Administrative Office of the Courts

FOR IMMEDIATE RELEASE
June 18, 2020

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NM Supreme Court rules on state constitutional privacy protections for banking records

SANTA FE – The state Supreme Court ruled today that prosecutors can obtain a person's banking records using a warrantless grand jury subpoena without violating the individual's right to privacy under the New Mexico Constitution.

In a unanimous decision, the justices concluded that a district court properly allowed the use of five years of personal financial records as evidence in a pending criminal case against a Taos couple, Ismael and Angela Adame, facing charges of tax evasion and other financially related offenses.

The Court rejected the Adames' argument that the New Mexico Constitution provided greater privacy protections for their financial records than offered under the U.S. Constitution's Fourth Amendment, which prohibits unreasonable searches and seizures. The couple contended that a court-authorized warrant should have been required to obtain the bank records. A warrant, unlike a grand jury subpoena, forces law enforcement to show a court there is probable cause a crime has occurred.

The justices adhered to a decades-old legal doctrine established by the U.S. Supreme Court that people have no constitutionally protected privacy interest in the financial account records they voluntarily share with third parties, such as a bank.

"In our view, individuals do not in general exhibit an actual (subjective) expectation of privacy in the financial information they expose to banking institutions and their employees," the Court reasoned in an opinion written by Justice Barbara J. Vigil.

But the justices made clear, that in the digital age with people electronically sharing more information with businesses and vendors, their decision applied only to the conventional banking records at issue in the Adames' case.

"We emphasize that our decision is narrow. We express no view on more sophisticated bank records resulting from newer technologies that may reveal a person's 'familial, political,

professional, religious, and sexual associations' by, for example, creating a record of a person's whereabouts. Nor do we comment on an outsized collection of financial records from banks that might span decades or even a lifetime."

Referencing a U.S. Supreme Court decision in 2018 on the issue of digital privacy rights for cellphone records, the state Court said, "Like the *Carpenter* Court, we do not profess to have all the answers today about, in our case, the application of Article II, Section 10 to information voluntarily shared with third parties." That provision in the New Mexico Constitution protects a person's privacy interests.

A federal grand jury initially issued subpoenas to obtain the Adames' personal banking records as part of an investigation of an alleged multistate drug trafficking operation. Subpoenas from a state grand jury later required two banks to produce five years of financial records about the couple's checking and savings accounts, credit cards, wire transfers, safety deposit box, certificates of deposit, money market certificates, loans, federal securities and letters of credit. Based on the financial records, state prosecutors filed charges against the couple in 2014.

Before their case went to trial, the couple appealed the district court's decision allowing prosecutors to use the banking records as evidence. The state Court of Appeals asked the Supreme Court to resolve the question about privacy protections under the New Mexico Constitution.

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To read the decision in *State v. Adame*, No. S-1-SC-36839, please visit the New Mexico Compilation Commission's website using the following link:

https://decisia.lexum.com/nmos/nmsc/en/item/481205/index.do