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Elizabeth A. Brown  
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6 *Attorney for Petitioner,*  
*JAQUAN GAMBOA*

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

8 JAQUAN GAMBOA,

9 Petitioner,

No.

10 vs.

11 THE EIGHTH JUDICIAL DISTRICT  
12 COURT OF THE STATE OF  
NEVADA, IN AND FOR THE  
13 COUNTY OF CLARK; and THE  
HONORABLE ERIKA BALLOU,  
14 DISTRICT JUDGE,

15 Respondents,

16 and THE STATE OF NEVADA,

17 Real Party in Interest.

18 **PETITION FOR WRIT OF MANDAMUS**

19 PETITIONER, JAQUON GAMBOA (hereinafter "MR. GAMBOA"), by  
20 and through his attorney, C. BENJAMIN SCROGGINS, ESQ., hereby petitions  
21

1 this Honorable Court for a Writ of Mandamus pursuant to NRS 34.150 – NRS  
2 34.310 and NRAP 21 directing the Eighth Judicial District Court, the Honorable  
3 Erika Ballou, District Court Judge, to conduct a proper hearing to set a reasonable  
4 bail.

5 **A. NRAP 21(a)(3)(A): Whether the Matter Falls In One of the**  
6 **Categories of Cases Retained by the Supreme Court Pursuant to**  
7 **NRAP 17(a) or Presumptively Assigned to the Court of Appeals**  
8 **Pursuant to NRAP 17(b)**

9 1. This case is one that should be retained by the Supreme Court  
10 pursuant to NRAP 17(a)(12) (2018) because it raises as a principal issue a question  
11 of statewide public importance. Namely, this case addresses the practice of  
12 District Court judges intentionally setting bail at an “unattainable” amount to  
13 circumvent the state and federal constitutional prohibitions against detaining a  
14 criminal defendant without bail.

15 **B. NRAP 21(a)(3)(B): The Relief Sought**

16 2. MR. GAMBOA seeks a Writ of Mandamus directing the District  
17 Court to conduct a meaningful adversarial hearing to make an individualized  
18 determination on his pretrial custody status. MR. GAMBOA seeks a Writ of  
19 Mandamus directing the District Court to set bail at a reasonable amount, if the  
20 State proves by clear and convincing evidence that bail is necessary, based upon  
21 his financial condition and all required constitutional and statutory factors.

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1           **C.   NRAP 21(a)(3)(C): The Issues Presented**

2                   **1.   Whether it is Constitutionally Permissible for a Court to**  
3                   **Intentionally Set Bail at an “Unattainable” Amount After**  
4                   **Finding that the State Has Failed to Prove That a No Bail**  
5                   **Hold is Appropriate**

6           **D.   NRAP 21(a)(3)(D): The Facts Necessary to Understand the Issues**  
7           **Presented by the Petition**

8           3.     MR. GAMBOA was charged in Las Vegas Justice Court by way of a  
9 criminal complaint on April 23, 2020 in case number 20F07961A. See Las Vegas  
10 Justice Court Register of Actions **PA000017-19**. MR. GAMBOA was on parole at  
11 the time these charges were initiated and was held on a “no bail” hold after his  
12 arrest. MR. GAMBOA’s parole was revoked because of the new case and he was  
13 transferred to the Nevada Department of Corrections.

14           4.     On November 20, 2020, the State filed an indictment charging MR.  
15 GAMBOA with the same crimes and the Las Vegas Justice Court case was  
16 dismissed on November 24, 2020. MR. GAMBOA’s prison sentence expired on  
17 August 9, 2021 and he was transferred from the Nevada Department of Corrections  
18 to the Clark County Detention Center. See Clark County Detention Center In-  
19 Custody Status **PA000020**; Nevada Department of Corrections Inmate Search  
20 Results **PA000021**.

21           5.     On August 17, 2021, MR. GAMBOA’s prior counsel, Anthony M.  
Goldstein, Esq., filed a motion to set reasonable bail in Eighth Judicial District

1 Court case number C-20-346925-2, the case opened pursuant to the indictment.

2 See Motion to Set Reasonable Bail **PA000001-11**.

3 6. A hearing on MR. GAMBOA's Motion was held on August 23, 2021.

