Docket No. _____

In the Supreme Court of the United States

ALI SHAHROKHI
Petitioner

vs.

KIZZY BURROW
Respondent

PETITION *for a* WRIT *of* CERTIORARI *to the* SUPREME COURT *of* NEVADA

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QUESTIONS PRESENTED

Question No. One—

In an emergency writ of mandamus, Nevada Court of Appeals declared that Petitioner's judge had violated Petitioner's fundamental liberty rights. However, the judge willfully refused to follow the Court of Appeal directives. Petitioner filed a federal lawsuit against the judge (42 U.S.C. 1983). The judge refused to recuse. On July 30, 2020, the judge went on the record taunting Petitioner about his pending Section 1983 lawsuits. Petitioner moved to recuse the judge again before his 3-day bench trial, but once again, the judge refused to recuse. On September 11, 2020, before his 3-day bench trial, Petitioner, in a pre-trial objection motion, asked the judge to answer federal questions of law essential to justice and proper protection of substantive and procedural due process; Petitioner asked the judge to take judicial notice of well-established substantive and procedural rights applicable in his case. Petitioner challenged the state court's subject-matter jurisdiction in the same motion. The judge willfully ignored Petitioner's pre-trial objections and motion. The judge boldly stated on the record at the first day of the bench trial, that substantive and procedural due process are appellate matters, not trial court matters. The Nevada Supreme Court never adjudicated the pre-trial objections and completely ignored the federal questions of law that petitioner had raised in the lower court before the start of his 3-day bench trial. Petitioner was therefore deprived of a factual basis for his recusal motion and substantive and procedural due process federal questions of law throughout the state's trial proceedings.

The question presented is—

Did the trial judge's refusal to recuse himself from presiding over the 3-day bench trial—while being an adverse party litigating against Shahrokhi—violate Shahrokhi's rights under the Due Process Clause?

Question No. Two—

Does Nevada Revised Statute 125C.0035(5) granting a single judge, to be the judge and the prosecutor at the same time and the right to try and convict accused on criminal statutes, in a civil setting, with no indictment, no adequate notice of alleged crimes, no jury-trial as mandated by law, no attorney standing by to assist, no presumption of innocent, on a lesser proof of standard "clear and convincing" instead of the traditional proof requirement of the "beyond reasonable doubt," forcing litigants to be witness against themselves incriminating their 5th amendment rights interfere with the essentials of due process and fair treatment, as defined by United States Constitution?

PARTIES *to the* PROCEEDING

The caption of the case contains the names of all the parties to this petition, Ali Shahrokhi and Kizzy Burrow.

CORPORATE DISCLOSURE STATEMENT

As per Rule 29.6, Petitioner, Shahrokhi, is a natural person. There is no parent corporation. Attorney, T. Matthew Phillips is a natural person with no parent corporation.

RELATED PROCEEDINGS

Petitioner knows of no proceeding "directly related" within the meaning of Rule 14.1(b)(iii).

* * *

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- The trial court's findings of fact and conclusions of law, regarding crimes against the state, stalking and harassment, is sealed and available at Nevada Eighth Judicial District Court, Clark County Case No. D-18-581208-P, (Sept. 21, 2021).

- The trial court's order, setting civil, non-jury trial, is sealed and unreported, and available at Nevada Eighth Judicial District Court, Clark County Case No. D-18-581208-P, (July 30, 2021)].

- The order of the Supreme Court of Nevada affirming the trial court's domestic violence conviction, crimes against the state, stalking and harassment decision is unpublished and available at Supreme Court of Nevada, Case No. 81978 & Case No. 82245, combined cases, [Supreme Court of Nevada (May. 12, 2022)].

JURISDICTIONAL STATEMENT

The Nevada Supreme Court's *Order of Affirmance* was issued on May 12, 2022. A timely petition for rehearing was denied on June 29, 2022. On September 13, 2022, Justice Kagan extended the time to file a petition for writ of certiorari until and including November 26, 2022. This Court has statutory jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

> "*No state shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws*."

The Second Amendment to the United States Constitution provides, in pertinent part:

> "*A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed*."

Federal Statutes:

18 U.S.C. § 922(g) –

"It shall be unlawful for any person—

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien—

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)"

STATE PROVISIONS INVOLVED

Nev. Rev. Stat. § 3.223 – Jurisdiction of family courts.

1. "Except if the child involved is subject to the jurisdiction of an Indian tribe pursuant to the Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901 et seq., in each judicial district in which it is established, the family court has original, exclusive jurisdiction in any proceeding:

(a) Brought pursuant to title 5 of NRS or chapter 31A, 123, 125, 125A, 125B, 125C, 126, 127, 128, 129, 130, 159A, 425 or 432B of NRS, except to the extent that a specific statute authorizes the use of any other judicial or administrative procedure to facilitate the collection of an obligation for support."

Nev. Rev. Stat. § 33.018– Acts which constitute domestic violence; exceptions.

"Domestic violence occurs when a person commits one of the following acts against or upon the person's spouse or former spouse, any other person to whom the person is related by blood or marriage, any other person with whom the person has had or is having a dating relationship, any other person with whom the person has a child in common, the minor child of any of those

persons, the person's minor child or any other person who has been appointed the custodian or legal guardian for the person's minor child."

Nev. Rev. Stat. § 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."

Nev. Rev. Stat. § 41.134 – Jurisdiction of family courts.

Action for damages for injuries resulting from acts of domestic violence; award of costs and attorney's fees to injured person. A person who has suffered injury as the proximate result of an act that constitutes domestic violence pursuant to NRS 33.018 may bring an action to recover for the person's actual damages, including, without limitation, damage to any real or personal property. If the person who suffered injury prevails in such an action, the court shall award the person costs and reasonable attorney's fees."

Nev. Rev. Stat. § 125C.0035.5 –

5. "Except as otherwise provided in subsection 6 or NRS 125C.210, 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."

Nev. Rev. Stat. § 200.571 – Harassment: Definition; penalties.

