

Electronically Filed
Jan 18 2022 10:27 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

NOAS
Rene L. Valladares
Federal Public Defender
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411 E. Bonneville Ave., Ste. 250
Las Vegas, NV 89101
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Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

Zane M. Floyd,

Plaintiff,

v.

Nevada Department Of Corrections;

Charles Daniels, Director, Nevada
Department of Corrections;

Ihsan Azzam, Chief Medical Officer of the
State of Nevada;

John Does 1-20, unknown employees or
agents of Nevada Department of
Corrections,

Defendants.

Case No. A-21-833086-C
Dept. No. XIV

Notice of Appeal

DEATH PENALTY CASE

1 Notice is hereby given that Plaintiff Zane Michael Floyd appeals to the
2 Nevada Supreme Court from the January 7, 2022, order granting Defendants'
3 motions to dismiss, as well as all orders, rulings, or decisions related thereto that
4 are made appealable thereby.

5 Written notice of entry of the order was filed on January 7, 2022.

6 Dated this 10th day of January, 2022.

7
8 Respectfully submitted,

9 Rene L. Valladares
Federal Public Defender

10 /s/ David Anthony
11 David Anthony
Assistant Federal Public Defender

12 /s/ Brad D. Levenson
13 Brad D. Levenson
Assistant Federal Public Defender

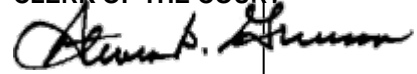
14 /s/ Jocelyn S. Murphy
15 Jocelyn S. Murphy
Assistant Federal Public Defender

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Steven G. Shevorski
Chief Litigation Counsel
sshevorski@ag.nv.gov

Crane Pomerantz, Esq.
Nadia Ahmed, Esq.
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ASTA

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(702) 388-5819 (Fax)

Attorneys for Plaintiff Zane M. Floyd

DISTRICT COURT
CLARK COUNTY, NEVADA

Zane Michael Floyd,

Plaintiff,

v.

Nevada Department of Corrections;
Charles Daniels, Director, Nevada
Department of Corrections; Ihsan Azzam,
Chief Medical Officer of The State of
Nevada; John Does 1-20, Unknown
Employees or Agents of Nevada
Departments of Corrections

Defendants.

Case No. A-21-833086-C

Dept. No. XIV

Case Appeal Statement

DEATH PENALTY CASE

1 **CASE APPEAL STATEMENT**

2 1. Name of petitioner filing this case appeal statement: Zane Michael
3 Floyd.

4 2. Identify the judge issuing the decision, judgment, or order appealed
5 from: The Honorable Adriana Escobar of the Eighth Judicial District Court.

6 3. Identify each appellant and the name and address of counsel for each
7 appellant:

8 Appellant:

9 Zane Michael Floyd

10 Counsel for Appellant:

11 Rene L. Valladares
12 David Anthony
13 Brad D. Levenson
14 Jocelyn S. Murphy
Office of the Federal Public Defender
411 E. Bonneville, Ste. 250
Las Vegas, Nevada 89101

15 4. Identify each respondent and the name and address of counsel for each
16 respondent:

17 Defendants:

18 Nevada Department of Corrections
19 Charles Daniels, Director, Nevada Department of Corrections
Ihsan Azzam, Chief Medical Officer of the State of Nevada
20 John Does 1-20, unknown employees or agents of Nevada Department
of Corrections

Counsel for NDOC Defendants:

Aaron D. Ford
Attorney General
Steve Shevorski
Chief Litigation Counsel
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101

Counsel for Ishan Azzam

Crane Pomerantz, Esq.
Nadia Ahmed, Esq.
Clark Hill
cpomerantz@clarkhill.com
nahmed@clarkhill.com

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42: Not applicable.

6. Indicate whether appellant was represented by appointed or retained counsel in the district court: Appellant was represented by appointed counsel, the Office of the Federal Public Defender in the district court.

7. Indicate whether appellant was represented by appointed or retained counsel on appeal: Appellant is represented by appointed counsel, the Office of the Federal Public Defender on appeal.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave: Appellant was granted a fee waiver as listed on the Eighth Judicial Court Case Docket on April 16, 2021. The district court in Department 17, Case No. A-21-

1 832952-W, appointed the Federal Public Defender to represent Mr. Floyd on June 4,
2 2021. Mr. Floyd has been represented by appointed counsel for all of the
3 proceedings in his criminal case, Case No. 99C159897. Mr. Floyd was granted leave
4 to proceed *in forma pauperis* and the Federal Public Defender was appointed to
5 represent him on April 17, 2006, in federal habeas proceedings in *Floyd v. Baker*,
6 Case No. 2:06-cv-00471-RFB-DJA, Docket No. 6. The Federal Public Defender has
7 represented Mr. Floyd in all subsequent state and federal proceedings.

8 9. Indicate the date the proceeding commenced in the district court: on
9 April 16, 2021.

10 10. Provide a brief description of the nature of the action and result in the
11 district court, including the type of judgment or order being appealed and the relief
12 granted by the district court: On April 16, 2021, Mr. Floyd filed a Complaint for
13 Declaratory and Injunctive Relief, and a Plaintiff's Motion for Temporary
14 Restraining Order with Notice and Preliminary Injunction. On April 30, 2021,
15 NDOC Defendants filed their Opposition to Motion for Temporary Restraining
16 Order with Notice and Preliminary Injunction. Mr. Floyd filed his Reply to
17 Opposition to Motion for Temporary Restraining Order with Notice and Preliminary
18 Injunction on May 17, 2021. At a hearing on June 8, 2021, the court denied Mr.
19 Floyd's Motion for Temporary Restraining Order with Notice and Preliminary
20 Injunction. On June 17, 2021, the court filed an Order Denying Plaintiff's Motion for
21 Temporary Restraining Order with Notice and Preliminary Injunction.

1 On August 23, 2021, the NDOC defendants filed a Motion to Dismiss the
2 Complaint for Declaratory and Injunctive Relief. On October 7, 2021, Mr. Floyd
3 filed his Opposition to the Motion to Dismiss. That same day, Defendant Azzam
4 filed a motion to dismiss. On October 19, 2021, Mr. Floyd filed his Opposition to
5 Defendant Azzam's Motion to Dismiss.

6 On January 7, 2022, the district court entered its order granting the
7 defendant's motions to dismiss. Notice of entry of order was filed the same day.

