

1 No 20-5153

ORIGINAL

2 Supreme Court, U.S.
3 FILED

4 MAY 13 2021

5 OFFICE OF THE CLERK

6 In the Supreme Court of the United States
7 In regard to Alfred Paul Centofanti, III

8 Alfred Paul Centofanti, III

9 Petitioner,

10 v.

11 The Supreme Court of the State of Nevada,

12 Respondent,

13 and

14 Calvin Johnson and the Attorney General of the State of Nevada,

15 Real Party in Interest.

16 ON PETITION FOR WRIT OF CERTIORARI

17 TO THE SUPREME COURT OF THE STATE OF NEVADA

18
19 Petition for Writ of Certiorari

20 Alfred P. Centofanti, III.

21
22 Nevada Department of Corrections #85237

23 High Desert State Prison

24 P.O. Box 650

25 Indian Springs, NV 89070

26 Petition in Proper Person

QUESTION(S) PRESENTED

Centofanti is a state prisoner litigating the appeal of the denial of his state collateral review proceedings in the Nevada Court of Appeals and Nevada Supreme Court. During the pendency of those proceedings, Centofanti was diagnosed and treated for stage IV cancer (Hodgkin's Lymphoma). Additionally, the institution he was housed at initiated COVID-19 protocols which locked down the facility including the prison law library.

7 Centofanti made multiple requests for relief to stay the proceedings during diagnosis and
8 treatment, and also until he was allowed to access the law library. Alternatively, requests were
9 made to refer the matter to a pro bono counsel program, or to appoint counsel. All of these
10 requests were denied. The matter was, over objection, submitted for decision, rehearing, and
11 review, and also denied.

12 The questions presented for review were presented in briefs, motions, supplements, and a
13 fully briefed Petition for Review (Petition, Answer, Reply) and denied on the merits, but without
14 Centofanti being provided access to the Courts.

15 **Question One:** Whether the denial of a pro se inmate with stage IV cancer's requests to
16 extend filing deadlines, stay the proceedings, refer the appeal to a pro bono program, or to appoint
17 counsel to either accommodate or assist one with a medical disability was a denial of Due Process,
18 and Equal Protection Rights under the U.S. Constitution and a further violation of the Americans
19 with Disabilities Act?

20 **Question Two:** Whether Nevada courts abdicated their responsibilities by failing to allow
21 challenges to prison COVID-19 restrictions that denied inmates access to the Courts?

LIST OF PARTIES

23 Alfred Paul Centofanti, III, is the Petitioner. The Nevada Supreme Court is the highest
24 Court of Appeal in the State of Nevada, which denied, and affirmed the denial of Centofanti's
25 multiple requests for a stay, appointment of counsel, and relief from the State of Nevada ex rel the
26 Nevada Department of corrections' COVID-19 restrictions denying him access to the Courts.

27 Calvin Johnson is the warden of High Desert State Prison and the Attorney General of the
28 state of Nevada are the real parties in interest in the underlying state habeas proceedings.

1 No party is a corporate entity.

2 The Nevada Department of Corrections is a political subdivision of the State of Nevada
3 who is responsible for operating Nevada's prisons, including High Desert State Prison, through
4 its warden, Calvin Johnson, and High Desert State Prison law library through inmate banking
5 services and Nevada Department of Corrections director Charles Daniels' office.

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RELATED CASES

This mandamus arises from a federal habeas case challenging a state court judgment of conviction. The underlying state trial proceedings took place in *State v. Centofanti*, Case No. C172534 (Nev. Eighth Jud. Dist. Ct.) (judgment of conviction issued Mar. 11, 2005). The direct appeal took place in *Centofanti v. Nevada*, Case No. 44984 (Nev. Sup. Ct.) (order issued Dec. 27, 2006).

The initial state collateral review proceedings took place in *Centofanti v. McDaniel*, Case No. C172534 (Nev. Eighth Jud. Dist. Ct.) (order issued June 6, 2011). An appeal took place in *Centofanti v. Nevada*, Case No. 58562 (Nev. Sup. Ct.) (order issued June 3, 2013).

A second round of collateral review proceedings took place in *Centofanti v. McDaniel*, Case No. C172534 (Nev. Eighth Jud. Dist. Ct.) (order issued Jan. 29, 2019). An appeal is taking place in *Centofanti v. Nevada*, Case No. 78193 (petition for review in the Nevada Supreme Court).

There are no related federal proceedings in the district court and the Ninth Circuit below that are directly related to the case in this Court.

Additional related cases include:

District Court, Clark County, Docket No. 01C172534, State of Nevada v. Alfred Centofanti No. 1730535, January 23, 2019, Findings of Fact, Conclusions of Law Nevada Supreme Court, Alfred P. Centofanti III, Appellant v. the State of Nevada Respondent, Docket No. 78193, March 3, 2021, Order Denying Petition for Review.

United States District Court, District of Nevada, Alfred P. Centofanti III, Petitioner v.
Dwight Evans, et al., Respondents, Case No. 2:13-cv-01080-JAD-BNW, Pending.

Ninth Circuit Court of Appeals, Alfred P. Centofanti v. Dwight Evans, 820 Fed. App. 555 (9th Cir. 2020).

Supreme Court of the United States In Re: Alfred Paul Centofanti III, Petitioner v. United States District Court, District of Nevada, Respondent and Dwight W. Evan and the Attorney General of Nevada, real party in interest. US Supreme Court No. 20-6957.

