1	MOTN MICHAEL LASHER, ESQ.				
2	Michael Lasher LLC				
3	Nevada Bar No. 13805 827 Kenny Way				
4	Las Vegas, Nevada 89107 (510) 507-2869	Electronically Filed Apr 21 2020 11:39 a.m Elizabeth A. Brown			
5	Michaellasher2@gmail.com				
6	Attorney for Appellant	Clerk of Supreme Court			
7					
8	DISTRICT	COURT			
9	CLARK COUNT	Y NEVADA			
10					
11	THE STATE OF NEVADA,				
12	Plaintiff,	Supreme Court Case No.: 79556			
13	vs.	Dist. Ct. Case No.: C-17-323098-1			
14					
15	RAMON MURIC DORADO,				
16	Defendant.				
17 18	APPELLANT RAMON DORADO'S MOTION FOR BAIL ON APPEAL UNDER				
18	<u>NRS 178</u>	.488			
20	COMES NOW, appellant RAMON D	ORADO, by and through his attorney,			
21	MICHAEL LASHER, ESQ. and hereby submits the following Motion for Bail on				
22	Appeal under NRS 178.488. This Motion is made and based upon the papers and				
23	pleadings on file in this matter, the Points and Authorities which follow, and				
24	argument of counsel hereinafter entertained by the Court at any hearing of said				
25					
26	Motion.				
27	DATED this 21st day of April, 2020				
28					
	1				

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RESPECTFULLY SUBMITTED: MICHAEL LASHER, ESQ. Michael Lasher LLC Nevada Bar No. 13805 827 Kenny Way Las Vegas, Nevada 89107 (510) 507-2869 Michaellasher2@gmail.com Attorney for Appellant

