

**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.

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APPENDIX TO PETITIONER'S MOTION TO REVIEW STAY ORDER AND  
DENIAL OF STAY PENDING SUPREME COURT REVIEW ENTERED BY  
LOWER TRIBUNAL

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I HEREBY CERTIFY that a true and correct copy of the foregoing was served via e-portal and/or e-mail service on this 15<sup>th</sup> 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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IN THE COUNTY COURT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

TRAFFIC DIVISION

CASE NO.: A369OZE

STATE OF FLORIDA, by and  
through the CITY OF AVENTURA,  
Plaintiff/Appellant,

JUDGE STEVE LEIFMAN

vs.

LUIS TORRES JIMENEZ,  
Defendant/Appellee

---

**ORDER LIFTING STAY ON PENDING RED LIGHT CAMERA CITATIONS**

THIS CAUSE is before this Court on the City of Aventura's Motion to Lift the Stay entered on October 16, 2015, of all pending red light camera citations in Miami-Dade County until the Third District Court of Appeal resolved the appeal of the above styled case.

A hearing was held on the motion on October 21, 2016, where counsel for each party argued their positions regarding the lifting of the stay. At the time of the hearing, although the Third District Court issued a written opinion on July 27, 2016, no Mandate had yet been issued as motions were file in the District Court for rehearing and to stay the issuance of the Mandate. This Court requested that counsel for each party submit a written memorandum of law within two weeks on issues raised during the hearing. This Court received and considered the memorandum of law filed by each of the parties.

On October 27, 2016, the Third District Court denied the motion to stay the issuance of the Mandate and it was issued. The opinion of the Third District Court is now final. This Court's October 16, 2015, Stay Order specified that it was to be in effect while this case was on appeal in the Third District Court. Therefore, by its terms, the stay entered by this Court has now expired.

This Court hereby lifts the stay on all pending City of Aventura's red light camera citations. These cases may now proceed to trial based on the finding of the Third District Court of Appeal that the procedures utilized are not in violation of the statutes. Additionally, the stay of all other red light camera citations issued by any other Miami-Dade County municipality is lifted, but those citations by may not proceed to trial until a hearing is held before this Court at which a showing is made that the procedures used are, at a minimum, the same as those approved by the Third District Court of Appeal.

**WHEREFORE**, it is **ORDER AND ADJUDGED** that the Stay of all pending red light camera citations previously order by this Court is hereby lifted subject to the above terms. .

**DONE AND ORDERED** at Miami, Miami-Dade County, Florida this 7<sup>th</sup> day of November, 2016.



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STEVE LEIFMAN  
COUNTY COURT JUDGE

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IN THE COUNTY COURT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

TRAFFIC DIVISION

CASE NO.: A369OZE

STATE OF FLORIDA, by and  
through the CITY OF AVENTURA,  
Plaintiff/Appellant,

JUDGE STEVEN LEIFMAN

vs.

LUIS TORRES JIMENEZ,  
Defendant/Appellee

**ORDER GRANTING THE CITY OF AVENTURA'S MOTION FOR STAY,  
EXTENDING STAY TO PENDING RED LIGHT CAMERA CITATIONS PENDING  
REVIEW BY THE THIRD DISTRICT COURT OF APPEAL, AND DENYING  
DEFENDANT'S MOTION TO STRIKE CITY'S MOTION**

THIS CAUSE came on to be heard on the City of Aventura's Motion for recognition of automatic stay and extension of the stay to other proceedings and the Defendant's Motion to Strike the City's motion. The Court having reviewed both motions, having heard argument from counsel for the Defendant, Counsel for the City, and the Attorney General on behalf of the State, and being otherwise fully advised in the premises finds:

The City requested the entry of an order recognizing the automatic stay provision under Fla. R. App. P. 9.310(b)(2) imposed by the appeal of this Court's Order Dismissing the red light citation in this case and requested the extension of the stay to all red light camera proceedings in Miami-Dade. The Defendant moved to strike the City's motion arguing the automatic stay provision is inapplicable in this case because the District Court of Appeal's jurisdiction over final orders from the county court that certify questions of great public importance is discretionary and not a matter of right.

Because the dismissal of the citation in this matter is appealable as a matter of right by both the City and the State of Florida, the automatic stay provision is applicable. However, even if the Defendant is correct, this Court under Fla. R. App. P. 9.310(a) has discretion to grant a stay of the order dismissing Defendant's case as it is a final order appealable by right. In ruling on whether to grant the stay this Court must consider the likelihood of success on the merits and the likelihood of harm should the stay not be granted. *Sepich v. Papadopoulos*, 145 So. 3d 156, 157 n. 6 (Fla. 3d DCA 2014). The City and State believe, based on the finds made on the evidence presented at the hearing, there is a likelihood of success. This Court found it necessary to certify questions of great public importance to the Third District Court of Appeal to resolve issues raised by evidence not presented or considered in *Arem*.<sup>1</sup> If no stay is granted, there is a great likelihood of great harm to City as all of Aventura's citations which may be found valid would have been dismissed. Therefore, this Court grants a stay as to this case and all pending City of Aventura's red light camera citations.

Both the City and the Attorney General also request the stay be extended to all other red light camera citations in Miami-Dade. As the Associate Administrative Judge of the County Court Criminal Division appointed by the Chief Judge of the Eleventh Judicial Circuit, this Court has administrative supervision over all traffic court matters. Countywide there are currently hundreds of thousands of red light camera citations backlogged due to a stay requested by defense counsel while *Arem* was pending. In fairness to all other municipalities with red light camera programs, this Court finds no reason why the stay now granted in this case should not be consistently applied. Additionally, the drivers impacted by receiving red light camera citations must not be treated differently depending on where the citation was issued. Based on the foregoing, this Court further orders that the dismissal of all red light camera citations per this

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<sup>1</sup> *Hollywood v. Arem*, 154 So. 3d 359 (Fla. 4th DCA 2014)

Court's Order of September 25, 2015 which use the process *Arem* found objectionable, that is where the contract allows the vender to review the red light camera data and issue the notice of violation and the citation, shall be stayed pending the resolution of this case in the Third District Court of Appeal.

**WHEREFORE**, it is **ORDER AND ADJUDGED** that the City of Aventura's Motion to for stay and extension of stay to pending red light camera citations is **GRANTED** and the Defendant's Motion to strike is **DENIED**.

**DONE AND ORDERED** at Miami, Miami-Dade County, Florida this 16<sup>th</sup> day of October, 2015.



STEVE LEIFMAN  
COUNTY COURT JUDGE

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IN THE COUNTY OF COURT OF THE  
11<sup>th</sup> JUDICIAL CIRCUIT, IN AND  
FOR DADE COUNTY, FLORIDA

STATE OF FLORIDA,  
Plaintiff,

CASE NO.: A369OZE

vs.

JUDGE: LEIFMAN

LUIS TORRES JIMENEZ,  
Defendant.

**DEFENDANT'S MEMORANDUM OF LAW REGARDING CITY'S**  
**MOTION TO LIFT STAY**

Defendant hereby files this Memorandum, and states:

INTRODUCTION

During the hearing held Friday, October 21, 2016, various issues were addressed by the parties which need clarification by way of this Memorandum. The issues to be discussed are: i) whether the stay entered by Judge Leifman has expired where a mandate has not been issued (answer is “no”); ii) whether the Florida Supreme Court’s ultimate ruling in *Jimenez* will have retroactive effect so that Judge Leifman can somehow correct thousands of rulings after-the-fact, if the Third District’s decision is overturned (answer is “no”); and iii) issues regarding prejudice if a stay is not continued (each Defendant would have to appeal to the Third District, then the Florida Supreme Court, this Court cannot refund, and no guaranty that any class action lawsuit will fully redress each Defendant, etc.).

I. The Stay Order has not expired, because a Mandate has not issued.

Rule 9.130(e) is clear – a stay currently in place remains in place until the mandate issues:

**(e) Duration.** A stay entered by a lower tribunal shall remain in effect during the pendency of all review proceedings in Florida courts until a mandate issues, or unless otherwise modified or vacated.

During the hearing, Judge Leifman expressed concern, and properly so, that the trial court did not have the mandate in hand. Since the mandate has not been issued, the Stay Order in question remains in effect, as a matter of law.

During the pendency of the filing of this Memorandum, the Third District issue the mandate, as stated during the hearing, Defendant would raise, as raised during the hearing, its *ore tenus* motion to continue the stay or issue a new stay pending review of *Jimenez* during review by the Florida Supreme Court. Obviously, if the Florida Supreme Court declines to accept review, Defendant's motion, on this basis, would no longer stand.

II. If the Florida Supreme Court reverses the Third District, that Decision would not be Retroactive, and Judge Leifman could not rectify damages.

While Judge Leifman stated that the Florida Supreme Court could find that §316.0083 is “unconstitutional,” Defendant Jimenez has never once contended that the statute is “unconstitutional.” Defendant merely contends, as has always been contended, the statute does not permit ATS, the private out-of-state agent, to perform various acts. Defendant merely argues that this is a matter of statutory

interpretation. However, Defendant never has argued that the statute is “unconstitutional.”

Defendant argues that the word “review” in 316.0083 does not allow ATS to make any decisions regarding what is found in the images recorded by a red light camera. In making this argument, Defendant does not argue the statute is “unconstitutional.” Defendant further argues that the statute requires a TIEO to issue citations and perform various acts, including transmission of the UTC to the court (for example). Similarly, in making this argument, Defendant does not argue that the statute is “unconstitutional.”

“Florida courts rarely [find] a change in decisional law to require retroactive application.” *See Perez v. State*, 120 So. 3d 49 (Fla. 4<sup>th</sup> DCA 2013). As stated in *Perez*, Florida courts will conduct a retroactivity analysis under *Witt v. State*, 387 So. 2d 922 (Fla. 1980). Under *Witt*, a change in decisional law (i.e. *Jimenez* is reversed by the Florida Supreme Court), will not be applied unless the change in law: 1) emanates from U.S. or Florida Supreme Court; 2) is constitutional in nature; and 3) constitutes a significant development of fundamental significance.

While the Florida Supreme Court’s decision (assuming a reversal of *Jimenez*) will surely “emanate” from the Florida Supreme Court, such a decision will not be constitutional in nature (because constitutionality is not even argued)

and does not constitute a significant development of fundamental significance for similar reasons.

In *Florida Elks Children Hosp. v. Stanley*, 610 So. 2d 538 (Fla. 5<sup>th</sup> DCA 1992), the court found that a decision by the Florida Supreme Court [*Shriner's Hospital for Crippled Children v. Zrillac*, 563 So. 2d 64 (Fla. 1990)] did have retroactive effect, because the Florida Supreme Court in *Zrillac*, in re-interpreting a statute, found, as follows i) the statute at issue was unconstitutional; ii) the legislature never had the power to enact such a statute; and iii, because the legislature never had such authority, the statute was void at its inception.

*Stanley* is inapplicable, because Defendant has never claimed that §316.0083 or any portion thereof is unconstitutional, and Defendant has never claimed that the legislature lacked the power to enact §316.0083. To the contrary, Defendant has contended that §316.0083 must be strictly construed, as it was in *Arem* by the Fourth District, and that the statute did not permit ATS to perform various acts that are at issue.

Thus, the Florida Supreme Court's decision, if *Jimenez* is reversed, will not be applied retroactively.

The City, at the hearing, implied that if the Florida Supreme 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.

III. All Defendants would be severely prejudiced if the Stay was lifted.

When the Stay Order was entered, this Court cited, as prejudice to the City and other municipalities, that the likelihood of great harm was that “all of Aventura’s citations which may be found valid (by the Third District) would have been dismissed.” This harm could have been rectified in one appeal – all dismissals could have joined in the *Jimenez* appeal, with no extra filing fees or attorney’s fees, and the harm would have been alleviated.

However, the likelihood of great harm is similar (“all of Aventura’s citations which may be found [in]valid (by the Florida Supreme Court) would have been [adjudicated guilty with a fine imposed]”), but far greater. Each defendant would have to file his or her own separate appeal first to the Third District, then to the Florida Supreme Court, incurring filing fees and attorney’s fees.

Further, as pointed out during the hearing, the results of a red light camera violation are reported, and sometimes insurance companies will raise premiums because of an adjudication of guilt.

Additionally, as noted above, because the Florida Supreme Court’s ultimate decision in *Jimenez*, if reversed, is not retroactive, this Court cannot direct that the money be paid back to the defendants, nor can the adjudications of guilt be erased.



Finally, there was mention of a class action lawsuit. However, there is no guaranty that just because the Florida Supreme Court reverses, that the class action lawsuit will automatically be successful. Even if the class action is “successful,” there is no guaranty that 100% of the money will actually be returned to each defendant. Attorney’s fees will have to be paid. The adjudications will probably not be erased, as well.

A. If the harm to Aventura and other municipalities was sufficient to warrant a Stay Order pending review in the Third District, the harm to all defendants, which is far greater, is more than sufficient to warrant continuation of the Stay Order or entry of a new Stay Order pending review to the Florida Supreme Court.

As detailed in the Stay Order, “hundreds of thousands of red light camera citations” were stayed while *Arem* was reviewed, and a similarly vast amount of citations were stayed while *Jimenez* was reviewed in the Third District. No logical reason exists, and none is presented by Aventura to stop the stay of citations while the matter is ultimately reviewed by the Florida Supreme Court.

If the citations have been stayed pending interim review by the appellate courts, the stay must continue pending ultimate and final review by the Florida Supreme Court. Further, as pointed out above, the harm to defendants outweighs the harm to the cities that necessitated the stay in the first instance. A city can be made completely whole by a blanket appeal. Unless each defendant separately

appeals, at two levels, they will never be made whole – even if the Florida Supreme Court ultimately reverses *Jimenez*.

### CONCLUSION

The issues discussed and addressed in *Jimenez* were: 1) whether ATS was permitted to review images and then decide which images to forward to the police; 2) whether ATS was permitted to mail a UTC; and 3) whether ATS was permitted to transmit a UTC to the court. It is believed that many red light camera programs currently in place no longer have these features in that ATS has been eliminated from the reviewing process altogether.

However, any red light camera citations that involve a combination or any of the three issues to be ultimately decided by the Florida Supreme Court should be stayed for the very reason that they were stayed in the first place.

WHEREFORE Defendant requests that the Stay Order be continued, or that a new Stay Order be entered and for any other relief deemed just and proper.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was delivered by email to Robert Dietz, 501 E. Kennedy Blvd, Suite 1100, Tampa, FL 33602 to [robert.dietz@myfloridalegal.com](mailto:robert.dietz@myfloridalegal.com); Edward Guedes, Matthew Mandel and Samuel Zeskind 2525 Ponce de Leon Boulevard, Suite 700, Coral Gables, FL 33334 to [eguedes@wsh-law.com](mailto:eguedes@wsh-law.com); [szavala@wsh-law.com](mailto:szavala@wsh-law.com);

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[ozuniga@wsh-law.com](mailto:ozuniga@wsh-law.com) on this 25<sup>th</sup> day of October, 2016.

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IN THE COUNTY OF COURT OF THE  
11<sup>th</sup> JUDICIAL CIRCUIT, IN AND  
FOR DADE COUNTY, FLORIDA

STATE OF FLORIDA,  
Plaintiff,

CASE NO.: A369OZE

vs.

JUDGE: LEIFMAN

LUIS TORRES JIMENEZ,  
Defendant.

**DEFENDANT’S SUPPLEMENTAL MEMORANDUM OF LAW  
OPPOSING CITY’S MOTION TO LIFT STAY AND IN SUPPORT OF  
DEFENDANT’S MOTION TO CONTINUE STAY ORDER OR ENTER A  
NEW STAY ORDER**

Defendant hereby files this Supplement Memorandum, and states:

INTRODUCTION

Aventura argues that since the Mandate in *Jimenez* was issued yesterday, the Stay Order of Judge Leifman must be terminated, Judge Leifman has no authority whatsoever to continue the stay or enter a new stay . . . period, end of story. This position is simply incorrect, and completely contrary to the plain language in Rule 9.310(e), Fla. R. App. P., quoted in Defendant’s initial Memorandum:

**(e) Duration.** A stay entered by a lower tribunal shall remain in effect during the pendency of *all review proceedings in Florida courts* until a mandate issues, or unless otherwise modified or vacated.

Clearly, “**all** review proceedings in Florida courts” means just that – all review proceedings, not just proceedings in the district courts of appeal.

As detailed below, Aventura has successfully argued, and now must concede that Judge Leifman has the authority and is in a “better position” to decide to continue his stay order, even if the mandate has been issued.

The Third District certified questions of great public importance to the Florida Supreme Court which will, while not guaranteed, more likely than not, take jurisdiction and answer these questions and/or resolve a conflict between *Arem*. The notice to invoke jurisdiction will be filed with this Supplemental Memo.

Additionally, whatever Aventura wishes to argue about other proceedings is completely irrelevant and ridiculous. What has been argued in this case, and what Judge Leifman has previously ruled is thing that matters. Here, the undersigned, Louis Arslanian, expressly argued that Judge Leifman has no authority to issue a blanket stay (See T. at 18 – Judge Leifman has “no authority” to enter a blanket stay), and Judge Leifman expressly rejected this argument, finding that he did have this authority, and ultimately did enter a blanket stay in favor of Aventura and all other municipalities, stating, transcript attached:

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**<sup>1</sup> filed all over the place unnecessarily. T. at 26.

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<sup>1</sup> Appeals either by the municipalities, or the individual defendants (“the very confused motorist population”).

Respectfully, if Judge Leifman, applies what he said at the hearing on Aventura's (and all other municipalities) motion to stay pending review of *Jimenez* before the Third District, "consistently," as well Judge Leifman should, there is no logical or possible reason to either deny Defendants' request for the same blanket Stay or merely continue or enter a new Stay Order, for these exact same reasons, pending review of the same case before the Florida Supreme Court!

This statement was, of course, the reasoning why Judge Leifman found a blanket stay was required "in fairness to all other municipalities," 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.

What is good for the goose is good for the gander. Judge Leifman has been consistent in this respect. Respectfully, this must stand. What was good for the goose and the gander remains the same. The Court cannot now, when ultimate review and resolution is forthcoming, choose the gander over the goose – especially in light of the policy statement made by the Court as quoted above.

Respectfully, the policy statement quoted above, by Judge Leifman, would be rendered hollow and meaningless if the Court refuses to adhere to this policy statement pending review in the Florida Supreme Court. Obviously, in the eyes of the Court, the Third District could either agree or disagree with Judge Leifman's assessment of *Jimenez* and *Arem*. However, equally obvious is the fact that the

Florida Supreme Court may either agree or disagree with the assessment by Judge Leifman and the Third District, and could side with the Fourth District.

The “confused motorist population,” in the meantime, will continue to be as such – “confused” – perhaps more so, at this point.

