

No. _____

Re: District Court No. 2:18-cv-00438-GMN-GWF,
in regards to Case No. 2:15-cr-00014-APG-VCF;
CA No. 18-15787

IN THE
SUPREME COURT OF THE UNITED STATES

Omar Qazi

Petitioner-Appellant.

v.

JANICE KILLIAN; et al.,

Respondents-Appellees.

On Petition for Certiorari
From the United States Court of Appeals
For the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Omar Qazi
N.S.D.C.
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Pahrump, Nevada
Proper Person

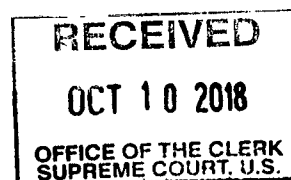


TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	ii
I. QUESTIONS PRESENTED FOR REVIEW.....	1
II. JURISDICTIONAL STATEMENT.....	1
III. STATEMENT OF THE CASE.....	2
IV. REASONS FOR GRANTING THE PETITION.....	4
A. <u>THE PANEL DECISION CONFLICTS WITH ESTABLISHED</u> <u>DECISIONS OF THE UNITED STATES SUPREME COURT, AND THE NINTH</u> <u>CIRCUIT ALSO VEERED OFF FROM THE ACCEPTED AND USUAL COURSE</u> <u>OF JUDICIAL PROCEEDINGS</u>	4
1. <u>THE 2241 PETITION SHOULD HAVE BEEN ADDRESSED BY THE</u> <u>DISTRICT COURT</u>	5
2. <u>THE NINTH CIRCUIT'S SUMMARY AFFIRMANCE WAS</u> <u>ERRONEOUS</u>	8
3. <u>VIOLATION OF INTERNATIONAL LAWS AND TREATIES ON</u> <u>HUMAN RIGHTS</u>	10
V. CONCLUSION.....	13
TABLE OF CONTENTS TO APPENDIX A.....	14

TABLE OF AUTHORITIES

CASES

<i>ACLU v. Nat'l Sec. Agency</i> , 493 F.3d 644, 651-52 (6th Cir. 2007).....	10
<i>Braden v. 30th Judicial Circuit Court of Ky.</i> , 410 U.S. 484 (1973).....	5, 6
<i>Clinton v. City of New York</i> , 524 US 417, 439 (1998).....	3, 9
<i>Dickerson v. Louisiana</i> , 816 F.2d 220, 224 (5th Cir. 1987),.....	6
<i>Ex parte Fisk</i> , 113 U.S. 713, 718 (1885).....	9
<i>Haines v. Kerner</i> , 404 U.S. 519, 520 (1972).....	4
<i>In re LimitNone, LLC</i> , 551 F.3d 572, 576 (7th Cir. 2008).....	10
<i>INS v. Chadha</i> , 462 U.S. 919, 941 (1983).....	3
<i>Jacobs v. McCaughtry</i> , 251 F.3d 596, 597 (7th Cir. 2001).....	6
<i>McCleskey v. Zant</i> , 499 U.S. 467, 478–479 (1991).....	5
<i>McNeely v. Blanas</i> , 336 F.3d 822, 824 n.1 (9th Cir. 2003).....	6
<i>NLRB v Pittsburgh S.S. Co.</i> , 340 U.S. 498, 502 (1951).....	2
<i>Page v. United States</i> , 356 F.2d 337, 339 n.1 (9th Cir. 1966).....	8
<i>Peyton v. Rowe</i> , 391 U.S. 54, 58–59 (1968).....	5
<i>Preiser v. Rodriguez</i> , 411 U.S. 475, 484-486 (1973).....	5
<i>Rhode Island v. Massachusetts</i> , 37 U.S. 657, 718, 12 Pet. 657, 726, 9 L. Ed. 1233 (1838).....	10
<i>Riggs v. Johnson County</i> , 73 U.S. 166, 187 (1868).....	6
<i>Simmons v. Kwon</i> , 2017 U.S. App. LEXIS 17114 (9th Cir. Cal., Feb. 27, 2017).....	9
<i>Stacey v. Warden, Apalachee Corr. Inst.</i> , 854 F.2d 401, 403 n.1 (11th Cir. 1988).....	6
<i>Stanley v. Baca</i> , 555 Fed. Appx. 707, 708 n.1, 2014 U.S. App. LEXIS 3015 (9th Cir.	

