

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 DORIE HENLEY,

4 Petitioner,

5 v.

6 THE EIGHTH JUDICIAL DISTRICT
7 COURT OF THE STATE OF
8 NEVADA, COUNTY OF CLARK,
9 THE HONORABLE
10 VALERIE ADAIR, DISTRICT
11 COURT JUDGE,

12 Respondent,

13 THE STATE OF NEVADA,

14 Real Party in Interest.

CASE NO.:

(District Ct. Case:

Electronically Filed
Dec 27 2017 09:16 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

15 **PETITION FOR WRIT OF MANDAMUS OR,**
16 **IN THE ALTERNATIVE, FOR WRIT OF PROHIBITION AND**
17 **REQUEST FOR EMERGENCY RELIEF**

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Real Party in Interest

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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5 v.

6 THE EIGHTH JUDICIAL DISTRICT
7 COURT OF THE STATE OF
8 NEVADA, COUNTY OF CLARK,
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10 VALERIE ADAIR, DISTRICT
11 COURT JUDGE,

12 Respondent,

13 THE STATE OF NEVADA,

14 Real Party in Interest.

CASE NO.:

(District Ct. Case: C-17-327585-1)

15 **PETITION FOR WRIT OF MANDAMUS OR,**
16 **IN THE ALTERNATIVE, FOR WRIT OF PROHIBITION AND**
17 **REQUEST FOR EMERGENCY RELIEF**

18 COMES NOW the Petitioner, DORIE HENLEY, by and through her
19 attorney, MARY D. BROWN, ESQ., and respectfully petitions this Honorable
20 Court to direct the trial court to dismiss all charges due to the State's outrageous
21 misconduct, pursuant to Solis-Ramirez v. Eighth Judicial District Court, 112 Nev.
22 344, 341 (1996), due to the State's intentional violation of Ms. Henley's right to
23 testify and present exculpatory evidence before the Grand Jury.
24

This Petition is based upon all the papers and pleadings on file herein, the attached Memorandum of Points and Authorities, controlling federal and U.S. Supreme Court case law, the Nevada Constitution, and the Constitution of the United States.

DATED this 26th day of December 2017.

By: /s/ Mary D. Brown
 MARY D. BROWN, ESQ.
 Nevada Bar No. 6947
 200 Hoover Ave., Suite 130
 Las Vegas, Nevada 89101
 Telephone: (702) 405-0505
Attorney for Petitioner

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MARY D. BROWN, being first duly sworn, deposes and says:

2. That DORIE HENLEY authorized me to file the instant Petition for Writ of Prohibition/Mandamus.

4. That extraordinary relief is warranted because Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law. Petitioner has no right to appeal from the District Court's denial of his Motion to Dismiss Indictment or, in the Alternative, for Own Recognizance Release Pending Writ

1 Due to the State's Knowing and Intentional Deprivation of Defendant's Rights.
2 Additionally, there is a strong necessity for this Court to intervene. Petitioner's
3 constitutional rights to due process of law have already been impinged. If the
4 Court does not intervene, Petitioner will be forced to remain in custody and
5 endure a trial, which has already been infected with impermissible and irreparable
6 harm due to the bad faith and misconduct of the State. Finally, the notion that
7 Petitioner may be able to appeal a conviction does not provide an adequate
8 remedy because Petitioner will be irreparably harmed by the ongoing violation of
9 her constitutional and civil rights if she is forced to endure a tainted trial on a
10 defective indictment in this matter. The matter will likely be deemed moot at any
11 post-conviction appeal.
12

13
14 5. Petitioner is currently charged by way of Indictment with Murder
15 with use of a Deadly Weapon, Conspiracy to Commit Murder, Third Degree
16 Arson, Conspiracy to Commit Third Degree Arson, First Degree Kidnapping,
17 Conspiracy to Commit Kidnapping, Robbery with use of a Deadly Weapon,
18 Conspiracy to Commit Robbery, Grand Larceny Auto and Conspiracy to Commit
19 Larceny.
20

21 6. On October 15, 2017, Petitioner was arrested on said charges. On
22 October 18, 2017, the undersigned counsel was appointed to represent Petitioner
23 and a preliminary hearing was set for November 1, 2107.
24

