

# ***ROGUE SHERIFFS IN NEW MEXICO:***

**WHO DO THEY SERVE?**



**BRADY**  
UNITED AGAINST GUN VIOLENCE

# EXECUTIVE SUMMARY

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On February 5, 2019, a group of New Mexico Sheriffs, acting under the umbrella of the New Mexico Sheriffs' Association (NMSA), surprisingly issued a Declaration opposing common sense gun violence prevention (GVP) bills being considered by the state legislature. These sheriffs pressured local and state politicians to oppose these measures that aim to protect the public safety and lives of New Mexicans. The sheriffs' effort resulted in 25 counties passing so-called "Second Amendment Sanctuary resolutions," including resolutions designed to undermine the American system of checks and balances by expressing support for sheriffs who unilaterally announced that they would not enforce such public safety laws.

Brady immediately suspected that the gun lobby was behind the effort to encourage these sheriffs to go rogue and not enforce the law. Accordingly, Brady filed requests for documents from each of these sheriffs' offices under New Mexico's public records act (IPRA). The documents that Brady has obtained thus far show how the NRA infiltrated the NMSA; the prevalence of conspiracy theories among these sheriffs; their disregard for the American system of checks and balances and the rule of law; and a worrisome dedication to not enforcing laws aimed at protecting the lives and public safety of their own constituents.

# BACKGROUND

On November 6, 2018, New Mexicans went to the polls and elected a new Governor and House of Representatives. Democrats increased their majority by flipping 9 seats from Republican control, now holding a 47-23 seat advantage over Republicans.<sup>1</sup> It is not surprising that many of the candidates who ran on gun violence prevention (GVP) platforms prevailed.<sup>2</sup> **Indeed, as of 2013, New Mexico's gun fatality rate was 40% higher than the national average.**<sup>3</sup> From 2001 to 2010, 2,932 people were killed by guns in New Mexico, which is over 70% higher than the number of U.S. combat deaths in the Afghanistan war.<sup>4</sup> Further, statistics show that women and children are at a higher risk of becoming homicide victims in New Mexico than in almost any other state.<sup>5</sup> New Mexicans knew they needed stronger gun laws.

With GVP identified as a priority issue, and organizations such as New Mexicans to Prevent Gun Violence paving the way to help shift gun culture in New Mexico, the state legislature immediately addressed New Mexico's gun violence epidemic. Just days after being sworn in, lawmakers began considering sweeping GVP legislation, including: a universal background check bill;<sup>6</sup> an extreme risk protection order (ERPO) bill;<sup>7</sup> a bill expanding prohibitory domestic violence (DV) crimes;<sup>8</sup> a bill requiring background checks at gun shows;<sup>9</sup> a child access prevention (CAP) bill;<sup>10</sup> and a bill establishing a system for the Department of Public Safety to run stolen gun checks.<sup>11</sup> The universal background check bill was signed into law on March 8, 2019 and the DV bill was signed into law on April 4, 2019.

**These bills are critical measures for keeping firearms out of the hands of potentially dangerous people and minors.** Federal law only requires gun purchasers to go through background checks when a licensed dealer is selling the firearm. Federal law is also under-inclusive

in its prohibitors, which means that many people who pose a threat to themselves or others may not be prohibited from purchasing or possessing a gun, even after undergoing a background check. Further, federal law does not provide law enforcement with mechanisms to retrieve firearms, temporarily, from people who are a risk to themselves or others for the time during which they pose such a risk. These bills in New Mexico help close these loopholes and others, ensuring that criminals and others with dangerous propensities cannot access guns.

## SOME NEW MEXICO SHERIFFS TRY TO UNDERMINE THE SEPARATION OF POWERS

Despite the will of New Mexico voters, the New Mexico Sheriffs' Association (NMSA), a voluntary organization comprised of New Mexico sheriffs and spearheaded by current President and Cibola County Sheriff Tony Mace, furiously opposed these life-saving measures.