Cal., 2014).....	6
<i>Stow v. Murashige</i> , 389 F.3d 880, 882 (9th Cir. 2004).....	5
<i>Stringer v. Williams</i> , 161 F.3d 259, 262 (5th Cir. 1998).....	6
<i>United States Catholic Conference v. Abortion Rights Mobilization, Inc.</i> , 487 U.S. 72, 77 (1988).....	9
<i>United States v. Hooton</i> , 693 F.2d 857, 858 (9th Cir. 1982).....	8
<i>United States v. Thomas</i> , No. 17-10371, 2018 U.S. App. LEXIS 6712 (9th Cir. Ariz., March 16, 2018).....	9
<i>Valdez v. Allstate Ins. Co.</i> , 372 F.3d 1115, 1116 (9th Cir. 2004).....	10
<i>Whittington v. Bank of N.Y. Mellon</i> , No. 17-15565, 2018 U.S. App. LEXIS 6836 (D. Haw., March 16, 2018).....	9
<i>Wilson v. Belleque</i> , 554 F.3d 816, 821-825 (9th Cir. 2009).....	5
<i>Withrow v. Williams</i> , 507 U.S. 680, 715 (1993).....	5
<i>Yellowbear v. Wyoming Atty. Gen.</i> , 525 F.3d 921, 924 (10th Cir. 2008).....	6
<i>Young Buffalo v. Shinn</i> , 2017 U.S. App. LEXIS 17703, No. 16-55358 (9th Cir., Mar. 2, 2017).....	8

CONSTITUTIONAL PROVISIONS

Art I, § 9, Clause 2.....	7
Article VI, Section 2.....	11
Fifth Amendment.....	7

STATUTES

28 U.S.C. § 1254.....	2
28 U.S.C. § 2241.....	1, 5, 6, 7

NRS 208.165.....	6
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INTERNATIONAL LAWS AND TREATIES ON HUMAN RIGHTS

American Declaration on the Rights and Duties of Man.....	13
International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U. N. T. S. 171.....	12
Universal Declaration of Human Rights, G. A. Res. 217A (III), U. N. Doc. A/810 (1948).....	10, 11

OTHER PUBLICATIONS

Ballentine's Law Dictionary, 3rd Edition.....	12
Wright, Miller & Cooper, Federal Practice and Procedure § 3533.1 (2008).....	10

I.

QUESTIONS PRESENTED FOR REVIEW

(1) Does 28 U.S.C. § 2243, authorize the District Court to dismiss a 2241 Petition for "failure to state a claim for which relief may be granted."?; (2) Does the 2241 Petition state a claim for which relief may be granted?; (3) Was the District Court required to address the arguments raised in the 2241 Petition?; (4) Did the District Court improperly order the certificate of appealability to be denied?; (5) Were the filings in the Ninth Circuit by Appellant (Notice of Appeal and Response to the Ninth Circuit's Order to Show Cause) equivalent to the filing of an Opening Brief on Appeal?; (6) Are the questions raised in the "Appeal" insubstantial?; and (7) Did the Ninth Circuit erroneously order a Summary Affirmance without Respondents filing a Motion for Summary Affirmance?

II.

JURISDICTIONAL STATEMENT

Petitioner filed a Petition for Writ of Habeas Corpus 28 U.S.C. § 2241 (hereinafter "2241 Petition") on March 12, 2018 in the United States District Court for the District of Nevada (Case No. 2:18-cv-438-GMN, Dkt.# 1; regarding the District Court's jurisdictional authority to detain and sentence in Case No. 2:15-cr-00014-APG-VCF). A copy of that filing appears at Appendix A. On April 18, 2018 the District Court filed an Order dismissing the 2241 Petition (Dkt.# 3). A copy of that Order appears at Appendix A.

