EXHIBIT 1

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

STATE OF NEVADA, Petitioner, vs. CHRISTOPHER EWING aka ALEX CHRISTOPHER EWING, Respondent.	Case No. 18 OC 00227 1B Dept. No. 2

ORDER DENYING PETITION IN OPPOSITION TO EXTRADITION

THIS MATTER comes before the Court on petitioner Christopher Ewing aka Alex Christopher Ewing's (Ewing) Petition in Opposition to Extradition (petition in opposition). This Court has reviewed all pleadings, documents and exhibits on file in the above-entitled matter. Based on this review, the Court will deny the petition.

Ewing is an inmate in the lawful custody of the Nevada Department of Corrections (NDOC).

On September 12, 2018, the State filed a Petition for Temporary Transfer of Custody of Inmate Pursuant to the Uniform Criminal Extradition Act (UCEA) (UCEA petition). The UCEA petition seeks the extradition of Ewing to the State of Colorado, based upon service of an Executive Agreement and Executive Warrant (aka Governor's Warrant), to face the following charges: four counts of Murder in the First Degree (Counts 1-4); and two counts of Crime of Violence (Counts 5-6). When Ewing refused to waive extradition, the Court ordered him to challenge his extradition by way of a state habeas petition.

Ewing filed a Petition in Opposition to Extradition on November 2, 2018. The State answered the petition. Ewing filed a reply.

On December 4, 2018, the Court held a hearing on Ewing's petition. Following argument by counsel, the Court orally denied the petition.

Upon the filing of a state habeas petition challenging an Executive Warrant (aka Governor's Warrant), the asylum state court may only decide: "(a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive." *Castriotta v. State*, 111 Nev. 67, 68-69, 888 P.2d 927, 928 (1995), quoting *Michigan v. Doran*, 439 U.S. 282, 289 (1978). Introduction of the Executive Warrant creates a presumption that all of the requirements for extradition have been met. *Doran*, 439 U.S. at 289; *Pacileo v. Walker*, 449 U.S. 86 (1980). Once the prima facie showing has been made, it is the petitioner's burden to overcome the presumption by clear and convincing evidence. *South Carolina v. Bailey*, 289 U.S. 412, 422 (1933).

Ewing failed to challenge the Executive Warrant or supporting documentation. Rather, his sole challenge is to the language of the Executive Agreement between the Governors of Nevada and Colorado, and Ewing's custody if convicted in Colorado.

In his reply, Ewing for the first time alleged the documents were not in order based upon the language of the Executive Agreement, the first issue subject to challenge under *Castriotta* or *Doran*. First, as this claim was raised for the first time in the reply, it is not appropriately before this Court. Second, the Court finds the challenge to the Executive Agreement fails to address whether the documents on their face are in order. Rather, Ewing fails to address or demonstrate that the documents which formed the demand for Ewing's extradition to Colorado did not meet the requirements of NRS 179.183. Therefore, his challenge fails.

As Ewing failed to overcome the presumption that the requirements for an extradition have been met, *Doran*, 439 U.S. at 289, this Court will deny the petition and authorize Ewing's extradition to Colorado.

In the alternative, Ewing fails to demonstrate the Executive Agreement is improper or violates NRS 179.187(1). In the Executive Agreement, the Governors of Nevada (asylum state, where the person is located) and Colorado (demanding state, who wants the person) agreed that if Ewing is

acquitted, he will be returned to Nevada. However, if Colorado convicts Ewing and imposes a sentence of death or life imprisonment, Ewing will remain in the custody of Colorado.

The Court finds that Ewing's claim is not ripe. A case is ripe for judicial review when "the degree to which the harm alleged by the party seeking review is sufficiently concrete, rather than remote or hypothetical, [and] yield[s] a justiciable controversy." *Herbst Gaming, Inc. v. Sec'y of State*, 122 Nev. 877, 887-88, 141 P.3d 1224, 1230-31 (2006); *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986) (finding litigated matters must present an existing controversy, not merely the prospect of a future problem, and must be ripe for judicial determination). If harm is likely to occur in the future because of a deprivation of a constitutional right, then a ripe case or controversy may exist, but the party must show that it is probable future harm will occur. *See Regional Rail Reorganization Cases*, 419 U.S. 102, 143 (1974) (internal quotation omitted).

Here, Ewing's challenge does not address a constitutionally protected interest, and is wholly contingent upon a future undetermined conviction in Colorado coupled with a sentence of life imprisonment or death. He fails to demonstrate probable future harm. His claim is not ripe for review by this Court at this time.

Even if this Court were to consider the merits of the claim, Ewing cannot demonstrate that the Executive Agreement violates state or federal law.

