

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS ALEJANDRO
MENENDEZ-CORDERO,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

_____ /

No. 74901

Electronically Filed
Oct 17 2018 04:25 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

RESPONDENT'S APPENDIX

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1 CODE
CHRISTOPHER J. HICKS
2 #007747
P.O. Box 30083
3 Reno, NV 89520-3083
(775) 328-3200
4 Attorney for Plaintiff

5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 THE STATE OF NEVADA,
10 Plaintiff,
Case No. CR15-1674
11 v. Dept. No. 7
12 LUIS ALEJANDRO MENENDEZ-CORDERO,
13 Defendant.

14 _____ /
15 STATE'S EMERGENCY MOTION TO LIMIT DISSEMINATION OF DISCOVERY AND FOR
16 PROTECTION ORDER FOR WITNESSES

17 COMES NOW, the State of Nevada, by and through CHRISTOPHER J.
18 HICKS, District Attorney of Washoe County, and Kelly Ann Kossow,
19 Chief Deputy District Attorney, and hereby files the following motion
20 addressing the need for a protective order regarding the
21 dissemination of the discovery in this case as well as a no contact
22 order with all named witnesses in this case. This motion is based
23 upon the attached Memorandum of Points and Authorities, and testimony
24 and/or arguments adduced at a hearing on the matter.

25 ///

26 ///

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **PROCEDURAL HISTORY**

3 MENENDEZ-CORDERO was charged with two counts of murder in the
4 first degree with the use of a deadly weapon in November 2010.
5 MENENDEZ-CORDERO was indicted on the same charges on October 28,
6 2015. His trial is currently set for October 2, 2017.

7 **STATEMENT OF FACTS**

8 The State has provided discovery regarding the charges pending
9 against MENENDEZ-CORDERO. This discovery includes the name of
10 witnesses with some identifying information, to include date of birth
11 and address information. One report authored by Detective Jason
12 Woodard summarizes an interview with a confidential source of
13 information identified only as SA-1290. It has come to the State's
14 attention that MENENDEZ-CORDERO was provided documents while being
15 housed at the Washoe County Jail related to this case. On July 15,
16 2017 MENENDEZ-CORDERO conducted an I-Web in which he showed a female
17 identified as Bertha Arias, a known MS-13 associate currently
18 residing in the San Francisco Bay area¹, two packets of documents in
19 brown envelopes, marked "Inmate Alejandro Menendez-Cordero" (See
20 Exhibit 1, still photo from I-Web) MENENDEZ-CORDERO told Arias that
21 the documents were going out on Monday. On August 10, 2017 MENENDEZ-
22 CORDERO provided a packet of documentation entitled, "All Legal
23
24

25 ¹ Arias is known to Homeland Security Agent Alicia McDonald as the girlfriend of
26 Davie Jimmy Mejia Sensente, who is currently serving a twenty seven year sentence
in Federal Prison for the 2010 MS-13 killing of a man they mistook as being a rival
gang member.

1 Paperwork" to Wilmer Avelar, aka, Sonic.² Wilmer Avelar is an
2 identified MS-13 gang member residing locally. He was interviewed
3 back in 2010 regarding his involvement and knowledge in the current
4 case. He claimed to have no knowledge of the murders or MENENDEZ-
5 CORDERO. Then MENENDEZ-CORDERO conducted an I-Web visit on August
6 21, 2017 to Bertha Arias and during the I-Web Arias stated that she
7 was ready to fly to El Salvador and personally deliver the "papers".
8 Arias showed MENENDEZ-CORDERO her luggage and a box in which she
9 indicated the "papers" were located. On August 24, 2017 the State
10 intercepted a phone call made by MENENDEZ-CORDERO, using another
11 inmate's pin number, at 10:38 a.m. to Bertha Arias. During the
12 conversation with Arias it appears that she is in fact in El
13 Salvador. Arias hands the phone off to a "friend" who tells
14 MENENDEZ-CORDERO that he started looking at the "papers". At one
15 point MENENDEZ-CORDERO tells Bertha Arias to let him speak to
16 "Cementerio" (Cemetery) and tells him to study the "papers" and the
17 names of all the people who are in them, along with the photos of the
18 gun and all his charges.

19 The State asked Homeland Security Agent Alicia MacDonald to
20 review the August 24, 2017 phone call. Agent MacDonald worked
21 closely on a 2010 MS-13 murder in Daly City involving three MS-13
22 members who shot and killed a man as he exited a bus. MENENDEZ-
23 CORDERO was suspected of being involved in that murder but was never
24 charged or prosecuted but Agent MacDonald became aware of MENENDEZ-

25

26 ² See attached Exhibit 1, Authorization for release of property wherein MENENDEZ-
CORDERO signed the document releasing the "legal paperwork" to Wilber *sic* Avelar.

1 CORDERO's presence during that investigation. According to Agent
2 MacDonald the monikers and information talked about in the August 24,
3 2017 phone call appear to be about the 2010 Daly City murders and
4 discuss who was a "snitch" and who didn't speak to police. However,
5 it is unclear whether MENENDEZ-CORDERO is also asking MS-13 gang
6 members to review the paperwork and the witnesses for this case as
7 well.

8 On August 30, 2017 at 11:00 a.m. MENENDEZ-CORDERO had a
9 prearranged I-Web with a person named Ana Rojas. A review of the I-
10 Web revealed the recipient was again, Bertha Arias who again appeared
11 to be in El Salvador. During this I-Web MENENDEZ-CORDERO speaks to
12 several men and at one point asks them for a favor and provides them
13 a phone number which he reads off of a piece of paper. He asks the
14 men to buy a cellphone and send a message to the number. MENENDEZ-
15 CORDERO then tells the men to tell the "guy" that his mother will be
16 gone and asks them to tell him not to show up on the day of his
17 trial. One of the men records the cellphone number in his phone.
18 MENENDEZ-CORDERO tells the group of men that the "son of a bitch"
19 keeps coming around and if he doesn't show up, it could change the
20 outcome of the jury. One of the men, referred to as "Sideway" tells
21 MENENDEZ-CORDERO that he will take care of it beforehand and that he
22 will call "Gordo" and ask him what the process was last time and then
23 he'll talk to the "brothers." The number MENENDEZ-CORDERO provided
24 is that of Elder Rodriguez, the witness who took MENENDEZ-CORDERO to
25 Kristine Yost's house on the evening of the gathering where the
26 murders took place. Elder Rodriguez testified at Grand Jury and did

1 identify MENENDEZ-CORDERO as the individual that he took to the party
2 that evening where the murders took place.

3 On August 30, 2017 Wilmer Avelar was served a subpoena by the
4 State. Mr. Avelar was questioned regarding the legal documents he
5 procured from MENENDEZ-CORDERO at the Washoe County Jail. Avelar
6 told the State's Investigator that he did pick up the documents and
7 that he still has them in his possession.

