

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE VALDEZ-JIMENEZ,)
Petitioner,)

VS.

THE EIGHTH JUDICIAL DISTRICT)
COURT OF THE STATE OF NEVADA,)
IN AND FOR THE COUNTY OF CLARK,)
AND THE HONORABLE MICHELLE)
LEAVITT, DISTRICT JUDGE,)

Respondent,)
and)
THE STATE OF NEVADA,)
Real Party in Interest.)

Case No. **Electronically Filed**
Jul 18 2018 03:37 p.m.
Elizabeth A. Brown
Dist. Ct. **Clerk of Supreme Court**
18-36377-1

APPENDIX TO PETITION FOR WRIT OF MANDAMUS

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Counsel for Real Party in Interest

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JOSE VALDEZ-JIMINEZ

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TRANSCRIPTS

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ORIGINAL

WARR

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

MAY 24 2018

THE STATE OF NEVADA,

Plaintiff,

-VS-

JOSE VALDEZ-JIMENEZ, aka,
Jose Antonio Valdezjimenez #7521605

Defendant.

BY 
DULCE MARIE ROMEA, DEPUTY

CASE NO: C-18-332277-1

DEPT NO: XVIII

WARRANT FOR ARREST

C-18-332277-1
WARR
Warrant
4749501



INDICTMENT WARRANT

THE STATE OF NEVADA,

To: Any Sheriff, Constable, Marshall, Policeman, or Peace Officer in This State:

An Indictment having been found on the 24th day of May, 2018, in the above entitled Court, charging Defendant JOSE VALDEZ-JIMENEZ, aka, Jose Antonio Valdezjimenez, above named, with the crime(s) of: (5) CTS - BURGLARY (Category B Felony - NRS 205.060 - NOC 50424); (4) CTS - GRAND LARCENY (Category C Felony - NRS 205.220.1, 205.222.2 - NOC 56004) and (1) CT - PARTICIPATION IN ORGANIZED RETAIL THEFT (Category B Felony - NRS 205.08345 - NOC 55986).


YOU ARE, THEREFORE, COMMANDED forthwith to arrest and bring said Defendant before the Court to answer the Indictment. If the Court is not in session, you are to deliver Defendant into the custody of the Sheriff of Clark County, or if requested by Defendant, take Defendant before any Magistrate in the County where arrested that bail may be given to answer to the Indictment. Defendant shall be admitted to bail in the sum of \$ 40,000.

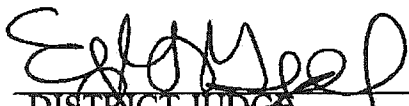
I HEREBY AUTHORIZE THE SERVICE OF THE WITHIN WARRANT BY TELETYPE, PURSUANT TO NRS 171.148. The Warrant may be served at any hour day or night.

GIVEN under my hand this 24th day of May, 2018.

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

BY


SHANON CLOWERS
Chief Deputy District Attorney
Nevada Bar #010008


DISTRICT JUDGE
ELIZABETH GONZALEZ
BAIL \$ 40,000

DA# 17BGJ120X/18F08807X/ed
LVMPD EV#180305099986
8/12/1961; WMA; N/A;
(TK10)

RET
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
SHANON CLOWERS
Chief Deputy District Attorney
Nevada Bar #010008
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
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Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JOSE VALDEZ-JIMENEZ, aka,
Jose Antonio Valdezjimenez, #7521605

Defendant.

CASE NO: C-18-332277-1
DEPT NO: XVIII

INDICTMENT WARRANT RETURN

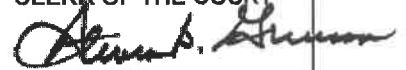
An Indictment having heretofore been found on the 24th day of May, 2018, in the above entitled Court, charging Defendant JOSE VALDEZ-JIMENEZ, aka, Jose Antonio Valdezjimenez , above named, with the crime(s) of: (5) CTS - BURGLARY (Category B Felony - NRS 205.060 - NOC 50424); (4) CTS - GRAND LARCENY (Category C Felony - NRS 205.220.1, 205.222.2 - NOC 56004) and (1) CT - PARTICIPATION IN ORGANIZED RETAIL THEFT (Category B Felony - NRS 205.08345 - NOC 55986), and upon finding the said Indictment, the court issued a warrant for the arrest of said Defendant.

I hereby certify that I received a certified copy of the Indictment Warrant and served the same by arresting the within Defendant on the ____ day of _____ 2018.

JOSEPH LOMBARDO
Sheriff, Clark County, Nevada

BY: _____

Deputy



MOT
1 PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
2 BELINDA T. HARRIS, DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 12222
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6 *Attorneys for Defendant*

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

9 THE STATE OF NEVADA,)	
)	
10 Plaintiff,)	CASE NO. C-18-332277-1
)	
11 v.)	DEPT. NO. XVIII
)	
12 JOSE VALDEZ-JIMENEZ,)	
)	
13 Defendant,)	DATE: June 12, 2018
)	TIME: 9:00 a.m.