8 11. Indicate whether the case has previously been the subject of an appeal
9 to or original writ proceeding in the Supreme Court or Court of Appeals, and if so,
10 the caption and docket number of the prior proceeding: This case has been the
11 subject of an appeal from the denial of Mr. Floyd's motion for preliminary injunction
12 in the Nevada Supreme Court in Case No. 83181. Briefing is still ongoing in that
13 appeal. However, NDOC argues in that case that the district court's dismissal of the
14 complaint moots the prior appeal from the denial of the preliminary injunction.

15 12. Indicate whether this appeal involves child custody or visitation: This
16 appeal does not involve child custody or visitation.

17 ///

18 ///

19 ///

1 13. If this is a civil case, indicate whether this appeal involves the
2 possibility of settlement: This appeal does not involve the possibility of settlement.

3 DATED this 10th day of January, 2022.

4 Respectfully submitted
5 Rene L. Valladares
6 Federal Public Defender

7 /s/ David Anthony
8 David Anthony
9 Assistant Federal Public Defender

10 /s/ Brad D. Levenson
11 Brad D. Levenson
12 Assistant Federal Public Defender

13 /s/ Jocelyn S. Murphy
14 Jocelyn S. Murphy
15 Assistant Federal Public Defender
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Steven G. Shevorski
Chief Litigation Counsel
sshevorski@ag.nv.gov

Crane Pomerantz, Esq.
Nadia Ahmed, Esq.
Clark Hill
cpomerantz@clarkhill.com
nahmed@clarkhill.com

7

CASE SUMMARY**CASE NO. A-21-833086-C****Zane Floyd, Plaintiff(s)****vs.****Nevada Department of Corrections, Defendant(s)**§
§
§
§
§
§Location: **Department 14**Judicial Officer: **Escobar, Adriana**Filed on: **04/16/2021**Cross-Reference Case **A833086**

Number:

Supreme Court No.: **83181****CASE INFORMATION****Statistical Closures**

01/07/2022 Motion to Dismiss by the Defendant(s)

Case Type: **Other Civil Matters**Case Status: **01/07/2022 Dismissed****DATE****CASE ASSIGNMENT****Current Case Assignment**

Case Number	A-21-833086-C
Court	Department 14
Date Assigned	04/16/2021
Judicial Officer	Escobar, Adriana

PARTY INFORMATION**Plaintiff****Floyd, Zane M***Lead Attorneys***Valladares, Rene L.***Retained*

702-388-6577(W)

Defendant**Azzam, Ihsan**

Removed: 01/07/2022

Dismissed

Daniels, Charles

Removed: 01/07/2022

Dismissed

Nevada Department of Corrections**DATE****EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

04/16/2021



Complaint

Filed By: Plaintiff Floyd, Zane M

[1] Complaint for Declaratory and Injunctive Relief

04/16/2021



Motion for Temporary Restraining Order

Filed By: Plaintiff Floyd, Zane M

[2] Plaintiff's Motion for Temporary Restraining Order with Notice and Preliminary Injunction

04/16/2021



Exhibits

Filed By: Plaintiff Floyd, Zane M

[3] EXHIBITS IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER WITH NOTICE AND PRELIMINARY INJUNCTION

04/19/2021



Clerk's Notice of Hearing

[4] Notice of Hearing

CASE SUMMARY

CASE NO. A-21-833086-C

04/30/2021	 Opposition Filed By: Defendant Nevada Department of Corrections <i>[5] Nevada Department of Correction s Opposition to Motion for Temporary Restraining Order with Notice and Preliminary Injunction</i>
05/07/2021	 Stipulation and Order Filed by: Plaintiff Floyd, Zane M <i>[6] Stipulation and Order</i>
05/17/2021	 Reply to Opposition Filed by: Plaintiff Floyd, Zane M <i>[7] Reply to Opposition to Motion for Temporary Restraining Order with Notice of Preliminary Injunction</i>
05/17/2021	 Exhibits Filed By: Plaintiff Floyd, Zane M <i>[8] Exhibits in Support of Reply to Opposition to Motion for Temporary Restraining Order with Notice of Preliminary Injunction</i>
06/10/2021	 Recorders Transcript of Hearing Party: Defendant Nevada Department of Corrections <i>[9] Recorder's Transcript of Hearing Re: Plaintiff's Motion for Temporary Restraining Order With Notice and Preliminary Injunction heard 6-8-21</i>
06/17/2021	 Order Denying Filed By: Defendant Nevada Department of Corrections <i>[10] Order Denying Plaintiff's Motion for Temprary Restraining Order with Notice and Preliminary Injunction</i>
06/17/2021	 Notice of Entry of Order Filed By: Defendant Nevada Department of Corrections <i>[11] Notice of Entry of Order</i>
07/02/2021	 Notice of Appeal Filed By: Plaintiff Floyd, Zane M <i>[12] Notice of Appeal</i>
07/02/2021	 Case Appeal Statement Filed By: Plaintiff Floyd, Zane M <i>[13] Case Appeal Statement</i>
07/30/2021	 Notice Filed By: Plaintiff Floyd, Zane M <i>[14] Notice of Lawsuit and Request to Waive Service of Summons Under Rule 4.1 of N.R.C.P. for Dr. Azzam</i>
07/30/2021	 Waiver Filed by: Plaintiff Floyd, Zane M <i>[15] Notice of Lawsuit and Request to Waive Service of Summons Under Rule 4.1 of N.R.C.P. for NDOC Defendants</i>
08/23/2021	 Motion to Dismiss Filed By: Defendant Nevada Department of Corrections; Defendant Daniels, Charles <i>[16] State of Nevada Ex Rel. its Department of Corrections and Charles Daniels' Motion to</i>

CASE SUMMARY

CASE NO. A-21-833086-C

Dismiss Under Nev. R. Civ. P. 12(B)(5)

08/23/2021



Clerk's Notice of Hearing
[17] Notice of Hearing

09/07/2021



Stipulation and Order
Filed by: Plaintiff Floyd, Zane M
[18] Stipulation and Order

09/20/2021



Stipulation and Order
Filed by: Plaintiff Floyd, Zane M
[19] Stipulation and Order

10/07/2021



Opposition to Motion to Dismiss
Filed By: Plaintiff Floyd, Zane M
[20] Opposition to NDOC Defendant's Motion to Dismiss

