

1 CODE 2290
2 WASHOE COUNTY PUBLIC DEFENDER
3 JENNIFER RAINS, #10425
350 S. CENTER ST., 5TH FLOOR
JRAINS@WASHOECOUNTY.GOV
RENO, NV 89501
4 (775)337-4800
5 ATTORNEY FOR DEFENDANT

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 THE STATE OF NEVADA,
Plaintiff,

Case No.: CV25-00347

9 vs.

Dept. No.:

10 NICHOLAS ORION POWELL,
11 Defendant.

12 /

13 **MOTION TO DISMISS**

14 The Defendant, NICHOLAS ORION POWELL, by and through his counsel of
15 record, Washoe County Public Defender EVELYN GROSENICK, and Chief Deputy
16 Public Defender, JENNIFER RAINS, hereby moves to dismiss this case without
17 prejudice due to the State of Nevada's violation of Mr. Powell's due process rights.
18 This *Motion* is made and based upon the following Memorandum of Points and
19 Authorities and upon such evidence as may be presented at a hearing on this matter.
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I, JENNIFER RAINS, declare under penalty of perjury under the laws of the

1. I am an attorney duly licensed to practice law in the State of Nevada; I am

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 5th day of June 2025.

[Handwritten signature]

Chief Deputy Public Defender

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Factual Background and Procedural History**

3 In an amended criminal complaint filed on February 4, 2025, the State charged
4 Mr. Powell with Murder with the Use of a Deadly Weapon, a violation of NRS 200.010,
5 NRS 200.030 and NRS 193.165, a category A felony, and Robbery with the Use of a
6 Deadly Weapon, a violation of NRS 200.380 and NRS 193.165, a category B felony.
7 On May 6, 2025, this Court found the Defendant to be incompetent to face the
8 allegations against him, a danger to himself and to society, and ordered transport to
9 Lakes Crossing for inpatient forensic competency restoration forthwith within a
10 reasonable time period. (Order Remanding to Lakes Crossing; Order Setting
11 Hearing). As of June 4, 2025, Mr. Powell remains in the county jail.

12 **II. Legal Authority and Argument**

13 Under the Due Process Clause of the Fourteenth Amendment and by statute,
14 a defendant cannot be tried or convicted while legally incompetent. *State v. Desavio*,
15 141 Nev. Adv. Op. 25 (2025). A person is incompetent if they do not have the present
16 ability to understand the nature of the criminal charges, understand the nature and
17 purpose of the court proceedings, or aid and assist their counsel in the defense with
18 a reasonable degree of rational understanding. NRS 178.400.

19 If a court finds a defendant incompetent and dangerous to themselves or
20 society, the court must order the defendant to be committed to a secure facility for
21 treatment aimed at restoring competency, and the defendant remains in custody until
22 they are deemed competent to stand trial or until the court orders their release. NRS
23 178.425. DPBH is responsible for the detention and treatment of defendants deemed
24 incompetent to stand trial. *See* NRS 178.425. Courts have interpreted NRS 178.425(1)
25 and the term “forthwith” as requiring transport within seven days based on past
26 consent decrees. *Dep’t of Health & Hum. Servs., Div. of Pub. & Behav. Health v.*

1 *Eighth Jud. Dist. Ct. in & for Cnty. of Clark (Aliano)*, 139 Nev. Adv. Op. 28, 534 P.3d
2 706, 712 (2023).

3 An incompetent pretrial detainee has a strong liberty interest in freedom from
4 incarceration and in prompt restorative treatment, both of which are protected by the
5 Due Process Clause. *See Chittenden v. Just. Ct. of Pahrump Twp.*, 140 Nev. Adv. Op.
6 5, 544 P.3d 919, 929 (Nev. App. 2024). The Nevada Supreme Court has unequivocally
7 recognized that delay in transporting individuals for the appropriate restoration to
8 competency is a violation of due process. *Aliano*, 534 P.3d at 712; *State v. Gonzalez*,
9 139 Nev. Adv. Op. 33, 535 P.3d 248, 253 (2023). Moreover, this violation of their due
10 process rights constitutes prejudice. *Desavio*, 141 Nev. Adv. Op. at *3. “Furthermore,
11 any ‘difficulties involving the availability of beds, staffing shortages, or other
12 logistical challenges cannot justify detaining an individual in jail for month after
13 month without recourse.” *Id.* (citing *Gonzalez*, 139 Nev. at —, 535 P.3d at 253-54).
14 “[C]ontinued incarceration without recourse constitutes a legal basis (unalleviated
15 prejudice) that allows for dismissal without prejudice.” *Id.* at *4.

16 The district court may “issue a contempt order and monetary fine to ensure
17 compliance with a competency restoration order” or order the defendant transferred
18 for competency restoration treatment within seven days. *Id.* However, those steps to
19 alleviate delays in transfer for competency restoration treatment have proved
20 ineffective thus making dismissal without prejudice an appropriate next step. *Id.*

21 In this case, the prosecution cannot move forward because Mr. Powell has been
22 deemed incompetent. *Desavio*, 141 Nev. Adv. Op. at *4. Because the State can neither
23 prosecute Mr. Powell nor promptly transfer him for competency restoration, Mr.
24 Powell’s continued incarceration cannot “be justified by progress toward that goal.”
25 *Id.* Thus, like Mr. Desavio, Mr. Powell is incarcerated in a state of legal limbo—he
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1 has been deemed incompetent to stand trial but detention in the county jail prevents
2 him from receiving treatment essential for competency restoration. *Id.*


3 For these reasons, Mr. Powell requests that the Court dismiss this case without
4 prejudice as a remedy for the State's violations of his due process rights. Mr. Powell
5 has been languishing in custody for 30 days since this Court ordered his transfer to
6 Lakes Crossing. This Court should conclude, as the Nevada Supreme Court did, that
7 Mr. Powell's "continued incarceration without recourse constitutes a legal basis
8 (unalleviated prejudice) that allows for dismissal without prejudice." *Id.* Although
9 this Court has imposed a monetary sanction against the State for its violations in
10 other cases, that sanction has been ineffective to remedy the violation and
11 importantly would fail to provide any relief to Mr. Powell. Therefore, the Court should
12 dismiss this matter without prejudice as the appropriate remedy.

13 **AFFIRMATION PURSUANT TO NRS 239B.030**

14 The undersigned does hereby affirm that the following document does not
15 contain the personal information of any person.

16 Dated this 5th day of June 2025.

17
18 EVELYN GROSENICK
19 Washoe County Public Defender

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21 By 
22 JENNIFER RAINS
23 Chief Deputy Public Defender
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Deputy District Attorney (using the master service list of this Court's electronic filing system)



JENNIFER H. RAINS