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2					
3	NOTICE OF MOTION				
4	TO: STATE OF NEVADA, Plaintiff; and				
5	TO: STEVEN WOLFSON, District Attorney, Attorney for Plaintiff				
6	YOU WILL PLEASE TAKE NOTICE that the undersigned will bring the				
7					
8	above and foregoing MOTION FOR BAIL ON APPEAL UNDER NRS 178.488on				
9	the 21st day of April, 2020 in the above entitled Court, or as soon thereafter as				
10	counsel may be heard.				
11	RESPECTFULLY SUBMITTED:				
12	\bigwedge				
13	MICHAEL LASHER, ESQ.				
14	Michael Lasher LLC				
15	Nevada Bar No. 13805 827 Kenny Way				
16	Las Vegas, Nevada 89107				
17	(510) 507-2869				
18	Michaellasher2@gmail.com Attorney for Appellant				
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2	MEMORANDUM OF POINTS AND AUTHORITIES				
3	I. PROCEDURAL BACKGROUND				
4					
5	On April 27, 2017, the State of Nevada filed an indictment charging				
6	appellant Ramon Dorado with three counts of sexual assault (NRS 200.366.2b)				
7	occurring 18 years prior, in April of 1999. The delay was entirely attributable to				
8 9	the State's failure to conduct DNA testing for lack of funds. In the intervening				
10	years, the State lost and destroyed critical evidence against Dorado, who was				
11	convicted on June 20, 2019 after a jury trial. 2 AA 180. He was sentenced to				
12	twenty years to life. 2 AA 181-82.				
13					
14	Appellate pleading is nearly complete. Appellant's Opening Brief was filed				
15	on. Respondent's Answering Brief was filed on April 3, 2020. And appelant's				
16	reply is due on May 13, 2020.				
17	II. RELEVANT BACKGROUND				
18 19	On the January 30, 2020, the COVID-19 outbreak was declared a Public Health				
20	Emergency. ¹ On April 5, 2020, the Surgeon General of the United States called the				
21	week one of the saddest for most Americans and compared it to our "Pearl Harbor"				
22	1 "0/11" menute ? The enced of the COVID-10 sime enced the model				
23	and "9/11" moments. ² The spread of the COVID-19 virus across the world,				
24					
25	¹ See The WHO, http://www.who.int/emergencies/diseases/novel-coronavirus- 2019/events-as-they-happen, 31 December 2019.				
26					
27	² See, e.g., https://www.time.com/5815870/jerome-adams-surgeon-general-saddest- week-covid-19.				
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1	including every state in the country, poses an unprecedented danger that no person				
2	fully understands. We have been told by the authorities to stay home, wash hands				
3	repeatedly, and socially distance ourselves by not getting closer than six feet to				
4	anyone. The Center for Disease Control ("CDC") states that there is a "high-risk				
6	severe illness" for those individuals who are: (1) aged 65 years or older; (2) living in				
7					
8	chronic lung disease or moderate to severe asthma; (4) people of any age with				
9	severe obesity; or (5) people with an underlying medical condition, such as				
10					
11	diabetes. ³ Under the best of circumstances, the conditions of a detention facility				
12	maximize virus transmission. With the increased risk of contracting Covid-19 the				
13	court in this matter should consider a compassionate release of detainees until				
14 15	such time as the COVID-19 risk abates.				
16	This Motion is brought pursuant to the changed circumstances and health				
17	concerns related to the COVID-19 pandemic, as Mr. Dorado is considered high risk				
18 19	due to his respiratory medical condition. As of April 21, 2020, Clark County alone				
20	has 2000 confirmed cases of the COVID-10 and 127 confirmed deaths from the				
21	virus ⁴ and High Desert State Prison, where appellant is housed, is among the				
22					
23					
24					
25	³ See CDC, https://www.cdc.gov/coronavirus/ 2019-ncov/need-extra-precautions/				
26	groups-at-higher-risk.html. ⁴ See https://www.reviewjournal.com/news/politics-and-				
27	7 government/nevada/number-of-new-covid-19-cases-in-clark-county-nevada-holds-				
28	steady-2010271/				
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1	facilities infected with the fatal virus. ⁵ Both the total number of confirmed cases					
2	and death toll are growing every day and incarcerated individuals, particularly					
3	those with underlying health conditions, are at even higher risk than other					
4 5	populations.					
6	On March 15, 2020, Governor Sisolak ordered a shutdown of non-essential					
7	services in Nevada. Other than hospitals, jails and prisons are the only places left					
8	with large populations of people. COVID-19 is a new, constantly evolving threat to					
9 10	the health and safety of every person, but particularly to incorrected meanly					
11	According to public health experts, incarcerated individuals "are at special risk of					
12	infection, given their living situations," and "may also be less able to participate in					
13	proactive measures to keep themselves safe." ⁶					
14 15	The coronavirus outbreak has reached correctional facilities throughout the					
16	entire United States and specifically, on April 13, 2020, CCDC announced its first					
17	confirmed case of COVID-19.7 On April 15, 2020, CCDC announced three more					
18 19	inmates had tested positive. ⁸ And cases have been reported at High Desert State					
20						
21	⁵ See https://www.reviewjournal.com/local/local-nevada/178-coronavirus-cases-in-					
22	nevada-nursing-homes-prisons-2005745/ ⁶ See <i>Achieving A Fair and Effective COVID-19 Response: An Open Letter to Vice</i>					
23	President Mike Pence, and Other Federal, State, and Local Leaders from Public Health and Legal Experts in the United States, signed by over 800 health experts and					
24	agencies (March 2, 2020) (available at https://bit.ly/2W9V6oS).					
25	⁷ See Inmate at Clark County Detention Center treated for COVID-19, (April 14, 2020)					
26	(https://www.fox5vegas.com/coronavirus/inmate-at-clark-county-detention-center-treated-for- covid-19/article_fd96da8c-7de0-11ea-81a9-eb87d52a1ce4.html)					
27 28	⁸ See <i>Three More Clark County Jail Inmates test Positive for Coronavirus</i> (April 15, 2020) (https://lasvegassun.com/news/2020/apr/15/3-clark-county-jail-inmates-test-positive-virus/)					
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Prison even earlier, allowing the pandemic an even longer time to spread.⁹ Courts and correctional institutions throughout the United States have started releasing inmates to halt the virus's spread, which would be catastrophic in a prison setting.

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Jails and prisons are notoriously unsanitary and the protective measures 6 7 necessary to avoid COVID-19 simply aren't available to appellant or any other 8 inmate. It is virtually impossible to achieve social distancing in the prison or jail. 9 Inmates share toilets, sinks, showers, eat in cafeterias and have limited access to 10 soap, hot water, and other necessary hygiene items. Inmates are controlled by the 11 12 jail staff and can only wash their hands when officials allow it, are unable to avoid 13 touching high-touch surfaces, or even clean and disinfect their own living space 14 when necessary.¹¹ Additionally, staff at CCDC pose a severe risk to the inmates, 15 they enter and exit daily to go home to their communities and with inadequate 16 17 infection screening procedures, the spread of COVID-19 within the jail is 18 inevitable. Overcrowding, scarce medical care, and the number of vulnerable 19 people in custody make the risk of uncontrolled spread of COVID-19 in jails or 20 21 prison even greater. Scarce medical care is also of grave concern as doctors, 22

- ²³ 9 See https://www.reviewjournal.com/crime/courts/nevada-prisons-a-powder-keg-in ²⁴ a-pandemic-lawyers-say-2001662/
- ²⁵ 10 The Marshall Project, Tracking Prisons' Response to Coronavirus (March 17, 2020; updated March 18, 2020) (available at https://bit.ly/2IXeZHT).
- 27 11 Prisons and Jails are Vulnerable to COVID-19 Outbreaks, The Verge, (Mar. 7, 2020)
 28 (available at https://bit.ly/33qGcfC).