1. "A person is guilty of harassment if:

(a) Without lawful authority, the person knowingly threatens:

(1) To cause bodily injury in the future to the person threatened or to any other person;

(2) To cause physical damage to the property of another person;

(3) To subject the person threatened or any other person to physical confinement or restraint; or

(4) To do any act which is intended to substantially harm the person threatened or any other person with respect to his or her physical or mental health or safety; and

(b) The person by words or conduct places the person receiving the threat in reasonable fear that the threat will be carried out."

2. "Except where the provisions of subsection 2 or 3 of NRS 200.575 are applicable, a person who is guilty of harassment:

(a) For the first offense, is guilty of a misdemeanor.

(b) For the second or any subsequent offense, is guilty of a gross misdemeanor.

3. The penalties provided in this section do not preclude the victim from seeking any other legal remedy available."

Nev. Rev. Stat. § 200.575 – Stalking: Definitions; penalties; entry of finding in judgment of conviction or admonishment of rights.

1. "A person who, without lawful authority, willfully or maliciously engages in a course of conduct directed towards a victim that would cause a reasonable person under similar circumstances to feel terrorized, frightened, intimidated, harassed or fearful for his or her immediate

safety or the immediate safety of a family or household member, and that actually causes the victim to feel terrorized, frightened, intimidated, harassed or fearful for his or her immediate safety or the immediate safety of a family or household member, commits the crime of stalking. Except where the provisions of subsection 2, 3 or 4 are applicable, a person who commits the crime of stalking."

Nev. Rev. Stat. § 202.360 – Ownership or possession of firearm by certain persons prohibited; penalties.

1. "A person shall not own or have in his or her possession or under his or her custody or control any firearm if the person:

(a) Has been convicted in this State or any other state of a misdemeanor crime of domestic violence as defined in 18 U.S.C. § 921(a) (33);

(b) Has been convicted of a felony in this State or any other state, or in any political subdivision thereof, or of a felony in violation of the laws of the United States of America, unless the person has received a pardon and the pardon does not restrict his or her right to bear arms."

RESPECTFULLY SUBMITTED,

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INTRODUCTION

Shahrokhi and Burrow had a son, in May 2009. Shahrokhi, Burrow and the minor lived as a family with a close familial association for all of the minor's life. The minor believed Burrow and Shahrokhi were married, although they were not. Shahrokhi was on the minor's birth certificate. There had never been allegations of abuse, not to family or friends. No pictures or indication of domestic violence in the ten years the couple resided together. Not a trace. Not a diary, not a picture, no records in ten years. No calls to police or friends. Nothing in ten years.

Suddenly around July-August 2018, Burrow started having an affair with another man from Portland, Oregon while she was still living with Shahrokhi. And then, Burrow, her new boyfriend, and attorney, conspired to deprive Shahrokhi of fundamental right to parent—because Burrow wished to relocate to Portland, Oregon to be with her boyfriend. And without securing a "domestic violence" conviction, Burrow would have never been able to gain primary custody nor be able to relocate to Portland, Oregon with the minor child.

1. How it all began.

In July of 2018, using her new boyfriend's money, Burrow began implementing a plan to remove the minor from Nevada and take him to live with Pearson in Portland, Oregon.

On December 3, 2018, Burrow comes home to Las Vegas after being in Portland, Oregon with her new boyfriend, Pearson and suddenly, in a loud voice, asks her sister if Shahrokhi has hurt her (Burrow's sister and Shahrokhi were confused—everyone was confused). Then, Burrow begins taunting Shahrokhi trying to get a rise out of him.

On December 5, 2018 Burrow filed for a temporary protective order ("TPO") based on the incident, (Dec. 3, 2018), in which the police were called and Shahrokhi was found to be the victim. The court granted the TPO, (Dec. 6, 2018).

In a court hearing, on January 3, 2019, Burrow's request to extend the TPO was denied. The TPO then dissolved by operation of law. The parties stipulated to joint legal and joint physical custody.

At a hearing on April 1, 2019, the judge kept suggesting the parties should pull the minor out of private school in order to fund a custody evaluation.

The judge indicated that, if there was going to be "relocation," there had to be a "relocation assessment." On May 13, 2019, Shahrokhi filed his first Petition for Writ of Mandamus in Nevada Court of Appeals, (Case Non. 78771-COA), which was subsequently denied, yet this was a turning point in this action.

After this point, the judge showed impermissible bias towards Shahrokhi, along with antagonism—and favoritism towards Burrow making arbitrary and capricious decisions.

2. The July 11, 2019 Hearing

On July 11, 2019, Shahrokhi, a *pro se*, was held outside of the court room for 15 minutes, while Burrow and her attorney were having a private, *ex parte* communication with the family court judge. There were also three additional marshals called into the court to physically intimidate Shahrokhi at the July 11th hearing.

The judge then, *sua sponte*, severs Shahrokhi contact with the child contingent on a psychological evaluation.

At the July 11, 2019 hearing, and without proper notice to Shahrokhi, without a request from either party, and without taking any evidence, and with no allegations or findings that Shahrokhi was any harm to the child, the district court changed a stipulated joint custody agreement and ordered Burrow to have sole legal and sole physical custody of the minor.

The trial court without subject-matter jurisdiction and any application before the court ordered no contact between Shahrokhi and the minor, Burrow, and Standish Law Firm (Burrow's attorney). The judge then allowed Burrow to relocate with the minor, 1,000 miles away, to live with Burrow new boyfriend in Oregon. A location where neither Burrow nor the minor had significant ties and a location that would make joint physical custody extremely difficult.

3. The Writ Petition Docket No. 793336-COA

On August 6, 2019, Shahrokhi filed his second Emergency Petition for Writ of Mandamus stating the judge had manifestly abused his discretion, and in turn, Shahrokhi's fundamental right to parent was violated.

Shahrokhi asked that his case be remanded to a different judge. On August 14, 2019, the Court of Appeals issued a stay in part regarding a no-contact order between Shahrokhi and the minor.

On November 6, 2019, the Nevada Court of Appeals issued an Order Granting Petition for Writ of Mandamus in Part and Denying Petition in Part on Docket No. 793336- COA. The Writ of Mandamus was issued the same date, directing the judge as follows—

> (1) vacate the July 16th no-contact order as to the child, only, and enter a new order setting forth the limited contact provided pursuant to our August 14 order; (2) immediately set an adversarial hearing on the temporary custody and relocation

issues; (3) strike the portion of its August 6th order requiring a psychological evaluation, subject to any new order that complies with NRCP 35, or alternatively NRCP; (4) **strike the portion of the August 6 order making domestic violence findings—any future domestic violence findings should be made only after an evidentiary hearing affording an adequate opportunity to respond to the allegations; and** (5) schedule a full evidentiary hearing to finally determine custody and relocation.