8 MS-13 is a recognized transnational criminal organization that
9 was formed in Los Angeles about 30 years ago. There is a proven
10 track record of witness intimidation in gang cases, specifically
11 violent history with MS-13. Just one of those examples was reported
12 in the ICE Journal which stated:

13 U.S. Immigration and Customs Enforcement (ICE) added a Los
14 Angeles gang member to its most-wanted-fugitives list after
15 he went into hiding following his arrest for raping a 12-
16 year-old girl and witness intimidation in 2001. The rape
charges were dropped after "the chief witness in the case
was found murdered."³

17 MENENDEZ-CORDERO does not dispute he is a member of M3-13.
18 In fact, while at the jail he visits with known local MS-13 gang
19 members. He speaks with other known MS-13 gang associates over
20 I-Web and engages in flashing gang signs at the beginning and
21 end of each conversation. See attached exhibit 3⁴ and exhibit
22 4.⁵

23 _____
24 ³ MS-13 Gang Member on ICE Most Wanted List." 2005. Inside ICE. Volume 2, No. 11:2.
25 Washington D.C.: U.S. Immigration and Customs Enforcement.

26 ⁴ Still photo taken during August 21, 2017 I-Web with Bertha Arias in which
MENENDEZ-CORDERO flashes a gang sign and she takes a photograph.

⁵ Still photo taken during August 7, 2017 I-Web with Wilmer Avelar.

1 **ARGUMENT**

2 According to NRS 174.275 the Court, upon a sufficient showing,
3 may order that discovery or inspection pursuant to NRS 174.234 to
4 174.295 be denied, restricted or deferred or make such other order as
5 is appropriate.

6 What is clear, now that MENENDEZ-CORDERO has determined not to
7 enter a plea of guilty, is that MENENDEZ-CORDERO is beginning his path
8 of intimidation, harassment and threats of physical force in order to
9 intimidate the witnesses in this case with a goal of disrupting
10 justice. These threats are effective based on the history and
11 reputation of MS-13.

12 Based on all of the above stated articulated facts, along with
13 the attached exhibits, and any hearing on the matter, the State moves
14 this court for an order preventing dissemination of all discovery
15 materials beyond the defendant, defense attorney(s) and any duly
16 qualified employed or retained persons on behalf of the Defendant.
17 The State further seeks an order requiring that no discovery
18 materials shall be provided to the Defendant to keep at the Washoe
19 County Jail and under no circumstances shall the Defendant
20 disseminate any previously provided discovery materials currently in
21 his possession to any third persons and that any discovery that is
22 currently in the possession of MENENDEZ-CORDERO be turned over to the
23 Court for safekeeping.

24 As to the witnesses in the case, the State requests a protective
25 order be put in place that any witness identifying information,
26 including the current whereabouts and/or contact information, not be

1 turned over to the Defendant and not go beyond the defense attorney
2 and any duly employed defense investigators. Further, that if the
3 Defendant is in possession of any identifying information for any
4 witness that such materials be turned over to the Court, to include
5 notes containing phone numbers, dates of birth or any identifying
6 information.

7 As to SA-1290, per discovery rules, the State will turn over the
8 name of SA-1290 prior to the 30 day discovery deadline. However, the
9 State requests that any identifying information including the
10 whereabouts of SA-1290 not be disseminated to the Defendant. The
11 State seeks permission to provide the contact number of Special Agent
12 Alicia MacDonald from Homeland Security to be the contact person for
13 SA-1290. If the defense wishes to interview SA-1290 they may go
14 through the designated Special Agent, who can coordinate contact with
15 SA-1290 to the defense team. Of course, SA-1290 is free to speak
16 with defense or decline to be interviewed. The State has
17 communicated his right to make that decision. However, the State
18 seeks permission to keep his location secret.

19 Finally, based on the actions of MENENDEZ-CORDERO the State
20 seeks an order from the Court prohibiting MENENDEZ-CORDERO from
21 having contact with any witness in this case, to include initiating
22 third party contact with any witness.

23 The above stated measures are necessary because the disclosure
24 and dissemination of the discovery materials, which include
25 identifying information for the witnesses create a substantial threat
26

1 of intimidation, coercion, harassment and/or the possibility of
2 bodily harm to all civilian named witnesses in this case.

3 In addition to the attachments provided the State intends to
4 submit a written statement in further support of the instant motion
5 to substantiate the need for witness protection. Pursuant to NRS
6 174.275 the State will submit the statement under seal for the
7 inspection of the Court in an in chambers review.

8 The State has provided all I-Web and jail phone calls referred
9 to in this motion to defense. The State is asking that a hearing on
10 the matter be set as soon as possible so that no further intimidation
11 or damage can be done to the State's witnesses.

12

13 AFFIRMATION PURSUANT TO NRS 239B.030

14 The undersigned does hereby affirm that the preceding document
15 does not contain the social security number of any person.

16 Dated this 31ST day of AUGUST, 2017.

17

18 CHRISTOPHER J. HICKS
19 District Attorney
Washoe County, Nevada

20

21

22 By/s/KELLY ANN KOSSOW
23 KELLY ANN KOSSOW
8221
24 Chief Deputy District Attorney

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CERTIFICATE OF SERVICE BY E-FILING

I certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

WASHOE COUNTY PUBLIC DEFENDER'S OFFICE
LINDA NORDVIG

DATED this 31ST day of AUGUST, 2017.

/s/KELLY ANN KOSSOW

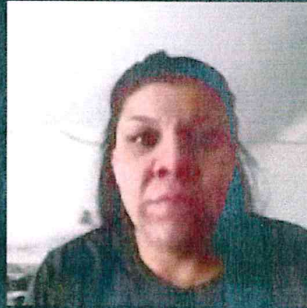
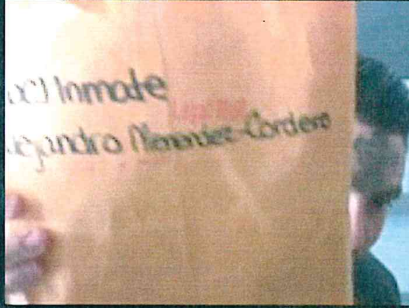
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EXHIBIT LIST

Exhibit One	Still Photo from 7-15-17 I-Web	1 page
Exhibit Two	Release of Property Receipt	1 page
Exhibit Three	Still Photo from 8-24-17 I-Web	1 page
Exhibit Four	Still Photo from 8-7-17 I-Web	1 page

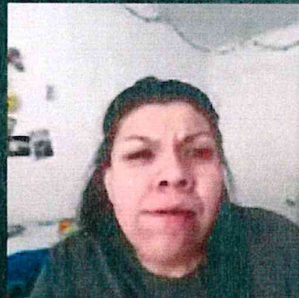
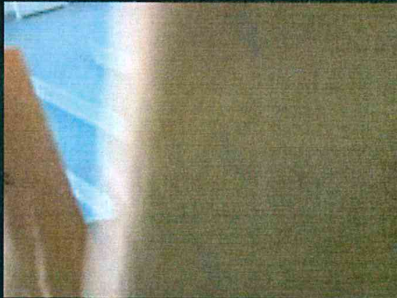
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2017-08-31 12:39:00 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6278260 : csulezic

EXHIBIT ONE



Monitored AND Recorded. Controlada Y Grabada.

-20:5



Monitored AND Recorded. Controlada Y Grabada.

