

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

3 NORBERTO MADRIGAL,
4 Petitioner,

5 vs.

6 THE EIGHTH JUDICIAL
7 DISTRICT COURT; THE
8 HONORABLE CRYSTAL
9 ELLER,

10 Respondents,
11 STATE OF NEVADA,
12 Real Party in Interest.

Electronically Filed
Jan 03 2022 01:19 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

S. Ct. No.:

DIST. CT. NO. C-21-356361-3

10 **PETITIONER'S APPENDIX (PA)**

11 THOMAS F. PITARO, ESQ.
12 Nevada Bar Number 1332
13 EMILY K. STRAND, ESQ.
14 Nevada Bar Number 15339
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CRYSTAL ELLER
DISTRICT COURT JUDGE
200 S. Lewis Street.
Department 19
Las Vegas, Nevada 89101

STEVEN WOLFSON,
DISTRICT ATTORNEY
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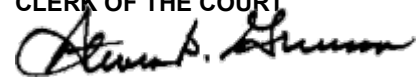
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WRIT

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Attorney for Defendant: Noberto Madrigal

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

vs.

NOBERTO MADRIGAL,

Defendant.

Case No. C-21-356361-3

Dept No. 17

PETITION FOR WRIT OF HABEAS CORPUS (PRE-TRIAL)

TO: THE HONORABLE JUDGE OF THE EIGHTH JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK:

COMES NOW, the Petitioner, NOBERTO MADRIGAL, by and through his attorneys of
record, THOMAS F. PITARO, ESQ. and EMILY K. STRAND, Esq., of the law offices of
PITARO & FUMO, CHTD., and states:

1. That the Attorneys for Petitioner are duly qualified and licensed attorneys practicing in Las Vegas, Nevada;
2. That Petitioner makes this application for a Writ of Habeas Corpus;
3. That Petitioner is in the constructive custody of Sheriff JOSEPH LOMBARDO, Clark County, Nevada;
4. That said imprisonment of Petitioner is unlawful in that the State failed to present sufficient evidence to establish probable cause that Petitioner committed the offenses with which he is charged in the Indictment, and the State failed to present the grand jury with exculpatory evidence.
5. That Petitioner waives the 60-day limitation for bringing this matter to trial;
6. That Petitioner consents that if this Petition is not decided within 15 days before

1 the date set for trial, the Court may, without notice or hearing, continue the trial to
2 such date as it designates;

3 7. That Petitioner consents that if any party appeals the Court's ruling and the appeal
4 is not determined before the date set for trial, the trial date shall be vacated and the
5 trial postponed, unless the Court otherwise orders;

6 8. That Petitioner personally authorized his aforementioned attorneys to commence
7 this action; and

8 9. That no other Petition for Writ of Habeas Corpus has heretofore been filed on
9 behalf of Petitioner in this case.

10 WHEREFORE, Petitioner prays that this Honorable Court direct the County Clerk to issue
11 a Writ of Habeas Corpus to the Sheriff of Clark County, Nevada, instructing said Sheriff to
12 produce the body of the Petitioner before the Court.
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DECLARATION OF COUNSEL

STATE OF NEVADA)
)
COUNTY OF CLARK) ss:

EMILY K. STRAND, ESQ., being first duly sworn, according to law, upon oath, deposes and says:

1. That Affiant is an attorney licensed in the State of Nevada, Bar No. 15339;

2. That Affiant has read the foregoing Petition and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true; and

3. That Petitioner, Noberto Madrigal, has authorized the law offices of PITARO & FUMO, CHTD., to make the foregoing application for relief.

FURTHER Affiant sayeth naught.

Dated this 6th day of July, 2021.

/s/ Emily K. Strand, Esq.
EMILY K STRAND, ESQ.

MEMORANDUM OF POINTS AND AUTHORITIES

I. LEGAL STANDARD

A. Legal Justification for a Writ of Habeas Corpus

NRS 172.155 requires that prior to returning an indictment, a grand jury must find (1) probable cause to believe that an offense has been committed and (2) probable cause to believe that the person charged is the person who committed the crime. Probable cause must be established for each offense and each defendant charged, by way of the indictment. NRS 172.255(2).

That finding of probable cause, however, requires far more than a trace of evidence; the facts must be such as would lead a person of ordinary caution and prudence to believe and conscientiously entertain a strong suspicion that the defendant committed the crime in question. Graves v. Sheriff, 88 Nev. 436, 438, 498 P.2d 1324, 1326 (1972). Further "the grand jury can receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence." NRS 172.135 (2).

A defendant indicted by the grand jury may object to the sufficiency of the evidence by way of an application for a writ of habeas corpus. NRS 172.155 (2). Indeed, the Nevada Supreme Court has held that if it appears that no offense has been committed, or that the defendant clearly is not guilty of committing an offense, want of jurisdiction in the Grand Jury to find indictment is clearly established and the defendant should be discharged. Eureka Bank Cases, 35 Nev., 80, 126 Pac. 655, 129 Pac. 308 (1912). Before a defendant may be held to answer in district court, the State is required to establish by "substantial and competent evidence" that there is probable cause to believe an offense has been committed and the defendant committed it. Sheriff v. Medberry, 96 Nev. 202, 204 (1980); NRS 172.155.

It is respectfully submitted that a finding of probable cause may not rest on other than "legal evidence". Tetrou v. Sheriff, 89 Nev. 166, 169 (1973), and "due process of law requires adherence to the adopted and recognized rules of evidence." Goldsmith v. Sheriff, 85 Nev. 295, 303 (1969).

1 **B. Duty of the Prosecutor to Present Exculpatory Evidence**

2 N.R.S. §172.145(2) specifically states that: "If the district attorney is aware of any
3 evidence which will explain away the charge, he shall submit it to the Grand Jury." The reason
4 for N.R.S. 172.145, indeed, for a grand jury is to "stand between the prosecution and the accused."
5 Hale v. Henkle, 201 U.S. 43 (1906). The function of the grand jury is independently of the
6 prosecuting attorney and the judge. United States v. Dionisio, 410 U.S. 1, 16-17 (1973). The role
7 of a grand jury, historically, is "as a protective bulwark standing solidly between the ordinary
8 citizen and an overzealous prosecutor." Dionisio, supra, at 17.

9 When "a prosecutor refuses to present exculpatory evidence, he, in effect, destroys the
10 existence of an independent and informed grand jury." Sheriff, Clark County v. Frank, 103 Nev.
11 160 (1987). See United States v. Gold, 470 F.Supp. 1336, 1353 (N.D.Ill. 1979); see also Johnson
12 v. Superior Court of San Joaquin County, 539 P.2d 792 (Cal. 1975). Exculpatory evidence has
13 been defined as that evidence "which has a tendency to explain away the charge against the target
14 of the grand jury's investigation." Lane v. District Court, 104 Nev. 427, 463, 760 P.2d 1245, 1269
15 (1988) (Steffen, J., concurring) (citing Frank, 103 Nev. at 160, 734 P.2d at 1244). Further NRS
16 172.135(2) provides that "[t]he grand jury can receive none but legal evidence, and the best
17 evidence in degree, to the exclusion of hearsay or secondary evidence."

18 **II. PROCEDURAL HISTORY AND EVIDENCE PRESENTED TO GRAND JURY**

19 On May 27, 2021, Noberto Madrigal was charged by way of a grand jury indictment with
20 two (2) counts of trafficking in a controlled substance in violation of NRS 453.339.1A and one
21 (1) count of conspiracy to violate the controlled substances act in violation of NRS 453.401.1a.
22 The State presented its case to a grand jury on November 18, 2020 and May 26, 2021. Four
23 witnesses testified regarding the allegations against Mr. Madrigal. Their testimony is summarized
24 below.

25 **Aaron Hefner Testimony at the Grand Jury**

26 Aaron Hefner (Hefner) testified at the grand jury that in February of 2019 he was a
27 detective in the Criminal Intelligence Section of LVMPD. GJT vol. 1 9: 9-10. He testified that
28

one of his duties was an investigation involving Jesus Najera, Eduardo Garcia, and Noberto Madrigal. GJT vol. 1 10:17.

Hefner told the jury that as part of his investigation, he learned that Mr. Madrigal had been in the process of trying to obtain two applications to operate a marijuana dispensary for several years. GJT vol.1 11:2-7. He later testified that he contacted the Marijuana Control Board and confirmed that Mr. Madrigal was in the process of obtaining a license to cultivate marijuana but had not been approved yet. GJT vol. 2 20:14-20. He testified that Madrigal was never approved to cultivate or sell marijuana by any agency in Clark County. GJT vol. 2 30:2-5. However, Hefner also testified that he learned that Mr. Madrigal had licenses for marijuana businesses throughout the valley, including North Las Vegas. GJT vol. 2 20:21-25. Additionally, Hefner testified that he did learn that Mr. Madrigal owned a legal hemp farm in Pahrump, Nevada. GJT vol 1 12:5-6.

He testified that as part of their investigation, they used electronic surveillance to observe a warehouse owned by Mr. Madrigal, Mr. Najera's apartment, and Mr. Garcia's house, over the course of several months. GJT vol. 1 15:11-19. He also testified that as part of their investigation, they used a confidential informant named Jose Soto to purchase narcotics. GJT vol. 1 23:3-23. Hefner told the grand jury that none of the three defendants in the case had a legal marijuana dispensary license and did not have any legitimate reason to be selling it, and thus, Mr. Soto's job was to see if he could purchase marijuana from them. GJT vol. 1 24:20-24. Hefner testified that Mr. Soto completed buys on April 8, April 13, and April 22, and that all three tested positive for marijuana. GJT vol. 1 28:1-18.

Hefner testified that when police executed a search warrant at Mr. Najera's house, they found U.S. currency with serial number matching the currency used by the confidential informant, Mr. Soto. GJT vol. 2 11:8-11.

He testified that during the search warrant execution for the warehouse on Mesquite Avenue they located bags of hemp, bags of sprayed marijuana, and lab equipment. GJT vol. 2 14:4-11. While Mr. Najera was not present in the warehouse, Amazon packaging for a spray gun was found addressed to him. GJT vol. 2 15:12-18. During the search of the warehouse, police recovered THC oil. GJT vol. 2 14:16-25. He later testified that none of Mr. madrigal's licenses

1 allowed him to be in the possession of THC oil. GJT vol. 2 21:5-7. They also recovered what they
2 believed to be hemp plant sprayed with THC oil. GJT vol. 2 16:17-25.

3 During a search of Mr. Garcia's house, they found both unsprayed hemp and thirty-two
4 marijuana plants inside his garage. GJT vol. 2 17:11-25.

5 During a search of Mr. Madrigal's residence, they found several bags of legal hemp. GJT
6 vol. 2 18-11-16. Hefner testified that police did not find anything illegal in Mr. Madrigal's
7 residence. GJT vol. 18:17-24. He testified that was not unexpected because based on their
8 investigation, it appeared that they would pick up unsprayed bags from Mr. Madrigal's house and
9 take them to the warehouse to spray them. GJT vol. 2 19-2-6. Hefner also testified that they
10 recovered a shirt and shoes that appeared similar to an outfit that appeared in a photograph of
11 someone spraying inside the warehouse, but there was no face in the photograph. GJT vol. 2 19:7-
12 21.

13 Finally, Hefner testified that police had recovered about 18 months of text messages
14 between Madrigal, Garcia, and Najera. GJT vol. 2 23:1-7. Hefner testified that those text
15 messages discussed spraying hemp with THC. GJT vol. 2 23:1-3. Hefner testified that the text
16 differentiated between the legal hemp and the illegal THC sprayed hemp. GJT vol. 2 25:16-19.

17 **Jose Soto Testimony at the Grand Jury**

18 Jose Soto (Soto) testified at the grand jury that he was working as a paid confidential
19 informant for LVMPD between March and April of 2020. GJT vol. 1 31:2-7. Soto testified that
20 he purchased a couple pounds of marijuana from a man he knew as Lalo on a few different
21 occasions. GJT vol. 1 32:14-18. Soto identified a photograph of Eduardo Garcia as the man he
22 knew as Lalo. GJT vol. 1 32:3-5. Soto testified that Lalo referenced business partners but that
23 they were not present during the sales. GJT vol 1 34:19-22.

24 Soto testified that the product that he bought was actually hemp sprayed with THC and
25 that Lalo showed him a video of someone spraying the hemp with something. GJT vol. 1 35:5-
26 15. He testified that during their first interaction, Lalo gave him a sample of the hemp and that he
27 turned it over to the detectives on the case. GJT vol. 1 38:1-7. Soto then testified that the detectives
28 told him that the sample wasn't strong enough so he called Lalo and asked him if they could get
something stronger. GJT vol.1 38:15-19. As a result of this information, Soto testified that Lalo

1 told him he would have to spray more oil on the hemp and that it was going to cost more. GJT
2 vol. 1 39:8-14.

3 Soto testified that later on, he returned to Lalo's house and purchased two pounds of
4 marijuana. GJT vol. 1 40:2-13. Soto then testified that he made another purchase from a
5 warehouse near the Spaghetti Bowl. GJT vol. 1 41:9-14. During this interaction, Soto testified
6 that he told Lalo he had a buyer for 250 pound and they set up a date for the sale. GJT vol. 1
7 42:11-22.

8 Soto testified that the Detectives instructed him that if there was a chance for him to go
9 into the warehouse to see when they were spraying, he should take it. GJT vol. 1 43:16-17. Based
10 on this request from detectives, Soto testified that he asked Lalo if he could go into the warehouse
11 and make sure that he was doing a good job spraying everything for the buyers. GJT vol. 1 43:18-
12 20. Soto testified that Lalo acquiesced, and that he went into the warehouse while Lalo was
13 spraying. GJT vol. 1 43:20-23. After observing the spraying, Soto testified that he told Lalo he
14 had a headache, went outside, and then the police raided the warehouse. GJT vol. 1 44:11-24.

15 Despite having described three buys to the grand jury, when asked by a juror how many
16 buys he had completed, Soto stated he did two buys. GJT vol.1 46:18-19. He was then questioned
17 regarding the buys and given the opportunity to refresh his recollection. GJT vol. 1 50:2-18.
18 Following that interaction, he ultimately admitted to participating in at least three buys. GJT vol.
19 1 51:1-3.

20 **Erik Morris Testimony at the Grand Jury**

21 Erik Morris (Morris) testified at the grand jury that in February of 2020, he was assigned
22 as a detective in the criminal intelligence unit of LVMPD. GJT vol. 1 53:14-20. He testified that
23 on April 30, 2020 he was tasked with responding to a search warrant execution near Camaro and
24 Eastern. GJT vol. 1 54:12-23. He later testified that this residence was determined to be the home
25 of Eduardo Garcia. GJT vol. 1 58:14-18.

26 During the execution of the search warrant, they located marijuana plants in the garage of
27 the residence. GJT vol. 1 56:1-3. They also located two bags of hemp in the rafter of the garage.
28 GJT vol. 1 56:22-25. Their field test cannot differentiate between raw hemp and hemp that has
been sprayed with THC so they sent it to the lab for further testing. GJT vol. 1 57:22-25.

