

FEB 23 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY: *Blawie*  
DEPUTY CLERK

1 IN Reply to the Respondent's Feb 3, 2023, Answering Brief, I, the  
2 Petitioner, In Pro Se, address their Discussion and conclusion portions of  
3 that brief as follows:

4 Background History

5 There are ample records in various motions and pleadings within my  
6 appeal via Writ of habeas corpus (post-conviction) that demonstrate good cause  
7 to excuse any procedural errors that prevented me from complying with  
8 procedural rules. For over nine (9) months, from Sept. 2021 through June, 2022  
9 the NDOC closed its law libraries in response to the COVID-19 pandemic  
10 policy it adopted. During that period inmates were provided legal supplies  
11 and were able to check out material via a paging-system where requests  
12 were delivered to the units weekly. To prevent the spread of disease only  
13 a "free-staff" law library supervisor made these rounds at NCC, where  
14 I was housed.

15 The paging-system-only has been ruled unconstitutional by the Nevada  
16 Supreme Court in several cases (see, Koerschner v. Warden, Spann v.  
17 Garcia and Evans v. Hatcher) and the 9th circuit has agreed. (see  
18 Toussaint v. McCarthy, et al)

19 IN NOV. 2021, I was nearing the 1-year time-bar to file my  
20 petition for writ of Habeas corpus. Even though I'd been denied physical  
21 access to the law library to research my grounds on their computers since  
22 September I didn't want to default. I filed my writ knowing I'd  
23 need to supplement it but ignorant of NRC's 21-day limit to  
24 do so. I was also ignorant that I'd need to seek the district court's  
25 permission to file a second petition. Without access to a law library  
26 ~~for~~ persons trained in the law I had no idea of how to proceed.  
27 ~~for~~ law library supervisor who made deliveries to our unit told

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1 Me that she wasn't allowed to help ~~me~~ other than to give ~~me~~ authorized  
2 supplies and documents requested; I was never advised about N.R.C.P.