The sheriffs' public comments in opposition to these bills showed a shocking disregard for basic tenets of American governance such as the separation of powers, strongly deviated from the traditional role of law enforcement embedded in American society, and instead reading like a list of National Rifle Association (NRA) talking points. According to the *New York Times*, San Juan County Sheriff Shane Ferrari said he "believed that the new law was a violation of the Second Amendment and the state's existing gun laws, and that he would not enforce it unless a court ruling told him to do so."<sup>12</sup> "This is just a gun-grab measure," he said of the universal background check bill,<sup>13</sup> although that bill deals with gun transfers and not

possession. Similarly, Lea County Sheriff Corey Helton stated, “I’m proud to say I’m a constitutional sheriff and I’m just not going to enforce an unconstitutional law” despite the fact that no court has declared any universal background check law unconstitutional.<sup>14</sup>



## **THIS IS JUST A GUN-GRAB MEASURE.**

**San Juan County Sheriff, Shane Ferrari**  
*on universal background check bill dealing with gun transfers, **not** possession*

## **I’M PROUD TO SAY I’M A CONSTITUTIONAL SHERIFF AND I’M JUST NOT GOING TO ENFORCE AN UNCONSTITUTIONAL LAW.**

**Lea County Sheriff, Corey Helton**  
*despite the fact that no court has declared any universal background check law unconstitutional*



The sheriffs’ opposition to the GVP bills culminated in a February 5, 2019 NMSA Declaration (Declaration), signed by 29 of the 33 New Mexico sheriffs, which insisted that the pending legislation was unconstitutional, unenforceable, and/or burdensome to law-abiding gun owners. It states that the signatories “agree that the rush to react to the violence by proposing controls on guns is ill conceived and is truly a distraction to the real problems proliferating violence in our counties and our state.” While making this claim, it is important to note that the Declaration in turn offered no real solutions to New Mexico’s gun violence epidemic, which every year claims hundreds of the very lives that New Mexico’s sheriffs are sworn to protect.

Many of these sheriffs used the Declaration to persuade their county commissions to pass self-proclaimed “Second Amendment Sanctuary Resolutions” that were designed to undermine state law. County commissioners were pressured by sheriffs in person, through emails, and through the press and as a result, **25 counties passed so-called Sanctuary Resolutions**. Many strictly adhered to a draft resolution that NMSA’s Executive Director sent to all sheriffs, declaring support for their sheriff’s decisions not to enforce any “unconstitutional” firearms laws and stating that the Board of County Commissioners would not authorize or appropriate resources for the purpose of enforcing such laws.

## **BRADY SEEKS PUBLIC RECORDS FROM NEW MEXICO SHERIFFS**

Press coverage and publication of the NMSA Declaration caused widespread controversy. Many expressed concern that county sheriffs, along with their county commissions, were unilaterally refusing to enforce state laws — particularly laws aimed at protecting the public and saving lives.<sup>15</sup> Brady shared in this concern and was immediately suspicious that the gun lobby was involved in the effort to convince law enforcement not to enforce laws that it did not like due to the extremist language used by these sheriffs in their public comments.

**On March 27, 2019, Brady took action and filed a series of public record requests for relevant documents pursuant to the New Mexico Inspection of Public Records Act (IPRA).** Brady requested all of their communications related to the Declaration or to the 2019 GVP bills with the goal of finding out how these rogue sheriffs reached the conclusion that they could unilaterally ignore state laws passed

by the state legislature and signed by the governor, and also determine the constitutionality of these laws without the courts. Brady specifically requested any communications between the sheriffs and organizations such as the NRA. At the time of this writing, 14 counties have produced the requested documents, totaling **1,615 pages**.

**ON MARCH 27, 2019, BRADY FILED A SERIES OF PUBLIC RECORD REQUESTS FOR RELEVANT DOCUMENTS PURSUANT TO THE NEW MEXICO INSPECTION OF PUBLIC RECORDS ACT. AT THE TIME OF THIS WRITING, 14 COUNTIES HAVE PRODUCED THE REQUESTED DOCUMENTS, TOTALING 1,615 PAGES.**

## **DOCUMENTS SHOW: THE NMSA IS ACTING AS AN NRA PUPPET**

The documents Brady acquired reveal that the NRA was actively involved in the NMSA's efforts in drafting the Declaration; recruiting sheriffs to lobby state and political politicians to oppose the GVP bills and to adopt so-called Second Amendment Sanctuary Resolutions; and encouraging sheriffs to not enforce state laws. The NRA's traditional mantra of "enforce the current laws in existence" rings hollow alongside this systematic campaign to encourage law enforcement not to enforce laws that it does not like.

NMSA President Tony Mace received extensive and significant behind-the-scenes support from the NRA, including NRA-funded NMSA-dedicated lobbyists (NRA-ILA New Mexico state liaisons) that directly influenced and supported Mace's crusade against

the new GVP laws. Through these lobbyists, the NRA authored and sent Mace and the sheriffs documents such as op-eds to send to their local newspapers (in the sheriffs' own names) and letters to send to state and local politicians opposing the GVP legislation. There is no indication the sheriffs disclosed that the NRA was behind the work product.

