IN THE
SUPREME COURT OF FLORIDA

LUIS TORRES JIMENEZ,

Petitioner,

vs.

CASE NO. SC16-1976
L.T. Case Nos. 3D15-2303
3D15-2271

STATE OF FLORIDA, by and through the CITY OF AVENTURA, and the FLORIDA ATTORNEY GENERAL, PAMELA JO BONDI,

Respondents.
_____/

MOTION FOR REVIEW OF STAY ORDER AND DENIAL OF STAY PENDING SUPREME COURT REVIEW ENTERED BY LOWER TRIBUNAL

Petitioner hereby files this Motion, pursuant to Rule 9.310(f), Fla. R. App. P., for review of the trial court's order denying a stay pending this Court's consideration of this case, and as grounds therefor states:

1. The instant matter is under discretionary review from the Third District Court of Appeal with jurisdiction based upon: i) certification of great public importance of three questions; and ii) conflict with *City of Hollywood v. Arem*, 154 So. 3d 359 (Fla. 4th DCA 2014), *rev. denied*, 168 So. 3d 224 (Fla. 2015).

2. The instant matter involves red-light camera citations issued under §316.0083, Fla. Stat., and the role of a private agent of a municipality in reviewing

images and videos of alleged red-light infractions to determine if probable cause may exist to issue a citation, and then forwarding certain images for which probable cause is determined to the police for further review, while retaining and not forwarding to the police the other images as to which the agent determines that no probable cause exists, as well as the role of the private agent in performing other tasks required by the Florida Statutes.

3. The instant matter, like *Arem*, involves matters that have a wide impact on all red-light camera citations of the municipality involved herein and all other Florida municipalities using the same or similar protocol.

4. On October 16, 2015, while this case was appealed to the Third District, the trial court entered a Stay Order staying all red-light camera citations involving the City of Aventura, as well as all other municipalities in the Third District. Stay Order, October 16, 2015 (Leifman, J.) ("Stay Order") (Appendix ("App.") 3-5).

5. While *Arem* was under review in the Fourth District, the lower tribunal in the instant case, stayed all red-light citations pending the decision of the Fourth District. *See* Stay Order, App. 4.

6. However, notwithstanding the fact that the Third District certified three questions of great public importance to this Court and one of the judges certified conflict of this case with *Arem*, the lower court lifted the Stay Order and denied Petitioner Jimenez's requests to keep the stay in place pending review by this

Court. *See* Order Lifting Stay on Pending Red Light Camera Citations, November 7, 2016 ("Order Lifting Stay"), App. 1-2. It is this Order Lifting Stay for which Petitioner now seeks review, pursuant to Rule 9.310(f).

7. Petitioner notes that a motion to stay the issuance of the mandate was filed in the Third District, and that said motion was denied. In response to this Motion, Respondent claimed that staying the issuance of the mandate by the Third District was unnecessary because the trial court had the authority to continue the stay already in effect and was in a better position to address whether a stay of all red-light camera citations should continue. It argued:

> [Jimenez] posits that the mandate should be withheld so that the trial court's stay remains in place. Motion at 4, 13-15. What this argument ignores is that the trial court has concurrent jurisdiction over the stay it ordered. The trial court, after all, was free to modify its stay order during the pendency of the appeal, if it saw fit to do so. A stay of the mandate is *not necessary* to allow the trial court [Judge Leifman] to assess whether its own stay should remain in place upon remand. Given the trial court's better position to assess the needs for continuance of the stay, there is no need for this Court [the Third District] to make a decision of the mandate based on the concerns as to whether the trial court's stay should continue.

Aventura Response at 4-5 (emphasis added) [App. 69-70].

8. As detailed in the Order Lifting Stay, Judge Leifman considered the arguments presented, as well as memoranda, and sided with Aventura to lift the stay and deny *ore tenus* and written requests to continue the stay.[1] App. 1-2.

[1] At the hearing held on the matter, Petitioner requested that either the stay be continued or a new stay order entered [*see* Transcript October 21, 2016 at 44; App.

9. In so doing, the trial court completely reversed itself and contradicted the reasons previously stated in writing and verbally as to why all red-light camera citations were stayed while *Arem* was pending review in the Fourth District and while this case was pending review in the Third District.

