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**JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA**

STATE OF NEVADA,)	CASE NO.: (See Attached List)
Plaintiff,)	DEPT. NO.: Traffic
vs.)	
ALBERTINA ACEVEDO, ET. AL.)	ORDER DENYING
Defendants.)	MOTION TO DISMISS

On August 20, 2021, counsel for the two-hundred similarly situated Defendants filed a Motion to Dismiss in each of the cases identified in the attached list. Each of the Motions was identical in content. Therefore, the Motions were all heard at a consolidated hearing and are each ruled upon in this Order. Each Defendant is represented by Mr. Joseph Maridon, Esq. and the State of Nevada is represented by Deputy District Attorney Jeffrey S. Rogan, Esq. The State of Nevada filed its Opposition to the Motions on September 13, 2021 and Defendants' Replies were filed September 15, 2021. The Motions were heard on September 23, 2021 and taken under advisement. The Court being fully apprised of the arguments of counsel and the pleadings in each case makes the following ruling.

FINDINGS OF FACT¹

On March 12, 2020, Governor Sisolak issued a Declaration of Emergency to facilitate the State's response to the COVID-19 pandemic. As of August 20, 2021, when the Motions were filed and continuing through the present, the CDC reports Clark County, Nevada as a high level of community transmission of COVID-19.

¹ "A judge or court may take judicial notice, whether requested or not." NRS 47.150(1). Several factual findings in this order are either generally known within the territorial jurisdiction of this court or are capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned, so the facts are not subject to reasonable dispute. NRS 47.130.

1 Both the Eighth Judicial District Court and the Las Vegas Justice Court are
2 provided occupancy of the Regional Justice Center by Clark County. However, the Eighth
3 Judicial District Court has been charged with the responsibility of the safety and security
4 of the entire facility.² On March 17, 2020, then Chief Justice Kristina Pickering of the
5 Supreme Court of Nevada and Chief Judge Linda Bell of the Eighth Judicial District Court
6 of Nevada issued joint Administrative Order 0009, 20-04, respectively, ordering the
7 temporary closure of the Las Vegas Justice Court traffic customer service counter located
8 on the first floor at the Regional Justice Center in response to the COVID-19 pandemic.
9 This same order provided, "To the extent possible, traffic-related matters should be
10 conducted by telephone, video, or other remote electronic means." On June 1, 2020, Chief
11 Justice Pickering and Chief Judge Bell further ordered, "Due to the limited capacity at the
12 Regional Justice Center as a result of social distancing, the Las Vegas Justice Court and
13 the Las Vegas Municipal Court traffic customer service counters located on the first floor
14 of the Regional Justice Center should remain closed until social distancing restrictions are
15 lifted. Traffic-related matters should be conducted by telephone, video, or other remote
16 electronic means."³ This order remains in effect for all traffic-related matters.

17 On August 24, 2021, Chief Justice James Hardesty of the Supreme Court of
18 Nevada and Chief Judge Melissa Saragosa of the Las Vegas Justice Court issued joint
19 Administrative Order 21-09 setting forth the Court's prioritization of the customer
20 services lobby for eviction-related matters which could lead to homelessness,
21 displacement, or shared-living environments and an increase in the risk of transmission of
22 COVID-19.

23 Additionally, Administrative Order 21-09 announced the March 2020 recall of all
24 bench warrants for traffic-related matters, the launch of a new online traffic citation
25 resolution system (Matterhorn), the legislature's recent passage of a bill reclassifying most
26 minor traffic violations as civil infractions rather than criminal offenses, the alternate
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28 ² This does not include the deputy marshals appointed and performing duties pursuant to NRS 4.353.
³ EJDC Administrative Order 20-17.

1 option of utilizing a written plea form in compliance with NRS 484A.615, and the Court's
2 plan to resume scheduling traffic trials in January 2022.

3 Each of the Defendants was issued a criminal citation. Each of the Defendants was
4 ordered to appear in the Las Vegas Justice Court during the period of time when the traffic
5 lobby was closed. Due to the inability of the Defendants to make the scheduled
6 appearance, the Court took no adverse action against the Defendants and did not issue a
7 bench warrant.