4. Post Docket No-. 793336-COA

A "status check" hearing was set by the district court for December 12, 2019. This was the first hearing after the Court of Appeals issued its Order in Docket No. 79336-COA.

On the April 6, 2020, hearing, Burrow was given unfettered control over Shahrokhi's rights to the minor. The superfluous language put into the Order from the February 6, 2020, hearing that Burrow can do whatever she wants—if she unilaterally decides that Shahrokhi somehow "violated" the Court's orders.

An "Order Setting Civil Non-Jury Trial, (Custody/ Paternity/ Visitation/ Relocation)," was filed on July 30, 2020, where trial was set for September 21st, 22nd, and 23rd, 2020. There is no mention of "domestic violence" in the trial setting order. Shahrokhi then asked the judge to declare on the record his jurisdiction and clarification for trial procedures due to COVID restrictions. [Pet.App.D,E,F,G]

At the July 30, 2020 hearing, the judge talked about a totally unrelated lawsuit that Shahrokhi filed against him in federal court.

Shahrokhi filed his motion to disqualify the judge on August 6, 2020.

On August 7, 2020, the judge went on to enter orders against court rules, while a decision on his disqualification was pending.

On September 11,2020 Shahrokhi filed his pre-trial objections and he filed another motion for the court to declare his rights, he asked for declaratory relief again. On September 11, 2020, Burrow filed her pretrial memorandum, and again there is no specificity as to the accusations of domestic violence, none of the statements are dated or referenced by exhibit number. [Pet.App.D]

Almost 200 communications in OFW, ("Our Family Wizard"), were brought in as the court's exhibits on the same day of the trial and emailed to Shahrokhi as the trial had started… how is that notice, how could Shahrokhi defend himself?[Pet.App.L]

REASONS *for* GRANTING *the* PETITION

Supreme Court of Nevada and the trial judge have eviscerated the core protections due process clause offers, in flagrant violation of the 14th Amendment rights. The consequences of the decision below are staggering for both litigants in Nevada and citizens of the state of Nevada. Now that this case has reached final judgment, this Court should grant review to correct the deeply flawed decision below, that is a true miscarriage of justice. Certiorari review is warranted due to the Nevada Supreme Court's egregious failure to apply this Court's settled law involving extreme and unusual facts that created an unacceptable risk of judicial bias that is not tolerable by the Constitution.

In the alternative, Shahrokhi requests that this Court grant his petition, vacate the decision of the Nevada Supreme Court, and remand the case for further proceedings in light of this Court's recent decision in *Rippo v Baker*, 580 U.S. ___ (2017). In *Rippo*, [*id.*], the risk of bias was to high to

be constitutionally tolerable since the judge at the time of the 3-day bench trial was an adversary to the petitioner in federal lawsuits and had refused to recuse himself.

The personal involvement of the trial judge in Shahrokhi's case being the prosecutor as well as the judge at the same time while being an adversary party to Shahrokhi in Nevada federal courts is absolutely outrageous. In this case "there is an unconstitutional 'potential for bias.'" [*Williams*, 136 S. Ct. at 1905 (citation omitted)]. As in *Williams*, the very evidence discounted by the Nevada Supreme Court in Shahrokhi's case is the same evidence showing that the trial judge had an improper personal interest in the case that required the court's recusal.[Pet.App.J,K]

The Due Process Clause incorporated the common-law rule requiring recusal when a judge has "a direct, personal, substantial, pecuniary interest" in a case, [*Tumey v. Ohio*, 273 U.S. 510, 523, 47 S. Ct. 437, 71 L. Ed. 749, 5 Ohio Law Abs. 159, 5 Ohio Law Abs. 185, 25 Ohio L. Rep. 236], but this Court has also identified additional instances which, as an objective matter, require recusal where "the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable," [*Withrow v. Larkin*, 421 U.S. 35, 47, 95 S. Ct. 1456, 43 L. Ed. 2d 712]. Two such instances place the present case in proper context. [Pp. 876-881.

I. Nevada Supreme Court Refuses to Apply Well-Settled Law which Creates Unacceptable Risk of Judicial Bias.

Here, the trial judge was an adversary party to Petitioner in two separate pending federal lawsuits at the time of the trial presided over the 3-day bench trial acting as the judge and the prosecutor at the same time. Petitioner had also asked the state and federal authorities to investigate the trial judge for alleged Chapter 7 bankruptcy fraud and concealment of

assets from the federal government with the trial judge having full knowledge of the situation. The judges alleged BK fraud was plastered all over the internet by many different people. The Nevada Supreme Court's failure to apply the appearance of impropriety standard to the facts of this case constitutes an egregious misapplication of this Court's judicial bias jurisprudence. [Pet.App.B,J]

Moreover, this Court has intervened in cases presenting extreme and unusual facts when the state courts failed to consider the import of new material evidence that fundamentally altered the nature of a constitutional claim previously raised and rejected by the state court. [*E.g.*, Foster v. Chatman, 136 S. Ct. 1737, 1745-46 (2016)].

In such circumstances, a state court's ruling preventing re-litigation of a claim risks blinding the court to the consideration of new material facts, which require a different outcome. [Cf. Wellons v. Hall, 558 U.S. 220, 222 (2010) (per curiam) ("perfunctory consideration" by court of appeals "may well have turned on the District Court's finding of a procedural bar")].

The decision by the Nevada Supreme Court in Shahrokhi's case warrants this Court's intervention as the Nevada Supreme Court ruling – which is a decision on the merits for the purposes of federal review – so far departed from the accepted and usual course of judicial proceedings as to warrant this Court's plenary consideration. [*Cf.* Supreme Court Rule 10].