///

1 7. On October 23, 2017, the District Attorney's Office served a Notice
2 of Intent to Seek Indictment on defense counsel by fax. On the afternoon of
3 October 24, 2017, the State presented its case to the grand jury. However, the
4 State stayed deliberations to allow defense counsel time to respond to its Marcum
5 Notice.
6

7 8. On October 25, 2017, counsel for Ms. Henley specifically informed
8 counsel that Ms. Henley was considering whether to testify and was also in the
9 process of identifying exculpatory evidence to be presented. Defense counsel
10 specifically noted that the time to provide notice and present evidence did not run
11 until the end of the day on October 31, 2017 due to the court holiday on October
12 27, 2017.
13

14 9. At 1:59 p.m. on October 31, 2017, the State allowed the Grand Jury
15 to deliberate on the instant indictment. Less than an hour later, at 2:47 p.m. on
16 October 31, 2017, defense counsel timely provided formal notice to the State that
17 Petitioner intended to testify. Petitioner also submitted specific requests that
18 certain exculpatory information be provided to the Grand Jury.
19

20 10. At 2:59 p.m., after the grand jury already returned its true bill, the
21 prosecutor coyly responded: "She will need to endorse the written waiver of rights
22 per the statute." Counsel for petitioner, who had not been advised that the true bill
23 had already been returned and constitutional violations, responded that she would
24 timely provide a waiver. At 3:06 p.m. on October 31, 2017, counsel for petitioner

1 provided a list of exculpatory evidence to be presented in the event the state chose
2 to convene a grand jury. Counsel further informed the State that the defense
3 would be ready to proceed on the preliminary hearing the following morning.
4

5 11. Petitioner was not provided an opportunity to testify. The requested
6 exculpatory evidence was not presented to the grand jury. Instead, the indictment
7 was returned on November 1, 2017. The underlying justice court case was
8 dismissed. As a result of the state's knowing and intentional conduct, petitioner
9 was deprived, not only of the right to testify at the grand jury, but also of the right
10 to at timely preliminary hearing.
11

12 12. On November 2, 2017, Petitioner filed a Motion to Dismiss
13 Indictment or, in the Alternative, for Own Recognizance Release Pending Writ
14 Due to the State's Knowing and Intentional Deprivation of Defendant's Rights.
15 Ms. Henley argued she was being illegally detained due to the State's violation of
16 her rights and requested the Court dismiss the indictment or grant an OR release
17 pending further litigation.
18

19 13. On December 4, 2017 and December 12, 2016, the Court heard
20 Petitioner's Motion to Dismiss Indictment or, in the Alternative, for Own
21 Recognizance Release Pending Writ Due to the State's Knowing and Intentional
22 Deprivation of Defendant's Rights. Ultimately, the Court rendered a decision
23 denying petitioner's motion. Undersigned counsel for Ms. Henley requested a
24 stay of proceedings pending a Writ to the Nevada Supreme Court, which was also

1 denied. The Court issued written orders for both decision on December 20, 2017.

2 14. Pursuant to the District Court's order, if the Supreme Court does not
3 intervene, Petitioner will be forced to remain in custody and bear the burden of a
4 trial on a defective indictment in proceedings that are already infected with the
5 State's bad faith and misconduct, and she will be subjected to continued violations
6 of her constitutional and civil rights.
7

8 By: /s/ Mary D. Brown
9 MARY D. BROWN
10 Nevada Bar No. 6947
11 200 Hoover Ave., Suite 130
12 Las Vegas, Nevada 89101
13 Telephone: (702) 205-0505
14 *Attorney for Petitioner*
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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE ISSUES**

- 3 (a) The trial court erred as a matter of law and manifestly abused its
4 discretion when it refused to dismiss the indictment against
5 Petitioner, pursuant to Solis-Ramirez v. Eighth Judicial District
6 Court, 112 Nev. 344, 341 (1996), following to the State's
7 egregious misconduct;
8