Finally, while Aventura cites to the decision of the Third District to deny withholding the issuance of the mandate, Aventura overlooks one key item – only this Court, and only Judge Leifman, has jurisdiction over the “hundreds of thousands of red light camera citations backlogged due to a stay.” Aventura recognized and admitted this to the Third District stating, response attached,:

He 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 5.

Aventura’s position to the Third District, successfully advanced to which a judicial estoppel applies, cannot be more clear – 1) Judge Leifman has the jurisdiction to continue his stay order; 2) Judge Leifman is in a better position to do so regardless of what the Third District does in issuing the mandate; and, most importantly, 3) even if the mandate issues, Judge Leifman has the authority and the

jurisdiction to continue his stay (“A stay of the mandate is *not necessary* to allow the trial court to assess whether its own stay should remain in place”).

Do not believe the undersigned – simply, believe Aventura and its counsel.

## ARGUMENT

### I. DESPITE THE ISSUANCE OF THE MANDATE, JUDGE LEIFMAN HAS JURISDICTION AND AUTHORITY TO CONTINUE HIS STAY ORDER.

Again, do not believe the undersigned on this matter – simply believe Aventura and its counsel. Aventura is completely correct that the trial court has jurisdiction to issue, continue or modify a stay. See Rule 9.310(a), Fla. R. App. P., providing that, as articulately written by Aventura’s counsel in the Third District, the trial court “shall have continuing jurisdiction, in its discretion, to grant, modify, or deny such relief (a stay).”

Aventura and its counsel expressly, based on the Rules, argued that withholding the mandate was unnecessary, because Judge Leifman has the authority; and, is in a “better position” to decide “whether the trial court’s stay should continue.”

A. Only Judge Leifman and the trial court have jurisdiction over the hundreds of thousands of cases backlogged by the Stay Order – neither the Third District or the Florida Supreme Court possesses such jurisdiction.

Inherent in Aventura’s argument is the fact that only Judge Leifman and the trial court have jurisdiction over the hundreds of thousands of other similar cases backlogged by the Stay Order. The Third District had, and the Florida Supreme



Court will have jurisdiction over one case (*Jimenez*) which will affect the hundreds of thousands of other cases.

B. Aventura, having been successful in contending that withholding the mandate is unnecessary because Judge Leifman has the authority continue the stay he entered, is judicially estopped to contend otherwise to prevent a “mockery of justice.”

To prevent “a mockery of justice,” courts will not prevent a party from successfully arguing a position, then taking a contrary position after the success under the doctrine of judicial estoppel. *See Brown & Brown, Inc. v. Sch. Bd.*, 97 So. 3d 918 (Fla. 5<sup>th</sup> DCA 2012). Here, Aventura successfully maintained that the Third District did not have to withhold the mandate, because Judge Leifman had the authority and was in a “better position” to decide whether or not to continue his stay order.

After the mandate has issued, Aventura, having won in obtaining the mandate, in a complete “mockery of justice,” now claims that Judge Leifman has no authority to do anything except terminate the stay order! This is the precise “mockery of justice” that the doctrine is designed to prevent.

**II. JUDGE LEIFMAN’S PRIOR REJECTION OF THE ARGUMENT THAT HE HAD NO AUTHORITY TO ISSUE A BLANKET STAY TO HUNDREDS OF THOUSANDS OF IMPACTED CASES, AND JUDGE LEIFMAN’S ABOVE-QUOTED POLICY STATEMENT AT A PRIOR HEARING MUST CONTINUE TO APPLY, AND MUST BE CONSISTENTLY APPLIED.**

Succinctly, if Judge Leifman believed that “we’re going to have a very confused motorist population,” after his ruling in *Jimenez* while that case was on

appeal to the Third District, the motorist population must be more confused at this point, and will continue as such, until the Florida Supreme Court decides.

Nothing whatsoever in Judge Leifman's policy statement to support the blanket stay in favor of all the municipalities has been minimized in the least, and nothing therein continues to apply while *Jimenez* is decided by the Florida Supreme Court.

Judge Leifman, probably speaking "off the cuff," could not have said it better than he said at the last hearing, transcript attached hereto:

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 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. T. at 26.

Respectfully, 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, the need for consistency, will be allowed, instead of prevented.

Whatever reasons existed to stay hundreds of thousands of cases pending review by the Third District, do not vanish into thin air while matters of great public importance, certified as such, are decided ultimately by the Florida Supreme Court. To the contrary, the reasons previously existing exist more forcefully. The

policy given by Judge Leifman is entirely correct, and there is no reason to abandon this policy at this time.

A. The above-quoted policy statement will be hollow and meaningless unless the stay is continued or entered anew, and there is no logical reason to abandon this policy at this time.

Again, the above-quoted policy statement could not have been said any better by Judge Leifman. The statement was made to preserve the integrity of the entire process, to eliminate confusion and to ensure consistency. There simply is no logical or proper reason to adhere to this policy initially, only to abandon it at the greatest time of need and reasoning for the policy.

III. THE NOTION THAT JUDGE LEIFMAN HAS AUTHORITY TO ISSUE A BLANKET STAY ONLY PENDING REVIEW IN A DISTRICT COURT OF APPEAL, BUT MUST NOT HAVE THE AUTHORITY TO ISSUE OR CONTINUE THE SAME BLANKET STAY PENDING REVIEW IN THE FLORIDA SUPREME COURT IS RIDICULOUS AND CONTRARY TO THE PLAIN MEANING OF THE FLORIDA RULES OF APPELLATE PROCEDURE.

To be clear, Aventura's position is simply that Judge Leifman has the authority to issue blanket stay (in favor of all municipalities and/or in favor of the very confused motorist population) only pending review before the district court of appeal – but has no such authority or discretion, and must deny and/or abandon a stay while the same matter is pending review in the Florida Supreme Court. Respectfully, to Aventura and its learned counsel, this contention is ridiculous and

contrary to: a) the plain language in the Florida Rules of Appellate Procedure; and b) Aventura's own successful argument presented to the Third District.

Rules 9.310(a) and (e), Fla. R. App. P., are clear. Under Rule 9.310(a), the trial court (Judge Leifman) has continuing jurisdiction to enter or modify a stay. Under Rule 9.310(e), a stay order previously entered continues "during the pendency of *all review proceedings* in Florida courts."

"All review proceedings in Florida courts" does not mean: i) some review proceedings; or ii) review proceedings before district courts of appeal, but not review before the Florida Supreme Court. The phrase means exactly what it says – all review proceedings in Florida courts.

As detailed above, Aventura convinced the Third District that Judge Leifman has the authority and is in a better position to determine whether or not to continue the stay, even if the mandate has been issued. This settles the question, along with the plain language of the Rules.

#### IV. NOT EVERY RED LIGHT CAMERA CASE MUST BE STAYED.

As previously argued in the initial Memorandum submitted, only those red light camera cases involving either: i) private vendor initial review and decision-making; ii) private vendor mailing; and/or iii) private vendor transmittal to the court are affected by *Jimenez*. Many cities now use a different protocol. Only those which are affected by *Jimenez* must be stayed.

## CONCLUSION

For all of these reasons, the Stay Order previously entered must continue, or a new blanket Stay Order must be entered, even though the mandate issues. As a matter of law, and conceded by Aventura, Judge Leifman has the authority and is in a better position to continue the Stay Order previously entered.

Finally, based on the policy eloquently stated by Judge Leifman in favor of the Stay Order at issue, this policy must continue to be followed, especially while the matter is being resolved in the Florida Supreme Court. If otherwise, the “very confused motorist pool” will be forced to file vast amounts of appeals – the exact matter that Judge Leifman wished to avoid. The policy must apply consistently, and the administration of justice must continue to be applied as it was at the time the Stay Order was entered.

No sound or logical reason exists as to why the Stay Order must be entered during review by the district court of appeal, but not the Florida Supreme Court.

WHEREFORE Defendant requests that the Stay Order be continued, or that a new Stay Order be entered and for any other relief deemed just and proper.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was delivered by email to Robert Dietz, 501 E. Kennedy Blvd, Suite 1100, Tampa, FL 33602 to [robert.dietz@myfloridalegal.com](mailto:robert.dietz@myfloridalegal.com); Edward Guedes, Matthew Mandel and Samuel Zeskind 2525 Ponce de Leon Boulevard, Suite 700,

Coral Gables, FL 33334 to [eguedes@wsh-law.com](mailto:eguedes@wsh-law.com); [szavala@wsh-law.com](mailto:szavala@wsh-law.com); [mmandel@wsh-law.com](mailto:mmandel@wsh-law.com); [lbrewley@wsh-law.com](mailto:lbrewley@wsh-law.com); [szeskind@wsh-law.com](mailto:szeskind@wsh-law.com); and [ozuniga@wsh-law.com](mailto:ozuniga@wsh-law.com) on this 29<sup>th</sup> day of October, 2016.

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IN THE COUNTY COURT OF THE 11TH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA  
CASE NO. A3690ZE

STATE OF FLORIDA,

Plaintiff,

-vs-

LUIS TORRES JIMENEZ,

Defendant.

**CERTIFIED  
COPY**

MOTION TO STRIKE CITY OF AVENTURA'S NOTICE OF  
AUTOMATIC STAY

DATE TAKEN: October 13, 2015

TIME: 3:05 P.M. - 4:00 P.M.

PLACE: 1351 Northwest 12th Street  
Miami, Florida 33125

BEFORE: THE HONORABLE STEVEN LEIFMAN

This cause came on to be heard at the time and  
place aforesaid, when and where the following  
proceedings were reported by:

Examination of the witness taken before:  
Laurie Susskind, Registered Professional Reporter  
United Reporting, Inc.  
1218 Southeast 3rd Avenue  
Fort Lauderdale, Florida 33316  
954-525-2221

United Reporting, Inc.  
(954) 525-2221

1 APPEARANCES FOR THE PLAINTIFF TELEPHONICALLY

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9 APPEARANCES FOR THE CITY OF AVENTURA

10 WEISS, SEROTA, HELFMAN, COLE & BIERMAN, P.L.

By: SAMUEL I. ZESKIND, ESQ.

11 2525 Ponce de Leon Boulevard, Suite 700  
12 Coral Gables, Florida 33334  
13 - - - - -  
14  
15  
16  
17  
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20  
21  
22  
23  
24  
25



1 Thereupon, the following proceedings were had:

2 THE COURT: Okay. Are we on the record?

3 THE REPORTER: Yes.

4 THE COURT: Attorney General's Office is  
5 on the phone.

6 THE CLERK: Counsel, hello. Bob Dietz?

7 MR. DIETZ: Yes, Judge. Okay. Yes, I can  
8 hear you.

9 THE COURT: Just for the record, it is  
10 Judge Leifman. Mr. Dietz has already made an  
11 appearance by phone.

12 Would the other attorneys introduce  
13 themselves for the record?

14 MR. ZESKIND: Good morning. Sam Zeskind  
15 from Weiss, Serota, Helfman for the City of  
16 Aventura.

17 MR. ARSLANIAN: Good afternoon, Your  
18 Honor. I'm Louis Arslanian on behalf of the  
19 defendant.

20 MR. DIETZ: Unfortunately, Your Honor, I  
21 can't hear the other parties.

22 THE COURT: Okay. They are just  
23 introducing themselves. It is okay. I'll have  
24 them speak up when they are making their  
25 argument, okay?

1 MR. DIETZ: Thank you.

2 THE COURT: No problem.

3 MR. GOLD: Mark Gold for the defendant as  
4 well.

5 THE COURT: Okay. Did you discharge your  
6 other attorney that was working so diligently?

7 MR. GOLD: Mr. Hollander is out of town on  
8 another matter. Louis Arslanian is our  
9 appellate lawyer.

10 THE COURT: I figured. A pleasure. Okay.

11 This is actually on a motion by the  
12 defendant in the red light camera, Mr. Jimenez,  
13 to strike the City of Aventura's motion for an  
14 automatic stay of my ruling, okay?

15 So the burden will rest with the  
16 defendant, and unless you want to say  
17 anything --

18 MR. ZESKIND: Yes. I was under the  
19 impression that our motion was also set for  
20 hearing, but --

21 MR. DIETZ: Yes, Your Honor, I really am  
22 having a hard time hearing.

23 THE COURT: Move the phone closer to him  
24 instead of me. They will do most of the  
25 talking.

1           We're going to move the phone a little  
2 bit, and, hopefully, that will help.

3           MR. DIETZ: I would appreciate that.

4           THE CLERK: Speak up so he can hear you.

5           MR. ARSLANIAN: Can you hear me?

6           THE COURT: It doesn't really matter who  
7 goes first in this proceeding. I mean, I am  
8 inclined to agree with you, so why don't we let  
9 them go.

10          I read the rule. That is why I sent the  
11 memo I sent out, which basically told my  
12 hearing officers that I was staying the  
13 decision. So why do I not give you the  
14 opportunity to speak.

15          Reintroduce yourself so Mr. Dietz can  
16 hear.

17          MR. ARSLANIAN: Okay. Again, may it  
18 please the Court, my name is Louis Arslanian.  
19 I am here on behalf of the defendant, Luis  
20 Torres Jimenez.

21          And I was in Court last Friday, and I was  
22 advised of some -- the memorandum that you are  
23 mentioning, and I haven't seen the memorandum,  
24 but I did receive a notice that there was this  
25 automatic stay.

1 First of all, we filed a response to that.  
2 The part that is really objectionable is in  
3 response to their motion, not so much my motion  
4 to strike, but it is the portion of the  
5 heading, it says an extension of same to other  
6 traffic court proceedings. Because assume for  
7 a second that this case is stayed under the  
8 rule as an automatic stay, what is stayed?  
9 Only this case.

10 THE COURT: Yes.

11 MR. ARSLANIAN: There is nothing -- there  
12 is no -- in the motion itself, there is no rule  
13 of appellate procedure, no rule of civil  
14 procedure, no statute, no case law stating that  
15 a county court judge has the authority -- with  
16 all due respect, has the authority to stay  
17 other proceedings.

18 And, basically, first of all, the City  
19 right now is seeking a discretionary review in  
20 the Third District. And, you know, I read  
21 their reply. Basically, they are saying that  
22 my case says that if it is a discretionary  
23 review, the automatic stay doesn't apply. But  
24 since they are saying that if the Third  
25 declines, they'll appeal to the circuit court,

1 then it will be an appeal of right, and so it  
2 will be an automatic stay.

3 But, again, automatic stay of what? It's  
4 just this particular case. It's the part of an  
5 extension of same to other traffic court  
6 proceedings.

7 And this whole -- this whole thing has a  
8 genesis from the Arem case in the Fourth  
9 District Court of Appeal.

10 By the way, I was the one who -- you read  
11 my memorandum. I wrote that memorandum of law,  
12 so I'm familiar with this particular case. I  
13 reviewed it. But, basically, I'm familiar with  
14 Arem as well.

15 What they are trying to do here is what  
16 they tried to do in the Arem case.

17 When the Fourth District made its final  
18 ruling, they went and sought discretionary  
19 review to the Supreme Court, and I have copies  
20 of the motions. They filed a motion similar to  
21 this motion saying stay the mandate. What they  
22 wrote to the Supreme Court, stay the mandate,  
23 which basically meant that --

24 THE CLERK: Counsel, just a minute. I  
25 apologize. Hold on.

1 Counsel?

2 MR. DIETZ: Yes.

3 THE COURT: Continue.

4 MR. ARSLANIAN: And, basically, what they  
5 asked for in that motion to the Supreme Court  
6 was stay this so that the lower courts don't  
7 follow Arem, which is similar to what they are  
8 trying to do here, because they don't want the  
9 hearing officers to follow your ruling or  
10 follow Arem.

11 But the Supreme Court -- now, here is the  
12 thing. The Supreme Court denied their motion,  
13 but there was a proper vehicle that was being  
14 utilized. The vehicle that was being utilized  
15 was a rule of appellate procedure, and the rule  
16 of the appellate procedure is 9.340. It calls  
17 for extension of time for issuance of a  
18 mandate.

19 With all due respect, again, Your Honor,  
20 your decision is not an appellate decision.  
21 It's not a mandate. There is no mandate.

22 THE COURT: Let me ask you this --

23 MR. ARSLANIAN: Sure.

24 THE COURT: -- putting aside how much  
25 authority I have over the hearing officers

1 since I am the administrative judge for the  
2 hearing officers, I agree I can't tell my  
3 county court judges how to rule. It is  
4 certainly up to them. Putting that issue  
5 aside, I still have the discretion to stay my  
6 own opinion if I choose to regardless of the  
7 argument that you are making.

8 MR. ARSLANIAN: I don't -- I mean, let me  
9 say it this way: It's your case.

10 THE COURT: Correct.

11 MR. ARSLANIAN: You have certainly  
12 jurisdiction over it, but what I'm saying is,  
13 and unless counsel could provide some rule,  
14 statute or case that says that this  
15 unprecedented action that would be taken is  
16 somehow authorized by a statute or some case,  
17 then I would -- I would agree that -- I mean, I  
18 would disagree. You really can't. I mean, you  
19 can in the sense that you have jurisdiction  
20 over the case, but I don't think there is any  
21 authority whatsoever to support this. There is  
22 not --

23 THE COURT: When you say "support this,"  
24 extend it beyond this case?

25 MR. ARSLANIAN: Correct. There is not --

1 they have not cited one case where a county  
2 court decision has been extended to similar  
3 matters or other related matters.

4 THE COURT: Let me ask you this question.  
5 Your office asked me to extend my ruling if I  
6 would dismiss them all, so why doesn't it apply  
7 to the other way around?

8 I mean, you weren't going to have 18,000  
9 separate hearings on red light cameras. That  
10 was the whole idea, to have one hearing where  
11 myself, who's the associate administrative  
12 judge for traffic matters for this circuit, who  
13 is going to hear the case, so I didn't have to  
14 have, you know, a ridiculous amount of hearings  
15 per case. So wouldn't you want my opinion to  
16 be covering the entire circuit?

17 MR. ARSLANIAN: What I think --

18 THE COURT: You want me to dismiss all of  
19 the cases?

20 MR. ARSLANIAN: Well, what -- actually,  
21 what I think, and one of the cases that we  
22 cited in our -- this is to support my  
23 proposition.

24 THE COURT: I read it. I appreciate that.

25 MR. ARSLANIAN: But one of the cases



1 specifically is a case called Bamber versus  
2 State because what they attempted to do was  
3 persuade you to -- Duval County ruled a certain  
4 way, you know. Broward County ruled a certain  
5 way.

6 THE COURT: That's irrelevant to us.

7 MR. ARSLANIAN: And what the case says is  
8 a county -- a trial court decision has no  
9 precedential value. So, basically, the way  
10 that it stands, the way the law from the Bamber  
11 case is is that your ruling is your ruling in  
12 this case.

