

IN THE SUPREME COURT OF FLORIDA

LUIS TORRES JIMENEZ,

Petitioner,

Case No. SC16-1976

vs.

CITY OF AVENTURA, et al.,

\_\_\_\_\_  
Respondents. \_\_\_\_\_/

ON DISCRETIONARY REVIEW FROM  
THE THIRD DISTRICT COURT OF APPEAL

Lower Case Nos. 3D15-2303; 3D15-2271

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**PETITIONER'S BRIEF ON JURISDICTION**

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MARC A. WITES  
Florida Bar No. 24783  
WITES & KAPETAN, P.A.  
4400 N. Federal Highway  
Lighthouse Point, FL 33064  
Tel.: 954-570-8989  
[mwites@wklawyers.com](mailto:mwites@wklawyers.com)

STEPHEN F. ROSENTHAL  
Fla. Bar No. 131458  
PODHURST ORSECK, P.A.  
Sun Trust International Center  
One S.E. 3rd Avenue, Ste. 2700  
Miami, FL 33131  
Tel: 305-358-2800  
[srosenthal@podhurst.com](mailto:srosenthal@podhurst.com)

*Counsel for Petitioner*

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## STATEMENT OF THE CASE AND FACTS

This case presents an issue of statewide concern regarding the lawful administration of local governments' red-light camera traffic-enforcement systems, which involve the outsourcing to a private vendor of certain statutorily mandated responsibilities which the Florida Legislature expressly pre-empted to the State and for which delegation to private vendors is unlawful. The Third District's decision in this case expressly and directly conflicts with the Fourth District's ruling in *City of Hollywood v. Arem*, 154 So. 3d 359 (4th DCA 2014), *rev. denied*, 168 So. 3d 224 (Fla. 2015), leaving over eighty local governments and over one million motorists who have been cited or may become subject to scrutiny for a red-light camera violation without clear direction about the lawfulness of these regimes.

The legal dispute in Petitioner Jimenez's case stems from his receipt of a traffic citation from the City of Aventura (the "City") charging him with making a prohibited right turn at an intersection with a red light. [Appendix ("A.")2]. The City cited Jimenez for this infraction through its red-light camera program, operated in conjunction with the private vendor, American Traffic Solutions, Inc. ("ATS"). [A.2]. Jimenez sought dismissal of the ticket in the county court on the ground that the City operated its red-light camera program in violation of §316.0083(1)(a), Fla. Stat. (2014), which authorizes local governments to use cameras to enforce red-light traffic infractions. [A.2-3].

The county court dismissed the case, quashing Jimenez’s citation, adhering to the Fourth District’s decision in *Arem* which concluded, in part, that the City of Hollywood’s red-light camera program unlawfully authorized the same private vendor to make the initial determination of who is subject to prosecution for red-light violations, and thereby “improperly delegated its police powers . . . to a for-profit, non-governmental corporation.” *Arem*, 154 So. 3d at 365. The county court, however, certified three questions of great public importance, over which the Third District accepted jurisdiction. [A.13-14].

Upon review, the Third District acknowledged that “the heart of the dispute in this case is the Wandall Act’s express authorization for local governments to use ‘agents’ to ‘review’ images before the ‘officer’ issues a citation.” [A.4 (quoting § 316.0083(1)(a), Fla. Stat.)]. That statutory provision allows a local government to employ an agent to undertake “a review of information from a traffic infraction detector” before a traffic infraction enforcement officer (“TIEO”) issues the citation. § 316.0083(1)(a), Fla. Stat. The Third District first concluded that ATS’s review and sorting of red-light camera data before forwarding the images to the City complied with the statute because ATS carried out these functions in accordance with contract language and a set of guidelines. [A.3]. A majority of the court declined to follow the Fourth District’s decision in *Arem*, concluding that the City’s program was distinguishable from the one “as reflected in the *Arem*

opinion.” [A.25]. In a concurring opinion, however, Judge Wells disagreed with the Fourth District’s conclusion that “the servicing agent for all practical purposes determines who is subject to prosecution for a red light violation,” and would have certified *Jimenez* as being in express and direct conflict with *Arem*. [A.33].