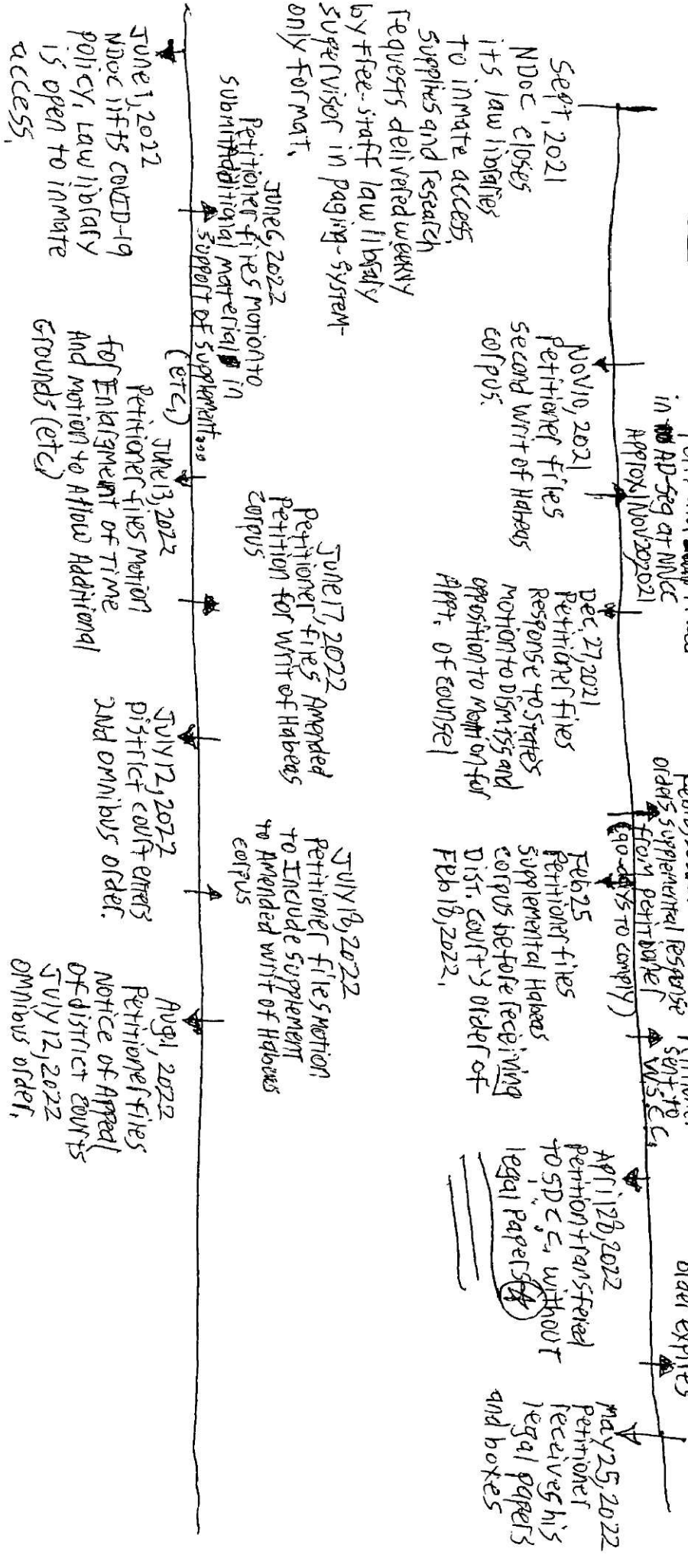
3 Shortly after filing my writ I was placed in Administrative  
4 Segregation (Ad-Seg) from Nov. 2021 until Feb. 28th, 2022. During  
5 that time I supplemented my petition with 3 more grounds. As I mailed  
6 copies to the court the court simultaneously ordered me to supplement  
7 my ~~petition~~ <sup>opposition</sup> to the Respondent's motion to dismiss my writ. On Feb. 28th  
8 I was transferred from N.N.C.C. to Warm Springs Corr. Ctr. (W.S.C.C.) The  
9 court had granted me 90-days to comply with its order and during this  
10 period I became aware that I'd need to do further research into my  
11 grounds after the law libraries were re-opened.

12 On April 28, 2022 I was transferred again. This time from W.S.C.C.  
13 to Southern Desert Corr. Ctr. where I am now. My legal papers weren't  
14 transferred with me and I didn't receive them until May 25, 2022.  
15 During that period the District court's 90-day time period expired.  
16 ~~During that period the District court's 90-day time period expired.~~ In my first 3 1/2 weeks at S.D.C.C.  
17 I was housed in a unit restricted from other inmates and no  
18 law library service was performed there.

19 In early June, 2022, the N.D.C. lifted its COVID-19 policy  
20 and only then allowed inmates to utilize its law libraries for  
21 legal research. On June 17, 2022, I was finally able to produce  
22 the final Amended writ of Habeas corpus that I am now appealing  
23 the district court's dismissal of.

24 The following page presents a graphic time-line showing that  
25 I was unable to have meaningful access to the courts by being denied  
26 physical access to the law library from Sept. 2021-June, 2022 and  
27 kept separated from my legal papers from April 28, 2022 - May 25, 2022.

Prime-lines during which the petitioner was denied meaningful access to the courts and/or persons trained in the law



(pg 3)

When petitioner arrived at SDCC, from WSCC, I was housed in Administrative segregation pending classification to general population. At this time I was separated from all my legal papers and supplies, the NDOC's COVID-19 policy preventing inmate access to its law libraries was in effect and there was absolutely no contact by "persons trained in the law." At that time I didn't even have stamps and/or envelopes to write the court and no legal supplies were provided because the law library was closed.