-20:57

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2017-08-31 12:39:00 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6278260 : csulezic

EXHIBIT TWO

WASHOE COUNTY SHERIFF'S OFFICE
DETENTION/COURTS BUREAU

AUTHORIZATION FOR RELEASE OF PROPERTY/MONEY

Inmate's Name: Cordero, Luis A
(please print) Last Name First name MI
Booking #: 1515390 Housing Unit: 8/54 Property Tag#: 49

This will certify that, as of the below listed date, I am an inmate in the Washoe County Detention Facility.

I authorize (name) X Wilber Avelar to receive the following listed property/money:

ALL SECURED PROPERTY X Money \$ _____
initials initials

WATCH COMMANDER'S AUTHORIZATION FOR RELEASE OF MONEY
(required if the inmate has been in custody longer than 72 hours)

Watch Commander Signature: _____ ID# _____

Other than money or secured property, list item(s) to be released:

All Legal Paperwork. and 3 personal books

Property is held by: X [Signature]

By approving the release of this property/money I understand that the Washoe County Sheriff's Office and the person holding the property/money will not be held liable in any way for releasing the property/money to the above listed person.

Inmate signature: X [Signature] Date: 8/9/17

Deputy's signature: [Signature] WITNESSED BY ID# 4313

PERSON RECEIVING PROPERTY

I acknowledge that on 8/10/17, that I received the items listed on property record form:

Print name: AVELAR, WILBER Signature: [Signature]

Address: 9375 STONEY CREEK WAY Reno NV Phone: _____

Form of Identification, State Issuing & Number: NO DL #0802091346

Employee signature: [Signature] WITNESSED BY ID# 2921

WHITE-BOOKING; YELLOW-PROPERTY; GREEN-ACCOUNTING; PINK-INMATE

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Electronically
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2017-08-31 12:39:00 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6278260 : csulezic

EXHIBIT THREE



Monitored AND Recorded.

Controlada Y Grabada.

25:54

29:27

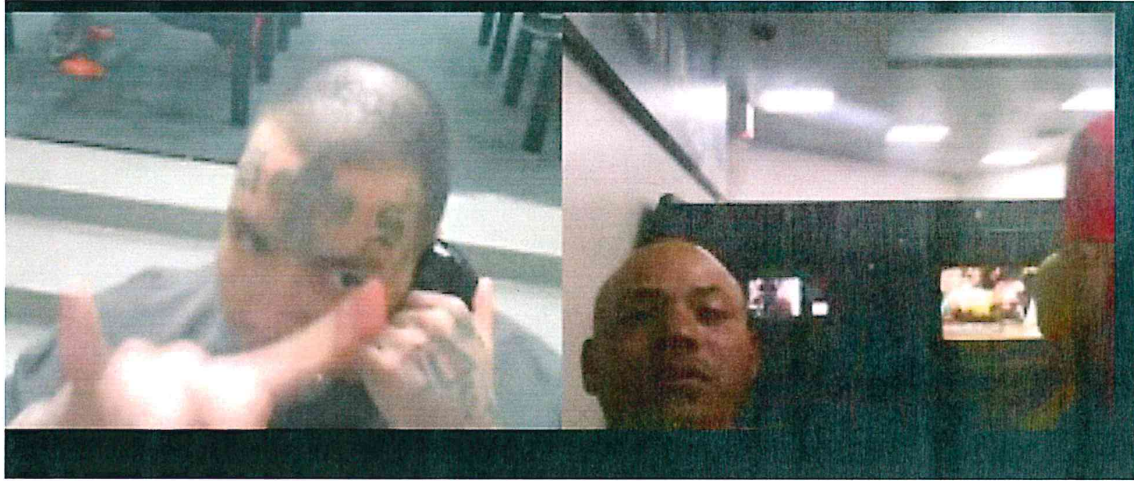


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2017-08-31 12:39:00 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6278260 : csulezic

EXHIBIT FOUR



1 CODE 2490
2 WASHOE COUNTY PUBLIC DEFENDER
3 LINDA M. NORDVIG, #5084
4 RICHARD M. VILORIA, #13273
5 P.O. BOX 11130
6 RENO, NV 89520-0027
7 (775) 337-4800
8 ATTORNEYS FOR DEFENDANT

9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
10 IN AND FOR THE COUNTY OF WASHOE

11 THE STATE OF NEVADA,

12 Plaintiff,

13 v.

Case No. CR15-1674

14 LUIS ALEJANDRO MENENDEZ-CORDERO, Dept. No. 7

15 Defendant.

16 **EMERGENCY MOTION REQUESTING REVIEW OF SEALED DOCUMENTS AND**
17 **REQUEST FOR ORDER SHORTENING TIME FOR STATE TO RESPOND**

18 COMES NOW, Defendant, LUIS ALEJANDRO MENENDEZ-CORDERO, by and
19 through his counsel of record, JEREMY T. BOSLER, Washoe County Public Defender,
20 LINDA M. NORDVIG and RICHARD M. VILORIA, Deputy Public Defenders, and hereby
21 serves his Emergency Motion. This Motion is made and based upon NRS 174.235, NRS
22 174.275, the Fifth and Sixth Amendments to the United States Constitution, the attached
23 Memorandum of Points and Authorities, and any argument adduced at the hearing of this
24 Motion, along with all other documents and papers filed herein.

25 **POINTS AND AUTHORITIES**

26 The State has filed the above motion with some of the supporting documentation filed
under seal, making it impossible for Defense Counsel to submit an informed response. We

1 would request an opportunity to review those document(s) prior to responding to the State's
2 Motion in full. Should the Court be uncomfortable with providing a copy to Counsel, solely for
3 the purposes of a response to the State's Motion, we would request to be allowed to at least
4 review the document either in the courtroom or in chambers, prior to responding. Pursuant to
5 NRS 174.235 and 174.275, the Court can determine whether to allow the information in
6 question to be sealed, restricted or any other conditions as may be appropriate.

7 **CONCLUSION**

8 Mr. MENENDEZ-CORDERO respectfully requests that this Court to allow Counsel the
9 opportunity to review documents currently unavailable to allow Defense Counsel to adequately
10 respond to the State's Emergency Motion and Motion Shortening Time in an informed manner.

11 **AFFIRMATION PURSUANT TO NRS 239B.030**

12 The undersigned does hereby affirm that the preceding document does not contain the
13 social security number of any person.

14 DATED this 1st day of September, 2017.

15 JEREMY T. BOSLER
16 Washoe County Public Defender

17 By /s/ Linda M. Nordvig
18 LINDA M. NORDVIG
19 Deputy Public Defender

20 By /s/ Richard M. Vilorio
21 RICHARD M. VILORIA
22 Deputy Public Defender

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada; that on this 1st day of September, 2017, I electronically filed the foregoing document with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

KELLY KOSSOW
Chief Deputy District Attorney
Via ECF System

DATED this 1st day of September, 2017.

/s/Karen Nelson
KAREN NELSON

1 CODE
CHRISTOPHER J. HICKS
2 #007747
P.O. Box 30083
3 Reno, NV 89520-3083
(775) 328-3200
4 Attorney for Plaintiff

5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8

* * *

9

THE STATE OF NEVADA,

10

Plaintiff,

Case No. CR15-1674

11

v.

