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2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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4 Electronically Filed
5 Sep 23 2011 11:04 a.m.
6 Tracie K. Lindeman
7 Clerk of Supreme Court

8 MICHAEL DAMON RIPPO,)

Case No. 53626

9 Appellant,)

10 vs.)

11 RENEE BAKER, Warden, Ely State)
12 Prison, CATHERINE CORTEZ)
13 MASTO, Attorney General of Nevada,)

14 Respondents.)
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RESPONSE TO NOTICE OF SUPPLEMENTAL AUTHORITIES

Appellant Michael Damon Rippo, through undersigned counsel, submits this Response to Notice of Supplemental Authorities. This Response is based upon the following memorandum and all papers and pleadings on file.

Dated this 23rd day of September, 2011.

Respectfully submitted,

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1 **MEMORANDUM**

2 On September 20, 2011, the state filed a notice of supplemental authorities pursuant
3 to NRAP 31(e), bringing the cases of Harrington v. Richter, 131 S. Ct. 770 (2011), and
4 Cullen v. Pinholster, 131 S. Ct. 1388 (2011), to this Court's attention. Harrington was issued
5 on January 19, 2011 (over ninth months ago), and Pinholster was issued on April 4, 2011
6 (over five months ago). The representative for the state has been aware of both cases for
7 over four months, as shown by the answering brief he filed with this Court on May 25, 2011,
8 in Greene v. State, Nev. Sup. Ct. No. 55971, which cites to both cases, yet his supplemental
9 notice of authorities was filed only thirteen days before oral argument in the instant case.

10 The state asserts that Harrington and Pinholster "clarify the Strickland standard for
11 ineffective assistance of counsel by narrowing the permissible review of counsel's duty to
12 investigate and to employ expert witnesses and by reaffirming the strong presumption that
13 counsel's actions were strategic without need for an evidentiary hearing." Memorandum of
14 Supplemental Authorities at 2.

15 Harrington and Pinholster do not alter the Strickland standard in any way or narrow
16 the scope of this Court's review of an ineffective assistance of counsel claim as those cases
17 only apply in federal habeas corpus proceedings. Specifically, both cases apply a layer of
18 deference as required by 28 U.S.C. § 2254(d) when a federal court reviews the decision of
19 a state court. However, in the instant case, those precedents have no application because this
20 Court is not a federal court reviewing the decision of a state court, and the considerations of
21 comity and federalism underpinning section 2254(d) have no relevance whatsoever in this
22 matter. Mr. Rippo notes that no state court in the nation has relied upon either Harrington
23 or Pinholster as either altering the relevant Strickland standard of ineffective assistance of
24 counsel or limiting the scope of review of such a claim. This Court is therefore obligated to
25 review Mr. Rippo's claims de novo using the Strickland standard and it is not permitted to

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1 apply the levels of deference discussed in Harrington and Pinholster as they are based
2 entirely on the federal habeas corpus statute.

3 DATED this 23rd day of September, 2011.

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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 23rd day of September, 2011. Electronic Service of the foregoing **RESPONSE TO NOTICE OF SUPPLEMENTAL AUTHORITIES** shall be made in accordance with the Master Service List as follows:

Steven Owens, Deputy District Attorney

Katrina Manzi,
An Employee of the Federal Public Defender