1	nurses, hospitals and clinics are already overwhelmed because of shortages of			
2	supplies, beds and resources. When treatment is absolutely necessary, inmates will			
3	get transferred to hospitals, if beds are available, as bad cases of COVID-19 can't			
4	be treated by medical staff at CCDC. Further, symptoms will likely go unnoticed or			
5				
6	untreated until the very last minute. Releasing appellant will not only protect him			
7	from the risk of infection when the coronavirus outbreak inevitably gets worse in			
8	High Desert State Prison, but also avoids the inevitable impact upon the quality of			
9 10	the medical care he requires by taxing an already taxed system. ¹²			
11	Based on research, healthy individuals and/or inmates can weather the virus			
12	if they get it, however, appellant may not be able to since he is among the group of			
13	people the Centers for Disease Control and Prevention categorizes as being the			
14	most at-risk for contracting COVID-19. Appellant has a heightened risk of			
15				
16	contracting severe forms of the virus because he has chronic asthma. ¹³			
17	On information and belief, appellant's chronic asthma is well documented in			
18	his medical records. ¹⁴ He is currently is being treated at the Detention Center for			
19 20	his respiratory disease. He is prescribed an asthma inhaler with Xopenex-HFA by			
20	Dr. Martin (prescription number 324471) and Amoxicillin (prescription number			
22	bi. Martin (prescription number 524471) and Amoxichini (prescription number			
23				
24	¹² See U.S. Dep't of Justice, Bureau of Justice Statistics, Laura M. Maruschak, Marcus Berzofsky, and Jennifer Unangs, Medical Problems of State and Federal Prisoners and Jail			
25	Inmates, 2011-2012 at 1-22 (Feb. 2015) (available at https://bit.ly/2WpPiI7).			
26	¹³ See CDC, If You Are at Higher Risk (last visited April 21, 2020) (available at			
27	https://bit.ly/2UhHAwT).			
28	¹⁴ Counsel is in the process of obtaining a copy of appellant's prison medical records and will provide these when available if requested or required by this Court.			
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324470) for bronchitis. In sum, appellant's health condition places him at a high
risk for COVID-19 and contracting the virus could be fatal in his case. As such,
this motion has been brought to notify this Court of appellant's serious and
sensitive medical condition, as it relates to contracting the COVID-19 deadly virus,
and it is respectfully requested that same be taken into consideration in releasing
him on his own recognizance or in setting a reasonable bail in light of this current
local and national crisis.

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III. LEGAL ARGUMENT

NRS 178.488 states that "bail may be allowed pending appeal or certiorari 11 12 unless it appears that the appeal is frivolous or taken for delay." The statute 13 specifically allows this Court to entertain such motion. In Bergna v. State, 120 14 Nev. 869, 874, 102 P.3d 549 (2004), this Court noted that a court which considers a 15 request for appeal bail can consider the strength and quality of the evidence, the 16 17 nature and circumstances of the offense, and the appellant's danger to the 18 community should he be released.

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i. Frivolity of the Appeal and Strength/Quality of the Evidence

Dorado's appeal is not frivolous. He raises seven issues: Almost Twenty Vears of Pre-indictment Delay Prejudiced Appellant; The Court Lacked Jurisdiction Because the Statute of Limitations Bars Prosecution; Appellant was Denied Due Process by the State's Failure to Collect Evidence and Preserve What they Did Collect; The State used Race-Based Peremptory Strikes; The District Court Erroneously Limited Defense Expert Witness Testimony; The District Court Erroneously Denied Relevant Defense Evidence; and The Prosecutor Committed Multiple Acts of Misconduct During Closing Argument. Each issue requires reversal.

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Regarding the first issue, preindictment delay, it is clear that Due Process 5 has been violated under the test articulated in United States v. Ross, 123 F.3d 6 7 1181, 1185 upon balancing the State's reason for the delay against the prejudice 8 to Dorado. Here, the reason for the delay was at best negligence or recklessness since the State frankly admitted that at the time of the alleged crimes, Metro did 10 not have the funds to conduct testing. 3 AA 203. Nonetheless, law enforcement 11 12 had the name and potential residence of the suspect but did no further 13 investigation. 9 AA 856. Nor is there any indication that the police attempted to 14 speak to the three people Lehr identified at the apartment: the young man in the 15 apartment and two women who Lehr passed as she left. See exhibits to October 16 17 29, 2018 State's Opposition. 2 AA 114 et seq. Worse, law enforcement destroyed 18 the physical evidence that they had collected a mere eight months after the 19 alleged incident. The State's own witness, Detective Cody, testified that protocols 20 21 are different now, indicating that the prior investigation was poor. 9 AA 856.

