

22-5622  
Docket No.

*ORIGINAL*

In the  
**Supreme Court of the United States**

Supreme Court, U.S.  
FILED

SEP 15 2022

OFFICE OF THE CLERK

T. MATTHEW PHILLIPS

*Petitioner*

vs.

AMBER KORPAK

*Respondent*

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**ON PETITION FOR A WRIT OF CERTIORARI  
TO THE SUPREME COURT OF NEVADA**

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**PETITION *for a* WRIT *of* CERTIORARI**

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## QUESTIONS PRESENTED

In the midst of a routine divorce saga, Wife alleged that Husband, during the marriage, had committed violent crimes against her. But Wife never contacted the police. More than that, Wife's divorce complaint is silent as to any supposed crimes. The state never filed an indictment and Husband was never given notice of any criminal charges. But then, in the couple's final custody order, the family court judge made a finding—based on clear and convincing evidence—that Husband did commit a violent crime against Wife, *i.e.*, the crime of coercion. And, based on the judge's finding—that Husband had violated a criminal statute—the judge thereupon terminated Husband's right to custody of his only son.

*The questions presented are—*

- (a) whether Wife has standing to act as private prosecutor against Husband; (b) whether the trial court, with no underlying indictment, has subject-matter jurisdiction to conclude that Husband violated a criminal statute; (c) whether "clear and convincing" is the proper evidentiary standard on criminal statutes; (d) whether the Constitution requires jury trials for all persons accused of violating criminal statutes; and (e) whether the state may rely on Husband's "conviction" as a basis to terminate his parental rights.

## **PARTIES *to the* PROCEEDING**

The caption page, in this instant case, contains the names of all the parties to this petition—*i.e.*, Petitioner, T. Matthew Phillips, (“Husband”), and Respondent Amber Korpak, (“Wife”), [Rule 14.1(b)(i)].

## **CORPORATE DISCLOSURE STATEMENT**

As per Supreme Court Rule 29.6, Petitioner, T. Matthew Phillips, a natural person, discloses that he has no parent corporation, [Rule 14.1(b)(ii)].

## **RELATED PROCEEDINGS**

Petitioner, T. Matthew Phillips, knows of no other proceedings that are “directly related,” [Rule 14.1(b)(iii)].

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## OPINIONS BELOW

As per Rule 14.1(d)], relevant lower court rulings include—

- Nevada Supreme Court *Order of Affirmance*, [Pet. App. B; (April 29, 2022)];
- the trial court's final custody order, [Pet. App. D; (Dec. 19, 2020)].

## JURISDICTIONAL STATEMENT

The date the judgment or order sought to be reviewed was entered, was April 29, 2022, *i.e.*, Nevada Supreme Court's *Order of Affirmance*, [Rule 14(e)(i)].

The date of any order respecting rehearing was **June 17, 2022**, the date on which Nevada Supreme Court denied the petition for rehearing, [Rule 14(e)(ii)].

This Court has subject-matter jurisdiction to hear the instant petition based on **28 U.S.C. § 1254**, [Rule 14.1(e)(iv)].

## CONSTITUTIONAL PROVISIONS INVOLVED

**Self-Incrimination Clause—5<sup>th</sup> Amendment:** "... nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law." [U.S. Const., Amend. V]

**Rights of the Accused—6<sup>th</sup> Amendment:** "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury ... and to be informed of the nature and cause of the accusation . . . and to have the assistance of counsel for his defense." [U.S. Const., Amend. VI]

**Due Process Clause—14<sup>th</sup> Amendment:** "... nor shall any state deprive any person of life, liberty, or property, without due process of law." [U.S. Const., Amend. XIV, § 1]

**Equal Protection Clause—14<sup>th</sup> Amendment:** "... nor deny to any person within its jurisdiction the equal protection of the laws." [U.S. Const., Amend. XIV § 1]

## NEVADA CONSTITUTION / STATUTES

**Nevada Constitution, Art. 1, Sec. 8:** “No person shall be tried for a[n] ... infamous crime ... except on presentment or indictment,” [Nev. Const., Art. 1, § 8.1]

**Nevada Revised Statutes, § 33.020.11** – “The clerk of the court shall inform the protected party upon the successful transfer of information concerning the registration to the Central Repository for Nevada Records of Criminal History as required pursuant to NRS 33.095,” [NRS § 33.020.11].

**Nevada Revised Statutes, § 125C.0035.5** – “... a determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking physical custody has engaged in one or more acts of domestic violence against the child, a parent of the child or any other person residing with the child creates a rebuttable presumption that sole or joint physical custody of the child by the perpetrator of the domestic violence is not in the best interest of the child,” [NRS § 125C.0035.5].

**Nevada Revised Statutes § 207.190 (Coercion)** – “It is unlawful for a person, with the intent to compel another to do or abstain from doing an act which the other person has a right to do or abstain from doing...” [NRS § 207.190].

**Nevada Revised Statutes § 33.020.11** – “The clerk of the court shall inform the protected party upon the successful transfer of information concerning the registration to the Central Repository for Nevada Records of Criminal History,” [NRS § 33.020.11].

