District Court Case No: A-25-915182-W

Electronically Filed
Aug 13 2025 08:47 AM
Elizabeth A. Brown
Clerk of Supreme Court

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

RUEL SALVA MERCADO,

Plaintiff(s),

vs.

NETHANJAH BREITENBACH, WARDEN, LOVELOCK CORRECTIONAL CENTER; JAMES DZURENDA, DIRECTOR, NEVADA DEPARTMENT OF CORRECTIONS; AARON FORD, NEVADA ATTORNEY GENERAL; STATE OF NEVADA,

Defendant(s).

NOTICE OF APPEAL PACKET COVER SHEET

Electronically Filed
8/11/2025 12:47 PM
Steven D. Grierson
CLERK OF THE COURT

NOASC
Rene L. Valladares
Federal Public Defender
Nevada State Bar No. 11479
*Laura Barrera
Assistant Federal Public Defender
Nevada State Bar No. 14320C
411 E. Bonneville, Ste. 250
Las Vegas, Nevada 89101
(702) 388-6577
(702) 388-6419 (Fax)
Laura_Barrera@fd.org

Attorney for Petitioner Ruel Mercado

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY

Ruel Mercado, Petitioner, v. Nethanjah Breitenbach, et all., Respondents.	Case No. A-25-915182-W Dept. No. VII

NOTICE OF APPEAL

Notice is hereby given that Petitioner Ruel Mercado appeals to the Nevada Supreme Court from the Order Denying Petition for Writ of Habeas Corpus entered in this action on July 7, 2025. The Notice of Entry of Decision or Order was filed July 14, 2025.

Dated August 11, 2025

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ Laura Barrera
Laura Barrera
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2025, I electronically filed the foregoing with the Clerk of the Eighth Judicial District Court by using the Court's electronic filing system.

Participants in the case who are registered users in the electronic filing system will be served by the system and include: Steven Wolfson, Steven.Wolfson@clarkcountydanv.gov, Motions@clarkcountydanv.gov, John Afshar, john.afshar@clarkcountydanv.gov.

I further certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage pre-paid, or have dispatched it to a third-party commercial carrier for delivery within three calendars days, to the following persons:

Office of the Attorney General
100 North Carson Street
Carson City, NV 89701

Ruel Mercado, #48165
Lovelock Correctional Center
1200 Prison Rd.
Lovelock, NV 89419

/s/ Kaitlyn O'Hearn
An Employee of the Federal Public Defender, District of Nevada

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CLERK OF THE COURT

ASTA
Rene L. Valladares
Federal Public Defender
Nevada State Bar No. 11479
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Las Vegas, Nevada 89101
(702) 388-6577
(702) 388-6419 (Fax)
Laura_Barrera@fd.org

Attorney for Petitioner Ruel Mercado

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY

Ruel Mercado, Petitioner, v. Nethanjah Breitenbach, et all., Respondents.	Case No. A-25-915182-W Dept. No. VII

CASE APPEAL STATEMENT

1. **Name of petitioner filing this case appeal statement:** Ruel Mercado

2. **Identify the judge issuing the order appealed from:** Hon. Danielle Pieper, District Court Judge, Dept. No. 7, Eighth Judicial District Court, Clark County, Nevada

3. **Identify each appellant and the name and address of counsel for each appellant:** Appellant Ruel Mercado is represented by Laura Barrera, Assistant Federal Public Defender, Federal Public Defender —District of Nevada, 411 E. Bonneville Avenue, Suite 250, Las Vegas, NV 89101.

4. **Identify each respondent and the name and address of appellate counsel, if known, for each respondent:** The State of Nevada is represented by Chief Deputy District Attorney John Afshar, Clark County District Attorney's Office, 200 Lewis Avenue, Las Vegas, NV 89101.

5. **Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42.** The attorneys mentioned above are licensed to practice law in Nevada.

6. **Whether petitioner/appellant was represented by appointed or retained counsel in the district court:** Mr. Mercado was represented in the district court by counsel previously appointed to represent him in a related federal matter.

7. **Whether petitioner/appellant is represented by appointed or retained counsel on appeal:** Mr. Mercado is represented on appeal by counsel previously appointed to represent him in a related federal matter.

8. **Whether petitioner/appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:** An inmate need not pay a fee to file (or appeal from the denial of) a post-conviction petition. NRS 2.250(1)(d); NRS 34.724(1). The federal court determined Mr. Mercado was indigent and appointed counsel on his behalf in a related federal case.

9. **Date proceedings commenced in the district court (e.g., date complaint, indictment, information or petition was filed):** Mr. Mercado filed

his Petition for Writ of Habeas Corpus (Validity of Judgment of Conviction or Sentence) on March 21, 2025.

10. **Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:** This is an appeal of an order dismissing Petitioner's Petition for Writ of Habeas Corpus (Validity of Judgment of Conviction or Sentence).

11. **Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court or Court of Appeals and, if so, the caption and docket number of the prior proceeding:**

Mercado v. State, 74513-COA

Mercado v. State, 74513

Mercado v. State, 45584

Mercado v. State, 35006

12. **Indicate whether this appeal involves child custody or visitation:** This appeal does not involve child custody or visitation.

13. **If this is a civil case, indicate whether this appeal involves the possibility of settlement:** N/A

Dated August 11, 2025

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ Laura Barrera
Laura Barrera
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2025, I electronically filed the foregoing with the Clerk of the Eighth Judicial District Court by using the Court's electronic filing system.

Participants in the case who are registered users in the electronic filing system will be served by the system and include: Steven Wolfson, Steven.Wolfson@clarkcountydanv.gov, Motions@clarkcountydanv.gov, John Afshar, john.afshar@clarkcountydanv.gov.

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Office of the Attorney General
100 North Carson Street
Carson City, NV 89701

Ruel Mercado, #48165
Lovelock Correctional Center
1200 Prison Rd.
Lovelock, NV 89419

/s/ Kaitlyn O'Hearn
An Employee of the Federal Public Defender, District of Nevada

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-25-915182-W

Ruel Mercado, Plaintiff(s)	§	Location:	**Department 7**
vs.	§	Judicial Officer:	**Pieper, Danielle**
Nethanjah Breitenbach, Defendant(s)	§	Filed on:	**03/21/2025**
	§	Case Number History:	
	§	Cross-Reference Case Number:	**A915182**

CASE INFORMATION

Related Cases
95C125649-1 (Writ Related Case)

Statistical Closures
08/05/2025 Summary Judgment

Case Type: **Writ of Habeas Corpus**

Case Status: **08/05/2025 Closed**

DATE — CASE ASSIGNMENT

Current Case Assignment

Case Number	A-25-915182-W
Court	Department 7
Date Assigned	04/01/2025
Judicial Officer	Pieper, Danielle

PARTY INFORMATION

		Lead Attorneys
Plaintiff	**Mercado, Ruel**	**Barrera, Laura** *Retained* 702-895-0080(W)
Defendant	**Breitenbach, Nethanjah**	
	Dzurenda, James	
	Ford, Aaron	

DATE — EVENTS & ORDERS OF THE COURT — INDEX

EVENTS

03/21/2025 Notice
Filed By: Plaintiff Mercado, Ruel
[1] Notice of Appearance

03/21/2025 Petition for Writ of Habeas Corpus
Filed by: Plaintiff Mercado, Ruel
[2] Petition for Writ of Habeas Corpus (Validity of Judgment of Conviction or Sentence)

03/21/2025 Exhibits
Filed By: Plaintiff Mercado, Ruel
[3] Index of Exhibits in Support of Petition for Writ of Habeas Corpus (Validity of Judgment of Conviction or Sentence)

03/28/2025 Notice of Department Reassignment
[4] Notice of Department Reassignment

