

No. 84459

IN THE NEVADA SUPREME COURT

Electronically Filed
Mar 30 2022 05:35 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Las Vegas Metropolitan Police Department,

Petitioner,

v.

**The Eighth Judicial District Court for the State of Nevada, In
and For The County of Clark and The Honorable Judge Bixler,
Senior District Court Judge,**

Respondents

And

The State of Nevada and Mateo Facio,

Real Parties in Interest.

**Real Party In Interest Mateo Facio's Opposition to Petitioner's
Request For Action by March 31, 2022**

*JoNell Thomas
Special Public Defender No. 4771
Scott Bindrup No. 2537
Chief Deputy Special Public Defender
Tegan Machnich No. 11642
330 S. 3rd St., Suite 800
Las Vegas, Nevada 89155
(702) 455-6265/(702) 455-6273 (fax)
JoNell.Thomas@ClarkCountyNV.gov

Petitioner Las Vegas Metropolitan Police Department (LVMPD) seeks an emergency writ of mandamus and/or prohibition which would void a district court order that instructed the Nevada Department of Corrections (NDOC) to transport Real Party In Interest Mateo Facio to the Clark County Detention Center (CCDC) for preparation for his trial and housing during trial. LVMPD proclaims on its cover sheet that “ACTION REQUIRED BY MARCH 31, 2022,” but fails to explain why action is required by that date. Mr. Facio agrees that this Court should entertain the writ petition, but does not agree that this matter, of apparent first impression, needs to be decided by tomorrow. Rather, resolution of this matter should be handled in the ordinary course.

Of significance, Mr. Facio was transported to CCDC on March 25, 2022, and remains in CCDC custody today. *See* attached Declaration of Tegan Machnich. As he has already been transported from NDOC to CCDC, there is no urgency to LVMPD’s demand for emergency treatment of its petition.

Also of significance, LVMPD failed to seek a stay in the district court. NRAP 8(a)(1) requires that a party must ordinarily move first in the district court for a stay of an order pending resolution of a petition to

this Court for an extraordinary writ. LVMPD also failed to seek a stay of the order in this Court under NRAP 8(a)(2) and has made no effort to satisfy the requirements of that rule. LVMPD's failure to seek stays in either the district court or this Court should result in this Court's refusal to hear LVMPD's petition on an emergency basis. *See generally State v. Robles-Nieves*, 129 Nev. 537, 541, 306 P.3d 399, 402-03 (2013) (explaining requirements for a stay under NRAP 8).

LVMPD cites to NRAP 27(e) in support of its assertion that action is required by March 31, 2022. *See* Petition Cover Page and Page 21. LVMPD fails to comply with NRAP 27(e) in that it fails to establish that immediate consideration of the petition is needed to avoid irreparable harm. It claims that LVMPD "will be responsible for housing and guarding Facio, at its own cost, pursuant to the unlawful and invalid March Transport Order," but fails to explain how this is irreparable harm. *See generally One Rent-A-Car v. Ramada Inns, Inc.*, 94 Nev. 779, 781, 587 P.2d 1329, 1331 (1978) (holding that harm is not irreparable if it can be remedied through an award of monetary damages); *see Excellence Catty. Mgrnt., LLC v. Gilmore*, 131 Nev. 347, 353, 351 P.3d 720, 723 (2015) ("Irreparable harm is an injury for which compensatory

damage is an inadequate remedy.”) (internal quotation marks omitted). Moreover, in the district court, NDOC noted that the payment issue need not be decided in that proceeding and that there were “wonderful financial people on both sides” who would work out the monetary issues. PA 131. The district court agreed that the financial issue was not going to be decided that day, but would instead be decided by Judge Bluth when she was out of trial. PA 131. The lack of request for relief on the financial issue by LVMPD in the district court reflects that the alleged harm is not irreparable, or even the subject of proper consideration by this Court in this proceeding.

CONCLUSION

Real Party In Interest Facio agrees that this Court should consider the merits of a petition addressing the issue of whether an accused may be housed at a county detention facility shortly before and during trial, but opposes LVMPD’s request for an immediate decision on this petition.

Dated March 30, 2022.

Respectfully submitted,

/s/ JoNell Thomas

JoNell Thomas
Special Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2022, a copy of the Opposition to Request For Action By March 31, 2022, was served as follows:

By Electronic Filing to

The Honorable Jacqueline Bluth
And The Honorable Jamesd Bixler
Eighth Judicial District Court, Dept. 6
Regional Justice Center
Dept06lc@clarkcountycourt.us
Respondent

Steven B. Wolfson, Clark County District Attorney
Giancarlo Pesci, Chief Deputy District Attorney
Clark County District Attorney's Office
Steven.Wolfson@clarkcountyda.com
Giancarlo.Pesci@clarkcountyda.com
Attorneys for Real Party in Interest The State of Nevada

Nick D. Crosby, Esq.
Jordan W. Montet, Esq.
Marquis Aurbach
ncrosby@maclaw.com
jmontet@maclaw.com
Attorneys for Las Vegas Metropolitan Police Department

Randall Gilmer, Deputy Attorney General
DGilmer@ag.nv.gov
Attorney for Nevada Department of Corrections

/s/ Kathleen Fitzgerald
An Employee of the
Special Public Defender

1 **DECLARATION OF TEGAN C. MACHNICH**

2 Tegan C. Machnich makes the following declaration:

- 3 1. I am the Chief Deputy Special Public Defender assigned to defend Mr.
4 Mateo Facio in his pending criminal case and a duly licensed Nevada
5 attorney working in the Office of the Special Public Defender.
- 6 2. Following the litigation in the Eighth Judicial District Court discussed in
7 Petitioner's Emergency Petition, Mr. Facio was ordered to be remanded to
8 Clark County Detention Center ("CCDC") on or before March 26, 2022 (30
9 days prior to the jury trial currently set for April 25, 2022).
- 10 3. On March 25, 2022, Mr. Facio was remanded to the custody of CCDC, where
11 he currently remains. See Inmate Custody Status, attached hereto.
- 12 4. I declare that the above information is true to my knowledge and belief.

13 Dated March 30, 2022.

14 Respectfully submitted,

15 

16 _____
17 Tegan Machnich
18 Chief Deputy Special Public Defender

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Inmate In-Custody Status

ID	Name	Age	Race	Sex
Case	Charge	Status		
Related Case	Arrest Date	Detainer	Cash Bail	Surety Bail
Housing	Sched Department	Sched Action	Sched Date	Sched Time

08385982	FACIO, MATEO J	21	White	Male
C-22-361822-1	ORDER TO PRODUCE	Active		
	3/25/2022	Y	\$0.00	\$0.00
NT5F	06	TO APPEAR	4/19/2022	11:00 AM

Searched On

Defendant's ID: 08385982

Defendant's Case No:

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