In the alternative, Shahrokhi requests that this Court grant his petition, vacate the decision of the Nevada Supreme Court of affirmance, and remand the case for further proceedings in light of this Court's decision in *Rippo v Baker*, 580 U.S. __ (2017). [Pet.App.J,K]

In this case "there is an unconstitutional 'potential for bias.'" [Williams, 136 S. Ct. at 1905 (citation omitted)]. As in Williams, the very evidence discounted by the Nevada Supreme Court in Shahrokhi's case is

the same evidence showing that the trial judge had an improper personal interest in the case that required the court's recusal.

Shahrokhi accordingly meets the standard set forth by this Court for a GVR in light of *Williams*: there is "a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration, and it appears that such a redetermination may determine the ultimate outcome of the matter." [*Wellons v. Hall*, 558 U.S. at 225 (citation omitted). Cf., e.g., *Flowers v. Mississippi*, 136 S. Ct. 2157 (2016) (granting GVR on Batson claims in light of *Foster v. Chatman*, 136 S. Ct. 1737 (2016)].

Shahrokhi faces "procedural morass" in this case. Shahrokhi raised his judicial bias claim on direct appeal, but he was constrained by Nevada Supreme Court willfully misapplying the case precedent by this honorable court. Given the "unusual facts of the case" and the "petitioner's allegations and the unusual facts raise a serious question about the fairness of a trial."

II. The Nevada Supreme Court Improperly Applied the 'Appearance of Impropriety' Standard.

Shahrokhi argues that the totality of the circumstances in his case, where the trial judge was being possibly criminally investigated and the trial judge was an adverse party to Shahrokhi at the time of the trial in not one but two separate federal lawsuits, required the judge's recusal. The instant case is one of those rare ones where the extreme and unusual facts present a constitutionally-intolerable risk of bias, and where recusal is required to address the resulting appearance of impropriety.

The Nevada Supreme Court's failure to consider the totality of the circumstances in this case affected its characterization of the species of judicial bias in Shahrokhi's case. The state court was required to "first

identify the 'essential elements' of [the bias] claim," [*Bracy*, 520 U.S. at 904 (citation omitted)], before it was in the position to apply the appropriate legal standard.

A judge cannot maintain a constitutional level of impartiality when he or she is an adversarial party to one of the litigants before them. This "Court's precedents apply an objective standard that, in the usual case, avoids having to determine whether actual bias is present." [*Williams v. Pennsylvani*a, 136 S. Ct. 1899, 1905 (2016)]. The critical inquiry is whether "as an objective matter, 'the average judge in his position is 'likely' to be neutral, or whether there is an unconstitutional 'potential for bias.'" [*Id*. (citing *Caperton v. A.T. Massey Coal Co*., 556 U.S. 868, 881 (2009)].

The circumstances presented in the instant case of a judge being an adverse party to one of the parties is precisely the type of situation where an objective inquiry requires the court's recusal due to an appearance of impropriety. [Cf. *In Interest of McFall*, 617 A.2d 707, 713-14 (Pa. 1992) (disqualification required when a judge "faced potential prosecution by the same authorities that prosecuted defendants in her courtroom every day")]. Such a situation is just as likely to compromise a judge's impartiality as the situation where the court stands to financially benefit from the case. [See, *e.g*., *Tumey v. Ohio*, 273 U.S. 510, 532 (1927)]. In fact, the average jurist may be even more affected by a threat to his or her life, liberty, and career than they would be to a mere financial benefit. [See *McFall*, 617 A.2d at 712 (There is no question that a juror who is being criminally prosecuted by one of the parties to a case is biased as a matter of law. *See*, *e.g*., *Brooks v. Dretke*, 418 F.3d 430, 434-35 (5th Cir. 2005)].

Moreover, a judge cannot maintain a constitutional level of impartiality in a case when he or she has a relationship with a state witness that is directly connected to a pending criminal investigation against the

judge. [Cf. *Johnson v. Mississippi*, 403 U.S. 212, 215-16 (1971) (recusal required where judge became "so enmeshed in matters involving [the defendant] as to make it appropriate for another judge to sit")]. In the circumstances presented here, the average jurist would hesitate to disclose a relationship with the state's victim witness when a material part of the relationship between the witness and the judge was that the judge fixed a case for him.

The fact that the judge falsely stated on the record that he did not know whether Metro was involved in the investigation, and the fact that he acquiesced in, and did not correct, the prosecutor's false representations regarding the extent of the Clark County District Attorney's Office's involvement in the federal investigation, is strong evidence that the judge was in fact affected by the State's involvement. [Cf. *McFall* 617 A.2d at 711 (recognizing that it is "a denial of the appellees' right to a fair and impartial tribunal for a judge to preside over their cases without revealing circumstances that raise questions as to her impartiality")].

"The issue is whether the judge was biased, regardless of how his bias may have manifested itself, or failed to manifest itself, in any defendant's case." [*Cartalino v. Washington*, 122 F.3d 8, 10 (7th Cir. 1997)]. This Court required no such particularized proof of actual bias in *Tumey* as judicial bias constitutes structural error, *Tumey*, 273 U.S. at 535, and the state court erred by requiring more of Shahrokhi in this case. **As this Court has long recognized, "to perform its high function in the best way 'justice must satisfy the appearance of justice.'"** [*In re Murchison*, 349 U.S. 133, 136 (1955) (citation omitted)].

The totality of the circumstances here show that Shahrokhi is entitled to relief from his convictions of stalking and harassment based on the present record and the final custody order that came out of the 3-day bench

trial where the presiding judge should have recused himself but refused to do so. While each of the circumstances above independently required the judge's recusal, in combination they absolutely demanded it.

Therefore, at the very least, his case should be remanded with instructions to permit formal discovery and factual development so that a decision can be rendered based on a fully developed record. [See, *e.g.*, *Bracy*, 520 U.S. at 908-10]. Factual development is appropriate here because "the presumption [of impartiality] has been soundly rebutted." [*Id*. at 909]. Such an approach will preserve this Court's scarce resources while also ensuring that Shahrokhi receives a full and fair hearing on the extreme and unusual circumstances that are present in his case.

