

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

LAS VEGAS METROPOLITAN POLICE  
DEPARTMENT,

Petitioner,

vs.

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

Respondents,

and

THE STATE OF NEVADA; and MATEO  
FACIO,

Real Parties in Interest.

Supreme Court Case No. C-22-361822-1  
Electronically Filed  
Mar 30 2022 02:20 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
Eighth Judicial District Court Case  
No.: C-22-361822-1

**PETITIONER'S APPENDIX**  
**(Bates Nos. 1-144)**

**Marquis Aurbach**

Nick D. Crosby, Esq.

Nevada Bar No. 8996

Jordan W. Montet, Esq.

Nevada Bar No. 14743

10001 Park Run Drive

Las Vegas, Nevada 89145

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ncrosby@maclaw.com

Attorneys for LVMPD

MAC:14687-406 4670909\_1.docx

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<b><u>DOCUMENT DESCRIPTION</u></b>	<b><u>LOCATION</u></b>
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*Steven D. Grierson*

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

MATEO JESUS FACIO,  
#8385982  
  
Defendant.

CASE NO: C-18-337117-1

DEPT NO: XXI

**JUDGMENT OF CONVICTION  
(PLEA OF GUILTY)**

The defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime(s) of ATTEMPT BURGLARY (Category C Felony), in violation of NRS 205.060, 193.330; thereafter, on the 30th day of April, 2019, the defendant was present in court for sentencing with his counsel, JASMIN SPELLS, Deputy Public Defender, and good cause appearing,

THE DEFENDANT WAS HEREBY ADJUDGED guilty of said offense(s) and, in addition to the \$25.00 Administrative Assessment Fee, a \$150.00 DNA Analysis fee including testing to determine genetic markers, and \$3.00 DNA Collection fee, Deft. SENTENCED to a MINIMUM of TWELVE (12) MONTHS and a MAXIMUM of THIRTY-FOUR (34) MONTHS in the Nevada Department of Corrections (NDC), SUSPENDED; placed on PROBATION for a FIXED period of FOUR (4) YEARS.  
SPECIAL CONDITIONS:

//

<input type="checkbox"/> Nolle Prosequi (before trial)	<input type="checkbox"/> Bench (Non-Jury) Trial
<input type="checkbox"/> Dismissed (after diversion)	<input type="checkbox"/> Dismissed (during trial)
<input type="checkbox"/> Dismissed (before trial)	<input type="checkbox"/> Acquittal
<input type="checkbox"/> Transferred (before/during trial)	<input type="checkbox"/> Conviction
<input type="checkbox"/> Other Manner of Disposition	

SS

CAUSERS\SCHOFIELDS\APPDATA\LOCAL\MICROSOFT\... (FACIO\_MATEO)001.DOCX



<input type="checkbox"/> Gold (High) award	<input type="checkbox"/> Gold (High) award
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3 1. Deft. to submit their digital storage media or any digital storage media that they  
4 have access or use, including computers, handheld communication devices and any  
5 network applications associated with those devices, including social media and  
6 remote storage services to a search and shall provide all passwords, unlock codes and  
7 account information associated with those items, with or without a search warrant, by  
8 the Division of Parole and Probation (P&P) or its agent.

9 2. Have no contact whatsoever with the victim or the victim's family.

10 3. Have no contact with any co-offenders.

11 4. Abide by any curfew imposed by probation officer.

12 5. Provide a complete disclosure of this conviction to present and potential employers.

13 6. Refrain from consuming alcohol until the age of 21 and thereafter if deemed  
14 problematic.

15 7. Refrain from the use, possession or control of recreational marijuana.

16 Deft. is also to comply with the standard terms of probation set forth in the Presentence  
17 Investigation Report.

18 DATED this 13 day of May, 2019.

19   
20 DISTRICT JUDGE

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27 18FH2336X/jr/L-1

28

Felony/Gross Misdemeanor

COURT MINUTES

February 18, 2022

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C-22-361822-1      State of Nevada  
   vs  
   Mateo Facio

---

February 18, 2022      09:30 AM      Status Check: Trial Setting

HEARD BY:      Bluth, Jacqueline M.      COURTROOM: RJC Courtroom 10C

COURT CLERK: Brown, Kristen

RECORDER:      Richardson, Sara

REPORTER:

PARTIES PRESENT:

Elissa Luzaich      Attorney for Plaintiff

Mateo Facio      Defendant

Scott L. Bindrup      Attorney for Defendant

Special Public Defender      Attorney for Defendant

State of Nevada      Plaintiff

Tegan Machnich      Attorney for Defendant

**JOURNAL ENTRIES**

Michael Sanft, Esq., appearing on behalf of Co-Def. Matus and Robert Purdy, Esq., appearing on behalf of Co-Def. Diaz.

Upon Court's inquiry, Ms. Luzaich stated the Deft's Facio and Matus have invoked their rights to a speedy trial, Deft. Diaz has waived his right to a speedy trial and that the State is not seeking the death penalty. COURT ORDERED, matter SET for trial on an invoked setting.

RECALLED: Ms. Machnich requested the Deft. be REMANDED to the Clark County Detention Center, COURT SO ORDERED. Court directed Ms. Machnich to prepare an order.

CUSTODY

3/18/22 9:30 AM STATUS CHECK: TRIAL READINESS

4/19/22 11:00 AM CALENDAR CALL

4/25/22 10:00 AM JURY TRIAL



1 IT IS FURTHER ORDERED that Mateo Jesus Facio will be transported from  
2 High Desert State Prison to the Clark County Detention Center where he will be  
3 housed through his trial and sentencing.

4 Dated this 18th day of February, 2022

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7  
8 45A DFF B2A9 466A  
9 Jacqueline M. Bluth  
10 District Court Judge

kj

11 Respectfully submitted,

12 JoNell Thomas  
13 Clark County Special Public Defender

14 /s/ Tegan C. Machnich  
15 Tegan C. Machnich  
16 Chief Deputy Special Public Defender  
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1 **CSERV**

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3 DISTRICT COURT  
CLARK COUNTY, NEVADA

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5  
6 State of Nevada

CASE NO: C-22-361822-1

7 vs

DEPT. NO. Department 6

8 Mateo Facio  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 2/18/2022

15 PUBLIC DEFENDER

PDClerk@ClarkCountyNV.gov



1 IT IS FURTHER ORDERED that Mateo Jesus Facio will be transported from  
2 High Desert State Prison to the Clark County Detention Center where he shall be  
3 housed through his trial and sentencing.

4 Dated this 22nd day of February, 2022

5   
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7 kj

8 7DA CEC 0965 B171  
9 Jacqueline M. Bluth  
10 District Court Judge

11 Respectfully submitted,

12 JoNell Thomas  
13 Clark County Special Public Defender

14 /s/ Tegan C. Machnich  
15 Tegan C. Machnich  
16 Chief Deputy Special Public Defender  
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1 **CSERV**

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3 DISTRICT COURT  
CLARK COUNTY, NEVADA

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6 State of Nevada

CASE NO: C-22-361822-1

7 vs

DEPT. NO. Department 6

8 Mateo Facio  
9

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14 Service Date: 2/22/2022

15 PUBLIC DEFENDER

PDClerk@ClarkCountyNV.gov



1 **MOT**  
2 LIESL FREEDMAN  
3 General Counsel  
4 Nevada Bar No. 5309  
5 MARTINA BAUHAUS  
6 Assistant General Counsel  
7 Nevada Bar No. 9337  
8 Las Vegas Metropolitan Police Department  
9 400 S. Martin Luther King Blvd.  
10 Las Vegas, Nevada 89106  
11 Tel: (702) 828-3310  
12 Fax: (702) 828-3191  
13 Email: [m10172b@lvmpd.com](mailto:m10172b@lvmpd.com)  
14 Attorneys for Sheriff Joseph Lombardo

9  
10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 THE STATE OF NEVADA, )  
13 )

14 Plaintiff, )  
15 )

16 vs. )  
17 )

18 MATEO JESUS FACIO, )  
19 ID#8385982 )

20 Defendant. )  
21 )

CASE NO. C-22-361822-1  
DEPT. NO. 6

**HEARING REQUESTED**

22 **SPECIALLY APPEARING INTERESTED PARTY SHERIFF JOSEPH LOMBARDO'S**  
23 **MOTION TO RECONSIDER ORDER**

24 COMES NOW, Sheriff Joseph Lombardo, (making a special appearance as an interested  
25 party) by and through his attorneys Liesl Freedman, General Counsel, and Martina Bauhaus,  
26 Assistant General Counsel and hereby submits his Motion To Reconsider Order.

27 ///

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1 This Motion is made and based upon the following Memorandum of Points and  
2 Authorities, exhibits and all the papers and pleadings on file herein.

3 DATED this 24<sup>th</sup> day of February, 2022.

4  
5 /s/ Martina Bauhaus  
6 LIESL FREEDMAN  
7 General Counsel  
8 Nevada Bar No. 5309  
9 MARTINA BAUHAUS  
10 Assistant General Counsel  
11 Nevada Bar No. 9337  
12 Las Vegas Metropolitan Police Department  
13 400 S. Martin Luther King Blvd.  
14 Las Vegas, Nevada 89106  
15 Tel: (702) 828-3310  
16 Fax: (702) 828-3191  
17 *Attorneys for Sheriff Joseph Lombardo*

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Sheriff Lombardo of the Las Vegas Metropolitan Police Department (LVMPD) through the LVMPD's Detention Services Division (DSD) maintains and operates the Clark County Detention Center (CCDC) and its inmates. The Sheriff has a duty to care for the safety, security, custody and control of CCDC inmates. NRS 211.140.

On, February 22, 2022, Defendant, through his attorneys, obtained an Amended Order to Remand Defendant and housed at the Clark County Detention Center for Trial Preparation. *See* Order attached hereto as **Exhibit A**.

The Sheriff was not provided with a Motion prior to the order or any other notice, is not a party to this case, nor was given an opportunity to be heard before the Order was entered. Defendant is properly housed at the Nevada Department of Corrections. Accordingly, the Sheriff requests that this honorable Court reconsider its previous Order and vacate the same.

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1       **II. ARGUMENT**

2       **A. DEFENDANT IS A SENTENCED INMATE ORDERED TO SERVE HIS**  
3       **SENTENCE IN THE NDC**

4       On November 16, 2021, this Honorable Judge entered an Order for Revocation of  
5       Probation and Amended Judgment of Conviction in Defendant's criminal case No. C-18-337117-  
6       1. *See* Order for Revocation attached hereto as attached **Exhibit B**. Defendant had previously  
7       plead guilty to ATTEMPT BURGLARY (Category C Felony). *Id.* Defendant was sentenced to  
8       "MAXIMUM OF THIRTY-FOUR (34) months with a minimum parole eligibility of TWELVE  
9       (12) months in the Nevada Department of Corrections (NDC)". *Id.* Defendant was properly  
10      sentenced pursuant to NRS 205.060 and 193.330 which implicitly state that a person found guilty  
11      of a category C felony of the offenses "shall be punished by imprisonment in the **state prison**".  
12      (emphasis added). CCDC is not a state prison, rather it is a local detention facility pursuant to  
13      NRS Chapter 211.

14      The Nevada legislature provides district courts with the statutory provisions of their  
15      power. A district court abuses its discretion if it exceeds the bounds of law. *Jackson v. State*, 17  
16      P.3d 998, 1000 (Nev. 2001). Remanding a sentenced Defendant from NDC to a local facility is  
17      not within the bounds of the law. NRS 209.261 to NRS 209.331. Upon being sentenced, the  
18      Sheriff has the duty to transfer the inmate to "whatever place of imprisonment the sentence of the  
19      court may require." NRS 211.040.

20      Here, this Court ordered Defendant to be transferred to NDC pursuant to NRS 202.360.  
21      The Sheriff and NDC followed that Order and Defendant was placed into the custody of NDC to  
22      serve his sentence. Any further transfer by the court is not contemplated by the legislature and  
23      the Nevada statutes.

24      The legislature did consider the possibility that a NDC inmate would have to appear at  
25      court after he is placed into a state facility. *See* NRS 209.274. Specifically, NRS 209.274 directs  
26      this be done by transporting the inmate from the NDC facility to court and back. There is no  
27      provision for the State inmate to be housed in a local facility based upon an order of the court.  
28      NRS 209.261 to NRS 209.331. Accordingly, there is no provision under which the Defendant

1 should be housed at CCDC. *Id.* Since Defendant is a convicted inmate, he is properly housed  
2 within the NDC and can not be moved to CCDC. Based upon the foregoing, the Sheriff requests  
3 that this honorable Court rescind the previous order.

4 **III. CONCLUSION**

5 Defendant is properly housed at NDC and cannot be housed at CCDC in advance of his  
6 trial date. Accordingly, the Sheriff requests that this honorable Court reconsider and vacate the  
7 previous Order.

8 DATED this 24<sup>th</sup> day of February, 2022.

9 /s/ Martina Bauhaus  
10 MARTINA BAUHAUS  
11 Assistant General Counsel  
12 Nevada Bar No. 9337  
13 Las Vegas Metropolitan Police Department  
14 400 S. Martin Luther King Blvd.  
15 Las Vegas, Nevada 89106  
16 *Attorney for Sheriff Joseph Lombardo*

17 **CERTIFICATE OF SERVICE**

18 I hereby certify that on the 24<sup>th</sup> day of February 2022, I caused the foregoing Specially  
19 Appearing Interested Party Sheriff Joseph Lombardo's Motion for Reconsideration of Order to be  
20 served via electronic means, by operation of the Court's electronic filing system, upon each party  
21 in this case who is registered as an electronic case filing user with the Clerk:

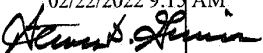
22 CLARK COUNTY PUBLIC DEFENDER'S OFFICE  
23 Tegan C. Machnich, Chief Deputy Special Public Defender  
24 Email: [Tegan.Machnich@clarkcountynv.gov](mailto:Tegan.Machnich@clarkcountynv.gov)

25 CLARK COUNTY DISTRICT ATTORNEY'S OFFICE  
26 Email: [motions@clarkcountyda.com](mailto:motions@clarkcountyda.com)

27 /s/ Shandell Auten  
28 An Employee of the Las Vegas Metropolitan  
Police Department – Office of General Counsel

# **EXHIBIT A**

# **EXHIBIT A**

  
CLERK OF THE COURT

1 ORDR

2 JoNell Thomas #4771

3 Clark County Special Public Defender

4 Tegan C. Machnich #11642

5 Chief Deputy Special Public Defender

6 330 S. 3<sup>rd</sup> St., Suite 800

7 Las Vegas, Nevada 89155

8 (702) 455-6265

9 (702) 455-6273 (fax)

10 Tegan.Machnich@ClarkCountyNV.gov

11 Attorney for Mateo Jesus Facio

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DISTRICT COURT  
CLARK COUNTY

State of Nevada,

Plaintiff,

v.

Mateo Jesus Facio,

Defendant.

Case No. C-22-361822-1

Dept. No. 6

AMENDED ORDER TO REMAND DEFENDANT

This matter having come before the Court on February 28, 2022, the Court being fully advised in the premises and good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Nevada Department of Corrections will remand Mateo Jesus Facio, ID 1251456, to the custody of the Clark County Detention Center by February 25, 2022, so that Defendant can assist his attorneys with preparation for his jury trial set for April 25, 2022.

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1 IT IS FURTHER ORDERED that Mateo Jesus Facio will be transported from  
2 High Desert State Prison to the Clark County Detention Center where he shall be  
3 housed through his trial and sentencing.

4 Dated this 22nd day of February, 2022

5   
6

7 kj

8 7DA CEC 0965 B171  
9 Jacqueline M. Bluth  
10 District Court Judge

11 Respectfully submitted,

12 JoNell Thomas  
13 Clark County Special Public Defender

14 /s/ Tegan C. Machnich  
15 Tegan C. Machnich  
16 Chief Deputy Special Public Defender  
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1 **CSERV**

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3 DISTRICT COURT  
CLARK COUNTY, NEVADA

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5  
6 State of Nevada

CASE NO: C-22-361822-1

7 vs

DEPT. NO. Department 6

8 Mateo Facio  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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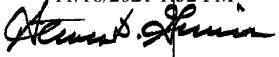
14 Service Date: 2/22/2022

15 PUBLIC DEFENDER

PDclerk@ClarkCountyNV.gov

# **EXHIBIT B**

# **EXHIBIT B**

  
CLERK OF THE COURT

1 AJOC  
2  
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4 DISTRICT COURT  
5 CLARK COUNTY, NEVADA  
6

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-  
10

11 MATEO JESUS FACIO  
12 #8385982

13 Defendant.  
14

CASE NO. C-18-337117-1

DEPT. NO. VI

15 ORDER FOR REVOCATION OF PROBATION AND  
16 AMENDED JUDGMENT OF CONVICTION  
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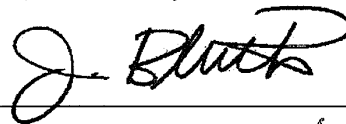
18 The Defendant previously appeared before the Court with counsel and entered a plea of  
19 guilty to the crime of ATTEMPT BURGLARY (Category C Felony) in violation of NRS  
20 205.060, 193.330; thereafter, on the 30<sup>th</sup> day of April, 2019, the Defendant was present in court  
21 for sentencing with counsel, wherein the Court did adjudge the Defendant guilty thereof by  
22 reason of the plea of guilty, suspended the execution of the sentence imposed and granted  
23 probation to the Defendant.  
24

25 THEREAFTER, a parole and probation officer provided the Court with a written  
26 statement setting forth that the Defendant has, in the judgment of the parole and probation  
27 officer, violated the conditions of probation; and on the 2<sup>nd</sup> day of November, 2021, the  
28

1 Defendant appeared in court with counsel ROBERT O'BRIEN, Deputy Public Defender, and  
2 pursuant to a probation violation hearing/proceeding and good cause appearing to amend the  
3 Judgment of Conviction,  
4

5 IT IS HEREBY ORDERED that the probation previously granted to the Defendant is  
6 REVOKED; in addition to the original fees, fines and assessments, IT IS FURTHER  
7 ORDERED that the original sentence is imposed as follows: a MAXIMUM of THIRTY-FOUR  
8 (34) MONTHS with a MINIMUM parole eligibility of TWELVE (12) MONTHS in the Nevada  
9 Department of Corrections (NDC); with ONE HUNDRED FIFTY-FIVE (155) DAYS credit for  
10 time served.  
11

12 Dated this 16th day of November, 2021

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16 C2B 55C 13C2 E049  
17 Jacqueline M. Bluth  
18 District Court Judge  
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1 **CSERV**

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3 DISTRICT COURT  
CLARK COUNTY, NEVADA  
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5  
6 State of Nevada

CASE NO: C-18-337117-1

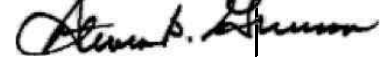
7 vs

DEPT. NO. Department 6

8 Mateo Facio  
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10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's  
12 electronic filing system, but there were no registered users on the case. The filer has been  
13 notified to serve all parties by traditional means.  
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OPPM  
JoNell Thomas #4771  
Clark County Special Public Defender  
Tegan C. Machnich. #11642  
Chief Deputy Special Public Defender  
Scott L. Bindrup #2537  
Assistant Deputy Special Public Defender  
330 S. 3<sup>rd</sup> St., Suite 800  
Las Vegas, Nevada 89155  
(702) 455-6265  
(702) 455-6273 (fax)  
[Tegan.Machnich@ClarkCountyNV.gov](mailto:Tegan.Machnich@ClarkCountyNV.gov)  
[Scott.Bindrup@ClarkCountyNV.gov](mailto:Scott.Bindrup@ClarkCountyNV.gov)  
Attorneys for Mateo Jesus Facio

DISTRICT COURT  
CLARK COUNTY

State of Nevada,

Plaintiff,

v.

Mateo Jesus Facio ID# 1251456,

Defendant.

Case No. C-22-361822-1

Dept. No. 6

Date: March 8, 2022

Time: 11:00 a.m.

**OPPOSITION TO SHERIFF'S MOTION TO RECONSIDER ORDER**

Counsel for Defendant Mateo Jesus Facio requested in open court that he be housed at the Clark County Detention Center for trial preparation. This Court issued that Order. The Sheriff now seeks to specially appear and asks this Court to reconsider that Order and to keep Mr. Facio housed with the Nevada Department of Corrections before and during trial. Mr. Facio opposes the Sheriff's motion. Under the Fifth, Sixth, and Fourteenth Amendments, he is entitled to prepare for his trial with his counsel and there is no basis for keeping him at a remote prison for the critical stages of his case. The Sheriff's motion should be denied.

1 **POINTS AND AUTHORITIES**

2 **I. Introduction**

3 The Sheriff challenges this Court's authority to have a defendant held at the  
4 Clark County Detention Center immediately prior to and during trial if that  
5 defendant is serving a sentence in prison on another offense. There is no statutory or  
6 rule authority which prohibits this Court from ordering that a defendant be held at  
7 the Detention Center for critical stages of his case, including the period immediately  
8 prior to trial and during the trial itself. Moreover, this Court has the inherent  
9 authority to determine the appropriate housing for a defendant in these  
10 circumstances. Finally, the state and federal constitutions require that an accused  
11 have a legitimate opportunity to communicate and develop a trial strategy, and to  
12 communicate during "trial recesses." This Court's Order mandating that Mr. Facio be  
13 housed at the Clark County Detention Center for trial preparation is consistent with  
14 these constitutional requirements. The Sheriff's motion should be denied.

15 It should be noted that counsel for Defendant Facio was not served with the  
16 Motion (see Automated Certificate of Service attached to the Sheriff's Motion) but  
17 learned of the court appearance and is hereby submitting this Opposition.

18 **II. Factual Statement**

19 Mr. Facio is scheduled for trial on April 25, 2022. He is accused of serious  
20 offenses, including First-Degree Murder, and is facing potential life sentence. In  
21 order to adequately review discovery, discuss trial strategy, examine potential  
22 evidence, and otherwise prepare for trial, it is critically important that he have ample  
23 opportunities to meet with his counsels. Mr. Facio has invoked his right for a speedy  
24 trial, so unless or until he waives that right, the trial preparation schedule is vastly  
25 diminished.

26 The Nevada Department of Corrections will not even allow counsel to bring a  
27 laptop into the prison to review the copious electronic discovery in this case. Further,

visitation is restricted to one day per week for a two-hour session. The Order issued by this Honorable Court required transport by February 25, 2022. The current delay of nearly two weeks has already irreparably harmed Mr. Facio's attorneys' ability to prepare for trial with his assistance.