Ewing argues the title of the UCEA petition includes "Temporary." Petition at 1. He is correct. Ewing is currently in the custody of the NDOC under a Nevada sentence. Until he discharges that sentence, he remains a Nevada inmate.

However, two state sovereigns may choose to enter into an Executive Agreement to address Ewing's future custody.

A prisoner has no standing to contest an agreement between two sovereigns concerning the exchange of custody of the prisoner. *See Pitsonbarger v. Gramley*, 141 F.3d 728, 734 (7th Cir. 1998) (finding agreement between Illinois and Nevada for Illinois to retain defendant in custody following extradition under the Interstate Agreement on Detainers (IAD)[1] and imposition of death was

[1] The United States Supreme Court found that a challenge to an extradition under the IAD and the UCEA are substantially the same, and therefore the wanted person could challenge the IAD paperwork using the same framework and issues as a challenge to the UCEA under *Doran*, except for fugitivity which was not at issue in an IAD. *Cuyler v. Adams*, 449 U.S. 433 (1981).

enforceable as the defendant had no legally protectable rights to the place in which he would serve his sentence); *New York v. Poe*, 835 F.Supp. 585, 592-93 (E.D. Okla. 1993) (holding that under the IAD, a prisoner does not have the right "to dictate the order in which he is to serve his multiple sentences;" and nothing in the IAD prohibited the sending state from waiving the return of the prisoner following his death sentence in the receiving state, as the sending state could waive the return of the prisoner based upon a cooperative custodial arrangement between the two states); *see also Chunn v. Clark*, 451 F.2d 1005, 1006 (5th Cir. 1971) (finding a prisoner has no standing to contest an agreement between two government sovereigns as to execution of sentences); *Lionel v. Day*, 430 F.Supp. 384, 386 (W.D. Okla. 1976) (finding a defendant who violated the criminal laws of the federal and state governments may not complain about the order in which he is punished); *Brown v. State*, 920 So.2d 1037, 1039 (Miss. App. 2005) (finding no standing to contest validity of extradition agreement between sovereign states); *Grayson v. Wainwright*, 330 So.2d 461 (Fla. 1976) (same, quoting *Chunn*).

Where the prisoner has prison commitments in multiple states, the states may agree on where to house the prisoner. *See Pitsonbarger*, 141 F.3d at 734; *Poland v. Stewart*, 117 F.3d 1094, 1097-98 (9th Cir. 1997) (finding federal government could waive return of prisoner from state court following the state court's imposition of death because "[a defendant] may not complain if one sovereignty waives its strict right to exclusive custody of him for vindication of its laws in order that the other may also subject him to conviction of crime against it. Such a waiver is a matter that addresses itself solely to the discretion of the sovereignty making it, and of its representatives with power to grant it.") (quoting *Ponzi v. Fessenden*, 258 U.S. 254, 260 (1922)); *State v. Robbins*, 590 A.2d 1133, 1136 (N.J. 1991) (same) (quoting *Ponzi*, 528 U.S. at 260)). The asylum state does not waive jurisdiction in such a situation. *Poe*, 835 F.Supp. at 592; *Engberg v. State*, 874 P.2d 890, 892 (Wyo. 1994).

NRS 179.187(1) provides for the return of a prisoner to Nevada upon completion of prosecution. However, an Executive Agreement may be tailored to fit the particular requirements of the demanding and asylum states in exceptional cases not covered by statute and in which the prisoner's return is not the exclusive concern, such as where the prisoner is sentenced to death or life imprisonment in one or both states. *See, e.g., Pitsonbarger*, 141 F.3d at 734; *Poe*, 835 F.Supp. at 592-93.

If Ewing is acquitted, he will be returned to Nevada. If he is convicted and sentenced to life imprisonment or death, then pursuant to the Executive Agreement, Colorado will retain custody. Ewing will continue to earn credits towards his Nevada sentence while housed in Colorado. The executive authorities of Colorado and Nevada may decide in which state Ewing will serve his sentences. Ewing lacks standing to challenge the state of his incarceration. The Court finds the Executive Agreement does not violate state or federal law.

The Court deeming itself fully informed,

IT IS HEREBY ORDERED that Ewing's Petition in Opposition to Extradition is **DENIED**.

IT IS THEREFORE ORDERED that Ewing is remanded to the custody of the NDOC to be held for the purpose of being turned over to the duly authorized agents of the State of Colorado.

DATED this 4 day of December, 2018.

James Ecby

HONORABLE JAMES E. WILSON JR.
DISTRICT JUDGE

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EXHIBIT 2

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER EWING, A/K/A ALEX CHRISTOPHER EWING, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 77670
CHRISTOPHER EWING, A/K/A ALEX CHRISTOPHER EWING, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 77671

ORDER OF AFFIRMANCE

These are consolidated appeals from district court orders denying petitions for writs of habeas corpus challenging extradition. First Judicial District Court, Carson City; James E. Wilson, Judge.

