

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

JOSE VALDEZ-JIMINEZ, et. al.)	Case Nos. 76417; 76845;
)	76947
Petitioners,)	
)	
vs.)	
)	
THE EIGHTH JUDICIAL DISTRICT)	
COURT OF THE STATE OF NEVADA,)	
IN AND FOR THE COUNTY OF CLARK,)	
)	
)	
Respondents,)	
and)	
THE STATE OF NEVADA,)	
Real Party in Interest.)	
)	
)	

**PETITIONERS’ MOTION TO EXPEDITE ADJUDICATION
OF HABEAS/MANDAMUS PETITIONS**

COMES NOW Petitioners, JOSE VALDEZ-JIMENEZ and ARON FRYE, by and through their attorneys, NANCY LEMCKE, Deputy Clark County Public Defender, and CHARLES GERSTEIN, Esq., and hereby moves this Honorable Court to expedite adjudication of the pending

consolidated extraordinary appeals challenging the constitutional propriety of Petitioners' pre-trial detention orders.

This Motion is based upon the following Memorandum and all papers and pleadings on file herein.

DATED this 5th day of March, 2019.

DARIN IMLAY
CLARK COUNTY PUBLIC DEFENDER

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POINTS AND AUTHORITIES

Petitioners, Jose Valdez-Jimenez and Aaron Frye, respectfully submit this motion for expedited consideration to ask this Court to rule on their Petitions for Writs of Mandamus as quickly as possible. They have been confined to a Clark County jail cell since May 12, 2018 and April 29, 2019, respectively. They have not been convicted of a crime, and are charged with non-violent offenses. They are in jail because they cannot pay the money required for their release. Each day in jail does them further irreparable harm, all in violation of the United States Constitution.

Pretrial incarceration works irreparable harm on those detained. It “is harsh and oppressive, subjects defendants to economical and psychological hardship, interferes with their ability to defend themselves, and in many instances, deprives their families of support.”¹ As the United States Supreme Court has explained, pretrial incarceration

[h]as a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness. Most jails offer little or no rehabilitative programs. The time spent in jail is simply dead time. Moreover if a defendant is locked up, he is hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense. Imposing those consequences on anyone who has not yet been convicted is serious. It is especially unfortunate to impose them on those persons who are ultimately found to be innocent.

¹ ABA Standards for Crim. Just.: Pretrial Release 10-1.1, <https://goo.gl/ipWB5b>.

Barker v. Wingo, 407 U.S. 524, 532–33 (1972). And empirical evidence establishes that those detained pretrial suffer worse outcomes at trial and sentencing than those released pretrial, even when charged with the same offenses.² Those detained pretrial are more likely to plead guilty just to shorten their jail time, even if innocent. *See, e.g., ODonnell v. Harris County*, 251 F. Supp. 3d 1052, 1100–04 (S.D. Tex. 2017) (discussing extensive evidence that detained misdemeanor defendants are more likely to plead guilty and “abandon valid defenses” than those released pretrial “to obtain faster release than if they contested their charges”), *aff’d in relevant part* 892 F.3d 147 (5th Cir. 2018).

Mr. Valdez-Jimenez is a 57-year-old father of five children who worked as a tile setter before his arrest. He has spent the last 10 months in

² *See, e.g.,* Christopher T. Lowenkamp et al., Laura and John Arnold Foundation, *Investigating the Impact of Pretrial Detention on Sentencing Outcomes* 4 (November 2013), <https://goo.gl/FLjVZP>, attached as Ex. I to West Decl. (those detained for the entire pretrial period are more likely to be sentenced to jail and prison—and receive longer sentences—than those who are released at some point before trial or case disposition); Megan Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes* 18 (Jan. 8, 2017), <https://goo.gl/riaoKD>, (finding that a person who is detained pretrial is 13% more likely to be convicted and 21% more likely to plead guilty than a person who is not detained); Arpit Gupta et al., *The Heavy Costs of High Bail: Evidence from Judge Randomization* 15, 19 (Aug. 18, 2016), <https://goo.gl/OW5OzL>, attached as Ex. K to West Decl. (finding a 12 percent increase in the likelihood of conviction using the same data).

the Clark County Detention Center. His mental and physical health is deteriorating: he has lost significant weight, and has trouble accessing necessary medication. Mr. Valdez-Jimenez's wife and two minor children live together in Miami. His 83-year old mother lives in Las Vegas. Before he was arrested, Mr. Valdez-Jimenez was the primary source of financial support for his wife and children, as well as for his mother. He also frequently cared for his mother. Mr. Valdez-Jimenez's incarceration has cost him his job as a tile setter. His wife has been forced to take a job as a housecleaner in order to support herself and the couple's children. Her support obligations include covering monthly rent as well as other daily necessities, such as food and clothing. Obviously, Mr. Valdez-Jimenez has been unable to care for his elderly mother.

Mr. Frye is a 41-year old father. He has spent the last 11 months in the Clark County Detention Center. Incarceration is taking a toll on his physical health: he suffers from chronic headaches from previous head trauma, and these headaches are getting worse. Mr. Frye has a two-year-old son who lives in California with the child's mother. The family intended to reunite and relocate to Las Vegas to live together, but that reunification has been delayed while the child's mother is the sole bread winner in the family.

Both Petitioners are suffering ongoing irreparable harm as a result of their pretrial incarceration. In July and August, 2018, Petitioners sought extraordinary relief from this Honorable Court. To date, no resolution has been forthcoming. For the foregoing reasons, Petitioners respectfully request that this Court rule on their petitions for writs of mandamus as soon as the Court's docket will allow.

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 5 day of March, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

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