**III. There is no authority requiring that a defendant facing trial be housed with the Nevada Department of Corrections, even if he is serving a prison sentence on another offense.**

The Sheriff argues that Nevada's statutory scheme does not consider a transfer of a prison inmate to a county detention center from a state prison based upon the defendant's request. The Sheriff is correct that there is not a statute authorizing a transfer to a county facility for pretrial preparation and trial. There also, however, is not a statute prohibiting this practice. Indeed, the statutory scheme of the Nevada Revised Statutes is silent on this issue. The Sheriff is correct that NRS 209.274 addresses transportation of an inmate to appear before Court, but this statute does not address pretrial preparation and does not address trials specifically.<sup>1</sup> There is no

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<sup>1</sup> Proof of the fact that this statute does not apply to trials is the provision in NRS 209.274(2)(a). That statute provides that if it is not possible for the Department of Corrections to transport an offender in the usual manner, the "Department shall make the offender available on the date scheduled for his or her appearance to provide testimony by telephone or video, if requested by the court." Appearance by telephone or video, however, does not satisfy constitutional requirements for the physical presence of a defendant at trial. "The right to be present is rooted in the Confrontation Clause and the Due Process Clause of the Federal Constitution." *Gallego v. State*, 117 Nev. 348, 368, 23 P.3d 227, 241 (2001), limited on other grounds, *Nunnery v. State*, 127 Nev. 749, 776 n.12, 263 P.3d 235, 253 n.12 (2011). The Confrontation Clause applies when the proceeding involves the presentation of evidence. *Id.*; *United States v. Gagnon*, 470 U.S. 522, 526-27 (1985). The Due Process Clause applies to the extent that the absence of the accused thwarts a fair and just hearing. *Gallego*, 117 Nev. at 368, 23 P.3d at 241; *Gagnon*, 470 U.S. at 526-27; *Snyder v. Massachusetts*, 291 U.S. 97, 107-08 (1934). "A leading principle that pervades the entire law of criminal procedure is that, after indictment found, nothing shall be done in the absence of the prisoner." *Lewis v. United States*, 146 U.S. 370, 372 (1892). "[I]t is the right of anyone, when prosecuted on a capital or criminal charge, 'to be confronted with the accusers and witnesses,' and it is within the scope of this right that he be present, not only



1 statute defining the mandatory housing of an inmate at a facility when that inmate  
2 has a sentence of imprisonment but is also facing trial in a pending case. NRS  
3 209.291(1)(b) does, however, provide that the director may transfer an offender “[t]o  
4 other governmental agencies, in accordance with classification evaluations and the  
5 requirements of treatment, training, security and custody of the offender.” Here, this  
6 Court’s order requires transfer of the client to the custody of the Clark County  
7 Detention Center for the purposes of maintaining his custody prior to and during  
8 trial. The Department of Corrections does not oppose this action and NRS 209.291 is  
9 appropriately constructed to allow such a transfer.

10 **IV. This Court has the inherent authority to order that a defendant be**  
11 **housed at the detention center prior to and during trial.**

12 The Nevada Constitution provides in Article 3 §1 that, “The powers of the  
13 Government of the State of Nevada shall be divided into three separate departments,  
14 - the Legislative, - the Executive and the Judicial; and no persons charged with the  
15 exercise of powers properly belonging to one of these departments shall exercise any  
16 functions, appertaining to either of the others, except in cases expressly directed or  
17 permitted in this constitution.” The Nevada Supreme Court has also found that “[i]n  
18 addition to the constitutionally expressed powers and functions of each Department,  
19 each (the Legislative, the Executive, and the Judicial) possess inherent and incidental  
20 powers that are properly termed ministerial. Ministerial functions are methods of

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22 when the jury are hearing his case, but at any subsequent stage when anything may  
23 be done in the prosecution by which he is to be affected.” *Id.* at 373 (quoting *Hooker*  
24 *v. The Commonwealth*, 13 Grat. 763, 766 (Va. 1855)). The term “presence” in this  
25 context means physical presence in the courtroom, which is presided over in-person  
26 by the judge. *United States v. Torres-Palma*, 290 F.3d 1244, 1246-47 (10<sup>th</sup> Cir. 2002)  
27 (citing *United States v. Lawrence*, 248 F.3d 300 (4<sup>th</sup> Cir. 2001) and *United States v.*  
*Navarro*, 169 F.3d 228 (5<sup>th</sup> Cir. 1999)). “[V]irtual reality is rarely a substitute for  
actual presence and that, even in an age of advancing technology, watching an event  
on a screen remains less than the complete equivalent of actually attending it.”  
*Lawrence*, 248 F.3d at 304.

1 implementation to accomplish or put into effect the basic function of each  
2 Department.” *Galloway v. Truesdell*, 83 Nev. 13, 21, 422 P.2d 234, 237 (1967). The  
3 judicial power is vested in the state Court system comprised of the Nevada Supreme  
4 Court, the Nevada Court of Appeals, District Courts, Justice Courts, and Municipal  
5 Courts. Nev. Const. art. VI, §1.

6 This Court has the inherent authority to assure that a defendant and his  
7 counsel are provided with an adequate opportunity to properly prepare for trial. This  
8 cannot be done effectively if a defendant is housed in the Nevada Department of  
9 Corrections. The Sheriff, however, ignores the burden that would be placed on the  
10 defense if Mr. Facio is not transferred. Specifically, there is no guarantee that a  
11 defendant would remain at High Desert State Prison. The Department of Corrections  
12 could transfer him to Ely, Lovelock, Carson City, or any other remote facility.

13 Moreover, there are extreme limits on visitation days and visitation hours at  
14 the prison. One day per week for two hours is woefully inadequate and takes up  
15 considerably longer than the stated time with travel and processing. This Honorable  
16 Court is well aware of the caseloads of appointed counsel - the travel / processing time  
17 makes weekly visitation onerous, while limitations based on a single-day per week  
18 visitation makes such visits impractical (with court schedules for other clients, etc).  
19 Further, these restrictions would interfere substantially with pretrial preparation.  
20 In this case specifically, there is substantial electronic discovery that Mr. Facio needs  
21 to review. The Nevada Department of Corrections will not allow counsel to bring a  
22 laptop during even the brief visits allowed so that Mr. Facio can review evidence  
23 against him.

24 Video contact is extremely limited, and often requires appointments that are  
25 set months in advance. Telephone contact is both impractical and ineffective as it is  
26 impossible to view visual evidence by telephone, the length of phone calls is severely  
27 limited, and inmates are often not provided with telephone access at any predictable

1 time. The realities of pretrial preparation and preparation during trial are such that  
2 it is appropriate to house the defendant at the detention center and this Court has  
3 the inherent authority to enter such an order.

4 **V. The Constitutional guarantees of due process, a fair trial, and**  
5 **effective assistance of counsel require that defense counsel have**  
6 **adequate contact with their client prior to and during trial.**

7 The accused enjoys a right to the assistance of counsel at all critical stages of  
8 a criminal proceeding. *Montejo v. Louisiana*, 556 U.S. 778, 786 (2009). Both the trial  
9 itself and the post-charging period before trial are critical stages. *Kirby v. Illinois*,  
10 406 U.S. 682, 688 (1972) (right to counsel attaches “at or after the time adversary  
11 judicial proceedings have been initiated against him”). When an accused suffers the  
12 impairment of counsel by a state-created barrier, the accused need not show that the  
13 inadequate performance affected the outcome – they need only show that such  
14 barriers affected counsel’s performance. *Smith v. Robbins*, 528 U.S. 259, 287 (2000);  
15 *Perry v. Leeke*, 488 U.S. 272, 279-80 (1989) (recognizing that while most claims of  
16 ineffective assistance of counsel require a showing of prejudice, “direct governmental  
17 interference with the right to counsel is a different matter”). In some circumstances,  
18 the effective performance of counsel is so unlikely that it amounts to the functional  
19 equivalent of a complete denial of counsel. *United States v. Cronin*, 466 U.S. 648, 659  
(1984). In these cases, reversal of a judgment is automatic. *Id.*

20 An accused person has the unqualified right to consult with counsel throughout  
21 the trial. *Geders v. United States*, 425 U.S. 80 (1976). This right prevails over even  
22 very weighty concerns of trial administration, such as the witness sequestration rule.  
23 *Id.* at 88-92. The efficacy of attorney-client consultation diminishes at a distance. If  
24 the defendant and counsel can hear each other at a distance, they cannot speak  
25 privately, as is guaranteed by the Sixth Amendment. *Weatherford v. Bursey*, 429 U.S.  
26 545, 554 n.4 (1977).

1 Criminal proceedings require that conditions are restored that ensure defense  
2 counsel can meet their Sixth Amendment obligations, including the conditions  
3 necessary for robust, ethical attorney-client relationships. Criminal proceedings  
4 require a robust attorney client relationship. This requires sufficient opportunities  
5 for client and counsel to confer for the purposes of reviewing evidence, discussing  
6 charges, reviewing potential defenses, planning investigation, weighing risks and  
7 benefits of a proposed negotiation, and determining trial strategy. *See Maine v.*  
8 *Moulton*, 474 U.S. 159, 170 (1985) (“the assistance of counsel cannot be limited to  
9 participation in a trial; to deprive a person of counsel during the period prior to trial  
10 may be more damaging than denial of counsel during the trial itself”).

11 Criminal defendants have a Sixth Amendment right to assistance of counsel.  
12 *Gideon v. Wainwright*, 372 U.S. 335, 339-41 (1963). A “criminal defendant’s ability  
13 to communicate candidly and confidentially with his lawyer is essential to his  
14 defense.” *Nordstrom v. Ryan*, 762 F.3d 903, 910 (9th Cir. 2014); *see also Coplon v.*  
15 *United States*, 191 F.2d 749, 757, 89 U.S. App. D.C. 103 (D.C. Cir. 1951) (noting that  
16 “[i]t is well established that an accused does not enjoy the effective aid of counsel if  
17 he is denied the right of private consultation with him”).

18 The Nevada Rules of Professional Conduct also impose ethical rules upon  
19 counsel that should not be limited by forcing this matter to proceed with the client at  
20 a distant location, at a facility which prohibits substantial contact between counsel  
21 and client. These rules require competence (Rule 1.1), diligence (Rule 1.3),  
22 communication (Rule 1.4), and confidentiality of information (Rule 1.6). ADKT 411  
23 also provides for confidential communications. These standards include zealous and  
24 competent representation (Standard 4-1), consultation in a confidential setting  
25 whenever possible (Standard 4-4), a thorough investigation (Standard 4-7),  
26 inspection of the scene of the offense (Standard 4-7), consultation with the client  
27 during trial (Standard 4-10), discussion of concessions with the client in preparing

1 for trial (Standard 4-10), preparation of a defense strategy in consultation with the  
2 client (Standard 4-12), and discussion with the client for presentation of the defense  
3 case (Standard 4-14).

4 **CONCLUSION**

5 The Sheriff's motion should be denied in its entirety. Mr. Facio is entitled to  
6 properly prepare for his defense and that preparation cannot be effectively done at  
7 the prison facility. This Court has the statutory, inherent, and constitutional  
8 authority to take the action which it took by ordering his transfer to the Clark County  
9 Detention Center.

10 Dated March 7, 2022.

11 Respectfully submitted,

12  
13 JoNell Thomas  
14 Clark County Special Public Defender

15 /s/ Tegan C. Machnich  
16 Tegan C. Machnich  
17 Chief Deputy Special Public Defender  
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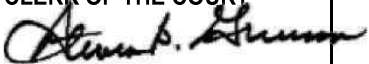
**CERTIFICATE OF SERVICE**

I certify that I electronically filed the foregoing with the Clerk of the Eighth Judicial District Court by using the Court’s mandatory electronic filing system (EFS). The EFS will serve a file-stamped copy of this document on all participants to this matter who are registered users. EJDC Rule 8.04; NEFCR. The EFS will provide proof of service by email to all addresses listed in the service list for that particular case, including:

<b>Party</b>	<b>Email</b>
State of Nevada	motions@clarkcountyda.com
LVMPD	m10172b@lvmpd.com

Dated March 7, 2022.

Signed,  
  
/s/ Shadonna Scurry  
An employee of the  
Special Public Defender



1 **RPLY**  
2 LIESL FREEDMAN  
3 General Counsel  
4 Nevada Bar No. 5309  
5 MARTINA BAUHAUS  
6 Assistant General Counsel  
7 Nevada Bar No. 9337  
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14 Attorneys for Sheriff Joseph Lombardo

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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

vs.

MATEO JESUS FACIO,  
ID#1251456,

Defendant.

CASE NO. C-22-361822-1  
DEPT. NO. 6

DATE: March 8, 2022  
TIME: 11:00 a.m.

**SPECIALLY APPEARING INTERESTED PARTY SHERIFF JOSEPH LOMBARDO'S  
REPLY TO DEFENDANT'S OPPOSITION TO MOTION TO RECONSIDER ORDER**

COMES NOW, Sheriff Joseph Lombardo, (making a special appearance as an interested party) by and through his attorneys Liesl Freedman, General Counsel, and Martina Bauhaus, Assistant General Counsel and hereby submits his Reply to Defendant's Opposition to Motion to Reconsider Order.

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1 This Reply is made and based upon the following Memorandum of Points and Authorities,  
2 exhibits and all the papers and pleadings on file herein.

3 DATED this 7<sup>th</sup> day of March, 2022.  
4

5 /s/ Martina Bauhaus  
6 LIESL FREEDMAN  
7 General Counsel  
8 Nevada Bar No. 5309  
9 MARTINA BAUHAUS  
10 Assistant General Counsel  
11 Nevada Bar No. 9337  
12 Las Vegas Metropolitan Police Department  
13 400 S. Martin Luther King Blvd.  
14 Las Vegas, Nevada 89106  
15 Tel: (702) 828-3310  
16 Fax: (702) 828-3191  
17 *Attorneys for Sheriff Joseph Lombardo*

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **I. INTRODUCTION**

20 Defendant argues that there is no statutory rule or authority prohibits the Court from  
21 ordering Defendant to be moved to the Clark County Detention Center (DDCD). Defendant  
22 ignores the fact that the principle of separation of powers does in fact prohibits the same.  
23 Furthermore, moving Defendant is not just a ministerial act by the court, rather an abuse of  
24 discretion as it exceeds the bounds of established law. The principle of separation of powers  
25 anchored in the United States Constitution and Nevada Constitution prohibits the same.  
26 Accordingly, this Court should grant the Motion and reconsider its Order.

27 **II. ARGUMENT**

28 **A. THE SEPARATION OF POWERS PRINCIPLE PROHIBITS THIS COURT  
FROM MOVING DEFENDANT FROM NDC TO CCDC.**

The Nevada Constitution separates the powers of Nevada government into three  
departments, "the Legislative, the Executive and the Judicial," and provides that "no persons  
charged with the exercise of powers properly belonging to one of these departments shall  
exercise any functions, appertaining to either of the others." *Nev. Const. art. 3, § 1(1).* "



1 The determination of the question whether an act is judicial, ministerial, legislative or  
2 administrative, must depend upon the act and the manner and method of its exercise. *State ex.rel.*  
3 *Fletcher v. Osburn*, 51 P. 837, 840 (Nev. 1898). Ministerial functions are based upon the  
4 administrative authority over court business. *Halverson v. Hardcastle*, 163 P.3d 428, 440 (Nev.  
5 2007). Inherent judicial power is not infinite and must be exercised within the confines of valid  
6 existing law. *Id.*

7 The Nevada Supreme Court has recognized that there is some amount of overlap and  
8 interdependence. *Galloway v. Trusdell*, 422 P.2d 237, 243 (Nev. 1967). However, the Court  
9 determined that establishing the penalty for a criminal offense is a legislative function, while  
10 deciding what penalty to impose in a given case is a judicial function. *Mendoza-Lobos v. State*,  
11 218 P.3d 501, 504-05 (Nev. 2009). The judicial function is also constrained, by the related  
12 legislative function as, the Legislature may "completely remove any judicial discretion to  
13 determine a criminal penalty by creating mandatory sentencing schemes" or "mandat[e] factors to  
14 be considered by the courts when imposing a sentence." *Id.* at 505.

15 Here the legislature mandated that a person convicted pursuant to NRS 202.360 "shall be  
16 punished by imprisonment in the state prison." Defendant was sentenced pursuant to NRS  
17 202.360 and was transferred to the state prison. The Honorable Judge Israel issued an order  
18 according to the legislative mandate. He did not have any discretion of placing Defendant at  
19 CCDC.

20 Defendant argues that moving Defendant from the NDC into the custody of the Sheriff is  
21 within the inherent power of the court as it is a ministerial function of the Court. However, as  
22 stated above it is not. Valid existing law demands that Defendant is housed at the NDC.  
23 Placement into CCDC is not a ministerial function of the Court. Accordingly, the Court should  
24 reconsider its Order.

25 ///

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**B. MOVING DEFENDANT IS NOT A MINISTERIAL FUNCTION OF THE COURT**

The United States Supreme Court admonished all courts in the case of *Bell v. Wolfish*, 441 U.S. 520, 547 (1979) to give considerable and wide-ranging deference to jail and prison administrators in matters of preserving the safe and orderly operation of a detention facility or prison. The Court consequently cautioned lower courts to approach with hesitancy any intervention into the operations of jails and prisons.

[T]he problems that arise in the day-to-day operations of a correctional facility are not susceptible of easy solutions. Prison administrators therefore should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security. Such considerations are peculiarly within the province and professional expertise of correctional officials, and, in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment in such matters.

*Id.* at 547-48 (emphasis added)(citations omitted).

This line of argument is in line with the Nevada Supreme Court's ruling on inherent powers of the Court: "inherent power should be exercised only when *established methods fail or in an emergency situation*," *Halverson*, at 441. (emphasis added). Furthermore courts should show "restraint in resorting to inherent power," particularly where the legislature has enacted a statute or rule covering a certain area, *Degen v. United States*, 517 U.S. 820, 823-24, (1996); *Hunter v. Gang*, 1377 P.3d 448, 454-55 (Nev. 2016) ("We remind courts that because inherent authority is not regulated by the Legislature or the people, it is more susceptible to misuse, and thus should be exercised sparingly."). In this case, valid existing law dictates that Defendant is to be housed at NDC. Furthermore, there is an Order in a different case, placing Defendant into the custody of the NDC. Ordering governmental entities of the executive branch to move Defendant is not a ministerial function of the Court. While where to house Defendant is a ministerial function, it as a ministerial function assigned to the executive, not the judicial branch.

1 United States Supreme Court cases further determine that where an individual is housed is to be  
2 left up to the correction facilities, not the Court.

3 Defendant's Opposition provides in length argument about Defendant's constitutional  
4 rights. What the Opposition however is missing is any attempt by Defendant's counsel to show  
5 that they tried to obtain these rights from the Nevada Department of Corrections prior on asking  
6 this Court having Defendant moved into the custody of the Sheriff. Defendant complains of  
7 difficulties to access his attorneys at NDC. There is nothing on the Court docket where he sought  
8 assistance from the Court to overcome these hurdles. If, as Defendant claims, it is easy to have  
9 the Court order Defendant from NDC into the custody of the Sheriff, it should be even easier to  
10 have asked this Court to order NDC to provide adequate access guaranteed by the U.S.  
11 Constitution. It does not appear that Defendant even tried.

12 Defendant requests that this Court order him to be housed at CCDC to accommodate his  
13 attorneys and defense team. Defendant failed to provide this Court with any legal authority to  
14 support a convicted inmate being transported and housed at a detention facility well before his  
15 trial date, let alone any legal authority that this would make it a ministerial function of the Court.

16 **III. CONCLUSION**

17 Defendant is properly housed at NDC and cannot be housed at CCDC in advance of his  
18 trial date. Accordingly, the Sheriff requests that this honorable Court reconsider and vacate the  
19 previous Order.

20 DATED this 7<sup>th</sup> day of March, 2022.

21 /s/ Martina Bauhaus  
22 MARTINA BAUHAUS  
23 Assistant General Counsel  
24 Nevada Bar No. 9337  
25 Las Vegas Metropolitan Police Department  
26 400 S. Martin Luther King Blvd.  
27 Las Vegas, Nevada 89106  
28 *Attorney for Sheriff Joseph Lombardo*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 7<sup>th</sup> day of March 2022, I caused the foregoing Specially Appearing Interested Party Sheriff Joseph Lombardo's Reply to Defendant's Opposition to Motion to Reconsider Order to be served via electronic means, by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk:

CLARK COUNTY PUBLIC DEFENDER'S OFFICE

[Tegan.Machnich@ClarkCountyNV.gov](mailto:Tegan.Machnich@ClarkCountyNV.gov)

[Scott.Bindrup@ClarkCountyNV.gov](mailto:Scott.Bindrup@ClarkCountyNV.gov)

CLARK COUNTY DISTRICT ATTORNEY'S OFFICE

[motions@clarkcountyda.com](mailto:motions@clarkcountyda.com)

/s/ Shandell Auten

An Employee of the Las Vegas Metropolitan  
Police Department – Office of General Counsel

DISTRICT COURT  
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

March 08, 2022

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C-22-361822-1      State of Nevada  
   vs  
   Mateo Facio

---

March 08, 2022      11:00 AM      Specially Appearing Interested Party Sheriff Joseph Lombardo's  
Motion to Reconsider Order

HEARD BY:      Ellsworth, Carolyn      COURTROOM: RJC Courtroom 11B

COURT CLERK: Harrington, Chris; Schlitz, Kory

RECORDER:      Estala, Kimberly

REPORTER:

PARTIES PRESENT:

Mateo Facio	Defendant
Scott L. Bindrup	Attorney for Defendant
Tegan Machnich	Attorney for Defendant

**JOURNAL ENTRIES**

Martina Bauhaus present on behalf of LVMPD; Defendant not present.

Ms. Machnich argued she was never served with the Motion and requested the Defendant be present for this hearing. COURT STATED this is not a substantive Motion for the Defendant's presence be required. Ms. Bauhaus stated she was not aware the Defense was not served, as they filed an Opposition, and she filed a Reply. Ms. Machnich again requested the Defendant be present, as that is the issue they are arguing is the prison is restricting access to the Defendant. Ms. Bauhaus argued there is no good reason for the current order in place, and requested the Motion to Reconsider be granted. COURT ORDERED, Motion to Reconsider GRANTED.

CUSTODY (COC-NDC)

3/18/2022 9:30 A.M. STATUS CHECK: TRIAL READINESS

4/19/2022 9:30 A.M. CALENDAR CALL

4/25/2022 10:00 A.M. JURY TRIAL

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THE STATE OF NEVADA,  
Plaintiff,  
vs.  
MATEO JESUS FACIO,  
Defendant.

BEFORE THE HONORABLE CAROLYN ELLSWORTH,  
DISTRICT COURT JUDGE  
TUESDAY, MARCH 8, 2022

APPEARANCES:

RECORDED BY: KIMBERLY ESTALA, COURT RECORDER

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Las Vegas, Nevada, Tuesday, March 8, 2022

[Case called at 11:33 a.m.]

THE COURT: C-22-361822 State of Nevada versus Mateo Facio. And --

MS. MACHNICH: Good Morning, Your Honor, Tegan Machnich, Special Public Defender's Office here on Mr. Facio's behalf. I would note first that we weren't served with this motion. I came across it when my staff alerted me to this being on calendar tomorrow. Despite the certificate of service it was not correct. They failed to writ our client down for this argument. I believe we could go forward but this might actually be a pivotal moment in this case because my client obviously also wants contact with us and now he's not able to be present because the State did not, well not the State, the moving party I'll them did not do their job in advance of this motion. And also we need to make all of the arguments for our record because we will be writing this up.