14
15 **MOTION TO VACATE DETENTION ORDER**
16 **AND RELEASE THE DEFENDANT FROM CUSTODY**

17 COMES NOW, the Defendant, Jose Valdez-Jimenez, by and through, BELINDA T.
18 HARRIS, Deputy Public Defender, and moves this Honorable Court for an order vacating Jose
19 Valdez-Jimenez's current detention order and releasing him on his own recognizance or, in the
20 alternative, pursuant to attainable conditions "minimally necessary" to protect the community
21 and ensure Jose Valdez-Jimenez's return to court.

22 This Motion is based upon the attached Declaration of Counsel, any attached documents,
23 argument of Counsel, and any information provided at the time set for hearing this motion.

24 DATED this 5th day of June, 2018.

25 PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

26 By: /s/Belinda T. Harris
27 BELINDA T. HARRIS, #12222
28 Deputy Public Defender

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1. I am an attorney licensed to practice law in the State of Nevada and I am a Deputy Public Defender for the Clark County Public Defender's Office appointed to represent Defendant Jose Valdez-Jimenez in the present matter;

3. I am more than 18 years of age and am competent to testify as to the matters stated herein. I am familiar with the procedural history of the case and the substantive allegations made by the government. I also have personal knowledge of the facts stated herein or I have been informed of these facts and believe them to be true.

EXECUTED this 5th day of June, 2018.

/s/ Belinda T. Harris
BELINDA T. HARRIS, #12222
Deputy Public Defender

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **STATEMENT OF FACTS**

3 Jose Valdez-Jimenez is currently being charged by of Indictment with five counts of
4 Burglary- Category B felony, four counts of Grand Larceny- Category C Felony, and one count
5 of Participation in Organized Retail Theft- Category B Felony. Mr. Valdez-Jimenez is alleged to
6 have gone into Victoria Secret's and Macy's between the time period of February 23, 2018 and
7 April 12, 2018. Mr. Valdez- Jimenez is alleged to have taken several pairs of leggings from
8 Victoria Secrets. Per the indictment the amount is more than \$3,500.00 but less than
9 \$10,000.00.

10 Per the Nevada Pretrial Risk Assessment (NPR), Mr. Valdez- Jimenez is assessed as a
11 low risk with a score of three. It also appears that Mr. Valdez-Jimenez has two misdemeanors
12 and two failures to appear.

13 Bail is currently set in the amount of \$40,000.00 dollars. Mr. Valdez- Jimenez cannot
14 make that bail.

15 **ARGUMENT**

16 **I. This Court Should Vacate the Unlawful Pretrial Detention Order Holding Jose**
17 **Valdez-Jimenez in Custody and Release Him on His Own Recognizance with Intensive**
18 **Supervision.**

19 Jose Valdez-Jimenez's current detention order is unlawful because 1) he did not receive a
20 full-blown adversarial hearing regarding his release, 2) the State did not show by clear and
21 convincing evidence that there are no release conditions that could reasonably mitigate danger to
22 the community and ensure his appearance in court, and 3) the unattainable bail setting did not
23 take into consideration his ability to pay bail. As a result, this Court should release Defendant on
24 his own recognizance with intensive supervision.

25 Jose Valdez-Jimenez is in custody at the Clark County Detention Center because his
26 current release conditions are unattainable. This amounts to a pretrial detention order. See U.S. v.
27 Mantecon-Zayas, 949 F.2d 548, 550 (1st Cir. 1991); O'Donnell v. Harris Co., 251 F.Supp.3d
28

1 1052, 1143-44 (S.D. Tex. Apr. 28, 2017) (holding that secured money bail set in an amount that
2 an arrestee cannot afford is constitutionally equivalent to an order of detention). Pretrial
3 detention orders violate due process unless they are preceded by a full-blown adversarial hearing
4 at which the State establishes clear and convincing evidence that preventative detention is the
5 least restrictive means of protecting the community and ensuring the accused's appearance in
6 court. U.S. v. Salerno, 481 U.S. 739, 750, 107 S. Ct. 2095 (1987). They also violate equal
7 protection guarantees and the excessive bail clause if, in the absence of such a hearing, bail is
8 imposed as a release condition and is unattainable. See O'Donnell, 251 F.Supp.3d at 1143-44
9 (finding that the Equal Protection Clause prohibits pretrial detention solely because of a
10 defendant's inability to afford bail); Salerno, 481 U.S. at 754.

11
12 **II. Due Process Principles Prohibit Pretrial Detention Unless the State Establishes**
13 **by Clear and Convincing Evidence that Preventative Detention is the Least Restrictive**
14 **Means of Ensuring Defendant's Return to Court and Community Safety**

15 The Due Process Clauses of the U.S. and Nevada Constitutions provide that "[n]o person
16 shall . . . be deprived of life, liberty, or property without due process of law." U.S. Const. amend.
17 V; Nev. Const. Art. 1, §8.¹ Pretrial liberty is a fundamental right. U.S. v. Salerno, 481 U.S. at
18 750. For that reason, a presumptively innocent person's loss of pretrial liberty is subject to
19 "heightened constitutional scrutiny" and must be preceded by rigorous procedures designed to
20 ensure protection of that liberty. Id. at 746. Where the State is seeking to detain a defendant
21 pretrial, the defendant is entitled to substantive and procedural due process. Id.