10. In issuing the Stay Order (pending review of this case to the Third District), Judge Leifman noted that it would be inconsistent *not* to issue such a stay given that defendants receiving red-light camera citations had benefited by a stay Judge Leifman had previously granted while *Arem* was being reviewed by the Fourth District.[2] *See* Stay Order at 2; App. 4.

11. In issuing the Stay Order Judge Leifman reasoned that Aventura would suffer great harm if a stay was not entered because citations which may be found valid would be dismissed. Stay Order at 2; App. 4. Judge Leifman extended this reasoning to all other municipalities, as well, and extended the stay to "all red light camera citations in Miami-Dade [County]." Stay Order at 2; App. 4.

12. At the hearing held as to the issuance of the Stay Order, Judge Leifman reasoned that a stay would serve the public interest and further judicial economy:

124], and in both memoranda submitted by Petitioner, the same request was made in the "wherefore" clauses of both memoranda. App. 12; 23. Per the Order Lifting Stay [App. 1-2], the trial court not only lifted the Stay Order [App. 3-5], but denied requests to continue it or issue a new stay order pending review by this Court.

[2] While Judge Leifman notes this particular stay pending *Arem*, Petitioner cannot identify a written order to that effect. That stay may have been done administratively.

> THE COURT (Judge Leifman): It's not the dollars. The public has a right to have the same set of facts heard **consistently**. To do otherwise jeopardizes a foundation of our law, and so I'm concerned that if we are to do otherwise, we're going to have a very confused motorist population, and it's going to have an adverse effect on the administration of this circuit because we're going to have **enormous amounts of appeals** filed all over the place unnecessarily. Transcript, Oct. 13, 2015 at 26 (emphasis added); App. 50.[3]

13. In other words, money played no role in the decision to stay all citations pending review to the Third District, and Judge Leifman was concerned about "a very confused motorist population," and eliminating "enormous amounts of appeals" which should be unnecessary.

14. At the hearing recently held in lifting the stay, Judge Leifman, having previously stated that money played no role in entering the Stay Order in favor of the municipalities, made a detailed inquiry of the amount of money involved in deciding to lift the Stay Order, and concluded that a stay would harm the municipalities because they would lose money. *See* Transcript, Oct. 21, 2016 at 39; App. 119 ("THE COURT: So -- well, I can argue that, too. They are losing revenue.").

Judge Leifman later inquired about the amount of citations outstanding and being issued, along with the amount of money at stake. Judge Leifman was

[3] This transcript is attached to Petitioner's Supplemental Memorandum of Law, a copy of which is attached hereto. App. 25-65.

advised by his Clerk that 72,000 cases are backlogged, and 13,000 new cases are filed each month. *See* Transcript, Oct. 21, 2016 at 42-43; App. 122-123.

It was determined that the backlogged cases, and one year's worth of new cases would amount to approximately $62 million dollars that motorists would be forced to pay while this Court reviews the Third District's *Jimenez* decision, which this Court may decide to quash. App. 127.

15. It was discussed whether a reversal in this case would apply retroactively and whether, in that event, Judge Leifman could simply order the return of the approximate $62 million dollars affected defendants would pay in fines in the interim. App. 126-127. Importantly, Petitioner Jimenez does not, because he cannot in this action, seek a refund for other motorists – who are not parties here – that have already paid red-light tickets.

16. At the hearing, Petitioner contended and provided proof that the circuit court in and for Broward County, Florida, by way of analogy, was staying all foreclosure cases in Broward County involving a statute of limitations defense until this Court completed its review of *U.S. Bank N.A. v. Bartram*, 140 So. 3d 1007 (Fla. 5th DCA 2014). A transcript was read from a hearing continuing a foreclosure based upon *Bartram*, and Petitioner's counsel represented that, if necessary, an affidavit from the foreclosure division judge could be provided stating that all foreclosure cases involving the statute of limitations defense were

being stayed. Judge Leifman did not require the affidavit. Transcript, Oct. 21, 2016 at 34; App 114.

Judge Leifman stated that he wondered if this particular situation had been encountered, and Petitioner responded that what the circuit court was doing with *Bartram* issues was directly on point. Transcript, Oct. 21, 2016 at 48; App. 128.