03/31/2025 Administrative Reassignment
Pursuant to Administrative Order 25-03

04/01/2025	Administrative Reassignment *Reassignment Error*
05/05/2025	Response *[5] State's Response To Petitioner's Petition For Writ Of Habeas Corpus (Post Conviction)*
05/12/2025	Reply in Support Filed By: Plaintiff Mercado, Ruel *[6] Reply in Support of Petition & Opposition to Motion to Dismiss*
05/22/2025	Order *[7] Order for Transcript*
06/11/2025	Recorders Transcript of Hearing Party: Other Nevada, State of *[8] Recorder's Transcript of Proceedings Re: Petition for Habeas Corpus May 19, 2025*
06/20/2025	Motion to Reconsider Filed By: Plaintiff Mercado, Ruel *[9] Motion To Reconsider, Or In The Alternative, To Stay Proceedings*
06/23/2025	Clerk's Notice of Hearing *[10] Clerk's Notice of Hearing*
07/02/2025	Response *[11] State's Response To Petitioner's Motion To Reconsider*
07/07/2025	Finding of Fact and Conclusions of Law *[12] Findings of Fact, Conclusions of Law and Order*
07/14/2025	Notice of Entry of Findings of Fact, Conclusions of Law *[13] Notice of Entry of Findings of Fact, Conclusions of Law and Order*
07/21/2025	Reply in Support Filed By: Plaintiff Mercado, Ruel *[14] Reply in Support of Motion to Reconsider or Stay Proceedings*
08/05/2025	Order to Statistically Close Case *[15] Civil Order to Statistically Close Case*
08/11/2025	Notice of Appeal (Criminal) Party: Plaintiff Mercado, Ruel *[16] Notice of Appeal*
08/11/2025	Case Appeal Statement Filed By: Plaintiff Mercado, Ruel *[17] Case Appeal Statement*

HEARINGS

05/19/2025	**Petition for Writ of Habeas Corpus** (8:30 AM) (Judicial Officer: Pieper, Danielle) *Petition for Writ of Habeas Corpus* *05/12/2025 Continued to 05/19/2025 - At the Request of Party - Breitenbach, Nethanjah; Dzurenda, James; Ford, Aaron*

Denied; Petition for Writ of Habeas Corpus
Journal Entry Details:
ALSO PRESENT: Hagar Trippiedi and Alexander Provan, Deputy District Attorneys on behalf of the State of Nevada Plaintiff Mercado not present. Court noted the instant Petition and welcomed argument. Ms. Barrera made arguments on the Petition and requested an evidentiary hearing be held. Mr. Provan advised the State primarily submitted on the written opposition, reiterated the points of the argument, and ultimately asserted there would be no need for an evidentiary hearing as the procedural bars were cleared. Following rebuttal arguments by Ms. Barrera, COURT ORDERED, Petition for Writ of Habeas Corpus DENIED based on the fact that good cause had not been shown. COURT FURTHER ORDERED, request for evidentiary hearing DENIED. COURT ADDITIONALLY ORDERED, State to prepare the Order and Status Check: Order Submitted SET for the Court's Chambers calendar in 60 days. 07/21/25 3:00 AM STATUS CHECK: ORDER SUBMITTED (DENYING PETITION FOR WRIT OF HABEAS CORPUS) (CHAMBERS);

07/21/2025 *CANCELED* **Status Check** (8:30 AM) (Judicial Officer: Pieper, Danielle)
Vacated
Status Check: Order Submitted (Denying Petition for Writ of Habeas Corpus)

07/28/2025 **Motion to Reconsider** (8:30 AM) (Judicial Officer: Pieper, Danielle)
Motion To Reconsider, Or In The Alternative, To Stay Proceedings
Motion Denied; Motion To Reconsider, Or In The Alternative, To Stay Proceedings
Journal Entry Details:
APPEARANCES CONTINUED: Ashlynn Saenz-Ochoa, Esq. appearing for Laura Barrera, Esq. on behalf of Deft. Following arguments by Ms. Saenz-Ochoa and Mr. Quagge, COURT ORDERED, Motion to Reconsider, or in the Alternative, to Stay Proceedings hereby DENIED and stated its basis for denial for the record. State the prepare the Order. ;

DISTRICT COURT CIVIL COVER SHEET

Clark County, Nevada

Case No. CASE NO: A-25-915182-W

(Assigned by Clerk's Office)

Department 14

I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
Ruel Mercado, #48165	Nethanjah Breitenbach
Lovelock Correctional Center	Warden, Lovelock Correctional Center
1200 Prison Rd.	James Dzurenda, Director, Nevada Department of Corrections;
Lovelock, NV 89701	Aaron Ford, Nevada Attorney General; and State of Nevada
Attorney (name/address/phone):	**Attorney (name/address/phone):**
Laura Barrera	Steve Wolfson, Clark County District Attorney
Assistant Federal Public Defender	200 Lewis Ave., Las Vegas, NV 89101, (702) 671-2500
411 E.Bonneville Ave. Suite 250, Las Vegas, NV 89101	cc: Aaron D Ford, Nevada Attorney General
(702) 388-6577	100 North Carson Street, Carson City, NV 89701

II. Nature of Controversy *(please select the one most applicable filing type below)*

Civil Case Filing Types

Real Property

Landlord/Tenant
- ☐ Unlawful Detainer
- ☐ Other Landlord/Tenant

Title to Property
- ☐ Judicial Foreclosure
- ☐ Other Title to Property

Other Real Property
- ☐ Condemnation/Eminent Domain
- ☐ Other Real Property

Torts

Negligence
- ☐ Auto
- ☐ Premises Liability
- ☐ Other Negligence

Malpractice
- ☐ Medical/Dental
- ☐ Legal
- ☐ Accounting
- ☐ Other Malpractice

Other Torts
- ☐ Product Liability
- ☐ Intentional Misconduct
- ☐ Employment Tort
- ☐ Insurance Tort
- ☐ Other Tort

Probate

Probate *(select case type and estate value)*
- ☐ Summary Administration
- ☐ General Administration
- ☐ Special Administration
- ☐ Set Aside
- ☐ Trust/Conservatorship
- ☐ Other Probate

Estate Value
- ☐ Over $200,000
- ☐ Between $100,000 and $200,000
- ☐ Under $100,000 or Unknown
- ☐ Under $2,500

Construction Defect & Contract

Construction Defect
- ☐ Chapter 40
- ☐ Other Construction Defect

Contract Case
- ☐ Uniform Commercial Code
- ☐ Building and Construction
- ☐ Insurance Carrier
- ☐ Commercial Instrument
- ☐ Collection of Accounts
- ☐ Employment Contract
- ☐ Other Contract

Judicial Review/Appeal

Judicial Review
- ☐ Foreclosure Mediation Case
- ☐ Petition to Seal Records
- ☐ Mental Competency

Nevada State Agency Appeal
- ☐ Department of Motor Vehicle
- ☐ Worker's Compensation
- ☐ Other Nevada State Agency

Appeal Other
- ☐ Appeal from Lower Court
- ☐ Other Judicial Review/Appeal

Civil Writ

Civil Writ
- ■ Writ of Habeas Corpus
- ☐ Writ of Mandamus
- ☐ Writ of Quo Warrant
- ☐ Writ of Prohibition
- ☐ Other Civil Writ

Other Civil Filing

Other Civil Filing
- ☐ Compromise of Minor's Claim
- ☐ Foreign Judgment
- ☐ Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

03/21/2025
Date

/s/ Laura Barrera
Signature of initiating party or representative

See other side for family-related case filings.

Electronically Filed
07/07/2025 3:28 PM
CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #1565
JOHN AFSHAR
Chief Deputy District Attorney
Nevada Bar #14408
200 Lewis Avenue
Las Vegas, NV 89101
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

RUEL MERCADO,

Petitioner,

vs.

NETHANJAH BREITENBACH,

Respondent.

CASE NO: A-25-915182-W
DEPT NO: VII

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

DATE OF HEARING: MAY 19, 2025
TIME OF HEARING: 8:30 AM

THIS CAUSE having come on for hearing before the Honorable DANIELLE PIEPER, District Judge, on the 19th day of May 2025, the Petitioner being represented by counsel LAURA BARRERA, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through HAGAR TRIPPIEDI, Chief Deputy District Attorney, and ALEXANDER PROVAN, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, prior arguments of counsel and Petitioner, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

///

FINDINGS OF FACT AND CONCLUSIONS OF LAW

CASE STATEMENT

Ruel Mercado, alongside four co-defendants, was charged by information on February 1, 1995, with twenty-two separate felony counts stemming from a robbery-murder at a local casino. An amended information was filed (in case C125649) on July 14, 1995, charging Mercado with: (1) murder with the use of a deadly weapon (open murder) with the intent to promote, further, or assist a criminal gang; (2) attempted murder with the use of a deadly weapon with the intent to promote, further, or assist a criminal gang; (3) burglary while in possession of a deadly weapon with the intent to promote, further, or assist a criminal gang; (4-6) attempted robbery with the use of a deadly weapon with the intent to promote, further, or assist a criminal gang; (7, 9) first-degree kidnapping with the use of a deadly weapon with the intent to promote, further, or assist a criminal gang; and (8, 10-22) coercion with the use of a deadly weapon with the intent to promote, further, or assist a criminal gang.