22 In order to deprive a presumptively innocent person of her physical liberty, due process
23 requires that the State demonstrate 1) by "clear and convincing evidence" at a "full-blown
24 adversarial hearing" that the defendant presents an "identified and articulable threat" to the
25 community or presents a risk of flight and 2) *no conditions or combination of conditions*
26 *alternative to detention* could reasonably mitigate that danger based on an individualized

27 ¹ Because the Due Process Clause of the Nevada Constitution mirrors that of its federal counterpart, Nevada "looks
28 to federal precedent" for guidance in resolving due process claims. Hernandez v. Bennett-Haron, 128 Nev. 580, 587,
287 P.3d 305 (2012).

1 consideration of defendant's unique circumstances. Id. at 750-51 (emphasis added);² see also
2 Weatherspoon v. Oldham, 2018 WL 1053548, at *14-15, *17 (W.D. Tenn. Feb. 26, 2018). A
3 state court procedure that does not require as much violates due process. See, e.g., Rodriguez v.
4 Providence Cmty. Corr., Inc., 155 F.Supp.3d 758, 767-70 and n. 10 (M.D. Tenn. 2015); Jones v.
5 City of Clanton, No. 215CV34-MHT, 2015 WL 5387219, at *2 (M.D. Ala. Sept. 14, 2015)
6 (holding that the "use of a secured bail schedule to detain a person . . . without an individualized
7 hearing regarding the person's indigence and the need for bail or alternatives to bail, violates the
8 Due Process Clause").

9 Nevada law reflects this basic *concept* but omits the procedural protections required by
10 Salerno. NRS 178.4851 provides that criminal defendants may be released without bail upon a
11 showing of good cause that the court "can impose conditions on the person that will adequately
12 protect the health, safety, and welfare of the community and ensure that the person will appear at
13 all times and places ordered by the court." NRS 178.4851. This runs afoul of Salerno in that it
14 burdens the defense with establishing 'good cause' for release, and speaks only to the issue of
15 release *without bail*.³ Indeed, as Salerno makes clear, the constitutionally proper inquiry is
16 whether conditioned (or unconditioned) release can satisfy the government's interest in
17 protecting the community and assuring the defendant's return to court; and *the government bears*
18 *the burden* of establishing that it does not before a defendant can be detained pretrial (i.e., held
19 pursuant to unattainable release conditions).⁴

20
21 ² Substantive due process requires that pretrial detention survive "heightened constitutional scrutiny" and the
22 government may only detain where that detention is carefully limited to serve a "compelling" government interest.
23 Salerno, 481 U.S. at 746. As a result, the government may detain someone pretrial only if other, less restrictive
24 means are not available to serve the state's interests. Id.; U.S. v. Karper, 847 F. Supp. 2d 350, 362 (N.D.N.Y. 2011)
(finding release conditions cannot exceed that which is minimally necessary to ensure the accused's appearance in
25 court and protect the community against future dangerousness). Procedural due process requires rigorous procedures
26 be met to detain someone pretrial, including, but not limited to, a "full-blown adversary hearing," a heightened
27 evidentiary standard of proof of dangerousness/flight risk by "clear and convincing evidence," consideration of
28 alternative conditions or release, and "written findings of fact and a written statement of reasons for a decision to
detain." Salerno, 481 U.S. at 741, 750-51.

³ To the extent that NRS 178.4851 obviates the procedural requirements mandated by Salerno, it is unconstitutional.
See U.S. v. Salerno, 481 U.S. at 750; Stack v. Boyle, 342 U.S. 1, 5, 72 S. Ct. 1 (1951); U.S. Const. amend. V, XIV;
Nev. Const. Art. 1, § 8.

⁴ See also, Lopez-Valenzuela v. Arpaio, 770 F.3d 772, 785-86 (9th Cir. 2014) (*en banc*) (finding Arizona law
establishing a blanket prohibition on pretrial release for any undocumented immigrants was unconstitutional because
it did not require the state to offer convincing – and individualized – rationales for detention); Simpson v. Miller,

1 While NRS 178.4853 sets forth factors bearing the issue of pretrial release,⁵ those factors
2 must be considered in the context of the inquiry required by Salerno. So courts should consider
3 the factors outlined in NRS 178.4583 when assessing the need for preventative detention and, in
4 cases where a preventative detention request has been denied, when fashioning release
5 conditions minimally necessary to protect the community and ensure a defendant's return to
6 court.

7 This analysis of the conditions minimally necessarily includes consideration of whether
8 bail should be imposed or why bail would alleviate the government's demonstrated concerns
9 about a defendant's release. However, "When financial conditions are warranted, the least
10 restrictive conditions principle requires that an unsecured bond be considered first." ABA
11 Standards for Crim. Justice (3rd Ed.) Pretrial Release (2007), Std. 10-1.4(c) (commentary) at 43-
12 44.⁶ This requires individualized consideration of a defendant's unique circumstances, including
13 "individualized considerations of indigency." Weatherspoon, 2018 WL 1053548, at *14-15.