III. Nevada Supreme Court Renders Decisions that Conflict with this Court's Decisions on Judicial Disqualification.

It has been this Court's long tradition under case precedents, the Due Process Clause may sometimes demand recusal even when a judge " 'ha[s] no actual bias.' " [*Aetna Life Ins. Co. v. Lavoie*, 475 U. S. 813, 825 (1986)]. Recusal is required when, objectively speaking, "the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." [*Withrow v. Larkin*, 421 U. S. 35, 47 (1975); see *Williams v. Pennsylvania*, 579 U. S. ___, ___ (2016) (slip op., at 6) ("The Court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential for bias" (internal quotation marks omitted)].

This Court's decision in *Bracy* is not to the contrary. Although This Court explained that the petitioner there had pointed to facts suggesting actual, subjective bias, the Court did not hold that a litigant must show as

a matter of course that a judge was "actually biased in [the litigant's] case," 132 Nev., at ___, 368 P. 3d, at 744—much less that he must do so when, as here, he does not allege a theory of "camouflaging bias."

The Nevada Supreme Court did not ask the question our precedents require: whether, considering all the circumstances alleged, the risk of bias was too high to be constitutionally tolerable. As a result, this Court should grant the petition for writ of certiorari and vacate the judgment below and remand the case for further proceedings not inconsistent with this this Court's precedent opinions. [Pet.App.B]

The Nevada Supreme Court refusing to apply this Court's case precedents suggest that the state in its many forms, many actors, is just insisting on not applying (precedent) and sounds as Nevada Supreme Court is thumbing their nose at this Court.

IV. All Persons Accused of Crimes Must Be Provided Due Process Notice.

Due process of law requires notice which would be deemed constitutionally adequate in a civil or criminal proceeding. Criminal proceedings may not go forward absent the protections owed to criminal proceedings for criminal adjudication or those of notice and an opportunity to be heard for civil contempt. [See *Bagwell*, 512 U.S. at 826-27]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have

the Assistance of Counsel for his defense. [See *Gideon v. Wainwright* (1963)].

The petitioner has never been provided adequate notice of what criminal statutes he has violated nor what acts were forbidden. The mere fact telling the petitioner he has a hearing on domestic violence is not sufficient and in compliance with requirements of fourteenth amendment rights to a fair trial. Petitioner has received two separate notices and one order regarding his 3-days bench trial which Nevada Supreme Court erroneously suggests meet the due process requirements. [Pet.App.E,F,G,M]

Under the due process clause of the Federal Constitution's Fourteenth Amendment, to the manner in which the trial judge introduced exhibits/evidence tending to prove that the accused committed some crimes against the state--the trial judge deprived the petitioner of due process by failing to give him adequate notice of the evidence prior to the state of the 3-day bench trial. [Pet.App.L]

In the Petitioner's state's 3-day bench, the trial judge would introduce the evidence to the petitioner the first day of the trial via email as the petitioner was already at the trial, had no way of knowing what evidence was against him and had no time to prepare to defend against such evidence and as such violated the petitioner's due process clause. [Pet.App.L]

V. Where Trial judges Act as 'Special Prosecutors,' it Violates the Right to a Fair Trial.

The 14th Amendment forbids judges from playing the dual roles of "the judge" and "special prosecutor"—because it violates the petitioner's right to a fair trial. No American precedent allows the trial judge to prosecute criminal claims against the accused. Where, as here, the trial

judge prosecutes criminal claims against the accused on his own accord with no indictment or criminal complaint before the judge, it leads to vigilantism, which violates "due process," [14th Amdt.].[Pet.App.M]

Vigilantism is prone to opportunism, which leads to rote abuses of power. Vigilantes typically operate in the absence of legitimate authority. Judges can not wear multiple hats in the judicial proceedings. The trial judge wearing multiple hats in the same judicial proceedings has so far departed from the accepted and usual course of judicial proceedings, such a departure by the state court, calls for an exercise of this Court's supervisory power. [Pet.App.M]

The judge is also the prosecutor who has an option and full menu of acts under NRS 125C.0035(5) to decide on his own accord which acts best satisfy the situation and then after the trial, the judge as the special prosecutor chooses the criminal statutes listed under NRS 125C.0035(5) and then convicts Shahrokhi of the crimes against the state. [Pet.App.M]

Nothing in the notices provide to Shahrokhi before his 3-day bench trial mentions violation of NRS 200.571 and NRS 200.575 and the judge is the only one bringing these charges against Shahrokhi as the special prosecutor after the trial. [Pet.App.E,F,G]

Nevada Supreme Court again mentions as long as Shahrokhi knew there was a domestic violence hearing, that met the due process requirements of the constitution. Such is an absurd statement by the judiciary of the highest court of the State. Such statement made by Nevada Supreme Court so far departed from the accepted and usual course of judicial proceedings and adequate notice requirements. [Pet.App.B]

VI. Family Court Lacks Subject-Matter Jurisdiction to Adjudicate Criminal Statutes.

As a matter of law, the family court judge lacked subject-matter jurisdiction to conclude that petitioner committed a crime against the state because petitioner was never given adequate 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," [14th 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 14th Amendment due process violations.

Nevada Family courts are courts of limited jurisdiction, Nev. Rev. Stat. § 3.223 did not give the family court subject-matter jurisdiction over criminal statutes. Nev. Rev. Stat. § 3.223 establishes the original and exclusive jurisdiction of the family court division, along with cases in which the family court may have concurrent jurisdiction. Subject-matter jurisdiction is the court's authority to render a judgment in a particular category of case.

NRS 3.223(3) only allows the family court, where established, and the district court have concurrent jurisdiction over any action for damages brought pursuant to NRS 41.134 by a person who suffered injury as the proximate result of an act that constitutes domestic violence, however family court lacks subject-matter jurisdiction to adjudicate any criminal statutes findings. The trial judge adjudicating criminal statutes in a civil setting has so far departed from the accepted and usual course of judicial proceedings, such a departure by the state court, calls for an exercise of this Court's supervisory power.

VII. The State Tried Petitioner on Criminal Statutes Absent Indictment.

During the three day bench trial, Sept. 21, 2021, the trial judge tried the petitioner for crimes against the state—under the guise of an ostensible civil trial, non-jury custody hearing. After the supposed child custody hearing—which was really a de facto criminal trial—the court issued its custody ruling, in which it found that petitioner violated criminal statutes, [NRS § 200.571 and 200.575]. On September 21, 2020, Petitioner was adjudicated a "criminal"—with no due process of any kind whatsoever.