17. Petitioner also contended, under a "goose and gander" analogy, that if the trial court felt a stay was necessary for the municipalities while this case was reviewed in the Third District, a stay was equally necessary while the case was being reviewed by this Court.[4] Transcript, Oct. 21, 2016 at 40-41; App. 120-121.

18. The trial court ultimately took the matter under advisement and allowed the parties to file memoranda of law.

19. Petitioner relies upon, and restates, the argument presented in Memorandum of Law and Supplemental Memorandum of Law, with attachments, provided to Judge Leifman in support of this Motion, copies of which are attached hereto. App. 6-13; 14-80.

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[4] Both sides have made arguments regarding the other side's standing to seek or object to the blanket stays that have been issued by Judge Leifman. Petitioner has contended, for example, that the City of Aventura had no standing to seek a stay pending review in the Third District for other municipalities. Likewise, Respondent will claim that Petitioner lacks standing to seek a stay for other defendants. However, as detailed above regarding the past procedures and events, Judge Leifman equally disregarded these arguments – staying all red light camera citations "due to a stay requested by defense counsel while *Arem* was pending," thereby backlogging thousands of cases; and, later, staying the same amount of citations, on behalf of all municipalities, at the request of Aventura.

20. Ultimately, Judge Leifman entered the Order Lifting Stay on November 7, 2016, the Order under review pursuant to Rule 9.130(f). App. 1-2.

ARGUMENT

The Court has the authority under Rule 9.310(f) to review orders entered by a lower tribunal regarding a stay. *See Reform Party of Fla. v. Black*, No. SC-05-1755, 2004 Fla. LEXIS 1536 (Fla. Sept. 13, 2004), allowing trial to go forward, while noting that motions for stay will be first determined by the trial court "with any review in this Court pursuant to Rule 9.310(f)." Petitioner, therefore, requests that the Court review the Order Lifting Stay, and reverse the decision of the trial court in that regard for the reasons below.[5]

Generally, where a party seeks review in this Court, a stay preserving the status quo is appropriate upon a showing of irreparable harm from the denial of a stay, and a likelihood of success. District courts have cited to four factors: 1) the likelihood that the Supreme Court will accept jurisdiction; 2) the likelihood of success on the merits; 3) the likelihood of harm if the stay is not granted; and 4) whether the harm would be irreparable. *State v. Miyasato*, 805 So. 2d 818, 825-26 (Fla. 2d DCA 2001). Petitioner will address these elements.

[5] By a separate motion, involving similar legal grounds, Petitioner has also filed a "Motion to Recall Mandate" upon the authority of *State v. Roberts*, 661 So. 2d 821 (Fla. 1995). The instant motion is, as stated above, based upon Rule 9.310(f) and *Reform Party*, where the trial court, having previously entered a stay pending review in district court of appeal, denied a motion seeking the same stay pending review to this Court.

I. This Court Has Two Equally Solid Bases on Which to Accept Jurisdiction.

The Third District certified three questions of great public importance to this Court. In addition, Petitioner is seeking this Court's jurisdiction on conflict grounds, the brief on which is being filed on November 15, 2016 in accordance with this Court's order. Petitioner adopts all arguments contained therein on this issue. In light of the significant numbers of motorists and local governments affected by the issues raised in this case, either discretionary ground for review provides this Court with compelling reasons to accept jurisdiction.

II. Petitioner Has a Reasonable Likelihood of Success, and the Harm to Respondent is Minimal.

Florida courts have concluded that the chance of success is a less significant consideration where there is a lack of harm to the other party. *See Miyasato*, 805 So. 2d at 826 (noting the difficulty to gauge likelihood of success, while finding that even a "small" chance of success was sufficient if the harm to the other side was minimal, and also finding a chance of success where the party seeking relief has arguments to present in good faith). The only potential harm to the Respondent and other municipalities due to a Stay Order would be a delay in receiving money assuming the citations are eventually deemed proper by this Court. As more fully discussed at p. 16, without a Stay Order motorists, however, would have to pay fines and have their driving records tarnished, with no guaranty of getting their money back or clearing up the matter with their insurance

companies, if this Court reverses this case. The minimal harm to the Respondents of maintaining a stay lessens Petitioner's need for showing likelihood of success on the merits.