10/07/2021



Exhibits
Filed By: Plaintiff Floyd, Zane M
[21] Exhibits in Support of Opposition to NDOC Defendant's Motion to Dismiss

10/07/2021



Joinder To Motion
Filed By: Defendant Azzam, Ihsan
[22] Defendant Ihsan Azzam, M.D.'s Joinder to State of Nevada Ex Rel. its Department of Corrections and Charles Daniels' Motion to Dismiss Under Nev. R. Civ. P. 12(B)(5)

10/07/2021



Motion to Dismiss
Filed By: Defendant Azzam, Ihsan
[23] Defendant Ihsan Azzam, M.D.'s Motion to Dismiss Under Nev. R. Civ. P. 12(B)(5)

10/07/2021



Motion to Dismiss
Filed By: Defendant Azzam, Ihsan
[24] Defendant Ihsan Azzam, M.D.'s Motion to Dismiss Under Nev. R. Civ. P. 12(B)(5)

10/07/2021



Joinder To Motion
Filed By: Defendant Azzam, Ihsan
[25] DEFENDANT IHSAN AZZAM, M.D. s JOINDER TO STATE OF NEVADA EX REL. ITS DEPARTMENT OF CORRECTIONS AND CHARLES DANIELS MOTION TO DISMISS UNDER NEV. R. CIV. P. 12(B)(5)

10/08/2021



Clerk's Notice of Hearing
[27] Notice of Hearing

10/19/2021



Opposition to Motion to Dismiss
Filed By: Plaintiff Floyd, Zane M
[28] Opposition to Defendant Azzam's Motion to Dismiss

10/19/2021



Exhibits
Filed By: Plaintiff Floyd, Zane M
[29] Exhibits in Support of Opposition to Defendant Azzam's Motion to Dismiss

10/28/2021



Reply in Support
Filed By: Defendant Nevada Department of Corrections; Defendant Daniels, Charles
[30] State of Nevada ex rel. its Department of Corrections and Charles Daniels' Reply

CASE SUMMARY

CASE NO. A-21-833086-C

Supporting Their Motion to Dismiss Under Nev. R. Civ. P. 12(b)(5)

11/08/2021



Stipulation and Order

Filed by: Plaintiff Floyd, Zane M
[31] *Stipulation and Order*

12/03/2021



Notice of Change of Firm Name

Filed By: Defendant Azzam, Ihsan
[32] *Notice of Change of Firm Affiliation and Address*

12/03/2021



Reply in Support

Filed By: Defendant Azzam, Ihsan
[33] *Reply in Support of Defendant Ihsan Azzam's Motion to Dismiss*

01/07/2022



Order Granting Motion

[34] *Order Granting Motion to Dismiss*

01/07/2022



Notice of Entry of Order

Filed By: Defendant Nevada Department of Corrections; Defendant Daniels, Charles
[35] *Notice of Entry of Order*

01/10/2022



Notice of Appeal

Filed By: Plaintiff Floyd, Zane M
[36] *Notice of Appeal*

01/10/2022



Case Appeal Statement

Filed By: Plaintiff Floyd, Zane M
[37] *Case Appeal Statement*

DISPOSITIONS

01/07/2022

Order of Dismissal (Judicial Officer: Escobar, Adriana)

Debtors: Zane M Floyd (Plaintiff)

Creditors: Nevada Department of Corrections (Defendant), Charles Daniels (Defendant), Ihsan Azzam (Defendant)

Judgment: 01/07/2022, Docketed: 01/10/2022

HEARINGS

06/08/2021



Motion for Temporary Restraining Order (10:00 AM) (Judicial Officer: Escobar, Adriana)

Plaintiff's Motion for Temporary Restraining Order with Notice and Preliminary Injunction Denied;

Journal Entry Details:

All appearances made via the BlueJeans Videoconferencing Application. Mr. Gilmer, Chief for Nevada Department of Corrections also present. Mr. Anthony stated Mr. Floyd waved his appearance for the purposes of this hearing. Upon inquiry of Court if anyone was appearing on behalf of Mr. Daniels, Mr. Shevorski stated Mr. Daniels has not been served or they would represent him. Mr. Shevorski further stated Mr. Azzam has separate counsel however, he has not been served in this matter either. Mr. Gilmer confirmed that neither Mr. Daniels or Mr. Azzam have been served. Arguments by Mr. Anthony and Mr. Shevorski regarding the merits of and opposition to the motion. Court stated its findings and ORDERED, Plaintiff's Motion for Temporary Restraining Order with Notice and Preliminary Injunction DENIED. Mr. Shevorski to prepare a detailed order and provide it to opposing counsel for review. Colloquy regarding time needed to prepare the order and the time to needed to prepare a transcript of the hearing. Court's Recorder stated the transcript could be expedited and prepared within twenty-four hours. Court directed counsel to have the order prepared by June 10, 2021.;


12/09/2021

Motion to Dismiss (9:30 AM) (Judicial Officer: Escobar, Adriana)