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Exhibits to Question 1

15 A-1. Findings of Fact, Conclusions of Law and Order District Court, Clark County, Nevada,
16 Filed January 23, 2019

17 B-1. Ex-Parte Motion for a Stay NRAP 8A(1) and/or Extending Time NRAR 26(b)(1) Under
18 Seal NRS 433 (HIPAA), Filed June 19, 2019

19 C-1. Supplemental Declaration in Support of Ex-Parte Motion for a Stay and/or Extending
20 Time, Filed June 26, 2019

21 D-1. Motion for Transcript of August 30, 2017 Proceeding and Other Relief, Filed July 23, 2019

22 E-1. Motion for Leave to Amend and/or File Supplemental Brief to Appellant's Informal Brief,
23 Filed September 13, 2019

24 F-1. Appellant's Informal Brief, Filed September 17, 2019

25 G-1. Renewed Motion for Transcript and Other Relief, Filed February 3, 2020

Exhibits to Question 2

27 A-2. Appellant's Petition for Rehearing, Filed June 26, 2020
28 B-2. Appellant's Motion for Leave to Amend and Other Relief, Filed June 26, 2020

- 1 C-2. Appellant's Supplement to Petition for Rehearing, Filed July 12, 2020
- 2 D-2. Motion for an Order to Show Cause and Other Relief, Filed July 13, 2020
- 3 E-2. Motion for Leave to File a Petition for an En Banc Reconsideration and Other Relief, Filed
- 4 July 22, 2020
- 5 F-2. Second Supplement to Motion for OSC, Motion for Stay, and Other Relief Due to Covid-
- 6 19, Filed September 1, 2020
- 7 G-2. Motion for Leave to File a Petition for En Banc Reconsideration and Other Relief, Filed
- 8 September 9, 2020
- 9 H-2. Appellant's Petition for Review by the Supreme Court, Filed September 11, 2020
- 10 I-2. Appellant's Motion for Leave to Amend Petition for Rehearing and Other Relief, Filed
- 11 September 11, 2020
- 12 J-2. Renewed Motion for an Order to Show Cause and Other Relief on an Order Shortening
- 13 Time, File September 28, 2020
- 14 K-2. Motion for Leave to File Amended Petition for Rehearing and Other Relief (Second
- 15 Request), Filed October 29, 2020
- 16 L-2. Renewed Motion for an Order for Access to the HDSP Law Library and Other Relief, File
- 17 November 3, 2020
- 18 M-2. Motion for Stay of Remittitur and Other Relief, Filed November 24, 2020
- 19 N-2. Appellant's Amended Petition for Review by the Supreme Court, File January 4, 2021
- 20 O-2. Motion for Leave to File a Petition for En Banc Reconsideration Outside the 10 Day Time
- 21 Limit of NRAP40(A)(b), Filed January 13, 2021
- 22 P-2. Answer to Petition for Review, Filed February 3, 2021
- 23 Q-2. Appellant's Reply to Answer to Petition for Review, Filed February 26, 2021
- 24 R-2. Declaration of Jacques Graham High Desert State Prison Law Library Supervisor
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3 **TABLE OF AUTHORITIES**

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6 **Federal Cases**

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8 **Bounds v. Smith**

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10 430 U.S. 817 (1977).....2, 16, 17

11 **Lewis v. Casey**

12

13 518 U.S. 343 (1996).....2, 16, 17

14 **Roman Catholic Diocese of Brooklyn, New York, v. Andrew Cuomo**

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16 141 S. Ct. 63 (2020) (per curium).....2, 14, 16, 17

17 **Federal Statutes**

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19 28 U.S.C. Section 1257

20 42 U.S.C. Sections 12101 – 12213 (Americans with Disabilities Act)

21 **U.S. Constitutional Rights**

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23 5th Amendment (Due Process).....2, 11

24 6th Amendment (Equal Protection, Fundamental Fairness)

25 14th Amendment (incorporating 5th and 6th Amendments).....2, 11

26 **Secondary Sources**

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28 “Afraid of dying in here: inmates fought for COVID-19 vaccinations,

29 protections after jails and prisons failed to protect them”

30 in *USA Today* on May 2021, by Kevin McCoy18

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PETITION FOR WRIT OF CERTIORARI

2 Petitioner Alfred Paul Centofanti respectfully requests this Honorable Court issue a writ of
3 Certiorari to review the decisions of the Nevada Supreme Court and the Nevada Court of Appeals.

Opinions Below

5 The Nevada Supreme Court's order denying motion for a 120-day extension is
6 unpublished. Pet. App. 0004; See July 3, 2019, Order 19 – 28460.

7 The Nevada Supreme Court's order denying motion for appointment of appellate counsel
8 and extension of time is unpublished. Pet. App. 0006-7; See July 31, 2019, Order 19 – 32287.

9 The Nevada Supreme Court of Appeals Order of Affirmance is unpublished. Pet. App.
10 0011-14; See June 5, 2020, Order of Affirmance, 20 – 21250.

11 The Nevada Court of Appeals Order denying Motion to Amend after access to prison law
12 library is unpublished. Pet. App. 0016. See July 2, 2020, Order 20 – 24566.

13 The Nevada Court of Appeals Order Denying Rehearing is unpublished. Pet. App 0018-20.
14 See, August 24, 2020, Order Denying Rehearing 20-31141.

15 The Nevada Court of Appeals Order taking no action on Motion to Show Cause is
16 unpublished. Pet. App 0024. See, September 10, 2020, Order 20-33344.

17 The Nevada Court of Appeals Order denying access to prison law library is unpublished.
18 Pet. App 0026-27. See, October 14, 2020, Order 20-37695.

19 The Nevada Court of Appeals Order denying reconsideration of access to prison law
20 library is unpublished. Pet. App 0029. See, November 6, 2020, Order 20-40671.

21 The Nevada Court of Appeals Order denying further extensions setting filling deadline is
22 unpublished. Pet. App 0033. See, December 3, 2020, Order 20-43780.