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## STATEMENT *of the* CASE

### 1. When Parents Stand Accused of Crimes in Family Court.

This petition sheds light on a silent epidemic that now plagues our nation, *i.e.*, the systematic *criminalization* of American parents in family court proceedings.

This petition examines family court proceedings, which ostensibly, are “civil” matters; however, such proceedings too often morph into *de facto* “criminal” matters, which should rightly trigger the rights of the accused, [5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amdts.].

From Petitioner’s point-of-view, the line between “civil” and “criminal,” has become increasingly blurred. Petitioner believes the “civil” label, traditionally associated with family court, should not be used to deny constitutional safeguards and procedures to family court parents who stand accused of violating criminal statutes.

Family court parents accused of violating criminal statutes should be treated as “criminal” defendants, and thus accorded the rights of the accused, including the right to trial by jury—regardless of the “civil” label traditionally associated with family courts.

This Court should extend—to family court parents accused of crimes—the “rights of the accused,” [5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amdts.], including,

5<sup>th</sup> Amendment: the privilege against self-incrimination; *Miranda* warnings; and the presumption of innocence until proven guilty;

6<sup>th</sup> Amendment: the right to trial by jury; the right to assistance of counsel; and the presumption of innocence until proven guilty;

14<sup>th</sup> Amendment: the right to due process notice of (i) the criminal facts alleged and (ii) the criminal statutes allegedly violated; and, the right to a fair trial.

Traditionally, the rights of the accused apply only in proceedings labeled “criminal,” but Petitioner urges this Court to extend the rights of the accused to *all* persons who stand accused of crimes—regardless of the tribunal in which they stand, (*i.e.*, “civil” or “criminal”).

In proceedings labeled “civil,” Nevada family court judges rule that individuals violate “criminal” statutes; and then the judges mete-out punishment by terminating parent rights, which are fundamental rights. With so much at stake, parents accused of crimes must be accorded the “rights of the accused,” [5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amdts.].

Where individuals in “civil” proceedings stand accused of violating “criminal” statutes—and where deprivations of constitutional liberties hang in the balance—the Constitution *must* apply, [5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amdts.].

Petitioner prays this Court enforce the constitutional protections designed and intended for those who stand accused of crimes, regardless of whether the hosting tribunal is fortuitously labeled “civil” or “criminal.”

## **2. All Persons Accused of Crimes Must Be Accorded Constitutional Safeguards and Protections.**

The family court system is big business. Today, the majority of America’s legal system is devoted to family law. The family court system has become the nation’s predominant court system. Matrimonial lawyers generate enormous revenue streams for the family court system. But this comes at a cost; *for example*, the monumental revenue streams are dependent upon the mass *criminalization* of parents, *i.e.*, to justify the terminations and limitations of custodial rights.

Thousands of American children lose a parent every day the family courts are open for business. In order to justify these deprivations, parents must be culpable; in other words, they must be *criminalized*. In order to

accomplish this, Nevada family courts now adjudicate criminal allegations—but with no formal indictment requirement; further, Nevada family courts recognize a parent's right to act as “special prosecutor,” *i.e.*, where one parent prosecutes criminal allegations against the other; so too, Nevada has abolished the right to trial by jury in family court proceedings.

Where states, such as Nevada, allow private citizens to play the role of both “victim” *and* “special prosecutor,” it leads to vigilante justice—which is at-odds with traditional notions of fair play under the 14<sup>th</sup> Amendment.

Criminal actions must be brought in the name of the People, (or Commonwealth). Petitioner believes that criminal actions must be brought by prosecutorial agencies, with supporting indictments, as the 14<sup>th</sup> Amendment affirmatively requires.

Again, the key to family court's financial success is the mass criminalization of parents—because that's what generates the colossal revenue streams. However, the goal of mass criminalization faces a formidable stumbling block, *i.e.*, the Constitution; and, as it turns out, the family court system has not the time, money, nor inclination to follow the Constitution. Indeed, to maintain the mammoth revenue streams, the system goes to great lengths to avoid the Constitution.

*For example*, Nevada family courts reject the constitutional requirement that the accused must be accorded due process notice of (i) the criminal facts alleged and (ii) the criminal statutes allegedly violated. Nevada family courts deny these rights to parents who stand accused of committing crimes.

Most monstrous of all, Nevada refuses to allow jury trials to parents who stand accused of crime. If Nevada family courts were required to give jury trials to all the parents accused of crimes, family court calendars would be swamped, and the system would become unmanageable. This presumably

explains why Nevada family courts deny jury trials. Nevada does an end-run around constitutional safeguards and procedures, and with sketchy legal procedures, including—