On June 01, 2018 the Ninth Circuit Court of Appeals filed an Order to Show Cause (Case No. 18-15787, Dkt.# 2). A copy of that Order appears at Appendix A. On June 15, 2018 Petitioner filed a Response to the Order to Show Cause (hereinafter "Motion Showing Cause") (Dkt.# 3). A copy of that filing appears at Appendix A. On July 16, 2018 the Ninth Circuit filed an Order, summarily affirming the District Court's Judgment (Dkt.# 6). A copy of that Order appears at Appendix A.

It is important to note that the Sentencing Hearing is currently scheduled for **November 15, 2018** in the United States District Court for the District of Nevada (Case No. 2:15-cr-00014-APG-VCF); and also, Petitioner is awaiting the determination from this Court on a separate Writ of Certiorari that should result in a new trial (Case No. 18-5362).

Petitioner now files this Petition for Writ of Certiorari to this U.S. Supreme Court. The jurisdiction of this Court is invoked under codified statute 28 U.S.C. § 1254(1).

III.

STATEMENT OF THE CASE

This case involves important principles, the settlement of which are important to the general public at large. See *NLRB v Pittsburgh S.S. Co.*, 340 U.S. 498, 502 (1951). The issues raised in this Petition, and ultimately determined by this Court will affect several Americans across the country. Petitioner had started a recent online public petition on Change.org, asking for the public's support, and as of this writing,

there are over 500 signatures from the public on that website seeking for the high Court's decision on this matter.

Petitioner also brings this Writ of Certiorari to this Supreme Court because the judicial branch is fundamentally the critical backstop to defend rights of individuals against the excesses of political branches, See *INS v. Chadha*, 462 U.S. 919, 941 (1983), and because this petition presents the "profoundly important issue" of the Constitutionality of an Act of Congress. See *Clinton v. City of New York*, 524 US 417, 439 (1998). Particularly, the Ninth Circuit has issued a decision in a way that conflicts with decisions of this Supreme Court, and in conflict with the decisions of other United States court of appeals, which will be shown herein.

Futhermore, many of the questions presented in this Petition were never addressed by the District Judge of the District Court, nor by the Ninth Circuit Court of Appeals, drifting so far from the accepted and usual course of judicial proceedings. The Ninth Circuit's ruling disregarded the decisions of other panels of their own Court, failing to act consistently regarding the binding effect of precedent.

Thus, the District Court and the Ninth Circuit stonewalled Petitioner's legal and factual arguments, and therefore, those issues are now brought to this Court's attention to prevent any further injustice. Perhaps, many of the undecided questions of federal law were not addressed by the lower courts because they are significantly important and better off to be settled by this Court.

Petitioner respectfully requests this pleading to be construed liberally, as I am not a professional lawyer, and as the Court is aware that Pro per pleadings are held to

a less stringent standard than those drafted by lawyers. See *Haines v. Kerner*, 404 U.S. 519, 520 (1972). Lastly, if further briefing or oral argument is ordered by this Court, Petitioner respectfully requests this Court to appoint Assistance of Counsel.

IV.

REASONS FOR GRANTING THE PETITION

A. THE PANEL DECISION CONFLICTS WITH ESTABLISHED DECISIONS OF THE UNITED STATES SUPREME COURT AND OF THE NINTH CIRCUIT COURT OF APPEALS, AND THE NINTH CIRCUIT ALSO VEERED OFF FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS

Petitioner first notes that this Petition for Writ of Certiorari can not be considered moot because the Sentencing Hearing is currently scheduled for November 15, 2018 in the United States District Court for the District of Nevada (Case No. 2:15-cr-00014-APG-VCF) where Petitioner anticipates that the District Court will be using the authority of expired/unconstitutional legislation for it's sentencing judgment, as explained fully in the 2241 Petition. Petitioner is also awaiting the determination from this Supreme Court on a separate Writ of Certiorari that should result in a new trial (Case No. 18-5362) with the anticipation that the District Court will continue to use the authority of the expired/unconstitutional legislation to detain Petitioner pre-trial in the event that a new trial is granted.

Within the 2241 Petition, Petitioner had fully raised sufficient legal arguments to amount an attack on the legality of current and future custody. Within the Motion

Showing Cause, Petitioner had also provided sufficient legal and moral reasons on why the Ninth Circuit's summary affirmance was improper. Here, Petitioner re-incorporates by reference the points and arguments made in those filings. And since Petitioner was not given an opportunity to file an opening brief, the following arguments are added on why the 2241 Petition should have been addressed by the District Court, and how the Ninth Circuit erred by ordering a summary affirmance.

