FILED
12th JUDICIAL DISTRICT COURT
Otero County
4/21/2020 5:03 PM
KATINA WATSON
CLERK OF THE COURT
Serena Counts

STATE OF NEW MEXICO COUNTY OF OTERO TWELFTH JUDICIAL DISTRICT

JEFF SWANSON,

Plaintiff,

v.

Civ. No. D-1215-CV-2020-00373 Schneider, Angie K.

COUY GRIFFIN,
Otero County Commissioner in his individual capacity acting under the color of law, and SYLVIA TILLBROOK, Otero County Records Custodian.

Defendants.

COMPLAINT TO RECOVER DAMAGES DUE TO DEPRIVATION OF CIVIL RIGHTS VIOLATIONS OF THE UNITED STATES AND NEW MEXICO CONSTITUTIONS AND FOR VIOLATIONS OF THE NEW MEXICO INSPECTION OF PUBLIC RECORDS ACT

Plaintiffs bring this action to recover damages for violations of their civil rights pursuant to 42 U.S.C. 1983 and for retaliation and harassment under the color of law with the intent to bring harm and for violations of the New Mexico Inspection of Public Records Act;

INTRODUCTION/STATEMENT OF THE CASE

Plaintiff is a citizen advocate watchdog residing in Otero County, New Mexico. In that role Mr. Swanson is a vocal proponent of government transparency and accountability and has at times expressed criticism of Defendant Commissioner Coup Griffin's actions as an Otero County Commissioner. Commissioner Griffin has responded to such criticism from Mr. Swanson and other constituents expressing concern with hostility and unprofessionalism. That hostility lead to the retaliation of Commissioner Griffin blocking Mr. Swanson and many other constituent citizens from Commissioner Griffin's Facebook page where he discussed public business concerning Otero County. Recently, following a County Commission meeting, Cmr. Griffin posted a discussion of that meeting on his Facebook page; Mr. Swanson was alerted to this posting by others but was

1

unable to see the posting about public business because he was blocked by Cmr. Griffin. Mr. Swanson arranged to have undersigned counsel request these public records about Otero County's public business from Otero County pursuant to the New Mexico Inspection of Public Records Act (IPRA). Mr. Swanson received some of the requested records, which included a list of citizens blocked from Cmr. Griffin's Facebook page where he has commonly discussed the public business of Otero County.

PARTIES

- 1. Plaintiff Jeff Swanson is a resident of Otero County, NM.
- 2. Defendant Couy Griffin is an elected county commissioner for Otero County.
- 3. Defendant Sylvia Tillbrook is the records custodian for Otero County.

JURISDICTION AND VENUE

- 4. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the Parties pursuant to the New Mexico Constitution and the NMSA §14-2-1 *et seq.*
 - 5. Venue lies in this district as Plaintiff Jeff Swanson is a resident of Otero County.

FACTUAL BACKGROUND

- 6. Defendant Couy Griffin, likely sometime in 2019 or before blocked Plaintiff Jeff Swanson from access to his Facebook page where he discussed the public business of Otero County with constituents. *See* Exhibit 1.
- 7. Plaintiff directed undersigned counsel to request certain public records regarding Defendant Griffin's Facebook on March 29, 2020. *See* Exhibit 2 attached hereto.
- 8. Sometime between March 29, 2020 and April 16, 2020 Defendant Griffin undertook to destroy the requested records by deleting them from his Facebook page out of retaliation and to avoid his responsibility for transparency. However, a large number of posts about

the public business of Otero County continued to exist on April 16, 2020 and were preserved by Plaintiff's counsel. *See* Exhibit 3 attached hereto.