The State filed two petitions to transfer appellant Christopher Ewing pursuant to the Uniform Criminal Extradition Act (UCEA), NRS 179.177 et seq., and Executive Warrants signed by the governor of Nevada. The petitions were based on demands from Colorado, where Ewing faces multiple felony charges in two counties. Ewing, by and through counsel, filed petitions in opposition to extradition, requests for appointments of counsel, motions to dismiss, and ultimately petitions for writs of habeas corpus. The district court denied Ewing's requests for appointed counsel based on Nevada precedent and denied his challenge to the extradition petition. These appeals followed.

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Ewing first claims he has a right to appointed counsel during the extradition proceedings pursuant to NRS 179.197(1). However, this court has held the statute does not require the appointment of counsel. *Roberts v. Hocker*, 85 Nev. 390, 456 P.2d 425 (1969). "The meaning of NRS 179.197 is unambiguous and needs no construction; it merely affords a defendant the privilege to have counsel present. If the legislature deems it desirable to afford appointed counsel to indigents during an extradition proceeding, it is their prerogative, not ours." *Id.* Thus, pursuant to Nevada caselaw, Ewing's statutory argument fails.[1]

To the extent Ewing asks us to overrule *Roberts*, we conclude he has not demonstrated compelling reasons to do so. *See Harris v. State*, 130 Nev. 435, 441, 329 P.3d 619, 623 (2014) (recognizing that "the doctrine of stare decisis militates against overruling precedent"); *Armenta-Carpio v. State*, 129 Nev. 531, 535, 306 P.3d 395, 398 (2013) (providing that precedent will not be overturned "absent compelling reasons for so doing"). That other states have interpreted the language in the uniform provision codified in Nevada as NRS 179.197 differently than this court did in *Roberts* is not a compelling reason to overrule *Roberts*, especially when this court was aware of contrary interpretations when it decided *Roberts*.[2] And we are not convinced that the reasoning in *Roberts* was clearly erroneous warranting

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[1]Ewing's reliance on NRS 34.820(1) is misplaced as that statute's plain language makes clear that it only applies to habeas petitions that challenge the validity of a judgment of conviction or death sentence.

[2]Ewing briefly argues that NRS 179.235 should sway this court into aligning itself with those states that have found a statutory right to appointed counsel from the UCEA's language. We are unpersuaded.

a departure "from the doctrine of stare decisis to avoid the perpetuation of that error." *Armenta-Carpio*, 129 Nev. at 536, 306 P.3d 395, 398; *see also Miller v. Burk*, 124 Nev. 579, 597, 188 P.3d 1112, 1124 (2008) (holding "mere disagreement does not suffice" as a reason to overturn precedent). Accordingly, Ewing's statutory claim to appointed counsel fails.

Ewing next argues that he has a constitutional right to appointed counsel based on the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article 1, §§ 8(1) (right to counsel) and 8(5) (due process) of the Nevada Constitution.[3] The arguments based on the constitutional right to counsel lack merit because extradition proceedings are not a critical stage of a criminal proceeding to which that right attaches. *Roberts*, 85 Nev. at 392-93, 456 P.2d at 425; *see also Utt v. State*, 443 A.2d 582, 588-89 (Md. 1982) (compiling cases to demonstrate that "the vast majority of cases around the country" have held an extradition proceeding is not a critical stage of the criminal proceeding such that the right to the assistance of counsel attaches). And as a federal district court reasoned when rejecting the idea that lack of counsel during an extradition hearing violates due process, "if forcible abduction for trial is no violation of due process [as the Supreme Court held in *Frisbie v. Collins*, 342 U.S. 519, 522 (1952)], lack of counsel on extradition certainly is not." *United States*

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[3]While Ewing bases his claim for counsel on both the United States and Nevada constitutions, he does not argue that the Nevada Constitution differs or provides for greater protection than that of its federal counterparts.

ex rel. Huntt v. Russell, 285 F. Supp. 765, 767 (E.D. Pa. 1968). Therefore, Ewing has not shown that he has a constitutional right to the appointment of counsel in extradition proceedings.[4]

Lastly, Ewing challenges the extradition petitions based on language in related Executive Agreements that provides Ewing will remain in Colorado to serve his sentence should he be convicted and sentenced to either death or life imprisonment. "A governor's grant of extradition is prima facie evidence that the constitutional and statutory requirements [for extradition] have been met." *Michigan v. Doran*, 439 U.S. 282, 289 (1978). Accordingly, once the asylum state's governor has granted extradition and issued a warrant of arrest, there are few issues a court in the asylum state can decide when a prisoner challenges extradition: "(a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive." *Id.* Here, Ewing's argument about the Executive Agreements appears to relate most closely to the first inquiry, suggesting the extradition documents were not in order due to the language in the Executive Agreements. We disagree.