The reader will note, Petitioner first learned the identity of the criminal statutes he violated—at the same time he learned that he violated it! No mention was made of NRS § 200.571 and 200.575 during the parties' civil trial, non-jury, bench trial, [See Exhibits]. To add insult, Petitioner's name was sent to the *Central Repository for Nevada Records of Criminal History*, [NRS § 33.020.11]. [Pet.App.C,E,F,G]

An indictment must give a plain, concise, and definite written statement of the essential facts constituting the offense charged. Shahrokhi has never received an indictment. His exhibits/evidence were given to him the first day of his 3-day bench trial by the Judge's JEA, via email. [Pet.App.E,F,G,L]

VIII. NRS 125C.0035(5) is Unconstitutionally Vague.

In examining a statute for vagueness, a court must determine whether a person of average intelligence would reasonably understand that the charged conduct is proscribed.

"In a facial challenge, a statute is unconstitutionally vague if it fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously

discriminatory enforcement. . . ." [*United States v. Harris*, 705 F.3d 929, 932 (9th Cir.), as amended, cert. denied, 133 S. Ct. 1510, 185 L. Ed. 2d 561 (2013) (citation and internal quotation marks omitted)].

By analogy, a person of ordinary intelligence who carefully reads NRS 125C.0035.5 could not be sure what specific acts constitute domestic violence. There is no description of acts that suggest what is forbidden.

Under NRS 125C.0035(5), a person of average intelligence would not reasonably understand the specific conduct proscribed. What are the predicate acts that give rise to "convictions" for domestic violence?

Due process requires that a State provide meaningful standards to guide the application of its laws. [See *Kolender v. Lawson*, 461 U.S. 352, 358 (1983)]. A state law that lacks such standards is void for vagueness.

Here NRS 125C.0035(5) reads as follow:

> 5. Except as otherwise provided in subsection 6 or NRS 125C.210, 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. Upon making such a determination, the court shall set forth:
>
> (a) Findings of fact that support the determination that one or more acts of domestic violence occurred; and
>
> (b) Findings that the custody or visitation arrangement ordered by the court adequately protects the child and the parent or other victim of domestic violence who resided with the child.

This statute is vague on its face and unconstitutional, as it does not pass the constitutional muster.

IX. NRS 125C.0035(5) Authorizes Trial Court Judges to Simultaneously Play the Role of Both Judge and Prosecutor.

Under the Due Process Clause and *Tumey v. Ohio* (1927), a judge must recuse himself if he has a direct, personal, substantial, pecuniary interest in the outcome of a case. While mere personal bias or prejudice is not enough to require recusal, there are additional situations in which it is objectively necessary because the likelihood of actual bias by the judge is too high to be acceptable under the Constitution.

A "fair trial in a fair tribunal is a basic requirement of due process," . A judge must be a neutral party at all times, here the NRS 125C.0035 authorizes a singular judge to be the prosecutor and the judge at the same time bringing charges and convicting Shahrokhi at the same time on his own accord. as such is a true violation of Shahrokhi's due process clause.

Since NRS 125C.0035(5), does not require an official indictment brought by a state agency as the executive branch, NRS 125C.0035(5) authorizes the presiding judge to now become the prosecutor as well and then choose from a list of menus of charges on the judge's own accord after the trial is over. NRS 33.018 is what defines domestic violence acts in Nevada, yet the judge now *aka* special prosecutor at the same hearing is the sole person deciding which act is being violated on his own act which act the judge aka the special prosecutor now should charge and convict the accused with at the same time.

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X. NRS 125C.0035(5) Affects the 2nd Amendment Right to Keep and Bear Arms.

Petitioner argues the loss of fundamental rights due to a conviction for domestic violence is a "serious offense" entitling the accused the right to a jury trial. He distinguishes his case from *Amezcua v. Eight Judicial District Court*, 319 P.3d 602 (Nev 2014) due to the fact that NRS 202.360 has been amended subsequent to *Amezcua*, to make him a felon, punishable up to 6 years in Nevada prison if he is caught possessing a firearm and has a conviction for domestic violence.

In 2015, the Nevada Legislature amended NRS 202.360 to deprive Nevadans of their Second Amendment right to bear firearms if convicted in Nevada of domestic violence, "Offense" includes stalking which constitutes domestic violence pursuant to NRS 33.018 or a violation of the law of any other jurisdiction that prohibits the same or similar conduct.

On October 1, 2017, Senate Bill 124 was enacted which required persons convicted of stalking Constituting Domestic Violence in violation of NRS 200.575 to permanently surrender, sell or transfer any firearms they own, possess or for which they have custody. A person who fails to comply with this new law faces prosecution for a Category B Felony which carries a potential fine of $5,000 and incarceration in Nevada State Prison of 1 to 6 years.

The Nevada Supreme Court erred in denying Shahrokhi a jury trial consistent with his procedural due process rights:

> Once it is determined that the Due Process Clause applies, 'the question remains what process is due.' [Citation.]" (*Loudermill*, supra, 470 U.S. at p. 541.) "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." (*Morrissey v. Brewer* (1972) 408 U.S. 471, 481 [33 L. Ed. 2d 484, 92 S. Ct. 2593].) "[I]dentification of the specific dictates of due process

> generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." [*Mathews v. Eldridge* (1976) 424 U.S. 319, 335 [47 L. Ed. 2d 18, 96 S. Ct. 893].) *Cook v. City of Buena Park*, 126 Cal. App. 4th 1, 6 (Cal. App. 4th Dist. 2005)].

Applying the first prong of the *Matthews* test to Mr. Shahrokhi's case, the private interest that will be affected is his Second Amendment right to bear arms. The second prong is the risk of an erroneous deprivation of his Second Amendment right caused by a conviction for domestic violence. Third, the additional protection of a twelve-person jury trial to hold the State to its burden of proving its case beyond a reasonable doubt would help eliminate the risk that Mr. Shahrokhi does not face an erroneous deprivation of his Second Amendment right because the State must prove its case beyond a reasonable doubt to twelve people sitting in a jury, instead of one singular family court Judge.