- 9. On April 14, 2020, legal counsel for Otero County, Michael Eshleman, responded on behalf of Defendants to inform Plaintiff's counsel that there were no records responsive to Plaintiff's request other than to provide the list of blocked constituents. *See* Exhibit 2.
- 10. The individual actions of Defendant Griffin, acting under the color of law, to destroy public records, withhold other public records and to block Plaintiff from his Facebook page where public business was discussed with constituents were maliciously done for the purpose of retaliating against Plaintiff for his exercise of his First Amendment right to petition his government for redress of grievances and to engage in protected speech that was critical of one of his elected government officials.
- 11. Defendant Griffin's action to block Plaintiff, because of his viewpoint, from a public forum where Defendant Griffin was discussing public business with the general public, was viewpoint discrimination. *See Knight First Amendment Institute at Columbia University v. Trump*, 302 F.Supp.3d 541 (S.D.N.Y. 2018)

FIRST CAUSE OF ACTION: VIOLATION OF FIRST AMENDMENT RIGHTS BY DEFENDANTS – FIRST AMENDMENT RETALIATION AND VIEWPOINT DISCRIMINATION

- 12. Plaintiffs re-allege each of the above paragraphs as if fully set forth herein.
- 13. The First Amendment of the United States Constitution protects an individual's freedom of expression/freedom of speech and the individual's right to petition their government for redress.
- 14. As a government actor, individually, acting under the color of law, Cmr. Griffin maliciously violated the First Amendment rights of Plaintiff through retaliation to withhold and destroy public records and through viewpoint discrimination by blocking Plaintiff from a public

forum where Defendant Griffin was discussing the public business appurtenant to his elected position.

- 15. As a direct and proximate result of the retaliatory actions, Plaintiff suffered injuries consisting of deprivation of a Constitutional Right.
 - 16. Defendant Griffin is also subject to punitive damages for his conduct.

SECOND CAUSE OF ACTION: VIOLATION OF INSPECTION OF PUBLIC RECORDS ACT BY DEFENDANT MONTOYA

- 17. Plaintiff re-alleges each of the above paragraphs as if fully set forth herein.
- 18. Pursuant to NMSA 1978 § 14-2-11 Defendants have violated the New Mexico Inspection of Public Records Act by failing to respond or provide for inspection the requested public records.
- 19. Because Defendants have violated the IPRA by failing to produce to Plaintiff the public records requested by Plaintiff without justification under the law, Plaintiff is entitled to an injunction ordering the Defendants to produce all relevant documents in the Defendants' possession including those that may be retrieved after being unlawfully deleted by Cmr. Griffin.
- 20. Pursuant to NMSA 1978 § 14-2-11 Plaintiff is entitled to statutory damages, attorney's fees, and costs for the failure of the Defendants to follow IPRA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the Court exercise its jurisdiction and enter, pursuant to the Court's original jurisdiction, and the New Mexico Inspection of Public Records Act:

- A. A trial on the merits before a jury;
- B. A declaration that the actions of identified Defendants described in this Complaint violated Plaintiff's First Amendment Rights by interfering with his protected speech

and interfering with his right to petition his government for redress;

C. General and specific compensatory damages according to proof;

D. Punitive damages in such amount as will sufficiently punish defendants for their willful

and malicious conduct and as will serve as an example to prevent a repetition of such

conduct in the future;

E. Interest on such damages awarded at the legal rate from the date of judgment until paid;

F. An order granting Plaintiff's costs and attorney fees pursuant to 42 USC §1988;

G. A finding adjudicating that the failure of the Defendants to timely respond or provide

the public records requested by Plaintiff is in violation of the New Mexico Inspection of

Public Records Act, or if necessary, a writ of mandamus requiring the Defendants to

produce the requested records;

H. Judgment in favor of Plaintiff on Defendants' violation of the Inspection of Public

Record Act;

I. An injunction to enforce the provisions of the New Mexico Inspection of Public

Records Act;

J. An Order awarding Plaintiff statutory damages for violation of the Inspection of Public

Records Act;

K. Any and all other relief that may be appropriate as deemed by this Court.

Respectfully submitted this 21st day of April 2020.