1 Mr. Madrigal specifically, Detective Hefner told the jury that Madrigal was never approved to
2 cultivate or sell marijuana by any agency in Clark County. GJT vol. 2 30:2-10.

3 These statements are plainly and demonstrably false. By Detective Hefner's own
4 admission, Mr. Madrigal had licenses for marijuana businesses throughout the valley, including
5 North Las Vegas. GJT vol. 2 20:21-25. While Mr. Madrigal had *additional* dispensary
6 applications pending, Mr. Madrigal's North Las Vegas license was perfected back in 2018. *See*
7 *Exhibit A*. Thus, since 2018, Mr. Madrigal has been legally allowed him to grow marijuana and
8 sell select marijuana products, including pre-rolled joints out of his North Las Vegas store.
9 Detective Hefner's statements to the jury that there was no legal way that Mr. Madrigal could
10 grow or possess the marijuana at issue in this case is patently false.

11 Incomprehensibly, the State failed to inform the grand jury in any way that Hefner's
12 testimony was directly contradictory to the records from the State Marijuana Board. The State did
13 not present Mr. Madrigal's perfected business license, nor did they press Hefner on the
14 contradiction or ask him to clarify why his answer was different than the documents available
15 from the State Marijuana Board.

16 The District Attorney's decision to allow their primary witness to make a blatantly false
17 statement about a materially important fact is reprehensible, however, their failure to take any
18 action to correct the statement is inexcusable. The DA's failure to act allowed the grand jury to
19 conclude that Mr. Madrigal could not have legally possessed any of the marijuana that was seized
20 in this case.

21 The Nevada Supreme Court has clearly stated that when "a prosecutor refuses to present
22 exculpatory evidence, he, in effect, destroys the existence of an independent and informed grand
23 jury." *Sheriff, Clark Cty. V. Frank*, 103 Nev. 160, 161, 734 P.2d 1241, 1242, (1987). Granting a
24 petition for a writ of habeas corpus is appropriate when the prosecution acted in "a willful or
25 consciously indifferent manner with regard to a defendant's procedural rights," or where
26 the grand jury indicted the defendant on criminal charges without probable cause. *Dettloff v.*
27 *State*, 120 Nev. 588, 595, 97 P.3d 586, 590 (2004). Furthermore, dismissal of an indictment is
28 appropriate when the defendant demonstrates substantial prejudice. *Lay v. State*, 110 Nev. 1189,
1198, 886P.2d 448, 454 (1994).

1 Here, the State's failure to correct the record and present the exculpatory evidence
2 regarding the status of Mr. Madrigal's active marijuana licenses severely mislead the jury and
3 gravely prejudiced Mr. Madrigal. Not only did destroy the existence of an independent and
4 *informed* grand jury, but it demonstrated a conscious indifference to Mr. Madrigal's procedural
5 rights. Furthermore, because the jury was never informed of Detective Hefner's false statements,
6 it affected their ability to judge his credibility in light of all the evidence. Based on the foregoing,
7 the indictment against Mr. Madrigal must be dismissed.

8 **II. THE INDICTMENT IS INVALID AGAINST MADRIGAL BECAUSE THE**
9 **STATE FAILED TO PRESENT SUFFICIENT EVIDENCE TO INDICT MR.**
10 **MADRIGAL FOR THE INSTANT OFFENSE**

11 Even if this court does not dismiss the Indictment based on the failure of the State to
12 uphold their duties under NRS 172, the charges are still ripe for dismissal. The information
13 presented *supra* clearly demonstrates that Mr. Madrigal had a legal license to both grow and
14 possess marijuana. As such, in order to succeed on the trafficking charge, the State would have
15 to demonstrate that Mr. Madrigal sold or delivered marijuana outside of his legal business. There
16 is no evidence that this is the case.

17 Detective Hefner clearly stated that none of the hemp obtained from Mr. Madrigal's house
18 tested above the legal limit for THC. GJT vol. 18:17-24. Furthermore, the confidential informant
19 in this case, Mr. Soto, specified that he only ever met with Mr. Garcia and that neither of Mr.
20 Garcia's alleged partners were present during any of the sales. GJT vol 1 34:19-22. The State has
21 no evidence that Mr. Madrigal did anything illegal in this case, and as such, there is no way for a
22 factfinder to reach the necessary probable cause determination sufficient to uphold the indictment
23 against Mr. Madrigal. The State simply has not met their burden and thus the charges must be
24 dismissed.

25 **JOINDER**

26 Mr. Madrigal hereby joins in his co-defendant's Writ of Habeas Corpus to the extent that
27 the issues raised and legal arguments presented pertain beneficially to Mr. Madrigal.
28

1
2 **CONCLUSION**

3 For the forgoing reasons, Petitioner respectfully requests that this Honorable Court grant
4 his Petition for Writ of Habeas Corpus and dismiss the Indictment against Petitioner.
5 Alternatively, and additionally, the Petitioner would request an evidentiary hearing on this matter.

6 Furthermore, it is respectfully requested that this Honorable Court grant Petitioner leave
7 to supplement the foregoing petition as needed to support the arguments made, to present any
8 additional arguments regarding any further aspects of improper testimony, and/or to present any
9 additional issues upon the review of all of the discovery that is yet to be provided in this matter.

10 Dated this 6th day of July 2021.

11
12 **PITARO & FUMO, CHTD.**

13 **/s/ Emily K. Strand, Esq.**

14 Emily K. Strand, Esq.
15 Nevada Bar No. 15339
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CERTIFICATE OF SERVICE

I confirm that on this 6th day of July, 2021, a copy of the foregoing Petition for Writ of Habeas Corpus was served on the below District Attorney's Office by having the same e-filed and courtesy copied to motions@clarkcountyda.com, which in turn provides electronic service to:

Chief Deputy District Attorney
200 Lewis Ave.
Las Vegas, NV 89155-2212

/s/ Kristine Tacata
An Employee of Pitaro & Fumo, Chtd.

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Exhibit A

Mayor
John J. Lee

Council Members
Isaac E. Barron
Pamela A. Goynes-Brown
Scott Black
Richard J. Cherchio

City Manager
Ryann Juden



Land Development and Community Services Department

2250 Las Vegas Boulevard, North · Suite 114 · North Las Vegas, Nevada 89030
Telephone: (702) 633-1516 Fax: (702) 649-6091 · TDD: (800) 326-6868
www.cityofnorthlasvegas.com

July 12, 2018

Norberto Madrigal
4830 E. Cartier Avenue
Las Vegas, NV 89115

Re: UN-40-18 (63926) HERBAL CHOICE NLV (Public Hearing). Applicant: Norberto Madrigal. Request: For a special use permit in an M-2 (General Industrial District) to allow a Cultivation Facility for Marijuana. Location: 3745 Losee Road. (APN 139-11-601-004)

Dear Applicant:

The Planning Commission, at its meeting of July 11, 2018, approved UN-40-18.

The condition is:

Planning and Zoning:

1. That, unless expressly authorized through a variance, waiver or another approved method, this development shall comply with all applicable codes and ordinances.

The decision of the Planning Commission is final unless appealed within seven days of the date action was taken, in writing, to the City Clerk at which time a public hearing will be scheduled before the City Council.

Should you have questions regarding this application, please contact Marc Jordan, Planning Manager, at 702-633-1545.

Sincerely,

Julie Shields, Executive/Recording Secretary
Land Development and Community Services

Cc: Marc Jordan, Planning Manager

RPO Leasing LLC
3745 Losee Rd.
North Las Vegas, NV 89030

Report: **MEDICAL MARIJUANA CERTIFICATION**

Report Id: **RCRRR783**

Filename::

Run By: **PRDREP**

Report Date: **01/09/2019**



STATE OF NEVADA MEDICAL MARIJUANA CULTIVATION REGISTRATION CERTIFICATE
DEPARTMENT OF TAXATION

Issued Date: 07/01/2018
Expiration Date: 06/30/2019

Certificate Number: 20409684276944093355
Establishment ID: C111
Taxpayer ID: 1033456918-001
Correspondence ID: 1900012199032

HERBAL CHOICE NLV LLC
4830 E CARTIER AVE
LAS VEGAS NV 89115-4509

THIS REGISTRATION CERTIFICATE:
IS VOID IF ALTERED.
IS NOT ISSUED IN LIEU OF ANY LOCALLY
REQUIRED BUSINESS LICENSE, PERMIT
OR REGISTRATION.
IS VALID UNLESS SUSPENDED OR
REVOKED.

AS DEFINED BY NRS CHAPTER 453A.

Current Registration Certificate Location

HERBAL CHOICE NLV LLC
3765 LOSEE RD
NORTH LAS VEGAS NV 89030-0924

MUST BE DISPLAYED IN PUBLIC VIEW AT ESTABLISHMENT LOCATION

(Detach Here)

Attached is your **NEVADA Marijuana Cultivation Establishment Registration Certificate**.

A single number, the TID (Taxpayer Identification Number), identifies a taxpayer for MOST tax types. Please use your TID and LOC (Location Number) in correspondence or telephone calls to the Department.

As stated on the application or renewal, this license is valid from the issue date through 06/30/2019.

The Department of Taxation has forms, publications and information available via the internet at <https://tax.nv.gov>.

Returns along with the appropriate tax are due the last day of the month following activity. A return must be filed whether or not a liability exists.

This Certificate authorizes the holder to operate in accordance with the provisions of NRS 453A and NAC 453A. By accepting this license, I certify that I understand that I am required to comply with all State of Nevada laws, including, but not limited to NRS 453A and NAC 453A, and that noncompliance may result in penalties, suspension or revocation of this registration certificate and criminal prosecution.

This Nevada Marijuana Cultivation Establishment Certificate has been issued pursuant to an application or renewal duly filed and payment of prescribed fees and bond if applicable. This License shall be considered valid unless canceled, suspended or revoked for good cause in accordance with NRS chapter 453A.

OFFICE LOCATION:

Nevada Department of Taxation
1550 College Pkwy
Suite 115
Carson City NV 89706
(775) 684-2000

MEDICAL MARIJUANA CERTIFICATION

Total Count 1

End of Report

Report: **MEDICAL MARIJUANA CERTIFICATION**

Report Id: **RCRRR783**

Filename::

Run By: **PRDREP**

Report Date: **07/24/2019**



STATE OF NEVADA MEDICAL MARIJUANA CULTIVATION REGISTRATION CERTIFICATE
DEPARTMENT OF TAXATION

Issued Date: 07/01/2019
Expiration Date: 06/30/2020

Certificate Number: 20409684276944093355
Establishment ID: C111
Taxpayer ID: 1033456918-001
Correspondence ID: 1900012569244

HERBAL CHOICE NLV LLC
4830 E CARTIER AVE
LAS VEGAS NV 89115-4509

THIS REGISTRATION CERTIFICATE:
IS VOID IF ALTERED.
IS NOT ISSUED IN LIEU OF ANY LOCALLY
REQUIRED BUSINESS LICENSE, PERMIT
OR REGISTRATION.
IS VALID UNLESS SUSPENDED OR
REVOKED.

AS DEFINED BY NRS CHAPTER 453A.

Current Registration Certificate Location

HERBAL CHOICE NLV LLC
3765 LOSEE RD
NORTH LAS VEGAS NV 89030-0924

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As stated on the application or renewal, this license is valid from the issue date through 06/30/2020.

The Department of Taxation has forms, publications and information available via the internet at <https://tax.nv.gov>.

Returns along with the appropriate tax are due the last day of the month following activity. A return must be filed whether or not a liability exists.

This Certificate authorizes the holder to operate in accordance with the provisions of NRS 453A and NAC 453A. By accepting this license, I certify that I understand that I am required to comply with all State of Nevada laws, including, but not limited to NRS 453A and NAC 453A, and that noncompliance may result in penalties, suspension or revocation of this registration certificate and criminal prosecution.

This Nevada Marijuana Cultivation Establishment Certificate has been issued pursuant to an application or renewal duly filed and payment of prescribed fees and bond if applicable. This License shall be considered valid unless canceled, suspended or revoked for good cause in accordance with NRS chapter 453A.

OFFICE LOCATION:

Nevada Department of Taxation
1550 College Pkwy
Suite 115
Carson City NV 89706
(775) 684-2000

0022

MEDICAL MARIJUANA CERTIFICATION

Total Count 1

End of Report



BRIAN SANDOVAL
Governor
JAMES DEVOLLD
Chair, Nevada Tax Commission
WILLIAM D. ANDERSON
Executive Director

STATE OF NEVADA DEPARTMENT OF TAXATION

Web Site: <https://tax.nv.gov>

1550 College Parkway, Suite 115
Carson City, Nevada 89706-7937
Phone: (775) 684-2000 Fax: (775) 684-2020

RENO OFFICE
4600 Kietzke Lane
Building L, Suite 235
Reno, Nevada 89502
Phone: (775) 687-9999
Fax: (775) 688-1303

LAS VEGAS OFFICE
Grant Sawyer Office Building, Suite 1300
555 E. Washington Avenue
Las Vegas, Nevada 89101
Phone: (702) 486-2300 Fax: (702) 486-2373

HENDERSON OFFICE
2550 Paseo Verde Parkway, Suite 180
Henderson, Nevada 89074
Phone: (702) 486-2300
Fax: (702) 486-3377

August 7, 2018

Herbal Choice, Inc.
4830 East Cartier Ave
Las Vegas, Nevada 89115

Dear Mr. Madrigal,

Enclosed is your agent card. Please note that agents, whether they are owners, officers, board members, employees or volunteers, must have their agent card with them at all times when on the premises of the marijuana establishment.

Agent cards are valid for one year.

Changes of name or address must be submitted to the Department. Lost, stolen or destroyed cards must be reported to the Division within 3 days of the loss. There is a \$75 fee for replacement cards.

Sincerely,

Steve Gilbert

Program Manager
Marijuana Establishment Program

CATEGORY TYPE
Norberto Madrigal, C111/C112



0024

Heather S. Lavin

CLERK OF THE COURT

1 **SAO**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **TINA TALIM**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #009286**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

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

10 **THE STATE OF NEVADA,**

11 **Plaintiff,**

12 **-vs-**

13 **NORBERTO LEON MADRIGAL,**
14 **#1950096**

15 **Defendant.**

CASE NO. C-21-356361-3

DEPT NO. XVII

16 **STIPULATION AND ORDER**

17 **IT IS HEREBY STIPULATED AND AGREED by and between the above named**
18 **parties, through their undersigned counsel of record, of the following:**

19 **1. That the State and Defense stipulate to the following briefing schedule for the**
20 **Petition of Writ of Habeas Corpus;**

21 **Return – 9/20/2021**

22 **Reply – 10/20/2021**

23 **Hearing – 11/19/2021**

24 **//**

25 **//**

26 **//**

27 **//**

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ATE\FILES\S032663\ATTACHMENTS\202017795C-SAO-(NORBERTO MADRIGAL)-001[37233].DOCX

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1 //

2 2. The current hearing date set for 7/27/2021 for the Petition for Writ of Habeas
3 Corpus both parties stipulate to vacate this date;

4 DATED this 23rd day of July, 2021.

DATED this 23rd day of July, 2021.