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-21-833086-C

	<i>State of Nevada Ex Rel. its Department of Corrections and Charles Daniels' Motion to Dismiss Under Nev. R. Civ. P. 12(B)(5)</i> Motion Granted;
12/09/2021	Motion to Dismiss (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Defendant Ihsan Azzam, M.D.'s Motion to Dismiss Under Nev. R. Civ. P. 12(B)(5)</i> Motion Granted;
12/09/2021	Motion to Dismiss (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Defendant Ihsan Azzam, M.D.'s Motion to Dismiss Under Nev. R. Civ. P. 12(B)(5)</i> Motion Granted;
12/09/2021	Joinder (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Defendant Ihsan Azzam, M.D.'s Joinder to State of Nevada Ex Rel. its Department of Corrections and Charles Daniels' Motion to Dismiss Under Nev. R. Civ. P. 12(B)(5)</i> Motion Granted;
12/09/2021	 All Pending Motions (9:30 AM) (Judicial Officer: Escobar, Adriana) Matter Heard; Journal Entry Details: <i>Jocelyn Murphy, Esq., present with co-counsel David Anthony, Esq., and plaintiff Zane Floyd, via Bluejeans. STATE OF NEVADA EX REL. ITS DEPARTMENT OF CORRECTIONS AND CHARLES DANIELS' MOTION TO DISMISS UNDER NEV.R.CIV.P. 12(B)(5)...DEFENDANT IHSAN AZZAM, M.D.'S MOTION TO DISMISS UNDER NEV.R.CIV.P.12(B)(5)...DEFENDANT IHSAN AZZAM, M.D.'S MOTION TO DISMISS UNDER NEV.R.CIV.P.12(B)(5)...DEFENDANT IHSAN AZZAM, M.D.'S JOINDER TO STATE OF NEVADA EX REL. ITS DEPARTMENT OF CORRECTIONS AND CHARLES DANIELS' MOTION TO DISMISS UNDER NEV.R.CIV.P.12(B)(5)... Upon Court's inquiry , Mr. Shevorski stated plaintiff is raising delegation of powers challenge, and further added NRS 176.355 is a pure legal challenge. Ms. Murphy provided her arguments as it relates to the directors ability to change protocol without medical advice. Ms. Ahmed added, there is no legally sufficient claim involving her client Dr. Azzam, and request the Court to dismiss him from the complaint. After hearing counsel arguments, COURT ORDERED, State of NV as it pertains to the Department of Corrections and Charles Daniel's Motion to Dismiss, GRANTED; COURT FURTHER ORDERED, Ihsan Azzam Motion to Dismiss Under NEV.R.CIV.P.12(b)(5), GRANTED; COURT FURTHER ORDERED, Defendant Ihsan Azzam, M.D.'s Joinder to State of Nevada Ex Rel. its Department of Corrections and Charles Daniels' Motion to Dismiss Under Nev. R. Civ. P. 12(B)(5), GRANTED, based on plaintiff raising an issue with separation of powers. It is this Court's findings the statute is constitutional. They have authority to delegate to the Executive branch. There is no violation of separation of powers' Checks and balances exist in every statute. NRS 176.355 is presumed valid, and this Court finds it to be valid. Plaintiff does not have a legally sufficient claim. Nevada State Corrections has the duty to carry out the law drafted by the legislature. COURT FURTHER ORDERED, Mr. Shevorski to prepare a detailed order, provide an opportunity for Ms. Murphy, Mr. Anthony, and Ms. Ahmed to review for form and content; Submit order to DC 14 inbox, one version in word and another in PDF format.;</i>

DATE

FINANCIAL INFORMATION

Defendant Azzam, Ihsan	
Total Charges	14.00
Total Payments and Credits	14.00
Balance Due as of 1/11/2022	0.00
Plaintiff Floyd, Zane M	
Total Charges	318.00
Total Payments and Credits	318.00
Balance Due as of 1/11/2022	0.00

DISTRICT COURT CIVIL COVER SHEET

_____ **Clark** _____ County, Nevada
 Case No. _____
 (Assigned by Clerk's Office)

CASE NO: A-21-833086-C
Department 14

I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone): <div style="text-align: center;">Zane Floyd, #66514</div> <div style="text-align: center;">Ely State Prison</div> <div style="text-align: center;">P.O. Box 1989</div> <div style="text-align: center;">Ely, NV 89301</div>	Defendant(s) (name/address/phone): <div style="text-align: center;">Nevada Department of Corrections, et al.,</div> <div style="text-align: center;">5500 Snyder Ave. Bld 17</div> <div style="text-align: center;">P.O. Box 7011</div> <div style="text-align: center;">Carson City, NV 89702</div>
Attorney (name/address/phone): <div style="text-align: center;">Brad D. Levenson</div> <div style="text-align: center;">Federal Public Defenders Office</div> <div style="text-align: center;">411 E. Bonneville Ave., Suite 250</div> <div style="text-align: center;">Las Vegas, NV 89101</div>	Attorney (name/address/phone): <div style="text-align: center;">Aaron D. Ford</div> <div style="text-align: center;">Office of the Attorney General</div> <div style="text-align: center;">100 N. Carson</div> <div style="text-align: center;">Carson City, NV 89702</div>

II. Nature of Controversy *(please select the one most applicable filing type below)*

Civil Case Filing Types

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate <i>(select case type and estate value)</i> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input checked="" type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

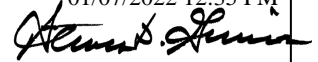
04/16/2021

Date

/s/ Brad D. Levenson

Signature of initiating party or representative

See other side for family-related case filings.


CLERK OF THE COURT

ORDG
AARON D. FORD
Attorney General
Steve Shevorski (Bar No. 8256)
Chief Litigation Counsel
State of Nevada
Office of the Attorney General
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sshevorski@ag.nv.gov

Attorneys for the State of Nevada ex rel.
The Nevada Department of Corrections

DISTRICT COURT

CLARK COUNTY, NEVADA

ZANE MICHAEL FLOYD,
Plaintiff,

vs.

NEVADA DEPARTMENT OF
CORRECTIONS; CHARLES DANIELS;
Director, Nevada Department of Corrections;
IHSAN AZZAM, Chief Medical Officer of the
State of Nevada; JOHN DOES 1-20, unknown
employees or agents of Nevada Department of
Corrections,

Defendants.

Case No. A-21-833086-C
Dept. No. XIV

Date of Hearing: December 9, 2021
Time of Hearing: 9:30 a.m.

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS

The State of Nevada ex rel its Nevada Department of Corrections (**NDOC**), Director Charles Daniels (**Daniels**), and Chief Medical Officer Ihsan Azzam (**Dr. Azzam**), moved to dismiss Plaintiff's, Zane Floyd (**Floyd**), complaint under NRCP 12(b)(5). The Court held a hearing on December 9, 2021 at 9:30 a.m. Steve Shevorski appeared for NDOC and Director Daniels. Nadia Ahmed appeared for Dr. Ihsan Azzam. Brad Levenson and Jocelyn Murphy appeared on Plaintiff's behalf. The Court, having reviewed the respective motions to dismiss of NDOC and Daniels and Dr. Azzam, Floyd's opposition, and the respective . . .

1 replies and listening to oral argument, GRANTS NDOC and Daniels’ and Dr. Azzam’s
2 respective motions to dismiss:

3 **I. Plaintiff’s allegations**

4 1. Floyd is a death row inmate. Compl. ¶2

5 2. A Nevada jury sentenced him to death for shooting and killing Lucy
6 Tarantino, Thomas Darnell, Chuck Leos, and Dennis “Troy” Sargent with a 12-gauge
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16 the Separation of Powers doctrine.

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18 8. Daniels, *inter alia*, administers NDOC under the direction of Board of State
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NRS 176.355.