4 See Eighth Judicial District Court Case No. C-20-346925-2 **PA000012**. No  
5 evidence was presented to the District Court other than court records and the  
6 Declaration of Mr. Goldstein.

7 7. A Pre-Trial Detention Order was entered on August 25, 2021. See  
8 Pre-Trial Detention Order **PA000013-16**. In the Order the court found that "[t]he  
9 State failed to prove by clear and convincing evidence that a no bail hold is  
10 appropriate in this matter." Nonetheless, the court, after determining that bail was  
11 required ordered "the Defendant is ordered detained by means of an unattainable  
12 cash bail of \$500,000.00." **PA000015** (emphasis added).

13 **E. NRAP 21(a)(3)(E): The Reasons Why the Writ Should Issue,**  
14 **Including Points and Legal Authorities**

15 **1. Standards for Issuing a Writ of Mandamus**

16 8. The Supreme Court of Nevada has set forth the conditions under  
17 which a writ of mandamus may be issued:

18 A writ of mandamus is appropriate "to compel the  
19 performance of an act that the law requires as a duty  
20 resulting from an office, trust, or station or to control an  
21 arbitrary or capricious exercise of discretion." Int'l Game  
Tech., Inc. v. Second Judicial Dist. Court, 124 Nev. 193,  
197, 179 P.3d 556, 558 (2008) (footnote omitted).  
Because a writ of mandamus is an extraordinary remedy,

1 it is within our complete discretion whether to consider it.  
2 Cote H. v. Eighth Judicial Dist. Court, 124 Nev. 36, 39,  
3 175 P.3d 906, 908 (2008). Writ relief is generally  
4 available only in “cases where there is not a plain, speedy  
5 and adequate remedy in the ordinary course of law.” NRS  
6 34.170.

7 Valdez-Jimenez v. Eighth Jud. Dist. Ct., 136 Nev. Adv. Op. 20 at 5, 460 P.3d 976  
8 at 981 (Nev. Sup. Ct. Apr. 9, 2020).

9 **2. There is a Constitutional Right to Reasonable Bail Under**  
10 **Both the Federal and State Constitutions.**

11 9. The Eighth Amendment to the United States Constitution reads  
12 “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and  
13 unusual punishments inflicted.” While this provision on its face only prohibits  
14 excessive bail, the Nevada Constitution is much broader and more specific. Article  
15 1, section 6 of the Nevada Constitution echoes the language of the Eighth  
16 Amendment. “Excessive bail shall not be required, nor excessive fines imposed,  
17 nor cruel and unusual punishments inflicted.” Nevada’s Constitution, however,  
18 goes further: “All persons shall be bailable by sufficient sureties; unless for  
19 Capital Offenses or murders punishable by life imprisonment without possibility of  
20 parole when the proof is evident or the presumption great.” Nev. Const. art. 1, § 7  
21 (1979) (emphasis added).

10. The United States Supreme Court discussed the right to reasonable  
bail extensively in Stack v. Boyle. The Court held:

1 From the passage of the Judiciary Act of 1789, 1  
2 Stat. 73, 91, to the present Federal Rules of Criminal  
3 Procedure, Rule 46 (a)(1), federal law has unequivocally  
4 provided that a person arrested for a non-capital offense  
5 shall be admitted to bail. This traditional right to freedom  
6 before conviction permits the unhampered preparation of  
7 a defense, and serves to prevent the infliction of  
8 punishment prior to conviction. See Hudson v. Parker,  
9 156 U.S. 277, 285 (1895). Unless this right to bail before  
10 trial is preserved, the presumption of innocence, secured  
11 only after centuries of struggle, would lose its meaning.

7 The right to release before trial is conditioned upon  
8 the accused's giving adequate assurance that he will stand  
9 trial and submit to sentence if found guilty. Ex parte  
10 Milburn, 9 Pet. 704, 710 (1835). Like the ancient practice  
11 of securing the oaths of responsible persons to stand as  
12 sureties for the accused, the modern practice of requiring  
13 a bail bond or the deposit of a sum of money subject to  
14 forfeiture serves as additional assurance of the presence of  
15 an accused. Bail set at a figure higher than an amount  
16 reasonably calculated to fulfill this purpose is “excessive”  
17 under the Eighth Amendment. See United States v.  
18 Motlow, 10 F.2d 657 (1926, opinion by Mr. Justice Butler  
19 as Circuit Justice of the Seventh Circuit).