13 Certainly, the City of Aventura couldn't  
14 be heard to complain if all of the Aventura  
15 cases were dismissed and taken up on appeal,  
16 okay? And then everybody would be in that same  
17 boat in the court where they want their --  
18 where they want their relief, okay?

19 Similarly, any other municipality that has  
20 similar-type rules could also be dismissed  
21 because what argument could they possibly make  
22 to you to change your mind based on what you  
23 ruled on?

24 The hearings would be held before you.  
25 They would all be taken up to the Third -- to

1 the Third District.

2 I mean, does it mean -- does this ruling  
3 mean that every case has to be dismissed is  
4 your question, as opposed to do they all have  
5 to be stayed?

6 THE COURT: Correct.

7 MR. ARSLANIAN: My position is that in  
8 front of Your Honor, certainly the City of  
9 Aventura would have to be. Certainly, if  
10 somebody brought up another case that involved  
11 a municipality with the same set of facts, it  
12 would have to be dismissed, but another hearing  
13 officer is free to disagree with you.

14 And my understanding is -- and, again, I  
15 do want a copy of that memorandum because I  
16 think we need that; we need an order from today  
17 so we can -- depending on what happens.

18 THE COURT: I can't give you a memo  
19 because that's our work product, but I can  
20 certainly prepare an order.

21 MR. ARSLANIAN: If there is going to be an  
22 order, we can take -- we can have an order, but  
23 my position is, especially based on the State  
24 versus Bamber -- and just for the record, I'll  
25 cite it, it is 592 So2d 1129. It was cited in

1 my memo. In fact, it is one of the cases that  
2 Your Honor relied on that basically says that,  
3 you know, you are free to express your  
4 disagreement with Arem, but you have to follow  
5 Arem.

6 THE COURT: Correct.

7 MR. ARSLANIAN: And, basically, my  
8 position is that in any other county, another  
9 hearing officer at the other court can -- he  
10 doesn't have to pay attention to your ruling.  
11 He has to follow -- he has to pay attention to  
12 Arem. He has to follow Arem, but just like the  
13 Duval County orders are not binding anybody  
14 because trial court orders are not binding  
15 anybody --

16 THE COURT: I hear your point.

17 MR. ARSLANIAN: And so I think that the  
18 idea that the magistrate sort of follow what  
19 happens in this particular court, I think  
20 that's where there might be the problem in the  
21 whole scheme of the administration of judicial  
22 administration because it shouldn't flow from  
23 one judge that everything has to be the same  
24 way.

25 In fact, what the exact reading says, and,

1 I mean, I think this is exactly the point that  
2 I'm trying to make, it says that trial courts  
3 do not create precedence. These rules are not  
4 binding even in the adjacent courtroom. That  
5 means to me that Judge Smith --

6 THE COURT: I agree. I cannot tell any of  
7 my colleagues how to rule on this case.

8 MR. ARSLANIAN: Right.

9 THE COURT: I mean, it is up to them to  
10 read my opinion. If they want to rule that  
11 way, they can rule that way.

12 MR. ARSLANIAN: Right.

13 THE COURT: I'm not sure the hearing  
14 officers are in the same position.

15 MR. ARSLANIAN: But --

16 THE COURT: That case stands for the -- I  
17 use this term loosely. I'm going to check.  
18 It's a valid point that you raised, but my  
19 colleagues, we all have the same constitutional  
20 authority. The hearing officers do not. And  
21 so I will check, and I will keep my mind open  
22 on that particular issue because I don't know  
23 the answer off the top of my head.

24 But as a rule, we generally educate the  
25 hearing officers to try to be consistent in our

1 rulings so that we don't have one officer from  
2 even the same municipality getting different  
3 rulings from different hearing officers,  
4 because then we have a chaotic system and there  
5 is no justice at all.

6 So I think there is some authority. And,  
7 again, it may be discretionary, but I'll follow  
8 that particular point up.

9 But going -- we don't need --

10 MR. ARSLANIAN: Let me say this: I don't  
11 disagree with them over their right to a stay  
12 per se. It's just this other related stuff.

13 THE COURT: Understood.

14 MR. ARSLANIAN: To me, so that I --

15 THE COURT: Your argument is my stay is  
16 limited.

17 MR. ARSLANIAN: Your stay is limited to  
18 that case only. There is no authority -- they  
19 don't have any authority that shows what is  
20 going to be done and has been done. And,  
21 again, I would just ask that -- also, one other  
22 thing.

23 THE COURT: Do I have authority to do  
24 that -- as an administrative judge, I have  
25 administrative memorandum authority, and we can

1 use the administrative memorandums or from even  
2 our chief judge to make consistency in rules  
3 that we are applying, and so I'll have to look  
4 to see how far that goes.

5 MR. ARSLANIAN: If you want, we'll leave a  
6 copy of the State versus Bamber case. I think  
7 that might help.

8 I also want to say one thing regarding if  
9 these cases are stayed, because one of the  
10 things when I was there, the hearing officer  
11 said, well, we're going to continue them all  
12 because I'm not going to follow Arem based on  
13 this memorandum that is going around.

14 THE COURT: This is your notice for your  
15 appearance.

16 MR. ARSLANIAN: I handed you the wrong  
17 thing, I'm sorry. This is the wrong -- this is  
18 the case. I'm sorry.

19 You know, it has to do with speedy trial  
20 and the continuances that were being granted,  
21 they were being charged to the defendants  
22 because of Your Honor's stay. And I don't  
23 think that the defendants, you know, can  
24 have -- can waive their speedy trial because of  
25 the stay.

1 And, again, it's not just my argument. I  
2 don't think there is a case that says this can  
3 be done.

4 THE COURT: They didn't have to. They  
5 could have gone through and tried their cases.  
6 We gave them -- look, we bent over backwards to  
7 be fair, and we gave them the option to  
8 continue the case.

9 MR. ARSLANIAN: The magistrate told me she  
10 wasn't going to follow Arem.

11 THE COURT: That's -- I'm not -- that's  
12 not really evidence here.

13 MR. ARSLANIAN: Okay.

14 THE COURT: It is not really at issue.

15 MR. ARSLANIAN: Right.

16 THE COURT: But in terms of the  
17 continuances that we gave them, they could have  
18 gone forward with their trials. We gave them  
19 the option. If they didn't want to, they  
20 wanted to wait for this hearing to be held and  
21 us to look at the evidence and this could be up  
22 to the appellate process, they were free to do  
23 that or go to trial and take their chances.

24 MR. ARSLANIAN: The only other thing is  
25 Arem took I don't know how long, at least a

1 year, a year and a half I'm sure. That's what  
2 is going to happen.

3 THE COURT: You don't have to tell me.  
4 I'm pained by it all how long this is going to  
5 take.

6 MR. ARSLANIAN: I will just say this last  
7 thing, too, that when Your Honor enters a  
8 ruling one way or the other, the way the Rule  
9 9.310 works is the Third District Court is  
10 going to review your order. If Your Honor was  
11 to enter a stay of everything, I'm going to say  
12 he doesn't have the authority to do that, I  
13 want review of that.

14 If you, on the other hand, deny it, they  
15 are going to go to the Third, they are going to  
16 say he should stay everything, and so that's  
17 where we leave it, you know.

18 THE COURT: Look, I agreed on that premise  
19 since day one. I'm happy to let the Third DCA  
20 make a decision because they are going to make  
21 one anyway. And, you know, at least I had a  
22 full evidentiary hearing, which I did not feel  
23 Arem relied on, that gave me -- put me in a  
24 better position to make a more informed  
25 decision. It will be up to them to decide if



1 I'm right or wrong, and that's fine. We can  
2 move forward. But we are in a bizarre posture,  
3 and part of the problem is -- I'll let counsel  
4 speak -- there are tens of thousands of cases.  
5 There is really a lot at stake. It's not like  
6 one case. And so there are a lot of financial  
7 issues at stake for the municipalities, which I  
8 think that particular rule contemplates, and so  
9 I'm trying to do this in a way I think is fair  
10 and, you know, in light of what that particular  
11 rule intended.

12 Counsel?

13 MR. ZESKIND: Thank you, Your Honor.

14 THE COURT: Just -- Mr. Dietz, counsel for  
15 the City of Aventura, is about to speak. You  
16 are welcome to speak after him.

17 MR. DIETZ: Thank you.

18 THE COURT: Have you been able to hear  
19 okay?

20 MR. DIETZ: Your Honor, I think the  
21 equipment is what the problem is because of the  
22 voices stay in and out. Sometimes I can hear  
23 very well, and sometimes it's a little mumbled.  
24 I definitely can hear counsel -- the  
25 defendant's counsel from where he was, so I'll

1 be able to hear the Aventura counsel also I'm  
2 sure.

3 MR. ZESKIND: Can you hear me?

4 MR. DIETZ: Yes, I can hear you.

5 MR. ZESKIND: I'll begin by addressing the  
6 Bamber case. It was not cited in the  
7 defendant's motion to strike and was not  
8 provided to us in advance, so I'm not in a  
9 position to distinguish or address the issues  
10 raised in the Bamber case.

11 If Your Honor is going to withhold ruling  
12 today based on a further analysis of that case,  
13 I would like the opportunity to at least brief  
14 the issues related to it.

15 With respect to some of the issues raised,  
16 I understand that counsel agrees that at least  
17 with respect to the Jimenez case, there should  
18 be an automatic stay. I'm puzzled by the  
19 statement that it shouldn't apply to everything  
20 related to the city of Aventura. We have  
21 appealed the Jimenez decision. Despite how the  
22 defendant wants to characterize it, it is not  
23 discretionary. The Third DCA may have  
24 discretion whether or not to accept  
25 jurisdiction based on your certified questions,

1 but as a final order, the City has an absolute  
2 right to appeal it. The Third DCA does not  
3 accept jurisdiction, it gets kicked back to the  
4 circuit court.

5 THE COURT: Have they accepted  
6 jurisdiction?

7 MR. ZESKIND: They've not formally stated  
8 they accept jurisdiction, but all signs are  
9 pointing to the fact they have. They have  
10 consolidated the City's appeal with the  
11 Attorney General's appeal. It looks like they  
12 likely will accept jurisdiction.

13 THE COURT: That happened I think today or  
14 Friday. We saw that.

15 MR. ZESKIND: On Friday, they entered the  
16 order consolidating the appeals, which leads us  
17 to believe they will, in fact, accept  
18 jurisdiction.

19 But the fact is that the City of  
20 Aventura's program and all the facts relating  
21 to it and the argument that we've made and Your  
22 Honor's ruling related to it is currently on  
23 appeal. It would be completely inequitable and  
24 unjust to then have the rest of Aventura's  
25 citations dismissed while it is pending.

1 THE COURT: Let me ask you another  
2 question. What authority, if any, do you think  
3 I have to extend to all red light camera cases  
4 the same process as in Arem?

5 MR. ZESKIND: I think it's within your  
6 discretion. It would not be the first time  
7 that Your Honor has done so with respect to  
8 proceedings between either the City of Aventura  
9 and defendants represented by The Ticket Clinic  
10 or other cities or countywide.

11 While Arem was pending before it became  
12 final, there was a countywide stay of all  
13 arguments related to Arem.

14 THE COURT: Which they have seen.

15 MR. ZESKIND: Naturally, because they  
16 didn't have a decision yet as to whether or not  
17 everything was going to be dismissed or  
18 approved.

19 THE COURT: Just trying to be consistent.

20 MR. ZESKIND: Likewise, here, if the Third  
21 DCA reverses Your Honor's order, finds that  
22 either it is distinguishable and that you  
23 could, in fact, not follow Arem or rules that,  
24 you know, Arem is incorrect based on any one of  
25 the certified questions, then we are left with

1 the situation where they have thousands of  
2 citations dismissed that otherwise should have  
3 been valid.

4 And with respect to Aventura, I think  
5 unquestionably the automatic stay should apply  
6 to them. If you want to go countywide, we are  
7 talking about thousands of citations that  
8 should not -- I think based on  
9 misrepresentations they made in the media, and  
10 I think they hinted at it here today, that Your  
11 Honor's ruling means that all citations should  
12 be dismissed regardless of, you know, any other  
13 municipalities' chance to present their system  
14 to Your Honor. And we intentionally did it  
15 that way. We did not have the time to let  
16 every city be heard. We started with Aventura  
17 with the understanding that if it became  
18 necessary, other cities would have the  
19 opportunity to be heard.

20 And to just not stay the effect of the  
21 Jimenez decision and allow Your Honor to order  
22 in that case to result in the automatic  
23 dismissal of everything, we are left with again  
24 thousands and thousands of citations being  
25 dismissed and a very real possibility that the

1 Third DCA reverses and finds the Arem defense  
2 doesn't apply to the programs where they have  
3 been properly distinguished.

4 The flip side of that is if Your Honor  
5 doesn't stay everything countywide and  
6 everything is automatically dismissed and those  
7 cities haven't had the opportunity to present  
8 their programs, then there's going to be dozens  
9 and dozens of appeals on all of those issues,  
10 and we are just wasting judicial resources,  
11 city taxpayer dollars. That wouldn't be the  
12 first time that we've stayed everything in this  
13 county until these issues have been resolved on  
14 appeal.

15 THE COURT: In terms of judicial  
16 administration, it only makes sense -- it would  
17 be one thing if they are all different cases,  
18 that I would understand; but it is the same set  
19 of facts for the vast majority of the  
20 municipalities except the cities that have  
21 changed the procedure since Arem.

22 MR. ZESKIND: Right. I would say with  
23 respect to if you are going to make a  
24 countywide stay, that if there are cities, and  
25 I know that there are some that have made

1 changes, and they want the opportunity to come  
2 before Your Honor and present it, they still  
3 have the opportunity to do that, you know, as a  
4 side from the stay, if that's what they're  
5 choosing to do. But that's -- I mean, that  
6 would be at their own risk, obviously.

7 We can either -- I think the stay should  
8 be related to the pre-Arem program.

9 THE COURT: I agree. The fact that the  
10 contracts that are consistent with Arem should  
11 cover is what I'm inclined to do unless I find  
12 some case law that tells me otherwise. And  
13 then if my colleagues in the county management  
14 want to do that, that certainly can be done.

15 MR. ZESKIND: That's what we are asking  
16 for, Your Honor. And to the extent even if the  
17 automatic stay does not apply to the other  
18 cities, I mean, there is still, you know,  
19 common law rule on when, you know, a stay is  
20 appropriate. And that's -- if there is a  
21 substantial success on appeal, and the  
22 prejudice, if an appeal is not -- if a stay is  
23 not granted, and the prejudice is what we have  
24 been discussing. We are talking about  
25 thousands of citations being dismissed,

1 hundreds of thousands of dollars being expended  
2 on appeal.

3 THE COURT: It's not the dollars. The  
4 public has a right to have the same set of  
5 facts heard consistently. To do otherwise  
6 jeopardizes a foundation of our law, and so I'm  
7 concerned that if we are to do otherwise, we're  
8 going to have a very confused motorist  
9 population, and it's going to have an adverse  
10 effect on the administration of this circuit  
11 because we're going to have enormous amounts of  
12 appeals filed all over the place unnecessarily.

13 So I will go back. I'm not going to rule  
14 from here. That's where I am inclined.

15 Again, I would agree with counsel that  
16 even if, you know, it's not an automatic stay,  
17 I would still under the discretion that I have  
18 minimally stay this case in the Aventura case,  
19 and then I'll look and see how much authority I  
20 have as a hearing officer before I make that  
21 decision.

22 MR. ZESKIND: I would just like to address  
23 one more point because I know that counsel  
24 raised an issue about speedy trial, and, you  
25 know, the fact that Arem took so long, a year,



1 year and a half for that, half a year, I just  
2 want Your Honor to be aware that the City has  
3 done and will continue to do everything in its  
4 power to expedite this appellate process. The  
5 order -- Your Honor's order was entered on  
6 September 25th, a Friday. We filed a notice of  
7 appeal that following Monday, September 28th.  
8 When we have final confirmation the Third DCA  
9 in fact has accepted jurisdiction, we will move  
10 to expedite the appeal. Because of those  
11 considerations, we want a quick resolution of  
12 this issue.

13 THE COURT: We all want a quick -- but  
14 they have been very slow with all kinds of  
15 things, the Third DCA. I don't know if they  
16 will agree to expedite. I hope they do because  
17 there clearly could be a conflict. And then if  
18 they agree with my ultimate analysis, then  
19 you'll have to decide where it goes next. So I  
20 don't even know that will be the end of it, but  
21 at least we'll have some precedence here and  
22 give some clear guidance what we all have to  
23 do.

24 I wish you well on that aspect. I don't  
25 want to be dealing with this two years from

1 now.

2 MR. ARSLANIAN: Can I say one other thing?

3 THE COURT: Is there anything else you  
4 want to address?

5 MR. ZESKIND: I would just like an  
6 opportunity to reply to whatever counsel says.

7 THE COURT: Any other points you needed to  
8 make?

9 MR. ZESKIND: No, but, Your Honor, if --  
10 like I said, if the Bamber issue is something  
11 that needs to be addressed --

12 THE COURT: No. Well, I need to look in  
13 terms of how much say I have over the hearing  
14 officers. That's a question.

15 But in terms of whether it's authoritative  
16 or not, I still have the discretion. It's kind  
17 of a moot issue, and I would be inclined based  
18 upon my reasoning in my initial opinion to stay  
19 this opinion because I don't see any harm to  
20 the defendant. I don't see massive harm to the  
21 municipalities.

22 Based on my own analysis, I think the --  
23 not really my analysis, but based on the  
24 evidence that was presented, I think there is  
25 at least a fair shot that the Third may

1 disagree with that. So we'll have to see.

2 MR. ARSLANIAN: Can I say this --

3 THE COURT: You have any words of wisdom  
4 or advice, I'll glad to hear it.

5 MR. ARSLANIAN: I want to just carry this  
6 a little further because if there is the  
7 prejudice -- because all these cases are out  
8 there, and, you know, we can't have dismissals,  
9 okay? What if the Third was to, you know,  
10 affirm? Why not stay the whole red light  
11 program? They are issuing tickets now that may  
12 be violative of the --

13 THE COURT: I don't have authority to  
14 stay -- that would be an injunction, which  
15 county court has no injunctive authority, so I  
16 can't.

17 MR. ZESKIND: That's one of the counts  
18 within the partner action that is currently  
19 stayed because there is an appeal pending.

20 THE COURT: I don't have authority. All I  
21 have is authority to decide if Arem applied to  
22 these particular tickets, and I agree it does;  
23 not that I agree Arem is right, but I agree it  
24 applies, and so I'm bound by Arem.

25 So I don't disagree with that. I think

1 the biggest question I have to solve is how far  
2 my authority stems to the hearing officers.  
3 That's the one area I don't have an answer for,  
4 but it might because only we have  
5 administrative orders giving us authority over  
6 them at some level. So I need to go back and  
7 look at that.