Mercado's seven-day jury trial commenced on July 12, 1995. The jury found Mercado guilty of all counts but eight and ten (coercion). At the penalty hearing, the jury imposed a sentence of life without parole, rather than death. More specifically, he was sentenced to: (1) life without parole (first-degree murder), with an equal and consecutive term for the deadly weapon enhancement; (2) 20 years, with a consecutive 10 years for the deadly weapon enhancement, concurrent with count 1; (3) 10 years, with a consecutive 10 years for the deadly weapon enhancement, consecutive with count 2; (4) 7.5 years, with a consecutive 7.5 years for the deadly weapon enhancement, consecutive to count 2; (5) 7.5 years, with a consecutive 7.5 years for the deadly weapon enhancement, consecutive to count 4; (6) 7.5 years, with a consecutive 7.5 years for the deadly weapon enhancement, consecutive to count 5; (7) life with the possibility of parole (first-degree kidnapping), with an equal and consecutive term for the deadly weapon

enhancement, concurrent with count 1; (9) life with the possibility of parole (first-degree kidnapping), with an equal and consecutive term for the deadly weapon enhancement, concurrent with count 1; (11-20) 6 years, with a consecutive 6 years for the deadly weapon enhancement, concurrent with each other and count 1.

The judgment of conviction was filed December 19, 1995. Mercado filed a direct appeal. The Nevada Supreme Court affirmed the judgment of conviction on April 9, 1998. Mercado v. State, 114 Nev. 1725, 988 P.2d 844 (1998). Remittitur issued April 28, 1998.

Mercado then filed his first post-conviction petition for writ of habeas corpus on March 25, 1999, raising 34 claims. The district court denied his petition and Mercado appealed. The Nevada Supreme Court affirmed in part, reversed in part, and remanded in part. Mercado v. State, 118 Nev. 1126, 106 P.3d 1241 (2002) (ordering the district court to appoint post-conviction counsel and to allow supplemental argument). Remittitur issued on July 16, 2002.

Mercado's subsequent evidentiary hearing was held on August 23, 2004. Because the State acknowledged that the two charges of first-degree kidnapping were incidental to the robbery, the court dismissed counts 7 and 9. The district court granted Mercado's petition as to counts 4, 5, 7, and 9, but denied Mercado's remaining claims. An amended judgment of conviction was filed on January 11, 2006.

Mercado appealed from the district court's partial denial of his post-conviction petition. The Nevada Supreme Court affirmed the district court's judgment on September 29, 2006. Mercado v. State, 122 Nev. 1704, 178 P.3d 782 (2006). Remittitur issued on October 26, 2006.[1]

Mercado filed another post-conviction petition for writ of habeas corpus on June 2, 2017. The district court denied his petition and Mercado appealed. The

[1]Mercado also filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 in federal court, which was denied in 2010.

Nevada Court of Appeals affirmed on March 20, 2019, noting that the petition was procedurally barred as untimely and successive and under the doctrine of laches. Mercado v. State, 135 Nev. 686, at *1 (Ct. App. 2019). Remittitur issued November 15, 2019 (following unsuccessful appeals to the Nevada Supreme Court and United States Supreme Court).

Then, five and a half years later, on March 21, 2025, Mercado filed a post-conviction petition for writ of habeas corpus. The State filed its response on May 5 and Mercado filed his reply on May 12. The district court conducted a hearing on May 19, 2025.[2]

ANALYSIS

I. MERCADO'S PETITION DOES NOT DEMONSTRATE GOOD CAUSE AND ACTUAL PREJUDICE TO OVERCOME THE PROCEDURAL BARS

Mercado argues that his life-without-parole sentence is unconstitutional because when imposed on "late adolescents" like as him (18 years old): (1) the categorical imposition violates Nevada's cruel or unusual punishment provision[3], "or it can be imposed only rarely, subject to strict procedural protections;" (2) the sentence is cruel or unusual as applied to petitioner's case; or (3) the sentence cannot be imposed on late adolescents under Nevada's equality of rights provision[4]. Petition at 1. He further argues that under the cruel or unusual punishment clause and the equality of rights clause, his sentence is illegal. Petition at 4. Mercado, however, acknowledges that his present claims are procedurally barred. Petition at 1.

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[2]Mercado additionally filed a motion to reconsider on June 20, 2025.

[3]Nev. Const. art. 1 § 6 ("Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel or unusual punishments be inflicted[.]").

[4]Nev. Const. art. 1 § 24 ("Equality of rights under the law shall not be denied or abridged by this State or any of its political subdivisions on account of race, color, creed, sex, sexual orientation, gender identity or expression, age, disability, ancestry or national origin.").

The Nevada Supreme Court has emphatically and repeatedly stated that district courts must apply procedural bars. That is, the district courts have a duty to consider whether post-conviction claims are procedurally barred, namely "when properly raised by the State." State v. Eighth Jud. Dist. Ct. ("Riker"), 121 Nev. 225, 233-34, 112 P.3d 1070, 1075-76 (2005); accord State v. Huebler, 128 Nev. 192, 197 n.2, 275 P.3d 91, 95 n.2 (2012), cert. denied, No. 12-7426, 568 U.S. 1147 (Jan. 22, 2013) (noting that the statutory time bar is "mandatory, not discretionary"). Even "a stipulation by the parties cannot empower a court to disregard the mandatory procedural default rules." State v. Haberstroh, 119 Nev. 173, 180, 69 P.3d 676, 681 (2003); Sullivan v. State, 120 Nev. 537, 542, 96 P.3d 761, 765 (2004) ("[The defendant's] petition was procedurally barred, and we expressly conclude that the district court should have denied the petition on that basis.").

The district courts lack discretion to apply the procedural bars, in large part, because allowing otherwise would undermine the finality of convictions:

> Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory. Habeas corpus petitions that are filed many years after conviction are an unreasonable burden on the criminal justice system. The necessity for a workable system dictates that there must exist a time when a criminal conviction is final.

Riker, 121 Nev. at 231, 112 P.3d at 1074 (internal quotation marks and citation omitted). Additionally, strict adherence to the procedural bars promotes the best interests of the parties. Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989) (holding that "the interests of both the petitioner and the government are best served if post-conviction claims are raised while the evidence is still fresh"), superseded by statute on other grounds as stated in, Huebler, 128 Nev. at 197 n.2, 275 P.3d at 95 n.2.

To overcome the procedural bars, a petitioner must demonstrate: (1) good cause for delay in filing his petition or for bringing new claims or repeating claims

in a successive petition; and (2) undue or actual prejudice. NRS 34.810. The petitioner must also plead their claims with more than "bare" or "naked" assertions to support relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

a. Good cause

To demonstrate good cause, "a petitioner must show that an impediment external to the defense prevented him or her from complying with the state procedural default rules." Hathaway v. State, 119 Nev. 248, 251, 71 P.3d 503, 506 (2003); see also Pellegrini, 117 Nev. at 887, 34 P.3d at 537 (concluding that neither ineffective assistance of counsel nor a physician's declaration in support of a habeas petition were sufficient good cause to overcome a procedural default). Put differently, there must be a "substantial reason; one that affords a legal excuse." Id. The Nevada Supreme Court has held that, "appellants cannot attempt to manufacture good cause[.]" Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 526 (2003).

Mercado contends that good cause is demonstrated because "his petition is based on recent legal and scientific developments." Petition at 2. Specifically, he relies on Commonwealth v. Mattis, 493 Mass. 216, 224 N.E. 410 (2024), which "was the first opinion striking down discretionary life-without-parole-sentences for late adolescents under a state constitutional provision."[5] Petition at 2. Mattis, in turn, relied on Miller v. Alabama, 567 U.S. 460 (2012). There, considering the life-without-parole sentence of a 14-year-old homicide offender, the United States Supreme Court held that a sentencing scheme imposing "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" Id. at 465. The Miller opinion focused on the mandatory nature of the punishment but also

[5]Commonwealth v. Matthis characterizes a "late adolescent," for sentencing purposes, as an individual who was 18, 19, or 20 years old at the time of their crimes. 493 Mass. 216, 235, 224 N.E. 410, 428 (2024).

reflected upon juveniles' "diminished culpability and heightened capacity for change" heavily: "By making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment." Id. at 479. Similarly, Mercado reflects upon the Eighth Amendment's evolving standards of decency to support his position. Petition at 2.