III. Conclusions of law

11. Floyd in this action asserts that NRS 176.355 on its face violates the Separation of Powers doctrine enshrined in Article 3, §1 of Nevada's Constitution.

12. Article 3 of Nevada's Constitution is entitled "Distribution of Powers." NEV. CONST. art. 3.

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20 27. The word “lethal” has an ordinary meaning of “[d]eadly; fatal.” Lethal,
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22 28. The word “injection” is also not ambiguous. As the Ohio Court of Appeals
23 noted, “‘injection’ is defined as the ‘[i]ntroduction of a medicinal substance or nutrient
24 material into the subcutaneous cellular tissue (subcutaneous or hypodermic), the muscular
25 tissue (intramuscular), a vein (intravenous) . . . or other canals or cavities of the body.’”
26 *O’Neal v. State*, 146 N.E.3d 605, 617 (Ohio Ct. App.), *appeal allowed*, 154 N.E.3d 98 (Ohio
27 2020) (quoting STEDMAN’S MEDICAL DICTIONARY 635 (3d unabr. Laws.’ Ed. 1972)).

28 . . .

1 29. In rejecting Floyd’s argument, the Court is keeping faith with the Nevada
2 Supreme Court’s analysis in *Luqman*. That the Legislature used ordinary terms like
3 “lethal” and “injection” does not make NRS 176.355 constitutionally vulnerable to Floyd’s
4 argument. See *Luqman*, 101 Nev. at 154, 697 P.2d at 110 (upholding delegation to
5 administrative agency despite use of general terms like “medical propriety” and “potential
6 for abuse” because they were sufficient to guide the agency’s fact-finding).

7 30. The Legislature did not delegate its law-making function by not specifying the
8 drug or combination of drugs to be used in an execution by lethal injection. Consistent with
9 Separation of Powers principles, the Legislature may delegate the power to determine the
10 facts or state of things upon which the law makes its own operations depend. *State ex rel.*
11 *Ginocchio v. Shaughnessy*, 47 Nev. 129, 217 P. 581 (1923). That is just what the Legislature
12 did in enacting NRS 176.355. The Legislature properly delegated this fact-finding function
13 to NDOC’s Director.

14 31. NRS 176.355 is also not infirm because it does not include specific language
15 requiring a humane execution or that the drug(s) selected be humane. The Legislature and
16 administrative agencies alike must follow the state and federal constitution. See *Gibson v.*
17 *Mason*, 5 Nev. 283, 292 (1869) (explaining that the Legislature’s power is limited only by
18 “the Federal Constitution[] and . . . the fundamental law of the State”). The Court declines
19 to accept Floyd’s invitation to strike down NRS 176.355 by assuming that the Director and
20 NDOC may act unconstitutionally without a specific statutory language commanding them
21 to obey the Nevada and United States Constitutions.

22 32. The Court also takes note of persuasive authority that has rejected arguments
23 similar to Floyd’s. The courts to address this question, which have capital punishment
24 statutes that are similar to Nevada’s, have overwhelmingly found their state legislature
25 can constitutionally delegate implementation of execution statutes to corrections officials.
26 See, e.g., *O’Neal v. State*, 146 N.E.3d 605, 620 (Ohio Ct. App.), *appeal allowed on other*
27 *grounds*, 154 N.E.3d 98 (Ohio 2020); *Sims v. Kernan*, 241 Cal. Rptr. 3d 300, 308 (Ct. App.
28 2018); *Zink v. Lombardi*, No. 2:12-CV-4209-NKL, 2012 WL 12828155, at *7-8 (W.D. Mo.

1 Nov. 16, 2012); *Cook v. State*, 281 P.3d 1053, 1056 (Ariz. Ct. App. 2012); *State v. Ellis*, 799
2 N.W.2d 267, 289 (Neb. 2011); *Brown v. Vail*, 237 P.3d 263, 269 (Wash. 2010) (en banc);
3 *Sims v. State*, 754 So. 2d 657, 670 (Fla. 2000); *State v. Osborn*, 631 P.2d 187, 201 (Idaho
4 1981); *Ex parte Granviel*, 561 S.W.2d 503, 515 (Tex. Crim. App. 1978). *State v. Hawkins*,
5 519 S.W.3d 1 (Tenn. 2017) (quoting *State v. Hawkins*, No. W2012-00412CCA-R3-DD, 2015
6 WL 5169157 at *28 (Tenn. Crim. App. 2015)).

7 33. The Court notes the Nevada Supreme Court considered and rejected near
8 identical arguments in the Eighth Amendment context. *McConnell v. State*, 120 Nev. 1043,
9 1056-57, 102 P.3d 606, 616 (2004); *State v. Gee*, 46 Nev. 418, 436-48, 211 P. 676, 681-82
10 (1923);

11 34. In upholding former NRS 176.355, the Nevada Supreme Court noted the
12 current statute affords NDOC no more discretion than its prior version, requiring the use
13 of lethal gas for executions, which “infring[ed] no provision of the Constitution.” *Gee*, 46
14 Nev. 418, 211 P. 676, 682 (1923). Yet the Nevada Supreme Court “[could not] see that any
15 useful purpose would be served by requiring greater detail.” *Id.* The Court affirmed that
16 the reasoning in *Gee* applies equally to Nevada’s lethal injection statute. *See McConnell*,
17 120 Nev. at 1056, 102 P.3d at 616 (applying the reasoning in *Gee* to reject a facial challenge
18 to NRS 176.355 based on a lack of detailed codified guidelines for the lethal injection
19 procedure).

20 **III. Order**

21 Based upon the Background and Conclusions of Law above:

22 **IT IS HEREBY ORDERED** that NDOC and Daniel’s motion to dismiss pursuant
23 to NRCP 12(b)(5) is GRANTED.

24
25
26 ...

27 ...

28 ...

IT IS FURTHER ORDERED that Dr. Azzam's motion to dismiss pursuant to
 NRC 12(b)(5) is also **GRANTED**.

DATED this 01 day of January, 2022.

Dated this 7th day of January, 2022

J. Escobar
DISTRICT COURT JUDGE

Submitted by:
AARON D. FORD
Attorney General

D3B 3B2 274C D5F1
Adriana Escobar
District Court Judge

By: /s/ Steve Shevorski
Steve Shevorski
Chief Litigation Counsel
Attorneys for Defendants
State of Nevada ex rel. its
Department of Corrections and
Director Charles Daniels

From: Ahmed, Nadia <nahmed@clarkhill.com>
Sent: Wednesday, December 22, 2021 1:20 PM
To: Steven G. Shevorsi <SShevorsi@ag.nv.gov>
Subject: Re: Floyd - Checking in on Draft Order Granting Motions to Dismiss

WARNING - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Okay fair enough. I'm fine with your order as is and don't have any edits. Sorry to hold it up and thank you!

Sent from my iPhone

Nadia Ahmed

Senior Counsel

Clark Hill LLP

3800 Howard Hughes Parkway, Las Vegas, NV 89169

(170) 269-7754(office) | (702) 862-8400(fax)

nahmed@clarkhill.com | www.clarkhill.com

From: David Anthony <David_Anthony@fd.org>
Sent: Thursday, December 30, 2021 9:15 AM
To: Steven G. Shevorski <SShevorski@ag.nv.gov>; Brad Levenson <Brad_Levenson@fd.org>
Cc: Ahmed, Nadia <nahmed@clarkhill.com>
Subject: RE: Floyd - Draft Order Granting MTD

WARNING - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Steve:

It looks like there is a misspelling on page two line 6 should be "gauge". Other than that, we don't have an objection to the form or content of the order. Please feel free to submit the order to the court. Thanks.

David

From: Steven G. Shevorski <SShevorski@ag.nv.gov>
Sent: Monday, December 27, 2021 9:04 AM
To: Brad Levenson <Brad_Levenson@fd.org>; David Anthony <David_Anthony@fd.org>
Cc: Ahmed, Nadia <nahmed@clarkhill.com>
Subject: Floyd - Draft Order Granting MTD

Matter: Floyd
Case # A-21-833086-C

Brad and David,

I hope you were able to have a happy holiday. Attached is the draft order granting the motions to dismiss. Nadia has indicated her approval as to form and content.

Best regards,

Steve

Steve Shevorski
Chief Litigation Counsel
Office of the Attorney General
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101
702-486-3783

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Zane Floyd, Plaintiff(s)

CASE NO: A-21-833086-C

7 vs.

DEPT. NO. Department 14

8 Nevada Department of
9 Corrections, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 1/7/2022

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gcrawford@sklar-law.com

16 Traci Plotnick

tplotnick@ag.nv.gov

17 Steven Shevorski

sshevorski@ag.nv.gov

18 Mary Pizzariello

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19 Amanda Brandon

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20 Bradley Levenson

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21 David Anthony

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22 Crane Pomerantz

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23 Nadia Ahmed

nahmed@sklar-law.com

24 Akke Levin

alevin@ag.nv.gov

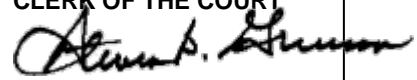
25 Sabrena Clinton

sclinton@ag.nv.gov

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Kiel Ireland	kireland@ag.nv.gov
Terri Scott	tscott@sklar-law.com
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AARON D. FORD
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Steve Shevorski (Bar No. 8256)
Chief Litigation Counsel
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(702) 486-3773 (fax)
sshevorski@ag.nv.gov

*Attorneys for Defendants
Nevada Department of Corrections
and Charles Daniels*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ZANE MICHAEL FLOYD,
Plaintiff,

Case No. A-21-833086-C
Dept. No. XIV

vs.

NEVADA DEPARTMENT OF
CORRECTIONS; CHARLES DANIELS;
Director, Nevada Department of Corrections;
IHSAN AZZAM, Chief Medical Officer of the
State of Nevada; JOHN DOES 1-20, unknown
employees or agents of Nevada Department of
Corrections,

Defendants.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order Granting Defendants' Motions to Dismiss was entered on the 7th day of January, 2022, a copy of which is attached hereto as Exhibit "A".

DATED this 7th day of January, 2022.

AARON D. FORD
Attorney General

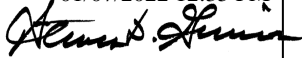
By: /s/ Steve Shevorski
Steve Shevorski (Bar No. 8256)
Chief Litigation Counsel
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/s/ Traci Plotnick
Traci Plotnick, an employee of the
Office of the Attorney General

EXHIBIT A

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CLERK OF THE COURT

ORDG
AARON D. FORD
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The Nevada Department of Corrections

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CLARK COUNTY, NEVADA

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Case No. A-21-833086-C
Dept. No. XIV

Date of Hearing: December 9, 2021
Time of Hearing: 9:30 a.m.

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS

The State of Nevada ex rel its Nevada Department of Corrections (**NDOC**), Director Charles Daniels (**Daniels**), and Chief Medical Officer Ihsan Azzam (**Dr. Azzam**), moved to dismiss Plaintiff's, Zane Floyd (**Floyd**), complaint under NRCP 12(b)(5). The Court held a hearing on December 9, 2021 at 9:30 a.m. Steve Shevorski appeared for NDOC and Director Daniels. Nadia Ahmed appeared for Dr. Ihsan Azzam. Brad Levenson and Jocelyn Murphy appeared on Plaintiff's behalf. The Court, having reviewed the respective motions to dismiss of NDOC and Daniels and Dr. Azzam, Floyd's opposition, and the respective . . .

1 replies and listening to oral argument, GRANTS NDOC and Daniels’ and Dr. Azzam’s
2 respective motions to dismiss:

3 **I. Plaintiff’s allegations**

4 1. Floyd is a death row inmate. Compl. ¶2

5 2. A Nevada jury sentenced him to death for shooting and killing Lucy
6 Tarantino, Thomas Darnell, Chuck Leos, and Dennis “Troy” Sargent with a 12-gauge
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21 BLACK’S LAW DICTIONARY (10th ed. 2014).

22 28. The word “injection” is also not ambiguous. As the Ohio Court of Appeals
23 noted, “‘injection’ is defined as the ‘[i]ntroduction of a medicinal substance or nutrient
24 material into the subcutaneous cellular tissue (subcutaneous or hypodermic), the muscular
25 tissue (intramuscular), a vein (intravenous) . . . or other canals or cavities of the body.’”
26 *O’Neal v. State*, 146 N.E.3d 605, 617 (Ohio Ct. App.), *appeal allowed*, 154 N.E.3d 98 (Ohio
27 2020) (quoting STEDMAN’S MEDICAL DICTIONARY 635 (3d unabr. Laws.’ Ed. 1972)).