- (a) The Nevada judiciary allows parents to be “special prosecutors,” *i.e.*, by giving them a private right to prosecute criminal statutes against the other parent—while at the same time playing the role of “victim,” but this sort of vigilante justice defeats traditional notions of a “fair trial,” (14<sup>th</sup> Amendment violation);
- (b) the family court system shuns subject-matter jurisdiction requirements, *i.e.*, by allowing the family court judges to make criminal findings—with no supporting indictment, which means the accused are cheated out of “due process notice,” *i.e.*, of the criminal facts alleged and the criminal statutes allegedly violated, (14<sup>th</sup> Amendment violation);
- (c) the family court system adopts relaxed evidentiary standards, *i.e.*, by using a *lower* standard, “clear and convincing,” to prove criminal allegations, (6<sup>th</sup> Amendment violation); so too, the state provides no *Miranda* warnings, (5<sup>th</sup> Amendment violation); and, no presumption of innocence, (violation of 5<sup>th</sup> and 6<sup>th</sup> Amendments).
- (d) the family court system allows parents to be tried for crimes—but with no right to trial by jury, (6<sup>th</sup> Amendment violation);
- (e) the family court system permits the state to terminate parental rights—with no showing that the parent committed (i) child abuse or (ii) child neglect, which is the federal standard for terminating parental rights; as a result, the state violates the “right to parent,” *i.e.*, by depriving parents of “life, liberty, or property without due process of law,” (violations of 5<sup>th</sup> and 14<sup>th</sup> Amendments)].

The family court system most effectively *criminalizes* parents by abrogating the accused's right to a jury trial, the most precious of all civil liberties. Petitioner sought a jury trial, but he was ultimately denied by Nevada Supreme Court, [Pet. App. B; *Order of Affirmance*, (July 21, 2021)].

In his family court case, Petitioner stood accused of crimes, and his right to be a parent hung in the balance; however, the state denied him those rights ordinarily accorded the accused. The State of Nevada then terminated Petitioner's fundamental "right to parent," with no jury trial, in a courtroom with no jury boxes.

Jury trials may be the most vital component of checks and balances. Where a parent's custodial rights are at stake—or *any* constitutional rights are at stake—the right to trial by jury must remain forever inviolate! Standing alone, the fact that the state denied Petitioner his natural-born right to trial by jury—is reason enough for this Court to grant the petition.

### **3. Civil and Criminal Labels are Not Determinative as to Whether a Given Proceeding is 'Civil' or 'Criminal.'**

When individuals violate criminal statutes in courts labeled "criminal," the penalty is losing one's freedom (or fines); in contrast, when individuals violate the same criminal statutes in courts labeled "family," the penalty is losing one's children. In the "criminal" setting, one's *freedom* is taken as punishment, while, in the "family" setting, one's *children* are taken. Notably, in both tribunals, judges adjudicate the *same criminal statutes*; the only difference is the tribunal's label, ("family" or "criminal").

When criminal statutes are adjudicated in "criminal" court, Nevada recognizes the accused's right to 14<sup>th</sup> Amendment due process because, of course, the proceeding is labeled "criminal." However, when the *same criminal statutes* are adjudicated in "family" court, Nevada rejects the rights

of the accused—but only because the proceeding just-so-happens to be labeled “family.” Why the glaring disparity?

For goodness’ sake, in *both* proceedings, judges adjudicate the *same criminal statutes*. By what earthly logic do the rights of the accused apply in one tribunal, but not the other? Nevada’s arbitrary label system works a harsh and unjust result for those accused of crime in family court.

Everyone agrees the Constitution protects those facing loss of their *freedom*; so too, the Constitution should rightly protect those facing loss of their *children*. And note, both rights, *freedom* and *parenting*, originate from the 5<sup>th</sup> Amendment, *i.e.*, “life, liberty, and property,” and thus, there should be no differential treatment.

Petitioner here states the obvious: losing one’s children is a punishment a million times worse than incarceration. Petitioner would rather be incarcerated and retain the right to raise his only son. At the time of this writing, Petitioner—*who has never been charged with a crime*—has neither seen, nor heard, from his son in 3 yrs. and 11 mos.; (a gross injustice, both to Petitioner and son).

Petitioner here presents issues of nationwide importance concerning the *criminalization* of the family court system, a topic of sufficient magnitude to warrant this Court’s attention.

Plaintiff prays this Court un-blur the blurry line that now wavers between the unconstitutionally overlapping worlds of “family” court and “criminal” court.

Petitioner urges this Court to extend the “rights of the accused” to *all* persons who stand accused of crimes, including all *de facto* criminal defendants, in all *de facto* criminal proceedings, regardless of the tribunal’s label, (“family” or “criminal”).

#### **4. The Right of the Accused Extend to All Persons Accused of Crimes, Regardless of Whether the Tribunal is ‘Civil.’**

The rights of the accused are well-established within the context of “criminal” proceedings. But these rights must also extend to “civil” proceedings—in which the accused are alleged to have violated the same “criminal” statutes, *i.e.*, statutes with *specific intent* requirements.

In Petitioner’s final custody order, [Pet. App. D], the judge found that he violated NRS § 207.190—a statute that carries up to six (6) years in state prison, [NRS § 207.190; (p. viii)]. On the issue of whether this statute is a *criminal* statute, the fact that its remedies include state prison is highly probative. Petitioner is confident it’s a criminal statute, in every sense of the term, due to the *specific intent*, (“*scienter*”), element.