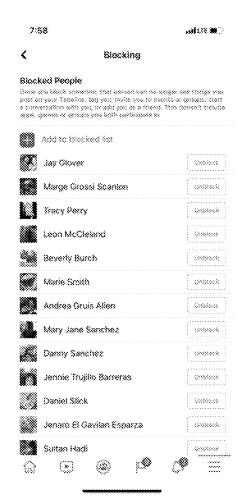
WESTERN AGRICULTURE, RESOURCE AND BUSINESS ADVOCATES, LLP

/s/ A. Blair Dunn

A. Blair Dunn, Esq. 400 Gold Ave SW, Suite 1000 Albuquerque, NM 87102 (505) 750-3060

abdunn@ablairdunn-esq.com

EXHIBIT 1

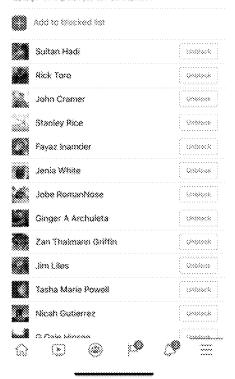


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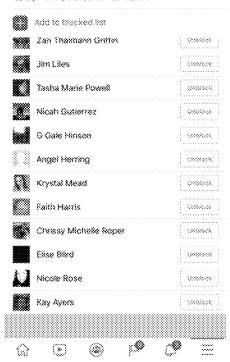
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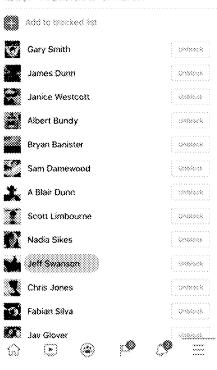


EXHIBIT 2

abdunn@ablairdunn-esq.com

From: meshleman@co.otero.nm.us

Sent: Tuesday, April 14, 2020 4:10 PM

To: 'A. Blair Dunn'
Cc: Sylvia C. Tillbrook

Subject: FW: IPRA REQUEST (OC File#20PRR056)

Attachments: Sylvia C Tillbrook.vcf; Sylvia C Tillbrook2.vcf; Griffin1.png; Griffin2.png; Griffin3.png; Griffin4.png

Dear Mr. Dunn:

This is to respond to your request under the Inspection of Records Act emailed to Sylvia Tillbrook on March 29, 2020. You asked for:

- 1. A copy of the Facebook page evincing the people Couy Griffin on his page had blocked as of today's date.
- 2. Copies of all Facebook messenger messages regarding public business sent or received by Couy Griffin
- 3. Copies of every post including the comments from Couy Griffin's Facebook page regarding county business for the last 12 months.

In response to your first request, four screenshots showing people blocked on Facebook by Commissioner Griffin are attached.

In response to your second request, Commissioner Griffin states that there are no records responsive to your request.

In response to your third request, Commissioner Griffin states he has unblocked you on Facebook and you may review this material online on his Facebook page.

This completes Otero County's response to your request.

Ave atque vale! Michael Eshleman



Michael Eshleman

Otero County Attorney
Otero County Administration Building
1101 New York Avenue
Alamogordo, New Mexico 88310
575-437-7427 (telephone)
866-986-8376 (toll-free)
575-443-2928 (facsimile)
meshleman@co.otero.nm.us

From: Sylvia Tillbrook <stillbrook@co.otero.nm.us>

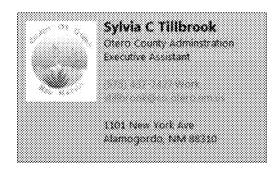
Sent: Monday, March 30, 2020 10:21 AM

To: 'abdunn@ablairdunn-esq.com' abdunn@ablairdunn-esq.com

Subject: RE: IPRA REQUEST (OC File#20PRR056)

Dear Mr. Dunn,

We will need additional time to respond to you request, until April 14, 2020. Should you have any questions, please do not hesitate to contact me.