1 during that latter period (April 28, 2022 - May 25, 2022) the district court's  
2 90-day period, in which I was ordered to supplement my opposition to  
3 the Respondent's motion to Dismiss [my Petition], expired on or about  
4 May 15, 2022. Held in Administrative-segregation, during a period when the  
5 NDAC had closed its law libraries, separated from all my legal papers  
6 and incommunicado from any "persons trained in the law," I didn't  
7 even have writing utensils, paper or envelopes and stamps to write  
8 the court to comply with its order. Clearly this is an example of  
9 a "good cause" for the default of NRCP 15

10 Brown v. McDaniel 130 Nev. 565 (2014) holds, "To overcome these statutory  
11 procedural bars, a petitioner must demonstrate 'good cause' for the default  
12 and actual prejudice. NR 34.726(1), NR 34.810(3). We have defined  
13 'good cause' as a 'substantial reason... that affords a legal excuse.' Hathaway  
14 v. State 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (internal quotations  
15 omitted). To show good cause, a petitioner must demonstrate that an  
16 'impediment external to the defense' prevented him from complying  
17 with the procedural rules." Passinisi v. Dir., Dept. of Prisons 105 Nev. 63  
18 66, ~~769~~ 769 P.2d 72, 74, (1989) (citing Murray v. Carrier, 477 U.S.  
19 478, 106 S.Ct. 2639, 91 L.Ed.2d 397 (1986)); see also, Pellegrini v. State  
20 117 Nev. 860, 886, 34 P.3d 519, 537 (2001).

21 As to my failure to seek permission from the district court to file  
22 a second petition, as previously discussed, due to the conditions of  
23 my confinement that prevented me from physical access to a law library  
24 and/or contact with "persons trained in the law" during the 1-year time  
25 provided to submit a writ of Habeas Corpus, I had no means of  
26 becoming aware that such permission was necessary. In any case,  
27 the district court never stated that it was dismissing my writ due



1 to that procedural error. In fact, the district court proceeded to  
2 order me to supplement my opposition to the state's motion to dismiss  
3 without ever expressing the Respondent's alleged violations ~~of~~ of NRECP  
4 15 and/or NRS 34.750. The Respondents are only now raising these issues  
5 of non-compliance. It should be noted that in its Motion to Dismiss my  
6 Supplement ~~to~~ to Petition ~~for~~ for writ of Habeas corpus, dated April 8, 2022, the  
7 State conceded that the additional grounds could be construed as the  
8 response ordered by the district court on Feb 18th, 2022. The district  
9 court should have considered those claims and erred in not doing so.

10 The Ninth circuit has held that if a petitioner can make the Prima  
11 Facia showing for at least one claim in a second or successive petition  
12 the court will certify the entire petition for consideration by the  
13 district court. (See, Cooper v. Woodford 358 F.3d 1117, 1123 (9th Cir. 2004))  
14 Therefore, my June 17, 2022, Amended Petition for writ of Habeas corpus  
15 should have been considered by the district court.

### 16 CONCLUSION

17 All procedural defaults and/or non-compliance issues with NRS 34.750  
18 stem from the extraordinary circumstances of the NDOC's closures  
19 of its law libraries in response to the COVID-19 Pandemic. During the  
20 period I was denied meaningful access to the courts because I was denied  
21 physical access to the law libraries at 3 different facilities nor was I able  
22 to have contact with persons trained in the law.

23 "Access to the courts entails prisoners' right to access legal  
24 materials and prisoner law clerks." Gomez v. Vernon 255 F.3d 1118  
25 (9th Cir. 2001) See also, US v Cooper 375 F.3d 1041 (10th Cir. 2004) and  
26 Bourdon v. Loughren 386 F.3d 88 (2nd Cir. 2004)

27 This access was further denied when I was placed in Administrative  
28 Segregation at Southern Desert Corr. Ctr. and separated from

1 My legal papers from April 28, 2022 - May 25, 2022. During that time  
2 I was confined inside a unit without any legal papers, envelopes, stamps  
3 of stationery and no free-staff or inmate law clerks came to the unit.