Mercado's argument fails to demonstrate good cause to overcome the procedural bars because neither Mattis nor Miller applies to this case.

First, Mattis is not binding nor did the decision create any new rights. Second, Mattis did not strike down a state statute providing "discretionary life-without-parole sentences *for* late adolescents[.]" Petition at 2 (emphasis added). The Massachusetts statute mandated life without parole for adult defendants found guilty of first-degree murder, whereas defendants convicted of the same offense who committed the crime "after the person's fourteenth birthday and before the person's eighteenth birthday" were required to receive parole eligibility with their life sentences. Mass. Gen. L. 265 § 2(a)-(b) (2014). In other words, the sentencing judge or jury had no discretion to award a first-degree homicide adult offender with parole eligibility; the state statute itself spelled out the appropriate punishment. Nevada, however, does not distinguish the appropriate punishment for a first-degree homicide offender based upon age and does not categorically impose life without parole. NRS 200.300(4). Furthermore, state law does not align with the adoption of "late adolescent" classifications in homicide cases. See NRS 62B.390(1) (allowing juveniles to be certified as adults in criminal proceedings if the juvenile is charged with murder and was 13 years old when the murder was committed, or 14 years old for other felonies).

But more importantly, Miller forbids only *mandatory* life-without-parole sentences for *juveniles*. 567 U.S. at 465 (restricting its holding to defendants "*under* the age of 18 at the time of their crimes" (emphasis added)). There, the

petitioner was a 14-year-old offender sentenced under a scheme that required a term of life without parole be imposed. Id. Here, the petitioner was an 19-year-old offender sentenced under a scheme that prescribes sentences of death, life without parole, life with the possibility of parole after 20 years, and a definite term of 50 years with parole eligibility after 20 years. NRS 200.300(4). There, the Miller Court concluded that the sentencing scheme violated the Eighth Amendment's prohibition against cruel and unusual punishment because its categorical nature invited "too great a risk of disproportionate punishment." 567 U.S. at 479. Here, not only does state law allow for individualized sentencing, but Mercado's current sentence (life without parole) sentence is significantly less harsh than the death sentence the State sought at trial. And contrary to his assertion, Mercado fails to demonstrate that the sentence is cruel or unusual as to his life and case. See Petition at 1; see also Feazeal v. State, 135 Nev. 641, 445 P.3d 856, at *5 (2019) (unpublished) (finding that a juvenile offender's sentence of 58-to-life did not violate the cruel and unusual punishment clause and affirming the judgment of conviction). Thus, neither Miller's factual circumstance nor legal reasoning[6] support Mercado's claims.

Lastly, Miller cannot establish good cause because the present petition was filed over a year after the Supreme Court's decision was issued. Even if Miller had created any new law which applied to Mercado, he was required to raise any claims based on that new law within one year of the issuance of the opinion. See Rippo v. State, 134 Nev. 411, 422, 423 P.3d 1084, 1097 (2018) (concluding that

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[6]Miller v. Alabama, 567 U.S. 460, 465 (2012) ("State law mandated that each juvenile die in prison even if a judge or jury would have thought that his youth and its attendant characteristics, along with the nature of his crime, made a lesser sentence (for example, life *with* the possibility of parole) more appropriate. Such a scheme prevents those meting out punishment from considering a juvenile's 'lessened culpability' and greater 'capacity for change,' and runs afoul of our cases' requirement of individualized sentencing for defendants facing the most serious penalties." (internal citation omitted)).

a claim is raised within a reasonable time when the petition is filed within one year after the factual or legal basis for the claim becomes available). Likewise, to the extent that Nevada's equality of rights provision (Nev. Const. art. 1 § 24) may apply, the provision was added in 2022 and therefore cannot demonstrate good cause for the same reason.[7]

b. Actual prejudice

To demonstrate prejudice to overcome the procedural bars, a petitioner must show "not merely that the errors of [the proceeding] created possibility of prejudice, but that they worked to his actual and substantial disadvantage, in affecting the state proceedings with error of constitutional dimensions." Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v. Frady, 456 U.S. 152, 170 (1982)).

Mercado addresses prejudice just once in his statement on procedural bars: "Petitioner would be prejudiced if this Court were to decline to consider the claims on the merits." Petition at 4. Such a pleading amounts to a largely naked assertion suitable only for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Mercado has thus failed to demonstrate actual prejudice necessary to excuse his defaults. Furthermore, he cannot establish such prejudice because his underlying claims are contrary to state statute and case law. NRS 34.726(1); NRS 34.800; NRS 34.810; Riker, 121 Nev. at 231, 112 P.3d at 1074 (holding that the district court's application of procedural bars is mandatory, not discretionary).

Rather than addressing actual prejudice, Mercado secondarily alleges that his sentence is illegal. Petition at 4. The argument is a bit circular, contending that the life-without-parole sentence is illegal *because* it is unconstitutional; and because the sentence is illegal, application of the mandatory procedural bars would constitute a miscarriage of justice. Petition at 4. However, Mercado failed

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[7]The State additionally contended that the invocation of this provision was a bare assertion, see Petition at 4, and thus subject to summary dismissal, Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

to demonstrate that the sentencing scheme or sentence imposed was, in fact, unconstitutional. Cf. Feazeal, 135 Nev. 641, 445 P.3d 856, at *5 (affirming a 15-year-old offender's sentence of 58-to-life). He also failed to establish how his miscarriage-of-justice argument equates to the necessary showing of actual prejudice, in order to overcome the procedural bars.

Mercado has not filed a motion to correct an illegal sentence but asks this court to construe the present petition as such, if it "determines that it would grant relief if these arguments had been brought in [such] a motion[.]" Petition at 5 n.7. Still, a motion to correct an illegal sentence requires the petitioner to demonstrate facial illegality. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). And based on Mercado's arguments thus far, he has not done so. See NRS 200.300(4).

c. Procedural bars

Because Mercado failed to demonstrate good cause and actual prejudice, the following procedural bars mandate that the district court deny the present petition. Riker, 121 Nev. at 231, 112 P.3d at 1074 ("Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory."); see also Sullivan, 120 Nev. at 542, 96 P.3d at 765 ("[The defendant's] petition was procedurally barred, and we expressly conclude that the district court should have denied the petition on that basis.").

1. Mercado's claims are untimely

Nevada law provides that:

> 1. Unless there is good cause shown for delay, a petition that challenges the validity of a judgment of conviction or sentence *must* be filed within 1 year after entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the appellate court . . . issues its remittitur. . . . [G]ood cause for delay exists if the petitioner demonstrates to the satisfaction of the court:
> (a) That the delay is not the fault of the petitioner; and

(b) That dismissal of the petition as untimely will prejudice the petitioner.

NRS 34.726(1) (emphasis added). The Nevada Supreme Court has strictly applied the one-year time bar, based on the plain language of the statute. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001), abrogated on other grounds by, Rippo, 117 Nev. at 423 n.12, 423 P.3d at 1097 n.12; see also Gonzalez v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002) (rejecting a habeas petition that was filed two days late, despite evidence that the petitioner purchased postage through the prison and mailed the notice within the one-year time limit). The court has also consistently emphasized that the mandatory procedural bar is essential to the judicial process. Colley, 105 Nev. at 236, 773 P.2d at 1230 ("At some point, we must give finality to criminal cases. Should we allow [petitioner's] postconviction relief proceeding to go forward, we would encourage defendants to file groundless petitions for federal habeas corpus relief, secure in the knowledge that a petition for postconviction relief remained indefinitely available to them.").

Mercado's present claims are clearly untimely. Mercado filed a direct appeal from the amended judgment of conviction, which the Nevada Supreme Court affirmed in April 1998. Mercado v. State, 114 Nev. 1725, 988 P.2d 844 (1998). Remittitur issued that same month. As such, Mercado had until spring 1999 to timely file a habeas petition; he filed this petition on March 21, 2025. See also Mercado v. State, 135 Nev. 686, at *1 (Ct. App. 2019) (finding that Mercado's post-conviction petition for writ of habeas corpus was filed nearly 19 years after issuance of remittitur and thus untimely). Therefore, his untimely claims must be dismissed without a showing of good cause, which he failed to demonstrate. NRS 34.726(1).