THE COURT: Did you --

MS. BAUHAUS: So, Your Honor, I talked to my staff and it is true that I talked to -- I don't file stuff actually that's I have to have somebody else file it for me. So and I had her look into it because we we're not aware that they were not served. She said she, apparently there's some boxes that you check, she said she checked the boxes she doesn't know what happened. So I apologize for that it wasn't intentional it wasn't to side -- blind side the defendant. That was --

THE COURT: All right. So this motion can't go forward today

1 because it wasn't properly served.

2 MS. BAUHAUS: Well they filed an opposition and I filed a  
3 reply.

4 MS. MACHNICH: I was able to quickly respond to their  
5 motion but they also did not writ my client down and so I would actually  
6 request that this be continued for his presence.

7 THE COURT: Well we wouldn't bring your client down for --

8 MS. BAUHAUS: We wouldn't have brought the client down.

9 MS. MACHNICH: Our client deserves to be here for each  
10 important part of the proceedings in his case. He is up at the Nevada  
11 Department of Corrections.

12 THE COURT: An issue of whether he's -- of where he's going  
13 to be housed doesn't require his -- it's not an essential part. I don't think  
14 he needs to be here for that.

15 MS. MACHNICH: Well, Your Honor, I think that goes to the  
16 crux of our argument is that the fact that they're restricting our access to  
17 our client fundamentally by taking this position does make it essential to  
18 our defense and to my defendant's point of view. My client wants to be  
19 housed where I can have access to him. And so I guess I can go forward  
20 with arguing today but I do want that as part of the record that we were  
21 not noticed and while I was able to respond quickly that should not be  
22 held against my client.

23 THE COURT: Well it's not being held against your client. It's  
24 because you got actual service even though you weren't apparently  
25 properly served you got the -- document. You filed your opposition, that's



1 how you would be prejudiced. If you hadn't had a chance to file your  
2 opposition and you did.

3 MS. MACHNICH: And --

4 THE COURT: And so I appreciate -- your arguments but, you  
5 know, the Court doesn't really have the ability to say where a person is  
6 housed. The Court has the ability to say there shall be access, right, and  
7 he's currently housed at the Nevada Department of Corrections. If there  
8 is a problem where the State through the Division of Corrections is going  
9 to take the position that they won't transport well then we need to  
10 address it with them.

11 MS. MACHNICH: So, Your Honor, --

12 THE COURT: The Court could compel them --

13 MS. MACHNICH: -- I would like to make my full argument  
14 because I do need it for my appellate record.

15 THE COURT: Well of course.

16 MS. MACHNICH: Thank you.

17 MS. BAUHAUS: Well then I would like to go first since it's my  
18 motion.

19 THE COURT: Yeah it's her motion, go ahead.

20 MS. BAUHAUS: So, many years ago I appeared in front of a  
21 Chief Judge with an issue that was handled a certain way for probably  
22 close to 20 years. I the -- every year it was renewed and it was done a  
23 certain way. And many Judges agreed to do it. And then I appeared in  
24 front of a very smart Chief Judge who asked me what his authority was  
25 to do a certain thing. And I said, we'll we've always done it this way. And

1 he said, well yes but what is my authority? And the easy solution that I  
2 was asking for wasn't in his authority to do so. So we had to kind of do it  
3 differently and it was a little bit more difficult issue to do it another way.  
4 But it was done another way because he had the authority do it the other  
5 way. And this is kind of like what this is. Is it the easy solution to send  
6 the defendant to CCDC, absolutely. But is there authority for it? I say no.  
7 And similar the Nevada Supreme Court has held that orders entered  
8 without authority are void in *Ex Parte Gardner* 39 P.570 (Nev 1895).

9           So, now we go to the statutory provision that is actually there.  
10 And there's a statutory provision that allows the defendant to come to  
11 court. In the opposition, what is argued that, well yeah, there is no actual  
12 statutory authority for the defendant to be transported but there's also no  
13 statutory authority that would prohibit the Court to answer that. Well that  
14 then goes to statutory construction as this Court knows. And statutory  
15 construction when it's silent there's a negative inference. Because there  
16 is a statute on point on how to do this it would make the statute to  
17 transport somebody back and forth from NDOC to court irrelevant if the  
18 Court could just order him into CCDC. Why would you have that one  
19 statute then? So -- and the U.S. Supreme Court has found the same  
20 thing that just when something is not specific in there you should, the  
21 Court should not extend the statute. To do so would enlarge the statute  
22 rather than construct -- the construction of it which is in US, I'm sorry,  
23 270 U.S. 245, 250 and that's a 1926 case.

24           So again, this is not new for the Court this has been going on  
25 for a long, long time. And I would say that like what I laid out in my

1 moving papers and then in my reply there is no really statutory authority  
2 for this type of remand or whatever you might want to call it.

3 THE COURT: All right, counsel.

4 MS. MACHNICH: Yes, Your Honor. In fact this is provided for  
5 in the Nevada Constitution, constitutional authority in Article 3 Section 1  
6 dividing the separation of powers into the 3 departments. But the  
7 Nevada Supreme Court has further stated that beyond the express  
8 functions there are inherent and incidental powers that are properly  
9 termed ministerial. Ministerial functions are methods of implementation  
10 to accomplish or put into effect the basic function of each department  
11 which is *Galloway v Truesdale* 83 Nev. 13 a 1967 case. It is within the  
12 power and it is vested within the power of the judicial department to  
13 facilitate trials and to move towards the accomplishment of justice in the  
14 system. And it is also within the judicial departments premise to protect  
15 the constitutional rights of criminal defendants.

16 In the instance that we are in before, Your Honor, our client is  
17 housed up at High Desert. Part of our representation of a criminal  
18 defendant is establishing a relationship with a client, having the chance  
19 to talk over their case with them. The 6<sup>th</sup> amendment of the constitution  
20 protects the attorney client relationship and holds it to be pivotal. It is a  
21 constitutionally protected right that we have the ability to meet with our  
22 client, discuss the case with the client, strategize with our client, and  
23 ultimately be there to counsel our client before a trial is held.

24 In the instant case at this point my client has invoked his right  
25 for a speedy trial. I don't know if that is something that he will hold onto

1 going forward. However, at this point he has invoked. And we have  
2 attempted to set up a visit and I want to take the Court through what that  
3 has entailed because it's not something where we can coordinate  
4 something for a quick afternoon. I appreciate that my colleague  
5 previously stated that it takes about a half day to accomplish these visits,  
6 I think it takes nearly a full day to accomplish these visits because it's  
7 not just the drive up to the prison. It's coordinating the schedules of  
8 multiple attorneys' because on a first degree murder case we are not  
9 trying these cases alone. That, in addition to investigators are part of our  
10 entire trial defense team. So were coordinating the schedules of multiple  
11 parties, we need to go up to the prison which is nearly 45 minute to an  
12 hour drive from here. At that point there's a processing in period which  
13 can take up to 45 minutes to an hour, we then get a 2 hour visit. And  
14 then we have to go through the processing out and then drive back. The  
15 reason why this becomes so difficult to accomplish is that visitation days  
16 are one day per week. I have a scheduled visit set for Mr. Facio in this  
17 case. It took us 2 weeks to get a response from High Dessert, then we  
18 had to schedule and at that point we were also rejected on our request  
19 to bring in a laptop to that my client could even view some of the  
20 evidence against him. They said give us a CD, it's not feasible in this  
21 case, its cell phone data and social media data that can't be placed on a  
22 CD. Nor would it be appropriate for the Warden to have access to my  
23 client's discovery. So, all of this is to say that it is impossible for the  
24 defense team to prepare for trial with our clients up at High Desert.

25           Additionally, the Nevada Department of Corrections could

1 choose to reclassify our defendant and send him anywhere in the state  
2 at any point without any restriction. So at that point we are then in a  
3 position where we could not even do the one half to full day visit it could  
4 take multiple days. Your Honor, is aware that it takes a lot to prepare for  
5 these trials and our client deserves and has a constitutional right to  
6 effective assistance of counsel. We cannot establish a relationship with  
7 our client, there is no way for us to just call in and talk to him on a  
8 regular basis. There's no feasible way to do video visits with him on a  
9 regular basis. And it takes weeks to schedule these in person visits and  
10 we have in fact done it in Mr. Facio's case. And the idea that every time  
11 we would need to see him we would wait one to two weeks, then  
12 schedule the visit for a specific a day of the week when everybody's  
13 available for a certain week it just makes it so that it's not feasible for the  
14 defense and it would violate our -- clients constitutional rights.

15 Now, I understand that the moving party had stated that this  
16 is a punishment for CCDC. That is obviously no one's intention.  
17 However, it is purely within the ministerial functions of the Court to  
18 determine what is the most effective way to both protect the  
19 constitutional rights of a criminal defendant but additionally to move  
20 dockets to move calendars. Judge Bluth herself has stated that she  
21 wants calendars to move, she wants these trials to move forward. I  
22 know, Your Honor, I know you sit Senior now but when you were on the  
23 bench --

24 THE COURT: I still want the same thing.

25 MS. MACHNICH: You want everything to move forward, Your

1 Honor, as do we. It is impossible for us to do it. We cannot do it in a way  
2 that protects our client's constitutional right. And it's going to cause a  
3 breakdown in client communications, a breakdown in the client  
4 relationship. It's going to require eventually clients are going to start  
5 trying to fire us because we can't communicate with them on a regular  
6 basis. We need regular access to our clients.

7 Now would two months before trial be ideal, yes. That would  
8 be ideal because that gives us a chance to fully investigate cases, to  
9 meet with our clients on a regular basis, and to develop relationships.  
10 We understand that that might be longer then the Court is comfortable  
11 with. And 30 days is basically the shortest period of time only because 2  
12 weeks puts us within the motion deadline. We would not even be able to  
13 coordinate with our client on motion practice, trial strategy, which  
14 direction we're going on cases, if we cannot have ready access to our  
15 client on a regular basis at least 30 days before the trial setting. And so  
16 while the moving party says there's no statutory authority for this we  
17 believe that is a higher level than that and it is constitutional authority in  
18 the Nevada Constitution, constitutional authority with the U.S.  
19 Constitution, and just the ministerial functions of the Court to effectively  
20 move dockets and effectively move cases and allow counsel to  
21 effectively represent their clients.

22 And I would say that you will never hear the moving party in  
23 this case come to court and say we need to let more people go so we  
24 can have less housing issues with dividing up more violent offenders.  
25 There never going to say that. That's their job, they house people who

1 need to be housed. Our clients will eventually end up back down at  
2 CCDC if these cases continue out long enough but we are no way of  
3 knowing if that's going to be the case. And it's somewhat disingenuous  
4 to say that these are so difficult people to house, they're going to have to  
5 house them in the future for some period of time if the trials don't go  
6 forward. They're going to get them back and they will never take the  
7 position that they should be released into the community instead just to  
8 facilitate the same means that they're trying to establish and facilitate by  
9 saying our clients should be up in the prison system. This Court does  
10 have this power. This Court has always had this power. I realize that the  
11 moving party was specifically focusing on the fact that sometimes things  
12 change and, you know, just because we've always done it someday  
13 doesn't mean we always should. However, Your Honor, this is always  
14 been done this way and it is always been relatively standard for our  
15 clients to at least spend 30 days before trial down on complex cases. If  
16 we were here before Your Honor, on a possession of stolen vehicle case  
17 I think that would be in a very, very different position. In both our case  
18 and my colleague's case we are here on life sentence cases. My client  
19 could spend the rest of his life in prison and that is going to be looked at  
20 with a higher scrutiny than a case where they're facing a 1 to 5. And so -  
21 -

22 THE COURT: I understand that and I understand your  
23 arguments but a lot of your argument is premised on speculation about  
24 what would happen if the Court ordered the prison -- I mean you haven't  
25 you have not asked the Court for relief to be able to see your clients in

1 the prison. You've just said well they've established these arbitrary rules  
2 and it's really hard and we just don't want to deal with that, we want  
3 instead you to order a person to be housed in an inappropriate facility  
4 which they're not supposed to be in, right.

5 MS. MACHNICH: Well, Your --

6 THE COURT: And so I'm granting the motion for  
7 reconsideration, you know, revoking the previous order and you can  
8 surely take it up on a writ but, you know, you would also want to, I would  
9 think, file a motion to bring the State in here to have them explain why  
10 they can't give ready access so you can properly --

11 MS. MACHNICH: Your Honor, in this --

12 THE COURT: -- talk to your client.

13 MS. MACHNICH: I understand, Your Honor's, ruling. We're  
14 pressed for time in this case. The motion practice to in order to get the  
15 State in on this case will already -- I mean at this point CCDC refused to  
16 comply with the court order and just ignored it and then eventually filed a  
17 motion, which I guess was a while ago however we never got served so  
18 we didn't know about it. However, we're in a position now where any sort  
19 of motion practice with the State would push us through our client's trial

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THE COURT: File it on an order shortening time. That's why we have order shortening time. Do that. All right, thank you, I've got another calendar.

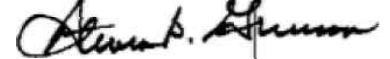
MS. BAUHAUS: Thank you, Your Honor.

[Proceedings concluded at 11:48 a.m.]

\* \* \* \* \*

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability. Please note: Technical glitches which resulted in distortion in the Bluejeans audio/video and/or audio cutting out completely were experienced and are reflected in the transcript.

  
\_\_\_\_\_  
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Court Recorder/Transcriber



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DISTRICT COURT  
CLARK COUNTY

State of Nevada,

Plaintiff,

v.

Mateo Jesus Facio ID# 1251456,

Defendant.

Case No. C-22-361822-1

Dept. No. 6

Date: March 22, 2022

Time: 11:00 a.m.

**DEFENDANT'S MOTION TO COMPEL NEVADA DEPARTMENT OF  
CORRECTIONS TO ALLOW DAILY VISITATION, TO RECONSIDER REMANDING  
DEFENDANT AND CLARIFY WHEN DEFENDANT WILL BE REMANDED TO  
CCDC PRIOR TO TRIAL**

Counsel for Defendant Mateo Jesus Facio requested in open court that he be housed at the Clark County Detention Center for trial preparation. This Court issued that Order. Subsequently, CCDC (aka LVMPD, the Sheriff) asked for reconsideration arguing that it was sufficient for counsel to visit Mr. Facio at the Nevada Department of Corrections ("NDOC"). The Honorable Senior Judge Ellsworth granted CCDC's

DEPARTMENT VI  
NOTICE OF HEARING  
DATE 3/22/22 TIME 11:00 am  
APPROVED BY [Signature] EA

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15  
16 DISTRICT COURT  
17 CLARK COUNTY

18 State of Nevada,  
19  
20 Plaintiff,

21 v.

22 Mateo Jesus Facio ID# 1251456,  
23  
24 Defendant.

Case No. C-22-361822-1

Dept. No. 6

Date: March 22, 2022

Time: 11:00 a.m.

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**DEFENDANT’S MOTION TO COMPEL NEVADA DEPARTMENT OF  
CORRECTIONS TO ALLOW DAILY VISITATION, TO RECONSIDER REMANDING  
DEFENDANT AND CLARIFY WHEN DEFENDANT WILL BE REMANDED TO  
CCDC PRIOR TO TRIAL**

Counsel for Defendant Mateo Jesus Facio requested in open court that he be housed at the Clark County Detention Center for trial preparation. This Court issued that Order. Subsequently, CCDC (aka LVMPD, the Sheriff) asked for reconsideration arguing that it was sufficient for counsel to visit Mr. Facio at the Nevada Department of Corrections (“NDOC”). The Honorable Senior Judge Ellsworth granted CCDC’s

1 Motion. As anticipated, NDOC will not allow visitation more than once per week –  
2 making preparation for a life-sentence trial impossible. Mr. Facio now requests that  
3 this Court (1) compel the NDOC to open up visitation in the two months before a jury  
4 trial to allow for visits five (5) days per week, (2) reconsider allowing the Mr. Facio to  
5 be remanded to Clark County Detention Center at least a calendar week before the  
6 jury trial motion deadline to facilitate trial preparation, and (3) to clarify the prior  
7 ruling regarding where he will be held in the days leading up to trial and during  
8 nighttime trial recesses.

## 10 POINTS AND AUTHORITIES

### 11 I. Introduction

12 At the prior hearing in this case on CCDC's motion to reconsider remand,  
13 Counsel for CCDC argued that CCDC should not be "punished" by being forced to  
14 house a defendant who has been sentenced and is serving time in the NDOC. [See  
15 Transcript in Companion Tavaréz case, 3/8/2022 Hearing, attached hereto as Exhibit  
16 A.] The argument stemmed from statutory interpretation that felony sentences  
17 should be served in the Department of Corrections, while completely ignoring the  
18 Constitutional Rights of a defendant pending trial who needs access to and the  
19 assistance of counsel. [See Transcript 3/8/2022, attached hereto as Exhibit B.]  
20 Ultimately, the Honorable Senior Judge Ellsworth ruled in CCDC's favor, noting that  
21 Mr. Facio should ask this Court to require NDOC to provide the access requested.  
22 [See *Id.*, p.11]

23 Presently, there is no court order in place requiring that CCDC house Mr. Facio  
24 even in the weeks immediately preceding trial or during the nighttime recesses  
25 during trial. This raises the issue of how Mr. Facio will be dressed-out for trial (who  
26 will take the clothing, who will provide necessary grooming), and further violates his  
27

1 right to confer with counsel during trial recesses. At the very least, this must be  
2 remedied and clarified.

3 Subsequently, Counsel for Mr. Facio reached out to NDOC to request visitation  
4 be allowed daily, Monday – Friday, upon request to facilitate preparation for trial. It  
5 is well-settled that counsel cannot call into the prison or have access to video visits  
6 on-demand. In response, NDOC stated that Mr. Facio has a set visitation day and  
7 can only have visits on his visitation day. [See E-Mail to NDOC, attached hereto as  
8 Exhibit C.] Further, it had already been made clear that counsel for Mr. Facio is not  
9 allowed to bring a laptop to the very limited visitation in order to show him the  
10 electronic discovery in his case (which cannot be placed on a CD for later review and  
11 should not even be placed in the possession of the warden). [See E-Mail Chain to  
12 NDOC, attached hereto as Exhibit D.]

## 13 **II. Factual Statement**

14 Mr. Facio is scheduled for trial on April 25, 2022. He is accused of serious  
15 offenses, including First-Degree Murder, and is potentially facing life in prison. In  
16 order to adequately review discovery, discuss trial strategy, examine potential  
17 evidence, and otherwise prepare for trial, it is critically important that he have ample  
18 opportunities to meet with his counsels. Mr. Facio has invoked his right for a speedy  
19 trial, so unless or until he waives that right, the trial preparation schedule is vastly  
20 diminished.

21 To date, this has been impossible. There is no way counsel can be ready for an  
22 invoked trial setting, despite Mr. Facio's invoking this right. Delays will continue if  
23 this situation is not remedied in some form.

## 24 **III. There is no authority requiring that a defendant facing trial be** 25 **housed with the Nevada Department of Corrections, even if he is** 26 **serving a prison sentence on another offense.**

26 Nevada's statutory scheme does not consider a transfer of a prison inmate to a  
27 county detention center from a state prison based upon the defendant's request.

1 CCDC correctly stated in its prior motion that there is not a statute authorizing a  
2 transfer to a county facility for pretrial preparation and trial. There also, however, is  
3 not a statute prohibiting this practice. Indeed, the statutory scheme of the Nevada  
4 Revised Statutes is silent on this issue. CCDC is correct that NRS 209.274 addresses  
5 transportation of an inmate to appear before Court, but this statute does not address  
6 pretrial preparation and does not address trials specifically.<sup>1</sup> There is no statute  
7 defining the mandatory housing of an inmate at a facility when that inmate has a  
8 sentence of imprisonment but is also facing trial in a pending case. NRS 209.291(1)(b)

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10  
11 <sup>1</sup> Proof of the fact that this statute does not apply to trials is the provision in  
12 NRS 209.274(2)(a). That statute provides that if it is not possible for the Department  
13 of Corrections to transport an offender in the usual manner, the “Department shall  
14 make the offender available on the date scheduled for his or her appearance to provide  
15 testimony by telephone or video, if requested by the court.” Appearance by telephone  
16 or video, however, does not satisfy constitutional requirements for the physical  
17 presence of a defendant at trial. “The right to be present is rooted in the Confrontation  
18 Clause and the Due Process Clause of the Federal Constitution.” *Gallego v. State*, 117  
19 Nev. 348, 368, 23 P.3d 227, 241 (2001), limited on other grounds, *Nunnery v. State*,  
20 127 Nev. 749, 776 n.12, 263 P.3d 235, 253 n.12 (2011). The Confrontation Clause  
21 applies when the proceeding involves the presentation of evidence. *Id.*; *United States*  
22 *v. Gagnon*, 470 U.S. 522, 526-27 (1985). The Due Process Clause applies to the extent  
23 that the absence of the accused thwarts a fair and just hearing. *Gallego*, 117 Nev. at  
24 368, 23 P.3d at 241; *Gagnon*, 470 U.S. at 526-27; *Snyder v. Massachusetts*, 291 U.S.  
25 97, 107-08 (1934). “A leading principle that pervades the entire law of criminal  
26 procedure is that, after indictment found, nothing shall be done in the absence of the  
27 prisoner.” *Lewis v. United States*, 146 U.S. 370, 372 (1892). “[I]t is the right of anyone,  
when prosecuted on a capital or criminal charge, ‘to be confronted with the accusers  
and witnesses,’ and it is within the scope of this right that he be present, not only  
when the jury are hearing his case, but at any subsequent stage when anything may  
be done in the prosecution by which he is to be affected.” *Id.* at 373 (quoting *Hooker*  
*v. The Commonwealth*, 13 Grat. 763, 766 (Va. 1855)). The term “presence” in this  
context means physical presence in the courtroom, which is presided over in-person  
by the judge. *United States v. Torres-Palma*, 290 F.3d 1244, 1246-47 (10<sup>th</sup> Cir. 2002)  
(citing *United States v. Lawrence*, 248 F.3d 300 (4<sup>th</sup> Cir. 2001) and *United States v.*  
*Navarro*, 169 F.3d 228 (5<sup>th</sup> Cir. 1999)). “[V]irtual reality is rarely a substitute for  
actual presence and that, even in an age of advancing technology, watching an event  
on a screen remains less than the complete equivalent of actually attending it.”  
*Lawrence*, 248 F.3d at 304.

1 does, however, provide that the director may transfer an offender “[t]o other  
2 governmental agencies, in accordance with classification evaluations and the  
3 requirements of treatment, training, security and custody of the offender. This Court  
4 has the inherent authority to order that a defendant be housed at the detention center  
5 prior to and during trial, as well as to order visitation at the Department of  
6 Corrections on a daily, as-needed, basis.

