

Supreme Court, U.S.
FILED

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Docket No. 22 A286

In the
Supreme Court of the United States

ALI SHAHROKHI

Petitioner

vs.

KIZZY BURROW

Respondent

APPLICATION for a STAY of the JUDGMENT

ENTERED by NEVADA SUPREME COURT

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SUPREME COURT, U.S.

PARTIES TO THE PROCEEDING

Applicant, (Defendant-Appellant), is ALI SHAHROKHI, and the Respondent herein, is KIZZY BURROW, (Plaintiff-Respondent).

CORPORATE DISCLOSURE STATEMENT

As per Rule 29.6, Petitioner, Shahrokhi, is a natural person. There is no parent corporation.

RELATED PROCEEDINGS

Within the meaning of Rule 14.1(b)(iii), there is a “directly related” case now pending in this Court, *Phillips vs. Korpak*, [Case No. 22-5622; (docketed Sept. 20, 2022)].

APPLICATION for a STAY of the JUDGMENT
ENTERED by NEVADA SUPREME COURT

Pursuant to Rule 23 of the Supreme Court Rules as well as the *All Writs Act*, 28 U.S.C. 1651, ALI SHAHROKHI, respectfully applies for a STAY of the judgment, entered May 12, 2022, by the Supreme Court of Nevada, (See Appendix B), pending the timely filing and disposition of a petition for a writ of certiorari and/or any further proceedings in this Court.

This case concerns *Nevada Revised Statutes* Sec. 125C.0035(5), which Shahrokhi contends violates the 14th Amendment, (“due process”), because it authorizes state court judges to try litigants — on *criminal* statutes — in *civil* proceedings — with no underlying indictment. The state violated Shahrokhi’s 14th Amendment rights by failure to give due process notice to Shahrokhi re: (i) the criminal facts alleged, and (ii) the criminal statutes allegedly violated.

First, NRS 125C.0035(5) allowed a state court judge to try Shahrokhi on *criminal* statutes — in *civil* proceedings — with no due process notice re: (i) the criminal facts alleged, nor (ii) the criminal statutes allegedly violated. This constitutes a blatant 14th Amendment due process violation.

Where there is no underlying criminal complaint, (“indictment”), state court judges lack subject-matter jurisdiction to try litigants on *criminal* statutes. Where litigants are accused of violating *criminal* statutes — and the accused’s constitutional rights hang in the balance — such litigants are entitled to the “rights of the accused,” [5th, 6th,

and 14th Amdts]; note also, where litigants stand accused of crimes, they are entitled to these constitutional rights — regardless of whether the proceedings are labeled “civil” or “criminal.”

Here, Shahrokhi was found to have violated *criminal* statutes — and yet, he was never “indicted,” *i.e.*, there is no underlying criminal complaint, (“indictment”); and, of course, with no underlying criminal complaint, the state court judge necessarily lacks subject-matter jurisdiction to try Shahrokhi on *criminal* allegations; so too, the judge lacks subject-matter jurisdiction to find and conclude that Shahrokhi violated *criminal* statutes. Here, the challenged order is void *ab initio* (from the date of issuance) for want of subject-matter jurisdiction— because there is no supporting indictment.

Shahrokhi contends that the criminal complaint, (“indictment”), is the precise legal mechanism that confers subject-matter jurisdiction upon state courts to adjudicate criminal allegations. As a matter of law, where there is no underlying criminal complaint, there is no subject-matter jurisdiction to make criminal findings or conclusions.

Second, *Nevada Revised Statutes* Sec. 125C.0035(5) is unconstitutional because it relaxes the evidentiary standards on proving criminal allegations. This statute allows Nevada state judges to conclude that litigants violate criminal statutes based on the “clear and convincing” evidentiary standard, but this is too low. When it comes to adjudicating criminal statutes, the proper evidentiary standard is the higher standard, *i.e.*, “beyond a reasonable doubt.”

Here, the state of Nevada violated Shahrokhi's right to due process, [14th Amdt], by using an evidentiary standard too low for criminal statutes. Again, the proper evidentiary standard on which to adjudicate criminal allegations is the "beyond a reasonable doubt" standard — and state-court judges must employ this standard regardless of whether the tribunal happens to be labeled "civil" or "criminal."

Third, Nevada Revised Statutes Sec. 125C.0035(5) wrongfully allows judges to conclude that individuals violate criminal statutes, even though they are never proven guilty "beyond a reasonable doubt" — and this defeats the constitutional "presumption of innocence," [5th & 6th Amdts]. Unless (or until) the state actually proves guilt "beyond a reasonable doubt," the State of Nevada and its judges must presume individuals are unequivocally innocent.

Until that very moment when the state actually proves guilt "beyond a reasonable doubt," no judge may conclude that an individual violated a criminal statute. Here, by concluding that Shahrokhi violated criminal statutes — despite the fact that the state has never proven him guilty "beyond a reasonable doubt" — the state violated Shahrokhi's 5th & 6th Amendment rights to "presumption of innocence."

Fourth, the "beyond a reasonable doubt" issue must be decided by a jury!—*not a judge*. Nevada Revised Statutes Sec. 125C.0035(5) wrongfully allows judges to control the fact-finding by abrogating the right to trial-by-jury — the most precious of all civil liberties.

Jury trials are the last best hope to check unbridled judicial discretion. Where litigants, such as Shahrokhi, face criminal

accusations — and the sought-after punishment is deprivation of fundamental rights — such litigants are entitled to trial-by-jury.

Shahrokhi is accused of crimes, and the sought-after punishment is deprivation of fundamental rights; these facts are sufficient to trigger the constitutional “rights of the accused,” [5th, 6th, and 14th Amdts], including Shahrokhi’s natural-born right to trial-by-jury.

The ultimate issue is whether individuals, (such as Shahrokhi), who stand accused of violating criminal statutes — where the prospective punishment is deprivation of constitutional liberties — are entitled to the “rights of the accused?” Yes!—where individuals stand accused of violating criminal statutes, and constitutional liberties hang in the balance, the matter becomes a *de facto* criminal proceeding, and the state must recognize the accused’s fundamental rights under the 5th, 6th, and 14th Amendments.

Traditionally associated with criminal proceedings, the “rights of the accused,” [5th, 6th, & 14th Amdts], should be extended to include all proceedings — including *de facto* criminal proceedings — where: (i) individuals stand accused of violating criminal statutes, and (ii) the sought-after punishment is limitation or termination of constitutional rights. All persons accused of crime — whose prospective punishments include deprivations of fundamental liberties — are necessarily entitled to the benefits and protections of the 5th, 6th, and 14th Amendments.

The rights of the accused, [5th, 6th, and 14th Amdts], must be extended to Shahrokhi — because he stood accused of crimes against the state, and furthermore, his constitutional right, (“right to parent”),

hung in the balance. Shahrokhi is thus entitled to the benefits and protections of the 5th, 6th, and 14th Amendments.

* * *

As a result of his criminal “conviction,” Shahrokhi’s fundamental liberties were taken, including the rights to physical and legal custody of his minor son—based on the fact that he was “convicted” of crimes against the state.

Shahrokhi was found to have violated two (2) criminal statutes, NRS 200.571, (“HARASSMENT”), and NRS 200.575, (“STALKING”). Shahrokhi was “convicted” in an ostensible *civil* proceeding, based on a finding of “clear and convincing” evidence of criminal activity — instead of the traditional legal standard, “beyond a reasonable doubt”; and, more than that, Shahrokhi was denied the right to trial-by-jury. (See Appendix E)

Shahrokhi’s “conviction” has adversely affected, indeed abrogated, his ability to have care and custody of his 13-year-old son; and, for over 40 months now, Shahrokhi has not seen his only son.

Shahrokhi has been wrongfully deprived of his constitutional “right to be a parent”—and his son has been wrongfully deprived of his constitutional “right to be parented.” Here, the State of Nevada violates the right to “familial association”—as to both father and son.