2. Mercado's claims are waived

Nevada law further provides that district courts *shall* dismiss a petition or habeas challenge to a judgment of conviction or sentence imposed if the court determines:

> (a) The petitioner's conviction was upon a plea of guilty or guilty but mentally ill and the petition is not based upon an allegation that the plea was involuntarily or unknowingly or that the plea was entered without effective assistance of counsel.
> (b) The petitioner's conviction was the result of a trial and the grounds for the petition could have been:
> . . .
> (2) Raised in a direct appeal or a prior petition for a writ of habeas corpus or postconviction relief;
> . . .
> unless the court finds both cause for the failure to present the grounds and actual prejudice to the petitioner.

NRS 34.810(1); Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001). The Nevada Supreme Court has clarified that "challenges to the validity of a guilty plea and claims of ineffective assistance of trial and appellate counsel must first be pursued in post-conviction proceedings" but "all other claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be *considered waived in subsequent proceedings*." Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

Notwithstanding Mercado's contention that recent research supports his present petition, a claim that his sentence was either unconstitutional or illegal was available at the time he filed his first direct appeal. Such claims were also available in 2006 and 2017, when he again appealed to the Nevada Supreme Court. Mercado failed to raise these issues in either his direct appeal or subsequent post-conviction proceedings and thus waived these claims.

3. Mercado's claims are an abuse of writ

Additionally, Nevada law provides that a successive petition *must* be dismissed if the petition alleges new and different grounds than previous pleadings, but "the judge or justice finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ." NRS 34.810(3). "Unlike initial petitions which certainly require a careful review of the record, successive petitions may be dismissed based solely on the face of the petition." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995); see also Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) ("The law of a first appeal is law of the case on all subsequent appeals in which the facts are substantially the same."). Put differently, if the claims being raised in the instant petition were previously available, it is an abuse of the writ to wait to assert those claims in a later petition. See McClesky v. Zant, 499 U.S. 467, 497-98 (1991) (discussing successive federal habeas petitions). The application of this procedural bar is mandatory, like the aforementioned, and will proscribe substantive analysis unless the petitioner demonstrates good cause and prejudice. NRS 34.810(4); Riker, 121 Nev. at 231, 112 P.3d at 1074.

Here, the Nevada Court of Appeals concluded that Mercado's 2019 appeal (from the district court's denial of his post-conviction petition) was successive and thus procedurally parred. Mercado v. State, 135 Nev. 686, at *1 (Ct. App. 2019). But to the extent that this court may conclude Mercado raises new claims which were previously available, the present petition amounts to an abuse of the writ as he failed to establish good cause and prejudice. See Petition at 5 (arguing that applying the mandatory procedural bars, rather than considering the petition on its merits, would be a miscarriage of justice). Notwithstanding his claim that recent research (and a single Massachusetts case) supports that life-without-parole sentences should not be categorically imposed on "late adolescents," Mercado does not provide any binding authority to support that his sentence constitutes a miscarriage of justice. See Petition at 5; see also Matthis, 224 N.E.3d

410. Furthermore, he does not argue, much less prove, that the sentence would be inappropriate under the purported "strict procedural protections" in such cases. Petition at 1.

II. MERCADO'S REQUEST FOR AN EVIDENTIARY HEARING IS DENIED

Mercado also moves this court to set an evidentiary hearing "based on the arguments in this petition, as well as the records filed with this petition and in the criminal/post-conviction case, C125649." Petition at 7.

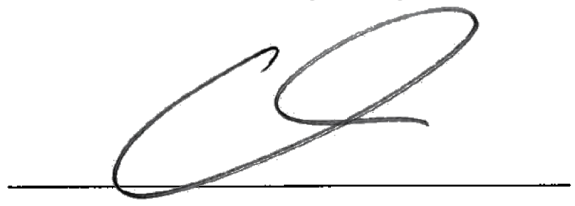
This court *may* set an evidentiary hearing if the petitioner's claims of good cause are supported by specific factual allegations which, if true, would entitle him to relief, unless the factual allegations are belied by the record. Hargrove, 100 Nev. at 502-03, 686 P.2d at 225; see also Colwell v. State, 118 Nev. 807, 812, 59 P.3d 463, 467 (2002) ("A petitioner for post-conviction relief cannot rely on conclusory claims for relief[.]"); NRS 34.770 ("The judge or justice, upon review of the return, answer and all supporting documents which are filed, shall determine whether an evidentiary hearing is required.). But the Nevada Supreme Court has held that if a petition can be resolved without expanding the record, no evidentiary hearing is necessary. Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002); see also Riker, 121 Nev. at 234, 112 P.3d at 1076 (holding that it is improper to hold an evidentiary hearing simply to make a complete record).

Mercado is not entitled to an evidentiary hearing. He has pleaded only barred claims, without demonstrating good cause and actual prejudice to overcome the procedural bars. And because Mercado failed to overcome the procedural bars, there is no need to introduce additional evidence; his petition can be resolved without expanding the record, as the district court must deny his procedurally-barred claims. Riker, 121 Nev. at 231, 112 P.3d at 1074 ("Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory."). Mercado's request for an evidentiary hearing is denied accordingly.

ORDER

THERFORE, IT IS HEREBY ORDERED that the Petition of Writ of Habeas Corpus (post-conviction) and request for an evidentiary hearing shall be, and is, hereby DENIED.

Dated this 7th day of July, 2025



1DE 2D9 0434 DF46
Danielle Pieper
District Court Judge

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #1565

BY */s/John Afshar*
JOHN AFSHAR
Chief Deputy District Attorney
Nevada Bar #14408

ag/JA/td/L2

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Ruel Mercado, Plaintiff(s) vs. Nethanjah Breitenbach, Defendant(s)	CASE NO: A-25-915182-W DEPT. NO. Department 7

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 7/7/2025

Kaitlyn O'Hearn	Kaitlyn_OHearn@fd.org
Laura Barrera	Laura_barrera@fd.org
Steven Wolfson	Steven.Wolfson@clarkcountydanv.gov
ECF Notification Email CCDA	motions@clarkcountydanv.gov
ECF Notification Email NCH Unit	ecf_nvnch@fd.org
John Afshar	john.afshar@clarkcountydanv.gov

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DISTRICT COURT
CLARK COUNTY, NEVADA

RUEL MERCADO,

Petitioner,

vs.

NETHANJAH BREITENBACH; ET AL.,

Respondent,

Case No: A-25-915182-W

Dept No: VII

NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

PLEASE TAKE NOTICE that on July 7, 2025, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on July 14, 2025.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Christine Bulfa
Christine Bulfa, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 14 day of July 2025, I served a copy of this Notice of Entry on the following:

☑ By e-mail:
Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

☑ The United States mail addressed as follows:

Ruel Mercado # 48165
1200 Prison Rd.
Lovelock, NV 89419

Rene L. Valladares
Federal Public Defender
411 E. Bonneville Ave., Ste. 250
Las Vegas, NV 89101

/s/ Christine Bulfa
Christine Bulfa, Deputy Clerk

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CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #1565
JOHN AFSHAR
Chief Deputy District Attorney
Nevada Bar #14408
200 Lewis Avenue
Las Vegas, NV 89101
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

RUEL MERCADO,

Petitioner,

vs.

NETHANJAH BREITENBACH,

Respondent.

CASE NO: A-25-915182-W
DEPT NO: VII

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

DATE OF HEARING: MAY 19, 2025
TIME OF HEARING: 8:30 AM

THIS CAUSE having come on for hearing before the Honorable DANIELLE PIEPER, District Judge, on the 19th day of May 2025, the Petitioner being represented by counsel LAURA BARRERA, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through HAGAR TRIPPIEDI, Chief Deputy District Attorney, and ALEXANDER PROVAN, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, prior arguments of counsel and Petitioner, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

CASE STATEMENT

Ruel Mercado, alongside four co-defendants, was charged by information on February 1, 1995, with twenty-two separate felony counts stemming from a robbery-murder at a local casino. An amended information was filed (in case C125649) on July 14, 1995, charging Mercado with: (1) murder with the use of a deadly weapon (open murder) with the intent to promote, further, or assist a criminal gang; (2) attempted murder with the use of a deadly weapon with the intent to promote, further, or assist a criminal gang; (3) burglary while in possession of a deadly weapon with the intent to promote, further, or assist a criminal gang; (4-6) attempted robbery with the use of a deadly weapon with the intent to promote, further, or assist a criminal gang; (7, 9) first-degree kidnapping with the use of a deadly weapon with the intent to promote, further, or assist a criminal gang; and (8, 10-22) coercion with the use of a deadly weapon with the intent to promote, further, or assist a criminal gang.

