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## Summary of Amezcuca v. Eighth Judicial Dist. Court, 130 Nev. Adv. Op. 7

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## CONSTITUTIONAL LAW: JURY TRIAL

### **Summary**

The Court determined whether a first-offense domestic battery under NRS 200.485 is a serious offense requiring a jury trial under the Sixth Amendment to the United States Constitution.

### **Disposition**

The Nevada Legislature did not determine first-offense domestic battery to be a serious offense because the additional penalties along with the maximum six-month incarceration are not sufficiently severe. In Nevada, first-offense domestic battery therefore constitutes a “petty” offense to which the Six Amendment right to a jury trial does not attach.

### **Factual and Procedural History**

Sergio Amezcua was charged with first-offense battery constituting domestic violence.<sup>2</sup> The justice court denied Amezcua’s motion for jury trial. Amezcua was convicted and the district court affirmed the judgment on appeal. Amezcua petitioned for a writ of mandamus arguing that first-offense domestic battery is a serious offense entitling him to a jury trial.

### **Discussion**

The Sixth Amendment right to a jury trial attaches to “serious” but not “petty” offenses.<sup>3</sup> An offense with a maximum sentence of six months or less is presumptively a “petty” offense.<sup>4</sup> The presumption may be overcome by showing additional penalties so severe that the legislature clearly determined the offense to be “serious.”<sup>5</sup>

First-offense domestic battery can only warrant a maximum six-month imprisonment.<sup>6</sup> Additional penalties include community service and a fine.<sup>7</sup> Collateral consequences for the offense can include a presumption of unfitness for child custody, loss of firearm rights, and deportation for noncitizens.

The Court noted that the collateral consequences arise in separate civil proceedings and are therefore not relevant to determine seriousness because they do not reflect a clear determination by the Legislature that a specific offense is serious. Considering only the penalties specific to first-offense domestic battery, and the fact that the Nevada Legislature permits the

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<sup>1</sup> By Alexandria K. Mendonca.

<sup>2</sup> See NEV. REV. STAT. § 200.485 (2013).

<sup>3</sup> *Blanton v. N. Las Vegas Mun. Court*, 103 Nev. 623, 629, 748 P.2d 494, 497 (1987).

<sup>4</sup> *United States v. Nachtigal*, 507 U.S. 1, 3 (1993).

<sup>5</sup> *Id.* at 3–4.

<sup>6</sup> NEV. REV. STAT. § 200.485 (2013).

<sup>7</sup> *Id.*

trial judge to allow intermittent imprisonment,<sup>8</sup> the Court concluded that “first-offense domestic battery is a ‘petty’ offense to which the right to a jury trial does not attach.”

### **Conclusion**

The Court denied Amezcua’s petition.

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<sup>8</sup> *Id.*