14 **III. Equal Protection Principles Prohibit Bail Settings that Fail to Account for an** 15 **Accused's Financial Means**

16 The Equal Protection Clause of the U.S. and Nevada Constitutions⁷ prohibits the pretrial
17 detention of defendants solely because of their inability to afford bail.⁸ Weatherspoon v. Oldham,

18
19 387 P.3d 1270, 1277-78 (Ariz. 2017) (finding an Arizona statute unconstitutional that required pretrial detention on
all sex-related charges because the statute did not provide for individualized determination of dangerousness).

20 ⁵ The statutory factors are: 1) The length of residence in the community; 2) The status and history of employment; 3)
21 Relationships with the person's spouse and children, parents or other family members and with close friends; 4)
22 Reputation, character and mental condition; 5) Prior criminal record, including, without limitation, any record of
23 appearing or failing to appear after release on bail or without bail; 6) The identity of responsible members of the
24 community who would vouch for the reliability of the person; 7) The nature of the offense with which the person is
charged, the apparent probability of conviction and the likely sentence, insofar as these factors relate to the risk of
not appearing; 8) The nature and seriousness of the danger to the alleged victim, any other person or the community
that would be posed by the person's release; 9) The likelihood of more criminal activity by the person after release;
and 10) Any other factors concerning the person's ties to the community or bearing on the risk that the person may
willfully fail to appear.

25 ⁶ Discussed at Nevada S.Ct. Judicial Conference (
26 https://nvcourts.gov/Conferences/District_Judges/Documents/The_History_of_Bail_-_DJ_Conf/) and available at:
https://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_pretrialrelease_blk.html#10-1.4.

27 ⁷ U.S. Const. amend. XIV; Nev. Const. Art. 1, § 1 and Art. IV, § 21.

28 ⁸ The U.S. Supreme Court has also held that release conditions that exceed a purported threat posed by a particular
defendant violate the "excessive bail" clause of the Eighth Amendment. Salerno, 481 U.S. at 754; see also U.S.

1 2018 WL 1053548, at *6 (W.D. Tenn. Feb. 26, 2018); Jones, 2015 WL 5387219, at *4; Pugh v.
2 Rainwater, 572 F.2d at 1058 (5th Cir. 1978) (holding that “pretrial confinement for inability to
3 post money bail” for a defendant “whose appearance at trial could reasonably be assured by one
4 of the alternate forms of release . . . would constitute imposition of an excessive restraint . . .”).
5 The U.S. Justice Department recently endorsed this view, asserting that “[i]ncarcerating
6 individuals solely because of their inability to pay for their release . . . violates the Equal
7 Protection Clause []”. Jones, 2015 WL 5387219, at *4. See also NRS 178.498(2) (requiring a
8 court setting “reasonable bail” to consider “the financial ability of the defendant to give bail”).

9 These decisions establish that requiring money bail as a release condition in an amount
10 impossible for the defendant to pay is equivalent to a detention order, “which is only appropriate
11 when the state shows and the court finds that no condition or combination of conditions of
12 release could satisfy the purposes of bail, to assure the defendant’s appearance at trial or hearing
13 and the safety of the public.” Weatherspoon, 2018 WL 1053548, at *6 (additional citations
14 omitted). Thus, in order to withstand constitutional scrutiny, unattainable money bail settings
15 must be preceded by an adversarial hearing at which the court determines the least restrictive
16 means of ameliorating an accused’s risk of flight and danger to the community. Absent this, an
17 unattainable release condition – such as an unattainable bail setting – operates as a *de facto*
18 detention order that discriminates on the basis of wealth. This violates equal protection
19 guarantees.

20 **IV. This Court Must Vacate the Instant Detention Order and Release Jose Valdez-**
21 **Jimenez With Conditions Minimally Required to Protect the Community and Ensure His**
22 **Return to Court**

23 Jose Valdez-Jimenez’s current detention order is unlawful. The State has not
24 established, and no court has found, that preventative detention is the least restrictive means of
25 assuring Jose Valdez-Jimenez’s return to court and protecting the community. Instead, Jose
26

27 Const. amend. VIII; Nev. Const. Art. 1 § 6-7; NRS 178.484(1) (stating “a person arrested for an offense other than
28 murder of the first degree must be admitted to bail”).

1 Valdez-Jimenez is being detained under a random bail number that may relate to the instant
2 charge(s) and the standardized bail schedule utilized in Clark County, but not Jose Valdez-
3 Jimenez. Consequently, while Jose Valdez-Jimenez cannot make that bail, a similarly situated
4 wealthy person could. Thus, under the authority set forth above, Jose Valdez-Jimenez's
5 detention order violates his due process, equal protection, and excessive bail guarantees. As
6 such, this Court must vacate the current detention order and release Jose Valdez-Jimenez from
7 custody.

8 Mr. Valdez- Jimenez should be released on his own recognizance with intensive
9 supervision or low level electronic monitoring. The allegations that Mr. Valdez-Jimenez are
10 accused of are non-violent in nature. Moreover, it does not appear that there is any violence
11 involved in the case. The alleged complaint in the indictment is a nationwide corporation. If the
12 Court were to release Mr. Valdez-Jimenez on one of these conditions he would still be under
13 the supervision of the Court. He would still have to be accountable for his actions while being
14 out of custody to the Court. Being under the supervision of the Court would ensure that Mr.
15 Valdez-Jimenez would return to Court.