1. THE 2241 PETITION SHOULD HAVE BEEN ADDRESSED BY THE DISTRICT COURT

The U.S. Supreme Court's rulings in *Peyton v. Rowe*, 391 U.S. 54, 58–59 (1968), *Preiser v. Rodriguez*, 411 U.S. 475, 484–486 (1973), and *McCleskey v. Zant*, 499 U.S. 467, 478–479 (1991), all provide great insight into the scope of the writ of habeas corpus, including the fact that it has always been used to challenge pretrial confinement. In *Withrow v. Williams*, 507 U.S. 680, 715 (1993), Justice Scalia also pointed out that “[b]y statute, a federal habeas court has jurisdiction over **any** claim that a prisoner is ‘in custody in violation of the Constitution or laws’ of the United States.” (citing *id.* §§ 2241(c)(3), 2254(a), 2255) (Scalia, J., concurring in part and dissenting in part) (emphasis added)

In *Wilson v. Belleque*, 554 F.3d 816, 821–825 (9th Cir. 2009), the Ninth Circuit found it particularly relevant that the Supreme Court had recognized federal jurisdiction over habeas claims based on future as well as present confinement. *Id.* (citing *Braden v. 30th Judicial Circuit Court of Ky.*, 410 U.S. 484, 488–89 (1973)); *See also Stow v. Murashige*, 389 F.3d 880, 882 (9th Cir. 2004) (holding that Stow's

habeas petition was properly considered under 28 U.S.C. § 2241 while impending retrial); *McNeely v. Blanas*, 336 F.3d 822, 824 n.1 (9th Cir. 2003) (same); *Stanley v. Baca*, 555 Fed. Appx. 707, 708 n.1, 2014 U.S. App. LEXIS 3015 (9th Cir. Cal., 2014) (same). Significantly, in *Braden v. 30th Judicial Circuit Court of Ky.*, 410 U.S. 484 (1973), then Chief Justice Rehnquist had noted that § 2241(c)(3) "empowers district courts to issue the writ, inter alia, **before a judgment is rendered in a criminal proceeding.**" 410 U.S. at 503 (Rehnquist, J., dissenting) (emphasis added).

In *Riggs v. Johnson County*, 73 U.S. 166, 187 (1868), the U.S. Supreme Court also held that "[e]xpress determination of this court is, that the jurisdiction of a court is not exhausted by the rendition of the judgment, but continues until that judgment shall be satisfied." (emphasis added)

Other Federal Courts of Appeals have followed these principles regarding the application of § 2241. See *Yellowbear v. Wyoming Atty. Gen.*, 525 F.3d 921, 924 (10th Cir. 2008) ("§ 2241 is a vehicle for challenging pretrial detention, or for attacking the execution of a sentence."); *Stacey v. Warden, Apalachee Corr. Inst.*, 854 F.2d 401, 403 n.1 (11th Cir. 1988) ("[Section] 2241 . . . applies to persons in custody regardless of whether final judgment has been rendered.") (citing, *Dickerson v. Louisiana*, 816 F.2d 220, 224 (5th Cir.), cert. denied, 484 U.S. 956, 108 S. Ct. 352, 98 L. Ed. 2D 378 (1987)); See also *Jacobs v. McCaughtry*, 251 F.3d 596, 597 (7th Cir. 2001) (explaining that a state court defendant attacking his pretrial detention should bring a habeas petition under 28 U.S.C. § 2241); *Stringer v. Williams*, 161 F.3d 259, 262 (5th Cir. 1998) (same)

Thus, Petitioner's 2241 Petition was correctly brought before the District Court under a Writ of Habeas Corpus, which contains claims of being in custody in violation of the Constitution and the laws of the United States. See 28 U.S.C. § 2241(c)(3).