Shahrokhi had hoped to timely prepare his Petition for a Writ of Certiorari, but was unable due to time constraints; he is now preparing for an opening brief in another matter — in the Ninth Circuit

(which was due Sept. 27, 2022) involving his First Amendment “right to petition” the courts for redress.

Also at-issue is whether the trial judge’s failure to recuse himself, together with Nevada Supreme Court’s willful rejection of Supreme Court precedent, constitute a violation of the Due Process Clause.

In this case, the trial judge was an “adverse party” to two (2) federal lawsuits that Shahrokhi filed against him—for violating Shahrokhi’s fundamental liberties, as declared by Nevada’s court of appeal in case No COA-79336—and for acting in the “clear absence of all jurisdiction,” *i.e.*, by trying & convicting Shahrokhi for crimes against the state — but with no supporting indictment, *i.e.*, no due process notice to Shahrokhi, and no jury trial, no *Miranda* warnings, no assistance of counsel, and so forth. (See Appendix E)

When Shahrokhi moved to disqualify the judge before trial and at trial, the judge willfully ignored Shahrokhi’s request and refused to recuse himself — even though the judge was an “adverse party” vis-à-vis Shahrokhi — in two (2) federal lawsuits; in addition, the judge was fully aware that Shahrokhi had reported him to the U.S. Bankruptcy Trustee’s Office — for committing *bankruptcy fraud*, including perjury, by falsely declaring his salary as a sitting state judge as \$0.00.

Not only did the state judge refuse to recuse himself, but he doubled down and used the bench to retaliate against Shahrokhi for suing him in federal courts, as well reporting him to federal and state authorities for the bankruptcy fraud he committed.

The trial judge (Harter) also failed to adjudicate Shahrokhi's filed pre-trial objection as part of the record. Shahrokhi had sought the court to declare his constitutional rights on the record; however, the trial judge ignored Shahrokhi's constitutional challenges and issued a minute order as part of the record as stating, "constitutional issues are appellate matters."

Shahrokhi has been deprived of a factual basis for denying his disqualification motion throughout the state proceedings and writs of mandamus to the Nevada Supreme Court, as well as his state Appeal in Case No. 81978 until the filing of this stay or his petition for a writ of certiorari in this Court.

And, note, this is not Shahrokhi's "opinion" that state judge committed BK fraud; it's all in the public domain. State judge's judicial salary is a matter of public record, and state judge's BK forms and income declaration—of \$0.00 income—is also a matter of public record. The state judge openly and notoriously committed bankruptcy fraud under the nose of a federal judge; and yet, remarkably, the state judge remains on the bench—passing judgment on others. This is antithetical to the ends of justice and downright un-American.

The trial judge (Harter) also failed to adjudicate Shahrokhi's filed pre-trial objections as part of the record. Shahrokhi had sought the trial court's declaration re his constitutional rights—on the record; however, the trial judge (Harter) completely ignored Shahrokhi's constitutional challenges. And then, unbelievably, the trial judge (Harter) issued a minute order stating, "constitutional issues are

appellate matters.” [See Appendix H]. No!—constitutional issues may arise at any stages of a legal proceeding!

Why does the trial judge believe that constitutional issues are for appellate courts only? Didn't the trial judge take an oath to uphold the Constitution? Trial judge shirks his responsibility to always protect the constitutional rights of all litigants.

Shahrokhi has been deprived of a factual basis for denial of his disqualification motion throughout the entire state proceedings, all the way to Nevada Supreme Court, until the filing of this stay.

In this case, Nevada Supreme Court again applied the *wrong* legal analysis on judicial disqualification. This Court has reprimanded Nevada Supreme Court in connection with *Rippo v Baker*, [580 U.S. ____ (2017)], which sets forth the proper standard on judicial disqualification.

The Nevada Supreme Court's refusal to disqualify the trial judge under such circumstances contradicts not only this court's case precedent decisions, it also violates the due process rights of others, as Nevada continues to apply the wrong disqualification standard, because the judiciary seeks to avoid disqualification of its judges (who are corrupt and participate in criminal activities such as bankruptcy fraud).

Nevada Supreme Court has declined (on four separate occasions) to stay or even narrow the state court's final custody order. This final custody order is VOID on its face — because it allows judges to conclude that Shahrokhi committed a crime based on “clear and convincing” evidence, which is the wrong standard for criminal adjudications.

And to make things worse, the state now seeks JAIL TIME from Shahrokhi in connection with related child support issues. The State of Nevada now prosecutes Shahrokhi pursuant to a VOID custody order!

Again, the challenged custody order is void. Why?—because there is no underlying indictment in this case—and with no underlying indictment—the state-court judge necessarily lacked subject-matter jurisdiction to make criminal findings and conclusions.

Shahrokhi shouts to the heavens!—as a matter of law, where there is no supporting criminal complaint, (“indictment”), there is no subject-matter jurisdiction to adjudicate criminal matters.

Shahrokhi has been forced to file multiple federal lawsuits; he has not seen his 13-year-old son since July 11, 2022 when the child was illegally relocated from Nevada to Oregon, and the state courts refuse to allow any visitation, even though Shahrokhi has never been found “unfit” or “abusive,” and there is no report or record of any abuse or neglect by any state agency as against his son.

Shahrokhi has not been able to practice his religion with his 13-year-old son which is Islam; and, Shahrokhi has not been able to attend or participate any of his son’s school gatherings or events since July 11, 2019. Shahrokhi has not been able to have any private conversations with his minor son since July 9, 2019; Shahrokhi has not been able to educate his son in any way or shape him through his own knowledge and experiences; and, Shahrokhi has not been able to hug or kiss his son or see him in person since July 11, 2019.

Thousands of litigants across the state of Nevada have been affected by this unconstitutional statute, NRS 125C.0035(5), and

thousands of litigants that are affected by State of Nevada's case precedent which cleverly labels parental termination orders as "primary custody with no visitation," which is just a euphemism for termination of parental rights!—which, in reality, is a civil death sentence!

Nevada pretends that Shahrokhi still has some parents rights; but in truth, he has none; (if his child, God forbid, lay dying in hospital, Shahrokhi would not be allowed to visit...).

This Court must decide at which point a parent's rights are terminated; according to State of Nevada, Shahrokhi has "secondary" custody—but Nevada's labeling scheme is a farce because the designation as "secondary" custody comes with no rights.

According to the State of Nevada, the ex has "primary" custody, which means 100% physical and legal custody, while Shahrokhi, (the "secondary"), has no rights at all. He has not seen his son "in-person" in over three (3) years! This is an outrage. All due to criminal findings!

It is misnomer to state Burrow has "primary" custody—because Shahrokhi has no visitation; in other words, there's no such thing as "secondary." The "primary" designation for Burrow effectively terminates Shahrokhi's rights, it is termination of my rights regardless. [See, *Franz v. United States*, 707 F.2d 582, 602 (1983); ("*the alleged infringement in this case is no mere disruption or curtailment of the parent-child relation but its permanent termination*"; at p. 602)].

Nevada's *Rivero vs. Rivero* is unconstitutional, [216 P.3d 213 (Nev. 2009)]. Shahrokhi's rights have, in fact, been terminated regardless of how the State of Nevada "labels" it.

The fact that Nevada deprived Shahrokhi of “legal & physical” custody in no way protects the minor from any actual or perceived harm, *i.e.*, the termination of “legal & physical” custody is not *narrowly tailored* to effectuate a compelling gov’t interest in the child’s “physical” safety. Parental rights, before being limited or terminated, must be afforded "strict scrutiny" (heightened scrutiny).

The Fourteenth Amendment prohibits the state from depriving any person of "life, liberty, or property without due process of law." The Court has long recognized that the Due Process Clause "guarantees more than fair process." [*Washington v. Glucksberg*, 521 U.S. 702, 719 (1997)]. It also includes a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests." [*id.*, at 720; *see also Reno v. Flores*, 507 U.S. 292, 301-302 (1993)].

It is further established that any law impinging on an individual's fundamental rights is subject to strict scrutiny, [*San Antonio School District v. Rodriguez*, 411 U.S. 1 (1973)].