16 Notably, a detainee poses a flight risk only if, by a preponderance of the evidence, there
17 exists a current indication that they may intentionally evade the criminal justice system. Prior
18 failures to appear ("FTAs") should not bear on this determination because FTAs are not always
19 willful and may result due to reasons such as illness, transportation problems, or even an errant
20 understanding of the need to be present in court at a particular date, time, and location.
21 Additionally, Mr. Valdez- Jimenez has two prior failures to appear and it appears as though they
22 were from traffic infractions.

23 Mr. Valdez-Jimenez is not currently employed and therefore cannot afford any bail.
24 Additionally, the Court has determined that Mr. Valdez-Jimenez indigency by appointing the
25 Public Defender to represent him in the current matter.

1 **CONCLUSION**

2 Based upon the foregoing, Jose Valdez-Jimenez, respectfully requests that this
3 Honorable Court vacate the current detention order and release him with attainable release
4 conditions unless this court concludes, in writing, after an adversarial hearing, that the State
5 established clear and convincing evidence that pretrial detention is the least restrictive means of
6 assuring Jose Valdez-Jimenez's return to court and ensuring community safety.

7
8 DATED this 5th day of June, 2018.

9 PHILIP J. KOHN
10 CLARK COUNTY PUBLIC DEFENDER

11
12 By: /s/Belinda T. Harris
13 BELINDA T. HARRIS, #12222
14 Deputy Public Defender
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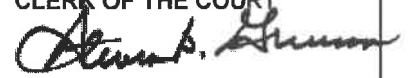
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YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion on for hearing before the Court on the 12th day of June, 2018 at 9:00 a.m. In District Court, Department XVIII.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

CERTIFICATE OF ELECTRONIC SERVICE

By: /s/Belinda T. Harris -PD
An employee of the
Clark County Public Defender's Office



1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 SHANON CLOWERS
6 Chief Deputy District Attorney
7 Nevada Bar #10008
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 JOSE VALDEZ-JIMENEZ, aka,
13 Jose Antonio Valdezjimenez, #7521605
14 Defendant.

CASE NO: C-18-332277-1

DEPT NO: XVIII

15 **STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR OWN**
16 **RECOGNIZANCE RELEASE OR REASONABLE BAIL**

17 DATE OF HEARING: JUNE 12, 2018
18 TIME OF HEARING: 9:00 AM

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
19 District Attorney, through SHANON CLOWERS, Chief Deputy District Attorney, and hereby
20 submits the attached Points and Authorities in State's Opposition to Defendant's Motion for
21 Own Recognizance Release or Reasonable Bail.

22 This Opposition is made and based upon all the papers and pleadings on file herein, the
23 attached points and authorities in support hereof, and oral argument at the time of hearing, if
24 deemed necessary by this Honorable Court.

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3. The character of the defendant; and
4. The factors listed in NRS 178.4835.

Nevada Revised Statute 178.4853 provides as follows:

In deciding whether there is good cause to release a person without bail, the court as a minimum shall consider the following factors concerning the person:

1. The length of his residence in the community;
2. The status and history of his employment;
3. His relationships with his spouse and children, parents or other members of his family and with his close friends;
4. His reputation, character and mental conditions;
5. His prior criminal record, including any record of his appearing or failing to appear after release on bail or without bail;
6. The identity of responsible members of the community who would vouch for the defendant's responsibility;
7. The nature of the offense with which he is charged, the apparent probability of conviction and the likely sentence, insofar as these facts relate to the risk of his not appearing;
8. The nature and seriousness of the danger to any person or the community that would be posed by the person's release;
9. The likelihood of more criminal activity by the person after he is released; and
10. Any other factors concerning his ties to the community or bearing on the risk that he may willfully fail to appear.

ARGUMENT

It is a shame to waste the argument that there are less restrictive means that are applicable for this Defendant to prevent him from further committing more crimes against the people and the State of Nevada, because, there are not. The Defendant was arrested in Henderson for theft and released; the very next day committed the same exact crime.

This Defendant has a longer criminal history than people working decades in law enforcement have ever seen. His FBI criminal history (NCIC) from only Florida is 85 pages. It contains no less than 23 felony convictions. To be frank with the Court, the State did not count the misdemeanors. The NPR prepared by the Justice Court was obviously not correct. Perhaps they looked up the Defendant under an erroneous combination of one of his 23 alias, his four different social security numbers, and one of his 22 different birthdates.

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1 This Defendant is a prolific habitual criminal. He has been convicted of drug crimes,
2 theft, robbery, and even destroying evidence. He has been arrested for resisting arrest, assault
3 and battery, battery on an officer/firefighter, and armed robbery, to highlight a few.

4 The Defendant in his last theft at Macy's tried to hit the loss prevention officer with the
5 merchandize to facilitate his escape. Additionally, Detectives have 10 other cases in which
6 they have probable cause to arrest the Defendant. The State made an attempt to negotiate this
7 case prior to filing the additional charges; but since the Defendant has rejected the
8 negotiations, the new cases will be filed.