5 STEVEN B. WOLFSON
6 DISTRICT ATTORNEY
Nevada Bar#001565

ATTORNEY FOR DEFENDANT

7 BY /s/ TINA TALIM

8 TINA TALIM
9 Chief Deputy District Attorney
Nevada Bar #009286

BY 
10 EMILY K. STRAND, ESQ.
11 Pitaro & Fumo, Chtd.
12 Nevada Bar #015339
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ORDER

IT IS HEREBY ORDERED that the above briefing schedule be set for Defendant Norberto Madrigal for Petition of Writ of Habeas Corpus.

Dated this 30th day of July, 2021



**E09 B91 27E9 7B68
Michael Villani
District Court Judge**

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 State of Nevada

CASE NO: C-21-356361-3

7 vs

DEPT. NO. Department 17

8 Norberto Madrigal
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Stipulation and Order was served via the court's electronic eFile system
13 to all recipients registered for e-Service on the above entitled case as listed below:

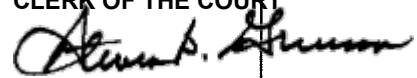
14 Service Date: 7/30/2021

15 Emily Strand

emily@fumolaw.com

16 Osvaldo Fumo

ozzie@fumolaw.com



MTN
THOMAS F. PITARO, ESQ.
Nevada Bar No. 1332
OSVALDO E. FUMO, ESQ.
Nevada Bar No. 5956
PITARO & FUMO, CHTD.
601 Las Vegas Blvd., South
Las Vegas, NEVADA 89101
(702) 474-7554 F: (702) 474-4210
Email: kristine.fumolaw@gmail.com
Attorneys for Defendant: NORBETO LEON MADRIGAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,)	
)	CASE NO.: C--21-356361-3
Plaintiff,)	DEPT. NO.: XVII
)	
vs.)	
)	Date of hearing:
NORBERTO LEON MADRIGAL)	Time of hearing:
#1950096,)	
Defendant)	(HEARING REQUESTED)
)	

**MOTION FOR AN ORDER GRANTING DEFENDANT'S PETITION OF
WRIT OF HABEAS CORPUS**

Comes now the defendant, Norberto Madrigal, by and through his attorneys, Thomas F. Pitaro, Esq., and Osvaldo Fumo, Esq., of the law firm of Pitaro and Fumo, and moves this Honorable Court to enter an order granting his Petition for a Writ of Habeas Corpus filed July 6, 2021. Pitaro and Fumo, Chtd., have previously been authorized, pursuant to Nevada Supreme Court Rule 118, by

the Honorable, Linda Bell, Chief Judge of the Eighth Judicial District Court to manage certain of the outstanding cases of William B. Terry, Esq., deceased.

This motion is made and based upon the contumacious failure of the Respondent, State of Nevada, to file its Return to said Petition as ordered by this Court on July 30, 2021, in violation of District court Rule 13(3), Eighth Judicial District Court Rules 3.20C and 3.40C, the Nevada Code of Professional Conduct Rule 3.4, “Fairness to Opposing Party and Counsel”, and all the papers, pleadings and files herein.

Dated this 28th day of October 2021.

PITARO & FUMO, CHTD.

/s/ Thomas F. Pitaro, Esq.
THOMAS F. PITARO, ESQ.
 Nevada Bar No. 1332
OSVALDO E. FUMO, ESQ.
 Nevada Bar No. 5956
PITARO & FUMO, CHTD.
 601 Las Vegas Blvd., South
 Las Vegas, NEVADA 89101
 (702) 474-7554 F: (702) 474-4210
 Email: kristine.fumolaw@gmail.com
 Attorneys for Defendant: NORBETO
 LEON MADRIGAL

NOTICE OF MOTION

TO: **OFFICE OF THE DISTRICT ATTORNEY**

PLEASE TAKE NOTICE that the undersigned will bring the foregoing

MOTION FOR AN ORDER GRANTING DEFENDANT'S PETITION OF

WRIT OF HABEAS CORPUS on the _____ day _____ of, 2021, at

the hour of ____ a.m. in Department No. 17, in the above Court, or as soon as

thereafter as counsel may be heard.

Dated this 28th day of October 2021.

PITARO & FUMO, CHTD.

/s/ Thomas F. Pitaro, Esq.

THOMAS F. PITARO, ESQ.

Nevada Bar No. 1332

OSVALDO E. FUMO, ESQ.

Nevada Bar No. 5956

PITARO & FUMO, CHTD.

601 Las Vegas Blvd., South

Las Vegas, NEVADA 89101

(702) 474-7554 F: (702) 474-4210

Email: kristine.fumolaw@gmail.com

Attorneys for Defendant: NORBETO

LEON MADRIGAL

POINTS AND AUTHORITIES

On May 27, 2021 Norberto Madrigal, was indicted by the Clark County Grand Jury. (A copy of the Indictment is attached as Exhibit A.) On June 15, 2021 Defendant, Madrigal, was formally arraigned and entered a plea of “not guilty”. (A copy of the Court Minutes are attached as Exhibit B.)

On July 6, 2021 he timely filed his Petition for Writ of Habeas Corpus, pursuant to NRS 34. 710, “... based on an alleged lack of probable cause or other wise challenging the court’s right or jurisdiction to proceed to the trial of of a criminal charge”. (Page 1 of the Petition is attached hereto as Exhibit C.)

On the July 23, 2021 the defendant stipulated, at the request of the State, to allow the State additional time until September 20, 2021 to file its Return to his Petition. The Court on July 30, 2021 entered its Order, submitted by the District Attorney, authorizing this additional time of almost 2 months for the State to file its Return to the Defendant’s Petition. (Stipulation and Order attached as Exhibit D.)

The State has never filed a Return to Defendant Madrigal’s meritorious Petition for Writ of Habeas Corpus.

It is clear that the State must file a Return and Points and Authorities to a Petition for Writ of Habeas Corpus alleging a lack of Probable Cause. EDCR 3.24 . Likewise the State must not “... knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists...” Nevada Code of Professional Conduct Rule 3.4.

Failure to file a required response, without excusable neglect, mandates the granting of this Petition for Writ of Habeas Corpus. Walls v. Brewster, 112 Nev. 175 (1996); cited with approval by Dickerson v. Downey Brand, LLP. 133 Nev. 1002 (2017); EDR 13(3); EDCR 3.20 (C).

1 The facts of the Wall case, supra, is very similar t what has happened in this
2 case, There Walls failed to respond to Brewster's motion. In dismissing the matter
3 due to Wall's failure to respond the Supreme Court went through the facts that lead
4 up to the dismissal of the action. The Court said at pages 5 through 8:

5 "After the February 4, 1994 arbitration was continued past February 9, 1994,
6 Brewster filed her motion to dismiss, and Walls had ten days to respond. DCR
7 13(3); WDCR 12(2). Walls received two extensions of time within which to file
8 the opposition; however, no opposition was filed prior to the deadline.

9 "Failure of the opposing party to serve and file his written opposition may be
10 construed as an admission that the motion is meritorious and a consent to granting
11 the same." DCR 13(3). We conclude that it was proper for the district court to
12 construe Walls' failure to respond to Brewster's motion to dismiss as an admission
13 that the motion was meritorious and as a consent to grant the motion.

14 "Additionally, we conclude that the district court did not abuse its discretion when
15 it dismissed Walls' case with prejudice. "Every court has the inherent power, in
16 the exercise of a sound judicial discretion, to dismiss a cause for want of
17 prosecution. The duty rests upon the plaintiff to use diligence and to expedite his
18 case to a final determination. The decision of a trial court in dismissing a cause
19 for lack of prosecution will not be disturbed on appeal unless it is made to appear
20 that there has been a gross abuse of discretion." Moore v. Cherry, 90 Nev. 390,
21 395, 528 P.2d 1018, 1021 (1974) (quoting Sweeney v. Anderson, 129 F.2d 756,
22 758 (10th Cir. 1942)). This power to dismiss a case exists independent of any
23 authority granted under the statutes or courtrules. Id.at393,528P2dat1020."The
24 element necessary to justify dismissal for failure to prosecute is lack of diligence .
25 Nmm. . whether individually or through counsel." Id. at 395, 528 P.2d at 1022. In
26 this case, evidence showed that in late February, before she became ill, Lynch
27 could have prepared the opposition but was instead occupied by another case.
28 Furthermore, Hamilton had requested two extensions, which gave him an
additional six weeks to prepare and file the opposition; yet, without explanation,
he failed to file the opposition by the March 28, 1994 deadline. This evidence
shows a lack of diligence to expedite the case to a final determination, and
therefore it was not an abuse of discretion for the district court to dismiss Walls'
claim with prejudice.

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Dated this 28th day of October 2021.

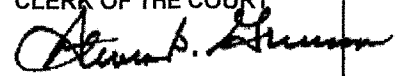
/s/ Thomas F. Pitaro, Esq.
THOMAS F. PITARO, ESQ.
 Nevada Bar No. 1332
OSVALDO E. FUMO, ESQ.
 Nevada Bar No. 5956
PITARO & FUMO, CHTD.
 601 Las Vegas Blvd., South
 Las Vegas, NEVADA 89101
 (702) 474-7554 F: (702) 474-4210
 Email: kristine.fumolaw@gmail.com
 Attorneys for Defendant: NORBETO
 LEON MADRIGAL

I hereby certify that on the 28th day of October 2021, a copy of **MOTION TO EXONERATE BOND** was served on the Clark County District Attorney's Office- Criminal Division via email at:
motions@clarkcountyda.com

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EXHIBIT A



IND
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
TINA TALIM
Chief Deputy District Attorney
Nevada Bar #09286
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

JESUS NAJERA, #5339086
EDUARDO FABIAN GARCIA 1489589,
NORBERTO LEON MADRIGAL
#1950096

Defendant(s).

CASE NO: C-21-356361-3

DEPT NO: XVII

INDICTMENT

STATE OF NEVADA }
COUNTY OF CLARK } ss.

The Defendant(s) above named, JESUS NAJERA, EDUARDO FABIAN GARCIA, NORBERTO LEON MADRIGAL, accused by the Clark County Grand Jury of the crime(s) of SALE OF CONTROLLED SUBSTANCE (Category B Felony - NRS 453.321 - NOC 51090), TRAFFICKING IN CONTROLLED SUBSTANCE (Category C Felony - NRS 453.339.1a - NOC 60433), CONSPIRACY TO VIOLATE UNIFORM CONTROLLED SUBSTANCES ACT (Category C Felony - NRS 453.401 - NOC 51306), UNLAWFUL PRODUCTION OR PROCESSING OF MARIJUANA (Category E Felony - NRS 453.3393 - NOC 58403) and POSSESSION OF CONTROLLED SUBSTANCE (Category E Felony - NRS 453.336 - NOC 51127), committed at and within the County of Clark, State of Nevada, on or between April 8, 2020 and April 30, 2020, as follows:

//

1 COUNT 1 - SALE OF CONTROLLED SUBSTANCE

2 Defendant EDUARDO FABIAN GARCIA did on or about April 8, 2020, willfully,
3 unlawfully, and feloniously sell to LVMPD C.I., a controlled substance, to wit: Marijuana.

4 COUNT 2 - SALE OF CONTROLLED SUBSTANCE

5 Defendant EDUARDO FABIAN GARCIA did on or about April 13, 2020, willfully,
6 unlawfully, and feloniously sell to LVMPD C.I., a controlled substance, to wit: Marijuana.

7 COUNT 3 - SALE OF CONTROLLED SUBSTANCE

8 Defendant EDUARDO FABIAN GARCIA did on or about April 22, 2020, willfully,
9 unlawfully, and feloniously sell to LVMPD C.I., a controlled substance, to wit: Marijuana.

10 COUNT 4 - TRAFFICKING IN CONTROLLED SUBSTANCE

11 Defendants JESUS NAJERA, EDUARDO FABIAN GARCIA and NORBERTO
12 LEON MADRIGAL did on or about April 30, 2020 willfully, unlawfully, feloniously, and
13 knowingly or intentionally possess, either actually or constructively, 50 pounds or more but
14 less than 1,000 pounds, to wit: approximately 81.23 pounds of Marijuana, or any mixture of
15 substance consisting of approximately 81.23 pounds containing the controlled substance
16 Marijuana, the Defendant(s) being criminally liable under one or more of the following
17 principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by
18 aiding or abetting in the commission of this crime, with the intent that this crime be committed,
19 by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the
20 other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the
21 intent that this crime be committed, Defendants, JESUS NAJERA and/or EDUARDO
22 FABIAN GARCIA and/or NORBERTO LEON MADRIGAL aiding or abetting and/or
23 conspiring by Defendants, JESUS NAJERA and/or EDUARDO FABIAN GARCIA and/or
24 acting in concert throughout.

25 COUNT 5 - TRAFFICKING IN CONTROLLED SUBSTANCE

26 Defendants JESUS NAJERA, EDUARDO FABIAN GARCIA and NORBERTO
27 LEON MADRIGAL did on or about April 30, 2020, willfully, unlawfully, feloniously and
28 knowingly or intentionally possess, either actually or constructively, 1 pound or more, but less

1 than 20 pounds, to wit: 2.25 pound(s) of Tetrahydrocannabinol, or any mixture of substance
2 consisting of approximately 2.25 pound(s) containing the controlled substance
3 Tetrahydrocannabinol, the Defendant(s) being criminally liable under one or more of the
4 following principles of criminal liability, to wit: (1) by directly committing this crime; and/or
5 (2) by aiding or abetting in the commission of this crime, with the intent that this crime be
6 committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise
7 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this
8 crime, with the intent that this crime be committed, Defendants, JESUS NAJERA and/or
9 EDUARDO FABIAN GARCIA and/or NORBERTO LEON MADRIGAL aiding or abetting
10 and/or conspiring by Defendants, JESUS NAJERA and/or EDUARDO FABIAN GARCIA
11 and/or NORBERTO LEON MADRIGAL acting in concert throughout.

12 COUNT 6 - CONSPIRACY TO VIOLATE UNIFORM CONTROLLED SUBSTANCES
13 ACT

14 Defendants JESUS NAJERA, EDUARDO FABIAN GARCIA and NORBERTO
15 LEON MADRIGAL did on or about April 30, 2020 willfully, unlawfully, and feloniously
16 conspire with each other to violate Uniform Controlled Substances Act, and in furtherance of
17 said conspiracy, the defendants did commit the acts as set forth in Count 4 and 5, said acts
18 being incorporated by this reference as though fully set forth herein.

19 COUNT 7 - UNLAWFUL PRODUCTION OR PROCESSING OF MARIJUANA

20 Defendant EDUARDO FABIAN GARCIA did on or about April 30, 2020, willfully,
21 unlawfully, feloniously, and knowingly or intentionally manufacture, grow, plant, cultivate,
22 harvest, dry, propagate and/or process Marijuana, involving more than 12 plants.

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1 COUNT 8 - POSSESSION OF CONTROLLED SUBSTANCE

2 Defendant JESUS NAJERA did on or about April 30, 2020, willfully, unlawfully,
3 feloniously, and knowingly or intentionally possess a controlled substance, to wit: Cocaine.

4
5 DATED this 26th day of May, 2021.