"In order to withstand strict scrutiny, the law must advance a compelling state interest by the least restrictive means available." [*Bernal v. Fainter*, 467 U.S. 216 (1984)].

Defining primary physical custody.

We now discuss “primary physical custody”—in contrast with “joint physical custody.” A parent has primary physical custody when he or she has physical custody of the child subject to the district court's

power to award the other parent visitation rights. [See, e.g., *Ellis*, 123 Nev. at 147, 161 P.3d at 240]. The focus of primary physical custody is the child's residence. The party with primary physical custody is the party that has the primary responsibility for maintaining a home for the child and providing for the child's basic needs. [See *Barbagallo*, 105 Nev. at 549, 779 P.2d at 534 (discussing primary custodians and custodial parents in the context of child support); see Tenn.Code Ann. § 36-6-402(4) (2005) (defining "primary residential parent" as the parent with whom the child resides for more than 50 percent of the time)].

This focus on residency is consistent with NRS 125C.010, which requires that a court, when ordering visitation, specify the "habitual residence" of the child. Thus, the determination of who has primary physical custody revolves around "where" the child resides.

Primary physical custody arrangements may encompass a wide array of circumstances. As discussed, (*supra*), if a parent has physical custody less than 40 percent of the time, then that parent has visitation rights and the other parent has primary physical custody. Likewise, a primary physical custody arrangement could also encompass a situation where one party has primary physical custody and the other party has limited or no visitation. [See *Metz*, 120 Nev. at 788-89, 101 P.3d at 781 (describing a primary physical custody situation where the non-primary physical custodian had visitation every other weekend)].

Where a parent has no right or any-visitiation, they cannot be properly said to have custodial rights, [see, e.g., *Franz v. United States*, 707 F.2d 582 (1983)].

Nevada allows judges to terminate parental rights based on “discretion” and with no due process protections as mandated by the U.S. Constitution.

Nevada Supreme Court must stop kidnapping children and terminating parental rights at the judge’s whimsical discretion.

This Court should STAY the state district court’s judgment in full, or at minimum—to the extent the criminal findings by the state court are stayed and Shahrokhi’s custodial rights are restored—until this Court has reviewed and decided on Shahrokhi’s petition for a writ of certiorari. The final state-court judgement is unconstitutional and void *ab initio*.

To not stay the state’s final judgment, based on Nevada’s unconstitutional statute, NRS 125C.0035(5), poses a grave threat to due process, as the 14th Amendment contemplates, as well as the health and well-being of our Nation’s justice system.

The need for this Court’s intervention is especially acute because this case exemplifies a troubling trend by the Nevada’s Supreme Court, *i.e.*, failure to uphold the U.S. Constitution. At the time of this writing, Nevada Supreme Court willfully violates tens of thousands of litigants’ due process rights—on a daily basis.

For most of our Nation’s history, it was unheard-of to try litigants on *criminal* statutes in *civil* proceedings, with no underlying indictments from any prosecutorial agency, no due process notice re alleged crimes, no attorney present, no jury trial, and sealed cases—with hearings closed to the general public; and yet, in the State of Nevada, such practices are commonplace.

Shahrokhi came to this country, from Iran, to claim his constitutional rights. Shahrokhi demands his 14th Amendment right to due process along with the presumption of innocence until proven guilty, [5th & 6th Amendments].

Nevada Supreme Court turns a blind eye to the U.S. Constitution; and knowing that Shahrokhi had two pending federal cases against the trial court judge (Harter), and the fact that Shahrokhi had reported the trial court judge (Harter) to state and federal authorities for perjury and bankruptcy fraud. (See appendix I)

In Nevada, violating litigants' due process right is commonplace, and Nevada Supreme Court tries to protect its judges at the cost of the litigant's constitutional rights (such as myself).

The state judge tried Shahrokhi for a capital crime, crimes against the state, on criminal statutes, NRS 200.571, ("HARASSMENT"), and NRS 200.575, ("STALKING"), in a *civil* proceeding—with no notice of the criminal facts alleged or the criminal statutes allegedly violated, no jury trial, no assistance of counsel—and all of this in a *civil* setting which is forbidden by law—because the state-court judge lacked subject-matter jurisdiction—for want of an underlying criminal complaint, ("indictment").

On September 21, 2020, first day of the three-day trial, there was no preliminary hearing; but note, the preliminary hearing constitutes a "critical stage" of the criminal proceedings—at which point there attaches the defendant's Sixth Amendment "right to counsel."

Furthermore, the state judge violated Shahrokhi's rights by not disclosing evidence. The state judge gave Shahrokhi the trial exhibits on the very day of trial, (not before!).

The Sixth Amendment guarantees the accused's right to counsel, [U.S. Const. Amend. VI]; and, the Sixth Amendment is *incorporated* to the states—via the Due Process Clause of the Fourteenth Amendment, [U.S. Const. Amend. XIV; [*Gideon v. Wainwright*, 372 U.S. 335, 341-45, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963); *see also*, *Palko v. Connecticut*, 302 U. S. 319 (1937)].

The U.S. Supreme Court has construed the Sixth Amendment guarantee [of counsel] to apply to critical stages of the proceedings. [*See, United States v. Wade*, 388 U.S. 218, 224, 87 S. Ct. 1926, 18 L. Ed. 2d 1149 (1967)]. Pretrial proceedings are often considered to be critical stages because the results might well settle the accused's fate and reduce the trial itself to a mere formality. [*Id.*; *see also Powell v. Alabama*, 287 U.S. 45, 57, 53 S. Ct. 55, 77 L. Ed. 158 (1932) (stating that the right to counsel during perhaps the most critical period of the proceedings . . . that is to say, from the time of [a criminal defendant] arraignment until the beginning of [the defendant] trial....is as important as [it is] at the trial itself;)].

A pretrial proceeding is critical; if potential substantial prejudice to defendant's rights adheres in the particular confrontation and the ability of counsel to help avoid that prejudice, [*Wade, supra*, 388 U.S. at 227].

The state judge also violated *The Brady Act*, [*Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)]. The state trial Court never asked Shahrokhi whether he could afford an attorney. At his trial, there was no attorney standing-by to assist with criminal proceeding to adjudicate crimes against the state findings. (See transcripts Appendix G)

The Federal and Nevada Constitutions provide that no person shall be deprived of life, liberty, or property without due process of law. Essentially, the State owes to each individual that process which, in light of the values of a free society, can be characterized as “due.” Substantive due process ensures that state action is not random and unpredictable; it restricts the government’s ability to interfere with a person’s “life, liberty, or property”—unless there exist “true blue” legal processes and procedures.

To state a procedural due process violation claim under the Fourteenth Amendment Due Process Clause, the claimant must allege facts showing that the state has deprived him or her of a liberty interest and has done so without providing adequate procedural protections.

On September 10, 2021, ten (10) days before his three-day bench trial, Shahrokhi had filed a pre-trial objection, mounting a constitutional challenge to the Court’s authority. Shahrokhi asked the state court to identify which laws and procedures the court will be using for the trial; in response, the judge issued a minute order stating, remarkably, that Shahrokhi’s substantive and procedural rights are *appellate* matters, not trial court matters. (See Appendix D).

In Shahrokhi's case, the trial court lacked-subject matter jurisdiction to proceed with the 3-day trial. Once a court has determined that a protected liberty interest has been impaired, the question remains what process is due. Due process is not technical conception with a fixed content unrelated to time, place and circumstances. [See Shahrokhi's pre-trial objection that were intentionally ignored by the trial court before the 3 days trial]. (See Appendix D)

Shahrokhi in his pre-trial objection had asked the state Court to resolve the following questions of law before presiding over the three-day trial, yet the state court completely ignored these questions, and to this date, these questions have not been adjudicated on the merits.