8 Due to technical delays in launching the online platform for traffic citation
9 resolution, the Court offered two options for Defendants with outstanding traffic citations.
10 First, a Defendant could choose to utilize a written plea form. This plea form simply
11 called for a Defendant to plead guilty, no contest, or not guilty to the charged offense and
12 did not purport to convey any negotiated settlement. However, it did contain a fine amount
13 that the Court would have sentenced the Defendant to if the Defendant was adjudicated
14 guilty of the offense. The plea form authorized a Defendant to attach written matters in
15 mitigation or extenuation to be considered with a no contest plea. For Defendants electing
16 to plead not guilty, the plea form presented the option to waive the right to a trial and
17 instead have the case adjudicated by the Court upon the written presentation of matters in
18 defense, statements of witnesses, and the citation. The original version of this plea form
19 did not clarify that a Defendant could still enter a not guilty plea and request a trial as the
20 Court's Administrative Order indicated the Court was not planning to resume scheduling
21 traffic trials until January 2022. However, the written plea form was updated to clarify
22 this option after the filing of the Defendants' Motions.

23 The Court's online traffic citation resolution system (Matterhorn) successfully
24 launched on November 2, 2021. Commensurate with this launch, the written plea form is
25 no longer being utilized by the Court.

26 CONCLUSIONS OF LAW

27 Defendants each face allegations of misdemeanor criminal offenses for violations
28 of minor traffic laws. NRS 484A.900(1). The Las Vegas Justice Court is a court of

1 limited jurisdiction as set forth by the legislature in NRS 4.370. "Justice courts have
2 jurisdiction of all misdemeanors and no other criminal offenses except as otherwise
3 provided by specific statute." NRS 4.370(3).

4 Traditional procedural rules for criminal citations found at NRS 171.177 – NRS
5 171.1779 do not apply to citations alleging minor traffic violations. NRS 171.1779.
6 Instead, procedural rules for citations for traffic laws are found in NRS Chapter 484A.
7 "Regardless of whether a citation is prepared electronically or by other means, if the form
8 of the citation includes information whose truthfulness is attested as required for a
9 complaint charging commission of the offense alleged in the citation to have been
10 committed, then the citation when filed with a court of competent jurisdiction shall be
11 deemed to be a lawful complaint for the purpose of prosecution pursuant to chapters 484A
12 To 484E, inclusive, of NRS." NRS 484A.620. Every citation issued must include notice
13 of the time and place when and where the person is required to appear in court. NRS
14 484A.630(1). It is unlawful for a person to fail to appear at the time and place set forth in
15 a notice to appear in court that is contained in a traffic citation, unless the person makes a
16 plea by using a system established by a court or traffic violations bureau in accordance
17 with NRS 484A.615 or makes such appearance by counsel. NRS 484A.670. The
18 consequence of failing to make the appearance is the issuance of a warrant. NRS
19 484A.670(3). Here, none of the 200 Defendants presenting identical Motions to Dismiss
20 have suffered the issuance of a warrant or any other consequence of a failure to appear at
21 the date and time noticed on the traffic citation due to the closure of the traffic lobby and
22 delays in launching the online traffic citation resolution system authorized in NRS
23 484A.615.

24 Although the time specified for a person to be required to appear in court must be
25 at least 5 days after the alleged violation, there is no provision of law that prohibits a
26 continuance of that date by the court or that requires the appearance date to be within a
27 specific time period. NRS 484A.630. The worldwide pandemic has caused significant
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1 disruption to previous norms of all kinds of industries, including the closure of business,
2 travel restrictions, supply chain delays, and government and judicial operations.

3 The Defendants collectively assert their due process rights have been violated
4 warranting dismissal of the charges against them. However, there is no clear description
5 of what fundamental liberty interest has been violated leaving the Court to surmise. First,
6 it appears the Defendants are arguing the Court's cancellation of *ex parte* "attorney
7 sessions" violates due process and second, the Defendants argue the Court's refusal to set
8 any type of hearing is a violation.

9 "Procedural due process imposes constraints on governmental decisions which
10 deprive individuals of 'liberty' or 'property' interests within the meaning of the Due
11 Process Clause of the Fifth or Fourteenth Amendment." *Mathews v. Eldridge*, 424 U.S.
12 319,332, 96 S. Ct. 893, 901 (1976). As "preventing and dealing with crime" is
13 predominantly the responsibility of the States, a defendant claiming that some aspect
14 of criminal procedure violates the Due Process Clause must show that the procedure
15 "offends some principle of justice so rooted in the traditions and conscience of our
16 people as to be ranked as fundamental" or "transgresses any recognized principle of
17 fundamental fairness in operation." *Medina v. California*, 505 U.S. 437, 446, 448
18 (1992) (quoting *Patterson v. New York*, 432 U.S. 197, 201 (1977)).