9 **SUMMARY OF THE CASE**

10 **STATEMENT OF FACTS**

11 Petitioner, Dorie Henley is charged by way of Indictment with Murder with
12 use of a Deadly Weapon, Conspiracy to Commit Murder, Third Degree Arson,
13 Conspiracy to Commit Arson, First Degree Kidnapping, Conspiracy to Commit
14 Kidnapping, Robbery with Use of a Deadly Weapon, Conspiracy to Commit
15 Robbery, Grand Larceny Auto and Conspiracy to Commit Larceny – Counts One
16 through Ten.¹
17

18 **PROCEDURAL HISTORY**

19 On October 15, 2017, Petitioner, Dorie Henley was arrested on the said
20 charges. On October 18, 2017, the undersigned counsel was appointed to
21 represent Ms. Henley and a preliminary hearing was set for November 1, 2017.
22 On October 23, 2017, the District Attorney's Office served a Notice of Intent to
23

24 _____
¹ Movant's Appendix (MA), p. 001-006

1 Seek Indictment on defense counsel by e-mail.² On the afternoon of October 24,
2 2017, the State presented its case to the grand jury. However, the State stayed
3 deliberations to allow defense counsel time to respond to its Marcum Notice.

4 On October 25, 2017, counsel for Ms. Henley specifically informed counsel
5 that Ms. Henley was considering whether to testify and was also in the process of
6 identifying exculpatory evidence to be presented. Defense counsel specifically
7 noted that the time to provide notice and present evidence did not run until the end
8 of the day October 31, 2017 due to the court holiday on October 27, 2017.³ At
9 1:59 p.m. on October 31, 2017, the State allowed the Grand Jury to deliberate on
10 the instant indictment.⁴ Less than an hour later on October 31, 2017 at 2:47 p.m.,
11 defense counsel timely provided formal notice to the State that Ms. Henley
12 intended to testify.⁵ Ms. Henley also submitted specific requests that certain
13 exculpatory information be provided to the Grand Jury.⁶ At 2:59 p.m., after the
14 grand jury already returned its true bill, the prosecutor coyly responded: “She will
15 need to endorse the written waiver of rights per the statute.”⁷ Counsel for Ms.
16 Henley (who had not been advised that the True Bill had already been returned)
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21 ² MA, p. 017

22 ³ MA, p. 015-016

23 ⁴ MA, p. 120

24 ⁵ MA p. 027; 069

⁶ MA, p. 067

⁷ MA, p. 069

1 responded that she would timely provide a waiver. Further, counsel indicated that
2 Ms. Henley, who was still in custody, was ready to proceed with the Preliminary
3 Hearing still scheduled for November 1, 2017.⁸

4 Ms. Henley was not provided an opportunity to testify. The requested
5 exculpatory evidence was not presented. Instead, the indictment was returned on
6 November 1, 2017, resulting in the underlying justice court case being dismissed,
7 thus denying the petitioner her right to a timely preliminary hearing. The state's
8 actions reflect a clear intent to rush a grand jury indictment for the purposes of
9 avoiding the preliminary hearing that was set for November 1, 2017, while blind-
10 siding Ms. Henley and her counsel, who was never given any indication to the
11 contrary. All available evidence, particularly the e-mail sent from undersigned
12 counsel to the state on October 31, 2017 indicating that the defense was ready to
13 proceed with the preliminary hearing, establish that the state not only failed to
14 inform counsel that the grand jury had been convened, but also failed to give
15 counsel any indication that it did not intend on putting on a preliminary hearing
16 the following morning.

17 The state intentionally denied Ms. Henley of her statutory right to testify at
18 a grand jury, the statutory right to have a preliminary hearing within 15 days, and
19 the constitutional right of due process, all without any consequence from the
20 court. It is clear that counsel for the state counted on the assumption that the state
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⁸ MA, p. 067

1 can act with such hubris and suffer no consequence. If this Court fails to
2 intervene, it not only reinforces this way of thinking, but it encourages the state to
3 continue violating the rights of criminal defendants in the belief that there will be
4 no consequence for their improper actions.