These questions were as follow:

1) whether the parties to this child custody dispute, between two fit parents, are entitled to the substantive protections associated with the First, Fourth, and Fourteenth Amendment rights at-issue in custody proceedings;

2) whether the parties are entitled to the procedural protections of an *Eldridge* balancing test;

3) whether the parties are entitled to obtain a just, fair, equitable, and impartial adjudication of their rights under established principles of substantive law;

4) whether the parent-child association, which litigants have with their child, is an intimate & expressive association protected by the First Amendment;

5) whether Respondent’s petition asks this court to impose unlawful time, place, or manner prior restraints on Shahrokhi’s speech, association, and worship with Shahrokhi’s child;

6) whether Respondent’s petition improperly asks this court to impose unlawful content-based “prior restraints” on Shahrokhi’s First Amendment rights;

7) whether the litigants’ parent-child associative rights are personal rights—independent of the marital status of the litigants or of changes in that status; and

8) whether the child has standing to have its “best interests” or any other interests asserted by the judge or by any appointed officer in these proceedings? (See Appendix D)

These federal questions law was never answered or adjudicated by the state court before the trial, and this violates Shahrokhi’s right to due process under the 14th Amdt.

The challenged Nevada statute, NRS 125C.0035(5) is unconstitutional because it affects tens of thousands of Nevada litigants. This unconstitutional statute allows a lone judge to supplant his own discretion over the U.S. Constitution, nullifying due process requirements protected by US Constitution, and “trying” litigants on criminal statutes—in violation of their fundamental liberty rights.

This Court should STAY the state’s unconstitutional policies and procedures. And, given the importance of the issues presented, as well as the rampant due process violations that affect so many Nevada litigants, this Court should issue a STAY.

Shahrokhi will file his application as a petition for a writ of certiorari no later than November 26, 2022. Shahrokhi prays this Court GRANT the petition and set this case for argument shortly after as the unconstitutional NRS 125C.0035(c) is robbing many litigants in the State of Nevada.

STATEMENT

A. Background

To determine what procedure satisfies due process, cases are analyzed using the three-part balancing test delineated by the Supreme Court in *Mathews v. Eldridge*: (1) the private interest impacted by the government action; (2) the chance that the procedures used will result in an improper deprivation of the private interest and the likely value of added procedural protections; and (3) the Government's interest in the proceedings and the cost of additional procedural protections.

NRS 125C.0035(5) allows state court judges to “try” litigants on *criminal* statutes in *civil* proceedings—deciding whether crimes are committed based on “clear and convincing” evidence—and with no underlying criminal complaint, (“indictment”), which means the trial court lacked subject-matter jurisdiction, which directly violates the requirements of *Mathews v. Eldridge*; therefore, Shahrokhi's due process rights have been violated.

The U.S. Supreme Court has made it clear that constitutional rights apply to children as well as adults. This Court has said, in *In re Gault*, neither the Fourteenth Amendment nor the Bill of Rights are for adults alone.

This Court, in *Planned Parenthood of Missouri v. Danforth* (1976), said that constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights.

The state courts do not have subject-matter jurisdiction to adjudicate crimes such as harassing, stalking within civil settings. Due process of law requires adequate notice so that the accused may prepare a defense. It does not allow a hearing to be held in which a youth's freedom, and his parents right to his custody, are at-stake without giving them timely notice, in advance of the hearing, of the specific issues that they must meet.

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)].

NRS. 125C.0035(5) also violates Nevada's own Constitution Article 1, Sec 8. The state judge and opposing private parties cannot

bring crime charges against Shahrokhi on their own and adjudicate crimes against the state findings in a civil setting, with no criminal attorney present, no jury, nor criminal notice given to Shahrokhi.

From Shahrokhi's point-of-view, the line between "civil" and "criminal," has become increasingly blurred. Shahrokhi believes the "civil" label, traditionally associated with state family court, should not be used to deny constitutional safeguards and procedures to state family court litigants who stand accused of violating criminal statutes. 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.

This Court should extend—to state family court litigants accused of crimes—the "rights of the accused," [5th, 6th, and 14th Amdts.], including, 5th Amendment—the privilege against self-incrimination, *Miranda* warnings; and the presumption of innocence until proven guilty; 6th Amendment—the right to trial by jury; the right to assistance of counsel; and the presumption of innocence until proven guilty; 14th Amendment—the right to due process including notice of (i) the criminal facts alleged and (ii) the criminal statutes allegedly violated; and, the right to a fair trial associated with state family courts.

In proceedings labeled "civil," Nevada state 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,” [5th, 6th, and 14th 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, [5th, 6th, and 14th Amdts.].

Thousands of American children lose a parent every month due to NRS 125C.0035(5) as the state courts now adjudicate criminal allegations—but with no formal indictment requirement; further, Nevada state 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 14th Amendment. Criminal actions must be brought in the name of the People, (or Commonwealth). Shahrokhi believes that criminal actions must be brought by prosecutorial agencies, with supporting indictments, as the 14th Amendment affirmatively requires.

Nevada state 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 state courts deny these rights to parents who stand accused of committing crimes.

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,” (14th Amendment violation);

(b) the Nevada State court system shuns subject-matter jurisdiction requirements, *i.e.*, by allowing the state court judges to make criminal findings—with no supporting indictment, which means the accused are cheated out of “due process notice,” *i.e.*, of (i) the criminal facts alleged and (ii) the criminal statutes allegedly violated, (14th Amendment violation);

(c) the Nevada State court system adopts relaxed evidentiary standards, *i.e.*, by using a lower standard, “clear and convincing” to make it easier to prove criminal allegations, (6th Amendment violation); so too, the state provides no *Miranda* warnings, (5th Amendment violation); and, no presumption of innocence, (violation of 5th and 6th Amendments).

(d) the Nevada state court system allows parents to be tried for crimes—but with no right to trial by jury, (blatant 6th Amendment violation);

(e) the Nevada state 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 5th and 14th Amendments)].

In his state court case, Shahrokhi 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 Shahrokhi’s fundamental “right to parent,” with no jury trial, in a courtroom with no jury boxes.

Jury trials are the most vital component of checks and balances. Where a litigant’s constitutional rights are at stake—the right to trial by jury must remain forever inviolate! Standing alone, the fact that the state denied Shahrokhi’s his natural-born right to trial by jury—is reason enough for this Court to grant the STAY.

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/civil” setting, one’s children are taken. Notably, in both tribunals, judges adjudicate the same criminal statutes; the only difference is the tribunal’s label, (“civil” or “criminal”).

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?

For goodness’ sake, in both proceedings, judges adjudicate the *same* criminal statutes, (*for example*, “domestic battery”). 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 so called civil proceedings.

Shahrokhi here states the obvious: losing one’s children is a punishment a million times worse than incarceration. Shahrokhi would rather be incarcerated and retain the right to raise his only son. At the time of this writing, Shahrokhi—who has never been charged with a neglect or abuse crime, nor has ever been declared unfit by the state of Nevada—has not seen his son in 3 years and 3 mos.; (a gross injustice, both to Shahrokhi and his son, B.E.S.).

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

B. Not typical judicial- disqualification disputes

“The facts of this case are, happily, not the stuff of typical judicial disqualification disputes.” [*Bracy v. Gramley*, 520 U.S. 899 (1997)].

Shahrokhi has not been able to find any case where a sitting trial judge was an adverse party to the litigant in two separate federal cases, and where the litigant had reported the state trial judge to state and federal

authorities for committing perjury and chapter 7 bankruptcy fraud and the sitting judge had full knowledge Shahrokhi had reported his criminal activity to the authorities because Shahrokhi had filed the fraudulent bankruptcy documents where they are public documents into his state court asking the sitting judge to take judicial notice of his crimes. (See Appendix J)

The absence of direct authority on this point is precisely because no one would consider such a thing permissible: “a general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question, even though ‘the very action in question has [not] previously been held unlawful.’” [*United States v. Lanier*, 520 U.S. 259, 271 (1997) (citation omitted)]. As this Court has noted, “[t]he easiest cases don’t even arise.” [*Id.* (citation and internal quotations omitted)].