9 With that many identities, the possibility of receiving large habitual criminal treatment,
10 and with the inability to stop committing crimes, it is apparent that the bail currently set is
11 appropriate, and the State only asks that this Court include house arrest, if the Defendant is
12 able to post the bail, so that he can be monitored by GPS.

13 **CONCLUSION**

14 For each of the forgoing reasons, the State respectfully requests the Defendant's motion
15 be denied.

16 DATED this 11th day of June, 2018.

17 Respectfully submitted,

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

20 BY /s/ SHANON CLOWERS
21 SHANON CLOWERS
22 Chief Deputy District Attorney
23 Nevada Bar #10008

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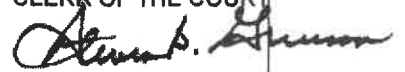
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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of State's Opposition to Defendant's Motion for Own
Recognizance Release or Reasonable Bail, was made this 11th day of June, 2018, by
Electronic Filing to:

DEPUTY PUBLIC DEFENDER
pdclerk@clarkcountynv.gov

/s/ J. MOSLEY
Secretary for the District Attorney's Office



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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,
9 Plaintiff,

CASE NO: C-18-332277-1
DEPT. XVIII

10 vs.

11 JOSE VALDEZ-JIMENEZ,
12 Defendant.

13
14 BEFORE THE HONORABLE MARK B. BAILUS, DISTRICT COURT JUDGE
15 THURSDAY, JUNE 21, 2018

16 **RECORDER'S TRANSCRIPT OF HEARING RE:**
17 **DEFENDANT'S MOTION TO VACATE DETENTION ORDER AND**
18 **RELEASE THE DEFENDANT FROM CUSTODY; DEFENDANT'S**
19 **MOTION FOR OWN RECOGNIZANCE RELEASE OR REASONABLE**
20 **BAIL/TRIAL SETTING**

21 Appearances on page 2
22
23
24

25 RECORDED BY: ROBIN PAGE, COURT RECORDER

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APPEARANCES:

For the State: NOREEN C. DEMONTE, ESQ.
Chief Deputy District Attorney

For the Defendant: CHRISTY L. CRAIG-ROHAN, ESQ.
JONATHAN COOPER, ESQ.
MARISSA A. PENSABENE, ESQ.
Deputy Public Defenders

Also Present: XIMENA FIENE
Court Interpreter

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Las Vegas, Nevada; Thursday, June 21, 2018

[Proceeding commenced at 9:30 a.m.]

THE COURT: On page 20, Case Number C332277, State versus Valdez-Jimenez.

Do we have an interpreter?

Counsel, state your appearances.

MS. CRAIG: Christy Craig on behalf of Mr. Valdez.

MS. DEMONTE: Noreen Demonte for the State.

MS. CRAIG: Do you need my bar number, Clerk? You guys are good? Okay.

THE COURT: Sir, what's your -- ah, shucks. Sir, what's your native language?

[Canvass through Spanish interpreter]

THE DEFENDANT: Spanish.

THE COURT: And do you need the assistance of a Spanish interpreter to aid you in understanding these proceedings?

THE DEFENDANT: Yes.

THE COURT: Let the record reflect that Mr. Valdez-Jimenez is being provided the assistance of a Spanish interpreter.

This is on for Defendant's motion to vacate detention order and release the Defendant from custody and Defendant's motion for own recognizance release or reasonable bail.

Counsel, I have reviewed all the briefing in this matter. Do you want to be heard in oral argument?

1 MS. CRAIG: I do. I just want to respond to the State's -- I
2 don't know what she called it -- they filed it. I got it late yesterday
3 afternoon.

4 I would point out that the State argued, essentially, excessive
5 bail which really isn't our argument. Our argument is that pursuant to
6 the due process clause and the protection clause, as well as, *Salerno*,
7 which we've already discussed, that he is entitled to a constitutionally
8 appropriate and a Nevada Law statutory appropriate detention hearing.

9 I would also point out that the State failed to mention
10 NRS 178.498 which requires a Court, when they're considering all the
11 factors. One of the factors is to consider the financial ability of the
12 Defendant to give bail. That didn't happen in this case. And under
13 *Hicks v. Oklahoma*, the arbitrary deprivation of a state created liberty
14 interest amounts to a due process clause violation.

15 So that's our position, is that in the event that the State -- and
16 it sounded like at the end of their argument in the filing by the State on
17 Wednesday, that they were seeking maybe to preventatively detain him.
18 If that's the case, then they need to say so, explicitly, and then have a
19 hearing where they present clear and convincing evidence that there are
20 no less restrictive means to ensure community safety and that he returns
21 to court.

22 Otherwise, we're talking about conditions of release and
23 \$40,000 bail does not reflect the Nevada Statutory requirement that bail
24 be set in an amount that considers a Defendant's ability to give bail. So
25 for all those reasons, we're asking the Court to grant our motion.

1 THE COURT: Thank you.

2 State, what's your position?

3 MS. DEMONTE: Well, Your Honor, I -- as laid out in the
4 motion, there is language being used and hearings being asked for that
5 aren't a consideration under Nevada law. Those are federal, you know,
6 those are federal beasts, not State beasts. However, with that, you're
7 not going to hear me ask for preventative detention. I'm going to speak
8 in terms of Nevada Revised Statutes and its factors regarding
9 Defendant's prior criminal history and ensuring the protection of the
10 community.

11 I will state, again, he has actually over 23 felonies. They
12 came from 23 separate and distinct cases. There's actually more
13 felonies within those distinct 23 felonies. The bail, I believe, being set at
14 \$40,000 does take into account his ability to pay. Because, based on
15 his criminal history, it should actually be a lot higher.

16 And not in addition to the 23 plus felonies, there's 23 separate
17 and distinct AKAs, 4 different social security numbers, 22 different dates
18 of birth, 10 additional cases we have not yet filed. And he had actually
19 already been released on one case for the same conduct when he
20 committed a new offense that was the exact same thing the very next
21 day.

22 So for the protection of the community, which is a
23 consideration of the Nevada Revised Statutes, we ask that the bail
24 remain.

25 MS. CRAIG: And I would just point out one really interesting

1 fact, if he was a millionaire, \$40,000 bail doesn't protect the community.
2 There's no rational relationship between the amount of bail and whether
3 or not the community is protected. That's just nonsense. There's no
4 research. It just doesn't make sense, just thinking about it. What is it --
5 why not 10,000? What is it about 40,000 that makes the community
6 safe?

7 So, frankly, I still say that the State has not addressed
8 178.498, in what way does \$40,000 bail reflect his ability to give bail.

9 THE COURT: All right. Thank you, Counsel.

10 MS. CRAIG: You bet.

11 THE COURT: In reviewing this case I did review the *Salerno*
12 decision as well as several other federal cases. And I reviewed portions
13 of the Bail Reform Act which *Salerno* was addressing.

14 And, as you know, Nevada has not adopted anything similar to
15 the Bail Reform Act. And the clear and convincing standard that was
16 being applied was applied through the criteria set forth in the Bail
17 Reform Act. Nevada, on the other hand, has enacted a statutory
18 scheme, and under Nevada statutory scheme NRS 178.4853, the
19 factors being -- to be considered before release without bail in deciding
20 whether there is good cause to release a person without bail.

21 So the standard in Nevada, under their -- under our statutory
22 scheme, is different than the standard in the federal courts under the
23 Bail Reform Act. Our standard is good cause. And then there's 13
24 non-exclusive factors that the Court is to consider.

25 And you raise a due process argument. There's both

1 procedural and substantive due process. Nevada's procedural -- the
2 issue of procedural due process is covered by the statute. The factors
3 covered by the statute where a Defendant files a motion is an entitled to
4 a hearing. In federal court, after an arrest, the Defendant's reviewed by
5 pre-trial services and then at his initial arraignment before a magistrate
6 judge, they have a detention hearing. The magistrate judge then makes
7 a report and recommendation, which is submitted to the district court
8 judge.

9 At the detention hearing there is a report, called the Detention
10 Report, that's very similar to a Presentence Investigation Report done at
11 the time of sentencing in the State. That is his adversarial proceeding.
12 When you file a motion, pursuant to statute, in Nevada that becomes his
13 procedural safeguard. That is his adversarial proceeding under Nevada
14 statutory scheme.

15 As far as substantive due process, that's the slightly different
16 argument. Your argument may have -- is -- is better put to the justice
17 court, not the district court. He gets the substantive due process in the
18 district court. I don't know how it works in justice court. You seem to
19 make the argument that they don't have an adversarial process where
20 you have an opportunity for both procedural and substantive due
21 process.

22 So I'm not sure you're addressing it to the proper court in your
23 argument, quite frankly. This --

24 MS. CRAIG: Well, bail is often set at the 48-hour probable
25 cause determination --

1 THE COURT: And these arguments may be --

2 MS. CRAIG: -- where the Defendant's not present.

3 THE COURT: And these arguments are probably better
4 addressed to that hearing and not to this hearing. He's getting both
5 procedural and substantive due process at this hearing.

6 So, again, so your arguments are probably better addressed
7 to that hearing in justice court, because I just described to you how it's
8 done in federal court.

9 So if you were to relate justice court as being before a
10 magistrate judge in federal court your argument is, is he getting an
11 adversarial hearing there? He's getting an adversarial hearing right
12 now. You're making his argument right now.

13 So I'm going to apply the statutory factors that I'm required to
14 apply.

15 MS. CRAIG: Can I ask you a question?

16 THE COURT: Sure.

17 MS. CRAIG: Are you applying the ones that are for release
18 without bail or are you applying the ones for the release with bail?

19 THE COURT: Both.

20 MS. CRAIG: Because at this --

21 Okay.

22 THE COURT: I looked at all the statutes.

23 MS. CRAIG: I'm sure you did.

24 THE COURT: I looked at Nevada's statutory scheme.

25 And also under the Bail Reform Act, you're correct. Usually

1 what the courts look at is, are they a flight risk and are they a danger to
2 the community, which is similar to the standard that we look at in
3 Nevada. It's just not quite as set forth. And under the Bail Reform Act
4 there's certain presumptions, what are called rebuttable presumptions.