The NRA's infiltration of the NMSA runs deep. The NRA was prominently featured on the agenda for the January 2019 NMSA Affiliate legislative conference, with an hour set aside for "NRA lobbyist introduction to NMSA"; the presentation given there by the NRA representatives included a debriefing on what Mace described as the "anti-gun bills." Returning the favor, in February Mace asked the NMSA sheriffs to attend an NRA-ILA legislative workshop. The NRA also circulated its rhetoric through Mace via email. The NRA reps sent Mace the NRA's legal positions and talking points about the GVP bills, asking him to distribute them to the other sheriffs. The sheriffs proved willing to follow the NRA's lead. After Mace asked other sheriffs whether they opposed one of the "anti-gun bills" debriefed at the Conference, one sheriff went so far as to admit he had not read an amendment, "[b]ut I still stand with my original stand that I oppose any bill on gun control."

Through their ghostwriting and other communications, the NRA was using these sheriffs (who were willing to play along) to further the NRA's own agenda. They successfully encouraged law enforcement to oppose, and then subsequently to refuse to enforce, laws that contradicted its agenda – orchestrating the whole campaign in secret by using the NMSA as an intermediary. As a result, the NMSA sheriffs were comfortable declaring that they would not enforce laws drafted with the purpose of saving the lives of **their own constituents**, and laws that enjoy vast public support.<sup>16</sup>

# DOCUMENTS SHOW: A LACK OF RESPECT FOR THE RULE OF LAW

In their emails, the sheriffs show hostility to the different branches of government and the basic concept of separation of powers. On the judicial branch, Sheriff Glenn Hamilton of Sierra County decried the “‘wrong’ decisions being handed down in these Kangaroo Courts” and further stated “I don’t think an individual should lose their gun rights just because a restraining order has been awarded by a non-judge ‘Special Master’ to handle the District Judge’s light work.” Other branches of government did not escape the sheriffs’ ire, either. In one of Sheriff Mace’s emails, he referred to such policymakers as “vapid.” Sheriff Hamilton inferred that the state legislators were “presumptuous” for assuming that “the common citizen can not sell their own firearm and do so responsibly” [sic].

In contrast, Sheriff Mace views sheriffs as omnipotent. In a bizarre email to state Senator Clemente Sanchez, Mace claimed: “The sheriff is the CEO of all the courts in his/her county and can easily strike down any court ruling or verdict as he sees fit”; “The Sheriff has more power in his County than the President of the United

States of America”; and “The Constitutional Sheriff... will then attend to the straight lawful business of arresting each and every Judge, Prosecuting Attorney, BAR Attorney and any Police Officer who has violated our Rights on charges of treason and conspiracy.” Perhaps it is this extremist view on sheriffs’ power that led Mace to declare, in reference to an article in the Albuquerque Journal: “I love the part where is [sic] says we will follow the law? Who the hell do they think we are!”<sup>17</sup>

The sheriffs’ attacks on the rule of law go beyond mere disdain for checks and balances. Indeed, some of the sheriffs expressed hostility toward domestic violence laws and dismiss the clear links between DV and firearms. On February 25, Sheriff Shane Ferrari of San Juan County stated that it “seem a little much” that someone could lose their firearm rights for life for keying their girlfriend’s car. He also minimizes the seriousness of domestic violence while taking issue with the seizure of guns from those who commit DV property crimes, noting: “Guy throws the wedding album in the fire. There goes his firearms.” Glenn Hamilton also dismissed the seriousness of DV, stating: “Piece of crap bill would add non-violent misdemeanor and petty misdemeanor domestic offenses to the list of convictions wherein you would not just lose your gun rights during the term of protection order, you will lose them LIFE-TIME!!!”

The Sheriff is CEO of all the courts in his/her county and can easily strike down any court ruling or verdict as he sees fit if he deems it to be unconstitutional- that is, offensive or repugnant to the precepts of the Constitution.

He doesn't answer to the State or the Federal Gov't but answers to the people who elected him. No Federal Alphabet Agency can tell him what to do in his own Jurisdiction. He can arrest and incarcerate any FBI, ATF, CIA, DHS, FEMA agent that violates the rights of any constituent within his jurisdiction.