It is also important to note that the district court's decision was not only incorrect legally, but also factually. I was appearing on my own behalf, *without counsel*, in the criminal case (2:15-cr-00014-APG-VCF). Petitioner had also challenged the March 5, 2015 detention order in the criminal case on several occasions, including the same assertions made in the 2241 petition: that the legislation used to detain or imprison is expired and unconstitutional. See District Court Case No. 2:15-cr-00014-APG-VCF, Dockets 299, 308, 315, 355, and 356; and Ninth Circuit CA No. 17-10478, Dockets 22 and 33. However, the District Court and the Ninth Circuit both *ignored* those assertions without due process of law in a direct violation of the Fifth Amendment of the United States Constitution. In turn this forced Petitioner to seek relief through the 2241 Petition.

Additionally, there is no binding legal or statutory authority stating that a detention order must only be challenged in the underlying criminal case, and that it can not be challenged through a Habeas Corpus under these circumstances. Moreover, the district court's reasoning could never justify the decision, that there was a "failure to state a claim for which relief may be granted." In fact, the decision from the District Court was in effect a suspension to "The Privilege of the Writ of Habeas Corpus" in direct violation of the Constitution, Art I, § 9, cl 2. This was fully

endorsed by the Ninth Circuit Court of Appeals as well.

2. THE NINTH CIRCUIT'S SUMMARY AFFIRMANCE WAS ERRONEOUS

None of the Respondents filed a motion for summary affirmance in this case. The Ninth Circuit only cited to *United States v. Hooten*, 693 F.2d 857, 858 (9th Cir. 1982), for the "standard" of summary affirmance. However, in *Hooten* the Ninth Circuit was only dealing with a case in regards to motions for summary affirmance. That case has no bearing on the issues in this case where respondents did not file a motion for summary affirmance. The Ninth Circuit in *Hooten* was only clarifying their position on motions for summary affirmance as stated in *Page v. United States*, 356 F.2d 337, 339 n.1 (9th Cir. 1966), where the Ninth Circuit held that "Motions to affirm should be made *only* after the appellant's brief is on file and *only* where, as here, the insubstantiality of the questions raised on appeal is clearly ascertainable from an examination of the record *and the opening brief*. The court may, *after examining the motion papers*, and without calendaring oral argument thereon, pass a motion to affirm for consideration at the time the appeal is argued on the merits." (emphasis added)

Thereby, since Respondents have not filed any motions to affirm, the summary affirmance by the Ninth Circuit was absolutely unfair and erroneous. Additionally, Petitioner had only filed a notice of appeal, and had not filed the opening brief yet. So there is no way that the court could examine the record and the opening brief to view whether the questions raised in the appeal are insubstantial or not. See *Id.*; See also, e.g., *Young Buffalo v. Shinn*, 2017 U.S. App. LEXIS 17703, No. 16-55358 (9th Cir.,

Mar. 2, 2017) ("A review of the record, **the opening brief**, and the response to the motion for summary affirmance indicates that the questions raised in this appeal are so insubstantial as not to require further argument."); *Simmons v. Kwon*, 2017 U.S. App. LEXIS 17114 (9th Cir. Cal., Feb. 27, 2017) (same); *United States v. Thomas*, No. 17-10371, 2018 U.S. App. LEXIS 6712 (9th Cir. Ariz., March 16, 2018) ("A review of the record and **the opening brief** indicates that the questions raised in this appeal are so insubstantial as not to require further argument."); *Whittington v. Bank of N.Y. Mellon*, No. 17-15565, 2018 U.S. App. LEXIS 6836 (D. Haw., March 16, 2018) (same).

Nevertheless, the questions presented in Petitioner's Habeas Corpus were significantly important, and not insubstantial. Whether substantive law was constitutionally enacted and whether it is currently expired, are essential questions that are vital to determine the very authority and power of the government to enforce that legislation. In fact, the constitutional procedure required for enacting law is a "profoundly important issue." *Clinton v. City of New York*, 524 US 417, 439 (1998)