This is one of those easy cases: a trial judge cannot maintain a constitutional level of impartiality in a case in which he is a defendant in two federal lawsuits by Shahrokhi as well as knowing Shahrokhi has reported him to federal and state authorities for perjuring himself on his Ch. 7 bankruptcy application under the penalty of perjury stating as a sitting state judge his income is \$0 and he was concealed assets (a single-family home) from the bankruptcy trustee by buying it under a friend’s name and as soon as his Ch. 7 bankruptcy was discharged, the friend deeded the property to the state judge’s name which is a federal crime.

Shahrokhi requests that this Court grant his application for STAY to correct this fundamental miscarriage of justice.

The Nevada Supreme Court completely ignored these facts presented to the Court and the Nevada Attorney General, instead of prosecuting the criminal state court judge, decided to provide him free legal representation to defend him against Shahrokhi's two federal cases where the state judge was declared by the Nevada Court of appeals that the state judge had violated Shahrokhi's fundamental liberties in Case No. COA-79336, (2019).

Here, the trial judge was being an adverse party in two separate federal lawsuits by Shahrokhi, and fully aware Shahrokhi has requested state and federal agencies investigating the state judge's alleged perjury and fraud in his Ch. 7 bankruptcy application as a sitting judge where he had completely lied about his income and assets under penalty of perjury. There has never been a sitting judge with an income of \$0 signed and dated under penalty of the perjury by the said state judge. 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.

There is nothing in the Nevada Supreme Court's decision in Shahrokhi's case to show that it was anything other than a decision on the merits of his judicial bias claim. This Court, accordingly, has jurisdiction to decide the legal issue in this case.

Shahrokhi does not argue that the mere fact that a state court judge knows that he or she might be the subject of a criminal investigation is sufficient by itself to require recusal under the Due Process Clause. Instead, Shahrokhi argues that the totality of the circumstances in his case, where the judge was an "adverse" party to

Shahrokhi in two separate pending federal cases at the time of Shahrokhi's trial, the fact that the state judge had continued to refuse to follow the Nevada Court of appeal's directive issued on him on November 11, 2019 in Case No. COA-79336, required the state 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.

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.

A judge cannot maintain a constitutional level of impartiality when he or she is a defendant in two federal lawsuits and has full knowledge the judge has been reported for his alleged perjury and fraudulent Ch. 7 bankruptcy application to the state and federal authorities for proper investigation by one of the parties to a case.

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 sued in two separate federal cases—for violating Shahrokhi's constitutional rights—in the clear absence of all subject-matter jurisdiction 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 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]

In Nevada it is recognized that a judge cannot be criminally investigated by one of the parties to a case in the context of state conflict of interest law when it held that a sitting judge cannot be prosecuted by the state attorney general’s office while deputies of the office at the same time are legally representing the same judge as a defendant in his federal lawsuits pending against him. That is a huge conflict itself and the state attorney general has refused to open criminal investigation for perjury or bankruptcy fraud against this same state judge.

Moreover, a judge cannot maintain a constitutional level of impartiality in a case when the judge is a defendant to federal lawsuits by one of the parties before him.

C. Proceedings and History of the state case

Petitioner, Ali Shahrokhi, (“Shahrokhi), and Respondent, Kizzy Burrow, (“Burrow”), entered into a relationship which resulted in the birth of the parties’ minor child, (“B.E.S”), born May 1,2009.

Shahrokhi is a self-employed realtor and Burrow is historically a travelling promotional model. From the time of B.E.S.'s birth, where the parties had been joint physical custodians of the minor, jointly performing all tasks pertaining to his upbringing (feeding, clothing, bathing, doctors, playdates, school pickup/drop off, etc.).

For essentially nine (9) years, B.E.S. experienced a daily relationship with both parents. Shahrokhi and B.E.S are very close, and B.E.S loves his father very much.(child interview under seal in State of Nevada). B.E.S. and Shahrokhi undeniably had a close familial association, which is protected by the 1st and 14th amendment.

Around or about the July of 2018, Burrow, while still residing with Shahrokhi, and after meeting her now boyfriend in Portland, Oregon began strategizing and planning to leave Shahrokhi. Burrow was leaving B.E.S with Shahrokhi while she travelled, to the extent that Shahrokhi in the six months leading up to the paternity complaint being filed in the state, had *de facto* primary custody of B.E.S.

On December 3, 2018, the police were called to the parties' home, Shahrokhi was reported as the victim, yet no arrests were made, and no charges brought. On or about December 4, 2018, Burrow absconded with B.E.S, leaving Nevada and did not return, taking the child out of school for (2 ½ weeks).

On December 5, 2018, Burrow applied for a Temporary Protection Order, ("TPO"), in Las Vegas, Nev., (case number T-18-193531-T), and attached a text message with no identifiable date and an email dated August, 2018. On December 10, 2018, Burrow, with the help of her now boyfriend Donald Pearson, ("Pearson") and her attorneys, instigated a

paternity action where Burrow filed a Complaint to Establish Paternity, Child Custody, Visitation, and Child Support wherein sole legal and primary physical custody was requested, where no claims warranting deviating from public policy in joint custody were alleged in her complaint (See Appendix C).

At the January 3, 2019, hearing, Burrow's extension for the TPO was denied as Burrow dissolved the TPO. The parties stipulated to joint legal and joint physical custody the custody order was signed by a state judge. On January 9th, 2019, Burrow's counsel prepared a motion for sole legal and primary physical custody of B.E.S filed on January 1, 2019. In said Motion, Burrow made an accusation that Shahrokhi had threatened to remove the child to Iran and included a one-line request to relocate to Portland, Oregon, to live with her soon-to-be-husband, who earns significant income. To this day, which is almost 4 years later, Burrow is not married to Pearson and such was a lie to the state courts.

The state judge approved and re-affirmed the previously stipulated joint custody order on three separate occasions in February, March, and April 2019. On March 12, 2019, Burrow, through her attorney, refused to allow B.E.S to continue playing soccer as the "practice time takes away too much time from [Burrow]; further they go on to tell Shahrokhi that B.E.S received his very first MMR vaccination, this was done without Shahrokhi's consent.

B.E.S was nine (9) at this time and the parties had never given the child the MMR vaccination, as it was against Shahrokhi's religion

and as such was document through private schools every year signed by Shahrokhi.

At a March 27, 2019, state court hearing, the judge gave Shahrokhi additional time with B.E.S. The state court further noted concerns that Burrow was “so busy that she has to have other people pick the child up. The judge also ordered Pearson, “the boyfriend,” and, the real individual controlling and funding this litigation, was not to pick the minor child up from school.

On April 29, 2019, Shahrokhi’s attorney filed a motion to withdraw. On May 1, 2019, Burrow filed her Motion for Primary Physical Custody and to Relocate B.E.S to live with her new boyfriend Pearson in Portland, Oregon. In her motion, Burrow conceded that the parties had a custody order. Burrow then argued that the relocation factors set forth in NRS 125C.007 should be applied to her case. Burrow also states that “she does not seek to reduce Shahrokhi’s parenting time.

Then, Burrow goes on to argue 125C.007(2) more than once. At the April, 1, 2019 hearing, the state Judge kept suggesting pulling B.E.S out of private school to fund a custody evaluation. The judge indicated if there was going to be relocation that there had to be a relocation assessment. This is common practice and forced on litigants by lazy state judges so they can delegate their judicial authority to a third-party service provider so they do not have to do the work. On May 13, 2019, Shahrokhi filed his first Petition for Writ of Mandamus in case 78771-COA, which was subsequently denied yet this is a turning point in this action. After this point the state judge showed an

impermissible bias towards Shahrokhi, showing antagonism towards Shahrokhi and favoritism towards Burrow and her attorney and making arbitrary and capricious decisions.

While the writ of mandamus was pending, B.E.S. had been telling Shahrokhi that mommy was moving him to Oregon and that Burrow had left B.E.S., overnight with her new boyfriend of just few months. At the time, Shahrokhi was *Pro Se*. What you will see in the record is a very frantic (pro se) Shahrokhi filing motions to stop Burrow from taking the child out of state.