The Sheriff has more power in his County than the President of the United States of America. The Office of Sheriff holds "Supreme Authority" over the land and especially in his/her own county.

The Constitutional Sheriff and the Posse will then attend to the straight lawful business of arresting each and every Judge, Prosecuting Attorney, BAR Attorney and any Police Officer who has violated our Rights on charges of treason and conspiracy to overthrow the Lawful Constitutional Republic of that State.

Email from Sheriff Tony Mace,  
February 17, 2019  
06:16PM MST

# DOCUMENTS SHOW: AN ECHOCHAMBER OF CONSPIRACIES AND EXTREMISM

Various right-wing conspiracies also appear throughout the sheriffs' documents. Some adhere to the conspiracy that any GVP legislation is "being forced on us by out-of-state interests," and claim that the passage of GVP legislation would be "selling out the rights of your constituents to a New York Billionaire." Other communications focus on the theory that Democrats are gun-grabbing socialists. For example, on March 2, Mace received an email from a constituent which said [sic]: "I applaud each and every one of the Sheriffs who is standing up to the onslaught of socialist Democrats plan on unarming the law abiding citizen and spread their vile socialism which we be fighting since the 1950's. . . [S]ince oba-mao [I] have been wondering 'What the hell are the Democrats and RHINOs doing to our country and how the hell can we stop it?'" Mace, seemingly from a place of pride, thanked the constituent and noted that he would be forwarding the communication to all sheriffs.

Mace also peddles an absurd theory in a set of emails to state politicians on January 19, asking them to "Just remember - the reason the Japanese didn't invade the US is because they knew that most of the citizens were armed." Mace also disseminated literature to the NMSA sheriffs in opposition to GVP legislation.<sup>18</sup> The literature was drafted by a woman named by the Southern Poverty Law Center as leading an "extreme antigovernment group."

Those who rejected such conspiracies were marginalized and mocked. On February 7, Sheriff Kim Stewart of Dona Ana County emailed Tony Mace clarifying that she was not supportive of the NMSA's

effort because she did "not support the theory advanced by Richard Mack and his conspiratorial, convoluted and entirely self-serving thesis, which grew out of the sovereign citizen movement, or as I like to refer to it, the 'Let's Make Timothy McVeigh a Hero' movement." Accordingly, Sheriff Stewart asked to withdraw her NMSA membership. Mace removed Stewart from the contact list but shared her message with the other sheriffs. This led to inflammatory comments about Sheriff Stewart: "Maybe she would be a better fit for the counties south of our border," one Sheriff stated. Another openly "wonder[ed] what constitution she took her oath of office to."

## MISSING: A COMMITMENT TO PUBLIC SAFETY

Like all other law enforcement officers, the New Mexico sheriffs primary responsibility is protecting the public safety and the lives of their constituents. The GVP bills at issue were designed and introduced with the intent to save lives -- the lives of children, domestic violence victims, and all New Mexicans. State laws requiring background checks for all handgun sales are associated with lower firearm homicide rates,<sup>19</sup> lower firearm suicide rates,<sup>20</sup> and lower firearm trafficking.<sup>21</sup> ERPO bills have been shown to avert suicide,<sup>22</sup> and there is a demonstrated reduction in DV in states with laws restricting firearm possession by people subject to DV restraining orders.<sup>23</sup> Yet the documents obtained reveal only a goal of opposing the GVP bills. There is no serious discussion about reducing gun violence in the state.

Mace perhaps inadvertently captured the rogue sheriffs' true priority when he described some of the GVP legislation as "allow[ing] anti-gun politicians to dictate to you what you can and can't do with a firearm in your home." At least two sheriffs established

themselves as against “any gun legislation.” Another took a stance against “any new gun legislation,” stating that “I unfortunately cannot compromise as I believe each time we allow another piece of legislation it is only furthering their cause and they will bring back more next year until they get where they want to be.”

While NMSA sheriffs are catering to the NRA’s extremist agenda, New Mexico’s communities continue to be ravaged by gun violence. New Mexicans went to the polls and elected a GVP majority to address this issue. It is shocking that any sheriff would try to exercise his or her office in a way that would nullify the will of the people. It is even more disturbing that sheriffs would take action in a manner that jeopardizes the public safety and lives of their own constituents. This is nothing less than a dereliction of duty. New Mexicans deserve better.