Dept. No. 7

12

LUIS ALEJANDRO MENENDEZ-CORDERO,

13

Defendant.

14

_____ /

15

16

STATE'S OPPOSITION TO DEFENDANT'S EMERGENCY MOTION REQUESTING REVIEW
OF SEALED STATEMENT

17

18

COMES NOW, the State of Nevada, by and through CHRISTOPHER J.

19

HICKS, District Attorney of Washoe County, and Kelly Ann Kossow,

20

Chief Deputy District Attorney, and hereby files the following

21

opposition to permit defense counsel to review the States sealed

22

statement pursuant to NRS 174.275. This motion is based upon the

23

attached Memorandum of Points and Authorities.

24

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25

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26

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 PROCEDURAL HISTORY

3 On August 31, 2017 the State filed an emergency motion regarding
4 limiting dissemination of discovery, protective order for witnesses
5 and a no contact order between the above named Defendant and any
6 civilian witness named in this case. In addition to a lengthy
7 statement of facts articulating instances on recorded I-Webs and jail
8 phone calls which demonstrated the Defendant committing instances of
9 intimidation and threats towards witnesses in this case, the State
10 also filed a statement under seal pursuant to NRS 174.275. On
11 September 1, 2017 the defense filed its own emergency motion,
12 requesting to review the sealed statement filed by the State so that
13 it may respond to the State's August 31, 2017 filed motion.

14 ARGUMENT

15 The exact language of NRS 174.275 reads as follows:

16 Upon a sufficient showing, the court may at any time order
17 that discovery or inspection pursuant to NRS 174.234 to
18 174.295, inclusive, be denied, restricted or deferred, or
19 make such other order as is appropriate. Upon motion by
20 the defendant or prosecuting attorney, the court may permit
21 the defendant or prosecuting attorney to make such showing
22 in whole or in part, **in the form of a written statement to
be inspected by the court in chambers.** If the court enters
an order granting relief following a showing in chambers,
the entire text of the written statement must be sealed and
preserved in the records of the court to be made available
to the appellate court in the event of an appeal.

23 The language of NRS 174.275 is clear on its face. It does not
24 allow for the opposing party, whether defense or prosecution, to
25 "review" the document filed under seal. The statute does provide the
26 court with the discretion to permit either party to make its showing

1 "...in whole or in part, in the form of a written statement to be
2 inspected by the court in chambers." The defense provides zero
3 support for its position that it should be allowed an opportunity to
4 review the sealed statement. The statute specifically allows for
5 such sealing to protect the privacy, security and safety of the
6 witnesses who are at issue in the State's underlying request for
7 protective order. As such, the defenses request to review the sealed
8 statement accompanying the State's motion for protection order
9 regarding witnesses in this case should be summarily denied.

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AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 5TH day of SEPTEMBER, 2017.

CHRISTOPHER J. HICKS
District Attorney
Washoe County, Nevada

By/s/KELLY ANN KOSSOW
KELLY ANN KOSSOW
8221
Chief Deputy District Attorney

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CERTIFICATE OF SERVICE BY E-FILING

I certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

WASHOE COUNTY PUBLIC DEFENDER'S OFFICE
LINDA NORDVIG. D.P.D.
RICHARD VILORIA, D.P.D.

DATED this 5TH day of SEPTEMBER, 2017.

/s/KELLY ANN KOSSOW

1 CODE 3790
2 WASHOE COUNTY PUBLIC DEFENDER
3 LINDA M. NORDVIG, #5084
4 RICHARD M. VILORIA, #13273
5 P.O. BOX 11130
6 RENO, NV 89520-0027
7 (775) 337-4800
8 ATTORNEYS FOR DEFENDANT

9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
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11 IN AND FOR THE COUNTY OF WASHOE
12

13 THE STATE OF NEVADA,

14 Plaintiff,

15 v.

Case No. CR15-1674

16 LUIS ALEJANDRO MENENDEZ-CORDERO, Dept. No. 7

17 Defendant.

18
19 **REPLY TO STATE’S OPPOSITION TO DEFENSE’S EMERGENCY MOTION**
20 **REQUESTING REVIEW OF SEALED DOCUMENTS AND REQUEST FOR ORDER**
21 **SHORTENING TIME FOR STATE TO RESPOND**
22

23 COMES NOW, Defendant, LUIS ALEJANDRO MENENDEZ-CORDERO, by and
24 through his counsel of record, Jeremy T. Bosler, Washoe County Public Defender, LINDA M.
25 NORDVIG and RICHARD M. VILORIA, Deputy Public Defenders, and hereby submits his
26 Reply to the State’s Opposition to his Emergency Motion. This Reply is made and based upon
NRS 174.235 and, NRS 174.275, the Fifth and Sixth Amendments to the United States
Constitution, the attached memorandum of Points and Authorities, and any argument adduced
at the hearing of this motion, along with all other documents and papers filed herein.

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1 **POINTS AND AUTHORITIES**

2 The State has filed the above motion with some of the supporting documentation filed
3 under seal, making it impossible for defense counsel to submit an informed response. In our
4 motion, we request an opportunity to review those document(s) prior to responding to the
5 State’s motion in full. NRS174.275 provides:

6 **NRS 174.275 Protective orders.** Upon a sufficient showing, the court
7 may at any time order that discovery or inspection pursuant to [NRS 174.234](#)
8 to [174.295](#), inclusive, be denied, restricted or deferred, or make such other
9 order as is appropriate. Upon motion by the defendant or prosecuting
10 attorney, the court may permit the defendant or prosecuting attorney to make
11 such showing, in whole or in part, in the form of a written statement to be
12 inspected by the court in chambers. *If the court enters an order granting
relief following a showing in chambers*, the entire text of the written
statement must be sealed and preserved in the records of the court to be
made available to the appellate court in the event of an appeal. (emphasis
added.)

13 It is not guaranteed that the information filed under seal by the State will stay sealed.
14 The statute provides for sealing **only if** the Court enters an order granting the relief sought.
15 Should the Court be uncomfortable with providing a copy to counsel, solely for the purposes of
16 a response to the State’s motion, we would request to be allowed to at least review the
17 document either in the courtroom or in chambers, prior to responding. Pursuant to NRS
18 174.235 and 174.275, the Court can determine whether to allow the information in question to
19 be sealed, restricted or any other conditions as may be appropriate.

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CONCLUSION

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Mr. Menendez-Cordero respectfully requests that this Court allow counsel the opportunity to review documents currently unavailable to allow defense counsel to adequately respond to the State’s Emergency Motion and Motion Shortening Time in an informed manner.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 5th Day of September, 2017.

JEREMY T. BOSLER
Washoe County Public Defender

By /s/ Linda M. Nordvig
LINDA M. NORDVIG
Deputy Public Defender

By /s/ Richard M. Vilorio
RICHARD M. VILORIA
Deputy Public Defender

CERTIFICATE OF SERVICE

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I hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada; that on this 5th day of September, 2017, I electronically filed the foregoing document with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

KELLY KOSSOW
Chief Deputy District Attorney
Via ECF System

DATED this 5th day of September, 2017.