The Third District also resolved the second and third certified questions in favor of the City, finding that the outsourcing of the printing and mailing of notices and citations as well as the electronic submission of citations to the clerk of the court were ministerial tasks which the City permissibly delegated to ATS. [A.25-28]. The Third District nonetheless certified the three issues it resolved in *Jimenez* as having great public importance given the attention that red-light camera programs have drawn by the public, local governments, and the Florida Legislature. [A.28-29]. *Jimenez* also urges this Court to grant review on express and direct conflict with the Fourth District’s decision in *Arem*. In accordance with this Court’s order dated October 31, 2016 and Florida Rule of Appellate Procedure 9.120(d), this jurisdictional brief addresses only this second basis.

### **SUMMARY OF THE ARGUMENT**

The Third and Fourth District’s opinions expressly and directly conflict. The Third District concluded that ATS’s circumscribed review, sorting, and forwarding of images of potential red-light camera traffic violations did not exceed the City’s limited authority under § 316.0083(1)(a) to use an “agent” to perform “a

review of information from a traffic infraction detector.” [A.3]. In contrast, the Fourth District in *Arem*, while recognizing that a local government has the authority to allow a private vendor to engage in the “review of information obtained from a traffic infraction detector,” *Arem*, 154 So. 3d at 364, concluded that a process which entailed the vendor’s review of images and application of certain standards to decide which images to send to the city’s TIEO did not comply with Florida’s red-light camera statutes. *Id.* at 365.

In order to ensure uniformity and certainty among the significant numbers of Florida’s local governments in their lawful implementation of their red-light camera programs and for the more than one million motorists throughout Florida who have received citations or will become subject to scrutiny for a red-light camera violation, this Court should exercise its jurisdiction and resolve the conflict between the Third and Fourth Districts.

### **ARGUMENT**

#### **THE THIRD DISTRICT’S DECISION IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE FOURTH DISTRICT’S DECISION IN *CITY OF HOLLYWOOD V. AREM*, 154 So. 3d 359 (4TH DCA 2014).**

The legal issues before the Third District in this case are substantially the same ones that the Fourth District contended with and resolved in *Arem*. Both courts considered whether §316.0083(1)(a) permitted the local government to outsource to ATS the review and sorting of red-light camera images and videos in

accordance with the parties' contract and attendant standards before forwarding those images to the local government's TIEO. Both courts recognized that the authority that the Legislature permitted local governments to delegate to a private vendor was circumscribed, in part, by the following provision of the Wandall Act:

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

§ 316.0083(1)(a), Fla. Stat. (2014). [A.4-5]. *See also Arem*, 154 So. 3d at 364.

The courts in *Arem* and *Jimenez*, however, reached conflicting conclusions as to the lawfulness of the review and sorting process carried out by ATS. While the Third District determined that ATS's role was merely ministerial, [A.16-17], the Fourth District concluded that "it is the *vendor* who initially determines who is subject to prosecution for a red light violation." *Arem*, 154 So. 3d at 365.

The Fourth District noted that the City of Hollywood's red-light camera program required ATS to review camera and video images and to make an initial determination whether the data was suggestive of a violation. *See id.* at 364. The court found that under its contract, ATS had to "send images and information regarding the violation to the TIEO *only* if ATS determines in its sole discretion that *certain standards* have been met, and ATS may withhold sending information if it determines that *those standards* were not met." *Id.* at 365 (second and third



emphases added). *See City of Oldsmar v. Trinh*, No. 2D15-4898, slip. op. at 15 (Fla. 2d DCA Oct. 28, 2016) (“[I]t appears that the *Arem* court was aware that processors functioned under standards or guidelines.”).

