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Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

IVONNE CABRERA,)	
)	Case No.: 74341
Appellant,)	
)	MOTION TO LATE FILE THE
vs.)	REPLY BRIEF BY FIVE DAYS
)	
THE STATE OF NEVADA,)	
)	
Respondent.)	
_____)	

COMES NOW, Patricia M. Erickson, counsel for Appellant Ivonne Cabrera, and respectfully requests this Court enter an order, pursuant to N.R.A.P. 26(b), permitting the late filing of Ms. Cabrera's Reply Brief which was due on January 18, 2019 but was submitted to this Honorable Court at 12:58 a.m. today.

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Counsel requests permission to late file the reply brief by five days based upon the following facts:

On January 18, 2019, undersigned counsel was completing the tasks required to file Ms. Cabrera's Reply Brief. During this process, counsel realized that the unconstitutionality of NRS 194.010(8) - an issue of first impression for this Court - was not as persuasive as counsel believed that it might be based upon a potential new argument that counsel had thought of on that day.

In order to provide this Court with all of the arguments that the analysis of this issue of first impression could rely on and in order to render effective assistance of appellate counsel, counsel determined she needed to complete a Westlaw search on the words "fair trial" /p "jury instruction" to see if the omission of jury instructions could support a Sixth Amendment challenge to the statute.

The "fair trial" /p "jury instruction" search found 2,223 cases contained that search language. In an effort to reduce the number of cases located, the same Westlaw search was completed in a more limited number of jurisdictions. 774 cases in the limited jurisdictions were located.

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After reviewing 17 of the 774 cases, counsel realized that the limited jurisdiction search was only locating federal habeas corpus cases. As AEDPA imposes a significantly different standard of review for federal courts, counsel completed a new search on “fair trial” /p “jury instruction” in all states. This search found 7,980 cases.

After reviewing 7 of those cases, a Westlaw search was conducted in all states on the words “fair trial” “6th” “Sixth” /10 amendment /p “jury instruction” which resulted in the identification of 1,113 cases. After reviewing 32 of the 1,113 cases, another search was completed on “fair trial” “6th” “Sixth” /10 amendment /p “jury instruction” & revers!. 969 cases were found.

With the change of the search words to “fair trial” “6th” “Sixth” /10 amendment /p “jury instruction” & reversed, 633 cases were located. After reviewing 77 of the 633 cases, counsel decided to change the search words to fail /p “jury instruction” /p “fair trial” “6th” “Sixth” /10 amendment & reversed.

This search located a much smaller number of cases - 247 in total. Counsel then reviewed 46 of the 247 cases which lead her to then limit the search to the words purpose /10 “jury instruction” /p sixth 6th /10 amendment. 15 cases were found as a result of this search. Counsel then reviewed all of those cases.

After this review, counsel felt that she had located all of the caselaw that she would need to rewrite the constitutional challenge to NRS 194.010(8) based on the Sixth Amendment's impact when necessary jury instructions are not presented to a jury.¹

Next, counsel determined to complete a Westlaw search on the purpose of closing argument in relation to the Sixth Amendment. The first search with the words purpose /10 Sixth 6th /p "closing argument" argument /p "fair trial" located 47 cases containing those words.

After reviewing 13 of the 47 cases, counsel determined that this search was too narrow. Therefore, a search was completed on the words purpose /10 "closing argument" argument /p "fair trial". While this search found 251 cases, counsel decided to review some of the cases to determine what additional words might be used to narrow that number of cases.

After reviewing the 18 cases, another search was conducted on the words purpose /10 "closing argument" argument /10 "fair trial" & reversed. This search found 145 cases.

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¹ See pp. 11-14 of Ms. Cabrera's Reply Brief.

After reviewing 29 of these 145 cases and counsel felt that she had located all of the caselaw that she would need to rewrite the constitutional challenge to NRS 194.010(8) based on the Sixth Amendment's impact when appropriate closing arguments are not presented to a jury.²

Undersigned counsel expended 9 hrs and 46 minutes - over two days - just completing the above noted research. After completing the research, undersigned counsel expended another 21 hours and 20 minutes - over the next three days - initially rewriting the Sixth Amendment challenge to the application of NRS 194.010(8) to Ivonne Cabrera's case and then editing the argument four times.

When undersigned counsel began her research on January 18, 2019, she had no idea that she would expend 30 hours and 6 minutes - over five days - completing the research and rewriting of the argument regarding the constitutionality of NRS 194.010(8).

Based upon these facts, the need to provide this Honorable Court with the strongest arguments that could be made regarding this issue of first impression, and the requirement that undersigned counsel provide effective assistance of counsel during this appeal, Ms. Cabrera's Reply Brief was not

² See pp. 14-17 of Ms. Cabrera's Reply Brief.

finalized until 12:50 a.m. on January 29, 2019. Counsel immediately submitted the reply brief for efilng which occurred at 12:58 a.m.

Undersigned counsel respectfully submits that all of the facts contained in this motion establish an extraordinary circumstance which resulted in extreme need for additional time to finalize Ms. Cabrera's reply brief. Undersigned counsel respectfully requests this Honorable Court enter an order permitting the reply brief to be late filed by five days.

DATED this 29th day of January, 2019.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 29th day of January, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Steven Owens, Clark County Chief Deputy District Attorney

Adam Laxalt, Attorney General

Patricia M. Erickson

/s/ Patricia M. Erickson
Patricia M. Erickson