7       The Nevada Constitution provides in Article 3 § 1 that, “The powers of the  
8 Government of the State of Nevada shall be divided into three separate departments,  
9 - the Legislative, - the Executive and the Judicial; and no persons charged with the  
10 exercise of powers properly belonging to one of these departments shall exercise any  
11 functions, appertaining to either of the others, except in cases expressly directed or  
12 permitted in this constitution.” The Nevada Supreme Court has also found that “[i]n  
13 addition to the constitutionally expressed powers and functions of each Department,  
14 each (the Legislative, the Executive, and the Judicial) possess inherent and incidental  
15 powers that are properly termed ministerial. Ministerial functions are methods of  
16 implementation to accomplish or put into effect the basic function of each  
17 Department.” *Galloway v. Truesdell*, 83 Nev. 13, 21, 422 P.2d 234, 237 (1967). The  
18 judicial power is vested in the state Court system comprised of the Nevada Supreme  
19 Court, the Nevada Court of Appeals, District Courts, Justice Courts, and Municipal  
20 Courts. Nev. Const. Art. VI, §1.

21       This Court has the inherent authority to assure that a defendant and his  
22 counsel are provided with an adequate opportunity to properly prepare for trial. This  
23 cannot be done effectively if a defendant is housed in the Nevada Department of  
24 Corrections with limited / restricted visitation. CCDC, and ultimately the prior court  
25 ruling, ignores the burden that would be placed on the defense if Mr. Facio is not  
26 transferred.

1           There are extreme limits on visitation days and visitation hours at the prison.  
2 Even after a direct request following the Honorable Senior Judge Ellsworth's  
3 decision, NDOC maintains that counsel can only have access to Mr. Facio one day per  
4 week. This Honorable Court is well aware of the caseloads of appointed counsel - the  
5 travel / processing time makes weekly visitation onerous, while limitations based on  
6 a single-day per week visitation makes such visits impractical (with court schedules  
7 for other clients, etc.). Further, these restrictions would interfere substantially with  
8 pretrial preparation. In this case specifically, there is substantial electronic discovery  
9 that Mr. Facio needs to review. NDOC will not allow counsel to bring a laptop during  
10 even the brief visits allowed so that Mr. Facio can review evidence against him.

11           Video contact is extremely limited, and often requires appointments that are  
12 set months in advance. Telephone contact is both impractical and ineffective as it is  
13 impossible to view visual evidence by telephone, the length of phone calls is severely  
14 limited, and inmates are often not provided with telephone access at any predictable  
15 time. The realities of pretrial preparation and preparation during trial are such that  
16 it is appropriate to house the defendant at the detention center and this Court has  
17 the inherent authority to enter such an order. Alternately, daily available visitation  
18 at NDOC could moderately improve the ability to prepare and communicate.

19 **IV. The Constitutional guarantees of due process, a fair trial, and**  
20 **effective assistance of counsel require that defense counsel have**  
21 **adequate contact with their client prior to and during trial.**

22           The accused enjoys a right to the assistance of counsel at all critical stages of  
23 a criminal proceeding. *Montejo v. Louisiana*, 556 U.S. 778, 786 (2009). Both the trial  
24 itself and the post-charging period before trial are critical stages. *Kirby v. Illinois*,  
25 406 U.S. 682, 688 (1972) (right to counsel attaches "at or after the time adversary  
26 judicial proceedings have been initiated against him"). When an accused suffers the  
27 impairment of counsel by a state-created barrier, the accused need not show that the  
inadequate performance affected the outcome – they need only show that such



1 barriers affected counsel's performance. *Smith v. Robbins*, 528 U.S. 259, 287 (2000);  
2 *Perry v. Leeke*, 488 U.S. 272, 279-80 (1989) (recognizing that while most claims of  
3 ineffective assistance of counsel require a showing of prejudice, "direct governmental  
4 interference with the right to counsel is a different matter"). In some circumstances,  
5 the effective performance of counsel is so unlikely that it amounts to the functional  
6 equivalent of a complete denial of counsel. *United States v. Cronin*, 466 U.S. 648, 659  
7 (1984). In these cases, reversal of a judgment is automatic. *Id.*

8 An accused person has the unqualified right to consult with counsel throughout  
9 the trial. *Geders v. United States*, 425 U.S. 80 (1976). This right prevails over even  
10 very weighty concerns of trial administration, such as the witness sequestration rule.  
11 *Id.* at 88-92. The efficacy of attorney-client consultation diminishes at a distance. If  
12 the defendant and counsel can hear each other at a distance, they cannot speak  
13 privately, as is guaranteed by the Sixth Amendment. *Weatherford v. Bursey*, 429 U.S.  
14 545, 554 n.4 (1977).

15 Criminal proceedings require that conditions are restored that ensure defense  
16 counsel can meet their Sixth Amendment obligations, including the conditions  
17 necessary for robust, ethical attorney-client relationships. Criminal proceedings  
18 require a robust attorney-client relationship. This requires sufficient opportunities  
19 for client and counsel to confer for the purposes of reviewing evidence, discussing  
20 charges, reviewing potential defenses, planning investigation, weighing risks and  
21 benefits of a proposed negotiation, and determining trial strategy. *See Maine v.*  
22 *Moulton*, 474 U.S. 159, 170 (1985) ("the assistance of counsel cannot be limited to  
23 participation in a trial; to deprive a person of counsel during the period prior to trial  
24 may be more damaging than denial of counsel during the trial itself").

25 Criminal defendants have a Sixth Amendment right to assistance of counsel.  
26 *Gideon v. Wainwright*, 372 U.S. 335, 339-41 (1963). A "criminal defendant's ability  
27 to communicate candidly and confidentially with his lawyer is essential to his

1 defense.” *Nordstrom v. Ryan*, 762 F.3d 903, 910 (9th Cir. 2014); *see also Coplon v.*  
2 *United States*, 191 F.2d 749, 757, 89 U.S. App. D.C. 103 (D.C. Cir. 1951) (noting that  
3 “[i]t is well established that an accused does not enjoy the effective aid of counsel if  
4 he is denied the right of private consultation with him”).

5 The Nevada Rules of Professional Conduct also impose ethical rules upon  
6 counsel that should not be limited by forcing this matter to proceed with the client at  
7 a distant location, at a facility which prohibits substantial contact between counsel  
8 and client. These rules require competence (Rule 1.1), diligence (Rule 1.3),  
9 communication (Rule 1.4), and confidentiality of information (Rule 1.6). ADKT 411  
10 also provides for confidential communications. These standards include zealous and  
11 competent representation (Standard 4-1), consultation in a confidential setting  
12 whenever possible (Standard 4-4), a thorough investigation (Standard 4-7),  
13 inspection of the scene of the offense (Standard 4-7), consultation with the client  
14 during trial (Standard 4-10), discussion of concessions with the client in preparing  
15 for trial (Standard 4-10), preparation of a defense strategy in consultation with the  
16 client (Standard 4-12), and discussion with the client for presentation of the defense  
17 case (Standard 4-14).

18 These ethical standards cannot be satisfied under the current circumstances,  
19 with neither CCDC nor NDOC providing constitutionally appropriate pretrial  
20 preparation and consultation.

## 21 CONCLUSION

22 The current situation is untenable. Mr. Facio remains up at NDOC with  
23 visitation one day per week and will not be remanded until jury trial (and perhaps  
24 not even during the nighttime recesses, although this is unclear). The Defense  
25 strongly believes that the appropriate location for a defendant pending trial is the  
26 local county facility where his attorneys can regularly consult with him in the  
27 weeks/months before trial. However, preparation for trial becomes completely

1 impossible if counsel is not allowed to visit him upon request during the work week  
2 (Monday – Friday). Mr. Facio requests an order allowing for visitation upon request,  
3 five days per week (Monday – Friday) at NDOC for the two months preceding jury  
4 trial. Further, it is imperative that he be remanded down to CCDC for at least a week  
5 prior to any motion deadline (so, 15 days before trial plus 7, equaling 22 days before  
6 trial) at the bare minimum in order to facilitate his Constitutional Right to effective  
7 assistance of counsel, where he must remain through the pendency of a jury trial or  
8 until the trial is continued.

9 In sum Mr. Facio's rights must be protected, and ultimately  
10 CCDC/LVMPD/Sheriff and NDOC must come to a workable arrangement that can be  
11 ordered by this Honorable Court.

12 Dated March 16, 2022.

13 Respectfully submitted,

14 JoNell Thomas  
15 Clark County Special Public Defender

16 /s/ Tegan C. Machnich  
17 Tegan C. Machnich  
18 Chief Deputy Special Public Defender  
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**CERTIFICATE OF SERVICE**

I certify that I electronically filed the foregoing with the Clerk of the Eighth Judicial District Court by using the Court’s mandatory electronic filing system (EFS). The EFS will serve a file-stamped copy of this document on all participants to this matter who are registered users. EJDC Rule 8.04; NEFCR. The EFS will provide proof of service by email to all addresses listed in the service list for that particular case, including:

<b>Party</b>	<b>Email</b>
State of Nevada	motions@clarkcountyda.com
LVMPD - CCDC Martina Bauhaus	m10172b@lvmpd.com
NDOC Offender Mgmt. Division Holly Skulstad	hskulstad@doc.nv.gov
NDOC Offender Mgmt. Division Kirk Widmar	kwidmar@doc.nv.gov
NDOC Central Transport Monica Navarro	mmnavarro@doc.nv.gov
Attorney General Office Randy Gilmer	dgilmer@ag.nv.gov

Dated March 16, 2022.

Signed,  
  
/s/ Shadonna Scurry  
An employee of the  
Special Public Defender

## **Exhibit “A”**



1 RTRAN

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 THE STATE OF NEVADA,  
9 Plaintiff,

10 vs.

11 RUBEN TAVAREZ,  
12 Defendant.

CASE#: C-21-355640-1

DEPT. VI

13  
14 BEFORE THE HONORABLE CAROLYN ELLSWORTH,  
15 SENIOR DISTRICT COURT JUDGE  
16 TUESDAY, MARCH 8, 2022

17 RECORDER'S TRANSCRIPT OF HEARING:  
18 **SPECIALLY APPEARING INTERESTED PARTY SHERIFF JOSEPH**  
19 **LOMBARDO'S MOTION TO RECONSIDER ORDER**

20 APPEARANCES:

21 For the State: NO APPEARANCE

22 For the Defendant: JORDAN SAVAGE, ESQ.  
23 QUINTIN M. DOLENTE, JR, ESQ.  
24 Chief Deputy Special Public Defenders

25 For LVMPD: MARTINA BAHAUS, ESQ.

RECORDED BY: KIMBERLY ESTALA, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, March 8, 2022

2  
3 [Case called at 11:21 a.m.]

4 THE COURT: Okay. So we're going to call first C-21-355640,  
5 State of Nevada versus Ruben Tavaraz.

6 MS. BAHAUS: Good morning, Your Honor, Martina Bahaus on  
7 behalf of Sheriff Lombardo.

8 THE COURT: Good morning.

9 MR. SAVAGE: Jordan Savage, Special Public Defender's  
10 Office, along with Quintin Dolente on behalf of Mr. Tavaraz.

11 THE COURT: All right. Good morning. So this is the motion by  
12 the Sheriff's Office to reconsider the Court's previous order, which wasn't  
13 served on the party in interest, Las Vegas Metropolitan Police  
14 Department. And so I guess I wanted to obviously I wanted to find out --  
15 because I looked at the prison website. They haven't updated their  
16 visiting issue -- you know, website since well 2017. So you tell me, what's  
17 happening up at High Desert right now?

18 MR. SAVAGE: So they -- my understanding is that visits are  
19 back on, but obviously as we get closer to trial because of the distance to  
20 travel to High Desert, along with the fact that it's as easy -- we make a  
21 schedule for a visit at CCDC, we can literally schedule a visit at 3:29 and  
22 visit -- and see somebody on our video screen at 3:30. And of course we  
23 can walk right next door from our office and have that kind of contact.

24 It's just not practical as we get closer to trial for our team to be  
25 traveling up the 95. It's a half a day for each client. By the time you get

1 up there you have a meaningful visit. And especially when you get -- you  
2 know, closer to trial, there is a lot of things that come up and it's just not  
3 practical. So they are having visits up there, but typically you have to  
4 schedule them in advance. I don't think that they do more than one visit a  
5 week up there. It's just not practical as we're preparing for trial.

6 We know that the Courts really want to get trials back ramping  
7 up. The sanctity of the attorney-client relationship we strongly feel, you  
8 know, trumps other considerations in this regard. We need to --

9 THE COURT: Okay.

10 MR. SAVAGE: -- so we need --

11 THE COURT: Okay.

12 MR. SAVAGE: -- to see our client.

13 THE COURT: I just really had only one question about the --

14 MR. SAVAGE: Sure.

15 THE COURT: -- about the visiting, okay.

16 MR. SAVAGE: Okay.

17 THE COURT: So my question for Metro's position is Judge  
18 Bluth indicated to me that she, in reviewing it, realized that the trial isn't  
19 until April and that she did agree that the -- this is too long. And but she  
20 wondered whether, and as do I, today, whether the Metro would feel that  
21 a -- transporting them 2 weeks before the trial would be acceptable so that  
22 the last 2 weeks before trial starts there some access to -- for trial  
23 preparation.

24 MS. BAHAUS: So honestly here's -- so the reason why this  
25 really came on the radar is because it was so long. The other reason was



1 we're getting a lot of these. And these are -- usually these inmates are  
2 quite frankly problem inmates too. And for my client I think it is unfair just  
3 because we do a better job of visitation that we're getting punished for  
4 that because it is more convenient for defense counsel.

5 I appreciate defense counsel's position on the difficulties and  
6 this kind of stuff. But the fact is if they have these difficulties, they should  
7 bring the State here first and try to work out the visitation issues and that  
8 kind of stuff with the State.

9 Incidentally, I actually used to be a Deputy Attorney General for  
10 the State. And my client was the Department of Corrections. So this is  
11 not a new argument. This has been -- I've been with Metro now for  
12 almost 15 years and we had these arguments when it was at the State  
13 before then. So this is really nothing new.

14 And I think more importantly, there is really not a statutory  
15 provision that would allow this kind of transport. We have done this in the  
16 past as a courtesy. But right now were in a position where, you know, like  
17 everybody else, our officers are strained to the max as well. And because  
18 we have so many individuals that are high risk inmates and usually the  
19 inmates that are coming from NDC are in the same boat.

20 So I guess the argument that I would make is would we be able  
21 to do it a couple days before, probably, I would have to refer to my client.  
22 That's not a decision that I can make. We have done so in the past and I  
23 don't think as a courtesy hold we usually work that out with NDC. I don't  
24 have an issue with that. But for a longer period of time, I don't think  
25 there's anything in the statute that would allow for the same.

1 THE COURT: Okay. So see, that to me that's the rub here,  
2 that there was an ex parte motion filed. You know, to me that shouldn't be  
3 an ex parte motion in the first place. It was considered without any input  
4 and without any authority to do that. I mean, the Court really doesn't  
5 decide where people are going to be housed.

6 And I know that it's what 30 miles to -- from here to High Desert.  
7 I have to drive 30 miles to go see my sister. You know, I mean, it's really  
8 not very far. There are marshals who drive every day to come to work  
9 from Mesquite. And so I just don't see that it's a problem when we -- do  
10 we still have overcrowding in the jail. That hasn't changed has it or has it?

11 MS. BAH AUS: Well the overcrowding is not so much the issue.  
12 It's more that we have the specific type of offender that makes it difficult to  
13 house together. So the IA Court and all of these kind of things have  
14 alleviated a little bit of the pressure of the amount. But what it now has on  
15 the flipside done is we have more violent offenders that cannot be housed  
16 together as closely as if you have just your run of the mill non-violent  
17 offenders.

18 MR. SAVAGE: I think, Your Honor, the other issue, the big  
19 problem beyond the drive and I agreed it's not an overly burdensome  
20 drive, that 30 minutes. But the problem is that as we get closer to trial,  
21 sometimes we need to see our clients everyday as things heat up, as  
22 motions get filed, as client testimony needs to be worked on. And right  
23 now you can't -- my understanding is you can't schedule a visit at NDOC  
24 every day on consecutive days. It's just not that easy. They have a  
25 visiting day and one visiting day that you can go see them.

1 THE COURT: Yes, but I would think that the Court would have  
2 the ability, you know, on a constitutional argument to compel the State to  
3 let you visit every day. But --

4 MR. SAVAGE: Well then what -- are we going to --

5 THE COURT: -- that's different than housing.

6 MR. SAVAGE: Well no I hear you. But are we going to have to  
7 get an order for every time that we go up to NDOC? And is that going to  
8 be, you know, a burdensome, you know, endeavor. We appreciate the --  
9 how convenient CCDC and the counsel for CCDC, Ms. Bahauss, make this  
10 on -- makes visitation at CCDC. And we certainly don't intend to, as she  
11 puts it, punish them. We are extremely appreciative for the systems we  
12 have there that make our visitation with our client so convenient and so  
13 easy. It just causes a problem at NDOC.

14 And if we have -- if the Court orders that we have to start doing  
15 that, but it's probably going to result in some motions to continue, because  
16 we just don't have that level of regular access to our clients.

17 THE COURT: Well I think that's what you're going to need to  
18 do is file a motion to compel -- if the State -- you know, if the Department  
19 of Prison says no you cannot visit more than once a week before, as your  
20 preparing for trial, then you file a motion to compel on constitutional  
21 grounds, right to counsel. And --

22 [Colloquy between counsel]

23 THE COURT: And I don't see a problem with the Court issuing  
24 an order that would say from this date to this date, you know, there needs  
25 to be access. And, you know, you might be able to establish some

1 parameters, like a warning, you know, we're coming here tomorrow. I  
2 mean, I don't know --

3 MR. SAVAGE: We just think that --

4 THE COURT: -- something like that.

5 MR. SAVAGE: -- the middle ground is 30 days prior to trial  
6 when things really heat up.

7 THE COURT: All right.

8 MR. SAVAGE: As the parties are getting ready that it is more  
9 than reasonable --

10 THE COURT: Okay.

11 MR. SAVAGE: -- for us to have our client locally right across  
12 the street where we have that level of access. And we just strongly  
13 believe that the sanctity of the attorney-client relationship and that the  
14 Court has that discretion. Obviously the Court seems to disagree with our  
15 position and we of course respect that. But our access to our clients is  
16 paramount. The relationship is paramount. And this -- you know, that  
17 we're going to be traveling up to High Desert back and forth every day of  
18 the week, you know, to prepare sometimes, it's just going to put an undue  
19 burden on our staff and on our attorneys. So that's -- you know, that's the  
20 record we'd make at this time.

21 THE COURT: Okay. Well I agree with the Metro's position on  
22 this, that there's not really any authority for the Court to dictate housing.  
23 They're housed -- your client's currently housed and is a high risk  
24 defendant. He's facing charges of murder and trafficking.

25 We can address this with the State. If you can't work it out with

1 them, you can also speak with counsel from Metro to see if there could be  
2 some agreement for bringing your client, you know, a week before trial or  
3 something like that, where it could be worked out. But I don't think the  
4 Court has the authority to say -- and even Judge Bluth spoke to me  
5 yesterday about this and said she did regret issuing the order that she did,  
6 and that at most she would only want two weeks.

7 So motion for reconsideration is granted. There will be no  
8 transport. The Court anticipates that counsel for the defense will file a  
9 motion for expedite -- you know, additional visitation if that's necessary for  
10 the -- for Nevada Department of Corrections. And hopefully also there  
11 can be some conversation to make things a little easier as it gets towards  
12 -- closer towards trial.

13 MS. BAH AUS: Sure, Your Honor. Thank you.

14 THE COURT: Thank you.

15 [Hearing concluded at 11:33 a.m.]

16 \*\*\*\*\*

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

23   
24 Jessica Kirkpatrick  
25 Court Recorder/Transcriber

## **Exhibit “B”**

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THE STATE OF NEVADA,  
Plaintiff,  
vs.  
MATEO JESUS FACIO,  
Defendant.

BEFORE THE HONORABLE CAROLYN ELLSWORTH,  
DISTRICT COURT JUDGE  
TUESDAY, MARCH 8, 2022

APPEARANCES:

RECORDED BY: KIMBERLY ESTALA, COURT RECORDER

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Las Vegas, Nevada, Tuesday, March 8, 2022

[Case called at 11:33 a.m.]

THE COURT: C-22-361822 State of Nevada versus Mateo Facio. And --

MS. MACHNICH: Good Morning, Your Honor, Tegan Machnich, Special Public Defender's Office here on Mr. Facio's behalf. I would note first that we weren't served with this motion. I came across it when my staff alerted me to this being on calendar tomorrow. Despite the certificate of service it was not correct. They failed to writ our client down for this argument. I believe we could go forward but this might actually be a pivotal moment in this case because my client obviously also wants contact with us and now he's not able to be present because the State did not, well not the State, the moving party I'll them did not do their job in advance of this motion. And also we need to make all of the arguments for our record because we will be writing this up.

THE COURT: Did you --

MS. BAUHAUS: So, Your Honor, I talked to my staff and it is true that I talked to -- I don't file stuff actually that's I have to have somebody else file it for me. So and I had her look into it because we we're not aware that they were not served. She said she, apparently there's some boxes that you check, she said she checked the boxes she doesn't know what happened. So I apologize for that it wasn't intentional it wasn't to side -- blind side the defendant. That was --

THE COURT: All right. So this motion can't go forward today



1 because it wasn't properly served.

2 MS. BAUHAUS: Well they filed an opposition and I filed a  
3 reply.

4 MS. MACHNICH: I was able to quickly respond to their  
5 motion but they also did not writ my client down and so I would actually  
6 request that this be continued for his presence.

7 THE COURT: Well we wouldn't bring your client down for --

8 MS. BAUHAUS: We wouldn't have brought the client down.

9 MS. MACHNICH: Our client deserves to be here for each  
10 important part of the proceedings in his case. He is up at the Nevada  
11 Department of Corrections.

12 THE COURT: An issue of whether he's -- of where he's going  
13 to be housed doesn't require his -- it's not an essential part. I don't think  
14 he needs to be here for that.

15 MS. MACHNICH: Well, Your Honor, I think that goes to the  
16 crux of our argument is that the fact that they're restricting our access to  
17 our client fundamentally by taking this position does make it essential to  
18 our defense and to my defendant's point of view. My client wants to be  
19 housed where I can have access to him. And so I guess I can go forward  
20 with arguing today but I do want that as part of the record that we were  
21 not noticed and while I was able to respond quickly that should not be  
22 held against my client.

23 THE COURT: Well it's not being held against your client. It's  
24 because you got actual service even though you weren't apparently  
25 properly served you got the -- document. You filed your opposition, that's

1 how you would be prejudiced. If you hadn't had a chance to file your  
2 opposition and you did.

3 MS. MACHNICH: And --

4 THE COURT: And so I appreciate -- your arguments but, you  
5 know, the Court doesn't really have the ability to say where a person is  
6 housed. The Court has the ability to say there shall be access, right, and  
7 he's currently housed at the Nevada Department of Corrections. If there  
8 is a problem where the State through the Division of Corrections is going  
9 to take the position that they won't transport well then we need to  
10 address it with them.