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

9 BY

10 
11 TINA TALIM
12 Chief Deputy District Attorney
13 Nevada Bar #09286

14 ENDORSEMENT: A True Bill

15
16 
17 Foreperson, Clark County Grand Jury

Names of Witnesses and testifying before the Grand Jury:

Additional Witnesses known to the District Attorney at time of filing the Indictment:

CUSTODIAN OF RECORDS - CCDC

CUSTODIAN OF RECORDS - LVMPD COMMUNICATIONS

CUSTODIAN OF RECORDS - LVMPD RECORDS

19BGJ223A-C/20F08565A-B; 20CR002883/mcb-GJ
LVMPD EV# 200200027347
(TK7)

1 Names of Witnesses and testifying before the Grand Jury:

2 HEFNER, AARON – LVMPD

3 MORRIS, ERICK - LVMPD

4 SNODGRASS, THEODORE - LVMPD

5 SOTO, JOSE – C/O CCDA, 200 Lewis Avenue, LV, NV 89101

6

7 Additional Witnesses known to the District Attorney at time of filing the Indictment:

8 CUSTODIAN OF RECORDS - CCDC

9 CUSTODIAN OF RECORDS - LVMPD COMMUNICATIONS

10 CUSTODIAN OF RECORDS - LVMPD RECORDS

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LVMPD EV# 200200027347

28 (TK7)

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EXHIBIT B

C-21-356361-3 State of Nevada
 vs
 Norberto Madrigal

June 15, 2021 10:00 AM Arraignment Continued

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Albrecht, Samantha

RECORDER: Georgilas, Cynthia

REPORTER:

PARTIES PRESENT:

Norberto Leon Madrigal Defendant

Osvaldo E Fumo Attorney for Defendant

State of Nevada Plaintiff

Tina Singh Talim Attorney for Plaintiff

JOURNAL ENTRIES

Michael Pariente, Esq. and Co-Defendant Najera also present. Frank Kocka, Esq. and Co-Defendant Garcia also present.

Court noted Volume 2 of the transcript was filed yesterday. DEFT. MADRIGAL ARRAIGNED, PLED NOT GUILTY, and WAIVED the 60-DAY RULE. COURT ORDERED, matter SET for trial and counsel has 21 days from the filing of the Grand Jury transcript or today s date, whichever is later, to file a Writ.

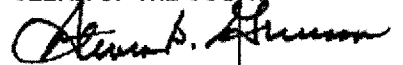
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5/31/2022 8:30 AM CALENDAR CALL

6/6/2022 9:00 AM JURY TRIAL

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EXHIBIT C



WRIT

EMILY K. STRAND, ESQ.
Nevada Bar No. 15339
PITARO & FUMO, CHTD.
601 Las Vegas Blvd. S.
Las Vegas, NV 89101
Phone: (702) 474-7554
Fax: (702) 474-4210
Email: emily@fumolaw.com
Attorney for Defendant: Noberto Madrigal

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

vs.

NOBERTO MADRIGAL,

Defendant.

Case No. C-21-356361-3

Dept No. 17

PETITION FOR WRIT OF HABEAS CORPUS (PRE-TRIAL)

TO: THE HONORABLE JUDGE OF THE EIGHTH JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK:

COMES NOW, the Petitioner, NOBERTO MADRIGAL, by and through his attorneys of
record, THOMAS F. PITARO, ESQ. and EMILY K. STRAND, Esq., of the law offices of
PITARO & FUMO, CHTD., and states:

1. That the Attorneys for Petitioner are duly qualified and licensed attorneys practicing in Las Vegas, Nevada;
2. That Petitioner makes this application for a Writ of Habeas Corpus;
3. That Petitioner is in the constructive custody of Sheriff JOSEPH LOMBARDO, Clark County, Nevada;
4. That said imprisonment of Petitioner is unlawful in that the State failed to present sufficient evidence to establish probable cause that Petitioner committed the offenses with which he is charged in the Indictment, and the State failed to present the grand jury with exculpatory evidence.
5. That Petitioner waives the 60-day limitation for bringing this matter to trial;
6. That Petitioner consents that if this Petition is not decided within 15 days before

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EXHIBIT D

Heather S. Smith
CLERK OF THE COURT

1 **SAO**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 TINA TALIM
6 Chief Deputy District Attorney
7 Nevada Bar #009286
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 NORBERTO LEON MADRIGAL,
14 #1950096

15 Defendant.

CASE NO. C-21-356361-3

DEPT NO. XVII

16 **STIPULATION AND ORDER**

17 IT IS HEREBY STIPULATED AND AGREED by and between the above named
18 parties, through their undersigned counsel of record, of the following:

19 1. That the State and Defense stipulate to the following briefing schedule for the
20 Petition of Writ of Habeas Corpus;

21 Return – 9/20/2021

22 Reply – 10/20/2021

23 Hearing – 11/19/2021

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2. The current hearing date set for 7/27/2021 for the Petition for Writ of Habeas Corpus both parties stipulate to vacate this date;

DATED this 23rd day of July, 2021.

DATED this 23rd day of July, 2021.

STEVEN B. WOLFSON
DISTRICT ATTORNEY
Nevada Bar#001565

ATTORNEY FOR DEFENDANT

BY /s/ TINA TALIM
TINA TALIM
Chief Deputy District Attorney
Nevada Bar #009286

BY Emily K. Strand
EMILY K. STRAND, ESQ.
Pitaro & Fumo, Chtd.
Nevada Bar #015339

ORDER

IT IS HEREBY ORDERED that the above briefing schedule be set for Defendant Norberto Madrigal for Petition of Writ of Habeas Corpus.

Dated this 30th day of July, 2021



**E09 B91 27E9 7B68
Michael Villani
District Court Judge**

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1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

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6 State of Nevada

CASE NO: C-21-356361-3

7 vs

DEPT. NO. Department 17

8 Norberto Madrigal
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Stipulation and Order was served via the court's electronic eFile system
13 to all recipients registered for e-Service on the above entitled case as listed below:

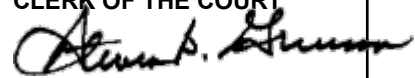
14 Service Date: 7/30/2021

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16 Osvaldo Fumo

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1 **RET**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 TINA TALIM
6 Chief Deputy District Attorney
7 Nevada Bar #009286
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 State of Nevada

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 In the Matter of Application,
10 of
11 NOBERTO LEON MADRIGAL,
12 #1950096
13 for a Writ of Habeas Corpus.

CASE NO: C-21-356361-3

DEPT NO: XIX

14 **STATE'S RETURN TO WRIT OF HABEAS CORPUS**

15 DATE OF HEARING: 11/16/2021
16 TIME OF HEARING: 12:00 P.M.

17 COMES NOW, JOE LOMBARDO, Sheriff of Clark County, Nevada, Respondent,
18 through his counsel, STEVEN B. WOLFSON, Clark County District Attorney, through TINA
19 TALIM, Chief Deputy District Attorney, in obedience to a writ of habeas corpus issued out of
20 and under the seal of the above-entitled Court on the 6th day of July, 2021, and made returnable
21 on the 16th day of November, 2021, at the hour of 12:00 o'clock P.M., before the above-
22 entitled Court, and states as follows:

23 A. Denies.
24 B. Denies.
25 C. Denies in part; admits in part. Respondent admits "concentrated cannabis
26 was not defines in the instructions, but denies that dismissal of Count 5, Trafficking in
27 Controlled Substance, is consequently warranted.
28

1 D. Denies in part; admits in part. Respondent admits the Grand Jury
2 instructions do not define the elements of Count 8 nor define or explain the Uniform Controlled
3 Substance Act, but denies the instructions are thusly incorrect.

4 E. Denies.

5 F. Admits.

6 G. Denies.

7 H. Denies in part; admits in part. Respondent admits to posing leading
8 questions to key witnesses before the Grand Jury but denies that so doing is impermissible.

9 I. Denies in part; admits in part. Respondent admits the detective erred in
10 his testimony but denies that the error was egregious or that the State's failure to correct it
11 constitutes a violation of its duty under NRS 172.095.

12 F. The Petitioner is in the actual custody of JOE LOMBARDO, Clark
13 County Sheriff, Respondent herein, pursuant to a Criminal Indictment, a copy of which is
14 attached hereto as Exhibit 1 and incorporated by reference herein.

15 Wherefore, Respondent prays that the Writ of Habeas Corpus be discharged and the
16 Petition be dismissed.

17 DATED this 3rd day of November, 2021.

18 Respectfully submitted,

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

21 BY /s/ Tina Talim
22 TINA TALIM
23 Chief Deputy District Attorney
Nevada Bar #009286
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1 **POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT'S**
2 **PRE-TRIAL WRIT OF HABEAS CORPUS**

3 **STATEMENT OF THE CASE**

4 On November 18, 2020 the State commenced its presentation of evidence to the Grand
5 Jury in the instant case. Due to the shutdown of the grand jury, caused by the Covid-19
6 pandemic, it was not until May 26, 2021 that the State continued and completed its presentation
7 of evidence. On May 27, 2021 the Grand Jury returned an indictment charging: Defendant
8 Eduardo Fabian Garcia with three (3) counts of Sale of Controlled Substance (Category B
9 Felony) and one (1) count of Unlawful Production or Processing of Marijuana (Category E
10 Felony); Defendants Eduardo Fabian Garcia, Jesus Najera, and Roberto Leon Madrigal with
11 two (2) counts of Trafficking in Controlled Substance (Category C Felony) and one (1) count
12 of Conspiracy to Violate Uniform Controlled Substances Act (Category C Felony); and
13 Defendant Jesus Najera with one (1) count of Possession of Controlled Substance (Category
14 E Felony).

15 Initial arraignment was set for June 10, 2021. Upon motion by defendants to continue
16 the arraignment, it was continued to June 15, 2021. On July 4, 2021, defendant Jesus Najera
17 filed a Petition for Writ of Habeas Corpus. On July 6, 2021, defendant Madrigal filed a Petition
18 for Writ of Habeas Corpus, joining in Defendant Najera's Petition, raising additional
19 arguments. Prior to the hearing date, parties stipulated, after defendant's Najera requested it,
20 to extend the Writ argument. Parties agreed to extend the State's date to file the Return
21 (September 20, 2021) and time for Defendants' Replies (October 20, 2021). The hearing was
22 reset to November 19, 2021.

23
24 **STATEMENT OF FACTS**

25
26 In February 2020, detectives Aaron Hefner and Gary Chaney of Las Vegas
27 Metropolitan Police Department's (LVMPD) Criminal Intelligence Section (CIS) received
28 information that Defendants Jesus Najera, Eduardo Fabian Garcia, and Norberto Leon

1 Madrigal were engaged in an operation involving the spraying of hemp with
2 tetrahydrocannabinol (THC) that Defendants would sell as marijuana. *Tr. of Grand Jury, The*
3 *State of Nevada v. Najera, Garcia, and Madrigal*, No. C356361 at 17:15-17 (Nev. 8th Jud.
4 Dist., 2020). Detective Aaron Hefner's testimony clarified that while hemp and marijuana
5 come from the same plant, marijuana is the nickname given only to plants that contain a certain
6 amount of THC from which users derive a sense of euphoria. *Id.* at 17:9-14. Under Nevada
7 State law the addition of THC to hemp in excess of the 0.3% THC limit produces a substance
8 that is chemically analyzed as marijuana. *Id.* at 17:21-25; *Id.* at 18:1-2. The information
9 detectives received also alleged that Defendant Madrigal was either in the process of obtaining
10 or had obtained licenses for marijuana dispensaries. *Id.* at 10:24-25; *Id.* at 11:1. After launching
11 an investigation into these allegations, detectives confirmed that Defendant Madrigal had two
12 legitimate applications for marijuana dispensary licenses that had been processing for some
13 years. *Id.* at 11:5-7. The investigation also revealed that Defendant Madrigal was associated
14 with a warehouse located at 800 West Mesquite. *Id.* at 11:11-16. Detectives further learned
15 that Defendants Najera and Garcia resided in apartment 4101 at 1445 Stone Lake Cove and at
16 2340 East Camaro and respectively. *Id.* at 13:12-14; *Id.* at 13:20-22.

17 Surveillance was established at the residence and warehouse of Defendants Garcia and
18 Madrigal respectively. *Id.* at 14:1-3. On March 7, 2020, Defendant Garcia arrived at the
19 warehouse in a flatbed truck that he and an unidentified individual loaded with multiple black
20 trash bags removed from the warehouse. *Id.* at 19:12-18. On March 8, 2020, Defendants
21 Najera, Garcia, and Madrigal contemporaneously arrived at the warehouse wherein they
22 engaged in discourse for approximately an hour. *Id.* at 21:5-15. During the investigation
23 detectives engaged the services of confidential informant Jose Soto. *Id.* at 23:8-24. Defendant
24 Garcia provided Mr. Soto with a sample of THC sprayed hemp in the pair's first meeting. *Id.*
25 at 37:5-8. However, this tested below the 0.3% statutory limit for THC and Mr. Soto later
26 returned it to Defendant Garcia. *Id.* at 38:14-18. The Defendants consequently are not charged
27 for providing this sample. *Tr. of Grand Jury, The State of Nevada v. Najera, Garcia, and*
28 *Madrigal*, No. C356361 at 33:1-3 (Nev. 8th Jud. Dist., 2021). On April 8th, 13th, and 22nd of

1 2020, Jose Soto purchased items from Defendant Garcia that tested positive as being
2 marijuana. *Tr. of Grand Jury, The State of Nevada v. Najera, Garcia, and Madrigal*, No.
3 C356361 at 24:23-25 (Nev. 8th Jud. Dist., 2020); *Tr. of Grand Jury, The State of Nevada v.*
4 *Najera, Garcia, and Madrigal*, No. C356361 at 25:1-5 (Nev. 8th Jud. Dist., 2020). An exam
5 by LVMPD's forensic laboratory of Mr. Soto's April 8th purchase yielded a positive result for
6 marijuana that weighed 62.82 grams. *Tr. of Grand Jury, The State of Nevada v. Najera,*
7 *Garcia, and Madrigal*, No. C356361 at 33:16-23 (Nev. 8th Jud. Dist., 2021). Mr. Soto's April
8 13th purchase from Defendant Garcia tested positive for marijuana that weighed 946 grams.
9 *Id.* at 34:5 Finally Mr. Soto's April 22nd purchase from Defendant Garcia tested positive for
10 marijuana that weighed 1076 grams. *Id.* at 34:9-10.

11 Before every deployment Mr. Soto and his vehicle were searched to confirm the
12 absence of any narcotics or undocumented funds. *Tr. of Grand Jury, The State of Nevada v.*
13 *Najera, Garcia, and Madrigal*, No. C356361 at 25:9-20 (Nev. 8th Jud. Dist., 2020). Mr. Soto
14 was also constantly surveilled during each trip to and from the buy location. *Id.* at 25:9-20.
15 During these transactions Mr. Soto paid Defendant Garcia with LVMPD buy funds that were
16 marked and photographed before each purchase. *Id.* at 26:4-13.