Nonetheless, assuming this Court accepts jurisdiction over Petitioner's case, Petitioner intends to present good faith arguments for which he is likely to prevail. At the outset, this Court declined jurisdiction to review *City of Hollywood v. Arem*, 168 So. 3d 224 (Fla. 2015), creating at least an inference that *Arem* was correctly decided. Although Petitioner is not obligated to submit the equivalent of an initial brief on the merits, he will summarize the good faith argument he expects to present to this Court.

Petitioner intends to show, in part, that the Third District's failure to conduct an adequate analysis of the key statutory provision at issue in this case, § 316.0083(1)(a), Fla. Stat., which permits a municipality to outsource "a review of information of a traffic infraction detector." The Third District read this phrase loosely, permitting the City to outsource a "review" that entailed more than just the private agent viewing the camera images to make sure they are clear and usable, but instead allowing the agent to consider a set of contractual standards the City selected for what constitutes a red-light infraction within its jurisdiction and making preliminary assessments against those standards as to whether the images depict a violation. In contrast, the Fourth District concluded in *Arem* that

§ 316.0083 had to be strictly construed against municipal authority, based upon statements by this Court in *Masone v. City of Aventura*, 147 So. 2d 492 (Fla. 2014):

> As the supreme court recognized in *Masone v. City of Aventura*, 147 So. 3d 492, 2014 Fla. LEXIS 1885, 39 Fla. L. Weekly S406 (Fla. June 12, 2014), the history of Florida traffic law supports the conclusion that these statutes should be strictly construed to effectuate their purpose, and any attempt by a local government to circumvent chapter 316 either by ordinance or contract is invalid unless expressly authorized by the legislature.

Arem, 154 So. 3d at 363 (emphasis added).

The Fourth District, having considered principles of statutory construction, also recognized the need to strictly construe the provisions of Chapter 316 to achieve its uniformity purpose:

> As a result of concerns about interference by municipalities in enacting and enforcing state traffic laws, the legislature adopted two sections which expressly limit the power of a municipality to legislate over traffic matters — sections 316.002 and 316.007, Florida Statutes — so as "to create a uniform, statewide traffic control system." *State v. Smith*, 584 So. 2d 145, 147 (Fla. 2d DCA 1991). From that, chapter 316 was titled as the "Florida Uniform Traffic Control Law." § 316.001, Fla. Stat. (2013) (italics added). The legislature created chapter 316 to address two abuses arising from the municipal court system of handling traffic infractions — the "history of inconsistency of penalties imposed" by the municipal courts and the inconsistency of traffic laws in municipalities across the state. *Miller v. City of Indian Harbour Beach*, 453 So. 2d 107, 111-12 (Fla. 5th DCA 1984).

Arem, 154 So. 3d at 362-63 (emphasis added).

At issue in both *Arem* and the instant case was the key phrase from § 316.0083(1)(a):

> This paragraph does not prohibit a review of information from a traffic infraction detector by an authorized employee or agent of the department, a county, or a municipality before issuance of the traffic citation by the traffic infraction enforcement officer.

Consistent with this Court and the Fourth District's understanding that Chapter 316, and this specific provision therein, must be strictly construed, Petitioner has a significant chance of succeeding on his argument that the Legislature's authorization of an agent to review information from a traffic infraction detector does not expressly authorize that agent to make decisions as to which images to forward to the police for prosecution when such decisions entail analysis and interpretation akin to finding the existence or lack of probable cause.

In contrast, the Third District's opinion in this case is devoid of substantial statutory construction or analysis, rendering its contrary conclusion inadequately supported and unlikely to prevail before this Court.

Petitioner anticipates that once this Court performs the appropriate statutory analysis and construction of § 316.0083(1)(a), it will reach the results consistent with the principles announced in its decision in *Masone* and which guided the Fourth District in reaching its conclusions in *Arem*. For this reason, alone, Petitioner has a likelihood of success necessary to obtain a stay in light of the weighing of the potential harms to each side.

