

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 83436

ZANE FLOYD,

Petitioner,

Electronically Filed
Dec 28 2021 05:27 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

v.

STATE OF NEVADA, et al.,

Respondent.

Appeal From Clark County District Court
Eighth Judicial District, Clark County
The Honorable Michael Villani, District Judge

PETITIONER'S APPENDIX

VOLUME 10 OF 14

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 A-09-594133-C Chase Bank USA, Plaintiff(s) vs. Jeffrey Schockley, Defendant(s)
 A-09-594202-C Capital One Bank USA, Plaintiff(s) vs. Bozhi He, Defendant(s)
 A-09-594364-C Chase Bank USA, Plaintiff(s) vs. Paula King, Defendant(s)
 A-09-594452-C Nevada Employment Security Dept, Plaintiff(s) vs. Theater Store Corp, Defendant(s)
 A-09-594459-C Nevada Employment Security Dept, Plaintiff(s) vs. Consolidated Mechanical Contractors Inc, Defendant(s)

A-09-594516-J Fitzgeralds Casino/Hotel, Plaintiff(s) vs. Gary Mogg, Defendant(s)
 A-09-594897-C Ginette Bedsaul, Plaintiff(s) vs. Maria Martinez-Bueno, Defendant(s)
 A-09-595009-C Las Vegas Metropolitan Police Dept, Plaintiff(s) vs. US Currency \$860.00, Defendant(s)
 A-09-595034-C Tiffani Jones, Plaintiff(s) vs. Glen Hostetter, Defendant(s)
 A-09-595194-C LJ Stanley & Associates Inc, Plaintiff(s) vs. Hardacker Roofing Corp, Defendant(s)
 A-09-595354-C Valantin Tajian, Plaintiff(s) vs. Nicholas Brabham, Defendant(s)
 A-09-595504-C Clark County Collection Service LLC, Plaintiff(s) vs. Harold Spadoni, III, Defendant(s)
 A-09-595732-C Heidi Waltermire, Plaintiff(s) vs. Hartford Insurance Company of the Midwest, Defendant(s)
 A-09-595775-C Michael Snyder, Plaintiff(s) vs. Ronald Warner, Jr., Defendant(s)
 A-09-595786-C Lawyers Title Of Nevada, Plaintiff(s) vs. Beldon Porter, Defendant(s)
 A-09-595804-F Southern Counties Oil Co, Plaintiff(s) vs. Nellis And Washington LLC, Defendant(s)
 A-09-596476-C Angela Van Sickle, Plaintiff(s) vs. Pure Management LLC, Defendant(s)
 A-09-596556-C Las Vegas Metropolitan Police Department, Plaintiff(s) vs. 1997 Cadillac Deville, Defendant(s)
 A-09-596589-C Joseph Thomas, Plaintiff(s) vs. Dorothy Sochocki, Defendant(s)
 A-09-596717-C Mirage Casino-Hotel, Plaintiff(s) vs. Amar Patel, Defendant(s)
 A-09-597014-C Quality Loan Service Corp, Plaintiff(s) vs. Larry Chanthavong, Defendant(s)
 A-09-597021-C Brenda Lee, Plaintiff(s) vs. Airview Court Trust, Defendant(s)
 A-09-597091-C Alena Pastuch, Plaintiff(s) vs. I Rock N Roll LLC, Defendant(s)
 A-09-597170-C Roger Kidneigh, Plaintiff(s) vs. Annabelle Vergiels, Defendant(s)
 A-09-597245-C Bellagio LLC, Plaintiff(s) vs. Weili Lin, Defendant(s)
 A-09-597563-C Discover Bank, Plaintiff(s) vs. Nina Vanbeck, Defendant(s)
 A-09-597601-C Paul Graham, Plaintiff(s) vs. Sara Farr, Defendant(s)
 A-09-597605-C American Express Centurion Bank, Plaintiff(s) vs. Steven Koporc, Defendant(s)
 A-09-597709-C Naomi Giannopolous, Plaintiff(s) vs. Jill Colin, Defendant(s)
 A-09-597953-C Loreal USA S/D Inc, Plaintiff(s) vs. Bot Hair LP, Defendant(s)
 A-09-597970-C Ralron Capital Corp, Plaintiff(s) vs. Jeffrey Flagg, Defendant(s)
 A-09-598733-C Nevada Employment Security Dept, Plaintiff(s) vs. Francisco Ayerbe-Suarez, Defendant(s)
 A-09-599086-C Anthony Hasse, Plaintiff(s) vs. David Bennet, Defendant(s)
 A-09-599326-M In the Matter of the Petition for Compromise of Minor's Claim by Grace Mwero
 A-09-599409-C Zions First National Bank, Plaintiff(s) vs. David Nevius, Defendant(s)
 A-09-599513-C 8683 Lake Sahara LLC, Plaintiff(s) vs. Professional Homeowners Association Managers LLC, Defendant(s)

A-09-599544-C Discover Bank, Plaintiff(s) vs. Teah Hartranft, Defendant(s)
 A-09-599564-C Nevada Employment Security Dept, Plaintiff(s) vs. Future House, Defendant(s)
 A-09-599745-C FIA Card Services NA, Plaintiff(s) vs. Joseph Calabria, Defendant(s)
 A-09-599990-C Liquid Asset Holdings LLC, Plaintiff(s) vs. Bong Spirits Imports LLC, Defendant(s)
 A-09-600027-A Valainis, Erik vs. Elsinore LLC
 A-09-600078-C Colonial Pacific Leasing Corporation, Plaintiff(s) vs. Diane Stacey, Defendant(s)
 A-09-600296-C American Express Centurion Bank, Plaintiff(s) vs. Richard Quizon, Defendant(s)
 A-09-600590-C Yolanda Roesner, Plaintiff(s) vs. Arlene Cepeda, Defendant(s)
 A-09-600602-C MGM Grand Hotel LLC, Plaintiff(s) vs. Mingyu Cha, Defendant(s)
 A-09-600664-C Tiffany Chung, Plaintiff(s) vs. Richard Ware, Defendant(s)
 A-09-601070-C Nevada Employment Security Dept, Plaintiff(s) vs. Christopher Johnson, Defendant(s)
 A-09-601312-C Jose Nava, Plaintiff(s) vs. Maria Ruiz, Defendant(s)
 A-09-601330-C Las Vegas Sands LLC, Plaintiff(s) vs. Vincent Salvatore, Defendant(s)
 A-09-601489-C FIA Card Services, Plaintiff(s) vs. Angela Wise, Defendant(s)
 A-09-602075-W Erik Valainis, Plaintiff(s) vs. Robert Gronauer, Defendant(s)

A-09-602131-C American Family Mutual Insurance Co, Plaintiff(s) vs. Michelle Zepeda, Defendant(s)
 A-09-602800-C Zuri-Kinshasa Terry, Plaintiff(s) vs. Sapphire/Sapphire Gentleman's Club, Defendant(s)
 A-09-603330-C Vito Reyes, Plaintiff(s) vs. CountryWide Home Loans, Defendant(s)
 A-09-603770-C Nevada Employment Security Dept, Plaintiff(s) vs. Leonard Bordeaux, Defendant(s)
 A-09-603923-C North Las Vegas Police Officers Assn, Plaintiff(s) vs. North Las Vegas City of, Defendant(s)
 A-09-603937-P In the Matter of the Petition of Elkhorn Community Association
 A-09-604042-C American Family Mutual Insurance Company, Plaintiff(s) vs. Diana Payanouvong, Defendant(s)
 A-09-604610-C Wells Fargo Bank, Plaintiff(s) vs. Pedro Cortina, Defendant(s)
 A-09-604661-C Nevada Employment Security Dept, Plaintiff(s) vs. Rosa Valantasis, Defendant(s)
 A-09-604895-C Beneficial Nevada Inc, Plaintiff(s) vs. Maximo Vargas, Defendant(s)
 A-09-604904-C American Express Bank, Plaintiff(s) vs. Mary Watrous, Defendant(s)
 A-09-605042-C American Express Travel Related, Plaintiff(s) vs. Max Butterworth, Defendant(s)
 A-09-605208-C American Express Centurion Bank, Plaintiff(s) vs. Jennifer Paek, Defendant(s)
 A-09-605620-C Discover Bank, Plaintiff(s) vs. Ultimate International Services LLC, Defendant(s)
 A-09-605647-C Timothy Greene, Plaintiff(s) vs. Alfred McCrury, Defendant(s)
 A-09-605664-C Ford Motor Credit, Plaintiff(s) vs. Willie Nomaaea, Defendant(s)
 A-09-605743-C Wells Fargo Bank of Nevada N.A., Plaintiff(s) vs. Roberto Balli, Defendant(s)
 A-09-606107-C Martha Diaz, Plaintiff(s) vs. Janice Baligad, Defendant(s)
 A-09-606289-C Nevada Employment Security Dept, Plaintiff(s) vs. Sharie Johnson, Defendant(s)
 A-09-606325-C Jeff Durroh, Plaintiff(s) vs. Nevada Yellow Cab Corporation, Defendant(s)
 A-09-606399-C Jose Esparza-Ortiz, Plaintiff(s) vs. Harley Hayden, Defendant(s)
 A-09-606499-C Jason Chandler, Plaintiff(s) vs. Roger Masgai, Defendant(s)
 A-09-606611-C Eric Palacios & Associates, Plaintiff(s) vs. Jose Yanez, Defendant(s)
 A-09-606737-C Jhonny Martinez-Reyes, Plaintiff(s) vs. Michael Dameron, Defendant(s)
 A-09-606820-C Nevada Employment Security Dept, Plaintiff(s) vs. Anthony Hernandez, Defendant(s)
 A-10-607035-C Sysco Las Vegas Inc, Plaintiff(s) vs. Adams Ribs LLC, Defendant(s)
 A-10-607184-C Jan Vinsko, Plaintiff(s) vs. Colorado Casualty Insurance Company, Defendant(s)
 A-10-607197-C Nevada Dept Of Business And Industry, Plaintiff(s) vs. Joaquin Gamez, Defendant(s)
 A-10-607617-C GMAC Inc, Plaintiff(s) vs. Caviar Royale Inc, Defendant(s)
 A-10-607697-C Nevada Employment Security Dept, Plaintiff(s) vs. Maryellen Brooks, Defendant(s)
 A-10-607892-P In the Matter of the Petition of California Reconveyance Co
 A-10-608273-C Nevada Employment Security Dept, Plaintiff(s) vs. Abel Millares, Defendant(s)
 A-10-608534-C Jaime Kocanda, Plaintiff(s) vs. Carolyn Mann, Defendant(s)
 A-10-608916-M In the Matter of the Petition for Compromise of Minor's Claim by Kristin Metz
 A-10-608927-M In the Matter of the Petition for Compromise of Minor's Claim by John Peck
 A-10-608948-C Lucky Investors Inc, Plaintiff(s) vs. Teresa Jackson, Defendant(s)
 A-10-608964-F Daimler Chrysler Services, Plaintiff(s) vs. Heather Stensland, Defendant(s)
 A-10-609109-F Bank of America, N.A., Plaintiff(s) vs. Ed Aronson, Defendant(s)
 A-10-609164-C Citifinancial Auto, Plaintiff(s) vs. Billy Wall, Defendant(s)
 A-10-609384-C California State Automobile Association vs. TLC Roofing
 A-10-609386-C Nancy Leinberger vs. Smith's Food and Drug Center Inc
 A-10-609601-C Hugo Solorio, Plaintiff(s) vs. BAC Home Loans LLC, Defendant(s)
 A-10-609803-C Nevada State Bank, Plaintiff(s) vs. Anna McKenzie, Defendant(s)
 A-10-610485-C Citibank South Dakota, Plaintiff(s) vs. John Depretis, Defendant(s)
 A-10-610867-C Nevada State Bank, Plaintiff(s) vs. Spencer Maule Business Park LLC, Defendant(s)
 A-10-610940-C Nevada Employment Security Dept, Plaintiff(s) vs. Mothers Best Elder Care Corporation, Defendant(s)

 A-10-611186-C Steve Cahill, Plaintiff(s) vs. American Family Mutual Insurance Company, Defendant(s)
 A-10-611363-C Nevada Dept of Employment Security, Plaintiff(s) vs. GC Electric, Inc, Defendant(s)
 A-10-611505-C Florence Rodriguez, Plaintiff(s) vs. Ricardo Vargas, Defendant(s)
 A-10-611534-C Las Vegas Metropolitan Police Department, Plaintiff(s) vs. U S Currency \$9,757.00, Defendant(s)
 A-10-611541-C Yellow Book Sales and Distribution Company Inc, Plaintiff(s) vs. America Automotive Glass Technician Inc , Defendant(s)
 A-10-611945-C Arthur Jacobsen, Plaintiff(s) vs. Robert Shaw, Defendant(s)
 A-10-612213-C Discover Bank, Plaintiff(s) vs. Mary Schlecht, Defendant(s)
 A-10-612549-C Martina Tarango, Plaintiff(s) vs. Jamaul Dismuke, Defendant(s)
 A-10-612651-C James Stanlake, Plaintiff(s) vs. Lori Serafini, Defendant(s)
 A-10-612761-C Wells Fargo Bank, Plaintiff(s) vs. Jose Rodriguez, Defendant(s)
 A-10-612932-C Louise Bredice, Plaintiff(s) vs. California Casualty Management Company, Defendant(s)

A-10-613055-C Osis Iron Work, Plaintiff(s) vs. Caviness Construction Company, Defendant(s)
 A-10-613311-C First Financial Bank, Plaintiff(s) vs. Fancy Nuts LLC, Defendant(s)
 A-10-613591-C Richard Harris Law Firm, Plaintiff(s) vs. Josephine Saludez, Defendant(s)
 A-10-613652-C Manuel Mojica, Plaintiff(s) vs. Scott Klempke, Defendant(s)
 A-10-613750-C Citibank South Dakota, Plaintiff(s) vs. Juanito Sayno, Defendant(s)
 A-10-613814-C Leslie Dunn, Plaintiff(s) vs. Murphy Electric, Inc., Defendant(s)
 A-10-613888-C Nevada State Bank, Plaintiff(s) vs. D. Jed Wunderli, Defendant(s)
 A-10-613912-C Nyeshia Matlock, Plaintiff(s) vs. Soponrat Kongrak, Defendant(s)
 A-10-614087-P In the Matter of the Petition of Nevada Dept of Health & Human Services
 A-10-614199-C Allied Collection Services Inc, Plaintiff(s) vs. Albert Jackson , Defendant(s)
 A-10-614457-C Spectrum Mortgage & Loan, Inc. vs. Maria L. Calica
 A-10-614532-C Michael Hurley, Plaintiff(s) vs. Kati Johnston, Defendant(s)
 A-10-614599-C Discover Bank, Plaintiff(s) vs. Nicole Turner, Defendant(s)
 A-10-614772-M In the Matter of the Petition for Compromise of Minor's Claim by Marilu Castrejon
 A-10-614884-C Felimi Rodis, Plaintiff(s) vs. Soma Financial, Defendant(s)
 A-10-615338-C Nicholas Pappas, Plaintiff(s) vs. Stefanie Mitchell, Defendant(s)
 A-10-615415-C Eagle Painting & Drywall Inc, Plaintiff(s) vs. Bean Investment Real Estate Inc, Defendant(s)
 A-10-615617-C Dylan Delgado-Machuca, Plaintiff(s) vs. Ralph Escoto, Defendant(s)
 A-10-615677-C Eliza Madrigal, Plaintiff(s) vs. Letha Martin, Defendant(s)
 A-10-615728-C Citibank South Dakota, Plaintiff(s) vs. Richard Mckee, Defendant(s)
 A-10-615771-C Jose Gomez, Plaintiff(s) vs. Corazon Santos, Defendant(s)
 A-10-616331-C Citibank South Dakota, Plaintiff(s) vs. Brandon Jacobsen, Defendant(s)
 A-10-616472-C Bank of Nevada, Plaintiff(s) vs. Vincent Torrez, Defendant(s)
 A-10-616530-C Stephanie Rossi, Plaintiff(s) vs. Ming-Wei Wu, DO, Defendant(s)
 A-10-616814-C CaptiveAire Systems, Inc., Plaintiff(s) vs. Alpine Fixtures and Sheet Metal, Inc., Defendant(s)
 A-10-616822-C Payroll Funding Company LLC, Plaintiff(s) vs. Cosmetivity School Management, LLC, Defendant(s)

 A-10-616887-C Citibank South Dakota, Plaintiff(s) vs. Sean Minnales, Defendant(s)
 A-10-617455-C Nevada Speedway LLC, Plaintiff(s) vs. Southern Nevada Harley-Davidson Sales Inc, Defendant(s)
 A-10-617628-C Inessa Kabakov, Plaintiff(s) vs. New York- New York Hotel and Casino LLC, Defendant(s)
 A-10-617658-F Azra Iovic, Plaintiff(s) vs. Robert Hughes, Defendant(s)
 A-10-617751-C Jianquin Lu, Plaintiff(s) vs. Nevada Star Cab Corp, Defendant(s)
 A-10-617982-C Nevada Dept of Employment Security, Plaintiff(s) vs. Lashannon Butler, Defendant(s)
 A-10-618263-C Bank of America, N.A., Plaintiff(s) vs. Martha Whitaker, Defendant(s)
 A-10-618467-C Nevada Employment Security Dept, Plaintiff(s) vs. Ptacec Inc, Defendant(s)
 A-10-618677-C Shanillya Ellington, Plaintiff(s) vs. Amy Rucker, Defendant(s)
 A-10-619282-C Jerry Hall, Plaintiff(s) vs. Lucille's Smokehouse Bar-B-Que, Defendant(s)
 A-10-619364-C Southwest Post-Tension Systems Inc, Plaintiff(s) vs. M S Concrete Co Inc, Defendant(s)
 A-10-619518-M In the Matter of the Petition for Compromise of Minor's Claim by Brennan Borja
 A-10-619533-C Maricruz Chavez, Plaintiff(s) vs. Gary Smith , Defendant(s)
 A-10-619578-C Tarz Mitchell, Plaintiff(s) vs. Howard Skolnik, Defendant(s)
 A-10-619825-C George Luster, Plaintiff(s) vs. Nevada State of, Defendant(s)
 A-10-620295-C Imelda Lopez, Plaintiff(s) vs. Felix Flores , Defendant(s)
 A-10-620629-C Citibank , Plaintiff(s) vs. Jaimie Moreno, Defendant(s)
 A-10-620682-C FIA Card Services, Plaintiff(s) vs. Ines Kohara, Defendant(s)
 A-10-620862-C Wells Fargo Bank, N.A., Plaintiff(s) vs. Sergio Garcia, Defendant(s)
 A-10-620890-C HSBC Bank Nevada, N.A., Plaintiff(s) vs. Louis Monteleone, Defendant(s)
 A-10-620982-C Kenneth Dinkins, Plaintiff(s) vs. Chester Ng, Defendant(s)
 A-10-620994-C Discover Bank, Plaintiff(s) vs. Shuangying Bi, Defendant(s)
 A-10-621134-C Anne Swaney, Plaintiff(s) vs. Francis Hughes, Defendant(s)
 A-10-621320-C Crystal Thompson, Plaintiff(s) vs. Clark County ex rel University Medical Center, Defendant(s)
 A-10-621344-M In the Matter of the Petition for Compromise of Minor's Claim by Flordeliza Calicdon
 A-10-621546-C Nevada State Employment Security Division, Plaintiff(s) vs. Tanya Thomas, Defendant(s)
 A-10-621849-C Bank of America, Plaintiff(s) vs. Brock Cochrane, Defendant(s)
 A-10-621982-C Sterling Respass, Plaintiff(s) vs. Kanawha Insurance Co, Defendant(s)
 A-10-622029-C Sigal Chattah, Plaintiff(s) vs. Cal Western Reconveyance Corporation, Defendant(s)
 A-10-622083-C HSBC Bank Nevada, Plaintiff(s) vs. Vicki Slosek, Defendant(s)
 A-10-622243-C HSBC Bank Nevada N A, Plaintiff(s) vs. Patricia Valdez, Defendant(s)
 A-10-622413-C HSBC Bank Nevada, Plaintiff(s) vs. Agnes Lie, Defendant(s)

A-10-622571-C Cynthia Anderson, Plaintiff(s) vs. Rio Properties Inc, Defendant(s)
 A-10-622792-C Chase Bank USA, Plaintiff(s) vs. Mary Weber, Defendant(s)
 A-10-622930-F Brightpoint North America L P vs. Affordable Cellular Inc
 A-10-623201-C FIA Card Services, N.A., Plaintiff(s) vs. Tatiana Camargo, Defendant(s)
 A-10-623236-J Steven Crain, Plaintiff(s) vs. Nevada Dept Of Industrial Relations, Defendant(s)
 A-10-623574-C Nevada Dept of Employment Security, Plaintiff(s) vs. Robert Kahre, Defendant(s)
 A-10-623589-C Ricky Harwood, Plaintiff(s) vs. Tammy Bogroff, Defendant(s)
 A-10-623613-C Joseph Svobodny, Plaintiff(s) vs. Victoria Lightner, Defendant(s)
 A-10-623672-C Zena Manderville, Plaintiff(s) vs. Litton Loan Servicing, Defendant(s)
 A-10-623897-C Nevada Employment Security Dept, Plaintiff(s) vs. Maverick Fire Protection Inc, Defendant(s)
 A-10-623907-C Robert Weeks, Plaintiff(s) vs. Shorl Ericksen, Defendant(s)
 A-10-624275-P In the Matter of the Petition of Shareholder Advocates LLC
 A-10-624539-C Las Vegas Metropolitan Police Dept, Plaintiff(s) vs. U S Currency \$5,200.00, Defendant(s)
 A-10-624988-M In the Matter of the Petition for Compromise of Minor's Claim by Maria Rivero
 A-10-625799-C Nevada Employment Security Dept, Plaintiff(s) vs. Hardacker Roofing Corp, Defendant(s)
 A-10-625889-C Citibank, Plaintiff(s) vs. Douglas Landaverde, Defendant(s)
 A-10-626066-C Erlinda Miranda, Plaintiff(s) vs. Marisel Duque, Defendant(s)
 A-10-626067-J Juan Buendia, Plaintiff(s) vs. Nevada Employment Security Dept, Defendant(s)
 A-10-626105-C Samantha Holcomb, Plaintiff(s) vs. Sergio Rodriguez-Vazquez, Defendant(s)
 A-10-626141-C David Rigg, Plaintiff(s) vs. Keith Montoya, Defendant(s)
 A-10-626161-C Griselda Bausch, Plaintiff(s) vs. Chase Home Finance LLC, Defendant(s)
 A-10-626435-C Wynn Las Vegas LLC, Plaintiff(s) vs. Brian Kusmer, Defendant(s)
 A-10-626477-C FIA Card Services, Plaintiff(s) vs. Susan Hess, Defendant(s)
 A-10-626508-J Abraham Abate, Plaintiff(s) vs. Nevada State Employment Security Division, Defendant(s)
 A-10-626716-C Rhonda Garcia-Martinez, Plaintiff(s) vs. Corey Bugg, Defendant(s)
 A-10-626953-C Jacqueline Brooks, Plaintiff(s) vs. Mark Leo MD, Defendant(s)
 A-10-627044-C Bank of Las Vegas, Plaintiff(s) vs. Christopher Zockoll, Defendant(s)
 A-10-627112-C Deborah Wands, Plaintiff(s) vs. John Wands, Defendant(s)
 A-10-627330-C Discover Bank, Plaintiff(s) vs. Jack Grant, Defendant(s)
 A-10-627387-C Donald Okada, Plaintiff(s) vs. Nevada Property 1 LLC, Defendant(s)
 A-10-627836-C Citibank, Plaintiff(s) vs. Peter Battisti, Defendant(s)
 A-10-627884-C Baxter Credit Union , Plaintiff(s) vs. Millicent Epino, Defendant(s)
 A-10-627905-C Vincent Caruso, Plaintiff(s) vs. Richard Pocaroba, Defendant(s)
 A-10-628293-C Marshall and Ilsley Bank, FSB aka M&I Bank, FSB vs. Gregory M. Shulman
 A-10-628397-F QMC Inc, Plaintiff(s) vs. Taryn White, Defendant(s)
 A-10-628923-C Deutsche Bank National Trust Company, Plaintiff(s) vs. Albert Gutierrez, Defendant(s)
 A-10-628980-C Silver State Schools Credit Union, Plaintiff(s) vs. Christopher Harris, Defendant(s)
 A-10-628996-C Discover Bank, Plaintiff(s) vs. Rochelle Kalb, Defendant(s)
 A-10-629016-C Capital One Bank (USA), Plaintiff(s) vs. Richard Gibb, Defendant(s)
 A-10-629247-C Bank of Nevada, Plaintiff(s) vs. W.I.T. Bro, Inc., Defendant(s)
 A-10-629420-C Silver State Schools Credit Union, Plaintiff(s) vs. Kenneth McClelland, Defendant(s)
 A-10-629441-C Silver State Schools Credit Union, Plaintiff(s) vs. Adan Villa-Jurado, Defendant(s)
 A-10-629638-C LCH Vegas LLC, Plaintiff(s) vs. Lamar Webster, Defendant(s)
 A-10-629844-C American Family Mutual Insurance Co, Plaintiff(s) vs. Trevor Scelso, Defendant(s)
 A-10-630249-C American Express Centurion Bank, Plaintiff(s) vs. Michael Hill, Defendant(s)
 A-10-630422-C Desert Palace, Inc., Plaintiff(s) vs. Homero Meruelo, Defendant(s)
 A-10-630565-C Capital One Bank USA N A, Plaintiff(s) vs. Pershing Dumlao, Defendant(s)
 A-10-630693-C Farid Mahbobian-Fard, Plaintiff(s) vs. Norkram Inc, Defendant(s)
 A-10-631080-C Silver State Schools Credit Union, Plaintiff(s) vs. Brandon Whittecar, Defendant(s)
 A-10-631135-C CACV LLC, Plaintiff(s) vs. Ramona Johnson, Defendant(s)
 A-10-631412-C Mortgage Guaranty Insurance Corporation, Plaintiff(s) vs. Glen Joos, Defendant(s)
 A-10-631448-C Mark Scott, Plaintiff(s) vs. Amir Shuja MD, Defendant(s)
 A-10-631866-C Hsiu-Hwa Smith, Plaintiff(s) vs. Gerri Bronstein, Defendant(s)
 A-10-631912-C Caren Boone, Plaintiff(s) vs. Cheryl Hunt, Defendant(s)
 A-10-632047-C Saeed Gohari, Plaintiff(s) vs. Jenny Lehouiller, Defendant(s)
 A-10-632237-F Cach LLC, Plaintiff(s) vs. James Ward, Defendant(s)
 A-10-632403-C American Express Centurion Bank, Plaintiff(s) vs. Lilia Jimenez, Defendant(s)
 A-11-632450-C U S Bank, Plaintiff(s) vs. Tanya Cusumano, Defendant(s)
 A-11-632522-C Citibank , Plaintiff(s) vs. Mehmed Celikovic, Defendant(s)

A-11-632537-C Discover Bank, Plaintiff(s) vs. Neal Johnson, Defendant(s)
 A-11-632682-C Raphael Jacoby, Plaintiff(s) vs. Miguel Guevara, Defendant(s)
 A-11-632749-M In the Matter of the Petition for Compromise of Minor's Claim by Kimberly Sanders
 A-11-633011-M In the Matter of the Petition for Compromise of Minor's Claim by Marvonja Trotter
 A-11-633265-F River City Petroleum, Inc, Plaintiff(s) vs. Double K. Enterprises, Defendant(s)
 A-11-633391-C Asli Mhina, Plaintiff(s) vs. Boris Perez, Defendant(s)
 A-11-633757-C Citibank, Plaintiff(s) vs. Damerica Ortega , Defendant(s)
 A-11-633797-C Citibank, Plaintiff(s) vs. Cristobal Miramontes, Defendant(s)
 A-11-634063-P In the Matter of the Petition of Nevada Dept of Health and Human Services
 A-11-634076-M In the Matter of the Petition for Compromise of Minor's Claim by Sonia Clifton
 A-11-634335-C Tina Roe, Plaintiff(s) vs. Rainbow Andreani, Defendant(s)
 A-11-634418-M In the Matter of the Petition for Compromise of Minor's Claim by Kentreisha Rogers
 A-11-635501-C Tamara Brazell, Plaintiff(s) vs. PV Holding Corp, Defendant(s)
 A-11-635525-C SA Group Properties, Inc., Plaintiff(s) vs. Stephanie Crossing LLC, Defendant(s)
 A-11-636003-C Nevada Employment Security Dept, Plaintiff(s) vs. MTA Enterprises Inc, Defendant(s)
 A-11-636028-C North Las Vegas City of, Plaintiff(s) vs. U S Currency \$1,475.00, Defendant(s)
 A-11-636224-M In the Matter of the Petition for Compromise of Minor's Claim by Olivia Moon
 A-11-636522-C Ahern Rentals, Inc., Plaintiff(s) vs. UFL Management, LLC, Defendant(s)
 A-11-636748-C Fausta Garcia, Plaintiff(s) vs. Buy-Low Market Inc, Defendant(s)
 A-11-636946-C Citibank, Plaintiff(s) vs. Ahron Bragg, Defendant(s)
 A-11-637151-C Citibank NA, Plaintiff(s) vs. Marisa Mascitelli, Defendant(s)
 A-11-637343-C Elaine Harman, Plaintiff(s) vs. Rancho Alta Mira Owners Association, Defendant(s)
 A-11-637423-C Martha Chavez, Plaintiff(s) vs. Vegas Tunnel Constructors, Defendant(s)
 A-11-637571-C Beneficial Mortgage Company of Nevada, Plaintiff(s) vs. Daniel Trudel, Defendant(s)
 A-11-637721-M In the Matter of the Petition for Compromise of Minor's Claim by Delores Omran
 A-11-637747-C Arminda Rangel, Plaintiff(s) vs. Jose Rivera, Defendant(s)
 A-11-637961-M In the Matter of the Petition for Compromise of Minor's Claim by Helen Daniels
 A-11-638003-C Unifund CCR Partners, Plaintiff(s) vs. Susan McDow, Defendant(s)
 A-11-638140-C State Farm Mutual Automobile Insurance Company, Plaintiff(s) vs. Latrease Bedolla, Defendant(s)
 A-11-638377-P In the Matter of the Petition of Peachtree Settlement Finance Co LLC
 A-11-638740-C Matthew Jividen, Plaintiff(s) vs. Matthew Scalzi, Defendant(s)
 A-11-638880-C Lee Iglody, Plaintiff(s) vs. Fresh Enterprises, LLC, Defendant(s)
 A-11-639014-C Discover Bank, Plaintiff(s) vs. Clarence Bowden, Defendant(s)
 A-11-639201-C James Silvas, Plaintiff(s) vs. Bank of America Home Loans, Defendant(s)
 A-11-639340-C Capital One Bank USA, Plaintiff(s) vs. David Claerbaut , Defendant(s)
 A-11-640049-M In the Matter of the Petition for Compromise of Minor's Claim by AJ Melson
 A-11-640171-C Carolyn Walkowski, Plaintiff(s) vs. Walter McGie, Defendant(s)
 A-11-640446-A Cuba, Shamondra vs. LVC Home Management LLC
 A-11-640626-C Nora Mead, Plaintiff(s) vs. Garden Fresh Restaurant Corporation, Defendant(s)
 A-11-640694-C Toni Cross, Plaintiff(s) vs. Jeremy Moore, Defendant(s)
 A-11-640775-C Capital One Bank, Plaintiff(s) vs. Todd Kelling , Defendant(s)
 A-11-640900-C Capital One Bank U S A, Plaintiff(s) vs. Jennifer Davis, Defendant(s)
 A-11-641203-C Citibank South Dakota, Plaintiff(s) vs. Thomas Trattler, Defendant(s)
 A-11-641393-C Citibank South Dakota, Plaintiff(s) vs. Daniel Wolford, Defendant(s)
 A-11-641413-C Credit Union 1, Plaintiff(s) vs. Desert Highlands Investments LLC, Defendant(s)
 A-11-641671-C Richard Byrd, Plaintiff(s) vs. Judith Pickett, Defendant(s)
 A-11-641751-M In the Matter of the Petition for Compromise of Minor's Claim by Kamera Carter
 A-11-641840-C Anita Coronado, Plaintiff(s) vs. Jodi Muller, Defendant(s)
 A-11-641884-C Maria Navarrete, Plaintiff(s) vs. Icon Health & Fitness, Inc., Defendant(s)
 A-11-642256-C Maricruz Lopez, Plaintiff(s) vs. Stephen Shortell, Defendant(s)
 A-11-642279-C Carmen Ruano, Plaintiff(s) vs. Sandybel Flores, Defendant(s)
 A-11-642291-C Citibank, Plaintiff(s) vs. Danilo Dungca, Defendant(s)
 A-11-642720-J Adelina Chatoff, Plaintiff(s) vs. Employment Security Division, Defendant(s)
 A-11-642834-C Henderson City of, Plaintiff(s) vs. US Currency \$1,736.00, Defendant(s)
 A-11-642899-F Glaser Wiel Fink Jacobs Howard Avchen & Shapiro LLP, Plaintiff(s) vs. Todd Sanders, Defendant(s)
 A-11-642961-C Allied Collection Services Inc, Plaintiff(s) vs. Keel Entertainment, Defendant(s)
 A-11-642978-C Citibank (South Dakota) , Plaintiff(s) vs. Narine Gyonjyan , Defendant(s)
 A-11-643236-C Cindy Ruiter, Plaintiff(s) vs. Stanley Benson, Defendant(s)

A-11-643318-P In the Matter of the Petition of J G Wentworth Originations LLC
A-11-643583-M In the Matter of the Petition for Compromise of Minor's Claim by Elizabeth Rodriguez
A-11-643651-M In the Matter of the Petition for Compromise of Minor's Claim by Bryan Boyack
A-11-644260-C RBS Citizens Bank, Plaintiff(s) vs. June Wong, Defendant(s)
A-11-644878-M In the Matter of the Petition for Compromise of Minor's Claim by Sara Estrada
A-11-644887-C SLM Education Loan Corp, Plaintiff(s) vs. David Diaz , Defendant(s)
A-11-645060-C Las Vegas Sands LLC, Plaintiff(s) vs. Ping Qu, Defendant(s)
A-11-645165-C Amber Carroll, Plaintiff(s) vs. John Alvarado, Defendant(s)
A-11-645570-C Citibank, Plaintiff(s) vs. Sharon Jones, Defendant(s)
A-11-645652-C Phairat Udomsilpa, Plaintiff(s) vs. Kroger Group Cooperative Inc, Defendant(s)
A-11-645691-C Clayton Pruzinsky, Plaintiff(s) vs. Spirit Underground LLC, Defendant(s)
A-11-646007-C Vanessa Griffith, Plaintiff(s) vs. Nevada Checker Cab Corporation, Defendant(s)
A-11-646028-C Farmers Insurance Company, Plaintiff(s) vs. Evelyn Borowicz, Defendant(s)
A-11-646067-C John Williams, Plaintiff(s) vs. Ryan Mechanical Inc, Defendant(s)
A-11-646099-C Henderson City of, Plaintiff(s) vs. US Currency \$9,010.00, Defendant(s)
A-11-646113-C Steve Kristy, Plaintiff(s) vs. Riverside Resort and Casino Inc, Defendant(s)
A-11-646461-C Daryl Sembrano, Plaintiff(s) vs. Nevada State of, Defendant(s)
A-11-646826-C Allstate Insurance Company, Plaintiff(s) vs. Elias Aguilar, Jr., Defendant(s)
A-11-647392-C Bank of Nevada, Plaintiff(s) vs. Aaron Fisher, Defendant(s)
A-11-647787-C CitiMortgage, Plaintiff(s) vs. Paula Ferree, Defendant(s)
A-11-648088-C Ennis Johnson, Plaintiff(s) vs. BPM Senior Living Company, Defendant(s)
A-11-648156-C Citibank, Plaintiff(s) vs. Robert Pfeil, Defendant(s)
A-11-649105-C Felipe Policarpodasilva, Plaintiff(s) vs. John Chessari, Defendant(s)
A-11-649137-C MaryAnn Hansen, Plaintiff(s) vs. Walter McGie, Defendant(s)
A-11-649222-C Elsie Lopez, Plaintiff(s) vs. Leann Loiselle, Defendant(s)
A-11-649533-F Western Arizona Regional Medical Center , Plaintiff(s) vs. Zachary Irons, Defendant(s)
A-11-649630-C Loriann Lopez, Plaintiff(s) vs. Medicwest Ambulance Inc, Defendant(s)
A-11-649905-C Clark County Credit Union, Plaintiff(s) vs. Jarrod Dolojan, Defendant(s)
A-11-650010-F Ford Motor Credit Company, Plaintiff(s) vs. Jean Wallace, Defendant(s)
A-11-650196-C Citibank South Dakota, Plaintiff(s) vs. Marianne Wojciechowicz, Defendant(s)
A-11-650295-C Nevada Employment Security Dept, Plaintiff(s) vs. Red Rock Financial, LLC, Defendant(s)
A-11-650431-C Prestige Financial Services, Inc., Plaintiff(s) vs. Veronica Lopez, Defendant(s)
A-11-650529-C Rhyn Campbell, Plaintiff(s) vs. Bradley Black, Defendant(s)
A-11-651116-C Nevada Employment Security Dept, Plaintiff(s) vs. Sabrina Grayson, Defendant(s)
A-11-651183-C Joann Gouge, Plaintiff(s) vs. Station Casinos Inc, Defendant(s)
A-11-651241-C Joan Day, Plaintiff(s) vs. Young Men's Christian Association of Southern Nevada, Defendant(s)
A-11-651716-C Julio Rodriguez, Plaintiff(s) vs. Crystal Hernandez, Defendant(s)
A-11-651849-M In the Matter of the Petition for Compromise of Minor's Claim by Joel Martinez
A-11-652025-M In the Matter of the Petition for Compromise of Minor's Claim by Kent Farrell
A-11-652312-M In the Matter of the Petition for Compromise of Minor's Claim by Marina Stirnweiss
A-11-652531-C Wiley Barnes , Plaintiff(s) vs. Western United Company , Defendant(s)
A-11-652679-F Gonor Funding Inc, Plaintiff(s) vs. Drazen Karalic, Defendant(s)
A-11-652786-C Estate of Helen Hindmand, Plaintiff(s) vs. Edgewater Gaming, LLC, Defendant(s)
A-11-653082-C John DeVries, Plaintiff(s) vs. Jewelers Mutual Insurance Company, Defendant(s)
A-11-653083-C Christopher Layman, Plaintiff(s) vs. Progressive Casualty Insurance Company, Defendant(s)
A-11-653188-C Discover Bank, Plaintiff(s) vs. Doris Cin, Defendant(s)
A-11-653217-C Isidro Soto-Ramirez, Plaintiff(s) vs. Emma Hernandez, Defendant(s)
A-11-653244-A Ballard, Debra vs. Lee, Michelle
A-11-653339-C R H Donnelley Inc, Plaintiff(s) vs. Asset Resources LLC, Defendant(s)
A-11-653722-C K A Kiermeyer MD, Plaintiff(s) vs. Chubb Custom Insurance Company, Defendant(s)
A-11-653922-M In the Matter of the Petition for Compromise of Minor's Claim by Angel Cardenas
A-11-653925-M In the Matter of the Petition for Compromise of Minor's Claim by Danelia Sanchez
A-11-653997-M In the Matter of the Petition for Compromise of Minor's Claim by Maria Hann
A-12-654142-C Shelly Logan, Plaintiff(s) vs. Wells Fargo Home Loans, Defendant(s)
A-12-654144-C Demi Wolfe, Plaintiff(s) vs. Helen Fernandez, Defendant(s)
A-12-654179-M In the Matter of the Petition for Compromise of Minor's Claim by Darlene Heckman
A-12-654213-C Citibank, Plaintiff(s) vs. Robert Price, Defendant(s)
A-12-654436-C Katrin Buell, Plaintiff(s) vs. Crossroads III Homeowners Association Inc, Defendant(s)
A-12-654772-C Nicole Soria, Plaintiff(s) vs. Dennis Rodis, Defendant(s)

A-12-654879-C Evelyn Borowicz, Plaintiff(s) vs. Edgewater Gaming, Defendant(s)
 A-12-654906-C American Express Centurion Bank, Plaintiff(s) vs. David Hill, Defendant(s)
 A-12-655355-C Nevada Dept of Public Safety, Plaintiff(s) vs. One (1) Glock 9mm Model 19 Handgun (s/n RAW256) et. al., Defendant(s)
 A-12-655629-C Michael Tom, Plaintiff(s) vs. R Mackey, Jr., Defendant(s)
 A-12-655846-M In the Matter of the Petition for Compromise of Minor's Claim by Raul Carmona
 A-12-656183-C Ford Motor Credit Company LLC, Plaintiff(s) vs. Steven Spindel, Defendant(s)
 A-12-656484-M In the Matter of the Petition for Compromise of Minor's Claim by Javier Santillanes
 A-12-656583-C Nicole Greco, Plaintiff(s) vs. Joseph Dluhy, Defendant(s)
 A-12-657010-F Anita Nash, Plaintiff(s) vs. Robert Preacely, Defendant(s)
 A-12-657028-C James Hester, Plaintiff(s) vs. Daniel Pendelton MD, Defendant(s)
 A-12-657707-C Amy Hinton, Plaintiff(s) vs. Richard Zerr, Defendant(s)
 A-12-658400-C Lawrence Callahan IRA, Plaintiff(s) vs. Gaming Network, Defendant(s)
 A-12-658712-C Tracy Lilly, Plaintiff(s) vs. Richard Flanzer, Defendant(s)
 A-12-658825-C Citibank, Plaintiff(s) vs. Justin Eberling, Defendant(s)
 A-12-658963-J Cannon Cochran Management Services, Inc., Plaintiff(s) vs. David Velarde, Defendant(s)
 A-12-659660-C Henderson City of, Plaintiff(s) vs. 2007 Mazda, Defendant(s)
 A-12-659677-C Nevada Employment Security Department, Plaintiff(s) vs. Quid Corp, Defendant(s)
 A-12-659968-C Vincent Caruso, Plaintiff(s) vs. Richard Pocoroba, Defendant(s)
 A-12-660390-M In the Matter of the Petition for Compromise of Minor's Claim by Bernstein and Poisson
 A-12-660696-C Deutsche Bank National Trust Company, Plaintiff(s) vs. Jorge Zepeda, Defendant(s)
 A-12-660840-C Charleston Auto Parts, Inc., Plaintiff(s) vs. New Look Collision Center, LLC, Defendant(s)
 A-12-660889-C Alitza Martinez, Plaintiff(s) vs. Valerie Gallegos, Defendant(s)
 A-12-660996-C Zekarias Bekele, Plaintiff(s) vs. Dezarae Schwegel, Defendant(s)
 A-12-661127-J Wayne Daniels, Plaintiff(s) vs. Nevada Dept Of Motor Vehicles, Defendant(s)
 A-12-661231-W Bank of the West, Plaintiff(s) vs. State of Nevada ex rel. Department of Motor Vehicles, Defendant(s)

 A-12-661292-C Citibank, N.A. , Plaintiff(s) vs. Brittany Sims, Defendant(s)
 A-12-662062-C Victor Quintero-Gallarzo, Plaintiff(s) vs. Crystal Hernandez, Defendant(s)
 A-12-662063-C Las Vegas Metropolitan Police Department, Plaintiff(s) vs. U S Currency \$756.00, Defendant(s)
 A-12-662174-C Roman Mousselimian, Plaintiff(s) vs. Liberty Insurance Corporation, Defendant(s)
 A-12-662266-C Clear Channel Outdoor Inc, Plaintiff(s) vs. Ajax Bail Bonds LLC, Defendant(s)
 A-12-662588-C Advantage Services, LLC, Plaintiff(s) vs. Resort Stays Marketing, LLC, Defendant(s)
 A-12-662627-C Dennis Casteel, Plaintiff(s) vs. Seterus, Inc., Defendant(s)
 A-12-662651-C Charles Thompson, Plaintiff(s) vs. Advantage Services LLC, Defendant(s)
 A-12-662786-C ABNB Federal Credit Union, Plaintiff(s) vs. Kelly Cady, Defendant(s)
 A-12-663422-C Las Vegas Metropolitan Police Department, Plaintiff(s) vs. U S Currency \$3,521.00, Defendant(s)
 A-12-663527-C Sqaure 1, Inc., Plaintiff(s) vs. Acclaim Engineering and Associates, Inc., Defendant(s)
 A-12-663537-C Capital One Bank, Plaintiff(s) vs. Joseph Landis, Defendant(s)
 A-12-663630-J Susan Canela, Plaintiff(s) vs. Employment Security Division State of Nevada, Defendant(s)
 A-12-663754-C Nevada Employment Security Dept., Plaintiff(s) vs. Tyler Gardner, Defendant(s)
 A-12-663924-C Susan Moorman, Plaintiff(s) vs. JPS Estate Liquidation LLC, Defendant(s)
 A-12-664030-C Select Portfolio Servicing, Inc., Plaintiff(s) vs. Eric Bowers, Defendant(s)
 A-12-664078-C Jose Vazquez, Plaintiff(s) vs. Jane Way, Defendant(s)
 A-12-664170-C Veronica Epstein, Plaintiff(s) vs. Natalino Ignagni, Defendant(s)
 A-12-664219-C Michael Rosario, Plaintiff(s) vs. Patricia Sawyer , Defendant(s)
 A-12-664826-C Desiree Dipuzo, Plaintiff(s) vs. Safeway Stores Incorporated, Defendant(s)
 A-12-665153-C Ashlee Wallis, Plaintiff(s) vs. Elizabeth Zorrilla, Defendant(s)
 A-12-665283-C Mazda American Credit, Plaintiff(s) vs. Patricia Hylander, Defendant(s)
 A-12-665388-C Robert Brown, Plaintiff(s) vs. Ashley Sandoval-Montoya, Defendant(s)
 A-12-665393-C Jeni Duran, Plaintiff(s) vs. Eddie Aceves, Defendant(s)
 A-12-665405-C Bank of New York Mellon, Plaintiff(s) vs. Tony Moreno, Defendant(s)
 A-12-665415-C Nevada Employment Security Dept, Plaintiff(s) vs. Kristopher Boesen, Defendant(s)
 A-12-665427-C Oasis Hotels and Resorts SA de CV, Plaintiff(s) vs. International Prophets LLC, Defendant(s)
 A-12-665634-M In the Matter of the Petition for Compromise of Minor's Claim by Cynthia Chavez
 A-12-665754-C Citibank, Plaintiff(s) vs. Reyna Terrero , Defendant(s)
 A-12-665809-C Kelly Andrews, Plaintiff(s) vs. Catherine Sells, Defendant(s)
 A-12-666011-C Stephanie Generette, Plaintiff(s) vs. 155 East Tropicana, LLC, Defendant(s)
 A-12-666164-C National Collegiate Master Student Loan Trust - I, Plaintiff(s) vs. Ashanti Lewis, Defendant(s)

A-12-666298-C Travelers Casualty and Surety Company of America, Plaintiff(s) vs. Boulder Sand and Gravel Inc, Defendant(s)

A-12-666300-C Rebecca Reyes, Plaintiff(s) vs. Shannon Flores, Defendant(s)

A-12-666565-C Patricia Appellof, Plaintiff(s) vs. Michael Rogers, Defendant(s)

A-12-667157-C Fina Balistreri, Plaintiff(s) vs. Beldy Electric Inc, Defendant(s)

A-12-667313-C Henderson City of, Plaintiff(s) vs. \$833.00 U S Currency, Defendant(s)

A-12-667345-C Olga Alejo, Plaintiff(s) vs. Jeffrey Jack, Defendant(s)

A-12-667523-C Jamie Burse, Plaintiff(s) vs. Kim Yongbae, Defendant(s)

A-12-667708-C Elisabeta Andone, Plaintiff(s) vs. Kavitha Sajja, Defendant(s)

A-12-668430-F Butte County Credit Bureau, Plaintiff(s) vs. Jason McGuire, Defendant(s)

A-12-669149-C Jose Guerrero, Plaintiff(s) vs. KECJ LLC, Defendant(s)

A-12-669461-C Nevada Employment Security Dept, Plaintiff(s) vs. Digital Concepts LV LLC, Defendant(s)

A-12-669567-C Clark County School District, Plaintiff(s) vs. Karen Urrieta, Defendant(s)

A-12-669741-C Wynn Las Vegas LLC, Plaintiff(s) vs. John Harvey, Defendant(s)

A-12-670208-C Jacob Garnica, Plaintiff(s) vs. David Znati, Defendant(s)

A-12-670228-C American Express Bank FSB, Plaintiff(s) vs. Elisa Gonzalez, Defendant(s)

A-12-670553-C Las Vegas Metropolitan Police Department, Plaintiff(s) vs. U.S. Currency \$1,373.00, Defendant(s)

A-12-670589-C A Ibarra-Gaspar, Plaintiff(s) vs. Doctor Mahakian, Defendant(s)

A-12-670637-C Tex Boisey, Plaintiff(s) vs. Ephraim Kiama, Defendant(s)

A-12-670842-C Select Porfolio Servicing Inc, Plaintiff(s) vs. Zelender Dye, Defendant(s)

A-12-670849-C Vion Holdings LLC, Plaintiff(s) vs. Victor Navarro-Perez, Defendant(s)

A-12-671090-C Janice Bell, Plaintiff(s) vs. El Pollo Loco Inc, Defendant(s)

A-12-671199-J Gonzalo Soto-Mendez, Plaintiff(s) vs. Premier Staffing Solutions, Defendant(s)

A-12-671827-C Paola Hinojo, Plaintiff(s) vs. Millard Mall Services Inc, Defendant(s)

A-12-672640-C Thomas Romeo, Plaintiff(s) vs. Ariel Miller, Defendant(s)

A-12-673401-C Nevada Employment Security Department of, Plaintiff(s) vs. Tivoli Lunettes, LLC, Defendant(s)

A-12-673555-C Capital One Bank USA, Plaintiff(s) vs. Elala Frank, Defendant(s)

A-12-673696-C Nevada Employment Security Department of, Plaintiff(s) vs. Horashio McCraney, Defendant(s)

A-12-673868-C Girma Zaid, Plaintiff(s) vs. Lori Evans, Defendant(s)

A-13-674327-M In the Matter of the Petition for Compromise of Minor's Claim by Jason Kennedy

A-13-674674-M In the Matter of the Petition for Compromise of Minor's Claim by Shelamir Ynigo

A-13-674846-C Francisco Ramirez, Plaintiff(s) vs. Charmara Momodu, Defendant(s)

A-13-674855-C U.S. Bank National Association, Plaintiff(s) vs. Maurice Wilson, Defendant(s)

A-13-675368-C Citibank, Plaintiff(s) vs. Lisa Peters, Defendant(s)

A-13-675517-C Cecilia Rueda, Plaintiff(s) vs. Ronald Hillock, M.D., Defendant(s)

A-13-675557-C Shawana Patterson-Jervis, Plaintiff(s) vs. Mauro Chavarria-Jervis, Defendant(s)

A-13-675862-C Silver State Schools Credit Union, Plaintiff(s) vs. Jessica Rosario-Guzman, Defendant(s)

A-13-676123-C Everbank, Plaintiff(s) vs. Estate of Jason I Vela, Defendant(s)

A-13-676718-C 3182 Tarpon 103 Trust, Plaintiff(s) vs. Vincent Sammarco , Defendant(s)

A-13-676874-C Jose Salguero, Plaintiff(s) vs. Kelvin Finkley, Defendant(s)

A-13-676886-C Marcy Gold, Plaintiff(s) vs. Healthsouth of Henderson, Inc., Defendant(s)

A-13-677009-C Nevada Employment Security Dept, Plaintiff(s) vs. New Image Auto Glass LLC, Defendant(s)

A-13-677363-C Kelvin Finkley, Plaintiff(s) vs. Robert Rossum, Defendant(s)

A-13-677424-C Leslie Winter, Plaintiff(s) vs. Mauricio Villazon-Diaz, Defendant(s)

A-13-677743-M In the Matter of the Petition for Compromise of Minor's Claim by Erica Hernandez -Torres

A-13-677758-C Santa Fe Auto Insurance Company Inc, Plaintiff(s) vs. Fabreonne Tillman, Defendant(s)

A-13-677848-C Jenifer Bonsell, Plaintiff(s) vs. Heather Barrera, Defendant(s)

A-13-678289-C Robert D Vannah Chtd, Plaintiff(s) vs. Tony Parker, Defendant(s)

A-13-678382-C Nevada Employment Security Division, Plaintiff(s) vs. Geri Bjorkman, Defendant(s)

A-13-678894-C NCEP, LLC, Plaintiff(s) vs. Jermaine Jones, Defendant(s)

A-13-678906-F Integrated Dealers Financial Inc, Plaintiff(s) vs. Jazz Carter, Defendant(s)

A-13-679111-C Gilberto Garza-Rodriguez, Plaintiff(s) vs. Pedro Guzman, Defendant(s)

A-13-679135-C Robert Ward, Plaintiff(s) vs. Venetian Casino Resorts LLC, Defendant(s)

A-13-679259-C Susannah Schmier , Plaintiff(s) vs. Bernice Amiel , Defendant(s)

A-13-679400-M In the Matter of the Petition for Compromise of Minor's Claim by April Symmonds

A-13-679587-C Autovest LLC, Plaintiff(s) vs. Raynado Sykes, Defendant(s)

A-13-679662-C Rosa Najera, Plaintiff(s) vs. Arturo Mejia, Defendant(s)

A-13-679786-C Portfolio Recovery Associates LLC, Plaintiff(s) vs. Skye Cloud, Defendant(s)

A-13-679937-C Fernando Valeriano - Lising , Plaintiff(s) vs. Tyler Hedrick , Defendant(s)

A-13-680033-C Portfolio Recovery Associates LLC, Plaintiff(s) vs. Nathaniel Ballard , Defendant(s)
 A-13-680042-C Portfolio Recovery Associates LLC, Plaintiff(s) vs. Carol Powell , Defendant(s)
 A-13-680464-C Unifund CCR Partners, Plaintiff(s) vs. Elaine Lucero, Defendant(s)
 A-13-680467-C Unifund CCR Partners, Plaintiff(s) vs. Thomas Leffler, Defendant(s)
 A-13-680469-C Unifund CCR Partners, Plaintiff(s) vs. Jacqueline Bell, Defendant(s)
 A-13-680784-C Carly Sloan, Plaintiff(s) vs. Brad Goodman, Defendant(s)
 A-13-681414-C Lester Malumbrez, Plaintiff(s) vs. Jose Guerra-Escalera, Defendant(s)
 A-13-681464-C Hannah Waggoner, Plaintiff(s) vs. Coast National Insurance Company, Defendant(s)
 A-13-681690-C Nevada Employment Security Division, Plaintiff(s) vs. Michell Costas, Defendant(s)
 A-13-681971-C American Express Centurion Bank, Plaintiff(s) vs. Keith Anderson, Defendant(s)
 A-13-682462-C Fahima Khalaf, Plaintiff(s) vs. American Family Insurance Company, Defendant(s)
 A-13-682549-C Nevada Employment Security Division, Plaintiff(s) vs. Rush Hour Inc, Defendant(s)
 A-13-683248-C Dulce Bazan, Plaintiff(s) vs. Aria Resort and Casino LLC, Defendant(s)
 A-13-683763-C Las Vegas Metropolitan Police Department, Plaintiff(s) vs. U.S. Currency \$54,520.00, Defendant(s)
 A-13-684008-C Jesus Fregoso-Ochoa, Plaintiff(s) vs. Alejandro Handy, Defendant(s)
 A-13-684857-M In the Matter of the Petition for Compromise of Minor's Claim by Joshua Harris, ESQ
 A-13-685512-C Mark Wahba, Plaintiff(s) vs. Yohannes Shaumye, Defendant(s)
 A-13-686201-C Toyota Motor Credit Corporation, Plaintiff(s) vs. Robert Pickthall, Defendant(s)
 A-13-686503-C Alicia Patton, Plaintiff(s) vs. MGM Grand Hotel LLC, Defendant(s)
 A-13-686719-C Stacy Jackson, Plaintiff(s) vs. Arturo Mendoza-Mejia, Defendant(s)
 A-13-686822-C Old Republic Insurance Company, Plaintiff(s) vs. Vicente Hector Gatan, Defendant(s)
 A-13-687055-C Allan Miranda, Plaintiff(s) vs. David Lacy, Defendant(s)
 A-13-687240-C James Rysedorph, Plaintiff(s) vs. Harrah's Las Vegas LLC, Defendant(s)
 A-13-687384-C Mirlany Barajas, Plaintiff(s) vs. Robert Russum, Defendant(s)
 A-13-688009-C Sarah Sheppard, Plaintiff(s) vs. Blackbird Realty and Management Inc, Defendant(s)
 A-13-688018-C Keith Lehman, Plaintiff(s) vs. Green Promotions Inc, Defendant(s)
 A-13-688350-C Check City Partnership LLC, Plaintiff(s) vs. Nevada Dept of Business and Industry Financial Division, Defendant(s)
 A-13-688379-C Clark County Collection Service LLC, Plaintiff(s) vs. Nevada Dept of Business and Industry Financial Division, Defendant(s)
 A-13-688424-C United Services Automobile Association, Plaintiff(s) vs. Robert Russum, Defendant(s)
 A-13-688728-C James Avalon, Plaintiff(s) vs. Eduardo Jimenez, Defendant(s)
 A-13-689070-C Lilianna Lopez, Plaintiff(s) vs. Ernesto Hernandez, Defendant(s)
 A-13-689227-C Michael Traynor, Plaintiff(s) vs. Joseph Jackson, Defendant(s)
 A-13-689492-C Wells Fargo Bank, Plaintiff(s) vs. Vibert Frederick, Defendant(s)
 A-13-689741-C Craig Cohen, Plaintiff(s) vs. Seccion Amarilla USA LLC, Defendant(s)
 A-13-689833-C Earl Jacobson, Plaintiff(s) vs. Pamela Kemper, Defendant(s)
 A-13-689869-C ALS Development and Management Corporation, Plaintiff(s) vs. Mathew Cathcart, Defendant(s)
 A-13-689954-C North Las Vegas City of, Plaintiff(s) vs. U.S. Currency \$5,910.00, Defendant(s)
 A-13-690366-C Chris Sullivan, Plaintiff(s) vs. William Hanson, Defendant(s)
 A-13-690402-C Ryan Burger, Plaintiff(s) vs. Allstate Fire and Casualty Insurance Company, Defendant(s)
 A-13-690649-C Mary Hamberlin, Plaintiff(s) vs. Tropicana Entertainment Inc, Defendant(s)
 A-13-691969-C Yosepp Terry, Plaintiff(s) vs. Benjamin Corso, Defendant(s)
 A-13-692028-C Christopher Bosted, Plaintiff(s) vs. Maria Diaz-Alarcon, Defendant(s)
 A-13-692277-C Nevada Employment Security Division, Plaintiff(s) vs. Community Benefits Consortium, Inc., Defendant(s)
 A-13-692298-C Jose Bernal-Quintero, Plaintiff(s) vs. Dustin Jensen, Defendant(s)
 A-13-693411-C US Bank National Association, Plaintiff(s) vs. Jong Park, Defendant(s)
 A-13-693815-C Michael Hill, Plaintiff(s) vs. Lauren Longmire, Defendant(s)
 A-14-694016-C Allstate Fire and Casualty Insurance Company, Plaintiff(s) vs. Jayson Wade, Defendant(s)
 A-14-694038-C Rafael Medina, Plaintiff(s) vs. Afterhours Clubwears LLC, Defendant(s)
 A-14-694086-C Easy Loans Corp, Plaintiff(s) vs. Alvin Steiner, Defendant(s)
 A-14-694213-C Karen Bromley, Plaintiff(s) vs. Moges Tesfaye, Defendant(s)
 A-14-694497-C Margaret Scott, Plaintiff(s) vs. Lancaster Colony Corporation, Defendant(s)
 A-14-694769-C Yolanda Ferrer, Plaintiff(s) vs. Jaime Villegas, Defendant(s)
 A-14-694812-C Portfolio Recovery Associates LLC, Plaintiff(s) vs. Teresa Estrada, Defendant(s)
 A-14-695016-C Nancy Baldenegro, Plaintiff(s) vs. Carlos Vargas-Martinez, Defendant(s)
 A-14-695329-C Sefaddin Tullu, Plaintiff(s) vs. Leanne Ross, Defendant(s)

A-14-695425-C Unifund CCR Partners, Plaintiff(s) vs. Alvaro Pineda, Defendant(s)
 A-14-695751-C Estella Santistevan, Plaintiff(s) vs. Broadacres Open Air Marketplace LLC, Defendant(s)
 A-14-695774-C Michael Vannozzi, Plaintiff(s) vs. Escrow of the West, Defendant(s)
 A-14-695942-C Dwight Kuykendall, Plaintiff(s) vs. Christopher Burcham, Defendant(s)
 A-14-696287-C Paul Ortega, Plaintiff(s) vs. Sheila Grenier, Defendant(s)
 A-14-696423-F LVNV Funding LLC, Plaintiff(s) vs. Patricia Briggs, Defendant(s)
 A-14-696821-C Starpoint Resort Group Inc, Plaintiff(s) vs. Irene Denke, Defendant(s)
 A-14-698032-C Salud Butcher vs. Wal-Mart Stores, Inc. d/b/a Walmart
 A-14-698121-C North Las Vegas Police Department, Plaintiff(s) vs. Christopher Burcham, Defendant(s)
 A-14-698150-C Antonio Diaz, Plaintiff(s) vs. Jeanna Domingo-Chavez, Defendant(s)
 A-14-698391-C Waiel Nada, Plaintiff(s) vs. Benjamin Corso, Defendant(s)
 A-14-698565-C Anthony Diiorio, Plaintiff(s) vs. St. Joseph Transitional Rehabilitation Center, Defendant(s)
 A-14-699076-C SFR Investments Pool 1 LLC, Plaintiff(s) vs. Bank of America NA, Defendant(s)
 A-14-699206-C Brenda Nelson, Plaintiff(s) vs. Harrah's Las Vegas Propco LLC, Defendant(s)
 A-14-699242-C American Express Bank, FSB, Plaintiff(s) vs. Oscar Isidoro, Defendant(s)
 A-14-699330-C Gary Guy Wilson, A.I.A., P.C., Plaintiff(s) vs. Nick Till, Defendant(s)
 A-14-699400-C Robert Keyes, Plaintiff(s) vs. Joseph Chilton, Defendant(s)
 A-14-699479-C Justin Stockton, Plaintiff(s) vs. Green Valley Ranch Resort, Defendant(s)
 A-14-699730-P In the Matter of the Petition of Laur B Fitzpatrick
 A-14-699796-C Farmers Insurance Exchange, Plaintiff(s) vs. American Home Shield Corporation, Defendant(s)
 A-14-700007-C Lee Johnson, Plaintiff(s) vs. Sandra Reyna, Defendant(s)
 A-14-700078-C Alex Cluff, Plaintiff(s) vs. Nevada Speedway LLC, Defendant(s)
 A-14-700117-C Tienchai Tubtieng, Plaintiff(s) vs. Jason Levin, Defendant(s)
 A-14-700225-C Jerry McGuire, Plaintiff(s) vs. Jeffrey Hendrickson, Defendant(s)
 A-14-700292-C United Services Automobile Association, Plaintiff(s) vs. Maria Delima, Defendant(s)
 A-14-700394-C Lisa Myk, Plaintiff(s) vs. New York Life Insurance Company, Defendant(s)
 A-14-700567-C ARC Paper LLC, Plaintiff(s) vs. Gill's Printing and Business Forms Inc, Defendant(s)
 A-14-701107-C Cheryle Cathcart, Plaintiff(s) vs. Universal North America Insurance Company, Defendant(s)
 A-14-701226-C Tony Archuletta, Plaintiff(s) vs. Nationwide Insurance Company of America, Defendant(s)
 A-14-701254-P In the Matter of the Petition of 15 Step LLC
 A-14-701478-C Kevin Chan, Plaintiff(s) vs. Copperhead Trails SLMC, Defendant(s)
 A-14-701537-C Nevada Employment Security Division, Plaintiff(s) vs. James Tyler, Defendant(s)
 A-14-701770-C Jonathan Ordonez, Plaintiff(s) vs. Nevada Checker Cab Corporation, Defendant(s)
 A-14-701846-F William Genord, Plaintiff(s) vs. Preferred Wholesale Travel, Defendant(s)
 A-14-701861-C Valeria Medina, Plaintiff(s) vs. Marla Morales-Hurtado, Defendant(s)
 A-14-701915-C Johnnie Graves, Plaintiff(s) vs. Paul Hayes, Defendant(s)
 A-14-702008-C Marsha Anderson, Plaintiff(s) vs. Robert Russum, Defendant(s)
 A-14-702422-C Brenda Kester, Plaintiff(s) vs. Lajuana Gamble, Defendant(s)
 A-14-702953-C Unifund CCR Partners, Plaintiff(s) vs. Judith Fordon, Defendant(s)
 A-14-703229-C American Express Bank FSB, Plaintiff(s) vs. Gregory Havill, Defendant(s)
 A-14-703369-C Mauricio Diez-Herrera, Plaintiff(s) vs. Plamen Djvizov, Defendant(s)
 A-14-703655-C Jesse Vaughn, Plaintiff(s) vs. Richard Holder, Defendant(s)
 A-14-703678-C Jason Black, Plaintiff(s) vs. Edward Ashman, M.D., Defendant(s)
 A-14-704048-J Centennial Toyota, Petitioner(s) vs. George Bandek, Respondent(s)
 A-14-704511-C National Default Servicing Corporation, Plaintiff(s) vs. Antonio Santes, Defendant(s)
 A-14-704558-J Kamil Croom, Petitioner(s) vs. Employment Security Division, Respondent(s)
 A-14-704901-C Benjamin Luis, Plaintiff(s) vs. Maria Mejia, Defendant(s)
 A-14-705157-C Joseph Alexander, Plaintiff(s) vs. George Walters, Defendant(s)
 A-14-705211-M In the Matter of the Petition for Compromise of Minor's Claim by Shilo Roberts
 A-14-705327-C William Jones, Plaintiff(s) vs. Kerrie Kissane, Defendant(s)
 A-14-705419-C Robert Magahan, Plaintiff(s) vs. Fernando Esparza, Defendant(s)
 A-14-705681-C TRP Fund IV LLC, Plaintiff(s) vs. US Bank National Association, Defendant(s)
 A-14-705958-C Crescent Bank & Trust, Plaintiff(s) vs. Donear Wiggins, Defendant(s)
 A-14-706343-C John Kolvacin, Plaintiff(s) vs. LTS Transportation Inc, Defendant(s)
 A-14-706355-C Mercedes Sanchez-Rodriguez, Plaintiff(s) vs. Derion Shelton, Defendant(s)
 A-14-706405-C Alexander Lurkins, Plaintiff(s) vs. Graham Mitchell St-Peter, Defendant(s)
 A-14-707005-C Las Vegas Metropolitan Police Department, Plaintiff(s) vs. U.S. Currency \$1,530.00, Defendant(s)
 A-14-707200-C American Express Centurion Bank, Plaintiff(s) vs. Efrain Reynoso, Defendant(s)
 A-14-707211-C Jennifer Baca, Plaintiff(s) vs. Gregory Starks, Defendant(s)

A-14-707407-C Michael Katin, M.D., Plaintiff(s) vs. Sin City Comedy LLC, Defendant(s)
 A-14-707456-C Nevada Employment Security Division, Plaintiff(s) vs. Nicholas Martinez, Defendant(s)
 A-14-707559-C Nevada Employment Security Division, Plaintiff(s) vs. Bradley Thomas, Defendant(s)
 A-14-707745-M In the Matter of the Petition for Compromise of Minor's Claim by Cruz Aguilar
 A-14-707813-C Discover Bank, Plaintiff(s) vs. Robert Friday, Defendant(s)
 A-14-707819-C Nevada Employment Security Division, Plaintiff(s) vs. Adam Frame, Defendant(s)
 A-14-708056-C Wynn Las Vegas LLC, Plaintiff(s) vs. Young Kwon, Defendant(s)
 A-14-708253-C Carlene Kelly, Plaintiff(s) vs. Paris Las Vegas Operating Company LLC, Defendant(s)
 A-14-708476-C Tony Love, Plaintiff(s) vs. 99 Cents Only Stores LLC, Defendant(s)
 A-14-708649-C Jorge Carroll, Plaintiff(s) vs. Danny Capps, Defendant(s)
 A-14-708678-C Susan Kruse, Plaintiff(s) vs. Damon Kramer, Defendant(s)
 A-14-709609-C Mueanchanok Pedigo, Plaintiff(s) vs. Amber Stevenson, Defendant(s)
 A-14-710037-C Susan Morgan, Plaintiff(s) vs. Hobbes Enterprises Inc, Defendant(s)
 A-14-710400-C 4240 Lamb Holdings LLC, Plaintiff(s) vs. Phouthasak Thiphakhinkeo, Defendant(s)
 A-14-710507-C Yvonne Archie, Plaintiff(s) vs. Martha Quevedo, Defendant(s)
 A-14-710725-C Service Employee International Union, Local 1107, Plaintiff(s) vs. Eleazar Martinez, Defendant(s)
 A-14-710750-C Discover Bank, Plaintiff(s) vs. Karen Bailey, Defendant(s)
 A-14-711302-M In the Matter of the Petition for Compromise of Minor's Claim by Yesenia Valdez
 A-14-711403-M In the Matter of the Petition for Compromise of Minor's Claim by Alma Camarena
 A-15-711792-C American Express Bank, FSB , Plaintiff(s) vs. Aklakur Rahman, Defendant(s)
 A-15-711875-C Henderson City of, Plaintiff(s) vs. \$2,273.00 US Currency, Defendant(s)
 A-15-711998-A Shirley Young, Appellant vs. 707 Property Management LLC, Respondent
 A-15-712149-C Nevada Employment Security Division, Plaintiff(s) vs. Paul Zieser, Defendant(s)
 A-15-712158-C Chun Lee, Plaintiff(s) vs. Kona Howard, Defendant(s)
 A-15-712395-C Leon Henry, Plaintiff(s) vs. Clark County School District, Defendant(s)
 A-15-712460-A Crystal Deary, Appellant vs. Elwis Donis, Respondent
 A-15-712471-C Jonathan Day Harding vs. Dale Warner Walsh
 A-15-712956-C Byron Mills, Plaintiff(s) vs. Jennifer1495, Defendant(s)
 A-15-713343-C Brandon Luke, Plaintiff(s) vs. Devlin Rodriguez, Defendant(s)
 A-15-713396-A Chance Hardy, Appellant vs. SFR Investments Pool 1 LLC, Respondent
 A-15-713754-C Rolando Velasquez, Plaintiff(s) vs. Bernadette Cueto, Defendant(s)
 A-15-714229-C Michael Clabo, Plaintiff(s) vs. Raymond Way, Defendant(s)
 A-15-714386-C Bruce Saavedra, Plaintiff(s) vs. Daniel McCreight, Defendant(s)
 A-15-714725-C Terrence Jones, Plaintiff(s) vs. Golden Nugget Hotel and Casino, Defendant(s)
 A-15-714976-C Roberto Elozua, Plaintiff(s) vs. Lawrence Rowland, Defendant(s)
 A-15-715254-C First 100 LLC, Plaintiff(s) vs. Wilmington Trust National Association, Defendant(s)
 A-15-715360-C Chanda Jones, Plaintiff(s) vs. American Access Casualty Company, Defendant(s)
 A-15-715372-C Robert Marsh, Plaintiff(s) vs. Las Vegas City of, Defendant(s)
 A-15-715400-C Manuel Chavez, Plaintiff(s) vs. Kelly Glunt, Defendant(s)
 A-15-715536-C Michael Holliday, Plaintiff(s) vs. Cheryl Holliday, Defendant(s)
 A-15-715790-M In the Matter of the Petition for Compromise of Minor's Claim by Stacy Fisher
 A-15-715924-C Westlake Services LLC, Plaintiff(s) vs. Maynor Rosales, Defendant(s)
 A-15-716193-C Dino Cerasoli, Plaintiff(s) vs. Joe Lombardo, Defendant(s)
 A-15-716338-C Janos Hajdar, Plaintiff(s) vs. SFG Mortgage, Defendant(s)
 A-15-717105-C Marcus & Millichap Real Estate Investment Services Inc, Plaintiff(s) vs. Alfred Barbagallo, Defendant(s)

 A-15-717170-C Wendy Flores , Plaintiff(s) vs. Cornerstone Home Owners Association, Defendant(s)
 A-15-717419-C Hambardzum Mamikonyan, Plaintiff(s) vs. Juan Chavez, Defendant(s)
 A-15-717513-C Midfirst Bank, Plaintiff(s) vs. Fifth Third Bank, Defendant(s)
 A-15-717518-C Ivica Veric, Plaintiff(s) vs. Shawna Macias, Defendant(s)
 A-15-717523-C Michelle LeBlanc, Plaintiff(s) vs. Starbucks Corporation, Defendant(s)
 A-15-717687-C Jacqueline Walsh, Plaintiff(s) vs. Casey Soliwoda, Defendant(s)
 A-15-717730-C Osvaldo Gonzalez-Lias, Plaintiff(s) vs. Ali Taghdir, Defendant(s)
 A-15-717792-A Rachel Singel, Appellant vs. CAH Realty Nevada LLC, Respondent
 A-15-717920-C Andrea Lacy, Plaintiff(s) vs. First Initiative LLC, Defendant(s)
 A-15-717954-P In the Matter of the Petition of CBC Settlement Funding LLC
 A-15-718311-C One Nevada Credit Union , Plaintiff(s) vs. Ronald Burko, Defendant(s)
 A-15-718410-C Zarina Harrison, Plaintiff(s) vs. Claudia Del Hoyo, Defendant(s)
 A-15-718436-A Debbie Thompson, Appellant vs. Anne Welser, Respondent

A-15-718503-C Garrett Winslow, Plaintiff(s) vs. Fashion Show Mall LLC, Defendant(s)
 A-15-718527-C Araceli Vicente, Plaintiff(s) vs. Sujiroj Charoenchote, Defendant(s)
 A-15-718531-C Robert Militano, Plaintiff(s) vs. Ali Taghdir, Defendant(s)
 A-15-718631-C Virginia Smit, Plaintiff(s) vs. Summerhill Owner LLC, Defendant(s)
 A-15-718667-F Bullhead City Hospital Corporation, Plaintiff(s) vs. Robin Santos, Defendant(s)
 A-15-718668-C Antonio Bryant, Plaintiff(s) vs. Gurunandh Duvvuru, Defendant(s)
 A-15-718866-C James Martinez, Plaintiff(s) vs. Rylee Robinson, Defendant(s)
 A-15-719029-A Fred Hartjen, III, Appellant vs. Desert Manor Apartments, Respondent
 A-15-719037-M In the Matter of the Petition for Compromise of Minor's Claim by Kenia Villareal-Gonzalez
 A-15-719088-C Shawn Baggett, Plaintiff(s) vs. Smith's Food & Drug Centers Inc, Defendant(s)
 A-15-719367-C Paul Trowe, Plaintiff(s) vs. Demont Daniel , Defendant(s)
 A-15-719401-M In the Matter of the Petition for Compromise of Minor's Claim by Jose Eguizabal
 A-15-719519-C State Farm Insurance Company, Plaintiff(s) vs. Nishma Chettri, Defendant(s)
 A-15-719525-C Matthew Harrison, Plaintiff(s) vs. Elie Elhajj, Defendant(s)
 A-15-719567-A Thecia Brown, Appellant vs. Chin Lee, Respondent
 A-15-719639-C Vigilant Insurance Company, Plaintiff(s) vs. Westar Kitchen & Bath LLC, Defendant(s)
 A-15-719672-C Doris Cortez-Coreas, Plaintiff(s) vs. Kira Ross, Defendant(s)
 A-15-719813-C Tonya Hendershot, Plaintiff(s) vs. Dunia Gutierrez, Defendant(s)
 A-15-720189-C Eshete Worku, Plaintiff(s) vs. Kim Christian, Defendant(s)
 A-15-720344-C Courtney Molina, Plaintiff(s) vs. Wenyan Yu, Defendant(s)
 A-15-720624-C Friedman Revocable Living Trust, Plaintiff(s) vs. Richard Thomson, Defendant(s)
 A-15-720735-C Julia Eisenstein, Plaintiff(s) vs. Cynthia Smith, Defendant(s)
 A-15-720792-C Mary Maneiro, Plaintiff(s) vs. Ali Taghdir, Defendant(s)
 A-15-720881-C Las Vegas Metropolitan Police Department, Plaintiff(s) vs. U.S. Currency \$65,060.00, Defendant(s)
 A-15-721012-C Ararat Mkrtchian, Plaintiff(s) vs. Mandalay Corp, Defendant(s)
 A-15-721593-C Nevada Employment Security Division, Plaintiff(s) vs. Shawn Newell, Defendant(s)
 A-15-721894-C National Collegiate Student Loan Trust 2006-3, Plaintiff(s) vs. Tasha Vick, Defendant(s)
 A-15-722116-C Sharon Chappelle, Plaintiff(s) vs. Diamond Sands Apartments LLC, Defendant(s)
 A-15-722537-C Christiana Trust, Plaintiff(s) vs. SFR Investments Pool 1 LLC, Defendant(s)
 A-15-722544-M In the Matter of the Petition for Compromise of Minor's Claim by Erica Soriano
 A-15-722682-C Dennis Wenglarz, Plaintiff(s) vs. Chase Bank USA, N.A, Defendant(s)
 A-15-722687-C Teely Rhyne, Plaintiff(s) vs. Experian Information Solutions, Inc., Defendant(s)
 A-15-723096-C Maria Robles-Montoya, Plaintiff(s) vs. Dandre Collins, Defendant(s)
 A-15-723222-C Citibank, N.A., Plaintiff(s) vs. E Valenzuela, Sr., Defendant(s)
 A-15-723424-C Jaydee Valencia, Plaintiff(s) vs. Summer Eastman, Defendant(s)
 A-15-723434-C Mendota Insurance Company, Plaintiff(s) vs. Ana Mesina, Defendant(s)
 A-15-723703-C Ruby Duncan, Plaintiff(s) vs. Nevada State of, Defendant(s)
 A-15-723931-C Derrick Deshazo, Plaintiff(s) vs. Catherine Ott, Defendant(s)
 A-15-724071-C Michael Rorman, Plaintiff(s) vs. Experian Information Solutions Inc, Defendant(s)
 A-15-724072-M In the Matter of the Petition for Compromise of Minor's Claim by Clarivel Catalan
 A-15-724187-C Donahue Schriber Realty Group LP, Plaintiff(s) vs. Richard Black, Defendant(s)
 A-15-724348-M In the Matter of the Petition for Compromise of Minor's Claim by Pamela Hilton
 A-15-724504-M In the Matter of the Petition for Compromise of Minor's Claim by Matthew Wheeler
 A-15-724560-C Faranak Abbasian, Plaintiff(s) vs. Xue Wang, Defendant(s)
 A-15-724714-C Armendariz Diesel Repair, Plaintiff(s) vs. Leonel Castillo Sr, Defendant(s)
 A-15-724959-C Las Vegas Metropolitan Police Department, Plaintiff(s) vs. U S Currency \$863.00, Defendant(s)
 A-15-725019-C Las Vegas Metropolitan Police Department, Plaintiff(s) vs. U S Currency \$3,678.00, Defendant(s)
 A-15-725726-C Hailu Robelle, Plaintiff(s) vs. 7 Eleven Corporation, Defendant(s)
 A-15-725887-C Ye-Ji Lee, Plaintiff(s) vs. Chata Holt, Defendant(s)
 A-15-726170-C Sean Garcia, Plaintiff(s) vs. Alex Paniagua Echevarria, Defendant(s)
 A-15-726513-M In the Matter of the Petition for Compromise of Minor's Claim by Josefina Esqueda
 A-15-727405-C Julio Polanco, Plaintiff(s) vs. Nijiana Hawkins, Defendant(s)
 A-15-727680-C Antonia Garcia-Cruz, Plaintiff(s) vs. Bodega Latina Corporation, Defendant(s)
 A-15-728213-C Keri Hayes, Plaintiff(s) vs. Mariann Harrison, Defendant(s)
 A-15-728658-C Insane Speed, LLC, Plaintiff(s) vs. Jeff Thompson, Defendant(s)
 A-15-728919-C Jimie Owsley, Plaintiff(s) vs. Tufguy Productions, Inc. , Defendant(s)
 A-15-729543-C Barbara August, Plaintiff(s) vs. Pahump Land Development LLC, Defendant(s)
 A-16-729811-F National Cinemedia, LLC, Plaintiff(s) vs. The Brian Evans Music Group, Inc., Defendant(s)

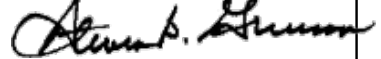
A-16-730409-C Juan De Dios Nevarez Pereda, Plaintiff(s) vs. Claudio Ladron de Guevara Jimenez, Defendant(s)
 A-16-730538-C Monroe Turner, Plaintiff(s) vs. Autocar LLC, Defendant(s)
 A-16-730554-F Hawaii Central Federal Credit Union, Plaintiff(s) vs. Timothy Rita, Jr., Defendant(s)
 A-16-730827-C Rafael Mondragon, Plaintiff(s) vs. Enmanuel Ortiz, Defendant(s)
 A-16-731097-C Daniel Hycz, Plaintiff(s) vs. Johnson Controls Inc, Defendant(s)
 A-16-731287-C Tyrone Dolendi, Plaintiff(s) vs. CBD Partners GP LLC, Defendant(s)
 A-16-731395-C Gregory Storey, Plaintiff(s) vs. Kanan Shannon, Defendant(s)
 A-16-731838-C Vegas Venture Llc, Plaintiff(s) vs. James Rosenberger, Defendant(s)
 A-16-731844-F Panitch, Schwarze, Belisario & Nadel Llp, Plaintiff(s) vs. Noninvasive Medical Technologies, Llc, Defendant(s)

A-16-732092-M In the Matter of the Petition for Compromise of Minor's Claim by Marcos Palmer-Delgado
 A-16-732123-C Lee Luckie, Plaintiff(s) vs. Darwin's LLC, Defendant(s)
 A-16-732130-F National Credit Acceptance Inc, Plaintiff(s) vs. Greg Roth, Defendant(s)
 A-16-732151-C Nevada Employment Security Division, Plaintiff(s) vs. Gerwayne Johnson, Defendant(s)
 A-16-732412-C Katherin Barros, Plaintiff(s) vs. Kevin Michael Kelly, Defendant(s)
 A-16-732454-M In the Matter of the Petition for Compromise of Minor's Claim by Charmaine Beverly
 A-16-732564-C Isaac Mann vs. Venetian Casino Resort, LLC
 A-16-732621-C Portfolio Recovery Associates LLC, Plaintiff(s) vs. Gary Irrthum, Defendant(s)
 A-16-732697-C Nevada Employment Security Division, Plaintiff(s) vs. Denise Naulls, Defendant(s)
 A-16-732987-M In the Matter of the Petition for Compromise of Minor's Claim by Patrick Freeman
 A-16-733496-C Raymond Blake, Plaintiff(s) vs. Bonanza LV Holdings LLC, Defendant(s)
 A-16-733582-C CACH, LLC, Plaintiff(s) vs. David Hill, Defendant(s)
 A-16-733896-C Carmax Business Services LLC, Plaintiff(s) vs. Terri Anderson-Brooks, Defendant(s)
 A-16-733912-C Alice Melesio-Incle, Plaintiff(s) vs. Judy Robinson, Defendant(s)
 A-16-734005-C Nevada Employment Security Division, Plaintiff(s) vs. Plan B Paint & Drywall, Defendant(s)
 A-16-734325-F Lobel Financial Corp, Plaintiff(s) vs. Claudia Chacon, Defendant(s)
 A-16-734923-C Randy Clayton, Plaintiff(s) vs. On Demand Sedan Services Inc, Defendant(s)
 A-16-734949-C CitiMortgage, Inc., Plaintiff(s) vs. Mortgage Store of Denver, Defendant(s)
 A-16-735087-C Angela Moreno, Plaintiff(s) vs. Wal-Mart Stores, Inc., Defendant(s)
 A-16-735127-C Elias Sorto, Plaintiff(s) vs. Israel Fuentes-Ascengo, Defendant(s)
 A-16-735202-C Nevada Employment Security Division, Plaintiff(s) vs. NOW! Services Inc, Defendant(s)
 A-16-735383-C Nevada Employment Security Division, Plaintiff(s) vs. Norma Moore, Defendant(s)
 A-16-735913-C Linda Clutters, Plaintiff(s) vs. Shawna Adams, Defendant(s)
 A-16-736132-C Law Office of William H Jackson PC, Plaintiff(s) vs. Jose Garcia , Defendant(s)
 A-16-736152-C Cesar Herrera-Perez, Plaintiff(s) vs. Cornelio Cervantes, Defendant(s)
 A-16-736182-C Capital One Bank USA, Plaintiff(s) vs. Yuri Kozlov, Defendant(s)
 A-16-736467-C BMO Harris Bank, Plaintiff(s) vs. Michael Jabara, Defendant(s)
 A-16-736701-C Nevada Employment Security Division, Plaintiff(s) vs. Maria Moreno, Defendant(s)
 A-16-736788-C Christiana Trust, Plaintiff(s) vs. Lone Mountain West Homeowners Association, Defendant(s)
 A-16-737071-M In the Matter of the Petition for Compromise of Minor's Claim by Dulce Hernandez
 A-16-737505-C National Collegiate Student Loan Trust 2007-2, Plaintiff(s) vs. Linda Voter, Defendant(s)
 A-16-737522-C Carlon Davenport, Plaintiff(s) vs. Cal-Ga Entertainment Inc, Defendant(s)
 A-16-738405-C Sunpower by Renewable Energy Electric Inc, Plaintiff(s) vs. Barry Esposito, Defendant(s)
 A-16-738563-C Melvin Jackson, Plaintiff(s) vs. Roosevelt Bennett, Defendant(s)
 A-16-738668-M In the Matter of the Petition for Compromise of Minor's Claim by Ruth Viilla-Rios
 A-16-738681-C Dawn Sapien, Plaintiff(s) vs. Regina Selvage, Defendant(s)
 A-16-738790-C Joseph Tuminaro, Plaintiff(s) vs. Esteban Martinez, Defendant(s)
 A-16-738934-C Se Jang, Plaintiff(s) vs. Jennifer Dweck, Defendant(s)
 A-16-738944-C Nevada Department of Public Safety, Plaintiff(s) vs. US Currency \$1,764.00, Defendant(s)
 A-16-739049-M In the Matter of the Petition for Compromise of Minor's Claim by Vivian Chess
 A-16-739080-C Soligent Distribution LLC, Plaintiff(s) vs. Summerlin Capital Group LLC, Defendant(s)
 A-16-739693-C Theresa Ary, Plaintiff(s) vs. Wal-Mart Stores Inc, Defendant(s)
 A-16-739752-C Maureen Rigali, Plaintiff(s) vs. Bryan Scott, Defendant(s)
 A-16-739954-C Cody Dunwoodie, Plaintiff(s) vs. Valerie Velasco, Defendant(s)
 A-16-739956-C Artiques Home Furnishings and Home Decor Llc, Plaintiff(s) vs. Munwar Paracha, M.D., Defendant(s)

A-16-739967-C Rameka Parham, Plaintiff(s) vs. Gerald Casas, M.D., Defendant(s)
 A-16-740105-C State of Nevada, Department of Employment, Plaintiff(s) vs. Pacific Home Health Care of Las Vegas, Defendant(s)

A-16-740646-M In the Matter of the Petition for Compromise of Minor's Claim by Miguel Villegas-Acosta
 A-16-740670-C Katerina Rojas, Plaintiff(s) vs. Gary Higgins, Defendant(s)
 A-16-740802-C Angelica Grant, Plaintiff(s) vs. Jose Ebro, Defendant(s)
 A-16-740914-C Steptoe Industrial Park LLC, Plaintiff(s) vs. Michael Tiquez, Defendant(s)
 A-16-741208-C Marley Leyva, Plaintiff(s) vs. Arturo Viramontes, Defendant(s)
 A-16-741239-C Benjamin Hoskins, Plaintiff(s) vs. Melissa Larson, Defendant(s)
 A-16-741365-C Cach LLC, Plaintiff(s) vs. Shannan Luzansky, Defendant(s)
 A-16-741397-C Deborah Dube, Plaintiff(s) vs. Oscar Carillo, Defendant(s)
 A-16-741617-C Serena Koerner, Plaintiff(s) vs. Caliber Home Loans, Defendant(s)
 A-16-741725-C Stephen Hill, Plaintiff(s) vs. Ellen Fornaro, Defendant(s)
 A-16-741892-C F & S Corporation, Plaintiff(s) vs. Majesty Bakeries, LLC, Defendant(s)
 A-16-742010-C Capital One Bank (USA), N.A., Plaintiff(s) vs. Mark Pak, Defendant(s)
 A-16-742131-C Andrew Chapin, Plaintiff(s) vs. Consuelo Martinez, Defendant(s)
 A-16-742134-C Christine Chapin, Plaintiff(s) vs. Consuelo Martinez, Defendant(s)
 A-16-742193-C American Express Centurion Bank, Plaintiff(s) vs. Hassan Assahouri, Defendant(s)
 A-16-742294-M In the Matter of the Petition for Compromise of Minor's Claim by Kyung Park
 A-16-742317-C Brandon Ragland, Plaintiff(s) vs. Brian Williams, Defendant(s)
 A-16-742497-C Jia Li, Plaintiff(s) vs. U.S. Bank National Association, Defendant(s)
 A-16-742960-C Charles Fairbanks, Plaintiff(s) vs. Charell Hicks, Defendant(s)
 A-16-743012-C Citibank NA, Plaintiff(s) vs. Carl Mandley, Defendant(s)
 A-16-743285-C Austin General Contracting, Inc., Plaintiff(s) vs. Valley Steel, LLC, Defendant(s)
 A-16-743394-C Marissa Risewick, Plaintiff(s) vs. Sunrise Hospital and Medical Center LLC, Defendant(s)
 A-16-743458-F Domenico Peano, Plaintiff(s) vs. Joann Sarivole, Defendant(s)
 A-16-743578-C Capital One Bank (USA), N.A., Plaintiff(s) vs. Dmytro Kravchenko, Defendant(s)
 A-16-743702-C Quality Acceptance LLC, Plaintiff(s) vs. Hattie Blue, Defendant(s)
 A-16-743736-C Ford Motor Credit Company, LLC. , Plaintiff(s) vs. Natasha Waldhalm, Defendant(s)
 A-16-743749-C Southern Nevada Regional Housing Authority, Plaintiff(s) vs. Service Employees International Union Local 1107, Defendant(s)
 A-16-743940-C Discover Bank, Plaintiff(s) vs. Imelda Saulog, Defendant(s)
 A-16-744055-C Jennifer Stoff, Plaintiff(s) vs. Michael Stoff, Defendant(s)
 A-16-744075-C Jesus Ramos, Plaintiff(s) vs. Jesus Gomez, Defendant(s)
 A-16-744107-C Morris, Polich & Purdy, LP, Plaintiff(s) vs. Grace Construction LLC, Defendant(s)
 A-16-744378-C Cach LLC, Plaintiff(s) vs. Ben Rogers, Defendant(s)
 A-16-744428-C Marta Martinez, Plaintiff(s) vs. Victoria Partners, Defendant(s)
 A-16-744593-M In the Matter of the Petition for Compromise of Minor's Claim by Asrat Worku
 A-16-744622-F Troy Capital LLC, Plaintiff(s) vs. Nathaniel Syme, Defendant(s)
 A-16-744799-C Nevada Employment Security Division, Plaintiff(s) vs. Reshenda Rogers, Defendant(s)
 A-16-745529-C Edward Braaten, Plaintiff(s) vs. Nationwide Agribusiness Insurance Company, Defendant(s)
 A-16-745550-C Ashley Hoffrichter, Plaintiff(s) vs. Rigoberto Fuentes, Defendant(s)
 A-16-745665-C Glen Lerner Injury Attorneys, Plaintiff(s) vs. Jelissa Lewis, Defendant(s)
 A-16-745777-C Christina Gartin, Plaintiff(s) vs. Robert Wagner, Defendant(s)
 A-16-745975-C Jessica Matson, Plaintiff(s) vs. United Services Automobile Association , Defendant(s)
 A-16-746246-M In the Matter of the Petition for Compromise of Minor's Claim by Amanda Wahl
 A-16-746362-C Edward Achrem, Plaintiff(s) vs. Sohrab Irani, Defendant(s)
 A-16-747027-C Nevada Restaurant Services Inc, Plaintiff(s) vs. Rocky Mountain Restaurant Services Inc, Defendant(s)
 A-16-747073-C Jack Rawnsley, Plaintiff(s) vs. Danae Adams, Defendant(s)
 A-16-747222-C Heidi Taylor, Plaintiff(s) vs. Diana Powell, Defendant(s)
 A-16-747298-C Mainor Wirth LLP, Plaintiff(s) vs. Larry Sanchez, Defendant(s)
 A-16-747514-C Opal Laman, Plaintiff(s) vs. NP Red Rock LLC, Defendant(s)
 A-16-747692-F National Credit Acceptance Inc, Plaintiff(s) vs. Eliza Yiu, Defendant(s)
 A-16-747869-C America Aranda-Terrazas, Plaintiff(s) vs. Anthea Mourselas, Defendant(s)
 A-16-747891-C Donna Evans , Plaintiff(s) vs. Boyd Gaming Corporation , Defendant(s)
 A-16-747898-C Cuauhtemoc Ramirez, Plaintiff(s) vs. Justino Rangel-Ramirez, Defendant(s)
 A-16-748366-C Ferdinand Bungay, Plaintiff(s) vs. Victor Becerra, Defendant(s)
 A-16-748401-C Aura Truelove, Plaintiff(s) vs. Robert Ramirez, Defendant(s)
 A-16-748817-C Thomas Barnett, Plaintiff(s) vs. Acer Capital Group LLC, Defendant(s)
 A-16-748902-C Leslie Perdomo, Plaintiff(s) vs. Casey Luz, Defendant(s)
 A-17-748973-C Rosanne Milano, Plaintiff(s) vs. Charda Winton-Lanam, Defendant(s)

A-17-749338-C David Wetherill, Plaintiff(s) vs. Linda Farley, Defendant(s)
 A-17-749408-C Alicia Shaw, Plaintiff(s) vs. Steven Termini, Defendant(s)
 A-17-749624-C Bernardo Gomez, Plaintiff(s) vs. Vera Jackson, Defendant(s)
 A-17-749663-C Barry Markman, M.D., Plaintiff(s) vs. Marc Salls, Defendant(s)
 A-17-749931-M In the Matter of the Petition for Compromise of Minor's Claim by Nancy Avilez-Ceja
 A-17-749963-C Deborah Moy, Plaintiff(s) vs. Efren Gonzalez, Defendant(s)
 A-17-750324-C Nicholas Montana, Plaintiff(s) vs. Sean Fancher, PT, Defendant(s)
 A-17-750467-C Jamie Lopez, Plaintiff(s) vs. Nicole Abruzee, Defendant(s)
 A-17-750869-C Francesca Romanyshyn, Plaintiff(s) vs. Christian Tanele, Defendant(s)
 A-17-750964-C Nevada Employment Security Division, Plaintiff(s) vs. Dennis Shaull, Defendant(s)
 A-17-751211-F Hospital of Barstow Inc, Plaintiff(s) vs. Colleen Coretti, Defendant(s)
 A-17-751236-C Las Vegas Metropolitan Police Department, Plaintiff(s) vs. U.S. Currency \$2,042.00, Defendant(s)
 A-17-751277-C Las Vegas Metropolitan Police Department, Plaintiff(s) vs. U.S. Currency \$1,913.00, Defendant(s)
 A-17-751604-M In the Matter of the Petition for Compromise of Minor's Claim by Digno Abrego-Vides
 A-17-751741-C State Farm Insurance Company, Plaintiff(s) vs. Diamond Patterson, Defendant(s)
 A-17-752146-M In the Matter of the Petition for Compromise of Minor's Claim by Jennifer Gonzalez
 A-17-752431-M In the Matter of the Petition for Compromise of Minor's Claim by Chang Lee
 A-17-752523-C Discover Bank, Plaintiff(s) vs. Lakeysha Chapple, Defendant(s)
 A-17-752808-C Nicole True, Plaintiff(s) vs. Sterling Redlack, Defendant(s)
 A-17-752968-C Nevada Employment Security Division, Plaintiff(s) vs. John Pellegrino, Defendant(s)
 A-17-753475-C Sergio Alvarado, Plaintiff(s) vs. Genesis Vasquez, Defendant(s)
 A-17-753696-C Lloyd Monteiro, Plaintiff(s) vs. Anthony Lezcano, Defendant(s)
 A-17-753976-C Las Vegas Metropolitan Police Department, Plaintiff(s) vs. US Currency \$666.00, Defendant(s)
 A-17-754055-F Ford Motor Credit Company, Plaintiff(s) vs. Kathleen Divine, Defendant(s)
 A-17-754072-C Angela Doom, Plaintiff(s) vs. Doris Wood, Defendant(s)
 A-17-754117-C Rosa Zepeda-Ochoa, Plaintiff(s) vs. Kevin Montgomery, Defendant(s)
 A-17-754411-C Jeffrey Smith, Plaintiff(s) vs. John Dugans, Defendant(s)
 A-17-754873-C Helen Thomas, Plaintiff(s) vs. Menachem Segall, Defendant(s)
 A-17-755052-C Ziphub Inc, Plaintiff(s) vs. Eddie Garcia, Defendant(s)
 A-17-755294-C Aurora Hernandez de Saucedo, Plaintiff(s) vs. Wal-Mart Stores Inc, Defendant(s)
 A-17-755376-M In the Matter of the Petition for Compromise of Minor's Claim by Paul Maciejewski
 A-17-755464-C Mary Scott, Plaintiff(s) vs. Wal-Mart Stores Inc, Defendant(s)
 A-17-755719-C Jose Estrada-Barrera, Plaintiff(s) vs. Daniel Heckethorn, Defendant(s)
 A-17-755845-C Unify Financial Credit Union, Plaintiff(s) vs. Matthew Sommermeyer, Defendant(s)
 A-17-756620-C Eduardo Solis, Plaintiff(s) vs. Omar Montes-Terrazas, Defendant(s)
 A-17-756807-M In the Matter of the Petition for Compromise of Minor's Claim by Jose Ramirez-Leon
 A-17-756883-C Funding Mate LLC, Plaintiff(s) vs. Mid State Transport LLC, Defendant(s)
 A-17-756993-C Rosen Materials of Nevada LLC, Plaintiff(s) vs. Lucky Dragon LP, Defendant(s)



1 **OPPM**
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8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 ZANE MICHAEL FLOYD,
13 #1619135

14 Defendant.

CASE NO: 99C159897

DEPT NO: XVII

15 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISQUALIFY**
16 **CLARK COUNTY DISTRICT ATTORNEY'S OFFICE**

17 DATE OF HEARING: MAY 14, 2021
18 TIME OF HEARING: 8:30 AM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
20 District Attorney, through ALEXANDER CHEN, Chief Deputy District Attorney, and hereby
21 submits the attached Points and Authorities in Opposition to Defendant's Motion to Disqualify
22 Clark County District Attorney's Office.