5
6 On November 2, 2017, Ms. Henley filed a Motion to Dismiss Indictment or,
7 in the Alternative, for Own Recognizance Release Pending Writ due to the State's
8 Knowing and Intentional Deprivation of Defendant's Rights.⁹ Ms. Henley argued
9 she was being illegally detained due to the State's violation of her rights and
10 requested the Court dismiss the indictment or grant an own recognizance release
11 pending further litigation.¹⁰

12
13 On December 4, 2017 and December 12, 2017, the Court heard Ms.
14 Henley's Motion to Dismiss Indictment. Ultimately, the court denied petitioner's
15 motion. It was determined between the parties that the testimony would be
16 scheduled for January 2, 2018. Undersigned counsel for Ms. Henley requested a
17 stay of proceedings pending a Writ of Mandamus, which was also denied. The
18 Court issued written orders for both decisions on December 20, 2017.¹¹
19 Pursuant to the District Court's order, the petitioner is to be given the opportunity
20 to testify before the Grand Jury on January 2, 2018.
21

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23 ⁹ MA, p. 006-029

24 ¹⁰ MA, p. 010

¹¹ MA, p. 077-082

1 **ARGUMENT**

2 **I.**

3 **WHY WRIT OF MANDAMUS, OR IN THE ALTERNATIVE**
4 **PROHIBITION, IS THE APPROPRIATE REMEDY IN THIS CASE**

5 A writ of mandamus is available to compel the performance of an act,
6 which the law requires as a duty resulting from an office, trust or station, NRS
7 34.160,¹² or to control an arbitrary or capricious exercise of discretion. Sandy v.
8 Fifth Judicial Dist. Court, 113 Nev. 435, 438, 935 P.2d 1148, 1148-50 (1997)
9 *citing* Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534,
10 536 (1981). A writ of prohibition is the appropriate remedy when the petitioner
11 seeks an order requiring the Court to cease acting beyond its jurisdiction or
12 authority. NRS 34.320. Smith v. Eighth Judicial Dist. Court, 107 Nev. 674
13 (1991).
14

15
16 A “writ shall be issued in all cases where there is not a plain, speedy and
17 adequate remedy in the ordinary course of law.” Sandy, 113 Nev. 435, 438, 935
18
19

20 ¹² The writ may be issued by the Supreme Court, a district court or a judge of the
21 district court, to compel the performance of an act which the law especially
22 enjoins as a duty resulting from an office, trust or station; or to compel the
23 admission of a party to the use and enjoyment of a right or office to which the
24 party is entitled and from which the party is unlawfully precluded by such inferior
tribunal, corporation, board or person. When issued by a district court or a judge
of the district court it shall be made returnable before the district court. Nev. Rev.
Stat. Ann. § 34.160 (West).

1 P.2d 1148, 1148-50 (1997); NRS 34.170, 34.330.¹³ Additionally, under
2 circumstances of urgency or strong necessity, or when an important issue of law
3 needs clarification and sound judicial economy and administration favor the
4 granting of the petition, this Court may exercise its discretion to entertain a
5 petition. State v. Second Judicial Dist. Court ex rel. County of Washoe, 118 Nev.
6 609, 614, 55 P.3d 420, 423 (2002). The party applying for an extraordinary writ
7 must show a clear legal right to have the thing done which is asked for, and it
8 must be the clear legal duty of the party sought to be coerced to do the thing he is
9 called on to do. State v. Daugherty, 1924, 231 P. 384, 48 Nev. 299.

11 For example, in Sandy, 113 Nev. 435 (1997), mandamus was appropriate
12 where Petitioner Sandy was likely to proceed to trial on a charge of murder in the
13 second degree if the Court did not entertain her petition regarding the district
14 court's refusal to enforce a plea bargain. Sandy, 113 Nev. 441. Similarly, in
15 Solis-Ramirez v. Eighth Judicial Dist. Court, 112 Nev. 344, 913 P.2d 1293 (1998),
16 mandamus relief was warranted because Petitioner Ramirez had no adequate legal
17
18

19 ¹³ This writ shall be issued in all cases where there is not a plain, speedy and
20 adequate remedy in the ordinary course of law. It shall be issued upon affidavit,
21 on the application of the party beneficially interested. Nev. Rev. Stat. Ann. §
22 34.170 (West). The writ may be issued only by the Supreme Court or a district
23 court to an inferior tribunal . . . in all cases where there is not a plain, speedy and
24 adequate remedy in the ordinary course of law. It is issued upon affidavit, on the
application of the person beneficially interested. Nev. Rev. Stat. Ann. § 34.330
(West).

1 remedy from district court's order denying his motion to dismiss indictment.
2 Finally, when right to a dismissal is clear, the extraordinary relief of mandamus is
3 available to compel dismissal. State ex rel. Dept. of Highways v. Eighth Judicial
4 Dist. Court, 95 Nev. 715, 601 P.2d 710 (1979) *disapproved of by* Nurenberger
5 Hercules-Werke GMBH v. Virostek, 107 Nev. 873 (1991) (mandamus appropriate
6 where it was clear the State of Nevada was entitled to dismissal of personal injury
7 action and the State could not appeal from trial court's order denying its motion to
8 dismiss).

9
10 Similarly, in the instant case, Petitioner has no adequate remedy at law.
11 Petitioner has no right to appeal from the District Court's denial of his Motion to
12 Dismiss Indictment or, in the Alternative, for Own Recognizance Release Pending
13 Writ Due to the State's Knowing and Intentional Deprivation of Defendant's
14 Rights. Additionally, there is a strong necessity for this Court to intervene. Here,
15 as in Solis-Ramirez, supra, Petitioner is entitled to dismissal and would be
16 subjected to an improper prosecution on an illegal indictment if this Honorable
17 Court does not intervene.
18

19
20 In addition, this petition presents an important issue of law that requires
21 clarification. The practical effect of the trial court's rulings is that a prosecutor
22 can knowingly and intentionally violate a defendant's statutory and due process
23 rights and still benefit from that violation, without consequence.

24 ///

**THE ESTABLISHED LAW REGARDING A DEFENDANT’S
CONSTITUTIONAL AND STATUTORY RIGHT TO TESTIFY AT A
GRAND JURY**

1. A person whose indictment the district attorney intends to seek or the grand jury on its own motion intends to return, but who has not been subpoenaed to appear before the grand jury, may testify before the grand jury if the person requests to do so and executes a valid waiver in writing of the person's constitutional privilege against self-incrimination.

(a) Is given to the person, the person's attorney of record or an attorney who claims to represent the person and gives the person not less than 5 judicial days to submit a request to testify to the district attorney; and

See, NRS 172.241

16

1 attorney. In granting Marcum’s writ of habeas corpus, the District Court held that
2 “since a target defendant has the right to testify before the grand jury, it follows
3 that he has the right to be notified that the grand jury is about to indict him
4 [because] [w]ithout such notice, the *right to testify would be meaningless and the*
5 *statute allowing it would be a nullity.*” See, Marcum, 105 Nev. at 825 (emphasis
6 added). The Nevada Supreme Court agreed and affirmed the District Court’s
7 ruling granting Marcum’s writ of habeas corpus. In addition to the reasons cited
8 by the District Court, the Nevada Supreme Court further noted that “giving a
9 defendant notice that he is a target of a grand jury investigation is consistent with
10 the policy of avoiding unnecessary trials [as] a defendant who has notice that he is
11 the subject of possible indictment may present the grand jury with evidence which
12 exonerates him.” Marcum, 105 Nev. at 826-827. Therefore, the Court noted that,
13 “in some instances notice to the target defendant will eliminate the need for trial.”
14 Marcum, 105 Nev. at 827.

17 The issue of what constitutes proper notice of a grand jury proceeding was
18 again before the Nevada Supreme Court in Solis-Ramirez v. Eighth Judicial
19 District Court, 112 Nev. 344 (1996). In Solis-Ramirez, the petitioner received
20 notice that the state intended to seek a grand jury indictment against him, that he
21 had the right to testify at the grand jury proceeding, that he had the right to present
22 exculpatory evidence at the grand jury, and that he had a right to be accompanied
23 by an attorney at the proceedings. See, Solis-Ramirez, 112 Nev. at 346. While
24

1 the notice provided instructions on how to inform the State that he wished to
2 exercise these rights, it did not provide the date, time, or place of the grand jury
3 hearing. After the grand jury indicted him, the petitioner in Solis-Ramirez filed a
4 Writ of Mandamus with the Nevada Supreme Court alleging that the notice
5 provided by the State was not “reasonable” as required by Nevada statute and case
6 law because it failed to inform him of the place, time, and date of the grand jury
7 proceeding. The Nevada Supreme Court agreed, issuing an order directing the
8 District Court to dismiss the indictment for failure to provide reasonable notice.
9

10 The state’s contention that the notice provided to
11 Ramirez constitutes reasonable notice pursuant to NRS
12 172.241(2) lacks merit. Although NRS 172.241(2) does
13 not specifically state what constitutes reasonable notice,
14 we conclude that the notice provided to Ramirez was not
15 reasonable. The notice did not provide the date, time, or
16 place of the grand jury hearing. NRS 172.241(2) requires
17 notice of a grand jury hearing, not notice that a grand
18 jury hearing will be held sometime in the future. Further,
19 the notice merely alerted Ramirez of the district
20 attorney’s intention to seek an indictment and that he
21 could testify if he contacted the district attorney’s office.
22 NRS 172.241(2) places the burden on the district
23 attorney’s office to give an accused reasonable notice of
24 a grand jury hearing. The notice provided to Ramirez
placed the burden on him to call the district attorney’s
office from jail and locate the information regarding the
date, time, and location of the hearing. Therefore, we
conclude that the state did not provide Ramirez with
reasonable notice of the grand jury hearing as required by
NRS 172.241(2).

Solis-Ramirez, 112 Nev. at 347.

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24

THE DISTRICT COURT WAS OBLIGATED TO DISMISS THE CHARGES AGAINST PETITIONER BECAUSE THE STATE'S EGREGIOUS MISCONDUCT IN VIOLATION OF DEFENDANT'S CONSTITUTIONAL RIGHTS

The state served a Notice of Intent to Seek Indictment on petitioner's counsel by fax on October 23, 2017. Pursuant to NRS 172.241 and Sheriff, Humboldt County v. Marcum, supra, the state must provide five (5) judicial days-notice. October 28, 2017, five (5) calendar days after service of the notice, was a Saturday. The following Monday, October 30, 2017, was Nevada Day, a legal holiday. Due to the weekend and legal holiday, the five judicial days notice did not expire until the end of day on Tuesday, October 31, 2017. *See*, EDCR 1.14(b) ("If any day on which an act required to be done by any one of these rules falls on a Saturday, Sunday or legal holiday, the act may be performed on the next succeeding judicial day."). Therefore, the State violated petitioner's right to testify at the grand jury by allowing the grand jury to deliberate before the end of day on October 31, 2017.

1 However, the facts of this case go one step further, showing an intentional
2 and knowing violation of petitioner’s rights. A review of the e-mail exchange
3 between undersigned counsel and counsel for the State underscores the severity of
4 the violations in this case.¹⁴ On October 23, 2017, counsel for the state, Mr.
5 Stanton, provided the Notice of Intent to Seek Indictment to undersigned counsel
6 via e-mail.¹⁵ Just as in Solis-Ramirez, the Notice of Intent to Seek Indictment
7 does not include the date, place, and time, of the grand jury. Further, the Notice
8 places the burden on the petitioner by saying “**THIS IS THE ONLY NOTICE**
9 **YOU WILL RECEIVE. It is your duty to respond as set forth above. Any**
10 **response inconsistent with the above directions will be disregarded.”**
11 (emphasis in original).¹⁶ On October 25, 2017, undersigned counsel replied via e-
12 mail to confirm receipt of the Notice and inform counsel for the State that she will
13 have exculpatory evidence to present. In this e-mail, undersigned counsel
14 specifically asked “[d]id we receive a date yet?”¹⁷ Counsel for the State, Mr.
15 Stanton, replied: “**presentation will be very shortly**” (emphasis added)¹⁸ A
16 review of the grand jury transcripts reveal that the grand jury convened on
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21 ¹⁴ MA, p. 015-018; 027-029; 053-055; 067-069

22 ¹⁵ MA, p. 017

23 ¹⁶ MA, p. 013

24 ¹⁷ MA, p. 016

¹⁸ MA, p. 016

1 Tuesday, October 24, 2017 at 12:00 p.m. and Mr. Stanton was present on that
2 date.¹⁹

3 Therefore, not only, did counsel for the state, Mr. Stanton, not provide the
4 petitioner or counsel for the petitioner with notice of the date, time, and place of
5 the grand jury hearing, but he deliberately concealed the fact that presentment of
6 evidence had already begun, a fact he was clearly aware of based upon his
7 presence at the grand jury proceedings. His failure to advise that grand jury
8 proceedings were currently taking place continues throughout his subsequent
9 communication with undersigned counsel.
10

11 When undersigned counsel asked to have until Wednesday, November 1,
12 2017, to provide exculpatory evidence, Mr. Stanton replied, “If you are talking
13 about next Wednesday, this case will be presented to the grand jury before that
14 date. If you have any exclamatory [sic] evidence you need to provide it to me
15 within the next 48 hours.”²⁰ This e-mail exchange occurred on October 25, 2017.
16 48 hours from this e-mail would have been Friday, October 27, 2017, well before
17 the expiration of the reasonable notice period the state is required to provide. This
18 point was made clear by undersigned counsel in her response, which highlighted
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24 ¹⁹ MA, p. 083-084

²⁰ MA, p. 053

1 that the deadline to submit a request to testify and submit exculpatory evidence
2 did not run until end of day of October 31, 2017.²¹

3 Not only did counsel for the state attempt to impose his own deadlines and
4 ignore those laid out by statute and case law, but he again failed to inform
5 undersigned counsel that the grand jury proceedings had already begun in this
6 case. Despite knowing full well that the petitioner was considering testifying and
7 that she had exculpatory evidence she wished to present to the grand jury, the state
8 reconvened the grand jury on October 31, 2017 at 1:59 p.m. and asked them to
9 deliberate.²² The grand jury returned a True Bill at 2:03 p.m. on October 31,
10 2017.²³ On October 31, 2017 at 2:47 p.m., undersigned counsel sent the
11 following e-mail to Mr. Stanton:
12

13
14 Please allow this to serve as a response to the Notice of
15 Intent to Seek Indictment that was served on my client on
16 or about October 23, 2017. I am hereby putting you on
17 formal notice that in the event you elect to take this case
18 to the Grand Jury my client Dorie Henley is requesting
19 that she be permitted to testify at the grand jury
20 proceedings herein. You may send notice of the date,
21 time and place of that scheduled proceeding to me at this
22 email address.²⁴

23 This e-mail was followed by a subsequent e-mail sent from undersigned
24 counsel to Mr. Stanton on October 31, 2017 at 3:06 p.m. listing exculpatory

25 ²¹ MA, p. 053

26 ²² MA, p. 120

27 ²³ MA, p. 121

28 ²⁴ MA, p. 027

1 evidence the petitioner requested to be presented if the case was taken to the grand
2 jury.²⁵

3 It is abundantly clear from these e-mails that counsel was not aware that,
4 not only had the state already elected to take this case to the grand jury, but the
5 grand jury had already returned a true bill. On October 31, 2017 at 2:49 p.m., Mr.
6 Stanton replied to undersigned counsel's e-mail wherein he stated simply, "She
7 will need to endorse the written waiver of rights per the statute."²⁶ Again, Mr.
8 Stanton failed to advise counsel for the petitioner that the grand jury had already
9 been convened, had already heard testimony, had already deliberated and had
10 already returned a true bill.
11

12 It is also abundantly clear when these facts are reviewed that the state
13 intentionally and knowingly violated petitioner's right to testify and present
14 exculpatory evidence prior to the grand jury hearing. The District Court, while
15 agreeing that petitioner was not provided an appropriate opportunity to testify, still
16 denied petitioner's motion to dismiss.²⁷ Rather, the Court provided that the
17 appropriate remedy for a denial of the right to testify is that she simply be allowed
18 to testify at the next grand jury. Ultimately, it was determined between the parties
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23 ²⁵ MA, p. 029

24 ²⁶ MA, p. 069

²⁷ MA, p. 077

1 that Ms. Henley would be provided time to testify on January 2, 2018.²⁸ In
2 denying petitioner's Motion to Dismiss the Indictment, the Court ignores the
3 precedent set forth by this court in Solis-Ramirez, 112 Nev. 344. Essentially, the
4 Court indicated that the remedy for the state's intentional and knowing violation
5 of petitioner's statutory and constitutional rights is that petitioner remains in
6 custody on the illegal indictment. Essentially, the state gets to return to the same
7 grand jury and present petitioner's testimony, thereby directly benefiting from its
8 misconduct.
9

10 The state's actions reflect a clear intent to rush a grand jury indictment for
11 the purposes of avoiding the preliminary hearing that was set for November 1,
12 2017, while blind-siding Ms. Henley and her counsel, who was never given any
13 indication to the contrary. All available evidence, particularly the e-mail sent
14 from undersigned counsel to the state on October 31, 2017 indicating that the
15 defense was ready to proceed with the preliminary hearing, establish that the state
16 not only failed to inform counsel that the grand jury had been convened, but also
17 failed to give counsel any indication that it did not intend on putting on a
18 preliminary hearing the following morning.
19
20

21 The state intentionally denied Ms. Henley of her statutory right to testify at
22 a grand jury, the statutory right to have a preliminary hearing within 15 days, and
23 the constitutional right of due process, all without consequence. This cannot be
24

²⁸ MA, p. 077-078

1 the law. And according to this Court's prior precedent, it is not the law.

2 This Court ordered the District Court to dismiss an indictment for failure to
3 provide the date, time and place of a grand jury proceeding in a Notice of Intent to
4 Seek Indictment in Solis-Ramirez, 112 Nev. 344. The remedy in this case should
5 be no different, especially in light of the flagrant and intentional conduct of the
6 state. Here, counsel for the state was more than negligent in failing to give notice,
7 as in Solis-Ramirez. Here, counsel engaged in intentional prosecutorial
8 misconduct by depriving Ms. Henley of her opportunity to testify and then
9 intentionally misleading defense counsel about the fact that the grand jury had
10 already been convened, despite petitioner's counsel directly asking if there had
11 been a date set yet. And when counsel for the state was informed that the
12 petitioner did want to testify and present exculpatory evidence, he again
13 intentionally deceived defense counsel and failed to inform petitioner's counsel
14 that a true bill had been returned, before the reasonable notice period required had
15 run.
16
17

18 It is now incumbent upon this Court to intervene to prevent additional
19 violations of this Petitioner's constitutional and statutory rights. Petitioner is
20 entitled to a dismissal of the illegal indictment based upon the State's egregious
21 misconduct. If this Court does not grant relief, Petitioner will be required to bear
22 the burden of a trial that is already infected with willful violations of his
23 constitutional right to Due Process and to a Fair Trial. The State should not be
24

1 permitted to directly benefit from its malfeasance. Therefore, Petitioner
2 respectfully requests that this Court enter an order granting this petition for
3 extraordinary relief.

4 CONCLUSION

5
6 Petitioner in this case is entitled to full dismissal of the charges against her.
7 Without intervention from this Court, Petitioner will be forced to bear the burden
8 of a trial that is already tainted by the egregious misconduct of the State.
9

10 Therefore, Petitioner respectfully requests that this Honorable Court issue
11 a writ of mandamus or prohibition ordering the district court to dismiss the
12 charges against Petitioner for the reasons set forth in petitioner's Motion to
13 Dismiss Indictment or, in the Alternative, for Own Recognizance Release Pending
14 Writ Due to the States Knowing and Intentional Deprivation of Defendant's
15 Rights.
16

17 Petitioner has no other means to obtain this relief and correct this wrong.

18 DATED this 26th day of December 2017.

19 By: /s/ Mary D. Brown
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I further certify that this Petition complies with the type volume limitations of NRAP 32(a)(7) because it is proportionately spaced, has a typeface of 14 points or more, and contains 5,209 words. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Respectfully submitted,

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I further certify that a true and correct copy of this Petition for Writ of Mandamus or, in the Alternative, for Writ of Prohibition and Request for Emergency Relief was served on Respondent, the Honorable Valerie Adair, District Court Judge, on this 26th day of December 2017.

ADAM P. LAXALT
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