8 MR. ARSLANIAN: One other argument to be  
9 made.

10 Obviously, Arem dealt with the City of  
11 Hollywood in their circumstance. Now this  
12 case, Jimenez, is going up, it is going to be  
13 the City of Aventura. Well, I will bet that  
14 some of these municipalities that are just like  
15 Aventura if the Third comes back and affirms  
16 are going to say we are not like the City of  
17 Hollywood, we are not like Aventura.

18 THE COURT: If that happens, I'll have to  
19 have a hearing on all those cases, but --

20 MR. ARSLANIAN: But I think you can have  
21 the hearings.

22 THE COURT: The contract that the City of  
23 Aventura used is identical to the one in  
24 Hollywood. That's really what the issue came  
25 down to. According to Arem, it was

1 inappropriate, you know, given the  
2 responsibility to the private vendor as opposed  
3 to the police, and that's what they ruled, you  
4 know. So I don't -- they can argue all that  
5 they want. I mean, if it is the same process,  
6 it doesn't really matter. The only one I have  
7 seen change that is now the City of Miami and  
8 so they don't seem to -- again, I haven't had a  
9 hearing on it. It's only based on what --

10 MR. ARSLANIAN: And I will say this, when  
11 I went before the magistrate, they argued we do  
12 want to go ahead. I said wait a second. If  
13 we're going to stop, if we're going to stop  
14 them all. And the hearing officer -- I'm just  
15 sort of reporting to you what happened. I  
16 mean, there is a record.

17 THE COURT: They have a --

18 MR. ARSLANIAN: But we have a record of  
19 what happened, and the magistrate basically  
20 said, well, I think that what is good for --

21 THE CLERK: I apologize, Counsel. Hold  
22 on, Counsel.

23 MR. ARSLANIAN: -- what is good for the  
24 goose is good for everybody.

25 THE COURT: I would have to have a hearing

1 to find out if it is separate or not. I don't  
2 think -- I don't want to make -- I don't want  
3 to guess. I mean, this is just what my hearing  
4 officers have told me, that they changed their  
5 process I think in March, and it's totally  
6 different than what is under Arem.

7 MR. ARSLANIAN: The only thing, the other  
8 thing is -- and I have heard your indication,  
9 I'm not going -- I know -- again, I know where  
10 this is going anyway, it doesn't really matter.

11 THE COURT: It does matter because the  
12 Third can either affirm or agree with you.

13 MR. ARSLANIAN: If I could ask for this  
14 because, just logistically, I'm on vacation  
15 next week, and I don't really want to write  
16 anything while I'm on a cruise ship. If there  
17 is going to be an order written --

18 THE COURT: I have had no break from this  
19 for a year now. I'm going to extend that --  
20 when are you back from vacation?

21 MR. ARSLANIAN: I'm coming back next  
22 weekend.

23 THE COURT: You are asking me if I do an  
24 order to do it after you return?

25 MR. ARSLANIAN: I would ask you to do it

1 right away.

2 THE COURT: That's fine.

3 MR. ARSLANIAN: I would ask --

4 THE COURT: The only thing I'm not sure  
5 of, and this is what -- when do you leave,  
6 Friday?

7 MR. ARSLANIAN: We leave Sunday, but, you  
8 know --

9 THE COURT: It will be before that. I  
10 mean, I am inclined -- I'm definitely staying  
11 this. Whether it's automatic or discretionary,  
12 I'm going to stay it, okay? So it doesn't  
13 really matter. Because I do feel under the two  
14 prongs of staying an opinion, it meets both of  
15 those standards. One, that there will be great  
16 harm and, B, I think there is a decent chance  
17 that they are going to prevail. So I will stay  
18 it.

19 The only question I don't know is how far  
20 it extends, and that's what I need to know.

21 MR. ARSLANIAN: I have never been in front  
22 of a proceeding where the judge says -- the  
23 same judge that entered the order saying there  
24 is a decent chance I'm going to get reversed,  
25 but that's just kind of an observation. It's

1 an observation since that --

2 THE COURT: Be clear what you are saying.

3 MR. ARSLANIAN: Right.

4 THE COURT: Look, I did a lot of work on  
5 this. I've been living with this for a long  
6 time, and they have done an amazing job, and it  
7 was very thorough. And I actually read  
8 everything that you-all sent to me, and I  
9 thought we had a very good hearing, and I had  
10 no dog in the fight. So I was clearly open to  
11 how it would lay out, and I was surprised, as  
12 the evidence -- I wouldn't say I was surprised.  
13 It didn't -- it didn't seem to be what Arem  
14 thought it was going to be, and the evidence  
15 just doesn't add up to their concerns. And so  
16 my ruling -- I feel I am bound by Arem. I  
17 mean, it is a Fourth DCA. There is nothing  
18 contrary to it. And I agree with the legal  
19 analysis, and they didn't really disagree with  
20 that either in the hearing that I could tell.  
21 I'm bound by it.

22 But based upon Bamber, the case you gave  
23 me, it also says I don't necessarily have to  
24 agree with that decision. So I lay out another  
25 course to give the Third an option. So I think



1 I may be reversed, but in a way they are going  
2 to affirm me, my analysis.

3 MR. ARSLANIAN: I understand.

4 THE COURT: Do you understand?

5 MR. ARSLANIAN: Yes, I do.

6 THE COURT: Either way is okay. Either  
7 way. Honestly, I will do whatever they tell me  
8 to do, but at least I feel we had a full  
9 evidentiary hearing. And I found Arem  
10 difficult to read and difficult to understand  
11 and apply, and I think that's bad for  
12 everybody. I'm hopeful based upon -- I don't  
13 usually write a 16-page county ruling on county  
14 hearings.

15 Based upon all of that, a very complete  
16 record, that at least the Third -- will they  
17 affirm or overturn me, they will finally settle  
18 and then we can move forward. That's okay.

19 MR. ARSLANIAN: One last thing I guess on  
20 that timing issue. I guess in a sense it  
21 doesn't necessarily matter if the Court waits a  
22 few days to do it because the Court still has  
23 not accepted jurisdiction, and so I mean, yeah,  
24 I mean, if I got it -- if I got it Friday and I  
25 couldn't write a motion over the weekend before

1 I left, it's not the end of the world.

2 THE COURT: It's going to happen anyway.  
3 Once they accept jurisdiction, they are going  
4 to --

5 MR. ARSLANIAN: Then they can rule on the  
6 stay issue, but until they -- until they accept  
7 jurisdiction, I don't think they can.

8 THE COURT: Got you.

9 MR. ARSLANIAN: That's --

10 THE COURT: We'll --

11 MR. ARSLANIAN: But we will have a written  
12 order very soon.

13 THE COURT: Hopefully by Thursday.

14 MR. ARSLANIAN: Thank you.

15 THE CLERK: We still have that Attorney  
16 General on the phone.

17 MR. ZESKIND: Just so we are clear,  
18 everything with respect to the City of Aventura  
19 is being stayed.

20 MR. DIETZ: Judge --

21 THE COURT: One second. Hold on, please.

22 MR. DIETZ: Okay.

23 THE COURT: I will give you an order.  
24 Minimally, it is Aventura. I would like to see  
25 it for all the municipalities that follow

1 Aventura, okay? But, again, I'm going to have  
2 to do a little homework on that particular  
3 thing and see how it --

4 MR. ZESKIND: Would you like a further  
5 brief?

6 THE COURT: Yes, if you have anything, and  
7 what authority I have to the hearing officers.  
8 And my legal staff is in the room. Actually,  
9 it turned out to be quite interesting. I'm not  
10 complaining.

11 Mr. Dietz, do you want to add something?

12 MR. DIETZ: Yes, Your Honor.

13 And I apologize that I had a chance  
14 between listening to you or the parties in this  
15 case. I thought it would be important for me  
16 to really listen to the parties. You were a  
17 little further away. I caught everything that  
18 you said, but if I'm correct, you are saying  
19 that you are going to reserve ruling and you  
20 are leaning towards granting the motion to  
21 stay?

22 THE COURT: I'm definitely granting the  
23 motion to stay. The question is how far and  
24 how wide it covers. It minimally covers this  
25 particular case. It probably easily covers all

1 of the Aventura cases.

2 The question is does it extend beyond  
3 that. If you would like to add your two cents,  
4 you are welcome to.

5 MR. DIETZ: Yes, your Honor.

6 I think that the defendant really should  
7 be asking the Court Tuesday. I think it is  
8 quite clear that the Aventura case, that they  
9 made the point that the process, the prereview  
10 process, that was done through the prereview  
11 process, and the business rules were not part  
12 of the contract. That's their argument. And  
13 so with that, I think that if they just take  
14 the contract from the City and put it into  
15 evidence, I think that they failed to carry  
16 their burden of proof in their motion to  
17 dismiss. They have the burden of proof.

18 THE COURT: We are not going to relitigate  
19 my ruling. So let's just stick to whether I  
20 stay and how far it extends.

21 If you have anything else to add to that,  
22 I'm happy to listen. Otherwise, I'm not going  
23 to relitigate.

24 MR. DIETZ: Okay.

25 No, Your Honor. I just think there is

1 great prejudice to the State while there is no  
2 prejudice to the other party if they are  
3 staying in the same place.

4 THE COURT: Anything else you would like  
5 to add?

6 MR. DIETZ: No. That's all.

7 THE COURT: Thank you.

8 Anything else?

9 MR. ZESKIND: No, Your Honor. Thank you.

10 THE COURT: If you want -- today is  
11 Tuesday; if you can get me something, I would  
12 like to get something by late tomorrow, early  
13 Thursday. I can put it out before you go on  
14 vacation.

15 MR. ARSLANIAN: You are talking to him  
16 about this case, right? I'm not preparing  
17 anything.

18 THE COURT: You don't have to. He said he  
19 wanted to. You are welcome to if you want.  
20 You don't have to.

21 MR. GOLD: I'm sorry, Your Honor. Mark  
22 Gold.

23 Is that regarding the issue of as the  
24 administrative judge how far you can go with  
25 the hearing officers?

1 THE COURT: Yes. Honestly, I'm not  
2 100 percent sure. I will check.

3 MR. ARSLANIAN: If I have something to  
4 submit, I will do it.

5 THE COURT: Feel free.

6 Otherwise, the hearing is adjourned.  
7 Thank you very much.

8 (Whereupon, the hearing was concluded at  
9 4:00 p.m.)

## C E R T I F I C A T E

THE STATE OF FLORIDA)  
COUNTY OF BROWARD )

I, LAURIE SUSSKIND, Registered Professional  
Reporter, State of Florida at large, certify that I  
was authorized to and did stenographically report  
the foregoing proceedings and that the transcript is  
a true and complete record of my stenographic notes.

Dated this 20th day of October, 2015.

*Laurie Susskind*  
LAURIE SUSSKIND, R.P.R.



IN THE THIRD DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

CITY OF AVENTURA, etc.,

Appellants,

v.

LUIS TORRES JIMENEZ,

Appellee.

CASE NOS. 3D15-2271  
3D15-2303

**CITY OF AVENTURA'S RESPONSE IN OPPOSITION TO MOTION TO  
STAY ISSUANCE OF MANDATE**

Appellant, City of Aventura ("City"), hereby files its response in opposition to appellee, Luis Torres Jimenez's ("Jimenez") motion to stay issuance of the mandate in this appeal.

**INTRODUCTION**

It is immediately apparent that Jimenez is taking *every* measure possible to maintain any semblance of its argument that the Court's decision should have no current effect, not only with respect to Jimenez's own red light camera citation, but as to all red light camera citations throughout Miami-Dade County and the rest of the state. The county court implemented a countywide stay of red light camera proceedings, but only during the pendency of this appeal – a stay, incidentally, that Jimenez vigorously opposed when it suited his (and his counsel's) interests, and as



to which he even sought review by this Court.<sup>1</sup> The City has filed a motion with the county court to lift the stay now that the appeal is concluded. The clear purpose of Jimenez's present motion is to somehow prevent this Court's decision from controlling the outcome in thousands of red light camera cases backlogged in the judicial system.<sup>2</sup> The City, alone, has more than 40,000 red light camera citations "on hold." One can only surmise that there are hundreds of thousands of similar red light camera citations countywide. This number only *increases* as each day passes.

The City clearly does not dispute the importance of the issues decided in this appeal or that the Court has certified questions of great public importance to the Florida Supreme Court. It is equally clear, however, that the Court also concluded – notwithstanding Judge Wells' special concurrence – that *City of Hollywood v. Arem*, 154 So. 3d 359 (Fla. 4th DCA 2014), was distinguishable by virtue of the incomplete record the Fourth District had before it.<sup>3</sup> This Court's decision is now

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<sup>1</sup> Jimenez has been represented through these proceedings by Gold & Associates, P.A., d/b/a/ The Ticket Clinic.

<sup>2</sup> These tactics extend even to the filing of new motions to dismiss directed to red light camera citations issued by the City that fail to disclose to the county court the existence of this Court's decision here. *See, e.g.*, Exh. A. Hundreds of similar motions have been filed as to local jurisdictions throughout Miami-Dade County.

<sup>3</sup> Jimenez suggests, in part, that a stay of the mandate is appropriate because the Fourth District's "articulation of the record in *Arem* was less than clear." Motion at 8-9. This observation is inexplicable. The entire *Arem* record was before this Court when it rendered its decision, since it had been admitted in evidence before the trial court. R. 285-455. Consequently, this Court knew precisely what was in the record that led to the *Arem* decision.

the law of the land, until such time as the Florida Supreme Court accepts review and either modifies it or quashes it.

Since October 2014, *Arem* has been the sole appellate decision relating to red light camera programs, resulting in the needless (and often summary) dismissal of tens of thousands of red light camera citations throughout the state and the suspension or outright termination of many red light camera programs by local governments frightened by the potential consequences of *Arem* and a pending multi-million dollar class action pending in federal court.<sup>4</sup> The Fourth District refused to stay its mandate in *Arem* pending review by the Florida Supreme Court (Exh. B), and that review was subsequently denied. The adverse consequences of *Arem*, standing alone, should not continue to be visited upon local governments throughout not only Miami-Dade County, but also the rest of the state.

## ARGUMENT

### I. ISSUANCE OF THE MANDATE SHOULD NOT BE STAYED.

#### A. Jimenez's motion seeks to expand the *effect* of a stayed mandate into an order that undermines the precedential value of this Court's decision.

As Judge Padovano has observed in his treatise on appellate practice, "A mandate is, in essence, a written order directing the lower tribunal to comply with the decision of the appellate court on review." Padovano, P., *Florida Appellate Practice*, § 20:9 (2015 ed.). It is merely the mechanism by which jurisdiction is

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<sup>4</sup> *Parker, et al. v. American Traffic Solutions, Inc., et al.*, Case No. 14-24010-CIV-MORENO/GARBER.

transferred from the appellate court to the trial court where the proceedings originated. *See, e.g., State v. Miyasato*, 805 So. 2d 818, 824 (Fla. 2d DCA 2001) (“In general, the mandate in any case functions to end the jurisdiction of the appellate court and to return full jurisdiction of the case to the trial court. If a stay has been entered under Florida Rule of Appellate Procedure 9.310, the mandate typically causes the stay to end.”). Here, however, Jimenez essentially seeks this Court’s blessing to maintain its ill-founded argument that the precedential effect of the Court’s decision is in question, thus attempting to prevent its application well beyond the narrow strictures of Jimenez’s own case.<sup>5</sup>

What Jimenez is attempting to accomplish under the guise of a motion to stay the issuance of the mandate is unheard of. Jimenez has not cited – and the City is unaware of – any precedent that stands for the proposition that a stay of the mandate in an individual case should have consequences beyond that particular case. In fact, one of the underlying premises of Jimenez’s motion is fundamentally flawed. He posits that the mandate should be withheld so that the trial court’s current 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,

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<sup>5</sup> To be clear, the City has no objection to the continuance of the stay as to Jimenez’s *individual* red light camera citation while he seeks review by the Florida Supreme Court. However, this is an issue that can readily be addressed by the trial court upon proper motion before that tribunal – not by withholding the mandate here.

if it saw fit to do so. A stay of the mandate is *not necessary* to allow the trial court 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 to make a decision as to issuance of the mandate based on concerns as to whether the trial court's stay should continue.

Additionally, the City remains very concerned about how an order by this Court withholding the mandate would be misused by The Ticket Clinic (and other defense counsel) not just in Miami-Dade County but also throughout the state. While Florida law is clear that the precedential effect of this Court's decision commenced the day the decision issued – see *Rock v. State*, 800 So. 2d 298, 300 (Fla. 3d DCA 2001) (holding appellate decision, pending rehearing, “controls until it is altered or overturned”); *Kraay v. State*, 148 So. 3d 789, 790 (Fla. 1st DCA 2014) (holding an appellate decision “was binding on the trial courts of [the] district from the date the opinion was issued”) – the City has no doubt that an order from this Court withholding the mandate will be used offensively throughout the state to argue the continuing and controlling effect of the *Arem* decision.<sup>6</sup>

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<sup>6</sup> The City's concerns are not born out of paranoia, but rather a demonstrated willingness on the part of The Ticket Clinic to perpetuate the myth that *Arem* is the only controlling decision relating to the validity of red light camera programs. This much is evident from the motion to dismiss counsel filed in *State, ex rel. City of Aventura v. Miller* (Exh. A), which continues to argue the binding effect of *Arem* and *does not even mention* this Court's binding decision here, despite the decision having been issued and served on The Ticket Clinic three weeks before the *Miller* motion to dismiss was filed. See Exh. A at ¶ 12 (“This Court is bound by *Arem*, and must follow *Arem*. See *Pardo v. State*, 596 So. 2d 665, 666-667 (Fla. 1992) (in the absence of  
(continued . . .)

There is little need to sugarcoat what Jimenez and his counsel are attempting to do. Without the slightest sense of irony, Jimenez argues that this Court's decision "creates some uncertainty concerning whether other local governments' red-light-camera-traffic programs are being operated lawfully." Motion at 4. So, in order to "maintain the status quo through the period of the Florida Supreme Court's review," Jimenez urges the Court to withhold its mandate. What Jimenez *actually* means to say is that this Court's decision has created uncertainty about the continuing validity and scope of *Arem* when the factual record as to the red light camera program is more developed. Jimenez's implicit contention is that, during the year or more it may take the Florida Supreme Court to accept jurisdiction, allow briefing, schedule oral argument, then render a decision, *Arem* should continue to be the sole controlling precedent. Thus, the "status quo" is preserved, and The Ticket Clinic may continue to argue that all red light camera citations be summarily dismissed.