III. Tens of Thousands of Motorists will Suffer Severe Prejudice and Irreparable Harm Absent a Stay.

Judge Leifman's primary concern when entering a stay of all red-light camera cases throughout Miami-Dade County after ruling on the merits of Mr. Jimenez's case was the harm on the driving public and the tremendous burden on the administration of the courts. As Judge Leifman astutely put it at the initial hearing when the original Stay Order was argued:

> It's not the dollars. The public has a right to have the same set of facts heard **consistently**. To do otherwise jeopardizes a foundation of our law, and so I'm concerned that if we are to do otherwise, we're going to have a confused motorist population, and it's going to have an adverse effect on the administration of this circuit because we're going to have **enormous amounts of appeals** filed all over the place unnecessarily. Transcript, Oct. 13, 2015 at 26 (emphasis added).

The concern of public confusion and efficient operation of the courts has not disappeared and, indeed, is all the more present given the conflicting decisions of the Fourth and Third Districts. Succinctly, if Judge Leifman believed that "we're going to have a very confused motorist population," after his initial ruling in this case while on appeal to the Third District, the motorist population must now be more confused at this point, and will continue as such, until this Court definitively resolves the tension between *Arem* and this case.

The likelihood of great harm originally found by Judge Leifman if a stay was not granted while this case was on appeal to the Third District is far greater under the present circumstances. Nothing has changed. If the stay is not continued or entered anew, the public's right to have the same set of facts heard, and

determined, "consistently" will not apply. That which jeopardizes the foundation of our law, and the need for consistency, will be allowed, instead of prevented. Thousands of traffic court trials, and protective appeals during the pendency of this case, all may be completely unnecessary, and this potential burden on the judicial system can be avoided by extending the stay until this case has been resolved.

In addition, not continuing the stay creates an immediate harm to thousands of individual motorists, who will face the real cost of being forced to undertake the time and expense of trials and appeals. Each defendant adjudicated guilty would have to file his or her own separate appeal to the Third District, then to the Florida Supreme Court, incurring filing fees and attorney's fees. Moreover, as pointed out during the hearing on lifting the stay, the results of a red-light camera violation are reported, and sometimes insurance companies may raise premiums because of an adjudication of guilt.

Respondents, at the hearing before Judge Leifman, incorrectly implied that if the Court did reverse *Jimenez*, Judge Leifman could simply order the return of all the money paid by defendants that were adjudicated guilty, and enter orders to correct their driving records. However, this is not true. The only parties to the instant action are Petitioner Jimenez and Respondent City of Aventura. Thus, while other motorists may bring their own individual actions, or join together in a class, should this Court quash the Third District's decision, and seek a refund of

fines paid for unlawfully issued red-light tickets, Judge Liefman would be without authority to order a refund of monies to parties not presently before his court.

Finally, Judge Leifman's original stay order was also premised in the need to afford "fairness to all other municipalities," other than Aventura, because "there are currently hundreds of thousands of red light camera citations backlogged due to a stay requested by defense counsel while *Arem* was pending." [App. 4] In other words, what was good for the goose is good for the gander, a "principle" that is well-established. *See, e.g., Fanelli v. HSBC Bank USA*, 170 So. 3d 72 (Fla. 4th DCA 2015). Fairness also dictates that this consistency principle be extended to the tens of thousands of motorists, other than Mr. Jimenez, who will be forced to litigate their cases and face adverse adjudications even though the issue of the lawfulness of the red-light camera program under which they are being prosecuted is pending discretionary review before this Court. The rationale for implementing a blanket stay pending review in the district courts of appeal (*Arem* and this case) is equally apropos to a stay pending review before this Court.[6]

The reasons that Judge Leifman originally found to warrant the stay of hundreds of thousands of cases pending review by the Third District do not vanish

[6] Undersigned counsel would point out that he is counsel in the matter involving the *Bartram* defense (*Bank of N.Y. Mellon v. Barnett*, CACE 15002766), in which the circuit court in Broward County has utilized a similar rationale when it stayed all foreclosure cases involving the statute of limitations pending review in this Court.

into thin air while matters of great public importance, certified as such, are pending ultimate review by this Court. To the contrary, those reasons exist more forcefully. The rationales for a stay that originally persuaded Judge Leifman are entirely correct, and there is no reason to abandon that prudent policy at this time.

