



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**Morreno v. Hon. Nicole Brickner, CV-17-0193-SA**

**PARTIES:**

*Petitioner:* James Felix Morreno

*Real-Party-In-Interest Respondent:* Maricopa County Attorney's Office

*Nominal Respondent:* Honorable Nicole Brickner, Maricopa County Superior Court Commissioner

**FACTS:**

In March 2016, Morreno was indicated for trespass and possession of marijuana and drug paraphernalia when he was found in someone's backyard (the "first case"). He was released on his own recognizance and ordered to refrain from committing any criminal offense.

While Morreno was on release, an individual reported seeing a suspicious person in a car; police arrived and found Morreno with marijuana and drug paraphernalia. He was charged by direct complaint with possession of marijuana and drug paraphernalia (the "second case").

Morreno failed to appear at his initial appearance in the second case and a warrant for his arrest was issued; he was arrested eight months later. Pursuant to Arizona Constitution article II, section 22(A)(2), Morreno was held without bond because he committed the offenses in the second case while on release in the first case.

Morreno then filed a Motion to Modify pursuant to Arizona Rule of Criminal Procedure 7.4(b), seeking a release to pre-trial services or on bond. Morreno argued he could not be held without bond under section 22(A)(2) because this Court in *Simpson v. Miller* ("*Simpson II*"), 241 Ariz. 341 (2017), had invalidated that portion of the Arizona Constitution. According to Moreno, he could only be denied bond after being found to be dangerous pursuant to A.R.S. § 13-3961(D).

A commissioner denied Morreno's motion and affirmed his detention. The court reasoned that *Simpson II* had invalidated only the portions of section 22(A) that applied to charges of sexual crimes. Thus, the court held that the remaining provisions of section 22(A)(2) were constitutional after *Simpson II*, and that Morreno was categorically barred from being released on bond.

Morreno filed a petition for special action in the court of appeals. The court entered an order staying the petition for special action. This Court then granted review.

## ISSUES:

1. “*Simpson II* and its progeny hold that due process requires a showing of that [sic] the defendant’s offense be a proxy for future dangerousness before the State can categorically hold a defendant without bond. Did Respondent Commissioner err as a matter of law when she categorically denied Mr. Morreno bail without making a finding of dangerousness?”
2. “Arizona courts reject absurd interpretations of constitutional provisions. Should this Court reject Respondent Commissioner’s construction of Article 2, §22(A)(2) of the Arizona Constitution when her construction results in absurd consequences?”

## CONSTITUTIONAL PROVISION:

Arizona Constitution article II, section 22(A) provides:

- A. All persons charged with crime shall be bailable by sufficient sureties, except:
1. For capital offenses, sexual assault, sexual conduct with a minor under fifteen years of age or molestation of a child under fifteen years of age when the proof is evident or the presumption great.
  2. For felony offenses committed when the person charged is already admitted to bail on a separate felony charge and where the proof is evident or the presumption great as to the present charge.
  3. For felony offenses if the person charged poses a substantial danger to any other person or the community, if no conditions of release which may be imposed will reasonably assure the safety of the other person or the community and if the proof is evident or the presumption great as to the present charge.
  4. For serious felony offenses as prescribed by the legislature if the person charged has entered or remained in the United States illegally and if the proof is evident or the presumption great as to the present charge.

*This Summary was prepared by the Arizona Supreme Court Staff Attorney’s Office solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or other pleading filed in this case.*