When this criminal statute, NRS § 207.190 is adjudicated in the “criminal” court system, the state recognizes the rights of the accused; however, when adjudicated in a “family” court system, the state *rejects* the rights of the accused. But note, NRS § 207.190 contains a *specific intent* requirement, *i.e.*, a “*scienter*” requirement, which confirms the statute is indeed a *criminal* statute.

#### **5. The *Scienter* Requirement Determines Whether a Statute is Deemed ‘Criminal.’**

What makes a statute a *criminal* statute?—the *scienter* requirement. Here, Petitioner was found to have violated a statute, [NRS § 207.190], that comes with a *scienter* element. The language of NRS § 207.190 references the word “intent,” which demonstrates the *specific intent* requirement, (“*scienter*”), which means the predicate statute is decidedly criminal in nature, which triggers the rights of the accused, [5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amdts.], which should have been accorded Petitioner.

NRS § 207.190 provides, “It is unlawful for a person, *with the intent* to compel another to do or abstain from doing an act,” [NRS § 207.190; (p. viii); (emphasis added)]. Use of the word “intent” proves the statute is criminal; *therefore*, the rights of the accused apply, [5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amdts.].

“[T]he labels affixed either to the proceeding or to the relief imposed under state law are not controlling, and will not be allowed to defeat the applicable protections of federal constitutional law,” [*Hicks v. Feiock*, 485 U.S. 624, 631 (1988)].

In 1988, this Court ruled, “[t]he characterization of a state proceeding as civil or criminal for the purpose of applying the Due Process Clause of the Fourteenth Amendment is itself a question of federal law,” [*Hicks v. Feiock*, 485 U.S. 624, 646 (1988), *citing*, *Allen v. Illinois*, 478 U.S. 364 (1986)].

“The categorization of a particular proceeding as civil or criminal is a question of statutory construction,” [*Kansas v. Hendricks*, 521 U.S. 346, 347 (1997), *citing*, *Allen v. Illinois*, 478 U.S. 364, 368 (1986)].

“The existence of a scienter requirement is customarily an important element in distinguishing criminal from civil statutes,” [*Kansas v. Hendricks*, 521 U.S. 346, 362 (1997), *citing*, *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168 (1963)].

“It is well settled that realities, rather than benign motives or noncriminal labels, determine the relevance of constitutional policies.” [*Allen v. Illinois*, 478 U.S. 364, 384, (1986), J. Stevens, with JJ. Brennan, Marshall, and Blackmun, dissenting, *citing*, *In re Winship*, 397 U.S. 358, 365-366 (1970); *see also*, *In re Gault*, 387 U.S. 1, (pp. 1, 21, 27, and 50), (1967); and *Breed v. Jones*, 421 U.S. 519, (1975)].

In the *Winship* matter, a New York family court judge found that appellant, a 12-year-old boy, had committed an act that, if done by an adult, would have constituted the crime of larceny. The family court judge made

this finding based on the “preponderance of the evidence” standard. But this Court *reversed*, holding—

“Proof beyond a reasonable doubt, which is required by the Due Process Clause in criminal trials, is among the ‘essentials of due process and fair treatment’ required during the adjudicatory stage when a juvenile is charged with an act that would constitute a crime if committed by an adult.”

[In re Winship, 397 U.S. 358 (1970)]

The Winship Court ruled that the 12-year-old boy is entitled to due process—because, if the criminal statute he violated were adjudicated in another courtroom that had a different label, he would have been accorded the rights of the accused. The analogy is clear; if the accusations against Petitioner were adjudicated in another courtroom that had a different label, he too would have been accorded the rights of the accused.

## **6. Arguments for this Court to Consider.**

Petitioner now seeks this Court’s intervention to address the below-listed arguments—

- (a) that Wife lacks standing to play the role of “special prosecutor” as against Husband—especially because Wife is also the “victim”;
- (b) that the family court judge, for want of indictment, lacks subject-matter jurisdiction to find and conclude that Husband violated a criminal statute;
- (c) that “clear and convincing” is the wrong evidentiary standard on criminal statutes;
- (d) that all persons accused of violating criminal statutes are entitled to trial by jury;

- (e) that the Constitution forbids the state to rely on Husband's "conviction" as a basis to terminate his parental rights—especially because there exists no evidence that Husband ever engaged in (i) child abuse, or (ii) child neglect as against the party's minor child.
- (f) that all persons accused of violating the same criminal statute are deemed "similarly situated" for purpose of equal protection analyses, and thus entitled to same constitutional safeguards and protections.

\* \* \*

## STATEMENT *of* FACTS

The parties married in Las Vegas, Nev., on Oct. 14, 2000. During the marriage, Wife never alleged that Husband committed violent crimes. On Oct. 5, 2018, Wife filed for divorce. Curiously, Wife's divorce complaint contains no allegations of violent crimes, [see Pet. App. E].

Husband was never arrested, nor charged, for any crime as against Wife. No law enforcement agency ever formed probable cause, [*Illinois v. Gates*, 462 U.S. 213 (1983)], to suspect that Husband committed any crime against Wife. Husband was never charged with a crime.