IV. The Questions Certified to be of Great Public Importance Would Lose Their Great Importance Unless the Mandate is Recalled.

The Third District certified the questions it did to be of great public importance, at least in part, if not completely, because the questions affect tens of thousands of people statewide, all similarly situated, and all depending upon the resolution of these questions.

If the previously entered Stay Order remains lifted, the door will open for the many municipalities in Miami-Dade County to gear up and proceed with the litigation in the thousands of red light camera cases that would be affected by this Court's ultimate determination of the certified questions of great public importance.

If they do so, the county court will be bound to determine all of those cases without the benefit of the resolution, by this Court, of the questions certified to be of great public importance.

The resolution of these cases will require a significant expenditure of resources by the private citizen drivers, the local governments, and the county court system. Additionally, while this case is pending review before the Florida

Supreme Court many, if not all, of the unsuccessful parties in the hundreds of thousands of red light camera cases are likely to seek appellate review of those decisions, adding to the burden on the court system.

Should the Florida Supreme Court, however, exercise its discretionary review and determine that the local government's red-light-camera traffic programs are unlawful, all of that effort will have been for naught. Indeed, if the Florida Supreme Court were to quash this Court's decision in whole or in part, the task of undoing the convictions and payments of unlawfully issued fines that occur in the meantime might be monumental. All of that potential waste could be avoided through the expediency of a stay of the mandate pending the Florida Supreme Court's review.

Withdrawal of the mandate will not bring harm to any of the local governments, Jimenez, or the many other drivers with pending cases. Instead, it will merely maintain the status quo for all concerned parties. *See Perez v. Perez*, 769 So. 2d 389, 391 n.4 (Fla. 3d DCA 1999) (purpose of issuing a stay under Rule 9.310 is to "preserv[e] the status quo during an appellate proceeding"). Considering that it was the City which originally requested the stay pending the resolution of the appellate proceedings, it would seem to have already conceded that legal certainty outweighs any benefit associated with prosecuting its red light camera tickets. The jurisdictional briefing schedule under the appellate rules is

tight, such that the parties will learn in short order whether the Florida Supreme Court has decided to address the certified questions of great public importance and/or resolve the *Jimenez* and *Arem* conflict. If so, all parties will benefit and not be unduly harmed by awaiting the final resolution of these questions governing the lawfulness of the local governments' red light camera traffic programs.

V. There Has Been, and Continues to be, an Overriding Need to Preserve the Status Quo.

By virtue of the Stay Order, and its recital of a prior stay, there has been an overriding concern to preserve the status quo – to allow the appellate courts to rule before making decisions affecting the rights of thousands and thousands of people. This overriding concern to preserve the status quo remains intact, and is not lessened in any fashion, because the matter is now being considered for review by the Court. If anything, the overriding concern to preserve the status quo is heightened, because the Court's decision will be the final word.

CONCLUSION

The Court has the authority under Rule 9.130(f) to consider this matter. There is a detailed history of a stay in the lower court, and the appellate court has the authority to review such orders. The same practical concerns that animated the trial court's initial decision to stay all Miami-Dade County cases pending review on appeal remain in effect now that the Third District has certified the case to this Court as a matter of great public importance.

Petitioner has met the requirements to continue the Stay Order previously entered for all the reasons advanced herein.

WHEREFORE, Petitioner requests the entry of an Order setting aside the Order Lifting Stay entered by the trial court, and requiring continuation of the Stay Order previously entered by the trial court pending review by this Court, along with any other relief deemed just and proper.

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via e-portal and/or e-mail service on this 15th day of November, 2016 upon: **Edward G. Guedes**, Weiss Serota Helfman Cole & Boniske, P.L., 2525 Ponce de Leon Blvd., Suite 700, Coral Gables, Florida 33134, eguedes@wsh-law.com, szavala@wsh-law.com; **Samuel I. Zeskind**, Weiss Serota Helfman Cole & Boniske, P.L., 2525 Ponce de Leon Blvd., Suite 700, Coral Gables, Florida 33134, szeskind@wsh-law.com, ozuniga@wsh-law.com; **Robert Dietz**, Office of the Attorney General, 501 E. Kennedy Blvd., Suite 1100, Tampa, Florida 33134, Robert.Dietz@myfloridalegal.com.

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