23 The Nevada Court of Appeals Order denying Petition for Review is unpublished. Pet. App
24 0039. See, Order Denying Petition for Review, 21-06268, March 3, 2020.

Jurisdiction

26 The underlying state trial proceedings took place in State v. Centofanti, Case No. 01-C-
27 172534, (Nevada Eighth Judicial District Court) (Judgement of Conviction issued March 11,
28 2005). The Direct Appeal took place in Centofanti v. Nevada, Case No. 44984 (Nev. Sup. Ct.)

1 (Order issued December 27, 2006).

2 The initial state collateral review proceedings took place in Centofanti c. McDaniel, Case
3 No. 01-C-172534 (Nev. Eighth Jud. Dist. Ct.) (Order issued June 6, 2011). An appeal took place
4 in Centofanti v. Nevada, Case No. 58562 (Nev. Sup. Ct.) (Order issued June 3, 2013).

5 A second round of state collateral proceedings took place in Centofanti v. Neven, Case No.
6 01-C-172534 (Nev. Eighth Jud. Dist. Ct.) (Order issued January 29, 2019).

7 A copy of the January 29, 2019, Order appears in Pet. App. 0049-0062, Ex. A-1 and is
8 unpublished.

9 An appeal took place in Centofanti v. Nevada, case No. 78193.

10 The date on which the highest state court decided my case was on June 5, 2020. A copy of
11 that decision appears at Pet. App. 0011-0014, Ex. E, and is unpublished.

12 A timely petition for rehearing was thereafter denied on August 24, 2020. A copy of that
13 decision appears at Pet. App. 0018-0020, Ex. G, and is unpublished.

14 A timely petition for Review by the Nevada Supreme Court of the June 5, 2020, decision
15 was thereafter denied on March 3, 2021. A copy of that decision appears at Pet. App. 0039 and is
16 unpublished. Ex. P.

17 A timely Writ of Certiorari to the U.S. Supreme Court was postmarked and received May
18 18, 2021, and returned with instructions to correct and resubmit within 60 days of May 19, 2021.

19 The jurisdiction of this Court is invoked under 28 U.S.C § 1257(a).

20 **Constitutional and Statutory Provisions Involved**

21 **Question One:** The Fifth Amendment to the United States Constitution, as applied to the
22 States through the Fourteenth Amendment, in relevant part, that a criminal defendant shall not be
23 deprived of “life, liberty, or property without due process of the law” or “the equal protection of
24 the laws;” the Sixth Amendment Right to a Fair Proceeding and Fundamental Fairness and the
25 Americans with Disabilities Act, 42 U.S.C §§ 12101-12213.

26 **Question Two:** In addition to those listed in Question One, *supra*, the Due Process
27 requirement that prose criminal defendant inmates have meaningful access to courts under Bounds
28 v. Smith, 430 U.S. 817, 820 (1977), overruled in part by Lewis v. Casey 578 U.S. 343, 350-351

1 (1996); as well as the case of Roman Catholic Diocese of Brooklyn, New York v. Andrew Cuomo,
2 141 S. Ct. 62 (2020) as to COVID-19 regulations by the state infringing upon Constitutional
3 Rights.

4 **STATEMENT OF THE CASE**

5 **Introduction**

6 Petitioner Alfred Paul Centofanti, III, (hereinafter “Centofanti”) seeks relief from this
7 Court by way of a Writ of Certiorari to address and remedy the violation of his Constitutional
8 Rights which occurred when he was denied accommodation by Nevada Courts while suffering
9 under the disability of Stage IV cancer, and then, the denial of access to the courts by state prison
10 officials due to COVID-19.

11 **A. Question One**

12 On February 27, 2019, the Nevada Supreme Court filed Centofanti’s Notice of Appeal in
13 Case No. 78193, the appeal of the denial of Centofanti’s state petition for writ of habeas corpus
14 (post-conviction) in state district court Case No. 01-C-72534, Clark County.

15 On March 1, 2019, the Nevada Supreme Court set a deadline of 120 days, or June 30,
16 2019, for Centofanti to file a brief in support of his appeal.

17 On April 29, 2019, Centofanti mailed for filing a brief seeking a stay of the proceedings, of
18 extension of the June 30, 2019, deadline due to his being diagnosed with lymphoma and the
19 adverse effects it was causing physically and mentally.

20 On June 15, 2019, Centofanti supplemented the April 29, 2019, Motion with additional
21 medical information and requested until January 1, 2020 to file his Opening Brief.

22 On June 19, 2019, the Nevada Supreme Court ruled on the April 29, 2019, Motion and
23 extended the Opening Brief filing deadline to September 30, 2019.

24 On July 3, 2019, the Nevada Supreme Court denied the request to extend the Opening
25 Brief deadline further as requested by Centofanti June 15, 2019.

26 On July 23, 2019, Centofanti requested the appointment of counsel due to the disabilities
27 caused by his medical condition, as well as an extension of time.

28 On July 31, 2019, the Nevada Supreme Court denied Centofanti’s request to appoint

1 counsel "at the state's expense" and no extension of the September 30, 2019, deadline was
2 ordered.

3 On September 13, 2019, Centofanti requested a continuance and appointment of counsel
4 based upon the deterioration of his medical condition effecting his ability to prepare a brief and
5 again sought a continuance and the appointment of counsel.

6 On September 17, 2019, Centofanti's informal brief in support of his appeal was filed. As
7 part of the form supplied by the Nevada Supreme Court, Centofanti requested referral to a pro
8 bono attorney program, as well as reiterated his requests for a stay, continuance, and appointment
9 of counsel due to disabilities caused by his medical condition and treatments.

10 On October 14, 2019, the Nevada Supreme Court issued an order silent as to the requests
11 for referral to the pro bono program, stay, continuance, or appointment of counsel.

