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1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,

4 v.

NO. 34,203

5 **JAMES A. ORTEGA,**

6 Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF CHAVEZ COUNTY**

8 **Steven L. Bell, District Judge**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 Kenneth H. Stalter, Assistant Attorney General

12 Albuquerque, NM

13 for Appellee

14 Jorge A. Alvarado, Chief Public Defender

15 Santa Fe, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **WECHSLER, Judge.**

1 {1} Defendant appeals the district court's determination that his kidnapping
2 conviction is a “serious violent offense” for the purposes of the Earned Meritorious
3 Deductions Act (EMDA), NMSA 1978, § 33-2-34 (2006). We proposed to hold that
4 the district court did not provide a sufficient basis for denying credit under the
5 EMDA. The State has responded by indicating that it opposes our calendar notice only
6 to the extent that it asks us to remand for additional factfinding on the EMDA issue,
7 if appropriate. [MIO 3] We agree that remand for reconsideration of the issue is
8 appropriate. *State v. Morales*, 2002-NMCA-016, ¶ 19, 131 N.M. 530, 39 P.3d 747,
9 *abrogated on other grounds by State v. Frawley*, 2007-NMSC–057, ¶ 36, 143 N.M.
10 7, 172 P.3d 144.

11 {2} For the reasons set forth above and in our calendar notice, we reverse the
12 EMDA determination and remand this matter to the district court pursuant to *Morales*.

13
14 {3} **IT IS SO ORDERED.**

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16

JAMES J. WECHSLER, Judge

17 **WE CONCUR:**

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19

MICHAEL E. VIGIL, Chief Judge

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2 **MICHAEL D. BUSTAMANTE, Judge**