17 On April 30, 2020, a series of search warrants were executed throughout the valley. *Id.*
18 at 55:7-14. The search of Defendant Garcia's residence produced bags of unsprayed hemp and
19 32 marijuana plants. *Tr. of Grand Jury, The State of Nevada v. Najera, Garcia, and Madrigal*,
20 No. C356361 at 17:11-25 (Nev. 8th Jud. Dist., 2021). In addition to official documents the
21 search of Defendant Najera's residence revealed ODV positive cocaine that weighed 1.1
22 grams. *Tr. of Grand Jury, The State of Nevada v. Najera, Garcia, and Madrigal*, No. C356361
23 at 68:13-15 (Nev. 8th Jud. Dist., 2020); *Tr. of Grand Jury, The State of Nevada v. Najera,*
24 *Garcia, and Madrigal*, No. C356361 at 72:18 (Nev. 8th Jud. Dist., 2020). Also recovered from
25 Defendant Najera's residence was a safe containing documented LVMPD buy funds used by
26 Mr. Soto to purchase narcotics from Defendant Garcia. *Tr. of Grand Jury, The State of Nevada*
27 *v. Najera, Garcia, and Madrigal*, No. C356361 at 9:16-21 (Nev. 8th Jud. Dist., 2021). Pursuant
28 to a search warrant officers recovered from Defendant Madrigal's warehouse bags of hemp

1 and sprayed marijuana and an apparent “science lab” containing a jar of THC oil, a gun for
2 spraying, and turkey bags for packaging narcotics. *Tr. of Grand Jury, The State of Nevada v.*
3 *Najera, Garcia, and Madrigal*, No. C356361 at 14:4-11 (Nev. 8th Jud. Dist., 2020).

4 After the execution of these search warrants, detectives secured a search warrant for the
5 Defendants’ phone numbers. *Tr. of Grand Jury, The State of Nevada v. Najera, Garcia, and*
6 *Madrigal*, No. C356361 at 7:18-24 (Nev. 8th Jud. Dist., 2021). Phone records spanning an 18-
7 month period reveal text messages in which Defendants discussed *inter alia* the first
8 transaction with Jose Soto, a prospective sale of THC sprayed hemp to individuals in Kansas,
9 and the purchase of THC oil from individual known as Eli. *Id.* at 27:11-4; *Id.* at 24:1-3; *Id.* at
10 25:3-10; *Id.* at 27:2-6. The text messages also reveal the Defendants’ “frantic” attempts to
11 purchase Everclear, which is the pure alcohol that the Defendants mixed with THC to spray
12 on hemp and allowed to evaporate so the THC would better adhere to the hemp. *Id.* at 26:11;
13 *Id.* at 26:5-7.

14 **I. LEGAL STANDARD FOR DISCHARGE BY WRIT OF HABEAS CORPUS**

15 In the instant case, the provisions of NRS 34.500 that permit Defendant’s discharge by
16 grant of Writ of Habeas Corpus are as follows:

17 NRS 34.500 Grounds for Discharge in Certain Cases

18 3. When the **process is defective** in some **matter of substance** required by
19 law, rendering it void.

20 7. When the petitioner has been committed or indicted on a criminal
21 charge...**without reasonable or probable cause.**

22 Where the alleged defectiveness of the process is attributable to governmental
23 misconduct, the dismissal of an indictment is not warranted unless a defendant can
24 demonstrate “substantial prejudice” that exists only when there is a “...reasonable probability
25 that the outcome would have been different absent the misconduct”. *Lay v. State*, 110 Nev.
26 1189, 1198, 886 P.2d 448, 454 (1994). With respect to Grand Jury proceedings the outcome
27 of which there must be reasonable probability is the Grand Jury’s failure to indict any
28 Defendant on any or all counts contained in the indictment.

1 As to a finding of probable cause to support an indictment, this has long been justified
2 by the State's ability to substantiate it has presented "slight or even marginal" evidence.

3 *Sheriff, Washoe Cty. v. Hodes*, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980).

4 **ARGUMENT**

5
6 Defendants alleges that his imprisonment and/or restraint is unlawful for two reasons:
7 (1) the State's presentation of evidence contained substantive procedural errors; and (2) the
8 indictment, either in whole or in part, is not supported by probable cause. Yet even if the State
9 made all alleged procedural errors, which the State does not concede, the relevant inquiries in
10 this case remain (1) whether any alleged procedural error was sufficient to allow for a
11 reasonable probability that the Grand Jury would not have indicted on any or all of the counts
12 charged absent the error; and (2) whether any count charged is unsupported by probable cause.
13 The State contends that any procedural error related to the Grand Jury proceedings was
14 harmless because there is nothing to substantiate the reasonable probability of a contrary
15 outcome in the absence thereof and all counts charged are supported by probable cause.

16 **I. NO ALLEGED PROCEDURAL ERROR INVADED THE INTEGRITY OF** 17 **THE GRAND JURY**

18 **a. Errors and/or Deficits in Grand Jury Instructions Must be Substantive**

19 Although Nevada is one of several jurisdictions in which the prosecutor is required to
20 instruct the Grand Jury on the elements of a crime, the Nevada Supreme Court has never
21 defined the requirements of NRS 172.095(2). *Clay v. Eighth Judicial Dist. Court of State*, 129
22 Nev. 445, 453, 305 P.3d 898, 904 (2013). However the New York test for a prosecutor's
23 compliance with this statute has been found consistent with the Nevada Legislature's
24 motivations for adopting NRS 172.095(2). *Id.* at 905. A prosecutor's Grand Jury instructions
25 are thus substantively incomplete or incorrect only if the instructions affected the Grand Jury
26 proceedings, where the effect must be compromising the integrity of the Grand Jury. *People*
27 *v. Ramos*, 223 A.D.2d 495, 637 N.Y.S.2d 93, 93-94 (App. Div. 1st Dept. 1996). The Grand
28 Jury's integrity is compromised only when it returns an indictment based on less than probable

1 cause”. *Id.* Defendant’s petition asserts that the Grand Jury could not have been familiar with
2 the Uniform Controlled Substances Act (UCSA) or the phrase “concentrated cannabis”.
3 However, without substantiation that the specific Grand Jury to which the State presented its
4 case lacked this understanding, this claim is purely speculative and provides no grounds for
5 dismissal of the indictment.

6 Further Defendant Najera falsely asserts the Grand Jury instructions contain a
7 commingling of the element “THC” with “concentrated cannabis”. A proper reading of the
8 proposed indictment confirms that the reality is instead an omission of “concentrated
9 cannabis” prior to the specification of the form thereof that renders Defendants’ in violation
10 of NRS 453.339(1)(a) in the instant case. Thus, this omission falls under the examination of
11 the indictment’s sufficiency. The sufficiency of an indictment is to be determined under
12 practical rather than technical considerations where the test is not whether the indictment could
13 have been more definite and certain. *Laney v. State*, 86 Nev. 173, 178, 466 P.2d 666, 669
14 (1970) (citing *Clay v. United States*, 326 F.2d 196 (10th Cir. 1963)). Instead, the question is
15 whether the indictment is so insufficient as to fail to provide the accused with the adequate
16 notice of the charged offense(s) required to permit the defendant to properly mount a defense.
17 *Id.* There is no basis for asserting this claim at this juncture and the aforementioned
18 examination is properly reserved for trial.

19 **b. Neither Detective’s Misstatement nor the State’s Failure to Correct it was**
20 **Prejudicial**

21 The transcripts of the Grand Jury’s proceedings confirm that Detective Aaron Hefner
22 referred to the statutory limit for THC in three separate instances during his cumulative
23 testimony; only once did Hefner err by misstating the limit is “.03 percent”. *Tr. of Grand Jury,*
24 *The State of Nevada v. Najera, Garcia, and Madrigal*, No. C356361 at 12:4 (Nev. 8th Jud.
25 Dist., 2021). Neither this error nor the State’s failure to correct it is fatal to the Grand Jury
26 proceedings. In a criminal trial the examination of an alleged misstatement of the law remains
27 restricted to the question of whether the misstatement caused the defendant to suffer any
28 prejudice. *Standen v. State*, 101 Nev. 725, 727, 710 P.2d 718, 719 (1985). If there remains

1 substantial evidence to support a verdict absent the alleged misstatement, no prejudice may be
2 found and thus no verdict overturned. *Bolden v. State*, 97 Nev. 71, 624 P.2d 20 (1981);
3 *Mercado v. State*, 100 Nev. 535, 539, 688 P.2d 305, 308 (1984). The application of this test is
4 more than equitable in the instant case since the burden of proof in a Grand Jury is considerably
5 lower than that in a criminal trial and a Grand Jury target enjoys fewer rights than a criminal
6 defendant. Defendant's petition provides no evidence that the grand jury even considered this
7 lone misstatement, let alone relied thereupon when deciding to indict Defendants. There is
8 therefore no means of substantiating the allegation that Defendants were prejudiced by the
9 misstatement or the State's failure to correct it. Further a review of the indictment confirms
10 that no count contained therein bears the statutory limit for THC. With respect to Defendant's
11 marijuana product the counts reference only a "controlled substance". Thus, contrary to
12 Defendant's petition, grand jurors were never made to speculate on the accurate statutory limit
13 for THC because grand jurors were never asked to determine whether the marijuana produced,
14 processed and sold by Defendants constituted a controlled substance. Rather the grand jurors
15 were asked, with respect to Counts 1-7, to determine whether under the premise that
16 Defendants' product constituted a controlled substance, the State presented the slight or
17 marginal evidence to substantiate that Defendant(s): (1) produced and/or processed the
18 controlled substance; (2) trafficked the controlled substance; and (3) conspired to violate the
19 UCSA. There are consequently no grounds to suggest that the posited speculation of grand
20 jurors ever transpired, let alone prejudiced Defendants.

21 **II. PROPER ADMISSION OF KELLY BURNS' NRS 50.320 DECLARATION**

22 Defendant's petition misapprehends applicable precedent. First *Valenti v. State, Dep't*
23 *of Motor Vehicles* necessitates the invalidation of the chemist's affidavit because admission of
24 an affidavit that fails to specify the chemist is properly qualified as an expert would result in
25 absurd results like the revocation of drivers' licenses based on a lay-person's affidavit, which
26 belies the plain meaning of NRS 50.320. 131 Nev. 875, 877, 362 P.3d 83, 84 (2015). This
27 holding clarifies that the Court's concern is permitting laypeople's affidavits to carry the same
28 evidentiary value as those of experts. The failure to specify which controlled substance(s) for

1 which Kelly Burns is an expert would not arouse this fear. Second even a finding that failure
2 to satisfy either of the two requirements identified in *Valenti* would not render its holding
3 applicable to the instant case. The *Valenti* court extended its holding to all administrative
4 proceedings wherein the accused enjoys the right to confront and examine his accusers. *Id.*
5 While it is proper to extend this Confrontation Clause based right to the accused in
6 administrative hearings who face the potential loss of life, liberty, and/or property similar to
7 that which criminal defendants face at trial, this extension is inappropriate to Grand Jury
8 targets. The Nevada Supreme Court considered and declined to expand the rights of Grand
9 Jury targets to render them "...coextensive with those of criminal defendants". *Gordon v.*
10 *Ponticello*, 110 Nev. 1015, 1019, 879 P.2d 741, 744 (1994). Finally, even the improper
11 expansion of the rights of Grand Jury targets would not necessitate dismissal of the indictment
12 because the absence of Kelly Burns' declaration would not sufficiently diminish the State's
13 case to the extent that the counts charged become unsupported by probable cause.

14 **III. NEITHER STATUTE NOR PRECEDENT PROSCRIBES THE STATE'S**
15 **USE OF LEADING QUESTIONS BEFORE A GRAND JURY**

16 Defendant contends without legal authority that the State may not pose leading
17 questions before the Grand Jury. The United States Supreme Court emphatically distinguished
18 Grand Jury proceedings from criminal trials when it pronounced the Grand Jury process
19 "generally is unrestrained by the technical procedural and evidentiary rules governing the
20 conduct of criminal trials". *United States v. Calandra*, 414 U.S. 338, 343 (1974). NRS
21 50.115(3)(a) provides:

22 NRS 50.115 Mode and Order of Interrogation and Presentation

23 3. Except as provided in subsection 4:

24 (a) Leading questions may not be used on the direct examination of a witness
25 without the **permission of the court**.

(b) Leading questions are permitted on cross-examination.

26 Congruent with statutory interpretation's goal of advancing legislative intent, the Nevada
27 Supreme Court has repeatedly rejected statutory interpretation that "...renders language
28 meaningless or superfluous". *Figueroa-Beltran v. United States*, 467 P.3d 615, 621 (Nev.

2020); *Williams v. State Dep't of Corr.*, 133 Nev. 594, 402 P.3d 1260, 1262 (2017); *Hobbs v. State*, 127 Nev. 234, 242, 251 P.3d 177, 179 (2011). Further the Court has demonstrated it will adhere to the plain meaning rule and enforce a statute “as written” when the language is “clear and unambiguous”. *Sheriff v. Witzenburg*, 122 Nev. 1056, 1061, 145 P.3d 1002, 1005 (2006); *Hobbs* at 237. NRS 50.115(3)(a)’s inclusion of the phrases “direct examination” and “permission of the court” renders clear that the applicability of its provisions is restricted to trials because Grand Jury proceedings include no court nor any incidence of direct examination. To broaden this statute’s applicability to Grand Jury proceedings is to deprive both phrases of any value, disregard clear legislative intent, and eradicate precedential force.

IV. ALL CHARGES ARE SUPPORTED BY PROBABLE CAUSE

a. Standard for Sustaining a Grand Jury Indictment

During Grand Jury proceedings, there must be evidence adduced that establishes probable cause to believe that an offense has been committed and that the defendant has committed it. *Robertson v. Sheriff*, 85 Nev. 681, 683, 462 P.2d 528 (1969). The Nevada Supreme Court has explicitly held that the "full and complete exploration of all facets of the case" should be reserved for trial. *Marcum v. Sheriff*, 85 Nev. 175, 178, 451 P.2d 845, 847 (1969); see also, *Id.* at 529.

b. Defendants’ Product Constitutes Marijuana and State Has Satisfied Its Burden that Defendants Trafficked this Controlled Substance

NRS 557.160 provides:

NRS 557.160 “Hemp” defined

1. “Hemp” means any plant of the genus *Cannabis sativa* L. and any part of such a plant, including, without limitation, the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts and salts of isomers, whether growing or not, with a **THC concentration** that does not exceed the maximum **THC concentration** established by the State Department of Agriculture for hemp.

2. "Hemp" does not include any commodity or product made using hemp.

NRS 453.096 provides:

NRS 453.096 "Marijuana" defined

1. "Marijuana" means:

- (a) All parts of any plant of the genus Cannabis, whether growing or not;
- (b) The seeds thereof;
- (c) The resin extracted from any part of the plant, including concentrated cannabis;
- (d) Every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin;
- (e) Any commodity or product made using hemp which **exceeds the maximum THC concentration** established by the State Department of Agriculture for hemp; and
- (f) Any product or commodity made from hemp which is manufactured or sold by a cannabis establishment **which violates any regulation** adopted by the Cannabis Compliance Board pursuant to paragraph (g) of subsection 1 of NRS 678A.450 relating to **THC concentration**.