Based on its review of relevant statutes, the Fourth District held that the city violated its “statutorily mandated obligation to issue uniform traffic citations for red-light camera violations” by authorizing ATS “to screen data and decide whether a violation has occurred before sending that data to a traffic infraction enforcement officer.” *Arem*, 154 So. 3d at 361. In support of its holding, the court explained that the city’s “authority to outsource the issuance of [red-light camera] citations or to outsource any other statutory duty” must have been “expressly authorized by the legislature.” *Id.* at 363-64. The court concluded that the relevant statutes did not authorize a private vendor to issue citations, “either expressly or impliedly,” *id.* at 364, but permitted a local government to outsource only “the review of information obtained from a traffic infraction detector.” *Id.*

The Fourth District, however, found that the city delegated more authority than this limited “review” provision permitted. Specifically, because ATS was prohibited by contract from forwarding images if it determined that “certain standards” had not been met, the Fourth District concluded “[f]or all practical purposes, it is the *vendor* that decides which cases the TIEO gets to review; [and] it is the *vendor* who initially determines who is subject to prosecution for a red light

violation.” *Id.* at 364-65. The *Arem* court concluded that this process contravened the express statutory mandate giving law and traffic enforcement officers the exclusive authority to issue traffic citations and the implied exclusive authority to determine who gets prosecuted for a red light violation. *Id.* at 364.

The Fourth District’s conclusion in *Arem* conflicts with the Third District’s contrary conclusion here that §316.0083(1)(a) did not prohibit the City from authorizing ATS to review still images and videos for more than just the usability of the data – *i.e.*, that the images are not blurry or missing the license plate – but also to assess additional variables which the local government specified in its contract and incorporated guidelines, before the sorting of the images into one of two databases prior to forwarding them to the City for further processing. [A.3, 5-6]. Not unlike the review and sorting process it was contractually bound to follow in *Arem*, when sorting images in this case, ATS was contractually prohibited from forwarding “for processing those recorded images that clearly fail to establish the occurrence of an infraction.” [A.8]. Thus, as in *Arem*, ATS’s review process in this case necessarily entailed determinations about the likelihood of the occurrence of a traffic infraction based on its screening of data pursuant to a set of guidelines, which served to allow ATS to make the initial probable cause determination by its sorting of images into two groups based on their worthiness of further review by the City. The Fourth District concluded that this prescreening and sorting based on

“certain standards” was an unauthorized delegation of its police powers, *Arem*, 154 So. 3d at 365, whereas the Third District concluded that ATS’s guideline-based review and sorting process was not prohibited by § 316.0083(1)(a). [A.3].

The Third District majority’s attempt to distinguish *Arem* based on the parties’ differing contracts is not persuasive as to the lack of a conflict between the decisions. While the 2008 contract provision addressing “Infraction Processing” reviewed in *Arem* was slightly re-worded in the 2010 version at play in this case, both are substantively indistinguishable. Both required ATS to make an initial determination about which images to forward to the local government. [A.8]; *Arem*, 154 So. 3d at 364. More significantly, both versions of the contract prohibited ATS from forwarding images which failed to establish the occurrence of an infraction. *Id.* There is no functional difference between the review procedure in *Arem*, which required ATS to apply the “ordinance” and “certain standards” to determine that “the image shall not be processed any further,” *Arem*, 154 So. 3d at 364-65, and the process in this case, which required ATS to apply guidelines to determine which images “clearly fail to establish the occurrence of an infraction.” [A.8]. Judge Wells wrote separately in part to voice her view that the court’s decision is “in express and direct conflict with *Arem*.” [A.36].