12 On November 1, 2019, the Nevada Supreme Court declared briefing completed and the
13 matter submitted for decision.

14 On January 23, 2020, the case was transferred to Nevada's Court of Appeals.

15 On February 3, 2020, Centofanti requested the ability to amend the opening brief and that
16 counsel be appointed to assist him in doing so due to the impairment of his medical disabilities.

17 On February 7, 2020, the Nevada Court of Appeals denied the February 3, 2020 request.

18 On June 5, 2020, the Nevada Court of Appeals filed its order of Affirmance denying his
19 appeal. It was silent as to the requests first, a continuance and counsel.

20 On June 26, 2020, Centofanti asked for rehearing of the appeal as the failure to
21 accommodate his requests as to his medical disabilities violated his constitutional rights as well as
22 those under the Americans with Disabilities Act.

23 On August 24, 2020, the Nevada Court of Appeals filed its order denying rehearing. The
24 order was silent as to the violations of Centofanti's rights as to his medical disabilities.

25 On September 11, 2020, Centofanti filed a petition for review with the Nevada Supreme
26 Court and raised the failures to accommodate his medical disabilities as Question and Reason
27 Two.

28 On January 4, 2021, Centofanti filed an amended petition for review, also including the

1 failure to accommodate as Question and Reason Two.

2 On February 3, 2021, the State answered the Amended Petition.

3 On February 17, 2021, Centofanti replied.

4 On March 3, 2021, the Nevada Supreme Court denied the Petition for Review.

5 **Question Two**

6 On June 5, 2020, the day the Nevada Court of Appeals denied Centofanti's appeal, supra,
7 the prison. Centofanti was housed at, High Desert State Prison or HDSP, was operating on
8 modified lockdown status due to COVID-19 protocols, which included the prison law library, its
9 inmate workers, and staff, and no physical access to its resources.

10 On June 26, 2020, Centofanti sought leave to amend his June 26, 2020, Petition for
11 Rehearing due to the prison's COVID-19 lockdown and no law library access until or once access
12 became available.

13 On July 2, 2020, the Nevada Court of Appeals denied Centofanti's leave to amend.

14 On July 13, 2020, Centofanti filed the Supplement to the Petition for Rehearing and a
15 Motion for an Order to Show Cause, followed by a July 22, 2020, Motion for Leave and an
16 August 14, 2020, Supplement (to the Order to Show Cause) seeking intervention, relief, and/or a
17 hearing as to the COVID-19 lockdown denied access to the courts.

18 On August 24, 2020, Nevada Court of Appeals Denied Rehearing as well as the relief
19 sought in the July 13, 2020, July 22, 2020, and Aug 14, 2020, Motions.

20 On September 1, 2020, Centofanti Second Supplement to the Order to Show Cause was
21 filed (mailed prior to receipt of the August 24, 2020, order) asking for a stay or Order to be
22 allowed access.

23 On September 9, 2020, the Nevada Court of Appeals denied the relief sought in the Second
24 Supplement and transferred the matter back to the Nevada Supreme Court.

25 On September 9, 2020, Centofanti requested leave to file En Banc Reconsideration, again
26 outlining the prejudice of being denied access to the courts due to COVID-19 protocols.

27 On September 10, 2020, Centofanti was given until September 30, 2020, to file a petition
28 for review but no action was taken as to denial of access to the courts.

1 On September 11, 2020, Centofanti's petition for review was filed, *supra*, and Question
2 Five, Reason Five was if denial of access to the courts requires relief (stay, appointment of
3 counsel, other), and concurrently filed a Leave to Amend, followed by a Renewed Motion for and
4 Order to Show Cause on September 28, 2020, asking to extend deadlines, stay, access or response
5 by the state.

6 On October 14, 2020, the Nevada Supreme Court took no action as to the additional
7 requests and would not "alter the lockdown restrictions at the prison."

8 On October 29, 2020, Centofanti's Motion for Leave (Second Request) filed seeking
9 access to resources, extending deadlines, or counsel, followed on November 3, 2020, by a renewed
10 Motion for Access to the HDSP law library.

11 On November 6, 2020, the Nevada Supreme Court granted a 14-day extension but no
12 access to go along with it.

13 On November 17, 2020, Centofanti supplemented the Motion to Leave with information as
14 to a facility wide lockdown of two weeks and possible COVID-19 exposure, as well as a
15 November 24, 2020, Motion for Stay due to the COVID-19 lockdown, referral to the pro bono
16 lawyer program, or other alternatives, can't litigate or meet deadlines.

17 On December 3, 2020, the Nevada Supreme Court ordered a 30-day extension, but no law
18 library access or any other relief.

19 On January 4, 2021, Centofanti's Amended Petition for Review filed including as Question
20 and Reason Five the lack of access to the courts.

21 On January 13, 2021, Centofanti sought additional time to seek *En Banc* Reconsideration
22 in the even the Petition for Review was denied.

23 On January 15, 2021, the Nevada Supreme Court denied the motions for additional time
24 and on January 21, 2021, ordered the State to Answer the Petition for Review.

25 On February 3, 2021, the Answer for the State emphasized the lack of authority cited to the
26 relief sought in Question One, Reason Two, *supra*, or as to "the authority to order the [NDOC] to
27 alter its procedures" is a basis to deny review, on Question Five, Reason Five, and the other issues
28 on Review.

1 On February 17, 2021, Centofanti filed his Reply noting he was being required to “litigate
2 and meet deadlines without access to those resources needed” to do so.