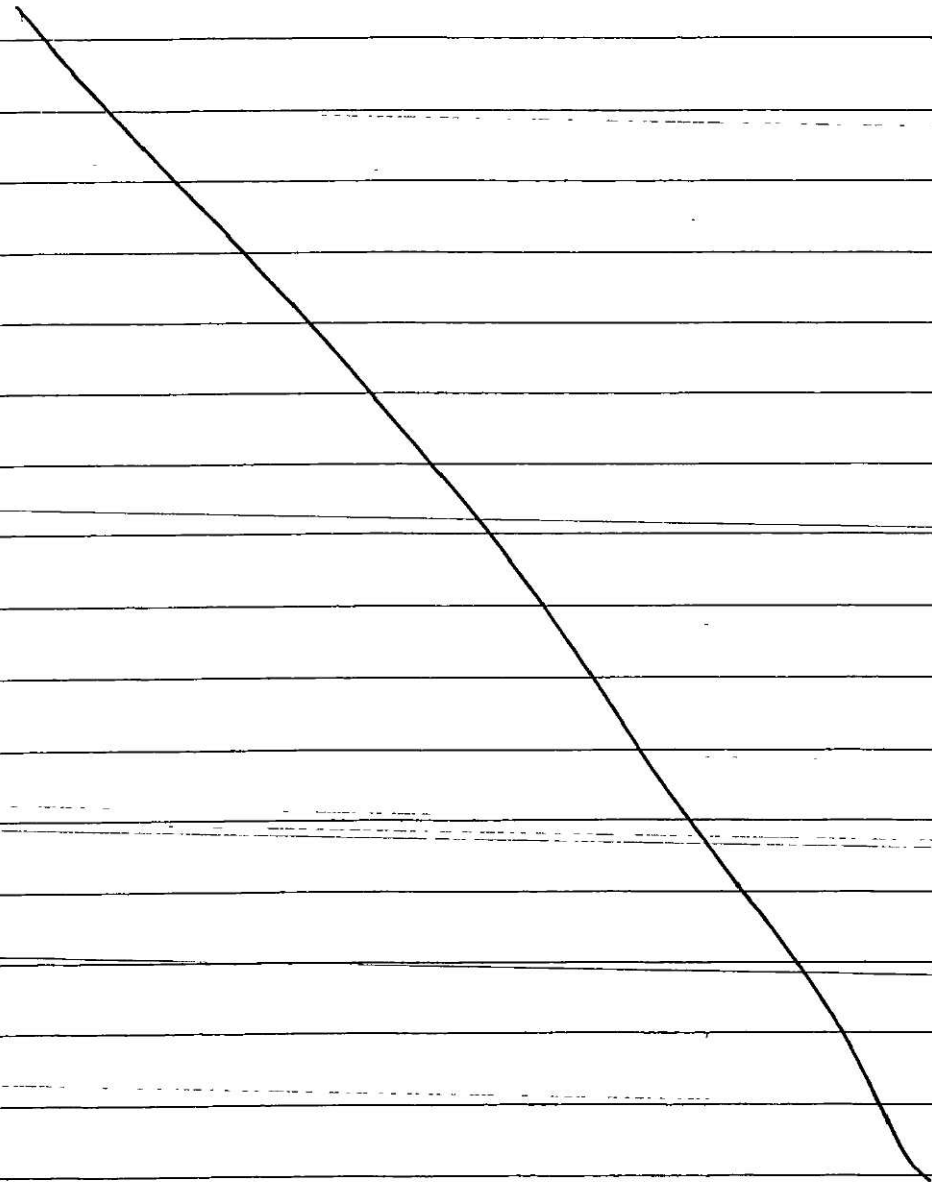
4 "Meaningful access to courts necessarily involves the ability to file  
5 legal papers and the use of accessories required to prosecute legal  
6 claims." *Toolasprashad v. Bureau of Prisons* 286 F.3d 576 (D.C. Cir 2002)