## ENDNOTES

- 1 <http://electionresults.sos.state.nm.us/>
- 2 See, e.g., [www.krwg.org/post/candidates-new-mexico-governor-offer-very-different-views-gun-control-public-safety](http://www.krwg.org/post/candidates-new-mexico-governor-offer-very-different-views-gun-control-public-safety); <https://giffords.org/2018/11/gun-safety-the-2018-midterms>
- 3 <https://cdn.americanprogress.org/wp-content/uploads/2013/04/NewMexicoGunViolence1.pdf>
- 4 <https://cdn.americanprogress.org/wp-content/uploads/2013/04/NewMexicoGunViolence1.pdf>
- 5 <https://cdn.americanprogress.org/wp-content/uploads/2013/04/NewMexicoGunViolence1.pdf>
- 6 <https://nmlegis.gov/Sessions/19%20Regular/final/SB0008.pdf>
- 7 <https://www.nmlegis.gov/Sessions/19%20Regular/bills/house/HB0083.pdf>
- 8 NMSA § 30-7-16; <https://nmlegis.gov/Sessions/19%20Regular/final/SB0328.pdf>
- 9 <https://www.nmlegis.gov/Sessions/19%20Regular/bills/house/HB0040.pdf>
- 10 <https://www.nmlegis.gov/Sessions/19%20Regular/bills/house/HB0130.pdf>
- 11 <https://www.nmlegis.gov/Sessions/19%20Regular/bills/house/HB0035.pdf>

- 12 [www.nytimes.com/2019/03/11/us/state-gun-laws.html](http://www.nytimes.com/2019/03/11/us/state-gun-laws.html)
- 13 [www.nytimes.com/2019/03/11/us/state-gun-laws.html](http://www.nytimes.com/2019/03/11/us/state-gun-laws.html)
- 14 <https://www.cbs7.com/content/news/New-Mexico-sheriffs-push-back-on-new-gun-control-legislation-505482521.html>
- 15 <https://www.governor.state.nm.us/2019/03/08/gov-lujan-grisham-signs-senate-bill-8-enacting-a-meaningful-effective-check-on-lethal-violence-in-new-mexico-communities/>
- 16 <https://www.americanprogress.org/press/release/2015/11/17/125618/release-gun-owners-overwhelmingly-support-background-checks-see-nra-as-out-of-touch-new-poll-finds/> (83% of gun owners support universal background checks); <https://everytown.org/documents/2019/02/overwhelming-public-support-for-red-flag-laws.pdf/> (no region saw less than 88% support for red flag laws).
- 17 <https://www.abqjournal.com/1281796/some-counties-exempting-sheriffs-from-any-new-gun-control-laws.html>
- 18 <https://krisannehall.com/index.php/resources/articles/269-in-re-the-recent-ratification-of-laws-denying-the-right-to-keep-and-bear-arms-to-law-abiding-persons>
- 19 E.W. Fleegler et al., Firearm Legislation and Firearm-Related Fatalities in the United States, 173 JAMA Internal Med. 732 (2013); Daniel Webster et al., Erratum to: Effects of the Repeal of Missouri’s Handgun Purchaser Licensing Law on Homicides, 3 J. Urban Health 91 (2014).
- 20 Id.; see also M. Anestis et al., Suicide Rates and State Laws Regulating Access and Exposure to Handguns, 105 Am. J. Pub. Health 1, 1, 3 (2015).
- 21 Daniel Webster et al., Effects of State-Level Firearm Seller Accountability Policies on Firearm Trafficking, 86 J. Urban Health 525 (2009).
- 22 See, e.g., Jeffrey W. Swanson et al., Implementation and Effectiveness of Connecticut’s Risk-Based Gun Removal Law: Does It Prevent Suicides?, 80 L. & Contemporary Problems 179, 206 (2017), available at <http://scholarship.law.duke.edu/lcp/vol80/iss2/8> (“[W]e estimated that approximately ten to twenty gun seizures were carried out for every one suicide averted.”).
- 23 See, e.g., Carolina Diez et al., State Intimate Partner Violence-Related Firearm Laws and Intimate Partner Homicide Rates in the United States, 1991 to 2015, 167 Ann. Intern. Med. 536 (2017) (“Laws requiring subjects of DVROs to surrender firearms already in their possession were associated with lower IPH [intimate partner homicide] rates.”).

*For information on documents uncovered by public records requests and cited in this report, please contact Max Samis at [MSamis@bradyunited.org](mailto:MSamis@bradyunited.org).*