Then, up through to July 11, 2019, Shahrokhi and Burrow shared joint custody of B.E.S, with no incident. Burrow stipulated to joint custody, after making domestic violence allegations in a TPO application, yet preserving domestic violence claims for later. Burrow never claimed B.E.S was injured or abused by Shahrokhi in this timeframe, there were no CPS investigations nor did Burrow ever file any formal charges against Shahrokhi.

For four months, after stipulating to joint custody of B.E.S., there were no allegations that Shahrokhi was a harm to B.E.S, nor had the State Court voiced concerns for B.E.S's safety.

On July 10, 2019, Shahrokhi received a phone call on his cell phone from the state Court's Judicial Executive assistant that Shahrokhi had a hearing before the state judge and Shahrokhi raised his concern that he had no notice of the court hearing and why is this sudden call. The JEA assured Shahrokhi the hearing was just to do a status check on all pending motions and nothing more and Shahrokhi should attend the hearing.

At the July 11, 2019 hearing Burrow and her attorney were having a 15-minute *ex parte* communication with the judge while they held Shahrokhi out of the court room and absent from participating in the discussion. Shahrokhi was *pro se* at this hearing. At this hearing Shahrokhi was surrounded with three (3) court marshals, was not allowed to speak, the judge found him guilty on crimes against the state (domestic violence) with no due process notice, no attorney present, no indictment by the state, and this terminated Shahrokhi's custody rights and legal rights.

The judge then asked on the record how soon could Burrow relocate with the minor to state of Portland; Burrow's attorney stated on the record "immediately," and the judge gave sole legal custody and sole physical custody to Burrow—giving her permission to relocate to Portland, Oregon, stating on the record that Burrow should register the custody order immediately in city of Portland to change jurisdiction and immediately closed the paternity case as being finalized.

On August 6, 2019 Shahrokhi filed his second Emergency Petition for Writ of Mandamus in the Nevada Court of appeals where the state judge had manifestly abused his discretion and in turn Shahrokhi's due process rights pertaining to his fundamental right to parent were violated. On August 14, 2019, the Nevada Court of Appeals issued a stay in part regarding a no-contact order between Shahrokhi and B.E.S. On September 10, 2019, as Shahrokhi had not spoken nor seen B.E.S for two months, Shahrokhi with no hesitation signed a Stipulation and Order for limited contact. This was signed, by Shahrokhi, in a state of

duress; the father and son had enjoyed daily associations as a family for nine (9) years.

Visitation had not at that time been agreed upon. The limited facetime under no circumstances and under no laws equates to “visitation”, even limited contact, is defined by statute to apply to non-parents. Shahrokhi was advised by counsel at the time, that this was temporary stipulation for contact and Shahrokhi and his counsel expected visitation (which is different than contact) to be decided by the Court of Appeals.

This temporary stipulation was used as a scapegoat for a year and a half in not allowing Shahrokhi any visitation with his son. The stipulation and order specifically states, “temporary facetime and mail contacts. Again state judge acknowledged that the stipulation for facetime contact and gifts is temporary, “THE COURT FINDS that the foregoing temporary contacts, as they are stipulated by the parents, are in the child’s best interests.” But the trial judge refused to hear arguments to allow Shahrokhi visitation with B.E.S., citing that Shahrokhi himself agreed it was in B.E.S’s best interest to only have the 10 minutes of facetime a week, but this order was never intended to be permanent.

When Shahrokhi directly opposed the state judge in the appellate court or in a judge’s disqualification, state judge would vacate all proceedings arbitrarily and capriciously, not in accordance with the rules to reassign, etc., pursuant to NRS 1.235(5) mandated by state law.

On November 6, 2019, The Writ of Mandamus No. COA-79336 was issued the same date, directing the district court as follows:

(1) vacate its July 16 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 6 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.

However, to this day, the trial judge (Harter) continues to ignore this Court of Appeals directives, and the record speaks for itself; the trial judge (Harter), never set an adversarial hearing as directed by Nevada Court of Appeals—for temporary custody and relocation issues and further allowed the minor to be relocated to Oregon without any evidentiary hearing as mandated by state statutes.

A "status check" hearing was set on December 12, 2019. This was the first hearing after the Court of Appeals issued its Order in Docket No. 79336-COA. A review of the state Register of Actions shows that no Notice of Hearing was never filed by the state district court to provide anyone any notice.

On December 10, 2019, Shahrokhi filed a motion for the Return of the Minor to Nevada, the state judge denied it without any evidentiary hearing or allowing Shahrokhi any legal argument. The state judge refused to set an adversarial hearing on temporary custody, again

depriving Shahrokhi of due process. Further, the state judge failed to set forth domestic violence allegations or reference any claims which would be heard at the evidentiary hearing.

Many interlocutory filings and procedures went forward, none of which offered Shahrokhi and B.E.S any relief to visit one another. On March 13, 2020, an “ORDER SETTING CIVIL NON-JURY TRIAL (Child Custody/Paternity/Visitation/Relocation)” was filed by the state court. The trial was set for May,18,19th and 20th of 2020. It is clearly stated that there would be a civil trial. In the April 6, 2020, hearing, Burrow was given unfettered control over ALI’s rights to B.E.S.

“The superfluous language put into the Order from the February 20, 2020, hearing that Burrow can do whatever she wants if she unilaterally decides if Shahrokhi has somehow “violated” the Court’s orders should be reconsidered. Basically, the state judge delegating his judicial authority to Burrow to decide on her own if Shahrokhi is in violation of the Court’s order without any hearing or due process offered to Shahrokhi and of course Burrow has been running with this non-sense ridiculous order since then to this day and conspiring with the state judge to deprive Shahrokhi and B.E.S out of their constitutional rights.

An “ORDER SETTING CIVIL NON-JURY TRIAL (Child custody/Paternity/Visitation/Relocation)” was filed on July 30, 2020, where trial was set for Sept. 21st – 23rd of 2020. There is no mention of Domestic Violence in the trial setting order. Shahrokhi challenged state judge’s jurisdiction and clarification for trial procedures due to the COVID restrictions.

At the July 20, 2020, hearing state judge starts talking about a lawsuit that Shahrokhi filed against him in federal court. Then Shahrokhi and the state judge go back and forth where on the record state judge is apparently laughing,

“Mr. SHAHROKHI: Yeah, keep laughing;

THE JUDGE: Yeah. MR. SHAHROKHI: keep laughing. We’ll see who’s”...(transcripts are available and it is all on the record).

Shahrokhi again filed to disqualify the state judge on August 20, 2020, and pursuant to NRS 1.235(5) once an application of disqualification is filed, a judge must absolutely do nothing and transfer the file to another department. However the state judge refused to follow the state statutes again and not only he did not transfer the file to another department, he continued to preside over Shahrokhi, and on August 7, 2020, state judge entered orders against state statutes, while a decision on his disqualification was pending before the chief judge.

Shahrokhi asked for declaratory relief asserting substantive rights on September 7, 2020. Shahrokhi asked for his rights to be declared before trial, he asked about his free association under 1st amendment, free speech duty to educate under 1st amendment, possession rights of the child under the 4th amendment right to remain silent under the 5th amendment, care custody and control over one’s minor children under the 14th amendment and strict scrutiny and right to privacy.

Where courts disrupt, curtail, or infringe upon one’s civil liberties, there must be “strict scrutiny” analysis and the courts must employ the least-restrictive means.

But the State of Nevada ignores “strict scrutiny” analysis. The judge ignored all of this and presided over trial with no subject-matter jurisdiction. When a judge is challenged to subject-matter jurisdiction, the judge must prove on the record before he can preside, or he/she is stripped out of his jurisdiction. [See, *Rescue Army vs Municipal Court of Los Angeles*, 171 P2d 8; 331 U.S. 549, 91 L. ed. 1666, 67 S. Ct. 1409].

Further, Shahrokhi was not noticed that he was going to trial for criminal accusations, nor was he noticed regarding which criminal statutes he had specifically violated and specific dates and details of such alleged criminal violations.