28 . . .

1 29. In rejecting Floyd’s argument, the Court is keeping faith with the Nevada
2 Supreme Court’s analysis in *Luqman*. That the Legislature used ordinary terms like
3 “lethal” and “injection” does not make NRS 176.355 constitutionally vulnerable to Floyd’s
4 argument. See *Luqman*, 101 Nev. at 154, 697 P.2d at 110 (upholding delegation to
5 administrative agency despite use of general terms like “medical propriety” and “potential
6 for abuse” because they were sufficient to guide the agency’s fact-finding).

7 30. The Legislature did not delegate its law-making function by not specifying the
8 drug or combination of drugs to be used in an execution by lethal injection. Consistent with
9 Separation of Powers principles, the Legislature may delegate the power to determine the
10 facts or state of things upon which the law makes its own operations depend. *State ex rel.*
11 *Ginocchio v. Shaughnessy*, 47 Nev. 129, 217 P. 581 (1923). That is just what the Legislature
12 did in enacting NRS 176.355. The Legislature properly delegated this fact-finding function
13 to NDOC’s Director.

14 31. NRS 176.355 is also not infirm because it does not include specific language
15 requiring a humane execution or that the drug(s) selected be humane. The Legislature and
16 administrative agencies alike must follow the state and federal constitution. See *Gibson v.*
17 *Mason*, 5 Nev. 283, 292 (1869) (explaining that the Legislature’s power is limited only by
18 “the Federal Constitution[] and . . . the fundamental law of the State”). The Court declines
19 to accept Floyd’s invitation to strike down NRS 176.355 by assuming that the Director and
20 NDOC may act unconstitutionally without a specific statutory language commanding them
21 to obey the Nevada and United States Constitutions.

22 32. The Court also takes note of persuasive authority that has rejected arguments
23 similar to Floyd’s. The courts to address this question, which have capital punishment
24 statutes that are similar to Nevada’s, have overwhelmingly found their state legislature
25 can constitutionally delegate implementation of execution statutes to corrections officials.
26 See, e.g., *O’Neal v. State*, 146 N.E.3d 605, 620 (Ohio Ct. App.), *appeal allowed on other*
27 *grounds*, 154 N.E.3d 98 (Ohio 2020); *Sims v. Kernan*, 241 Cal. Rptr. 3d 300, 308 (Ct. App.
28 2018); *Zink v. Lombardi*, No. 2:12-CV-4209-NKL, 2012 WL 12828155, at *7-8 (W.D. Mo.

1 Nov. 16, 2012); *Cook v. State*, 281 P.3d 1053, 1056 (Ariz. Ct. App. 2012); *State v. Ellis*, 799
2 N.W.2d 267, 289 (Neb. 2011); *Brown v. Vail*, 237 P.3d 263, 269 (Wash. 2010) (en banc);
3 *Sims v. State*, 754 So. 2d 657, 670 (Fla. 2000); *State v. Osborn*, 631 P.2d 187, 201 (Idaho
4 1981); *Ex parte Granviel*, 561 S.W.2d 503, 515 (Tex. Crim. App. 1978). *State v. Hawkins*,
5 519 S.W.3d 1 (Tenn. 2017) (quoting *State v. Hawkins*, No. W2012-00412CCA-R3-DD, 2015
6 WL 5169157 at *28 (Tenn. Crim. App. 2015)).

7 33. The Court notes the Nevada Supreme Court considered and rejected near
8 identical arguments in the Eighth Amendment context. *McConnell v. State*, 120 Nev. 1043,
9 1056-57, 102 P.3d 606, 616 (2004); *State v. Gee*, 46 Nev. 418, 436-48, 211 P. 676, 681-82
10 (1923);

11 34. In upholding former NRS 176.355, the Nevada Supreme Court noted the
12 current statute affords NDOC no more discretion than its prior version, requiring the use
13 of lethal gas for executions, which “infring[ed] no provision of the Constitution.” *Gee*, 46
14 Nev. 418, 211 P. 676, 682 (1923). Yet the Nevada Supreme Court “[could not] see that any
15 useful purpose would be served by requiring greater detail.” *Id.* The Court affirmed that
16 the reasoning in *Gee* applies equally to Nevada’s lethal injection statute. *See McConnell*,
17 120 Nev. at 1056, 102 P.3d at 616 (applying the reasoning in *Gee* to reject a facial challenge
18 to NRS 176.355 based on a lack of detailed codified guidelines for the lethal injection
19 procedure).

20 **III. Order**

21 Based upon the Background and Conclusions of Law above:

22 **IT IS HEREBY ORDERED** that NDOC and Daniel’s motion to dismiss pursuant
23 to NRCP 12(b)(5) is GRANTED.

24
25
26 ...

27 ...

28 ...

IT IS FURTHER ORDERED that Dr. Azzam's motion to dismiss pursuant to
 NRC 12(b)(5) is also **GRANTED**.

DATED this 01 day of January, 2022.

Dated this 7th day of January, 2022

J. Escobar
DISTRICT COURT JUDGE

Submitted by:
AARON D. FORD
Attorney General

D3B 3B2 274C D5F1
Adriana Escobar
District Court Judge

By: /s/ Steve Shevorski
Steve Shevorski
Chief Litigation Counsel
Attorneys for Defendants
State of Nevada ex rel. its
Department of Corrections and
Director Charles Daniels

From: Ahmed, Nadia <nahmed@clarkhill.com>
Sent: Wednesday, December 22, 2021 1:20 PM
To: Steven G. Shevorsi <SShevorsi@ag.nv.gov>
Subject: Re: Floyd - Checking in on Draft Order Granting Motions to Dismiss

WARNING - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Okay fair enough. I'm fine with your order as is and don't have any edits. Sorry to hold it up and thank you!

Sent from my iPhone

Nadia Ahmed

Senior Counsel

Clark Hill LLP

3800 Howard Hughes Parkway, Las Vegas, NV 89169

(170) 269-7754(office) | (702) 862-8400(fax)

nahmed@clarkhill.com | www.clarkhill.com

From: David Anthony <David_Anthony@fd.org>
Sent: Thursday, December 30, 2021 9:15 AM
To: Steven G. Shevorski <SShevorski@ag.nv.gov>; Brad Levenson <Brad_Levenson@fd.org>
Cc: Ahmed, Nadia <nahmed@clarkhill.com>
Subject: RE: Floyd - Draft Order Granting MTD

WARNING - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Steve:

It looks like there is a misspelling on page two line 6 should be "gauge". Other than that, we don't have an objection to the form or content of the order. Please feel free to submit the order to the court. Thanks.