3 On March 3, 2021, the Nevada State Supreme Court denied Centofanti’s Petition for
4 Review.

5 **REASONS FOR GRANTING THE PETITION**

6 **Reason One:** The denial of Petitioner Centofanti’s requests to extend filing deadlines,
7 stay the proceedings, refer the appeal to a pro bono program, or to appoint counsel to either
8 accommodate or assist Centofanti as he labored under Stage IV Hodgkin’s Lymphoma was a
9 denial of Due Process, and, Equal Protection Rights under the U.S. Constitution and a further
10 violation of the Americans with Disabilities Act.

11 Centofanti has prepared a separate Index of Exhibits, Exhibit A-1 through G-1, App 0049
12 – App 0108, in support of Reason One.

13 Centofanti was convicted of First-Degree Murder with the Use of a Deadly Weapon and is
14 serving two consecutive sentences of Life Without the Possibility of Parole. See, Exhibit A-1,
15 App. 0050, lines 8-10.

16 On April 24, 2012, Centofanti filed a pro per state habeas petition and on January 16,
17 2013, counsel was appointed to assist him. App 0052, LL4-8. After a November 20, 2014,
18 evidentiary hearing, additional briefing was allowed and “the district court found that the conflict
19 [of interest with prior counsel] established good cause and prejudice” to overcome any procedural
20 bars. App 0053, LL 3-9 (Order of July 29, 2015).

21 Additional Pleadings were filed, and litigated, and hearings held from March 22, 2016
22 through May 24, 2018. App 0053, LL 10-21. The court entered a minute order denying each of the
23 claims raised in the petition on the merits, and also denied the request for further discovery and on
24 evidentiary hearing. App 0057-0062.

25 Centofanti filed a timely Notice of Appeal, and the matter was assigned number 78193 by
26 the Nevada Supreme Court. Exhibit Q, App 0041.

27 On March 1, 2019, the Nevada Supreme Court gave Centofanti 120 days to file an
28 Opening Brief. App 0041.

1 (0094, LL 10-12); On August 16, 2019, began chemo therapy with “side effects which creates
2 issues for...preparing his informal brief” (0094, LL 13-16). Centofanti requested Leave to Amend
3 (0095, LL 12-19) or it would violate his rights to Due Process, Equal Protection, and a Fair
4 Proceeding (0095, LL 1-6), alternatively, requested a ‘continuance or appointment of counsel’
5 (0096, LL 1-3).

6 On September 17, 2019, Centofanti’s Informal Brief was filed. Ex. F-1, App. 0096-0106.
7 At page 3 (0100), was the following:

8 *Pro Bono Counsel. Would you be interested in having pro bono
counsel assigned to represent you in this appeal?*

9 Yes No

10 At page 5 (0102):

11 *[C]entofanti sought relief in the form of a stay, continuance...and
the appointment of counsel due to his diagnosis of Stage IV
Hodgkin’s Lymphoma, and the adverse effects of Chemotherapy.*

12 On October 14, 2019, the Nevada Supreme Court ruled the September 17, 2019 Informal
13 Brief as the Amended one requested September 10, 2021, and was silent as to a continuance or
14 counsel. Ex. Q, App 0042 & Ex. Supp. C, App 0007(u).

15 On January 23, 2020, the matter was transferred to the Court of Appeals. Ex. Q, App 0042.

16 On January 30, 2020, Centofanti filed a Motion to review his prior requests for a transcript
17 and to amend the Informal Brief. Ex G-1, App 0108-0112. Since the cancer and treatment
18 “adversely impacted his ability to prepare the filed Informal Brief and to litigate the issue of the
19 missing transcript (0110, LL 14-19) and now side effects of chemotherapy, neuropathy in his
20 hands and feet (0110, LL 20-23), Centofanti asked counsel be appointed (pro bono) to assist him.
21 (0111, L 22).

22 On February 7, 2020, the Court of Appeals denied the transcript request and was silent as
23 to the request for counsel. Ex. D, App 0009.

24 On June 5, 2020, the Court of Appeals denied Centofanti’s appeal. Ex. E, App 0011, 0014.
25 Centofanti sought review of the denial through a Petition for Review, Ex. H-2, App 0163-0172,
26 and raised as Question Two what criteria should be used to appoint counsel for pro per

1 incarcerated inmates with serious medical conditions (Stage IV cancer). App 0164, LL 5-8, and
2 briefed, (0166, line 6, to, 0167, line 20); and raised in the Amended Petition for Review, Ex. N-2,
3 App 0195-0206, as Question Two, App 0197, LL 7-9, and briefed, App 199, line 6, to App 0200,
4 line 19, raising “ Why does the pro bono (not at ‘state expense’) program exist if medically
5 disabled inmates are not eligible or considered?” App 0194, LL 26-27.

6 The State’s “Answer” to this question (App. 0220) fails to address the medically disabled
7 inmate’s request or need for the assistance of counsel. Ex. P-2.

8 Centofanti’s Reply, Ex. Q-2, again stressed the Nevada Courts’ failure to accommodate his
9 disability (App 0229) amounted to a denial of Due Process (LL 9-15) and worked to his detriment
10 (LL 16-17).

11 The Petition for Review, including the disability question, was denied on March 3, 2021.
12 Ex. P. App 0040.

13 Centofanti was diagnosed with cancer during the period in 2019 that his Opening Brief on
14 the Appeal of the denial of his state habeas was due. As additional tests and medical information
15 became known, Centofanti sought relief in the form of extensions of time, a stay during treatment,
16 referral to the pro bono program, and/or appointment of counsel.

17 The original due date of July was moved to September of 2019. Centofanti was informed
18 his Lymphoma (April), was Hodgkin’s Lymphoma (May), could be terminal (May), Stage IV
19 (June), and that he was experiencing symptoms both before and after he began chemotherapy
20 (Aug) that prejudiced his ability to prepare a brief on his own and litigate.