11 MS. MACHNICH: So, Your Honor, --

12 THE COURT: The Court could compel them --

13 MS. MACHNICH: -- I would like to make my full argument  
14 because I do need it for my appellate record.

15 THE COURT: Well of course.

16 MS. MACHNICH: Thank you.

17 MS. BAUHAUS: Well then I would like to go first since it's my  
18 motion.

19 THE COURT: Yeah it's her motion, go ahead.

20 MS. BAUHAUS: So, many years ago I appeared in front of a  
21 Chief Judge with an issue that was handled a certain way for probably  
22 close to 20 years. I the -- every year it was renewed and it was done a  
23 certain way. And many Judges agreed to do it. And then I appeared in  
24 front of a very smart Chief Judge who asked me what his authority was  
25 to do a certain thing. And I said, we'll we've always done it this way. And

1 he said, well yes but what is my authority? And the easy solution that I  
2 was asking for wasn't in his authority to do so. So we had to kind of do it  
3 differently and it was a little bit more difficult issue to do it another way.  
4 But it was done another way because he had the authority do it the other  
5 way. And this is kind of like what this is. Is it the easy solution to send  
6 the defendant to CCDC, absolutely. But is there authority for it? I say no.  
7 And similar the Nevada Supreme Court has held that orders entered  
8 without authority are void in *Ex Parte Gardner* 39 P.570 (Nev 1895).

9           So, now we go to the statutory provision that is actually there.  
10 And there's a statutory provision that allows the defendant to come to  
11 court. In the opposition, what is argued that, well yeah, there is no actual  
12 statutory authority for the defendant to be transported but there's also no  
13 statutory authority that would prohibit the Court to answer that. Well that  
14 then goes to statutory construction as this Court knows. And statutory  
15 construction when it's silent there's a negative inference. Because there  
16 is a statute on point on how to do this it would make the statute to  
17 transport somebody back and forth from NDOC to court irrelevant if the  
18 Court could just order him into CCDC. Why would you have that one  
19 statute then? So -- and the U.S. Supreme Court has found the same  
20 thing that just when something is not specific in there you should, the  
21 Court should not extend the statute. To do so would enlarge the statute  
22 rather than construct -- the construction of it which is in US, I'm sorry,  
23 270 U.S. 245, 250 and that's a 1926 case.

24           So again, this is not new for the Court this has been going on  
25 for a long, long time. And I would say that like what I laid out in my

1 moving papers and then in my reply there is no really statutory authority  
2 for this type of remand or whatever you might want to call it.

3 THE COURT: All right, counsel.

4 MS. MACHNICH: Yes, Your Honor. In fact this is provided for  
5 in the Nevada Constitution, constitutional authority in Article 3 Section 1  
6 dividing the separation of powers into the 3 departments. But the  
7 Nevada Supreme Court has further stated that beyond the express  
8 functions there are inherent and incidental powers that are properly  
9 termed ministerial. Ministerial functions are methods of implementation  
10 to accomplish or put into effect the basic function of each department  
11 which is *Galloway v Truesdale* 83 Nev. 13 a 1967 case. It is within the  
12 power and it is vested within the power of the judicial department to  
13 facilitate trials and to move towards the accomplishment of justice in the  
14 system. And it is also within the judicial departments premise to protect  
15 the constitutional rights of criminal defendants.

16 In the instance that we are in before, Your Honor, our client is  
17 housed up at High Desert. Part of our representation of a criminal  
18 defendant is establishing a relationship with a client, having the chance  
19 to talk over their case with them. The 6<sup>th</sup> amendment of the constitution  
20 protects the attorney client relationship and holds it to be pivotal. It is a  
21 constitutionally protected right that we have the ability to meet with our  
22 client, discuss the case with the client, strategize with our client, and  
23 ultimately be there to counsel our client before a trial is held.

24 In the instant case at this point my client has invoked his right  
25 for a speedy trial. I don't know if that is something that he will hold onto

1 going forward. However, at this point he has invoked. And we have  
2 attempted to set up a visit and I want to take the Court through what that  
3 has entailed because it's not something where we can coordinate  
4 something for a quick afternoon. I appreciate that my colleague  
5 previously stated that it takes about a half day to accomplish these visits,  
6 I think it takes nearly a full day to accomplish these visits because it's  
7 not just the drive up to the prison. It's coordinating the schedules of  
8 multiple attorneys' because on a first degree murder case we are not  
9 trying these cases alone. That, in addition to investigators are part of our  
10 entire trial defense team. So were coordinating the schedules of multiple  
11 parties, we need to go up to the prison which is nearly 45 minute to an  
12 hour drive from here. At that point there's a processing in period which  
13 can take up to 45 minutes to an hour, we then get a 2 hour visit. And  
14 then we have to go through the processing out and then drive back. The  
15 reason why this becomes so difficult to accomplish is that visitation days  
16 are one day per week. I have a scheduled visit set for Mr. Facio in this  
17 case. It took us 2 weeks to get a response from High Dessert, then we  
18 had to schedule and at that point we were also rejected on our request  
19 to bring in a laptop to that my client could even view some of the  
20 evidence against him. They said give us a CD, it's not feasible in this  
21 case, its cell phone data and social media data that can't be placed on a  
22 CD. Nor would it be appropriate for the Warden to have access to my  
23 client's discovery. So, all of this is to say that it is impossible for the  
24 defense team to prepare for trial with our clients up at High Desert.

25           Additionally, the Nevada Department of Corrections could

1 choose to reclassify our defendant and send him anywhere in the state  
2 at any point without any restriction. So at that point we are then in a  
3 position where we could not even do the one half to full day visit it could  
4 take multiple days. Your Honor, is aware that it takes a lot to prepare for  
5 these trials and our client deserves and has a constitutional right to  
6 effective assistance of counsel. We cannot establish a relationship with  
7 our client, there is no way for us to just call in and talk to him on a  
8 regular basis. There's no feasible way to do video visits with him on a  
9 regular basis. And it takes weeks to schedule these in person visits and  
10 we have in fact done it in Mr. Facio's case. And the idea that every time  
11 we would need to see him we would wait one to two weeks, then  
12 schedule the visit for a specific a day of the week when everybody's  
13 available for a certain week it just makes it so that it's not feasible for the  
14 defense and it would violate our -- clients constitutional rights.

15 Now, I understand that the moving party had stated that this  
16 is a punishment for CCDC. That is obviously no one's intention.  
17 However, it is purely within the ministerial functions of the Court to  
18 determine what is the most effective way to both protect the  
19 constitutional rights of a criminal defendant but additionally to move  
20 dockets to move calendars. Judge Bluth herself has stated that she  
21 wants calendars to move, she wants these trials to move forward. I  
22 know, Your Honor, I know you sit Senior now but when you were on the  
23 bench --

24 THE COURT: I still want the same thing.

25 MS. MACHNICH: You want everything to move forward, Your

1 Honor, as do we. It is impossible for us to do it. We cannot do it in a way  
2 that protects our client's constitutional right. And it's going to cause a  
3 breakdown in client communications, a breakdown in the client  
4 relationship. It's going to require eventually clients are going to start  
5 trying to fire us because we can't communicate with them on a regular  
6 basis. We need regular access to our clients.

7 Now would two months before trial be ideal, yes. That would  
8 be ideal because that gives us a chance to fully investigate cases, to  
9 meet with our clients on a regular basis, and to develop relationships.  
10 We understand that that might be longer then the Court is comfortable  
11 with. And 30 days is basically the shortest period of time only because 2  
12 weeks puts us within the motion deadline. We would not even be able to  
13 coordinate with our client on motion practice, trial strategy, which  
14 direction we're going on cases, if we cannot have ready access to our  
15 client on a regular basis at least 30 days before the trial setting. And so  
16 while the moving party says there's no statutory authority for this we  
17 believe that is a higher level than that and it is constitutional authority in  
18 the Nevada Constitution, constitutional authority with the U.S.  
19 Constitution, and just the ministerial functions of the Court to effectively  
20 move dockets and effectively move cases and allow counsel to  
21 effectively represent their clients.

22 And I would say that you will never hear the moving party in  
23 this case come to court and say we need to let more people go so we  
24 can have less housing issues with dividing up more violent offenders.  
25 There never going to say that. That's their job, they house people who

1 need to be housed. Our clients will eventually end up back down at  
2 CCDC if these cases continue out long enough but we are no way of  
3 knowing if that's going to be the case. And it's somewhat disingenuous  
4 to say that these are so difficult people to house, they're going to have to  
5 house them in the future for some period of time if the trials don't go  
6 forward. They're going to get them back and they will never take the  
7 position that they should be released into the community instead just to  
8 facilitate the same means that they're trying to establish and facilitate by  
9 saying our clients should be up in the prison system. This Court does  
10 have this power. This Court has always had this power. I realize that the  
11 moving party was specifically focusing on the fact that sometimes things  
12 change and, you know, just because we've always done it someday  
13 doesn't mean we always should. However, Your Honor, this is always  
14 been done this way and it is always been relatively standard for our  
15 clients to at least spend 30 days before trial down on complex cases. If  
16 we were here before Your Honor, on a possession of stolen vehicle case  
17 I think that would be in a very, very different position. In both our case  
18 and my colleague's case we are here on life sentence cases. My client  
19 could spend the rest of his life in prison and that is going to be looked at  
20 with a higher scrutiny than a case where they're facing a 1 to 5. And so -  
21 -

22 THE COURT: I understand that and I understand your  
23 arguments but a lot of your argument is premised on speculation about  
24 what would happen if the Court ordered the prison -- I mean you haven't  
25 you have not asked the Court for relief to be able to see your clients in



1 the prison. You've just said well they've established these arbitrary rules  
2 and it's really hard and we just don't want to deal with that, we want  
3 instead you to order a person to be housed in an inappropriate facility  
4 which they're not supposed to be in, right.

5 MS. MACHNICH: Well, Your --

6 THE COURT: And so I'm granting the motion for  
7 reconsideration, you know, revoking the previous order and you can  
8 surely take it up on a writ but, you know, you would also want to, I would  
9 think, file a motion to bring the State in here to have them explain why  
10 they can't give ready access so you can properly --

11 MS. MACHNICH: Your Honor, in this --

12 THE COURT: -- talk to your client.

13 MS. MACHNICH: I understand, Your Honor's, ruling. We're  
14 pressed for time in this case. The motion practice to in order to get the  
15 State in on this case will already -- I mean at this point CCDC refused to  
16 comply with the court order and just ignored it and then eventually filed a  
17 motion, which I guess was a while ago however we never got served so  
18 we didn't know about it. However, we're in a position now where any sort  
19 of motion practice with the State would push us through our client's trial

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THE COURT: File it on an order shortening time. That's why we have order shortening time. Do that. All right, thank you, I've got another calendar.

MS. BAUHAUS: Thank you, Your Honor.

[Proceedings concluded at 11:48 a.m.]

\* \* \* \* \*

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability. Please note: Technical glitches which resulted in distortion in the Bluejeans audio/video and/or audio cutting out completely were experienced and are reflected in the transcript.

  
\_\_\_\_\_  
Kimberly Estala  
Court Recorder/Transcriber

## **Exhibit “C”**

## Shadonna K. Scurry

---

**From:** HDSP\_Warden\_AA HDSP\_Warden\_AA <HDSP\_Warden\_AA@doc.nv.gov>  
**Sent:** Wednesday, March 9, 2022 12:48 PM  
**To:** Shadonna K. Scurry  
**Subject:** Re: Attorney In Person Visit Request - #1251456 (Facio)

Inmate Facio #1251456 has visitation on Wednesday. He can only have in person visits on his visitation day.

Assistant to Calvin Johnson, Warden  
High Desert State Prison  
PO Box 650  
Indian Springs, NV 89070

**Please be advised: There has been a change of staff in this office. We ask for your patience while the new Warden's Assistant gains access to the programming and becomes accustomed to the procedures necessary for this office.**

*This message, including any attachments, is the property of the Nevada Department of Corrections and is solely for the use of the individual or entity intended to receive it. It may contain confidential and proprietary information and any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient(s) or if you have received this message in error, please contact the sender by reply email and permanently delete it.*

**From:** "Shadonna K. Scurry" <Shadonna.Scurry@ClarkCountyNV.gov>  
**To:** HDSP\_Warden\_AA HDSP\_Warden\_AA <HDSP\_Warden\_AA@doc.nv.gov>  
**CC:** Tegan Machnich <Tegan.Machnich@ClarkCountyNV.gov>, Scott Bindrup <Scott.Bindrup@ClarkCountyNV.gov>, Richard Luman <Richard.Luman@ClarkCountyNV.gov>  
**Date:** 3/9/2022 12:28 PM  
**Subject:** Attorney In Person Visit Request - #1251456 (Facio)  
Good Morning,

I am requesting the following for Visitation to prepare for trial:

We are currently scheduled for March 23, 2022 at 10 am. **(We want to keep this date no matter the outcome of the following request below.)**

Based on recent court order in the Mateo Facio #1251456 case, our only option for regular visitation is to request the following –

We would like continuing permission for trial counsel of the above mentioned, as indicated below, to visit the Defendant in NDOC for purposes of preparing for trial. Requested visitation should be on demand, Monday through Friday, 8am-5pm. The visitation plan will continue until jury trial proceed or the release of the Defendant. This is to start immediately for the following:

- Tegan C. Machnich, Esq. Bar #11642
- Scott L. Bindrup, Esq. Bar #2537
- SPD Investigator, Richard Luman

**Inmate: Mateo Jesus Facio #1251456**

**DOB: 12/07/1990**

**Visitation date: To start immediately, upon demand Monday – Friday (8 am to 5 pm)**

Thanks,

Shadonna Scurry, MA MPA SW

SPD Legal Secretary

702-455-62655

## **Exhibit “D”**

## Shadonna K. Scurry

---

**From:** HDSP\_Warden\_AA HDSP\_Warden\_AA <HDSP\_Warden\_AA@doc.nv.gov>  
**Sent:** Monday, March 7, 2022 11:36 AM  
**To:** Shadonna K. Scurry  
**Subject:** Re: Atty Prison Visit Request - #1251456

The laptop would be unauthorized. You can mail discovery on a disk to the prison via the Warden's AA. The inmate can request (kite) to see the information. Once the kite is received the caseworker is notified. They make arrangements for the inmate to view the disk in their office.

Assistant to Calvin Johnson, Warden  
High Desert State Prison  
PO Box 650  
Indian Springs, NV 89070

**Please be advised: There has been a change of staff in this office. We ask for your patience while the new Warden's Assistant gains access to the programming and becomes accustomed to the procedures necessary for this office.**

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**From:** "Shadonna K. Scurry" <Shadonna.Scurry@ClarkCountyNV.gov>  
**To:** HDSP\_Warden\_AA HDSP\_Warden\_AA <HDSP\_Warden\_AA@doc.nv.gov>  
**CC:** Tegan Machnich <Tegan.Machnich@ClarkCountyNV.gov>, Scott Bindrup <Scott.Bindrup@ClarkCountyNV.gov>, Richard Luman <Richard.Luman@ClarkCountyNV.gov>  
**Date:** 3/1/2022 2:44 PM  
**Subject:** Atty Prison Visit Request - #1251456  
Good Morning,

I would like to request the following Attorney Prison Visit:

- Tegan C. Machnich, Esq. Bar #11642
- Scott L. Bindrup, Esq. Bar #2537
- SPD Investigator, Richard Luman

**Inmate: Mateo Jesus Facio #1251456**

**DOB: 12/07/1990**

**Visitation Date: Wednesday, March 23, 2022**

**Visitation Time: 11 am**

**Additionally, the attorney is requesting permission to bring in a laptop to show discovery to the client during this meeting.**

If you have any questions or concerns, please call me at (702) 455-6265.

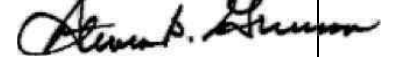
Thank you,

Shadonna Scurry, MA MPA SW

SPD Legal Secretary

702-455-6265





RSPN  
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Attorney General  
D. Randall Gilmer (Bar No. 14001)  
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(702) 486- 3427 (phone)  
(702) 486-3773 (fax)  
dgilmer@ag.nv.gov

*Attorneys for Nevada Department of Corrections*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

STATE OF NEVADA,  
Plaintiff,

vs.

MATEO JESUS FACIO ID# 1251456,  
Defendant.

Case No. C-22-361822-1

Dept. No. 6

Hearing Date: March 22, 2022

Hearing time: 11:00 a.m.

**NON-PARTY NEVADA DEPARTMENT OF  
CORRECTIONS' RESPONSE IN PARTIAL OPPOSITION  
AND PARTIAL CONCURRENCE TO DEFENDANT'S  
MOTION TO COMPEL NEVADA DEPARTMENT OF  
CORRECTIONS TO ALLOW DAILY VISITATIONS, TO  
RECONSIDER REMANDING DEFENDANT AND  
CLARIFY WHEN DEFENDANT WILL BE REMANDED TO  
CDCC PRIOR TO TRIAL**

Non-Party, Nevada Department of Corrections (NDOC), by and through counsel,  
Aaron D. Ford, Attorney General for the State of Nevada, and D. Randall Gilmer, Chief  
Deputy Attorney General, and in response to *Defendant's Motion to Compel NDOC to Allow  
Daily Visitation, to Reconsider Remanding Defendant and Clarify When Defendant Will be  
Remanded to CCDC Prior to Trial* (Motion), hereby provides this response in partial  
opposition and partial concurrence to the Motion.

///

1 **I. INTRODUCTION AND SUMMARY OF NDOC’S POSITION**

2 NDOC routinely complies with Orders to Transport inmates within its custody to  
3 CCDC prior to trial. Such transportation to CCDC not only assists inmates and their  
4 counsel in preparing for trial—ensuring that the inmate has constitutionally required  
5 access to counsel—but also seemingly assists the court as it by ensuring inmate defendants  
6 are present for motions, hearings, and trial proceedings in a much more expeditious and  
7 cost effective manner than if NDOC was required to transport inmates daily to and from  
8 the Regional Justice Center (RJC) and the institution for purposes of such motions,  
9 hearings, and trials every day. NDOC believes such Orders to Transport are not only  
10 permitted under the inherent authority of the judicial branch, but also consistent with the  
11 statutory scheme permitting NDOC to transfer inmates to other governmental agencies as  
12 set forth in NRS 209.291(1)(b). Accordingly, to the extent Defendant seeks to have this  
13 Court reconsider its earlier ruling rescinding its Order of Transport, NDOC joins  
14 Defendant’s request to the extent NDOC agrees with Defendant that such orders are  
15 permissible and consistent with the interests of justice.

16 To the extent this Court disagrees with the position of Defendant and NDOC, and  
17 exercises its discretion to not reconsider the Order to Transport Defendant, NDOC must  
18 respectfully object to Defendant’s request for daily access to meet in person with his  
19 counsel. Providing access for meetings seven days a week would cause significant  
20 disruption to NDOC’s and High Desert State Prison’s (HDSP) normal operations. NDOC  
21 understands from speaking to Defendant’s counsel, that while the Motion is styled as  
22 seeking “daily access,” the Motion does not actually seek to be able to meet with Defendant  
23 every day of the week, but rather to have the ability to meet with Defendant on 24-hour  
24 notice one to two days per week in the days leading up to trial. To the extent the Motion is  
25 limited to such a request, NDOC does not object and will work with Defendant’s counsel to  
26 ensure counsel will have access one or two days per week with a minimum of 24-hour notice  
27 (not including weekends). Nonetheless, NDOC notes that, according to Defendant such  
28 access, while an alternative request, would only “moderately improve the ability [for

1 Defendant and counsel] to prepare and communicate,” Motion at 6:17-18, and therefore  
2 NDOC defers to Defendant, Defendant’s counsel, and this Court as to whether the  
3 alternative of not transporting Defendant to CCDC is appropriate under the circumstances  
4 of this case. In addition, NDOC will, if Defendant is not remanded, work with Defendant  
5 and Defendant’s counsel to ensure that there is a mutually agreed upon mechanism for  
6 Defendant to view the electronic discovery referenced in Motion.

## 7 **II. STATEMENT OF FACTS**

8 NDOC defers to the procedural history set forth in the Motion at page 3 of his Motion.  
9 Motion at 3:14-23. In further response, NDOC notes the difficulties associated with the  
10 request for nearly unfettered attorney-client physical visitations Defendant seeks to have  
11 at HDSP:

12 • As an institution designed to house convicted individuals, HDSP was both  
13 physically designed, and operated in a manner, that contemplates a lower level of  
14 attorney-client legal visits that is commonplace for pre-trial detention centers such  
15 as CCDC. This means that HDSP was designed to have one main area for attorney  
16 visitation, and that area must be shared with offenders that have six different level  
17 classifications. Safety and security concerns require these classification levels to be  
18 sequestered from one another. Utilizing this area for increased attorney visits will  
19 necessarily result in the need to cut back on non-attorney visitation so as to ensure  
20 the safety and security of all individuals. While there is one other area at HDSP that  
21 can accommodate some increase in legal visitation, using that area will likely result  
22 in conflicts with court hearings as it would require the use of the video conference  
23 room set aside for video hearings, conferences, motions, not only for court, but also  
24 administrative matters such as parole hearings. **Exhibit A, Declaration of**  
25 **Associate Warden of Operations, Jeremy Bean at 2, ¶ 6.**

26 • A staffing shortage of 11%, which means HDSP is currently without a full  
27 complement of correctional officers by approximately fifty-nine (59) officers. HDSP  
28 is the biggest and busiest NDOC institution. Requiring nearly unfettered legal

1 visitation will result in significant overtime costs, and, due to staffing, increased  
2 fatigue, burnout, accidents, injuries and potentially more resignations. Therefore,  
3 these staffing shortages exacerbate the design and operation of HDSP as a post-  
4 conviction institution not contemplated to have routine, daily, attorney-client  
5 meetings for trial preparation. *Id.* at 3, ¶ 7.

6 • Advance scheduling is necessary to minimize the conflicts with visitation of  
7 different classification offenders as well as video conferencing. *Id.* at ¶ 8.

8 • Transporting an inmate from HDSP to court everyday as contemplated by  
9 LVMPD would result in a minimum of \$284.63 per day. This number is derived at  
10 based on 81 miles, 110-minute round trip travel, and two correctional officers  
11 working overtime for a minimum of three hours for each officer. *Id.* at ¶ 9.

12 • Transporting inmates daily also increases safety and security concerns for the  
13 public, the prisoner, and NDOC employees. *Id.* at ¶ 10.

14 In contrast to the design, operation, and remote location of HDSP, CCDC is centrally  
15 located within the City of Las Vegas, and was (presumably) designed to accommodate pre-  
16 trial visitation as county detention centers such as CCDC routinely house pre-trial  
17 detainees awaiting trial. *Id.* at ¶ 11.

18 If ordered to provide more legal access, HDSP will certainly ensure it is provided.  
19 However, given the stress and additional burdens it will put on HDSP, NDOC, and Nevada  
20 taxpayers, NDOC believes it is important to inform the Court of these issues; issues that  
21 are largely alleviated by transferring Defendant and similar Defendants to CCDC as has  
22 been the standard for years. *Id.* at ¶¶ 4 12.