David

From: Steven G. Shevorski <SShevorski@ag.nv.gov>
Sent: Monday, December 27, 2021 9:04 AM
To: Brad Levenson <Brad_Levenson@fd.org>; David Anthony <David_Anthony@fd.org>
Cc: Ahmed, Nadia <nahmed@clarkhill.com>
Subject: Floyd - Draft Order Granting MTD

Matter: Floyd
Case # A-21-833086-C

Brad and David,

I hope you were able to have a happy holiday. Attached is the draft order granting the motions to dismiss. Nadia has indicated her approval as to form and content.

Best regards,

Steve

Steve Shevorski
Chief Litigation Counsel
Office of the Attorney General
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101
702-486-3783

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Zane Floyd, Plaintiff(s)

CASE NO: A-21-833086-C

7 vs.

DEPT. NO. Department 14

8 Nevada Department of
9 Corrections, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 1/7/2022

15 Gene Crawford

gcrawford@sklar-law.com

16 Traci Plotnick

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17 Steven Shevorski

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18 Mary Pizzariello

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19 Amanda Brandon

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

June 08, 2021

A-21-833086-C Zane Floyd, Plaintiff(s)
vs.
Nevada Department of Corrections, Defendant(s)

**June 08, 2021 10:00 AM Motion for Temporary
Restraining Order**

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Nicole McDevitt

RECORDER: Stacey Ray

REPORTER:

PARTIES

PRESENT: Anthony, David S. Attorney
Levenson, Bradley D. Attorney
Shevorski, Steven G. Attorney

JOURNAL ENTRIES

- All appearances made via the BlueJeans Videoconferencing Application.

Mr. Gilmer, Chief for Nevada Department of Corrections also present.

Mr. Anthony stated Mr. Floyd waved his appearance for the purposes of this hearing. Upon inquiry of Court if anyone was appearing on behalf of Mr. Daniels, Mr. Shevorski stated Mr. Daniels has not been served or they would represent him. Mr. Shevorski further stated Mr. Azzam has separate counsel however, he has not been served in this matter either. Mr. Gilmer confirmed that neither Mr. Daniels or Mr. Azzam have been served. Arguments by Mr. Anthony and Mr. Shevorski regarding the merits of and opposition to the motion. Court stated its findings and ORDERED, Plaintiff's Motion for Temporary Restraining Order with Notice and Preliminary Injunction DENIED. Mr. Shevorski to prepare a detailed order and provide it to opposing counsel for review. Colloquy regarding time needed to prepare the order and the time to needed to prepare a transcript of the hearing. Court's Recorder stated the transcript could be expedited and prepared within twenty-four

hours. Court directed counsel to have the order prepared by June 10, 2021.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

December 09, 2021

A-21-833086-C	Zane Floyd, Plaintiff(s)
	vs.
	Nevada Department of Corrections, Defendant(s)

December 09, 2021 9:30 AM All Pending Motions

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Jessica Quamina

RECORDER: Michelle Ramsey

REPORTER:

PARTIES

PRESENT:	Ahmed, Nadia N	Attorney
	Anthony, David S.	Attorney
	Shevorski, Steven G.	Attorney

JOURNAL ENTRIES

- Jocelyn Murphy, Esq., present with co-counsel David Anthony, Esq., and plaintiff Zane Floyd, via Bluejeans.

STATE OF NEVADA EX REL. ITS DEPARTMENT OF CORRECTIONS AND CHARLES DANIELS' MOTION TO DISMISS UNDER NEV.R.CIV.P. 12(B)(5)...DEFENDANT IHSAN AZZAM, M.D.'S MOTION TO DISMISS UNDER NEV.R.CIV.P.12(B)(5)...DEFENDANT IHSAN AZZAM, M.D.'S MOTION TO DISMISS UNDER NEV.R.CIV.P.12(B)(5)...DEFENDANT IHSAN AZZAM, M.D.'S JOINDER TO STATE OF NEVADA EX REL. ITS DEPARTMENT OF CORRECTIONS AND CHARLES DANIELS' MOTION TO DISMISS UNDER NEV.R.CIV.P.12(B)(5)...

Upon Court's inquiry , Mr. Shevorski stated plaintiff is raising delegation of powers challenge, and further added NRS 176.355 is a pure legal challenge. Ms. Murphy provided her arguments as it relates to the directors ability to change protocol without medical advice. Ms. Ahmed added, there is no legally sufficient claim involving her client Dr. Azzam, and request the Court to dismiss him from

the complaint. After hearing counsel arguments, COURT ORDERED, State of NV as it pertains to the Department of Corrections and Charles Daniel's Motion to Dismiss, GRANTED; COURT FURTHER ORDERED, Ihsan Azzam Motion to Dismiss Under NEV.R.CIV.P.12(b)(5), GRANTED; COURT FURTHER ORDERED, Defendant Ihsan Azzam, M.D.'s Joinder to State of Nevada Ex Rel. its Department of Corrections and Charles Daniels' Motion to Dismiss Under Nev. R. Civ. P. 12(B)(5), GRANTED, based on plaintiff raising an issue with separation of powers. It is this Court's findings the statute is constitutional. They have authority to delegate to the Executive branch. There is no violation of separation of powers' Checks and balances exist in every statute. NRS 176.355 is presumed valid, and this Court finds it to be valid. Plaintiff does not have a legally sufficient claim. Nevada State Corrections has the duty to carry out the law drafted by the legislature. COURT FURTHER ORDERED, Mr. Shevorski to prepare a detailed order, provide an opportunity for Ms. Murphy, Mr. Anthony, and Ms. Ahmed to review for form and content; Submit order to DC 14 inbox, one version in word and another in PDF format.

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL DEATH PENALTY CASE; CASE APPEAL STATEMENT DEATH PENALTY CASE; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES

ZANE MICHAEL FLOYD,

Plaintiff(s),

vs.

NEVADA DEPARTMENT OF
CORRECTIONS; CHARLES DANIELS;
IHSAN AZZAM,

Defendant(s),

Case No: A-21-833086-C

Dept No: XIV

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 11 day of January 2022.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk