

**SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO**

ENDORSED
FILED IN MY OFFICE THIS

JUN 21 2006

Juanita M. Duran
CLERK DISTRICT COURT

ANN M. COLLISON

**ONE 2005 HYUNDAI , 4-DOOR AUTOMOBILE,
NEW MEXICO VEHICLE LICENSE NO. HDL649,
and JOSIE NICASIO, its Owner,**

JUANITA M. DURAN

Petitioners,

CV-2006-0109

vs.

CITY OF ALBUQUERQUE,

Respondent.

PETITION FOR WRIT OF CERTIORARI

Petitioners hereby request a Writ of Certiorari to challenge the May 23, 2006 Decision and Order of the City of Albuquerque's Administrative Hearing Officer finding that a 2005 Hyundai Automobile, Vehicle License HDL649, owned by and registered to Josie Nicasio, violated the Albuquerque Safe Traffic Operations Program (Stop Fine - Red Light Violation) Ordinance, Sec. 7-11-1 to 7-11-6, Revised Ordinances of Albuquerque, 1994 as amended, and imposing a fine for the alleged violation.

1.

The jurisdictional grounds for this Petition are Rule 1-075 of the New Mexico Rules of Civil Procedure; Article II, Section 18 [Due Process] and Article X, Section 6 [Municipal Home Rule] of the New Mexico Constitution; Section 30-8-8, N.M.S.A., providing that abatement of a public nuisance will take place in the district court; and

Section 35-15-1, N.M.S.A., providing that proceedings to enforce ordinances shall take place in the Metropolitan Court.

2.

On May 9, 2006, City Administrative Hearing Officer Albert V. Chavez commenced a hearing on the alleged nuisance ordinance violation. At that time Ms. Nicasio chose to be represented (or to have her vehicle be represented) by Mr. Mark G. Bralley. Hearing Officer Chavez refused to allow Mr. Bralley, who is not an attorney, to represent Petitioners, and attorney Paul Livingston, who was present at the hearing, agreed to represent them. The case was continued until May 23, 2006.

Following a hearing on May 23, 2006, the City Hearing Officer held that the City of Albuquerque had presented sufficient evidence to establish that a violation occurred and ordered that the "Registered Owner shall pay said fine of \$100.00" for the alleged City Ordinance violation.

3.

The parties to the administrative proceeding are named in the caption of this Petition.

4.

Petitioners allege that the Albuquerque Red Light STOP Ordinance violates the Constitution and laws of the State of New Mexico by allowing the City, its Police Department, and its City Administrative Hearing Officer, rather than a court, to determine

and enforce penalties for alleged violations of the City's nuisance ordinance resulting from an alleged traffic violation.

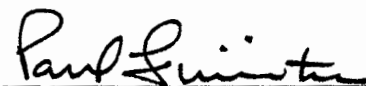
5.

Petitioners seek a declaration that the Albuquerque Red Light STOP Ordinance is unconstitutional and in violation of law; ask that the fine be rescinded and Petitioners be awarded fees and costs; and request such other and further relief as the Court deems just.

6.

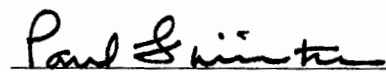
A copy of the administrative Decision and Order, dated May 23, 2006, is attached hereto, along with a Certificate of Satisfactory Arrangements for the preparation and production of the record of proceedings in this matter.

Respectfully submitted,



Paul Livingston
Attorney for Petitioners
P.O. Box 250
Placitas, NM 87043
(505) 771-4000
(505) 771-2333 (fax)

I HEREBY CERTIFY that I served the foregoing Petition to the City's Boards and Commissions Office, on or before June 22, 2006.



Paul Livingston



CITY OF ALBUQUERQUE

P.O. Box 1293, Albuquerque, New Mexico 87103

Before the City Administrative Hearing Officer

SAFE TRAFFIC OPERATIONS PROGRAM (Stop Fine-Red Light Violation)

Findings of Fact Decision and Order

Violation Notice Number: CR 06017260
 Vehicle: 2005 Hy. car.
 License Plate: 3 HDL 649
 Registered Owner: Josie Nicolas
 Address: 803 San. Ch... NW
Albany NM 87107

THIS MATTER having come for a hearing on 5-9-06, before Albert V. Chavez, City Administrative Hearing Officer. Pursuant to a request for hearing filed by Josie Nicolas, who (appeared) (~~did not appear~~) personally and with attorney Paul Livingston Esq.; and the City of Albuquerque, Police Department appearing by and through Dr. Joyce Roach. This Hearing Officer otherwise being sufficiently advised FINDS:

1. That this hearing officer has jurisdiction over the parties and subject matter to this action.
2. That on or about 3-10-06, a certain vehicle identified as a 2005 Hy. car. (did) (~~did not~~) proceed through the intersection of San Mateo / Montgomery NE, Albuquerque, New Mexico, County of Bernalillo, State of New Mexico without effectuating a lawful stop.
3. That said vehicle identified in finding #2 above was registered to Josie Nicolas
4. _____

5. _____

CONCLUSION

1. That the City of Albuquerque presented sufficient evidence to establish that the violation occurred by that certain 3005 Hesperia registered to Josie Nicoin on or about 3-11-06 pursuant to § 7-11-1, *et seq.* Revised Ordinance of Albuquerque 1994 as amended.
2. That the City of Albuquerque has not presented sufficient evidence to establish that the violation occurred by that certain _____ registered to _____ pursuant to § 7-11-1, *et seq.* Revised Ordinance of Albuquerque 1994 as amended.
3. _____


4. _____

ORDER

Registered Owner shall pay said fine of \$ 100.00 by mailing the same to "PHOTO STOP" - P.O. Box 9473, Toledo, OH 43697, payable by certified funds (money order or cashiers check). Please write the Violation Notice Number and vehicle license plate on your money order or cashiers check.

The Registered Owner did not violate § 7-11-1, *et seq.*, and therefore the violation fine was not just and proper.

CITY OF ALBUQUERQUE



City Administrative Hearing Officer

Date: 3-11-06

Distribution:

Josie Nicoin / Paul Knight atty
Registered Owner

Joe Lopez / Benicio Padilla
Albuquerque Police Department