Therefore, the challenge in this case also went to the "subject-matter jurisdiction of the court and hence its power to issue the order." *United States Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 77 (1988). An order or decree made by a court without jurisdiction is a nullity and void. See *Ex parte Fisk*, 113 U.S. 713, 718 (1885). "Jurisdiction is the power to hear and determine the subject matter in controversy between parties to a suit, to adjudicate or exercise any judicial power over them; **the question is, whether on the case before a court,**

their action is judicial or extrajudicial, with or without the authority of law, to render a judgment or decree upon the rights of the litigant parties." *Rhode Island v. Massachusetts*, 37 U.S. 657, 718, 12 Pet. 657, 726, 9 L. Ed. 1233 (1838). Thereby, the Petition for Writ of Habeas Corpus still "**must** be considered and decided before any court can move one further step in the cause, any movement is necessarily the exercise of jurisdiction." *Id.* The Federal Courts have recognized that a Federal Court must satisfy itself of its jurisdiction, no matter how difficult, before reaching the merits of a case. See, e.g., *Am. Civil Liberties Union v. Nat'l Sec. Agency*, 493 F.3d 644, 651-52 (6th Cir. 2007); *In re LimitNone, LLC*, 551 F.3d 572, 576 (7th Cir. 2008); *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1116 (9th Cir. 2004); See also *Wright, Miller & Cooper, Federal Practice and Procedure* § 3533.1 (2008) ("[T]he Supreme Court appears to have ruled that a court may never bypass a difficult and important Article III question in favor of resolving an easy and nonprecedential question on the merits.").

3. VIOLATION OF INTERNATIONAL LAWS AND TREATIES ON HUMAN RIGHTS

An important source of international law is the Universal Declaration of Human Rights (hereinafter "Declaration"), G. A. Res. 217A (III), U. N. Doc. A/810 (1948). This Declaration was adopted by the UN General Assembly on December 10, 1948. It was the first time the fundamental freedoms and rights of all people were set forth in detail by the international community. This Declaration embodies several rights, including the right to life, liberty and security of person, the right to be free

from torture, arbitrary arrest and detention and the right to a fair and public hearing. These are inherent rights belonging to all people that cannot be granted or withdrawn by anyone or any government. Significant here are articles 7-10 within this Declaration, which provide as follows:

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

The District Court and the Ninth Circuit Court of Appeals have both treated Petitioner unequal before the law, denying the right to an effective remedy by a competent national tribunal for acts violating the fundamental rights granted to him

by the constitution or by law, and by subjecting Petitioner to arbitrary detention without the equality to a fair and public hearing by an independent and impartial tribunal, in the determination of those rights. Therefore, the District Court and the Ninth Circuit have, thus far, violated articles 7-10 within this Declaration.

The United States has also ratified the human rights treaty International Covenant on Civil and Political Rights (hereinafter "Covenant"), Dec. 16, 1966, 999 U. N. T. S. 171. By ratifying this treaty, the United States is bound to incorporate the provisions and standards of this treaty into domestic law, since treaties are part of the "supreme law" of the land. See United States Constitution, Article VI, Section 2.

Article nine of this Covenant also provides that "[n]o one shall be subjected to arbitrary arrest or detention," that "[n]o one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law," and that "[a]nyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation." 999 U. N. T. S., at 175-176.

Arbitrary has been defined as "According to notion or whim rather than according to law. Despotism; without reason. Fixed or arrived at through an exercise of will or by caprice, without consideration or adjustment with reference to principles, circumstances or significance." *Ballentine's Law Dictionary, 3rd Edition*. Petitioner has clearly been subjected to arbitrary detention by being deprived of liberty, that is not in accordance to the procedures established by law.

Since the United States is a member of the Organization of American States, and is bound to the provisions of these international laws and treaties, including the

provisions of the American Declaration on the Rights and Duties of Man, Petitioner *may* have to seek a remedy by filing a petition to the Inter-American Commission on Human Rights, or other sources, *if* this honorable domestic court does not afford Petitioner the entitled relief. As it has been evident, thus far, that any avenue of redress that should be derived from the United States Constitution and from the laws of the United States appears to be virtually nonexistent in these federal courts.

V.

CONCLUSION

For the reasons mentioned above, Petitioner respectfully requests that this Supreme Court enter an order granting this Petition for Writ of Certiorari.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this document is executed without the benefit of a notary pursuant to NRS 208.165, as I am a prisoner confined in a private prison within this state of Nevada.

Executed on September 28, 2018.

Respectfully submitted,

All Rights Reserved and Without Prejudice,

Omar Qazi

Signed: _____