5 For example, under the Bail Reform Act, you have to make a
6 determination whether his previous record constitutes crimes of
7 violence. And crimes of violence are defined by statute. It defines the
8 different statutes that we're -- we don't have that in Nevada either. And
9 you get rebuttable presumptions that you have to overcome if you want
10 to have your client released in federal court.

11 So, again, there's -- it's a completely different scheme in the
12 federal system than it is in Nevada. And many of your arguments are --
13 more addressed to the 48-hour hearing, as opposed to the one he's
14 getting today.

15 MS. CRAIG: Well, we're not present at the 48-hour hearing.

16 THE COURT: Well --

17 MS. CRAIG: Neither is the Defendant. They do it in
18 chambers. So we are addressing --

19 MS. DEMONTE: Actually, they do them now being present.

20 THE COURT: But --

21 MS. CRAIG: No, they aren't.

22 THE COURT: All right. Well, I'm just saying I'm addressing --

23 MS. CRAIG: Only one judge.

24 THE COURT: -- what's before me in the district court.

25 MS. CRAIG: I understand that.

1 THE COURT: And I am ruling in the district court. He is being
2 provided both substantive and procedural due process. I am
3 considering the factors as set forth in the statutory scheme and I'm going
4 to deny your motions.

5 MS. DEMONTE: Okay. Thank you, Your Honor.

6 MR. COOPER: And, Your Honor, one last thing on this case,
7 can we just have 21 days for the filing the writ?

8 Sorry. I -- my understanding is that the transcript was not filed
9 'til the, I believe, the 8th. So we have 21 days from the 8th, just by the
10 statute.

11 THE COURT: Has the time elapsed?

12 MR. COOPER: The time has not elapsed, no. The transcript
13 was filed on June 8th, so we would have to the 29th, that's my
14 understanding. So I just wanted that to obviously be part of the record.

15 THE COURT: You can have 21 days from the date that the
16 transcripts were filed.

17 MR. COOPER: Thank you, Your Honor.

18 THE CLERK: Do we need to set a trial?

19 THE COURT: Apparently, we need to set a trial.

20 Counsel, we need to set a trial or do you want to --

21 MS. CRAIG: I only did the one little bit.

22 THE COURT: No, no, come back.

23 MS. DEMONTE: Yeah, he --

24 MS. CRAIG: You can have the rest.

25 MS. DEMONTE: -- and he has to state whether he's invoking

1 or waiving. He has not done that yet either.

2 THE COURT: Counsel, do you want to -- counsel approach.

3 [Bench conference - not transcribed]

4 THE COURT: We lost our interpreter. Is the interpreter still
5 here? I need you for one more moment.

6 Mr. Valdez-Jimenez, you have a right to a speedy trial within
7 60 days of your arraignment. Do you wish to invoke that right or do you
8 want to waive it?

9 Has he been arraigned?

10 MS. DEMONTE: He pled not guilty, but he hasn't -- according
11 to my notes he pled not guilty on May 31st.

12 MS. PENSABENE: Your Honor, can I ask the Clerk what the
13 waive date is for jury trial?

14 THE COURT: Normally, Counsel, they were going into next
15 year.

16 MS. PENSABENE: Sure.

17 THE COURT: Just so you know.

18 MS. PENSABENE: Your Honor, he's going to invoke his right
19 to a speedy trial.

20 THE COURT: Okay.

21 At this time, I'm going to -- is there a in-custody trial date?

22 THE CLERK: Jury trial, July 23rd, 11:00 a.m. Calendar Call,
23 July 17, 9:00 a.m.

24 THE COURT: And, Counsel, approach, including Mr. Cooper.

25 [Bench Conference - not transcribed]

1 THE COURT: All right. After a bench conference what was
2 discussed was whether the timeframe to request an extension to file a
3 petition -- pretrial petition for writ of habeas corpus. The State has
4 stipulated that the timeframe has not run and, therefore, you will have an
5 extension of 21 days from the date that the grand jury transcripts were
6 filed to file your pretrial writ.

7 MR. COOPER: Thank you, Your Honor.

8 THE COURT: Thank you.

9 MS. PENSABENE: Thank you.

10 [Proceeding concluded at 9:49 a.m.]

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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 Robin Page
25 Court Recorder/Transcriber

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1 I hereby certify that this document was filed electronically with the Nevada
2 Supreme Court on the 18 day of July, 2018. Electronic Service of the foregoing document
3 shall be made in accordance with the Master Service List as follows:

4 ADAM LAXALT
5 STEVEN S. OWENS

NANCY LEMCKE
CHRISTY CRAIG
HOWARD BROOKS

6 I further certify that I served a copy of this document by mailing a true and
7 correct copy thereof, postage pre-paid, addressed to:

8 Honorable Mark Bailus, DC 18
9 200 Lewis Avenue
Las Vegas, NV 89101

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11 BY /s/ Carrie M. Connolly
12 Employee, Clark County Public Defender's Office
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