### 23 **III. LEGAL ARGUMENT IN SUPPORT OF TRANSPORT TO CCDC**

24 To the extent Defendant argues this Court has authority, either explicit or implicit,  
25 to order NDOC to transport him to CCDC to await trial and to assist in making legal  
26 visitation easier, NDOC adopts by reference Defendant's argument. *See* Motion at 3:26-  
27 8:17. While NDOC agrees with the legal premises set forth by Defendant, this should not  
28 be construed to be an admission by NDOC that Defendant's access to counsel has been

1 infringed by it or that NDOC cannot provide legal visits consistent with the constitutional  
2 requirement should this Court not agree with both NDOC and Defendant and remand  
3 Defendant to CCDC for purposes of trial preparation and trial.

4       That being said, CCDC is better designed to facilitate needed legal visits than HDSP.  
5 As a pre-trial detention center, CCDC is well positioned to handle such legal visits—and  
6 does so much more frequently than HDSP, a facility designed to house already convicted  
7 individuals as opposed to individuals awaiting trial. Indeed, in this case, if Defendant had  
8 not been on parole or probation at the time of the events that led to the current charge and  
9 bail not provided, it is likely Defendant would have been housed at CCDC while pending  
10 this trial. Based on that reality, CCDC's implied argument that Defendant should be  
11 transported because "high risk inmates" are housed at CCDC rings hollow—especially  
12 given CCDC's further admission of housing pre-trial detainees in similar circumstances as  
13 this Defendant as a courtesy for decades. Motion at Ex. A at 4:9-25.

14       NDOC also notes that despite Sheriff Lombardo's argument that there is no  
15 authority to have NDOC transport Defendant to CCDC, the argument is implicitly rejected  
16 by Lombardo himself when counsel later conceded that CCDC could likely house Defendant  
17 "a couple days before" trial or hearings. *Id.* at 4:20-22. Lombardo likewise informed the  
18 Court that it was indeed the length of the request that concerned CCDC, as counsel  
19 informed the Court that "honestly. . . the reason why this really came on the radar is  
20 because it was so long." *Id.* at 3:24-25. These two concessions undermine Lombardo's  
21 argument that there is no authority for this Court to order the transport and no authority  
22 permitting CCDC to house an inmate pending trial. This is because that argument is  
23 premised on the fact that there is no authority whatsoever, not that the authority is limited  
24 to a particular timeframe.

25       NDOC also notes that Lombardo's reliance on *Ex Parte Gardner*, 39 P. 570 (1895).  
26 *See* Motion at Ex. B at 5:7-8. There, the Nevada Supreme Court was faced with whether  
27 one county court had jurisdiction to issue an order pertaining to a case pending in a  
28 different county. *Id.* That is a wholly different situation than here, where, this Court, has

1 jurisdiction to hear the criminal proceedings pending before Defendant, and has inherent  
2 authority to issue an order to have Defendant transferred for purposes of trial and, if  
3 necessary, legal representation. Even further, all proceedings take place within the same  
4 county.

5 NDOC also respectfully suggests that while Lombardo references *Bell v. Wolfish*, 441  
6 U.S. 520, 547 (1979) to assist its argument, *see* Lombardo Reply Brief, dated 3/7/22, at 4:3-  
7 15, this case weighs in NDOC's and Defendant's favor. Specifically, *Bell* provides that  
8 "[p]rison administrators . . . should be afforded wide-ranging deference in the adoption and  
9 execution of policies and practices . . . needed to preserve internal order and . . . to maintain  
10 institutional security." *Id.* As the facts noted above and in the attached Declaration  
11 establish, these necessary internal policies and procedures implemented at HDSP are  
12 precisely why someone who needs daily access in preparation of trial should be housed at  
13 a pre-trial detention center such as CCDC as opposed to HDSP.

14 NDOC also notes that it agrees with Defendant that NRS 209.291(1)(b) provides the  
15 NDOC, and this Court through its inherent powers, the ability to transport an inmate to  
16 CCDC when necessary and appropriate. Specifically, that statute provides that the NDOC  
17 "may transfer an offender . . . [t]o other governmental agencies." *Id.* CCDC clearly is a  
18 governmental agency. *See generally Public Employees' Benefits Program v. Las Vegas Metro*  
19 *Dept.*, 124 Nev. 138, 179 P.3d 542 (2008); *LVMPD v. Blackjack Bonding*, 131 Nev. 80, 82,  
20 343 P.3d. 608, 610 (2015).

21 There is no limitation on the amount of time the offender can be "transferred" to  
22 another governmental agency—and immediately before that provision, the statute provides  
23 that NDOC may transfer offenders "[f]rom one institution or facility to another within the  
24 Department." *Id.* As it is undisputed NDOC may transfer prisoners from one institution to  
25 another within NDOC without a timeframe or even return to the other institution, it only  
26 stands to reason then that a transfer to another governmental agency also does not contain  
27 a time limitation.

28 ///

1 Lombardo's reliance on NRS 209.274 for the proposition that housing at a local  
2 detention center is not permitted, but rather NDOC is required to transport the individual  
3 to court and back, *see* Lombardo Motion to Reconsider, dated 2/24/22, at 3:25-26, is of no  
4 assistance to Lombardo. In this regard, NRS 209.274(1) notes that transportation to court  
5 from an NDOC facility is required unless "otherwise provided in this section." *Id.* The  
6 section also notes that NDOC "shall provide for special transportation of the offender to  
7 and from court" at the county's expense if so ordered, and also order the "county sheriff to  
8 transport the offender to and from the court at the expense of the county." NRS  
9 209.274(2)(b),(c). Both these provisions contemplate circumstances in which NDOC may  
10 not be able to transport an offender and the assistance of the county may be needed.

#### 11 **IV. NDOC WILL PROVIDE ADDITIONAL LEGAL ACCESS IF NECESSARY**

12 Should the Court disagree with NDOC and Defendant's argument that transferring  
13 Defendant to CCDC for legal access and trial preparation up to and through the trial should  
14 not occur, either legally or factually based on the facts of this case, NDOC informs this  
15 Court and Defendant that it will provide Defendant's counsel additional access to  
16 Defendant as this Court deems necessary and appropriate. However, in doing so, NDOC  
17 respectfully requests that visits be limited to one or two days per week, and that HDSP be  
18 provided with a minimum of 24-hour notice for the appointment (excluding weekends, as  
19 notice should be provided on Friday for a Monday visit). Such steps will allow HDSP to  
20 mitigate the burden on its staff and other inmates and visitors.

21 NDOC has also informed Defendant's counsel that arrangements can be made to  
22 permit Defendant to view electronic discovery. As such, should this Court choose to not  
23 transfer Defendant to CCDC, NDOC and Defendant's counsel will meet and confer to  
24 address Defendant's concerns pertaining to not only physical visitation, but also the need  
25 for Defendant to view electronic discovery.

#### 26 **V. CONCLUSION**

27 For the reasons noted above, NDOC agrees with Defendant that this Court may  
28 transfer Defendant to CCDC to facilitate access to his counsel during the days and weeks

1 leading up to trial, that NDOC does not oppose such transfers generally and does not  
2 oppose the transfer in this case. NDOC also states that should this Court choose to not  
3 transfer Defendant to CCDC, NDOC will meet and confer with Defendant's counsel to reach  
4 a mutually agreeable plan to facilitate legal visits that are anticipated to be once or twice  
5 a week on varying days of the week, and to ensure that Defendant may view electronic  
6 discovery.

7 DATED this 21st day of March, 2022.

8 AARON D. FORD  
9 Attorney General

10 By: /s/ D. Randall Gilmer  
11 D. Randall Gilmer (Bar No. 14001)  
12 Chief Deputy Attorney General  
13 *Attorneys for Nevada Department of Corrections*  
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**CERTIFICATE OF SERVICE**

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on March 21, 2022, I electronically filed the foregoing document via this Court's electronic filing system. Parties who are registered with this Court's electronic filing system will be served electronically.

/s/ Diane Resch  
Diane Resch, an employee of the  
Office of the Nevada Attorney General

# EXHIBIT A

DECLARATION OF JEREMY BEAN

EXHIBIT A

AARON D. FORD  
Attorney General  
D. Randall Gilmer (Bar No. 14001)  
Chief Deputy Attorney General  
State of Nevada  
Office of the Attorney Generals  
555 E. Washington Ave., Ste. 3900  
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Facsimile: (702) 486-3773  
Email: DGilmer@ag.nv.gov

*Attorneys for Specially Appearing Party,  
Nevada Department of Corrections*

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

STATE OF NEVADA,

Plaintiff,

v.

MATEO JESUS FACIO #1251456,

Defendants.

SHERIFF JOSEPH LOMBARDO,

Specially Appearing Party,

NEVADA DEPARTMENT OF CORRECTIONS,

Specially Appearing Party,

Case No. C-22-361822-1

Dept. No. VI

**DECLARATION OF ASSOCIATE  
WARDEN JEREMY BEAN FOR THE  
NEVADA DEPARTMENT OF  
CORRECTIONS**

I, Jeremy bean, hereby declare based on personal knowledge and/or information and belief, that the following assertions are true.

1. I serve as the Associate Warden of Operations of High Desert State Prison (HDSP), an institution within the Nevada Department of Corrections (NDOC). I have held this position for four years and have worked for the NDOC for twenty-one (21) years.

2. It has come to the attention of NDOC that on February 24, 2022, the Specially Appearing Interested Party Sheriff Joseph Lombardo filed a Motion to Reconsider this Court's Order dated February

1 22, 2022 where this Court ordered Mr. Facio, ID 1251456 to be remanded to Clark County Detention  
2 Center (CCDC) for purposes of facilitating attorney client meetings in preparation of Mr. Facio's  
3 upcoming criminal trial set for April 25, 2022. Despite these orders being routine throughout my time as  
4 Associate Warden of Operations, it is my understanding this Court granted Sheriff Lombardo's Motion  
5 for Reconsideration and rescinded the order to transport.

6 3. It is my understanding that a similar order was originally entered but also later rescinded  
7 based on a Motion for Reconsideration filed by Sheriff Lombardo regarding inmate Reuben Tavarez, ID  
8 1245635.

9 4. During my time as Associate Warden of Operations at HDSP I am familiar with such  
10 orders to transport inmates to CCDC prior to trial. I consider these orders to be quite routine.

11 5. On March 17, 2022, Defendant's counsel filed a Motion to Compel Nevada Department  
12 of Corrections to Allow Daily Visitation, to Reconsider Remanding Defendant and Clarify When  
13 Defendant Will be Remanded to CCDC Prior to Trial. It is NDOC's understanding that a hearing on this  
14 motion is set to occur on March 22, 2022. This declaration is being provided to share with the Court why  
15 NDOC has no objection to transporting either Facio or Tavarez to CCDC for purposes of trial preparation  
16 and trial.

17 6. As an institution designed to house convicted individuals, HDSP was both physically  
18 designed, and operated in a manner, that contemplates a lower level of attorney-client legal visits that  
19 was is commonplace for pre-trial detention centers such as CCDC. This means HDSP was designed to  
20 have one main area for attorney visitation, and that area must be shared with offenders that have six  
21 different level classifications. Safety and security concerns require these classification levels to be  
22 sequestered from one another. Utilizing this area for increased attorney visits will necessarily result in  
23 the need to cut back on non-attorney visitation so as to ensure the safety and security of all individuals.  
24 While there is one other area at HDSP that can accommodate some increase in legal visitation, using that  
25 area will likely result in conflicts with court hearings as it would require the use of the video conference  
26 room set aside or video hearings, conferences, motions, not only for court, but also administrative matters  
27 such as parole hearings.  
28

7. A staffing shortage of 11%, which means HDSP is currently without a full complement of correctional officers by approximately fifty-nine (59) correctional staff. HDSP is the biggest and busiest NDOC institution. Requiring nearly unfettered legal visitation will result in significant overtime costs, and, due to staffing, further lead to fatigue, burnout, accidents, injuries and potentially more resignations. Therefore, these staffing shortages exacerbate the design and operation of HDSP as a post-conviction institution not contemplated to have routine, daily, attorney-client meetings for trial preparation.

8. Advance scheduling is necessary to minimize the conflicts with visitation of difference classification offenders as well as video conferencing.

9. Transporting an inmate from HDSP to court everyday as contemplated by LVMPD would result in a minimum of \$284.63 per day. This number is derived at based on 81 miles, 110-minute round trip travel, and two correctional officers working overtime for a minimum of three hours for each officer.

10. Transporting inmates daily also increases safety and security concerns for the public, the prisoner, and NDOC employees.

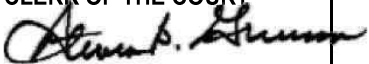
11. In contrast to the design, operation, and remote location of HDSP, CCDC is centrally located within the City of Las Vegas, and was (presumably) designed to accommodate pre-trial visitation as county detention centers such as CCDC routinely house pre-trial detainees awaiting trial.

12. Of course, if ordered to provide more legal access, HDSP will certainly ensure it is provided. However, given the stress and additional burdens it will put on HDSP, NDOC, and Nevada taxpayers, NDOC believes it is important to inform the Court of these issues that would seem to be alleviated by transferring Defendant and similar Defendants to CCDC as has been standard for years.

13. I declare under penalty of perjury pursuant to NRW 53.045 that the foregoing is true and correct.

EXECUTED this 21st day of March, 2022.

/s/ \_\_\_\_\_  
Jeremy Bean, Associate Warden  
High Desert State Prison  
Nevada Department of Corrections



1 **OPPS**  
2 LIESL FREEDMAN  
3 General Counsel  
4 Nevada Bar No. 5309  
5 MARTINA BAUHAUS  
6 Assistant General Counsel  
7 Nevada Bar No. 9337  
8 Las Vegas Metropolitan Police Department  
9 400 S. Martin Luther King Blvd.  
10 Las Vegas, Nevada 89106  
11 Tel: (702) 828-3310  
12 Fax: (702) 828-3191  
13 Email: [m10172b@lvmpd.com](mailto:m10172b@lvmpd.com)  
14 Attorneys for Sheriff Joseph Lombardo

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

12 THE STATE OF NEVADA,

13 Plaintiff,

14 vs.

15 MATEO JESUS FACIO,  
16 ID#8385982

17 Defendant.

CASE NO. C-22-361822-1

DEPT. NO. 6

DATE: 3/22/2022

TIME: 11:00 a.m.

18  
19 **SPECIALLY APPEARING INTERESTED PARTY SHERIFF JOSEPH LOMBARDO'S**  
20 **OPPOSITION TO MOTION TO RECONSIDER REMAND AND CLARIFY WHEN**  
21 **DEFENDANT WILL BE REMANDED TO CCDC PRIOR TO TRIAL**

22 COMES NOW, Sheriff Joseph Lombardo, (making a special appearance as an interested  
23 party) by and through his attorneys Liesl Freedman, General Counsel, and Martina Bauhaus,  
24 Assistant General Counsel and hereby submits his Opposition to Motion to Reconsider Remand  
25 and Clarify When Defendant Will be Remanded to CCDC Prior to Trial<sup>1</sup>.

26 ///

27 ///

28 <sup>1</sup> The Sheriff does not take a position on Defendant's Motion to Compel Nevada Department of Corrections to Allow Daily Visitation.

1 This Opposition is made and based upon the following Memorandum of Points and  
2 Authorities, exhibits and all the papers and pleadings on file herein.

3 DATED this 21<sup>st</sup> day of March, 2022.

4  
5 /s/ Martina Bauhaus  
6 LIESL FREEDMAN  
7 General Counsel  
8 Nevada Bar No. 5309  
9 MARTINA BAUHAUS  
10 Assistant General Counsel  
11 Nevada Bar No. 9337  
12 Las Vegas Metropolitan Police Department  
13 400 S. Martin Luther King Blvd.  
14 Las Vegas, Nevada 89106  
15 Tel: (702) 828-3310  
16 Fax: (702) 828-3191  
17 *Attorneys for Sheriff Joseph Lombardo*

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **I. INTRODUCTION**

20 On March 8, 2022, the Court heard Sheriff Lombardo's Motion to reconsider its previous  
21 Order to remand Defendant to the Clark County Detention Center (CCDC). The Honorable  
22 Senior Judge Ellsworth granted the Sheriff's Motion. She agreed that there is no statutory  
23 authority for the Court to decide where people are going to be housed. *See* Defendant's Motion,  
24 Exhibit A, p. 5, ln. 4-5, p. 7, lns 21-22; Exhibit B, p. 4, ln. 5-6. Defendant further was instructed  
25 to contact the Nevada Department of Corrections (NDC) and if access is denied to "file a motion  
26 to bring the State in here to have them explain why they can't give ready access...". *See*  
27 Defendant's Motion, Exhibit A, p. 8, lns. 8-12; Exhibit B, p. 11, ln. 9-10.

28 Now, Defendant copied and pasted his previously filed Opposition, added a few details  
about the NDC and called it "Defendant's Motion to Compel Nevada Department of Corrections  
to Allow Daily Visitation, to Reconsider Remanding Defendant and Clarify When Defendant will  
be Remanded to CCDC prior to Trial". Defendant's Motion is a request for Reconsideration of  
the previously granted Reconsideration. Defendant's Motion shows that it is **not** about access to

1 the inmate at NDC. Rather is has always been about convenience of counsel. Convenience not to  
2 drive 30 miles. Otherwise, this would not have been a motion for reconsideration, rather only a  
3 motion to be granted access at NDC as the Court directed. Convenience is not a legal standard to  
4 grant reconsideration. Accordingly, the Motion should be denied.

5 **II. ARGUMENT**

6 **A. DEFENDANT’S MOTION FOR RECONSIDERATION SHOULD BE DENIED**  
7 **AS IT IS WITHOUT THE REQUIRED POINTS AND AUTHORITIES.**

8 Eighth Judicial District Court of Criminal Practice Rule 3.20 (b) states in relevant part that  
9 “[a] party filing a motion must also serve and file with it a memorandum of points and authorities  
10 in support of each ground thereof. The absence of such memorandum may be construed as an  
11 admission that the motion is not meritorious, as cause for its denial or as a waiver of all grounds  
12 not so supported.” A memorandum of points and authorities provides the legal authorities such as  
13 statutes and court cases, and explains how those authorities support the position. Defendant has  
14 failed to serve a memorandum of points and authorities to support his Motion for Reconsideration  
15 and as such his Motion should be denied.

16 **B. DEFENDANT HAS NOT SHOWN THAT RECONSIDERATION IS**  
17 **WARRANTED.**

18 An order may be reconsidered due to "newly discovered evidence which by due diligence  
19 could not have been discovered" at the time of the court's initial determination. However,"[o]nly  
20 in very rare circumstances in which *new issues of fact or law* are raised supporting a ruling  
21 contrary to the ruling already reached should a motion for rehearing be granted.” *Moore v. Las*  
22 *Vegas*, 551 P.2d 244, 245 (Nev. 1976) [Emphasis added]. The district court "may reconsider a  
23 previously decided issue if substantially different evidence is subsequently introduced or the  
24 decision is clearly erroneous." *Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga &*  
25 *Wirth, Ltd.*, 941 P.2d 486, 489 (Nev. 1997). This is not such a case.

26 Defendant’s Motion brings the exact same legal arguments that the Court already heard  
27 previously. The only newly added “evidence” are emails from NDC that state NDC does not  
28 allow daily visits. However, this was already presented without any actual evidence during the



1 previous court hearing. *See* Defendant’s Opposition to Sheriff’s Motion to Reconsider Order;  
2 Defendant’s Motion Exhibit A and B. As such, it is not “newly discovered”. It is simply newly  
3 fabricated evidence.

4 Furthermore, “while a Court does have inherent authority to review its Order,... the Court  
5 cannot provide a second reconsideration of the same ... Order which was already reconsidered ...  
6 as that could be viewed to place the District Court Judge in the position of an appellate decision  
7 maker, which is not the role of a District Court Judge...” *Hill*, 2015 Nev. Dist. LEXIS 2470.  
8 Here, the Court granted specially appearing party Sheriff Lombardo’s Motion for  
9 Reconsideration. Defendant now seeks to have the Court reconsider its order again. If the court  
10 constantly reconsiders matters a case would never be resolved. Parties would file infinite motions  
11 for reconsiderations. For that reason, the law requires a motion for reconsideration to provide  
12 new law and facts. Neither has been presented. Accordingly, the Court should deny the current  
13 Motion.

14 **C. DEFENDANT SHOULD BE PROHIBITED FROM “JUDGE SHOPPING” IN**  
15 **HOPES TO OBTAIN A DIFFERENT OUTCOME**

16 The Nevada Supreme Court prohibits "'judge shopping' once a motion is granted or  
17 denied" and "preclude[s] litigants from attempting to have an unfavorable determination by one  
18 district judge overruled by another." *Moore v. City of Las Vegas*, 551 P.2d 244, 245 (Nev. 2021);  
19 *see also* Eighth Judicial District Court General Rule of Practice 7.20. Further, the Nevada  
20 Supreme Court held, when a second motion "raised no new issues of law and made reference to  
21 no new or additional facts" the district court abused its discretion in entertaining the motion. *Id.*  
22 551 P.2d at 246.

23 Placing the Defendant’s previously filed Opposition and this current Motion next to each  
24 other shows that they are almost word for word identical. Nothing new has been added that  
25 would indicate reconsideration is warranted. More importantly, nothing new has been added in  
26  
27  
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1 regards to the law that would allow for the Court to “remand” the Defendant.<sup>2</sup> Rather the Motion  
2 repeats the previously made arguments hoping for a different outcome from Senior Judge  
3 Ellsworth’s ruling. That is not the legal standard or authority for reconsideration. No new  
4 evidence or new law is being provided. As such, the Court should deny Defendant’s Motion.

5 **D. DEFENDANT’S MOTION FOR CLARIFICATION IS NON-SENSICAL AND**  
6 **AS SUCH SHOULD BE DENIED.**

7 Defendant seeks for this Court to clarify when Defendant will be remanded to CCDC prior  
8 to trial. Taken the Court’s previous Order for Reconsideration, this clarification is non-sensical,  
9 as the Court has found that it does not have the authority to remand the Defendant to CCDC. *See*  
10 Defendant’s Motion Exhibit A and B. Specifically, the Court stated:

11 “The Court doesn’t really have the ability to say where a person is  
12 housed. The Court has the ability to say there shall be access, right  
13 and he’s currently housed at the Nevada Department of Corrections.  
14 If there is a problem where the State through the Division of  
15 Corrections is going to take the position that they won’t transport  
16 well then we need to address it with them.”

17 Defendant’s Motion, Exhibit B, Ins. 5-10.

18 Because the Court has ruled it has no authority to remand the Defendant, there is no need  
19 to clarify when the Court is going to remand as it never even mentioned any remand even closer  
20 to trial. Accordingly, the Court should deny Defendant’s Motion.

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<sup>2</sup> Rather than to repeat, copy and paste the previously made arguments, specially appearing interested Party Sheriff Joseph Lombardo hereby incorporates the previously filed papers and arguments into this opposition.