14 Stack v. Boyle, 342 U.S. 1, 4-5 (1951) (emphasis added) (superseded by statute as  
15 recognized in Galen v. County of Los Angeles, 322 F. Supp. 1045, 1054 (C.D. Cal.  
16 2004)). “To infer from the fact of indictment alone a need for bail in an unusually  
17 high amount is an arbitrary act. Such conduct would inject into our own system of  
18 government the . . . principles of totalitarianism. . . .” Id. at 6.

19 11. Recently the Supreme Court of Nevada addressed the right to bail and  
20 the procedural requirements for setting bail.

1           The right to reasonable bail is guaranteed by the  
2           Nevada Constitution for individuals who commit offenses  
3           other than capital offenses or first-degree murder. Bail  
4           serves the important function of allowing a defendant to  
5           be released pending trial while at the same time ensuring  
6           that he or she will appear at future proceedings and will  
7           not pose a danger to the community. When bail is set in  
8           an amount the defendant cannot afford, however, it  
9           deprives the defendant of his or her liberty and all its  
10          attendant benefits, despite the fact that he or she has not  
11          been convicted and is presumed innocent. To safeguard  
12          against pretrial detainees sitting in jail simply because they  
13          cannot afford to post bail, we conclude that the following  
14          due process protections are constitutionally required.

15               A defendant who remains in custody following  
16               arrest is constitutionally entitled to a prompt  
17               individualized determination on his or her pretrial custody  
18               status. The individualized determination must be  
19               preceded by an adversarial hearing at which the defendant  
20               is entitled to present evidence and argument concerning  
21               the relevant bail factors. The judge must consider the  
              factors set forth in NRS 178.4853 and may impose bail  
              only if the State proves by clear and convincing evidence  
              that it is necessary to ensure the defendant's presence at  
              future court proceedings or to protect the safety of the  
              community, including the victim and the victim's family.  
              If the district court determines that bail, rather than  
              nonmonetary conditions, is necessary, the judge must  
              consider the defendant's financial resources as well as the  
              other factors set forth in NRS 178.498 in setting the  
              amount of bail, and the judge must state his or her reasons  
              for the bail amount on the record.

18       Valdez-Jimenez v. Eighth Jud. Dist. Ct., 136 Nev. Adv. Op. 20 at 2-3, 460 P.3d  
19       976 at 980 (Nev. Sup. Ct. Apr. 9, 2020) (en banc) (emphasis added).

20               12. Bail, if proven necessary by clear and convincing evidence from the

1 State, must not be set in an amount designed to insure the pretrial detention of a  
2 presumptively innocent person prior to conviction. This right to bail, in order to be  
3 meaningful in any way, must not exceed that which is found to be necessary to  
4 guarantee that the defendant will appear in future court proceedings and to protect  
5 the community. “When bail is set in an amount the defendant cannot afford . . . it  
6 deprives the defendant of his or her liberty and all its attendant benefits, despite the  
7 fact that he or she has not been convicted and is presumed innocent.” Valdez-  
8 Jimenez, 136 Nev. Adv. Op. 20 at 3, 460 P.3d at 980 (emphasis added). If a court  
9 intends to guarantee that a defendant will remain incarcerated while awaiting trial  
10 it must satisfy the standards necessary for holding a person without bail. Bail  
11 intentionally set to be unattainable is de facto detention without bail.

12 **F. Conclusion**

13 13. MR. GAMBOA is being held prior to his trial because the district  
14 court intentionally set bail at an unattainable amount. Recognizing the right to  
15 bail, and then intentionally setting it in an amount the defendant cannot afford, is  
16 the equivalent of ordering detention with no bail. Regardless of the State’s or the  
17 district court’s feelings about MR. GAMBOA he is entitled to the presumption of  
18 innocence. This is an important, and fundamental, rule of constitutional law; it  
19 cannot be reduced to a hollow slogan bereft of meaning.