2. "Marijuana" does **not** include:

- (a) Hemp, as defined in NRS 557.160, which is grown or cultivated pursuant to the provisions of chapter 557 of NRS;
- (b) The mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination; or
- (c) Any commodity or product made using hemp, as defined in NRS 557.160, which does not exceed the maximum **THC concentration** established by the State Department of Agriculture for hemp.

THC is defined as the most active of the principal constituents of marijuana. T. J. E. Schmidt, M.D., *Attorneys' Dictionary of Medicine*, (Matthew Bender). This definition combined with the five (5) aggregate uses between NRS 453.096 and 557.160 of the phrase "THC concentration" is consistent with the legislative intent to more closely regulate an "intoxicating" substance with a high propensity for addiction. THC. ARTICLE FOR CLE CREDIT: THE BRAIN DISEASE OF ADDICTION, 26 Nevada Lawyer 24.

1 *Sessions v. State* dictates that ambiguity between NRS 453.096(1) and NRS 453.096(2)
2 must be resolved in favor of the accused, 106 Nev. 186, 189, 789 P.2d 1242, 1243 (1990), as
3 dictated by the rule of lenity. However most statutory provisions bear some element of
4 ambiguity. The rule of lenity is therefore inapplicable unless there is a "grievous ambiguity or
5 uncertainty in the language and structure of the Act," *Huddleston v. United States*, 415 U.S.
6 814, 831, 39 L. Ed. 2d 782, 94 S. Ct. 1262 (1974). Furthermore this "grievous ambiguity"
7 must persist after the court has looked to every source from which the court can gain the
8 requisite insight to resolve it, *United States v. Bass*, 404 U.S. 336, 347, 30 L. Ed. 2d 488, 92
9 S. Ct. 515 (1971) (quoting *United States v. Fisher*, 6 U.S. 358, 2 Cranch 358, 386, 2 L. Ed.
10 304 (1805)), such as legislative history, purpose and/or acquiesce. An examination of the
11 statutory language reveals legislative purpose that invalidates the rule of lenity's application
12 to the instant case.

13 While statutory language alone supports classifying Defendants' commodity as
14 marijuana, there is additional support therefor. The State elicited Grand Jury testimony that
15 confirms the Defendants' represented their product to be chemically equivalent to and/or
16 stronger than marijuana. Specifically, Defendant Garcia told confidential informant Soto that
17 his THC-sprayed hemp would be "even stronger than marijuana". *Tr. of Grand Jury, The State*
18 *of Nevada v. Najera, Garcia, and Madrigal*, No. C356361 at 35:12 (Nev. 8th Jud. Dist., 2020).
19 This representation is sufficient evidence to support the charge of trafficking in controlled
20 substance because while a trial requires the State to prove beyond a reasonable doubt that the
21 substance sold was in fact marijuana, a defendant's representation alone that he is selling
22 marijuana is sufficient to satisfy the probable cause standard the State must satisfy before a
23 grand jury. *Glosen v. Sheriff*, 85 Nev. 145, 451 P.2d 841 (1969).

24 **c. Circumstantial Evidence Properly Established Trafficking in Controlled**
25 **Substance and Conspiracy to Violate the UCSA**

26 Convictions based on circumstantial evidence have been and are routinely upheld in
27 Nevada. *See Gibson v. State*, 96 Nev. 48, 50 (1980); *Merryman v. State*, 95 Nev. 648, 649
28 (1979); *Dutton v. State*, 94 Nev. 567, 568 (1978); *Edwards v. State*, 90 Nev. 255, 258 (1974);

1 *Goldsmith v. Sheriff*, 85 Nev. 295, 304 (1969). Circumstantial evidence is therefore sufficient
2 to satisfy the lower standard of probable cause. *Howard v. Sheriff*, 93 Nev. 30, 559 P.2d 827
3 (1977). The State elicited Grand Jury testimony of the following: (1) video depicting all
4 Defendants arriving contemporaneously at the warehouse to engage in discussion and a survey
5 of the land; (2) the proper search of the Mesquite warehouse led to the recovery of several
6 bags of hemp, sprayed marijuana, and a production/processing set-up consisting of a jar of
7 THC oil, a spray gun, and turkey bags for packaging narcotics; (3) Defendant Garcia was on
8 the premises during the search of the Mesquite warehouse; (4) all Defendants participated in
9 text message exchanges regarding their procurement of substances used in their illegal
10 production of marijuana; and (5) recovery of a long-sleeved shirt and pair of shoes from
11 Defendant Madrigal's residence that matched the shirt and shoes depicted in a photo of a hand
12 spraying hemp. *Tr. of Grand Jury, The State of Nevada v. Najera, Garcia, and Madrigal*, No.
13 C356361 at 21:5-15 (Nev. 8th Jud. Dist., 2020); *Tr. of Grand Jury, The State of Nevada v.*
14 *Najera, Garcia, and Madrigal*, No. C356361 at 14:4-11 (Nev. 8th Jud. Dist., 2020); *Tr. of*
15 *Grand Jury, The State of Nevada v. Najera, Garcia, and Madrigal*, No. C356361 at 13:5-9
16 (Nev. 8th Jud. Dist., 2021); *Tr. of Grand Jury, The State of Nevada v. Najera, Garcia, and*
17 *Madrigal*, No. C356361 at 26:11 (Nev. 8th Jud. Dist., 2021); *Tr. of Grand Jury, The State of*
18 *Nevada v. Najera, Garcia, and Madrigal*, No. C356361 at 19:7-21 (Nev. 8th Jud. Dist., 2021).
19 Defendants' interactions with one another in conjunction with their synchronized arrival in
20 and tour of the warehouse permits the reasonable inference that Defendants' possessed the
21 controlled substances contained therein. The direct evidence of the controlled substances'
22 quantity supports the charge of trafficking in controlled substance. Finally, the consideration
23 of reasonably inferred possession with direct evidence of the controlled substances' quantity
24 allows for the reasonable inference that Defendants were acting in concert consistent with their
25 conspiracy to violate the UCSA.

26 **d. Circumstantial Evidence Properly Established Constructive Possession**

27 Defendant's petition reflects misapprehension of the *Glispey v. Sheriff, Carson City*
28 holding resulting from an improperly truncated citation thereto. 89 Nev. 221, 510 P.2d 623

1 (1973). First, in instructing on simple possession *Glispey* provides “For instance,
2 possession may be imputed when the contraband is found in a location which is immediately
3 and exclusively accessible to the accused and subject to her dominion and control”. *Id.* at 624.
4 Again relying on the Nevada Supreme Court’s reverence of the statutory interpretation canon
5 that preserves linguistic value, inclusion of the phrase “for instance” in conjunction with the
6 word “may” clarifies that this is a discretionary sentiment; the Court is identifying one of
7 potentially numerous means by which possession may be imputed. Mandatory language is
8 evident in the dictate “The accused has constructive possession only if she maintains control
9 or a right to control the contraband”. *Id.* It is this citation that restricts the determination of
10 constructive possession. In the first part of the Grand Jury proceedings the State established
11 Defendant Najera’s “residence” was located at 1445 Stone Lake. *Tr. of Grand Jury, The State*
12 *of Nevada v. Najera, Garcia, and Madrigal*, No. C356361 at 13:9-13 (Nev. 8th Jud. Dist.,
13 2020). The State further established Defendant Najera’s ownership of the residence by
14 describing a safe located in the apartment that contained a US passport and driver’s license in
15 Defendant Najera’s name. *Tr. of Grand Jury, The State of Nevada v. Najera, Garcia, and*
16 *Madrigal*, No. C356361 at 70:1-2 (Nev. 8th Jud. Dist., 2021). This testimony coupled with the
17 absence of any evidence to belie the contention constitutes circumstantial evidence that allows
18 for the inference that Defendant Najera maintained control of his residence. The inference of
19 Defendant Najera’s control of his residence establishes he had constructive possession of the
20 ODV positive cocaine because the State may present circumstantial evidence from which
21 “...the jury may draw reasonable inferences.” *Kinsey v. Sheriff*, 87 Nev. 361, 363, 487 P.2d
22 340, 341 (1971).

23 Second Defendant’s argument ostensibly challenging the insubstantiality of evidence
24 to support constructive possession is premised on authorities that are unanalogous to the instant
25 case. *Glipsey* and *Miller v. Sheriff, Carson City* involve the disputed possession of narcotics
26 recovered from a searched area that was designed to be and provably was accessible to multiple
27 parties. 95 Nev. 255, 592 P.2d 952 (1979). The State’s introduction of official documents in
28 Defendant Najera’s name was sufficient to allow for a reasonable inference that Defendant

1 Najera was the sole occupant of the residence. A sole occupant necessarily bears ownership of
2 and/or dominion over his residence. A defendant's sole ownership of or dominion over a
3 searched premises establishes a rebuttable presumption of the defendant's constructive
4 possession of contraband recovered from said premises. *United States v. Kincaide*, 145 F.3d
5 771, 782 (6th Cir. 1998); *United States v. Molina*, 443 F.3d 824, 829 (11th Cir. 2006); *United*
6 *States v. Bustamante*, 493 F.3d 879, 889 (7th Cir. 2007), citing *United States v. Kitchen*, 57
7 F.3d 516, 521 (7th Cir. 1995); *United States v. Brannon*, 218 F. App'x 533, 536 (7th Cir. 2007);
8 *United States v. Wright*, 739 F.3d 1160, 1168 (8th Cir. 2014). The proper forum to rebut this
9 presumption is a trial not a writ of *habeas corpus*.

10 Defendant Najera also claims that cocaine is a Schedule II offense. Defendant is
11 incorrect. Under NRS 453.510 (1) and NRS 453.510 (8), free base cocaine (powder and crack)
12 is a Schedule I controlled substance. Defendant is incorrect. Finally, Defendant's petition
13 takes issue with the State's failure to disprove the possibility that Defendant Najera shared his
14 residence with other persons. The State presented its theory of possession to the Grand Jury.
15 The burden of refuting the State's theory or proving alternate theories of possession rests with
16 the defense at trial because "the State need not negate all inferences which might explain away
17 the criminal conduct but need only present enough evidence to support a reasonable inference
18 that the accused committed the offense." *Kinsey* at 341; *Sheriff v. Milton*, 109 Nev. 412, 414,
19 851 P.2d 417, 418 (1993). Defendant's pre-trial petition constitutes a thinly veiled attempt to
20 ask the Court to preliminarily adjudicate factual disputes that may arise during trial. Such a
21 request is contrary to the provinces of a Grand Jury and a petition for writ of *habeas corpus*.
22 Defendant may appeal a conviction under the relevant statutes if Defendant continues to
23 contend that his conduct does not contravene the relevant statutes' provisions. Presently there
24 is no basis for the Defendant's Petition because the State presented the slight or marginal
25 evidence required to sustain every charge contained in the Grand Jury indictment.

26 //

27 //

28 //

1 **CONCLUSION**

2 Based upon the foregoing, the State respectfully requests that Defendant's petition be
3 denied and the writ discharged.

4 DATED this 3rd day of November, 2021.

5 Respectfully submitted,

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

9 BY /s/ *Tina Talim*
10 TINA TALIM
11 Chief Deputy District Attorney
12 Nevada Bar #009286

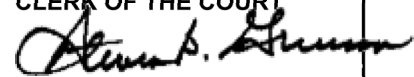
13 **CERTIFICATE OF ELECTRONIC TRANSMISSION**

14 I hereby certify that service of the above and foregoing was made this 3rd day of
15 November, 2021, by electronic transmission to:

16 OSVALDO FUMO
17 ozzie@fumolaw.com

18 BY /s/ *E. Del Padre*
19 E. DEL PADRE
20 Secretary for the District Attorney's Office
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24
25
26
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28 TT/ed/HIDTA



1 **IND**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 TINA TALIM
6 Chief Deputy District Attorney
7 Nevada Bar #09286
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10
11 Plaintiff,

CASE NO: C-21-356361-1

11 -vs-

DEPT NO: XVII

12 **JESUS NAJERA, #5339086**
13 EDUARDO FABIAN GARCIA #1489589,
14 NORBERTO LEON MADRIGAL
15 #1950096

INDICTMENT

15 Defendant(s).

16 STATE OF NEVADA }
17 COUNTY OF CLARK } ss.

18 The Defendant(s) above named, JESUS NAJERA, EDUARDO FABIAN GARCIA,
19 NORBERTO LEON MADRIGAL, accused by the Clark County Grand Jury of the crime(s)
20 of SALE OF CONTROLLED SUBSTANCE (Category B Felony - NRS 453.321 - NOC
21 51090), TRAFFICKING IN CONTROLLED SUBSTANCE (Category C Felony - NRS
22 453.339.1a - NOC 60433), CONSPIRACY TO VIOLATE UNIFORM CONTROLLED
23 SUBSTANCES ACT (Category C Felony - NRS 453.401 - NOC 51306), UNLAWFUL
24 PRODUCTION OR PROCESSING OF MARIJUANA (Category E Felony - NRS 453.3393
25 - NOC 58403) and POSSESSION OF CONTROLLED SUBSTANCE (Category E Felony -
26 NRS 453.336 - NOC 51127), committed at and within the County of Clark, State of Nevada,
27 on or between April 8, 2020 and April 30, 2020, as follows:

28 //

1 COUNT 1 - SALE OF CONTROLLED SUBSTANCE

2 Defendant EDUARDO FABIAN GARCIA did on or about April 8, 2020, willfully,
3 unlawfully, and feloniously sell to LVMPD C.I., a controlled substance, to wit: Marijuana.

4 COUNT 2 - SALE OF CONTROLLED SUBSTANCE

5 Defendant EDUARDO FABIAN GARCIA did on or about April 13, 2020, willfully,
6 unlawfully, and feloniously sell to LVMPD C.I., a controlled substance, to wit: Marijuana.

7 COUNT 3 - SALE OF CONTROLLED SUBSTANCE

8 Defendant EDUARDO FABIAN GARCIA did on or about April 22, 2020, willfully,
9 unlawfully, and feloniously sell to LVMPD C.I., a controlled substance, to wit: Marijuana.

10 COUNT 4 - TRAFFICKING IN CONTROLLED SUBSTANCE

11 Defendants JESUS NAJERA, EDUARDO FABIAN GARCIA and NORBERTO
12 LEON MADRIGAL did on or about April 30, 2020 willfully, unlawfully, feloniously, and
13 knowingly or intentionally possess, either actually or constructively, 50 pounds or more but
14 less than 1,000 pounds, to wit: approximately 81.23 pounds of Marijuana, or any mixture of
15 substance consisting of approximately 81.23 pounds containing the controlled substance
16 Marijuana, the Defendant(s) being criminally liable under one or more of the following
17 principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by
18 aiding or abetting in the commission of this crime, with the intent that this crime be committed,
19 by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the
20 other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the
21 intent that this crime be committed, Defendants, JESUS NAJERA and/or EDUARDO
22 FABIAN GARCIA and/or NORBERTO LEON MADRIGAL aiding or abetting and/or
23 conspiring by Defendants, JESUS NAJERA and/or EDUARDO FABIAN GARCIA and/or
24 acting in concert throughout.

25 COUNT 5 - TRAFFICKING IN CONTROLLED SUBSTANCE

26 Defendants JESUS NAJERA, EDUARDO FABIAN GARCIA and NORBERTO
27 LEON MADRIGAL did on or about April 30, 2020, willfully, unlawfully, feloniously and
28 knowingly or intentionally possess, either actually or constructively, 1 pound or more, but less

1 than 20 pounds, to wit: 2.25 pound(s) of Tetrahydrocannabinol, or any mixture of substance
2 consisting of approximately 2.25 pound(s) containing the controlled substance
3 Tetrahydrocannabinol, the Defendant(s) being criminally liable under one or more of the
4 following principles of criminal liability, to wit: (1) by directly committing this crime; and/or
5 (2) by aiding or abetting in the commission of this crime, with the intent that this crime be
6 committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise
7 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this
8 crime, with the intent that this crime be committed, Defendants, JESUS NAJERA and/or
9 EDUARDO FABIAN GARCIA and/or NORBERTO LEON MADRIGAL aiding or abetting
10 and/or conspiring by Defendants, JESUS NAJERA and/or EDUARDO FABIAN GARCIA
11 and/or NORBERTO LEON MADRIGAL acting in concert throughout.

12 COUNT 6 - CONSPIRACY TO VIOLATE UNIFORM CONTROLLED SUBSTANCES
13 ACT

14 Defendants JESUS NAJERA, EDUARDO FABIAN GARCIA and NORBERTO
15 LEON MADRIGAL did on or about April 30, 2020 willfully, unlawfully, and feloniously
16 conspire with each other to violate Uniform Controlled Substances Act, and in furtherance of
17 said conspiracy, the defendants did commit the acts as set forth in Count 4 and 5, said acts
18 being incorporated by this reference as though fully set forth herein.

19 COUNT 7 - UNLAWFUL PRODUCTION OR PROCESSING OF MARIJUANA

20 Defendant EDUARDO FABIAN GARCIA did on or about April 30, 2020, willfully,
21 unlawfully, feloniously, and knowingly or intentionally manufacture, grow, plant, cultivate,
22 harvest, dry, propagate and/or process Marijuana, involving more than 12 plants.

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1 COUNT 8 - POSSESSION OF CONTROLLED SUBSTANCE

2 Defendant JESUS NAJERA did on or about April 30, 2020, willfully, unlawfully,
3 feloniously, and knowingly or intentionally possess a controlled substance, to wit: Cocaine.


4
5 DATED this 26th day of May, 2021.

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

9 BY

10 
11 TINA TALIM
12 Chief Deputy District Attorney
13 Nevada Bar #09286

14 ENDORSEMENT: A True Bill

15
16 
17 Foreperson, Clark County Grand Jury

Names of Witnesses and testifying before the Grand Jury:

Additional Witnesses known to the District Attorney at time of filing the Indictment:

CUSTODIAN OF RECORDS - CCDC

CUSTODIAN OF RECORDS - LVMPD COMMUNICATIONS

CUSTODIAN OF RECORDS - LVMPD RECORDS

19BGJ223A-C/20F08565A-B; 20CR002883/mcb-GJ
LVMPD EV# 200200027347
(TK7)

Names of Witnesses and testifying before the Grand Jury:

HEFNER, AARON – LVMPD

MORRIS, ERICK - LVMPD

SNODGRASS, THEODORE - LVMPD

SOTO, JOSE – C/O CCDA, 200 Lewis Avenue, LV, NV 89101

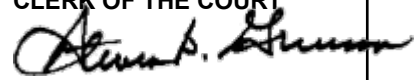
Additional Witnesses known to the District Attorney at time of filing the Indictment:

CUSTODIAN OF RECORDS - CCDC

CUSTODIAN OF RECORDS - LVMPD COMMUNICATIONS

CUSTODIAN OF RECORDS - LVMPD RECORDS

19BGJ223A-C/20F08565A-B; 20CR002883/mcb-GJ
LVMPD EV# 200200027347
(TK7)



1 **RET**
STEVEN B. WOLFSON
2 Clark County District Attorney
Nevada Bar #001565
3 TINA TALIM
Chief Deputy District Attorney
4 Nevada Bar #009286
200 Lewis Avenue
5 Las Vegas, Nevada 89155-2212
(702) 671-2500
6 State of Nevada

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 In the Matter of Application,
10 of
11 NOBERTO LEON MADRIGAL,
12 #1950096
13 for a Writ of Habeas Corpus.

CASE NO: C-21-356361-3
DEPT NO: XIX

14 **STATE'S SUPPLEMENT TO RETURN TO PETITION FOR WRIT OF**
15 **HABEAS CORPUS AND MOTION FOR AN ORDER GRANTING**
16 **DEFENDANT'S PETITION OF WRIT OF HABEAS CORPUS AND**
MOTION TO EXTEND TIME TO FILE STATE'S RETURN

17 DATE OF HEARING: 11/16/2021
18 TIME OF HEARING: 12:00 P.M.

19 On October 28, 2021, Defendant Madrigal filed his Motion for an Order Granting
20 Defendant's Petition of Writ of Habeas Corpus due to State's failure to timely respond to his
21 Petition. EDCR Rule 3.20 (c), does not, like defendant suggests, mandate the granting of his
22 underlying Writ. Instead, the rule states, "Failure of the opposing party to serve and file written
23 opposition may be construed as an admission that the motion is meritorious and a consent to
24 granting of the same." Granting the defendant's Writ is not mandatory. In the instant case, the
25 State admits it failed to file its Return by the date set. However, the State submit to this Court
26 that it was not due to a willful or malicious intent. Rather, it was an oversight by the underlying
27 prosecutor. The hearing on the Writ is set for November 19, 2021. The State filed its Return
28 nearly two weeks before the hearing date, and 1 day after receiving defendant's Motion. The

1 State's Return was prepared and completed, yet not filed due to an oversight, until November
2 3, 2021. The initial briefing schedule was continued out by stipulation based on defendant
3 Najera's request. Defendant cannot argue he is faced with any prejudice based on the late
4 filing. As a result, the State asks this Court to extend the time to file State's Return to
5 November 3, 2021 and for arguments to go forward on the merits on the underlying Writ and
6 Return. The State makes this motion in good faith and not for the purpose of delay.

7 DATED this 4th day of November, 2021.

8 Respectfully submitted,

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

11 BY /s/ Tina Talim
12 TINA TALIM
13 Chief Deputy District Attorney
14 Nevada Bar #009286

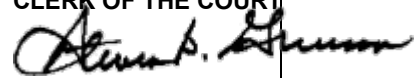
15 CERTIFICATE OF ELECTRONIC TRANSMISSION

16 I hereby certify that service of the above and foregoing was made this 4th day of
17 November, 2021, by electronic transmission to:

18 OSVALDO FUMO
19 ozzie@fumolaw.com

20 BY /s/ E. Del Padre
21 E. DEL PADRE
22 Secretary for the District Attorney's Office
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25
26
27

28 TT/ed/HIDTA



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

8 STATE OF NEVADA,) CASE NO.: C-21-356361-1
9 Plaintiff,) C-21-356361-2
10 vs.) C-21-356361-3
11 JESUS NAJERA, EDUARADO) DEPT. XIX
12 FABIAN GARCIA and)
13 NORBERTO LEON MADRIGAL,)
Defendant.)

14
15 BEFORE THE HONORABLE J. CHARLES THOMPSON, DISTRICT COURT JUDGE
16 TUESDAY, NOVEMBER 23, 2021

17 **RECORDER'S TRANSCRIPT OF HEARING RE:**
18 **ALL PENDING MOTIONS**

19 APPEARANCES ON PAGE 2:
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25 RECORDED BY: BRITTANY AMOROSO, COURT RECORDER

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APPEARANCES:

For the Plaintiff:	TINA S. TALIM, ESQ. Chief Deputy District Attorney
For the Defendant Najera:	MICHAEL D. PARIENTE, ESQ. (Via Bluejeans)
For the Defendant Garcia:	MICHAEL V. CASTILLO, ESQ. (Via Bluejeans)
For the Defendant Madrigal:	THOMAS F. PITARO, ESQ. OSVALDO E. FUMO, ESQ. (Via Bluejeans)

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Las Vegas, Nevada; Tuesday, November 23, 2021

[Hearing commenced at 12:48 p.m.]

THE COURT CLERK: 16 and 17. So I have C-21-356361-3, State of Nevada versus Norberto Madrigal, and then I have C-353 -- 356361, State of Nevada versus Eduardo Garcia, and I have C356361, State of Nevada versus Jesus Najera.

MS. TALIM: Good afternoon, Your Honor. Tina Talim for the State.

MR. PARIENTE: Good afternoon, Your Honor. Michael Pariente for Jesus Najera. He is present.

MR. CASTILLO: Good afternoon, Your Honor. Michael Castillo, 11531, for Mr. Becker's office on behalf of Eduardo Garcia who I see present via Bluejeans as well.

MS. TALIM: Your Honor, I believe Mr. Pitaro and Mr. Fumo are present representing Mr. Madrigal.

MR. PARIENTE: That's correct. They're online.

THE COURT RECORDER: Mr. Pitaro, it looks like you have your microphone muted.

MR. PITARO: Am I unmuted now?

THE COURT RECORDER: There you go.

MR. PARIENTE: Yes.

THE COURT: All right.

MR. PITARO: Okay. Thank you.

THE COURT: It's my understanding that the petitions on the

1 writ are going to be continued and that I was only to decide today the
2 motion to strike.

3 MS. TALIM: That's my understanding as well, Your Honor.

4 MR. PARIENTE: That is our understanding for Mr. Najera,
5 Your Honor.

6 MR. PITARO: And as to Madrigal.

7 MR. CASTILLO: And as to Mr. Garcia as well.

8 THE COURT: Well, I can tell you that it's Judge Eller's
9 position and which I'm going to adopt that excusable neglect in filing the
10 motion late if there's no prejudice to the Defendants would justify her
11 filing those late, so I'm going to deny the motion to strike.

12 MR. PITARO: Well, Your Honor, may I be heard? This is
13 Tom Pitaro for. Mr. Madrigal.

14 THE COURT: I can't hear you.

15 MR. PITARO: Hold on.

16 THE COURT: I don't know what's wrong with your
17 microphone but I cannot hear you, sir.

18 MR. PITARO: Let me see what I can -- Did it work now?

19 THE COURT: No -- I'm going to deny the motion strike.

20 MR. PARIENTE: Your Honor --

21 THE COURT: Now we need to reset the writ to the --
22 subsequent time?

23 MS. TALIM: Yes, Your Honor. Please.

24 MR. PARIENTE: Your Honor, I'm sorry. Your Honor, Michael
25 Pariente for Mr. Najera. I, too, would like to make a record because I

1 am going to take this on a writ to the Nevada Supreme Court.

2 THE COURT: You can do that.

3 MR. PARIENTE: The State -- sorry, Your Honor.

4 THE COURT: -- but we need to reset the writs.

5 MR. PARIENTE: I know. I understand, Your Honor. We're
6 asking to do that. If we do, we all want to make a record, Mr. Pitaro and
7 I specifically. May we be heard?

8 THE COURT: Certainly.

9 MR. PARIENTE: Your Honor, the State did not comply with
10 EDCR 2.25. The State was six weeks late. Also, the State filed their
11 opposition -- their return, after our reply date was due.

12 The State had to comply with EDCR 2.25 because they --
13 because their request was made after the expiration of their deadline. In
14 fact, EDCR 2.25(a) says a request for extension made after the
15 expiration of the specified period, shall not be granted unless the moving
16 party, attorney, or other person demonstrates that the failure to act was
17 the result of excusable neglect. They didn't even comply with just filing
18 a motion to ask for extending time. All they did was file the return.

19 And secondly, this cannot be considered excusable neglect.
20 They filed their return six weeks after it was due. We gave the State
21 plenty of time to file a return. They had 60 days and we were to have 30
22 days to do a reply. They're 44 days late on filing their return.

23 I believe that because they haven't even tried to comply to
24 with EDCR 2.25, that this is not -- this -- that this motion should be
25 granted. Additionally, they have not shown excusable neglect.

1 MR. PITARO: Your Honor, can you hear me now? This is
2 Tom Pitaro.

3 THE COURT: Not really.

4 MR. PITARO: I don't know why, Judge, but I will yell. How's
5 that? I get closer.

6 Your Honor, [indiscernible] want to make a record.

7 THE COURT: Can you hear?

8 MR. PITARO: Your Honor, of course this Court making a
9 ruling based on what another judge said, that would give us the
10 opportunity to address what the other judge [indiscernible] is. So on that
11 -- that creates a problem on the Court's ruling and the [indiscernible].

12 But, let me just say this, as far as excusable neglect on this
13 case, we had filed, all of us, the Defendants had filed a timely petition for
14 writ of habeas corpus. After the time had expired for the State to
15 respond under the local rule which we cited, the State requested
16 additional time to file their return.

17 All the Defendants gave the State enough time to file. As a
18 matter of fact as far as excusable neglect, it was in fact the State of
19 Nevada that prepared the order for the judge to give them the additional
20 time, which then gave them -- us additional time. Which then set down
21 the time for the writ to be heard.

22 So, what happens in this case is, is that even though they
23 prepared the order, even though they asked for the time, and they set
24 the time, what happened here was they didn't respond. Now the
25 problem with that is, well, they didn't respond. Maybe they forgot. Well,

1 if we've submitted an affidavit to respond, Mr. Fumo was going to be
2 here to do it, but he had to go to another court. Our office called the
3 District Attorney's office twice, after they blew the date of the stipulation
4 and order of 9/20, September 20th. We called them and on or about
5 October 20th and October 28th, asking -- and this was Ms. Talim --
6 asking is she going to respond and if she -- and the Grand Jury exhibit?
7 We never got their reply, period, on that. It was only after that that we --
8 we in fact filed my motion to see what would've happened when I did it.

9 So what we have is our timely writ, because we would have
10 been knocked off because of the 41 days, which is the mandatory
11 against the Defendant. Then we have the State after blowing the time
12 asking for a continuance, which we gave. No problem, Judge, we gave.
13 They set the time frame up with what the times were. They prepared the
14 order -- the stipulation, we signed it and submitted it. It was submitted to
15 the Court. The Court signed it and set up the dates and I put those in
16 the exhibits in my motion on this.

17 And what then happens is, that date comes and goes. And,
18 you know, rather than -- then we called Mr. Fumo -- called twice, not
19 once but twice and never get a response back. The only response we
20 get back is after I filed my motion to do this. And then the Court -- and
21 then State says, oh, well can we file a writ?

22 So, I guess our problem is this, Judge. It really is this. The
23 Court's [indiscernible] there's no -- no harm, of course there's harm.
24 Because our time -- our time for this writ was way back and then after
25 we filed in -- in July. We would have had a hearing sometime in the end

1 of July if we didn't agree to these things that the State says.

2 There is in fact, the prejudice there. Then, interestingly, the
3 writ after that on this case is supposed to be November 19th. Obviously,
4 they never -- they didn't file their return until November 3rd, which wasn't
5 even if Mr. Pariente filed that within the 30 day. So that date has come
6 and gone and I think that this is now, in fact the 23rd.