A three-day trial took place on commencing on September 21, 2020, where no evidence as to the child’s wellbeing was ever presented to the court, which lacked subject-matter jurisdiction to try Shahrokhi on criminal statutes in a civil proceeding even though Shahrokhi starts objecting to such at the beginning of the trial yet the state judge makes threats to Shahrokhi, continuing to raise constitutional protections will land Shahrokhi in state jail if he does not stop. Partial transcripts are submitted as part of this application. (See Appendix G)

The trial judge (Harter) is notoriously known to violate litigant’s constitutional rights and remove children when parents challenge his authority. The Nevada Commission on Judicial Discipline refuses to bring formal charges against this judge and Nevada Supreme Court has ordered the Commission not to bring charges for public discipline against state judges, instead alerting the parents that they may exercise their appellate rights! This is such a miscarriage of justice.

We have too few constitutional rights in State of Nevada. (See Appendix K)

ARGUMENT

An applicant for a stay pending appeal and certiorari must establish (1) “a reasonable probability that this Court would eventually grant review,” (2) “a fair prospect that the Court would reverse,” and (3) that the applicant “would likely suffer irreparable harm absent the stay” and “the equities” otherwise support relief. [*Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring)]. Those requirements are satisfied here.

I. THIS COURT WOULD LIKELY GRANT REVIEW BECAUSE NRS 125C.0035(5) AFFECTS THE RIGHTS OF THOUSANDS OF NEVADA LITIGANTS TRIED ON CRIMINAL STATUTES—in CIVIL PROCEEDINGS—in VIOLATION OF FOURTEENTH AMENDMENT DUE PROCESS

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.

In the trial judge’s Order on September 22, 2020, amended domestic violence order, the following criminal findings of guilt were made: (See also appendix)

“Under NRS 200.571(1), this Court FINDS that [Shahrokhi] without lawful authority, knowingly threatened [Burrow] (1) to cause bodily injury in the future and (2) to cause physical damage to [Burrow’s] property (i.e., burn her clothes) and that the words of [Shahrokhi] placed [Burrow] in reasonable fear that the threat would be carried out. Under NRS 200.571(2) , this also Court FINDS that [Shahrokhi] without lawful authority, willfully engaged in a course of conduct directed towards [Burrow] that would cause a reasonable person under similar circumstances to feel terrorized, frightened, intimidated, harassed and fearful for her immediate safety.”

[See Appendix E].

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.

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.

NRS § 200.571, (“HARASSMENT”), provides,

“1. A person is guilty of harassment if: (a) Without lawful authority, the person knowingly threatens,” [see NRS § 200.571; (emphasis added)]. Use of the word “knowingly threatens” proves the statute is criminal; *therefore*, the rights of the accused here apply, [see 5th, 6th, and 14th Amdts.].

NRS § 200.575, (“STALKING”), provides,

“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: (a) For the first offense, is guilty of a misdemeanor. (b) For the second offense, is guilty of a gross misdemeanor. (c) For the third or any subsequent offense, is guilty of a category C felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 5 years and may be further punished by a fine of not more than \$5,000.” [NRS § 200.575; (emphasis added)].

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

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 state 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 state 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.

II. SHAHROKHI is LIKELY to SUCCEED on the MERITS

For multiple independent reasons, there is more than a “fair prospect that the Court would reverse” if it granted review. [Merrill, 142 S. Ct. at 880 (Kavanaugh, J., concurring)]. Nevada Revised Statutes 125C.0035(5) is unconstitutional on its face authorizing state judges to try litigants on criminal statutes without an indictment, no proper notice, no jury, no attorney present, no alleged violation of statutes before the trial proceedings.

This court has held, “We... hold that failure to afford the petitioner a reasonable opportunity to defend himself against the charge of false and evasive swearing was a denial of due process of law. A person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense - a right to his day in court - are basic in our system of jurisprudence; and these rights include, as a minimum, a right to examine the witnesses against him, to offer testimony, and to be represented by counsel.” [citation]

This Court has held that whether a statutory scheme is civil or criminal for *ex post facto* purposes is first a question of statutory

construction. A court considers the statute's text and its structure to determine the legislative objective. A conclusion that the legislature intended to punish would satisfy an ex post facto challenge without further inquiry into its effects, so considerable deference must be accorded to the intent as the legislature has stated it.

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 U.S. 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.

A. Did the trial judge's failure to recuse himself from Shahrokhi's capital trial violate the Due Process Clause?

In Shahrokhi's cases "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.

The trial judge was an adverse party to two pending federal cases against him by Shahrokhi at the time of Shahrokhi's trial. "Adverse action" is defined as any action that is adverse to the interests of the party." If the trial judge is an adverse party, how could he ever be neutral and impartial?

The trial judge was also fully aware Shahrokhi has referred him to state and federal authority for alleged perjury and fraud committed by the trial judge is his Ch. 7 bankruptcy application stating to the federal courts as a sitting judge his income was \$0 and was signed under penalty of the perjury. (See Appendix J)

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)].

The Nevada Supreme Court Failed to Properly Apply the Appearance of Impropriety Standard Because it Misapprehended the Nature of Shahrokhi's Judicial Bias Claim As Limited to Compensatory Bias.

III. THE EQUITIES OVERWHELMINGLY FAVOR A STAY

The Nevada supreme court's affirmance of the state court's judgment causes serious harm to Shahrokhi and his 13-year-old minor son. Under the law, children in the United States are fully formed human beings with the same constitutional rights that adults enjoy. It is the most absurd and ridiculous statement by any courts made that they are acting in the child's best interest while they are causing constitutional injury to the child. This is no common sense in such idiotic statement made by Nevada Courts.

NRS 125C.0035(5) runs afoul of the U.S. Constitution and the affect and negative impact authorizing the state to try litigants on criminal statutes in civil proceedings deprives the entire state of Nevada to their due process under the 14th Amendment.

On September 22, 2020, Amended order for domestic violence, When Shahrokhi was called by Burrow's counsel to testify, he "Plead the 5th Amendment." This is clearly Shahrokhi's right and it will not be held against him!

Shahrokhi further claimed only a criminal court could determine a domestic violence issue and that the "highest" burden of proof should apply, (*i.e.*, "beyond a reasonable doubt"). The standard in criminal cases is the highest burden and this Court clearly has jurisdiction to determine the issue.

Here, trial judge makes direct reference to Shahrokhi's decision not to testify which "is always a violation of the fifth amendment." [*Harkness v. State*, 107 Nev. 800, 820 P.2d]. Further, the trial judge insists he has jurisdiction to hear the criminal allegation, based on criminal statutes in a civil proceeding, and this shocks the conscious.

It's a clear abuse by the state judge and a very high risk of bias, which is constitutionally intolerable.

Pursuant to NRS 125C.0035(5), the State of Nevada continues to mislabel court proceedings to avoid constitutional protection guaranteed to its citizens. Further, the State continues to wrongfully convict litigants and then remove their liberty rights under the color of law.

It is critical for this Court to protect the interests of the citizens of Nevada making sure their constitutional rights are upheld in the Nevada Courts, instead of being violated by the same officers of the Court that have taken oaths to honor and apply the U.S. Constitution. Rebuttable presumptions do not arise in criminal matters, as in such the defendant would be compelled to testify against themselves which the Nevada Constitution strictly prohibits. After Shahrokhi invoked his fifth amendment, trial judge, put Shahrokhi on notice that this was his opportunity to rebut the DV, and in doing such trial judge was compelling Shahrokhi to testify. The trial judge knew that Shahrokhi had invoked his 5th amendment right in testifying on criminal matters, including domestic violence. The trial judge then goes on to ambush Shahrokhi into testifying regarding a message never brought-up by Burrow at trial.

Here, the trial judge took it upon himself to find evidence in the record and question Shahrokhi about it. Here, again, the trial judge wears a hat a judge and then wear a hat as a prosecutor trying Shahrokhi on criminal statutes in a civil proceeding. The underlying state case is a civil child custody between two private parties. Private

parties are prohibited from bringing claims stemming from criminal laws. There is no private right to bring criminal causes-of-action.

Before depriving a person of a liberty or property interest, the state, consistent with due process of law, must use procedures that balance the interests involved in the deprivation. "The essence of due process is the requirement that 'a person in jeopardy of serious loss (be given) notice of the case against him and opportunity to meet it.'"

