

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

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

Petitioners,

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
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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