23 This Opposition is made and based upon all the papers and pleadings on file herein, the
24 attached points and authorities in support hereof, and oral argument at the time of hearing, if
25 deemed necessary by this Honorable Court.

26 //

27 //

28 //

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On July 19, 2000, Defendant Zane Floyd was unanimously found guilty beyond a
4 reasonable doubt by a jury of his peers. The jury convicted Defendant Floyd of four counts of
5 Murder with Use of a Deadly Weapon; one count of Attempt Murder with Use of a Deadly
6 Weapon; one count of Burglary with Use of a Deadly Weapon; one count of First Degree
7 Kidnapping with Use of a Deadly Weapon and four counts of Sexual Assault with Use of a
8 Deadly Weapon. The case was prosecuted by the former Clark County District Attorney
9 Stewart Bell and one of his chief deputies, William Koot.

10 On July 21, 2000, the same jury unanimously found beyond a reasonable doubt that the
11 mitigating factors did not outweigh the aggravating circumstances and imposed a penalty of
12 death for each of the four separate counts of Murder Use of a Deadly Weapon. Upon the jury's
13 verdict imposing a penalty of death, Defendant Floyd initiated voluminous litigation to
14 overturn the jury's verdict. Defendant Floyd's litigation eventually went to federal court where
15 the Ninth Circuit Court of Appeals denied his appeal from the denial of a petition for a writ of
16 habeas corpus. On November 2, 2020, slightly over twenty years from the jury's verdict, the
17 United States Supreme Court denied certiorari which effectively ended Defendant Floyd's
18 pending litigation.

19 Upon receiving notification that Defendant Floyd had exhausted his appellate remedies,
20 the State began to prepare the statutorily mandated filings in this case, which included an
21 extensive review of twenty years of procedural history. Coincidentally, the Nevada Legislature
22 commenced their 81st session on February 1, 2021. Among the many proposed bills that
23 eventually were introduced in the Legislature was A.B. 395, which calls for the outright
24 abolition of the death penalty.

25 On March 31, 2021, the Assembly Committee on Judiciary held a hearing where
26 proponents and opponents of the bill testified.¹ The make-up of representatives in favor of the
27

28

¹ Video of the entire hearing can be found at <http://sg001-harmony.sliq.net/00324/Harmony/en/PowerBrowser/PowerBrowserV2/20210331/-1/?fk=7836&viewmode=1>

1 bill included multiple defense attorneys, including an attorney from the Federal Public
2 Defender of Nevada, which is the Office that currently represents Defendant Floyd.

3 As part of the committee hearing, individuals were also called upon to voice opposition
4 to the passage of A.B. 395. Included among the speakers that voiced opposition against the
5 passage of A.B. 395 was the president of the Nevada District Attorney's Association, the
6 District Attorney of the Washoe County, and the Clark County District Attorney, Steven
7 Wolfson.

8 District Attorney Wolfson's testimony against the passage of A.B. 395 was consistent
9 with an article published by the Las Vegas Review Journal on March 26, 2021.² In the article,
10 District Attorney Wolfson indicated that the State would be seeking a warrant of execution in
11 the coming weeks. Moreover, he was specifically quoted with the following:

12 "I think the timing is good...Our legislative leaders should recognize that
13 there are some people who commit such heinous acts, whether it be the
14 particular type of murder or the number of people killed, that this
community has long felt should receive the death penalty."

15 "We [the State] would be moving forward with the Zane Floyd efforts at
16 obtaining the order and warrant of execution notwithstanding the
Legislature. ... **I'm not purposefully moving forward with Floyd
because of the Legislature.** But because they're occurring at the same
17 time, I want our lawmakers to have their eyes wide open because this is a
18 landmark case. They need to be aware that there are these kinds of people
out there where the jury has spoken loudly and clearly." *Emphasis added.*

19 Meanwhile in the same article, Clark County Public Defender Scott Coffee, who also
20 testified at the Assembly committee in favor of A.B. 395, stated his belief that Floyd's case in
21 general would have little effect on what the Legislature decides.

22 On April 13, 2021, the full Assembly voted on the passage of A.B. 395. The bill passed
23 through the Assembly with a vote of 26-16.³ Included in the 26 votes in favor of passage were
24 individuals that either worked for, or currently work for the Clark County Public Defender's
25 Office.

26
27 ² David Ferrara, DA to proceed with death penalty against gunman in 1999 store killings, Las Vegas Rev. J. (Mar. 26,
28 2021), available at <https://www.reviewjournal.com/crime/courts/da-to-proceed-with-death-penalty-against-gunman-in-1999-store-killings-2315637/>.

³ <https://www.leg.state.nv.us/App/NELIS/REL/81st2021/Bill/8006/Overview>

1 On April 14, 2021, the State filed a motion seeking the court's signature of an order
2 and warrant of execution. Immediately upon the State filing its motion, Defendant Floyd filed
3 the instant motion seeking to remove the Clark County District Attorney's Office.

4 I. INTRODUCTION

5 Under the guise of the Nevada Constitution, Defendant Floyd seeks this Court to
6 remove the Clark County District Attorney's Office from its duty to fulfill the jury's verdict
7 of death in his case. NRS 176.505(3) states "[N]otwithstanding the entry of a stay of issuance
8 of a remittitur in the appellate court of competent jurisdiction following denial of appellate
9 relief in a proceeding brought pursuant to chapter 34 or 177 of NRS, the court in which the
10 conviction was obtained **shall**, upon application of the Attorney General or the **district**
11 **attorney of the county in which the conviction was obtained, cause another warrant to**
12 **be drawn**, signed by the judge and attested by the clerk under the seal of the court, and
13 delivered to the Director of the Department of Corrections." *Emphasis added*. Despite this
14 statutory language that requires the District Attorney's Office to obtain a new order and
15 warrant of execution, Defendant Floyd is now calling for the Clark County District Attorney's
16 Office to be removed because of a manufactured conflict.

17 Noticeably, neither "Statement of the Case" filed by Defendant Floyd or by the State
18 references Deputy District Attorneys Nicole Cannizaro or Melanie Scheible, who both serve
19 as Senators in the citizen-based Nevada Legislature. In a desperate attempt to make the District
20 Attorney's Office look outrageous, Defendant Floyd references Article 3, Section 1 of the
21 Nevada Constitution's separation of powers clause to support his claim that the Clark County
22 District Attorney's Office should be removed from the case. Although Defendant Floyd does
23 not specifically state it, his position is essentially that the entire Office of the District Attorney
24 is in violation of the Nevada Constitution, thereby making every prosecution seemingly null
25 and void, because two individuals that are prosecutors in the District Attorney's Office also
26 serve part-time at the Nevada Legislature. Defendant Floyd makes his separation of powers
27 argument without any consideration to the fact that neither of the individual prosecutors has
28 ever worked on his case.

1 Alternatively, Defendant Floyd argues that the District Attorney’s Office should be
2 removed because of a “likelihood of public suspicion and no social interest is served.”
3 However, the standard for removal of an entire District Attorney’s Office from a case is a
4 specific one, and the citation of mere conjecture by individuals cannot and does not meet the
5 standard to remove an entire office from fulfilling its statutory obligations.

6 **II. THE CLARK COUNTY DISTRICT ATTORNEY’S OFFICE IS NOT IN**
7 **VIOLATION OF THE NEVADA CONSTITUTION**

8 Although Deputy District Attorneys Cannizzaro and Scheible are not involved with this
9 case, Defendant Floyd tries to disqualify the entire Clark County District Attorney’s Office
10 based on their service in the citizen-based Legislature. Article 3, Section 1(1) of the Nevada
11 Constitution provides that “[T]he powers of the Government of the State of Nevada shall be
12 divided into three separate departments, - the Legislative, - the Executive and the Judicial; and
13 no persons charged with the exercise of powers properly belonging to one of these departments
14 shall exercise any functions, appertaining to either of the others, except in cases expressly
15 directed or permitted in this constitution.”

16 Through the Nevada Constitution, each branch is given a specific role; “the Legislature
17 enacts laws, the executive branch is tasked with carrying out and enforcing the laws, and the
18 judicial power is the authority to hear and determine justiciable controversies.” N. Lake Tahoe
19 Fire v. Washoe Cnty. Commi’rs, 129 Nev. 682 (2014). Under our system of government, it is
20 fundamental that the powers vested in the executive, legislative, and judicial departments be
21 exercised without intrusion. City of North Las Vegas ex. Rel. Arndt v. Daines, 92 Nev. 292
22 (2000).

23 The general premise behind the separation of powers doctrine is to prevent one branch
24 of government from encroaching on the powers of another branch. Clinton v. Jones, 520 U.S.
25 681, 699 (1976). This Court has previously considered what constitutes legislative, executive,
26 and judicial powers: “Legislative power is the power of law-making representative bodies to
27 frame and enact laws, and to amend and repeal them...The executive power extends to the
28 carrying out and enforcing the laws enacted by the legislature... ‘Judicial Power’...is the

1 authority to hear and determine justiciable controversies. Judicial power includes the authority
2 to enforce any valid judgment, decree, or order.” Galloway v. Truesdell, 83 Nev. 13, 19 (1967).

3 The Nevada Constitution does not contain any broad provisions about what constitute
4 incompatible public offices. *See ex rel. Davenport v. Laughton*, 19 Nev. 202 (1885). While
5 the Nevada Constitution states that no person charged with the exercise of functions shall
6 exercise the functions in a separate department, the type of person that the Constitution is
7 referring to is someone that the Constitution has expressly granted powers. These are positions
8 that are charged with a sovereign function of government. State ex rel. Kendall v. Cole, 38
9 Nev. 215, 148 P.2 551 (1915). The Nevada Constitution is only referring to public officers,
10 not all employees of those officers. For instance, in Kendall the Nevada Supreme Court listed
11 numerous positions that while part of a judicial or executive office would not qualify as an
12 “officer” as defined by the Constitution. *Id.* Similarly in Sawyer v. Dooley, the Nevada
13 Supreme Court pointed out that “These departments are each charged by other parts of the
14 constitution with certain duties and functions, and it is to these that the prohibition just quoted
15 [Article 3 §1] refers.” Thus the type of person that is meant to be prohibited from exercising
16 dual functions is limited to those exercising a sovereign function, not merely an employee.

17 Under Nevada’s Constitution, the legislature is responsible for establishing certain
18 county officers, including the District Attorney’s Office. Article 4 § 32. The formation of such
19 offices is clearly not violative of the separation of powers because the power is specifically
20 proscribed by the Constitution. NRS Chapter 252 was the legislature’s conveyance of
21 policymaking authority on the principal prosecutor. NRS 252.070 is the legislative enactment
22 that allows the district attorney to appoint deputy district attorneys that work under the elected
23 district attorney. Notably, NRS 252.070(1) explicitly states, “The appointment of a deputy
24 district attorney must not be construed to confer upon that deputy policymaking authority for
25 the office of the district attorney or the county by which the deputy district attorney is
26 employed.” NRS 252.070(1) makes it clear that a deputy district attorney only serves under
27 the district attorney, and does not hold a public office by virtue of prosecuting cases.
28

1 Not only does NRS 252.070 indicate there is a difference between the elected district
2 attorney and a mere deputy, but other cases have indicated the legal difference as well. For
3 instance in Price v. Goldman, this Court made it clear that deputy district attorneys do not have
4 the authority to authorize wire intercepts. 90 Nev. 299, 301 (1974). Relying upon the specific
5 enumerated reasons, the Nevada Supreme Court agreed that ‘district attorney’ is not
6 synonymous with everyone that works for the district attorney.

7 A Deputy District Attorney similarly is not the type of public officer that the Nevada
8 Constitution contemplated because a Deputy District Attorney is merely an employee of an
9 agency. *See State ex rel. Mathews v. Murray*, 70 Nev. 116, 120-21, 258 P.2d 982, 984 (1953).
10 A Deputy District Attorney’s responsibilities are provided for by statute. However as the
11 statutes above make clear, a deputy is not the same as an elected public official. A deputy
12 simply does not possess the same powers or authority that was contemplated for the separation
13 of powers clause. Since a Deputy District Attorney is a “public employee,” the separation of
14 powers doctrine as listed in Article 3 §1 is not applicable.

15 Specifically, for district attorneys the Nevada Supreme Court has held that the
16 separation of powers was not applicable to the exercise of certain powers by a county’s District
17 Attorney because he was not a state constitutional officer. Lane v. Second Jud. Dist. Ct., 104
18 Nev. 427, 437 (1988). In citing NRS 252.110, which sets forth the powers inured to the district
19 attorney, the Court indicated that the district attorney is not an office created via the Nevada
20 State Constitution, thus the separation of powers doctrine is inapplicable.

21 Although Deputy District Attorneys Cannizzaro and Scheible are mere employees of
22 an executive agency thus putting them outside of the purview of the separation of powers
23 clause, it should be noted that they do not simultaneously exercise their functions. Nevada’s
24 legislative bodies meet for session once every other year. During those times, neither
25 individual serves any type of executive function. Instead, both serve with their fellow
26 legislators, which come from all different professions and backgrounds, to collectively
27 propose, debate, and pass various laws. This argument that Defendant Floyd makes simply
28

1 lacks merit, especially considering that neither individual has had any involvement with his
2 case.

3 **A. Membership Is The Sole And Exclusive Function Of The Legislative Body**
4 **Itself**

5 The composition and qualifications of an individual to serve in the legislature is left to
6 the legislature itself. With the separate bodies of government in mind, the Nevada Constitution
7 does place certain specified limitations on the eligibility for membership. Article 4 § 4 states
8 that Senators shall be chosen from the qualified electors of their respective districts and that
9 no Senator shall serve more than 12 years. Article 4 § 6 grants each House the authority to
10 determine the qualifications of its own members. Article 4 § 8 specifically prohibits a member
11 of the Legislature from accepting an appointment to a civil office of profit while serving.
12 Article 4 § 9 makes certain federal officers ineligible for serving in the legislature. Article 6,
13 § 11 even goes so far as to specifically say that judicial officers while they are serving are
14 ineligible for other offices including any legislative positions. However, no such proscription
15 applies to other agency employees. Clearly, of all the restrictions and qualifications set forth
16 in the Nevada Constitution, there is no limitation that constitutionally prohibits a legislator
17 that works as an employee for an executive agency. The principle that the Legislature is to
18 determine its members' qualifications is also supported and recognized by the Nevada
19 Supreme Court. *See Heller v. Legislature of State of Nev.*, 120 Nev. 456, 462, 93 P.3d 746,
20 750 (2004).

21 The Legislature is given deference in determining who is qualified to be a member of
22 the Legislature. As seen in *Heller*, the Supreme Court of Nevada refused to address this issue
23 on the merits because to address the issue presented would in itself be a violation of the
24 separation of powers. The Legislature was given the specific authority in the constitution to
25 qualify their members, and the supreme court said that "by asking us to declare that dual
26 service violates the separation of powers, the secretary urges our own violation of the
27 separation of powers." *Heller*, at 459.

1 Despite the argument that Defendant Floyd attempts to make, there is simply no basis
2 to remove the Clark County District Attorney's Office from the case on the grounds that the
3 Office is in violation of Article 3 § 1 of the Constitution.

4 Hypothetically if one were to believe that the entire Clark County District Attorney's
5 Office was in violation of the Nevada Constitution thereby warranting its removal in this case,
6 it would correspondingly mean that the current Nevada Legislature is illegitimate because it
7 has members that sometimes work in offices that perform various executive functions.
8 However Defendant Floyd of course does not make this argument because to make that
9 argument would hurt his self-interested claim and hopes that the Legislature does in fact
10 abolish the death penalty. Despite being the individual responsible for murdering four innocent
11 victims, Defendant Floyd instead tries to portray the Clark County District Attorney's Office
12 as the one that is acting unlawfully. There simply is no merit to his claim.

13 **III. THERE IS NO CONFLICT TO DISQUALIFY THE CLARK COUNTY** 14 **DISTRICT ATTORNEY'S OFFICE**

15 While Defendant Floyd has couched this argument based on an alleged a separation of
16 powers argument, what he in essence is requesting is that this Court remove the District
17 Attorney's Office from carrying out its lawful and statutory duty. Defendant Floyd attempts
18 to make this argument by explaining that the Clark County District Attorney's involvement
19 creates a "likelihood of public suspicion and no social interest is served." *Defendant motion*,
20 p. 9.

21 "To prevail on a motion to disqualify opposing counsel, the moving party must first
22 establish 'at least a reasonable possibility that some specifically identifiable impropriety did
23 in fact occur,' and then must also establish that 'the likelihood of public suspicion or obloquy
24 outweighs the social interests which will be served by a lawyer's continued participation in a
25 particular case.'" Brown v. Eighth Judicial Dist. Court, 116 Nev. 1200, 1205, 14 P.3d 1266,
26 1270 (2000) (quoting Cronin v. District Court, 105 Nev. 635, 640, 781 P.2d 1150, 1153
27 (1989)).
28

1 When a party wishes to disqualify a prosecutor, such impropriety must take the form
2 of a conflict of interest. See NRPC 1.7, 1.9, 1.11; United States v. Kahre, 737 F.3d 554, 574
3 (2013) (“proof of a conflict [of interest] must be clear and convincing to justify removal of a
4 prosecutor from a case.”). Defendant has failed to demonstrate, or even address, the existence
5 of a conflict of interest. Black’s Law Dictionary defines “conflict of interest” as follows:

6 1) A real or seeming incompatibility between one's private interests and
7 one's public or fiduciary duties.

8 2) A real or seeming incompatibility between the interests of two of a
9 lawyer's clients, such that the lawyer is disqualified from representing both
10 clients if the dual representation adversely affects either client or if the clients
11 do not consent.

12 *Black’s Law Dictionary* (11th ed. 2019).

13 The disqualification of lawyers who work in government offices is governed by Nevada
14 Rule of Professional Conduct 1.11. Rule 1.11(d) specifically states that lawyers who are in
15 government offices “does not impute the conflicts of a lawyer currently serving as an officer
16 or employee of the government to other associated government officers or employees.”

17 Although not cited by Defendant Floyd, the general concept that Defendant Floyd is
18 relying upon to disqualify the entire District Attorney’s Office was seemingly based in an
19 overruled case called Collier v. Legakes, 98 Nev. 307 (1982). In Collier, the Nevada Supreme
20 Court at the time implied that disqualification of a prosecutor’s office may be required “in
21 extreme cases where the appearance of unfairness or impropriety is so great that the public
22 trust and confidence in our criminal justice system could not be maintained without such
23 action.” Id. At 310.

24 The standard applied in Collier, however, was explicitly disapproved of and overruled
25 by State v. Eighth Jud. Dist. Ct. (Zogheib), 130 Nev. 158 (2014). While most cases that involve
26 a conflict of interest deal with the removal of private attorneys or firms, additional scrutiny
27 should apply when removing an entire district attorney’s office, and courts should “not
28 unnecessarily interfere with the performance of a prosecutor’s duties.” Id., at 164. Ultimately,
the Court in Zogheib determined that the test is “the appropriate inquiry is whether the conflict
would render it unlikely that the defendant would receive a fair trial unless the entire
prosecutor’s office is disqualified from prosecuting the case.” Id., at 165.

1 The problem for Defendant Floyd is that he can not even meet the first factor that
2 requires an actual conflict for removal. Moreover, this Court is not being asked to remove the
3 District Attorney's Office at a trial stage. Defendant Floyd has already been convicted and
4 has lost his appellate and post-conviction remedies. This situation is not like Collier or
5 Zogheib, which both dealt with the issue of whether an entire district attorney's office would
6 need to be removed from a case because the office was employing an attorney who had
7 previously represented the defendant. Even though the district attorney's offices were not
8 barred from prosecuting in both Collier and Zogheib, here there is not even an allegation that
9 the District Attorney's Office has any confidential or intimate knowledge about Defendant
10 Floyd. The only conflict that Defendant Floyd is trying to manufacture is that by performing
11 its statutory duties, the District Attorney's Office should be removed from proceeding on this
12 case. His only support for the removal is that there is a pending bill that would abolish the
13 death penalty, but he provides no legal support that prosecutors are obligated to refrain from
14 prosecuting statutes that are being considered by the Legislature.

15 In so much as Defendant Floyd tries to impute a conflict using the separation of powers
16 argument, neither Deputy District Attorney Cannizzaro or Scheible has ever even worked on
17 his case. Thus even assuming arguendo that a conflict exists with regards to those two deputies,
18 which the State adamantly maintains that there is not, it would still give no basis to remove
19 the entire Clark County District Attorney's Office from fulfilling its obligations. If in Zogheib
20 the District Attorney's Office was properly able to remain on the case even though the elected
21 District Attorney had previously represented the defendant, then it can hardly be the case that
22 the entire District Attorney's Office should be removed when the two deputies have never
23 been involved with the case.

24 Additionally, even though Defendant Floyd is using an old standard that has already
25 been repudiated by the Nevada Supreme Court, even under his proposed standard he would
26 still have no right to removal of the District Attorney's Office. While Defendant Floyd wishes
27 to use District Attorney Wolfson's words in a Las Vegas Review Journal article as a basis for
28 removal, he cites to no rule or authority that the District Attorney said anything incorrect or

1 impermissible, either by statute or the Nevada Rules of Professional Conduct. In fact while
2 Defendant Floyd makes the argument that the State's filing is purely political, District
3 Attorney Wolfson testified at the Committee on Judiciary hearing on March 31, 2021 and
4 never once even uttered Defendant Floyd's name. Thus, despite Defendant Floyd's attempt at
5 casting scrutiny on the timing of the State's efforts to actualize the jury's verdict, he has no
6 evidence whatsoever that the District Attorney's Office is doing anything improperly that
7 would warrant its removal from this case.

8 Defendant Floyd argues for removal of the Clark County District Attorney's Office on
9 political grounds. However, his request is transparent when considering that he has no issue
10 with any other individual's political statements about the death penalty, so long as the position
11 favors his own. He is represented by an office that testified in favor of A.B. 395. He is seeking
12 that the Attorney General's Office take over his case, but he has no problem with the fact that
13 the Attorney General has made public concerns regarding the death penalty⁴. Apparently the
14 only entity that is not permitted to speak of the death penalty, in his mind, is the agency that
15 prosecuted him.

16 He continues his argument by raising hypothetical questions of potential separation of
17 powers violations such as conversations the District Attorney's Office may have had with the
18 two Senators. Although there would be nothing improper if conversations about potential
19 legislation did take place, Defendant Floyd is still unable to present evidence of any such
20 conversation. Moreover, even the timeline used by Defendant Floyd clearly shows that all
21 actions taken by the Assembly (not even the Senate where the deputy district attorneys serve)
22 were matters of public record.

23 Not only is Defendant Floyd's hypothetical not true, but another member of the
24 Assembly, Clara Thomas, also works as an employee for the District Attorney's Office⁵.
25 Assemblywoman Thomas voted in favor of A.B. 395, which would abolish the death penalty.
26 There simply is no merit to the image that Defendant Floyd wants to portray that District

27 ⁴ David Ferrara, Nevada's top officials disagree on capital punishment, Las Vegas. Rev. J. (Apr. 11, 2021), availab
28 <https://www.reviewjournal.com/local/local-nevada/nevadas-top-officials-disagree-on-capital-punishment-2325897/>

⁵ <https://www.leg.state.nv.us/App/Legislator/A/Assembly/81st2021/17>

1 Attorney Wolfson pressured any of the citizen legislators from voting in a way that deviates
2 from their own personal conscience.

3 Furthermore, Defendant Floyd makes no mention of the members of the Legislature
4 that also serve in the Public Defender's Office, including Assemblyman Jason Frierson who
5 already has voted in favor of the passage of A.B. 395⁶. NRS 260.010 legislatively mandates
6 that the boards of county commissioners provide for an office of public defender. Thus, similar
7 to the District Attorney's Office which is legislatively created, public defenders also carry out
8 an executive function to ensure that the laws are properly being applied within the courts. To
9 be clear, Assemblyman Frierson absolutely should be able to serve in his legislative and
10 executive capacities. However, the State finds it curious that Defendant Floyd would lobby to
11 remove the District Attorney's Office under the guise of a separation of powers argument
12 while never mentioning members that support A.B. 395 that are part of a non-legislative entity.

13 Defendant Floyd concludes his argument by explaining that the "citizens of the State
14 of Nevada deserve the assurance that the lawyers representing the State and seeking Mr.
15 Floyd's execution are doing so to 'see that the laws are faithfully executed.'" *Motion*, p. 13.
16 As to this statement the State absolutely agrees. The District Attorney's Office is tasked by
17 law with the responsibility of seeking an order and warrant of execution that satisfies the jury's
18 judgment of death against Defendant Floyd. To ignore the jury's verdict by not seeking an
19 order and warrant of execution would be the ultimate failure to faithfully execute the laws of
20 this State.

21 CONCLUSION

22 Based upon the lack of legal arguments, and the lack of a defined conflict of interest,
23 the State respectfully requests that Defendant Floyd's motion be denied.

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⁶ <https://www.leg.state.nv.us/App/Legislator/A/Assembly/Current/8>

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DATED this 26th day of April, 2021.

Respectfully submitted,
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY /s/ Alexander Chen
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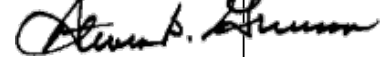
CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of the above and foregoing State's Opposition to Defendant's Motion to Disqualify Clark County District Attorney's Office, was made this 26th day of April, 2021, by facsimile transmission to:

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BY /s/ E. Davis
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AC//ed



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Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

v.

ZANE M. FLOYD,

Defendant.

Case No. 99C159897

Dept. No. 17

**REPLY TO OPPOSITION TO
MOTION TO DISQUALIFY THE
CLARK COUNTY DISTRICT
ATTORNEY'S OFFICE**

Date of Hearing: May 14, 2021

Time of Hearing: 9:00 am

(DEATH PENALTY CASE)

**EXECUTION WARRANT SOUGHT
FOR THE WEEK OF JUNE 7, 2021**

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POINTS AND AUTHORITIES

The State has much to say about arguments that Floyd does not raise, and little to say about the arguments that Floyd does raise. To be clear: Floyd does not seek “to make the District Attorney’s Office look outrageous,” Opp. at 4; Floyd does not assert that “every prosecution” is “null and void,” *id.*; nor does Floyd assert that the two senator-prosecutors are “involved with this case,” *id.* at 5; or that there are no differences “between the elected district attorney and a mere deputy,” *id.* at 7; or that this Court should violate the “principle that the Legislature is to determine its members’ qualifications”, *id.* at 8; or that there is a traditional “conflict of interest” under Nev. R. Prof’s Conduct 1.7 or 1.9, *id.* at 9.

What Floyd asserts is specific and narrowly tailored to this unique situation, and is based not solely on the violation of the separation of powers but on the Clark County District Attorney’s attempt to exploit that violation.

Disqualification is required. This Court must “appoint some other person to perform the duties of the district attorney.” Nev. Rev. Stat. § 252.100.

ARGUMENT

The State does not dispute the applicable standard. *See* Opp. at 9. This Court must disqualify the Clark County District Attorney’s Office if there is “at least a reasonable possibility that some specifically identifiable impropriety did in fact occur” and “the likelihood of public suspicion or obloquy outweighs the social interest which will be served by a lawyer’s continued participation in a particular case.” *Brown v. Eighth Jud. Dist. Ct. (Thalgott)*, 116 Nev. 1200, 1205, 14 P.3d 1266, 1270 (2000). The State does not dispute that a violation of Article 3, Section 1,

1 would be a specific and identifiable impropriety. Nor does the State dispute that
2 public suspicion and obloquy is present here. Finally, the State does not dispute
3 that that public suspicion and obloquy outweighs any social interest in allowing the
4 Clark County District Attorney to continue representing the State in this matter.

5 The State raises only two arguments in opposition: that there is no
6 separation of powers violation and that there is no conflict of interest. This Court
7 should reject both arguments.

8 **A. The Clark County District Attorney's Office is in Violation of**
9 **Article 3 of the Nevada Constitution.**

10 In full, Article 3, Section 1 of the Nevada Constitution reads:

11 The powers of the Government of the State of Nevada shall
12 be divided into three separate departments, --the
13 Legislative, --the Executive and the Judicial; and no person
charged with the exercise of powers properly belonging to
one of these department shall exercise any functions
appertaining to either of the others, except in cases
expressly directed or permitted in this Constitution.

14 The State does not dispute that either senator-prosecutor is a "person
15 properly charged with the exercise of powers properly belonging to" the Legislative
16 Department. Nor could it: both are senators, and in that role unambiguously
17 exercise powers belonging to the Legislative Department. The State also does not
18 dispute that a prosecution is a "function" appertaining to the Executive
19 Department. Nor could it: on numerous occasions, the Nevada Supreme Court has
20 explicitly referred to prosecution as a fundamental exercise of Executive
21 Department power. *See State v. Second Jud. Dist. Ct. (Hearn)*, 134 Nev. 783, 786,
22 432 P.3d 154, 158 (2018); *Schoels v. State*, 114 Nev. 981, 991, 966 P.3d 735, 741–42
23 (1998); *Sandy v. Fifth Jud. Dist. Ct.*, 113 Nev. 435, 440, 935 P.2d 1148, 1150–51

1 (1997); *Righetti v. Eighth Jud. Dist. Ct.*, 133 Nev. 42, 46, 388 P.3d 643, 647 (2017).

2 Indeed, Floyd cited these very cases for this proposition in his Motion, and the State
3 did not address them at all.

4 This, alone, establishes the Constitutional violation.

5 The State also, for the most part, fails to acknowledge the constitutional
6 violation goes in the other direction. Just as it violates separation of powers to have
7 legislative officers exercising executive powers, prosecutors serving in the
8 legislature are improperly exercising “functions” “appertaining to” the Legislative
9 Department. That is: the State does not dispute that prosecution is an Executive
10 Department power. The State also does not dispute that prosecutors serving in the
11 legislature would be exercising “functions” “appertaining to” the Legislative
12 Department.

13 Instead, the State argues that “[t]he Nevada Constitution does not contain
14 any broad provisions about what constitute [sic] incompatible public offices.” Opp.
15 at 6.¹ Without citation, the State argues that “While the Nevada Constitution states
16 that no person charged with the exercise of functions shall exercise the functions in
17 a separate department, *the type of person that the Constitution is referring to is*
18 *someone that the Constitution has expressly granted powers.*” *Id.* (emphasis added)

20
21 ¹ In support of this proposition, the State cites *Ex rel Davenport*, 19 Nev. 202,
22 8 P. 344 (1885). However, *Davenport* does not support this argument. There, the
23 Nevada Supreme Court considered whether the constitution prevented the
Lieutenant Governor from serving as the state librarian. *Id.*, 8 P. at 344. The court
noted, “There is nothing in the constitution of this state prohibiting respondent
from holding the office of lieutenant governor and the office of state librarian.” *Id.*, 8
P. at 346. But nothing about that situation is analogous to the present one.

1 (citing no case or provision of the Nevada Constitution). This proposition, in
2 addition to being wholly unsupported, is unhelpful to the State because Senators
3 are persons expressly granted powers under the Nevada Constitution. *See, e.g.*, Art.
4 4, § 1 (“The Legislative authority of this State shall be vested in a Senate and
5 Assembly”); *see also* Michael W. Bowers, *The Nevada State Constitution* 65 (2d
6 ed. 2014) (“This section vests the legislative power of the state in the state
7 legislature”). Moreover, this proposition cannot be right. The Nevada
8 Constitution does not “expressly grant powers” to the Attorney General, but surely
9 the Attorney General—an officer listed in the Article 5—is prohibited from
10 exercising any functions appertaining to the other departments. *See, e.g.*, Art. 5 §
11 22; *see also* Bowers, at 101 (“The attorney general has no constitutionally
12 prescribed duties, and whatever powers may be exercised are to be found only in the
13 statutes.” (citing *Ryan v. Eighth Jud. Dist. Ct.*, 88 Nev. 638, 642, 503 P.2d 842, 844
14 (1972))).

15 Moreover, the State is wrong as a matter of law. The State’s further
16 explanation requires a misreading of Nevada case law, and a failure to distinguish
17 between very different provisions of the Nevada Constitution. Thus, the State cites
18 *State ex rel. Kendall v. Cole*, 38 Nev. 215, 148 P. 551 (1915), for the proposition that
19 the “persons” referenced in Article 3, § 1 “are positions that are charged with a
20 sovereign function of government.” Opp. at 6 (providing no pin citation). However,
21 not only does “sovereign function” nowhere appear in Art. 3, § 1, *Kendall* is a case
22 discussing Art. 4, § 8. *Kendall*, 148 P. at 551–52. That provision reads, in full:

1 No Senator or member of Assembly shall, during the term
2 for which he shall have been elected, nor for one year
3 thereafter be appointed to any civil office of profit under
4 this State which shall have been created, or the
5 emoluments of which shall have been increased during
6 such term, except such office as may be filled by elections
7 by the people.

8 Art. 4, § 8. This is not the same as Art. 3, § 1. The issue in *Kendall* was whether a
9 legislator-turned-exposition-commissioner violated Art. 4, § 8 because the legislator
10 served in the legislature that passed the statute creating the exposition
11 commissioner. *Kendall*, 148 P. at 551. The Nevada Supreme Court was analyzing
12 whether an exposition commissioner was a “civil office” under Art. 4, § 8. The entire
13 discussion of “sovereign function” related to construing the term “civil office.”
14 *Kendall*, 148 P. at 552 (“A public office is the right, authority, and duty, created and
15 conferred by the law, by which for a given period . . . an individual is invested with
16 some portion of the *sovereign functions* of the government” (quoting *Mechem*
17 *on Pub. Officers*, § 1)); *Kendall*, 148 P. at 552 (“The right, authority, and duty
18 conferred by law by which, an individual is invested with some portion of the
19 *sovereign functions* of the government” (quoting Wyman, *Pub. Officers*, § 44));
20 *id.* at 553 (“It is held by many that to be an officer one must be charged by law with
21 duties involving an exercise of some part of the *sovereign power* of the state.”
22 (providing string citation)). And though the State is correct that the *Kendall* opinion
23 references a number of positions that are not “officers” under Art. 4, § 8, none of
these examples have any applicability to Art. 3, § 1. *Kendall*, 148 P. at 553–54. Nor
does the Nevada Supreme Court suggest its construction of the term “civil office” in

1 Art. 4 § 8 was meant to apply to the term “person” in Art. 3, § 1. Indeed, Article 3 is
2 mentioned nowhere in the *Kendall* opinion.

3 The State cites *Sawyer v. Dooley* (without providing a full citation), for the
4 proposition: “These departments are each charged by other parts of the constitution
5 with certain duties and functions, and it is to these that the prohibition just quoted
6 [Article 3 §1] refers.” Opp. at 6 (quoting *Sawyer v. Dooley*, 21 Nev. 390, 32 P. 437,
7 439 (1893)). From this, the State concludes, “the type of person that is meant to be
8 prohibited from exercising dual functions is limited to those exercising a sovereign
9 function, not merely an employee.” Opp. at 6 (citing no authority). *Sawyer*, though a
10 case that analyzes Article 3, does not mention “sovereign functions” anywhere.

11 Indeed, *Sawyer* does not support the State’s argument. There, the Nevada
12 Supreme Court held there was no violation of Art. 3, § 1 where a county treasurer
13 was authorized “to sell the property upon which the tax is a lien by simply giving
14 certain notices, instead of there being an action in a court, and judgment obtained,
15 as must be done where the tax is more than [\$300].” *Sawyer*, 21 Nev. 390, 32 P. at
16 438. The Nevada Supreme Court noted that the country treasurer—a member of the
17 executive branch—was not performing a function of the judicial branch in
18 “equalizing valuations,” even though such “may act in a judicial capacity.” *Id.* at
19 439. This, the court noted, was not a duty expressly assigned to the judicial
20 department. *Id.* But, here, the function at issue—prosecution—is a recognized core
21 function of the executive department. *See Hearn*, 134 Nev. at 786, 432 P.3d at 158;
22 *Schoels*, 114 Nev. at 991, 966 P.3d at 741–42; *Sandy*, 113 Nev. at 440, 935 P.2d at
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1 1150–51; *Righetti*, 133 Nev. at 46, 388 P.3d at 647. But *Sawyer* also supports
2 Floyd’s position: the Nevada Supreme Court equated the *county* treasurer with a
3 member of the *executive* branch. *Sawyer*, 21 Nev. 390, 32 P. at 439.

4 The State cites *Lane v. Second Jud. Dist. Ct.*, 104 Nev. 427, 437, 760 P.2d
5 1245, 1251 (1988) for the proposition that “separation of powers was not applicable
6 to the exercise of *certain* powers by a county District Attorney because he was not a
7 state constitutional officer.” Opp. at 7 (emphasis added). However, the State does
8 *not* assert that prosecution is the exercise of a power exempt from the separation of
9 powers doctrine. Moreover, the State’s argument that “the district attorney is not
10 an office created via the Nevada State Constitution, thus the separation of powers
11 doctrine is inapplicable” overstates the precedential effect of *Lane*. See Opp. at 7
12 (without citation, but ostensibly referring to 104 Nev. at 437, 760 P.2d at 1251). On
13 numerous subsequent, and more recent occasions—not addressed by the State—the
14 Nevada Supreme Court has referenced prosecution as a function of the Executive
15 Department, as referenced above. See *Hearn*, 134 Nev. at 786, 432 P.3d at 158
16 (2018); *Righetti*, 133 Nev. at 46, 388 P.3d at 647 (2017); *Schoels*, 114 Nev. at 991,
17 966 P.3d at 741–42 (1998); *Sandy*, 113 Nev. at 440, 935 P.2d at 1150–51 (1997).

18 The State’s distinction between deputy district attorneys and elected district
19 attorneys is unhelpful. This is not an issue of public employees or the policy-making
20 power of the elected district attorney; this is an issue of whether an individual can
21 both be a legislator and exercise the function of prosecution or whether the District
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1 Attorney can be an officer of the Executive Department and through his
2 subordinates exercise the function of legislating.

3 Finally, the State points out that “[t]he composition and qualifications of an
4 individual to serve in the legislature is left to the legislature itself.” Opp. at 8. Floyd
5 does not dispute this point. However, the State asks this Court to read *Heller v.*
6 *Legislature*, 120 Nev. 456, 462, 93 P.3d 746, 750 (2004), too broadly. *Heller* does
7 proscribe this Court’s ability to judge the membership and qualifications of the
8 legislators, *id.*; *Heller* does not proscribe this Court’s responsibility “for controlling
9 the conduct of the attorneys practicing before it.” *Brown v. Eighth Jud. Dist. Ct.*
10 *(Thalgott)*, 116 Nev. 1200, 1205, 14 P.3d 1266, 1269 (2000).

11 The State presents a slippery-slope argument that, should this Court accept
12 Floyd’s argument, “it would correspondingly mean that the current Nevada
13 Legislature is illegitimate because it has members that sometimes work in offices
14 that perform various executive functions.” Opp. at 9. This is not Floyd’s argument,
15 and would require this Court to ignore the specific factual issue here: The Clark
16 County District Attorney, in this case, timed their filings to correspond to pending
17 legislation, and then issued a public statement telling “[o]ur legislative leaders” to
18 “recognize there are some people who commit such heinous acts . . . that this
19 community has long felt should receive the death penalty.”² The District Attorney
20 created this problem in this case by instructing subordinates in his office with

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22 ² David Ferrara, *DA to proceed with death penalty against gunman in 1999*
23 *store killings*, Las Vegas Rev. J. (Mar. 26, 2021), available at
<https://www.reviewjournal.com/crime/courts/da-to-proceed-with-death-penalty-against-gunman-in-1999-store-killings-2315637/>

1 regard to legislation pending in this legislature. This issue is specific to these
2 unique facts.

3 There can be no question that the Clark County District Attorney's Office is
4 in violation of the separation of powers prohibition. This is a specific and
5 identifiable impropriety. But the violation here is not just separation of powers: it is
6 that the Clark County District Attorney, through the timing of its filings in this
7 case and his public statements about it, is exploiting this violation by applying
8 improper pressure on the senator-prosecutors and in this case.

9 **B. The Clark County District Attorney's Office's violation of Article 3**
10 **creates a likelihood of public suspicion, and no social interest is**
11 **served by allowing the Clark County District Attorney's Office to**
12 **continue representing the State.**

11 Though the State disputes whether there is a separation of powers violation,
12 the State does not dispute that such a violation would create a "likelihood of public
13 suspicion" or that no social interest is served by allowing the Clark County District
14 Attorney's Office to continue representation. Thus, if this Court finds that there is a
15 separation of powers violation, this Court must grant Floyd's Motion to Disqualify.³

16 The State does argue, however, that Floyd fails to demonstrate a conflict of
17 interest. *See* Opp. at 9–13. However, the State provides no authority for the
18 proposition that the standard in *Brown* applies only in the context of conflicts of
19 interest. *See, e.g.,* Opp. at 10. For example, the State argues, "When a party wishes
20 to disqualify a prosecutor, such impropriety *must* take the form of a conflict of
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22 ³ *See, e.g., Polk v. State*, 126 Nev. 180, 185, 233 P.3d 357, 360 (2010) ("We
23 have also determined that a party confessed error when that party's answering brief
effectively failed to address a significant issue raised in the appeal.").

1 interest,” citing Nevada Rule of Professional Conduct 1.7, 1.9, 1.11, and *United*
2 *States v. Kahre*, 737 F.3d 554, 574 (9th 2013). Opp. at 10 (emphasis added).
3 However, none of these sources support the position that the *only* impropriety
4 warranting disqualification is a conflict of interest. Rules 1.7, 1.8, and 1.9 govern
5 conflicts of interest, but say nothing about other kinds of impropriety or the removal
6 standard. *Kahre*, a federal case governing federal conflicts of interests, stands for
7 the unremarkable proposition that, where a conflict of interest is the basis for
8 disqualification, that conflict of interest must be proven by clear and convincing
9 evidence. 737 F.3d at 574. Moreover, an ethical violation “in itself, is neither a
10 necessary nor a sufficient condition for disqualification.” *In re Estate of Myers*, 130
11 P.3d 1023, 1025 (Col. 2006) (en banc). This Court has an independent obligation to
12 review whether a “specifically identifiable impropriety” occurred, and to then review
13 whether “the likelihood of public suspicion or obloquy outweighs the social interest
14 which will be served by a lawyer’s continued participation in a particular case,”
15 whether there is a conflict of interest or not. *See Brown*, 116 Nev. at 1205, 14 P.3d
16 at 1269.⁴

17 The State raises a number of points related to whether the Clark County
18 District Attorney acted inappropriately or differently from other political actors,

20 ⁴ Thus, much of the State’s arguments are unrelated to Floyd’s motion. For
21 example, the State writes, “Floyd is using an old standard that has already been
22 repudiated by the Nevada Supreme Court . . .,” despite also acknowledging that
23 this standard was “not cited by Defendant Floyd.” Opp. at 11, 10. Indeed, the State
goes on to describe how this “old standard” was “explicitly disapproved and
overruled by *State v. Eighth Jud. Dist. Ct. (Zogheib)*.” Opp. at 10. The State fails to
mention that Floyd explicitly addressed *Zogheib* and noted that the *Zogheib*
standard was not appropriate for the legal issue presented here. *See Mot. to*
Disqualify at 5 n.6.

1 and accuses Floyd of implying that “the only entity that is not permitted to speak of
2 the death penalty, in his mind, is the agency that prosecuted him.” *See* Opp. at 11–
3 12. However, the State ignores a crucial distinction between the Clark County
4 District Attorney and other political actors: the Clark County District Attorney—an
5 office exercising the core executive function of prosecution—supervises two
6 legislators. His statements and actions are different because they implicate a
7 violation of separation of powers.⁵

8 To this end, the State argues that Floyd “is seeking that the Attorney
9 General’s Office take over his case.” Opp. at 12 (without citation). This is
10 inaccurate, both with regard to Floyd’s motion and the law. Floyd has not requested
11 that this Court appoint the Attorney General to represent the State in this case. *See*
12 Mot. to Disqualify. Moreover, though the Attorney General has discretion to take
13 over prosecution of this case, this Court lacks the authority to appoint the Attorney
14 General. *See* Nev. Rev. Stat. § 228.120(3); *see also* *Attorney General v. Eighth Jud.*
15 *Dist. Ct. (Morris)*, 108 Nev. 1073, 1075, 844 P.2d 124, 125 (1992) (“District courts in
16 Nevada are not empowered by statute or the state constitution, to assign
17 prosecutions to the attorney general upon disqualification of the district attorney.”).

21 ⁵ Thus the State’s suggestion that it is “curious that Defendant Floyd would
22 lobby to remove the District Attorney’s Office under the guise of a separation of
23 powers argument while never mentioning members that support A.B. 395 that are
part of a non-legislative entity” is itself curious. These individuals are not
exercising executive branch functions in their day jobs.

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CONCLUSION

The State invokes the Clark County District Attorney's responsibility to seek "an order and warrant of execution that satisfies the jury's judgment of death against Defendant Floyd," adding "[t]o ignore the jury's verdict by not seeking an order and warrant of execution would be the ultimate failure to faithfully execute the laws of the State." Opp. at 13. This is the point. The State had this responsibility in November. And December. And January. And February. And in March. But the Clark County District Attorney waited until it was politically expedient, and then told the "legislative leaders" who work for him that they needed to take this case into consideration.

This is a specific and identifiable impropriety.

Floyd asks that this Court disqualify the Clark County District Attorney's Office, and "appoint some other person to perform the duties of the district attorney." Nev. Rev. Stat. § 252.100.

DATED this 29th day of April, 2021.

Respectfully submitted
RENE L. VALLADARES
Federal Public Defender

/s/ David Anthony
DAVID ANTHONY
Assistant Federal Public Defender

/s/ Brad D. Levenson
BRAD D. LEVENSON
Assistant Federal Public Defender

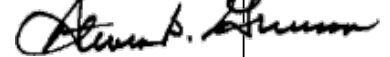
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CERTIFICATE OF SERVICE

In accordance with EDCR 8.04(c), the undersigned hereby certifies that on this 29th day of April, 2021, a true and correct copy of the foregoing **REPLY TO OPPOSITION TO MOTION TO DISQUALIFY CLARK COUNTY DISTRICT ATTORNEY'S OFFICE**, was filed electronically with the Eighth Judicial District Court. Electronic service of the foregoing document shall be made in accordance with the master service list as follows:

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/s/ Sara Jelinek
An Employee of the Federal Public Defenders
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DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

v.

ZANE M. FLOYD,

Defendant.

Case No. 99C159897

Dept. No. 17

**REPLY TO RESPONSE TO MOTION
TO TRANSFER CASE UNDER EDCR
1.60(H)**

Date of Hearing: May 14, 2021

Time of Hearing: 9:00 am

(DEATH PENALTY CASE)

**EXECUTION WARRANT SOUGHT
FOR THE WEEK OF JUNE 7, 2021**

POINTS AND AUTHORITIES

I. Introduction

On April 14, 2021, Zane Floyd moved this Court to transfer his case back to Department 5 as that department was the court of conviction, the court where the sentence of death was obtained, and the one where all prior state post-conviction proceedings were litigated. EDCR 1.60(h). On April 26, 2021, the State filed a “response” that does not take issue with Floyd’s arguments regarding the state statutory scheme or the statewide rules of criminal procedure, which both require that Department 5 adjudicate this matter. The State’s failure to address these issues operates as a concession under N.R.Cr.P. 8(4)(B).

The State speculates that this matter was properly transferred to this Court pursuant to Administrative Order 17-05, as this Court is designated as a murder court. Response at 4-7. The State does not identify any factual support for its speculation, and its argument that homicide cases are all transferred to murder court judges for random assignment in post-trial and post-conviction proceedings is incorrect.

Floyd replies to the State’s arguments below.

II. Argument

Floyd argued in his motion that the state statutory scheme controls and dictates that the case must be transferred back to Department 5. Motion at 4-5. The State does not controvert this proposition or discuss the relevant statutory provisions cited by Floyd that vest sole jurisdiction in Department 5 as the only court that can enter or stay an execution warrant. NRS 176.495(1), NRS 176.505(1,

1 2). Since the filing of Floyd's motion, his state habeas case was also transferred to
2 this Court given the (erroneous) transfer of the criminal case. However, Floyd also
3 cited NRS 34.730(3)(b) in his motion, which requires that state post-conviction
4 petitions be "assigned to the original judge or court." Motion at 5 n.3. Chapters 34
5 and 176 together create a unified procedure requiring the same department that
6 adjudicated the case to handle all post-trial and post-conviction matters. Therefore,
7 both the criminal case and the habeas case must be transferred back to Department
8 5.

9 Floyd also explained that the statewide rules of criminal procedure similarly
10 require that the case remain with Department 5. Motion at 5-6. N.R.Cr.P 2(1) &
11 2(1)(A). Again, the State does not address this issue. Based on these omissions, this
12 Court should transfer the case back to Department 5 without considering the
13 factual and legal issues raised by the State as the statutes and rules of criminal
14 procedure are controlling here.

15 To the extent the rules of the Eighth Judicial District Court control, Floyd
16 argued that AO 20-25 requires his case to be heard in Department 1. The State
17 acknowledges this same administrative order but asserts it is superseded by AO 17-
18 05. As explained in Floyd's motion, there is no factual evidence showing when and
19 under what authority the case was transferred to this Court, and Floyd seeks a
20 hearing on this issue. But even assuming this case was transferred under AO 17-05,
21 Floyd explained that the transfer was erroneous because that administrative order
22 only applies to cases that were new or pending as of the effective date of AO 17-05.

1 The State points out that AO 17-05 contains a reference to “applicable post-
2 conviction matters.” Ex. 3 to Motion at 2. However, that reference applies to cases
3 that were new or pending on the effective date of AO 17-05. *See id.* Floyd agrees
4 that cases that were initially assigned to the murder court must remain with the
5 same department that conducted the trial, sentencing, and prior post-conviction
6 proceedings under the statutory scheme, the statewide rules of criminal procedure,
7 and AO 17-05. But Floyd’s case is not in that group.

8 Floyd agrees with the State that under his reading of the administrative
9 orders “cases that were not pending at the time of enactment should not be
10 transferred to the homicide team.” Response at 5. According to the State,

11 This interpretation is not what the chief judge intended
12 when creating the Homicide Team, because it leaves an
13 entire group of homicide cases nontransferable. Cases that
14 were not pending at the time of the Order are transferred
15 automatically to the Homicide Team when they become
16 pending again with new filings, which is exactly what
17 happened in this case.

18 Response at 5-6. The State cites no factual support in favor of this argument, and
19 there is none.

20 To the contrary, no homicide cases that were concluded as of the effective
21 date of AO 17-05 have been transferred to the murder court for post-conviction
22 proceedings. Floyd notes that even the Clark County District Attorney’s Office has
23 made the same argument Floyd makes here. In *State v. District Court (Mum)*, Case
No. 77221, the CCDA filed a writ petition challenging the chief judge of the Eighth
Judicial District Court’s rule change requiring that post-conviction actions be

1 opened as a new civil case.¹ In the relief sought, the CCDA argued that a new state
2 petition should be transferred back to the department that adjudicated the criminal
3 case.² The CCDA did not argue that new state petitions should be randomly
4 assigned to the murder court as the State argues here.³ The State cannot have it
5 both ways and should be estopped from making arguments to this Court that are
6 inconsistent with its legal position in other cases. The bottom line is that the state
7 statutory scheme, the rules of criminal procedure, and the consistent practice in the
8 Eighth Judicial District Court all support Floyd's argument that this case must be
9 transferred back to Department 5.

10 **III. Conclusion**

11 For the foregoing reasons, Floyd requests that this Court transfer the
12 criminal case and the state post-conviction action back to Department 5. In the
13 alternative, he requests a hearing to determine when and under what authority the
14 case was transferred, followed by the transfer of this case back to the correct
15 department.

18 ¹ Ex. 1 (*State v. Eighth Judicial District Court (Mum)*, Case No. 77221,
19 Petition for Writ of Mandamus, Document No. 18-41321 (filed October 22, 2018)).
20 The Nevada Supreme Court denied the State's petition as moot. *State v. Eighth*
Judicial District Court (Mum), Case No. 77221, Order Denying Petitioner's Writ of
Mandamus, Document No. 19-44414 (filed October 29, 2019).

21 ² *Id.* at 2, 10-11.

22 ³ The State included in its appendix the case of Paulette Perry, who was
convicted of first-degree murder, and whose case the parties agreed should be
transferred back to the department assigned to the criminal case. Ex. 2 at 63-67
(*State v. Eighth Judicial District Court (Mum)*, Case No. 77221, Petitioner's
23 Appendix, Document No. 18-41323, at 63-67 (filed October 22, 2018))

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DATED this 29th day of April, 2021.

Respectfully submitted
RENE L. VALLADARES
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/s/ David Anthony
DAVID ANTHONY
Assistant Federal Public Defender

/s/ Brad D. Levenson
BRAD D. LEVENSON
Assistant Federal Public Defender

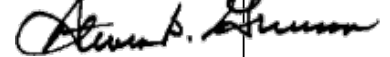
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CERTIFICATE OF SERVICE

In accordance with EDCR 8.04(c), the undersigned hereby certifies that on this 29th day of April, 2021, a true and correct copy of the foregoing **REPLY TO RESPONSE TO MOTION TO TRANSFER CASE UNDER EDCR 1.60(H)**, was filed electronically with the Eighth Judicial District Court. Electronic service of the foregoing document shall be made in accordance with the master service list as follows:

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/s/ Sara Jelinek
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Attorneys for Zane Michael Floyd

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff,

v.

ZANE MICHAEL FLOYD,

Defendant.

Case No. 99C159897
Dept. No. XVII

**MOTION TO STRIKE, OR
ALTERNATIVELY, MOTION TO
STAY THE SECOND
SUPPLEMENTAL ORDER OF
EXECUTION AND SECOND
SUPPLEMENTAL WARRANT OF
EXECUTION**

Date of Hearing:
Time of Hearing:

(DEATH PENALTY CASE)

**EXECUTION SOUGHT BY THE
STATE FOR THE WEEK OF JULY 26,
2021**

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Petitioner Zane Michael Floyd moves this Court to strike the Second Supplemental Order of Execution and the Second Supplemental Warrant of Execution filed by the State on April 14, 2021, as stated in the Addendum filed by the State on May 10, 2021, as current law prohibits the execution from taking place at the Ely State Prison. In the alternative, Floyd requests this Court stay any action on the Second Supplemental Warrant and Order until the final disposition of this motion, his motion for leave to file and amended petition, amended petition, and his state petition for writ of habeas corpus. This motion is made and based on the following points and authorities and the entire file herein.

DATED this 11th day of May, 2021.

Respectfully submitted
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 Federal Public Defender

/s/ David Anthony
DAVID ANTHONY
Assistant Federal Public Defender

/s/ Brad D. Levenson
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/s/ Jocelyn S. Murphy
JOCELYN S. MURPHY
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POINTS AND AUTHORITIES

I. INTRODUCTION

On March 26, 2021, Clark County District Attorney, Steve Wolfson, announced that the CCDA would be seeking a warrant of execution against Floyd.¹ On April 14, 2021, the State filed a Motion and Notice of Motion for the Court to Issue Second Supplemental Order of Execution and Second Supplemental Warrant of Execution. The proposed warrant submitted by the State sought Floyd’s execution to be held at “the State Prison, located at or near Carson City, State of Nevada.”

On May 10, 2021, the State filed an addendum to its motion seeking to change the location of the execution to Ely State Prison (ESP), even though NRS 176.355(3) expressly states that executions must be conducted at the state prison, which is Nevada State Prison, in Carson City. The State asserts that citing NSP as the execution location was a “typographical error,” and “the correct location of execution” is ESP.

Floyd therefore moves to strike the State’s proposed warrant seeking his execution at ESP as precluded under current law, or, in the alternative, to stay consideration of it until the final disposition of his recently submitted amended petition for writ of habeas corpus. Floyd also objects on notice grounds to the State

¹ David Ferrara, *DA to proceed with death penalty against gunman in 1999 store killings*, Las Vegas Rev. J. (Mar. 26, 2021), available at <https://www.reviewjournal.com/crime/courts/da-to-proceed-with-death-penalty-against-gunman-in-1999-store-killings-2315637/>.

1 making such material changes to the execution warrant at the last moment thereby
2 depriving him of adequate notice and an opportunity to respond.

3 II. ARGUMENT

4 A motion to strike is appropriate to remove any redundant, immaterial,
5 impertinent, or scandalous pleading. NRCP 12(f). The second warrant sought by the
6 State is redundant and immaterial as it has already submitted a proposed warrant
7 for Floyd's execution at NSP. As explained in his pleadings on file with the Court,
8 the State's recently proposed warrant is immaterial and impertinent as Floyd has
9 pending litigation, making its application premature. The State's new warrant is
10 further immaterial and impertinent because under NRS 176.355(3) the intended
11 execution location, ESP, is against current law, and precluded by the statute. Under
12 NRS 176.355(3), all executions must occur at NSP. Changing the warrant to ESP as
13 the execution location therefore violates NRS 176.355(3) and as a result the new
14 proposed warrant is illegal and cannot be signed by the Court.

15 A. NRS 176.355(3)'s use of "the," a definite article, plainly 16 demonstrates the Legislature's intent for NSP to be the only prison where executions can occur

17 Under NRS 176.355(3), all executions "*must* take place at *the* state prison."
18 (emphasis added). For this reason, any execution that does not take place at NSP is
19 against current law and precluded under the statute.

20 The purpose of statutory interpretation "is to give effect to the Legislature's
21 intent." *Hobbs v. State*, 127 Nev. 234, 237, 251 P.3d 177, 179 (2011). Traditionally,
22 this begins with the statute's plain words; "when a statute is clear on its face, a
23 court cannot go beyond the statute in determining legislative intent." *State v.*

1 *Lucero*, 127 Nev. 92, 95, 249 P.3d 1226, 1228 (2011). But if a statute is ambiguous,
2 this Court is permitted to go beyond its plain words to determine legislative intent.
3 *Id.* “A statute is ambiguous if it is capable of being understood in two or more senses
4 by reasonably well-informed persons.” *D.R. Horton, Inc. v. Eighth Judicial Dist.*
5 *Court*, 123 Nev. 468, 476, 168 P.3d 731, 737 (2007). When interpreting an
6 ambiguous statute, this Court turns to legislative history, reason, and public policy
7 to determine legislative intent. *Lucero*, 127 Nev. at 95-96, 249 P.3d at 1228.

8 In interpreting a statute, a court’s duty “is to interpret the statute’s
9 language; this duty does not include expanding upon or modifying the statutory
10 language because such acts are the Legislature’s function.” *Williams v. United*
11 *Parcel Servs.* 129 Nev. 386, 391-92, 302 P.3d 1144, 1147 (2013); *see also Williams v.*
12 *State Dep’t of Corr.*, 133 Nev. 594, 598-99, 402 P.3d 1260, 1264 (2017) (“[The
13 Legislature’s] explicit decision to use one word over another in drafting a statute is
14 material. It is a decision that is imbued with legal significance and should not be
15 presumed to be random or devoid of meaning.” (internal citations omitted)) (quoting
16 *S.E.C. v. McCarthy*, 322 F.3d 650, 656 (9th Cir. 2003)).

17 NRS 176.355(3) is clear and unambiguous. Thus, legislative intent must be
18 derived from the plain words of the text. NRS 176.355(3) provides that all
19 executions “must take place at the state prison.” Despite its decommissioned
20 condition, NSP, in Carson City, is the state prison in Nevada, and resultantly the
21 only prison where executions can take place. Construing this statute otherwise
22 would eliminate the legal significance of the Legislature’s intentional act. Use of the
23

1 definite article “the” denotes the Legislature’s intent to limit executions to a specific
2 place and a singular location, the state prison.

3 Notably, when drafting the statute and through its almost half a dozen
4 amendments the Legislature made an explicit decision to use “the” instead of “a” or
5 foregoing the use of a definite article altogether. *See Freytag v. Commissioner*, 501
6 U.S. 868, 902 (1991) (Scalia, J., concurring) (use of the definite article in the
7 Constitution’s conferral of appointment authority on “the Courts of Law” obviously
8 narrows the class of eligible ‘Courts of Law’ to those courts of law envisioned by the
9 Constitution”); *Pineda v. Bank of America, N.A.*, 241 P.3d 870, 875 (Cal. 2010) (“Use
10 of the indefinite articles “a” or “an” signals a general reference, while use of the
11 definite article ‘the’ (or ‘these’ in the instance of plural nouns) refers to a specific
12 person, place, or thing.”). Rules of statutory interpretation demand that this
13 decision not be treated as “random or devoid of meaning.” Expanding or modifying
14 NRS 176.355(3) to include prisons other than NSP would diminish the legal
15 significance of the Legislature’s decision.

16 The subsequent construction of an execution chamber at ESP is
17 inconsequential in interpreting the statute. NRS 176.355(3) must be applied by this
18 Court as written, as “[i]t is the prerogative of the Legislature, not the Supreme
19 Court, to change or rewrite a statute.” *Holiday Ret. Corp. v. State, Div. of Indus.*
20 *Relations*, 128 Nev. 150, 154, 274 P.3d 759, 761 (2012). Only the Legislature is
21 vested with lawmaking authority and this Court may not rely on public policy to
22 change or refuse to enforce NRS 176.355(3)’s plain meaning. *See Beazer Homes*
23

1 *Nev., Inc. v. Eighth Judicial Dist. Court*, 120 Nev. 575, 578 n.4, 97 P.3d 1132, 1134
2 n.4 (2018) (“When a statute is clear, unambiguous, not in conflict with other
3 statutes and is constitutional, the judicial branch may not refuse to enforce the
4 statute on public policy grounds. That decision is within the sole purview of the
5 legislative branch.”). Therefore, even though the Legislature’s failure to change the
6 statute to specify ESP was likely an oversight, the democratic process requires that
7 the people’s representatives in the Legislature change the statute. It should not be
8 amended by a court decision.

9 Moreover, the Nevada Supreme Court has recognized NSP as the only prison
10 where executions can occur. In *Kramer v. State*, Kramer asked the Nevada
11 Supreme Court to take judicial notice that although his death warrant stated he
12 would be executed at “the State Prison of the State of Nevada, at *Carson City*” the
13 state prison, NSP, was not technically located within the Carson City limits. 60
14 Nev. 262, 262, 108 P.2d 304, 304 (1940). The Court affirmed Kramer’s assertion and
15 further noted that “Nevada has but one state prison and but one Carson City, and
16 that the state prison is located approximately one mile from the city limits of said
17 Carson City, which is the capital city of Nevada.” *Id.* The Nevada Supreme Court
18 unequivocally referenced NSP as the state prison, not ESP, which is located over
19 300 miles from Carson City and had yet to be constructed at the time of the
20 statute’s enactment.

21 Consistent with that position, the prior execution warrant in Floyd’s case
22 specified the location of the execution at the Nevada State Prison *see also* Ex. 6 at 2
23

1 (Judgment of Conviction) (sentencing Floyd to death “in the Nevada State Prison
2 located at or near Carson City, State of Nevada.”). And even the State in their
3 second supplemental warrant, filed with this Court on April 14, 2021, recognized in
4 the warrant that the “the State Prison” meant the Nevada State Prison. Motion at
5 4.

6 Moreover, interpreting “the” to encompass whichever maximum-security
7 prison is identified as the “state prison,” would lead to unreasonable and absurd
8 results. *See Sheriff, Clark County v. Burcham*, 124 Nev. 1247, 1253, 198 P.3d 326,
9 329 (2008) (“[S]tatutory construction should always avoid an absurd result.”).
10 Presently, Nevada has two active prisons that are maximum security and classified
11 as “state prisons” per their formal titles, Ely State Prison and High Desert State
12 Prison. Thus, the statute would permit executions at either location as both are a
13 “state prison.” Adopting this interpretation would render NRS 176.355(3) vague and
14 incapable of being properly enforced because it would be unclear, to an ordinary
15 person, which “state prison” is required to be utilized to meet NRS 176.355(3)’s
16 location requirement. *See Clancy v. State*, 129 Nev. 840, 847, 313 P.3d 226, 231
17 (2013) (“A statute is unconstitutionally vague (1) if it fails to provide a person of
18 ordinary intelligence fair notice of what is prohibited; or (2) if it is so standardless
19 that it authorizes or encourages seriously discriminatory enforcement.”) (internal
20 quotation marks omitted) (quoting *State v. Castaneda*, 126 Nev. 478, 481-82, 245
21 P.3d 550, 553 (2010)).

1 Accordingly, because NRS 176.355(3) plainly evidences the Legislature's
2 intent for executions to only occur at NSP, the State's proposed amendment to its
3 motion for a second execution warrant is precluded by current law and this Court
4 should strike it as immaterial and impertinent.

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1 **B. NRS 176.355’s legislative history further supports interpreting**
2 **the statute to only permit executions at NSP**

3 Nonetheless, even if it is appropriate to go beyond NRS 176.355’s plain text to
4 determine legislative intent, legislative history also supports interpreting the
5 statute in this manner.

6 While NRS 176.355 has virtually stayed the same since being codified in
7 1967, its been brought before the Legislature for amendments five times. In several
8 instances NSP was the only prison referenced or alluded to when discussing the
9 location of an execution under the statute. *See e.g.*, Ex. 1 at 125, (Hearing Before
10 the Senate Committee on Judiciary, 62nd Legis. 124-27 (1983)) (statement of John
11 Slansky, Warden of Northern Nevada Correctional Center describing the inept
12 execution conditions at NSP); Ex. 2 at 1673-74 (Hearing Before the Assembly
13 Committee on Judiciary, 62nd Legis. 1670-75 (1983)) (statement of Vernon
14 Housewright, Director of Prisons, discussing changes to Nevada’s method of
15 execution due to the insufficiency of NSP’s execution chamber); Ex. 3 at 1
16 (Memorandum Exhibit submitted for Hearing before Assembly Committee on
17 Judiciary, 68th Sess. Legis. 1977-78 (1995)) (referencing NSP as the location where
18 executions occur). Notably, the Nevada State prison was referenced even after Ely
19 State Prison (in 1989) and Lovelock State Prison (1995) were opened.

20 Further, during a 1983 committee meeting it was specifically recognized that
21 under NRS 176.355 executions are to be held at the State’s maximum-security
22 prison. *See* Ex. 1 at 126. During that time NSP was the only such facility in
23 existence, with ESP being constructed in 1989 and High Desert over a decade later

1 in 2000. Permitting an execution at any prison other than NSP directly contradicts
2 legislative intent evidencing otherwise.

3 Reading the statute to permit executions at locations other than NSP would
4 be expanding upon NRS 176.355(3)'s limited scope and modifying its specific
5 designation of a location for executions, an act that is solely left to the Legislature.
6 Legislative history further shows that despite opining upon the meaning of NRS
7 176.355's text and passing several amendments, the Legislature failed to expand
8 the statutory language to include prisons other than NSP. Specifically, in 1983, the
9 Legislature amended NRS 176.355(3)'s statutory language from "within the limits
10 of the state prison" to "at the state prison." Ex. 4 at 860-61, Ex. 5 at 1675.
11 Legislators opined that the former language was unclear and as a result chose to
12 clarify the language by limiting the places an execution can take place, not
13 expanding them. *See* Ex. 1 at 126 (stating that "the normal place for the execution
14 would be the maximum security prison," but the Legislature "did not know the
15 meaning behind the words, 'within the limits of the state prison.'"). Thus, NRS
16 176.355's legislative history further demonstrates the Legislature's intent to make
17 NSP the sole location for executions of death sentenced inmates.

18 In light of the above, striking the State's recently submitted execution
19 warrant is required as it is against NRS 176.355(3) and precluded by current law,
20 making it immaterial, impertinent, and redundant to the execution warrant is
21 previously filed.

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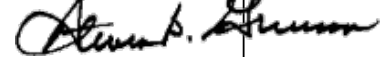
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CERTIFICATE OF SERVICE

In accordance with EDCR 8.04(c), the undersigned hereby certifies that on this 11th day of May, 2021 a true and correct copy of the foregoing MOTION TO STRIKE OR ALTERNATIVELY, MOTION TO STAY ENTRY OF SECOND SUPPLEMENTAL WARRANT AND ORDER OF EXECUTION, was filed electronically with the Eighth Judicial District Court. Electronic service of the foregoing document shall be made in accordance with the master service list as follows:

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/s/ Sara Jelinek
An Employee of the Federal Public Defenders
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(702) 388-5819 (Fax)

Attorneys for Zane Michael Floyd

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,
Plaintiff,
v.
ZANE MICHAEL FLOYD,
Defendant.

Case No. 99C159897
Dept. No. XVII

**EXHIBITS IN SUPPORT OF MOTION
TO STRIKE, OR ALTERNATIVELY,
MOTION TO STAY ENTRY OF
SECOND SUPPLEMENTAL
WARRANT AND ORDER OF
EXECUTION**

Date of Hearing:
Time of Hearing:

(DEATH PENALTY CASE)

1	Exhibit	Document
2	1.	Minutes of the Nevada State Legislature, 62nd Sess., Senate Committee on Judiciary, dated Feb. 10, 1983.
3		
4	2.	Minutes of the Nevada State Legislature, Assembly Committee on Judiciary, dated May 2, 1983.
5	3.	State of Nevada Legislative Counsel Bureau, Memorandum from Assemblywoman Jeannine Stroth to Jean Courey White, Research Analyst, re: Viewing of Executions by Victims' Families, dated Apr. 24, 1995.
6		
7	4.	Nev. Rev. Stat. § 176.355(3)
8		
9	5.	Minutes of the Nevada State Legislature, Assembly Committee on Judiciary, Dated May 27, 1983.
10	6.	<i>State of Nevada v. Zane Michael Floyd</i> , Case No. C159897

11 DATED this 11th day of May, 2021.

12 Respectfully submitted
13 RENE L. VALLADARES
14 Federal Public Defender

15 /s/ David Anthony
16 DAVID ANTHONY
17 Assistant Federal Public Defender

18 /s/ Brad D. Levenson
19 BRAD D. LEVENSON
20 Assistant Federal Public Defender

21 /s/ Jocelyn S. Murphy
22 JOCEYLN S. MURPHY
23 Assistant Federal Public Defender

1 **CERTIFICATE OF SERVICE**

2 In accordance with EDCR 8.04 (c), the undersigned hereby certifies that on
3 this 11th day of May, 2021 a true and correct copy of the foregoing EXHIBITS IN
4 SUPPORT OF MOTION TO STRIKE, OR ALTERNATIVELY, MOTION TO STAY
5 ENTRY OF SECOND SUPPLEMENTAL WARRANT AND ORDER OF
6 EXECUTION, were filed electronically with the Eighth Judicial District Court.
7 Electronic service of the foregoing document shall be made in accordance with the
8 master service list as follows:

9 Alexander Chen
10 Chief Deputy District Attorney
11 motions@clarkcountyda.com
12 Eileen.davis@clarkcountyda.com

13 /s/ Sara Jelinek
14 An Employee of the Federal Public Defenders
15 Office, District of Nevada
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EXHIBIT 1

EXHIBIT 1

MINUTES OF THE NEVADA STATE LEGISLATURE

SIXTY-SECOND Session

Senate Committee on JUDICIARY

Date: February 10, 1983

Page: One (1)

The Senate Committee on Judiciary was called to order by Chairman, Senator Thomas R.C. Wilson, at 9:00 a.m., Thursday, February 10, 1983, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is a copy of the Agenda; Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Thomas R.C. Wilson, Chairman
Senator Helen A. Foley, Vice Chairman
Senator Sue Wagner
Senator William H. Hernstadt
Senator Thomas J. Hickey
Senator James H. Bilbray
Senator Bob Ryan

STAFF MEMBERS PRESENT:

Marilyn Hofmann, Committee Secretary

SENATE BILL 109

The first bill on the agenda was Senate Bill 109, an act relating to the execution of criminals; changing the method of inflicting the death penalty to lethal injection.

Senators Glaser and Ashworth were the first to testify. Senator Glaser stated that Senate Bill 109 is relatively simple, straightforward and self-explanatory. The method of capital punishment in the State of Nevada is the sole issue of this bill. Senator Glaser said that he feels that execution by lethal injection is a more sophisticated, humane method of capital punishment. He noted that several states have already adopted this method, i.e., Idaho, New Mexico, Texas and Oklahoma. The drug that is primarily used is sodium pentothal. He expressed that sodium pentothal injections are painless and clean. He also said that this type of method

would avoid some of the emotional trauma and publicity which usually accompanies other forms of execution. He said that sodium pentothal is used for putting animals away, and is considered the most humane method. The co-sponsor of the bill, Senator Ashworth, commented that the condition of the gas chamber at the maximum security prison is very old and there are indications that when used, a great deal of effort is necessary to seal the chamber. The use of lethal injection would eliminate that expense. In response to a question from Senator Wagner, Senator Ashworth stated that he did not believe that doctors would be involved in any way with the injection itself, but only as observers.

The next person to testify was John Slansky, Warden of the Northern Nevada Correctional Center. He is speaking on behalf of the Department of Prisons, and takes a position of advocacy on Senate Bill 109. His principal concern when proposing this bill, was the safety of the gas chamber at the Nevada State Prison. He said that the gas chamber is over thirty years old, and it is unsafe. He further stated that the primary concern at the time of the Jesse Bishop execution, was the safety of the staff, witnesses and the news media, and elaborate precautions were taken, including antidotes for cyanide gas. He said that execution by gas is an extremely complicated, dangerous and costly procedure; execution by lethal injection is none of those. Gas from a gas chamber must be vented into the open air, and is affected by weather conditions. He also said that during one test done in preparation for an execution, the windows in the witness room were blown out during pressurization. Senator Wagner asked the witness if his objectives in supporting this bill were different from the sponsors', since they are on record in support of the bill because it is more humane and will draw less attention, while the Department's is mainly safety and cost effectiveness. He said that he and the sponsors had not really discussed the question of humanity, but he emphasized that there is no conflict between the Department's position and the sponsors' position. He believes that the lethal injection method would remove some of the carnival atmosphere that surrounds an execution. He also said that it is difficult to discuss humanity when someone is being executed. Mr. Slansky was asked who would administer the injection. He stated that it would be a violation of oath for a doctor to do the injection, and therefore one member of the prison staff would administer the drug, and he does not know who that would be, and does not believe that

the person who administers the drug would like to have his identity known.

Senator Hernstad suggested that perhaps the use of carbon monoxide gas would be preferable to cyanide gas. Senator Bilbray stated that a less circus atmosphere could be accomplished by administering lethal injection in a nursing facility, or the condemned person's room with family present. The Chairman questioned the warden regarding the reasons behind the location of the execution and the number of persons to be present. Mr. Slansky indicated that the normal place for the execution would be the maximum security prison, and he did not know the meaning behind the words, "within the limits of the state prison." He was then questioned regarding the words, "No person who has not been invited by the director may witness the execution." The warden stated that he had no reason for that particular language, but he could see why he might want to have certain persons at the execution. This language was apparently patterned after the Texas law. The warden said that he believed that there should be more than six official witnesses [that he should be able to have other "observers".] The Committee consensus was that this language simply allowed the director to invite more than six witnesses, at his discretion. There was discussion regarding how many witnesses attended the Jesse Bishop execution, and an exact number could not be determined. The Chairman stated, for the record: "I take it it's not the method of administering the death penalty which makes the event a sensational one; I gather it's the nature of the event itself.... it is consistent to say whether or not it's sensational really does not turn on the method of execution..it turns on the fact of execution, by whatever the method." The warden agreed with the Chairman, and stated that execution would be sensational no matter what the method. Senator Wagner emphasized that the number of people who are allowed to attend is a part of the sensationalism, and that this Committee should have some concern as to how many witnesses are there and how they are chosen. The warden said that whenever there is an execution, the local and national media wish to be there. Senator Wagner suggested that perhaps methods other than lethal injection would point out the ugliness of execution to a greater extent, and the warden agreed. In response to a question posed by Senator Ryan, the warden stated that there are 18 persons now awaiting execution in Nevada.

The next person to testify was Senator Joe Neal, who spoke

in opposition to Senate Bill 109. He first stated that he believes there is no way that a high degree of civility can be brought to the death penalty, and to entertain a bill such as Senate Bill 109, which allows the state to impose the death penalty by lethal injection, seems to indicate that the state is trying to make execution more palatable. He stated that perhaps execution should be kept at a degree where it is objectionable. The senator said that he is disturbed because he believes passage of this bill will tend to increase the number of executions. Senator Wilson asked the following question of Senator Neal: "Should the method of execution be for the benefit of the executed or for the benefit of society?" Senator Neal stated that there is no benefit to the one being executed. The chairman said that the question is not whether or not there should be capital punishment, but pertains to the method; whether there should be consideration for the convicted or for society, recognizing that those needs may be radically different. "Do you use the execution as an example, or do you choose the method out of consideration for the person being executed?" Senator Neal replied that one could not adequately address that question without looking at both sides. In this instance, i.e., lethal injection, it seems to be one in which society itself is not bothered as consciously about that method of execution, since it is treated more like putting a puppy to sleep, and is therefore more palatable. He said that for the person being executed, it makes no difference, and the method is therefore for the benefit of society. "If you are trying to find a better method to kill someone in the name of the state...you are making it easier, and therefore the judge who might have some apprehension of imposing the death penalty...it is the easy way to die.. and from that perspective you are going to find more judgments of death..."

There being no further testimony regarding Senate Bill 109, the public hearing was closed on that matter.

SENATE BILL 110

The next matter was Senate Bill 110, an act relating to homesteads, increasing the amount exempt; increasing the value of a dwelling exempt from execution.

Testifying on behalf of this bill was the sponsor, Senator Nick Horn. He stated that this bill is one of the good things that the legislature can do for the citizens of the

EXHIBIT 2

EXHIBIT 2

MEMBERS PRESENT: Chairman Jan Stewart
Vice-Chairman Shelley Berkley
Mr. Mike Malone
Mrs. Jane Ham
Mr. Byron Bilyeu
Mr. Gene Collins
Mr. Robert Fay
Mr. David Humke
Mr. Leonard Nevin
Mr. James Stone
Mrs. Courtenay Swain

MEMBERS ABSENT : None

GUESTS PRESENT : See guest list attached as EXHIBIT A.

Chairman Stewart called the meeting to order at 8:20 a.m. The first bill considered by the Committee was SB 109.

SB 109: Changes method of inflicting death penalty.
(BDR 14-70)

Senator Norman Glaser Introduced Vern Housewright, Director of Prisons, and stated they were here to discuss Senate Bill 109, which changes the method of inflicting the death penalty.

He said he first became interested in this when a warden at one of the interim finance committee meetings indicated to us there were some problems over at the prison when they had an execution out there a year or so ago. The gas chamber is on the top story and they had considerable trouble to make it leak proof. The cyanide gas is very toxic and posed a threat to other inmates in that wing.

He remembers back to 1961 when he first served in the Assembly, they used to evacuate the Warden and the Warden's family from the house next door, which is outside of the grounds.

After the execution, it takes time to vent off the gases and they can only admit a little bit of it into the atmosphere at a time, so it takes several days to evacuate the room.

He became acquainted with this method of execution, the death by lethal injection, when he was down in Oklahoma several years ago. Oklahoma and Texas, Arkansas, Idaho and one other State have death by lethal injection.

It occurred to him that this was a more humane way and much less costly and he said he doesn't think there is the "carnival type" atmosphere with it, as you have with the electric chair, firing squad or gas.

There was a man executed in the electric chair just a few days ago, he continued. They had to give him three shots of 30 second duration each time. Thirty seconds is quite awhile to have a current of electricity passing through your body, with all the convulsing and tensing that goes with it before he was finally pronounced dead.

Some of you (the committee) might have had sodium penathol in the operating room. He said he did a couple of years ago, and didn't even know they had given it to him. First thing he knew, he was awakened in the recovery room. All this would amount to would be an overdose of sodium pentathol.

The bill passed through Senate Judiciary, and they made an amendment which would be SB 109 - First Reprint.

Some of the changes made are:

They reduced the number of people that could view the execution. (Sec. 1, Par. 2, Line 14, of the original bill.)

He thinks that was the only major change. It passed out of committee handily and he thinks there was only one dissenting vote on the floor of the Senate.

Vernon Housewright is more acquainted with it than he is, and Warden Slansky and Warden Sommer testified that they favored the bill. Warden Slansky appeared before the Senate Judiciary Committee.

Mr. Stewart asked Senator Glaser about his statement that sodium pentathol is a pleasant way to go. His question to Senator Glaser was: "Do you think we should make it a pleasant way to go?"

Senator Glaser replied that in the debate on the floor of the Senate, one of the Senators said that they should execute him in the same manner in which they executed their victims. He said he doesn't know whether we should torture them or not, but he shares Mr. Stewart's sentiment. As a rancher, he continued, he is not a bleeding heart. It wouldn't hurt him to torcher them, but he understands the terminology, that you can't use anything ---

Mr. Stewart said he supposes one of the purposes of capital punishment is for a deterrent, and he wonders if you lose the deterrent effect if you make it a pleasant way to go.

Senator Glaser said "no, but it speeds up the executions." He said one of the reluctants that people have to committing a

person to death is that they don't want to see them shot or hung. Right now there are 20 people on death row. One person has been there since 1963 and he was the man who chopped up Sonjia McCaskie, the Olympic skier into little bits and pieces and put parts of her body in the trunk. He's still out there. He doesn't know why.

Perhaps if the death penalty were a little more accepted, then you might see some movement on death row.

Mr. Stewart said one of the problems that some states have wrestled with is the fact that the American Medical Association is coming out against their doctors, for instance being a part of injecting this lethal dose. Its in violation of their code. He asked Mr. Houseright if he saw that as a problem here?

Mr. Housewright said Warden Slansky would address that technique as it is used in Texas and they don't have to use a doctor.

Mr. Collins asked Senator Glaser what the difference was between electrocution, the gas chamber and death by the firing squad and the lethal injection?

Senator Glaser said the lethal injection was more humane and did not create the carnival atmosphere, as say the firing squad. He asked Mr. Collins if he recalled when Gary Gilmore was executed by firing squad in Utah? People gathered the day before, and they lined that man up at dawn as the sun was coming up over the Wasatch Mountains. The firing squad lined up and they even made a movie of it.

He continued that he didn't think there was anything glamorous or sensational about lying down on a gurney and having a needle jabbed into your vein.

Senator Glaser said he is advocating the death by injection for the following reasons:

- (1) Our present system is archaic and costs the State money every time they fire it up.
- (2) It's more humane and less sideshow atmosphere to this type of death.

Mr. Nevin asked what it costs for an execution by gas?

Senator Glaser said he would rather defer to the Director on that, but knows that when they buy cyanide, (and they only do it about once every 10 years) he understands they have to buy a barrel full at a time, which costs several thousands of dollars, and you only use a handful. The rest sits there, and they have to throw it out or dispose of it, unless they are going to have another execution within a short time.

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Mr. Nevin said the death penalty does not deter crime to him, but it sure stops that person from doing it again.

Senator Glaser said when they used to hang the horse thief in the village square, it sure stopped horse thieving. How many horse thieves do you see today?

Vernon Housewright, Department of Prisons - In checking on the current gas chamber at the Nevada State Prison, he said, he asked their Chief Engineer, Bill Berning to prepare a statement of some of the problems with it. He was concerned with the fact that they could end up killing several of the people who witness the executions if they used the gas chamber. (EXHIBIT "B")

The chamber is surrounded on three sides with one-quarter inch plate glass. The glass could be broken during an execution if the condemned person were able to free a leg. The vacuum created by the evacuation of the gas could cause the glass to break. Due to age, the glass could become crystallized and break. The seal holding the glass in could fail. Any of these could cause gas to escape into the witness room or the control room.

The bags of cyanide pellets are dropped into an acid vat under the chair by an electric cellunoid. If there was an electrical problem or the cellunoid hung up for some reason, someone would have to enter the chamber to remove the cyanide bag. To do this, the vats would have to be drained of acid and someone would have to enter to remove the bag of cyanide. If the bag dropped when someone entered, there could be enough acid to activate the cyanide and produce enough gas to impair or kill the person trying to remove the cyanide bag.

After an execution, the acid vats are drained by pulling the plugs from a remote position by means of a nylon cord. If for some reason this failed, there would be no way to drain the vats.

The drained acid goes under the chamber, then to a drain pipe outside the building into an unknown spot north of the Nevada State Prison. Any leak along the way could harm any one in its path.

The gas is evacuated by an exhaust fan on the top of the chamber. If the exhaust fan failed, another fan would have to be installed to evacuate the gas. The person changing the fan could have his life seriously endangered.

From the gas evacuates, it is removed by way of a tall stack above the gas chamber, even though it is neutralized with ammonia prior to evacuation. The evacuated gas could drift to No. 2 tower, and present a problem to the No. 2 tower officers.

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Even though the sinks in the control room are filled with water to serve as a trap, it is possible for the gas to enter the control room.

Mr. Housewright questions if there is a fail-safe method of knowing if all of the gas is evacuated prior to opening the door to remove the condemned from the chamber. He feels it is possible that the victim's lungs could be full of cyanide gas and possibly the gas could escape when the victim is removed.

All of the vat plugs, nylon strings, the door and any other connection to the outside of the chamber is sealed with vaseline. The vaseline seal could fail at any time during an evacuation and cause gas to leak.

The current gas chamber was constructed in 1950 and has been utilized in 11 executions. Chemicals and/or solutions necessary for operation of the chamber are:

- 1 gallon sulfuric acid
- 2 pounds sodium cyanide
- 1 gallon ammonia
- 4 pounds sodium hydroxide
- ice
- 2 gallons of water
- 1 quart phenol phthaline

Regarding the Chief Engineer's concerns on the window, he informs Mr. Housewright that a window did in fact pop out of the chamber during a vacuum check that he performed a few years ago. He estimates that it would require a minimum of \$30,000 to correct the deficiencies in the existing chamber.

When New Mexico adopted lethal injection, they offered to sell to Nevada their gas chamber and reported that it had been built in 1955 at a cost of \$40,000 - in worse shape than the one that we have, he said.

Execution by lethal injection - Conversion of the gas chamber to a suitable enclosure for execution by lethal injection would require a minimum in the way of structural changes. The existing chairs would have to be removed. A platform could be constructed for placement of a gurney. Tubing for the syringes could be run into the chamber from the existing control room.

Chemicals and/or solutions necessary for lethal injection as used in Texas are:

- 1 gram sodium thiopental - a muscle relaxant
- 30 cc saline solution - suspension solution
- 1 milligram pavilon - a respiratory suppressant
- 100 milli-equivalents potassium chloride - a chemical which alters blood electrolyte level.

(Committee Minutes)

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A back-up syringe flowing with saline solution is utilized in case of problems with the primary injection. Unconsciousness is almost immediate. Death may take up to several minutes and is caused by the combined overdose of each of the above drugs.

Mr. Housewright continued by saying the current bill, SB 109, changes the method of execution from lethal gas to injection of lethal drug. The bill requires the Director to:

- (1) Select the drug or combination of drugs in consultation with the State Health Officer.
- (2) Be present at the execution.
- (3) Invite a competent physician and not less than 6 or more than 9 witnesses.
- (4) The execution must take place at the State Prison, and no person who has not been invited by the Director may be a witness.

Reference to the Doctor's Hippocratic Oath he is told that now the position of the American Medical Association is that a Doctor can consult with them regarding the types of drugs that should be used in carrying out the execution, and he can pronounce the individual dead.

The matter of the injection of the lethal drug as it was done in Texas, can be done by an emergency medical technician or anyone else for that matter that is trained in depressing the syringe that allows the drug to go into the body.

Mr. Malone asked Mr. Housewright about his statement that there was a leak in the gas chamber and several witnesses to the execution could be effected by the fumes. "Is it true that you or a warden would have to be there?"

Mr. Housewright replied that the bill makes it mandatory that the Director be present. There would be several staff members, including himself.

Mr. Malone continued by saying that he thought it had been brought up that the expense of renovating the gas chamber was quite high, and asked if Mr. Housewright could give an estimate of what that would be?

He replied that after talking to the staff after the last execution, he knows its quite high but has no exact figures on it.

EXHIBIT 3

EXHIBIT 3

**STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU**

LEGISLATIVE COMMISSION (702) 687-6800
JOSEPH E. DINI, JR., Assemblyman, Chairman
Lorne J. Malkiewicz, Director, Secretary

INTERIM FINANCE COMMITTEE (702) 687-6821
JOHN W. MARVEL, Assemblyman, Chairman
MORSE ARBERRY, JR., Assemblyman, Chairman
Mark W. Stevens, Fiscal Analyst
Daniel G. Miles, Fiscal Analyst



CARSON CITY OFFICE:
Legislative Building, Capitol Complex
Carson City, Nevada 89710
Fax No.: (702) 687-5962
LORNE J. MALKIEWICH, Director (702) 687-6800
GARY CREWS, Legislative Auditor (702) 687-6815
ROBERT E. BRIDGEMAN, Research Director (702) 687-6825
BRENDA J. BRIDGES, Legislative Counsel (702) 687-6830

LAS VEGAS OFFICE:
555 E. Washington Avenue, Room 4400
Las Vegas, Nevada 89101
Fax No.: (702) 486-2810
BRIAN L. DAVIE, Administrative Services Officer (702) 486-2800

MEMORANDUM

DATE: April 24, 1995
TO: Assemblywoman Jeannine Stroth
FROM: Jean Courey White, Research Analyst
SUBJECT: **Viewing of Executions by Victims' Families**

You requested information regarding the viewing of executions by victims' families. Specifically, you asked if there were any space limitations for the viewing of executions in Nevada prisons. Also, you asked if any other states allow viewing of executions by victims' families, and if so, what are the age restrictions.

According to John Slansky, Acting Assistant Director of the Department of Prisons (887-3285), the room where executions are conducted (at the Nevada State Prison facility on Fifth Street in Carson City) is limited in size. Therefore, the maximum number of persons who could view an execution is 24.

A Westlaw search of the statutes of all 50 states reveals two states that have laws pertaining to the viewing of executions by victims' families: Washington and Louisiana. The West's *Revised Code of Washington* 10.95.180 states that the superintendent of prisons shall designate the witnesses allowed in several categories, including representatives from victims' families. The Washington code does not provide an age restriction for witnesses. West's *Louisiana Revised Statutes Annotated* 46:1844(N) regarding the basic rights for victims states that:

In cases where the sentence is the death penalty, the victim's family shall have the right to be notified by the appropriate court of the time, date and place of the execution, and a representative of the family shall have the right to be present.

EXHIBIT E
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EXHIBIT 4

EXHIBIT 4

3. The term of imprisonment designated in the judgment shall begin on the date of sentence of the prisoner by the court.

4. Upon the expiration of the term of imprisonment of the prisoner, or the termination thereof for any legal reason, the [warden] director of the department of prisons shall return one of his certified copies of the judgment to the county clerk of the county from whence it was issued, with a brief report of his proceedings thereunder endorsed thereon, and the endorsed copy shall be filed with the county clerk. The return shall show the cause of the termination of such imprisonment, whether by death, legal discharge or otherwise.

SEC. 68. NRS 176.345 is hereby amended to read as follows:

176.345 1. When a judgment of death has been pronounced, a certified copy of the entry thereof in the minutes of the court shall be forthwith executed and attested in triplicate by the clerk under the seal of the court. There shall be attached to the triplicate copies a warrant signed by the judge, attested by the clerk, under the seal of the court, which shall recite the fact of the conviction and judgment, and appoint a week within which the judgment is to be executed, which must not be less than 60 days nor more than 90 days from the time of judgment, and must direct the sheriff to deliver the prisoner to such authorized person as the [warden of the state prison shall designate] director of the department of prisons designates to receive the prisoner, for execution, such prison to be designated in the warrant.

2. The original of the triplicate copies of the judgment and warrant shall be filed in the office of the county clerk, and two of the triplicate copies shall be immediately delivered by the clerk to the sheriff of the county; one of the triplicate copies to be delivered by the sheriff, with the prisoner, to such authorized person as the [warden of the state prison shall designate,] director of the department of prisons designates, which shall be the warrant and authority of the [warden of the state prison] director for the imprisonment and execution of the prisoner, as therein provided and commanded, and the [warden] director shall return his certified copy of the judgment to the county clerk of the county whence it was issued; and the other triplicate copy of such judgment and warrant to be the warrant and authority of the sheriff to deliver the prisoner to such authorized person so designated by the [warden of the state prison] director; the last-mentioned copy to be returned to the county clerk by the sheriff with his proceedings endorsed thereon.