7 Your Honor, these rules, these Eighth Judicial District Court
8 rules as well as the local rules, are in fact there. We've cited case law
9 showing you need excusable neglect, both Mr. Pariente and myself did.
10 And there is no excusable neglect when you have a case like this.
11 Unless you get -- what I know, we can always reset something when it's
12 the Defendant. If I don't file a motion, if I don't respond, well you know,
13 all of a sudden these rules become favorable. It is against me. Just --
14 what would just happen -- the case like before this? The State didn't
15 respond to it and the Court just dismissed it.

16 Here, we have a whole history of trying to get them to respond
17 and they didn't. And once we do it, once we file the motion we did, and
18 then all of a sudden the Eighth Judicial District Court rules go out the
19 window as well as the District Court rules were out the window. But that
20 wasn't the case. It should be -- our motion should be granted as this.

21 And I would ask the Court -- before this Court, you as an
22 individual -- you are the individual, make a ruling based on some
23 [indiscernible] not in front of Judge Eller, that you read the points and
24 authorities that Mr. Pariente filed. They are compelling. Read the points
25 that I filed. I think they're compelling. And then the Court can in fact,

1 make a decision because quite recently, just blowing us off quite through
2 that by saying oh, no harm, no foul to you guys, because the State didn't
3 follow the rules just doesn't seem to cut it, Judge. Not in this case it
4 doesn't.

5 But Mr. Pariente, myself, and Mr. Castillo, each and every one
6 us bent over backwards to accommodate the State and this is what we
7 get in return. You know, close your eyes, what do you see? Nothing.
8 That's we get and now we get an adverse ruling in spite of the case law
9 and in spite of the District Court rules that are supposed to apply to both
10 sides in cases, Your Honor. So, that's why I'm asking to reconsider. If
11 you'll just read the stuff before you make a ruling from the bench.

12 MS. TALIM: And Your Honor, if I may make a brief record,
13 because not once, not twice, not three times, but now four times, Mr.
14 Pitaro has said that the time for the -- the schedule for the State to
15 respond was extended based on my request. That's absolutely not true.
16 My return was prepared. It was not filed because Mr. Najera's counsel
17 contacted me and said, hey these are complicated issues. Let's set this
18 case out.

19 MR. PARIENTE: That's not true.

20 MS. TALIM: That's absolutely true.

21 MR. PARIENTE: And Your Honor, if I --

22 MS. TALIM: And that's happened.

23 THE COURT: Well wait a minute, I can only hear one of you
24 at a time.

25 MS. TALIM: Mr. Pariente contacted me and said there are

1 complicated issues. Let's -- give this a little bit more time. So you have
2 more time to file your return, I have more time to file my reply, and then
3 we'll have the hearing at a later date.

4 I would point out, Your Honor, the Court has discretion in this
5 case whether to deny or grant the Defendant's motion to strike. I'm
6 asking the Court to exercise the same discretion that Judge Eller would
7 exercise and to rule that, really in favor of allowing the substantive
8 arguments to proceed. We're not done here. There are still substantive
9 arguments to be had.

10 There is no prejudice to the Defendant. And I would point out
11 again it's because this was a professional courtesy that I extended to
12 Counsel by continuing it. Shame on me because my writ was prepared.
13 And the Court knows my writ was prepared because the moment I got
14 Mr. Fumo's motion to grant his petition, that next day my motion was --
15 my return was filed. My return is lengthy. There's no way I would have
16 had time overnight to draft that pleading.

17 So, this was not calendared. The State did prepare the order,
18 again as a courtesy as the State generally does when we set a hearing
19 schedule. We did prepare the order. It wasn't on my calendar. It didn't
20 appear on my calendar and because it wasn't on my calendar, there was
21 neglect in me responding timely. But it was not intentional, it was not
22 willful, it was certainly a malicious neglect, it was an excusable neglect.
23 It simply did not make my calendar and I failed to respond in time.

24 I would note also, Your Honor, the hearing was originally set
25 on the writ argument for November 19th. It's November 23rd. We

1 certainly could have had that argument today. We're 4 days out from
2 when the hearing was initially set. So again, that goes back to there is
3 no prejudice. The Defendants, none of them, none of them are barred
4 from making the substantive arguments that they raised in their petition -
5 - in their writ argument. They are not barred from making those same
6 arguments in front of the Court on the substantive level. They've never
7 been in custody. Certainly, nothing from a custodial standpoint has
8 changed in so far as that there just is no prejudice to the defense.

9 So I am asking that the Court stand by it's ruling that -- and
10 find that this was an excusable neglect. And I bet every attorney in this
11 courtroom has had this happen to them during the course of their career
12 where they have just blown a deadline and that's all this was, Your
13 Honor. So it is an excusable neglect. I'm going to ask that the Court
14 stand by it's ruling, deny the motion to strike, and set a date where we
15 can all argue substantively on the petition and the arguments against.

16 MR. PARIENTE: Your Honor, I need to respond if I may.

17 THE COURT: Yes.

18 MR. PARIENTE: Your Honor, Michael Pariente again for Mr.
19 Najera. The State is acting like they gave us some sort of courtesy. We
20 filed -- Mr. Pitaro and myself, filed our writs of habeas corpus timely
21 within the 21 days. In fact, I filed mine on July the 4th of this year.

22 What I did was at the first hearing, I contacted the State and I
23 said these are complicated issues. I as a courtesy said you should have
24 60 days to do an opposition and we're going to ask for 30 days to do a
25 reply. As the Court knows from many years of being on the bench,

1 typically what happens is we file a writ of habeas corpus. The Court will
2 then set 30 days for the State to do their return, 2 weeks for us to do a
3 reply. There are many complicated issues here, very technical issues.

4 So on the record in front of Judge -- it was Judge Villani, I
5 said, Your Honor, I'd like to go ahead and just give the State 60 days
6 just to make sure that they have enough time because these are
7 complicated issues.

8 I as a courtesy requested that and that was agreed to. The
9 State drafted the order, so I asked for them to have 60 days. So, what
10 Ms. Talim is trying to suggest is that she did me a favor. I already filed
11 my writ. I was doing them a favor by asking the Court to agree to 60
12 days and they couldn't even comply with that. So not only do we have
13 the 60 days that were in there, we had the 30 days for us to do a reply.
14 That's -- we're prejudiced because that date has come and gone. They
15 didn't even try to comply with EDCR 2.25. They must file a motion
16 requesting the extension of time they granted and there has to be a
17 showing of excusable neglect.

18 So, if the Court is not inclined to reconsider it's ruling, I'm
19 asking the Court to at least hold off on ruling on this rather than just
20 granting it. I ask the Court to just hold off and let Judge Eller address
21 this when we come back.

22 MS. TALIM: And Your Honor, I did file a supplement --

23 MR. PITARO: And Your Honor --

24 MR. TALIM: -- on November 4th in which I did outline
25 procedurally what happened in this case, outlining my --

1 THE COURT: I saw the supplement.

2 MS. TALIM: Thank you, Judge. I just want to make sure that
3 Mr. Pariente is aware that that was filed as well as the request to extend
4 the time to November 3rd --

5 THE COURT: Well --

6 MS. TALIM: -- which would have been the day before that
7 that was in there.

8 MR. PITARO: Your Honor, I do want to respond also. This is
9 Tom Pitaro on behalf of Mr. Madrigal.

10 It's this, we filed our writ on July 6th. According to the Eighth
11 Judicial District Court rules, the State has 10 days. That would have
12 been to July 16th. The stipulation -- they had -- it wasn't filed at that time
13 but we agreed to give them and we went along with the stipulation. After
14 we went along with the stipulation, that wasn't complied with. And Ms.
15 Talim, I think -- I'm sure she would not disagree because I believe she
16 confirmed it with Ozzy Fumo and that is that she did get those
17 messages from Ozzy. This was before we even filed it. Before I drafted
18 this, I asked Ozzy that -- did you in fact -- I asked him how did he do?
19 He told me that he had done it twice and that there had been no
20 response.

21 So the idea that that's excusable neglect is -- that's a
22 [indiscernible] from the 21 days from filing the writ under the 22. This
23 Court had no problem knocking it up. If I don't file a writ in response or
24 coming in, you know, when I'm giving those courtesies and well, you
25 have no harm, no foul, quite truthfully. You have these rules in effect.

1 We followed up, we did everything. We gave not one courtesy, not two
2 courtesies, three courtesies, four courtesies on this with the
3 conversations with Mr. Fumo and nothing. And it's not until I filed this
4 motion that all of a sudden, it's probably not -- there. We expect if the
5 rules apply to us they apply to everyone, Judge. If Your Honor applies it
6 to us, it applies to everyone.

7 And we sited case law, Mr. Pariente sited case law, we sited
8 the rules, I even sited the code of ethics, the ethics of attorneys, not that
9 I thought that she was -- or that, Talim was unethical, I don't. But it says
10 in there if you're not going to file something, then you have to put in the
11 record the reason why that I don't agree with the order.

12 But everything that you could possibly read through and that
13 they blow off that there are no harm, no foul. They totally ignore us,
14 your rules, the District Court rules, several state of the case law and
15 maybe that's why we're a bit upset over this.

16 My answer was -- by the State was due July 16th not
17 November 3rd. It wasn't due -- it was October the 3rd -- it was due 2
18 months before. We gave them the courtesies and this was the response
19 we get. But that's my record on it, Your Honor.

20 And I do think that if Your Honor will allow it, you should read
21 the points and authorities before you rule, because according to the
22 case law, you have to make a specific finding. And I don't know how
23 you can make a finding over [indiscernible] what we've said and put it on
24 motions and reading the case law. And Judge Eller, this was -- I was
25 supposed to be arguing this on the 19th and then I accept the 19th. That

1 gets bumped over to whatever today is -- the 23rd. You know, my
2 hearing should have been in July. Now I'm in November. That's all.

3 And what the case shows us -- what the facts show, and that's
4 why we filed this motion. This is one of the two times I've ever filed a
5 motion like this. But this is so egregious that we had to do it to protect
6 our client. And that's what these rules are out there to make the
7 administration of justice run smooth but it goes both ways. There's not a
8 one way street; there's a two-way street. And we're just asking the
9 State to get on the other side or get in the right side of the street they're
10 after. We're on our side of it; right? And they went on theirs. Thank
11 you.

12 THE COURT: Well, I find no prejudice --

13 UNIDENTIFIED SPEAKER: Hello, Your Honor.

14 THE COURT: -- to the Defendant. I'm not -- I'm going to stick
15 with my ruling. The motion to strikes are denied.

16 MS. TALIM: Thank you, Your Honor.

17 THE COURT: I'd like the State to prepare an appropriate
18 order. We need to reset the writ. When do you want it?

19 MS. TALIM: Whenever --

20 MR. PARIENTE: Well, Your Honor, it's --

21 MS. TALIM: I'll defer to Defense, Your Honor.

22 MR. PARIENTE: Well, Your Honor, first of all, I don't want in
23 any way be waiving my objections. So, I would prefer that we just -- I'd
24 like the Court to just status check this for -- till after the New Year,
25 because I don't want to ask for time for a new reply date, because then

1 I'll appear that I'm waiving any defenses. So, I'm just going to ask that
2 we continue this for a status check to see where we are for after the
3 New Year.

4 In the meantime, I am going to order a transcript to today's
5 proceedings. I'm going to immediately file a writ of mandamus. As soon
6 as I get the transcript, I'm going to file this with the Nevada Supreme
7 Court and I believe Mr. Pitaro said he will join in that. So, I would like to
8 just pass this for 60 days so I can proceed forthwith on those efforts.

9 THE COURT: You've got a trial date set in June.

10 MS. TALIM: Your Honor, I prefer to just move forward with
11 the argument. It sounds like --

12 THE COURT: Well, why don't we set -- why don't we set it for
13 argument in January?

14 MS. TALIM: Perfect.

15 MR. PITARO: Except, Your Honor, what you're missing is
16 that I had an opportunity to reply. It has never been set. If we get 30
17 days to reply, we haven't even come to the 30 days yet and we're talking
18 as if we -- we've already responded to a writ.

19 THE COURT: Well, you want --

20 MR. PITARO: We haven't because they didn't file in time
21 when I filed a motion and we ask --

22 THE COURT: Why don't we have you file your -- your reply
23 by January 1; would that be good?

24 MR. PITARO: Well -- I -- if whatever the Court says, but we're
25 not waiving any right to [indiscernible].

1 THE COURT: We'll have you file it by January 1. We'll set
2 this for argument to the latter part of January.

3 THE COURT CLERK: January --

4 MR. CASTILLO: And Your Honor --

5 THE COURT CLERK: -- 18th at 12 noon.

6 THE COURT: That'll be the order.

7 MR. CASTILLO: And Your Honor, on behalf of Eduardo
8 Fabian Garcia, I just want to submit based upon the arguments
9 submitted on -- this afternoon. And that day was January 1st?

10 THE COURT: January 1st to file -- make it January 2 to file
11 the reply.

12 MS. TALIM: Thank you, Your Honor.

13 THE COURT CLERK: And January 18th at noon for the writ --

14 MS. TALIM: Thank you.

15 THE COURT CLERK: -- to be heard.

16 MR. PARIENTE: Thank you, Your Honor.

17 MR. CASTILLO: Thank you.

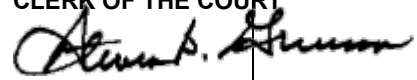
18 [Hearing concluded at 1:12 p.m.]

19 *****

20
21 ATTEST: I do hereby certify that I have truly and correctly transcribed
22 the audio/video proceedings in the above-entitled case to the best of my
23 ability.

24 

25 Brittany Amoroso
Court Recorder/Transcriber



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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	
Plaintiff,)	
)	Case No.: C-21-356361-3
vs.)	Dept. No.: 19
)	
NORBERTO MADRIGAL,)	
)	
Defendant,)	
)	
)	

DECLARATION OF OSVALDO E. FUMO , ESQ.

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

OSVALDO E. FUMO, ESQ., swears under penalty of perjury that the following assertions are true of his own personal knowledge:

1. I am an attorney duly licensed to practice law in the State of Nevada.
2. Declarant is the attorney of record for the Defendant, NORBERTO MADRIGAL.
3. That my office filed the petition for habeas corpus on July 6, 2021.
4. That the State's return was due on September 20, 2021.
5. That after not receiving a return on that date, on or about October 20, 2021, I called the district attorney assigned to the case

1 6. That I left a voice message asking when the return would filed and for the exhibits
2 from the grand jury.

3 7. That on or about October 28, 2021, I contacted the district attorney again after not
4 receiving a response to ask about when the return would be filed.

5 8. Further declarant sayeth naught.

6 DATED this 22nd day of November 2021.

7
8 /s Osvaldo E. Fumo
9 OSVALDO E. FUMO, ESQ.

10
11
12
13 **CERTIFICATE OF SERVICE**

14 I certify that I am an employee of Pitaro & Fumo, Chtd. A copy of the foregoing
15 **AFFIDAVIT OF OSVALDO E. FUMO, ESQ.** was served upon counsel of record, via
16 Electronic Case Filing.

17 motions@clarkcountyda.com

18
19 DATED this 22nd day of November 2021.

20
21 /s/ Kristine Tacata
22 *An Employee of Pitaro & Fumo, Chtd.*
23
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25
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