu); [ao700@georgetown.edu](mailto:ao700@georgetown.edu); James Grayson <[james.grayson@da2nd.state.nm.us](mailto:james.grayson@da2nd.state.nm.us)>  
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~Best

**Ronda J. Crollett**

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