Dorado was significantly prejudiced. The SANE nurse, who had a chance booserve the alleged victim's demeanor and who concluded the injuries were minimal, died in 2011. 1 AA 71. Furthermore, at trial, Detective Cody enumerated all of the physical and documentary evidence that was lost. 9 AA 865, 867. All that remained was the DNA, the poor transcript of Lehr's voluntary 28

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statement, and law enforcement's continuation report but not the original police 1 report. 2 AA 114 et seq. Lost to time were the original tape recording of Lehr's 2 3 statement to the detective, her clothing on the night of the crime (2 AA 115; 9 AA 4 865, 867), the 911 call (2 AA 158), and any business records of 2101 Sunrise, 5 which had been torn down in the intervening years (1 AA 94). And because the 6 7 police destroyed Lehr's clothing, Lehr's statement that the pantyhose were ripped could not be ascertained.

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The destruction of the evidence is an additional strong ground for relief. 10 Dismissal is warranted as a violation of due process when the State loses critical 11 12 evidence that it had previously gathered. Cook v. State, 114 Nev. 120, 125 (1998), 13 a sexual assault case in which the defendant and complaining witness had 14 significantly different versions of the events, held, "A conviction may be reversed 15 when the state loses evidence if the defendant is prejudiced by the loss or the 16 17 state acted in bad faith in losing it." In the instant case, Metro collected and then 18 lost (1) the original audiotape of Lehr's statement to the detective (2 AA 115; 9 19 AA 865, 867), (2) the clothing she wore on April 24, 1999 (Ibid), and (3) the 911 20 21 call (2 AA 158). The law is clear that the charges must be dismissed because 22 Dorado suffered prejudice. Here, the audiotape of Lehr's statement, her clothing. 23 and the 911 call all could have each impeached her trial testimony. The 24 audiotape could be used to fill in the extensive missing sections of the transcript, 25 26 including whether the alleged assailant used a condom. As well, the 911 call is 27 often more truthful than a complaining witness' later statement. Furthermore, 28

1 the clothing, destroyed after only a few weeks, could have shown a lack of 2 struggle.

3 As just one more example of a strong appellate issue, the district court 4 erroneously excluded evidence that Lehr's best friend doubted Lehr's statement 5 that she had been raped because Lehr and she had had "crazy nights" in which 6 7 Lehr had sexual relations with men in the two months prior to this incident. 8 8 AA 792, 796. Notably, this proffered testimony directly contradicted Lehr's 9 testimony that this was the first time she left her two-year-old son alone and the 10 first time she went out to socialize since his birth. 7 AA 643, 689. As well, the 11 12 friend's statement could have rebutted the State's theory that all of the injuries 13 were caused by Dorado.

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Clearly the appeal is not frivolous and the issues are strong.

ii. Nature and Circumstances of the Offense

17 Dorado has always maintained his innocence and that his interactions 18 with Ms. Lehr were consensual. Ms. Lehr, the only percipient witness to the 19 events, testified that she went dancing with friends at the Silver Saddle late in 20 21 the evening on April 23, 1999. 7 AA 635. After socializing with band members 22 and bar staff, they made a plan to go to PT's Pub. 7 AA 648. Dorado got in the 23 car with Ms. Lehr and said he needed to go to a friend's apartment to call work. 7 24 AA 650-51. Once there, she testified that Dorado picked her up and carried her 25 towards the bedroom. 7 AA 661. He put her on the bed and tried to take her 26 27 clothes off. 7 AA 662-63. Ms. Lehr blanked out for a second or two. 7 AA 665. 28

Dorado allegedly put his mouth on her vagina, rubbed his half-erect penis against her, and put his fingers inside her. 7 AA 666, 669, 670. Ms. Lehr left and eventually went to the police and then UMC. 7 AA 674-75. In 2007, she was convicted of conspiracy to commit theft. 7 AA 684-85, 688.

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iii. Potential Danger to the Community

7 Dorado would not be a danger to the community should he be released. 8 First, he has a strong support system and a large group of family and friends. 9 Should he be released, his sister, Blanca Muric, has offered him a place to live in 10 Las Vegas. She has no felony convictions and works in the TJ Maxx distribution 11 12 center. His elderly mother, Virginia Dorado, also lives in Las Vegas and he 13 would be expected to care for her. Dorado's adult children, Ruby and Ramon, 14 also live in Las Vegas, as does his other sister, Lorena Muric and her children. 15 Dorado sporadically lived in Las Vegas in 1998 and then permanently beginning 16 17 in 2003. His ties to the community are clearly strong and his support system 18 consists of reputable people that will vouch for his reliance and responsibility. 19

Should Dorado be released, he will seek gainful employment. Prior to his arrest, he obtained his commercial driver's license and worked as a truck driver for EnviroTech Drilling. Exh. 1. At the moment, there is a great need for commercial truckers and Dorado should easily find a job.

Proper measures can be pursued, and conditions set, such as house arrest, to protect the community and ensure that Dorado is not a threat to anyone, including the issuance of a stay-away order from Ms. Lehr. That he poses little threat is demonstrated by the fact that he has used his time while incarcerated to better himself by completing classes to assist in his re-entry, including programs from New Beginnings and Turning Point. Exh. 1.

Finally, the current circumstances in which Nevada and the United States are operating because of the global pandemic, COVID-19, should be considered in determining whether Dorado should be afforded bail on appeal. Dorado is not only at high risk to contract the virus because he is incarcerated but most importantly, he is among the population that is most at risk based on his underlying medical condition effecting his respiratory health.

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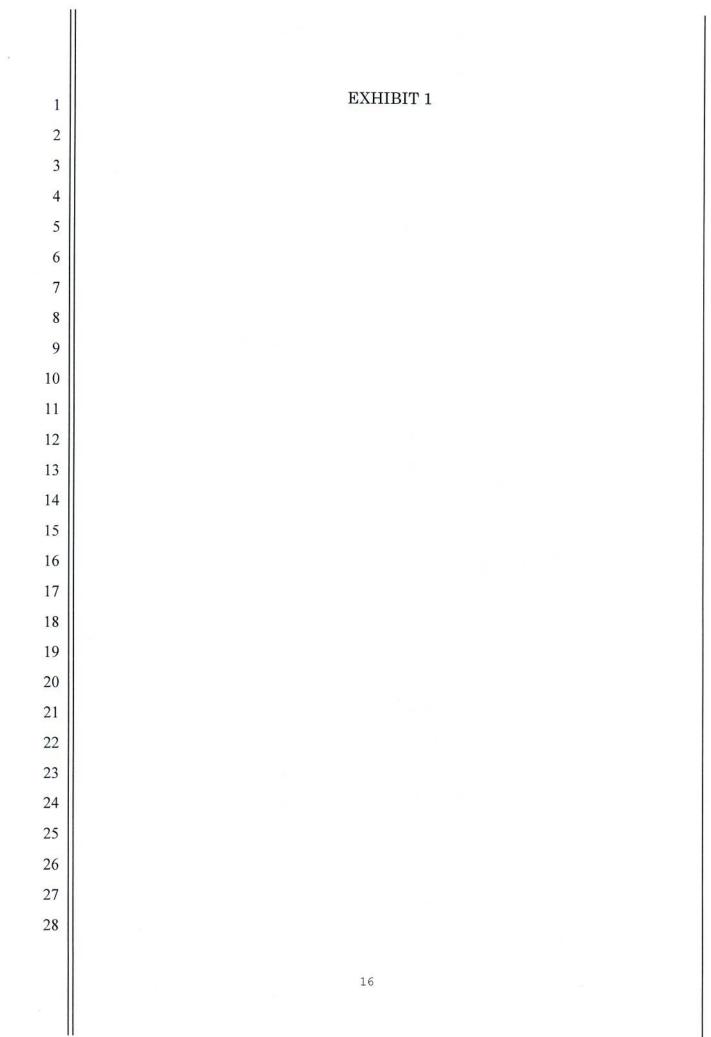
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IV. CONCLUSION

Dorado respectfully requests that this Court release him on reasonable 15 bail. Given the changed circumstances of the underlying case related to the local 16 and global COVID-19 pandemic and Dorado's chronic asthma, he should be 17 18 considered for release because he is at high risk for contracting the possible fatal 19 COVID-19 virus and spreading it through the jail. Also, given his family and 20 communal ties, his employment history, he does not pose a risk of absconding 21 and does not pose a risk to the community. Finally, the appeal is not frivolous 22 23 and contains matters which will lead to reversal of the convictions. For these 24 reasons, this Court should exercise its discretion in favor of fairness and release 25 Dorado on a reasonable bail with reasonable conditions to ensure the safety of 26 27 the community.