Mercado's seven-day jury trial commenced on July 12, 1995. The jury found Mercado guilty of all counts but eight and ten (coercion). At the penalty hearing, the jury imposed a sentence of life without parole, rather than death. More specifically, he was sentenced to: (1) life without parole (first-degree murder), with an equal and consecutive term for the deadly weapon enhancement; (2) 20 years, with a consecutive 10 years for the deadly weapon enhancement, concurrent with count 1; (3) 10 years, with a consecutive 10 years for the deadly weapon enhancement, consecutive with count 2; (4) 7.5 years, with a consecutive 7.5 years for the deadly weapon enhancement, consecutive to count 2; (5) 7.5 years, with a consecutive 7.5 years for the deadly weapon enhancement, consecutive to count 4; (6) 7.5 years, with a consecutive 7.5 years for the deadly weapon enhancement, consecutive to count 5; (7) life with the possibility of parole (first-degree kidnapping), with an equal and consecutive term for the deadly weapon

enhancement, concurrent with count 1; (9) life with the possibility of parole (first-degree kidnapping), with an equal and consecutive term for the deadly weapon enhancement, concurrent with count 1; (11-20) 6 years, with a consecutive 6 years for the deadly weapon enhancement, concurrent with each other and count 1.

The judgment of conviction was filed December 19, 1995. Mercado filed a direct appeal. The Nevada Supreme Court affirmed the judgment of conviction on April 9, 1998. Mercado v. State, 114 Nev. 1725, 988 P.2d 844 (1998). Remittitur issued April 28, 1998.

Mercado then filed his first post-conviction petition for writ of habeas corpus on March 25, 1999, raising 34 claims. The district court denied his petition and Mercado appealed. The Nevada Supreme Court affirmed in part, reversed in part, and remanded in part. Mercado v. State, 118 Nev. 1126, 106 P.3d 1241 (2002) (ordering the district court to appoint post-conviction counsel and to allow supplemental argument). Remittitur issued on July 16, 2002.

Mercado's subsequent evidentiary hearing was held on August 23, 2004. Because the State acknowledged that the two charges of first-degree kidnapping were incidental to the robbery, the court dismissed counts 7 and 9. The district court granted Mercado's petition as to counts 4, 5, 7, and 9, but denied Mercado's remaining claims. An amended judgment of conviction was filed on January 11, 2006.

Mercado appealed from the district court's partial denial of his post-conviction petition. The Nevada Supreme Court affirmed the district court's judgment on September 29, 2006. Mercado v. State, 122 Nev. 1704, 178 P.3d 782 (2006). Remittitur issued on October 26, 2006.[1]

Mercado filed another post-conviction petition for writ of habeas corpus on June 2, 2017. The district court denied his petition and Mercado appealed. The

[1]Mercado also filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 in federal court, which was denied in 2010.

Nevada Court of Appeals affirmed on March 20, 2019, noting that the petition was procedurally barred as untimely and successive and under the doctrine of laches. Mercado v. State, 135 Nev. 686, at *1 (Ct. App. 2019). Remittitur issued November 15, 2019 (following unsuccessful appeals to the Nevada Supreme Court and United States Supreme Court).

Then, five and a half years later, on March 21, 2025, Mercado filed a post-conviction petition for writ of habeas corpus. The State filed its response on May 5 and Mercado filed his reply on May 12. The district court conducted a hearing on May 19, 2025.[2]

ANALYSIS

I. MERCADO'S PETITION DOES NOT DEMONSTRATE GOOD CAUSE AND ACTUAL PREJUDICE TO OVERCOME THE PROCEDURAL BARS

Mercado argues that his life-without-parole sentence is unconstitutional because when imposed on "late adolescents" like as him (18 years old): (1) the categorical imposition violates Nevada's cruel or unusual punishment provision[3], "or it can be imposed only rarely, subject to strict procedural protections;" (2) the sentence is cruel or unusual as applied to petitioner's case; or (3) the sentence cannot be imposed on late adolescents under Nevada's equality of rights provision[4]. Petition at 1. He further argues that under the cruel or unusual punishment clause and the equality of rights clause, his sentence is illegal. Petition at 4. Mercado, however, acknowledges that his present claims are procedurally barred. Petition at 1.

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[2]Mercado additionally filed a motion to reconsider on June 20, 2025.

[3]Nev. Const. art. 1 § 6 ("Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel or unusual punishments be inflicted[.]").

[4]Nev. Const. art. 1 § 24 ("Equality of rights under the law shall not be denied or abridged by this State or any of its political subdivisions on account of race, color, creed, sex, sexual orientation, gender identity or expression, age, disability, ancestry or national origin.").

The Nevada Supreme Court has emphatically and repeatedly stated that district courts must apply procedural bars. That is, the district courts have a duty to consider whether post-conviction claims are procedurally barred, namely "when properly raised by the State." State v. Eighth Jud. Dist. Ct. ("Riker"), 121 Nev. 225, 233-34, 112 P.3d 1070, 1075-76 (2005); accord State v. Huebler, 128 Nev. 192, 197 n.2, 275 P.3d 91, 95 n.2 (2012), cert. denied, No. 12-7426, 568 U.S. 1147 (Jan. 22, 2013) (noting that the statutory time bar is "mandatory, not discretionary"). Even "a stipulation by the parties cannot empower a court to disregard the mandatory procedural default rules." State v. Haberstroh, 119 Nev. 173, 180, 69 P.3d 676, 681 (2003); Sullivan v. State, 120 Nev. 537, 542, 96 P.3d 761, 765 (2004) ("[The defendant's] petition was procedurally barred, and we expressly conclude that the district court should have denied the petition on that basis.").

The district courts lack discretion to apply the procedural bars, in large part, because allowing otherwise would undermine the finality of convictions:

> Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory. Habeas corpus petitions that are filed many years after conviction are an unreasonable burden on the criminal justice system. The necessity for a workable system dictates that there must exist a time when a criminal conviction is final.

Riker, 121 Nev. at 231, 112 P.3d at 1074 (internal quotation marks and citation omitted). Additionally, strict adherence to the procedural bars promotes the best interests of the parties. Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989) (holding that "the interests of both the petitioner and the government are best served if post-conviction claims are raised while the evidence is still fresh"), superseded by statute on other grounds as stated in, Huebler, 128 Nev. at 197 n.2, 275 P.3d at 95 n.2.

To overcome the procedural bars, a petitioner must demonstrate: (1) good cause for delay in filing his petition or for bringing new claims or repeating claims

in a successive petition; and (2) undue or actual prejudice. NRS 34.810. The petitioner must also plead their claims with more than "bare" or "naked" assertions to support relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

a. Good cause

To demonstrate good cause, "a petitioner must show that an impediment external to the defense prevented him or her from complying with the state procedural default rules." Hathaway v. State, 119 Nev. 248, 251, 71 P.3d 503, 506 (2003); see also Pellegrini, 117 Nev. at 887, 34 P.3d at 537 (concluding that neither ineffective assistance of counsel nor a physician's declaration in support of a habeas petition were sufficient good cause to overcome a procedural default). Put differently, there must be a "substantial reason; one that affords a legal excuse." Id. The Nevada Supreme Court has held that, "appellants cannot attempt to manufacture good cause[.]" Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 526 (2003).

Mercado contends that good cause is demonstrated because "his petition is based on recent legal and scientific developments." Petition at 2. Specifically, he relies on Commonwealth v. Mattis, 493 Mass. 216, 224 N.E. 410 (2024), which "was the first opinion striking down discretionary life-without-parole-sentences for late adolescents under a state constitutional provision."[5] Petition at 2. Mattis, in turn, relied on Miller v. Alabama, 567 U.S. 460 (2012). There, considering the life-without-parole sentence of a 14-year-old homicide offender, the United States Supreme Court held that a sentencing scheme imposing "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" Id. at 465. The Miller opinion focused on the mandatory nature of the punishment but also

[5]Commonwealth v. Matthis characterizes a "late adolescent," for sentencing purposes, as an individual who was 18, 19, or 20 years old at the time of their crimes. 493 Mass. 216, 235, 224 N.E. 410, 428 (2024).

reflected upon juveniles' "diminished culpability and heightened capacity for change" heavily: "By making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment." Id. at 479. Similarly, Mercado reflects upon the Eighth Amendment's evolving standards of decency to support his position. Petition at 2.

Mercado's argument fails to demonstrate good cause to overcome the procedural bars because neither Mattis nor Miller applies to this case.