From: abdunn@ablairdunn-esq.com <abdunn@ablairdunn-esq.com>

Sent: Sunday, March 29, 2020 9:34 AM

To: Sylvia C Tillbrook < stillbrook@co.otero.nm.us Cc: Tammy Pelletier < warba.llp.tammy@gmail.com stillbrook@co.otero.nm.us <a hr

Subject: IPRA REQUEST

Ms. Tillbrook,

Pursuant to IPRA please provide:

- 1. A copy of the Facebook page evincing the people Couy Griffin on his page had blocked as of today's date.
- 2. Copies of all Facebook messenger messages regarding public business sent or received by Couy Griffin
- 3. Copies of every post including the comments from Couy Griffin's Facebook page regarding county business for the last 12 months.

Just to be clear - Couy's Facebook page discussed public business yesterday, so there is no question that such records exist. Please also treat this email as a litigation hold letter and be aware that any action to destroy records will be pursued as an adverse inference sanction. It is documented that Couy Griffin has several people blocked and unblocking them would be an example of spoilation.

A. Blair Dunn, Esq. WARBA, LLP 505-750-3060



Michelle Crishan only further proved her



Couy Griffin

JULY 20, 2019 31 7:58 AM . 🚳

Michelle Grisham only further proved her cowardice and poor character by not reaching out to our County Sheriff and County Government. She is a partisan hack that only wants to hear things that agree with her and her political agenda. Her insecurity shows from the platform shoes she wears to the people she chooses to meet with. Those that are weak always have the loudest voice!



ALAMOGOROONEWS.COM

Governor Lujan Grisham visits Alamogordo to promote state's new outdoor recreation division





Comment



∠ Share



15 Shares



Terrie J. Bell-Castro She never spoke with you?

9 mos Like Reply More



Patricia Coburn

Tales

9 mos

Like

Reply:

More





Friends and fellow patriots. I need your help. Yesterday I was informed that Governor Michelle Lujan Grisham was traveling to Alamogordo to discuss issues affecting this community. I called her office 5 times to try and find out details and discuss possibilities of meeting with her. Her office staff only put me on hold or took my # down and said they would call me back. Well guess what? I'm still waiting on a call. That's where you come in. Could I ask you to please call her office and ask them to return my call?? After all our efforts in Otero County this is the total disrespect we receive. Please click on the number and call (505) 476-2200 and ask them to call me back. Lets make her phone ring and demand our voices be heard. Please make the call.

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I had the blessing of sharing the struggle New Mexico is going thru with an unsecured border. Please read and consider the danger that New Mexico politics is subjecting our great nation to.

🕶 📝 - July 17, 2019 at 10:31 AM - 🛞









Couy Griffin June 30, 2019 at 4:34 PM - 🦑





KOB.COM

NM ranks 50th in child well-being

New Mexico ranked at the bottom of a new list for child well-being.

13 Comments 51 Shares

M Like

Comment

🛆 Share



Couy Griffin

June 16, 2019 at 9:32 PM - Albumueroue Journal - 🚱

This was an editorial in the Albuquerque Journal today. I hope it brings attention to this border crisis that is going to further cripple our great state.



ABOJOURNAL.COM

OPINION | Double-edged sword - immigrants and drugs threatens Otero County

Comment

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ሆን Like

17 Comments 327 Shares



Couy Griffin

June 14, 2019 at 10:37 PM - CoFundMe - @

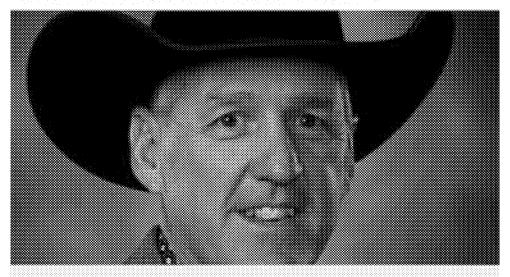
And we love you Vickie!! Thanks for your support!! MAGA!!!





Thank you for taking a stand Sheriff Black. Our Governor is putting our whole state at risk in her attempt to please her political party.