SEC. 69. NRS 176.355 is hereby amended to read as follows:

176.355 1. The judgment of death shall be inflicted by the administration of lethal gas.

2. The execution shall take place within the limits of the state prison, wherein a suitable and efficient enclosure and proper means for the administration of such gas for that purpose shall be provided by the board of prison commissioners.

3. The [warden of the state prison] director of the department of prisons must be present, and must invite a competent physician, and not less than six reputable citizens over the age of 21 years, to be present at the execution; but no other persons shall be present at the execution.

SEC. 70. NRS 176.365 is hereby amended to read as follows:

176.365 After the execution, the [warden] director of the department of prisons must make a return upon the death warrant to the court by which the judgment was rendered, showing the time, place, mode and manner in which it was executed.

SEC. 71. NRS 176.425 is hereby amended to read as follows:

176.425 1. If, after judgment of death, there is a good reason to believe that the defendant has become insane, the [warden of the state prison] director of the department of prisons to whom the convicted person has been delivered for execution may by a petition in writing, verified by a physician, petition a district judge of the district court of the county in which the state prison is situated, alleging the present insanity of such person, whereupon such judge shall:

(a) Fix a day for a hearing to determine whether the convicted person is insane;

(b) Appoint two physicians, at least one of whom shall be a psychiatrist, to examine the convicted person; and

(c) Give immediate notice of the hearing to the attorney general and to the district attorney of the county in which the conviction was had.

2. If [such judge shall determine] the judge determines that the hearing on and the determination of the sanity of the convicted person cannot be had before the date of the execution of such person, [such] the judge may stay the execution of the judgment of death pending the determination of the sanity of [such] the convicted person.

SEC. 72. NRS 176.435 is hereby amended to read as follows:

176.435 1. On the day fixed, the [warden of the state prison] director of the department of prisons shall bring the convicted person before the court, and the attorney general or his deputy shall attend the hearing. The district attorney of the county in which the conviction was had, and an attorney for the convicted person, may attend the hearing.

2. The court shall receive the report of the examining physicians and may require the production of other evidence. The attorney general or his deputy, the district attorney, and the attorney for the convicted person or such person if he is without counsel may introduce evidence and cross-examine any witness, including the examining physicians.

3. The court shall then make and enter its finding of sanity or insanity.

SEC. 73. NRS 176.445 is hereby amended to read as follows:

176.445 If it is found by the court that the convicted person is sane, the [warden] director of the department of prisons must execute the judgment of death; but if [such] the judgment has been stayed, as provided in NRS 176.425, the judge shall cause a certified copy of his order staying the execution of the judgment, together with a certified copy of his finding that the convicted person is sane, to be immediately forwarded by the clerk of the court to the clerk of the district court of the county in which the conviction was had, who shall give notice thereof to the district attorney of such county. [whereupon proceedings shall] Proceedings shall then be instituted in the last-mentioned district court for the issuance of a new warrant of execution of the judgment of death in the manner provided in NRS 176.495.

SEC. 74. NRS 176.455 is hereby amended to read as follows:

EXHIBIT 5

EXHIBIT 5

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He replied that after talking to the staff after the last execution, he knows its quite high but has no exact figures on it.

EXHIBIT 6

EXHIBIT 6

ORIGINAL

FILED

SEP 5 10 45 AM '00

Shirley L. Pennington
CLERK

234
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2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ZANE MICHAEL FLOYD,
#1619135

Defendant.

Case No. C159897
Dept. No. V
Docket H

JUDGMENT OF CONVICTION

WHEREAS, on the 6th day of July, 1999, Defendant, ZANE MICHAEL FLOYD, entered a plea of Not Guilty to the crimes of BURGLARY WHILE IN POSSESSION OF A FIREARM; MURDER WITH USE OF A DEADLY WEAPON; ATTEMPT MURDER WITH USE OF A DEADLY WEAPON; SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON AND FIRST DEGREE KIDNAPING WITH USE OF A DEADLY WEAPON, NRS 205.060, 193.165; 200.010, 200.030, 193.165; 200.010, 200.030, 193.165, 193.330; 200.310, 200.320, 193.165; 200.364; 200.366 and 193.165; and

WHEREAS, the Defendant ZANE MICHAEL FLOYD, was tried before a Jury and the Defendant was found guilty of the crime of COUNT I - BURGLARY WHILE IN POSSESSION OF A FIREARM; COUNT II, III, IV, V - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON; COUNT VI - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON; CT VII - FIRST DEGREE KIDNAPING WITH USE OF A DEADLY WEAPON; and CT VIII, IX, X and XI - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON, in

CE-02

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1 violation of NRS 205.060, 193.165; 200.010, 200.030, 193.165; 200.010, 200.030, 193.165,
2 193.330; 200.310, 200.320, 193.165; 200.364; 200.366 and 193.165, and the Jury verdict was
3 returned on or about the 19th day of July, 2000. Thereafter, the same trial jury, deliberating in
4 the penalty phase of said trial, in accordance with the provisions of NRS 175.552 and 175.554,
5 found that there were Three (3) aggravating circumstances in connection with the commission
6 of said crime, to-wit:

7 1. The murder was committed by a person who knowingly created a great risk of death
8 to more than one person by means of a weapon, device or course of action which would normally
9 be hazardous to the lives of more than one person;

10 2. The murder was committed upon one or more persons at random and without
11 apparent motive; and

12 3. The Defendant has, in the immediate proceeding, been convicted of more than one
13 offense of murder in the first or second degree.

14 That on or about the 21st day of July, 2000, the Jury unanimously found, beyond a
15 reasonable doubt, that there were no mitigating circumstances sufficient to outweigh the
16 aggravating circumstance or circumstances, and determined that the Defendant's punishment
17 should be Death as to COUNTS II, III, IV and V - MURDER OF THE FIRST DEGREE WITH
18 USE OF A DEADLY WEAPON in the Nevada State Prison located at or near Carson City, State
19 of Nevada.

20 WHEREAS, thereafter, on the 31st day of August, 2000, the Defendant being present in
21 court with his counsel, CURTIS BROWN and DOUGLAS HEDGER, Deputy Public Defenders,
22 and STEWART L. BELL, District Attorney, also being present; the above entitled Court did
23 adjudge Defendant guilty thereof by reason of said trial and verdict and sentenced Defendant as
24 follows:

25 As to COUNT I - BURGLARY WHILE IN POSSESSION OF A FIREARM - A
26 maximum term of One Hundred Eighty (180) months with the minimum parole eligibility of
27 Seventy-Two (72) months in the Nevada Department of Prisons and ordered to submit to testing
28 to determine genetic markers. It is further recommended that the defendant be held responsible

1 for restitution totaling \$1,638.48;

2 As to COUNTS II, III, IV, V - MURDER OF THE FIRST DEGREE WITH USE OF A
3 DEADLY WEAPON - Set by jury verdict as Death by Lethal Injection as to each count
4 separately. It is further recommended that the Defendant also be held responsible for restitution
5 totaling \$15,051.00 as to Count II; \$39,478.29 restitution as to Count III; \$43,660.14 restitution
6 as to Count IV; and \$19,695.10 restitution as to Count V, and ordered to submit to testing to
7 determine genetic markers;

8 As to Count VI - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON - A
9 maximum term of Two-Hundred Forty (240) months in the Nevada Department of Prisons with
10 the minimum parole eligibility of Ninety-Six (96) months, plus an equal and consecutive
11 sentence of Two-Hundred Forty (240) months with the minimum parole eligibility of Ninety-Six
12 (96) months for the Use of a Deadly Weapon and ordered to submit to testing to determine
13 genetic markers. It is further recommended that Count VI be served consecutive to Count I and
14 that the defendant be held responsible for restitution totaling \$64,264.87.

15 As to COUNT VII - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY
16 WEAPON - LIFE in the Nevada Department of Prisons with the minimum parole eligibility of
17 Sixty (60) months plus an equal and consecutive sentence of LIFE with the minimum parole
18 eligibility of Sixty (60) months for the Use of a Deadly Weapon. It is further recommended that
19 Count VII be served consecutive to Count VI.

20 As to COUNTS VIII, IX, X and XI - SEXUAL ASSAULT WITH USE OF A DEADLY
21 WEAPON - As to each count separately, the Defendant is sentenced to LIFE in the Nevada
22 Department of Prisons with minimum parole eligibility of One Hundred Twenty (120) months
23 plus an equal and consecutive sentence of LIFE with minimum parole eligibility of One Hundred
24 Twenty (120) months for Use of a Deadly Weapon. The Defendant shall submit to testing to
25 determine genetic markers and shall submit to a term of LIFETIME supervision to commence
26 upon completion of any term of incarceration or parole. It is further recommended that the
27 defendant be held responsible for restitution totaling \$210.00 as to Count VIII and Count VIII
28 be served consecutive to Count VII; Count IX be served consecutive to Count VIII; Count X be

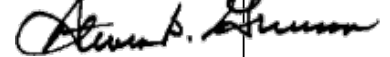
1 served consecutive to Count IX; and Count XI be served consecutive to Count X.

2 THEREFORE, the Clerk of the above entitled Court is hereby directed to enter this
3 Judgment of Conviction as part of the record in the above entitled matter.

4 DATED this 5 day of September, 2000, in the City of Las Vegas, County of Clark,
5 State of Nevada.

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8 DISTRICT JUDGE
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27 DA#C159897X/msf
28 LVMPD EV#9906030340
1° MURDER W/WPN - F



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Attorneys for Zane Michael Floyd

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ZANE MICHAEL FLOYD,
Petitioner,

v.

WILLIAM GITTERE, Warden, Ely State
Prison; **AARON FORD**; Attorney General,
State of Nevada

Respondents.

Case No. A-21-832952-W
Dept. No. 17

**MOTION FOR LEAVE TO FILE
AMENDED PETITION FOR WRIT OF
HABEAS CORPUS (POST-
CONVICTION)**

Date of Hearing:
Time of Hearing:

(DEATH PENALTY CASE)

**EXECUTION SOUGHT BY THE
STATE FOR THE WEEK OF JULY 26,
2021**

1 **POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Petitioner, Zane Michael Floyd, filed a Petition for Writ of Habeas Corpus
4 (Post-Conviction) with this Court on April 15, 2021. As of the present date, the
5 Court has not set a briefing schedule on the petition, and the State has not filed a
6 responsive pleading. Floyd seeks leave to file an amended petition concurrently
7 with this motion.

8 On April 14, 2021, the State filed a motion for the Court to issue a Second
9 Supplemental Order of Execution and Second Supplemental Warrant of Execution.
10 The State's proposed warrant sought to carry out Floyd's execution during the week
11 of June 7, 2021, at the Nevada State Prison (NSP). On April 21, 2021, Floyd filed his
12 opposition.

13 On April 16, 2021, Floyd filed a series of actions against the Nevada
14 Department of Corrections and other named defendants in the United States
15 District Court, District of Nevada (case number 3:21-cv-00176-RFB). On May 3,
16 2021, federal court ordered an evidentiary hearing with testimony to be taken of
17 Charles Daniels, the Director of the Nevada Department of Corrections. The
18 hearing took place on May 6, 2021.

19 At the hearing, Director Daniels testified that Mr. Floyd's execution would
20 not take place at NSP, but rather Ely State Prison (ESP).¹

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22
23

¹ See Ex. 1 at 56-57 (Transcript of Record at 56-57, *Floyd v. Daniels, et al.*
(May 6, 2021) (No. 3:21-cv-00176-RFB-CLB).

1 On May 10, 2021, the State filed an addendum to its warrant, changing the
2 execution location from NSP to Ely State Prison (ESP) and requesting Floyd's
3 execution date be moved to the week of July 26, 2021.

4 Director Daniels's recent testimony and the State's addendum necessitate
5 amending Floyd's habeas petition. By changing the execution location and
6 designating ESP as the place where his execution will take place, the State's
7 proposed warrant violates NRS 176.355 and correspondingly Floyd's right to a
8 constitutional execution. As such, Floyd respectfully requests this Court grant him
9 leave to amend his petition to include new claims addressing the change of
10 execution location and NDOC's inability to carry out an execution during the time
11 period requested by the State.

12 **II. ARGUMENT**

13 Floyd seeks leave to include a new claim specifically addressing the State's
14 intent to unlawfully change his execution location to ESP. The change in execution
15 location in the State's May 10th filing prevented Floyd from filing a petition which
16 addressed the statutory and constitutional issues surrounding ESP as the execution
17 location. Indeed, but for Director Daniels stating "[t]he execution, as I know it to
18 be, would be at Ely State Prison," and the State's addendum to its second
19 supplemental warrant of execution, Floyd would not have felt compelled to seek
20 leave to amend his petition.²

21
22
23 ² See Ex. 1 at 56-57.

1 The State obtained its first Warrant of Execution against Floyd on September
2 5, 2000. The State requested that the execution be held “within the limits of the
3 State Prison, located at or near Carson City, State of Nevada,” and contended that
4 this execution location was proper under NRS 176.355.³

5 Similarly, the State’s proposed Second Supplemental Warrant of Execution
6 declared that “[p]ursuant to the provisions of NRS . . . 176.355 . . . Said execution to
7 be within the limits of the State Prison, located at or near Carson City, State of
8 Nevada.”⁴

9 Even Floyd’s Judgment of Conviction dictates that NSP is the proper location
10 for executions by punishing him to death “in the Nevada State Prison located at or
11 near Carson City, State of Nevada.”⁵

12 Now, Floyd has received notice that the location of his execution is ESP, not
13 NSP. Last week, Director Daniels stated that NDOC intends to carry out Floyd’s
14 execution at ESP, and has already begun preparing the execution protocol based
15 upon this by visiting ESP “where we would carry that out, met with the warden,
16 and we went through the protocols there step-by-step.” *See* Ex. 1 at 54-55. Then, in
17 its recently filed addendum, the State argues for the first time that NSP is not the
18 proper execution location. Addendum at 3. It does not follow that the State can now
19 assert that NRS 176.355 should be interpreted to say something entirely different
20 than what it argued in its prior pleadings. At the time of filing his petition with this

21
22 ³ *See* Ex. 2 (Warrant of Execution (September 5, 2000)).

23 ⁴ *See* Ex. 3.

⁵ *See* Ex. 4 (Judgment of Conviction (September 5, 2000)).

1 Court Floyd lacked notice that NDOC intended to carry out his execution at ESP.

2 Indeed, no execution has ever occurred at ESP.

3 As a result of the State's actions, Floyd's amended petition does not address
4 all the statutory and constitutional issues surrounding his impending execution.
5 This change is significant, and warrants granting Floyd leave to amend his petition
6 in the interest of justice. As argued in the amended petition, current law (NRS
7 176.355) precludes the State and NDOC from carrying out Floyd's execution so long
8 as ESP is the execution location. This is so because NRS 176.355(3) states the
9 execution "*must* take place at *the* state prison." (Emphasis added). The use of the
10 definite article and the singular phrasing requires the statute be interpreted as
11 requiring that executions occur at NSP.

12 This Court has ample discretion under NRS 34.750(5) and *Barnhart v. State*,
13 122 Nev. 301, 130 P.3d 650 (2006), to permit the filing of Floyd's amended petition,
14 subject only to the obligation to allow the State to respond. *Barnhart*, 122 Nev. at
15 303–04, 130 P.3d at 651–52. More specifically, NRS 34.750(5) "vest[s] the district
16 court with broad authority" to consider any new claims Floyd may assert in an
17 amended petition. *State v. Powell*, 122 Nev. 751, 758, 138 P.3d 453, 458 (2006).

18 Here, an opportunity to amend his petition to include a claim challenging
19 ESP as the execution location due to the statutory constraints of NRS 176.355(3) is
20 necessary to allow Floyd to meaningfully vindicate his state and federal
21 constitutional rights to due process, equal protection, and freedom from cruel and/or
22 unusual punishment. U.S. Const. amend. V, VIII, XIV; Nev. Const. Art. I, § 6, 8(2),
23

1 Art. IV, § 21; NRS 176.355(3); *see also McConnell v. State*, 125 Nev. 243, 249, 212
2 P.3d 307, 311 (2009) (recognizing that a challenge to a death sentence is cognizable
3 in habeas to the extent “current law” would preclude the execution altogether).
4 Allowing Floyd to amend his petition to include a claim addressing the new
5 execution location, which the State deprived him of initially challenging, is the only
6 way to satisfy the interests of justice and protect Floyd’s rights to due process, equal
7 protection, and freedom from cruel or unusual punishment.

8 III. CONCLUSION

9 Based on the foregoing, Floyd respectfully requests that this Court grant his
10 motion for leave to file an amended petition for writ of habeas corpus.

11 DATED this 11th day of May, 2021.

12 Respectfully submitted
13 RENE L. VALLADARES
Federal Public Defender

14 /s/ David Anthony
15 DAVID ANTHONY
Assistant Federal Public Defender

16 /s/ Brad D. Levenson
17 BRAD D. LEVENSON
Assistant Federal Public Defender

18 /s/ Jocelyn S. Murphy
19 JOCELYN S. MURPHY
Assistant Federal Public Defender

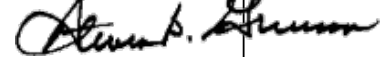
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CERTIFICATE OF SERVICE

In accordance with EDCR 8.04(c), the undersigned hereby certifies that on this 11th day of May, 2021, a true and correct copy of the foregoing **MOTION FOR LEAVE TO FILE AMENDED PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)**, was filed electronically with the Eighth Judicial District Court. Electronic service of the foregoing document shall be made in accordance with the master service list as follows:

Alexander Chen
Chief Deputy District Attorney
motions@clarkcountyda.com
Eileen.Davis@clarkcountyda.com

/s/ Sara Jelinek
An Employee of the Federal Public Defenders
Office, District of Nevada



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Attorneys for Zane Michael Floyd

DISTRICT COURT
CLARK COUNTY, NEVADA

ZANE MICHAEL FLOYD,

Petitioner,

v.

WILLIAM GITTERE, Warden, Ely State
Prison; Aaron Ford; Attorney General,
State of Nevada

Respondents.

Case No. A-21-832952-W
Dept. No. 17

**EXHIBITS TO MOTION FOR LEAVE
TO FILE AMENDED PETITION FOR
WRIT OF HABEAS CORPUS (POST-
CONVICTION)**

Date of Hearing:
Time of Hearing:

(DEATH PENALTY CASE)

**EXECUTION WARRANT SOUGHT
BY THE STATE FOR THE WEEK OF
JULY 26, 2021**

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Exhibit No.

Document

- | | |
|---|--|
| 1 | <i>Floyd v. Daniels, et al.</i> , Case No. 3:21-cv-00176-rFB-CLB, United States District Court of Nevada, Transcript of Evidentiary Hearing held on May 6, 2021 (Testimony of Charles Daniels). |
| 2 | <i>State v. Floyd</i> , Case No. 99C159897, District Court of Clark County, Nevada, Warrant of Execution, filed Sep. 5, 2000. |
| 3 | <i>State v. Floyd</i> , Case No. 99C159897, District Court of Clark County, Nevada, Motion and Notice of Motion for the Court to Issue Second Supplemental Order of Execution and Second Supplemental Warrant of Execution, filed Apr. 15, 2021. |
| 4 | <i>State v. Floyd</i> , Case No. 99C159897, District Court of Clark County, Nevada, Judgment of Conviction, filed Sep. 5, 2000. |

DATED this 11th day of May, 2021.

Respectfully submitted
RENE L. VALLADARES
Federal Public Defender

/s/ David Anthony
DAVID ANTHONY
Assistant Federal Public Defender

/s/ Brad D. Levenson
BRAD D. LEVENSON
Assistant Federal Public Defender

/s/ Jocelyn S. Murphy
JOCELYN S. MURPHY
Assistant Federal Public Defender

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/s/ Sara Jelinek
An Employee of the Federal Public Defenders
Office, District of Nevada

EXHIBIT 1

EXHIBIT 1

3:21-cv-00176-RFB-CLB

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ZANE M. FLOYD,)
) Case No. 3:21-cv-00176-RFB-CLB
Plaintiff,)
) Las Vegas, Nevada
vs.) Thursday, May 6, 2021
) 10:35 a.m.
CHARLES DANIELS, Director,)
) EVIDENTIARY HEARING
Nevada Department of)
Corrections; HAROLD)
WICKHAM, NDOC Deputy)
Director of Operations;
WILLIAM GITTERE, Warden,
Ely State Prison; WILLIAM
REUBART, Associate Warden
at Ely State Prison; DAVID
DRUMMOND, Associate Warden
at Ely State Prison; IHSAN
AZZAM, Chief Medical
Officer of the State of
Nevada; DR. MICHAEL MINEV,
NDOC Director of Medical
Care, DR. DAVID GREEN, NDOC
Director of Mental Health,
Defendants.

C E R T I F I E D C O P Y

REPORTER'S TRANSCRIPT OF PROCEEDINGS

THE HONORABLE RICHARD F. BOULWARE, II,
UNITED STATES DISTRICT JUDGE

APPEARANCES: See next page

COURT REPORTER: Patricia L. Ganci, RMR, CRR
United States District Court
333 Las Vegas Boulevard South, Room 1334
Las Vegas, Nevada 89101

Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

3:21-cv-00176-RFB-CLB

1 APPEARANCES:

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16 INDEX OF EXAMINATIONS

17 TESTIMONY OF CHARLES DANIELS

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19 Direct Examination by Mr. Gilmer.....49
20 Cross-Examination by Mr. Levenson.....52

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1 than -- is there anything different than what we've discussed
2 here?

3 MR. GILMER: I think it -- it talks about how broad the
4 deliberative process privilege is pertaining to issues and
5 documents, especially. But that was because that case was
6 specific to a document-seeking issue. I think it also would
7 apply to testimony outside that confines, and that anything and
8 everything predecisional is covered even -- and it talks at
9 great length about facts and how they can be intertwined. So
10 that is what I thought it was important to bring it to the
11 Court's attention.

12 THE COURT: Okay. Thank you, Mr. Gilmer. I appreciate
13 that.

14 All right. Director Daniels, if you wouldn't mind
15 stepping forward, please.

16 I'm sorry, right up here, Director Daniels.
17 Watch your step there.

18 COURTROOM ADMINISTRATOR: Please raise your right hand.

19 CHARLES DANIELS, having duly been sworn, was examined
20 and testified as follows:

21 COURTROOM ADMINISTRATOR: Thank you.

22 THE COURT: You can go ahead and take your seat. And
23 if you could state your full name for the record. And since
24 you're in front of the Plexiglas, Director Daniels, you can take
25 your mask down.

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1 THE WITNESS: Thank you, Your Honor.

2 Good morning. My name is Charles Daniels. I'm sorry,
3 did you ask the spelling?

4 Yes. Charles, C-H-A-R-L-E-S. Last name Daniels,
5 D-A-N-I-E-L-S.

6 EXAMINATION OF CHARLES DANIELS

7 BY THE COURT:

8 Q. Okay. So, Director Daniels, let's -- let's just start off
9 with the most basic question. Why isn't the protocol finalized?

10 A. Sir, the -- Your Honor, the protocol has not been finalized
11 for several reasons. There's a requirement that I seek counsel
12 with primarily the Chief Medical Officer of the state. I'm
13 still in the process of looking at various drugs to be used. I
14 believe that I don't have a greater responsibility than to
15 ensure that I do this right, and I need to consult with as many
16 individuals as possible to ensure that I'm doing this right.

17 There are also costs, heavy significant costs,
18 associated with putting on one of these executions. So --

19 Q. Can you tell me a little bit about that. Because I'm not
20 aware of that. Can you tell me, when you say that, what type of
21 costs?

22 A. Yes.

23 Q. You mean in terms of the protocol, can you explain that a
24 little bit?

25 A. Well, yes, because for anything that we decide we want to

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1 do, whether it's regarding security, gathering intelligence,
2 providing the appropriate staff that would have to come in
3 and/or experts and/or contractors from other areas, we will have
4 to have them come out. We're going to have to provide lodging.
5 All the minutia that no one would think about that --

6 Q. Right.

7 **A.** -- we have to plan for. I have to have redundancy built in
8 to any issues that I may have.

9 I also have to work in coordination with other state
10 law enforcement authorities, medical authorities, examiners.

11 We have to coordinate and move all of those people
12 around. But, more importantly, I have to ensure I have enough
13 staff to deal with any, and I mean any, contingency. There's no
14 do-over button in -- in executions.

15 Q. Right.

16 **A.** So I have to ensure that I have all of that. I have to
17 bring people up. We have to run through our protocols
18 step-by-step ensuring that we stay within the confines of what
19 we've actually drafted.

20 Q. Okay.

21 **A.** And if we identify any particular issues, then we need to
22 mitigate that right there. And if we can't overcome it, then we
23 need to make everyone else aware that there has been a change.

24 I have to ensure that the condemned individual is
25 maintained in a safe place, that he has access to his attorneys,

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1 and that for the most part we will ensure that he gets what he
2 has coming to him as it relates to whatever the constitutional
3 needs are and/or what the expectations are of the people of the
4 State to include the judiciary as well as our -- the executive
5 branch of our Government and so on.

6 But all of this requires a lot of moving pieces as it
7 relates to especially the security apparatus, bringing people
8 out, ensuring that they know step-by-step what they need to do.

9 There's also, of course, I have to ensure that my
10 equipment works, that I have everything that I need, that we're
11 able to test it ensure that it works.

12 That -- I also have to ensure that the drugs that are
13 available. I have to -- that I have available or we think we
14 have available are things we have in stock that would also
15 expire depending on how long things go along.

16 So I have -- there's a lot of moving parts. And not to
17 mention, of course, just the court proceedings and the attorneys
18 and all of those people that are involved.

19 Coroners, EMTs, the clergy, all of those people that
20 are involved. It's serious.

21 I would think that the expectation would be of
22 Mr. Floyd and his -- and his representatives that I do
23 everything possible to ensure that if we actually go through
24 that it's done right in accordance with provisions that are
25 outlined in the Eighth Amendment of the U.S. Constitution.

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1 Cruel and unusual punishment, I take that very seriously. It's
2 personal for me. But I understand my obligations and my duties
3 towards the people of the state as well as all of the other
4 inmates as well as Mr. Floyd.

5 Q. Okay.

6 So you've outlined a fair number of considerations that
7 you have to factor in to your decision, including the -- again,
8 the time and the experts and redundancy.

9 Let me ask you this question. When do you expect that
10 your protocol will be finalized?

11 A. Sir, I do not know when it will be finalized, because as
12 long as I have an opportunity to conduct my due diligence,
13 consult with more individuals, consult more sources -- and also
14 I have to take into consideration as soon as the potential drugs
15 are identified, there may be a huge push to have that via court
16 order in some court we can't use that or there's some claim
17 saying that that's no longer available to you.

18 Q. Right.

19 A. And so I have to take into consideration that I can do most
20 of my planning in advance, but it would be incumbent upon me to
21 ensure that I have the best information available, I think,
22 which is in everyone's best interests. I still have to consult
23 with the -- with the Chief Medical Officer of the state. And
24 until I do that, because it's a requirement, then I really have
25 to know where -- where I am at with that individual as well

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1 because I can't proceed without that consultation.

2 Q. Well, do you think it will take three months?

3 A. Your Honor, I don't know.

4 Q. Well, you have to give me some date. I mean, it's not going
5 to take five years, right?

6 A. Sir, it would not. Your Honor, it would not.

7 Q. Okay. So give me what you think would be the outside limit
8 of the decision.

9 I also have to make important decisions here, Director
10 Daniels, and as it relates to how the Court has to rule, right.

11 And so you need to at least tell me -- given what
12 you've said, it's clear that you've thought about this process
13 and are still thinking about it and are potentially still
14 gathering information, but it seems to me that the NDOC has to
15 have some timeline, in part because of the timing of when these
16 drugs might be available, as to when it's going to make a
17 decision.

18 So what would be the outer boundaries of that decision?

19 A. Your Honor, very good question. So here's what my response
20 would be. After I am able to consult with the Chief Medical
21 Officer and then look at all of our security apparatuses and so,
22 I would say 90 to 120 days --

23 Q. Okay.

24 A. -- would be sufficient.

25 Q. Well, and, again, I appreciate that you have a lot of things

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1 that you've said, and there may be many things, Director
2 Daniels, that we won't even take into consideration. So some of
3 the things that you had mentioned just about the redundancy and,
4 obviously, if someone were to get sick, for example, whoever the
5 medical officer is who I presume would be monitoring this, if
6 something were to happen that you have to find someone else,
7 they have to go through the whole procedure again, potentially
8 testing. And so I appreciate that in terms of the timing.

9 So one other --

10 **A.** Your Honor, may I ask you a question, sir?

11 **Q.** Yes, go ahead. But I didn't have anything else. I was just
12 saying I have an understanding, given what you said, of how much
13 goes into this decision. And it's certainly not the Court's
14 intent in asking the question, Director Daniels, I want to be
15 clear, of sort of deciding one way or another when or how you
16 should do it. I just -- in terms of making the decision in this
17 case, I also need to know what would be appropriate and fair in
18 terms of the timing for you and also for Mr. Floyd's counsel in
19 terms of preparation. That's why I'm asking you -- that's why I
20 asked you that question.

21 I'm sorry. If there's something else you wanted to
22 add, you can.

23 **A.** Yes, Your Honor. And I just want to be clear. You asked me
24 to opine, which I did. I'm seeking to ensure that you get the
25 information you need.

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1 But I want to also just point out that there are some
2 statutory limits as to what I must do once the actual signed
3 warrant and order for the death to proceed. I will honor that
4 unless --

5 Q. I appreciate that.

6 A. -- otherwise stayed.

7 Q. Right.

8 A. So I didn't want to give the impression that I'm controlling
9 the timeline. I am obligated by statute to stay within the
10 appropriate timeline.

11 Q. No, I -- I did not interpret your comments, Director
12 Daniels, to somehow suggest that you wouldn't abide by a
13 legitimate Court order from this Court or from State Court. I
14 did not in any way take that from your testimony, because I
15 don't think that's what you were suggesting.

16 I think what I understood was you are opining just
17 about your process of deliberation, as you've said how seriously
18 you take it, all the different factors that have to be
19 considered, and the point at which, you know, if given an
20 opportunity to weigh in on that process, how much would be
21 potentially the outer limits of that decision. So I appreciate
22 that.

23 Let me see if I have any more questions, and then I'll
24 turn this over to counsel.

25 (Pause.)

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1 BY THE COURT:

2 Q. One question I had, which is also helpful is, Director
3 Daniels, do you have any information about how long it takes to
4 acquire information about the drugs?

5 So, in other words, I would imagine as part of your
6 process you want to acquire information about a particular drug
7 in terms of how it has been used, what it's approved for, what
8 may be its side effects or interaction effects.

9 Do you have any information about how long it takes
10 just to get the information? Not the drug itself. I'm not
11 asking you about how long once you make a request to obtain it,
12 but just to get the information. Because one of the issues in
13 this case, of course, Director Daniels, is how quickly could
14 potentially Mr. Floyd's counsel get access to some of this
15 information.

16 Do you have anything that you could share about how
17 long it takes to get this information about the potential drugs?
18 Without identifying a specific drug.

19 **A.** Your Honor, thank you for your question.

20 I am clearly not a pharmacist, but we have a Director
21 of Pharmacy Services and that's the individual that would order
22 all of our drugs, but also would be the one to do some basic
23 research from a professional standpoint.

24 Now, it's also my understanding that research is
25 available on most drugs, but to the depth in which you get into

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1 questionable or nonprescription types of usage, what its -- you
2 know, its intended use, I think there's probably a better person
3 to respond to that question.

4 Q. Okay.

5 A. From the laymen's term, we can -- we can Google it.

6 Q. Right.

7 A. But that would not be enough for me, and I would share with
8 my Director of Pharmacy, "I need more than the Google version."
9 I need to be able to discuss and understand the efficacy and all
10 of those things that go around the utilization of the compounds
11 that make the drugs.

12 I am not qualified to do that, but I would seek counsel
13 to better understand it.

14 Q. Right. So you would -- you would ask other people to
15 provide you with as much information as possible that's not so
16 scientific such that you can't, sort of, obviously process that,
17 but that gives you the full range of information that would
18 allow you to be able to make an informed decision?

19 A. Your Honor, yes. I would seek additional consultation with
20 professionals in that field to better understand.

21 THE COURT: Okay. All right.

22 Thank you, Director Daniels. I don't know that I have
23 more questions at this time.

24 Mr. Gilmer, is there something else that you wanted to
25 be able to ask Director Daniels?

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1 And then, Mr. Anthony, I'll turn to you.

2 MR. GILMER: Thank you, Your Honor. There's just a
3 couple of points I would like to clarify with regard to the
4 timeline. Would you like me to do it from here or from the
5 podium?

6 THE COURT: Oh, no. Do it from there, please.

7 DIRECT EXAMINATION OF CHARLES DANIELS

8 BY MR. GILMER:

9 Q. Director Daniels, I think you tried to clarify your question
10 with regard to the 90 to 100 days to finalize a protocol, but
11 then also indicated that you would abide by any warrants or
12 orders requiring you to move forward.

13 So if the execution warrant was issued by a Court the
14 week of June 7th, as has been suggested has been thought, do
15 you -- would you still think that you would need 90 to 100 days
16 to finish or would you be able to complete the process in order
17 to be able to comply with that Court order?

18 A. In the event a warrant were to actually come out giving a
19 date, I would comply.

20 At some point in time I could continue to review
21 information, but at the end of the day it's a requirement, it's
22 a duty of mine as Director of the Nevada Department of
23 Corrections, to execute the wishes of the judiciary and the will
24 of the people.

25 THE COURT: Let me ask you this question about that.

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1 If you are ordered, for example, to perform an execution in four
2 days, right, and you didn't feel you could adequately do that
3 and safely do that, would you not have an obligation to inform
4 the Court that it couldn't be done consistent with your
5 constitutional obligation at the NDOC not to perform an
6 execution without violation of the Eighth Amendment?

7 THE WITNESS: I would certainly consult my -- my legal
8 counsel on that matter and bring up my objections and/or
9 concerns. And while I certainly cannot speak for any other
10 entity, I can tell you a violation of the Eighth Amendment is
11 something that would be taken with great caution and care. And
12 that would -- in my opinion, I would do the right thing.

13 THE COURT: Well, and I'm not asking for your legal
14 opinion.

15 THE WITNESS: Yes.

16 THE COURT: Because I think Mr. Gilmer would and has
17 adequately, as always, represented the legal positions of the
18 NDOC. But I'm just responding to your question -- excuse me.
19 I'm responding to your answer in response to Mr. Gilmer's
20 questions about the performance of an execution if you are
21 ordered June 7th, because it seems to me that there might be a
22 point at which you were ordered to perform an execution, given
23 what you said, that you simply couldn't perform and not violate
24 the Eighth Amendment. And the question would come up, what
25 would you do in that circumstance, if you know.

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1 And it sounds like what you said, just to confirm, that
2 you'd have to speak with your attorneys before you decided how
3 to proceed. Is that right?

4 THE WITNESS: That would be my response.

5 THE COURT: Okay. That makes sense.

6 Mr. Gilmer, go ahead. I'm sorry.

7 MR. GILMER: Thank you, Your Honor.

8 And, also, I know that was a hypothetical, but under
9 Nevada law that could never happen within four days. So ...

10 THE COURT: Well, no, I understand that. I mean,
11 partly what the purpose really was with me to help me understand
12 Director Daniels' response to your question. It was not to sort
13 of lay out the fact that that would happen.

14 Yes, I think that I would be -- well, I don't think
15 that it could happen in Nevada law and I don't think that any
16 Court would order that either.

17 MR. GILMER: Understood.

18 THE COURT: But that was the purpose of that question.
19 Go ahead, Mr. Gilmer.

20 MR. GILMER: Thank you. I believe I only have one more
21 question, Director Daniels, and it's always, you know, a very
22 bad thing for a lawyer to say one more question because it's
23 generally not true. But I believe I only have one more
24 question.

25 BY MR. GILMER:

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1 Q. And that is you mentioned that you have to consult with the
2 Chief Medical Officer before making any final decisions.

3 You're not suggesting that you have not already met
4 with Dr. Azzam, correct?

5 You have already met with him. Is that correct?

6 A. Correct. I have already met with Dr. Azzam.

7 Q. Okay. Thank you. I just wanted to make sure that was clear
8 for the record.

9 MR. GILMER: I have nothing else at this time, Your
10 Honor.

11 THE COURT: Okay.

12 Mr. Anthony?

13 MR. ANTHONY: Mr. Levenson will be handling the
14 examination of the witness, Your Honor.

15 THE COURT: Okay. So what I would like for you to do
16 is switch positions just because we have the Plexiglas there,
17 preferably.

18 All right. Go ahead, Mr. Levenson.

19 MR. LEVENSON: Thank you.

20 CROSS-EXAMINATION OF CHARLES DANIELS

21 BY MR. LEVENSON:

22 Q. Good morning, Director Daniels.

23 A. Good morning.

24 Q. So to clarify, you -- I believe you originally said you had
25 not met with the CMO. Is that incorrect? You have met with

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1 your CMO?

2 **A.** I said I would -- I believe my testimony was that I would
3 need or be required to meet with the CMO. We have already had
4 one meeting.

5 **Q.** And when -- I'm sorry.

6 When was that meeting? What was the date of that
7 meeting?

8 **A.** I do not recall the date.

9 THE COURT: Do you know how many months ago it was or
10 weeks ago?

11 THE WITNESS: It was weeks ago.

12 THE COURT: Weeks ago.

13 And one question I had, Director Daniels, is, when were
14 you first informed as to the fact that the State would be
15 seeking a warrant of execution on June 7th? I'm not asking who
16 informed you, but when do you recall you were first told that
17 information?

18 THE WITNESS: Your Honor, I cannot recall the date. It
19 wasn't very long ago. I do believe it was in April.

20 THE COURT: In April?

21 THE WITNESS: In April.

22 THE COURT: So, again, as it relates to how long you
23 have been involved in this process of your deliberation, given
24 that timing, it sounds as if you have been involved in this
25 deliberative process for around 30 days or so?

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1 THE WITNESS: Thank you for the question, Your Honor.

2 I'm not sure of the day and I don't want to give
3 testimony that someone could impeach, but it's -- I believe it
4 was back in April.

5 THE COURT: So you don't think -- for example, it
6 wasn't January or February?

7 THE WITNESS: No.

8 THE COURT: That you recall.

9 THE WITNESS: Your Honor, I do not recall that.

10 THE COURT: So you recall it being some time in April,
11 maybe late March.

12 THE WITNESS: Potentially, yes.

13 THE COURT: Okay. I'm just -- I'm just trying to get a
14 rough estimate as to the timing of that as to when you were
15 first, sort of, informed of when you would have to start this
16 process. Because I would imagine, Director Daniels, that once
17 you get that information, as you've indicated, there is a lot of
18 work that has to be done to finalize the protocol. So the
19 moment you hear that you start working, correct, when you hear
20 that information?

21 THE WITNESS: Yes, Your Honor. I -- I will share with
22 you, as I found out, of course, I obviously researched what was
23 done during the last protocol. And in addition to that, then I
24 went to the location, the site, where we would carry that out,
25 met with the warden, and we went through the protocols there

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1 step-by-step.

2 I was very deliberative in terms of what I wanted to
3 see and I wanted to see what we had. And, of course, we're now
4 in the process of changing the protocols to meet the new
5 threads, ideas, and so on.

6 So we've made some changes and they're still working on
7 putting that together. But a lot of this, of course, will still
8 have to be completed at a little later date when we have more
9 additional information. Because a lot will change based on who
10 we communicate with, how long we, for instance, would have a
11 contract to get various people here, would those people still be
12 available, and so on. So there's a few things that are still in
13 the works.

14 THE COURT: Well, and in terms of the information you
15 don't have, are you still waiting for or seeking any information
16 about drugs that may be used?

17 THE WITNESS: Yes, Your Honor.

18 THE COURT: Okay. Thank you.

19 Go ahead, Mr. Levenson.

20 BY MR. LEVENSON:

21 Q. Do you expect to meet again with Dr. Azzam?

22 A. My response is that I do expect to meet with him in the
23 future or as additional pharmaceuticals become available that I
24 want to consult with him about. So each time there's a new
25 pharmaceutical that we haven't previously discussed, I would

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1 then seek consultation with Dr. Azzam.

2 Q. So have any meanings been currently arranged?

3 A. Not future meetings.

4 Q. You mentioned that you went to the site where the execution
5 was going to take place. The Clark County District Attorney's
6 Office notices that site as Nevada State Prison.

7 Are you in disagreement with that?

8 THE COURT: I'm sorry. When you say "Nevada State
9 Prison?"

10 MR. LEVENSON: I'm saying Nevada State Prison, Your
11 Honor. That's the warrant, the current warrant. That's the
12 execution, Nevada State Prison in Carson City.

13 THE COURT: Okay. I wasn't sure if, Mr. Levenson, you
14 are identifying a specific facility. If you are, then it would
15 be helpful to say that, or if you were trying to point out that
16 the language wasn't specific. I wasn't sure the nature of your
17 question.

18 So if you're asking about a specific location, that's
19 fine. It would be helpful, I think for the witness, but also
20 for me to know what you're actually asking.

21 MR. LEVENSON: Correct.

22 BY MR. LEVENSON:

23 Q. So it's identified as the Nevada State Prison in Carson
24 City.

25 Do you agree that's where the execution would take

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1 place?

2 **A.** The execution, as I know it to be, would be at Ely State
3 Prison.

4 **Q.** You spoke about the protocol, the prior protocol. That
5 would be in the Scott Dozier case. Was that right?

6 **A.** Yes.

7 **Q.** Are you aware of the findings by Judge Togliatti in 2017
8 about the use of a paralytic drug in the execution protocol?

9 MR. GILMER: Your Honor, I object to that. It calls
10 for a legal conclusion. It's also addressing a factual finding
11 that was vacated by the Nevada Supreme Court.

12 THE COURT: Well, I mean, are you objecting to him --
13 objecting to him indicating whether or not he was aware of it?
14 They haven't asked the follow-up question yet, Mr. Gilmer.

15 MR. GILMER: Understood.

16 THE COURT: I think you're anticipating the next
17 question.

18 MR. GILMER: I'll table the objection to the next
19 question, Your Honor.

20 THE COURT: I'll be shocked if Director Daniels had not
21 been informed at least of the decision. I think you're waiting
22 for the next question.

23 But you can go ahead and answer that question. Were
24 you aware of that decision by Judge Togliatti, Director Daniels?

25 THE WITNESS: Your Honor, yes, I was aware of it.

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1 THE COURT: Okay.

2 BY MR. LEVENSON:

3 Q. Director Daniels, I want to go back to a question that the
4 Judge asked you. You mentioned that the costs involved were
5 something that you would -- would take additional time for you
6 to -- to release a final protocol.

7 You mentioned staffing. Wouldn't staffing be the same
8 no matter what the protocol is?

9 A. No, that would not be the same.

10 Q. Could you explain that?

11 What would be different with -- with the particular
12 drugs you used and your staffing?

13 MR. GILMER: Your Honor, I'm going to object to that as
14 I think that would delve into deliberative process and also
15 safety and security issues.

16 MR. LEVENSON: Your Honor, he --

17 THE COURT: So, hold on.

18 So, Mr. Gilmer, let me ask you this question. Could
19 Director Daniels respond to how many, without naming who the
20 people would be in terms of their title, positions might be
21 affected by the different types of drugs?

22 Because I think part of the question relates to just
23 how many people are involved in this process. I wouldn't
24 necessarily ask Director Daniels to identify anyone by title
25 because I think there could be legitimate security or other

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1 issues related to that. But what about just how many people
2 would be affected by a potential difference in the drug?

3 MR. GILMER: Perhaps, that could be answered, Your
4 Honor. The concern I have is that he said it depends on what
5 his final decision is, because he said it depends on what the
6 drugs are. So that seems to me as if it would dive into
7 deliberative processes into the final decision. So that's the
8 concern. I think if it's as extremely narrow as you indicated,
9 perhaps that's something Director Daniels may answer.

10 THE COURT: Why don't we try this. Director Daniels,
11 how many positions do you think are implicated by choices of
12 drugs? So choosing one drug versus another, without identifying
13 which positions that are involved in the execution would be
14 implicated, how many positions would be implicated by a choice
15 in drugs, as far as you understand it?

16 THE WITNESS: Your Honor, I can't answer that as
17 narrowly as possible because I would have to utilize a lot of
18 staff and they would have to come from many places. But it
19 would also, unfortunately, have me disclose sources, methods,
20 numbers, security apparatus, and the specialized people that I
21 need to ensure the security.

22 Your Honor, I'm very hesitant to talk about those
23 issues publicly.

24 THE COURT: So -- so then how about this. In terms of
25 your -- what you were referencing, it seems like what you were

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1 saying is that you didn't want to assume that for the variety of
2 drugs that may be under consideration or could be under
3 consideration that the same personnel would be used for all. Is
4 that fair?

5 THE WITNESS: That would be a fair question -- a fair
6 assumption.

7 THE COURT: Okay.

8 THE WITNESS: Yes.

9 THE COURT: Mr. Gilmer, does that work? Because I
10 think that was the nature of what -- what Mr. Levenson was
11 trying to get at, which is that Director Daniels is basically
12 saying there are many moving parts and staff are affected by
13 that and staff potentially could be affected, without naming who
14 they are and without naming the drugs, could be affected by the
15 choice of drugs. Is that correct, Dr. Daniels -- I mean,
16 Director Daniels.

17 THE WITNESS: Your Honor, yes.

18 THE COURT: Okay. Move on from there, Mr. Levenson.

19 BY MR. LEVENSON:

20 Q. You mentioned another component, an EMT. Does the changing
21 of the -- does the finalization of the protocol determine how
22 many EMTs you would need?

23 A. Yes, it could.

24 Q. How?

25 MR. GILMER: Your Honor, that clearly would go into the

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1 deliberative process and determinations.

2 THE COURT: Okay. And I would direct you not to answer
3 at this time, Director Daniels.

4 BY MR. LEVENSON:

5 Q. Director Daniels, you mentioned a coroner, and I'm
6 presuming -- let me ask the question. Would the protocol
7 dictate how many coroners you had at the scene?

8 (Pause.)

9 THE WITNESS: Your Honor, I would really not like to
10 answer any questions regarding my processes and procedures, how
11 many, who many. That's an issue for us. We have to -- for
12 instance, I'll explain.

13 There's confidentiality built into the processes. We
14 have redundancy built in. We may cancel one of two or cancel
15 two of three at the last moment. And I don't want to be
16 pigeonholed into saying, well, this is all you have, then later
17 on who is it.

18 I need to have control over the mechanisms to --

19 THE COURT: I appreciate that, Director Daniels.

20 THE WITNESS: -- perform my judicial responsibilities.

21 THE COURT: I appreciate that. So you don't have to
22 answer further.

23 So, Mr. Levenson, what I would ask you to do is --
24 because I do think there are legitimate security issues
25 regarding individuals who may be identified by profession within

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1 the State, and we should avoid those types of questions.

2 I haven't ruled on that. And so I don't want to get
3 into that, but I think that's part of the Director's hesitancy,
4 which I think is a legitimate concern at this point in time.

5 So why don't we move on.

6 MR. LEVENSON: Certainly, Your Honor.

7 BY MR. LEVENSON:

8 Q. In your meeting with Dr. Azzam, Director Daniels, did you
9 offer him multiple choices for a drug protocol?

10 MR. GILMER: Objection, Your Honor. That calls for
11 questions regarding predecisional and deliberative process.

12 MR. LEVENSON: Can I respond, Your Honor?

13 THE COURT: Sure.

14 MR. LEVENSON: We think it has independent relevance
15 separate and apart from the deliberative process. This goes to
16 when the protocol is going to be finalized. We are alleging bad
17 faith on the part of NDOC and its release of the drug protocol,
18 so this goes to intent.

19 If Dr. Azzam was only offered one drug protocol, then
20 the protocol was pretty much finalized at that point. That's
21 why we have this question.

22 THE COURT: Well, the protocol hasn't been finalized
23 yet and so I think part of the issue is -- you're right,
24 Mr. Levenson, it could potentially go to that after the protocol
25 has in fact been finalized.

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1 So part of the issue with respect to your bad faith
2 arguments, which I can appreciate, is that they are premature,
3 some of them, at this point in time because we don't know what
4 the final protocol is. I'm not saying you shouldn't ask those
5 questions, Mr. Levenson, because I think they could potentially
6 be relevant for the Court's consideration. But for now I am
7 going to sustain the objection and allow for the privilege to be
8 asserted for that question.

9 MR. LEVENSON: Okay.

10 BY MR. LEVENSON:

11 Q. Director Daniels, what actions have you taken with respect
12 to finalizing the execution protocol since your meeting with
13 Dr. Azzam?

14 MR. GILMER: Objection, Your Honor. I believe that
15 also calls for a deliberative process privilege and also could
16 delve into safety and security concerns as well as Director
17 Daniels has previously testified.

18 THE COURT: Sustained. I'll allow for the privilege to
19 be asserted conditionally at this time.

20 BY MR. LEVENSON:

21 Q. Director Daniels, in your declaration filed with this Court
22 on April 30th, that's ECF Number 22-10, at paragraphs 9 through
23 11 you state that NDOC did not have midazolam in its possession.
24 Is that correct?

25 **A.** That is correct.

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1 Q. Now, when you say it is not available for NDOC, what do you
2 mean by that?

3 A. In consultation with my pharmacy chief indicated that that
4 drug was no longer available to the -- to NDOC. That was a
5 decision made well before I arrived, and I did not get into the
6 details as to why.

7 Q. So you're not sure why it is unavailable to NDOC. Is that
8 what I understand?

9 A. My understanding is that I'm not 100 percent sure as to why,
10 which is why I will not testify as to why. All I know is I've
11 been told that that -- that medication is not available to us.

12 THE COURT: I'm sorry. When you say "it's not
13 available," it obviously is available in terms of being
14 available for purchase. You're not saying that it's not
15 available generally for purchase.

16 THE WITNESS: To NDOC.

17 THE COURT: And are you saying that because that's an
18 NDOC policy or are you saying that because there's some other
19 reason why you all cannot obtain it? And it's important because
20 there -- it's one thing if NDOC has made a determination to do
21 that, potentially. But it's another thing if, essentially, the
22 company or someone else decided not to provide it.

23 Can you explain why it's not available?

24 THE WITNESS: Your Honor, I arrived -- my first day of
25 work was December 3rd of '19. There were a lot of things that I

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1 just didn't know because I wasn't a part of the organization or
2 understand all the history.

3 Once I engaged in learning more about this process here
4 in this state, I started asking about, well, individual items
5 that were based on the last one.

6 THE COURT: Right.

7 THE WITNESS: And it was told to me -- the chief
8 pharmacist explained to me -- I'm sorry. She's actually the
9 Pharmacy Director -- indicated to me that that is no longer
10 available to us. I did not get into the reasons why.

11 THE COURT: Okay. Okay.

12 THE WITNESS: It wasn't relevant to me. I wanted to
13 know what we did have available --

14 THE COURT: Got it.

15 THE WITNESS: -- as opposed to what we did not.

16 THE COURT: Okay. Thank you, Director Daniels.

17 Go ahead, Mr. Levenson.

18 BY MR. LEVENSON:

19 Q. With regard to your obtaining midazolam, in your declaration
20 at paragraph 10 you state that it cannot be purchased or, quote,
21 otherwise obtained.

22 What does "otherwise obtained" mean in --

23 THE COURT: I think, Mr. Levenson, he's already gone
24 over this. Let's move on from this question, please.

25 BY MR. LEVENSON:

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1 Q. Are you able to receive drugs from other Department of
2 Corrections?

3 MR. GILMER: Your Honor, I object. I think that seeks
4 a legal conclusion.

5 THE COURT: Okay. I'm going to sustain that, but,
6 Mr. Levenson, perhaps you could be more specific about what the
7 nature is of what you're asking. I'm not sure I understand
8 myself either, if you're talking about particular agencies, or
9 it would be helpful to give some more detail.

10 BY MR. LEVENSON:

11 Q. Could you -- could you receive the drugs from, let's say,
12 the Arizona Department of Corrections as opposed to going
13 through a pharmacy?

14 A. Thank you.

15 MR. GILMER: Again, I just would like to object to that
16 question because I think it calls for a legal conclusion as to
17 where he can purchase drugs from other states. There's --

18 THE COURT: So, Mr. Gilmer, maybe I'm not understanding
19 your -- your objection. What I understood the question to be is
20 not asking Director Daniels for a legal conclusion, but whether
21 or not he understood even as part of this process whether or not
22 there would be access to -- without him deciding whether or not
23 he's chosen to pursue it or not, whether or not there would be
24 access to drugs from other corrections facilities outside of the
25 State of Nevada. That limited question. And I think that that

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1 would avoid the legal conclusion that you are objecting to.

2 So could you answer that -- that question, Director
3 Daniels? Are you aware of whether or not you could obtain any
4 drugs for the protocol from other state Departments of
5 Corrections outside of Nevada?

6 THE WITNESS: Your Honor, I do not know. I have not
7 directed my pharmacy chief to attempt to do so nor do I know if
8 that's a common practice or if she has or has not. I don't
9 know.

10 THE COURT: Okay. Thank you, Director Daniels.

11 BY MR. LEVENSON:

12 Q. Director Daniels, what other drugs are not available to NDOC
13 usage for this execution?

14 MR. GILMER: Objection, Your Honor. That calls for the
15 deliberative process privilege. And I believe that asking those
16 questions would delve into his thoughts and opinions with regard
17 to potential protocols.

18 MR. LEVENSON: May I respond, Your Honor?

19 THE COURT: Yes.

20 MR. LEVENSON: The director and his counsel put this
21 issue -- they waived this issue because they put in their
22 declaration and their pleadings that midazolam was not
23 available. So that would infer that they have waived the issue
24 as far as what is not available.

25 What we understand is that they're worried about drug

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1 companies finding out that their drugs will be used. We're
2 talking about drugs that will not be used. So it doesn't seem
3 to have the same public concern nor, as I said, they have put
4 this -- this in issue.

5 MR. GILMER: Brief response, Your Honor?

6 THE COURT: We don't -- I don't need the brief response
7 because what I'm going to do is I'm going to reserve on this
8 issue. As indicated, I'm going to have Director Daniels and
9 Dr. Azzam come back on Monday. I'm going to look at these
10 privilege issues that are being raised today.

11 So there will be an opportunity, Mr. Levenson,
12 potentially for the Court to revisit this later. I think -- I
13 do think with respect to midazolam it's different because that
14 was specifically identified in the affidavit. And so that's
15 different than other hypothetical drugs that NDOC may or may not
16 have access to.

17 I'm not saying I wouldn't direct an answer, but let's
18 move on from there. I'm going to reserve ruling on that.

19 So, Director, you do not have to answer that question.

20 Go ahead, Mr. Levenson.

21 BY MR. LEVENSON:

22 Q. And, Director, you said that you needed approximately 90 to
23 100 days to -- to finalize a protocol.

24 Have you voiced any concerns to anyone that you could
25 potentially have to formulate and carry out an execution within

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1 the next four weeks?

2 MR. GILMER: Objection, Your Honor, as I believe that
3 mischaracterized the evidence in part or his testimony in part
4 with regard to the 90 and 120-day timeline.

5 THE COURT: Is that the only portion you're objecting
6 to?

7 MR. GILMER: What was the second part of the question?

8 THE COURT: Because I -- I thought -- I want to -- the
9 question was -- and we can take out the 90 and 120 days -- have
10 you voiced any concerns to any State officials or other public
11 officials about the ability of the NDOC to effectively and
12 safely carry out an execution within 30 days.

13 MR. GILMER: Your Honor, I object to that question to
14 the extent that that could also delve into the deliberative
15 process as well as potential attorney/client issues depending on
16 how that answer was asked.

17 THE COURT: So that's why I asked you about your
18 objection earlier, Mr. Gilmer, because I would have anticipated
19 that you would have reasserted it. That's why I just rephrased
20 it. I didn't expect that he would answer because I expect that
21 you would in fact object. But I wanted just to restate it
22 clearly, as I understood it, for the record.

23 I'm going to allow for that objection to be asserted at
24 this time and again sustain it conditionally.

25 MR. LEVENSON: Can I have a moment, Your Honor?

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1 THE COURT: Sure. Take your time.

2 (Plaintiff's counsel conferring.)

3 MR. LEVENSON: Let me try again, Your Honor.

4 BY MR. LEVENSON:

5 Q. Director Daniels, do you have any concerns about having to
6 effectuate an execution within -- possibly within four weeks?

7 A. I do not have any concerns. In reference to the previous
8 question, I was opining based on a very deliberate question that
9 I responded to.

10 However, I am clearly aware of my duties as the
11 Director of the Nevada Department of Corrections. And if given
12 an executed warrant and order, I will execute my duties. I --
13 there's always an opportunity to know more and learn more, but
14 at some point in time you still have to execute your duties.
15 And that's how I see this process.

16 THE COURT: But, again, Director, you wouldn't
17 understand the duty to perform an execution that you couldn't
18 legally perform. And what I mean by that is, for example, if
19 you actually didn't have the drugs that you thought were
20 appropriate for the execution, let's say there was an incident
21 where they were destroyed inadvertently, you're not saying you
22 would nonetheless go through with an execution even though you
23 don't think you could safely perform it, correct?

24 THE WITNESS: Your Honor, I would clearly alert those
25 in my chain of command as well as my legal counsel as to the

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1 fact that I don't have the appropriate tools to complete these
2 tasks. And that would be part of my duty to obviously stay
3 within the scope of cruel and unusual punishment that's listed
4 in the Eighth Amendment.

5 THE COURT: No. Okay. I just wanted to receive that
6 clarification. It sounded as if you were saying you would do it
7 regardless, but I didn't understand that to be your testimony.
8 And I think what you're saying is that if you didn't think that
9 you had the material, you're saying that you would alert the
10 appropriate individuals or speak with Mr. Gilmer about what the
11 options would be. Is that right?

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: Okay.

14 BY MR. LEVENSON:

15 Q. Director Daniels, how do you reconcile your testimony that
16 you -- that it would be good to have a longer period of time to
17 effectuate an execution with the fact that you would -- might
18 have to prepare and complete an execution with four weeks? How
19 do you reconcile those two pieces of testimony?

20 MR. GILMER: Objection, asked and answered. Just
21 answered that in the last question.

22 THE COURT: Overruled. I think it's slightly
23 different.

24 You can answer that question?

25 THE WITNESS: Would you repeat the question, sir?

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1 BY MR. LEVENSON:

2 Q. Certainly.

3 How do you reconcile your previous testimony that a
4 longer period of time to effectuate an execution would be good
5 with the fact that you are talking about having to go through an
6 execution in four weeks?

7 A. Once again, the issue was I was asked to opine on time. And
8 in most circumstances, if most of us are put in a situation in
9 which we have more time to deliberate, more time to discuss, we
10 would take advantage of that. However, that does not mean that
11 I would not be prepared to take the information I had available
12 to me as long as it was consistent with what the State law
13 requires, our statute, as well as the Constitution.

14 I guess the analogy would be you could never make the
15 -- perfect the enemy of the good. I would always opt for more
16 and always opt for better. However, given the circumstances and
17 the statute, I would go with the best information I had
18 available. And if I did not believe that I could move forward
19 in a way that would be consistent with the Constitution, the
20 State Constitution, then I would apprise the appropriate
21 individuals.

22 So I don't see a conflict in my testimony. I was just
23 asked to opine. I opined, but I'm prepared to do my job.

24 THE COURT: But let me ask you this question, I think
25 this may help to clarify this. It sounds to me as if what

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1 you're saying is if you were given more time you would take more
2 time because of the seriousness of this process and all the
3 factors you'd have to consider, right?

4 THE WITNESS: Your Honor, exactly. I think the people
5 of the state deserve the fact that the Director of the
6 Department of Corrections sees this as a very, very serious
7 issue. There is no greater responsibility than if you are going
8 to be tasked with, as a part of your duties, to take a life that
9 you do the best you can, learn as much as you can, and keep
10 growing and learning as often, but sooner or later the day will
11 come.

12 THE COURT: Well, let me ask you this question. If you
13 had the ability to decide the date and the date was 30 days from
14 now versus 90 days from now, which date would you choose?

15 THE WITNESS: Your Honor, last time I opined, that's
16 how we got here.

17 THE COURT: Well, but, Director, I want you to be
18 direct and honest with us.

19 THE WITNESS: I --

20 THE COURT: And I think you opined because what you're
21 saying is it's a deliberative process and you want to be
22 deliberative.

23 I appreciate that this question may be uncomfortable,
24 but the fact is we're looking at, as you said, very serious
25 issues here. There is a potential for this execution to proceed

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1 possibly in 30 days, and I have to consider that.

2 And what you seem to have said to me is, "There are a
3 lot of factors to consider. I don't necessarily have all of the
4 information, even about the drugs." If you were given the
5 choice, wouldn't you choose 90 days over 30 days?

6 THE WITNESS: If given the choice --

7 THE COURT: Yes.

8 THE WITNESS: -- I would go with the longer date.

9 However, the statutory limits are already set --

10 THE COURT: And I understand that.

11 THE WITNESS: -- I would obviously operate within the
12 scope of the statute.

13 THE COURT: Director Daniels, I'm not asking you,
14 right, whether or not you think, because I think you've said
15 this, you could still -- you think you could still potentially
16 perform NDOC an execution within 30 days. And you have said
17 that if you didn't think you could do that, you would -- you
18 would inform authorities. So I don't think that you're somehow
19 suggesting with your answer that you wouldn't perform the
20 duties. I know that's a concern of yours, but that's not what I
21 take from it.

22 But you've acquired a great deal of information. It's
23 helpful for me in terms of understanding this process and
24 understanding what I have to consider for me to have that
25 information as well. So I appreciate your candor. Thank you.

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1 Mr. Levenson?

2 BY MR. LEVENSON:

3 Q. Director Daniels, I want to understand something you
4 testified to previously. You talked about the timing of the
5 release of the protocol somehow being based on companies seeing
6 the drugs that were going to be used.

7 Can you explain that?

8 (Pause.)

9 MR. GILMER: Your Honor, I think there's an objection
10 to that question because I don't remember that testimony, but
11 I'm not sure exactly what the objection is.

12 If Mr. Daniels knows what he's asked -- I guess maybe
13 it's vague. I'm not sure that question is answerable.

14 But obviously if Director Daniels can --

15 THE COURT: I think what Mr. Levenson is asking is if
16 Director Daniels could be more detailed about your, sort of,
17 reference to the possibility that you have to factor in a
18 manufacturer coming in and saying, "We don't want to have our
19 drugs used," and there might be litigation around that, and that
20 creates something for you to consider in terms of finalizing the
21 protocol. I think you said something like that in terms of your
22 prior testimony.

23 Would that be fair that you have to at least consider
24 that possibility in terms of what may be available to you in
25 terms of the execution protocol?

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1 THE WITNESS: I will respond based on what I believe to
2 be the question. And at the end of the day, we know that as
3 much research as I could possibly do, I will take that time to
4 research and then consult with the Chief Medical Officer.

5 However, early disclosure of that information could
6 provide some with an opportunity to create legal roadblocks for
7 whatever reason. I -- I'm not in the head of any of these
8 companies.

9 THE COURT: Right.

10 THE WITNESS: But I do understand that as I'm working
11 the information that I received then deciding what information I
12 want to present to the Chief Medical Officer.

13 I also have to take into consideration that there may
14 be some legal challenges that will be generated through many
15 groups. It can be anti-death penalty groups or so on. But I am
16 cognizant of that.

17 But the primary issue is always the due diligence of me
18 understanding the drugs and what the compounds and having
19 professionals explain to me what this does, what the dosage
20 would be, all of those -- those individual issues that I'm not
21 qualified to make.

22 So I'm taking in the totality of the act -- of the
23 execution process and our protocols, as well as our ability to
24 secure the tools that we need to effectuate the will of the
25 people.

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1 THE COURT: Does a consideration of a possible
2 litigation by a manufacturer factor into your timing of the
3 finalization of the protocol?

4 THE WITNESS: (Pause.)

5 Your Honor, will you rephrase your question, please?

6 THE COURT: Sure. Does the consideration -- does a
7 consideration of the possibility of litigation by a manufacturer
8 to prevent use of a drug factor into your determination about
9 the timing of the finalization of the protocol?

10 MR. GILMER: Your Honor, I'm always loath to object to
11 a Judge's question.

12 THE COURT: No --

13 MR. GILMER: That gets into deliberative process.

14 THE COURT: That's fine. Again, part of it is,
15 Mr. Gilmer, is I want -- I have to also know which questions you
16 think would be covered. So I know, Mr. Gilmer, that you're
17 respectful of the Court, but you will always object if you think
18 it's appropriate. And I think you will continue to do so.

19 I'm going to sustain that objection to my own question,
20 conditionally, with the understanding that I'll have to go back
21 and look at that.

22 So -- but I do want to -- I do want to make sure,
23 Mr. Gilmer, again, even if I ask a question, you're well aware
24 of the fact that you can object and assert the privilege.

25 We have to figure out on a question-by-question basis

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1 what the nature of the privilege is that's being asserted so I
2 can rule on that later.

3 So, I appreciate that. And, again, I have no doubt
4 that you'll continue to object as you see appropriate regardless
5 of who asks the questions.

6 Mr. Levenson, please go ahead.

7 MR. LEVENSON: Just a moment, Your Honor.

8 (Plaintiff's counsel conferring.)

9 BY MR. LEVENSON:

10 Q. Director Daniels, do you have any plans to consult with any
11 other individuals --

12 MR. GILMER: Objection.

13 BY MR. LEVENSON:

14 Q. -- as you formulate the protocol?

15 MR. GILMER: Objection, Your Honor, that goes into his
16 deliberative process as to who he may seek opinions from.

17 THE COURT: Sustained.

18 (Plaintiff's counsel conferring.)

19 MR. LEVENSON: Your Honor, can I just revisit that for
20 a moment? I believe that Director Daniels actually said in his
21 testimony that he might be consulting with other people and I
22 wanted to explore that. So I think he put the -- put it in
23 issue.

24 THE COURT: I'll go back and take a look at the
25 transcript. I think to the extent that Director Daniels

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1 identified any individual process, you could potentially ask
2 about that, but I think that the privilege would extend to him
3 providing a sort of fulsome and detailed overall description of
4 his deliberations and process, which is what I think the
5 question invites.

6 And as I understand it, Mr. Gilmer, that's your
7 objection to it. Is that correct?

8 MR. GILMER: Yes, Your Honor.

9 THE COURT: All right. So for now I'll continue to
10 sustain that objection.

11 MR. LEVENSON: I don't think we have any other
12 questions at the moment, Your Honor.

13 THE COURT: All right.

14 Mr. Gilmer, do you have any additional questions?

15 MR. GILMER: Your Honor, I have questions, but since
16 you said Director Daniels will be back on Monday, I'll just
17 reserve and ask those -- all those questions at that time.

18 THE COURT: Okay. Well, any questions you think will
19 be helpful as it relates to deciding the privilege issue,
20 Mr. Gilmer?

21 MR. GILMER: No, Your Honor. I do not.

22 THE COURT: All right.

23 Mr. Pomerantz, Ms. Ahmed, do you have any questions
24 that you would like to ask of Director Daniels? Certainly you
25 are free to do so as well.

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1 MR. POMERANTZ: May I have a moment, Your Honor?

2 THE COURT: Sure. Take your time.

3 (Defense counsel conferring.)

4 MS. AHMED: Your Honor, thank you for asking. We don't
5 have any questions for the witness.

6 THE COURT: Well, and I'll allow you an opportunity on
7 Monday when we come back to be able to ask questions. Again, I
8 know that you all are fairly new on this case and so you may
9 need some time to be able to delve deeper. So I'll allow you to
10 be able to reserve on that issue as relates to questions for
11 Director Daniels.

12 MS. AHMED: Thank you, Your Honor.

13 THE COURT: All right. So for now, thank you, Director
14 Daniels, for your testimony. I appreciate it.

15 I, unfortunately, am going to require that you come
16 back on Monday and I appreciate again your time for that, but as
17 I'm sure you understand, this is a very significant case and
18 issue that we have to resolve. And so we're going to set a time
19 and date. But you're excused for now, sir.

20 THE WITNESS: Yes, Your Honor. Thank you very much.

21 THE COURT: Thank you.

22 All right. Let's think a little bit then about next
23 steps here. Mr. Gilmer, I want to start with you. As you are
24 aware, in civil cases oftentimes when a privilege is asserted, a
25 privilege log needs to be created so the Court can figure out

EXHIBIT 2

EXHIBIT 2

ORIGINAL

FILED

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Shirley C. Pennington
CLERK

236
1 WARR
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

11 ZANE MICHAEL FLOYD,
12 #1619135

13 Defendant.

Case No. C159897
Dept. No. V
Docket H

14
15 WARRANT OF EXECUTION

16 A JUDGMENT OF DEATH was entered on the 21st day of July, 2000, against the above
17 named Defendant ZANE MICHAEL FLOYD as a result of his having been found guilty of
18 Counts II, III, IV and V - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY
19 WEAPON, by a duly and legally impaneled Jury of twelve persons. The Jury, with the
20 HONORABLE JUDGE JEFFREY SOBEL presiding, after determining Defendant's guilt to the
21 crime of COUNTS II, III, IV and V - MURDER OF THE FIRST DEGREE WITH USE OF A
22 DEADLY WEAPON, in violation of NRS 200.010, 200.030, 193.165, returned said guilty
23 verdict on or about the 19th day of July, 2000. The Jury then proceeded to hear evidence and
24 deliberated on the punishment to be imposed as provided by NRS 175.552 and 175.554.
25 Thereafter, the trial jury returned with the sentence that the Defendant should be punished by
26 Death, and found that there were Three (3) aggravating circumstances connected with the
27 commission of said crime, to-wit:

28 1. The murder was committed by a person who knowingly created a great risk of death
to more than one person by means of a weapon, device or course of action which would normally

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1 be hazardous to the lives of more than one person;

2 2. The murder was committed upon one or more persons at random and without
3 apparent motive; and

4 3. The Defendant has, in the immediate proceeding, been convicted of more than one
5 offense of murder in the first or second degree.

6 That on or about the 21st day of July, 2000, the Jury unanimously found, beyond a
7 reasonable doubt, that there were no mitigating circumstances sufficient to outweigh the
8 aggravating circumstance or circumstances, said verdict having been returned in the County of
9 Clark, State of Nevada. The Court at this time, having determined that no legal reason exists
10 against the execution of the Judgment.

11 IT IS HEREBY ORDERED that the County Clerk of the County of Clark, State of
12 Nevada, shall forthwith, execute, in triplicate, under the Seal of the Court, certified copies of the
13 Warrant of Execution, the Judgment of Conviction, and of the entry thereof in the Minutes of
14 the Court. The original of the triplicate copies of the Judgment of Conviction, Warrant of
15 Execution, and entry thereof in the Minutes of the Court, shall be filed in the Office of the
16 County Clerk, and two of the triplicate copies shall be immediately delivered by the Clerk to the
17 Sheriff of Clark County, State of Nevada.

18 IT IS FURTHER ORDERED that one of the triplicate copies be delivered by the Sheriff
19 to the Director of the Department of Prisons or to such person as the Director shall designate.
20 The Sheriff is hereby directed to take charge of the said Defendant, ZANE MICHAEL FLOYD,
21 and transport and deliver the prisoner, forthwith, to the Director of the Department of Prisons
22 at the Nevada State Prison located at or near Carson City, State of Nevada, and said prisoner,
23 ZANE MICHAEL FLOYD, is to be surrendered to the custody of the said Director of the
24 Department of Prisons or to such authorized person so designated by the Director of the
25 Department of Prisons, for the imprisonment and execution of the said Defendant, ZANE
26 MICHAEL FLOYD, in accordance with the provisions of this Warrant of Execution.

27 IT IS FURTHER ORDERED that in connection with the above facts and pursuant to the
28 provisions of NRS 176.345, 176.355 and 176.357, the Director of the Department of Prisons,

1 or such person as shall by him be designated, shall carry out said Judgment and Sentence by
2 executing the said ZANE MICHAEL FLOYD, by the administration to him, said Defendant,
3 ZANE MICHAEL FLOYD, an injection of a lethal drug, the drug or combination of drugs to
4 be used for the execution to be selected by the Director of the Department of Prisons after
5 consulting with the State Health Officer. Said execution to be within the limits of the State
6 Prison, located at or near Carson City, State of Nevada, during the week commencing on the
7 13th day of November, 2000, in the presence of the Director of the Department of Prisons, and
8 notify those members of the immediate family of the victim who have, pursuant to NRS 176.357,
9 requested to be informed of the time, date and place scheduled for the execution, and invite a
10 competent physician, the county coroner, a psychiatrist and not less than six reputable citizens
11 over the age of 21 years to be present at the execution. The director shall determine the
12 maximum number of persons who may be present for the execution. The director shall give
13 preference to those eligible members or representatives of the immediate family of the victim
14 who requested, pursuant to NRS 176.357, to attend the execution.. The execution must take
15 place at the state prison and a person who has not been invited by the director may not witness
16 the execution.

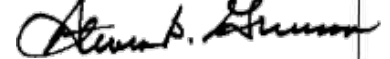
17 DATED this 5 day of ~~August~~ ^{Sept}, 2000.

18
19 
20 DISTRICT JUDGE
21
22
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28 msf

EXHIBIT 3

EXHIBIT 3



1 **MOT**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 ALEXANDER CHEN
6 Chief Deputy District Attorney
7 Nevada Bar #0010539
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 State of Nevada

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 ZANE MICHAEL FLOYD,
14 #1619135

15 Defendant.

Case No. 99C159897
Dept No. XVII

16
17 MOTION AND NOTICE OF MOTION FOR THE COURT TO ISSUE
18 SECOND SUPPLEMENTAL ORDER OF EXECUTION AND
19 SECOND SUPPLEMENTAL WARRANT OF EXECUTION

20 DATE OF HEARING:
21 TIME OF HEARING:

22 COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District
23 Attorney, through ALEXANDER CHEN, Chief Deputy District Attorney, and moves this
24 Honorable Court, pursuant to NRS 176.495 and NRS 176.505, to make and enter a Second
25 Supplemental Order of Execution and to issue a Second Supplemental Warrant of Execution
26 inasmuch as the Defendant Floyd's initial Judgment of Conviction was affirmed by the 9th
27 Circuit Court of Appeals, so that his death sentence may be carried out. See Exhibit 1.
28 Subsequently, Defendant Floyd's Petition for a Writ of Certiorari to the United States Supreme
Court was denied on November 2, 2020.

I:\appellate\WPDOCS\Floyd, Zane Michael, 99C159897, 2nd death pprwrk 2021\Floyd Zane Michael 99C159897 Mtn.for Crt. Issue 2nd.

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1 WHEREAS, a Mandate has been issued from the Ninth Circuit Court of Appeals
2 showing the affirmation of the aforementioned habeas corpus dismissal and the said Judgment
3 having been filed with the United States District Court Clerk on or about the 5th day of
4 November, 2020, See Exhibit 2. Additionally, an Order on Mandate was filed in the United
5 States District Court District of Nevada on or about November 6, 2020. See Exhibit 3. Based
6 on the Mandate, there is no longer any legal reason or good cause why the judgment of death
7 should not be executed.

8 This Motion is based upon the entire record of these proceedings, the Points and
9 Authorities attached hereto, and argument of counsel to be made at the time of the hearing on
10 this Motion.

11 **NOTICE OF HEARING**

12 TO: ZANE MICHAEL FLOYD, Defendant; and

13 TO: BRAD LEVENSON and DAVID ANTHONY, Attorney for the Defendant

14 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned
15 will bring the foregoing MOTION FOR THE COURT TO ISSUE SECOND
16 SUPPLEMENTAL ORDER OF EXECUTION AND SECOND SUPPLEMENTAL
17 WARRANT OF EXECUTION on for setting before the above entitled Court, in Department
18 XVII thereof, on _____, the ____ day of April, 2021, at the hour of 9:00 o'clock a.m., or
19 as soon thereafter as counsel may be heard.

20 DATED this _____ day of April, 2021.

21 Respectfully submitted,
22 STEVEN B. WOLFSON
23 Clark County District Attorney
24 Nevada Bar #001565

25 BY /s/ Alexander Chen
26 ALEXANDER CHEN
27 Chief Deputy District Attorney
28 Nevada Bar #010539

1 **POINTS AND AUTHORITIES**

2 This motion is being filed pursuant to NRS 176.495 and NRS 176.505 seeking this
3 Court's issuance of a Second Supplemental Order of Execution and a Second Supplemental
4 Warrant of Execution regarding the upheld murder convictions of the defendant, Zane Michael
5 Floyd. The defendant has now exhausted his appellate and post-conviction remedies. The
6 Nevada Supreme Court has upheld the lawfulness of his convictions. Moreover, the Ninth
7 Circuit United States Court of Appeals has also affirmed his convictions. The United States
8 Supreme Court has declined to grant certiorari to any petitions that defendant has filed seeking
9 its intervention. As such, the defendant has exhausted his legal remedies and a supplemental
10 order of execution pursuant to NRS 176.505 shall be issued. Following the issuance of the
11 order of execution, a new warrant of execution pursuant to NRS 176.495 must also issue.

12 In their entirety, the relevant statutes for the purpose of this request are listed below.

13 NRS 176.495. New warrant generally.

14 "1. If for any reason a judgment of death has not been executed,
15 and it remains in force, the court in which the conviction was had
16 must, upon the application of the attorney general or the district
17 attorney of the county in which the conviction was had, cause
another warrant to be drawn, signed by the judge and attested by the
clerk under the seal of the court, and delivered to the director of the
department of prisons.

18 2. The warrant must state the conviction and judgment and appoint
19 a week, the first day being Monday and the last day being Sunday,
20 within which the judgment is to be executed. The first day of that
21 week must be not less than 15 days nor more than 30 days after the
22 date of the warrant. The director shall execute a sentence of death
within the week the judgment is to be executed, as designated by
the district court. The director may execute the judgment at any
time during that week if a stay of execution is not entered by a court
of appropriate jurisdiction.

23 3. Where sentence was imposed by a district court composed of
24 three judges, the district judge before whom the confession or plea
25 was made, or his successor in office, shall designate the week of
execution, the first day being Monday and the last day being
Sunday, and sign the warrant."

26 NRS 176.505. Order following appeal.

27 "1. When a remittitur showing the affirmation of a judgment of
28 death has been filed with the clerk of the court from which the
appeal has been taken, the court in which the conviction was

1 obtained shall inquire into the facts, and, if no legal reasons exist
2 prohibiting the execution of the judgment, shall make and enter an
3 order requiring the director of the department of prisons to execute
4 the judgment at a specified time. The presence of the defendant in
5 the court at the time the order of execution is made and entered, or
6 the warrant is issued, is not required.

7 2. When an opinion, order dismissing appeal or other order
8 upholding a sentence of death is issued by the supreme court
9 pursuant to chapter 34 or 177 of NRS, the court in which the
10 sentence of death was obtained shall inquire into the facts and, if no
11 legal reason exists prohibiting the execution of the judgment, shall
12 make and enter an order requiring the director of the department of
13 prisons to execute the judgment during a specified week. The
14 presence of the defendant in the court when the order of execution
15 is made and entered, or the warrant is issued, is not required.

16 3. Notwithstanding the entry of a stay of issuance of a remittitur in
17 the supreme court following denial of appellate relief in a
18 proceeding brought pursuant to chapter 34 or 177 of NRS, the court
19 in which the conviction was obtained shall, upon application of the
20 attorney general or the district attorney of the county in which the
21 conviction was obtained, cause another warrant to be drawn, signed
22 by the judge and attested by the clerk under the seal of the court,
23 and delivered to the director of the department of prisons.

24 Accordingly, the State is requesting that this Court review and sign the proposed
25 Second Order of Execution pursuant to NRS 176.505. Based upon the extensive procedural
26 history of this case, both in State and Federal court, the Defendant has exhausted his legal
27 remedies thereby leaving no valid legal reasons against the issuance of an order to carry out
28 the jury's sentence of a judgment of death. Pursuant NRS 176.505(2), requiring the district
court to set the judgment for a specified week, the week of June 7, 2021 is being proposed as
a date for the Director of the Department of Corrections to execute the judgment.

Once the Second Supplemental Order of Execution is signed, the State would propose
a future court date for the signing and filing of the Second Supplemental Warrant of Execution,
pursuant to NRS 176.495. Due the timing required by statute, that the judgment be carried out
no less than 15 days but no more than 30 days following the issuance of the warrant of
execution, the State would request that this Court issues the Second Supplemental Warrant of
Execution on or about May 21, 2021.

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DATED this 14th day of April, 2021.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar # 001565

BY /s/ Alexander Chen

ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #010539

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of the above and foregoing MOTION FOR THE COURT TO ISSUE A SECOND SUPPLEMENTAL ORDER OF EXECUTION AND A SECOND SUPPLEMENTAL WARRANT OF EXECUTION, Points and Authorities, and Notice of Motion was made this 14th day of April, 2021, by facsimile transmission to:

BRAD LEVENSON
Email: brad_levenson@fd.org
DAVID ANTHONY
Email: david_anthony@fd.org
Ecf_nvchu@fd.org

BY /s/ E.Davis
Employee for the District Attorney's Office

AC/ed

1 **WARR**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 ALEXANDER CHEN
6 Chief Deputy District Attorney
7 Nevada Bar #010539
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 State of Nevada

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 THE STATE OF NEVADA,
15
16 Plaintiff,

17 -vs-

18 ZANE MICHAEL FLOYD,
19 #1619135
20 Defendant.

21 Case No. 99C159897
22 Dept No. XVII

23 SECOND SUPPLEMENTAL WARRANT OF EXECUTION

24 TO: THE SHERIFF OF CLARK COUNTY, NEVADA, and
25 THE DIRECTOR OF THE DEPARTMENT OF PRISONS,
26 OF THE STATE OF NEVADA:

27 WHEREAS, on the 19th day of July, 2000, ZANE MICHAEL FLOYD was found
28 guilty of Counts II, III, IV & V, Murder of the First Degree With Use of a Deadly Weapon,
along with six (7) other Counts, by a duly and legally impaneled jury of twelve persons; and

WHEREAS, on the 21st day of July, 2000, that same jury returned a verdict of death
against ZANE MICHAEL FLOYD; and

WHEREAS, on the 11th day of September, 2000, filed an appeal with the Supreme
Court of the State of Nevada; and

WHEREAS, on the 13th day of March, 2002, the Supreme Court of the State of Nevada

E:\appellate\WPDOCS\Floyd, Zane Michael, 99C159897, 2nd death pprwrk 2021\Floyd Zane Michael 99C159897 Mtn.for Crt. Issue 2nd.

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1 affirmed ZANE MICHAEL FLOYD'S convictions for all counts as well as the Jury's
2 imposition of the death penalty; and

3 WHEREAS, on the 24th of February, 2003, the United States Supreme Court denied
4 ZANE MICHAEL FLOYD's Petition for a Writ of Certiorari; and

5 WHEREAS, on the 26th day of March, 2003, the Supreme Court of the State of
6 Nevada filed a Remittitur with the Clerk of this Court showing the denial of rehearing; and

7 WHEREAS, on the 19th day of June, 2003, ZANE MICHAEL FLOYD filed a
8 Petition for a Writ of Habeas Corpus (Post-Conviction) and on the 6th day of October, 2003,
9 a Supplemental Petition for a Writ of Habeas Corpus (Post-Conviction) was filed on behalf
10 of ZANE MICHAEL FLOYD; and

11 WHEREAS, on the 4th day of February, 2005, the District Court issued a Findings of
12 Fact, Conclusions of Law, and Order denying ZANE MICHAEL FLOYD's Petition for a
13 Writ of Habeas Corpus (Post-Conviction);

14 WHEREAS, on the 9th day of March, 2005, ZANE MICHAEL FLOYD filed a Notice
15 of Appeal to the Supreme Court of the State of Nevada; and

16 WHEREAS, on the 16th of February, 2006, the Supreme Court of the State of Nevada
17 denied ZANE MICHAEL FLOYD's appeal from the denial of his Petition for a Writ of
18 Habeas Corpus (Post-Conviction);

19 WHEREAS, on the 17th day of March, 2006, the Supreme Court of the State of
20 Nevada filed a Remittitur with the Clerk of this Court; and

21 WHEREAS, on the 14th of April, 2006, MICHAEL ZANE FLOYD filed a Petition
22 for Writ of Habeas Corpus in United States District Court;

23 WHEREAS, on the 8th June, 2007, MICHAEL ZANE FLOYD filed his second
24 Petition for a Writ of Habeas Corpus (Post-Conviction) in the State of Nevada District Court;

25 WHEREAS, on the 2nd day of April, 2008, the District Court issued a Findings of
26 Fact, Conclusions of Law, and Order denying ZANE MICHAEL FLOYD's Second Petition
27 for a Writ of Habeas Corpus; and

28 WHEREAS, on the 7th day of April, 2008, ZANE MICHAEL FLOYD filed a Notice

1 of Appeal from the denial of his Second Petition for a Writ of Habeas Corpus (Post-
2 Conviction); and

3 WHEREAS, on the 18th day of February, 2011, the Supreme Court of the State of
4 Nevada affirmed the District Court's denial of ZANE MICHAEL FLOYD's Second Petition
5 for a Writ of Habeas Corpus (Post-Conviction); and

6 WHEREAS, on the 22nd of September, 2014, the United States District Court denied
7 ZANE MICHAEL FLOYD's Petition for Writ of Habeas Corpus (Post-Conviction); and

8 WHEREAS, on the 22nd of October, 2014, a Notice of Appeal was filed to the US
9 Court of Appeals, Ninth Circuit; and

10 WHEREAS, on the 11th day of October, 2019, The United States Court of Appeals for
11 the Ninth Circuit issued an Order affirming the United States District Court's denial of
12 ZANE MICHAEL FLOYD's Petition for a Writ of Habeas Corpus; and

13 WHEREAS, on November 2, 2020, the United States Supreme Court denied a
14 Petition for a Writ of Certiorari; and

15 WHEREAS, on November 5, 2020, Mandate was filed giving the judgment of the
16 United States Court of Appeals for the Ninth Circuit full effect.

17 WHEREAS, the Court, in which the conviction was had and pursuant to NRS 176.505,
18 has inquired into the facts and determined that no legal reasons exist against the execution of
19 the judgment of death, and has entered a SECOND supplemental order to execute the judgment
20 and sentence of death,

21 NOW THEREFORE, it is hereby

22 ORDERED that the County Clerk of the County of Clark, State of Nevada, shall
23 forthwith, execute, in triplicate, under the Seal of the Court, certified copies of the SECOND
24 Supplemental Warrant of Execution, the Judgment of Conviction, and of the entry thereof in
25 the Minutes of the Court. The original of the triplicate copies of the Judgment of Conviction,
26 SECOND Supplemental Warrant of Execution, and entry thereof in the Minutes of the Court,
27 shall be filed in the Office of the County Clerk, and two of the triplicate copies shall be
28 immediately delivered by the Clerk to the Sheriff of Clark County, State of Nevada.

1 IT IS FURTHER ORDERED that one of the triplicate copies be delivered by the Sheriff
2 to the Director of the Department of Prisons or to such person as the Director shall designate.
3 The Sheriff is hereby directed to take charge of the said Defendant, ZANE MICHAEL
4 FLOYD, and transport and safely deliver the prisoner, forthwith, to the Director of the
5 Department of Prisons at the Nevada State Prison located at or near Carson City, State of
6 Nevada, and said prisoner, ZANE MICHAEL FLOYD, is to be surrendered to the custody of
7 the said Director of the Department of Prisons or to such authorized person so designated by
8 the Director of the Department of Prisons, for the imprisonment and execution of the said
9 Defendant, ZANE MICHAEL FLOYD, in accordance with the provisions of this SECOND
10 Supplemental Warrant of Execution.

11 IT IS FURTHER ORDERED that in connection with the above facts and pursuant to
12 the provisions of NRS 176.345, 176.355 and 176.357, the Director of the Department of
13 Prisons, or such person as shall by him be designated, shall carry out said Judgment and
14 Sentence by executing the said ZANE MICHAEL FLOYD, by the administration to him, said
15 Defendant, ZANE MICHAEL FLOYD, an injection of a lethal drug, the drug or combination
16 of drugs to be used for the execution to be selected by the Director of the Department of Prisons
17 after consulting with the State Health Officer. Said execution to be within the limits of the
18 State Prison, located at or near Carson City, State of Nevada, during the week commencing
19 on the 7th day of June, 2021, in the presence of the Director of the Department of Prisons, and
20 notify those members of the immediate family of the victim who have, pursuant to NRS
21 176.357, requested to be informed of the time, date and place scheduled for the execution, and
22 invite a competent physician, the county coroner, a psychiatrist and not less than six reputable
23 citizens over the age of 21 years to be present at the execution. The director shall determine
24 the maximum number of persons who may be present for the execution. The director shall
25 give preference to those eligible members or representatives of the immediate family of the
26 victim who requested, pursuant to NRS 176.357, to attend the execution. The execution must
27 take place at the state prison and a person who has not been invited by the director may not
28 witness the execution.

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ORDERED that said Defendant shall be safely kept and imprisoned by said Director until the Defendant is put to death by the injection of a lethal drug, or combination of drugs, and these presents shall be your authority so to do.

HEREIN FAIL NOT.

WITNESS, the HONORABLE MICHAEL VILLANI, this ____ day of April, 2021.

DISTRICT JUDGE

WITNESS my hand and seal
this ____ day of April, 2021.
Clerk Name, Clerk
BY _____

1 **ORDR**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 ALEXANDER CHEN
6 Chief Deputy District Attorney
7 Nevada Bar #010539
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 State of Nevada

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 THE STATE OF NEVADA,)

15 Plaintiff,)

16 -vs-)

17 ZANE MICHAEL FLOYD,
18 #1619135)

19 Defendant.)

20 Case No. 99C159897
21 Dept No. XVII

22 SECOND SUPPLEMENTAL ORDER OF EXECUTION

23 A JUDGMENT OF DEATH having been entered on the 21st day of July, 2000, against
24 the above named Defendant, ZANE MICHAEL FLOYD, as a result of his having been found
25 guilty of Counts II, III, IV and V Murder of the First Degree with Use of a Deadly Weapon,
26 by a duly and legally impaneled Jury of twelve persons; and

27 WHEREAS, this Court has made inquiry into the facts and found no legal reasons
28 against the execution of the Judgment of Death.

IT IS ORDERED that the Director of the Department of Prisons shall execute the
Judgment of Death, during the week commencing on the 7th day of June, 2021.

DATED this ____ day of April, 2021.

DISTRICT JUDGE

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DISTRICT COURT
CLARK COUNTY, NEVADA

CASE NO. 99C159897
DEPT. NO. XVII
THE STATE OF NEVADA

To the Sheriff of Clark County, and the Warden or Officers in charge of the State Prison of the State of Nevada,

GREETINGS:

WHEREAS, ZANE MICHAEL FLOYD

Having entered a plea of Not Guilty to the crime of Counts II, III, IV, and V Murder With Use of a Deadly Weapon, and the Defendant having been found guilty by the Jury of the crimes of Counts II, III, IV, and V Murder of the First Degree With Use of a Deadly Weapon, and judgment having been pronounced against him that be punished by the imposition of the Death Penalty by the administration of an injection of a lethal drug or combination of drugs. All of which appears of record in the Office of the Clerk of said Court and a certified copy of the Judgment being attached hereto and made a part hereof.

Now this is to command you, the said Sheriff, to safely deliver the said ZANE MICHAEL FLOYD, into the custody of the said Warden or his duly authorized representative, when requested to do so,

and this is to command you, the said Warden, or your duly authorized deputy, to receive from the said Sheriff, the said ZANE MICHAEL FLOYD, to be sentenced as aforesaid, and that the said be put to death by an injection of a lethal drug or combination of drugs.

And these presents shall be your authority to do so. HEREIN FAIL NOT.

WITNESS, Honorable MICHAEL P. VILLANI, Judge of the said District Court at the Courthouse, in the County of Clark, this ____ day of April, 2021.

Witness my hand and the Seal of
said Court, the day and year last
above written.

Clerk

EXHIBIT 1

EXHIBIT 1

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ZANE FLOYD,
Petitioner-Appellant,

v.

TIMOTHY FILSON; ADAM PAUL
LAXALT, Attorney General,
Respondents-Appellees.

No. 14-99012

D.C. No.
2:06-cv-00471-
PMP-CWH

ORDER AND
AMENDED
OPINION

Appeal from the United States District Court
for the District of Nevada
Philip M. Pro, District Judge, Presiding

Argued and Submitted January 31, 2019
San Francisco, California

Filed October 11, 2019
Amended February 3, 2020

Before: Marsha S. Berzon, John B. Owens,
and Michelle T. Friedland, Circuit Judges.

Order;
Opinion by Judge Friedland

SUMMARY*

Habeas Corpus / Death Penalty

The panel affirmed the district court's denial of Zane Floyd's habeas corpus petition challenging his Nevada conviction and death sentence for four counts of first-degree murder.

As to Floyd's ineffective-assistance-of-trial-counsel claims raised for the first time in his second state petition, which the Nevada Supreme Court denied as untimely and successive, the panel held that because the claims would fail on the merits, it did not need to resolve whether section 34.726 of the Nevada Revised Statutes is adequate to bar federal review, or whether Floyd can overcome his procedural default. The panel held that Floyd's remaining ineffective-assistance-of-counsel claim that was raised and adjudicated in state court fails under AEDPA's deferential standards.

Regarding Floyd's claim that his constitutional rights were violated when the State's expert made reference during his testimony to test results that he had obtained from Floyd's expert, the panel held that the Nevada Supreme Court's conclusion on direct appeal that no constitutional error occurred was not contrary to or an unreasonable application of controlling Supreme Court case law.

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Regarding Floyd's claim that the trial court violated his constitutional rights by failing to grant a change of venue, the panel held that the district court did not err when it reasoned that AEDPA limited its review to those materials before the state courts that had rejected the venue claim.

Regarding Floyd's claim that the trial court violated his constitutional rights by permitting the mother of a victim to testify extensively during the penalty phase about her son's difficult life and previous experiences with violent crime, the panel held that the Nevada Supreme Court's conclusion that the admission of the testimony did not unduly prejudice Floyd was not contrary to or an objectively unreasonable application of clearly established federal law.

Reviewing under AEDPA, the panel held that the Nevada Supreme Court's determination that the prosecutor's improper statement that Floyd had committed "the worst massacre in the history of Las Vegas" was harmless was neither contrary to nor an unreasonable application of *Darden v. Wainwright*, 477 U.S. 168 (1986). Reviewing de novo, the panel held that several of the prosecutor's other statements—suggesting that other decisionmakers might ultimately decide whether Floyd received the death penalty, and implying that the jury could sentence Floyd to death to send a message to the community—were improper but did not so affect the fundamental fairness of the proceedings as to violate the Eighth Amendment or result in the denial of due process.

The panel declined to expand the certificate of appealability to include claims challenging Nevada's lethal injection protocol and courtroom security measures that caused certain jurors to see Floyd in prison garb and restraints.

COUNSEL

Brad D. Levenson (argued) and David Anthony, Assistant Federal Public Defenders; Rene Valladares, Federal Public Defender; Office of the Federal Public Defender, Las Vegas, Nevada; for Petitioner-Appellant.

Jeffrey M. Conner (argued), Deputy Assistant Attorney General; Heidi Parry Stern, Chief Deputy Attorney General; Adam Paul Laxalt, Attorney General; Office of the Attorney General, Las Vegas, Nevada; for Respondents-Appellees.

H. Louis Sirkin, Santen & Hughes, Cincinnati, Ohio, for Amicus Curiae National Association for Public Defense.

Thomas C. Sand and Nicholas H. Pyle, Miller Nash Graham & Dunn LLP, Portland, Oregon, for Amicus Curiae The National Organization on Fetal Alcohol Syndrome.

Elizabeth Ballart and William Leiner, Disability Rights California, Oakland, California, for Amici Curiae Disability Law Center of Alaska, Disability Rights California, National Disability Rights Network, and Nevada Disability Advocacy & Law Center.

John L. Krieger, Dickinson Wright PLLC, Las Vegas, Nevada; Justin J. Bustos, Dickinson Wright PLLC, Reno, Nevada; for Amici Curiae Canadian Criminal Justice Professors, Litigators, and Expert Witnesses.

Lisa Rasmussen, Law Office of Lisa Rasmussen, Las Vegas, Nevada, for Amici Curiae The Directors of the Three Research Centers of Birmingham City University's School of Law.

ORDER

The opinion filed on October 11, 2019, reported at 940 F.3d 1082, is amended as follows.

On page 12 of the slip opinion, following <whether Floyd can overcome his procedural default and obtain federal review of the merits of his ineffective assistance claims.>, insert the footnote <The arguments in Floyd's opening and reply briefs regarding section 34.726 of the Nevada Revised Statutes address the same ineffective assistance of counsel claims as do his *Martinez* arguments. In Floyd's petition for rehearing, he argues that we should reach other constitutional claims that were also procedurally defaulted by section 34.726. Floyd forfeited any such argument by failing to present it in his opening brief. See *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 919 (9th Cir. 2001).>.

On page 14 of the slip opinion, replace <Floyd's counsel emphasized Floyd's developmental problems and mental illness> with <Floyd's counsel emphasized Floyd's developmental problems and emotional instability>.

On page 15 of the slip opinion, replace <Floyd's other mental illnesses> with <Floyd's other developmental problems>, and delete <on his mental state>.

On page 16 of the slip opinion, replace <the jury already had evidence before it that Floyd suffered from some mental illness and that his illness might have been related to his mother's alcohol use during pregnancy> with <the jury already had evidence before it that Floyd suffered from some developmental problems and that his issues might have been related to his mother's alcohol use during pregnancy>.

On page 17 of the slip opinion, replace <mental illness> with <developmental problems>.

On page 26 of the slip opinion, in the current footnote 5, replace <*Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 919 (9th Cir. 2001)> with <*Arpin*, 261 F.3d at 919>.

With these amendments, the panel has unanimously voted to deny Appellant's petition for panel rehearing and rehearing en banc. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for panel rehearing and rehearing en banc is accordingly **DENIED**. No further petitions for panel rehearing or rehearing en banc will be entertained.

OPINION

FRIEDLAND, Circuit Judge:

In 1999, Petitioner-Appellant Zane Michael Floyd shot and killed four people at a Las Vegas supermarket. A Nevada jury found Floyd guilty of four counts of first-degree murder, as well as several related offenses, and sentenced him to death. After the Nevada Supreme Court upheld his conviction and sentence on direct appeal and denied a petition for postconviction relief, Floyd sought a writ of habeas corpus in the United States District Court for the District of Nevada. Following a stay during which Floyd filed an unsuccessful second petition for postconviction relief in state court, the district court denied the federal habeas petition but issued a certificate of appealability as to various claims now before us. We affirm the district court's

decision and deny Floyd's motion to expand the certificate of appealability.

I.

A.

Before dawn one morning in June 1999, Floyd called an escort service and asked the operator to send a female escort to his parents' home in Las Vegas, where he had been living since his discharge from the U.S. Marine Corps the previous year. When a young woman sent by the service arrived, Floyd threatened her with a shotgun and forced her to engage in vaginal and anal intercourse, digital penetration, and oral sex. At one point he removed a shell from his shotgun and showed it to her, telling her that her name was on it. He later put on a Marine Corps camouflage uniform and told her that he planned to kill the first nineteen people he saw that morning. Commenting that he would have already shot her had he had a smaller gun on him, he told the woman she had one minute to run before he would shoot her. She escaped.

Floyd then walked about fifteen minutes to an Albertsons supermarket near his home. When he arrived at 5:15 am, he immediately began firing on store employees. He shot and killed four Albertsons employees and wounded another. The store's security cameras captured these events.

When Floyd exited the store, local police were waiting outside. Officers arrested him, and he quickly admitted to shooting the people in the Albertsons. Prosecutors charged Floyd with offenses that included multiple counts of first-degree murder and indicated that they would seek the death penalty.

B.

Numerous psychiatric experts examined Floyd and explored his background. On the day of his arrest, Floyd's public defenders retained Dr. Jakob Camp, a forensic psychiatrist who examined Floyd for three hours. Dr. Camp concluded that Floyd did not suffer from a mental illness that would impair his ability to stand trial, noted that Floyd's experiences during and after his time in the Marines might have had a bearing on his actions that day, and suggested that counsel obtain Floyd's adolescent health records to learn more about an attention deficit/hyperactivity disorder ("ADHD") diagnosis for which Floyd had been previously treated with the drug Ritalin. Floyd's counsel eventually obtained records from two doctors who had treated Floyd's mental health issues as an adolescent that confirmed this type of diagnosis. Those doctors had diagnosed Floyd with attention deficit disorder ("ADD"), although they had also determined that Floyd did not have any significant cognitive deficits.

Shortly before trial, defense counsel also retained clinical neuropsychologist Dr. David L. Schmidt to conduct a full examination of Floyd. Dr. Schmidt concluded that Floyd suffered from ADHD and polysubstance abuse, but that he showed "[n]o clear evidence of chronic neuropsychological dysfunction." He also diagnosed Floyd with a personality disorder that included "[p]aranoid, [s]chizoid, and [a]ntisocial [f]eatures."

Discouraged by Dr. Schmidt's findings, which they worried would make Floyd unsympathetic to a jury, counsel turned to clinical neuropsychologist Dr. Thomas Kinsora. After reviewing Dr. Schmidt's report and a report from Floyd's childhood doctor, Dr. Kinsora was highly critical of Dr. Schmidt's work, questioning the validity of the tests that

Dr. Schmidt had conducted. Dr. Kinsora advised Floyd's counsel that it was "not clear whether or not a more comprehensive assessment would have revealed ongoing deficits or not," but that he "wouldn't be surprised to find some continued evidence of neurological problems" in light of the findings of one of the doctors who had examined Floyd as an adolescent. The defense subsequently unendorsed Dr. Schmidt as an expert, but not before the state trial court ordered it to provide the prosecution a copy of Dr. Schmidt's report along with the associated raw testing data.

Defense counsel also retained Dr. Frank E. Paul, a clinical psychologist and retired Navy officer, who investigated and described in detail Floyd's background and life history. Floyd's mother told Dr. Paul that she had used drugs and alcohol heavily earlier in her life, including when she was pregnant with her first child, but that she "stopped drinking and all drug use when she found herself pregnant with [Floyd] . . . but continued to smoke tobacco." Dr. Paul also learned of an incident in which Floyd, at the age of eight, was accused of anally penetrating a three-year-old boy. Dr. Paul further learned that Floyd began using drugs and alcohol extensively in high school. Dr. Paul described Floyd's Marine Corps deployment to the U.S. base at Guantanamo Bay, Cuba as difficult, explaining that Floyd struggled with the stress and monotony of the deployment and drank extremely heavily during that period. Defense counsel originally named Dr. Paul as an expert but did not call him at trial and never disclosed Dr. Paul's report to the prosecution.

At the guilt phase of Floyd's trial, the jury convicted him of four counts of first-degree murder with use of a deadly weapon, one count of attempted murder with use of a deadly

weapon, one count of burglary while in possession of a firearm, one count of first-degree kidnapping with use of a deadly weapon, and four counts of sexual assault with use of a deadly weapon.

During the penalty phase of Floyd's trial, the State argued that three statutory aggravating factors justified application of the death penalty: killing more than one person, killing people at random and without apparent motive, and knowingly creating a risk of death to more than one person. In arguing that mitigating circumstances weighed against imposition of the death penalty, the defense called (among other witnesses) two experts hired by defense counsel: Dr. Edward Dougherty, a psychologist specializing in learning disabilities and education; and Jorge Abreu, a consultant with an organization specializing in mitigation defense.

Dr. Dougherty diagnosed Floyd with ADHD and a mixed personality disorder with borderline paranoid and depressive features. He also discussed the "prenatal stage" of Floyd's development, and commented that his mother "drank alcohol, and she used drugs during her pregnancy," including "during the first trimester." In rebuttal, the prosecution called Dr. Louis Mortillaro, a psychologist with a clinical neuropsychology certificate, who had briefly examined Floyd and reached conclusions similar to Dr. Schmidt's based on Dr. Schmidt's testing. Abreu painted a detailed picture of Floyd's life, drawing on many of the same facts that Dr. Paul's report had mentioned. He particularly noted Floyd's mother's heavy drinking, including during her pregnancies.

During closing arguments, defense counsel urged the jury to refrain from finding that a death sentence was warranted. The mitigating factors defense counsel relied on

in closing included Floyd's difficult childhood, his alcohol and substance abuse, his stressful military service, his ADD/ADHD, and his mother's substance abuse while she was pregnant with him.

After three days of deliberation, the jury sentenced Floyd to death. It found that all three statutory aggravating factors were present and that they outweighed Floyd's mitigating evidence.

C.

New counsel represented Floyd on his direct appeal, which the Nevada Supreme Court denied. *Floyd v. State*, 42 P.3d 249 (Nev. 2002) (per curiam). The U.S. Supreme Court then denied certiorari. *Floyd v. Nevada*, 537 U.S. 1196 (2003). Floyd filed a state petition for a writ of habeas corpus a little over a year later. The state trial court denied the petition on the merits, and the Nevada Supreme Court affirmed. *Floyd v. State*, No. 44868, 2006 Nev. LEXIS 851 (Nev. Feb. 16, 2006).

Floyd then filed a pro se habeas petition in the U.S. District Court for the District of Nevada. *See* 28 U.S.C. § 2254(a). The federal public defender was appointed as counsel and filed an amended petition with new allegations, including alleged ineffective assistance by Floyd's trial counsel. The district court agreed with the State that Floyd had not exhausted these new claims in state court and stayed the federal proceedings so he could do so.

Floyd filed a second state habeas petition that included the new claims of ineffective assistance of trial counsel. The state trial court denied this petition on the merits and as untimely filed. The Nevada Supreme Court affirmed, holding that Floyd's second petition was untimely and

successive. *Floyd v. State*, No. 51409, 2010 WL 4675234 (Nev. Nov. 17, 2010).

The federal district court then lifted the stay and reopened Floyd's habeas proceedings. It ultimately granted in part the State's motion to dismiss, concluding that Floyd's new claims that the Nevada Supreme Court had denied as untimely—including his new ineffective assistance of trial counsel claims—were procedurally defaulted, and that Floyd had not shown cause and prejudice for failing to raise his ineffective assistance of trial counsel claims in his first petition. *See Coleman v. Thompson*, 501 U.S. 722, 750 (1991). The district court went on to deny Floyd's remaining claims on the merits, but it issued a certificate of appealability as to several issues, including whether Floyd could show cause and prejudice for the default of his ineffective assistance of trial counsel claims.

Floyd appealed, pressing each of the certified issues and also arguing that we should expand the certificate of appealability to encompass two more. We evaluate each of his arguments in turn.

II.

We review a district court's denial of habeas corpus de novo. *Robinson v. Ignacio*, 360 F.3d 1044, 1055 (9th Cir. 2004).

The Antiterrorism and Effective Death Penalty Act ("AEDPA") applies to Floyd's habeas petition. Under AEDPA, we may grant Floyd relief only if the Nevada Supreme Court's rejection of his claims "(1) was contrary to or involved an unreasonable application of clearly established federal law, or (2) was based on an unreasonable determination of the facts." *Davis v. Ayala*, 135 S. Ct. 2187,

2198 (2015). “[C]learly established federal law” in this context refers to law “as determined by the Supreme Court.” 28 U.S.C. § 2254(d)(1). “Although an appellate panel may . . . look to circuit precedent to ascertain whether it has already held that the particular point in issue is clearly established by Supreme Court precedent,” that precedent cannot “refine or sharpen a general principle of Supreme Court jurisprudence into a specific legal rule that th[e] Court has not announced.” *Marshall v. Rodgers*, 569 U.S. 58, 64 (2013) (per curiam).

III.

Floyd asserts numerous claims of ineffective assistance of trial counsel. He raised most of these claims for the first time in his second state petition, prompting the Nevada Supreme Court to deny them as untimely and successive. *Floyd v. State*, No. 51409, 2010 WL 4675234, at *1 (Nev. Nov. 17, 2010). The Nevada Supreme Court held that the ineffective assistance of counsel claims raised for the first time in Floyd’s second state habeas petition were procedurally barred under section 34.726 of the Nevada Revised Statutes, which states that absent “good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year” after conviction or remittitur of any denied appeal “taken from the judgment.” Nev. Rev. Stat. § 34.726(1).

Unless a petitioner can show “cause and prejudice,” federal courts in habeas actions will not consider claims decided in state court on a state law ground that is independent of any federal question and adequate to support the state court’s judgment. *Coleman v. Thompson*, 501 U.S. 722, 750 (1991). Floyd and the State disagree about whether section 34.726, as applied in his case, is adequate to bar

federal review.¹ Floyd contends that when he filed his second state habeas petition in 2007, Nevada did not clearly and consistently apply section 34.726 to bar successive petitions alleging ineffective assistance of counsel in capital cases. He further argues that, even if the state law is adequate, he can establish cause and prejudice under *Martinez v. Ryan*, 566 U.S. 1 (2012), based on ineffective assistance of initial state habeas counsel in failing to raise claims of ineffective assistance of trial counsel.

Given that Floyd's underlying ineffective assistance of trial counsel claims lack merit, we need not resolve whether the state law is adequate or, if it is, whether Floyd can overcome his procedural default and obtain federal review of the merits of his ineffective assistance claims.² See *Franklin v. Johnson*, 290 F.3d 1223, 1232 (9th Cir. 2002). Even if we held in Floyd's favor on either of those questions and thus reached the merits of Floyd's ineffective assistance

¹ The Nevada Supreme Court also held that Floyd's new claims were barred by section 34.810 of the Nevada Revised Statutes, which requires dismissal of claims that could have been raised in an earlier proceeding. Nev. Rev. Stat. § 34.810(1)(b)(3). On appeal, the State does not contest the district court's determination that this application of section 34.810 was inadequate, and so it does not bar federal review, because the rule was not consistently applied at the time of Floyd's purported default.

² The arguments in Floyd's opening and reply briefs regarding section 34.726 of the Nevada Revised Statutes address the same ineffective assistance of counsel claims as do his *Martinez* arguments. In Floyd's petition for rehearing, he argues that we should reach other constitutional claims that were also procedurally defaulted by section 34.726. Floyd forfeited any such argument by failing to present it in his opening brief. See *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 919 (9th Cir. 2001).

of trial counsel claims, we would affirm the district court's denial of relief.³

A.

To succeed on an ineffective assistance of counsel claim, Floyd must show that his counsel's performance "fell below an objective standard of reasonableness," and that, if so, there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). With respect to the prejudice requirement, the Supreme Court has cautioned that "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 112 (2011). To determine the risk of such prejudice at the penalty phase of a capital trial, we consider whether it is reasonably probable that the jury otherwise "would have concluded that the balance of aggravating and mitigating circumstances did not warrant death" in light of "the totality of the evidence" against the petitioner. *Strickland*, 466 U.S. at 695.

B.

Floyd's primary ineffective assistance of trial counsel claim is that his trial counsel failed to investigate and present mitigation evidence showing that Floyd suffers from fetal alcohol spectrum disorder ("FASD") as a result of his mother's alcohol consumption while he was in utero. In

³ Nor is a remand to the district court for further evidentiary development appropriate because only "a habeas petitioner who asserts a *colorable* claim to relief . . . is entitled to an evidentiary hearing." *Siripongs v. Calderon*, 35 F.3d 1308, 1310 (9th Cir. 1994) (emphasis added).

support of this claim, Floyd offers a report from FASD expert Dr. Natalie Novick Brown. After reviewing the trial court record and other experts' examinations of Floyd, Dr. Brown concluded that Floyd suffered from FASD and that the disorder could explain his actions on the day of the shooting. Floyd argues it is reasonably probable that had jurors been presented with evidence of FASD and its effects, they would have spared him a death sentence. Floyd acknowledges that trial counsel consulted seven experts, none of whom diagnosed Floyd with FASD, but he contends that those experts were inadequately prepared and lacked the expertise to present proper mitigating evidence regarding FASD.

We need not resolve whether Floyd's counsel's performance was deficient in failing to present expert testimony that Floyd suffers from FASD. Even assuming it was, there is no reasonable probability that, had the jury heard from an FASD expert, it would have concluded that mitigating factors outweighed aggravating factors such that Floyd did not deserve a death sentence.

The State presented an extremely weighty set of aggravating factors at sentencing. First, the State charged that Floyd "created a great risk of death to more than one person by means of a weapon, device or course of action which would normally be hazardous to the lives of more than one person." Nev. Rev. Stat. § 200.033(3). Second, it alleged that Floyd killed more than one person (indeed, four) during the course of the offense that led to his conviction. *See id.* § 200.033(12). Third, it alleged that the killings were at random and without apparent motive, because Floyd "just went to a place where he knew 18 people would be and shot everybody he could see." *See id.* § 200.033(9). The jury

unanimously found that all three aggravating circumstances existed with regard to all four victims.

In response, Floyd's counsel emphasized Floyd's developmental problems and emotional instability, issues exacerbated by his early life experiences and military service. Counsel's mitigation arguments included multiple references to Floyd's mother's drinking while Floyd was in utero—a point that both mitigation consultant Abreu and Dr. Dougherty emphasized as well. Counsel and Dr. Dougherty both explicitly opined that Floyd's mother's substance abuse might be to blame for Floyd's mental condition. All in all, Floyd's counsel argued that Floyd acted “under the influence of extreme mental or emotional disturbance,” and that he “suffer[ed] from the effects, early effects of his mother's drinking, her ingested alcohol, drugs early on in her pregnancy.”

Consistent with these defense arguments, the mitigation instructions submitted to the jury included that Floyd's “[m]other use[d] alcohol and drugs during early pregnancy,” that Floyd had been born prematurely, that the murders were committed while Floyd was under the influence of “[e]xtreme [m]ental or [e]motional [d]isturbance,” and that Floyd had been “[i]nsufficiently [t]reated for ADHD [and] other [e]motional-[b]ehavioral [p]roblems including [d]epression.” Maternal alcohol and drug use was the first mitigating factor on the list.

Given the defense's focus on Floyd's mother's drinking during pregnancy and its effects, testimony by an FASD expert would likely not have changed any juror's balancing of mitigating versus aggravating circumstances. For Floyd to have been prejudiced by the lack of testimony by an FASD expert, at least one juror would have had to have considered a formal FASD diagnosis more severe and

debilitating than ADD/ADHD and Floyd's other developmental problems, which the defense had suggested included effects of his mother's drinking and drug use during pregnancy, but without using FASD terminology. In other words, at least one juror would have had to view a formal FASD diagnosis as a weightier mitigating factor than those presented. And that juror would have had to have placed so much additional weight on the FASD defense as to cause the mitigating circumstances to outweigh the State's significant aggravating evidence, even though they did not on the record before the jury. Both the limited additional contribution of the FASD mitigating factor as compared with the mitigation evidence presented and the especially shocking nature of Floyd's crime, during which he killed multiple unarmed people at close range, without provocation, and in their workplace, makes that switch in outcome unlikely. Given that the jury already had evidence before it that Floyd suffered from some developmental problems and that his issues might have been related to his mother's alcohol use during pregnancy, and given the extreme aggravating circumstances, it seems very unlikely—and so not reasonably probable—that any juror would have had these reactions.

This conclusion comports with our previous holdings that a capital petitioner is not necessarily prejudiced when counsel fails to introduce evidence that differs somewhat in degree, but not type, from that presented in mitigation. In *Bible v. Ryan*, 571 F.3d 860 (9th Cir. 2009), for instance, we held that a capital petitioner was not prejudiced by his attorney's failure to introduce medical evidence that he suffered from neurological damage. *Id.* at 870. We reasoned that because counsel presented evidence that the petitioner might have had brain damage from persistent drug and alcohol abuse, along with evidence of childhood events that

could have led to brain damage, medical evidence of neurological damage would have been different only in degree. *Id.* at 871. Floyd’s FASD argument resembles that of the petitioner in *Bible*—the jury heard the evidence that would have supported the FASD diagnosis as well as the implication that the evidence explained Floyd’s behavior. And like the petitioner in *Bible*, who “murdered a nine-year-old child in an especially cruel manner,” Floyd “has a significant amount of aggravating circumstances that he would need to overcome,” *id.* at 872, making it unlikely that the jury would have imposed a different sentence based on mitigating evidence that differed only in degree from that which Floyd presented at trial.

Floyd urges us to follow the Fourth Circuit’s decision in *Williams v. Stirling*, 914 F.3d 302 (4th Cir. 2019), *petition for cert. docketed*, No. 18-1495 (May 31, 2019), in which that court affirmed a district court’s conclusion that a capital petitioner’s counsel had performed constitutionally deficiently in failing to present evidence of fetal alcohol syndrome in mitigation, and that the petitioner was prejudiced by this failure. *Id.* at 319. In some cases, FASD evidence might be sufficiently “different from . . . other evidence of mental illness and behavioral issues” to raise a reasonable probability that a juror would not have imposed the death penalty had it been presented. *Id.* at 318. But much distinguishes Floyd’s case from that of the petitioner in *Williams*. Floyd’s lawyers and experts explicitly argued that his mother’s alcohol use while she was pregnant led to his developmental problems in some form and therefore helped explain his actions, whereas trial counsel in *Williams* investigated the petitioner’s mother’s drinking “as evidence of [the petitioner’s] difficult childhood, not of [fetal alcohol-related disorders]” and never offered evidence to the jury that the drinking could have caused Williams’s cognitive

issues. *Id.* at 309. The State submitted against Floyd three aggravating factors, all involving a multiple-victim shooting, whereas in *Williams* “the State only presented one aggravating factor: that the [single] murder occurred in the commission of a kidnapping.” *Id.* at 318. The jury that imposed the death sentence on Floyd did not report difficulty reaching a verdict, whereas in *Williams* “the jury sent a note to the trial court stating it was deadlocked nine to three in favor of death.” *Id.* at 308. In short, the petitioner in *Williams* was prejudiced because his lawyers presented a much weaker-than-available mitigation argument that was insufficient to overcome an also weak aggravating argument that clearly troubled some jurors.⁴ That was not the situation here. We also note that our conclusion is consistent with the Fifth Circuit’s in *Trevino v. Davis*, 861 F.3d 545 (5th Cir. 2017), *cert. denied*, 138 S. Ct. 1793 (2018), in which that court rejected an ineffective assistance of counsel claim relating to the failure to present mitigating evidence of an FASD diagnosis because the evidence would have been outweighed by what the court viewed as very substantial aggravating evidence. *Id.* at 549–51.

Floyd further argues that counsel provided deficient performance in the penalty phase by failing to call Dr. Paul, the consulting military and mental health expert, to testify about Floyd’s military service, early life, and other matters. We are skeptical that declining to call this expert was constitutionally deficient. *See Hinton v. Alabama*, 571 U.S.

⁴ Floyd’s postconviction investigator interviewed one juror who stated that evidence of a “serious mental illness” would have “weighed heavily” in her sentencing-phase deliberations. It does not follow that this juror would have deemed FASD a sufficiently severe condition to mitigate Floyd’s offenses, especially because she appears to have considered insufficient the existing evidence of potential ties between maternal alcohol use and Floyd’s state of mind.

263, 275 (2014) (“The selection of an expert witness is a paradigmatic example of the type of ‘strategic choic[e]’ that, when made ‘after thorough investigation of [the] law and facts,’ is ‘virtually unchallengeable.’” (alterations in original) (quoting *Strickland*, 466 U.S. at 690)). Even assuming that counsel’s choice in this regard was deficient, it did not prejudice Floyd. Like Floyd’s FASD evidence, Dr. Paul’s testimony would have been largely cumulative of the evidence of Floyd’s substance abuse and mental health struggles actually presented at trial, and the testimony therefore would have done little to offset the weighty aggravating evidence against Floyd.

C.

Floyd argues that his trial counsel’s conduct during jury selection amounted to ineffective assistance of counsel. We disagree. Much of his argument supposes that various decisions by the trial court prejudiced him during jury selection, that those decisions were erroneous, and that his counsel was ineffective in failing to object to or otherwise remedy these errors. But most of the trial court decisions he challenges were not errors at all, and with respect to any that may have been errors, we conclude that his counsel acted within the bounds of professional competence in responding to the court’s decisions.

For example, Floyd contends that his counsel erred in failing to successfully object to the trial court’s dismissal of two prospective jurors. Floyd first argues that the trial court improperly or pretextually removed one venireperson from the venire for cause. Even assuming that the trial court erred in doing so, this does not show that Floyd’s counsel was ineffective. On the contrary, Floyd’s counsel attempted to rehabilitate the prospective jurors who had expressed hesitation about the death penalty, including the juror in

question, and to allay the court's concerns. After the juror stated that she had scruples about the death penalty, counsel elicited a response from her that she "would have to follow the law." But she then admitted that she would "invariably in all cases give a sentence less than death," and the trial court dismissed her for cause.

Floyd next argues that the court improperly dismissed a second venireperson for improper concerns about language ability. After it came to light that this prospective juror was not a native English speaker, defense counsel questioned him about his degree from an English-speaking university. Nonetheless, the court concluded that the juror's English fluency was insufficient, stating that it could "not take a chance where the stakes [were] so high to both sides."

That the trial court dismissed these two potential jurors does not mean that counsel's attempts to rehabilitate them were deficient and that competent counsel would have sufficiently rehabilitated the two to keep them on the jury, especially because the court appears to have had legitimate concerns about both.

Floyd similarly argues that because the trial court refused to excuse allegedly biased venirepersons for cause, counsel wasted peremptory challenges on striking those individuals from the jury pool. It appears, however, that the trial court made no error by refusing to dismiss the prospective jurors in question. One of them, for instance, retracted her statement that she could not consider a sentence of life with parole after the trial court clarified that she was only required to "at least consider" it. And again, even if the trial court erred, Floyd's counsel's reaction was within the realm of permissible strategic choices: counsel chose between the two (admittedly unattractive) options of spending a peremptory challenge or taking the risk of seating a juror that counsel

had concluded would be unfavorable to Floyd. In other words, Floyd's counsel was not ineffective for attempting to make the best of the trial court's alleged errors.

Finally, Floyd contends in general terms that the voir dire format, in which the prosecution questioned all prospective jurors before the defense was permitted to question any, was prejudicial or caused his counsel to be ineffective. We struggle to discern precisely Floyd's theory of deficient performance or of prejudice. Even assuming that the trial court's format was prejudicial, counsel did object to it by moving for "attorney conducted, sequestered individual *voir dire*." Trial counsel's attempt to challenge the trial court's procedures shows diligence, not ineffectiveness.

Moreover, Floyd's lawyers had the opportunity to individually question numerous prospective jurors, eliciting information about their views on topics including the death penalty, psychology, alcoholism, and how they would behave in a jury room. Counsel's decision not to further question each venireperson about his or her exposure to media coverage of the shooting and ability to consider mitigating evidence was not deficient. The questionnaires that every prospective juror completed asked about these issues, and the trial court asked all prospective jurors if "there [is] anybody among you who feels unable to set aside what they've read, seen, or heard" about the case. Floyd's counsel were entitled to rely on those responses, and their mere failure to inquire further does not render their performance deficient. *See Fields v. Woodford*, 309 F.3d 1095, 1108 (9th Cir. 2002) ("[W]e cannot say that failure to inquire beyond the court's voir dire was outside the range of reasonable strategic choice or that it would have affected the outcome."); *Wilson v. Henry*, 185 F.3d 986, 991 (9th Cir. 1999) (rejecting argument "that trial counsel rendered

ineffective assistance by failing to focus on his client's criminal history during voir dire to discover potential juror prejudice and determine whether jurors could follow limiting instructions on such a history").

D.

Floyd's counsel was not ineffective in cross-examining the State's penalty-phase psychological expert witness, Dr. Mortillaro. Dr. Mortillaro reviewed the guilt-phase record materials and other psychological experts' reports and data, including Dr. Schmidt's unfavorable test results that the defense provided the prosecution in discovery before it un-endorsed Dr. Schmidt. Dr. Mortillaro also interviewed Floyd himself. Based on these materials, Dr. Mortillaro opined that—contrary to defense expert Dr. Dougherty's testimony—Floyd had not suffered brain damage, was of average IQ, did not suffer delusions, could tell right from wrong, and was not mentally ill.

On cross-examination, defense counsel elicited testimony from Dr. Mortillaro that he had only interviewed Floyd for about ninety minutes and that he had only received Dr. Dougherty's report the day before. Counsel also attempted to undermine Dr. Mortillaro's reliance on Floyd's scores from tests administered by Dr. Schmidt as the basis for Dr. Mortillaro's conclusion, arguing that the results should have been thrown out entirely. Counsel succeeded in getting Dr. Mortillaro to admit that any individual psychologist has significant discretion in deciding whether the test score was valid enough to allow reliance on the raw data. Counsel then pointed out that Dr. Dougherty had looked at the same data and diagnosed Floyd with dissociative personality disorder rather than borderline personality disorder, and he elicited an admission from

Dr. Mortillaro that individuals with borderline personality disorder may show dissociative symptoms.

Finally, counsel attempted to undermine Dr. Mortillaro's minimization of Floyd's ADD/ADHD. Counsel presented Dr. Mortillaro with his own prior testimony from another matter in which Dr. Mortillaro had stated "that 70 percent of those with attention deficit [disorder] still have it as an adult." Dr. Mortillaro also conceded that even if a patient were to "outgrow" ADD or ADHD, the fallout from the childhood disorder "would stay with them."

Floyd generally faults counsel for choosing to rely on cross-examination of Dr. Mortillaro rather than calling Floyd's other consulting expert, Dr. Kinsora, to rebut Dr. Mortillaro's testimony. The caselaw does not support Floyd's argument. In prior cases in which we and other circuits have recognized constitutionally deficient cross-examination, there were glaring failures to ask even basic questions, not—as here—a strategic choice between one means of undermining the witness and another. *See, e.g., Reynoso v. Giurbino*, 462 F.3d 1099, 1112–13 (9th Cir. 2006) (counsel ineffective for failing to ask *any* questions about a \$25,000 reward that might have motivated key witnesses' testimony against the defendant); *Higgins v. Renico*, 470 F.3d 624, 633 (6th Cir. 2006) (ineffective assistance where counsel did not cross-examine key prosecution witness at all because he felt unprepared to do so, even though he "had plenty of ammunition with which to impeach [the witness's] testimony").

Floyd does not contend that counsel failed altogether to cross-examine Dr. Mortillaro about key issues, but rather that he failed to do so in a manner that Floyd now believes would have been more effective. But Floyd's counsel did attempt to impeach Dr. Mortillaro's testimony, including

with information counsel obtained from experts he had hired. This was not constitutionally deficient performance.

E.

Floyd argues that his trial counsel was ineffective for failing to object to various jury instructions. Many of the arguments against the instructions Floyd now challenges would not have been legally supported or would have been foreclosed by then-governing law, so counsel was not ineffective for failing to raise them.

First, we disagree with Floyd that the jury should have been instructed at the penalty phase that it could impose a death sentence only if it found that aggravating factors outweighed mitigating factors beyond a reasonable doubt. Floyd contends that the Supreme Court's decision in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), required that the jury instructions include such a statement about burden of proof. The Court in *Apprendi* held that, subject to an exception for prior convictions, "any *fact* that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Id.* at 490 (emphasis added). Floyd characterizes the balance of aggravating and mitigating circumstances as a "fact" governed by this rule.

The federal courts of appeals that have considered this argument have uniformly rejected it, holding that a jury's balancing inquiry in a capital case is a subjective and moral one, not a factual one. See *United States v. Gabrion*, 719 F.3d 511, 532–33 (6th Cir. 2013) (en banc); *United States v. Runyon*, 707 F.3d 475, 516 (4th Cir. 2013); *United States v. Barrett*, 496 F.3d 1079, 1107–08 (10th Cir. 2007); *United States v. Fields*, 483 F.3d 313, 346 (5th Cir. 2007); *United States v. Sampson*, 486 F.3d 13, 31–32 (1st Cir.

2007); *United States v. Purkey*, 428 F.3d 738, 749–50 (8th Cir. 2005).⁵ Floyd’s proposed instruction thus hardly flowed naturally from *Apprendi*, which did not involve a capital case and was decided just months before Floyd’s trial began. Floyd’s counsel was not deficient for failing to make an argument that was untested, an extension of newly minted law, and (judging from the weight of subsequent authority) likely to fail. See *Engle v. Isaac*, 456 U.S. 107, 134 (1982) (“[T]he Constitution guarantees criminal defendants only a fair trial and a competent attorney. It does not insure that defense counsel will recognize and raise every conceivable constitutional claim.”).

Second, Floyd’s counsel was not ineffective for failing to challenge on constitutional grounds the penalty-phase jury instructions for the aggravating circumstance that “[t]he murder was committed upon one or more persons at random and without apparent motive.” At the time of Floyd’s trial, the Nevada Supreme Court had already rejected an identical constitutional challenge to this aggravating factor. See *Geary v. State*, 930 P.2d 719, 727 (Nev. 1996). Counsel was not ineffective for failing to raise this argument.

⁵ We have never directly ruled on this question—nor do we today—but we have at least twice expressed our skepticism of Floyd’s view. See *Ybarra v. Filson*, 869 F.3d 1016, 1030–31 (9th Cir. 2017); *United States v. Mitchell*, 502 F.3d 931, 993–94 (9th Cir. 2007). Floyd also argues that counsel should have requested a reasonable doubt instruction based on the Supreme Court’s decision in *Ring v. Arizona*, 536 U.S. 584 (2002), which applied the principle from *Apprendi* to hold that every sentence-enhancing fact, “no matter how the State labels it,” must be found beyond reasonable doubt. *Id.* at 602. *Ring* was decided two years after Floyd’s trial. In addition, *Ybarra* and *Mitchell*, as well as other circuits’ decisions rejecting that argument, post-date *Ring* and thus defeat this version of Floyd’s claim as well.

Third, no *Strickland* violation occurred when Floyd’s counsel declined to challenge a guilt-phase jury instruction that premeditation, an element of first-degree murder, “may be as instantaneous as successive thoughts of the mind.” Even assuming that this instruction was improper and that counsel’s decision not to challenge it was unreasonable, no prejudice resulted from use of the instruction. The jury had before it significant evidence that Floyd’s premeditation occurred in more than an instant. Among other things, he told his sexual assault victim that he planned to kill the first nineteen people he saw, then walked for fifteen minutes carrying the shotgun that he used to perpetrate the murders. Even if counsel had succeeded in striking the “instantaneous premeditation” instruction, there is no reasonable probability that the jury would have found a lack of premeditation as a result. *See Strickland*, 466 U.S. at 694.

F.

Floyd’s remaining claim of ineffective assistance—that his trial counsel should have objected to Nevada’s use of the “great risk of death” aggravating circumstance—was raised and adjudicated in state court, so we review it under AEDPA’s deferential standards. The claim fails under those standards.

Floyd contends that his trial counsel should have objected to this aggravating circumstance as duplicative of another aggravating circumstance—the “multiple murders” factor—that the State charged. *See Nev. Rev. Stat. § 200.033(3)*. Initial post-conviction counsel presented a nearly identical argument⁶ to the Nevada Supreme Court,

⁶ To the extent Floyd is now making a new argument that this aggravating circumstance was impermissibly vague, we hold that

which rejected it on the merits. The Nevada Supreme Court held that the two aggravators were based on different facts and served different state interests. It reasoned that “[o]ne is directed against indiscriminately dangerous conduct by a murderer, regardless of whether it causes more than one death; the other is directed against murderers who kill more than one victim, regardless of whether their conduct was indiscriminate or precise.” *Floyd v. State*, No. 44868, 2006 Nev. LEXIS 851 (Nev. Feb. 16, 2006). Floyd argues in a conclusory fashion that this decision was “arbitrary and capricious” such that it was contrary to or an unreasonable application of clearly established federal law, but he cites no controlling Supreme Court precedent relevant to this argument. His briefing focuses entirely on the legislative history of Nevada’s aggravating factors and what he contends are two conflicting strains of doctrine in that state’s jurisprudence on the “great risk of death factor.” These state law issues are not grounds for federal habeas relief, and we are aware of no clearly established federal law that the Nevada Supreme Court’s determination might have contravened. See 28 U.S.C. § 2254(d); *Williams v. Taylor*, 529 U.S. 362, 412 (2000) (holding that “clearly established Federal law” refers only to U.S. Supreme Court decisions at time of alleged violation).

argument lacks merit. “[N]ot every ambiguity, inconsistency, or deficiency in a jury instruction rises to the level of a due process violation.” *Middleton v. McNeil*, 541 U.S. 433, 437 (2004) (per curiam). To the extent that Floyd is making a new argument in his reply brief that substantial evidence did not support this jury instruction, we hold that Floyd forfeited any such argument by failing to articulate it in his opening brief. See *Arpin*, 261 F.3d at 919.

IV.

Floyd argues that his constitutional rights were violated when the State's expert, Dr. Mortillaro, made reference during his testimony to test results that he had obtained from Floyd's expert, Dr. Schmidt. The Nevada Supreme Court's conclusion on direct appeal that no constitutional error occurred, *Floyd v. State*, 42 P.3d 249, 258–59 (Nev. 2002) (per curiam), was not contrary to or an unreasonable application of controlling Supreme Court caselaw.

Floyd argues at length that the Nevada Supreme Court wrongly determined that Dr. Schmidt's report was not privileged work product.⁷ Although the Nevada Supreme

⁷ Floyd argues that his counsel were ordered to turn over Dr. Schmidt's report "before defense counsel had even seen the report of their expert." That assertion is misleading. The court ordered the defense to provide a copy of Dr. Schmidt's report "before the close of business on June 15, 2000." Dr. Schmidt's report is dated June 13, 2000. In his declaration, Floyd's counsel describes a phone call with Dr. Schmidt on June 14 where Dr. Schmidt informed counsel that he was "unable to find any neurological basis for Mr. Floyd's actions." "Upon talking with Dr. Schmidt," counsel "became skeptical about the quality of his testing and decided to hire Dr. Kinsora" to review Dr. Schmidt's testing and analysis. So Floyd's counsel knew basically what would be in Dr. Schmidt's report before they turned it over, whether or not they had seen the actual report. Counsel had the opportunity to withdraw Dr. Schmidt as an expert before turning over his report, as they previously had done with Dr. Paul, but failed to do so. And Floyd's counsel admits that there was "no strategic reason to turn over a report that [they] were not sure about using." In light of this timeline, Floyd's argument that the prosecution's use of Dr. Schmidt's data violated the work-product privilege might be more accurately framed as a result of a poor strategic choice on defense counsel's part not to withdraw Dr. Schmidt as an expert, which could in turn be grounds for an ineffective assistance of counsel claim. See *McClure v. Thompson*, 323 F.3d 1233, 1242–43 (9th Cir. 2003). But no such claim is before us.

Court drew on federal authority in reaching that conclusion, Floyd “simply challenges the correctness of the state evidentiary rulings,” and “he has alleged no deprivation of federal rights” that could entitle him to relief. *Gutierrez v. Griggs*, 695 F.2d 1195, 1197 (9th Cir. 1983). He similarly argues that the Nevada Supreme Court misapplied its own precedent, but a state court’s misreading of *state* law is not a ground for federal habeas relief.

Ake v. Oklahoma, 470 U.S. 68 (1985), does not support Floyd’s challenge to the use of Schmidt’s report either. The Supreme Court in *Ake* held that “due process requires access to a psychiatric examination on relevant issues, to the testimony of the psychiatrist, and to assistance in preparation at the sentencing phase” of a capital case. *Id.* at 84. Floyd received ample psychiatric evaluations and assistance prior to sentencing, so *Ake* has little bearing here.

Floyd further contends that our extension of *Ake* in *Smith v. McCormick*, 914 F.2d 1153, 1158–59 (9th Cir. 1990), should have compelled the Nevada Supreme Court to reach a different result. In *Smith*, we held that a capital defendant’s due process rights⁸ were violated when, instead of permitting an independent psychiatric evaluation, the trial court ordered a psychiatrist to examine the defendant and

⁸ Floyd asserted in passing in his opening brief before this court that the disclosure and use of Dr. Schmidt’s report violated his Fifth Amendment rights against self-incrimination but provided no developed argument supporting that assertion. We therefore express no view on that issue. See e.g., *Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994) (“We review only issues which are argued specifically and distinctly in a party’s opening brief. We will not manufacture arguments for an appellant, and a bare assertion does not preserve a claim, particularly when, as here, a host of other issues are presented for review.” (internal citations omitted)).

report directly to the court at a resentencing hearing. *Id.* at 1159–60. We reasoned that the petitioner’s “counsel was entitled to a confidential assessment of such an evaluation, and the strategic opportunity to pursue other, more favorable, arguments for mitigation.” *Id.* at 1160.

Floyd appears to argue that because, under *Smith*, a defendant is entitled to a confidential assessment of the state-provided psychiatric assessment and the chance to pursue other strategies, he was entitled to claw back a document that was disclosed in connection with designating an expert to testify after he reversed course and removed the expert from his witness list. The holding in *Smith* did not encompass what Floyd seeks here, so the Nevada Supreme Court did not act contrary to our precedent. And, in any event, Floyd’s proposed rule is not clearly established by any Supreme Court decision. *Marshall v. Rodgers*, 569 U.S. 58, 64 (2013) (per curiam).

Indeed, the Supreme Court has held that mandatory disclosure schemes are permissible in criminal trials as long as they do not structurally disadvantage the defendant. *See Wardius v. Oregon*, 412 U.S. 470, 472 (1973) (“We hold that the Due Process Clause of the Fourteenth Amendment forbids enforcement of alibi rules *unless reciprocal discovery rights are given to criminal defendants.*” (emphasis added)). Nevada provides for reciprocal discovery, as it did at the time of Floyd’s trial, so *Wardius* was not contravened here. *See Nev. Rev. Stat. § 174.234* (1999).

V.

Floyd next contends that the trial court violated his constitutional rights by failing to grant a change of venue.⁹ He argues that the district court erred when it rejected this claim in part on the ground that, of the 115 news articles Floyd submitted with his federal habeas petition to attempt to show that the jury was exposed to prejudicial pretrial publicity about his case, only three were in the record before the state courts. Relying on *Cullen v. Pinholster*, 563 U.S. 170 (2011), the district court reasoned that AEDPA limited its review to those materials before the state courts that had rejected Floyd's venue claim. *See id.* at 185 ("If a claim has been adjudicated on the merits by a state court, a federal habeas petitioner must overcome the limitation of § 2254(d)(1) on the record that was before that state court.").

The district court did not err. Floyd argues that, under *Dickens v. Ryan*, 740 F.3d 1302 (9th Cir. 2014) (en banc), the district court misapplied *Pinholster* to bar consideration of his 112 new articles. Floyd's reliance on *Dickens* is misplaced. In *Dickens*, we held that AEDPA (as interpreted in *Pinholster*) did not bar a federal court from considering new evidence introduced to support a *Martinez* motion alleging ineffective assistance of trial and postconviction counsel as cause and prejudice for a procedural default. *Dickens*, 740 F.3d at 1319–20. Here, by contrast, Floyd faults the district court for failing to consider new evidence

⁹ In Floyd's opening brief, he asserts in a section heading that the district court also erred by failing to consider his claim that the trial court violated his rights by refusing to sever the sexual assault charges against him from the murder charges. But he does not actually argue this point or explain the alleged error, so we consider any such argument forfeited. *See Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 919 (9th Cir. 2001).

in the context of a change of venue claim decided on its merits in the state court and so reviewed under AEDPA deference. Floyd's theory about how the Nevada Supreme Court erred has nothing to do with trial counsel's performance and therefore does not implicate the *Dickens* rule.

Because Floyd makes no argument beyond the district court's refusal to consider these documents—which we conclude was not error—we need not consider whether the Nevada Supreme Court's denial of Floyd's venue claim was contrary to or unreasonably applied clearly established federal law.

VI.

Floyd argues, as he did on direct appeal, that the trial court violated his constitutional rights by permitting the mother of victim Thomas Darnell to testify extensively during the penalty phase about her son's difficult life and previous experiences with violent crime. The Nevada Supreme Court held that parts of Nall's testimony "exceeded the scope of appropriate victim impact testimony" and should not have been admitted under state evidentiary law, but that their admission did not unduly prejudice Floyd such that it rendered the proceeding fundamentally unfair. *Floyd v. State*, 42 P.3d 249, 262 (Nev. 2002) (per curiam). The Nevada Supreme Court's rejection of this claim was not contrary to or an objectively unreasonable application of clearly established federal law. 28 U.S.C. § 2254(d).

The prosecution called Mona Nall, Darnell's mother, to offer victim impact testimony during the penalty phase of trial. Nall told the jury how Darnell had thrived in the face of serious learning and developmental disabilities, going on to form close relationships with his family and members of

the community. She testified that “the hurt has gone so deep” for those affected by his death. Nall also recounted an incident years earlier in which Darnell and his family had been kidnapped by two men who held the family hostage and sexually assaulted Nall’s daughter. Defense counsel objected twice to this testimony and the trial court admonished the prosecution to “get to th[e] point.”

The Nevada Supreme Court did not unreasonably apply the relevant clearly established federal law in rejecting Floyd’s claim that this testimony violated his due process rights. In *Payne v. Tennessee*, 501 U.S. 808 (1991), the Supreme Court held that in a penalty-phase capital trial, “if the State chooses to permit the admission of victim impact evidence and prosecutorial argument on that subject, the Eighth Amendment erects no *per se* bar.” *Id.* at 827. The Court added that “[i]n the event that evidence is introduced that is so unduly prejudicial that it renders the trial fundamentally unfair, the Due Process Clause of the Fourteenth Amendment provides a mechanism for relief.” *Id.* at 825 (citing *Darden v. Wainwright*, 477 U.S. 168, 179–83 (1986)).

Like the Nevada Supreme Court, we are troubled by the admission of some of Nall’s testimony. That court determined that although *Payne* did not necessarily bar Nall’s testimony about the hostage-taking and kidnapping incident, those parts of her testimony should not have been admitted under state evidentiary law because of its limited relevance and high risk of prejudice. We are additionally concerned about the propriety of Nall’s testimony about Darnell’s early life and developmental difficulties because of its limited relevance to Floyd’s impact on the victims (or on people close to and surviving them) and its potential risk of prejudice. Eliciting extensive testimony about a horrible

crime that had nothing to do with the defendant risks inappropriately affecting jurors who might feel that the victim's family should be vindicated for all of its tragedies, not just for the one caused by Floyd.

Nevertheless, it was not unreasonable for the Nevada Supreme Court to conclude that the admission of Nall's testimony did not render Floyd's trial fundamentally unfair. Given the strength of the prosecution's aggravating case against Floyd, it seems unlikely that the jury was substantially swayed by the irrelevant parts of Nall's testimony. The same characteristics that made Nall's testimony so objectionable—that it had nothing to do with Floyd's crimes or, at times, with Floyd's victims—could have diminished the testimony's effect on the jury.

The prosecutor indirectly referenced the irrelevant portions of Nall's testimony in closing argument when he commented on “the tremendous tragedies . . . that Mona has suffered and had suffered with her son over the years, so many tragedies, so many hardships.” But this comment lacked detail and was in the context of a long description of the victim impact of Floyd's crime, so the prosecution does not appear to have relied extensively on the improper testimony. In the face of the robust aggravating evidence that the State presented, the Nevada Supreme Court did not unreasonably apply clearly established Supreme Court law by holding that Floyd was not prejudiced by Nall's statement or by the prosecutor's references to it, so there was no due process violation. *See Payne*, 501 U.S. at 825. For the same reasons, any error in permitting Nall's testimony about Darnell's early life was harmless as there is no evidence that the testimony had “substantial and injurious effect or influence in determining the jury's verdict.” *Brecht v.*

Abrahamson, 507 U.S. 619, 638 (1993) (quotation marks omitted).

VII.

Floyd challenges numerous statements made by the prosecution as misconduct amounting to constitutional error.¹⁰ We agree that a subset of these statements was improper, but we hold that the impropriety is not a ground for habeas relief under the relevant standards of review.

The due process clause provides the constitutional framework against which we evaluate Floyd's claims of prosecutorial misconduct. "The relevant question" under clearly established law "is whether the prosecutors' comments 'so infected the trial with unfairness as to make the resulting conviction a denial of due process.'" *Darden v. Wainwright*, 477 U.S. 168, 181 (1986) (quoting *Donnelly v. DeChristoforo*, 416 U.S. 637, 643 (1974)); see also *Parker v. Matthews*, 567 U.S. 37, 45 (2012) (per curiam) (holding that *Darden* provides relevant clearly established law on habeas review of claims that statements by prosecutors amounted to prosecutorial misconduct). In making that determination, courts look to various

Darden factors—i.e., the weight of the evidence, the prominence of the comment in the context of the entire trial, whether the prosecution misstated the evidence, whether the judge instructed the jury to disregard the comment, whether the comment was invited by defense counsel in its summation and

¹⁰ The district court determined that Floyd had exhausted all of these claims, and the State does not challenge that ruling.

whether defense counsel had an adequate opportunity to rebut the comment.

Hein v. Sullivan, 601 F.3d 897, 914 (9th Cir. 2010). As the Supreme Court emphasized in *Darden*, “it is not enough that the prosecutors’ remarks were undesirable or even universally condemned,” 477 U.S. at 181 (citation omitted), because the effect on the trial as a whole needs to be evaluated in context. *See United States v. Young*, 470 U.S. 1, 17–20 (1985) (prosecutor’s exhortation that the jury “do its job” and statements of personal belief were improper, but they did not have prejudicial effect on the trial as a whole in light of the comments’ context and overwhelming evidence of guilt).

A.

In his direct appeal and first habeas petition, Floyd presented several claims that the prosecutor’s statements amounted to misconduct; we review those adjudicated claims under AEDPA. We agree with the Nevada Supreme Court that the prosecutor’s contention that Floyd had committed “the worst massacre in the history of Las Vegas” was improper. *Floyd v. State*, 42 P.3d 249, 260–61 (Nev. 2002) (per curiam). That court’s further determination that the comment was harmless, *id.* at 261, was not unreasonable. Although the Nevada Supreme Court cited the state’s codified harmless error doctrine, *see* Nev. Rev. Stat. § 178.598, and not *Darden*, its reasoning can also be understood as concluding that Floyd had not shown that the misconduct “so infected the trial with unfairness” as to work a denial of his due process rights. *Darden*, 477 U.S. at 181 (quotation marks omitted).

This conclusion was not objectively unreasonable under the *Darden* factors. Although the “worst massacre”

comment came late in the trial and was not invited by the defense, the weight of the evidence against Floyd and the fact that the comment was not egregiously inflammatory make the Nevada Supreme Court's determination reasonable. In *Darden*, for instance, the prosecutor made a series of comments far more inflammatory than this one.¹¹ The Supreme Court nonetheless held that those comments did not render the petitioner's trial fundamentally unfair in light of the defense's response and the strong evidence against the petitioner. *Id.* at 180–83. And although the trial court here did not specifically direct jurors to ignore the prosecutor's "worst massacre" comments, it did instruct them that "arguments and opinions of counsel are not evidence." The Nevada Supreme Court's determination was therefore neither contrary to nor an unreasonable application of *Darden*.

B.

Floyd raised additional claims in his second state habeas petition that statements by the prosecutor amounted to misconduct. The Nevada Supreme Court held that those claims were procedurally barred, *Floyd v. State*, No. 51409, 2010 WL 4675234, at *1 (Nev. Nov. 17, 2010), but because

¹¹ *Darden* enumerated a few of the prosecutor's statements: "He shouldn't be out of his cell unless he has a leash on him and a prison guard at the other end of that leash." "I wish [the victim] had had a shotgun in his hand when he walked in the back door and blown [the petitioner's] face off. I wish that I could see him sitting here with no face, blown away by a shotgun." "I wish someone had walked in the back door and blown his head off at that point." "He fired in the boy's back, number five, saving one [round]. Didn't get a chance to use it. I wish he had used it on himself." "I wish he had been killed in the accident, but he wasn't. Again, we are unlucky that time." 477 U.S. at 180 n.12.

the State has forfeited any objection to the district court's decision to review them on the merits nonetheless, we consider them de novo.

Most of these claims are meritless, but we note two troubling arguments made by the prosecution. We find improper one set of statements characterizing the jury's role in imposing the death penalty. At the penalty phase, the prosecution told the jury that "you're not killing him," that "[y]ou are part of a shared process," and that "even after you render your verdict, there's a process that continues." These comments suggested that other decisionmakers might ultimately decide whether Floyd received the death penalty. They therefore present concerns under *Caldwell v. Mississippi*, 472 U.S. 320, 328–29 (1985), which held that the Eighth Amendment makes it "constitutionally impermissible to rest a death sentence on a determination made by a sentencer who has been led to believe that the responsibility for determining the appropriateness of the defendant's death rests elsewhere."

Nevertheless, these comments did not "so affect the fundamental fairness of the sentencing proceeding as to violate the Eighth Amendment." *Id.* at 340. The statements did not quite as clearly suggest to the jury that Floyd would not be executed as did the offending remark in *Caldwell*. See *id.* at 325–26 ("[Y]our decision is not the final decision"; "[T]he decision you render is automatically reviewable by the Supreme Court."). Defense counsel emphasized the jury's responsibility during his closing argument, telling the jurors, "[w]e sit before you and we ask whether or not you're going to kill somebody." Moreover, the jury instructions clearly stated that the jurors "must assume that the sentence will be carried out." This sufficiently avoided any "uncorrected" suggestion that the responsibility for any

ultimate determination of death will rest with others,” so as to not require reversal. *Id.* at 333 (emphasis added).

The prosecution also argued during the penalty phase that the death penalty “sends a message to others in our community, not just that there is a punishment for a certain crime, but that there is justice.” This statement inappropriately implies that the jury could sentence Floyd to death to send a message, rather than making “an *individualized* determination.” *Zant v. Stephens*, 462 U.S. 862, 879 (1983). The harm of this statement was mitigated in part by jury instructions that emphasized the jury’s responsibility to weigh the specific aggravating and mitigating circumstances of the case. Both the defense and the prosecution also repeatedly emphasized and relied on the specific details of the crime at hand, encouraging the jury to make a determination based on the individual facts of the case. Finally, we agree with the district court’s holding that, in context, these comments did not “incite the passions of the jurors” and “did not include any overt instruction to the jury to impose the death penalty . . . to send a message to the community.” In light of the other arguments made at trial, and the strong evidence against Floyd, the improper argument by the prosecution did not “so infect[] the trial with unfairness as to make the resulting conviction a denial of due process.” *Darden*, 477 U.S. at 181 (quotation marks omitted).

VIII.

Floyd advances on appeal two claims outside the certificate of appealability issued by the district court. These uncertified claims challenge Nevada’s lethal injection protocol and courtroom security measures that caused certain jurors to see Floyd in prison garb and restraints. We

construe this portion of his briefing as a motion to expand the certificate of appealability. 9th Cir. R. 22-1(e).

A petitioner meets his burden for a certificate of appealability if he can make “a ‘substantial showing of the denial of a constitutional right,’ accomplished by ‘demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.’” *Turner v. McEwen*, 819 F.3d 1171, 1178 n.2 (9th Cir. 2016) (first quoting 28 U.S.C. § 2253(c)(2); and then quoting *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003)). Floyd makes no such showing here, and we therefore deny his motion to expand the certificate of appealability.

First, Floyd’s uncertified challenge to Nevada’s lethal injection protocol—a three-drug sequence of the anesthetic midazolam, the opioid fentanyl, and the paralytic cisactracurium—is not yet ripe. In 2018, the manufacturer of Nevada’s supply of midazolam brought an action to enjoin its product’s use in executions. The manufacturer won, obtaining a preliminary injunction, *Alvogen v. Nevada*, No. A-18-777312-B (Nev. Dist. Ct. Sept. 28, 2018), which is currently on appeal to the Nevada Supreme Court. *See State v. Alvogen, Inc.*, Nos. 77100, 77365 (Nev. 2019). As a result, for all practical purposes, Nevada presently has no execution protocol that it could apply to Floyd. A method-of-execution challenge is not ripe when the respondent state has no protocol that can be implemented at the time of the challenge. *See Payton v. Cullen*, 658 F.3d 890, 893 (9th Cir. 2011) (claim unripe because no protocol in place following state court invalidation of existing protocol). We cannot determine what drugs Nevada might attempt to use to execute Floyd, and we cannot adjudicate the

constitutionality of an unknown protocol. Floyd's claim is therefore unripe for federal review because "the injury is speculative and may never occur." *Portman v. County of Santa Clara*, 995 F.2d 898, 902 (9th Cir. 1993) (citation omitted).

Second, Floyd's uncertified and procedurally defaulted argument that his trial counsel was ineffective for failing to challenge various courtroom security measures fails. In Floyd's second state habeas petition and instant federal petition, he contended that his trial counsel failed to object to the trial court's forcing him to appear at voir dire in a prison uniform and restraints. The Nevada Supreme Court dismissed this claim as untimely and successive because it was first raised in Floyd's second state petition, *Floyd v. State*, No. 51409, 2010 WL 4675234, at *1 (Nev. Nov. 17, 2010), and the district court dismissed it as procedurally defaulted. As with Floyd's other defaulted ineffective assistance of counsel claims, because of the underlying claim's weakness, we need not resolve whether the state law under which it was deemed defaulted is adequate or whether Floyd may show cause and prejudice under *Martinez v. Ryan*, 566 U.S. 1 (2012).

In light of the overwhelming evidence of Floyd's guilt and the weight of the aggravating factors against him, any reasonable jurist would agree that the courtroom security measures had no substantial effect on the jury's verdicts. See *Walker v. Martel*, 709 F.3d 925, 930–31 (9th Cir. 2013) (reversing the grant of habeas relief on a shackling-related ineffective assistance claim because the prejudicial effect of shackles was "trivial" compared to aggravating evidence against defendant who killed multiple victims during armed robberies); *Larson v. Palmateer*, 515 F.3d 1057, 1064 (9th Cir. 2008) (holding that when evidence against the

defendant is overwhelming, prejudice from shackling is mitigated). Even if trial counsel should have objected to the restraints, Floyd was not prejudiced by that failure. *See Harrington v. Richter*, 562 U.S. 86, 111 (2011) (explaining that *Strickland*'s prejudice prong "asks whether it is reasonably likely the result would have been different." (quotation marks and citation omitted)).

We therefore deny the motion to expand the certificate of appealability as to both uncertified claims.

IX.

For the foregoing reasons, we **AFFIRM** the district court's denial of habeas relief.

EXHIBIT 2

EXHIBIT 2

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

NOV 05 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ZANE FLOYD,

Petitioner - Appellant,

v.

TIMOTHY FILSON, Warden and
ADAM PAUL LAXALT, Attorney
General,

Respondents - Appellees.

No. 14-99012

D.C. No. 2:06-cv-00471-PMP-CWH
U.S. District Court for Nevada, Las
Vegas

MANDATE

The judgment of this Court, entered October 11, 2019, and amended
February 3, 2020, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Rhonda Roberts
Deputy Clerk
Ninth Circuit Rule 27-7

PA2466

EXHIBIT 3

EXHIBIT 3

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ZANE FLOYD

Petitioner-Appellant,

vs.

TIMOTHY FILSON, Warden and
ADAM PAUL LAXALT, Attorney
General,

Respondents-Appellees.

District No. 2:06-cv-00471-RFB-CWH

U.S.C.A. No. 14-99012

ORDER ON MANDATE

The above-entitled cause having been before the United States Court of Appeals for the Ninth Circuit, and the Court of Appeals having on 10/11/2019, issued its judgment AFFIRMING the judgment of the District Court, and the Court being fully advised in the premises, NOW, THEREFORE, IT IS ORDERED that the mandate be spread upon the records of this Court.

Dated this 6th day of November, 2020.



Richard F. Boulware, II
United States District Judge

PA2468

EXHIBIT 4

EXHIBIT 4

ORIGINAL

FILED

SEP 5 10 45 AM '00

Shirley L. Pennington
CLERK

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1 JOC
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ZANE MICHAEL FLOYD,
#1619135

Defendant.

Case No. C159897
Dept. No. V
Docket H

JUDGMENT OF CONVICTION

WHEREAS, on the 6th day of July, 1999, Defendant, ZANE MICHAEL FLOYD, entered a plea of Not Guilty to the crimes of BURGLARY WHILE IN POSSESSION OF A FIREARM; MURDER WITH USE OF A DEADLY WEAPON; ATTEMPT MURDER WITH USE OF A DEADLY WEAPON; SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON AND FIRST DEGREE KIDNAPING WITH USE OF A DEADLY WEAPON, NRS 205.060, 193.165; 200.010, 200.030, 193.165; 200.010, 200.030, 193.165, 193.330; 200.310, 200.320, 193.165; 200.364; 200.366 and 193.165; and

WHEREAS, the Defendant ZANE MICHAEL FLOYD, was tried before a Jury and the Defendant was found guilty of the crime of COUNT I - BURGLARY WHILE IN POSSESSION OF A FIREARM; COUNT II, III, IV, V - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON; COUNT VI - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON; CT VII - FIRST DEGREE KIDNAPING WITH USE OF A DEADLY WEAPON; and CT VIII, IX, X and XI - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON, in

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1 violation of NRS 205.060, 193.165; 200.010, 200.030, 193.165; 200.010, 200.030, 193.165,
2 193.330; 200.310, 200.320, 193.165; 200.364; 200.366 and 193.165, and the Jury verdict was
3 returned on or about the 19th day of July, 2000. Thereafter, the same trial jury, deliberating in
4 the penalty phase of said trial, in accordance with the provisions of NRS 175.552 and 175.554,
5 found that there were Three (3) aggravating circumstances in connection with the commission
6 of said crime, to-wit:

7 1. The murder was committed by a person who knowingly created a great risk of death
8 to more than one person by means of a weapon, device or course of action which would normally
9 be hazardous to the lives of more than one person;

10 2. The murder was committed upon one or more persons at random and without
11 apparent motive; and

12 3. The Defendant has, in the immediate proceeding, been convicted of more than one
13 offense of murder in the first or second degree.

14 That on or about the 21st day of July, 2000, the Jury unanimously found, beyond a
15 reasonable doubt, that there were no mitigating circumstances sufficient to outweigh the
16 aggravating circumstance or circumstances, and determined that the Defendant's punishment
17 should be Death as to COUNTS II, III, IV and V - MURDER OF THE FIRST DEGREE WITH
18 USE OF A DEADLY WEAPON in the Nevada State Prison located at or near Carson City, State
19 of Nevada.

20 WHEREAS, thereafter, on the 31st day of August, 2000, the Defendant being present in
21 court with his counsel, CURTIS BROWN and DOUGLAS HEDGER, Deputy Public Defenders,
22 and STEWART L. BELL, District Attorney, also being present; the above entitled Court did
23 adjudge Defendant guilty thereof by reason of said trial and verdict and sentenced Defendant as
24 follows:

25 As to COUNT I - BURGLARY WHILE IN POSSESSION OF A FIREARM - A
26 maximum term of One Hundred Eighty (180) months with the minimum parole eligibility of
27 Seventy-Two (72) months in the Nevada Department of Prisons and ordered to submit to testing
28 to determine genetic markers. It is further recommended that the defendant be held responsible

1 for restitution totaling \$1,638.48;

2 As to COUNTS II, III, IV, V - MURDER OF THE FIRST DEGREE WITH USE OF A
3 DEADLY WEAPON - Set by jury verdict as Death by Lethal Injection as to each count
4 separately. It is further recommended that the Defendant also be held responsible for restitution
5 totaling \$15,051.00 as to Count II; \$39,478.29 restitution as to Count III; \$43,660.14 restitution
6 as to Count IV; and \$19,695.10 restitution as to Count V, and ordered to submit to testing to
7 determine genetic markers;

8 As to Count VI - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON - A
9 maximum term of Two-Hundred Forty (240) months in the Nevada Department of Prisons with
10 the minimum parole eligibility of Ninety-Six (96) months, plus an equal and consecutive
11 sentence of Two-Hundred Forty (240) months with the minimum parole eligibility of Ninety-Six
12 (96) months for the Use of a Deadly Weapon and ordered to submit to testing to determine
13 genetic markers. It is further recommended that Count VI be served consecutive to Count I and
14 that the defendant be held responsible for restitution totaling \$64,264.87.

15 As to COUNT VII - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY
16 WEAPON - LIFE in the Nevada Department of Prisons with the minimum parole eligibility of
17 Sixty (60) months plus an equal and consecutive sentence of LIFE with the minimum parole
18 eligibility of Sixty (60) months for the Use of a Deadly Weapon. It is further recommended that
19 Count VII be served consecutive to Count VI.

20 As to COUNTS VIII, IX, X and XI - SEXUAL ASSAULT WITH USE OF A DEADLY
21 WEAPON - As to each count separately, the Defendant is sentenced to LIFE in the Nevada
22 Department of Prisons with minimum parole eligibility of One Hundred Twenty (120) months
23 plus an equal and consecutive sentence of LIFE with minimum parole eligibility of One Hundred
24 Twenty (120) months for Use of a Deadly Weapon. The Defendant shall submit to testing to
25 determine genetic markers and shall submit to a term of LIFETIME supervision to commence
26 upon completion of any term of incarceration or parole. It is further recommended that the
27 defendant be held responsible for restitution totaling \$210.00 as to Count VIII and Count VIII
28 be served consecutive to Count VII; Count IX be served consecutive to Count VIII; Count X be

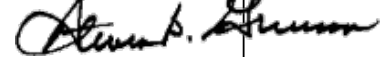
1 served consecutive to Count IX; and Count XI be served consecutive to Count X.

2 THEREFORE, the Clerk of the above entitled Court is hereby directed to enter this
3 Judgment of Conviction as part of the record in the above entitled matter.

4 DATED this 5 day of September, 2000, in the City of Las Vegas, County of Clark,
5 State of Nevada.

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8 DISTRICT JUDGE
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(702) 388-5819 (Fax)

Attorneys for Zane Michael Floyd

DISTRICT COURT
CLARK COUNTY, NEVADA

ZANE MICHAEL FLOYD,

Petitioner,

v.

WILLIAM GITTERE, Warden, Ely State
Prison; AARON FORD; Attorney General,
State of Nevada

Respondents.

Case No. A-21-832952-W
Dept. No. 17

**AMENDED PETITION FOR WRIT OF
HABEAS CORPUS (POST-
CONVICTION)**

Date of Hearing:
Time of Hearing:

(DEATH PENALTY CASE)

**EXECUTION SOUGHT BY THE
STATE FOR THE WEEK OF JULY 26,
2021**

Petitioner, Zane Michael Floyd, hereby files this Amended Petition for Writ of
Habeas Corpus pursuant to Nevada Revised Statutes sections 34.724 and 34.820.
Floyd alleges that he is being held in custody in violation of the Fifth, Sixth, Eighth,

1 and Fourteenth Amendments of the Constitution of the United States of America;
2 Article 1, sections Three, Six, Eight, and Nine and Article Four, section Twenty-one
3 of the Constitution of the State of Nevada; and the rights afforded him under
4 international law enforced under the Supremacy Clause of the United States
5 Constitution, U.S. Const. art VI, cl.2.

6 DATED this 11th day of May, 2021.

7 Respectfully submitted
8 RENE L. VALLADARES
Federal Public Defender

9 /s/ David Anthony
10 DAVID ANTHONY
Assistant Federal Public Defender

11 /s/ Brad D. Levenson
12 BRAD D. LEVENSON
Assistant Federal Public Defender

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Name and location of court which entered the judgment of conviction under attack: Eighth Judicial District Court, 200 Lewis Avenue, Las Vegas, NV 89101.

Case Number: C159897

Count I: 72 – 180 months

Counts II, III, IV, and V: death by lethal injection

Count VI: 96 – 240 months plus equal and consecutive enhancement

Count VII: Life with parole eligibility after 60 months

Counts VIII, IX, X, and XI: Life with parole eligibility after 120 months to run consecutively with an additional life sentence of 120 months

Counts VI and VII are served consecutive to Count VIII; Count IV served consecutive to Count VIII; Count X served consecutive to Count IX; and Count XI served consecutive to count X.

(b) If sentence is death, state any date upon which execution is scheduled: No execution date is currently set. However, the State has expressed an intent to obtain an execution warrant for Floyd withing the coming weeks. David Ferrara, *DA to proceed with death penalty against gunman in 1999 store killings*, Las Vegas Review Journal, at A1

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(March 26, 2020), <https://www.reviewjournal.com/crime/da-to-proceed-with-death-penalty-against-gunman-in-1999-store-killings-2315637/>.

Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes [] No [x]

If “yes”, list crime, case number and sentence being served at this time:

Nature of offense involved in conviction being challenged: N/A

Nature of offense involved in conviction being challenged:

Zane Floyd was charged by information with, on or about June 3, 1999: (1) burglarizing Albertsons while in possession of a firearm; (2) four counts of murder with use of a deadly weapon for shooting Thomas Michael Darnell, Dennis Troy Sergeant, Carlos Chuck Leos, and Lucille Alice Tarantino, who died as a result of their injuries; (3) attempted murder with use of a deadly weapon for shooting Zachary Emenegger; (4) first degree kidnapping of Tracie Rose Carter with use of a deadly weapon; and (5) four counts of sexual assault upon Tracie Rose Carter with use of a deadly weapon.

What was your plea?

(a) Not guilty x (c) Guilty but mentally ill
(b) Guilty (d) Nolo contendere

If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment

1 or information, or if a plea of guilty or guilty but mentally ill was negotiated, give
2 details: N/A

3 If you were found guilty after a plea of not guilty, was the finding made by:

4 (a) Jury × (b) Judge without a jury

5 Did you testify at the trial? Yes No ×

6 Did you appeal from the judgment of conviction? Yes × No

7 If you did appeal, answer the following:

8 (a) Name of Court: Nevada Supreme Court

9 (b) Case number or citation: Floyd v. State, 118 Nev. 156, 42 P.3d
10 249 (2002)

11 (c) Result: Conviction and sentence affirmed.

12 If you did not appeal, explain briefly why you did not: N/A

13 Other than a direct appeal from the judgment of conviction and sentence, have
14 you previously filed any petitions, applications or motions with respect to this
15 judgment in any court, state or federal? Yes × No

16 If your answer to No. 15 was "yes," give the following information:

17 (a) (1) Name of Court: Eighth Judicial District Court

18 (2) Nature of proceeding: State post-conviction Petition for Writ
19 of Habeas Corpus

20 (3) Ground raised:

21 I. The trial court committed constitutional error in
22 denying Defendant's motion to sever counts for trial.

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- II. The trial court committed constitutional error in denying Defendant’s motion for a change of venue.
- III. The trial court committed constitutional error in denying Defendant’s motion to dismiss statutory aggravators based on a failure to find probable cause for existence of aggravating circumstances.
- IV. The trial court committed constitutional error by improperly requiring Defendant to disclose expert witness test results and allowing the State to make use of that data in presenting penalty phase rebuttal evidence.
- V. The trial court committed constitutional error in denying Defendant’s motion to suppress Defendant’s statements.
- VI. Prosecutorial misconduct during closing argument requires that a new trial be conducted.
- VII. Prosecutorial misconduct during the presentation of victim-impact testimony at the penalty hearing requires that a new penalty hearing be conducted.
- VIII. Floyd’s conviction and death sentence are invalid under the State and Federal guarantee of effective assistance of counsel, due process of law, equal protection of the

1 law, cross-examination and confrontation and a reliable
2 sentence due to the failure of trial counsel to provide
3 reasonably effective assistance of counsel.

4 IX. Trial counsel failed to make contemporaneous
5 objections on valid issues during trial and appellate
6 counsel failed to raise these issues on direct appeal,
7 both failures being in violation of Floyd's rights under
8 the Sixth Amendment to effective counsel and under the
9 Fifth and Fourteenth Amendments to due process and
10 a fundamentally fair trial.

11 X. Trial counsel failed to request an instruction during the
12 penalty phase that correctly defined the use of
13 character evidence for the jury.

14 XI. Trial counsel failed to object and move to strike
15 overlapping aggravating circumstances and appellate
16 counsel failed to raise the issue on direct appeal.

17 XII. The malice instruction given to the jury contained an
18 unconstitutional presumption that relieved the State of
19 its burden of proof and violated Floyd's presumption of
20 innocence.

21 XIII. Floyd's conviction and sentence are invalid under the
22 State and Federal Constitutional guarantee of due
23

1 process, equal protection of the laws, and reliable
2 sentence due to the failure of the Nevada Supreme
3 Court to conduct fair and adequate appellate review.

4 XIV. Floyd's conviction and sentence is invalid under the
5 State and Federal Constitutional guarantees of due
6 process, equal protection, impartial jury from cross-
7 section of the community and reliable determination
8 due to the trial, conviction, and sentence being imposed
9 by a jury from which African Americans and other
10 minorities were systematically excluded and under-
11 represented.

12 (4) Did you receive an evidentiary hearing on your petition,
13 application or motion? Yes _____ No x

14 (5) Result: Denial of the Writ for Habeas Corpus

15 (6) Date of Result: February 4, 2005

16 (7) If known, citations of any written opinion or date of orders
17 entered pursuant to such result: District Court entered an
18 order of denial on February 4, 2005; Nevada Supreme Court
19 affirmed the denial on February 16, 2006. Nevada v. Floyd,
20 Order of Affirmance (Feb. 16, 2006).

21 (b) As to any second petition, application or motion, give the same
22 information:
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(1) Name of court: Eighth Judicial District Court

(2) Nature of proceeding: Successive Petition for Writ of Habeas Corpus

(3) Grounds raised:

I. Floyd's convictions and death sentence are invalid under state and federal constitutional guarantees of due process, equal protection, the effective assistance of counsel, and a reliable sentence due to the ineffective assistance of counsel.

II. Floyd's conviction and death sentence are invalid under state and federal constitutional guarantees of due process, equal protection, right to effective assistance of counsel, a fair trial and a reliable sentencing because Floyd was deprived of expert assistance to aid in his defense during the guilt and penalty phases of his trial.

III. Floyd's conviction and death sentence are invalid under state and federal constitutional guarantees of due process, equal protection, trial before an impartial jury, and a reliable sentence in violation of U.S. Constitutional Amends. V, VI, VIII, & XIV and Nev. Const. Art. I, IV, because he is actually innocent of first-degree murder.

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- IV. Floyd’s conviction and death sentence are invalid because Floyd’s state and federal constitutional guarantees of due process, equal protection, trial before an impartial jury, and a reliable sentence were violated because of prosecutorial misconduct.
- V. Floyd’s conviction and death sentence are invalid under the state and federal constitutional guarantees of due process, equal protection, trial before an impartial jury, a reliable sentence, and protection from cruel and unusual punishment because Nevada law fails to properly channel death sentences by limiting the scope of victim-impact testimony.
- VI. Floyd’s conviction and death sentence are invalid under state and federal constitutional guarantees of due process, equal protection, a reliable sentence, an impartial jury, and the effective assistance of counsel due to the improper actions of the trial court during the voir dire proceedings which deprived Floyd of his right to a fair and impartial jury.
- VII. Floyd’s conviction and death sentence are invalid under the state and federal constitutional guarantees of due process, equal protection, trial before an impartial jury,

1 and a reliable sentence because of the trial court's
2 failure to grant a change of venue and sequester the
3 jury.

4 VIII. Floyd's conviction and death sentence are invalid under
5 the constitutional guarantees of a trial before an
6 impartial jury, due process, and a reliable sentence
7 because the trial court failed to properly instruct the
8 jury.

9 IX. Floyd was deprived of his state and federal
10 constitutional rights to communicate with counsel, to
11 the effective assistance of counsel, due process, equal
12 protection, and a reliable sentence due to the jurors
13 viewing him in prison clothes, handcuffs, and shackles.

14 X. Floyd's conviction and death sentence are invalid under
15 the federal constitutional guarantees of due process,
16 equal protection, and a reliable sentence because of the
17 failure to preserve Floyd's blood sample.

18 XI. Floyd was deprived of his state and federal
19 constitutional right to adequate notice of the charges
20 against him, a pretrial review of probable cause to
21 support aggravating factors as elements of capital
22 eligibility, due process of law and a reliable sentence by
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1 the failure to submit all the elements of capital
2 eligibility to the grand jury or to the court for a probable
3 cause determination.

4 XII. Floyd's conviction and death sentence are invalid under
5 state and federal constitutional guarantees of due
6 process, equal protection, trial before an impartial jury,
7 and a reliable sentence because of the trial court's
8 failure to grant a motion to sever counts relating to
9 events at his apartment from those relating to events at
10 the Albertson's store.

11 XIII. Floyd's death sentence is invalid under state and
12 federal constitutional guarantees of due process of law,
13 equal protection of the laws, and a reliable sentence due
14 to the failure of the Nevada Supreme Court to conduct
15 fair and adequate appellate review.

16 XIV. Floyd's death sentence is invalid under federal
17 constitutional guarantees of due process, equal
18 protection, and a reliable sentence because the Nevada
19 capital punishment system operates in an arbitrary and
20 capricious manner.

21 XV. Floyd's death sentence is invalid under the federal
22 constitutional guarantees of due process, equal
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1 protection, and a reliable sentence because execution by
2 lethal injection violates the constitutional prohibition
3 against cruel and unusual punishment.

4 XVI. Floyd's conviction and sentence violate the
5 constitutional guarantees of due process of law, equal
6 protection of the laws, a reliable sentence, and
7 international law because Floyd's capital trial and
8 sentencing and review on direct appeal were conducted
9 before state judicial officers whose tenure in office was
10 not dependent on good behavior but whose tenure was
11 dependent on popular election.

12 XVII. Floyd's conviction and death sentence are invalid under
13 the federal constitutional guarantees of due process,
14 equal protection, right to counsel, and a reliable
15 sentencing because the State improperly withheld
16 exculpatory evidence in violation of U.S. Const.
17 Amends. V, VI, VIII, and XIV, and Nev. Const. Art. I,
18 IV.

19 XVIII. Floyd's conviction and death sentence are invalid under
20 state federal and constitutional guarantees of due
21 process, equal protection, the effective assistance of
22 counsel, a fair tribunal, an impartial jury, and a reliable
23

1 sentence due to the cumulative errors in the admission
2 of evidence and instructions, gross misconduct by state
3 officials and witnesses, and the systematic deprivation
4 of Floyd's right to the effective assistance of counsel.

5 XIX. Floyd's conviction and death sentence are invalid under
6 the federal constitutional guarantees of due process,
7 equal protection, the effective assistance of counsel, a
8 fair tribunal, an impartial jury, and a reliable sentence
9 due to the use of peremptory strikes against women in
10 a discriminatory manner.

11 (4) Did you receive an evidentiary hearing on your petition,
12 application or motion? Yes x No

13 (5) Result: Petition dismissed as procedurally barred.

14 (6) Date of result: April 2, 2008

15 (7) If known, citations of any written opinion or date of orders
16 entered pursuant to such result: Case No. C159897, dismissed
17 petition as procedurally barred on April 2, 2008. Nevada
18 Supreme Court affirmed dismissal on January 19, 2011

19 (d) As to any third petition, application or motion, give the same
20 information:

21 (1) Name of court: Federal District Court, District of Nevada
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(2) Nature of proceeding: Second Amended Petition for Writ of Habeas Corpus

(3) Grounds raised:

- I. Floyd’s convictions and death sentence are invalid under federal constitutional guarantees of due process, equal protection, and a reliable sentence due to the ineffective assistance of counsel.
- II. Floyd’s conviction and death sentence are invalid under federal constitutional guarantees of due process, equal protection, the right to effective assistance of counsel, the right to a fair trial and the right to a reliable sentence because Floyd was deprived of expert assistance to aid in his defense during the guilt and penalty phases of his trial.
- III. Floyd’s conviction and death sentence are invalid under federal constitutional guarantees of due process, equal protection, a trial before an impartial jury, and a reliable sentence because he is actually innocent of first-degree murder.
- IV. Floyd’s conviction and death sentence are invalid under federal constitutional guarantees of due process, equal protection, a reliable sentence, an impartial jury, a fair

1 tribunal, and the effective assistance of counsel due to
2 the improper actions of the trial court during the voir
3 dire proceedings which deprived Floyd of his right to a
4 fair and impartial jury.

5 V. Floyd's conviction and death sentence are invalid under
6 the federal constitutional guarantees of due process,
7 equal protection, a trial before an impartial jury, and a
8 reliable sentence because of the trial court's failure to
9 grant a change of venue and sequester the jury.

10 VI. Floyd's conviction and death sentence are invalid under
11 the constitutional guarantees of a trial before an
12 impartial jury, due process, equal protection and a
13 reliable sentence because the trial court failed to
14 properly instruct the jury.

15 VII. Floyd's conviction and death sentence are invalid under
16 the federal constitutional guarantees of due process,
17 equal protection, trial before an impartial jury, a
18 reliable sentence, and protection from cruel and
19 unusual punishment because Nevada law fails to
20 properly channel death sentences by limiting the scope
21 of victim-impact testimony.

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VIII. Floyd was deprived of his federal constitutional rights to communicate with counsel, to the effective assistance of counsel, due process, equal protection, and a reliable sentence due to the jurors viewing him in prison clothes, handcuffs, and shackles.

IX. Floyd’s conviction and death sentence are invalid under federal constitutional guarantees of due process, equal protection, trial before an impartial jury, and a reliable sentence because of the trial court’s failure to grant a motion to sever counts relating to events at his apartment from those relating to events at the Albertson’s.

X. Floyd’s conviction and death sentence are invalid because Floyd’s federal constitutional guarantees of due process, equal protection, trial before an impartial jury and a reliable sentence were violated due to severe and pervasive prosecutorial misconduct.

XI. Floyd’s death sentence is invalid under the federal constitutional guarantees to freedom from cruel and unusual punishment, due process, equal protection, a reliable sentence, and compliance with international law because execution by lethal injection is

1 unconstitutional under all circumstances, and
2 specifically because it violates the constitutional
3 prohibition against cruel and unusual punishments.

4 XII. Floyd's conviction and sentence violate the federal
5 constitutional guarantees of due process, equal
6 protection, a reliable sentence, and international law
7 because Floyd's capital trial, sentencing and review on
8 direct appeal were conducted before state judicial
9 officers whose tenure in office was not dependent on
10 good behavior but was rather dependent on popular
11 election, and who failed to conduct fair and adequate
12 appellate review.

13 XIII. Floyd was deprived of his federal constitutional right to
14 adequate notice of the charges against him, a pretrial
15 review of probable cause to support aggravating factors
16 as elements of capital eligibility, due process of law and
17 a reliable sentence by the failure to submit all the
18 elements of capital eligibility to the grand jury or to the
19 court for a probable cause determination..

20 XIV. Floyd's death sentence is invalid under the federal
21 constitutional guarantees of due process, equal
22 protection, and a reliable sentence because the Nevada
23

1 capital punishment system operates in an arbitrary and
2 capricious manner.

3 XV. Floyd's conviction and death sentence are invalid under
4 the federal constitutional guarantees of due process,
5 equal protection, the effective assistance of counsel, a
6 fair tribunal, an impartial jury, and a reliable sentence
7 due to the use of peremptory strikes against women in
8 a discriminatory manner.

9 XVI. Floyd's conviction and death sentence are invalid under
10 federal constitutional guarantees of due process, equal
11 protection, a fair tribunal, the effective assistance of
12 counsel, an impartial jury, and a reliable sentence due
13 to the cumulative errors in the admission of evidence
14 and instructions, gross misconduct by state officials and
15 witnesses, and the systematic deprivation of Floyd's
16 right to the effective assistance of counsel.

17 (4) Did you receive an evidentiary hearing on your petition,
18 application or motion? Yes _____ No x

19 (5) Result: dismissed as claims were either procedurally barred
20 or invalid on the merits

21 (6) Date of result: August 20, 2012 (procedural dismissal);
22 September 22, 2014 (merits-based dismissal)
23

1 (7) If known, citations of any written opinion or date of orders

2 entered pursuant to such result: Case no. 2:06-CV-0471-PMP-

3 CWH; August 20, 2012, September 22, 2014

4 Has any ground being raised in this petition been previously presented to this
5 or any other court by way of petition for habeas corpus, motion, application or any
6 other post-conviction proceeding? No If so, identify:

7 Which of the grounds is the same: N/A

8 The proceedings in which these grounds were raised: N/A

9 Briefly explain why you are again raising these grounds. N/A

10 If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any
11 additional pages you have attached, were not previously presented in any other court,
12 state or federal, list briefly what grounds were not so presented, and give your reasons
13 for not presenting them. (You must relate specific facts in response to this question.
14 Your response may be included on paper which is 8 ½ by 11 inches attached to the
15 petition. Your response may not exceed five handwritten or typewritten pages in
16 length.). See Grounds For Relief Claims One, Two, and Three, below

17 (a) Claim One has been raised for the first time in the instant
18 petition. Claim One was not previously raised because the factual basis of the claim
19 did not exist during any of the prior state proceedings. The factual basis for Claim
20 One is based upon new scientific evidence demonstrating the equivalence in adaptive
21 functioning deficits between individuals who suffer from Intellectual Disability (ID)
22 and those who suffer from fetal alcohol spectrum disorder (FASD) and delayed brain
23

1 development due to a combination of age and FASD. Based on this new science, Zane
2 Floyd is categorially ineligible for execution and this Court must decline to sign the
3 execution warrant proffered by the State. In the alternative this Court should stay
4 its decision on the execution warrant until Floyd has had the opportunity to receive
5 factual development on its claim of categorial exclusion from the death penalty. Floyd
6 is entitled to a stay until he has been able to fully litigate the instant petition.
7 176.415(6), NRS 176.486, 176.487(3)-(6) (stay of execution required when necessary
8 to litigate pending habeas petition).

9 (b) Claim Two has been raised for the first time in the instant
10 petition. The factual basis for the claim is that Floyd has been deprived of an
11 adequate and meaningful opportunity to seek commutation of his death sentence with
12 the Nevada Board of Pardons. The factual basis for Claim Three was not known until
13 the State announced it intended to seek a warrant for Floyd's execution without
14 giving Floyd the opportunity to pursue clemency. Claim Three is accordingly not
15 procedurally defaulted from review by this Court. NRS 176.415(6), NRS 176.486,
16 NRS 176.487(3)-(6) (stay of execution required when necessary to litigate pending
17 habeas petition). Floyd is entitled to a stay until he has been able to fully litigate this
18 Claim. *Id.*

19 (c) Claim Three has been raised for the first time in the instant
20 petition. The factual basis for the Claim was not available during prior state court
21 proceedings. The State has only just notified Floyd that it intends to effectuate his
22 execution at the Ely State Prison (ESP), not NSP as was stated in the prior order
23

1 seeking warrant. Floyd's argument that NRS 176.355(3) requires his execution occur
2 at NSP was therefore not ripe for review before he received notice of the State's
3 instant proposed execution warrant. Claim Three is accordingly not procedurally
4 defaulted from review by this Court. 176.415(6), NRS 176.486, 176.487(3)-(6) (stay of
5 execution required when necessary to litigate pending habeas petition). Floyd is
6 entitled to a stay until he has been able to fully litigate this Claim. *Id.*

7 (d) Claim Four has been raised for the first time in the instant
8 petition. Claim Four is based on the testimony of Nevada Department of Corrections
9 (NDOC) Director Charles Daniels in federal court on May 6, 2021, which means the
10 factual basis for the claim was not available during prior state proceedings. Daniels's
11 testimony demonstrates that the NDOC is not capable of conducting an execution
12 that complies with the state and federal constitutions during the time period stated
13 in the State's warrant of execution. Thus, Claim Four is not procedurally defaulted
14 from review by this Court. NRS 176.415(6), NRS 176.486, NRS 176.487(3)-(6) (stay
15 of execution required when necessary to litigate pending habeas petition). Floyd is
16 entitled to a stay until he has been able to fully litigate this Claim. *Id.*

17 Are you filing this petition more than one year following the filing of the
18 judgment of conviction or the filing of a decision on direct appeal? If so, state briefly
19 the reasons for the delay. (You must relate specific facts in response to this question.
20 Your response may be included on paper which is 8 ½ by 11 inches attached to the
21 petition. Your response may not exceed five handwritten or typewritten pages in
22 length.) Yes; see question 21(a) and (b) above.

1 Do you have any petition or appeal now pending in any court, either state or
2 federal, as to the judgment under attack? Yes _____ No x

3 If yes, state what court and the case number:

4 Give the name of each attorney who represented you in the proceeding
5 resulting in your conviction and on direct appeal:

6 (e) Pre-trial, Trial, and Sentencing Proceedings:

7 Curtis Brown (Clark County Public Defender)

8 Douglas Hedger (Clark County Public Defender)

9 (b) First Direct Appeal:

10 Morgan Harris (Clark County Public Defender)

11 Marcus D. Cooper (Clark County Public Defender)

12 Robert Miller (Clark County Public Defender)

13 (c) State Post-Conviction:

14 David Schieck (Private)

15 Do you have any future sentences to serve after you complete the sentence
16 imposed by the judgment under attack: Yes _ No x

17 State concisely every ground on which you claim that you are being held
18 unlawfully. Summarize briefly the facts supporting each ground. If necessary, you
19 may attach pages stating additional grounds and facts supporting same.

1 **GROUND FOR RELIEF**

2 Floyd alleges the following grounds for relief from the judgment of conviction
3 and sentence. References in this Petition to the accompanying exhibits incorporate
4 the contents of the exhibit as if fully set forth herein.

5 **CLAIM ONE: Fetal Alcohol Spectrum Disorder Renders Floyd Ineligible for**
6 **Execution**

7 Zane Floyd's death sentence is invalid under state and federal constitutional
8 guarantees of due process, equal protection, a reliable sentence, and freedom from
9 cruel and/or unusual punishments because his Fetal Alcohol Spectrum Disorder
10 categorically removes him from the class of offenders that may be punished by the
11 death penalty. U.S. Const. amends V, VI, VIII, XIV; Nev. Const. Art. I, § 1, 5, 6, 8;
12 Art. 4, § 21.

13 **SUPPORTING FACTS**

14 Floyd is categorically exempt from the death penalty, as he suffers from Fetal
15 Alcohol Spectrum Disorder (FASD), stemming from prenatal exposure to alcohol.
16 Further, Floyd is exempt from capital punishment because his brain was not fully
17 developed at the time of the offense due to his prenatal exposure to alcohol which
18 would have had an additive and cumulative effect on the brain damage he was born
19 with.

20 The litany of deficits suffered by Floyd are akin to those identified by the
21 United States Supreme Court in *Atkins v. Virginia*, 536 U.S. 304, 318, 320–21
22 (2002) and *Roper v. Simmons*, 543 U.S. 551, 578 (2005), and require his exclusion
23 from the class of persons eligible for the death penalty. *See also* Scott E. Sundby,

1 *The True Legacy of Atkins and Roper: The Unreliability Principle, Mentally Ill*
2 *Defendants, and the Death Penalty's Unraveling*, 23 Wm. & Mary Bill Rts. J. 487,
3 512–24 (2014). As such, Floyd is ineligible for the death penalty and this Court
4 must set aside his death sentence and decline to sign the State's warrant requesting
5 his execution.

6 **A. FASD is Equivalent to Intellectual Disability**

7 Floyd has been diagnosed with FASD. Ex. 1 at ¶15; Ex. 2 at ¶9, ¶18, ¶24,
8 ¶25. As will be discussed below, Floyd's FASD is a "brain-based, congenial, lifelong,
9 impactful disorder" with corresponding adaptive functioning deficits analogous to
10 "Intellectual Disability (ID) Equivalence," making him ineligible for the death
11 penalty. Ex. 2 at ¶9, ¶32.

12 **1. Brief Summary of FASD**

13 A fetus is susceptible to damage from alcohol exposure throughout the
14 mother's pregnancy. Prenatal alcohol exposure typically causes widespread
15 structural damage throughout the fetus' brain. Ex. 2 at ¶14. Alcohol exposure
16 during pregnancy is a major known cause of birth defects, neurodevelopmental
17 disorders, and learning disabilities. *Id.*

18 The toxic effects of prenatal alcohol exposure are widespread throughout the
19 brain causing potent irregularities in brain structure that compromise the brain
20 function and impact cognition and behavior. Ex. 2 at ¶14.

21 FASD is an umbrella term that encompasses all the medical conditions
22 caused by prenatal alcohol exposure described in the diagnostic guidelines
23

1 published in 1996 by the Institute of Medicine. Ex. 2 at ¶14 (fetal alcohol syndrome
2 (FAS), partial FAS, alcohol related neurodevelopmental disorder (ARND), and
3 alcohol related birth defects (ARBD)). Under the Diagnostic and Statistical Manual
4 of Mental Disorders 5 (DSM-5), the term FASD also includes the diagnosis for the
5 Central Nervous System (CNS) dysfunction due to prenatal alcohol exposure:
6 neurodevelopmental disorder associated with prenatal alcohol exposure (ND-
7 PAE/FASD). *Id.* This diagnosis requires evidence of prenatal alcohol exposure, at
8 least one impairment in neurocognitive functioning, at least one impairment in self-
9 regulation, and at least two domains of adaptive impairment. *Id.*

10 Organic brain damage in FASD directly impairs the cognitive skills needed to
11 think adequately and self-regulate one's behavior. Ex. 2 at ¶19. In turn, cognitive
12 dysfunction in FASD impairs adaptive functioning. *Id.* Of the many possible
13 cognitive impairments in FASD, executive dysfunction is the most serious because
14 the executive system controls self-regulation, conscious decision-making, and
15 everyday adaptive behavior. Ex. 2 at ¶14. Prenatal exposure creates
16 hypersensitivity to stress via faulty neurological hard-wiring of the hypothalamic-
17 pituitary-adrenal system which causes chronic overreaction to stressful events. *Id.*
18 But because of the executive functioning deficits, individuals with FASD lack the
19 top-down moderating influence of a fully functioning prefrontal cortex. *Id.* As a
20 result, those with FASD are prone to act out their emotions, particularly in high
21 stress everyday situations. *Id.*

1 It is not surprising then that a deficient adaptive profile is a universal
2 finding in persons with FASD. The DSM-5 defines adaptive functioning as
3 everyday behavior that meets developmental and sociocultural standards for
4 personal independence and social responsibility. Ex. 2 at ¶14.

5 **2. Floyd Suffers From ND-PAE/FASD**

6 Floyd meets the current diagnosis under the DSM-5 for the CNS impairment
7 in FASD. Ex. 2 at ¶24, ¶25, ¶28.

8 First, Floyd's mother has a well-documented history of drinking while
9 pregnant with Floyd. Ex. 2 at ¶24.

10 Second, testing from 1989, 2000, and 2006 demonstrates that Floyd suffers
11 from neurocognitive impairments in four areas (although only one area is needed for
12 a diagnosis): sub-test discrepancies in intellectual testing; complex visuospatial
13 memory deficits; academic learning disabilities; and deficits in visuospatial
14 construction. Ex. 2 at ¶19, ¶24.

15 Third, Floyd suffers from impairments in three areas of self-regulation
16 (although only one is needed): attention, impulse control, and problem solving. Ex. 2
17 at ¶24.

18 Fourth, Floyd suffers from adaptive impairments in four areas (although only
19 two are needed): communication, daily living skills, socialization, and motor
20 coordination. Ex. 2 at ¶18, ¶24.

21 Further, Floyd's FASD is long standing from childhood and his FASD causes
22 clinically significant distress or impairment in social, occupational, or other
23