/s/ Brianda Gomez
BRIANDA GOMEZ

1 CHRISTOPHER J. HICKS
#007747
2 P.O. Box 30083
Reno, NV 89520-3083
3 (775) 328-3200
Attorney for Plaintiff
4

5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 THE STATE OF NEVADA,
10 Plaintiff,

Case No. CR15-1674

11 v.

Dept. No. 7

12 LUIS ALEJANDRO MENENDEZ-CORDERO,
13 Defendant.
14

15 ORDER GRANTING STATE'S MOTION TO PRECLUDE DISSEMINATION OF DISCOVERY,
ISSUANCE OF PROTECTIVE ORDER FOR WITNESSES AND ISSUANCE OF NO CONTACT
ORDER BETWEEN THE DEFENDANT AND ANY NAMED CIVILIAN WITNESS
16

17 The Court grants the State's motion and orders the following:
18 The dissemination of any discovery materials here forward shall be
19 limited to the Defendant, defense attorney(s) and any duly qualified
20 employed or retained persons on behalf of the Defendant; no discovery
21 materials shall be provided to the Defendant to be kept or housed at
22 the Washoe County Jail. The Defendant will not disseminate any
23 previously provided discovery materials and if in fact any previously
24 provided discovery materials are currently in the possession of the
25 Defendant at the Washoe County Jail, those materials and/or notes
26 with identifying witness information to include geographical, and/or


1 personal identifying information to include phone numbers, be
2 confiscated by the Washoe County Jail staff and turned over to the
3 Court for safekeeping.

4 Further, the Court orders that a protective order be put in
5 place that prohibits the dissemination of any identifying information
6 including the current whereabouts and/or contact information of any
7 civilian witness named in the discovery materials to the Defendant
8 and that such information shall not be disseminated beyond the
9 defense attorney and any duly employed defense investigators. Such
10 protective order also applies to identified confidential informant SA-
11 1290 in that no geographical or location information shall be
12 disseminated to the Defendant regarding SA-1290 and that the State
13 may utilize Special Agent Alicia MacDonald's contact information as
14 the only point of contact for SA-1290.

15 Finally, the Court orders that the Defendant, MENENDEZ-CORDERO,
16 have no contact with any named civilian witness previously provided
17 in the discovery materials which includes directly, or through a
18 third party.

19 IT IS SO ORDERED.

20 DATED this 11TH day of September 2017.

21
22
23 
24 DISTRICT JUDGE
25
26

1 CODE 2490
2 Christopher J. Hicks
3 #7747
4 P.O. Box 11130
5 Reno, NV 89520
6 (775) 328-3200
7 Attorney for Plaintiff

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
9 IN AND FOR THE COUNTY OF WASHOE

10 * * *

11 THE STATE OF NEVADA,

12 Plaintiff,

13 Case No. CR15-1674

14 v.

15 Dept. No. 7

16 LUIS ALEJANDRO MENENDEZ-CORDERO,

17 Defendant.

18 _____/
19 **EMERGENCY MOTION TO PROHIBIT DEFENDANT'S NON-ATTORNEY-CLIENT**
20 **COMMUNICATION, AND REQUEST FOR A HEARING**

21 The State of Nevada, by and through CHRISTOPHER J. HICKS,
22 Washoe County District Attorney and ZELALEM BOGALE, Deputy District
23 Attorney, hereby moves the Court for an Emergency Order immediately
24 prohibiting Defendant Luis Alejandro Menendez-Cordero from
25 communicating with *anyone* except his counsel of record in this case
26 through *any* means, including but not limited to personal visits,
electronic mail, video communication, telephonic communication,
and/or written letters/correspondence, until the end of the trial
currently scheduled to begin on October 2, 2017. The State also
requests an emergency hearing on this matter as soon as practicable.

1 This motion is based upon the attached Memorandum of Points
2 and Authorities, the pleadings and papers on file in this case, and
3 any argument the court wishes to consider.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. RELEVANT BACKGROUND**

6 On September 24, 2017 and September 26, 2017, Defendant
7 made several telephone calls from the Washoe County Jail. According
8 to the State’s translation of the calls conducted by sworn law
9 enforcement personnel,¹ Defendant makes several troubling statements
10 indicating his ongoing efforts to interfere with the prosecution of
11 this case and intimidate (or worse) witnesses in this case.

12 First, Defendant asks a subject (fellow MS-13 gang member)
13 to surveil and investigate another MS-13 gang member referred to as
14 “Snake.” Defendant suspects “Snake” is helping law enforcement
15 understand his way of speech and decipher his slang and code words.
16 Defendant says he will provide the subject with the phone number to
17 Snake’s neighbor so other gang members can monitor him.

18 Second, in another call, Defendant and a subject (fellow
19 MS-13 gang member) discuss how the State’s witnesses are scared to
20 testify. The subject tells Defendant that he (the subject) will be at
21 trial himself on October 3, 2017 and that another fellow gang member
22 will be at trial on October 2, 2017. The inference culled from this
23 conversation is that these gang members will attend trial to keep an
24 eye on the witnesses and instill fear.

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26

¹ These calls were discovered to the defense today, September 28, 2017, prior to the filing of this motion.

1 Third, in another call, Defendant talks to a fellow MS-13
2 gang member in El Salvador. Defendant tells this subject that an
3 "active MS-13" gang member will testify against him. Defendant
4 further tells this subject to be careful about who is attending the
5 "meetings" and to be selective on who is attending such meetings. The
6 subject tells Defendant that MS-13 will start an investigation to
7 find out the identity of the potential witness. Defendant then states
8 he believes the potential witness is helping the State decode his
9 encrypted conversations. Furthermore, later in this conversation,
10 Defendant tells the subject that he knows the identity of
11 confidential informant SA-1290. He refers to this individual as a
12 "motherfucker."

13 Fourth and finally, in another call, Defendant tells the
14 subject (a fellow MS-13 gang member) that once the trial is over, the
15 subject will get Defendant's "papers" and know who the witnesses were
16 in the trial.

17 **II. ARGUMENT**

18 First and foremost, translations of a non-English-speaking-
19 defendant's statements need not be conducted by interpreters pursuant
20 to NRS 50.054, and instead may be conducted by police. *Baltazar v.*
21 *State*, 122 Nev. 606, 613, 137 P.3d 1137, 1142 ("[W]e conclude that
22 police interviews need not be conducted by an independent interpreter
23 and no presumption of police bias should apply absent a showing in
24 the record."). Here, the fact that the statements at issue have been
25 translated by police is of no moment and does not undermine the
26 credibility of the translations presented herein, absent a showing of

1 actual police bias in the record. *See id.* ("Because [the defendant]
2 simply asserts that a presumption of police bias should be applied on
3 appeal but fails to point to any actual police bias in the record, we
4 conclude that his argument lacks merit."). The State, at a pretrial
5 hearing conducted as soon as practicable, will provide an offer of
6 proof concerning the nature of these statements and the translations
7 thereof, if the court so orders.