Extradition documents are in order when the demand for extradition is in the form required by NRS 179.183. *State ex rel. Gilpin v. Stokes*, 483 N.E.2d 179, 183 (Ohio Ct. App. 1984) (finding extradition

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[4]To that end, Ewing has not shown that appointment of appellate counsel is required. Accordingly, we deny his motion for the appointment of appellate counsel.

paperwork in order when it complied with state statute outlining requirements for demand paperwork). The Executive Agreements challenged by Ewing are separate from the demands for his extradition and only address the matter of Ewing's custody upon the termination of the Colorado proceedings. Accordingly, they have no bearing on whether the demands for Ewing's extradition met NRS 179.183's requirements.

But even if the Executive Agreements are relevant to whether the extradition documents were in order, Ewing's argument is unavailing. First, Ewing's argument is not ripe, as the alleged harm—not being returned from Colorado—may never come to fruition if he is acquitted or receives a sentence less than death or life imprisonment. *See Herbst Gamin, Inc. v. Heller*, 122 Nev. 877, 887, 141 P.3d 1224, 1231 (2006) (providing two factors for consideration as to ripeness—hardship to parties in withholding judicial review and suitability for such review—and finding that a complainant's harm must not be speculative or hypothetical but must be sufficiently concrete). Second and more importantly, Ewing has no say as to what order sentences imposed by two different sovereigns are executed and therefore no ground on which to challenge the Executive Agreements regarding his custody at the end of the proceedings in Colorado. *See Smothers v. State*, 741 So. 2d 205, 207 (Miss. 1999); *State v. Robbins*, 590 A.2d 1133, 1137 (N.J. 1991); *Guerrieri v. Maxwell*, 186 N.E.2d 614, 615 (Ohio 1962); *see also Ponzi v. Fessenden*, 258 U.S. 254, 260 1922) (after having received a fair trial, a defendant "may not complain if one sovereignty waives its strict right to exclusive custody of him for vindication of its laws in order that the other may also subject him to conviction of crime

against it"). For these reasons, we are not convinced that Ewing demonstrated any facial deficiency in the extradition documents.

Having considered Ewing's contentions and concluded that no relief is warranted, we

ORDER the judgments of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Pickering

_____, J.
Hardesty

_____, J.
Parraguirre

_____, J.
Stiglich

_____, J.
Cadish

_____, J.
Silver

cc: Hon. James E. Wilson, District Judge
Martin H. Wiener
Attorney General/Carson City
Carson City Clerk

EXHIBIT 3

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER EWING, A/K/A ALEX CHRISTOPHER EWING, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 77670
CHRISTOPHER EWING, A/K/A ALEX CHRISTOPHER EWING, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 77671

FILED

JAN 24 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.

Pickering, C.J.
Pickering

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

Cadish, J.
Cadish

Silver, J.
Silver

20-03399

cc: Hon. James E. Wilson, District Judge
Martin H. Wiener
Attorney General/Carson City
Carson City Clerk

EXHIBIT 4

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER EWING, A/K/A ALEX CHRISTOPHER EWING, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 77670
CHRISTOPHER EWING, A/K/A ALEX CHRISTOPHER EWING, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 77671

FILED

FEB 21 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DENYING MOTION TO STAY REMITTITUR

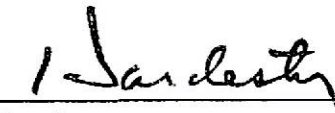
We issued an order of affirmance on November 22, 2019, in these consolidated appeals from district court orders denying petitions for writs of habeas corpus challenging extradition. Rehearing was denied on January 24, 2020. Appellant has now filed a motion to stay the remittitur under NRAP 41(b)(3) pending his petition for certiorari to the United States Supreme Court. Respondent has filed an opposition to the motion, and appellant has filed a reply.

Having considered the parties' arguments, we conclude that staying remittitur is not warranted. Appellant has not demonstrated a reasonable probability of succeeding on the petition or good cause for the stay. *See generally Bricklayers Local 21 of Illinois Apprenticeship & Training Program v. Banner Restoration, Inc.*, 384 F.3d 911 (7th Cir. 2004); 16AA Charles Alan Wright & Arthur R. Miller, *Federal Practice &*

Procedure § 3987.1 (4th ed. 2019). Therefore, we deny the stay, and remittitur shall issue forthwith.

It is so ORDERED.

_____, J.
Parraguirre



_____, J.
Hardesty

_____, J.
Cadish

cc: Hon. James E. Wilson, District Judge
Martin H. Wiener
Attorney General/Carson City
Carson City Clerk