21 All of Centofanti’s requests to assist him or accommodate his medical disability were
22 ignored and/or denied despite the fact that the American’s with Disabilities Act, 42 U.S.C. § 1210-
23 12213 recognizes cancer as a physical or mental impairment that limited his major life activities
24 and functions, let alone litigating on appeal that if not continued or staged, without assistance of
25 counsel (free or otherwise), placing him at a disadvantage to healthy or represented inmates.

26 The appeal was submitted, referred to the Nevada Court of Appeals, and, the renewed
27 Motion for Counsel (after 24 weeks of chemotherapy) on the basis of inability to represent
28 himself, ignored, and denied.

1 The Nevada Court of Appeals denied Centofanti's appeal on June 5, 2020.
2 Centofanti sought reconsideration in the Court of Appeals (denied) and Review in the
3 Nevada Supreme Court, in part, on the failure to provide relief as to acknowledge and
4 accommodate his medical condition, which after full briefing (Answer and Reply) was denied, on
5 March 3, 2021.

6 The Nevada Court of Appeals based it's denial on an issue not appealed by either
7 Centofanti or the State, and, on an issue not briefed by Centofanti, and made worse by having to
8 address the issue for the first time on the more strict standards of reconsideration and then review
9 and, no access to the resources needed to brief the issue, as set forth in Reason Two, below.

10 The reason for granting the petition as to question one is that the denial by the Nevada
11 courts to provide relief to Centofanti, who is serving two consecutive terms of Life Without the
12 Possibility of Parole, due to his undisputed medical condition and debilitating effects of treatment
13 denied him Due Process, Equal Protection, Fundamental Fairness, and rights under the Americans
14 with Disabilities Act.

15 The Nevada courts were given notice, the applicable constitutional rights (including the
16 Americans with Disabilities Act), and multiple opportunities to rule on Centofanti's requests,
17 which consisted of a) extending filing deadlines and/or stay of proceedings while Centofanti's
18 condition was treated; or b) refer matter to the pro bono attorney program (no cost to 'taxpayers');
19 or c) appoint counsel to assist him as he was laboring under serious life-threatening medical issues
20 while incarcerated (and having to fight for treatment, medications, and care-related issues).

21 This Court is therefore asked to rule Nevada had an obligation to provide Centofanti relief
22 due to his Stage IV cancer and the failure to do so in the facts and circumstances require a reversal
23 of the denial of his appeal as (App. 0118, lines 19-27) being a direct result of the denial of his
24 Rights to Due Process (5th and 14th Amendments), Equal Protection (as to inmates not laboring
25 under a serious medical condition) and Fundamental Fairness (6th and 14th Amendments), as well
26 as the Americans with Disabilities Act as he was laboring under a disability that was not
27 acknowledged or accommodated.

28 The relief sought by way of certiorari would not place an undue burden on states, like

1 Nevada, in Centofanti's, or other similarly situated inmates' cases. As with Reason Two (the
2 denial of access to the Courts due to COVID-19), this Court is asked to order that in the face of a
3 disability to a pro per incarcerated litigant a state should be required to provide alternatives in the
4 form of

- 5 a) a stay of proceedings until the disability is removed¹
- 6 b) referral of the matter, if the stay is not allowed, to
 - 7 1) a pro bono counsel program, as in Nevada, or
 - 8 2) appointment of counsel
- 9 c) require the state to hold a hearing to consider facts, witnesses, documents, and
10 other evidence as to the disability, its impact and prejudicial effect on litigating in
11 pro per, and to determine what alternatives are available
- 12 d) compliance with the Americans with Disabilities Act

13 Therefore, because of the failures to accommodate Centofanti's medical disability, the
14 June 5, 2020 Order of Affirmance should be reversed and remanded to allow for a briefing on
15 appeal not affected by these disabilities in existence at or before the filing deadline of September
16 30, 2019.

17 **Reason Two:** Nevada courts abdicated their responsibilities by failing to allow challenges
18 to prison COVID-19 restrictions that denied Petitioner Centofanti access to the courts.

19 Centofanti has prepared a separate Index of Exhibits, Exhibits A-2 through R-2, App.
20 0114-App 0239, in Support of Reason Two.

21 The reason for granting this petition as to question two is that Nevada Courts, both the
22 Nevada Court of Appeals and Nevada Supreme Court, abdicated their responsibilities by failing to
23 allow challenges to prison COVID-19 restrictions that denied Petitioner Centofanti access to the
24 courts. Had Centofanti been granted the relief he sought, constitutionally adequate operation of the
25 prison law library, or alternative, the decisions on reconsideration of his appeal and subsequent
26 Petition for Review, would have been made on the merits, in his favor, instead of denied due to his
27

28 ¹ Whether medical or COVID-19 restrictions lifted.

1 lack of access to resources to draft, prepare and litigate issues.

2 Centofanti suggests this Court adopt the framework of its decision in the case of Ramon v.
3 Cuomo, 141 S. Ct. 63 (2020) (per curiam) in analyzing Centofanti's petition. In granting
4 injunctive relief against the State of New York's religious COVID-19 restrictions were three
5 points applicable here:

6 “[E]ven in a pandemic, the Constitution cannot be put away and
7 forgotten.” I.d. at p. 68.

8 “Judicial deference in an emergency or crisis does not mean
9 wholesale judicial abdication when important questions of religious
10 discrimination, racial discrimination, free speech, or the like are
raised.” I.d. at p. 74.

11 The Court also questioned why there were no capacity restrictions on certain businesses
12 considered “essential” such as liquor stores, hardware stores, and (referring to the State of Nevada)
13 Casinos, over churches. I.d. at p. 69.