8 Second, the safety issues these statements present are
9 obvious, to say nothing about the consciousness of guilt they also
10 demonstrate. Defendant is actively attempting to contact individuals
11 that he believes are witnesses in this case in an effort to obstruct
12 justice and interfere with the prosecution. And these telephone calls
13 from the Washoe County Jail fit within the pattern of obstruction and
14 intimidation Defendant has shown at least since August 31, 2017, the
15 initial revealing of which resulted in a protective order dated
16 September 11, 2017 that prohibited Defendant from disseminating
17 discovery or witness information to any individual that is not his
18 counsel of record and prohibited contact with any named civilian
19 witness in this case. Consequently, Defendant appears to be violating
20 that court order by attempting to contact or intimidate witnesses in
21 this case.

22 Accordingly, the State believes an absolute prohibition of
23 communication by Defendant to *anyone* that is not his counsel of
24 record is necessary to protect the integrity of these proceedings and
25 to ensure the safety of the witnesses in this trial. *See, e.g.,*
26 *Halverson v. Hardcastle*, 123 Nev. 245, 262, 163 P.3d 428, 441 (2007)

1 (en banc) (“[C]ourts have inherent authority to make certain that
2 their courtrooms are secure.”).

3 **III. CONCLUSION**

4 Based on the foregoing, the State requests an Emergency
5 Order immediately prohibiting Defendant Luis Alejandro Menendez-
6 Cordero from communicating with *anyone* except his counsel of record
7 in this case through *any* means, including but not limited to personal
8 visits, electronic mail, video communication, telephonic
9 communication, and/or written letters/correspondence, until the end
10 of the trial currently scheduled to begin on October 2, 2017.

11 **AFFIRMATION PURSUANT TO NRS 239B.030**

12 The undersigned does hereby affirm that the preceding
13 document does not contain the social security number of any person.

14
15 Dated this 28th day of September, 2017.

16 CHRISTOPHER J. HICKS
17 District Attorney
18 Washoe County, Nevada

19 By/s/ Zelalem Bogale
20 ZELALEM BOGALE
21 12937
22 Deputy District Attorney
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CERTIFICATE OF SERVICE BY E-FILING

I certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing and sent a copy via email to the following:

LINDA M. NORDVIG, WASHOE COUNTY DEPUTY PUBLIC DEFENDER; and
RICHARD VILORIA, WASHOE COUNTY DEPUTY PUBLIC DEFENDER

Dated this 28th day of September, 2017.

By/s/ Zelalem Bogale
ZELALEM BOGALE
12937
Deputy District Attorney

1 CODE 3880
2 WASHOE COUNTY PUBLIC DEFENDER
3 LINDA M. NORDVIG, #5084
4 RICHARD M. VILORIA, #13273
5 P.O. BOX 11130
6 RENO, NV 89520-0027
7 (775) 337-4800
8 ATTORNEYS FOR DEFENDANT

9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

10 IN AND FOR THE COUNTY OF WASHOE

11 THE STATE OF NEVADA,

12 Plaintiff,

13 v.

Case No. CR15-1674

14 LUIS ALEJANDRO MENENDEZ-CORDERO, Dept. No. 7

15 Defendant.

16 **DEFENDANT'S RESPONSE TO THE STATE'S EMERGENCY MOTION TO**
17 **PROHIBIT DEFENDANT'S NON-ATTORNEY-CLIENT COMMUNICATION, AND**
18 **REQUEST FOR HEARING**

19 The Defendant, LUIS ALEJANDRO MENENDEZ-CORDERO ("Mr. Menendez-
20 Cordero"), by and through his counsel of record, Jeremy T. Bosler, Washoe County Public
21 Defender, Linda M. Nordvig and Richard M. Viloria, Deputy Public Defenders, hereby
22 responds to the State's *Emergency Motion to Prohibit Defendant's non-Attorney Client*
23 *Communication, and Request for Hearing* filed herein on September 28, 2017. This responsive
24 pleading is made and based upon the attached Memorandum of Points and Authorities, the
25 pleadings on file herein, as well as any evidence and argument adduced at an evidentiary
26 hearing on the motion.

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MEMORANDUM OF POINTS AND AUTHORITIES

The State has filed a separate and distinct motion for an order shortening time to respond the present motion. While the Court has issued no order granting that request, the defense anticipates the Court will grant the State’s request for shortening time. As such, the defense hereby offers its response to the State’s pleading.

ARGUMENT

As a preliminary matter, Mr. Menendez-Cordero has no objection to the holding of a formal hearing, whereupon the State can prove up its claims with competent evidence. Mr. Menendez-Cordero does, however strongly object to the issuance of such an unnecessarily broad order prohibiting Mr. Menendez-Cordero from speaking to anyone but his defense counsel. The State’s request is the functional and legal equivalent of a direct restraint designed to chill Mr. Menendez-Cordero’s right to freedom of speech under the United States and Nevada Constitutions. See U.S. Const., 1st Amend.; Nev. Const., Art. I, § 9 (“[e]very citizen may freely speak, write and publish his sentiments on all subjects being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press”); see also Evans v. Evans, 162 Cal. App. 4th 1157, 1166, 76 Cal. Rptr. 3d 859, 867 (2008)(“[t]he right to free speech is ... one of the cornerstones of our society,” and is protected under the First Amendment of the United States Constitution and under an “even broader” provision of the California Constitution”). It is hornbook law that judicial orders that constrain or preclude a citizen from speaking in advance are known as “prior restraints” and are strongly disfavored and presumptively invalid. See Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 559, 96 S. Ct. 2791, 2803, 49 L. Ed. 2d 683 (1976)(“prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights.”)

An order restricting the speech of trial participants, typically known as a “gag order,” is a prior restraint. See generally, Saline v. Superior Court 100 Cal.App.4th 909, 915–916, 122 Cal.Rptr.2d 813.(2002). Although the right to a fair trial is a protected constitutional right, a

1 court seeking to insure a fair trial may *not* impose a prior restraint unless “the gravity of the
2 ‘evil,’ discounted by its improbability, justifies such invasion of free speech as is necessary to
3 avoid the danger.” Nebraska Press Ass’n, 427 U.S. at 562, 96 S. Ct. at 2804. In this case, the
4 State has simply failed to articulate or cite to any real, tangible, or specific threat to the legal
5 process in this case, the State’s witnesses, or any other representatives of the State. No subjects
6 known to the defense are specifically identified in the State’s purported translations and no trial
7 witnesses appear to be specifically named in the alleged statements.¹ In fact, and upon
8 information and belief, no prospective trial witness has claimed he or she has been personally
9 threatened and/or accosted by Mr. Menendez-Cordero or someone acting on his behalf. Neither
10 party wishes for *any* harm to come to *any* trial participant, but allegations based on mere
11 conjecture and/or a mischaracterization of statements should not form the basis of a complete
12 and total restraint on Mr. Menendez-Cordero’s right to speak freely.