**CERTIFICATE OF SERVICE**

I hereby certify that on the 21<sup>st</sup> day of March 2022, I caused the foregoing Specially Appearing Interested Party Sheriff Joseph Lombardo's Opposition to Motion to Reconsider Remand and Clarify When Defendant Will be Remanded to CCDC Prior to Trial to be served via electronic means, by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk:

CLARK COUNTY SPECIAL PUBLIC DEFENDER'S OFFICE  
Tegan C. Machnich, Chief Deputy Special Public Defender  
Email: [Tegan.Machnich@clarkcountynv.gov](mailto:Tegan.Machnich@clarkcountynv.gov)

CLARK COUNTY DISTRICT ATTORNEY'S OFFICE  
Email: [motions@clarkcountynv.com](mailto:motions@clarkcountynv.com)

NDOC Offender Management Division  
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[hskulstad@doc.nv.gov](mailto:hskulstad@doc.nv.gov)

NDOC Offender Management Division  
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Attorney General Office  
Randy Gilmer  
[rgilmer@ag.nv.gov](mailto:rgilmer@ag.nv.gov)

/s/ Shandell Auten

An Employee of the Las Vegas Metropolitan  
Police Department – Office of General Counsel

DISTRICT COURT  
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

March 22, 2022

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C-22-361822-1      State of Nevada  
   vs  
   Mateo Facio

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March 22, 2022      11:00 AM      Defendant's Motion to Compel Nevada Department of  
Corrections to Allow Daily Visitation, to Reconsider Remanding  
Defendant and Clarify when Defendant will be Remanded to  
CCDC prior to Trial

HEARD BY:      Bixler, James

COURTROOM:    RJC Courtroom 11B

COURT CLERK:   Gibson, David

RECORDER:      Gerold, Jennifer

REPORTER:

PARTIES PRESENT:

Donald R. Gilmer

Attorney for Other

Tegan Machnich

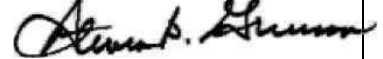
Attorney for Defendant

**JOURNAL ENTRIES**

APPEARANCES CONTINUED: Martina Bauhaus, Las Vegas Metropolitan Police Dept., also present. Deft. not present.

Ms. Machnich argued in support of the motion. Mr. Gilmer stated the Nevada Department of Correction would comply with an order to transport. Ms. Bauhaus argued in opposition to the motion. COURT ORDERED motion GRANTED. COURT FURTHER ORDERED the Defendant's to be transported to the Clark County Detention Center (CCDC) within 30 days of trial for trial preparation. Ms. Machnich is to prepare the order.

CUSTODY (COC)



TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

\* \* \* \* \*

STATE OF NEVADA,	)	
	)	CASE NO. C-21-355640-1
Plaintiff,	)	C-21-361822-1
	)	
vs.	)	DEPT. NO. VI
	)	
RUBEN TAVAREZ, MATEO FACIO,	)	
	)	<b>Transcript of Proceedings</b>
Defendants.	)	
	)	

BEFORE THE HONORABLE JAMES BIXLER, SENIOR JUDGE

**DEFENDANT TAVAREZ'S MOTION AND DEFENDANT FACIO'S MOTION TO  
COMPEL NV DEPARTMENT OF CORRECTIONS TO ALLOW DAILY  
VISITATION, RECONSIDER REMANDING DEFENDANT, AND CLARIFY  
WHEN DEFENDANT WILL BE REMANDED TO CCDC PRIOR TO TRIAL;**

TUESDAY, MARCH 22, 2022

APPEARANCES:

For the State: MARTINA BAUHAUS, ESQ.

For Tavarez and Facio: TEAGAN C. MACHNICH, ESQ.

For NDOC: RANDALL GILMER, ESQ.

RECORDED BY: DE'AWNA TAKAS, DISTRICT COURT  
TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording, transcript  
produced by transcription service.

1 TUESDAY, MARCH 22, 2022 AT 12:38 P.M.

2

3 THE COURT: All right. Page 18. *State of Nevada*  
4 *versus Ruben Tavaréz*. The Defendant is in custody. But  
5 he's in custody at the Department of Corrections. I think.  
6 Right?

7 MS. MACHNICH: Yes, Your Honor. Tegan Machnich  
8 from the Special Public Defender's Office, 11642. I would  
9 actually ask that we call both *Tavaréz* and *Mateo Facio* at  
10 the same time in this case if that's possible? They are on  
11 for identical matters. Additionally, I'll be handling both  
12 of them because our team on *Tavaréz* is currently at the  
13 prison --

14 THE COURT: Okay.

15 MS. MACHNICH: -- and on their way back, I  
16 believe, now. But --

17 THE COURT: The case as to Defendant Tavaréz is C-  
18 21-355640. The case as to Facio, on page 19, is C-22-  
19 361822.

20 MS. BAUHAUS: Your Honor, I think last time the  
21 Court decided that it wouldn't handle both at the same  
22 time. Because it was some issues with the recording. And,  
23 honestly, there are slight differences in their Motions as  
24 well.

25 THE COURT: Well, let's just do them one at a

1 time. But we'll call them -- we know that they're  
2 together. But why are they charged in separate Complaints?

3 MS. MACHNICH: Your Honor, these cases are not  
4 otherwise related. What brings us before Your Honor is a  
5 transport and remand issue.

6 THE COURT: Oh, yeah.

7 MS. MACHNICH: These are not the same criminal  
8 case.

9 THE COURT: Yeah, yeah, yeah. Okay.

10 MS. MACHNICH: Yeah.

11 THE COURT: So, this is -- these are the couple  
12 cases that you guys want them transported from Department  
13 of Corrections down to CCDC so that you can prepare for the  
14 trials.

15 MS. MACHNICH: Correct.

16 THE COURT: The same on both cases, basically.

17 MS. MACHNICH: Exactly.

18 MR. BAUHAUS: Correct.

19 THE COURT: And the problem is the Department of  
20 Corrections won't do it.

21 MS. MACHNICH: That's not correct, Your Honor.  
22 It's CCDC that won't do it. The Nevada Department of  
23 Corrections is on board.

24 MR. GILMER: And, Your Honor, Randall Gilmer. I'm  
25 here on behalf of the Nevada Department of Corrections. I



1 also brought with me Associate Warden Bean, should the  
2 Court wish to hear from him. There was a Declaration  
3 attached from him.

4 Just so -- for the record is clear, we take no  
5 position as to whether or not these -- Mr. Tavaréz needs to  
6 be transported to CCDC. We're not criminal lawyers and  
7 NDOC's not involved in the criminal case. So, we do not  
8 take any position with regard to their request.

9 However, we come before the Court to -- because we  
10 do believe that the Court does have the authority to order  
11 the transportation, which, I believe was -- which is  
12 different than what Sheriff Lombardo had argued. And, so,  
13 we wanted to make sure that the Court was clear that from  
14 NDOC's position, we believe the Court does have the  
15 authority to transport these individuals. We are routinely  
16 getting such transportation orders, NDOC does. And they  
17 routinely comply with those transportation orders.

18 THE COURT: If I remember, reading through this,  
19 CCDC's position was, you want to interview and prepare with  
20 your clients while they're in custody, go to the prison and  
21 interview with them.

22 MS. MACHNICH: Your Honor, I believe that CCDC's  
23 position is that the Court does not have authority to order  
24 the remand down to CCDC for us to prepare for trial. Your  
25 Honor is not allowed to order that and does not have that

1 within your power. None of the Judicial District Court  
2 Judges have that. That's their position. And, yes,  
3 because of that, they're saying we don't want them down  
4 here, we shouldn't be forced to house them; therefore, go  
5 to the prison. But the crux of their argument is that Your  
6 Honor doesn't have that ability, despite decades of that  
7 happening.

8 MS. BAUHAUS: Your Honor, if I may? We're jumping  
9 ahead here because that's already been decided. We already  
10 were -- these arguments have already been decided by the  
11 previous Judge. We're --

12 THE COURT: Who?

13 MS. BAUHAUS: By Judge Ellsworth --

14 THE COURT: Okay.

15 MS. BAUHAUS: -- in this court. With, apparently,  
16 according to Judge Ellsworth's own words, with talking to  
17 Judge Bluth. There's already -- this has already been  
18 decided. We're here -- so, they went, they got an order.  
19 I came in and asked for reconsideration of an order. Now  
20 we're here on a reconsideration of a reconsideration.  
21 There's no such a thing. So, we're getting ahead because  
22 they're starting again the same old arguments that have  
23 already been heard. This is done.

24 MS. MACHNICH: I -- Your Honor, if I may, just  
25 briefly?

1           The end result was a level of absurdity that left  
2 us all in a questioning state. First of all, the State  
3 went to Judge Bluth -- I'm sorry.

4           THE COURT: Hang on just a second.

5           MS. MACHNICH: Of course, Your Honor.

6                           [Pause in proceedings]

7           MS. MACHNICH: And, Your Honor, if I may just  
8 clarify? The attorney's prior statement, our understanding  
9 of Judge Bluth's position, obviously she was not sitting on  
10 the bench and the Judge that we're in front of is the Judge  
11 that we are in front of. However, during the argument,  
12 Judge Ellsworth had mentioned that Judge Bluth --

13          THE COURT: Can I --

14          MS. MACHNICH: -- had an issue with the length of  
15 time.

16          THE COURT: Can I just make sure that I  
17 understand? This is my understanding. Judge Bluth  
18 originally granted the request to transport the Defendants,  
19 both of them, down to CCDC for preparation of trial. Judge  
20 Ellsworth, in a Motion to Reconsider, reversed that?

21          MS. MACHNICH: Yes.

22          MS. BAUHAUS: Correct.

23          THE COURT: And said: No, the Court didn't have  
24 the authority to transport them down here. Is that  
25 correct?

1 MS. MACHNICH: Correct. That the Judicial  
2 District Court Judges of the Eighth Judicial District have  
3 no inherent authority to order or remand to CCDC for  
4 preparation for trial at any point during the process.  
5 And, largely, our Motion for Reconsideration is based upon  
6 the absurd result that, at this point, --

7 THE COURT: So, --

8 MS. MACHNICH: -- we don't even know if they'd be  
9 down during the nighttime recesses of trial.

10 THE COURT: First --

11 MS. MACHNICH: There's just --

12 THE COURT: Okay. First of all, let me just -- I  
13 don't understand what this big argument is about. First,  
14 how can the State expect the defense to prepare for trial  
15 when they can't contact their -- or the contact is so  
16 limited, which is what happens when they're in prison, the  
17 contact is just almost none. It's limited in terms of  
18 time, in terms of when you can contact them, it's limited  
19 all over the board.

20 MS. BAUHAUS: So, Your Honor is saying that the  
21 Department of Corrections doesn't -- the Constitution  
22 doesn't apply to the Department of Corrections? Because,  
23 if you read the Motion for Reconsideration -- first off, I  
24 don't think this Court really should hear this. Because we  
25 have already -- a Court -- a Judge has already decided

1 this. This is done. There's a bow on it. It's done.

2 THE COURT: Well, --

3 MS. BAUHAUS: This is not really before the Court  
4 because you cannot -- and I -- if -- I don't know if you  
5 read my Opposition.

6 THE COURT: I read everything.

7 MS. BAUHAUS: There is -- the -- there's actually  
8 rules that disallow. This is a -- this is a matter for the  
9 Appellate Court at this point. This is not for the  
10 District Court, again, to reconsider a reconsideration.

11 And, second off, for reconsideration, what you  
12 have to have, you have to have new facts or new law. None  
13 of that has been presented to this Court. We are here --  
14 these are exactly the same arguments that were made in  
15 front of Judge Ellsworth. She already considered it.

16 THE COURT: What --

17 MS. BAUHAUS: So, under this, if --

18 THE COURT: Let me ask you something. Since Judge  
19 Bluth -- and this is -- these are both Judge Bluth's cases,  
20 since she made the original ruling that the Department of  
21 Corrections was supposed to transport them down to CCDC for  
22 preparation of trial, how did it get in front of Judge  
23 Ellsworth?

24 MS. BAUHAUS: Because she was sitting just like  
25 you for Judge Bluth right now, as a Senior Judge. Because

1 Judge Bluth was in trial. That's why it was in front of  
2 Judge Ellsworth because she is also a Senior Judge. So,  
3 when she was just in the same position as you are in. So,  
4 basically, what the --

5 THE COURT: I'm more senior than she is.

6 MS. BAUHAUS: Well, of course. And better  
7 looking.

8 THE COURT: I don't know about that.

9 MS. BAUHAUS: But, anyway, basically, to allow to  
10 hear this again would be the same thing as -- so, you make  
11 an order today, tomorrow I come back and do a -- file  
12 another Motion for Reconsideration, on the Motion for  
13 Reconsideration, for Reconsideration. That's where we are  
14 right now. This has already been heard. All of these  
15 arguments that are in their Motion for Reconsideration is  
16 done.

17 Furthermore, if you read through what the State  
18 said, the State of Nevada, the Nevada Department of  
19 Corrections, they're willing to accommodate. The Motion to  
20 Compel is basically moot because when I read through their  
21 papers -- first off, I don't think they -- they are -- they  
22 get to make a decision of -- on the Motion for  
23 Reconsideration or get to get -- have an opinion because  
24 that's really not against them.

25 But, as -- there's basically three Motions on

1 here. The first one is to compel the Department of  
2 Corrections to get additional visiting. Well, the  
3 Department of Corrections pretty much said: Yeah, well,  
4 we'll do that because we're required to do that under the  
5 Constitution. It doesn't matter whether they're at CCDC or  
6 at NDOC. NDOC has the same requirements under the  
7 Constitution to provide access to counsel. All these  
8 arguments that were made by the Public Defender's Office,  
9 they are -- they also apply to NDOC. Just because it is  
10 more convenient, that's not the law. The law is not  
11 convenience. And the law says that these Defendants are  
12 NDOC defendants. And everything that goes with it.

13 And, also, part of it, what NDOC is claiming,  
14 well, we would have to transport them down here. They come  
15 down here everyday anyway for trial. They come down here  
16 every day, from Monday to Friday. I actually brought  
17 Lieutenant Wooten [phonetic] with me from the Jail who can  
18 testify to that, that NDOC currently, Monday to Friday,  
19 every morning, they come, every evening they go back. If  
20 this Defendant comes over here to trial, it's not our  
21 officer -- officers that are sitting here in court, it's  
22 NDOC people anyway. And that's been like this all the time  
23 because that's what the statute required. They're NDOC.

24 Yes, have we done this in the past? Yes. But  
25 just because we've done it in the past doesn't mean that it

1 is under the statute. The statute says something totally  
2 different. And, for example, the State recently changed  
3 all of their competency hearing stuff, too, because they  
4 realized that, under the statute, they were not required to  
5 do something. So, just because they had done it for 30  
6 years that way doesn't mean anything.

7 Right now, we are also at a situation where CCDC  
8 is space deprived. We're going to -- through a renovation.  
9 So, what we were courteous enough before, now our courtesy  
10 is being thrown in our face. Oh, no, now you have to take  
11 them. There's no statute in there that says that somebody  
12 that's already sentenced to NDOC is supposed to be housed  
13 at CCDC. Nothing. And they have not shown one statute.  
14 You say, well, it doesn't prohibit it. There's not one  
15 statute that says so. I have shown statutes that say that  
16 they're NDOC defendants.

17 THE COURT: Counsel?

18 MR. GILMER: Your Honor, if I may? Thank you. I  
19 would say, just for the Court's edification because of the  
20 procedural history, this is the first time NDOC has been  
21 able to be heard on this matter. We were not noticed with  
22 regard to either the original Order, which, again, is not  
23 uncommon because we generally, you know, agree to those  
24 orders. But we also were -- not received notice of the  
25 Motion for Reconsideration that was filed by Sheriff



1 Lombardo. So, I would take exception to Sheriff Lombardo's  
2 position that there's not new facts here because we  
3 provided new facts in the way of the Declaration and our  
4 argument for the Court to consider.

5 I would state that we respectfully disagree with  
6 the Sheriff's position pertaining to the statutes. The  
7 statute specifically says that NDOC may transport offenders  
8 to any governmental agency. Obviously, CCDC would be a  
9 governmental agency. So, we do believe there is the  
10 authority to do that. We also believe there's inherent  
11 authority to do that.

12 With regard to what we said we would do pertaining  
13 to providing access, we said that we would certainly work  
14 with public defenders to provide additional access. As the  
15 Court has correctly indicated, it's a much more difficult  
16 and unique situation at a prison as opposed to a county  
17 detention center. Prisons are not set up for daily access  
18 to attorneys because, obviously, people there are post-  
19 incarcerated. Yes, there is a need to provide attorney  
20 access when they might need it for post-conviction relief,  
21 appeals, but it's not in the statutory design or structure  
22 that when somebody is at prison, they've already been  
23 incarcerated on a particular crime, that they're going to  
24 need trial preparation to meet with an attorney for an  
25 additional crime.

1           And, I think here, it's important to point out  
2 that in this particular situation, these weren't crimes --  
3 if I can just use a hypothetical. If this was a situation  
4 where NDOC was -- prisoners were being charged with a crime  
5 that occurred on NDOC property, for instance, that might be  
6 a different situation. But, here, these two individuals,  
7 but for the fact that they were on probation at the time of  
8 this occurred -- I believe they're both on probation.

9           MS. MACHNICH: Yeah.

10           MR. GILMER: One may have been on parole. They  
11 would not have had any -- they were revoked. And that's  
12 why they were in NDOC custody. If they had no previous  
13 felony or were not on parole or probation, these people  
14 would -- these individuals would have been at CCDC pending  
15 trial, unless they met bond or bail.

16           So, I think that that -- those are important  
17 things to consider. We did -- and, again, we respectfully  
18 disagree with the Sheriff's position that the statutes  
19 don't provide for transportation. We believe they do. We  
20 also believe it's within the Court's inherent authority to  
21 do so.

22           And while we will certainly work with PD's Office  
23 to provide as much access as possible, should the Court not  
24 reconsider the Motion and have them stay at the Department  
25 of Corrections, even the PD's moving papers said that even

1 that would -- while be moderately better, would not meet  
2 what they believe is necessary to meet with their client.  
3 So, I believe that that would be a concern for the Court to  
4 consider as well. Thank you, Your Honor.

5 MS. BAUHAUS: Again, the Court has already heard  
6 all of these arguments. It doesn't matter whether NDOC  
7 makes them or the Defendant makes them. These are exactly  
8 the same arguments that Judge Ellsworth already considered.  
9 They were considered.

10 And, again, the standard for Motion for  
11 Reconsideration is you have to show new law. This has not  
12 been done.

13 MR. GILMER: Or new facts. And Judge Ellsworth  
14 did not have anything from NDOC when it was considered the  
15 first time, Your Honor.

16 MS. BAUHAUS: But the Public Defender's Office  
17 basically made the same representations that the State  
18 made.

19 THE COURT: All right. All right. Here's --  
20 here's what we're going to do. We're going to go back.  
21 I'm not quite sure how we got, initially, into a Motion for  
22 Reconsideration. We're going back to Judge Bluth's  
23 original Order. And I don't know if she -- how  
24 comprehensive it was. But she basically directed the  
25 Department of Corrections to transport the two Defendants

1 down to CCDC. And we're going to go back to that original  
2 Order that Judge Bluth entered. I think it was correct  
3 under the circumstances. And it's not the first time.

4 MS. BAUHAUS: Your Honor, if I may? Actually,  
5 Judge Ellsworth, in the record, said that Judge Bluth --  
6 and I'm going to quote here because I'm going to file it in  
7 another Motion for Reconsideration because that's not what  
8 Judge Bluth said. Judge Ellsworth quoted Judge Bluth in  
9 saying that she had talked to Judge -- Judge Ellsworth had  
10 talked to Judge Bluth and -- Court's indulgence?

11 MS. MACHNICH: And, Your Honor, it was that she  
12 reconsidered the time -- length of time --

13 MS. BAUHAUS: Correct.

14 MS. MACHNICH: -- that she would have remanded  
15 down, which can certainly be discussed. However, part of  
16 our argument with that is, too, we -- she had -- Judge  
17 Bluth -- Judge Ellsworth said that Judge Bluth said to her,  
18 when they discussed the Motion prior to coming to Court,  
19 that Judge Bluth was reconsidering the length of time in  
20 our request. We had requested with either -- it was either  
21 30 days or 60 days. We had set a time, a definite date,  
22 upon the Court's request, to have the transport happen, so  
23 that we would have enough time to prepare.

24 The conversation that was relayed during the  
25 argument was not that Judge Bluth believed that she did not

1 have the inherent authority. But that she was  
2 reconsidering the time length down to potentially two weeks  
3 before trial. Obviously, our issue with that would be  
4 that's within the Motion deadline and doesn't allow us to  
5 strategize with our clients before that would happen and  
6 would again make preparation for trial impossible. But  
7 that is the actual statement that Judge Ellsworth said that  
8 Judge Bluth was reconsidering the length of time.

9 THE COURT: Well, 60 days is way too much. Sixty  
10 days is way too much. Can you accomplish what you need to  
11 accomplish within 30 days?

12 MS. MACHNICH: Yes.

13 THE COURT: Thirty days.

14 MS. BAUHAUS: Your Honor, that's not what Judge  
15 Bluth actually said. She was considering two weeks, not 60  
16 days or 30 days.

17 And, in the -- to give the Court an alternative,  
18 since apparently the sitting Senior Judges have different  
19 of opinions, why don't we trail this over to Judge Bluth  
20 until she can actually hear the matter, so we get it from  
21 her mouth?

22 THE COURT: I certainly don't have any trouble  
23 doing that. But, the trouble is, we got some time frames  
24 here.

25 MR. GILMER: Yes.

1 THE COURT: We got a calendar call April 19<sup>th</sup> and  
2 the trial date April 25<sup>th</sup>. That's on the *Tavarez* matter.  
3 And, on *Facio*, we've got --

4 MS. MACHNICH: They're the same, Your Honor.

5 THE COURT: Calendar call is the 19<sup>th</sup> and the trial  
6 -- the trial date's kind of cut off. What is the trial  
7 date on?

8 MS. MACHNICH: It's the 25<sup>th</sup>, Your Honor. They  
9 have the same calendar call and trial dates.

10 THE COURT: They do?

11 MS. BAUHAUS: Which why we're going to get trailed  
12 anyway because when I file my Writ, then it's probably  
13 stayed anyway.

14 MR. GILMER: On that point, Your Honor, I mean,  
15 obviously, we're nonparties here. We're here today. It  
16 was filed on an order shortening time. It was originally  
17 scheduled for today. At one point, there was a Notice of  
18 Hearing, setting it for next week. And, then, it was moved  
19 back to today.

20 MS. BAUHAUS: Right.

21 MR. GILMER: So, from our position as nonparties,  
22 I -- and, you know, we have an Associate Warden here. We  
23 would not like to -- we would like a ruling today, as  
24 opposed to having it trailed over. Also, because NDOC  
25 needs to be able to prepare --

1 THE COURT: Here's the --

2 MR. GILMER: -- either way.

3 THE COURT: Here's the problem. Judge Bluth is  
4 probably going to be in trial for the next two weeks. And  
5 that's puts us right up against the dates. So, you can  
6 file your Writ. But I'm going to set 30 days. I want  
7 Department of Corrections to have these guys down here  
8 within 30 days of their trial date so that they can  
9 prepare.

