

**PETITIONERS' RESPONSE TO DEFENDANT'S OPPOSITION FOR
LEAVE TO FILE AMICUS CURIAE BRIEF**

COMES NOW Petitioners JOSE VALDEZ-JIMENEZ, AARON FRYE and NATHAN GRACE by and through their attorneys, NANCY LEMCKE, Deputy Clark County Public Defender, and CHARLES GERSTEIN, Esq., and hereby respond to Respondent's Opposition to Motion for Leave to File Amicus Curiae Brief pending before this Honorable Court.

This Response is based upon the following Memorandum and all papers and pleadings on file herein.

DATED this 23rd day of July, 2019.

DARIN IMLAY
CLARK COUNTY PUBLIC DEFENDER

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I. ARGUMENT

Before this court are three petitions that raise issues of fundamental importance for pretrial justice in Nevada. Jose Valdez-Jimenez challenged his illegal detention by filing a mandamus petition with this Honorable Court on July 18, 2018. Aaron Frye filed his petition on August 31, 2018, and Nathan Grace filed his petition on September 14, 2018.¹ On June 7, 2019, almost a year after Mr. Valdez-Jimenez filed his petition, this Honorable Court scheduled oral argument.

On July 15, 2019, Amici, the National Association of Pretrial Service Agencies (NAPSA), the Pretrial Justice Institute (PJI), and the National Association for Public Defense (NAPD), filed a Motion for Leave to file an Amicus Brief in support of Petitioners, seeking to aid this Honorable Court in the resolution of the issues presented in this case. This Court should hear their insight. Granting leave to file will not cause delay and will promote just adjudication of this case. Accordingly, Petitioners respectfully request this Court grant Amici's Motion for Leave.

Granting Amici's Motion Will Not Cause Delay

Respondent opposes Amici's Motion for Leave because it was filed more than seven days after the underlying petitions were filed. He argues

¹ These petitions were consolidated on November 11, 2018.

that granting the Motion for Leave will require oral argument to again be rescheduled, which would cause Petitioner’s motion to expedite a ruling in this case to “be frustrated.” Resp. Opp. at 3. Respondent is wrong.

First, the deadline for filing is discretionary and can be excused by this Court. NRAP 29(f) (“The court may grant leave for later filing, specifying the time within which an opposing party may answer.”); see Summerland Hospital Medical Center v. Eighth Judicial District, No. 65403 (Nev. July 14, 2018) (granting amicus unopposed motion for leave to file and extension of time).

Excusal is appropriate here because Petitioners only recently received notice that their consolidated cases—which have been pending for between eight and twelve months—would be heard by this Honorable Court on the merits. And, over the past year, the Clark County Public Defender’s Office filed many mandamus and habeas challenges materially identical to those at issue here, see generally S.App. 1-213 (providing a small sampling of these petitions), none of which were heard at oral argument or decided on the merits. Given these unique circumstances, Amici learned about this Honorable Court’s decision to hear these important cases and sought to aid this court in the resolution of this case only after oral argument was scheduled.

Moreover, should this court agree to hear the insights offered by Amici, oral argument need not be delayed. Respondent has not identified any concrete hardships posed by granting the Motion for Leave nor any reason why he cannot respond to Amici's brief within the six weeks that remain before oral argument.

Granting Amici's Motion is in the Interests of Justice

Respondent argues that "allowing amicus to enter this case at this late juncture would undermine the fair administration of justice," but precisely the opposite is true. Every day, justice and trial courts in Clark County impose money-bail orders that violate the due process and equal protection clauses of the United States Constitution as they have been interpreted by every other state and federal court to consider the question. As a result of these orders, presumptively innocent people wait in cages because they cannot afford the cost of their release. They lose their jobs, their shelter, their medical care, and are separated from their families, solely because they cannot make a monetary payment that was imposed without any of the findings and procedural safeguards that the Constitution requires. In deciding these petitions, this Honorable Court has the opportunity to end these unfair and unconstitutional pretrial-detention practices, practices that are ongoing every day. In making such an important decision, this Court

should have before it all relevant information. The National Association of Pretrial Service Agencies, Pretrial Justice Institute, and National Association of Public Defense provide such information; as leading national organizations of federal, state, county, and non-profit employees who specialize in these issues, they will aid the Court in the resolution of this case.

NAPSA, PJI and NAPD are among the nation’s foremost experts on the design of safe and fair pretrial systems and provide insight into the few circumstances in which pretrial detention is necessary to address the State’s interest in community safety and mitigating risk of flight. This is not, as Respondent argues, “ancillary to the subject of the instant mandamus proceeding.” Resp. Opp. at 4. It goes to the heart of it.

II. CONCLUSION

Granting Amici’s Motion for Leave to File is in the interests of justice: it will assist this Court in the resolution of this case and it need not cause delay. For these reasons, Petitioners Jose Valdez-Jimenez, Aaron

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Frye, and Nathan Grace respectfully request that this Honorable Court grant Amici's Motion for Leave to File an amici curiae brief in this case.

Dated this 23rd day of July, 2019.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 23rd day of July, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service

List as follows:

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

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