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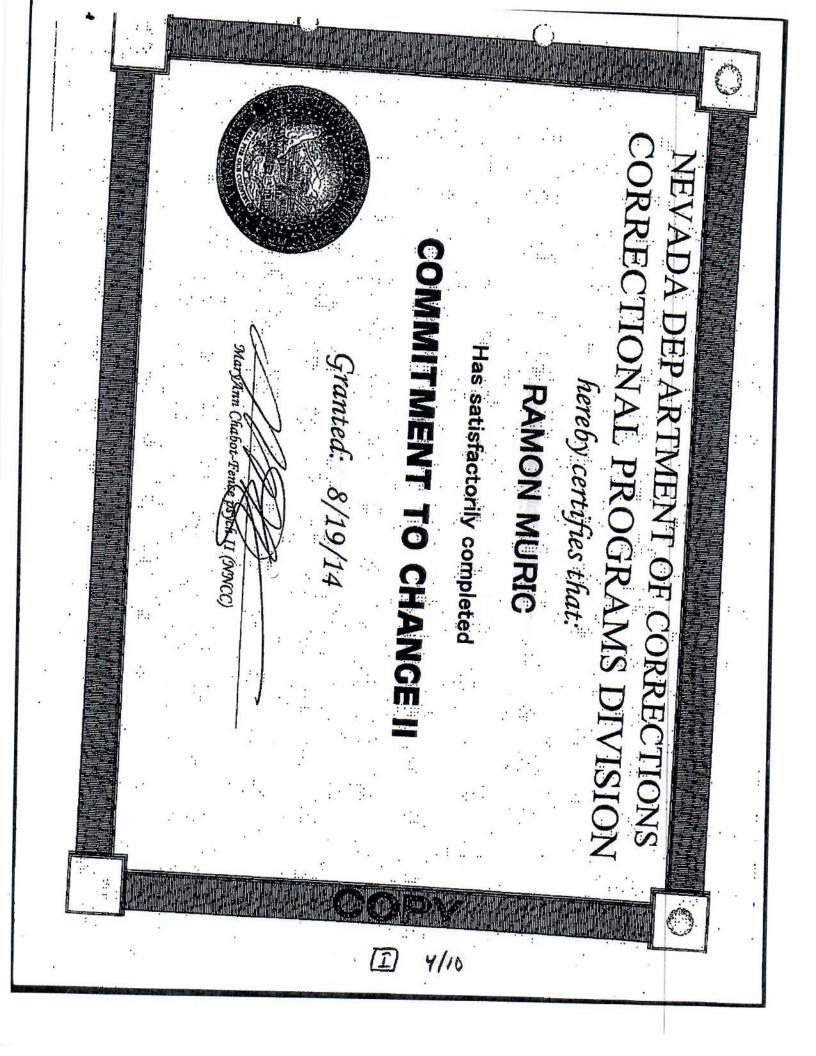
1	DATED this 21st day of April, 2020.			
2	RESPECTFULLY SUBMITTED:			
3				
4	MICHAEL LASHER, ESQ.			
5	Michael Lasher LLC Nevada Bar No. 13805			
6	827 Kenny Way			
7	Las Vegas, Nevada 89107 (510) 507-2869			
8	Michaellasher2@gmail.com			
	Attorney for Appellant			
9				
10	CERTIFICATE OF ELECTRONIC SERVICE			
11	$\mathbf{D}_{\mathbf{M}} = \mathbf{M} \mathbf{D}_{\mathbf{M}} \mathbf{D}_{M$			
12	Pursuant to NRCP5(b), I certify that on this 21st day of April, 2020 I caused			
13	the foregoing document entitled MOTION FOR BAIL ON APPEAL UNDER NRS			
14	178.488 to be served upon those persons designated by the parties in the E-service			
15	Master List for the above-referenced matter in the Eighth Judicial District Court			
16				
17	eFiling System in accordance with the mandatory electronic service requirements			
18	of Administrative Order 14.2 and the Nevada Electronic Filing and Conversion			
19	Rules.			
20				
21				
22	Michael Lasher			
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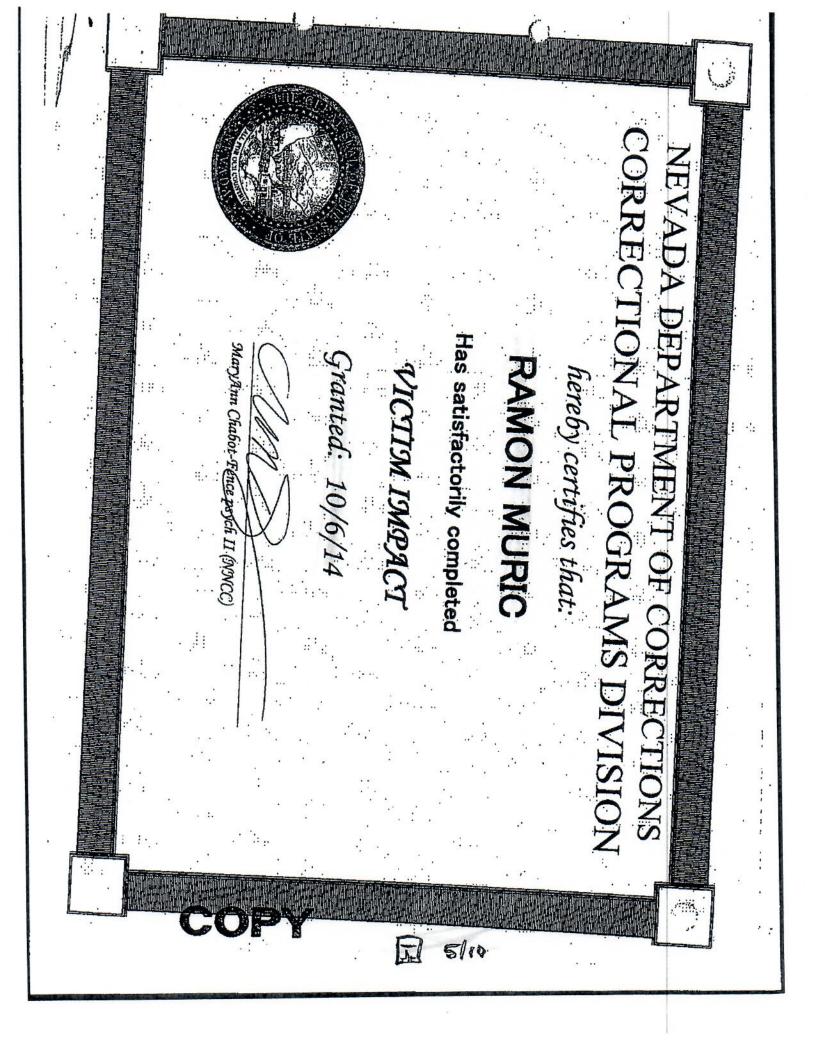