10 MS. BAUHAUS: So, -- well, but --

11 THE WARDEN: Which would be this Thursday or  
12 Friday, the 24<sup>th</sup> or 25<sup>th</sup>.

13 THE COURT: Right. Right.

14 THE WARDEN: Correct?

15 MS. BAUHAUS: And, Your Honor, just so I can make  
16 my record --

17 MR. GILMER: We can do that, Your Honor.

18 MS. BAUHAUS: To complete my record? So, here is  
19 -- here's the first thing. Like I said, I apologize I have  
20 to drag this on. But, again, I want to have a clean  
21 record.

22 As to NDOC, I really don't think they have  
23 standing to chime in for the Motion for Reconsideration.  
24 And there -- the Sheriff has not taken a position on the  
25 Motion to Compel.

1           It's also clear that NDOC seeks to deflect from  
2 their shortcomings. Regardless of whether it is difficult  
3 or not or that NDOC is a prison or pretrial detention  
4 facility, the same constitutional standard applies  
5 regarding access to counsel. The Constitution does not  
6 change between a jail and a prison.

7           Another matter that I would like to bring up --  
8 and, actually, Your Honor, I would need you to rule on  
9 this, is the financial matter of transporting somebody down  
10 here. So, the statute actually says in detail that:

11           Upon notification of the Clerk of the County in  
12 the state that the person is being held under sentence  
13 of imprisonment in the state prison, the director shall  
14 immediately provide for transport of the offender from  
15 the place of confinement, which would have been CCDC,  
16 to the appropriate institution and facility. The  
17 reasonable expenses of maintaining every person  
18 sentenced to imprisonment in the state prison, after  
19 five days' notice to the director, it's charged to  
20 against the Department.

21           These guys are NDOC prisoners. So, if CCDC has to  
22 house them, NDOC has to be ordered to pay the financial  
23 burden of that, which is currently \$240 a day. Which,  
24 since they put in their Motion that they would have to pay  
25 \$280 for transport, it's actually a deal for them.



1           MR. GILMER: Your Honor, I mean, again, these  
2 transportation orders, and payment, and financial issues  
3 are not anything new. I'm certain that if the Court wishes  
4 to have NDOC pay, I mean, it -- you know, again, there's  
5 obviously ways that this happens, communication between the  
6 jail and NDOC. So, I don't know exactly what those  
7 particulars are. But, obviously, whatever statutorily  
8 we're required to pay, NDOC would pay.

9           I would note that it's -- the statute that is  
10 being cited by the Sheriff at the moment is based upon what  
11 happens after somebody has been convicted of a crime.  
12 These individuals here are not being transported here  
13 because they were convicted of a crime. They're being  
14 transported as pretrial detainees for a new crime.

15          So, I think that there's an open question as to  
16 whether or not the statute that she's referring to would  
17 apply in this particular situation. Because, again, as I  
18 indicated, if these people had not been on probation at the  
19 time, they would be housed at Clark County if they hadn't  
20 met bond or bail. So, I think that that statute isn't a  
21 perfect fit for this particular situation. But, again,  
22 certainly whatever the Court thinks is appropriate.

23          I would also note that those same statutes that  
24 she referenced talked about the fact that if a prisoner is  
25 transported by the County, that the County can also be

1 ordered to pay. So, -- in those same statutes. So, I  
2 think that that's an open debate on the payment that I  
3 don't think necessarily has to be decided today.

4 THE COURT: All right. I don't think it --

5 MR. GILMER: There is wonderful financial people  
6 on both sides.

7 THE COURT: I don't think it does either. I think  
8 there's -- that issue is going to be left to Judge Bluth to  
9 decide. The only thing we're addressing here is the  
10 Department's transport down here 30 days prior to trial.  
11 And we'll consider the costs and the fees. Judge Bluth can  
12 decide that when she gets out of trial.

13 I'm just reluctant not to make this Order right  
14 now because we're so pressed for time to get this thing  
15 ready to go to trial in April. And Judge Bluth is going to  
16 be tied up in trial until right before these trials. And I  
17 doubt seriously that -- well, obviously, both of these  
18 trials aren't going to be able to go. One of them is going  
19 to go and one of them is going to get continued.

20 MR. GILMER: Understood, Your Honor. And I was  
21 able to check with Associate Warden Bean, who's sitting in  
22 the front row. We can make that happen for Thursday. We  
23 do obviously need to have a written Order of some sort for  
24 that to happen.

25 THE COURT: Somebody prepare an Order --

1 MS. MACHNICH: I draft it.  
2 THE COURT: -- and I'll sign it.  
3 MR. GILMER: But we will make sure that they're  
4 transported no later than Thursday.  
5 THE COURT: Okay.  
6 MS. MACHNICH: Your Honor, I'll send it over  
7 today.  
8 THE COURT: Okay.  
9 THE WARDEN: Thank you.  
10 THE COURT: Thank you.  
11 MS. MACHNICH: Thank you.

12  
13 PROCEEDING CONCLUDED AT 1:03 P.M.

14 \* \* \* \* \*

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**CERTIFICATION**

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

**AFFIRMATION**

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.

A handwritten signature in blue ink, reading "Kristen Lunkwitz", is written over a horizontal line.

KRISTEN LUNKWITZ  
INDEPENDENT TRANSCRIBER

*Heather S. Simon*  
CLERK OF THE COURT

1 **ORDR**  
2 LIESL FREEDMAN  
3 General Counsel  
4 Nevada Bar No. 5309  
5 MARTINA BAUHAUS  
6 Assistant General Counsel  
7 Nevada Bar No. 9337  
8 Las Vegas Metropolitan Police Department  
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12 Fax: (702) 828-3191  
13 Email: [m10172b@lvmpd.com](mailto:m10172b@lvmpd.com)  
14 *Attorneys for Sheriff Joseph Lombardo*

9  
10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12  
13 THE STATE OF NEVADA, )  
14 Plaintiff, )  
15 vs. )  
16 MATEO JESUS FACIO, )  
17 ID#8385982 )  
18 Defendant. )

CASE NO. C-22-361822-1  
DEPT. NO. 6

19 **ORDER GRANTING SPECIALLY APPEARING INTERESTED PARTY SHERIFF**  
20 **JOSEPH LOMBARDO'S MOTION TO RECONSIDER ORDER**

21 The above-entitled matter having come before this Court on the 8<sup>th</sup> day of March 2022  
22 with the Specially Appearing Interested Party SHERIFF LOMBARDO OF THE LAS VEGAS  
23 METROPOLITAN POLICE DEPARTMENT, DETENTION SERVICES DIVISION (LVMPD  
24 DSD) being represented by LIESL K. FREEDMAN, General Counsel, through MARTINA  
25 BAUHAUS, Assistant General Counsel, Defendant MATEO JASUS FACIO being represented  
26 by his attorneys JONELL THOMAS, Clark County Special Public Defender through SCOTT  
27 BINDRUP and TEGAN MACHNICH, Deputy Special Public Defenders and the Court having  
28 reviewed all papers and pleadings on file, this Court finds:

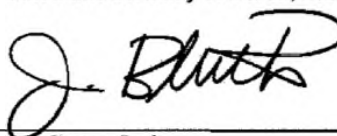
1 Defendant is currently housed at the Nevada Department of Corrections (NDOC). Based  
2 upon representation, Defendant's counsels have encountered difficulties to meet with their client  
3 due to the NDOC's restrictions on visitations.

4 IT IS HEREBY ORDERED THAT if Defendant's counsel has issues visiting their client  
5 at the NDOC, the appropriate recourse is to file a motion to address this issue with NDOC.

6 IT IS FURTHER ORDERED that specially appearing interested party Sheriff Joseph  
7 Lombardo's Motion for Reconsideration of Order is granted, revoking the previous Order. The  
8 Court does not have authority to remand an inmate legally housed at NDOC to CCDC or direct a  
9 certain housing pursuant to NRS 202.360, NRS 209.2261 to NRS 209.331.

10 ~~DATED this \_\_\_\_\_ day of March, 2022.~~

Dated this 23rd day of March, 2022

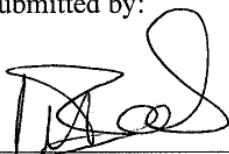
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13 District Court Judge

14 FFA 797 D2F6 A0EB  
15 Jacqueline M. Bluth  
16 District Court Judge

kj

17 Submitted by:

18 

19 Martina Bauhaus  
20 Assistant General Counsel  
21 Nevada Bar No. 9337  
22 Las Vegas Metropolitan Police Department  
23 400 S. Martin Luther King Blvd.  
24 Las Vegas, Nevada 89106  
25 Attorney for Sheriff Lombardo  
26  
27  
28

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 State of Nevada

CASE NO: C-22-361822-1

7 vs

DEPT. NO. Department 6

8 Mateo Facio  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 3/23/2022

15 Diane Resch

dresch@ag.nv.gov

16 PUBLIC DEFENDER

PDclerk@ClarkCountyNV.gov

17 Tegan Machnich

tegan.machnich@clarkcountynv.gov

18 Shadonna Scurry

shadonna.scurry@clarkcountynv.gov

19 Office of the Special Public Defender

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20 Clark County District Attorney

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21 Martina Bauhaus, Esq.

m10172b@lvmpd.com

22 Holly Skulstad

hskustad@doc.nv.gov

23 Kirk Widmar

kwidmar@doc.nv.gov

24 Randy Gilmer

dgilmer@ag.nv.gov

25 Scott Bindrup

scott.bindrup@clarkcountynv.gov

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1 ORDR  
2 JoNell Thomas #4771  
3 Clark County Special Public Defender  
4 Tegan C. Machnich #11642  
5 Chief Deputy Special Public Defender  
6 330 S. 3<sup>rd</sup> St., Suite 800  
7 Las Vegas, Nevada 89155  
8 (702) 455-6265  
9 (702) 455-6273 (fax)  
10 Tegan.Machnich@ClarkCountyNV.gov  
11 Attorney for Mateo Jesus Facio

DISTRICT COURT  
CLARK COUNTY

12 State of Nevada,  
13 Plaintiff,  
14 v.  
15 Mateo Jesus Facio,  
16 Defendant.

Case No. C-22-361822-1  
Dept. No. 6

ORDER TO REMAND DEFENDANT

17 This matter having come before the Court on March 22, 2022, the Court being  
18 fully advised in the premises and good cause appearing;

19 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Nevada  
20 Department of Corrections will remand Mateo Jesus Facio, ID 1251456, to the  
21 custody of the Clark County Detention Center on or before March 26, 2022, thirty  
22 (30) days before trial, so that Defendant can assist his attorneys with preparation for  
23 his jury trial set for April 25, 2022.

24 ///

25 ///

26 ///

1 IT IS FURTHER ORDERED that Mateo Jesus Facio will be transported from  
2 High Desert State Prison to the Clark County Detention Center where he will be  
3 housed through his trial date, and that Clark County Detention Center shall accept  
4 Defendant Facio and house him according to this Order.

5 Dated this 23rd day of March, 2022

6   
7

8 298 958 D7C4 C679 NH  
9 Jacqueline M. Bluth  
District Court Judge

10 Respectfully submitted,

11 JoNell Thomas  
12 Clark County Special Public Defender

13 /s/ Tegan C. Machnich  
14 Tegan C. Machnich  
15 Chief Deputy Special Public Defender  
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For the Honorable Senior Judge  
Bixler

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 State of Nevada

CASE NO: C-22-361822-1

7 vs

DEPT. NO. Department 6

8 Mateo Facio  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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12 Court. The foregoing Order was served via the court's electronic eFile system to all  
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 3/23/2022

15 Diane Resch

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16 PUBLIC DEFENDER

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18 Shadonna Scurry

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19 Office of the Special Public Defender

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20 Clark County District Attorney

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24 Randy Gilmer

dgilmer@ag.nv.gov

25 Scott Bindrup

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**REGISTER OF ACTIONS**  
**CASE NO. C-22-361822-1**

State of Nevada vs Mateo Facio

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Case Type: **Felony/Gross Misdemeanor**  
Subtype: **Homicide**  
Date Filed: **01/13/2022**  
Location: **Department 6**  
Cross-Reference Case Number: **C361822**  
Defendant's Scope ID #: **8385982**  
ITAG Case ID: **2474203**  
Lower Court Case # Root: **21-CR-046744**  
Lower Court Case Number: **21-CR-046744-001**

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**RELATED CASE INFORMATION**

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**Related Cases**

C-22-361822-2 (Multi-Defendant Case)  
C-22-361822-3 (Multi-Defendant Case)

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**PARTY INFORMATION**

---

**Defendant**      **Facio, Mateo Facio, Mateo Jesus**

**Lead Attorneys**  
**Special Public Defender**  
*Retained*

**Plaintiff**      **State of Nevada**

**Steven B Wolfson**  
702-671-2700(W)

---

**CHARGE INFORMATION**

---

<b>Charges: Facio, Mateo</b>	<b>Statute</b>	<b>Level</b>	<b>Date</b>
1. MURDER WITH USE OF A DEADLY WEAPON	200.010	Felony	08/29/2021
2. ATTEMPT MURDER WITH USE OF A DEADLY WEAPON	200.010	Felony	08/29/2021
3. BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM	200.481.2e2	Felony	08/29/2021
4. ATTEMPT MURDER WITH USE OF A DEADLY WEAPON	200.010	Felony	08/29/2021
5. BATTERY WITH USE OF A DEADLY WEAPON	200.481.2e1	Felony	08/29/2021
6. ATTEMPT MURDER WITH USE OF A DEADLY WEAPON	200.010	Felony	08/29/2021
7. BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM	200.481.2e2	Felony	08/29/2021
8. CONSPIRACY TO COMMIT MURDER	200.010	Felony	08/29/2021
9. DISCHARGING FIREARM AT OR INTO OCCUPIED STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT	202.285.1b	Felony	08/29/2021
10. DISCHARGING FIREARM AT OR INTO OCCUPIED STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT	202.285.1b	Felony	08/29/2021
11. DISCHARGING FIREARM AT OR INTO OCCUPIED STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT	202.285.1b	Felony	08/29/2021
12. DISCHARGING FIREARM AT OR INTO OCCUPIED STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT	202.285.1b	Felony	08/29/2021
13. DISCHARGING FIREARM AT OR INTO OCCUPIED STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT	202.285.1b	Felony	08/29/2021
14. DISCHARGING FIREARM AT OR INTO OCCUPIED STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT	202.285.1b	Felony	08/29/2021
15. DISCHARGING FIREARM AT OR INTO OCCUPIED STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT	202.285.1b	Felony	08/29/2021
16. DISCHARGING FIREARM AT OR INTO OCCUPIED STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT	202.285.1b	Felony	08/29/2021
17. DISCHARGING FIREARM AT OR INTO OCCUPIED STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT	202.285.1b	Felony	08/29/2021
18. DISCHARGING FIREARM AT OR INTO OCCUPIED STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT	202.285.1b	Felony	08/29/2021
19. DISCHARGING FIREARM AT OR INTO OCCUPIED STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT	202.285.1b	Felony	08/29/2021
20. DISCHARGING FIREARM AT OR INTO OCCUPIED STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT	202.285.1b	Felony	08/29/2021
21. DISCHARGING FIREARM AT OR INTO OCCUPIED STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT	202.285.1b	Felony	08/29/2021
22. DISCHARGING FIREARM AT OR INTO OCCUPIED STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT	202.285.1b	Felony	08/29/2021
23. DISCHARGING FIREARM AT OR INTO OCCUPIED STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT	202.285.1b	Felony	08/29/2021
24. DISCHARGING FIREARM AT OR INTO OCCUPIED STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT	202.285.1b	Felony	08/29/2021
25. DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE	202.287.1b	Felony	08/29/2021
26. DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE	202.287.1b	Felony	08/29/2021

27.DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE	202.287.1b	Felony	08/29/2021
28.DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE	202.287.1b	Felony	08/29/2021
29.DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE	202.287.1b	Felony	08/29/2021
30.DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE	202.287.1b	Felony	08/29/2021
31.DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE	202.287.1b	Felony	08/29/2021
32.DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE	202.287.1b	Felony	08/29/2021
33.DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE	202.287.1b	Felony	08/29/2021
34.DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE	202.287.1b	Felony	08/29/2021
35.DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE	202.287.1b	Felony	08/29/2021
36.DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE	202.287.1b	Felony	08/29/2021
37.DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE	202.287.1b	Felony	08/29/2021
38.DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE	202.287.1b	Felony	08/29/2021
39.DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE	202.287.1b	Felony	08/29/2021
40.DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE	202.287.1b	Felony	08/29/2021
41.DISCHARGING FIREARM AT OR INTO OCCUPIED STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT	202.285.1b	Felony	08/29/2021
42.DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE	202.287.1b	Felony	08/29/2021

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**EVENTS & ORDERS OF THE COURT**

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<b>OTHER EVENTS AND HEARINGS</b>			
01/14/2022	<b>Reporters Transcript Doc ID# 1</b>		
	<i>[1] Reporter's Transcript of Preliminary Hearing 12/13/2021</i>		
01/14/2022	<b>Reporters Transcript Doc ID# 2</b>		
	<i>[2] Reporter's Transcript of Preliminary Hearing 12/14/2021</i>		
01/14/2022	<b>Reporters Transcript Doc ID# 3</b>		
	<i>[3] Reporter's Transcript of Preliminary Hearing 12/15/2021</i>		
01/14/2022	<b>Criminal Bindover - Confidential Doc ID# 4</b>		
	<i>[4]</i>		
01/14/2022	<b>Criminal Bindover Doc ID# 5</b>		
	<i>[5]</i>		
01/14/2022	<b>Order for Production of Inmate Doc ID# 6</b>		
	<i>[6] Order for Production of Inmate</i>		
01/19/2022	<b>Information Doc ID# 7</b>		
	<i>[7] Information</i>		
01/25/2022	<b>Reporters Transcript Doc ID# 8</b>		
	<i>[8] Reporter's Transcript of Preliminary Hearing 1/13/2022</i>		
01/28/2022	<b>Initial Arraignment (8:30 AM) (Judicial Officer Jones, Tierra)</b>		
	<a href="#">Parties Present</a>		
	<a href="#">Minutes</a>		
	Result: Continued		
02/14/2022	<b>Arraignment Continued (8:30 AM) (Judicial Officer Jones, Tierra)</b>		
02/18/2022	<b>Status Check (9:30 AM) (Judicial Officer Bluth, Jacqueline M.)</b>		
	<i>Status Check: Trial Setting</i>		
	<a href="#">Parties Present</a>		
	<a href="#">Minutes</a>		
	Result: Trial Date Set		
02/18/2022	<b>Order Doc ID# 9</b>		
	<i>[9] Order to Remand Defendant to CCDC</i>		
02/22/2022	<b>Order Doc ID# 10</b>		
	<i>[10] Amended Order to Remand Defendant</i>		
02/24/2022	<b>Motion to Reconsider Doc ID# 11</b>		
	<i>[11] Specially Appearing Interested Party Sheriff Joseph Lombardo's Motion to Reconsider Order</i>		
02/24/2022	<b>Clerk's Notice of Hearing Doc ID# 12</b>		
	<i>[12] Notice of Hearing</i>		
03/07/2022	<b>Reporters Transcript Doc ID# 13</b>		
	<i>[13] Reporter's Transcript of Preliminary Hearing 1/13/2022</i>		
03/07/2022	<b>Opposition to Motion Doc ID# 14</b>		
	<i>[14] Opposition to Sheriff's Motion to Reconsider Order</i>		
03/07/2022	<b>Reply to Opposition Doc ID# 15</b>		
	<i>[15] Specially Appearing Interested Party Sheriff Joseph Lombardo's Reply to Defendant's Opposition to Motion to Reconsider Order</i>		
03/08/2022	<b>Motion to Reconsider (11:00 AM) (Judicial Officer Ellsworth, Carolyn)</b>		
	<i>Specially Appearing Interested Party Sheriff Joseph Lombardo's Motion to Reconsider Order</i>		
	<a href="#">Parties Present</a>		
	<a href="#">Minutes</a>		

Result: Motion Granted

03/11/2022 **Ex Parte Application Doc ID# 16**  
*[16] Ex Parte Application AND order for Expedited Transcript*

03/15/2022 **Recorders Transcript of Hearing Doc ID# 17**  
*[17] Recorders Transcript of Motion to Reconsider Order*

03/17/2022 **Motion to Compel Doc ID# 18**  
*[18] Defendant's Motion to Compel Nevada Department of Corrections to Allow Daily Visitation, to Reconsider Remanding Defendant and Clarify when Defendant will be Remanded to CCDC prior to Trial*

03/17/2022 **Clerk's Notice of Hearing Doc ID# 19**  
*[19] Notice of Hearing*

03/18/2022 **Notice of Change of Hearing Doc ID# 20**  
*[20] Notice of Change of Hearing*

03/21/2022 **Opposition Doc ID# 21**  
*[21] Specially Appearing Interested Party Sheriff Joseph Lombardo's Opposition to Motion to Reconsider Remand and Clarify When Defendant Will Be Remanded to CCDC Prior to Trial*

03/21/2022 **Response Doc ID# 22**  
*[22] Non- Party Nevada Department of Corrections Response in Partial Opposition and Partial Concurrence to Defendant's Motion to Compel Nevada Department of Corrections to Allow Daily Visitations, to Reconsider Remanding Defendant and Clarify When Defendant Will be Remanded to CCDC Prior to Trial*

03/22/2022 **Motion to Compel (11:00 AM) (Judicial Officer Bixler, James)**  
*Defendant's Motion to Compel Nevada Department of Corrections to Allow Daily Visitation, to Reconsider Remanding Defendant and Clarify when Defendant will be Remanded to CCDC prior to Trial*  
[Parties Present](#)  
[Minutes](#)  
*03/29/2022 Reset by Court to 03/22/2022*

Result: Granted

03/23/2022 **Order Doc ID# 23**  
*[23] Order Granting Specially Appearing Interested Party Sheriff Joseph Lombardo's Motion to Reconsider Order*

03/23/2022 **Order Doc ID# 24**  
*[24] Order to Remand to CCDC 001*

03/24/2022 **Recorders Transcript of Hearing Doc ID# 27**  
*[27] Recorders Transcript of Hearing Re: Specially Appearing Interested Party Sheriff Joseph Lombardo;s Motion to Reconsider Order, March 22, 2022*

03/25/2022 **Minute Order (4:50 PM) (Judicial Officer Bluth, Jacqueline M.)**  
[Minutes](#)

Result: Minute Order - No Hearing Held

04/01/2022 **Status Check: Trial Readiness (9:30 AM) (Judicial Officer Bluth, Jacqueline M.)**  
*03/18/2022 Reset by Court to 04/01/2022*

04/19/2022 **Calendar Call (11:00 AM) (Judicial Officer Bluth, Jacqueline M.)**

04/25/2022 **Jury Trial (10:00 AM) (Judicial Officer Bluth, Jacqueline M.)**