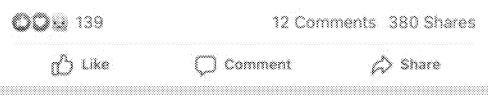
Please call your county commissioners. No matter what county you are in. And demand resolutions to be put in place to safeguard tax payer monies and county resources against illegals/asylum seekers. We must take a stand together. Stand with Otero, Lincoln and Sierra Counties.



LCSUN-NEWS.COM

Lack of law enforcement resources taking its toll on rural

New Mexico







Blessed to have my name on this letter. Thanks for including me Mark Cage

Senator Tom Udali

31 Hart Senate Office Building Satungton DC, 20510

Representative Debra Hasland, District 1 1297 Longworth HOB Washington DC 20515

Representative Ben Lujan, District 3 2323 Replum (408 Westengton DC, 20515

New Mission Congressional Delogation,

Senator Martin Honeich 303 Hart Senate Office Building Washington DC, 20510

Regressmative Xochiti Torres Smail, District 2 430 Carmon HOB Washington DC, 20015

We elected officials in our respective New Mexico counties hereby declare that we believe the southern border immigration crisis has reached the level of an emergency situation.

This emergency must be addressed and it must be addressed immediately. Our communities do not have the resources not the budgets to handle the massive influx of immigrants we are experiencing and are expected to experience in the very near future. Our scape resources are in danger of being regidly depicted to the point that we will be unable to effectively care for our own obtains and our existing homeless populations, many of whom are American veterans.

We, whom you represent, request that you put points sade and support the President of the United Spies in his request for the supplemental handing recessary to effectively address this crisis sad provide the New Mexicans you serve with the relief we to desperately need. We implied you to protect the border and provide processes that proved immigrants and/or asytum sewers crossing into the United States properly and legally.

It is with our conditional's support and with their well-being in mind that we request you exercise your elected duty to the people whom you serve and act now in this emergency situation to overcome the politics in addressing this humanitarism crisis with no further delay. Please work with the President to give relief and security to both New Medicans and the Immagrants entering through our southern

Best regards,

Will Casin, Chaves County Commission Chair
Jon Henry, Eddy County Commission Chair
Daniel Torrez, Cibola County Commission Chair
Dean Jackson, Lea County Commission Vice Chair
Preston Stone, Lincoln County Commission Chair
John Sweetser, Luna County Commissioner
Couy Griffin, Otoro County Commissioner
Jam Growley, San Juan County Commissioner
James Pason, Sierra County Commissioner

Miles Herrington, Charves County Sheriff
Mark Cage, Eddy County Sheriff
Tony Mace, Cibola County Sheriff
Corey Helton, Lea County Sheriff
Robert Shepperd, Lincoln County Sheriff
Kelly Garaway, Luna County Sheriff
David Mack, Otero County Sheriff
Shane Ferrari, San Juan County Sheriff
Gienn Hamilton, Sierra County Sheriff

es: NACCOMMENT Michaels (spin) Critition, NAC Reprince And Commissed, NACCOMMENT Company (spin)

Mark Cage May 23, 2018 at 2:45 PM - 6

We have expressed our concerns to our congressional delegation.





This is why Otero County Commissioners Gerald Matherly and Couy Griffin passed a resolution to protect tax dollars and resources from being spent on illegal aliens/asylum







Couy Griffin

May 2, 2019 at 8:12 PM - Alamogordo Dally News - 🦑

It was a great statement made today by 2 of our 3 commissioners here in Otero County.



ALAMOGORDONEWS.COM

Otero County does not support housing immigrants in county





] Comment



Share



51 Shares



Toni Vann

Thanks for thinking of our infrastructure and citizens first!