The family court convened a child custody hearing on Oct. 19, 2020. Husband requested a jury trial. The trial judge denied his request. The judge issued a final custody order on Dec. 19, 2020, which granted sole and exclusive physical and legal custody to Wife, [Pet. App. D].

In the final custody order, [Pet. App. D], the trial court found that Husband violated criminal statutes, but by "clear and convincing" evidence. The custody order reads—

"The Court finds by *clear and convincing evidence* that Defendant engaged in multiple acts of domestic violence against Plaintiff.

Per NRS 33.018, domestic violence occurs when a person commits *coercion pursuant to NRS 207.190* or engages in knowing, purposeful or reckless course of conduct intended to harass acts against or upon the person's spouse."

[Final custody order, (Dec. 19, 2020); (Pet. App. D); (emphases added)]

Husband timely filed a notice of appeal. On July 12, 2021, Husband filed his appellate brief, [Pet. App. C], in which he argues, *inter alia*, that the court lacks subject-matter jurisdiction, that he was denied due process notice, and that he was denied a right to trial by jury, *etc.*

On April 29, 2022, Nevada Supreme Court issued an *Order of Affirmance*, [Pet. App. B], in which the Court denied Petitioner's request for a trial by jury. The reader will note that the Nevada Supreme Court apparently relies on labels; the Court wrote—

“We reject [Petitioner's] argument that the district court erred by not holding a jury trial. ***There is no right to jury trials in proceedings before the family court division.***”

[*Order of Affirmance*, Pet. App. B; (April 29, 2022);  
(emphases added)]

Here, we see Nevada Supreme Court, in no uncertain terms, rejecting Petitioner's constitutional right to trial by jury. Based on this blatant denial of a federally protected right, (6<sup>th</sup> Amdt.), this Court may properly issue a writ of certiorari to the State of Nevada.

Husband timely filed a petition for rehearing. On June 17, 2022, Nevada Supreme Court summarily denied Husband's petition, [Pet. App. A]. Husband now petitions this Court for a writ of certiorari.

#### **REASONS to GRANT *the* PETITION**

**(a) Where Civil Litigants Act as ‘Special Prosecutors,’  
It Violates the Right to a Fair Trial.**

The 14<sup>th</sup> Amendment forbids private parties, in civil proceedings, from playing the dual roles of “victim” and “special prosecutor”—because it violates Husband's right to a fair trial. No American precedent allows Wife to prosecute criminal claims against Husband. Where, as here, civil litigants prosecute criminal claims against opposing parties, it leads to vigilantism, which violates “due process,” [14<sup>th</sup> Amdt.]. Vigilantism is prone to opportunism, which leads to rote abuses of power. Vigilantes typically operate in the absence of legitimate authority.

Here, the absence of legitimate authority is the absence of the district attorney's office; so too, the absence of authority is the absence of an indictment, which means the judge lacks legal authority, (*i.e.*, subject-matter jurisdiction), to adjudicate crimes. Petitioner contends that—where states allow one civil litigant to prosecute another, it offends traditional notions of fair play and substantial justice, and it serves only to defeat the other party's right to a "fair trial," [14<sup>th</sup> Amdt.].

**(b) Family Court Judges Lack Subject-Matter Jurisdiction to Adjudicate Criminal Statutes.**

As a matter of law, the family court judge lacked subject-matter jurisdiction to conclude that Husband committed a crime against Wife because Husband was never given due process notice of (i) the criminal facts alleged, and (ii) the criminal statutes allegedly violated, *i.e.*, there was no indictment, which again, violates "due process," [14<sup>th</sup> Amdt.].

Most significantly, criminal subject-matter jurisdiction *cannot* exist absent indictment. Where, as in Nevada, states prosecute individuals on criminal statutes, with no underlying indictment, there lay 14<sup>th</sup> Amendment due process violations.

In his appellate brief to the Nevada Supreme Court, Petitioner (Phillips) identified the following issue of first impression—

"Phillips was tried for the "crime" of D.V. and the family court judge, lo and behold, concluded that Phillips did it! However, pursuant to Nev. Const., Art 1., Sec. 8, ***citizens may not be tried for "crimes" unless upon indictment.*** This is axiomatic. ***Family courts lack subject matter jurisdiction to try parents for "crimes."*** . . . If parents commit crimes, then let the D.A. bring charges! When parents are accused of the crime of D.V., the County should appoint a lawyer to defend that person—because D.V. is a "crime!"

[Petitioner's appellate brief, (Pet. App. C); (July 21, 2021)]

In his appellate brief, (*supra*), Petitioner argued that, “citizens may not be tried for ‘crimes’ unless upon indictment,” and that, “[f]amily courts lack subject matter jurisdiction to try parents for crimes,” [see Pet. App. C]. However, Nevada Supreme Court in its *Order of Affirmance*, [Pet. App. B], never did respond to this argument, *i.e.*, that state courts lack authority to adjudicate criminal matters absent indictment. Petitioner’s subject-matter jurisdiction argument is the lynchpin of this case. But remarkably, no Nevada jurist has ever ruled thereon; (they dodge the issue).