Jimenez has requested that the Court withhold its mandate for an improper purpose: to prolong the uncertainty that ensued subsequent to *Arem* in cases other than his own. Jimenez has no standing to do so.<sup>7</sup> Contrary to Jimenez's assertion,

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(... continued)

interdistrict conflict, a district court of appeal's decision binds all Florida trial courts." While the *Miller* motion also contains a stay request, it is premised on Judge Leifman's stay, which is valid only during the pendency of this appeal.

<sup>7</sup> In the related proceeding of *Fla. Att'y Gen., et al. v. Jimenez*, 180 So. 3d 248 (Fla. 3d DCA 2015), in which Jimenez attempted to vacate or modify the very same stay he now seeks to keep in place, this Court concluded that  
(continued ...)

allowing the mandate to issue would *eliminate* – not create – uncertainty as to the operation of red light camera programs. Defendants throughout Miami-Dade County and elsewhere in the state would have the opportunity to demonstrate, through an appropriately developed record, that a local government has either delegated unfettered discretion to its camera vendor – as contemplated by *Arem* – or operated in a manner consistent with the record in this case. *See, e.g., City of Boynton Beach v. Boss*, Case No. 502015AP000053XXXXMB (appellate division of Fifteenth Judicial Circuit reviewing evidentiary record, applying *Jimenez*, distinguishing *Arem*, and reversing dismissal) (Exh. C).<sup>8</sup>

## **II. EVEN APPLYING THE FACTORS TRADITIONALLY CONSIDERED IN STAYING A MANDATE, THE COURT SHOULD STILL DENY JIMENEZ'S MOTION.**

The City concurs that under normal circumstances, where the litigant is seeking to stay a mandate solely within the confines of his own litigation, the following factors should be considered: (1) the likelihood of review by the Florida Supreme Court; (2) the likelihood that the movant will ultimately prevail on the merits in the Supreme Court; (3) the likelihood of harm if the stay is not granted;

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(... continued)

Jimenez lacked standing to assert arguments on behalf of litigants in other red light camera proceedings. If he lacked standing to assert those interests, he certainly lacks standing to assert the purported interests of the local governments referenced in his motion. Motion at 14.

<sup>8</sup> Given that The Ticket Clinic was counsel for the defendant in *Boss*, it is perhaps not surprising that shortly after the adverse decision in *Boss* issued, Jimenez sought to have the mandate withheld in this case.

and (4) the remediable quality of any such harm. *Banco Indust. de Venezuela, C.A. v. De Saad*, 126 So. 3d 259, 259 (Fla. 3d DCA 2010). Here, however, Jimenez seeks to stay the mandate not to prevent the City from requiring him to pay his fine, but rather to minimize (if not eliminate) the effect of this Court's decision across thousands of red light camera proceedings in Miami-Dade County and elsewhere, thus "maintain[ing] the status quo" created by *Arem*.<sup>9</sup> Under these circumstances, consideration of the factors is unwarranted. *Not one of the cases cited by Jimenez even purports to contemplate the consequences of withholding the mandate on other pending cases involving other individuals.* However, even applying the factors, this Court should conclude that withholding the mandate is inappropriate.

The City does not dispute that there exists a real possibility of discretionary review by the Florida Supreme Court, given the certified questions formulated by this Court. Review, however, is not guaranteed. It is also possible that the Supreme Court could agree that *Arem* and *Jimenez* are wholly distinguishable, and

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<sup>9</sup> Even if the Ticket Clinic had offered to stop defending red light camera violators during the pendency of the Florida Supreme Court's possible review of this Court's decision – an offer, in fact, they have *not* made – nothing would preclude other defense attorneys throughout the state from citing this Court's order withholding the mandate as indicative of the continuing and untempered validity of *Arem*. So, notwithstanding Jimenez's protestations of the consequences to the judicial system from having to recommence processing red light camera citations, the fact remains that withholding the mandate would not guarantee that other courts throughout the state would refrain from continuing to dismiss citations based on *Arem*.

that this Court's analysis does not warrant further review or elaboration. For the moment, though, and in the interests of expediency, the City will concede that the first of the factors enumerated above has been met.

As to the likelihood of prevailing on the merits, Jimenez has not articulated why he would ultimately prevail on the merits. Instead, he argues that so long as he has a good faith argument to assert, he has satisfied this factor. Motion at 11, 13. Contrary to Jimenez's assertion, the Second District in *Miyasato* did not hold that having a good faith argument "weighs in favor" of granting the stay. It merely concluded that the outcome on the merits was "unclear."<sup>10</sup> Jimenez's "good faith" standard ignores the plain language of the commentary to Rule 9.120, which this Court quoted in *De Saad* as the pertinent standard. "The advisory committee was of the view that the District Courts should permit such stays *only when essential*. Factors to be considered are the likelihood that jurisdiction will be accepted by the Supreme Court, the likelihood of ultimate success on the merits, the likelihood of harm if no stay is granted, and the remediable quality of any such harm." 126 So. 3d at 259 (emphasis added).

While Jimenez concedes that the majority of the panel here did not find *Arem* incompatible with the Court's reasoning, he argues that the Fourth District's articulation of the record before it was nonetheless "less than clear." Motion at 8-

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<sup>10</sup> Ultimately, *Miyasato* provides little refuge for Jimenez, since the Second District granted the stay of the mandate in that case because the party opposing the stay would suffer virtually no harm from the stay. 805 So. 2d at 826. As articulated below, the same cannot be said here.



9. This is a non sequitur, as well as a canard Jimenez continues to espouse. The entire *Arem* record *was* before the trial court, *was* before this Court, and *will be* before the Florida Supreme Court. There will be no need to provide clarity as to the record underlying the Fourth District's reasoning. It is abundantly apparent that the *Arem* decision was rendered in a case where the program was perceived to operate in a manner different than the City's program. Moreover, there is nothing about the supposed lack of clarity of the *Arem* record that supports Jimenez's contention that he is likely to prevail on the ultimate merits.

The only other argument Jimenez offers to justify his assertion of likelihood of prevailing on the merits is an off-shoot of his "good faith" argument – that the issues presented in this appeal have been "close issues and the subject of vigorous debate first in the county court and now before this Court." Motion at 12. What Jimenez overlooks is that the county court expressly *disagreed* with *Arem*, noted that the concerns at issue in *Arem* did not exist in this case, but nonetheless felt compelled to follow it. There has been no vigorous debate as to the legality of a municipal red light camera program that operates in the manner established by the record in this case.<sup>11</sup>

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<sup>11</sup> Jimenez's contention (Motion at 12) that the Florida Supreme Court's decision not to review *Arem* should be read to lend credence to the *Arem* prevailing arguments is baffling, to say the least. As Jimenez notes, *Arem* was at the time the only decision on the subject of Wandall Act red light camera programs. As such, conflict review was unavailable. And since the Fourth District specifically declined to certify questions of great public importance to the Florida Supreme Court (*see* Exh. D), there is nothing that can be inferred from the denial of review.

In balancing the harms that would result from denying or granting a stay, the scales tip heavily in favor of issuance of the mandate. Jimenez has not articulated any harm to *himself* from denial of the stay, other than the possibility of having to pay his traffic fine (which could always be refunded should the Florida Supreme Court grant review and quash this Court's decision). In contrast, red light traffic enforcement is at a virtual standstill in the City because of the trial court's stay of proceedings pending conclusion of this appeal. Tens of thousands of citations remain in legal limbo, and the number increases daily. In the interim, the City continues to incur the substantial expense of operating its red light camera program. In the span of time it would take the Florida Supreme Court to accept jurisdiction and decide the case, the backlog of red light camera citations would number in the hundreds of thousands in the City and possibly in the millions around the state.<sup>12</sup>

To circumvent this obvious imbalance in the equities, Jimenez invokes consequences unrelated to his own case, announcing a parade of "horribles" as red light violators are required to defend against red light camera citations and courts are required to hold hearings and apply both *Arem* and the Court's decision here.<sup>13</sup>

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<sup>12</sup> Jimenez also fails to note that many local governments, including the City, in an abundance of caution after *Arem* was decided, modified their programs in an attempt to comply with *Arem*. Citations issued under those modified programs also remain in limbo.

<sup>13</sup> Jimenez's argument involves a certain amount of hyperbole, especially insofar as the City's red light camera program is concerned. This Court has already ruled that the City's program is lawful, so there is *no* need to conduct "lengthy evidentiary hearings" to ascertain the validity of the City's  
(continued . . .)

Assuming Jimenez has standing to raise these arguments – which he likely does not – they are precisely the arguments the Fourth District rejected in denying the motion to stay the mandate in *Arem*. The same attorneys who now represent Jimenez and argue in *favor* of withholding the mandate because of these “horribles” also represented Mr. Arem in *opposing* the stay of the mandate notwithstanding the same “horribles”:

[A]ny cases which are pending in the county court awaiting the outcome of this [*Arem*] decision can only be affected if those cases involve the same facts and the same improper application by the private vendor. That those courts “will be forced to determine on a case-by-case basis whether a specific red light camera program complies with the perceived requirements of the Court’s substituted opinion” is exactly how this Court’s ruling must be given its due force and affect [sic].

See Exh. E.

Virtually any appellate decision that announces a rule of law may be said to have consequences across a broad range of other pending cases touching upon the same subject matter. This alone cannot justify withholding the mandate, otherwise appellate mandates could be withheld whenever a basis for discretionary review by the Florida Supreme Court existed. As even Jimenez concedes, the Florida Supreme Court has clearly held, “The decisions of the district courts of appeal represent the law of Florida unless and until they are overruled by this Court.”

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(... continued)

program. As for other jurisdictions in Miami-Dade County, the hearings in question could certainly be streamlined based on this Court’s holdings as to what constitutes the lawful operational components of a municipal program.

*Pardo v. State*, 596 So. 2d 665, 666 (Fla. 1992). That holding applies with equal force to the Court's decision here. The fact that Jimenez and his counsel would prefer to maintain a "status quo" that is based on *Arem* – and thus facilitate the erroneous argument that *Jimenez* has no present effect – does not justify ignoring the principle articulated in *Pardo* and withholding the mandate.

**III. SHOULD THE COURT DECIDE THAT A STAY OF THE MANDATE IS WARRANTED, THE COURT SHOULD CLARIFY IN ITS ORDER THAT THE STAY DOES NOT AFFECT THE PRECEDENTIAL VALUE OF ITS DECISION OR THE JURISDICTION OF THE TRIAL COURT.**

As previously noted, mandates serve a limited function in transferring jurisdiction back to the trial court and directing the trial court's compliance with the appellate decision. And yet, Jimenez's motion clearly reflects his intention to invoke any stay of the mandate as an argument against the precedential value of the Court's decision here. Should the Court conclude that a stay of the mandate is warranted as to Jimenez, the City respectfully requests that the Court, in its order, clarify that withholding the mandate does not vitiate or undermine the precedential value of its decision as to other proceedings or interfere with the trial court's concurrent jurisdiction to decide whether it should continue the stay currently in place for Miami-Dade County.

**CONCLUSION**

Jimenez and his counsel were content to allow *Arem* to have its full force and effect over the past two years, during which time tens of thousands of red light camera citations were summarily dismissed and many local government programs

were either suspended or terminated, simply because of fear of the consequences of *Arem*. Now that this Court has called into question the scope of the holding in *Arem* and upheld the City's program, it has suddenly become imperative to Jimenez and his counsel that all red light camera proceedings that might rely on *Jimenez* be precluded from going forward. This self-serving agenda should not justify withholding the mandate in this appeal. Accordingly, the City respectfully requests that Jimenez's motion be denied. Alternatively, any stay of the mandate that issues should be narrow in scope and expressly limited exclusively to Jimenez's case, to avoid misplaced and misleading arguments that this Court's opinion lacks the power of law as to third parties.

#### **CERTIFICATE OF SERVICE**

I certify that a copy of this motion was served via e-mail this 19th day of October, 2016, on **Robert Dietz, Esq.** (Robert.Dietz@myfloridalegal.com), Office of the Attorney General, 501 E. Kennedy Boulevard, Suite 1100, Tampa, FL 33134; and **Louis C. Arslanian, Esq.** (arsgabriela@comcast.net), Gold & Associates, P.A., 5800 Sheridan Street, Hollywood, Florida 33021; **Marc A. Wites, Esq.** Wites & Kapetan, P.A. (mwites@mklawyers.com), Co-Counsel for Appellee, 4400 North Federal Highway, Lighthouse Point, Florida 33064; **Edwin R. Christman** (rchristman@gmail.com), 237 Jim Bryant Road, East Palatka, Florida 32131.

Respectfully submitted,

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*Counsel for Appellant, City of Aventura*

By: /s/ Edward G. Guedes  
Edward G. Guedes

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA  
CASE NO. 16-TR000A6KTAME00

Citation No. A6KTAME

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STATE OF FLORIDA, by and through the  
CITY OF AVENTURA,

Plaintiff,

-vs-

LISA MILLER,

Defendant.

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TRANSCRIPT OF PROCEEDINGS

DATE TAKEN: October 21, 2016  
TIME: 2: 10 P.M. - 3:25 P.M.  
PLACE: 1351 Northwest 12th Street  
Miami, Florida  
BEFORE: THE HONORABLE STEVEN LEIFMAN

This cause came on to be heard at the time and  
place aforesaid, when and where the following  
proceedings were reported by:

Examination of the witness taken before:  
Laurie Susskind, Registered Professional Reporter  
United Reporting, Inc.  
1218 Southeast 3rd Avenue  
Fort Lauderdale, Florida 33316  
954-525-2221

United Reporting, Inc.  
(954) 525-2221

081

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ALSO PRESENT VIA TELEPHONICALLY:

OFFICE OF THE ATTORNEY GENERAL  
By: ROBERT DIETZ, ESQ.  
501 East Kennedy Boulevard, Suite 1100  
Tampa, Florida 33602-5242

- - - - -



1 Thereupon, the following proceedings were had:

2 THE COURT: Hi, everybody. I hope  
3 everyone is well.

4 Red light cameras for the record.

5 For the record, Judge Leifman presiding.

6 Would the parties like to make their  
7 appearance?

8 MR. ZESKIND: Good afternoon. Sam  
9 Zeskind, Weiss, Serota, for the City of  
10 Aventura.

11 MR. PEREZ: Good afternoon, Your Honor.  
12 For the City Attorney, J.C. Perez on behalf of  
13 the City of Miami.

14 THE COURT: We need to get the Attorney  
15 General's Office on the phone.

16 THE CLERK: I have a hold, but no phone  
17 number.

18 THE COURT: Since you can't call long  
19 distance, I'm going to have -- do you have the  
20 number down here? Do you know the number?  
21 I'll have Laura call from my office, and she'll  
22 transfer him in.

23 Hold on. Let me call her.

24 While we are waiting for the Attorney  
25 General, do you guys -- are you going to

1 participate in this at all?

2 MR. HOLLANDER: I'm not sure. Probably  
3 not.

4 MR. ARSLANIAN: Louis Arslanian for the  
5 plaintiff.

6 THE COURT: Counsel, make your appearance  
7 just in case.

8 MR. HOLLANDER: Ted Hollander.

9 THE COURT: Let's wait for the Attorney  
10 General to get started.

11 Mr. Dietz?

12 MR. DIETZ: Here I am.

13 THE COURT: Can you make your appearance  
14 for the record?

15 MR. DIETZ: Yes. This is Robert Dietz for  
16 the Office of the Attorney General, the  
17 intervenor.

18 THE COURT: Thank you.

19 Counsel, would you like to proceed?

20 MR. ZESKIND: Yes, Your Honor.

21 Good afternoon again, Your Honor. Sam  
22 Zeskind on behalf of the City of Aventura.

23 We are here today on the City of  
24 Aventura's and City of Miami's joint motions to  
25 lift the stay that is currently in place

1 regarding all red light camera decisions, as  
2 well as a request for Your Honor to set uniform  
3 mandatory guidelines to be put in place with  
4 respect to the prosecution and defense of all  
5 red light camera matters.

6 To begin with, with respect to our motion  
7 to lift the stay, the order, the stay order,  
8 that is at issue here has already expired.

9 THE COURT: Okay.

10 MR. ZESKIND: The order says that -- and  
11 I'll quote from the beginning on the bottom of  
12 Page 2 -- "Based on the foregoing, this Court  
13 further orders that the dismissal of all red  
14 light camera citations per this Court's order  
15 of September 25th, 2015 which use the process  
16 Arem found objectionable, that is where the  
17 contract allows the vendor to review the red  
18 light camera data and issue the notice of  
19 violation and the citation, shall be stayed  
20 pending the resolution of this case in the  
21 Third District Court of Appeal."

22 Jimenez has been resolved in the Third  
23 Court of Appeal. That opinion is final. It is  
24 binding on the other courts throughout the  
25 state, and by the terms of this order, it is

1 expired.

2 THE COURT: Can I ask a couple of  
3 questions?

4 MR. ZESKIND: Absolutely, Your Honor.

5 THE COURT: So, first, I don't have a  
6 final judgment yet on the case.

7 Secondly, there is a motion to stay the  
8 Third's.

9 I would love to proceed, quite frankly,  
10 but I don't want to create another problem for  
11 all of us.

12 MR. ZESKIND: Right.

13 Just to clarify why you don't have the  
14 mandate yet from the Third and the effect of  
15 that, the mandate is the directive from the  
16 Third DCA to the trial court to proceed in that  
17 case, the Jimenez case, per the directive of  
18 the Court. It has no effect on any other case.  
19 It is solely related to the mandate with  
20 respect to Jimenez. Otherwise, Jimenez's  
21 decision is final. The rehearing has been  
22 denied. That decision is final and binding,  
23 and it remains controlling, binding precedent  
24 in the state of Florida until such time as --  
25 if it happens to be reversed at some point.

1 THE COURT: Or if they stay it.

2 MR. ZESKIND: Well, no. The request is to  
3 stay the issuance of the mandate.

4 THE COURT: Correct.

5 MR. ZESKIND: Which doesn't stay the  
6 controlling precedential effect of the  
7 decision.

8 THE COURT: Explain why would that be.

9 MR. ZESKIND: Because the mandate is a  
10 procedural -- the purpose of the mandate is  
11 just a procedural nature by way that the Third  
12 DCA directs the trial court to deal with the  
13 judgment with respect to that individual.  
14 Otherwise, outside of that case, the opinion is  
15 effective from the date it is issued, and it is  
16 final as to everyone throughout the rest of the  
17 state from the date the rehearing was denied.

18 THE COURT: Okay. But it seems to fly in  
19 the face of some logic. So if the Third,  
20 though, then goes and stays its own opinion --

21 MR. ZESKIND: Your Honor, it won't be  
22 staying its opinion. That is --

23 THE COURT: If they stay the mandate --  
24 Let's go -- it's a little like chess, though.

25 Assume you are correct --

1 MR. ZESKIND: Yes.

2 THE COURT: -- and the Florida Supreme  
3 Court reverses the Third, and then if I have  
4 started to hear all of these cases, what  
5 happens at that point?