[*Mathews v. Eldridge*, 424 U.S. 319, 348-49, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)].

Further, with such a grave claim to be heard, such as DV (outlined in NRS 33.018), the legislature must clearly specify the process and procedure for finding domestic violence in civil (and public proceedings for that matter) custody proceedings, such is not found or outlined anywhere in Nevada Law. The only process outlined in NRS 33, for applying DV findings in regard to protection orders/injunctions.

Shahrokhi has never been charged or convicted of the crimes which constitute DV by a lawful court with proper jurisdiction, proper notice and charges brought by the proper officials. Domestic Violence is a categorization of specific criminal acts committed and hence is inapplicable under the current circumstances, no criminal charges were properly brought against Shahrokhi.

Worst of all, Shahrokhi was immediately presumed to lose his right to joint custody. The trial judge references NRS 33, where he wrongfully asserted as proper notice to ALI. Specifically, on August 5, 2020, the trial judge claims Shahrokhi was given notice as to the DV allegations:

“Accordingly, the first issue to be determined at the 3 day evidentiary hearing will be if an act of domestic violence occurred, specifically under NRS 33.018(1)(e)(“A knowing, purposeful or reckless course of conduct intended to harass the other.”). The balance of the issues (relocation, custody, etc.) will follow that specific determination. (emphasis in original).”

[Appendix E]

The notice that the trial judge clings to, is insufficient and misappropriated. There is no specificity to allegations and certainly no indication that Shahrokhi would be on trial for crimes against the state.

There are no specific accounts of the alleged crimes (place, time, etc...) In Nevada, family court’s limited jurisdiction is proscribed at NRS 3.223(2), which provides that family courts have jurisdiction only over “actions for the issuance of a temporary or extended order for protection against domestic violence,” [NRS 3.223(2)]. However, and this is significant, NRS 3.223(2) confers no jurisdiction for family courts to issue permanent custody orders based on DV or criminal allegations initiated in custody proceedings, nor does the family court have jurisdiction to override the Nevada Constitution in commencing trial on criminal acts [See NRS 3.223(2)].

The criminal acts, for which Shahrokhi was tried, are not claims which can be brought about in child custody proceedings, which are supposed to be *civil* in nature. The Nevada Constitution prohibits such criminal claims in civil proceedings as is also recognized by the 9th circuit:

In Plaintiff's first cause of action, he alleges that LVMPD harassed him by following him with as many as five helicopters during his stay in Nevada. (Compl. (#1) at 4-5). Plaintiff is unclear on what legal basis his claim for harassment rests. Nevada law provides for a claim of [*6] harassment only under a criminal statute, see Nev. Rev. Stat. § 200.571(1), and as the present case is civil, Plaintiff cannot rely on this statute to state a claim for relief. *Wellesley v. Chief Fin. Officer*, 2010 U.S. Dist. LEXIS 73388, 2010 WL 2926162, at *1 n.4 (D. Nev. 2010). Additionally see, *Wallace v. Las Vegas Metro. Police Dep't*, 2012 U.S. Dist. LEXIS 135957, *5-6, 2012 WL 4361315 (D. Nev. September 21, 2012). "Counts I, II, and III further do not state a claim for harassment under N.R.S. 200.571. This Nevada state criminal statute does not give rise to a private right of action." *Lewis v. Nevada*, 2014 U.S. Dist. LEXIS 2045, *22, 2014 WL 65799 (D. Nev. January 6, 2014)

As the Nevada Supreme Court previously explained, the separation of powers provision of the Constitution—which states no one charged with exercising the powers of one branch may exercise “any function” pertaining to the others—is “probably the most important single principle of government” safeguarding Nevadans’ liberties.

The court went on to argue that even a single “seemingly harmless” violation of the principle should not be tolerated.

Under our state constitution, the Legislature writes the laws. See Nev. Const. art. 4, § 1; *Galloway v. Truesdell*, 83 Nev. 13, 20, 422 P.2d 237, 242 (1967). The Judiciary hears justiciable controversies and issues judgments and decrees in individual cases. See Nev. Const. art 6, § 6; *Galloway*, 83 Nev. at 20, 422 P.2d at 242. And the Executive “enforces” the laws. *Galloway*, 83 Nev. at 20, 422 P.2d at 242 (“The executive power extends to the carrying out and enforcing the laws enacted by the Legislature.”); see Nev. Const. art. 5, § 7 (the Governor “shall see [***167] that the laws are faithfully executed”); see also *Morrison v. Olson*, 487 U.S. 654, 706, 108 S. Ct. 2597, 101 L. Ed. 2d 569 (1988) (Scalia, J., dissenting) (prosecuting crimes is a “quintessentially

executive function"). The separation of these powers between three independent [**681] branches of government with the power to check-and-balance each other is a central tenet of our constitutional structure and a fundamental bulwark of democratic freedom. See *Morrison*, 487 U.S. at 706 (Scalia, J., dissenting) (citing The Federalist No. 47 (James Madison) (Random House 1941)); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635, 640, 72 S. Ct. 863, 96 L. Ed. 1153, 62 *Ohio Law Abs.* 417 (1952) (Jackson, J., concurring) ("[T]he Constitution diffuses power the better to secure liberty"; "The purpose of the Constitution was not only to grant power, but to keep it from getting out of hand."); cf. *Comm'n on Ethics v. Hardy*, 125 Nev. 285, 292, 212 P.3d 1098, 1103-04 (2009) (discussing differences between Nevada Constitution [*12] and U.S. Constitution).

This is constitutionally intolerable because such an egregious act as a judge exercising an executive branch function as a member of the judiciary has occurred in this case, Shahrokhi's rights have been severely violated and as such many other Nevadan's rights will be severely violated if this Court does not intervene.

Shahrokhi's liberties in parenting have been stripped regardless of how the trial judge has labeled the final judgment or spun off the order.. No visitation means no legal rights to your children, which means **termination of parental rights**, which is the fate Shahrokhi suffered.

Nevada courts label this order as primary custody and sole legal custody. Again, commons sense states if one cannot see his or her own child, and if one has no physical rights or legal rights to him your parental rights have been **TERMINATED!**

Why do Nevada courts label such custody orders as "primary" custody where the non-custodial parent has no visitation rights whatsoever? This is a fraud. The state does that for the single reason

of child support purposes where the state then starts enforcing child support collections against the non-custodial parents so the state could benefit from the federal program matching the child support collection which is a huge revenue for the state of Nevada. As such is not only a conflict, rather it is again gross miscarriage of a justice labeled off and spun off to avoid constitutional protections.

The Supremacy Clause is a clause within Article VI of the U.S. Constitution which dictates that federal law is the "supreme law of the land." This means that judges in every state must follow the Constitution.

Under the doctrine of preemption, which is based on the Supremacy Clause, federal law preempts state law, especially where the laws conflict. Parenting is a federal right which is owed protection in Nevada courts. Under the Supremacy Clause of the federal constitution, state courts are bound to follow the U.S. Supreme Court's interpretation of the Constitution. [See *State v. Floyd F. (In re N.G.)*, 2018 IL 121939, P1, 115 N.E.3d 102, 110, (2018)].

The presumption that the "best interest" of the child is served by awarding custody to [a] parent is deeply embedded in Nevada law." The State may not "infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a 'better decision' could be made.

CONCLUSION

The application for a stay of the Nevada supreme Court's affirmance of the final custody order judgment should be granted. At a minimum, the Court should stay the state court's judgment of criminal

findings and conviction of Shahrokhi. In addition, the Court may wish to construe this application as a petition for a writ of certiorari before judgment, grant the petition, and set this case for argument in the winter 2022 or spring of 2023 . [Cf. *Nken v. Mukasey*, 555 U.S. 1042 (2008)].

Date: **October 3, 2022**

RESPECTFULLY SUBMITTED.

A handwritten signature in black ink, appearing to read 'Ali', is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval shape.

/s/ Ali Shahrokhi

ALI SHAHROKHI

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