12 mos Like Reply More



Patricia Coburn Agree totally



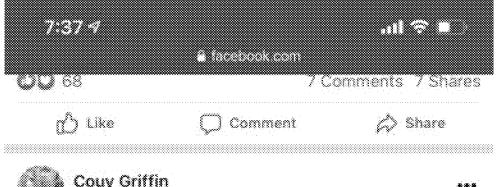
12 mos Like Reply More



Michael Washam









Couy Griffin April 13, 2019 at 11:41 PM 🖓



Proclamation

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Alamogordo Police Department

At this morning's County Commission Meeting, May 4th, 2019 was declared "Otero County Law Enforcement Appreciation Day"! Thanks to all Otero County Law Enforcement agencies for everything you do!

#BackTheBlue #AlamogordoPD #SafeAlamogordo #OCLEAC



2 Comments: 3 Shares

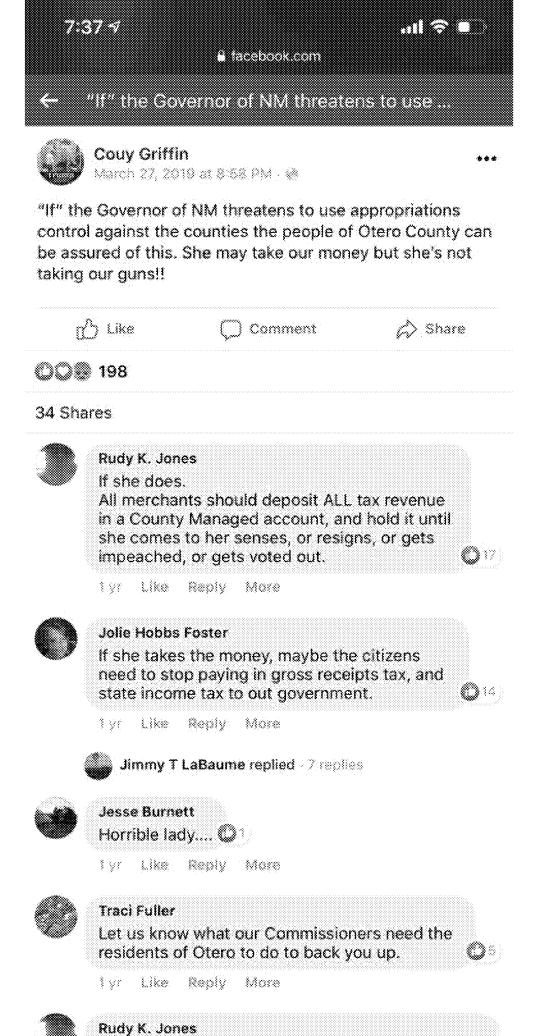




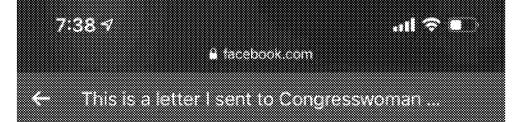
Comment



Share



Perhaps someone here knows a County





This is a letter I sent to Congresswoman Small:

Dear Congresswoman Small,

I pray that God gives you the humility and wisdom to recognize your position on border security has been wrong. Our County, State, and Nation is under extreme danger right now and it is due to poor decisions regarding policy on our border.

I pray that you don't translate this message into political jargon but you will sincerely consider the effects of an unsecured border.

Please consider the safety, security, and well being of American citizens and your constituents first and foremost.

All wrongs can be made right but it takes humility and strength!

Sincerely, Couy Griffin Otero County Commission

Sent from Outlook





Jeannie Harbour Jones

Couy Griffin. A friend cannot get surgery due to this fact. Weekend before last 800 illegals were sent to Albquerque hospitals!!!!!