14 It is undisputed that Centofanti sought relief from the COVID-19 restrictions at the HDSP
15 that denied him physical access and a constitutionally adequate alternative from the time he
16 received the June 5, 2020 decision denying his appeal up to and including the filing of his Reply to
17 the Answer to Petition for Review in February of 2021. On sixteen separate occasions, Centofanti
18 informed the Nevada Courts the impact the prison's COVID-19 restrictions effected his ability to
19 litigate and meet deadlines. Collected and attached as Index in Appendix – Question Two,
20 Exhibits A-2 through)-2, and Q-2. Centofanti sought a stay, continuances, access or assistance of
21 counsel, and/or the State be required to answer for the NDOC as to the HDSP law library,
22 including the response for Centofanti to “find a cure for COVID-19” in order to be allowed access.
23 App. 0161.

24 The Nevada Court of Appeals, and then the Nevada Supreme Court, failed to address the
25 denial of access issue.

26 Refusal to continue deadlines and allow or ensure access was available.

27 Refusal to stay the appeal until access was available.

28 Refusal to hear or decide motions (or order the State to respond) as to whether alternative

1 access, if any, was adequate or if alternative access was needed.

2 See, orders of the Nevada Court of Appeals of July 2, 2020 (Ex. F) (0016), August 24,
3 2020, Ex. G (0018-0020): refusing a request for stay, continuance, alternatives or a hearing.

4 See, also Orders of the Nevada Supreme Court of October 14, 2020 (Ex. J) (0026-0027) no
5 “basis to alter the lockdown restrictions at the prison” as to the prison law library; Order of
6 November 5, 2020. (Ex. K) (0029) Granting 14-day continuance but no access to the HDSP law
7 library; Order of December 3, 2020 (Ex. M) (0033). No stay, no hearing, continuance without
8 addressing access issue.

9 Instead, the Nevada Supreme Court seemed to adopt the position taken by the State in its
10 February 3, 2021 Answer to Petition for Review (Ex. P-2) at page 12 (0224):

11 *[T]his Court lacks the authority to Order the Nevada Department of
12 Corrections to alter its procedures ... as to Centofanti's claim that
13 the Nevada Department of Corrections is interfering with his access
to the courts and the law library...*

14 Despite the fact Centofanti cited to Roman v. Cuomo, *supra*, in his Amended Petition for
15 Review (0196) (as well as in his Reply (0231)), and refuted the “lack of authority” argument, it
16 was not addressed in the Answer or Denial by the Court (0039).

17 The deference to prison officials by Nevada Courts was misplaced as judicial intervention
18 was needed to address the lack of adequate access to the law library at HDSP.

19 In the time frame Centofanti sought relief from the Nevada Courts, June 2020 through the
20 present, HDSP’s law library was not equipped to provide adequate access to inmates.

21 First, as a practical matter, six inmate law library assistants could not be expected to
22 provide access by a paging system to 3200+ inmates by interdepartmental mail. Limited hours of
23 operation, staffing issues caused by COVID-19, and other issues made compliance with deadlines
24 and ability to obtain materials impossible. See, Ex. R-2 0234-37.

25 Second, HDP made the decision to treat it’s prison industries operations “essential” and
26 law library “non-essential.” It chose reprocessing casino playing cards and coat hangers over court
27 access. So, while it was profitable to send 100+ inmates a day to prison industries straight through
28 the pandemic, it wouldn’t allow inmates to attend the law library or alternatively ensure the law

1 library had the resources and staff to be able to adequately provide access. See Ex. D-2 at 0140;
2 Ex. K-2 at 0183.

3 Third, HDSP's law library was not operational from November of 2020 through February
4 of 2021 as both inmate workers and free staff were terminated for unknown reasons, therefore,
5 HDSP could not provide access during the time frame Centofanti was given a hard deadline to file
6 his Amended Petition for Review by the Nevada Supreme Court (See, Ex. M, (0033)) and
7 previous requests for a hearing also denied. (See, Ex., J (0026-27), K (0029), and L (0031). (See,
8 also Ex. K-2 at 0183-0184)

9 The facts and circumstances of the HDSP law library shutdown were unknown to their
10 counsel, the Nevada Attorney General's Office, but not disclosed in their Answer to the Petition
11 for Review, Ex. P-2 at 0224. Contrast Exhibit R-2 at 0236-0237. As a result, the State was able to
12 successfully argue Centofanti's failure to provide the "relevant authority" (0220),
13 "legal...support" (0221), required the denial of his appeal ("unsupported arguments are summarily
14 rejected on appeal") (0223). Centofanti's appeal on the denial of access to the courts and law
15 library was denied due to his being denied access to the resources needed to litigate those very
16 same claims.

17 Had the Nevada courts conducted the hearing Centofanti had requested, they would have
18 learned that at the time Centofanti was submitting requests for materials for his Amended Petition
19 for Review commensurate with the January 3, 2021, deadline (Ex. M (0033)) that a paging system
20 was being utilized for "all inmates" (0235, LL 5-7), but that due to "COVID-19 mitigating
21 efforts...or safety and security issues" there was only one staff member and no law library
22 assistants employed at the law library (0236 LL 5-25), that since September 2020, there was a
23 primary focus on meeting the electronic filing requirements for the U.S. District Court (0235, line
24 15, to 0236, line 4), and that "a backlog in responding to inmate request (sic) for law library
25 materials" (0237 LL 6-7) and that "some of those requests may date back to the end of 2020."
26 (0237, lines 18-20).