The loss of the right to possess a firearm makes a conviction for stalking constituting domestic violence a serious offense. The Court held that the right to possess a firearm for self-defense is a fundamental right and cannot be abridged by the State. Specifically, the Court in *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010) held that the Second Amendment is a fundamental right that is fully applicable to the States through the Fourteenth Amendment. *McDonald* further holds:

> Self-defense is a basic right, recognized by many legal systems from ancient times to the present day, and in *Heller*, we held that individual self-defense is "the central component" of the Second Amendment right. 554 U.S., at ___, 128 S. Ct. 2783, 171 L. Ed. 2d, at 662; see also id., at ___, 128

S. Ct. 2783, 171 L. Ed. 2d, at 679 (stating that the "inherent right of self-defense has been central to the Second Amendment right"). Explaining that "the need for defense of self, family, and property is most acute" in the home, ibid., we found that this right applies to handguns because they are "the most preferred firearm in the nation to 'keep' and use for protection of one's home and family," id., at ___, 128 S. Ct. 2783, 171 L. Ed. 2d, at 679 (some internal quotation marks omitted); see also id., at ___, 128 S. Ct. 2783, 171 L. Ed. 2d, at 679 (noting that handguns are "overwhelmingly chosen by American society for [the] lawful purpose" of self-defense); id., at ___, 128 S. Ct. 2783, 171 L. Ed. 2d, at 680 ("[T]he American people have considered the handgun to be the quintessential self-defense weapon"). Thus, we concluded, citizens must be permitted "to use [handguns] for the core lawful purpose of self-defense." Id., at ___, 128 S. Ct. 2783, 171 L. Ed. 2d, at 680. *McDonald v. Chicago*, 130 S. Ct. 3020 (U.S. 2010)

Other courts have recognized the right to a jury trial in cases where a defendant faces a lifetime prohibition of possession of a firearm as a consequence of a misdemeanor assault conviction not punishable by more than six months:

Having examined that issue, the Court finds that a lifetime prohibition on the possession of a firearm is a serious penalty which entitles a defendant to a jury trial under the 6th Amendment.

In this context, the issue is very serious. Moreover, the categories of persons prohibited from possessing firearms under 18 U.S.C. § 922(g) and the penalties imposed under 18 U.S.C. § 924 for violating the prohibition (10 years) demonstrate that Congress views the prohibition as serious. The Court finds that a lifetime prohibition on the possession of a firearm is a serious penalty and, when combined with 6 months imprisonment, entitles a Defendant to the common-sense judgment of a jury. Defendant's Motion for a Jury Trial is GRANTED. [*United States v. Smith*, 151 F. Supp. 2d 1316, 1317-1318 (N.D. Okla. 2001). (italics added)]

The Smith case, *supra*, is right on point. The fact that the Nevada Legislature has barred persons from owning or possessing firearms, even

for self-defense for the rest of their lives, and subjects them to felony prosecution punishable up to 6 years if such persons are convicted of domestic violence, demonstrates that the Legislature "views the prohibition as serious." The Legislature chose to amend NRS 202.360 in 2015 to treat persons convicted of domestic violence the same as felons, mentally ill persons, and drug addicts by lumping them in with the category of people who cannot own or possess a firearm even for self-defense demonstrates a clear intent of the Legislature that it believes Domestic Violence is a serious crime.

Thus, this Court should find the Legislature's lifetime ban and felony prosecution for possessing a firearm and for failure to permanently surrender firearms, when combined with 6 months imprisonment "entitles a Defendant to the common-sense judgment of a jury."

In this case, Mr. Shahrokhi requested from Nevada Supreme Court under NRS 175.011 demanding his right to trial by jury.

Any person convicted of Stalking Constituting Domestic Violence in violation of NRS 200.575, and NRS 33.018, faces the loss of their right to possess a firearm even for self-defense, up to 6 years in prison if they are caught owning or possessing a firearm under NRS 202.360(2), despite the fact that the Court in *McDonald v. City of Chicago*, *supra*, held that the Second Amendment right to bear arms is a fundamental right incorporated through the Fourteenth Amendment to the State the fact that a defendant stands to lose his Second Amendment right and face felony prosecution under NRS 202.360(2) upon conviction of misdemeanor battery constituting domestic violence makes this criminal offense anything but "petty."

Because a defendant's Second Amendment right is at stake for Stalking Constituting Domestic Violence and because he or she faces subsequent felony prosecution under NRS 202.360(2) if caught owning or

possessing a firearm even for self-defense, Shahrokhi should have been afforded a jury trial.

XI. The Questions Presented Are Recurring, Important, and Squarely Presented.

As the foregoing discussion makes clear, the questions presented recur frequently. More generally, these questions have arisen, and will continue to arise, across Nevada courts weather a singular judge can act as a judge and prosecutor at the same time pursuant to NRS 125C.0035(5), bringing charges on his own without adequate notice given to the accused and then convicting the accused on the judge's own accord after the trial, convicting the accused from the list from the menu that the judge gets to choose on his own.

Remarkably, instead of using the traditional criminal standard, i.e., "beyond a reasonable doubt," NRS 125C.0035(5) authorizes a singular judge to 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). [Pet.App.C]

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 bench trial was a "criminal" trial—because the court entertained criminal accusations; and then, after weighting the probative value of those accusations, the trial judge made conclusions of law, *i.e.*, that the petitioner committed crimes against the state. Yes, it most certainly was a criminal trial. The proper evidentiary standard should have been "beyond a reasonable doubt."

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 ". [Pet.App.C]

In the instant matter, Petitioner was not presumed innocent. The trial judge determined he had committed crimes against the state—even though he was never proven guilty "beyond a reasonable doubt."

XII. Nevada Mislabels Criminal Proceedings as Civil Proceedings

In addition to relaxing evidentiary standards, the Nevada Courts abrogate 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 are not required to prove the accused acted with "specific intent."

Nevada Revised Statutes § 125C.0035.5 is unconstitutional per se. This statute authorizes a single judge to determine accused 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 (i) Magazine, (Jan. 1888)].

The questions presented have significant implications for accused in Nevada that appear before family court judges and face NRS 125C.0035(5). Absent correction by this Court, the decision will subvert the due process clause purposes of providing a fair judiciary to the litigants and defendants.