6 MR. ZESKIND: Well, your Honor --

7 THE COURT: I mean, I don't want to stay  
8 all of this indefinitely. I have a backlog of  
9 tens of thousands of cases I need to start  
10 hearing. I am not -- I am sympathetic. I'm  
11 just trying to prevent another nightmare  
12 scenario if the Supreme Court, they want to go  
13 in a different direction.

14 MR. ZESKIND: Your Honor, this is not the  
15 only case that has ever been appealed to the  
16 the Florida Supreme Court. Those other cases  
17 always remain --

18 THE COURT: I totally agree with that. I  
19 didn't mean to interrupt you, but, you know, I  
20 ask a lot of questions. I'm sorry to interrupt  
21 you.

22 MR. ZESKIND: We've been through this  
23 before.

24 THE COURT: It just helps me think it  
25 through, okay?

1           So the difference between an opinion that  
2           they issued that affects one issue and the  
3           difference between this situation which affects  
4           hundreds of thousands of issues is significant.  
5           And from a perspective of the process of the  
6           Court and administration of the Court, there  
7           are huge consequences to whatever I do with  
8           this thing. And so I'm trying very hard to  
9           have one system in place and not get a million  
10          different things.

11           Why don't -- do you have any case law  
12          supporting your position on this?

13          MR. ZESKIND: I do, Your Honor.

14          THE COURT: Okay.

15          MR. ZESKIND: If I can approach.

16          I'm going to hand you --

17          THE COURT: Anything different than I have  
18          already read?

19          MR. ZESKIND: It is cited within our  
20          motion, but I'll hand you courtesy copies.

21          THE COURT: Thank you.

22          MR. ZESKIND: I'm handing you Rock versus  
23          State, which is cited at 800 So2d 298. It is a  
24          2001 Third DCA opinion; also Gray versus State,  
25          148 So3d 789, it's a 2014 First DCA opinion.

1           Your Honor, I'm also going to hand you --  
2           I don't believe it was cited within the most  
3           recent motion, but it's been cited in prior  
4           filings. That's Pardo versus State. It is a  
5           Florida Supreme Court case, 596 So2d 665.

6           And the proposition in Pardo is that the  
7           decisions of the District Courts of Appeal  
8           represent the law in Florida unless and until  
9           they are overruled by this Court, and that's at  
10          666.

11          THE COURT: Thank you very much.

12          Your second argument, which I haven't  
13          heard yet, may be, I don't know, stronger, but  
14          may be more persuasive. I don't know if you  
15          are going there, so maybe I'll wait.

16          MR. ZESKIND: No, Your Honor. I want you  
17          to find what is the more persuasive argument.

18          I will tell you, though, this is the law.  
19          The decision --

20          THE COURT: I understand it is the law.

21          MR. ZESKIND: And I will just say before  
22          we jump into another issue that I know that the  
23          defendant's opposition, one of the points they  
24          make in opposition is they would be prejudiced  
25          somehow if we were to proceed under the law --



1 THE COURT: I don't think they will be  
2 prejudiced because we can always reverse  
3 whatever happens I suppose if the Supreme Court  
4 finds it is constitutional.

5 I think the other issue would be -- I'm  
6 more interested in talking through is there are  
7 different municipalities using different  
8 processes that may not apply to this case.

9 MR. ZESKIND: Yes, Your Honor. That is --

10 THE COURT: Those are the cases that it  
11 may be we could go forward on without a  
12 problem.

13 MR. ZESKIND: Your Honor, yes, that is  
14 another point; I think that's the secondary  
15 point. I would just like to finish with the  
16 first issue.

17 THE COURT: Go ahead.

18 MR. ZESKIND: And that is, I understand  
19 Your Honor's thought process with respect to,  
20 you know, not wanting to create issues where  
21 you don't have to. But, you know, the law in  
22 Florida right now specifically within this  
23 district, specifically within this district --

24 THE COURT: Correct.

25 MR. ZESKIND: Although --

1 THE COURT: State of Florida, because the  
2 Fourth has a sort of different opinion, and the  
3 Third is not even sure if this case is  
4 factually identical to the Fourth case.

5 MR. ZESKIND: The majority opinion was,  
6 Your Honor.

7 THE COURT: Correct.

8 MR. ZESKIND: The concurrence --

9 THE COURT: Wasn't.

10 MR. ZESKIND: But that's not precedential.

11 THE COURT: I agree with you.

12 MR. ZESKIND: I will say, though, that it  
13 has been extended. Jimenez has been cited and  
14 used even within the umbrella of the Fourth DCA  
15 in the City of Boynton Beach versus Boss. The  
16 15th Judicial Circuit in its appellate capacity  
17 recently relied on Jimenez in overturning the  
18 dismissal of red light camera citations, found  
19 Boynton Beach's program to be valid. So it's  
20 outside the Third. They are applying Jimenez  
21 and allowing the program to be determined to be  
22 valid and proceed. I don't know why we can't  
23 do it within the Third where Jimenez is the  
24 binding controlling law.

25 THE COURT: Fair enough.

1 MR. ZESKIND: To the extent that they  
2 think there might be some prejudice -- because  
3 I know it is buried in the bottom of their  
4 opposition that they filed or at least served  
5 in opposition to our motion -- is the notion  
6 that they wouldn't have any recourse should we  
7 proceed and down the line the Florida Supreme  
8 Court puts this around.

9 If they are going to concede that the  
10 partner class action, they won't be able to  
11 certify a class there, then I think that's  
12 fair. Otherwise, I don't think that's fair  
13 argument. There is a pending class action --

14 THE COURT: In federal court.

15 MR. ZESKIND: -- in federal court on these  
16 various issues.

17 So I would just like to go back to the  
18 initial point, which is the current order has  
19 expired. We shouldn't be here on our motion to  
20 lift the stay; the stay should already be  
21 lifted. There has been no motion and  
22 subsequent order granted extending the stay in  
23 any other case.

24 THE COURT: I was waiting to get a mandate  
25 so I can read something. I have nothing in

1 hand except their opinion, basically, but I  
2 don't have a mandate.

3 MR. ZESKIND: Again --

4 THE COURT: I really would like to have  
5 that before I start doing something that may be  
6 a problem.

7 MR. ZESKIND: The mandate only affects  
8 your ability to do anything within the Jimenez  
9 case itself. We are not asking you to lift the  
10 stay in Jimenez; we are asking you to lift the  
11 stay beyond Jimenez, the other cases that allow  
12 the City of Aventura to proceed to have their  
13 other citations heard because the Third DCA has  
14 determined that the program --

15 THE COURT: Is okay.

16 MR. ZESKIND: -- is valid.

17 THE COURT: Okay.

18 MR. ZESKIND: There has been no motion  
19 that has been filed and heard to extend the  
20 stay, to apply the stay, to issue a new stay.  
21 So right now should Your Honor effectively  
22 leave the stay in place, we are effectively  
23 left without a remedy to seek review of that.  
24 There is not a motion and order on one of those  
25 other cases that has been filed. The burden

1       should be on the defendants to extend or  
2       continue or put a new stay in place. That's  
3       not what happened.

4               What happened here is after the rehearing  
5       motion got filed, an ex-parte e-mail was sent  
6       to your assistant after the program had  
7       restarted, and then all of a sudden, without  
8       hearing or argument, the stay was put back into  
9       place.

10              THE COURT: Well, I don't think that's a  
11       fair description because the stay never got  
12       lifted by me to be put back in place. I'm  
13       sitting now, my hand is waiting for a mandate  
14       so I can tell my hearing officers what they can  
15       and cannot do.

16              One of your earlier arguments was to put  
17       guidelines in place, which I'm working on, but  
18       I'm waiting to have -- no pun intended -- a  
19       green light to move forward from the Third to  
20       issue it, so -- but I'm listening.

21              MR. ZESKIND: All right, Your Honor.

22              So before we go into the guidelines issue,  
23       I think to touch on, although, you know,  
24       respectfully, I think it is appropriate to lift  
25       the stay with respect to all the citations,

1       whether it is the citations that were issued  
2       under the programs that, you know, are similar  
3       to the ones or the same as the one analyzed in  
4       Jimenez, the pre-Arem programs, but since then,  
5       the municipalities that I'm aware of, everyone  
6       is operating differently.

7               THE COURT: I know.

8               MR. ZESKIND: So it doesn't make sense --  
9       I think it is even included within your stay  
10      order, the one that is in place, that things --  
11      the citations that are supposed to be stayed  
12      are the ones that are addressed to where we --  
13      by Jimenez.

14              So without waiving any of our arguments if  
15      the stay were to remain in place with respect  
16      to Jimenez and those similar programs, because  
17      I think if an order were to be entered  
18      continuing it, it needs to be done in a way to  
19      allow us the ability to seek relief and review  
20      of that order if that should happen. But with  
21      respect to the other programs, I don't see any  
22      reason why -- like the City of Miami who's here  
23      and might want to be heard on this as well  
24      today --

25              THE COURT: It is a totally different

1 process.

2 MR. ZESKIND: -- totally different  
3 process, that's not --

4 THE COURT: Correct.

5 MR. ZESKIND: That's not at all --

6 THE COURT: I haven't ruled, but it  
7 probably is not even questionable based upon  
8 Arem.

9 MR. ZESKIND: Right.

10 And there are other programs Aventura has  
11 changed. Many other municipalities that we  
12 represent also have made modifications to their  
13 program that, you know, we believe to the  
14 extent -- obviously, we don't agree with the  
15 Arem ruling, but even with respect to Jimenez,  
16 that there have been enough changes that those  
17 issues should not even be in place any longer.  
18 There are delegation issues.

19 THE COURT: I don't do much appellate  
20 work. How long does a mandate usually take?

21 MR. ZESKIND: Your Honor, the motion to  
22 stay the issuance of a mandate has been fully  
23 briefed. We are just waiting on the Third DCA  
24 to rule. But, again, I will reiterate --

25 THE COURT: Counsel, if you want to

intercede real quick.

MR. ARSLANIAN: It would have been issued already but for a motion that was filed.

THE COURT: Right.

MR. ARSLANIAN: And, I mean, I'll address that issue regarding why that was filed that way.

THE COURT: Okay.

MR. ZESKIND: So --

THE COURT: Your next point.

MR. ZESKIND: I don't know if you want to move on to the other issues and let other people be heard. Just run through the status.

THE COURT: Run through, and I'll let everyone address whatever they want to address.

MR. ZESKIND: Absolutely, Your Honor.

So we are also here on our motion to implement mandatory uniform procedures to be implemented in the prosecution defense of red light cameras in this county.

The problem that we are facing, irrespective of the fact that apparently there remains a stay in place, is that motions to dismiss are being filed all across the county against every program.



1 THE COURT: Even more complicated than  
2 that. They are also getting filed in the  
3 municipality on notices of violation.

4 MR. ZESKIND: Yes. They are, yes. It's  
5 being challenged everywhere.

6 They are not -- there are no courtesy  
7 copies being served on the attorneys for the  
8 municipality, so there is no way for us to be  
9 prepared to address them. There are motions  
10 that -- a large portion of them, although we  
11 have not actually been served with a courtesy  
12 copy, the ones that have been brought to our  
13 attention don't address Jimenez at all. They  
14 operate in a world where Jimenez doesn't exist.

15 THE COURT: Are you referring to cases in  
16 municipalities involving notices of violation  
17 or also -- or just the regular uniform traffic  
18 citation violations or both?

19 MR. ZESKIND: With respect to today, I'm  
20 really talking about the -- although we would  
21 certainly appreciate it if someone was going to  
22 make that kind of challenge at the municipality  
23 hearing level, that that same courtesy be given  
24 to the City so that the attorney can be there  
25 to defend those motions.

1           THE COURT: I'll address that with counsel  
2           because I agree with you. They are now calling  
3           our general counsel asking us to share them,  
4           but we don't get them because they are only  
5           municipal cases. They have no jurisdiction  
6           over them.

7           MR. ZESKIND: They are code enforcement  
8           cases, essentially.

9           THE COURT: Correct.

10          MR. ZESKIND: And, you know, there aren't  
11          rules of procedure necessarily in place there,  
12          so maybe they feel they can get away with it.  
13          Here, there is no excuse.

14          THE COURT: I agree.

15          MR. ZESKIND: There are rules of  
16          procedures in place and rules of professional  
17          conduct that mandate that we receive courtesy  
18          copies on motions filed when they know that the  
19          party is represented by counsel.

20          There is no question here who represents  
21          the City of Aventura with respect to the red  
22          light camera programs. There is no question  
23          who represents the City of Miami with respect  
24          to their red light camera programs.

25          THE COURT: Well, any municipality, it's

1 easy to know because they all sit in the City  
2 Attorney's Office.

3 MR. ZESKIND: Absolutely, Your Honor.

4 It is a very simple exercise. The problem  
5 is that even just with respect to Aventura,  
6 there are currently over 300 motions to dismiss  
7 floating out there, none of which have been  
8 served upon us.

9 THE COURT: Or me.

10 MR. ZESKIND: Or you.

11 THE COURT: Which is just fine. I don't  
12 need 300 more cases.

13 MR. ZESKIND: If we receive just one with  
14 a notice this has been filed in all these other  
15 cases, it might be okay, but we have received  
16 zero.

17 THE COURT: We'll address that later.

18 Let's go to your second mandatory or  
19 uniform procedures argument.

20 MR. ZESKIND: Sure.

21 I think we also need to have a procedure  
22 put in place that those motions actually set  
23 forth all the things that they do intend to  
24 argue. We have been kind of sitting and  
25 morphing the theories where it is not just

1 based on Arem or delegation issues. They seem  
2 to continually adopt new arguments, and we --  
3 the reason why Arem exists in the first place  
4 is because of that very thing. There needs to  
5 be a written motion that allows us the  
6 opportunity to respond so that the evidence can  
7 be put on.

8 THE COURT: Why don't we need guidelines  
9 for that? The Rules of Criminal Procedure  
10 already have guidelines. Why do I need to --

11 MR. ZESKIND: They are not being followed,  
12 Your Honor.

13 THE COURT: Then file a rule to show  
14 cause, but I don't know why I need to make  
15 guidelines on top of rules that already exist  
16 to do the same exact thing.

17 The guidelines and rules that I am  
18 thinking about issuing to my hearing officers  
19 would not be that. It would be more to this  
20 is -- these are the issues of these cases, and  
21 these are the issues that we need to rule on  
22 based upon the Third's opinion.

23 If these are the parameters and it doesn't  
24 fit in this parameter, move forward on the  
25 case, but I don't want multiple motions once we

1 rule on a particular set of facts.

2 MR. ZESKIND: Yeah. I think that's fair,  
3 and that's part of what we asked for within the  
4 procedures of what should be set forth in the  
5 motions, which is, you know, the Third has said  
6 that Arem was decided properly based on its  
7 limited record and set of facts as they viewed  
8 the Hollywood program. Then there's Jimenez,  
9 and we know how that Court ruled and the set of  
10 facts that they analyzed. And there are two  
11 types of programs; one has been ruled invalid  
12 and one valid. And they need to -- the defense  
13 need to have the burden of saying why they  
14 think any of these other programs fit into  
15 either one of those boxes.

16 THE COURT: I didn't see it -- I don't  
17 know if you did it. Do you have a proposed set  
18 of guidelines you would like us to consider?

19 MR. ZESKIND: We laid out a rough set  
20 within our motion beginning on Page 10. There  
21 are six paragraphs where we laid out what we  
22 would propose. Obviously, if Your Honor has  
23 additional thoughts, a way to make this process  
24 work more seemly, I think that we are not  
25 married to only these six.

1 THE COURT: Okay.

2 MR. ZESKIND: Before I step aside and let  
3 someone speak, I would like to reiterate again  
4 for the purposes of dealing with the stay issue  
5 that we don't believe that the mandate dictates  
6 what you do with respect to any other case  
7 other than him Jimenez. It's purely a  
8 procedural mechanism from the Third to you to  
9 tell you what to do.

10 THE COURT: I understand your argument.

11 MR. ZESKIND: So if Your Honor is not  
12 going to keep the stay in place or keep the  
13 placement with respect to some programs and not  
14 others, we just ask it be done in a way where  
15 the order is entered in another case other than  
16 Jimenez that allows the City of Aventura case  
17 that is pending -- that allows us to a chance  
18 to seek review of that order.

19 THE COURT: I was all ready to do that and  
20 hit the send button, and so the appeal got  
21 filed as to the Third to stay. I hear you.

22 Let me hear all the other arguments, and  
23 then we'll put together a response. It won't  
24 be today, but it will be soon.

25 MR. ZESKIND: If Your Honor wants proposed

1 orders or anything along those lines, I'll be  
2 happy to submit that. Thank you, Your Honor.

3 THE COURT: Any other -- Mr. Dietz is on  
4 the line or City of Miami representative,  
5 whoever would like to.

6 Mr. Dietz, would you like to make a couple  
7 of comments?

8 You don't need to repeat any of the  
9 arguments I just heard. If you have something  
10 additional, I'll be happy to hear it.

11 MR. DIETZ: Yes. You know, it might be  
12 sort of what is good for the goose is what is  
13 good for the gander sort of thinking in your  
14 mind. Like you put the stay in place, why  
15 should it be -- why shouldn't there be a stay  
16 until all these cases are over? There is a  
17 very logical explanation for that.

18 When they entered Arem, it was necessary  
19 because -- and the defense counsel agreed, that  
20 one case can be tried to determine the protocol  
21 for each city, and then we would know whether  
22 the protocol was different from Arem or the  
23 same as Arem. That is why we did the Jimenez  
24 case, and some of the cases will be determined  
25 as a result of the Jimenez case.

1           The reason why there was a stay after the  
2           Jimenez trial court case is because the Court  
3           found that the protocol was different than the  
4           Arem case and that it needed a Third District  
5           Court of Appeal opinion in regard to changing  
6           the law.

7           Now that the Third District Court of  
8           Appeal opinions have come out and have changed  
9           the law, which is effective due to the cases  
10          cited by Mr. Zeskind, Kroll being 148 So3d 789,  
11          the law has changed, and you have two courts  
12          agreeing that under this protocol that it is  
13          not an illegal delegation of police power and,  
14          furthermore, that the majority opinion said the  
15          cases do not conflict, that they can -- they  
16          are separate within themselves.

17          So for that reason, it is logical to lift  
18          the stay at this time for the cases other than  
19          Jimenez. I mean, Jimenez -- as you know, we  
20          are not here arguing about Jimenez. We are  
21          here to argue about all the other cases that  
22          should be tried.

23          I think one of the things that you asked  
24          Mr. Zeskind was what happens if the Third comes  
25          out. Well, the Third is not going to come



1 out -- well, last year, the defendants asked  
2 the Third to rule on all the cases outside  
3 Jimenez, and the Third stated they didn't have  
4 standing.