First, Mattis is not binding nor did the decision create any new rights. Second, Mattis did not strike down a state statute providing "discretionary life-without-parole sentences *for* late adolescents[.]" Petition at 2 (emphasis added). The Massachusetts statute mandated life without parole for adult defendants found guilty of first-degree murder, whereas defendants convicted of the same offense who committed the crime "after the person's fourteenth birthday and before the person's eighteenth birthday" were required to receive parole eligibility with their life sentences. Mass. Gen. L. 265 § 2(a)-(b) (2014). In other words, the sentencing judge or jury had no discretion to award a first-degree homicide adult offender with parole eligibility; the state statute itself spelled out the appropriate punishment. Nevada, however, does not distinguish the appropriate punishment for a first-degree homicide offender based upon age and does not categorically impose life without parole. NRS 200.300(4). Furthermore, state law does not align with the adoption of "late adolescent" classifications in homicide cases. See NRS 62B.390(1) (allowing juveniles to be certified as adults in criminal proceedings if the juvenile is charged with murder and was 13 years old when the murder was committed, or 14 years old for other felonies).

But more importantly, Miller forbids only *mandatory* life-without-parole sentences for *juveniles*. 567 U.S. at 465 (restricting its holding to defendants "*under* the age of 18 at the time of their crimes" (emphasis added)). There, the

petitioner was a 14-year-old offender sentenced under a scheme that required a term of life without parole be imposed. Id. Here, the petitioner was an 19-year-old offender sentenced under a scheme that prescribes sentences of death, life without parole, life with the possibility of parole after 20 years, and a definite term of 50 years with parole eligibility after 20 years. NRS 200.300(4). There, the Miller Court concluded that the sentencing scheme violated the Eighth Amendment's prohibition against cruel and unusual punishment because its categorical nature invited "too great a risk of disproportionate punishment." 567 U.S. at 479. Here, not only does state law allow for individualized sentencing, but Mercado's current sentence (life without parole) sentence is significantly less harsh than the death sentence the State sought at trial. And contrary to his assertion, Mercado fails to demonstrate that the sentence is cruel or unusual as to his life and case. See Petition at 1; see also Feazeal v. State, 135 Nev. 641, 445 P.3d 856, at *5 (2019) (unpublished) (finding that a juvenile offender's sentence of 58-to-life did not violate the cruel and unusual punishment clause and affirming the judgment of conviction). Thus, neither Miller's factual circumstance nor legal reasoning[6] support Mercado's claims.

Lastly, Miller cannot establish good cause because the present petition was filed over a year after the Supreme Court's decision was issued. Even if Miller had created any new law which applied to Mercado, he was required to raise any claims based on that new law within one year of the issuance of the opinion. See Rippo v. State, 134 Nev. 411, 422, 423 P.3d 1084, 1097 (2018) (concluding that

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a claim is raised within a reasonable time when the petition is filed within one year after the factual or legal basis for the claim becomes available). Likewise, to the extent that Nevada's equality of rights provision (Nev. Const. art. 1 § 24) may apply, the provision was added in 2022 and therefore cannot demonstrate good cause for the same reason.[7]

b. Actual prejudice

To demonstrate prejudice to overcome the procedural bars, a petitioner must show "not merely that the errors of [the proceeding] created possibility of prejudice, but that they worked to his actual and substantial disadvantage, in affecting the state proceedings with error of constitutional dimensions." Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v. Frady, 456 U.S. 152, 170 (1982)).

Mercado addresses prejudice just once in his statement on procedural bars: "Petitioner would be prejudiced if this Court were to decline to consider the claims on the merits." Petition at 4. Such a pleading amounts to a largely naked assertion suitable only for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Mercado has thus failed to demonstrate actual prejudice necessary to excuse his defaults. Furthermore, he cannot establish such prejudice because his underlying claims are contrary to state statute and case law. NRS 34.726(1); NRS 34.800; NRS 34.810; Riker, 121 Nev. at 231, 112 P.3d at 1074 (holding that the district court's application of procedural bars is mandatory, not discretionary).

Rather than addressing actual prejudice, Mercado secondarily alleges that his sentence is illegal. Petition at 4. The argument is a bit circular, contending that the life-without-parole sentence is illegal *because* it is unconstitutional; and because the sentence is illegal, application of the mandatory procedural bars would constitute a miscarriage of justice. Petition at 4. However, Mercado failed

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[7]The State additionally contended that the invocation of this provision was a bare assertion, see Petition at 4, and thus subject to summary dismissal, Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

to demonstrate that the sentencing scheme or sentence imposed was, in fact, unconstitutional. Cf. Feazeal, 135 Nev. 641, 445 P.3d 856, at *5 (affirming a 15-year-old offender's sentence of 58-to-life). He also failed to establish how his miscarriage-of-justice argument equates to the necessary showing of actual prejudice, in order to overcome the procedural bars.

Mercado has not filed a motion to correct an illegal sentence but asks this court to construe the present petition as such, if it "determines that it would grant relief if these arguments had been brought in [such] a motion[.]" Petition at 5 n.7. Still, a motion to correct an illegal sentence requires the petitioner to demonstrate facial illegality. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). And based on Mercado's arguments thus far, he has not done so. See NRS 200.300(4).

c. Procedural bars

Because Mercado failed to demonstrate good cause and actual prejudice, the following procedural bars mandate that the district court deny the present petition. Riker, 121 Nev. at 231, 112 P.3d at 1074 ("Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory."); see also Sullivan, 120 Nev. at 542, 96 P.3d at 765 ("[The defendant's] petition was procedurally barred, and we expressly conclude that the district court should have denied the petition on that basis.").

1. Mercado's claims are untimely

Nevada law provides that:

> 1. Unless there is good cause shown for delay, a petition that challenges the validity of a judgment of conviction or sentence *must* be filed within 1 year after entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the appellate court . . . issues its remittitur. . . . [G]ood cause for delay exists if the petitioner demonstrates to the satisfaction of the court:
> (a) That the delay is not the fault of the petitioner; and

(b) That dismissal of the petition as untimely will prejudice the petitioner.

NRS 34.726(1) (emphasis added). The Nevada Supreme Court has strictly applied the one-year time bar, based on the plain language of the statute. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001), abrogated on other grounds by, Rippo, 117 Nev. at 423 n.12, 423 P.3d at 1097 n.12; see also Gonzalez v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002) (rejecting a habeas petition that was filed two days late, despite evidence that the petitioner purchased postage through the prison and mailed the notice within the one-year time limit). The court has also consistently emphasized that the mandatory procedural bar is essential to the judicial process. Colley, 105 Nev. at 236, 773 P.2d at 1230 ("At some point, we must give finality to criminal cases. Should we allow [petitioner's] postconviction relief proceeding to go forward, we would encourage defendants to file groundless petitions for federal habeas corpus relief, secure in the knowledge that a petition for postconviction relief remained indefinitely available to them.").

Mercado's present claims are clearly untimely. Mercado filed a direct appeal from the amended judgment of conviction, which the Nevada Supreme Court affirmed in April 1998. Mercado v. State, 114 Nev. 1725, 988 P.2d 844 (1998). Remittitur issued that same month. As such, Mercado had until spring 1999 to timely file a habeas petition; he filed this petition on March 21, 2025. See also Mercado v. State, 135 Nev. 686, at *1 (Ct. App. 2019) (finding that Mercado's post-conviction petition for writ of habeas corpus was filed nearly 19 years after issuance of remittitur and thus untimely). Therefore, his untimely claims must be dismissed without a showing of good cause, which he failed to demonstrate. NRS 34.726(1).

2. Mercado's claims are waived

Nevada law further provides that district courts *shall* dismiss a petition or habeas challenge to a judgment of conviction or sentence imposed if the court determines:

> (a) The petitioner's conviction was upon a plea of guilty or guilty but mentally ill and the petition is not based upon an allegation that the plea was involuntarily or unknowingly or that the plea was entered without effective assistance of counsel.
> (b) The petitioner's conviction was the result of a trial and the grounds for the petition could have been:
> . . .
> (2) Raised in a direct appeal or a prior petition for a writ of habeas corpus or postconviction relief;
> . . .
> unless the court finds both cause for the failure to present the grounds and actual prejudice to the petitioner.

NRS 34.810(1); Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001). The Nevada Supreme Court has clarified that "challenges to the validity of a guilty plea and claims of ineffective assistance of trial and appellate counsel must first be pursued in post-conviction proceedings" but "all other claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be *considered waived in subsequent proceedings*." Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

Notwithstanding Mercado's contention that recent research supports his present petition, a claim that his sentence was either unconstitutional or illegal was available at the time he filed his first direct appeal. Such claims were also available in 2006 and 2017, when he again appealed to the Nevada Supreme Court. Mercado failed to raise these issues in either his direct appeal or subsequent post-conviction proceedings and thus waived these claims.