20 ///



1           WHEREFORE, Petitioner, JAQUAN GAMBOA, prays for the following  
2 relief:

3           1.     That a writ of mandamus issue compelling Respondents to comply  
4 with the Eighth Amendment to the United States Constitution and article 1,  
5 sections 6 and 7 of the Nevada Constitution by affording a proper hearing on  
6 custody status as set forth in Valdez-Jimenez.

7           2.     That the writ of mandamus compel the district court to provide MR.  
8 GAMBOA the constitutionally guaranteed presumption of innocence in that  
9 hearing.

10          3.     That the writ of mandamus instruct the district court that it cannot  
11 intentionally set bail in an unattainable amount for the purpose of guaranteeing  
12 MR. GAMBOA's continued incarceration.

13          4.     That Respondents be required to pay MR. GAMBOA for all

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16 ///

1 attorney's fees, court fees, and costs incurred by having to bring this action.

2 5. For such other and further relief as the Court deems just and proper.

3 BROUGHT this 26th day of January, 2022.

4 **THE LAW FIRM OF**  
5 **C. BENJAMIN SCROGGINS, CHTD.**

6   
7 C. BENJAMIN SCROGGINS, ESQ.

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14 *Attorney for Petitioner,*  
15 *JAQUAN GAMBOA*

16 ///

17 ///

18 ///

1 **VERIFICATION**

2 I declare under penalty of perjury that I have read this Petition for Writ of  
3 Mandamus, that the information provided in this Petition is true and complete to  
4 the best of my knowledge, information and belief, and that I have attached all  
5 required documents in the Appendix filed with the Petition.

6 MADE this 26th day of January, 2022.

7 **THE LAW FIRM OF**  
8 **C. BENJAMIN SCROGGINS, CHTD.**

9   
10 C. BENJAMIN SCROGGINS, ESQ.

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14 *Attorney for Petitioner,*  
15 *JAQUAN GAMBOA*

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This Petition has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 MSO in 14-point Times New Roman font.

It does not exceed 15 pages.

DATED this 26th day of January, 2022.

C. BEN SCROGGINS  
C. BENJAMIN SCROGGINS, ESQ.

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*Attorney for Petitioner,*  
**JAQUAN GAMBOA**

///

1 **PROOF OF SERVICE**

2 Pursuant to NRAP 25(d)(1)(B) I hereby certify that on the 26th day of  
3 January, 2022, I served the foregoing PETITION FOR WRIT OF MANDAMUS  
4 by depositing a copy of the same in the United States mail, First-Class postage  
5 prepaid, addressed to the Respondents at the following addresses:

6 Aaron Ford,  
7 Nevada Attorney General  
8 OFFICE OF THE ATTORNEY  
9 GENERAL  
10 100 N. Carson St.  
11 Carson City, NV 89701

*Attorney for Real Party in Interest,  
STATE OF NEVADA*

Steven B. Wolfson,  
Clark County District Attorney  
OFFICE OF THE CLARK COUNTY  
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Las Vegas, NV 89155-1111

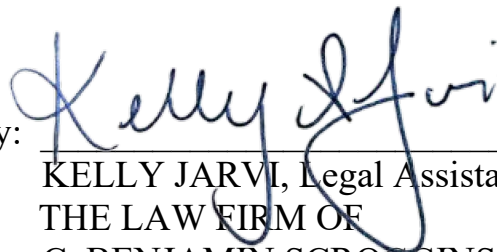
*Attorney for Respondent,  
EIGHTH JUDICIAL DISTRICT  
COURT*

12 Hon. Erika Ballou,  
13 District Court Judge  
14 Department XXIV  
15 EIGHTH JUDICIAL DISTRICT  
16 COURT  
17 200 Lewis Ave.  
18 Las Vegas, NV 89155

*Respondent*

19 CERTIFIED this 26th day of January, 2022.

20 By:

21 

KELLY JARVI, Legal Assistant to  
THE LAW FIRM OF  
C. BENJAMIN SCROGGINS, CHTD.

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TO: THE OFFICE OF THE CLARK COUNTY DISTRICT ATTORNEY,  
attorneys for Plaintiff.

GIVEN this 26th day of January, 2022.

By: