

**In the Supreme Court of the State of Nevada**

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Case No. 80255

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**Evaristo Jonathan Garcia**

Appellant,

v.

**James Dzurenda, et al.,**

Respondent.

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Electronically Filed  
Feb 14 2020 10:23 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**Motion to Unseal**

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Dated this 14th day of February, 2020.

Respectfully submitted,

RENE L. VALLADARES  
Federal Public Defender

/s/ S. Alex Spelman

S. ALEX SPELMAN

Assistant Federal Public Defender

## Points and Authorities

According to the Nevada Rules Governing Sealing and Redacting Court Records (SRCR), Rule 7: “. . . Court records sealed in the trial court shall be sealed from public access in the Nevada Supreme Court subject to further order of that court.”

On September 19, 2019, the Eighth Judicial District Court ordered the case below sealed in its entirety. *See Garcia v. Dzurenda, et al.*, Case No. A-19-791171-W, at \*3 (8th J. Dist. Ct. Sept. 19, 2019). Therefore, on December 19, 2019, in accordance with SRCR 7, Garcia filed his notice-of-appeal documents in this appeal under seal.

However, on February 13, 2020, the district court granted Garcia’s unopposed motion to unseal the case below, ordering unsealed all filings and records within case number A-19-791171-W, as well as all the filings and records in Garcia’s linked criminal case, case number C226218. *See* Ex. 1 (order). Therefore, SRCR 7 no longer requires any filings in this appeal to remain under seal, and there remains no other basis for any filings in this case to remain under seal. *See* Ex. 2 (motion to unseal filed in district court). Garcia wishes to unseal this appeal.

## **Conclusion**

Appellant Garcia respectfully moves for this Court to order unsealed all documents and records filed in this appeal.

Dated this 14th day of February 2020.

Respectfully submitted,  
Rene L. Valladares  
Federal Public Defender

/s/ S. Alex Spelman

S. Alex Spelman  
Assistant Federal Public Defender

## CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2020, I electronically filed the foregoing with the Clerk of the Nevada Supreme Court by using the appellate electronic filing system.

Participants in the case who are registered users in the appellate electronic filing system will be served by the system and include:

Alexander Chen.

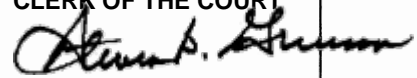
I further certify that some of the participants in the case are not registered appellate electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage pre-paid, or have dispatched it to a third-party commercial carrier for delivery within three calendar days, to the following person:

Evaristo Jonathan Garcia  
No. 1108072  
Saguaro Correctional Center  
1252 E. Arica Road  
Eloy, AZ 85131

/s/ Jessica Pillsbury  
An Employee of the  
Federal Public Defender, District of Nevada

**EXHIBIT 1**

**EXHIBIT 1**



1 ORDR  
2 RENE L. VALLADARES  
3 Federal Public Defender  
4 Nevada State Bar No. 11479  
5 \*S. Alex Spelman  
6 Assistant Federal Public Defender  
7 Nevada State Bar No. 14278  
8 \*Jonathan M. Kirshbaum  
9 Nevada State Bar No. 12908C  
10 411 E. Bonneville, Ste. 250  
11 Las Vegas, Nevada 89101  
12 (702) 388-6577  
13 alex\_spelman@fd.org  
14  
15 \*Attorneys for Petitioner Evaristo J. Garcia

10 EIGHTH JUDICIAL DISTRICT COURT  
11 CLARK COUNTY

12 Evaristo Jonathan Garcia,  
13 Petitioner,  
14  
15 v.  
16 James Dzurenda, *et al.*,  
17 Respondents.

Case No. A-19-791171-W  
Dept. No. 29  
Hearing Date: February 6, 2020  
Time of Hearing: 8:30AM

18 ORDER

19 This matter came before the Court on February 6, 2020 on petitioner's motion  
20 to alter or amend the judgment pursuant to Nev. R. Civ. P. 59(e), and petitioner's  
21 unopposed motion to unseal this case. Present were counsel for petitioner and  
22 respondents. The unopposed motion to unseal this case is granted for the reasons  
23 stated therein.

24 This Court will address the Rule 59(e) motion in a separate order.  
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1 THEREFORE,

2 IT IS HEREBY ORDERED that petitioner's unopposed motion to unseal this  
3 case is **GRANTED**. All documents, exhibits, and other filings within the case record  
4 and case file for this case, number A-19-791171-W, and for the associated criminal  
5 case, number C226218, are hereby unsealed.

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7 DATED this 6 day of February, 2020.

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11 \_\_\_\_\_  
12 DISTRICT COURT JUDGE

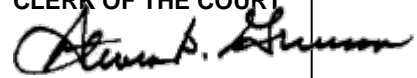
13 RENE L. VALLADARES  
14 Federal Public Defender

15 BY /s/ S. Alex Spelman  
16 S. ALEX SPELMAN  
17 Assistant Federal Public Defender  
18 Nevada Bar # 14278  
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**EXHIBIT 2**

**EXHIBIT 2**





MOT  
Rene L. Valladares  
Federal Public Defender  
Nevada State Bar No. 11479  
\*S. Alex Spelman  
Assistant Federal Public Defender  
Nevada State Bar No. 14278  
411 E. Bonneville, Ste. 250  
Las Vegas, Nevada 89101  
(702) 388-6577  
alex\_spelman@fd.org

\*Attorney for Petitioner Evaristo J. Garcia

**EIGHTH JUDICIAL DISTRICT COURT**  
**CLARK COUNTY**

Evaristo Jonathan Garcia,  
  
Petitioner,  
  
v.  
  
James Dzurenda, *et al.*  
  
Respondents.

Case No. A-19-791171-W  
C262966-1  
  
Dept. No. 29  
  
Date of hearing:  
  
Time of Hearing:

**UNOPPOSED MOTION TO UNSEAL COURT FILE AND COURT RECORDS**

This Court ordered the records and file in this case sealed. *See* 9-19-2019  
Order at 3. Mr. Garcia now moves to unseal this case. Respondents do not oppose.

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**Date:** The \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**Location:** RJC Courtroom 15A  
Regional Justice Center  
200 Lewis Ave.  
Las Vegas, NV 89101

STEVEN D. GRIERSON, CEO/Clerk of Court

By: \_\_\_\_\_  
Deputy Clerk of the Court

<sup>1</sup> This case is already set for a hearing on February 6, 2020 on another motion. Petitioner requests this unopposed motion be heard during the same hearing.

1 **POINTS AND AUTHORITIES**

2 Mr. Garcia moved previously to seal the records and file in this case to  
3 protect the identity of the children involved in this case. *See* 3-14-2019 Motion to  
4 Seal. While the rules do not require redaction of the names of minors, there is a  
5 reasonable policy argument in favor of doing so nonetheless, as Mr. Garcia  
6 explained in his motion to seal. *See id.* Further, because Mr. Garcia is also litigating  
7 his case in the federal courts, and the federal courts *do* require redaction of the  
8 names of children, and the federal court here ordered Mr. Garcia's federal case  
9 sealed, Mr. Garcia moved for the same ruling in this Court for consistency purposes.  
10 This Court granted the motion and sealed this case. *See* 9-19-2019 Order at 3.

11 However, as this litigation progresses to the appellate stage, and Mr. Garcia's  
12 new counsel<sup>2</sup> has re-evaluated the need for sealing this case at the state-court level,  
13 Mr. Garcia's counsel has determined that continuing the sealed-nature of this case  
14 in perpetuity is neither in Mr. Garcia's interest nor is in the public's interest for  
15 access to information about court proceedings. Namely, Mr. Garcia was 16 at the  
16 time of the offense, and is now 30. The children involved in the offense, therefore,  
17 are all adults now. Further, the prior proceedings under Mr. Garcia's criminal case  
18 number, including his trial, were neither conducted nor filed under seal—thus, the  
19 courts have already publicized the names of these now-adult individuals.

20 Further, there will be practical hurdles to keeping this case under seal if it  
21 proceeds to briefing on appeal. Mr. Garcia would be required to file all the  
22 records under seal, for instance. And if the Nevada Supreme Court were interested  
23 in publishing an opinion in this case, it would have to grapple with whether to  
24 unseal the case in order to discuss the names of the individuals involved, and to  
25 allow the public to review the filings in that court.

26 \_\_\_\_\_  
27 <sup>2</sup> The Federal Public Defender has assigned a new co-counsel to assist with  
Mr. Garcia's case after previous co-counsel left the office.

The local federal rules appear to require redaction of the names of minor children, even if they are adults now, and even if their names were already publicized in state-court proceedings—Nevada’s state-court rules do not require such redaction. The circumstances now counsel against keeping this case under seal. Given the above, Mr. Garcia’s counsel discussed unsealing this case with counsel for respondents, Deputy District Attorney John Niman. Respondents, through counsel, indicated they do not oppose this motion to unseal the case.

In conclusion, Mr. Garcia requests this Court grant this motion and order the records in this case, both under its civil and criminal case numbers (A-19-791171-W and C262966-1), be permanently unsealed.

Dated January 23, 2020.

Respectfully submitted,  
Rene L. Valladares  
Federal Public Defender

/s/ S. Alex Spelman  
S. Alex Spelman  
Assistant Federal Public Defender

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