13 As briefly mentioned by the State, this Court *does* possess the “inherent authority to
14 administrate its own procedures and to manage its own affairs, meaning that [it] may make
15 rules and carry out other incidental powers when ‘*reasonable and necessary*’ for the
16 administration of justice.” Halverson v. Hardcastle, 123 Nev. 245, 261, 163 P.3d 428, 440
17 (2007)(emphasis added). That inherent authority, however, does not come without limitation,
18 and Halverson suggests that the Court exercise great caution in issuing such a broad, incredibly
19 sweeping “gag” order. See Id. at 263, 163 P.2d at 441 (a court’s “inherent power should be
20 exercised only when established methods fail or in an emergency situation”). Here, a gag order
21 of this magnitude is not reasonably necessary because there are no real probable threats to a
22 trial participant. Furthermore, as worded, the State’s proposed order fails to take into account
23 the practical impact of its sweeping nature—it means Mr. Menendez-Cordero cannot talk to jail
24 staff, fellow inmates, cell mates, if any, parents, siblings, and other family members . . . about

25
26 ¹ “Interpreters are subject to qualification as *experts*, and an expert may testify to matters within the scope of his or her special knowledge.” Baltazar-Monterrosa v. State, 122 Nev. 606, 614, 137 P.3d 1137, 1142 (2006).

1 anything . . . at anytime . . . which is an absurd result. Even when a prior restraint is deemed
2 necessary and permissible, which the defense contends it is not, the restraint order must “be
3 couched in the narrowest terms that will accomplish the pin-pointed objective permitted by
4 constitutional mandate and the essential needs of the public order....” See. Evans, 162 Cal. App.
5 4th at 1167, 76 Cal. Rptr. 3d at 867 (citing Carroll v. Princess Anne 393 U.S. 175, 183–184, 89
6 S.Ct. 347, 21 L.Ed.2d 325 (1968)).

7 **CONCLUSION**

8 Based on the foregoing, Mr. Menendez-Cordero respectfully requests this Court to deny
9 the State’s request for a blanket order prohibiting his free speech, at least and until the State
10 presents evidence of real, tangible threats to a trial participant. At some point in this case, this
11 Court should require the State to produce actual evidence of imminent threats of harm to
12 another.²

13 **AFFIRMATION PURSUANT TO NRS 239B.030**

14 The undersigned does hereby affirm that the preceding document does not contain the
15 social security number of any person.

16 DATED this 28th day of September, 2017.

17
18 JEREMY T. BOSLER
Washoe County Public Defender

19 By /s/ Linda M. Nordvig
20 LINDA M. NORDVIG
Deputy Public Defender

21 By /s/ Richard M. Vioria
22 RICHARD M. VILORIA
23 Deputy Public Defender

24
25
26 ² The defense has received only *three* out of the four telephone calls mentioned by the State. See Exhibit 1 (Email to defense sent by Ms. Kossow).

CERTIFICATE OF SERVICE

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I hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada; that on this 28th day of September, 2017, I electronically filed the foregoing document with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

KELLY KOSSOW
ZELALEM BOGALE
Chief Deputy District Attorney
Via ECF System

DATED this 28th day of September, 2017

/s/ Brianda Gomez
BRIANDA GOMEZ

1 CODE 1020
2 WASHOE COUNTY PUBLIC DEFENDER
3 LINDA M. NORDVIG, #5084
4 RICHARD M. VILORIA, #13273
5 P.O. BOX 11130
6 RENO, NV 89520-0027
7 (775) 337-4800
8 ATTORNEYS FOR DEFENDANT

9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

10 IN AND FOR THE COUNTY OF WASHOE

11 THE STATE OF NEVADA,

12 Plaintiff,

13 v.

Case No. CR15-1674

14 LUIS ALEJANDRO MENENDEZ-CORDERO, Dept. No. 7

15 Defendant.

16 **ADDEDNDUM TO DEFENDANT'S RESPONSE TO THE STATE'S EMERGENCY**
17 **MOTION TO PROHIBIT DEFENDANT'S NON-ATTORNEY-CLIENT**
18 **COMMUNICATION, AND REQUEST FOR HEARING**

19 See attached email, referenced as "Exhibit 1" in Defendant's Response to the State's
20 Emergency Motion filed on September 28, 2017.

21 **AFFIRMATION PURSUANT TO NRS 239B.030**

22 The undersigned does hereby affirm that the preceding document does not contain the
23 social security number of any person.

24 DATED this 29th day of September, 2017.

25 JEREMY T. BOSLER
Washoe County Public Defender

26 By /s/ Linda M. Nordvig
LINDA M. NORDVIG
Deputy Public Defender

By /s/ Richard M. Viloria
RICHARD M. VILORIA
Deputy Public Defender

CERTIFICATE OF SERVICE

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I hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada; that on this 29th day of September, 2017, I electronically filed the foregoing document with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

KELLY KOSSOW
ZELALEM BOGALE
Chief Deputy District Attorney
Via ECF System

DATED this 29th day of September, 2017

/s/ Brianda Gomez
BRIANDA GOMEZ

Index of Exhibits

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Exhibit 1 Email from deputy district attorney Kelly Kossow 1 pages

FILED
Electronically
CR15-1674
2017-09-29 08:20:38 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 6323512 : swilliam

EXHIBIT 1

EXHIBIT 1

Nordvig, Linda M

From: Kossow, Kelly
Sent: Thursday, September 28, 2017 10:31 AM
To: Nordvig, Linda M; Vilorio, Richard M
Cc: Bogale, Zelalem
Subject: FW: Apo Calls from 9/24 and 9/26
Attachments: 1506266410_161_12_190_388.wav; 1506474330_161_12_160_125.wav; 1506475673_161_12_175_886.wav

Linda & Richard,

Just dropped these three jail calls made by your client into Justware and will release them momentarily but wanted to e-mail them to you as well so you can have them as quickly as possible. The calls do contain material that could be safety issues for the trial and we will be filing a motion to have an emergency hearing regarding the content. It should be on file today.

Thank you.

Kelly Kossow

1 CODE 3795
2 Christopher J. Hicks
3 #7747
4 P.O. Box 11130
5 Reno, NV 89520
6 (775) 328-3200
7 Attorney for Plaintiff

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
9 IN AND FOR THE COUNTY OF WASHOE

10 * * *

11 THE STATE OF NEVADA,

12 Plaintiff,

13 Case No. CR15-1674

14 v.

15 Dept. No. 7

16 LUIS ALEJANDRO MENENDEZ-CORDERO,

17 Defendant.

18 _____/
19 **REPLY TO DEFENDANT'S RESPONSE TO THE STATE'S EMERGENCY MOTION TO**
20 **PROHIBIT DEFENDANT'S NON-ATTORNEY-CLIENT COMMUNICATION, AND REQUEST**
21 **FOR A HEARING**

22 The State of Nevada, by and through CHRISTOPHER J. HICKS,
23 Washoe County District Attorney and ZELALEM BOGALE, Deputy District
24 Attorney, hereby files a reply to Defendant Luis Alejandro Menendez-
25 Cordero's response to the State's emergency motion filed yesterday,
26 September 29, 2017.

This reply is based upon the attached Memorandum of Points
and Authorities, the pleadings and papers on file in this case, and
any argument the court wishes to consider.

///

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. ARGUMENT

3 The notion that Defendant's free speech rights permit him
4 to coordinate obstruction of official court proceedings and
5 facilitate witness intimidation through channels established and
6 maintained by tax payer dollars is astounding and, more importantly,
7 a misapprehension of constitutional law. Yet that is precisely what
8 Defendant argued in his response. Based on the law cited below,
9 however, the State will modify its request to allow for limited
10 personal visits from family and friends.