7 As to the doctrine of the law of the case which the district court  
8 applied, there are several grounds upon which the district court should  
9 have counteracted that are independent of the grounds addressed by  
10 the Nevada Supreme court. (See again, *Cooper v. Woodford* 358 F.3d 1117,  
11 1123 (9th Cir 2004). See also, extant case law stating, "When State Decisis  
12 is incorrect or badly reasoned it should be overturned." (Citation unknown)

13 The Nevada Supreme court's doctrine of the law of the case is in direct  
14 opposition to the holding of its decision in *Hano v. Nev* 131 Nev 1288 (Nev  
15 2015) quoting *Webster v. Woodford* 369 F.3d 1062, 1072 (9th Cir 2004) holding  
16 that a robbery victim, "clearly had constructive possession of the car at the  
17 time he was attacked by virtue of having the keys to the vehicle," and  
18 *U.S. v Brett* 872 F.2d 1365, 1369 and n.3 (8th Cir 1989) holding that possessing a key  
19 establishes dominion of control to impute constructive possession and noting that,  
20 "every other circuit to address this issue agrees that the holder of a key, be it  
21 to a dwelling, vehicle or motel room in question has constructive possession of  
22 the contents therein." Emphasis by petitioner.

23 Since I was in possession of the key from the commission of Grand  
24 Larceny of a motor vehicle occurring 5 days earlier I was in possession of  
25 the truck itself, as the court's decision in "Hano" holds. ~~that~~ I was in  
26 possession of the truck before I entered it on Jan 3rd, 2018.  
27 Therefore, the Nevada Supreme court erred in its doctrine of  
28 the law of the case in my case. They ruled that my intent

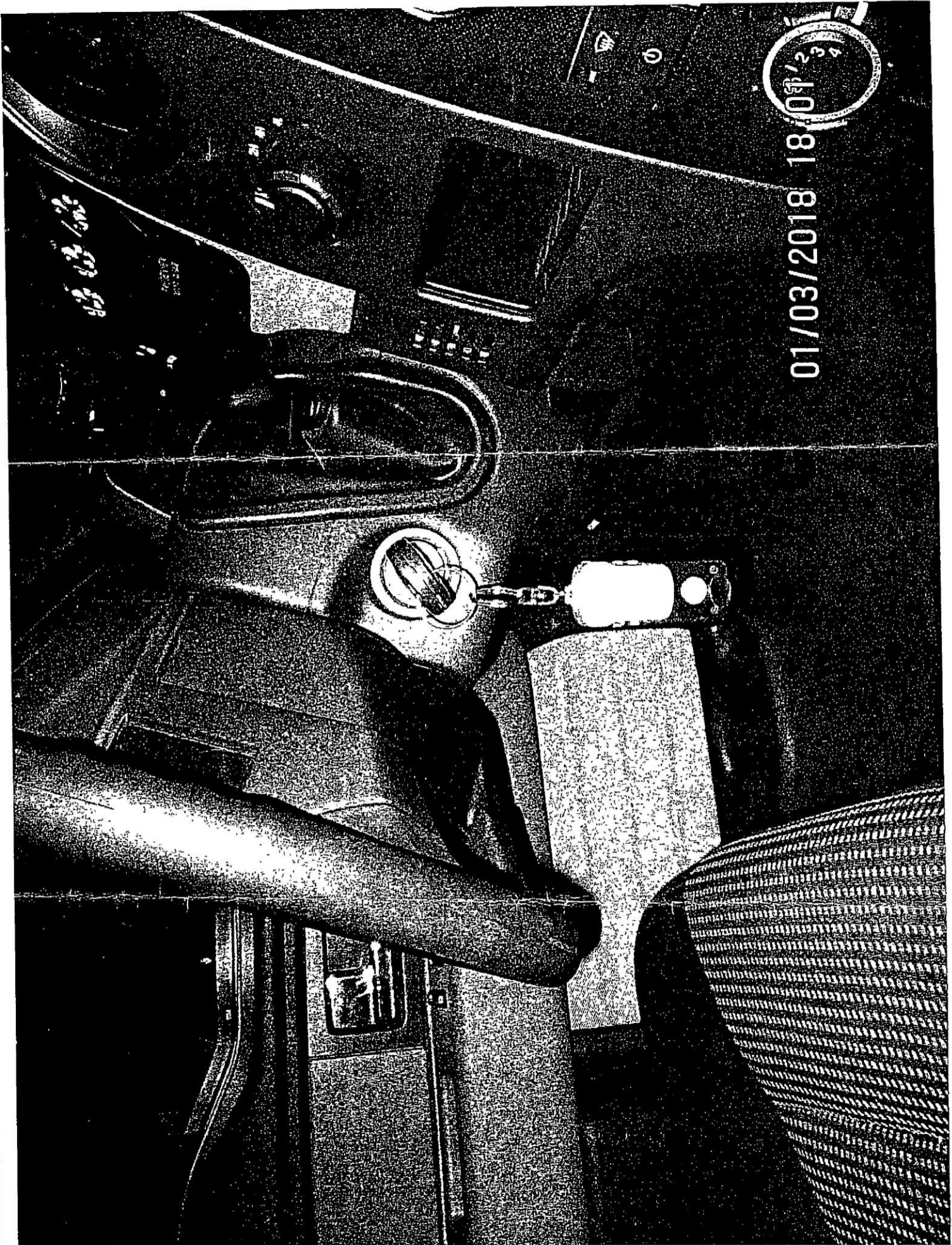
1 -ion upon entering the TRUCK was to possess it, which  
2 is a logical and factual impossibility. This claim of actual  
3 -factual innocence is re-asserted in my June 17th, 2022,  
4 Amended Petition for writ of Habeas Corpus and if it had been reviewed  
5 by the district court as it should have as per Cooper v. Woodford  
6 358 F.3d 1117, 1123 (9th Cir 2004) ~~therefore~~ then all my grounds  
7 within that document should have been reviewed.  
8