The Third District further attempts to distinguish *Arem* based on its erroneous finding that “there is a total absence of any consideration of guidelines”

by the Fourth District. [A.23]. Although the Fourth District did not elaborate on the details of the “standard protocol” and “certain standards” governing ATS’s review in *Arem*, the court clearly recognized that ATS screened the images and video to determine “that certain standards ha[d] been met,” and that those standards figured in its determination of which images to forward to the city. *Arem*, 154 So. 3d at 364-65; *see also Trinh*, No. 2D15-4898, slip. op. at 22-24 (disagreeing with Third District’s reading of *Arem* opinion).

Relatedly, the Third District places too much emphasis on the Fourth District’s use of the terms “unfettered discretion” and “sole discretion” when describing ATS’s role in the review process in *Arem*. [A.24]. The court in *Arem* recognized that ATS’s discretion, however qualified, was necessarily exercised in accordance with the “[c]ity’s standard protocol” and the “terms of [the city’s] contract” with ATS, 154 So. 3d at 364, when it found that ATS’s determinations about whether to send images to the city were premised on those standards. *Id.* at 365. A fair reading of *Arem* must account for the Fourth District’s acknowledgement that ATS operated under certain standards. Although the *Arem* decision is unclear whether the Fourth District reviewed the substance of those standards, if anything, the finding that ATS acted “unilaterally” or with “unfettered discretion” notwithstanding ATS’s operation under a set of standards presents

another point of direct conflict with the Third District's conclusion that the guidelines circumscribed ATS's discretion. [A.24].

The Third District's final point of distinction is to contend that in *Arem* the Fourth District found that the "officer did not conduct an independent review of whether probable cause existed to issue a citation" whereas in this case the City's officer made such a probable cause assessment. [A.24]. Although the court in *Arem* referenced the trial court's finding that the officer "merely acquiesces in the vendor's decision to issue a citation," 154 So. 3d at 365, this is not equivalent to the finding that the Third District makes it out to be. Rather, having already noted the trial court's finding that "the traffic infraction enforcement officer (CSO) reviewed the information from the traffic infraction detector," *id.* at 362, the Fourth District itself also found that "it is the *vendor* that decides which cases the *TIEO* gets to review," "the City may have some input into who eventually is prosecuted," and information is "made available for the officer's consideration." *Arem*, 154 So. 3d at 365 (second emphasis added). These statements support the conclusion that the Fourth District found that the TIEO reviewed the forwarded images just as the Third District found in this case.

### **CONCLUSION**

For the foregoing reasons, the Court should grant review on conflict grounds as well.

Respectfully submitted,

MARC A. WITES  
Florida Bar No. 24783  
WITES & KAPETAN, P.A.  
4400 N. Federal Highway  
Lighthouse Point, FL 33064  
Tel.: 954-570-8989  
[mwites@wklawyers.com](mailto:mwites@wklawyers.com)

*s/ Stephen F. Rosenthal*  
STEPHEN F. ROSENTHAL  
Fla. Bar No. 131458  
PODHURST ORSECK, P.A.  
Sun Trust International Center  
One S.E. 3rd Avenue, Ste. 2700  
Miami, FL 33131  
Tel: 305-358-2800  
[srosenthal@podhurst.com](mailto:srosenthal@podhurst.com)

*Counsel for Petitioner*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via e-portal and/or e-mail service on this **14th** 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](mailto:eguedes@wsh-law.com), [szavala@wsh-law.com](mailto: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](mailto:szeskind@wsh-law.com), [ozuniga@wsh-law.com](mailto:ozuniga@wsh-law.com); **Robert Dietz**, Office of the Attorney General, 501 E. Kennedy Blvd., Suite 1100, Tampa, Florida 33134, [Robert.Dietz@myfloridalegal.com](mailto:Robert.Dietz@myfloridalegal.com).

*s/ Stephen F. Rosenthal*  
Stephen F. Rosenthal  
Florida Bar No. 0131458

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that the type style utilized in this brief is 14-point font Times New Roman which complies with the font requirements of Fla. R. App. P. 9.210(a)(2).

*s/ Stephen F. Rosenthal*  
Stephen F. Rosenthal  
Florida Bar No. 0131458