5 As with the document that I filed  
6 yesterday with the Third District Court of  
7 Appeal in response to the request for the stay  
8 at the Third, that decision has not changed for  
9 Mr. Jimenez. He does not have standing to --  
10 continues not to have standing, either a  
11 request to stay or to request a stay be lifted  
12 for all the other cases outside his case.  
13 Therefore, I am pretty confident the Third is  
14 going to come back and give the same ruling,  
15 but there is no standing by Mr. Jimenez to ask  
16 for the stay on all the cases.

17 So with that, I think it is logical that  
18 the stay would have been particularly in the  
19 Third District Court of Appeal where the law is  
20 established now in the state of Florida, so  
21 I'll comment on the -- you probably want me to  
22 comment right now also on the protocol.

23 Your Honor put in place the protocol that  
24 the Ticket Clinic would serve upon the Attorney  
25 General's Office a motion when they filed it

1 with the clerk that had the name of the  
2 jurisdiction on it, that had the -- that has  
3 certificate of service and then had a case  
4 number on it. The reason being that they were  
5 serving motions to dismiss without those things  
6 previously.

7 However, now The Ticket Clinic has decided  
8 to serve a motion with the name of the  
9 jurisdiction on it and has forwarded those  
10 motions to the Attorney General's Office now.  
11 But in violation of your order, they have not  
12 put on the certificate of service naming those  
13 people that they served in the certificate of  
14 service. So, you know, we don't know who they  
15 have served. They put on the certificate of  
16 service just saying that they served the clerk  
17 of court. So really the certificate of  
18 service, there is -- you know, it is usually  
19 assumed the clerk of court is served, and then  
20 they put on the name of the other parties that  
21 they served. So we really need them to abide  
22 by your order that is already put in place  
23 stating that they should fill out the  
24 certificate of service properly.

25 THE COURT: Anything else you would like

1 to add?

2 MR. DIETZ: No, Your Honor.

3 THE COURT: Thank you.

4 Would the City of Miami like to be heard?

5 MR. PEREZ: Good afternoon. Again, JC  
6 Perez on behalf of City of Miami.

7 Your Honor, you know that the stay was  
8 issued in the case of Jimenez, and then it was  
9 made applicable that some motion for  
10 recognition of the stay be entered was entered  
11 against every municipality in the city and the  
12 county. The City was not represented at that  
13 hearing. The City never received a motion, and  
14 all we have been doing is receiving these  
15 motions to dismiss despite the fact we changed  
16 our program so that in order to pertain to any  
17 changes that Arem may create as far as a  
18 problem for us now, we have the dual peer  
19 review system and all we have is a work in  
20 queue. Our offices review everything.

21 To the extent where these motions to  
22 dismiss are continuing to be filed and we want  
23 to go forward on those cases, we have not been  
24 able to. A lot has to do with the second  
25 point, which is the back door communication.

1 THE COURT: I hear what you are saying. I  
2 disagree with you on one point. It is  
3 incumbent upon you to then file a motion before  
4 us to have a hearing. I mean, it is not for me  
5 to reach out and set a hearing now for the City  
6 to see what different procedures you are using  
7 to see if it is consistent or not consistent  
8 with Jimenez. Since we didn't hear anything  
9 from anybody, we didn't do anything.

10 So if you want us to make a ruling on  
11 that, then by all means file a motion, and I'll  
12 hear that; and then we could see if the facts  
13 are different, and we can move forward on your  
14 cases if that helps you.

15 MR. PEREZ: That's what we are seeking.  
16 We still have a batch of the older cases.

17 THE COURT: Yes. Which makes it a little  
18 more complicated.

19 MR. PEREZ: Which is why we ask them to be  
20 stayed for discovery.

21 THE COURT: Okay. I appreciate it.

22 MR. PEREZ: Thank you.

23 THE COURT: Thank you very much.

24 MR. ARSLANIAN: Good afternoon, Your  
25 Honor.

1 THE COURT: Good afternoon.

2 MR. ARSLANIAN: Where do I begin?

3 First of all --

4 THE COURT: This is a lawyer's dream.  
5 Complex litigation.

6 MR. ARSLANIAN: I guess where I'll begin  
7 is the last time I was here the roles were  
8 completely reversed, and when Arem came out,  
9 the rules -- the roles were completely  
10 reversed.

11 You know, one issue that I take with  
12 something Mr. Zeskind said is that he says that  
13 if you stay the mandate, it doesn't do  
14 anything. I assure you that when Arem came  
15 out, the exact motion that we filed was filed  
16 in the Fourth and then in the Supreme Court,  
17 and he said it would be a disaster to not stay  
18 this thing. Okay. And he cited the same exact  
19 cases.

20 Now, technologically, when this motion was  
21 filed --

22 THE COURT: You are echoing. I get to  
23 hear you twice.

24 MR. ARSLANIAN: That's only fair.

25 THE COURT: There you go. You are

1           outnumbered three to one.

2           MR. ARSLANIAN: I need a third one.

3           But when the motion was filed, I think it  
4           was filed after the Jimenez opinion came out,  
5           but while the rehearing was pending. Now, the  
6           rehearing has been denied since the time we got  
7           this hearing.

8           So while -- to the extent that they say  
9           that the stay that you have entered -- there  
10          are two different things going on here. There  
11          is you as the trial court.

12          By the way, in their response to the  
13          motion pending to the Third, they recognized  
14          your inherent ability to do what you will with  
15          this day, modify it, lift it, extend it,  
16          whatever.

17          THE COURT: Do you agree with them that  
18          the stay is expired -- my stay is expired based  
19          upon the denial of the rehearing on the case?

20          MR. ARSLANIAN: Well, I would say -- I  
21          would say there is certainly a good faith  
22          argument to be made and what -- because what  
23          you said, it is in the last sentence, it shall  
24          be stayed pending the resolution of this case  
25          in the Third District Court of Appeal.

1 Obviously, we know the opinion has been  
2 issued. We know rehearing has been denied.  
3 There is a motion to stay the mandate. It is  
4 the mandate that really resolved the case, so I  
5 would argue that it is not yet resolved. I  
6 mean, would I undo the opinion? No.

7 Are you going to suddenly grant rehearing?  
8 No, but --

9 THE COURT: So what's the rest of me  
10 lifting the stay based upon them denying the  
11 rehearing? What damage or prejudice occurs to  
12 this client and any other clients that you  
13 happen to represent?

14 MR. ARSLANIAN: Let me first answer that,  
15 and I want to answer that because I don't want  
16 to avoid the question. Let me tell you --

17 THE COURT: It is not a presidential  
18 debate. Make sure I get my questions answered  
19 no matter what you talk about.

20 MR. ARSLANIAN: I'm not pivoting.

21 Besides working for Gold & Associates, the  
22 Ticket Clinic, I have my own private practice,  
23 and one of the things that I do -- this is --  
24 why I'm raising this is because it is exactly  
25 what is going on here. A case, an important

1 case, is going up to the Supreme Court. I do  
2 foreclosure defense, and I have currently a  
3 case that involves what is called the Bartram  
4 defense, just like there's the Arem defense.

5 Bartram -- it is U.S. Bank versus Bartram,  
6 Fifth District Rule, and it has to do with the  
7 statute of limitations. Banks send out your  
8 little default letter saying you have missed --

9 THE COURT: Life is not affecting tens of  
10 thousands of cases.

11 MR. ARSLANIAN: In Broward County -- this  
12 was my second appearance before this judge for  
13 a trial, and I basically came out and said  
14 we're in the process of picking a new date in  
15 November because this case was rolled because  
16 of the Bartram issue. And Judge Stone happened  
17 to be senior judge, former member of the Fourth  
18 DCA; the guy starts to arguing a little bit.  
19 He said I'm going to wait for whatever guidance  
20 the Supreme Court can give me on this subject.  
21 I can provide you an affidavit from the judge  
22 of the Court.

23 THE COURT: I do not need that.

24 MR. ARSLANIAN: They are staying all the  
25 cases because of this issue.



1 THE COURT: I understand the analogy.

2 MR. ARSLANIAN: Because of this issue.

3 Obviously, what will happen here is the  
4 people will be not only -- Let's assume for a  
5 second -- I mean, it's going to the Supreme  
6 Court. And there are three --

7 THE COURT: Well, without -- let me ask  
8 you a future question. Does the Supreme Court  
9 have to accept --

10 MR. ARSLANIAN: No, they don't.

11 THE COURT: I wouldn't argue yet it is  
12 going to go to the Supreme Court. I would be  
13 surprised if they don't accept it because we  
14 have all these issues, and there is a lot of  
15 money at stake for the State.

16 MR. ARSLANIAN: There is also an appeal  
17 going on in the Second District that hasn't  
18 been -- we don't know -- we don't know what  
19 they are going to do.

20 THE COURT: I think they will, but just --

21 MR. ARSLANIAN: I would think they will.

22 Obviously, if -- you know, paper -- the  
23 jurisdictional stuff is filed, the notice of  
24 intent to invoke the jurisdiction is filed and  
25 the Supreme Court decides we are not taking the

1 case, Judge, I don't have much of an argument  
2 anymore. I kind of lost my mojo completely  
3 here.

4 But, basically, the prejudice is -- you  
5 know, if the Supreme Court comes back and says,  
6 you know what, this case -- finds exactly what  
7 Your Honor said -- this case is the Arem case.  
8 Your Honor -- you know, if you -- I don't know  
9 if you read my motion for rehearing.

10 THE COURT: It sounds like --

11 MR. ARSLANIAN: You didn't see my motion  
12 for rehearing? You need to see my motion.

13 THE COURT: You didn't send it to us.

14 MR. ARSLANIAN: They attempted to say this  
15 is a different case, and I said you just  
16 totally disregarded the trial judge's findings.  
17 The trial judge found this is the same exact  
18 facts as Arem.

19 THE COURT: It is remarkable on one day  
20 you argue against me, and then the next day you  
21 have to agree with me.

22 MR. ARSLANIAN: That's, you know --

23 THE COURT: The beauty of the law.

24 MR. ARSLANIAN: We are getting close to  
25 politics now, but not quite.

1 But the thing is that --

2 THE COURT: What is the prejudice?

3 MR. ARSLANIAN: The prejudice is obviously  
4 payment; they are going to get imposed a fine  
5 and --

6 THE COURT: What would happen -- and I  
7 asked Mr. Zeskind, but I'm not sure I got a  
8 clear answer. I'm not being critical. I just  
9 don't know if you answered it. If I lift the  
10 stay, the cases go forward, the Supreme Court  
11 subsequently says, no, these cases are no good,  
12 can you then come back, file a motion on all  
13 these cases we dismissed, all the cases, and  
14 people get a refund?

15 MR. HOLLANDER: May I interject for a  
16 second? It hasn't mentioned one part. It is  
17 really more about the fine because, as you  
18 know, with a UTC, sure, you are going to pay  
19 the fine, but that entry goes on the person's  
20 driving record.

21 THE COURT: It will be lifted if I then  
22 sign an order --

23 MR. ARSLANIAN: Your Honor --

24 MR. HOLLANDER: Your Honor --

25 THE COURT: One at a time.

1 MR. HOLLANDER: Here is what happens, Your  
2 Honor. You are correct. Theoretically, you  
3 can sign an order a year down the road that  
4 said I want a refund and the entry should be  
5 taken off the record. Having done this now for  
6 getting close to 18 years with the DMV, getting  
7 them to take something off the driving record  
8 is virtually impossible. It is not impossible,  
9 but it is very difficult to do that.

10 In addition to that, the bigger issue is  
11 that the insurance companies when they have  
12 access to the driving records, they now make  
13 you a premium based on what is on the record.  
14 They are not going to go back --

15 MR. DIETZ: That is illegal, Your Honor.

16 MR. HOLLANDER: Whether it is illegal or  
17 not, the reality is with non-moving violations,  
18 seat belt violations, for example, the  
19 insurance company will increase someone's rates  
20 for a violation that probably shouldn't  
21 increase their rates. In reality, it happens.  
22 It is the real world. That's what happens.  
23 Even though the person has now paid their fine,  
24 it's on a record; and you have now subsequently  
25 reversed that, given the refund back and taken

1           it off, but they are now paying higher  
2           insurance premiums for a case that should never  
3           have been on the record.

4           THE COURT: You are arguing that there's  
5           some damage I cannot undo?

6           MR. HOLLANDER: There are things you  
7           cannot undo if you make the case go forward.

8           I don't see the reason -- the other  
9           argument is what is the damage to the City just  
10          to wait?

11          THE COURT: So -- well, I can argue that,  
12          too. They are losing revenue.

13          MR. HOLLANDER: If they are going to get  
14          it, they are not losing it.

15          MR. ARSLANIAN: At the same time -- let  
16          me, if we go --

17          THE COURT: Are you asking me -- are you  
18          then asking me to keep the stay in place until  
19          the Third District Court rules?

20          MR. ARSLANIAN: I am.

21          THE COURT: How long does that usually  
22          take?

23          The Third expedited it, to their credit,  
24          and it still took six to nine months.

25          What is the Florida Supreme Court going to

1 take; anybody have a clue?

2 MR. ARSLANIAN: Can't say. I know this,  
3 that with my Bartram defense cases, you know,  
4 they had oral argument in January.

5 THE COURT: Of last year.

6 MR. ARSLANIAN: And I'm going back on this  
7 case in November, and I'll probably have to get  
8 it rolled again because the Bartram decision  
9 has not come down from the Supreme Court yet.

10 Can't say. Can't really say. Certainly,  
11 we can ask them to expedite it, but the point  
12 is, Judge, that when we look at the order --  
13 and, again, I was here on the other side when  
14 this order was entered.

15 THE COURT: I remember.

16 MR. ARSLANIAN: But Your Honor made it a  
17 point to point out in the order and at the  
18 hearing that, you know, countywide, there are  
19 currently hundreds of thousands of red light  
20 camera citations backlogged due to stays  
21 requested by defense counsel while Arem was  
22 pending. So we stopped the movie -- we stopped  
23 the train for that, and now -- and it was -- it  
24 was. What was good for the goose is good for  
25 the gander.

1           It's so funny. I have a case that --  
2           there is a bunch of cases that say that. And,  
3           basically, what was good for us, we got it  
4           stayed, you did it for them, and --

5           THE COURT: I didn't do it for them.

6           MR. ARSLANIAN: I didn't mean --

7           THE COURT: I did it for the Court  
8           because --

9           MR. ARSLANIAN: It just came out that way.

10          But it was basically their request at that  
11          time, and, believe me, if the Third District  
12          Court of Appeal would have said this is just  
13          like Arem -- we agree with the Fourth District  
14          in all respects and certify. I guarantee you  
15          that the house, the farm, the wife, the kids,  
16          the fishing poles, everything we cherish, that  
17          they would be here asking --

18          THE COURT: For the stay.

19          MR. ARSLANIAN: Exactly.

20          THE COURT: You would be here asking me to  
21          dismiss all the cases.

22          MR. ARSLANIAN: That's what we do.

23          That's --

24          THE COURT: I'm not being critical.

25          MR. ARSLANIAN: I believe that in light of

1 the procedure and the process that has been  
2 done so far, it would seem -- we are like going  
3 through this big movie, and we have gotten to  
4 the point where we are finally going to get to  
5 the end, we are just not going to wait until  
6 the end of the movie. I think we need to wait  
7 for the end of the movie, especially because --  
8 well, there is a possibility that all of this  
9 could be turned around. Again, we have the  
10 Second doing what it is going to do. We don't  
11 know what the Supreme Court is going to do.

12 THE COURT: Can I interrupt you?

13 MR. ARSLANIAN: Sure.

14 THE COURT: I just want to ask my court  
15 administrator a question. How many cases a  
16 month are being filed on my calendar?

17 So for the record, how many do we have in  
18 backlog now?

19 ADMINISTRATOR: 72,000.

20 THE COURT: For the record --

21 MR. DIETZ: I can help you with that  
22 question.

23 THE COURT: Hold on. I want to put it on  
24 the record.

25 According to my court administrator, who



1 monitors the cases, we have 72,000 cases  
2 pending in backlog that have been stayed, and  
3 they are currently receiving an additional  
4 approximately 13,000 cases a month.

5 So if we wait a year, we are looking at  
6 another 130,000 or more -- actually, 150,000  
7 cases plus the 72,000.

8 At some point, I have to hear them.

9 MR. ARSLANIAN: But --

10 THE COURT: I only have a couple of  
11 courtrooms.

12 MR. ARSLANIAN: How many of them -- and  
13 this is the protocol to different protocols at  
14 issue.

15 The three points that we are addressing in  
16 Jimenez, and I believe these are the ones  
17 where -- where any issue of this that is raised  
18 should be stayed is the vendor review. I think  
19 a lot of the new cases don't involve vendor  
20 review anymore.

21 THE COURT: Right.

22 MR. ARSLANIAN: I believe that that was  
23 the main issue, and then the two other points  
24 addressed -- and that would be, you know,  
25 mentioned in Jimenez and ruled on is the

mailing to the driver and the transmittal of  
the UTC to the court.

THE COURT: Okay.

MR. ARSLANIAN: Okay?

So I believe that because that's what is  
going to be up in the Supreme Court and capable  
of being reversed or overturned in some way,  
shape or form, that's what needs to be stayed.

And, by the way, to the extent that the  
Court feels that this order has expired, I'm  
asking the Court ore tenus to continue this, to  
continue its stay.

THE COURT: You would like me to extend it  
pending the Florida Supreme Court  
determination?

MR. ARSLANIAN: Correct.

THE COURT: Okay.

MR. ARSLANIAN: Correct.

And regarding what happened, by the way,  
in the Boss case, there was mention of citing  
Jimenez in Boss, that is an appellate decision  
of a judge named Judge Icey. Judge Icey is  
saying everything while it is going to the  
Supreme Court. That's what --

THE COURT: What circuit are they from?

1 MR. HOLLANDER: Palm Beach County.

2 MR. ARSLANIAN: Palm Beach County.

3 THE COURT: They have a lot of cases, too.  
4 They have to do summons. Small world area.  
5 Two hundred cases a month might be a little  
6 different than a larger urban area that gets  
7 tens of thousands of cases.

8 MR. ARSLANIAN: That's a jurisdiction --

9 THE COURT: Do you have any additional  
10 case law that you would like me to look at that  
11 suggests that I should wait?