Without sounding too preachy, the indictment is the precise legal instrument that confers *criminal* subject-matter jurisdiction, thus allowing judges to make *criminal* findings and conclusions. But where, as in the instant matter, there is no underlying criminal complaint, there can be no subject-matter jurisdiction to make criminal findings.

With the 5<sup>th</sup> Amendment in mind, the Nevada Assembly, in 1864, had the foresight to add the indictment requirement to Nevada Constitution, which states, “No person shall be tried” … “for an infamous crime” … “except on indictment,” [Nev. Const., Art. 1, § 8]. Petitioner construes the phrase, “*No person shall be tried*” to include *all persons* who stand accused of violent crimes—regardless of the artificial “label” assigned to the tribunal, “family” or “criminal.”

Here, because Wife prosecuted Husband in family court, with *no* underlying indictment, for the crime of coercion, [NRS § 207.190], the state rejects his right to due process notice. This alone constitutes an “equal protection” violation, [14<sup>th</sup> Amdt.]; here, we see similarly situated persons—accused of violating the *same criminal statutes*—who are treated differently by the state. Some citizens are afforded the rights of the accused, while others aren’t. This is a blatant equal protection violation.

Here, the basis for the class distinction is arbitrary—based only on the tribunal’s label, (“family” or “criminal”).

All persons who stand accused of crimes must be afforded the right to due process—in order to adequately prepare a defense, regardless of whether the tribunal is artificially labeled “family” or “criminal.”

Here, because the state tried Husband for violent crimes—with no underlying subject-matter jurisdiction, the resulting custody order, (Dec. 19, 2020), must be deemed void *ab initio*—and of zero force or effect.

**(i) The State Tried Petitioner for Crimes Absent Indictment.**

During the parties’ child custody hearing on Oct. 19, 2019, (Husband didn’t realize it at the time), but the state had tried him for crimes—under the guise of an ostensible child custody hearing. After the supposed child custody hearing—which was really a *de facto* criminal trial—the court issued its custody ruling, [Pet. App. D], in which it found that Plaintiff had violated a criminal statute, [NRS § 207.190; (p. viii)]. On Dec. 19, 2020, Petitioner was adjudicated a “criminal”—with no due process of any kind whatsoever, [see Pet. App. D].

The reader will note, Petitioner first learned the identity of the criminal statute he violated—at the same time he learned that he violated it! No mention was made of NRS § 207.190 during the parties’ custody hearing.

To add insult, Petitioner’s name was sent to the *Central Repository for Nevada Records of Criminal History*, [NRS § 33.020.11; (p. vii)]. If there were any doubt as to whether Petitioner’s divorce case had morphed into a “criminal” proceeding, such doubt is quickly removed by the fact that the State of Nevada labels Petitioner a “criminal.”

Petitioner is an officer-of-the-court, a California attorney with 30 consecutive years in “good standing” with the State Bar. Petitioner identifies

as law-abiding; but according to Nevada, he's a "criminal." Somewhat humorously, the State of Nevada has "actual knowledge" that its *Central Repository* labels Petitioner a "criminal," all the while insisting that the underlying proceedings were "civil"; (this defies logic).

Sadly, many Nevada parents are tried for crimes, with no supporting criminal complaint; sadder still, these unlucky parents are unaware they're being tried for crimes because the family court advertises the event as a "custody hearing." This violates the right to a fair trial, [14<sup>th</sup> Amdt.].

Imagine being tried for a crime—believing it was a custody hearing—not realizing it was a *de facto* criminal proceeding. Imagine being tried under a criminal statute—without having been formally charged under that statute. Imagine a judge concluding you committed a crime and punishing you for it—without ever having been convicted of that crime beyond a reasonable doubt; (imagine trial courts with no jury boxes...).

Where, as here, the accused receives no notice of (i) the criminal facts alleged, nor (ii) the criminal statutes allegedly violated, the judge lacks subject-matter jurisdiction to find and conclude that the individual violated a criminal statute. With no underlying criminal complaint, no state-court judge has subject-matter jurisdiction to adjudicate criminal statutes.

And, where judges act with no subject-matter jurisdiction, the resulting order is void *ab initio*—and of no force or effect. Here, the custody order, [Pet. App. D], that terminated Petitioner's parental rights is based on violation of a criminal statute—a subject over which the family court judge has no jurisdiction. As a result, the custody order, (Dec. 19, 2020), must be voided-out for lack of subject-matter jurisdiction.

**(c) The “Clear and Convincing” Evidentiary Standard Does Not Apply to Criminal Statutes.**

Remarkably, instead of using the traditional criminal standard, *i.e.*, “beyond a reasonable doubt,” Nevada family courts decide criminal statutes based on a *lower* evidentiary standard—the “clear and convincing” standard, [NRS § 125C.0035.5]. This lower evidentiary standard, of course, ensures a high “conviction” rate (to support the larger goal of mass criminalization).