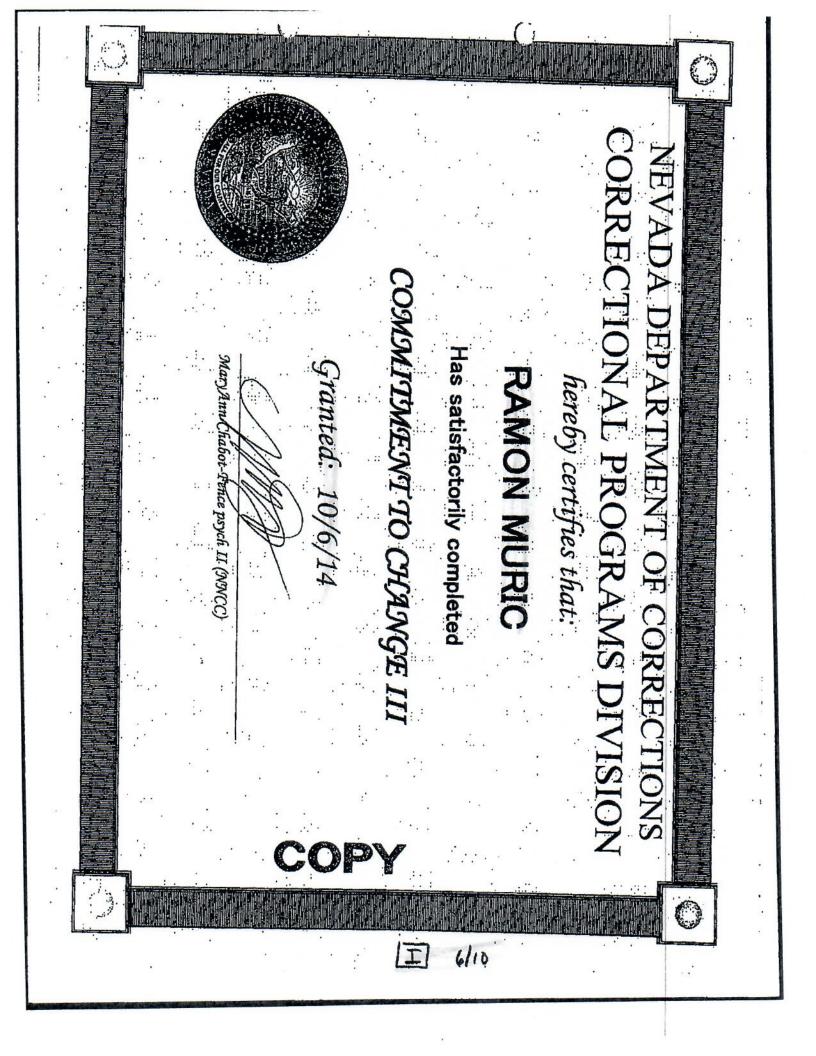
FAMILYREUNIFICATION consisting of 8 hours of formal instruction. has successfully completed a prescribed course in Dated this 22nd day of MAY, 2014 RE-ENTRY PROGRAM CERTIFICATE DEPARTMENT OF CORRECTIONS "Family Reunification begins with me. STATE OF NEVADA This certifies that: Ramon Muric A. Smith, Job Developer Isidro Baca Warder COP