12 MR. ARSLANIAN: I am just suggesting what  
13 is being done in Bertram. I don't have any  
14 cases that say it. I know what they are doing.  
15 That's the practical thing of it because that's  
16 going to be the ultimate finder, and I'm not  
17 100 percent certain that you can after the fact  
18 order the money back. I'm not sure that you  
19 could -- people that --

20 THE COURT: I've done it in the past when  
21 we reversed ourselves on rulings and the clerk  
22 has to send money back to the individual.  
23 There is a process by which the clerk  
24 reimburses people. So I'm not too worried  
25 about that aspect of it, but --

1 MR. ARSLANIAN: I'm not sure a Supreme  
2 Court decision has retroactive effect is what  
3 I'm trying to -- I don't believe that, and  
4 that's the reason why --

5 THE COURT: Mr. Dietz, do you know the  
6 answer to that question?

7 MR. DIETZ: I don't believe it is  
8 retroactive, Your Honor.

9 One thing that I did find --

10 THE COURT: Would it be at my discretion  
11 to do if I chose to do so?

12 MR. DIETZ: I think the case is over.  
13 Once the case is over, it is over.

14 You know, moving forward in all the  
15 jurisdictions that they feel that they can get  
16 favorable verdicts in; they are not asking for  
17 a stay in any other jurisdiction. In Fort  
18 Lauderdale, they look --

19 THE COURT: They wouldn't want a stay in  
20 the Fourth because they won in that district.

21 MR. DIETZ: That's it.

22 And there has been a stay requested by  
23 cities, and when you have --

24 THE COURT: You are saying what is good  
25 for the goose argument should be on the reverse

1 side of that coin, that if they want to argue  
2 for a stay, they should argue a stay for every  
3 single circuit in the state?

4 MR. DIETZ: Yeah, right, exactly, but, you  
5 know, the good for the goose argument I already  
6 explained away in that the reason why it was  
7 good in the former period to do what you did  
8 really wasn't looking at what was good for  
9 either side. It was looking at the particular  
10 case itself, the reason why you put the stay in  
11 place and the reason why the stay would not be  
12 good now.

13 But in answer to your question, I think  
14 there are about 20,000 cases that have been  
15 dismissed in Fort Lauderdale, and, you know,  
16 that --

17 THE COURT: Don't get refiled. So  
18 municipalities have, in fact, lost those; they  
19 don't get to --

20 MR. ARSLANIAN: It is not retroactive.

21 I think even if it was retroactive, the  
22 numbers we were just talking about, when the  
23 Supreme Court came down, you would be like  
24 directing like 62 million dollars. You have to  
25 turn -- municipalities would have to flip back

1           62, so, you know --

2           MR. ZESKIND: Your Honor, that is part of  
3           what is at issue in the Parker class action,  
4           whether or not they would be entitled to a  
5           refund should the programs be determined  
6           illegal.

7           THE COURT: Hold on, Mr. Dietz. I have a  
8           question.

9           Are you aware of anything analogous to  
10          this in the last 40, 50 years in our circuit  
11          that can give me some guidance on how this  
12          should be done?

13          I don't know. I mean, I'm not aware of  
14          anything, but I'm just curious.

15          MR. ARSLANIAN: The Bartram case is --  
16          that's good. That's going statewide. I only  
17          know of -- I mean, I have some cases up in  
18          Walton County where I filed the same motion.  
19          It hasn't been ruled on. My understanding,  
20          even up in Walton County, the Florida Supreme  
21          Court decision is going to affect the entire  
22          state.

23          THE COURT: I understand.

24          MR. ARSLANIAN: And I'm not -- I'm not  
25          averse to -- I can say this in court that I had

1 private discussions with counsel -- with the  
2 appellate counsel discussing a powwow of the  
3 state, but the problem is that they don't  
4 represent all the different municipalities.  
5 Not all the municipalities agree, and, you  
6 know, so that's been a problem, but to say that  
7 we are just gung ho to win and win when we can  
8 win. We recognize what is going on here, and  
9 we are hopeful the Supreme Court can kind of  
10 bring this -- not guidance. We want more than  
11 guidance. I think --

12 THE COURT: Closure.

13 MR. ARSLANIAN: Right. And I think the  
14 fact the Third District found opposite to what  
15 you said, that this case, Jimenez, wasn't the  
16 same as Arem; it really is the same as Arem.  
17 There may have been different things that  
18 happened, but the same process was at issue.  
19 And if we can all agree that, you know, like  
20 what you proposed is get a municipality with a  
21 certain process, let's agree this is the  
22 universe of all the cases with this process, it  
23 is one case and deal with them all, and that's  
24 it.

25 That has been the problem because now,

1           apparently, what was decided in Arem isn't  
2           within the universe of what was Jimenez  
3           according to two of the three judges, which I  
4           think Your Honor looked at everything and found  
5           the same process, ATS review them, ATS sends  
6           them here, they are looked at. It the same  
7           process. I know it's the same process.

8           THE COURT: Except Aventura added an  
9           additional wrinkle, which jinxed the process.

10          MR. ARSLANIAN: The second tier, right.  
11          But, I mean --

12          THE COURT: They generally did agree with  
13          my analysis, so I don't -- all right.

14          Anything else you want to add?

15          MR. ZESKIND: Just a few points I would  
16          like to clarify and reply to without getting --

17          THE COURT: I'm sorry, Counsel, is there  
18          anything you want to add?

19          MR. ARSLANIAN: The only other thing is --  
20          and I don't know where to begin or where to  
21          end. There were so many different -- the issue  
22          regarding the motions to dismiss, first of all,  
23          I want to make it very clear on the record.  
24          When the motions to dismiss started to be  
25          filed, that was when I was advised that perhaps



1       this Court was going to start hearing cases  
2       again. So I filed -- I prepared a plethora --  
3       but what ended up happening is that was before  
4       Jimenez came down. And then Jimenez came down,  
5       and it was brought to my attention, oh, my God,  
6       they are filing frivolous motions, they are not  
7       mentioning Jimenez. So we changed that.

8               But at the same time, I wanted to -- you  
9       know, I'm doing -- we are doing what we can for  
10      our people and our position.

11             THE COURT: I appreciate it. You are  
12      zealously advocating. I totally respect that,  
13      but I do need you to notice them on any cases  
14      that you file so that they can be represented  
15      in court.

16             MR. ARSLANIAN: But I think we should  
17      revisit this issue. I think that the cases  
18      are -- correct me if I'm wrong because I'm more  
19      of a civil guy than I am of any of this other  
20      stuff. But I believe it is the State of  
21      Florida who is the plaintiff in these matters,  
22      and when we -- my understanding from  
23      representation of City of Miami counsel, they  
24      apparently have our motions. So I don't know  
25      how -- I don't know -- I'm not sure what is

1 going on here, but are they counsel of record  
2 in every Aventura red light case or are they  
3 counsel of record only when we decide to file a  
4 motion to dismiss?

5 THE COURT: Do you want to say something,  
6 Counsel?

7 MR. PEREZ: Yes. Again, on behalf of the  
8 City of Miami, I have only seen three motions.  
9 Two of them were on cases that were filed in  
10 2015 when they were -- where the city ran a  
11 program similar to what was heard at the  
12 evidentiary hearing of Aventura and only one  
13 after our two-tier system.

14 I have shown up for court every time to  
15 get a hearing set or see what is going on. I  
16 get an evidentiary hearing, but then this would  
17 be the first one that was going to go forward,  
18 and no one has ever shown up from your firm or  
19 Mr. Hollander's firm to set that up.

20 So I was informed by the City Attorney and  
21 Mr. Dietz, actually, that there were hundreds  
22 of motions to dismiss being filed in City of  
23 Miami cases.

24 THE COURT: I think under the rules of  
25 traffic procedure, which is what governs these

1 cases, you are obligated to notice them on  
2 their cases, and they don't have to have had a  
3 notice of appearance filed on each case because  
4 you are asking the Court to dismiss cases that  
5 they are a party of interest, clearly. And so  
6 any motions you are going to file, they need to  
7 be noticed on so that they have an opportunity  
8 to be present and represent the case.

9 I mean, I don't understand why you do not  
10 think you need to do that.

11 MR. HOLLANDER: Judge, I see the title of  
12 these motions are not the City of Aventura,  
13 City of Miami. I think it is State of Florida  
14 versus our client, not the city. Every traffic  
15 ticket is State of Florida versus. These are  
16 UTC.

17 MR. ZESKIND: By and through the  
18 municipalities. The municipalities are the  
19 ones that enforce and prosecute.

20 THE COURT: And get some revenue from it,  
21 whether you like it or not. So I think they  
22 are a party of interest, and I can't -- unless  
23 you can --

24 MR. HOLLANDER: The Rules of Court -- and  
25 I don't have my book with me. The Rules of

1 Court say in State of Florida cases, the State  
2 of Florida shall show up --

3 THE COURT: Let's do this --

4 MR. HOLLANDER: -- not a private law firm.

5 MR. DIETZ: Your Honor, here is the  
6 statute that says -- it is 316.0083, Subsection  
7 2, that the municipality is in charge of the  
8 prosecution, trial, adjudication, punishment of  
9 violations when the citation is issued in their  
10 jurisdiction.

11 So it's not that -- not only that, Your  
12 Honor, but you have the power to order them to  
13 make sure the municipality is served because  
14 this has been a matter of great public  
15 importance between the Second, Third and the  
16 Fourth District of Appeal. They know what they  
17 are doing. They know -- I mean, they want to  
18 win cases, and if that means not noticing the  
19 municipality, then I think that would take the  
20 cake.

21 I think it is fair under the circumstances  
22 for these cases making legal delegation of the  
23 parties' defenses to order them to make sure  
24 they serve municipalities.

25 MR. HOLLANDER: For every city; we have to

1 know who the law firm is that represents every  
2 city?

3 THE COURT: It is not a law firm. You can  
4 send it to the City Attorney's Office, and  
5 they'll forward it on to --

6 MR. ZESKIND: If you look at Aventura's  
7 website, it will list attorneys from our firm.

8 THE COURT: This is not complicated stuff.

9 This is what I'm going to ask counsel to  
10 do, Mr. Zeskind; if you could, maybe prepare a  
11 draft order on that issue. I'll hold it in  
12 abeyance unless you send me something in the  
13 next week that changes my mind that requires  
14 you-all to please file a courtesy copy to  
15 municipalities. It is not that big of a deal.

16 MR. HOLLANDER: I don't think we have an  
17 objection to that. We'll do that.

18 THE COURT: Fair enough.

19 MR. DIETZ: And the certificate of  
20 service, Your Honor, which you already ordered?

21 THE COURT: Yes. I think he needs to do  
22 both.

23 MR. ZESKIND: Would you like a draft order  
24 to include the other procedure we are looking  
25 for as well or just specifically on the service

1 issue?

2 THE COURT: Do them separately. I would  
3 like two, but I would like this one separate  
4 because the other one is going to take me more  
5 time. I'll get this one out right away.

6 MR. ZESKIND: Absolutely, Your Honor.

7 There are a few issues in reply I'd like  
8 to address quickly.

9 THE COURT: Yes.

10 MR. ZESKIND: Your Honor asked if there is  
11 a case you could look to for guidance about  
12 what to do while a case is pending. The Rock  
13 versus State case we cited involved a burglary  
14 charge. So the defendant was dealing with, you  
15 know, burglary while the case was pending  
16 review in the Florida Supreme Court, and the  
17 Third DCA said the State argued that Huggins  
18 should not be relied upon because the decision  
19 is not yet final since rehearing is pending  
20 before the Florida Supreme Court. Nonetheless,  
21 that decision controls until it is altered or  
22 overturned.

23 So they are telling the Court to go ahead  
24 and prosecute the defendant for burglary.

25 THE COURT: I understand.

1           The difference with this situation, that's  
2           affecting one defendant. The ruling here  
3           affects hundreds of thousands.

4           MR. ZESKIND: You know, the issue that was  
5           there in Huggins was whether or not there could  
6           be burglary of an unoccupied structure. It  
7           couldn't be the only individual that has ever  
8           been charged with that offense.

9           THE COURT: Fair enough.

10          But I think I'm not -- I haven't decided,  
11          and I want to move forward on these. I don't  
12          want to, like I said at the beginning, create a  
13          secondary problem for the Court.

14          MR. ZESKIND: Absolutely.

15          Just to address just really quickly --

16          THE COURT: I'm looking at this from  
17          several interests. One of the interests is  
18          from the Court and administration of justice  
19          and not making a mess of everything because it  
20          just seems that is what we should do.

21          MR. ZESKIND: Absolutely, Your Honor.

22          THE COURT: Hold on, Mr. Dietz.

23          MR. ZESKIND: Just to address a couple of  
24          other issues that were raised.

25          With respect to the points in the

1 insurance issue, I have no ability to respond  
2 to that. That's the first I have heard of that  
3 argument.

4 As I stated before, I think the burden is  
5 on the defendant to either extend or implement  
6 or modify whatever they are doing with the  
7 stay. There is no evidence it has been  
8 entered. It is argument of counsel. I don't  
9 think that is enough to meet the burden to  
10 continue the stay based on that argument alone.

11 I'd also like to quickly just address.  
12 There was a lot of what was good for the goose  
13 was good for the gander talk back and forth. I  
14 know there was a lot said about what counsel  
15 might have done on behalf of the City of  
16 Hollywood in the Arem case with respect to  
17 whether or not the mandate should have been  
18 stayed there.

19 I would like to read quickly for Your  
20 Honor what was stated in opposition by  
21 defendant's counsel in that case to put in  
22 perspective for Your Honor what their position  
23 was --

24 THE COURT: Fair enough.

25 MR. ZESKIND: -- in moving forward in



1       Arem.

2               They stated, "Any cases which are pending  
3       in the county court awaiting the outcome of  
4       this Arem decision can only be affected if  
5       those cases involve the same facts and the same  
6       improper application by the private vendor,  
7       that those courts, quote, will be forced to  
8       determine on a case-by-case basis whether a  
9       specific red light camera program complies with  
10      the perceived requirements of the Court's  
11      substituted opinion is exactly how this Court's  
12      ruling must be, given its due force and  
13      effect."

14             I would ask Your Honor to do exactly that.  
15      Give the Third DCA's ruling its due force and  
16      effect and allow us to proceed on with all of  
17      our red light camera citations.

18             Just one other clarification, very  
19      quickly. Mr. Arslanian mentioned three points,  
20      general broad points dealing with Jimenez that  
21      might be resolved one way or the other if the  
22      Supreme Court accepts jurisdiction.

23             I would just like to point out the  
24      transmittal issue. Your Honor ruled there was  
25      no problem with the transmittal. That was not

1 cross appealed. That issue is not going to be  
2 before the Supreme Court.

3 THE COURT: It wasn't one of the issues  
4 that they found.

5 MR. ZESKIND: And that's not -- right.  
6 That's not one of the issues in the appellate  
7 Third DCA decision.

8 With that, obviously, Your Honor, in  
9 addition to the argument put forth today, what  
10 we relied upon, what we set forth in our papers  
11 we filed.

12 THE COURT: Anything else anybody else  
13 wants to add?

14 MR. DIETZ: Yes.

15 MR. ARSLANIAN: Any briefing regarding  
16 this -- some discussion or seems to be some  
17 debate over when the Supreme Court rules in a  
18 year or year and a half or two-and-a-half  
19 years, whenever it is, whether that's going to  
20 be retroactive or not in light of what Mr. --  
21 what the argument was with regard to all the  
22 people affected. Forget the money for a  
23 second. The other issues that were discussed,  
24 you know.

25 THE COURT: Listen, let's do this:

1 Anything you want to brief on this is fine; you  
2 have ten days. I don't want this to go -- I  
3 want to rule ASAP. I don't like things hanging  
4 around. Too much at stake.

5 MR. ZESKIND: Quickly. With that in mind,  
6 I know post Jimenez hearing, there were  
7 specific questions that you wanted a briefing  
8 on. In fact, is there anything in particular  
9 Your Honor would like to be addressed in any  
10 additional briefs?

11 THE COURT: The issue of the stay is not  
12 that complex to me. If there is anything you  
13 think I -- you want to emphasize is fine; you  
14 have ten days to give it to me. If not, as  
15 much of a legal issue at this point, it is more  
16 of an administration of justice issue. So I  
17 think that's kind of the balance I need to look  
18 at. And if you have anything in that rein, you  
19 want to enlighten me with, by all means, please  
20 get it to me. Anything after ten days, I'm not  
21 going to look at it because I want to rule on  
22 it.

23 MR. ARSLANIAN: Can I just add one quick  
24 thing?

25 THE COURT: Ten working days. You have

1 two weeks.

2 MR. ARSLANIAN: When he was reading from  
3 something --

4 THE COURT: Hold on.

5 MR. ARSLANIAN: When he was reading  
6 something from Arem, the difference is that  
7 Arem was the first one, and when the Supreme  
8 Court -- that became the law. It was nothing  
9 else to do. There would be no reason. It is  
10 now you have these two, which is why you  
11 stopped this thing in the beginning to begin  
12 with after your first ruling and why I think it  
13 should continue because it's not over yet.

14 THE COURT: I hear you.

15 MR. ARSLANIAN: Thank you.

16 THE COURT: Thank you all.

17 Mr. Dietz, you want to have the final  
18 word, surprisingly?

19 MR. DIETZ: You asked how long they will  
20 take, and the appellate crews I have been  
21 speaking to seem to be 18 months with the  
22 Supreme Court.

23 Also, it is illegal for any insurance  
24 company to take a red light camera in  
25 consideration when making a rate, and,

1       furthermore, there is no consequence. It would  
2       be on the driver's record, but, as you know,  
3       you ruled in the past, I've seen your records  
4       that it's not the driver, it is the owner of  
5       the vehicle that is issued the citation. So  
6       it's not taken into consideration against  
7       somebody that they have taken -- that they have  
8       red light camera tickets on their record. So  
9       there are really no consequence other than just  
10      being listed on the record.

11           THE COURT: I appreciate that, but the  
12      insurance companies do what they want, and so I  
13      can't quite -- even though it may be, quote,  
14      unquote, illegal for them to do it, they  
15      certainly look at the records and make a  
16      determination and may say they raise the rates  
17      for some other reason. It is always a concern.  
18      It's not my biggest issue to be honest with  
19      you. So don't worry about it.

20           I just would point out that in 18 more  
21      months, there would be an additional 234,000  
22      more cases in the county.

23           MR. ARSLANIAN: Again, I think we could go  
24      forward with some of those if those don't  
25      involve -- I'm not --

1 THE COURT: If you want to get together  
2 with learned counsel and see if you can have  
3 some kind of agreement, I'll give you the ten  
4 days to do that. If not, I'll make a ruling  
5 and go from there, okay?

6 MR. DIETZ: Thank you, Your Honor.

7 THE COURT: Thank you.

8 (Whereupon, the hearing was concluded at  
9 3:25 p.m.)  
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C E R T I F I C A T E

THE STATE OF FLORIDA)  
COUNTY OF BROWARD )

I, LAURIE SUSSKIND, Registered Professional  
Reporter, State of Florida at large, certify that I  
was authorized to and did stenographically report  
the foregoing proceedings and that the transcript is  
a true and complete record of my stenographic notes.

Dated this 10th day of November, 2016.

*Laurie Susskind*  
LAURIE SUSSKIND, R.P.R.



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