However, under the 5<sup>th</sup> and 6<sup>th</sup> Amendments, parents must be presumed innocent of criminal allegations until proven guilty by a jury—and based on the *correct* evidentiary standard, *i.e.*, “beyond a reasonable doubt.”

In the *Winship* matter, [397 U.S. 358 (1970)], a New York family court judge found that appellant, a 12-year-old boy, had committed an act that, if done by an adult, would have constituted the crime of larceny; however, the family court judge made this finding based on the “preponderance of the evidence” standard, which is the *wrong* evidentiary standard. The *Winship* Court *reversed*, holding—

***“Proof beyond a reasonable doubt***, which is required by the Due Process Clause in criminal trials, is among the ‘essentials of due process and fair treatment’ required during the adjudicatory stage when a juvenile is charged with an act that would constitute a crime if committed by an adult.”

[*In re Winship*, 397 U.S. 358 (1970); (emphasis added)]

*Winship* requires “*proof beyond a reasonable doubt*” in criminal trials. But it begs the question: what is a “criminal” trial? Petitioner’s child custody hearing was a “criminal” trial—because the court entertained criminal accusations; and then, after weighting the probative value of those accusations, the judge made conclusions of law, *i.e.*, that Husband committed

a crime. Yes, it most certainly was a criminal trial. The proper evidentiary standard *should* have been “beyond a reasonable doubt.”

“[E]very man is presumed to be innocent until his guilt is proved beyond a reasonable doubt,” *[Coffin v. United States*, 156 U.S. 432, 459 (1895), citing *Criminal Law Magazine*, (Jan. 1888)].

The presumption of innocence is a fundamental right, deeply rooted in America’s historical tradition of well-ordered liberty. That the accused should enjoy the right to presumption of innocence until proven guilty, is an essential underpinning of the right to a “fair trial,” [14<sup>th</sup> Amdt.].

No judge may determine that an individual violated a criminal statute based on evidentiary standards *lower* than “beyond a reasonable doubt.” The State of Nevada may not blithely ignore the accused’s right to be presumed innocent simply because the “criminal” allegations happen to arise in tribunals artificially labeled “family.”

Where, as here, judges conclude that individuals commit crimes—without having been proven guilty “beyond a reasonable doubt”—there lay due process violations—and human rights violations. Article 11 of the *Universal Declaration of Human Rights*, (“UDHR”), guarantees everyone accused of a criminal offense “the right to be presumed innocent until proved guilty according to law.” The State of Nevada stands in defiant opposition to the Constitution and the United Nations.

In the instant matter, Petitioner was *not* presumed innocent. The judge determined he had committed a crime—even though he was never proven guilty “beyond a reasonable doubt.” The judge had no right to conclude that Petitioner had committed a crime—because, of course, the state has never proven guilt “beyond a reasonable doubt”; (plus, the judge lacks subject-matter jurisdiction, for want of an indictment, to conclude that Petitioner committed a crime in the first place).

### **(i) The Specific Intent Requirement.**

In addition to relaxing evidentiary standards, the family court system abrogates the *specific intent* requirement that all crimes otherwise require. Family court judges adjudicate criminal statutes as if they were “strict liability” offenses, *i.e.*, the only issue is whether the accused engaged in the *acts* enumerated in the criminal statute; however, judges *do not* require the victim/prosecutor to prove the accused acted with “specific intent.”

By abrogating the *specific intent* requirement, it makes it easier to prove “crimes,” which ensures a high “conviction” rate, (which furthers the mass criminalization agenda).

Nevada Revised Statutes § 125C.0035.5 is unconstitutional per se. This statute authorizes judges to determine parents committed violent crimes based on “clear and convincing” evidence. But this statute conflicts with the constitutional due process mandate that presumes all persons accused of crime are innocent—until the state proves guilt beyond a reasonable doubt, [*Coffin v. United States*, 156 U.S. 432, 459 (1895), citing *Criminal Law Magazine*, (Jan. 1888)].

### **(ii) *Miranda*; Strict Scrutiny Analysis, etc.**

Those accused of violent crime must receive also *Miranda* warnings, assistance of counsel, and most significantly, trial by jury. In his custody hearing, the judge denied Petitioner all these rights.

Remarkably, in the State of Nevada, a judge can conclude that an individual committed a crime—based on an evidentiary standard lower than “beyond a reasonable doubt”—with no presumption of innocence, no underlying criminal complaint—no due process notice to the accused—and with no jury present. And, once the judge, in his or her sole discretion,

determines that a parent violated a criminal statute—the gov’t employee punishes the individual by revoking their right to be a parent.

Furthermore, the custody termination orders come with no strict scrutiny analyses, *i.e.*, Nevada family court judges terminate parental rights, but with no discussion on whether the termination order is narrowly tailored to effectuate a compelling gov’t interest, or whether there are less-restrictive alternatives to termination. Here, the state infringes on fundamental rights, and yet, there is no strict scrutiny review; this is plainly unconstitutional.

**(d) The Constitution Forbids the State from Terminating Husband’s Rights Based on the ‘Conviction.’**

The state’s “conviction” of Husband is *not* legitimate; the judge lacked subject-matter jurisdiction; *therefore*, the judge’s order, terminating parental rights, is void *ab initio*.