11 Of course, "the First Amendment right of free speech
12 applies within prison walls" *Valdez v. Rosenbaum*, 302 F.3d
13 1039, 1048 (9th Cir. 2002) (citation omitted). However, a prison (or
14 detention facility) may enforce a regulation that impinges upon a
15 detainee's constitutional free speech rights so long as the
16 regulation is "reasonably related to legitimate penological
17 interests." *Id.* (quoting and citing *Turner v. Safley*, 482 U.S. 78, 89
18 (1986) (Internal quotation marks omitted.)

19 In determining "reasonableness," courts consider four
20 factors:

- 21 (1) whether there is a valid, rational connection between
22 the restriction and the legitimate governmental interest
23 put forward to justify it; (2) whether there are
24 alternative means of exercising the right; (3) whether
25 accommodating the asserted constitutional right will have a
26 significant negative impact on prison guards and other
inmates, and on the allocation of prison resources
generally; and (4) whether there are obvious, easy
alternatives to the restriction showing that it is an
exaggerated response to prison concerns.

1 *Id.* at 1049 (citing *Turner, supra*).

2 In *Valdez*, state officials placed the defendant, a pretrial
3 detainee charged with various drug trafficking offenses, in
4 administrative segregation for four months where he was not permitted
5 to make or receive any telephone calls, except one call per day with
6 his attorney. *Id.* at 1042, 1043. This restriction was imposed after
7 the prosecutor advised the U.S. Marshal that the defendant's
8 telephone privileges could be used to frustrate the service of arrest
9 warrants on the defendant's co-conspirators. *Id.* After being
10 convicted he filed a civil rights action under 42 U.S.C. section 1983
11 alleging, among other things, that the pretrial telephone restriction
12 violated his constitutional rights. *Id.* at 1043.

13 The Ninth Circuit rejected his argument and affirmed his
14 conviction. *Id.* Applying the *Turner* factors, the court concluded that
15 the restriction was rationally related to a legitimate governmental
16 interest, that limited personal visits were an alternative means of
17 exercising his free speech rights, that monitoring telephone calls
18 would have required the allocation of additional governmental
19 resources, and that there were no easy alternatives which would
20 indicate the restriction was an exaggerated response. *Id.* at 1049.

21 Similarly, here, the State's request is rationally related
22 to a legitimate governmental interest. The modified restriction the
23 State seeks (which allows for limited personal visits from family and
24 friends and communication with his counsel of record) is rationally
25 related to preventing Defendant from contacting and intimidating
26 witnesses through third parties, which is certainly a legitimate

1 governmental interest. Second, this modified restriction provides
2 Defendant with an alternative means of exercising his right to
3 communicate with persons outside the Washoe County Jail. *See, e.g.,*
4 *Pope v. Hightowner*, 101 F.3d 1382, 1385 (11th Cir. 1996) (limitation
5 on number of people prisoners could telephone did not infringe on
6 constitutional right to free speech because prisoners could receive
7 visitors).

8 Third, allowing telephone and iWeb access will require the
9 State to continue to allocate significant resources to monitor
10 Defendant's conversations and to translate them to ensure that he
11 does not attempt to contact witnesses (confidential or otherwise)
12 through third parties. Fourth and finally, no obvious, easy
13 alternative to this restriction exists that would serve the same
14 governmental interest or indicate that the restriction the State
15 seeks is an exaggerated response. *See also Turner*, 482 U.S. at 92
16 ("no violation of prisoners' free speech right where, although they
17 were precluded from communicating with fellow prisoners, the
18 "regulation [did] not deprive prisoners of all means of expression");
19 *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 351-52 (1986) (no
20 violation of prisoners' free exercise right where, although they were
21 precluded from participating in a particular religious ceremony, they
22 were free to perform other rituals of their religion).

23 II. CONCLUSION

24 Based on the foregoing, the State requests the court to
25 enter an Emergency Order immediately prohibiting Defendant Luis
26 Alejandro Menendez-Cordero from communicating with anyone except his

1 counsel of record in this case through electronic mail, video
2 communication, telephonic communication, and/or written
3 letters/correspondence, until the end of the trial currently
4 scheduled to begin on October 2, 2017.

5 AFFIRMATION PURSUANT TO NRS 239B.030

6 The undersigned does hereby affirm that the preceding
7 document does not contain the social security number of any person.

8 Dated this 29th day of September, 2017.

9 CHRISTOPHER J. HICKS
10 District Attorney
11 Washoe County, Nevada

12 By/s/ Zelalem Bogale
13 ZELALEM BOGALE
14 12937
15 Deputy District Attorney
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CERTIFICATE OF SERVICE BY E-FILING

I certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing and sent a copy via email to the following:

LINDA M. NORDVIG, WASHOE COUNTY DEPUTY PUBLIC DEFENDER; and
RICHARD VILORIA, WASHOE COUNTY DEPUTY PUBLIC DEFENDER

Dated this 29th day of September, 2017.

By/s/ Zelalem Bogale _____
ZELALEM BOGALE
12937
Deputy District Attorney

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,
Petitioner, Case No. CR15-1674
vs. Dept. No. 7
LUIS ALEJANDRO MENENDEZ-
CORDERO,
Defendant.

ORDER AFTER HEARING

On September 28, 2017, Plaintiff The State of Nevada filed an Emergency Motion to Prohibit Defendant's Non-Attorney-Client Communication, and Request for a Hearing. On September 28, 2017, Defendant Luis Alejandro Menendez-Cordero filed a Response. On September 29, 2017, the State filed a Reply and a Request for Submission. This Court held a hearing on that motion on September 29, 2017, during which the State presented evidence in the form of testimony and media (audio), and both parties presented argument.

Having ruled orally during the hearing, and after considering the four factors set forth in *Turner v. Safley*, 482 U.S. 78 (1986) pertaining to restrictions on a pretrial detainee's free speech rights under the First Amendment, this Order shall serve as the written memorialization of that ruling.

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IT IS HEREBY ORDERED that the State's Emergency Motion to Prohibit Defendant's Non-Attorney-Client Communication, and Request for a Hearing is **GRANTED**.

IT IS FURTHER ORDERED that Defendant's communication from the Washoe County Jail is limited to: (1) any and all direct communication with his counsel of record; (2) any and all direct communication with agents of his counsel of record, including investigators, experts, and/or interpreters; (3) on-site visits from family or friends; and (4) direct communication with staff at the jail.

IT IS SO ORDERED.

DATED this 29 day of September, 2017.


PATRICK FLANAGAN
District Judge

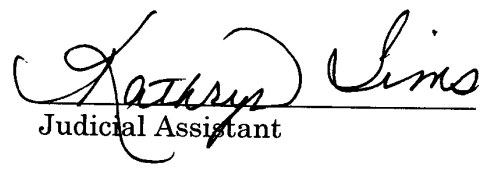
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 29 day of September, 2017, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Kelly Kossow, Esq. and Zelalem Bogale, Esq. for The State of Nevada; and
Linda Nordvig, Esq. and Richard Vilorio, Esq. for Luis Alejandro Menendez-Cordero.

I deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:


Judicial Assistant

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on October 17, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

John Reese Petty
Chief Deputy Public Defender

/s/ Margaret Ford
MARGARET FORD