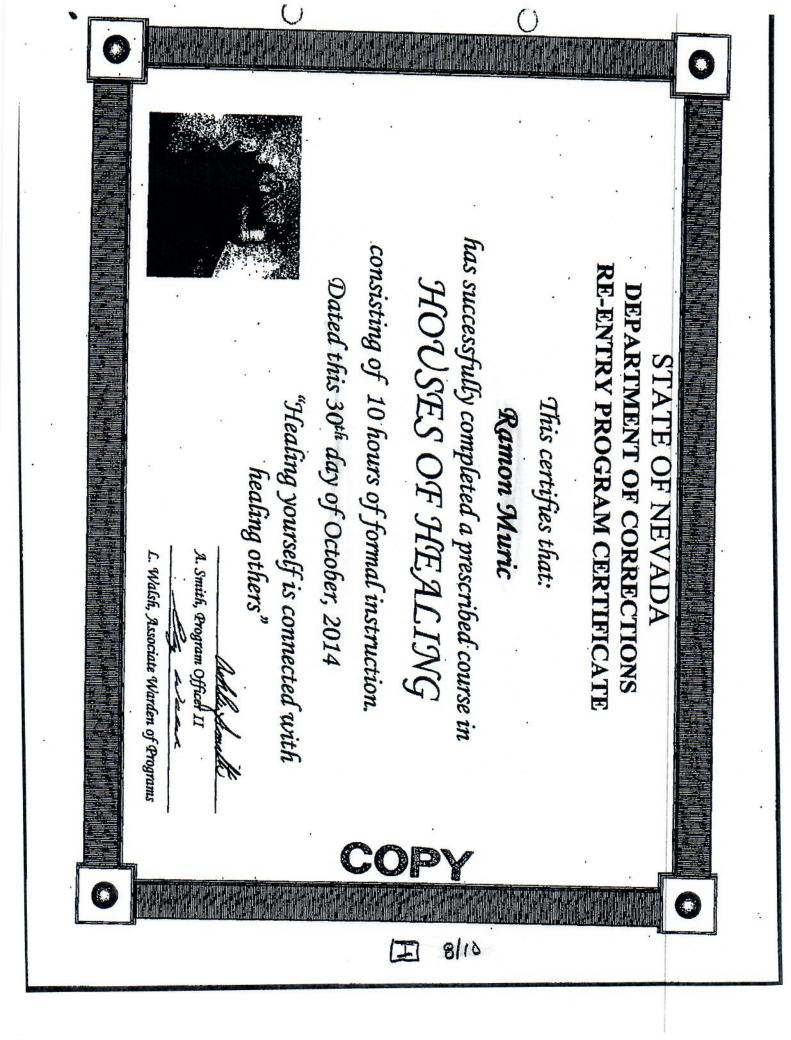
(1 sccessfully completed a prescribed course in the Re-Entry Program~ Bronze Phase ADA DEPARTMENT OF CORRECTIONS ACHIEVEMENT CERTIFICATE t this 25th day of June, 2014 "Everyday is a New Beginning New Beginnings Ramon Muric This certifies that: tidro Baca; Wander 1, Workforce Dev 3 0F10

consisting of 23 hours of formal instruction. ias successfully completed a prescribed course in TURNING POINT Dated this 25Th day of June, 2014_ RE-ENTRY PROGRAM CERTIFICATE DEPARTMENT OF CORRECTIONS "Being Prepared Insures the Future STATE OF NEVADA Ramon Muric This certifies that: L Smith, Workforce Develop I. Baca, Warden COF E 3/10









has successfully completed a prescribed course in consisting of 12 hours of formal instruction. PEACEFUL SOLUTIONS **RE-ENTRY PROGRAM CERTIFICATE** Dated this 6th day of November, 2014 DEPARTMENT OF CORRECTIONS STATE OF NEVADA "I am only the sum of my words and thoughts" This certifies that: Ramon Muric L. Walsh, Associate Warden of Program A. Smith, Program Officer II alle Smith An when COP 凹 9/10

4 has successfully completed a prescribed course in consisting of 37.5 hours of formal instruction. **RE-ENTRY PROGRAM CERTIFICATE** "Thinking controls behavior." Dated this 8th of July, 2015 DEPARTMENT OF CORRECTIONS Thinking for a Change STATE OF NEVADA This certifies that: Ramon Muric A. Smith, Program Officer II Isidro Baca, Warden May South COP 10/10 I

Brian Sandoval				
Governor			Terri L. Albertson Director	
	Thank you for your application Nevada Department of Motor Vehic COMMERCIAL DRIVER LIC	lon C.		
DLN/ID:2103905859	This interim document expires on	: 07/23/2016		
MURIC RAMON JR 12405 S GRASS VALLEY WINNEMUCCA NV 89445	RD 4702	6 6 Ht: 5'7"	ssued: 06/08/2016 Rest: J Wt: 195 DOB: 11/27/1972	
Signature			And and an an an and an an an an an	
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Ren	o/Sparks/Carson City (775) 684-4 Las Vegas Area (702) 486-4DM\ Rural Nevada (877) 368-78	1DMV (4368)		
• NRS 482.385 requ Nevada within 30 o license, whichever	ires new residents to register all v lays of becoming a resident or at occurs earlier.		the state of Da driver's	
 If you were informed 	d by DMV staff that your immediate		A	
verification with the	Department of Homeland Securi	ty, it is your response	pending sibility to	
card. Call (800) 375	ancies to ensure issuance of you 5-5283 to speak with a USCIS rep	r driver's license or resentative.	identification	
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lust a, click away. Registration	WWW.dmvnv.com	i stra a		
DL Renewal	Renewal • Registration Fee Estir History • Insurance Verification R s • Driver History Printouts • Rep cheduling • DMV Business Licens	copolises and Rell	ed Plate Search Instatements es	
s a s		3		

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