XIII. NRS 125C.0035(5) Conflicts with Nevada Constitution, Article 1, Section 8.

Nevada Constitution provides, "***No person shall be tried for a*** capital or other ***infamous crime*** (except in cases of impeachment, and in cases of the militia when in actual service and the land and naval forces in time of war, or which this state may keep, with the consent of congress, in time of peace, and in cases of petit larceny, under the regulation of the legislature) ***except on presentment or indictment of the grand jury***, ***or upon information duly filed by a district attorney***, or attorney-general of the state, and in any trial, in any court whatever, the party accused shall be allowed to appear and defend in person, and with counsel, as in civil actions." [Emphasis added]

XIV. NRS 125C.0035(5) Conflicts with Nevada Constitution, Article 6, Section 6:

Sec. 6. District Courts: Jurisdiction; referees; family court.

1. The District Courts in the several Judicial Districts of this State have original jurisdiction in all cases excluded by law from the original jurisdiction of justices' courts.

In Clark county, Nevada, all domestic violence cases are heard and adjudicated by the justice courts and justices of the peace.

XV. NRS 33.018 is Vague.

A person of average intelligence would not reasonably understand that the charged conduct is proscribed. [NRS 33.018]

NRS 33.018 disjunctively lists multiple acts which constitute violations, yet the only acts that are references for definition are coercions (which is defined by NRS 207.190).

The rest of the acts listed under NRS 33.018 have no reference to any definition pursuant to Nevada revised statutes and it is impossible for an average intelligence person to come up with a definition for acts.

Under the first prong of the vagueness test, a statute will be deemed to have given sufficient warning as to proscribed conduct when the words utilized have a well settled and ordinarily understood meaning when viewed in the context of the entire statute. It is impossible for an average intelligence to know exactly what is forbidden by these acts that make no reference to any Nevada statutes definition.

Here NRS 33.018 is vague because (1) it fails to provide a person of ordinary intelligence fair notice of what is prohibited; and (2) it is so standardless, the Legislature failed to establish minimal guidelines to govern law enforcement. This prong is more important than the first prong because otherwise a criminal statute may permit a standardless sweep, which would allow judges, police, prosecutors, and juries to pursue their personal predilections as we have witnesses in Shahrokhi's case.

XVI. 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). [Pet.App.C]

However, under the 5th and 6th Amendments, accused 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. The proper evidentiary standard should have been "beyond a reasonable doubt."

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 ignore the accused's right to be presumed innocent simply because the "criminal" allegations happen to arise in tribunals artificially labeled "civil." [Pet.App.C]

XVII. Where Judges Adjudicate Criminal Statutes, the Proceedings are Deemed 'Criminal.'

The categorization of a particular proceeding as civil or criminal is first of all a question of statutory construction; in determining whether a legislature intended to create a civil or a criminal proceeding, the United States Supreme Court, while recognizing that a civil label is not always dispositive, (1) will reject the legislature's manifest intent only where a party challenging the statute provides the clearest proof that the statutory scheme is so punitive either in purpose or effect as to negate the legislature's intention to deem it civil, and (2) under such limited circumstances, will consider the statute to have established criminal proceedings for constitutional purposes; the existence of a scienter requirement is customarily an important element in distinguishing criminal from civil statutes; and the absence of such a requirement in a state's provision for civil commitment is evidence that confinement under the statute is not intended to be retributive.

What makes a statute a criminal statute?—the scienter requirement. Here, Petitioner was found to have violated two statutes, [NRS § 200.575 & NRS 200.571], that come with a scienter element. The language of NRS § 200.575 & 200.571 reference 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, [5th, 6th, and 14th Amdts], which should have been accorded Petitioner.

The language of NRS § 200.571 references the word "knowingly," which demonstrates the specific intent requirement, ("scienter"), which means the predicate statute is decidedly criminal in nature, which triggers the rights of the accused, [5th, 6th, and 14th Amdts], which should have been accorded Petitioner. [Pet.App.C]

The language of NRS § 200.575 references the words "willfully or maliciously," which demonstrates the specific intent requirement, ("scienter"), which means the predicate statute is decidedly criminal in nature, which triggers the rights of the accused, [5th, 6th, and 14th Amdts], which should have been accorded Petitioner. [Pet.App.C]

Here, the conspicuous use of the word "willfully or maliciously engages" proves the statute is criminal; therefore, the rights of the accused apply, [5th, 6th, and 14th 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 42 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)]

Criminal proceedings may not go forward absent the protections owed to criminal proceedings for criminal adjudication or those of notice and an opportunity to be heard for civil contempt. [See, *Bagwell*, 512 U.S.] In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense. [See, *Gideon v. Wainwright* (1963)]. From Shahrokhi's point-of-view, the line between "civil" and "criminal," has become increasingly blurred. [Pet.App.E,F,G]

State family court litigants 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.

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, [5th, 6th, and 14th Amdts.]

When criminal statutes are adjudicated in "criminal" court, Nevada recognizes the accused's right to 14th Amendment due process because, of course, the proceeding is labeled "criminal." However, when the same criminal statutes are adjudicated in "civil proceedings," Nevada rejects the rights of the accused—but only because the proceeding just-so-happens to be labeled "civil proceedings." Why the glaring disparity?

Nevada Supreme Court claims that because the accused was not sent to jail, trying and convicting the accused on criminal statutes, but in a civil setting, is fair and justified. [Pet.App.B]

* * *

Unless or until this Court intervenes, the State of Nevada will continue to convict thousands and thousands of litigants on domestic violence charges—crimes against the state pursuant to NRS 125C.0035(5)—but with no due process notice of the criminal facts alleged, nor the criminal statutes allegedly violated, no jury trials, a single judge acting as both judge and prosecutor, with a lowered standard of proof, "clear and convincing" instead of the traditional "beyond reasonable doubt," forcing litigants to be witnesses against themselves—and then the state infringes on their Second Amendment right to bear arms after their convictions.

This Court should therefore grant certiorari to review the lower courts' decisions, declaring NRS 125C.0035(5) unconstitutional. In the alternative at least vacate and remand the case to the Supreme Court of Nevada with instructions on *Rippo's* totality framework on judicial disqualification.

CONCLUSION

This Court should grant the petition for writ of cert.

RESPECTFULLY SUBMITTED,

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