3. Mercado's claims are an abuse of writ

Additionally, Nevada law provides that a successive petition *must* be dismissed if the petition alleges new and different grounds than previous pleadings, but "the judge or justice finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ." NRS 34.810(3). "Unlike initial petitions which certainly require a careful review of the record, successive petitions may be dismissed based solely on the face of the petition." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995); see also Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) ("The law of a first appeal is law of the case on all subsequent appeals in which the facts are substantially the same."). Put differently, if the claims being raised in the instant petition were previously available, it is an abuse of the writ to wait to assert those claims in a later petition. See McClesky v. Zant, 499 U.S. 467, 497-98 (1991) (discussing successive federal habeas petitions). The application of this procedural bar is mandatory, like the aforementioned, and will proscribe substantive analysis unless the petitioner demonstrates good cause and prejudice. NRS 34.810(4); Riker, 121 Nev. at 231, 112 P.3d at 1074.

Here, the Nevada Court of Appeals concluded that Mercado's 2019 appeal (from the district court's denial of his post-conviction petition) was successive and thus procedurally parred. Mercado v. State, 135 Nev. 686, at *1 (Ct. App. 2019). But to the extent that this court may conclude Mercado raises new claims which were previously available, the present petition amounts to an abuse of the writ as he failed to establish good cause and prejudice. See Petition at 5 (arguing that applying the mandatory procedural bars, rather than considering the petition on its merits, would be a miscarriage of justice). Notwithstanding his claim that recent research (and a single Massachusetts case) supports that life-without-parole sentences should not be categorically imposed on "late adolescents," Mercado does not provide any binding authority to support that his sentence constitutes a miscarriage of justice. See Petition at 5; see also Matthis, 224 N.E.3d

410. Furthermore, he does not argue, much less prove, that the sentence would be inappropriate under the purported "strict procedural protections" in such cases. Petition at 1.

II. MERCADO'S REQUEST FOR AN EVIDENTIARY HEARING IS DENIED

Mercado also moves this court to set an evidentiary hearing "based on the arguments in this petition, as well as the records filed with this petition and in the criminal/post-conviction case, C125649." Petition at 7.

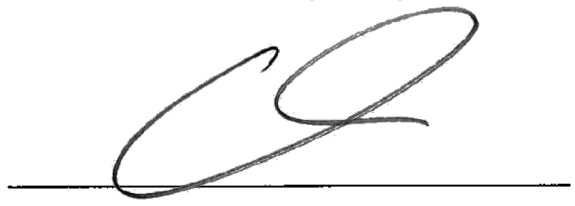
This court *may* set an evidentiary hearing if the petitioner's claims of good cause are supported by specific factual allegations which, if true, would entitle him to relief, unless the factual allegations are belied by the record. Hargrove, 100 Nev. at 502-03, 686 P.2d at 225; see also Colwell v. State, 118 Nev. 807, 812, 59 P.3d 463, 467 (2002) ("A petitioner for post-conviction relief cannot rely on conclusory claims for relief[.]"); NRS 34.770 ("The judge or justice, upon review of the return, answer and all supporting documents which are filed, shall determine whether an evidentiary hearing is required.). But the Nevada Supreme Court has held that if a petition can be resolved without expanding the record, no evidentiary hearing is necessary. Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002); see also Riker, 121 Nev. at 234, 112 P.3d at 1076 (holding that it is improper to hold an evidentiary hearing simply to make a complete record).

Mercado is not entitled to an evidentiary hearing. He has pleaded only barred claims, without demonstrating good cause and actual prejudice to overcome the procedural bars. And because Mercado failed to overcome the procedural bars, there is no need to introduce additional evidence; his petition can be resolved without expanding the record, as the district court must deny his procedurally-barred claims. Riker, 121 Nev. at 231, 112 P.3d at 1074 ("Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory."). Mercado's request for an evidentiary hearing is denied accordingly.

ORDER

THERFORE, IT IS HEREBY ORDERED that the Petition of Writ of Habeas Corpus (post-conviction) and request for an evidentiary hearing shall be, and is, hereby DENIED.

Dated this 7th day of July, 2025



1DE 2D9 0434 DF46
Danielle Pieper
District Court Judge

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #1565

BY */s/John Afshar*
JOHN AFSHAR
Chief Deputy District Attorney
Nevada Bar #14408

ag/JA/td/L2

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Ruel Mercado, Plaintiff(s) vs. Nethanjah Breitenbach, Defendant(s)	CASE NO: A-25-915182-W DEPT. NO. Department 7

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 7/7/2025

Kaitlyn O'Hearn	Kaitlyn_OHearn@fd.org
Laura Barrera	Laura_barrera@fd.org
Steven Wolfson	Steven.Wolfson@clarkcountydanv.gov
ECF Notification Email CCDA	motions@clarkcountydanv.gov
ECF Notification Email NCH Unit	ecf_nvnch@fd.org
John Afshar	john.afshar@clarkcountydanv.gov

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus	**COURT MINUTES**	**May 19, 2025**

A-25-915182-W Ruel Mercado, Plaintiff(s)
vs.
Nethanjah Breitenbach, Defendant(s)

May 19, 2025	**8:30 AM**	**Petition for Writ of Habeas Corpus**	**Petition for Writ of Habeas Corpus**

HEARD BY: Pieper, Danielle **COURTROOM:** RJC Courtroom 05B

COURT CLERK: Briana Jackson
Krystle Roberson

RECORDER: Stacey Ray

REPORTER:

PARTIES PRESENT: Barrera, Laura Attorney

JOURNAL ENTRIES

- ALSO PRESENT: Hagar Trippiedi and Alexander Provan, Deputy District Attorneys on behalf of the State of Nevada

Plaintiff Mercado not present. Court noted the instant Petition and welcomed argument. Ms. Barrera made arguments on the Petition and requested an evidentiary hearing be held. Mr. Provan advised the State primarily submitted on the written opposition, reiterated the points of the argument, and ultimately asserted there would be no need for an evidentiary hearing as the procedural bars were cleared. Following rebuttal arguments by Ms. Barrera, COURT ORDERED, Petition for Writ of Habeas Corpus DENIED based on the fact that good cause had not been shown. COURT FURTHER ORDERED, request for evidentiary hearing DENIED. COURT ADDITIONALLY ORDERED, State to prepare the Order and Status Check: Order Submitted SET for the Court's Chambers calendar in 60 days.

07/21/25 3:00 AM STATUS CHECK: ORDER SUBMITTED (DENYING PETITION FOR WRIT OF HABEAS CORPUS) (CHAMBERS)

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus	**COURT MINUTES**	**July 28, 2025**

A-25-915182-W Ruel Mercado, Plaintiff(s)
vs.
Nethanjah Breitenbach, Defendant(s)

July 28, 2025	**8:30 AM**	**Motion to Reconsider**	**Motion To Reconsider, Or In The Alternative, To Stay Proceedings**

HEARD BY: Pieper, Danielle **COURTROOM:** RJC Courtroom 05B

COURT CLERK: Krystle Roberson

RECORDER: Stacey Ray

REPORTER:

PARTIES PRESENT: Quagge, Alexander E Attorney

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Ashlynn Saenz-Ochoa, Esq. appearing for Laura Barrera, Esq. on behalf of Deft.

Following arguments by Ms. Saenz-Ochoa and Mr. Quagge, COURT ORDERED, Motion to Reconsider, or in the Alternative, to Stay Proceedings hereby DENIED and stated its basis for denial for the record. State the prepare the Order.

Certification of Copy

State of Nevada
County of Clark } **SS:**

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DISTRICT COURT MINUTES

RUEL SALVA MERCADO,

Plaintiff(s),

vs.

NETHANJAH BREITENBACH, WARDEN, LOVELOCK CORRECTIONAL CENTER; JAMES DZURENDA, DIRECTOR, NEVADA DEPARTMENT OF CORRECTIONS; AARON FORD, NEVADA ATTORNEY GENERAL; STATE OF NEVADA,

Defendant(s),

Case No: A-25-915182-W

Dept No: VII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 12 day of August 2025.

Steven D. Grierson, Clerk of the Court

/s/ Shaun Salcedo
Shaun Salcedo, Deputy Clerk