19 Furthermore, "A judge shall not initiate, permit, or consider *ex parte*
20 communications, or consider other communications made to the judge outside the
21 presence of the parties or their lawyers, concerning a pending or impending matter." Rule
22 2.9, Nevada Code of Judicial Conduct. In 2015, the Standing Committee on Judicial
23 Ethics issued Advisory Opinion #JE15-003 which concluded that "with one narrow
24 exception, the Code of Judicial Conduct does not allow a judge to participate in
25 substantive, *ex parte* settlement negotiations with misdemeanor traffic offenders." The
26 one narrow exception, was "where a district attorney prepares a specific matrix of
27 settlement guidelines and authorizes a judge in writing to relay such settlement offers to a
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1 defendant or its counsel *ex parte*, and provided the judge does not engage in any
2 negotiation or substantive discussion regarding the settlement terms.”

3 At the time of the previously scheduled “attorney sessions” a defense counsel
4 would meet with a hearing master of the court in a conference room where the hearing
5 master would convey a settlement offer pursuant to a matrix provided by the District
6 Attorney. However, the proceeding, which necessitated a plea, was not conducted on the
7 record. “Proceedings in each justice court must be recorded by using sound recording
8 equipment except where the board of county commissioners of the county in which the
9 court is located authorizes, and the justice of the peace appoints, a certified court reporter
10 to take down the proceedings in the same manner and with the same effect as in a district
11 court.” NRS 4.390.

12 Additionally, no representations were made that written consent of the Defendant
13 had been provided permitting counsel of the Defendant to enter a plea on the Defendant’s
14 behalf in the Defendant’s absence. See, NRS 178.388(3).

15 Here, the Defendants had no due process right to have an “attorney session”
16 conducted in a manner that was not authorized by the statutory guidelines of this state.

17 Furthermore, as highlighted in Administrative Order 21-09, the Court prioritized
18 use of resources, which included the hearing masters, for eviction-related matters which
19 could lead to homelessness, displacement, or shared-living environments and an increase
20 in the risk of transmission of COVID-19. Given the ramifications of an eviction action
21 versus a traffic matter, the Court had a compelling interest in allocating its limited
22 resources.

23 Defendants have not articulated any specific harm or prejudice that has been
24 suffered due to the closure of the traffic customer service windows. The clerks working at
25 the windows cannot perform judicial functions that include taking pleas, hearing trials, or
26 adjudicating cases.

27 While the Constitution does guarantee a Defendant the right to a speedy trial
28 through the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment,

1 the Defendants have failed to establish any such violation. "In addition to the general
2 concern that all accused persons be treated according to decent and fair procedures, there
3 is a societal interest in providing a speedy trial which exists separate from, and at time in
4 opposition to, the interests of the accused." *Barker v. Wingo*, 407 U.S. 514, 519 (1972).
5 The Supreme Court even noted that a difference between the right to speedy trial and the
6 accused's other constitutional rights is that deprivation of the right may work to the
7 accused's advantage. *Id.* at 521. Because the right to a speedy trial is vague and
8 undefined, the Court adopted a balancing test that weighs four specific factors: length of
9 delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the
10 defendant. *Id.* at 530.

11 Assuming *arguendo* that the Defendants' Motions serve as their assertion of their
12 right, the Court finds the length of delay is not presumptively prejudicial thus far, and
13 cannot fairly be reviewed until such time as a trial is held and the length of the delay has
14 been established. The Court's Administrative Order sets forth the various reasons for the
15 delay, including a pandemic, IT programming of the Court's case management system
16 (Odyssey) for compliance with findings from an audit by the Administrative Office of the
17 Courts, delays in IT programming of the Court's online traffic citation resolution system
18 (Matterhorn), and limited resources. Finally, the Defendants have not collectively nor
19 individually identified any prejudice caused by the delay.

20 Though the Defendants contend that they have been denied the right to confront
21 witnesses and the right to subpoena witnesses, that argument is either premature, as no
22 trial has been conducted as of yet, or seeking an advisory ruling on whether actual use of
23 the written plea form somehow denied these rights. Here, where none of the defendants
24 have opted to use the written plea form, this Court declines to rule on a non-existent
25 factual scenario in these cases.

26 The Court finds no due process violations. Defendants are free to utilize the online
27 traffic resolution platform that launched November 2, 2021.

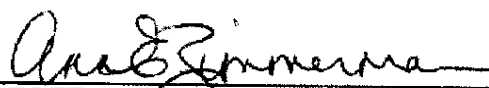
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ORDER

Defendants' Motions to Dismiss are each DENIED.

DATED this 17th day of November, 2021.



ANN ZIMMERMAN
Justice of the Peace