Tyr Like Reply More



Jeannie Harbou... replied A replies



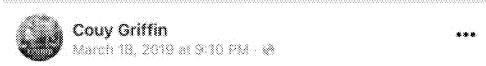
James Jimbo Williams

I've met wit her twice now and I'm cautiously epitimistic that she is listening



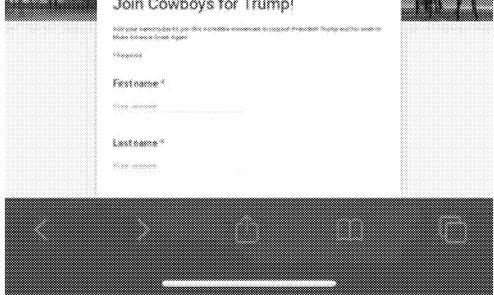






Please check out our new products and support our next ride. Atlanta Georgia, Ride for Southern Pride. Circle the Wagons Tour!









If you got a few minutes click on the video. And don't make fun of me!!



312 Comments 2.6K Shares







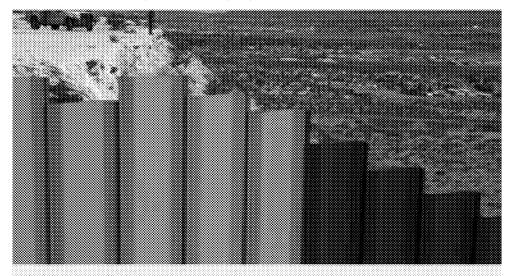




Couy Griffin

January 19, 2019 at 7:19 AM - Silver City Sun News - 🤣

I met with the Otero County attorney yesterday to draft a resolution for our upcoming commission agenda to address the status of Otero County as "sanctuary". If this state bill passes I am not sure how it will legally affect our county but I will fight hard to keep us in line with federal immigration laws and clear of the "sanctuary" status.

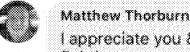


SCSUN-NEWS.COM

Proposal could make New Mexico a 'sanctuary state'
Bills in the New Mexico House and Senate would make the state a s...

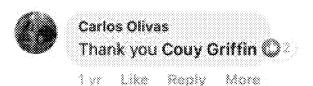


34 Shares

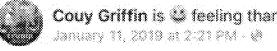


I appreciate you & support you Couy. Keep on fighting.

Tyr- Like Reply More







Just got out of a very informative meeting on the border situation. Governor is supposed to be here at 3. Hope I can sneak back in!! Lol





Couy Griffin

January 10, 2019 at 5:44 AM - 🐶

Good job Hidalgo County. We need the grassroots to come alive and this is a great start. Keep er going!!! Otero County is behind you!!!



Amy Smith Barela > Republican Party of Otero County, New Mexico

January 9, 2019 at 11:18 PM - 🙌

STATE OF NEW MEXICO HIDALGO COUNTY



Decomber 24, 2018

Pressure accessor the letter on any engages request by assistance in Southwestern New Market. Addition County is not the new of all exposures and sentencements. The feet there is an entire of the exist to the safety and well-on all our objects in Haddyn County. Resources such as medical low enforcement, and sentencement are converged those most needed.

Cut Hology County Emergency Medical Services Second consists of 7 full-brine employees and 3 voluments. This form of Emergency Medical Services cover over \$300 square miles. At the very exact we can over \$300 square miles. At the very exact we can over \$300 square miles. At the very exact we can over \$300 square miles. At the very exact we can over \$300 square miles from the form of County and County and

Our bodge from a work diagonally to count the County and its others with anything that bis the best interest of our County. With the amount of amount points coming in delay, they are shall had the county as section 2.5% as the county of a section 2.5%.

Sanitation is a major concern for Holdgo County, as well. Constity a local variable is providing party or posterior to Antelope Wells FOR the vendor's very concerned with the unablicary manner. They are being united to Antelope Wells FOR the employees, immigrants and provide that who may come this concerns of the Antelope Wells FOR the employees, immigrants and provide that who may come this concerns to the Wells FOR the provide the provide the following to develop the provide the following to develop the employees.

Construence Co.

House County Manager

NM Cattle Growers Association January 9, 2019 at 10:28

PM : W

Hildago County in New Mexico has declared an emergency. It is southernmost county of New Mexico. It is the bootheel of MM: Our border is not safe and we