When the Carson City legislature, in 1911, enacted the criminal “coercion” statute, [NRS § 207.190; (p. viii)], they contemplated the statute would be used to send violent criminals to prison. But nowadays, Nevada family courts use this criminal statute as convenient means of *criminalizing* parents—but without the hassle and expense of having to provide to the accused their constitutional right to due process.

When the Carson City legislature enacted the criminal “coercion” statute, [NRS § 207.190], they never contemplated the statute would be used to take children from parents. Truth is, Nevada family courts use criminal statutes for “off-label” purposes; instead of using criminal statutes to put the bad guys behind bars, the system uses criminal statutes to divest parents of their fundamental right to be parents—because *that’s* what generates all the revenue for the family court system.

No, the state may not rely upon Petitioner's bogus "conviction" as a basis to terminate his parental rights. Under federal law, parental rights may not be terminated unless there is (i) child abuse or (ii) child neglect, *neither of which have ever been alleged against Petitioner*. Nevada turns away from federal precedent; Nevada rejects the federal "abuse-neglect" standards, and instead terminates parental rights upon dubious findings that the parents have committed crimes against the state.

Most distressing, Nevada uses custody as a "sword of punishment," which is totally improper. Ironically, Nevada violates its own precedent: "[w]e have held that *a court may not use a change of custody as a sword to punish* parental misconduct," [*Blanco v. Blanco*, 129 Nev. Adv. Op. 77, (2013), citing *Sims v. Sims*, 109 Nev. at 1149, (1993); (emphases added)].

Even if it were true that Husband perpetrated violent crimes as against Wife, there is no basis to terminate Husband's parental rights—because Husband never engaged in (i) child abuse, or (ii) child neglect, as against the party's minor child. Here, the State of Nevada terminated Husband's rights *solely to punish him* for (supposedly) committing violent crimes against Wife.

There is no documented abuse or neglect by Husband as against the parties' minor child, (nor is it even alleged); *therefore*, there was no basis to terminate Husband's custodial rights. Husband prays this court validate his constitutional rights and restore custody of his only son.

## SUMMARY *of* CONSTITUTIONAL VIOLATIONS

5<sup>th</sup> Amendment Violations: In the parties' child custody proceeding, Petitioner was denied his 5<sup>th</sup> Amendment rights by all of the following—

- No *Miranda* Warnings: By trying him for crimes, with no prior *Miranda* warnings, the state violated Petitioner's 5<sup>th</sup> Amendment privilege against self-incrimination.
- No Presumption of Innocence: By concluding he violated a criminal statute—despite the fact that he was never proven guilty “beyond a reasonable doubt,” the state violated Petitioner's 5<sup>th</sup> Amendment right to the presumption of innocence.

6<sup>th</sup> Amendment Violations: In the parties' child custody proceeding, Petitioner was denied his 6<sup>th</sup> Amendment rights by all of the following—

- No Jury Trial: By trying him for crimes, with no trial by jury, (despite his *repeated* requests for a jury trial), the state violated Petitioner's 6<sup>th</sup> Amendment right to trial by jury.
- No Offer of Assistance of Counsel: By trying him for crimes, with no offer of stand-by counsel, the state violated Petitioner's 6<sup>th</sup> Amendment right to the effective assistance of counsel.
- No Presumption of Innocence: By concluding he violated a criminal statute, without proving guilt “beyond a reasonable doubt,” the state violated Petitioner's 6<sup>th</sup> Amendment right to the presumption of innocence.

14<sup>th</sup> Amendment Violations: In the parties' child custody proceeding, Petitioner was denied his 14<sup>th</sup> Amendment rights by all of the following—

- No Due Process Notice (No Indictment): By concluding that he violated a criminal statute, with no supporting indictment, the state violated Petitioner's 14<sup>th</sup> Amendment right to receive due

process notice of (i) criminal facts alleged and (ii) criminal statutes allegedly violated.

- Violation of the Right to a Fair Trial: By allowing Wife to play the dual roles of “victim” and “special prosecutor,” the state violated Petitioner’s 14<sup>th</sup> Amendment right to a fair trial.
- Violation of Equal Protection: By providing differential treatment to “similarly situated” persons—all of whom are charged with violating the *same criminal statute*—the state violated Petitioner’s 14<sup>th</sup> Amendment right to “equal protection” of the law. The State of Nevada grants or denies the rights of the accused based on an arbitrary and capricious factor, *i.e.*, whether the tribunal happens to be labeled “civil” or “criminal.”

## CONCLUSION

Petitioners prays the Court issue grant the instant petition and issue a writ of certiorari to the Nevada Supreme Court.

Date: Sept. 15, 2022

RESPECTFULLY SUBMITTED,

T. Matthew Phillips  
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*Self-Represented*

**CERTIFICATE of WORD COUNT**

I, the undersigned, do hereby certify that this brief contains a grand total of **5,958 words**, (below the 9,000 word limit).

Date: **Sept. 15, 2022**

T. Matthew Phillips  
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*Affiant.*