27 Clearly, had the Nevada Supreme Court knew that there was only one person staffing the
28 law library "since November of 2020" they would not have intervened on Centofanti's behalf, and

1 not simply deferred; as the one employee stated in his own words:

2 *[L]aw library duties cannot simply be done by another employee*
3 *“filling in.” It is imperative that library workers be trained to*
4 *ensure that the information the inmates request is appropriately*
5 *obtained and, when necessary, filed with the courts. As a result, I*
5 *am currently the only employee with the necessary and appropriate*
5 *training to complete these crucial tasks.*

6 I.d. at 0236, lines 13-18.

7 Centofanti’s Amended Petition for Review clearly put the issue before the Nevada
8 Supreme Court for proper consideration as Question and Reason Five:

9 *From June 12, 2020 to the present, Centofanti had been denied*
10 *access to the HDSP law library....A state prisoner is constitutionally*
11 *entitled to have some form of legal assistance such as access to*
11 *adequate law libraries. Bounds v. Smith...Lewis v.*
12 *Casey...Regardless of the reasons for the denial of access given to*
12 *Centofanti, COVID-19...it is undisputed that Centofanti has been*
13 *denied his rights under Bounds v. Smith. The prejudice, being the*
13 *lack of access has and continues to hinder Centofanti’s ability to*
14 *proceed in a meaningful and adequate matter.*

15 Ex. N-2 0204, lines 7-8, lines 18-21, lines 22-27.

16 In fact, Centofanti was using “notebook paper, carbon paper, a 2007 Georgetown Law
17 Journal, and older, case law on hand without the ability to Shepardize or research...comply with
18 rules, deadlines.” I.d. at 0204, line 27, to 0205, line 2.

19 The relief sought, “a review of the facts, documents, and evidence...as to the denial of
20 access to the Courts” (I.d. at 0205, lines 10-11) “the ability to research and draft a response to the
21 June 5, 2020 Order of the Court of Appeals” (I.d. at lines 12-13) and “Order the Attorney General
22 or their client, the NDOC, to respond [as to the access issues]” (I.d. at lines 17-18) was exactly the
23 role Nevada Courts were supposed to have, as was done in Roman v. Cuomo, *supra*, in
24 challenging COVID-29 restrictions imposed in New York.

25 Therefore, the reason for granting this petition as to question two is that the denial by the
26 Nevada Courts to provide relief to Centofanti denied him the rights enumerated in Bounds v.
27 Smith and Lewis v. Casey, Due Process, Equal Protection, Fundamental Fairness, as well as their
28 failures under Roman v. Cuomo to allow challenges to Nevada prisons COVID-19 protocols,

1 which resulted in Centofanti being denied access to the courts, and “resources needed to have the
2 issues decided on the merits.” (Ex. Q-2 at 0231 LL 22-28)

3 The record is replete with the Fact that Nevada courts were given Notice and multiple
4 opportunities (collected in Exhibits A-2 through O-2, and Q-2) to rule on Centofanti’s request to
5 address the access to the courts and the violation of his Constitutional Rights. Although Centofanti
6 was able to file motions and requests for relief, they contained only facts, arguments, and evidence
7 of being denied access, but without the ability to cite to (or respond to the State’s citation to)
8 Rules, statutes, case law, and other authority, never had the opportunity to brief issues adequately
9 to obtain favorable ratings on the merits.

10 This Court is therefore asked to rule Nevada Courts had an obligation to provide
11 Centofanti relief due to the NDOC’s failure to provide access to the Courts through the failure to
12 operate the HDSP law library in a constitutionally adequate manner by allowing Centofanti to
13 challenge the COVID-19 protocols, which, under the facts and circumstances, require a reversal of
14 the denial of his appeal as being a direct result of the denial of his Rights to Due Process (5th and
15 14th Amendments) as set forth in Bonds, Casey, Equal Protection and Fundamental Fairness (6th
16 and 14th Amendments) (as to access to the courts for inmates) and in Roman v. Cuomo, and others
17 as to challenging COVID-19 restrictions. As with Question One, *supra*, Centofanti was laboring
18 under a disability, lack of access to resources, that was not acknowledged or accommodated.

19 The relief sought by way of certiorari would not place an undue burden on States, like
20 Nevada, in Centofanti’s, or other similarly situated inmates’ cases. As with Reason One, *supra*, the
21 failure to accommodate an inmate with a medical disability, this Court is asked that in the face of a
22 colorful showing inmates are being denied access to the Courts, a state should be required to
23 provide constitutionally adequate alternatives in the form of:

- 24 a) a stay of proceedings until the disability is removed
- 25 e) referral of the matter, if the stay is not allowed, to
 - 26 3) a pro bono counsel program, as in Nevada, or
 - 27 4) appointment of counsel
- 28 f) require the state to hold a hearing to consider facts, witnesses, documents, and

1 other evidence as to the disability, its impact and prejudicial effect on litigating in
2 pro per, and to determine what alternatives are available

3 The reversal and remand of the June 5, 2020 denial of Centofanti's appeal would not
4 prejudice the State, but instead would allow the appeal to be briefed and decided on the merits,
5 once Centofanti is allowed access to the Courts, which the NDOC is obligated to provide, and the
6 Nevada Courts required to protect and intervene under the facts and circumstances of this case. It
7 is not a burden to require State Courts to hold state prisons accountable for the operation if its law
8 libraries especially during a pandemic when inmate's Constitutional Rights are violated as a result
9 of COVID-19 protocols. As one federalist ct. Jude said "[D]uring difficult times we must remain
10 the most vigilant to protect the constitutional rights of the powerless...Even when faced with
11 limited resources, the state must fulfill its duty of protecting those in its custody."²

12 **CONCLUSION**

13 The Petition for a Writ of Certiorari should be granted and the June 5, 2020 Order denying
14 Centofanti's appeal be reversed and remanded back to the Nevada Supreme Court for the reasons
15 set forth in Question One and Question Two of this Petition.

16
17 Respectfully submitted,

18 this 15 day of July, 2021

19 

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24

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26

27

28 ² U.S. Magistrate Judge Stacie Beckerman quoted in *USA Today*, May 11, 2021, in an article by Kevin McCoy.