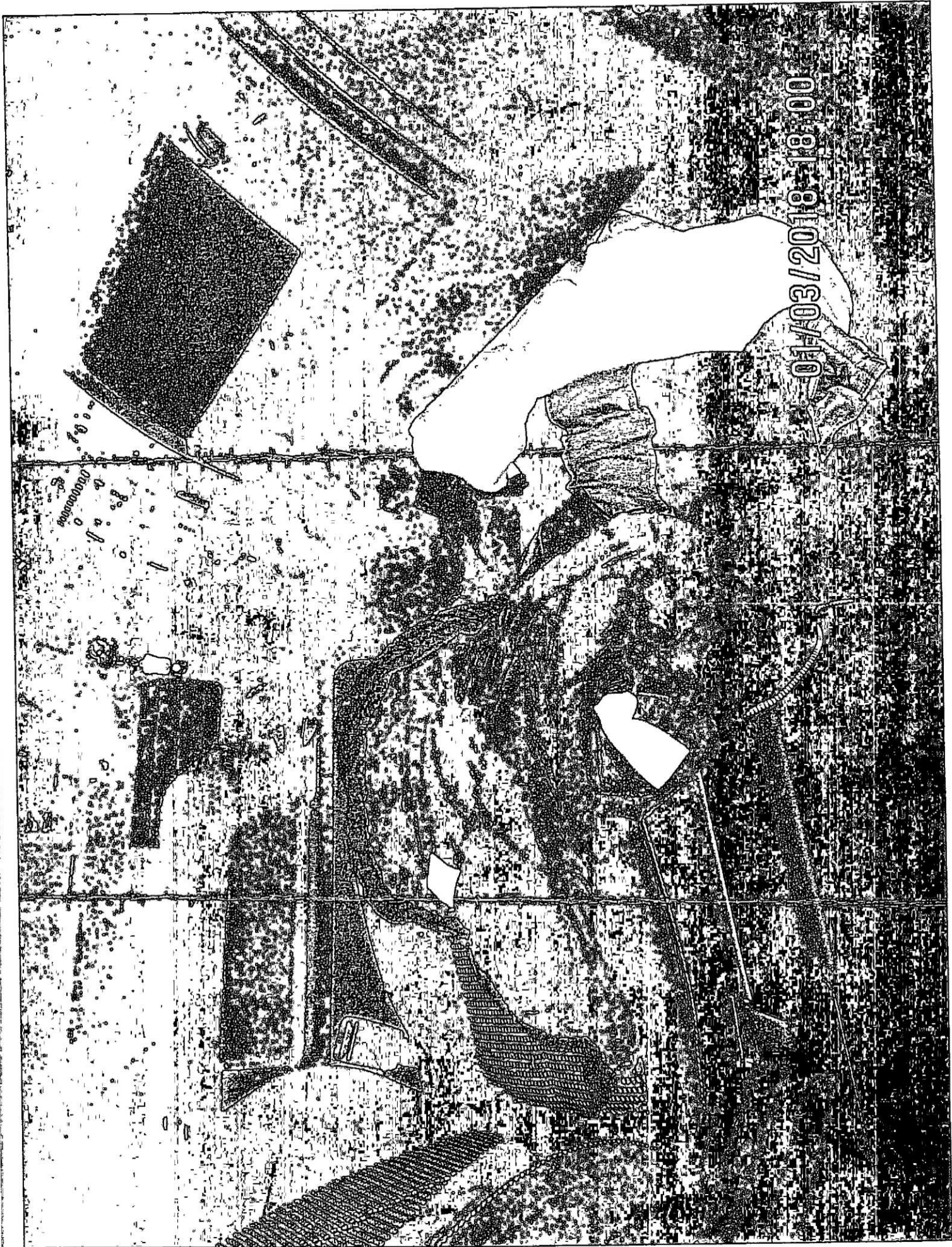




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AFFIDAVIT OF: Keith Sullivan

STATE OF NEVADA )  
                          )     ss:  
COUNTY OF CLARK )

TO WHOM IT MAY CONCERN:

I, Keith W Sullivan the undersigned, do hereby swear that all statements, facts and events within my foregoing Affidavit are true and correct of my own knowledge, information and belief, and as to those, I believe them to be True and Correct. Signed under the penalty of perjury, pursuant to, NRS. 29.010; 53.045; 208.165, and state

the following: The contents of my reply to the respondents brief are true and correct

FURTHER YOUR AFFIANT SAYETH NAUGHT.

EXECUTED At: Indian Springs, Nevada, this 17 Day of February.

2023.

BY: Keith Sullivan  
Keith Sullivan # 92630  
Post Office Box-208 (SDCC)  
Indian Springs, Nevada. 89070. /  
Affiant, In Propria Personam:

CERTIFICATE OF SERVICE

I, Keith W. Sullivan, hereby certify that I am the  
Petitioner in this matter and I am representing myself *in propria persona*.

On this 17th day of February, 2023, I served copies of  
the Reply to the Respondent's Answering Brief

in Case No. \_\_\_\_\_, and placed said document(s) in the United States  
Mail, first-class postage prepaid, addressed as follows:


Nevada Supreme Court  
Court of Appeals  
201 S. Carson St Suite 201  
Carson City, NV 89701-4702

Nevada Atty Gen Office  
100 N. Carson St  
Carson City, NV 89701-4717

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he is the Petitioner in the  
above-entitled action, and he has read this Certificate of Service and the information  
contained therein is true and correct.

Executed pursuant to 28 U.S.C. § 1746 and 18 U.S.C. § 1621 at  
\_\_\_\_\_ on this 17 day of  
February, 2023.

  
\_\_\_\_\_  
Keith W. Sullivan  
Petitioner - *In Propria Persona*

NDOC No. 9260